

Updated with ORM forms for regulatory actions in Tabs C, D and E - starts on page 790 of pdf document

TENTATIVE AGENDA
STATE WATER CONTROL BOARD MEETING

THURSDAY, JUNE 22, 2023

IN PERSON ONLY – GALLERY, COMMUNITY COLLEGE WORKFORCE ALLIANCE,
1651 EAST PARHAM ROAD, RICHMOND, VA 23228

Meeting will be Live-Streamed. Go to: www.deq.virginia.gov

Any Updates To Details/Final Arrangements To Be Announced On Virginia Regulatory Town Hall

Convene – 10:30 A.M

Agenda Item	Presenter	Tab
Minutes (March 23, 2023)	Porterfield	A
Final Exempt Regulations		
<i>Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation (9VAC25-31) in response to Chapter 276 of the 2023 Acts of Assembly (HB2189)</i>	Morris	B pg 4
<i>Virginia Water Protection Permit Program Regulation 9(VAC25-210) in response to Chapters 245, 258 and 259 of the 2023 Acts of Assembly (HB1804 and HB2181/SB1074)</i>	Morris	C pg 24
<i>Erosion and Sediment Control Regulations (9VAC25-840) and Virginia Stormwater Management Program (VSMP) Regulation (9VAC25-870), and General VPDES Permit for Discharges of Stormwater from Construction Activities (9VAC25-880) in response to Chapters 48 and 49 of the 2023 Acts of Assembly (HB1848/SB1376)</i>	Morris	D pg 41
<i>Certification of Nonpoint Source Nutrient Credits (9VAC25-900) in response to Chapter 723 of the 2023 Acts of Assembly (SB959)</i>	Morris	E pg 109
Final Regulations		
<i>Adoption of Virginia Erosion and Stormwater Management Regulation, 9VAC25-875; and repeal of Erosion and Sediment Control Regulations (9VAC25-840); Erosion and Sediment Control and Stormwater Certification Regulations (9VAC25-850); and Virginia Stormwater Management Program Regulation (9VAC25-870)</i>	Davenport	F pg 122
<i>Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Concrete Products Facilities (9VAC25-193)</i>	Brockenbrough	G pg 611
Proposed Regulations		
<i>General VPDES Permit for Discharges of Stormwater from Construction Activities (9VAC25-880)</i>	Rochet	H pg 690
Other Business		
Report to the Board Regarding Controversial Permits VPDES Permit No. VA0093165, Camp Luray OPCO, LLC	Morris	

Agenda Item	Presenter	Tab
Mountain Valley Pipeline - Update Future Meeting date- to be determined Public Forum (time not to exceed 45 minutes - no public comment on Mountain Valley Pipeline)	Stafford Porterfield	

ADJOURN

NOTE: The Board reserves the right to revise this agenda without notice unless prohibited by law. Revisions to the agenda include, but are not limited to, scheduling changes, additions or deletions. Questions on the latest status of the agenda should be directed to Melissa S. Porterfield at (804) 698-4238.

PUBLIC COMMENTS AT STATE WATER CONTROL BOARD MEETINGS: The Board encourages public participation in the performance of its duties and responsibilities. To this end, the Board has adopted public participation procedures for regulatory action and for case decisions made by the Department of Environmental Quality (Department). These procedures establish the times for the public to provide appropriate comment to the Board for regulatory action and the Department for case decisions for consideration.

For **REGULATORY ACTIONS** (adoption, amendment or repeal of regulations), public participation is governed by the Administrative Process Act and the Board's Public Participation Guidelines. Public comment is accepted during the Notice of Intended Regulatory Action phase (minimum 30-day comment period) and during the Notice of Public Comment Period on Proposed Regulatory Action (minimum 60-day comment period). Notice of these comment periods is announced in the Virginia Register, by posting to the Department and Virginia Regulatory Town Hall web sites and by mail to those on the Regulatory Development Mailing List. The comments received during the announced public comment periods are summarized for the Board and considered by the Board when making a decision on the regulatory action.

For **CASE DECISIONS** (e.g., issuance and amendment of permits and enforcement orders), the Board adopts public participation procedures in the individual regulations which establish the permit programs. (Note: as of July 1, 2022, the Department takes final action on all case decisions.) As a general rule, public comment is accepted on a draft permit for a period of 30 days. In some cases a public hearing is held at the conclusion of the public comment period on a draft permit. In other cases there may be an additional comment period during which a public hearing is held, usually 45 days.

In light of these established procedures, the Board accepts public comment on regulatory actions as well as general comments, at Board meetings in accordance with the following:

REGULATORY ACTIONS: Comments on regulatory actions are allowed only when the staff initially presents a regulatory action to the Board for final adoption. At that time, those persons who commented during the public comment period on the proposal are allowed up to 3 minutes to respond to the summary of the comments presented to the Board. Adoption of an emergency regulation is a final adoption for the purposes of this policy. Also, public comment will be accepted for certain final exempt actions where there has been no public comment period. Persons are allowed up to 3 minutes to address the Board on the emergency regulation and final exempt actions under consideration.

POOLING MINUTES ON REGULATORY ACTIONS: Those persons who commented during the public hearing or public comment period and attend the Board meeting may pool their minutes to allow for a single presentation to the Board that does not exceed the time limitation of 3 minutes times the number of persons pooling minutes, or 15 minutes, whichever is less.

NEW INFORMATION ON A REGULATORY ACTION will not be accepted at the meeting. The Board expects comments and information on a regulatory action to be submitted during the established public comment periods. However, the Board recognizes that in rare instances new information may become available after the close of the public comment period. To provide for consideration of and ensure the appropriate review of this new information, persons who commented during the prior public comment period shall submit the new information to the Department staff contact listed below at least 10 days prior to the Board meeting. The Board's decision will be based on the Department-developed official file and discussions at the Board meeting. Should the Board or Department decide that the new information was not reasonably available during the prior public comment period, is significant to the Board's decision and should be included in the official file, the Department may announce an additional public comment period in order for all interested persons to have an opportunity to participate.

PUBLIC FORUM: The Board schedules a public forum at each regular meeting to provide an opportunity for citizens to address the Board on matters other than those on the agenda or pending regulatory actions. Those persons wishing to address the Board during this time should indicate their desire on the sign-in cards/sheet and limit their presentations to 3 minutes or less. Note, there is no pooling of minutes during the public forum.

The Board reserves the right to alter the time limitations set forth in this policy without notice and to ensure comments presented at the meeting conform to this policy.

Department of Environmental Quality Staff Contact: Melissa S. Porterfield, Policy Analyst, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, Virginia 23218, phone (804) 698-4238, e-mail: Melissa.porterfield@deq.virginia.gov

Additional Meeting Information:

- Attendees may not erect any signage inside or outside the meeting room or building.
- Attendees are not entitled to be disorderly or disrupt the meeting from proceeding in an orderly, efficient, and effective fashion. Disruptive behavior may result in a recess or removal from the meeting.
- Possession or use of any device that may disrupt the conduct of business is prohibited, including but not limited to: voice-amplification equipment; bullhorns; blow horns; sirens, or other noise-producing devices; as well as signs on sticks, poles or stakes; or helium-filled balloons.
- All attendees are asked to be respectful of all speakers.
- Rules will be enforced fairly and impartially not only to ensure the efficient and effective conduct of business, but also to ensure no interference with the business of the complex, its employees and guests.
- Attendees wishing to record the proceedings are welcome to do so; however, you may not interfere with the business of the meeting, nor impede the view or participation of other meeting attendees and staff.
- No smoking is allowed unless in a designated outside space. This includes tobacco & e-cigarettes.
- No alcohol, fireworks, pyrotechnics, weapons, or any substances/items controlled by law are allowed.
- No firearms are allowed in the State's contracted spaces except for firearms carried by law-enforcement officers or authorized security personnel.
- All violators may be subject to removal from the meeting facility.
- Anyone removed from the facility may not reenter.
- Anyone who fails to comply with removal may be charged with trespass.

TAB B



Commonwealth of Virginia

VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

1111 E. Main Street, Suite 1400, Richmond, Virginia 23219

P.O. Box 1105, Richmond, Virginia 23218

(800) 592-5482 FAX (804) 698-4178

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Travis A. Voyles
Secretary of Natural and Historic Resources

Michael S. Rolband, PE, PWD, PWS Emeritus
Director
(804) 698-4020

MEMORANDUM

TO: State Water Control Board Members

FROM: Scott Morris, Water Division Director

A handwritten signature in black ink, appearing to read "Scott Morris".

DATE: May 31, 2023

SUBJECT: Final Exempt Action: Amendment to change the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation (9VAC25-31 et seq.) in response to Chapter 276 of the 2023 Virginia Acts of Assembly

At the June 22, 2023, meeting of the State Water Control Board, the Department will present the Board with final amendments to the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation (9VAC25-31 et seq.) These amendments are necessary to implement Chapter 276 of the 2023 Acts of Assembly.

Chapter 276 of the 2023 Acts of Assembly requires the pretreatment standards adopted by the State Water Control Board to require any industrial user of a publicly owned treatment works that receives and cleans, repairs, refurbishes, or processes any equipment, parts, or media used to treat any water or wastewater from any off-site manufacturing process that the industrial user knows or reasonably should know uses PFAS chemicals to test its wastestream for PFAS chemicals prior to and after cleaning, repairing, refurbishing, or processing such items. These regulatory amendments are exempt from the state administrative procedures for adoption of regulations because they are necessary to conform to Virginia statutory law (§ 2.2-4006(A)(4)(a) of the Code of Virginia). A copy of Chapter 276 of the 2023 Virginia Acts of Assembly is attached to this memorandum. The Office of the Attorney General will be sent the regulation for certification of authority to adopt the amendments.

After making a presentation on the proposed amendments and answering any questions the Board may have, staff will ask the Board for final approval of amendments to the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation (9VAC25-31 et seq.) and affirm that the Board will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

ATTACHMENTS

- TH09- Exempt Action Final Regulation Agency Background Document for the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation
- Project 7567- Final Exempt Action: Amendment to change 9VAC25-31 et seq. in response to Chapter 276 of the 2023 Virginia Acts of Assembly
- Chapter 276 of the 2023 Acts of Assembly

PRESENTER CONTACT INFORMATION

Name: Scott Morris, Water Division Director
Phone: (804) 659-1383
Email: anthony.morris@deq.virginia.gov



townhall.virginia.gov

Exempt Action: Final Regulation Agency Background Document

Agency name	State Water Control Board
Virginia Administrative Code (VAC) Chapter citation(s)	9VAC25-31
VAC Chapter title(s)	Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation
Action title	Amendment to change the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation (9VAC25-31 et seq.) in response to Chapter 276 of the 2023 Virginia Acts of Assembly
Final agency action date	June 22, 2023
Date this document prepared	May 17, 2023

This information is required for executive branch review pursuant to Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19. In addition, this information is required by the Virginia Registrar of Regulations pursuant to the Virginia Register Act (§ 2.2-4100 et seq. of the Code of Virginia). Regulations must conform to the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Brief Summary

Provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.

This final exempt regulatory action is necessary to implement Chapter 276 of the 2023 Acts of Assembly, which requires the pretreatment standards adopted by the State Water Control Board to require any industrial user of a publicly owned treatment works that receives and cleans, repairs, refurbishes, or processes any equipment, parts, or media used to treat any water or wastewater from any off-site manufacturing process that the industrial user knows or reasonably should know uses PFAS chemicals to test its wastestream for PFAS chemicals prior to and after cleaning, repairing, refurbishing, or processing such items. This action will amend 9VAC25-31, the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation, to include this new statutory requirement.

These regulatory amendments are exempt from the state administrative procedures for adoption of regulations because they are necessary to conform to Virginia statutory law (§ 2.2-4006(A)(4)(a) of the Code of Virginia).

Mandate and Impetus

Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, internal staff review, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, "mandate" has the same meaning as defined in the ORM procedures, "a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part."

HB2189 was passed during the 2023 Session of the General Assembly. This bill requires the pretreatment standards adopted by the State Water Control Board to require any industrial user of a publicly owned treatment works that receives and cleans, repairs, refurbishes, or processes any equipment, parts, or media used to treat any water or wastewater from any off-site manufacturing process that the industrial user knows or reasonably should know uses PFAS chemicals to test its wastestream for PFAS chemicals prior to and after cleaning, repairing, refurbishing, or processing such items.. The Governor signed this bill into law on March 22, 2023 (HB2189 – Chapter 276 of the 2023 Acts of Assembly) and these changes will become effective July 1, 2023. This regulatory action is required to conform the existing regulation to changes in Code.

Statement of Final Agency Action

Provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) the name of the agency taking the action; and 3) the title of the regulation.

On June 22, 2023, the State Water Control Board approved final amendments to the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation (9VAC25-31 et seq.) and affirmed that the Board will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

1 **Project 7567 - Final Exempt Action: Amendment to change 9VAC25-31 et seq. in**
2 **response to Chapter 276 of the 2023 Virginia Acts of Assembly**

3 **State Water Control Board**

4 **Final exempt- Pretreatment program requirements: testing for PFAS chemicals**
5 **9VAC25-31-805. Pretreatment requirements: testing for PFAS chemicals.**

6 A. As used in this section, "PFAS chemical" means (i) Perfluorooctanoic Acid (PFOA), (ii)
7 Perfluorooctane Sulfonate (PFOS), (iii) hexafluoropropylene oxide dimer acid (HFPO-DA), (iv)
8 perfluorobutane sulfonate (PFBS), or (v) any substance in a class of fluorinated organic chemicals
9 containing at least two adjacent fluorinated carbon atoms, where one carbon atom is fully
10 fluorinated and the other atom is at least partially fluorinated, excluding gases and volatile liquids,
11 also referred to as perfluoroalkyl and polyfluoroalkyl substances, identified by a publicly owned
12 treatment works in its pretreatment program for which there is an EPA approved testing method.

13 B. Any POTW receiving a wastestream from an industrial user that receives and cleans,
14 repairs, refurbishes, or processes any equipment, parts, or media used to treat any water or
15 wastewater from any off-site manufacturing process that the industrial user knows or reasonably
16 should know uses PFAS chemicals shall require such industrial user to test its wastestream for
17 PFAS chemicals prior to and after cleaning, repairing, refurbishing, or processing such items. The
18 results of such tests shall be transmitted to the receiving publicly owned treatment works within
19 three days of receipt of the test results by the industrial user of the publicly owned treatment
20 works.

VIRGINIA ACTS OF ASSEMBLY -- 2023 SESSION

CHAPTER 276

An Act to amend the Code of Virginia by adding in Article 2 of Chapter 3.1 of Title 62.1 a section numbered 62.1-44.15:5.3, relating to requirements to test for PFAS chemicals; publicly owned treatment works.

[H 2189]

Approved March 22, 2023

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Article 2 of Chapter 3.1 of Title 62.1 a section numbered 62.1-44.15:5.3 as follows:

§ 62.1-44.15:5.3. Requirements to test for PFAS chemicals; publicly owned treatment works.

A. As used in this section, "PFAS chemical" means (i) Perfluorooctanoic Acid (PFOA), (ii) Perfluorooctane Sulfonate (PFOS), (iii) hexafluoropropylene oxide dimer acid (HFPO-DA), (iv) perfluorobutane sulfonate (PFBS), or (v) any substance in a class of fluorinated organic chemicals containing at least two adjacent fluorinated carbon atoms, where one carbon atom is fully fluorinated and the other atom is at least partially fluorinated, excluding gases and volatile liquids, also referred to as perfluoroalkyl and polyfluoroalkyl substances, identified by a publicly owned treatment works in its pretreatment program for which there is an EPA approved testing method.

B. The pretreatment standards adopted by the Board shall require any industrial user of a publicly owned treatment works that receives and cleans, repairs, refurbishes, or processes any equipment, parts, or media used to treat any water or wastewater from any off-site manufacturing process that the industrial user knows or reasonably should know uses PFAS chemicals to test its wastestream for PFAS chemicals prior to and after cleaning, repairing, refurbishing, or processing such items. The results of such tests shall be transmitted to the receiving publicly owned treatment works within three days of receipt of the test results by the industrial user of the publicly owned treatment works.

Office of Regulatory Management

Economic Review Form

Agency name	State Water Control Board
Virginia Administrative Code (VAC) Chapter citation(s)	9VAC25-31
VAC Chapter title(s)	Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation
Action title	Amendment to change the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation (9VAC25-31 et seq.) in response to Chapter 276 of the 2023 Virginia Acts of Assembly (HB 2189)
Date this document prepared	May 31, 2023
Regulatory Stage (including Issuance of Guidance Documents)	Final Exempt Action

Cost Benefit Analysis

Complete Tables 1a and 1b for all regulatory actions. You do not need to complete Table 1c if the regulatory action is required by state statute or federal statute or regulation and leaves no discretion in its implementation.

Table 1a should provide analysis for the regulatory approach you are taking. Table 1b should provide analysis for the approach of leaving the current regulations intact (i.e., no further change is implemented). Table 1c should provide analysis for at least one alternative approach. You should not limit yourself to one alternative, however, and can add additional charts as needed.

Report both direct and indirect costs and benefits that can be monetized in Boxes 1 and 2. Report direct and indirect costs and benefits that cannot be monetized in Box 4. See the ORM Regulatory Economic Analysis Manual for additional guidance.

Table 1a: Costs and Benefits of the Proposed Changes (Primary Option)

<p>(1) Direct & Indirect Costs & Benefits (Monetized)</p>	<p>Direct Costs:</p> <p>This regulatory amendment is in response to Chapter 276 of the 2023 Virginia Acts of Assembly (HB 2189).</p> <p>Specifically, the law requires the pretreatment standards adopted by the State Water Control Board to require industrial users that clean, repair, refurbish, or process equipment used to treat any water or wastewater from an offsite manufacturing process involving PFAS to test their discharges to the sewer for PFAS. The results of the tests are to be submitted to the publicly owned treatment works that receives the discharge to the sewer. In the context of pretreatment standards “industrial user” is a defined term that does not correspond to the every day use of the term industrial. In the context of this law an “industrial user” includes any entity to which pretreatment standards apply. However, this law only affects a small subset of industrial users, specifically those that receive and clean, repair, refurbish, or processes any equipment, parts, or media used to treat any water or wastewater from any off-site manufacturing process that the industrial user knows or reasonably knows should use PFAS.</p> <p>There are 104 publicly owned treatment works in the Commonwealth, and they are already required to have a pretreatment program. This law would be implemented through those pretreatment programs.</p> <p>Industrial entities that discharge to a sewer and clean, repair, refurbish, or process equipment used to treat any water or wastewater from an offsite manufacturing process involving PFAS will be required to test their sewer discharges for PFAS. There will be costs for sampling, including laboratory costs. The law only applies to industrial users of a sewer. Industrial facilities with their own discharge permit and residential users of sewers are not affected.</p> <p>Indirect Costs:</p> <p>It is possible that industrial users will pass the costs of PFAS testing on to their customers, but no conclusive statement can be made to that effect.</p> <p>Direct Benefits:</p>
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	<p>This law seeks to proactively identify industrial users of publicly owned treatment works (i.e., entities that release their wastestream to a sewer rather than in compliance with their own discharge permit) that might be releasing a wastestream that contains PFAS into the sewer system.</p> <p>This law addresses the problem by requiring the pretreatment programs implemented by publicly owned treatment works to require users of publicly owned treatment works (i.e., entities that release their wastestream to a sewer rather than in compliance with their own discharge permit) that receive and clean, repair, refurbish, or process any equipment, parts, or media used to treat any water or wastewater from any offsite manufacturing process that the user knows or reasonably should know uses PFAS chemicals to test its wastestream prior to and after cleaning, repairing, refurbishing, or processing such items.</p> <p>This law and resulting regulation are beneficial to human health and the environment through the protection of Virginia’s waterways. When PFAS enters a sewer system it can pass through the publicly owned treatment works, and into state waters, including drinking water sources. When drinking water sources have to be treated there can be significant costs to deploy treatment systems (i.e., millions of dollars).</p> <p>Indirect Benefits:</p> <p>This law and resulting regulation are beneficial to human health and the environment through the protection of Virginia’s waterways, including drinking water sources. As a result, indirect benefits include enhanced recreational uses of Virginia’s waterways such as fishing and economic uses of Virginia’s waterways such as use by the shellfish industry. Tourism would also benefit indirectly from improved water quality.</p>
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(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	<p>(a) Costs per test for PFAS vary widely based on the lab used. Sampling collection costs using a contractor are estimated at \$300 per event. Analytical costs per sample range, depending on the laboratory used, from \$400 per sample to \$500 per</p>	<p>(b) Protection for drinking water sources (and avoided drinking water treatment costs, tourism; recreational use of Virginia’s waterways; and economic use of Virginia’s waterways including tourism, fishing, and shellfish harvesting.</p>

	sample.	
(3) Net Monetized Benefits	<p>No conclusive statement can be made about specific net monetized benefits, however, the Commonwealth generally benefits from the protection of the Commonwealth’s environment and natural resources from pollution, impairment, or destruction. This law and resulting regulation are beneficial to human health and the environment through the protection of Virginia’s waterways, including drinking water sources. When PFAS enters drinking water sources, additional treatments, such as granular activated carbon, are required and the costs for water providers can reach into the millions of dollars, which must be absorbed by the water provider or passed through to ratepayers. As a result, benefits of this requirement include users of drinking water, recreational uses of Virginia’s waterways such as fishing, and economic uses of Virginia’s waterways such as use by the shellfish industry. Tourism would also benefit from enhanced water quality.</p>	
(4) Other Costs & Benefits (Non-Monetized)	<p>No conclusive statement can be made about specific non-monetized costs and benefits, however, the Commonwealth generally benefits from the protection of the Commonwealth’s environment and natural resources from pollution, impairment, or destruction. This law and resulting regulation are beneficial to human health and the environment through the protection of Virginia’s waterways, including drinking water sources. When PFAS enters drinking water sources, additional treatments, such as granular activated carbon, are required and the costs for water providers can reach into the millions of dollars, which must be absorbed by the water provider or passed through to ratepayers. As a result, benefits of this requirement include users of drinking water, recreational uses of Virginia’s waterways such as fishing and economic uses of Virginia’s waterways such as use by the shellfish industry. Tourism would also benefit from enhanced water quality.</p>	
(5) Information Sources	<p>Fiscal impact statement for HB 2189 (2023); <i>Water Authority to Spend \$13.5 Million to Remove Toxin in Spring Hollow Reservoir</i>, The Roanoke Times, Sept. 15, 2022, available online at: https://roanoke.com/news/local/water-authority-to-spend-13-5-million-to-remove-toxin-in-spring-hollow-reservoir/article_74696642-3546-11ed-9fd9-c773d61c4ef6.html.</p>	

Table 1b: Costs and Benefits under the Status Quo (No change to the regulation)

(1) Direct & Indirect Costs &	<p>Direct Costs:</p> <p>There are no current requirements and therefore no current direct costs.</p>
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Benefits (Monetized)	<p>Indirect Costs:</p> <p>There are no current requirements and therefore no current indirect costs.</p> <p>Direct Benefits:</p> <p>There are no current requirements and therefore no current direct benefits.</p> <p>Indirect Benefits:</p> <p>There are no current requirements and therefore no current indirect benefits.</p>	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) N/A	(b) N/A
(3) Net Monetized Benefit	N/A	
(4) Other Costs & Benefits (Non-Monetized)	N/A	
(5) Information Sources	N/A	

Agency Note: This final exempt regulatory action is mandated by state statute effective July 1, 2023. Therefore, Table 1c is not required and has been removed.

Impact on Local Partners

Use this chart to describe impacts on local partners. See Part 8 of the ORM Cost Impact Analysis Guidance for additional guidance.

Table 2: Impact on Local Partners

(1) Direct & Indirect Costs & Benefits (Monetized)	<p>Direct Costs:</p> <p>This regulatory amendment is in response to Chapter 276 of the 2023 Virginia Acts of Assembly (HB 2189).</p> <p>This law affects any industrial user of a publicly owned wastewater treatment works (i.e., industrial users who release their wastestream to a</p>
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sewer rather than in compliance with their own discharge permit) that receives and cleans, repairs, refurbishes, or processes any equipment, parts, or media used to treat any water or wastewater from any off-site manufacturing process that the industrial user knows or reasonably knows should use PFAS.

This law also affects operators of publicly owned treatment works (i.e., local governments and authorities), which will be required to include testing requirements for PFAS for industrial users of their publicly owned treatment works that receive and clean, repair, refurbish, or processes any equipment, parts, or media used to treat any water or wastewater from any off-site manufacturing process that the industrial user knows or reasonably knows should use PFAS in their pretreatment programs and will receive test results for PFAS from the affected industrial users.

Indirect Costs:
N/A

Direct Benefits:
This law seeks to proactively identify users of publicly owned treatment works (i.e., entities that release their wastestream to a sewer rather than in compliance with their own discharge permit) that might be releasing a wastestream that contains PFAS into the sewer system.

This law addresses the problem by requiring the pretreatment programs implemented by publicly owned treatment works to require users of publicly owned treatment works (i.e., entities that release their wastestream to a sewer rather than in compliance with their own discharge permit) that receive and clean, repair, refurbish, or process any equipment, parts, or media used to treat any water or wastewater from any offsite manufacturing process that the user knows or reasonably should know uses PFAS chemicals to test its wastestream prior to and after cleaning, repairing, refurbishing, or processing such items.

This law and resulting regulation are beneficial to human health and the environment through the protection of Virginia’s waterways, including drinking water sources. When PFAS enters drinking water sources, entities that provide drinking water (i.e., local governments and authorities) can incur costs in the millions of dollars to install treatment technologies.

Indirect Benefits:

	<p>This law and resulting regulation are beneficial to human health and the environment through the protection of Virginia’s waterways, including drinking water sources. As a result, indirect benefits include recreational uses of Virginia’s waterways such as fishing and economic uses of Virginia’s waterways such as use by the shellfish industry. Tourism would also benefit indirectly.</p>	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	<p>(a) Costs per test for PFAS vary widely based on the lab used. Sampling collection costs using a contractor are estimated at \$300 per event. Analytical costs per sample range, depending on the laboratory used, from \$400 per sample to \$500 per sample.</p>	<p>(b) Protection for drinking water sources (and avoided drinking water treatment costs, tourism; recreational use of Virginia’s waterways; and economic use of Virginia’s waterways including tourism, fishing, and shellfish harvesting.</p>
(3) Other Costs & Benefits (Non-Monetized)	<p>No conclusive statement can be made about specific non-monetized costs and benefits, however, the Commonwealth generally benefits from the protection of the Commonwealth’s environment and natural resources from pollution, impairment, or destruction. This law and resulting regulation are beneficial to human health and the environment through the protection of Virginia’s waterways, including drinking water sources. When PFAS enters drinking water sources, additional treatments, such as granular activated carbon, are required and the costs for water providers can reach into the millions of dollars, which must be absorbed by the water provider or passed through to ratepayers. As a result, benefits of this requirement include users of drinking water, recreational uses of Virginia’s waterways such as fishing and economic uses of Virginia’s waterways such as use by the shellfish industry. Tourism would also benefit from enhanced water quality.</p>	
(4) Assistance	N/A	
(5) Information Sources	Fiscal impact statement for HB 2189 (2023)	

Impacts on Families

Use this chart to describe impacts on families. See Part 8 of the ORM Cost Impact Analysis Guidance for additional guidance.

Table 3: Impact on Families

<p>(1) Direct & Indirect Costs & Benefits (Monetized)</p>	<p>Direct Costs:</p> <p>N/A</p> <p>Indirect Costs:</p> <p>It is possible that local partners would pass their costs through to families, however, no conclusive statement can be made as to the amount.</p> <p>Direct Benefits:</p> <p>This law and resulting regulation are beneficial to human health and the environment through the protection of Virginia’s waterways. Virginia families generally benefit from clean waterways.</p> <p>Indirect Benefits:</p> <p>This law and resulting regulation are beneficial to human health and the environment through the protection of Virginia’s waterways. As a result, indirect benefits include recreational uses of Virginia’s waterways by families such as fishing and economic uses of Virginia’s waterways such as use by the shellfish industry which would create jobs for Virginia families.</p>	
<p>(2) Present Monetized Values</p>	<p>Direct & Indirect Costs</p>	<p>Direct & Indirect Benefits</p>
	<p>(a)</p> <p>It is possible that local partners would pass their costs through to families, however, no conclusive statement can be made as to the amount.</p>	<p>(b)</p> <p>This law and resulting regulation are beneficial to human health and the environment through the protection of Virginia’s waterways. As a result, indirect benefits include recreational uses of Virginia’s waterways by families such as fishing and economic uses of Virginia’s waterways such as use by the shellfish industry which would create jobs for Virginia families.</p>

(3) Other Costs & Benefits (Non-Monetized)	No conclusive statement can be made about specific non-monetized costs and benefits, however, the Commonwealth and its families generally benefit from the protection of the Commonwealth’s environment and natural resources from pollution, impairment, or destruction. This law and resulting regulation are beneficial to human health and the environment through the protection of Virginia’s waterways. As a result, benefits include recreational uses of Virginia’s waterways such as fishing and economic uses of Virginia’s waterways such as use by the shellfish industry creating jobs for Virginia families.
(4) Information Sources	Fiscal impact statement for HB 2189 (2023); <i>Water Authority to Spend \$13.5 Million to Remove Toxin in Spring Hollow Reservoir</i> , The Roanoke Times, Sept. 15, 2022, available online at: https://roanoke.com/news/local/water-authority-to-spend-13-5-million-to-remove-toxin-in-spring-hollow-reservoir/article_74696642-3546-11ed-9fd9-c773d61c4ef6.html .

Impacts on Small Businesses

Use this chart to describe impacts on small businesses. See Part 8 of the ORM Cost Impact Analysis Guidance for additional guidance.

Table 4: Impact on Small Businesses

(1) Direct & Indirect Costs & Benefits (Monetized)	<p>Direct Costs: This regulatory amendment is in response to Chapter 276 of the 2023 Virginia Acts of Assembly (HB 2189).</p> <p>This law affects any small business that is an industrial user of a publicly owned wastewater treatment works, (i.e., industrial users who release their wastestream to a sewer rather than in compliance with their own discharge permit) that receives and cleans, repairs, refurbishes, or processes any equipment, parts, or media used to treat any water or wastewater from any off-site manufacturing process that the industrial user knows or reasonably knows should use PFAS. In the context of pretreatment standards “industrial user” is a defined term that does not correspond to the every day use of the term industrial. In the context of this law an “industrial user” includes any entity to which pretreatment standards apply. However, this law only affects a small subset of industrial users, specifically those that receive and clean, repair, refurbish, or processes any equipment, parts, or media used to treat any water or wastewater from any off-site manufacturing process that the industrial user knows or reasonably knows should use PFAS.</p> <p>It is unknown how many small businesses will be required to test their wastestream for PFAS. Small businesses that fall within the scope of the law would be subject to the same PFAS testing costs listed in Table 1a.</p>
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	<p>Indirect Costs:</p> <p>It is possible that small businesses subject to the requirements in this law will pass their testing costs through to customers, however, no conclusive statement can be made as to the amount.</p> <p>Direct Benefits:</p> <p>This law and resulting regulation are beneficial to human health and the environment through the protection of Virginia’s waterways, including drinking water sources. Virginia’ small businesses generally benefit from clean waterways, including clean drinking water. When PFAS enters a sewer system it can pass through the publicly owned treatment works, and into state waters, including drinking water sources. When drinking water sources have to be treated there can be significant costs to deploy treatment systems (i.e., millions of dollars).</p> <p>Indirect Benefits:</p> <p>This law and resulting regulation are beneficial to human health and the environment through the protection of Virginia’s waterways, including drinking water sources. As a result, indirect benefits include enhanced recreational uses of Virginia’s waterways such as fishing and economic uses of Virginia’s waterways such as use by the shellfish industry. Tourism would also benefit indirectly from improved water quality.</p>	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	<p>(a)</p> <p>Costs per test for PFAS vary widely based on the lab used. Sampling collection costs using a contractor are estimated at \$300 per event. Analytica costs per sample range, depending on the laboratory used, from \$400 per sample to \$500 per sample.</p> <p>It is possible that small businesses would pass their costs through to customers, however, no conclusive</p>	<p>(b)</p> <p>This law and resulting regulation are beneficial to human health and the environment through the protection of Virginia’s waterways, including drinking water sources. As a result, indirect benefits include recreational uses of Virginia’s waterways such as fishing and economic uses of Virginia’s waterways such as use by small businesses. Both the recreational and economic uses of</p>

	statement can be made as to the amount.	Virginia waterways by small businesses would create jobs.
(3) Other Costs & Benefits (Non-Monetized)	No conclusive statement can be made about specific non-monetized costs and benefits, however, the Commonwealth’s small businesses generally benefit from the protection of the Commonwealth’s environment and natural resources from pollution, impairment, or destruction. This law and resulting regulation are beneficial to human health and the environment through the protection of Virginia’s waterways, including drinking water sources. When PFAS enters drinking water sources, additional treatments, such as granular activated carbon, are required and the costs for water providers can reach into the millions of dollars, which must be absorbed by the water provider or passed through to ratepayers. As a result, benefits of this requirement include recreational uses of Virginia’s waterways such as fishing and economic uses of Virginia’s waterways by small businesses would create jobs.	
(4) Alternatives	N/A	
(5) Information Sources	Fiscal impact statement for HB 2189 (2023); <i>Water Authority to Spend \$13.5 Million to Remove Toxin in Spring Hollow Reservoir</i> , The Roanoke Times, Sept. 15, 2022, available online at: https://roanoke.com/news/local/water-authority-to-spend-13-5-million-to-remove-toxin-in-spring-hollow-reservoir/article_74696642-3546-11ed-9fd9-c773d61c4ef6.html .	

Changes to Number of Regulatory Requirements

Table 5: Regulatory Reduction

For each individual action, please fill out the appropriate chart to reflect any change in regulatory requirements, costs, regulatory stringency, or the overall length of any guidance documents.

Change in Regulatory Requirements

VAC Section(s) Involved	Initial Count	Additions	Subtractions	Net Change
9VAC25-31-805	0	2	0	+2

Cost Reductions or Increases (if applicable)

VAC Section(s) Involved	Description of Regulatory Requirement	Initial Cost	New Cost	Overall Cost Savings/Increases
9VAC25-31-805	PFAS testing required for a small subset of facilities, if activities potentially involve PFAS chemicals and discharge to a public sewer system.	\$0- currently no requirement to test	Sampling costs per test for PFAS vary widely and are summarized in Table 1a (2)(b)	Increase in costs to a small segment of the regulated community due to the statutory requirement to test for PFAS.

Other Decreases or Increases in Regulatory Stringency (if applicable)

VAC Section(s) Involved	Description of Regulatory Change	Overview of How It Reduces or Increases Regulatory Burden
9VAC25-31-805	This nondiscretionary regulatory change is required by a statutory change that requires the pretreatment standards adopted by the State Water Control Board to require industrial users that clean, repair, refurbish, or process equipment used to treat any water or wastewater from an offsite manufacturing process involving PFAS to test their	PFAS testing required for a small subset of facilities, if activities potentially involve PFAS chemicals.

	<p>discharges to the sewer for PFAS. The results of the tests are to be submitted to the publicly owned treatment works that receives the discharge to the sewer. In the context of pretreatment standards “industrial user” is a defined term that does not correspond to the every day use of the term industrial. In the context of this law an “industrial user” includes any entity to which pretreatment standards apply. However, this law only affects a small subset of industrial users, specifically those that receive and clean, repair, refurbish, or processes any equipment, parts, or media used to treat any water or wastewater from any off-site manufacturing process that the industrial user knows or reasonably knows should use PFAS.</p>	

TAB C



Commonwealth of Virginia

VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

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Travis A. Voyles
Secretary of Natural and Historic Resources

Michael S. Rolband, PE, PWD, PWS Emeritus
Director
(804) 698-4020

MEMORANDUM

TO: State Water Control Board Members

FROM: Scott Morris, Water Division Director

A handwritten signature in black ink, appearing to read "Scott Morris".

DATE: May 31, 2023

SUBJECT: Final Exempt Action: Amendment to change the Virginia Water Protection Permit Program Regulation (9VAC25-210 et seq.) in response to Chapters 245, 258, and 259 of the 2023 Virginia Acts of Assembly

At the June 22, 2023, meeting of the State Water Control Board, the Department will present the Board with final amendments to the Virginia Water Protection Permit Program Regulation (9VAC25-210 et seq.). These amendments are necessary to implement Chapters 245, 258, and 259 of the 2023 Acts of Assembly.

Chapter 245 of the 2023 Acts of Assembly provides that notwithstanding any provision of this section restricting the location of the source of credits, the Department may, for tidal wetland impacts, authorize the use of, including without the application of subsection C, a tidal wetland mitigation bank located in an adjacent river watershed when such bank contains the same plant community type and salinity regime as the impacted wetlands, which shall be the preferred form of compensation. This subsection shall apply only (i) to tidal wetland mitigation banks with a polyhaline salinity regime located in subbasins 02080102, 02080107, 02080108, and 02080208 and (ii) when a tidal wetland mitigation bank with the same plant community type and salinity regime as the impacted wetlands is not available in the same river watershed as the impacted wetland.

Chapters 258 and 259 of the 2023 Acts of Assembly provides that a permit from the Virginia Marine Resources Commission is not required for activity in nontidal waters provided the person

performing the activity obtains and complies with a Virginia Water Protection Permit. These acts further provide that in determining whether to issue a Virginia Water Protection Permit, the Department of Environmental Quality shall be guided by the factors set forth in subsection A of §28.2-1205.

This action will amend 9VAC25-210, Virginia Water Protection Permit Program Regulation, to include these new statutory provisions. These regulatory amendments are exempt from the state administrative procedures for adoption of regulations because they are necessary to conform to Virginia statutory law (§ 2.2-4006(A)(4)(a) of the Code of Virginia). Copies of Chapters 245, 258, and 259 of the 2023 Virginia Acts of Assembly are attached to this memorandum. The Office of the Attorney General will be sent the regulation for certification of authority to adopt the amendments.

After making a presentation on the proposed amendments and answering any questions the Board may have, staff will ask the Board for final approval of amendments to the Virginia Water Protection Permit Program Regulation (9VAC25-210 et seq.) and affirm that the Board will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

ATTACHMENTS

- TH09- Exempt Action Final Regulation Agency Background Document for Virginia Water Protection Permit Program Regulation
- Project 7570- Final Exempt Action: Amendment to change 9VAC25-210 et seq. in response to Chapters 245, 258, and 259 of the 2023 Virginia Acts of Assembly
- Chapters 245, 258, and 259 of the 2023 Acts of Assembly

PRESENTER CONTACT INFORMATION

Name: Scott Morris, Water Division Director
Phone: (804) 659-1383
Email: anthony.morris@deq.virginia.gov



townhall.virginia.gov

Exempt Action: Final Regulation Agency Background Document

Agency name	State Water Control Board
Virginia Administrative Code (VAC) Chapter citation(s)	9VAC25-210
VAC Chapter title(s)	Virginia Water Protection Permit Program Regulation
Action title	Amendment to change the Virginia Water Protection Permit Program Regulation (9VAC25-210 et seq.) in response to Chapters 245, 258, and 259 of the 2023 Virginia Acts of Assembly
Final agency action date	June 22, 2023
Date this document prepared	May 17, 2023

This information is required for executive branch review pursuant to Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19. In addition, this information is required by the Virginia Registrar of Regulations pursuant to the Virginia Register Act (§ 2.2-4100 et seq. of the Code of Virginia). Regulations must conform to the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Brief Summary

Provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.

This final exempt regulatory action is necessary to implement Chapters 245, 258, and 259 of the 2023 Acts of Assembly.

Chapter 245 of the 2023 Acts of Assembly provides that notwithstanding any provision of this section restricting the location of the source of credits, the Department may, for tidal wetland impacts, authorize the use of, including without the application of subsection C, a tidal wetland mitigation bank located in an adjacent river watershed when such bank contains the same plant community type and salinity regime as the impacted wetlands, which shall be the preferred form of compensation. This subsection shall apply only (i) to tidal wetland mitigation banks with a polyhaline salinity regime located in subbasins 02080102, 02080107, 02080108, and 02080208 and (ii) when a tidal wetland mitigation bank with the same plant

community type and salinity regime as the impacted wetlands is not available in the same river watershed as the impacted wetland.

Chapters 258 and 259 of the 2023 Acts of Assembly provides that a permit from the Virginia Marine Resources Commission is not required for activity in nontidal waters provided the person performing the activity obtains and complies with a Virginia Water Protection Permit. These acts further provide that in determining whether to issue a Virginia Water Protection Permit, the Department of Environmental Quality shall be guided by the factors set forth in subsection A of §28.2-1205.

This action will amend 9VAC25-210, Virginia Water Protection Permit Program Regulation, to include these new statutory provisions.

These regulatory amendments are exempt from the state administrative procedures for adoption of regulations because they are necessary to conform to Virginia statutory law (§ 2.2-4006(A)(4)(a) of the Code of Virginia).

Mandate and Impetus

Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, internal staff review, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, “mandate” has the same meaning as defined in the ORM procedures, “a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part.”

HB1804, HB2181 and SB1074 were passed during the 2023 Session of the General Assembly.

HB1804 provides that notwithstanding any provision of this section restricting the location of the source of credits, the Department may, for tidal wetland impacts, authorize the use of, including without the application of subsection C, a tidal wetland mitigation bank located in an adjacent river watershed when such bank contains the same plant community type and salinity regime as the impacted wetlands, which shall be the preferred form of compensation. This subsection shall apply only (i) to tidal wetland mitigation banks with a polyhaline salinity regime located in subbasins 02080102, 02080107, 02080108, and 02080208 and (ii) when a tidal wetland mitigation bank with the same plant community type and salinity regime as the impacted wetlands is not available in the same river watershed as the impacted wetland.

HB2181 and SB1074 provide that a permit from the Virginia Marine Resources Commission is not required for activity in nontidal waters provided the person performing the activity obtains and complies with a Virginia Water Protection Permit. These acts further provide that in determining whether to issue a Virginia Water Protection Permit, the Department of Environmental Quality shall be guided by the factors set forth in subsection A of §28.2-1205.

The Governor signed these bills into law on March 22, 2023 (HB1804 – Chapter 245 of the 2023 Acts of Assembly, HB2181– Chapter 258 of the 2023 Acts of Assembly, SB1074 – Chapter 259 of the 2023 Acts of Assembly) and these changes will become effective July 1, 2023. This regulatory action is required to conform the existing regulation to changes in Code.

Statement of Final Agency Action

Provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) the name of the agency taking the action; and 3) the title of the regulation.

On June 22, 2023, the State Water Control Board approved final amendments to the Virginia Water Protection Permit Program Regulation (9VAC25-210 et seq.) and affirmed that the Board will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

1 **Project 7570- Final Exempt Action: Amendment to change 9VAC25-210 et seq. in response**
2 **to Chapters 245, 258, and 259 of the 2023 Virginia Acts of Assembly**

3 **State Water Control Board**

4 **final exempt- HB 2181/SB 1074 2023 GA session- CH210 amendment**

5 **9VAC25-210-40. Permit rationale.**

6 In granting a permit pursuant to this chapter, the department shall provide in writing a clear
7 and concise statement of the legal basis, scientific rationale, and justification for the decision
8 reached. When the decision of the department is to deny a permit, the department shall in
9 consultation with legal counsel provide a clear and concise statement explaining the reason for
10 the denial, the scientific justification for the same, and how the department's decision is in
11 compliance with applicable laws and regulations. Copies of the decision, certified by the director,
12 shall be mailed by certified mail to the permittee or applicant. In determining whether to grant a
13 permit pursuant to this chapter for an activity conducted in nontidal waters, where a permit from
14 the Virginia Marine Resources Commission will not be issued the department shall be guided by
15 the factors set forth in subsection A of § 28.2-1205.

16 **9VAC25-210-116. Compensation.**

17 A. No net loss. Compensatory mitigation for project impacts shall be sufficient to achieve no
18 net loss of existing wetland acreage and no net loss of functions in all surface waters.
19 Compensatory mitigation ratios appropriate for the type of aquatic resource impacted and the type
20 of compensation provided shall be applied to permitted impacts to help meet this requirement.
21 Credit may be given for preservation of upland buffers already protected under other ordinances
22 to the extent that additional protection and water quality and fish and wildlife resource benefits
23 are provided.

24 B. Practicable and ecologically and environmentally preferable compensation alternatives.

25 1. An analysis shall be required to justify that permittee-responsible compensatory
26 mitigation is ecologically and environmentally preferable to the purchase of mitigation bank
27 credits or in-lieu fee program credits with a primary service area that covers the impact
28 site if such credits are available in sufficient quantity for the project at the projected time
29 of need. The analysis shall address the ability of the permittee-responsible compensatory
30 mitigation sites to replace lost wetland acreage and functions or lost stream functions and
31 water quality benefits. The analysis comparing the impacted and compensation sites may
32 use a method that assesses water quality or habitat metrics, such as that required by
33 9VAC25-210-80 C, or a method that assesses such criteria as water quality benefits,
34 distance from impacts, hydrologic source and regime, watershed, vegetation type, soils,
35 constructability, timing of compensation versus impact, property acquisition, and cost.

36 2. The applicant shall demonstrate that permittee-responsible compensatory mitigation
37 can be protected in perpetuity through a protective mechanism approved by the
38 Department of Environmental Quality, such as, but not limited to, a conservation easement
39 held by a third party in accordance with the Virginia Conservation Easement Act (§ 10.1-
40 1009 et seq. of the Code of Virginia) or the Virginia Open-Space Act (§ 10.1-1700 et seq.
41 of the Code of Virginia), a duly recorded declaration of restrictive covenants, or other
42 protective instrument.

43 C. Compensatory mitigation proposals shall be evaluated as follows:

44 1. The purchase of mitigation bank credits and in-lieu fee program credits with a primary
45 service area that covers the impact site when available shall in most cases be deemed
46 the ecologically and environmentally preferable form of compensation for project impacts.

47 However, permittee-responsible compensatory mitigation may be considered when the
48 applicant satisfactorily demonstrates that permittee-responsible compensatory mitigation
49 is ecologically and environmentally preferable in accordance with subdivision B 1 of this
50 section.

51 2. Compensatory mitigation for unavoidable wetland impacts may be met through the
52 following options, which are preferred in the following sequence: mitigation banking, in-
53 lieu fee program, and permittee-responsible compensatory mitigation. However, the
54 department shall evaluate the appropriate compensatory mitigation option on a case-by-
55 case basis with consideration for which option is practicable and ecologically and
56 environmentally preferable, including, in terms of replacement of acreage and functions,
57 which option offers the greatest likelihood of success and avoidance of temporal loss of
58 acreage and function. This evaluation shall be consistent with the U.S. Army Corps of
59 Engineers Compensatory Mitigation for Losses of Aquatic Resources as provided in 33
60 CFR Part 332. When considering options for providing the required compensatory
61 mitigation, DEQ shall consider the type and location options in the following order:

- 62 a. Mitigation bank credits;
- 63 b. In-lieu fee program credits;
- 64 c. Permittee-responsible mitigation under a watershed approach;
- 65 d. Permittee-responsible mitigation through on-site and in-kind mitigation;
- 66 e. Permittee-responsible mitigation through off-site or out-of-kind mitigation;
- 67 f. Restoration, enhancement, or preservation of upland buffers adjacent to wetlands
68 when utilized in conjunction with subdivision 2 a, 2 b, 2 c, 2 d, or 2 e of this subsection
69 and when consistent with subsection A of this section; and
- 70 g. Preservation of wetlands when utilized in conjunction with subdivision 2 a, 2 b, 2 c,
71 2 d, or 2 e of this subsection and when consistent with subsection A of this section.

72 3. Compensatory mitigation for unavoidable stream impacts may be met through the
73 following options, which are preferred in the following sequence: mitigation banking, in-
74 lieu fee program, and permittee-responsible mitigation. However, the department shall
75 evaluate the appropriate compensatory mitigation option on a case-by-case basis with
76 consideration for which option is practicable and ecologically and environmentally
77 preferable, including, in terms of replacement of acreage and functions, which option
78 offers the greatest likelihood of success and avoidance of temporal loss of acreage and
79 function. This evaluation shall be consistent with the U.S. Army Corps of Engineers
80 Compensatory Mitigation for Losses of Aquatic Resources as provided in 33 CFR Part
81 332. One factor in determining the required compensation shall be an analysis of stream
82 impacts utilizing a stream impact assessment methodology approved by the department.
83 When considering options for providing the required compensatory mitigation, DEQ shall
84 consider the type and location options in the following order:

- 85 a. Mitigation bank stream credits;
- 86 b. In-lieu fee program credits;
- 87 c. Permittee-responsible mitigation under a watershed approach;
- 88 d. Permittee-responsible mitigation through on-site and in-kind mitigation;
- 89 e. Permittee-responsible mitigation through off-site or out-of-kind mitigation;
- 90 f. Restoration, enhancement, or preservation of upland buffers adjacent to streams
91 when utilized in conjunction with subdivision 3 a, 3 b, 3 c, 3 d, or 3 e of this subsection
92 and when consistent with subsection A of this section; and

93 g. Preservation of stream channels and adjacent riparian buffers when utilized in
94 conjunction with subdivision 3 a, 3 b, 3 c, 3 d, or 3 e of this subsection and when
95 consistent with subsection A of this section.

96 4. Compensatory mitigation for open water impacts may be required to protect state
97 waters and fish and wildlife resources from significant impairment, as appropriate.
98 Compensation shall not be required for permanent or temporary impacts to open waters
99 that are identified as palustrine by the Cowardin classification method, but compensation
100 may be required when such open waters are located in areas of karst topography in
101 Virginia and are formed by the natural solution of limestone.

102 D. In-lieu fee program approval.

103 1. The department may approve the use of a program by issuing a VWP permit for a
104 specific project or by taking an enforcement action and following applicable public notice
105 and comment requirements, or by granting approval of a program after publishing a notice
106 of its intent in the Virginia Register of Regulations and accepting public comments on its
107 approval for a minimum of 30 days.

108 2. Where a program is mandated by the Code of Virginia to be implemented and such
109 program is approved by the U.S. Army Corps of Engineers, the program may be used as
110 deemed appropriate for any VWP permit or enforcement action.

111 3. An approved program must meet the following criteria:

112 a. Demonstration of a no net loss policy in terms of wetland acreage and functions or
113 stream functions and water quality benefits by adoption of operational goals or
114 objectives for restoration, creation, enhancement, or preservation;

115 b. DEQ approval of each site for inclusion in the program;

116 c. A commitment to provide annual reports to the department detailing contributions
117 received and acreage and type of wetlands or streams preserved, created or restored
118 in each watershed with those contributions, as well as the compensatory mitigation
119 credits contributed for each watershed of project impact;

120 d. A mechanism to establish fee amounts that will ensure each contribution will be
121 adequate to compensate for the wetland acreage and functions or stream functions
122 and water quality benefits lost in the impacted watershed; and

123 e. Such terms and conditions as the department deems necessary to ensure a no net
124 loss of wetland acreage and functions or stream functions and water quality benefits
125 from permitted projects providing compensatory mitigation.

126 4. Approval may be granted for up to 10 years and may be renewed by the department
127 upon a demonstration that the program has met the criteria in subdivision 3 of this
128 subsection.

129 E. Use of mitigation banks. The use of mitigation banks for compensating project impacts shall
130 be deemed appropriate if the following criteria are met:

131 1. The bank meets the criteria and conditions found in § 62.1-44.15:23 of the Code of
132 Virginia;

133 2. The bank is ecologically and environmentally preferable to practicable on-site and off-
134 site individual compensatory mitigation options;

135 3. The banking instrument, if approved after July 1, 1996, has been approved by a process
136 that involved public review and comment in accordance with federal guidelines; and

137 4. The applicant provides verification to DEQ of purchase of the required amount of credits.

138 F. For permittee-responsible mitigation, the final compensatory mitigation plan shall include
139 complete information on all components of the conceptual compensatory mitigation plan detailed
140 in 9VAC25-210-80 B 1 m and:

141 1. For wetlands, the final compensation plan for review and approval by DEQ shall also
142 include a summary of the type and acreage of existing wetland impacts anticipated during
143 the construction of the compensation site and the proposed compensation for these
144 impacts; a site access plan; a monitoring plan, including proposed success criteria,
145 monitoring goals, and the location of photo-monitoring stations, monitoring wells,
146 vegetation sampling points, and reference wetlands or streams if available; an abatement
147 and control plan for undesirable plant species; an erosion and sedimentation control plan;
148 a construction schedule; and the final protective mechanism for the compensation site or
149 sites, including all surface waters and buffer areas within its boundaries. The approved
150 protective mechanism shall be recorded in the chain of title to the property, or an
151 equivalent instrument for government-owned lands, and proof of recordation shall be
152 submitted to DEQ prior to commencing impacts in surface waters.

153 2. For streams, the final compensation plan for review and approval by DEQ shall also
154 include a site access plan; an erosion and sedimentation control plan, if appropriate; an
155 abatement and control plan for undesirable plant species; a monitoring plan, including a
156 monitoring and reporting schedule, monitoring design, and methodologies for success;
157 proposed success criteria; location of photo-monitoring stations, vegetation sampling
158 points, survey points, bank pins, scour chains, and reference streams; a plan view drawing
159 depicting the pattern and all compensation measures being employed; a profile drawing;
160 cross-sectional drawing or drawings of the proposed compensation stream; and the final
161 protective mechanism for the compensation site or sites, including all surface waters and
162 buffer areas within its boundaries. The approved protective mechanism shall be recorded
163 in the chain of title to the property, or an equivalent instrument for government-owned
164 lands, and proof of recordation shall be submitted to DEQ prior to commencing impacts in
165 surface waters.

166 G. Notwithstanding any provision of this section restricting the location of the source of credits,
167 the Department may, for tidal wetland impacts, authorize the use of, including without the
168 application of subsection C of § 62.1-44.15:23 of the Code of Virginia, a tidal wetland mitigation
169 bank located in an adjacent river watershed when such bank contains the same plant community
170 type and salinity regime as the impacted wetlands, which shall be the preferred form of
171 compensation. This subsection shall apply only (i) to tidal wetland mitigation banks with a
172 polyhaline salinity regime located in subbasins 02080102, 02080107, 02080108, and 02080208
173 and (ii) when a tidal wetland mitigation bank with the same plant community type and salinity
174 regime as the impacted wetlands is not available in the same river watershed as the impacted
175 wetland.

VIRGINIA ACTS OF ASSEMBLY -- 2023 SESSION

CHAPTER 245

An Act to amend and reenact §§ 28.2-1308, 33.2-247, and 62.1-44.15:23 of the Code of Virginia, relating to tidal wetland mitigation bank credits.

[H 1804]

Approved March 22, 2023

Be it enacted by the General Assembly of Virginia:

1. That §§ 28.2-1308, 33.2-247, and 62.1-44.15:23 of the Code of Virginia are amended and reenacted as follows:

§ 28.2-1308. Standards for use and development of wetlands; utilization of guidelines.

A. For the purposes of this section, "river watershed" means the Potomac River Basin, Shenandoah River Basin, James River Basin, Rappahannock River Basin, Roanoke and Yadkin Rivers Basin, Chowan River Basin (including the Dismal Swamp and Albemarle Sound), Tennessee River Basin, Big Sandy River Basin, Chesapeake Bay and its Small Coastal Basins, Atlantic Ocean, York River Basin, and the New River Basin.

B. The following standards shall apply to the use and development of wetlands and shall be considered in the determination of whether any permit required by this chapter should be granted or denied:

1. Wetlands of primary ecological significance shall not be altered so that the ecological systems in the wetlands are unreasonably disturbed; and

2. Development in Tidewater Virginia, to the maximum extent practical, shall be concentrated in wetlands of lesser ecological significance, in vegetated wetlands which have been irreversibly disturbed before July 1, 1972, in nonvegetated wetlands which have been irreversibly disturbed prior to January 1, 1983, and in areas of Tidewater Virginia outside of wetlands.

~~B. C.~~ The provisions of guidelines and minimum standards promulgated by the Commission pursuant to § 28.2-1301 shall be considered in applying the standards listed in subsection ~~A~~ of this section ~~B~~.

~~C. D.~~ When any activity authorized by a permit issued pursuant to this chapter is conditioned upon compensatory mitigation for adverse impacts to wetlands, the applicant may be permitted to satisfy all or part of such mitigation requirements by the purchase or use of credits from any wetlands mitigation bank, including any banks owned by the permit applicant, that has been approved and is operating in accordance with applicable federal and state guidance, laws, or regulations for the establishment, use and operation of mitigation banks as long as (i) the bank is in the same fourth order subbasin, as defined by the hydrologic unit boundaries of the National Watershed Boundary Dataset or by the hydrologic unit system or dataset utilized and depicted or described in the bank's approved mitigation banking instrument, as the impacted site, or in an adjacent subbasin within the same river watershed, as the impacted site, or it meets all the conditions found in clauses (a) through (d) and either clause (e) or (f) of this subsection; (ii) the bank is ecologically preferable to practicable on-site and off-site individual mitigation options, as defined by federal wetland regulations; and (iii) the banking instrument, if approved after July 1, 1996, has been approved by a process that included public review and comment. When the bank is not located in the same subbasin or adjacent subbasin within the same river watershed as the impacted site, the purchase or use of credits shall not be allowed unless the applicant demonstrates to the satisfaction of the Commission that (a) the impacts will occur as a result of a Virginia Department of Transportation linear project or as the result of a locality project for a locality whose jurisdiction encompasses multiple river watersheds; (b) there is no practical same river watershed mitigation alternative; (c) the impacts are less than one acre in a single and complete project within a subbasin; (d) there is no significant harm to water quality or fish and wildlife resources within the river watershed of the impacted site; and either (e) impacts within the Chesapeake Bay watershed are mitigated within the Chesapeake Bay watershed as close as possible to the impacted site or (f) impacts within subbasins 02080108, 02080208, and 03010205, as defined by the National Watershed Boundary Dataset, are mitigated in-kind within those subbasins as close as possible to the impacted site. After July 1, 2002, the provisions of clause (f) shall apply only to impacts within subdivisions of the listed subbasins where overlapping watersheds exist, as determined by the Department of Environmental Quality, provided the Department has made such a determination by that date. For the purposes of this subsection, the hydrologic unit boundaries of the National Watershed Boundary Dataset or other hydrologic unit system may be adjusted by the Department of Environmental Quality to reflect site-specific geographic or hydrologic information provided by the bank sponsor.

~~D. E.~~ Where an agreed-upon permit condition requires the contribution of in-lieu fees to offset permitted wetland losses, the wetlands board shall credit the applicant for any in-lieu fee payments made to the Virginia Aquatic Resources Trust Fund or another dedicated wetlands restoration fund with

reference to the same activity.

For the purposes of this section, "river watershed" means the Potomac River Basin, Shenandoah River Basin, James River Basin, Rappahannock River Basin, Roanoke and Yadkin Rivers Basin, Chowan River Basin (including the Dismal Swamp and Albemarle Sound), Tennessee River Basin, Big Sandy River Basin, Chesapeake Bay and its Small Coastal Basins, Atlantic Ocean, York River Basin, and the New River Basin.

F. Notwithstanding any provision of this section restricting the location of the source of credits, an applicant may be permitted to purchase or use credits from a tidal wetland mitigation bank located in an adjacent river watershed when such bank contains the same plant community type and salinity regime as the impacted wetlands, which shall be the preferred form of compensation. This subsection shall apply only (i) to tidal wetland mitigation banks with a polyhaline salinity regime located in subbasins 02080102, 02080107, 02080108, and 02080208 and (ii) when a tidal wetland mitigation bank with the same plant community type and salinity regime as the impacted wetlands is not available in the same river watershed as the impacted wetland.

§ 33.2-247. Wetlands mitigation banking.

A. For the purposes of this section, "river watershed" means the Potomac River Basin, Shenandoah River Basin, James River Basin, Rappahannock River Basin, Roanoke and Yadkin Rivers Basin, Chowan River Basin (including the Dismal Swamp and Albemarle Sound), Tennessee River Basin, Big Sandy River Basin, Chesapeake Bay and its Small Coastal Basins, Atlantic Ocean, York River Basin, and New River Basin.

B. When authorization is required by federal or state law for any project affecting wetlands and such authorization is conditioned upon compensatory mitigation for adverse impacts to wetlands, the Commissioner of Highways is authorized to expend funds for the purchase of, or is authorized to use, credits from any wetlands mitigation bank, including any owned by the Department of Transportation, that has been approved and is operating in accordance with applicable federal and state guidance, laws, or regulations for the establishment, use, and operation of mitigation banks as long as (i) the bank is in the same fourth order subbasin, as defined by the hydrologic unit boundaries of the National Watershed Boundary Dataset or by the hydrologic unit system or dataset utilized and depicted or described in the bank's approved mitigation banking instrument, as the impacted site, or in an adjacent subbasin within the same river watershed as the impacted site, or it meets all the conditions found in clauses (a) through (d) and either clause (e) or (f); (ii) the bank is ecologically preferable to practicable on-site and off-site individual mitigation options, as defined by federal wetland regulations; and (iii) the banking instrument, if approved after July 1, 1996, has been approved by a process that included public review and comment. When the bank is not located in the same subbasin or adjacent subbasin within the same river watershed as the impacted site, the purchase or use of credits shall not be allowed unless the Commissioner of Highways demonstrates to the satisfaction of the agency requiring compensatory mitigation that (a) the impacts will occur as a result of a Department of Transportation linear project; (b) there is no practical same river watershed mitigation alternative; (c) the impacts are less than one acre in a single and complete project within a subbasin; (d) there is no significant harm to water quality or fish and wildlife resources within the river watershed of the impacted site; and either (e) impacts within the Chesapeake Bay watershed are mitigated within the Chesapeake Bay watershed as close as possible to the impacted site or (f) impacts within subbasins 02080108, 02080208, and 03010205, as defined by the National Watershed Boundary Dataset, are mitigated in-kind within those subbasins, as close as possible to the impacted site. After July 1, 2002, the provisions of clause (f) shall apply only to impacts within subdivisions of the listed subbasins where overlapping watersheds exist, as determined by the Department of Environmental Quality, provided the Department of Environmental Quality has made such a determination by that date. For the purposes of this subsection, the hydrologic unit boundaries of the National Watershed Boundary Dataset or other hydrologic unit system may be adjusted by the Department of Environmental Quality to reflect site-specific geographic or hydrologic information provided by the bank sponsor.

For the purposes of this section, "river watershed" means the Potomac River Basin, Shenandoah River Basin, James River Basin, Rappahannock River Basin, Roanoke and Yadkin Rivers Basin, Chowan River Basin (including the Dismal Swamp and Albemarle Sound), Tennessee River Basin, Big Sandy River Basin, Chesapeake Bay and its Small Coastal Basins, Atlantic Ocean, York River Basin, and New River Basin.

C. Notwithstanding any provision of this section restricting the location of the source of credits, the Commissioner of Highways may be permitted to purchase or use credits from a tidal wetland mitigation bank located in an adjacent river watershed when such bank contains the same plant community type and salinity regime as the impacted wetlands, which shall be the preferred form of compensation. This subsection shall apply only (i) to tidal wetland mitigation banks with a polyhaline salinity regime located in subbasins 02080102, 02080107, 02080108, and 02080208 and (ii) when a tidal wetland mitigation bank with the same plant community type and salinity regime as the impacted wetlands is not available in the same river watershed as the impacted wetland.

§ 62.1-44.15:23. Wetland and stream mitigation banks.

A. For purposes of this section:

"Physiographic province" means one of the five physiographic provinces of Virginia designated as the Appalachian Plateaus, Blue Ridge, Coastal Plain, Piedmont, and Ridge and Valley physiographic provinces as identified on Figure 2 in the Overview of the Physiography and Vegetation of Virginia prepared by the Department of Conservation and Recreation, Division of Natural Heritage and dated February 2016. The Department of Environmental Quality may adjust the boundaries of a physiographic province to reflect site-specific boundaries based on relative elevation, relief, geomorphology, and lithology provided by the bank sponsor.

"Primary service area" means the fourth order subbasin in which the bank is located, as defined by the hydrologic unit boundaries of the National Watershed Boundary Dataset or the hydrologic unit system or dataset utilized and depicted or described in the bank's approved mitigation banking instrument, and any adjacent fourth order subbasin within the same river watershed.

"River watershed" means the Potomac River Basin; Shenandoah River Basin; James River Basin; Rappahannock River Basin; Roanoke and Yadkin Rivers Basin; Chowan River Basin, including the Dismal Swamp and Albemarle Sound; Tennessee River Basin/Big Sandy River Basin Complex; Chesapeake Bay and its Small Coastal Basins; Atlantic Ocean; York River Basin; and New River Basin.

"Secondary service area" means the area outside the primary service area but within the same physiographic province in which the bank is located and any adjacent physiographic province within the same river watershed.

"Tree canopy" includes all of the area of canopy coverage by self-supporting and healthy woody plant material exceeding five feet in height.

B. When a Virginia Water Protection Permit is conditioned upon compensatory mitigation for adverse impacts to wetlands or streams, the applicant may be permitted to satisfy all or part of such mitigation requirements by the purchase or use of credits from any wetland or stream mitigation bank in the Commonwealth, or in Maryland on property wholly surrounded by and located in the Potomac River if the mitigation banking instrument provides that the Board shall have the right to enter and inspect the property and that the mitigation bank instrument and the contract for the purchase or use of such credits may be enforced in the courts of the Commonwealth, including any banks owned by the permit applicant, that has been approved and is operating in accordance with applicable federal and state guidance, laws, or regulations for the establishment, use, and operation of mitigation banks as long as (i) the impacted site is located in the bank's primary or secondary service area as provided in subsection C or it meets all the conditions found in clauses (a) through (d) and either clause (e) or (f); (ii) the bank is ecologically preferable to practicable onsite and offsite individual mitigation options as defined by federal wetland regulations; and (iii) the banking instrument, if approved after July 1, 1996, has been approved by a process that included public review and comment. When the impacted site is not located in the bank's primary or secondary service area, the purchase or use of credits shall not be allowed unless the applicant demonstrates to the satisfaction of the Department of Environmental Quality that (a) the impacts will occur as a result of a Virginia Department of Transportation linear project or as the result of a locality project for a locality whose jurisdiction encompasses multiple river watersheds; (b) there is no practical same river watershed mitigation alternative; (c) the impacts are less than one acre in a single and complete project within a subbasin; (d) there is no significant harm to water quality or fish and wildlife resources within the river watershed of the impacted site; and either (e) impacts within the Chesapeake Bay watershed are mitigated within the Chesapeake Bay watershed as close as possible to the impacted site or (f) impacts within subbasins 02080108, 02080208, and 03010205, as defined by the National Watershed Boundary Dataset, are mitigated in-kind within those subbasins, as close as possible to the impacted site. For the purposes of this subsection, the hydrologic unit boundaries of the National Watershed Boundary Dataset or other hydrologic unit system may be adjusted by the Department of Environmental Quality to reflect site-specific geographic or hydrologic information provided by the bank sponsor.

C. For impacts to a site for which no credits are available to purchase (i) in the primary service area of any mitigation provider or (ii) at a price below 200 percent of the current price of credits applicable to that site from a Board-approved fund dedicated to achieving no net loss of wetland acreage and functions, a permit applicant may be permitted to purchase or use credits from the secondary service area of a mitigation provider to satisfy all or any part of such applicant's mitigation requirements. For purposes of this subsection, the permit applicant shall provide a determination of credit availability and credit price no later than the time such applicant submits to the Department (a) its proof of credit acquisition or (b) a later change to such proof.

If a permit applicant purchases or uses credits from a secondary service area, the permit applicant shall:

1. Acquire three times the credits it would have had to acquire from a bank in the primary service area for wetland impacts and two times the number of credits it would have had to acquire in the primary service area for stream impacts;

2. When submitting proof of acquisition of credits for a subdivision or development, provide to the Department a plan that the permit applicant will implement that is certified by a licensed professional

engineer, surveyor, or landscape architect for the planting, preservation, or replacement of trees on the development site such that the minimum tree canopy percentage 20 years after development is projected to be as follows:

- a. Ten percent tree canopy for a site zoned for business, commercial, or industrial use;
- b. Ten percent tree canopy for a residential site zoned for 20 or more units per acre;
- c. Fifteen percent tree canopy for a residential site zoned for more than eight but fewer than 20 units per acre;
- d. Twenty percent tree canopy for a residential site zoned for more than four but not more than eight units per acre;
- e. Twenty-five percent tree canopy for a residential site zoned for more than two but not more than four units per acre; and
- f. Thirty percent tree canopy for a residential site zoned for two or fewer units per acre.

For a mixed-use development, the tree canopy percentage required pursuant to this subdivision shall be that which is applicable to the predominant use.

The tree canopy requirements established under this subsection shall not supersede any additional requirements imposed by a locality pursuant to § 15.2-961 or 15.2-961.1.

D. The Department is authorized to serve as a signatory to agreements governing the operation of mitigation banks. The Commonwealth and its officials, agencies, and employees shall not be liable for any action taken under any agreement developed pursuant to such authority.

E. State agencies and localities are authorized to purchase credits from mitigation banks.

F. A locality may establish, operate and sponsor wetland or stream single-user mitigation banks within the Commonwealth that have been approved and are operated in accordance with the requirements of subsection B, provided that such single-user banks may only be considered for compensatory mitigation for the sponsoring locality's municipal, joint municipal or governmental projects. For the purposes of this subsection, the term "sponsoring locality's municipal, joint municipal or governmental projects" means projects for which the locality is the named permittee, and for which there shall be no third-party leasing, sale, granting, transfer, or use of the projects or credits. Localities may enter into agreements with private third parties to facilitate the creation of privately sponsored wetland and stream mitigation banks having service areas developed through the procedures of subsection B.

G. Notwithstanding any provision of this section restricting the location of the source of credits, the Department may, for tidal wetland impacts, authorize the use of, including without the application of subsection C, a tidal wetland mitigation bank located in an adjacent river watershed when such bank contains the same plant community type and salinity regime as the impacted wetlands, which shall be the preferred form of compensation. This subsection shall apply only (i) to tidal wetland mitigation banks with a polyhaline salinity regime located in subbasins 02080102, 02080107, 02080108, and 02080208 and (ii) when a tidal wetland mitigation bank with the same plant community type and salinity regime as the impacted wetlands is not available in the same river watershed as the impacted wetland.

VIRGINIA ACTS OF ASSEMBLY -- 2023 SESSION

CHAPTER 258

An Act to amend and reenact § 28.2-1203 of the Code of Virginia, relating to use of subaqueous beds; nontidal waters; permit requirements; penalty.

[H 2181]

Approved March 22, 2023

Be it enacted by the General Assembly of Virginia:

1. That § 28.2-1203 of the Code of Virginia is amended and reenacted as follows:

§ 28.2-1203. Unlawful use of subaqueous beds; penalty.

A. It shall be unlawful for any person to build, dump, trespass or encroach upon or over, or take or use any materials from the beds of the bays, ocean, rivers, streams, or creeks which are the property of the Commonwealth, unless such act is performed pursuant to a permit issued by the Commission or is necessary for the following:

1. Erection of dams, the construction of which has been authorized by proper authority;
2. Uses of subaqueous beds authorized elsewhere in this title;
3. Construction and maintenance of congressionally approved navigation and flood-control projects undertaken by the United States Army Corps of Engineers, the United States Coast Guard, or other federal agency authorized by Congress to regulate navigation, navigable waters, or flood control;
4. Construction of piers, docks, marine terminals, and port facilities owned or leased by or to the Commonwealth or any of its political subdivisions;
5. Except as provided in subsection D of § 28.2-1205, placement, after submission of an application to the Commission for review and processing, of private piers for noncommercial purposes by owners of the riparian lands in the waters opposite those lands, provided that (i) the piers do not extend beyond the navigation line or private pier lines established by the Commission or the United States Army Corps of Engineers, (ii) the piers do not exceed six feet in width and finger piers do not exceed five feet in width, (iii) any L or T head platforms and appurtenant floating docking platforms do not exceed, in the aggregate, 400 square feet, (iv) if prohibited by local ordinance open-sided shelter roofs or gazebo-type structures shall not be placed on platforms as described in clause (iii), but may be placed on such platforms if not prohibited by local ordinance, and (v) the piers are determined not to be a navigational hazard by the Commission. Subject to any applicable local ordinances, such piers may include an attached boat lift and an open-sided roof designed to shelter a single boat slip or boat lift. In cases in which open-sided roofs designed to shelter a single boat, boat slip or boat lift will exceed 700 square feet in coverage or the open-sided shelter roofs or gazebo structures exceed 400 square feet, and in cases in which an adjoining property owner objects to a proposed roof structure, permits shall be required as provided in § 28.2-1204;
6. Maintenance or replacement of a previously authorized pier, provided that it is reconstructed within the footprint of the existing pier;
7. Agricultural, horticultural or silvicultural irrigation on riparian lands or the watering of animals on riparian lands, provided that (i) no permanent structure is placed on or over the subaqueous bed, (ii) the person withdrawing water complies with requirements administered by the Department of Environmental Quality under Title 62.1, and (iii) the activity is conducted without adverse impacts to instream beneficial uses as defined in § 62.1-10; ~~or~~
8. Recreational gold mining, provided that (i) a man-portable suction dredge no larger than four inches in diameter is used, (ii) rights of riparian property owners are not affected, (iii) the activity is conducted without adverse impacts to instream beneficial uses as defined in § 62.1-10, (iv) the activity is conducted without adverse impacts to underwater historic properties and related objects as defined in § 10.1-2214, and (v) the activity is not defined as mining in § 45.2-1200; *or*
9. *Any activity conducted in nontidal waters, provided that the person performing such activity obtains a Virginia Water Protection Permit and complies with all requirements of the Virginia Water Resources and Wetlands Protection Program pursuant to Article 2.2 (§ 62.1-44.15:20 et seq.) of Chapter 3.1 of Title 62.1. In determining whether to issue a Virginia Water Protection Permit, the Department of Environmental Quality shall be guided by the factors set forth in subsection A of § 28.2-1205.*

B. A violation of this section is a Class 1 misdemeanor.

VIRGINIA ACTS OF ASSEMBLY -- 2023 SESSION

CHAPTER 259

An Act to amend and reenact § 28.2-1203 of the Code of Virginia, relating to use of subaqueous beds; nontidal waters; permit requirements; penalty.

[S 1074]

Approved March 22, 2023

Be it enacted by the General Assembly of Virginia:

1. That § 28.2-1203 of the Code of Virginia is amended and reenacted as follows:

§ 28.2-1203. Unlawful use of subaqueous beds; penalty.

A. It shall be unlawful for any person to build, dump, trespass or encroach upon or over, or take or use any materials from the beds of the bays, ocean, rivers, streams, or creeks which are the property of the Commonwealth, unless such act is performed pursuant to a permit issued by the Commission or is necessary for the following:

1. Erection of dams, the construction of which has been authorized by proper authority;
2. Uses of subaqueous beds authorized elsewhere in this title;
3. Construction and maintenance of congressionally approved navigation and flood-control projects undertaken by the United States Army Corps of Engineers, the United States Coast Guard, or other federal agency authorized by Congress to regulate navigation, navigable waters, or flood control;

4. Construction of piers, docks, marine terminals, and port facilities owned or leased by or to the Commonwealth or any of its political subdivisions;

5. Except as provided in subsection D of § 28.2-1205, placement, after submission of an application to the Commission for review and processing, of private piers for noncommercial purposes by owners of the riparian lands in the waters opposite those lands, provided that (i) the piers do not extend beyond the navigation line or private pier lines established by the Commission or the United States Army Corps of Engineers, (ii) the piers do not exceed six feet in width and finger piers do not exceed five feet in width, (iii) any L or T head platforms and appurtenant floating docking platforms do not exceed, in the aggregate, 400 square feet, (iv) if prohibited by local ordinance open-sided shelter roofs or gazebo-type structures shall not be placed on platforms as described in clause (iii), but may be placed on such platforms if not prohibited by local ordinance, and (v) the piers are determined not to be a navigational hazard by the Commission. Subject to any applicable local ordinances, such piers may include an attached boat lift and an open-sided roof designed to shelter a single boat slip or boat lift. In cases in which open-sided roofs designed to shelter a single boat, boat slip or boat lift will exceed 700 square feet in coverage or the open-sided shelter roofs or gazebo structures exceed 400 square feet, and in cases in which an adjoining property owner objects to a proposed roof structure, permits shall be required as provided in § 28.2-1204;

6. Maintenance or replacement of a previously authorized pier, provided that it is reconstructed within the footprint of the existing pier;

7. Agricultural, horticultural or silvicultural irrigation on riparian lands or the watering of animals on riparian lands, provided that (i) no permanent structure is placed on or over the subaqueous bed, (ii) the person withdrawing water complies with requirements administered by the Department of Environmental Quality under Title 62.1, and (iii) the activity is conducted without adverse impacts to instream beneficial uses as defined in § 62.1-10; ~~or~~

8. Recreational gold mining, provided that (i) a man-portable suction dredge no larger than four inches in diameter is used, (ii) rights of riparian property owners are not affected, (iii) the activity is conducted without adverse impacts to instream beneficial uses as defined in § 62.1-10, (iv) the activity is conducted without adverse impacts to underwater historic properties and related objects as defined in § 10.1-2214, and (v) the activity is not defined as mining in § 45.2-1200; *or*

9. *Any activity conducted in nontidal waters, provided that the person performing such activity obtains a Virginia Water Protection Permit and complies with all requirements of the Virginia Water Resources and Wetlands Protection Program pursuant to Article 2.2 (§ 62.1-44.15:20 et seq.) of Chapter 3.1 of Title 62.1. In determining whether to issue a Virginia Water Protection Permit, the Department of Environmental Quality shall be guided by the factors set forth in subsection A of § 28.2-1205.*

B. A violation of this section is a Class 1 misdemeanor.

ORM form for TAB C will be provided prior to the board meeting

TAB D



Commonwealth of Virginia

VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

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Travis A. Voyles
Secretary of Natural and Historic Resources

Michael S. Rolband, PE, PWD, PWS Emeritus
Director
(804) 698-4020

MEMORANDUM

TO: State Water Control Board Members

FROM: Scott Morris, Water Division Director

A handwritten signature in black ink, appearing to read 'Scott Morris'.

DATE: May 31, 2023

SUBJECT: Final Exempt Action: Amendment to change Erosion and Sediment Control Regulations (9VAC25-840 et seq.) and Virginia Stormwater Management Program (VSMP) Regulation (9VAC25-870 et seq.), and General VPDES Permit for Discharges of Stormwater from Construction Activities (9VAC25-880 et seq.) in response to Chapters 48 and 49 of the 2023 Virginia Acts of Assembly

At the June 22, 2023, meeting of the State Water Control Board, the Department will present the Board with final amendments to the Erosion and Sediment Control Regulations (9VAC25-840 et seq.) and Virginia Stormwater Management Program (VSMP) Regulation (9VAC25-870 et seq.), and General VPDES Permit for Discharges of Stormwater from Construction Activities (9VAC25-880 et seq.) These amendments are necessary to implement Chapters 48 and 49 of the 2023 Acts of Assembly.

Chapters 48 and 49 of the 2023 Acts of Assembly provide that an agreement in lieu of a plan may be used for certain farm buildings and structures. The existing definition of “agreement in lieu of a plan” is being revised to be consistent with state law and the statutory definition of “farm buildings and structures” is being added to the Erosion and Sediment Control Regulations (9VAC25-840 et seq.) and the Virginia Stormwater Management Program (VSMP) Regulation (9VAC25-870 et seq.).

Chapters 48 and 49 of the 2023 Acts of Assembly also make statutory changes necessary to conform state law to federal law regarding the types of projects that must file a registration statement. This amendment also revises registration statement language in the Virginia Stormwater Management

Program (VSMP) Regulation (9VAC25-870), and General VPDES Permit for Discharges of Stormwater from Construction Activities (9VAC25-880) to conform to state law.

These regulatory amendments are exempt from the state administrative procedures for adoption of regulations because they are necessary to conform to Virginia statutory law (§ 2.2-4006(A)(4)(a) of the Code of Virginia). Copies of Chapters 48, and 49 of the 2023 Virginia Acts of Assembly are attached to this memorandum. The Office of the Attorney General will be sent the regulation for certification of authority to adopt the amendments.

After making a presentation on the proposed amendments and answering any questions the Board may have, staff will ask the Board for final approval of amendments to the Erosion and Sediment Control Regulations (9VAC25-840 et seq.) and Virginia Stormwater Management Program (VSMP) Regulation (9VAC25-870 et seq.), and General VPDES Permit for Discharges of Stormwater from Construction Activities (9VAC25-880 et seq.) and affirm that the Board will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

ATTACHMENTS

- TH09- Exempt Action Final Regulation Agency Background Document for amendments in response to Chapters 48 and 49 of the 2023 Virginia Acts of Assembly
- Project 7572- Final Exempt Action: Amendment in response to Chapters 48 and 49 of the 2023 Virginia Acts of Assembly
- Chapters 48 and 49 of the 2023 Acts of Assembly

PRESENTER CONTACT INFORMATION

Name: Scott Morris, Water Division Director
Phone: (804) 659-1383
Email: anthony.morris@deq.virginia.gov



townhall.virginia.gov

Exempt Action: Final Regulation Agency Background Document

Agency name	State Water Control Board
Virginia Administrative Code (VAC) Chapter citation(s)	9VAC25-840 (primary) 9VAC25-870 (secondary) 9VAC25-880 (secondary)
VAC Chapter title(s)	Erosion and Sediment Control Regulations (primary) Virginia Stormwater Management Program (VSMP) Regulation (secondary) General VPDES Permit for Discharges of Stormwater from Construction Activities (secondary)
Action title	Amendment in response to Chapters 48 and 49 of the 2023 Virginia Acts of Assembly
Final agency action date	June 22, 2023
Date this document prepared	May 17, 2023

This information is required for executive branch review pursuant to Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19. In addition, this information is required by the Virginia Registrar of Regulations pursuant to the Virginia Register Act (§ 2.2-4100 et seq. of the Code of Virginia). Regulations must conform to the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Brief Summary

Provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.

This final exempt regulatory action is necessary to implement Chapters 48 and 49 of the 2023 Acts of Assembly. Chapters 48 and 49 of the 2023 Acts of Assembly provide that an agreement in lieu of a plan may be used for certain farm buildings and structures. Chapters 48 and 49 of the 2023 Acts of Assembly also make statutory changes necessary to conform state law to federal law regarding the types of projects

that must file a registration statement. This action will amend the Erosion and Sediment Control Regulations (9VAC25-840 et seq.), Virginia Stormwater Management Program (VSMP) Regulation (9VAC25-870 et seq.), and General VPDES Permit for Discharges of Stormwater from Construction Activities (9VAC25-880 et seq.) to include these new statutory requirements.

These regulatory amendments are exempt from the state administrative procedures for adoption of regulations because they are necessary to conform to Virginia statutory law (§ 2.2-4006(A)(4)(a) of the Code of Virginia).

Mandate and Impetus

Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, internal staff review, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, “mandate” has the same meaning as defined in the ORM procedures, “a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part.”

HB1848 and SB1376 were passed during the 2023 Session of the General Assembly. These bills provide that an agreement in lieu of a plan may be used for certain farm buildings and structures and also conform state law to federal law regarding the types of projects that must file a registration statement. The Governor signed these bills into law on March 17, 2023 (HB1848 – Chapter 48 of the 2023 Acts of Assembly and SB1376 – Chapter 49 of the 2023 Acts of Assembly) and these changes will become effective July 1, 2023. This regulatory action is required to conform the existing regulation to changes in Code.

Statement of Final Agency Action

Provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) the name of the agency taking the action; and 3) the title of the regulation.

On June 22, 2023, the State Water Control Board approved final amendments to the Erosion and Sediment Control Regulations (9VAC25-840 et seq.), Virginia Stormwater Management Program (VSMP) Regulation (9VAC25-870 et seq.), and General VPDES Permit for Discharges of Stormwater from Construction Activities (9VAC25-880 et seq.) and affirmed that the Board will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Project 7572 – Final Exempt Action: Amendment in Response to Chapters 48 and 49 of the 2023 Acts of Assembly- for June 22, 2023 SWCB meeting

State Water Control Board

Final exempt CH 840 CH 870 CH 880 HB 1848/SB1376

9VAC25-840-10. Definitions.

The following words and terms when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise. In addition, some terms not defined herein are defined in § 62.1-44.15:51 of the Erosion and Sediment Control Law.

"Act" means the Erosion and Sediment Control Law, Article 2.4 (§ 62.1-44.15:51 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia.

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

"Agreement in lieu of a plan" means a contract between the VESCP authority and the owner that specifies conservation measures that must be implemented in the construction of a (i) single-family residence or (ii) farm building or structure on a parcel of land with a total impervious cover percentage, including the impervious cover from the farm building or structure to be constructed, of less than five percent; this contract may be executed by the VESCP authority in lieu of an erosion and sediment control plan.

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

"Board" means the State Water Control Board. When used outside the context of the promulgation of regulations, including regulations to establish general permits, "board" means the Department of Environmental Quality.

"Causeway" means a temporary structural span constructed across a flowing watercourse or wetland to allow construction traffic to access the area without causing erosion damage.

"Channel" means a natural stream or manmade waterway.

"Cofferdam" means a watertight temporary structure in a river, lake, etc., for keeping the water from an enclosed area that has been pumped dry so that bridge foundations, dams, etc., may be constructed.

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

"Denuded" means a term applied to land that has been physically disturbed and no longer supports vegetative cover.

"Department" means the Department of Environmental Quality.

"Development" means a tract or parcel of land developed or to be developed as a single unit under single ownership or unified control which is to be used for any business or industrial purpose or is to contain three or more residential dwelling units.

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

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

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

"Diversion" means a channel with a supporting ridge on the lower side constructed across or at the bottom of a slope for the purpose of intercepting surface runoff.

"Dormant" means denuded land that is not actively being brought to a desired grade or condition.

"Energy dissipator" means a nonerodible structure that reduces the velocity of concentrated flow to reduce its erosive effects.

"Erosion and Sediment Control Plan" or "plan" means a document containing material for the conservation of soil and water resources of a unit or group of units of land. It may include appropriate maps, an appropriate soil and water plan inventory and management information with needed interpretations, and a record of decisions contributing to conservation treatment. The plan shall contain all major conservation decisions and all information deemed necessary by the plan-approving authority to assure that the entire unit or units of land will be so treated to achieve the conservation objectives.

"Farm building or structure" means the same as that term is defined in § 36-97 of the Code of Virginia and also includes any building or structure used for agritourism activity, as defined in § 3.2-6400 of the Code of Virginia, and any related impervious surfaces including roads, driveways, and parking areas.

"Flume" means a constructed device lined with erosion-resistant materials intended to convey water on steep grades.

"Live watercourse" means a definite channel with bed and banks within which concentrated water flows continuously.

"Locality" means a county, city or town.

"Natural stream" means nontidal waterways that are part of the natural topography. They usually maintain a continuous or seasonal flow during the year and are characterized as being irregular in cross-section with a meandering course. Constructed channels such as drainage ditches or swales shall not be considered natural streams.

"Nonerodible" means a material, e.g., riprap, concrete, plastic, etc., that will not experience surface wear due to natural forces.

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

"Post-development" means conditions that may be reasonably expected or anticipated to exist after completion of the land development activity on a specific site or tract of land.

"Program administrator" means the person or persons responsible for administering and enforcing the erosion and sediment control program of a VESCP authority.

"Pre-development" means conditions at the time the erosion and sediment control plan is submitted to the VESCP authority. Where phased development or plan approval occurs (preliminary grading, roads and utilities, etc.), the existing conditions at the time the erosion and sediment control plan for the initial phase is submitted for approval shall establish pre-development conditions.

"Sediment basin" means a temporary impoundment built to retain sediment and debris with a controlled stormwater release structure.

"Sediment trap" means a temporary impoundment built to retain sediment and debris that is formed by constructing an earthen embankment with a stone outlet.

"Sheet flow" (also called overland flow) means shallow, unconcentrated and irregular flow down a slope. The length of strip for overland flow usually does not exceed 200 feet under natural conditions.

"Shore erosion control project" means an erosion control project approved by local wetlands boards, the Virginia Marine Resources Commission, the department, or the United States Army Corps of Engineers and located on tidal waters and within nonvegetated or vegetated wetlands as defined in Title 28.2 of the Code of Virginia.

"Slope drain" means tubing or conduit made of nonerosive material extending from the top to the bottom of a cut or fill slope with an energy dissipator at the outlet end.

"Stabilized" means land that has been treated to withstand normal exposure to natural forces without incurring erosion damage.

"Storm sewer inlet" means a structure through which stormwater is introduced into an underground conveyance system.

"Stormwater detention" means the process of temporarily impounding runoff and discharging it through a hydraulic outlet structure to a downstream conveyance system.

"Temporary vehicular stream crossing" means a temporary nonerodible structural span installed across a flowing watercourse for use by construction traffic. Structures may include bridges, round pipes or pipe arches constructed on or through nonerodible material.

"Ten-year storm" means a storm that is capable of producing rainfall expected to be equaled or exceeded on the average of once in 10 years. It may also be expressed as an exceedance probability with a 10% chance of being equaled or exceeded in any given year.

"Two-year storm" means a storm that is capable of producing rainfall expected to be equaled or exceeded on the average of once in two years. It may also be expressed as an exceedance probability with a 50% chance of being equaled or exceeded in any given year.

"Twenty-five-year storm" means a storm that is capable of producing rainfall expected to be equaled or exceeded on the average of once in 25 years. It may also be expressed as exceedance probability with a 4.0% chance of being equaled or exceeded in any given year.

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

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

9VAC25-870-10. Definitions.

The following words and terms used in this chapter have the following meanings unless the context clearly indicates otherwise.

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

"Administrator" means the Administrator of the United States Environmental Protection Agency or an authorized representative.

"Agreement in lieu of a stormwater management plan" means a contract between the VSMP authority and the owner or permittee that specifies methods that shall be implemented to comply with the requirements of a VSMP for the construction of a (i) single-family residence or (ii) farm building or structure on a parcel of land with a total impervious cover percentage, including the impervious cover from the farm building or structure to be constructed, of less than five percent; such contract may be executed by the VSMP authority in lieu of a stormwater management plan.

"Applicable standards and limitations" means all state, interstate, and federal standards and limitations to which a discharge or a related activity is subject under the Clean Water Act (CWA) (33 USC § 1251 et seq.) and the Act, including effluent limitations, water quality standards, standards of performance, toxic effluent standards or prohibitions, best management practices, and standards for sewage sludge use or disposal under §§ 301, 302, 303, 304, 306, 307, 308, 403, and 405 of CWA.

"Approval authority" means the State Water Control Board or its designee.

"Approved program" or "approved state" means a state or interstate program that has been approved or authorized by EPA under 40 CFR Part 123.

"Average monthly discharge limitation" means the highest allowable average of daily discharges over a calendar month, calculated as the sum of all daily discharges measured during a calendar month divided by the number of daily discharges measured during that month.

"Average weekly discharge limitation" means the highest allowable average of daily discharges over a calendar week, calculated as the sum of all daily discharges measured during a calendar week divided by the number of daily discharges measured during that week.

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

1. "Nonproprietary best management practice" means both structural and nonstructural practices to prevent or reduce the pollution of surface waters and groundwater systems that are in the public domain and are not protected by trademark or patent or copyright.
2. "Proprietary best management practice" means both structural and nonstructural practices to prevent or reduce the pollution of surface waters and groundwater systems that are privately owned and controlled and may be protected by trademark or patent or copyright.

"Board" means the State Water Control Board. When used outside the context of the promulgation of regulations, including regulations to establish general permits, "board" means the Department of Environmental Quality.

"Bypass" means the intentional diversion of waste streams from any portion of a treatment facility.

"Channel" means a natural or manmade waterway.

"Chesapeake Bay Preservation Act" means Article 2.5 (§ 62.1-44.15:67 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia.

"Chesapeake Bay Preservation Act land-disturbing activity" means a land-disturbing activity including clearing, grading, or excavation that results in a land disturbance equal to or greater than 2,500 square feet and less than one acre in all areas of jurisdictions designated as subject

to the Chesapeake Bay Preservation Area Designation and Management Regulations (9VAC25-830) adopted pursuant to the Chesapeake Bay Preservation Act.

"Chesapeake Bay Preservation Area" means any land designated by a local government pursuant to Part III (9VAC25-830-70 et seq.) of the Chesapeake Bay Preservation Area Designation and Management Regulations and § 62.1-44.15:74 of the Chesapeake Bay Preservation Act. A Chesapeake Bay Preservation Area shall consist of a Resource Protection Area and a Resource Management Area as defined in the Chesapeake Bay Preservation Area Designation and Management Regulations (9VAC25-830).

"Chesapeake Bay watershed" means all land areas draining to the following Virginia river basins: Potomac River Basin, James River Basin, Rappahannock River Basin, Chesapeake Bay and its small coastal basins, and York River Basin.

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

"Comprehensive stormwater management plan" means a plan, which may be integrated with other land use plans or regulations, that specifies how the water quality components, quantity components, or both of stormwater are to be managed on the basis of an entire watershed or a portion thereof. The plan may also provide for the remediation of erosion, flooding, and water quality and quantity problems caused by prior development.

"Construction activity" means any clearing, grading, or excavation associated with large construction activity or associated with small construction activity.

"Contiguous zone" means the entire zone established by the United States under Article 24 of the Convention on the Territorial Sea and the Contiguous Zone (37 FR 11906 June 15, 1972).

"Continuous discharge" means a discharge which occurs without interruption throughout the operating hours of the facility, except for infrequent shutdowns for maintenance, process changes, or other similar activities.

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

"Controversial permit" means a water permitting action for which a public hearing has been granted pursuant to 9VAC25-870-550 and 9VAC25-870-555.

"Co-operator" means an operator of a state permit that is only responsible for state permit conditions relating to the discharge for which it is the operator.

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

"CWA and regulations" means the Clean Water Act (CWA) and applicable regulations published in the Code of Federal Regulations promulgated thereunder. For the purposes of this chapter, it includes state program requirements.

"Daily discharge" means the discharge of a pollutant measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in units of mass, the daily discharge is calculated as the total mass of the pollutant discharged over the day. For pollutants with limitations expressed in other units of measurement, the daily discharge is calculated as the average measurement of the pollutant over the day.

"Department" means the Department of Environmental Quality.

"Development" means land disturbance and the resulting landform associated with the construction of residential, commercial, industrial, institutional, recreation, transportation, or utility

facilities or structures or the clearing of land for nonagricultural or nonsilvicultural purposes. The regulation of discharges from development, for purposes of this chapter, does not include the exemptions found in 9VAC25-870-300.

"Direct discharge" means the discharge of a pollutant.

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

"Discharge," when used without qualification, means the discharge of a pollutant.

"Discharge of a pollutant" means:

1. Any addition of any pollutant or combination of pollutants to state waters from any point source; or
2. Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.

This definition includes additions of pollutants into surface waters from: surface runoff that is collected or channeled by man; discharges through pipes, sewers, or other conveyances owned by a state, municipality, or other person that do not lead to a treatment works; and discharges through pipes, sewers, or other conveyances, leading into privately owned treatment works. This term does not include an addition of pollutants by any indirect discharger.

"Discharge Monitoring Report" or "DMR" means the form supplied by the department, or an equivalent form developed by the operator and approved by the department, for the reporting of self-monitoring results by operators.

"Draft state permit" means a document indicating the department's tentative decision to issue or deny, modify, revoke and reissue, terminate, or reissue a state individual or general permit. A notice of intent to deny a state individual or general permit is a type of draft state permit. A denial of a request for modification, revocation and reissuance, or termination is not a draft state permit.

"Drainage area" means a land area, water area, or both from which runoff flows to a common point.

"Effluent limitation" means any restriction imposed by the board on quantities, discharge rates, and concentrations of pollutants which are discharged from point sources into surface waters, the waters of the contiguous zone, or the ocean.

"Effluent limitations guidelines" means a regulation published by the administrator under § 304(b) of the CWA to adopt or revise effluent limitations.

"Environmental Protection Agency" or "EPA" means the United States Environmental Protection Agency.

"Erosion and Sediment Control Law" means Article 2.4 (§ 62.1-44.15:51 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia.

"ESC" means erosion and sediment control.

"Existing state permit" means for the purposes of this chapter a state permit issued by the department and currently held by a state permit applicant.

"Existing source" means any source that is not a new source or a new discharger.

"Facilities or equipment" means buildings, structures, process or production equipment or machinery that form a permanent part of a new source and that will be used in its operation, if these facilities or equipment are of such value as to represent a substantial commitment to construct. It excludes facilities or equipment used in connection with feasibility, engineering, and design studies regarding the new source or water pollution treatment for the new source.

"Facility or activity" means any point source or treatment works treating domestic sewage or any other facility or activity (including land or appurtenances thereto) that is subject to regulation under the VSMP.

"Farm building or structure" means the same as that term is defined in § 36-97 of the Code of Virginia and also includes any building or structure used for agritourism activity, as defined in § 3.2-6400 of the Code of Virginia, and any related impervious surfaces including roads, driveways, and parking areas.

"Flood fringe" means the portion of the floodplain outside the floodway that is usually covered with water from the 100-year flood or storm event. This includes the flood or floodway fringe designated by the Federal Emergency Management Agency.

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

"Floodplain" means the area adjacent to a channel, river, stream, or other water body that is susceptible to being inundated by water normally associated with the 100-year flood or storm event. This includes the floodplain designated by the Federal Emergency Management Agency.

"Flood-prone area" means the component of a natural or restored stormwater conveyance system that is outside the main channel. Flood-prone areas may include the floodplain, the floodway, the flood fringe, wetlands, riparian buffers, or other areas adjacent to the main channel.

"Floodway" means the channel of a river or other watercourse and the adjacent land areas, usually associated with flowing water, that must be reserved in order to discharge the 100-year flood or storm event without cumulatively increasing the water surface elevation more than one foot. This includes the floodway designated by the Federal Emergency Management Agency.

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

"Hazardous substance" means any substance designated under the Code of Virginia or 40 CFR Part 116 pursuant to § 311 of the CWA.

"Hydrologic Unit Code" or "HUC" means a watershed unit established in the most recent version of Virginia's 6th Order National Watershed Boundary Dataset unless specifically identified as another order.

"Illicit discharge" means any discharge to a municipal separate storm sewer that is not composed entirely of stormwater, except discharges pursuant to a separate VPDES or state permit (other than the state permit for discharges from the municipal separate storm sewer), discharges resulting from firefighting activities, and discharges identified by and in compliance with 9VAC25-870-400 D 2 c (3).

"Impervious cover" means a surface composed of material that significantly impedes or prevents natural infiltration of water into soil.

"Incorporated place" means a city, town, township, or village that is incorporated under the Code of Virginia.

"Indian country" means (i) all land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation; (ii) all dependent Indian communities with the borders of the United States whether within the originally or subsequently acquired territory thereof, and whether within or without the limits of a state; and (iii) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

"Indirect discharger" means a nondomestic discharger introducing "pollutants" to a "publicly owned treatment works (POTW)."

"Inspection" means an on-site review of the project's compliance with the permit or the state permit, the VSMP, and any applicable design criteria, or an on-site review to obtain information or conduct surveys or investigations necessary in the implementation or enforcement of the Act and this chapter.

"Interstate agency" means an agency of two or more states established by or under an agreement or compact approved by Congress, or any other agency of two or more states having substantial powers or duties pertaining to the control of pollution as determined and approved by the administrator under the CWA and regulations.

"Karst area" means any land area predominantly underlain at the surface or shallow subsurface by limestone, dolomite, or other soluble bedrock regardless of any obvious surface karst features.

"Karst features" means sinkholes, sinking and losing streams, caves, large flow springs, and other such landscape features found in karst areas.

"Land disturbance" or "land-disturbing activity" means a manmade change to the land surface that potentially changes its runoff characteristics including clearing, grading, or excavation, except that the term shall not include those exemptions specified in § 62.1-44.15:34 of the Code of Virginia.

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

"Large municipal separate storm sewer system" means all municipal separate storm sewers that are either:

1. Located in an incorporated place with a population of 250,000 or more as determined by the 1990 decennial census by the Bureau of Census (40 CFR Part 122 Appendix F);
2. Located in the counties listed in 40 CFR Part 122 Appendix H, except municipal separate storm sewers that are located in the incorporated places, townships or towns within such counties;
3. Owned or operated by a municipality other than those described in subdivision 1 or 2 of this definition and that are designated by the department as part of the large or medium municipal separate storm sewer system due to the interrelationship between the discharges of the designated storm sewer and the discharges from municipal separate storm sewers described under subdivision 1 or 2 of this definition. In making this determination the department may consider the following factors:
 - a. Physical interconnections between the municipal separate storm sewers;
 - b. The location of discharges from the designated municipal separate storm sewer relative to discharges from municipal separate storm sewers described in subdivision 1 of this definition;
 - c. The quantity and nature of pollutants discharged to surface waters;
 - d. The nature of the receiving surface waters; and
 - e. Other relevant factors;
4. The department may, upon petition, designate as a large municipal separate storm sewer system, municipal separate storm sewers located within the boundaries of a region defined by a stormwater management regional authority based on a jurisdictional,

watershed, or other appropriate basis that includes one or more of the systems described in this definition.

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

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

"Locality" means a county, city, or town.

"Localized flooding" means smaller scale flooding that may occur outside of a stormwater conveyance system. This may include high water, ponding, or standing water from stormwater runoff, which is likely to cause property damage or unsafe conditions.

"Main channel" means the portion of the stormwater conveyance system that contains the base flow and small frequent storm events.

"Major facility" means any facility or activity classified as such by the regional administrator in conjunction with the department.

"Major modification" means, for the purposes of this chapter, the modification or amendment of an existing state permit before its expiration that is not a minor modification as defined in this regulation.

"Major municipal separate storm sewer outfall" or "major outfall" means a municipal separate storm sewer outfall that discharges from a single pipe with an inside diameter of 36 inches or more or its equivalent (discharge from a single conveyance other than circular pipe which is associated with a drainage area of more than 50 acres); or for municipal separate storm sewers that receive stormwater from lands zoned for industrial activity (based on comprehensive zoning plans or the equivalent), with an outfall that discharges from a single pipe with an inside diameter of 12 inches or more or from its equivalent (discharge from other than a circular pipe associated with a drainage area of two acres or more).

"Manmade" means constructed by man.

"Maximum daily discharge limitation" means the highest allowable daily discharge.

"Maximum extent practicable" or "MEP" means the technology-based discharge standard for municipal separate storm sewer systems established by CWA § 402(p). MEP is achieved, in part, by selecting and implementing effective structural and nonstructural best management practices (BMPs) and rejecting ineffective BMPs and replacing them with effective best management practices (BMPs). MEP is an iterative standard, which evolves over time as urban runoff management knowledge increases. As such, the operator's MS4 program must continually be assessed and modified to incorporate improved programs, control measures, BMPs, etc., to attain compliance with water quality standards.

"Medium municipal separate storm sewer system" means all municipal separate storm sewers that are either:

1. Located in an incorporated place with a population of 100,000 or more but less than 250,000 as determined by the 1990 decennial census by the Bureau of Census (40 CFR Part 122 Appendix G);
2. Located in the counties listed in 40 CFR Part 122 Appendix I, except municipal separate storm sewers that are located in the incorporated places, townships or towns within such counties;

3. Owned or operated by a municipality other than those described in subdivision 1 or 2 of this definition and that are designated by the department as part of the large or medium municipal separate storm sewer system due to the interrelationship between the discharges of the designated storm sewer and the discharges from municipal separate storm sewers described under subdivision 1 or 2 of this definition. In making this determination the department may consider the following factors:

- a. Physical interconnections between the municipal separate storm sewers;
- b. The location of discharges from the designated municipal separate storm sewer relative to discharges from municipal separate storm sewers described in subdivision 1 of this definition;
- c. The quantity and nature of pollutants discharged to surface waters;
- d. The nature of the receiving surface waters; or
- e. Other relevant factors;

4. The department may, upon petition, designate as a medium municipal separate storm sewer system, municipal separate storm sewers located within the boundaries of a region defined by a stormwater management regional authority based on a jurisdictional, watershed, or other appropriate basis that includes one or more of the systems described in subdivisions 1, 2, and 3 of this definition.

"Minimize" means to reduce or eliminate the discharge of pollutants to the extent achievable using stormwater controls that are technologically available and economically practicable.

"Minor modification" means, for the purposes of this chapter, minor modification or amendment of an existing state permit before its expiration for the reasons listed at 40 CFR 122.63 and as specified in 9VAC25-870-640. Minor modification for the purposes of this chapter also means other modifications and amendments not requiring extensive review and evaluation including changes in EPA promulgated test protocols, increasing monitoring frequency requirements, changes in sampling locations, and changes to compliance dates within the overall compliance schedules. A minor state permit modification or amendment does not substantially alter state permit conditions, substantially increase or decrease the amount of surface water impacts, increase the size of the operation, or reduce the capacity of the facility to protect human health or the environment.

"Municipal separate storm sewer" means a conveyance or system of conveyances otherwise known as a municipal separate storm sewer system, including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains:

1. Owned or operated by a federal, state, city, town, county, district, association, or other public body, created by or pursuant to state law, having jurisdiction or delegated authority for erosion and sediment control and stormwater management, or a designated and approved management agency under § 208 of the CWA that discharges to surface waters;
2. Designed or used for collecting or conveying stormwater;
3. That is not a combined sewer; and
4. That is not part of a publicly owned treatment works.

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

"Municipal Separate Storm Sewer System Management Program" or "MS4 Program" means a management program covering the duration of a state permit for a municipal separate storm sewer system that includes a comprehensive planning process that involves public participation and intergovernmental coordination, to reduce the discharge of pollutants to the maximum extent

practicable, to protect water quality, and to satisfy the appropriate water quality requirements of the CWA and regulations and the Act and attendant regulations, using management practices, control techniques, and system, design and engineering methods, and such other provisions that are appropriate.

"Municipality" means a city, town, county, district, association, or other public body created by or under state law and having jurisdiction over disposal of sewage, industrial wastes, or other wastes, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under § 208 of the CWA.

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

"Natural channel design concepts" means the utilization of engineering analysis based on fluvial geomorphic processes to create, rehabilitate, restore, or stabilize an open conveyance system for the purpose of creating or recreating a stream that conveys its bankfull storm event within its banks and allows larger flows to access its floodplain.

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

"New discharger" means any building, structure, facility, or installation:

1. From which there is or may be a discharge of pollutants;
2. That did not commence the discharge of pollutants at a particular site prior to August 13, 1979;
3. Which is not a new source; and
4. Which has never received a finally effective separate VPDES or state permit for discharges at that site.

This definition includes an indirect discharger that commences discharging into surface waters after August 13, 1979. It also includes any existing mobile point source (other than an offshore or coastal oil and gas exploratory drilling rig or a coastal oil and gas developmental drilling rig) such as a seafood processing rig, seafood processing vessel, or aggregate plant, that begins discharging at a site for which it does not have a separate VPDES or state permit; and any offshore or coastal mobile oil and gas exploratory drilling rig or coastal mobile oil and gas developmental drilling rig that commences the discharge of pollutants after August 13, 1979.

"New permit" means, for the purposes of this chapter, a state permit issued by the department to a state permit applicant that does not currently hold and has never held a state permit of that type, for that activity, at that location. An application for a new permit issued pursuant to this chapter, 9VAC25-880, or 9VAC25-890 shall not be subject to §§ 62.1-44.15:3 A and 62.1-44.15:4 D of the Code of Virginia.

"New source," means any building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced:

1. After promulgation of standards of performance under § 306 of the CWA that are applicable to such source; or
2. After proposal of standards of performance in accordance with § 306 of the CWA that are applicable to such source, but only if the standards are promulgated in accordance with § 306 of the CWA within 120 days of their proposal.

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

"Oil and gas exploration, production, processing, or treatment operations or transmission facilities" means all field activities or operations associated with exploration, production, or treatment operations, or transmission facilities, including activities necessary to prepare a site for drilling and for the movement and placement of drilling equipment, whether or not such field activities or operations may be considered to be construction activity. (33 USC § 1362(24))

"Operator" means the owner or operator of any facility or activity subject to the Act and this chapter. In the context of stormwater associated with a large or small construction activity, operator means any person associated with a construction project that meets either of the following two criteria: (i) the person has direct operational control over construction plans and specifications, including the ability to make modifications to those plans and specifications or (ii) the person has day-to-day operational control of those activities at a project that are necessary to ensure compliance with a stormwater pollution prevention plan for the site or other state permit or VSMP authority permit conditions (i.e., they are authorized to direct workers at a site to carry out activities required by the stormwater pollution prevention plan or comply with other permit conditions). In the context of stormwater discharges from Municipal Separate Storm Sewer Systems (MS4s), operator means the operator of the regulated MS4 system.

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

"Overburden" means any material of any nature, consolidated or unconsolidated, that overlies a mineral deposit, excluding topsoil or similar naturally occurring surface materials that are not disturbed by mining operations.

"Owner" means the Commonwealth or any of its political subdivisions including sanitation district commissions and authorities, and any public or private institution, corporation, association, firm, or company organized or existing under the laws of this or any other state or country, or any officer or agency of the United States, or any person or group of persons acting individually or as a group that owns, operates, charters, rents, or otherwise exercises control over or is responsible for any actual or potential discharge of sewage, industrial wastes, or other wastes or pollutants to state waters, or any facility or operation that has the capability to alter the physical, chemical, or biological properties of state waters in contravention of § 62.1-44.5 of the Code of Virginia, the Act, and this chapter.

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

"Percent impervious" means the impervious area within the site divided by the area of the site multiplied by 100.

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

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

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

"Point of discharge" means a location at which concentrated stormwater runoff is released.

"Point source" means any discernible, confined, and discrete conveyance including any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel, or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural stormwater runoff.

"Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 USC § 2011 et seq.)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. It does not mean:

1. Sewage from vessels; or
2. Water, gas, or other material that is injected into a well to facilitate production of oil or gas, or water derived in association with oil and gas production and disposed of in a well if the well is used either to facilitate production or for disposal purposes and is approved by the department and if the department determines that the injection or disposal will not result in the degradation of groundwater or surface water resources.

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

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

"Postdevelopment" refers to conditions that reasonably may be expected or anticipated to exist after completion of the land development activity on a specific site.

"Predevelopment" refers to the conditions that exist at the time that plans for the land development of a tract of land are submitted to the VSMP authority. Where phased development or plan approval occurs (preliminary grading, demolition of existing structures, roads and utilities, etc.), the existing conditions at the time prior to the first item being submitted shall establish predevelopment conditions.

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

"Privately owned treatment works" or "PVOTW" means any device or system that is (i) used to treat wastes from any facility whose operator is not the operator of the treatment works and (ii) not a POTW.

"Publicly owned treatment works" or "POTW" means a treatment works as defined by § 212 of the CWA that is owned by a state or municipality (as defined by § 502(4) of the CWA). This definition includes any devices and systems used in the storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature. It also includes sewers, pipes, and other conveyances only if they convey wastewater to a POTW treatment plant. The term also means the municipality as defined in § 502(4) of the CWA, that has jurisdiction over the indirect discharges to and the discharges from such a treatment works.

"Qualified personnel" means a person knowledgeable in the principles and practices of erosion and sediment and stormwater management controls who possesses the skills to assess conditions at the construction site for the operator that could impact stormwater quality and quantity and to assess the effectiveness of any sediment and erosion control measures or stormwater management facilities selected to control the quality and quantity of stormwater discharges from the construction activity. For VSMP authorities this requires the use of a person who holds a certificate of competency from the department in the area of project inspection for ESC and project inspection for SWM or combined administrator for ESC and combined administrator for SWM as defined in 9VAC25-850-10 or a combination of ESC and SWM qualifications from these two areas.

"Recommencing discharger" means a source that recommences discharge after terminating operations.

"Regional administrator" means the Regional Administrator of Region III of the Environmental Protection Agency or the authorized representative of the regional administrator.

"Revoked state permit" means, for the purposes of this chapter, an existing state permit that is terminated by the department before its expiration.

"Runoff coefficient" means the fraction of total rainfall that will appear at a conveyance as runoff.

"Runoff" or "stormwater runoff" means that portion of precipitation that is discharged across the land surface or through conveyances to one or more waterways.

"Runoff characteristics" includes maximum velocity, peak flow rate, volume, and flow duration.

"Runoff volume" means the volume of water that runs off the site from a prescribed design storm.

"Rural Tidewater locality" means any locality that is (i) subject to the provisions of the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq. of the Code of Virginia) and (ii) eligible to join the Rural Coastal Virginia Community Enhancement Authority established by Chapter 76 (§ 15.2-7600 et seq.) of Title 15.2 of the Code of Virginia.

"Schedule of compliance" means a schedule of remedial measures included in a state permit, including an enforceable sequence of interim requirements (for example, actions, operations, or milestone events) leading to compliance with the Act, the CWA, and regulations.

"Secretary" means the Secretary of the Army, acting through the Chief of Engineers.

"Severe property damage" means substantial physical damage to property, damage to the treatment facilities that causes them to become inoperable, or substantial and permanent loss of natural resources that can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

"Significant materials" means, but is not limited to: raw materials; fuels; materials such as solvents, detergents, and plastic pellets; finished materials such as metallic products; raw materials used in food processing or production; hazardous substances designated under § 101(14) of CERCLA (42 USC § 9601(14)); any chemical the facility is required to report pursuant to § 313 of Title III of SARA (42 USC § 11023); fertilizers; pesticides; and waste products such as ashes, slag, and sludge that have the potential to be released with stormwater discharges.

"Single jurisdiction" means, for the purposes of this chapter, a single county or city. The term county includes incorporated towns which are part of the county.

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

"Site hydrology" means the movement of water on, across, through, and off the site as determined by parameters including soil types, soil permeability, vegetative cover, seasonal water tables, slopes, land cover, and impervious cover.

"Small construction activity" means:

1. Construction activities including clearing, grading, and excavating that results in land disturbance of equal to or greater than one acre and less than five acres. Small construction activity also includes the disturbance of less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one and less than five acres. Small construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility. The department may waive the otherwise applicable requirements in a general permit for a stormwater discharge from construction activities that disturb less than five acres where stormwater controls are not needed based on an approved "total maximum daily load" (TMDL) that addresses the pollutants of concern or, for nonimpaired waters that do not require TMDLs, an equivalent analysis that determines allocations for small construction sites for the pollutants of concern or that determines that such allocations are not needed to protect water quality based on consideration of existing in-stream concentrations, expected growth in pollutant contributions from all sources, and a margin of safety. For the purpose of this subdivision, the pollutants of concern include sediment or a parameter that addresses sediment (such as total suspended solids, turbidity, or siltation) and any other pollutant that has been identified as a cause of impairment of any water body that will receive a discharge from the construction activity. The operator must certify to the department that the construction activity will take place, and stormwater discharges will occur, within the drainage area addressed by the TMDL or equivalent analysis. As of the start date in Table 1 of 9VAC25-31-1020, all certifications submitted in support of the waiver shall be submitted electronically by the owner or operator to the department in compliance with this subdivision and 40 CFR Part 3 (including, in all cases, 40 CFR Part 3 Subpart D), 9VAC25-870-370, and Part XI (9VAC25-31-950 et seq.) of the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation. Part XI of 9VAC25-31 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of Part XI of 9VAC25-31, permittees may be required to report electronically if specified by a particular permit.

2. Any other construction activity designated by either the department or the EPA regional administrator, based on the potential for contribution to a violation of a water quality standard or for significant contribution of pollutants to surface waters.

"Small municipal separate storm sewer system" or "small MS4" means all separate storm sewers that are (i) owned or operated by the United States, a state, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to state law) having jurisdiction over disposal of sewage, industrial wastes, stormwater, or other wastes, including special districts under state law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under § 208 of the CWA that discharges to surface waters and

(ii) not defined as "large" or "medium" municipal separate storm sewer systems or designated under 9VAC25-870-380 A 1. This term includes systems similar to separate storm sewer systems in municipalities, such as systems at military bases, large hospital or prison complexes, and highway and other thoroughfares. The term does not include separate storm sewers in very discrete areas, such as individual buildings.

"Source" means any building, structure, facility, or installation from which there is or may be a discharge of pollutants.

"State" means the Commonwealth of Virginia.

"State application" or "application" means the standard form or forms, including any additions, revisions, or modifications to the forms, approved by the administrator and the department for applying for a state permit.

"State/EPA agreement" means an agreement between the EPA regional administrator and the state that coordinates EPA and state activities, responsibilities, and programs including those under the CWA and the Act.

"State permit" means an approval to conduct a land-disturbing activity issued by the department in the form of a state stormwater individual permit or coverage issued under a state general permit or an approval issued by the department for stormwater discharges from an MS4. Under these state permits, the Commonwealth imposes and enforces requirements pursuant to the federal Clean Water Act and regulations, the Act, and this chapter. As the mechanism that imposes and enforces requirements pursuant to the federal Clean Water Act and regulations, a state permit for stormwater discharges from an MS4 and, after June 30, 2014, a state permit for conducting a land-disturbing activity issued pursuant to the Act, are also types of Virginia Pollutant Discharge Elimination System (VPDES) Permits. State permit does not include any state permit that has not yet been the subject of final department action, such as a draft state permit. Approvals issued pursuant to this chapter, 9VAC25-880, and 9VAC25-890 are not issuances of a permit under § 62.1-44.15.01 of the Code of Virginia.

"State project" means any land development project that is undertaken by any state agency, board, commission, authority, or any branch of state government, including state-supported institutions of higher learning.

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

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

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

"Stormwater conveyance system" means a combination of drainage components that are used to convey stormwater discharge, either within or downstream of the land-disturbing activity. This includes:

1. "Manmade stormwater conveyance system" means a pipe, ditch, vegetated swale, or other stormwater conveyance system constructed by man except for restored stormwater conveyance systems;
2. "Natural stormwater conveyance system" means the main channel of a natural stream and the flood-prone area adjacent to the main channel; or
3. "Restored stormwater conveyance system" means a stormwater conveyance system that has been designed and constructed using natural channel design concepts. Restored stormwater conveyance systems include the main channel and the flood-prone area adjacent to the main channel.

"Stormwater discharge associated with construction activity" means a discharge of stormwater runoff from areas where land-disturbing activities (e.g., clearing, grading, or excavation); construction materials or equipment storage or maintenance (e.g., fill piles, borrow area, concrete truck washout, fueling); or other industrial stormwater directly related to the construction process (e.g., concrete or asphalt batch plants) are located.

"Stormwater discharge associated with large construction activity" means the discharge of stormwater from large construction activities.

"Stormwater discharge associated with small construction activity" means the discharge of stormwater from small construction activities.

"Stormwater management facility" means a control measure that controls stormwater runoff and changes the characteristics of that runoff including the quantity and quality, the period of release or the velocity of flow.

"Stormwater management plan" means a document containing material for describing methods for complying with the requirements of the VSMP or this chapter. An agreement in lieu of a stormwater management plan as defined in this chapter shall be considered to meet the requirements of a stormwater management plan.

"Stormwater Pollution Prevention Plan" or "SWPPP" means a document that is prepared in accordance with good engineering practices and that identifies potential sources of pollutants that may reasonably be expected to affect the quality of stormwater discharges. A SWPPP required under a VSMP for construction activities shall identify and require the implementation of control measures and shall include or incorporate by reference an approved erosion and sediment control plan, an approved stormwater management plan, and a pollution prevention plan.

"Subdivision" means the same as defined in § 15.2-2201 of the Code of Virginia.

"Surface waters" means:

1. All waters that are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters that are subject to the ebb and flow of the tide;
2. All interstate waters, including interstate wetlands;
3. All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:
 - a. That are or could be used by interstate or foreign travelers for recreational or other purposes;
 - b. From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or
 - c. That are used or could be used for industrial purposes by industries in interstate commerce;
4. All impoundments of waters otherwise defined as surface waters under this definition;
5. Tributaries of waters identified in subdivisions 1 through 4 of this definition;
6. The territorial sea; and
7. Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in subdivisions 1 through 6 of this definition.

Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of the CWA and the law, are not surface waters. Surface waters do not include prior converted cropland. Notwithstanding the determination of an area's status as prior converted

cropland by any other agency, for the purposes of the CWA, the final authority regarding the CWA jurisdiction remains with the EPA.

"SWM" means stormwater management.

"Total dissolved solids" means the total dissolved (filterable) solids as determined by use of the method specified in 40 CFR Part 136.

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

"TMDL Action Plan" means the scheduled steps of activities that the MS4 operator will take to address the assumptions and requirements of the TMDL wasteload allocation. TMDL action plans may be implemented in multiple phases over more than one state permit cycle.

"Toxic pollutant" means any pollutant listed as toxic under § 307(a)(1) of the CWA or, in the case of sludge use or disposal practices, any pollutant identified in regulations implementing § 405(d) of the CWA.

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

"Variance" means any mechanism or provision under § 301 or § 316 of the CWA or under 40 CFR Part 125, or in the applicable federal effluent limitations guidelines that allows modification to or waiver of the generally applicable effluent limitation requirements or time deadlines of the CWA. This includes provisions that allow the establishment of alternative limitations based on fundamentally different factors or on § 301(c), § 301(g), § 301(h), § 301(i), or § 316(a) of the CWA.

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

"Virginia Erosion and Sediment Control Program authority" or "VESCO authority" means an authority approved by the department to operate a Virginia Erosion and Sediment Control Program. An authority may include a state entity, including the department; a federal entity; a district, county, city, or town; or for linear projects subject to annual standards and specifications, electric, natural gas and telephone utility companies, interstate and intrastate natural gas pipeline companies, railroad companies, or authorities created pursuant to § 15.2-5102 of the Code of Virginia.

"Virginia Pollutant Discharge Elimination System (VPDES) permit" or "VPDES permit" means a document issued by the department pursuant to the State Water Control Law authorizing, under prescribed conditions, the potential or actual discharge of pollutants from a point source to surface waters.

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

"Virginia Stormwater BMP Clearinghouse Website" means a website that contains detailed design standards and specifications for control measures that may be used in Virginia to comply with the requirements of the Virginia Stormwater Management Act and associated regulations.

"Virginia Stormwater Management Handbook" means a collection of pertinent information that provides general guidance for compliance with the Act and associated regulations and is developed by the department with advice from a stakeholder advisory committee.

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

"VSMP authority" means an authority approved by the department after September 13, 2011, to operate a Virginia Stormwater Management Program or the department. An authority may include a locality as set forth in § 62.1-44.15:27 of the Code of Virginia; state entity, including the department; federal entity; or, for linear projects subject to annual standards and specifications in accordance with subsection B of § 62.1-44.15:31 of the Code of Virginia, electric, natural gas, and telephone utility companies, interstate and intrastate natural gas pipeline companies, railroad companies, or authorities created pursuant to § 15.2-5102 of the Code of Virginia. Prior to approval, the department must find that the ordinances adopted by the locality's VSMP authority are consistent with the Act and this chapter including the General Permit for Discharges of Stormwater from Construction Activities (9VAC25-880).

"Wasteload allocation" or "wasteload" or "WLA" means the portion of a receiving surface water's loading or assimilative capacity allocated to one of its existing or future point sources of pollution. WLAs are a type of water quality-based effluent limitation.

"Water quality standards" or "WQS" means provisions of state or federal law that consist of a designated use or uses for the waters of the Commonwealth and water quality criteria for such waters based on such uses. Water quality standards are to protect the public health or welfare, enhance the quality of water, and serve the purposes of the State Water Control Law (§ 62.1-44.2 et seq. of the Code of Virginia), the Act (§ 62.1-44.15:24 et seq. of the Code of Virginia), and the CWA (33 USC § 1251 et seq.).

"Water quantity technical criteria" means standards that establish minimum design criteria for measures to control localized flooding and stream channel erosion.

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

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

"Whole effluent toxicity" means the aggregate toxic effect of an effluent measured directly by a toxicity test.

9VAC25-870-59. Applying for state permit coverage.

The operator must submit a complete and accurate registration statement, if such statement is required, on the official department form to the VSMP authority in order to apply for state permit coverage. The registration statement must be signed by the operator in accordance with 9VAC25-

870-370. In accordance with § 62.1-44.15:28 of the Code of Virginia, no registration statement is required for ~~the construction of~~ coverage under the General Permit for Discharges of Stormwater from Construction Activities for a small construction activity involving a single-family detached residential structure within or outside a common plan of development or sale.

9VAC25-880-50. Registration statement.

A. Deadlines for submitting registration statement. Any operator seeking coverage under this general permit, and that is required to submit a registration statement, shall submit a complete and accurate general VPDES permit registration statement in accordance with this section, which shall serve as a notice of intent for coverage under the general VPDES permit for discharges of stormwater from construction activities.

1. New construction activities.

a. Any operator proposing a new stormwater discharge from construction activities shall submit a complete and accurate registration statement to the VSMP authority prior to the commencement of land disturbance.

b. Any operator proposing a new stormwater discharge from construction activities in response to a public emergency where the related work requires immediate authorization to avoid imminent endangerment to human health or the environment is authorized to discharge under this general permit, provided that:

(1) The operator submits a complete and accurate registration statement to the VSMP authority no later than 30 days after commencing land disturbance; and

(2) Documentation to substantiate the occurrence of the public emergency is provided with the registration statement.

c. Any operator proposing a new stormwater discharge associated with a small construction activity involving the construction of a single-family detached residential structure, within or outside a common plan of development or sale, is authorized to discharge under this general permit and is not required to submit a registration statement, ~~or~~ Any operator proposing a new stormwater discharge associated with the construction of a single-family detached residential structure, within or outside a common plan of development or sale is not required to submit the department portion of the permit fee.

2. Existing construction activities.

a. Any operator who was authorized to discharge under the expiring or expired general permit and who intends to continue coverage under this general permit shall:

(1) Submit a complete and accurate registration statement to the VSMP authority at least 60 days prior to the expiration date of the existing permit or a later submittal date established by the board; and

(2) Update its stormwater pollution prevention plan to comply with the requirements of this general permit no later than 60 days after the date of coverage under this general permit.

b. Any operator with an existing stormwater discharge associated with a small construction activity involving the construction of a single-family detached residential structure, within or outside a common plan of development or sale that intends to continue coverage under this general permit, is authorized to discharge under this general permit and is not required to submit a registration statement ~~or the department portion of the permit fee~~, provided that the operator updates its stormwater pollution prevention plan to comply with the requirements of this general permit no later than 60 days after the date of coverage under this general permit. Any operator with an existing stormwater discharge associated with the construction of a single-family detached

residential structure, within or outside a common plan of development or sale that intends to continue coverage under this general permit is not required to submit the department portion of the permit fee.

3. For stormwater discharges from construction activities where the operator changes, the new operator shall submit a complete and accurate registration statement or transfer agreement form and any other documents deemed necessary by the VSMP authority to the VSMP authority to demonstrate transfer of ownership and long-term maintenance responsibilities for stormwater management facilities, as required, has occurred prior to assuming operational control over site specifications or commencing work on-site.

4. Late notifications. Operators are not prohibited from submitting registration statements after commencing land disturbance. When a late registration statement is submitted, authorization for discharges shall not occur until coverage under the general permit is issued. The VSMP authority, department, board, and the EPA reserve the right to take enforcement action for any unpermitted discharges that occur between the commencement of land disturbance and discharge authorization.

5. Late registration statements. Registration statements for existing facilities covered under subdivision A 2 a of this section will be accepted after the expiration date of this permit, but authorization to discharge will not be retroactive. The VSMP authority, department, board, and the EPA reserve the right to take enforcement action for any unpermitted discharges that occur after existing permit coverage expires and prior to coverage under this permit is approved.

B. Registration statement. The operator shall submit a registration statement to the VSMP authority that contains the following information:

1. Name, contact, mailing address, telephone number, and email address if available of the construction activity operator. No more than one operator may receive coverage under each registration statement;

NOTE: General permit coverage will be issued to this operator, and the certification in subdivision 17 of this subsection shall be signed by the appropriate person associated with this operator as described in Part III K of 9VAC25-880-70.

2. Name and physical location address of the construction activity, when available, to be covered under this general permit, including city or county, and latitude and longitude in decimal degrees (six digits - ten-thousandths place);

3. A site map (in an 8.5 inch by 11 inch format) showing the location of the existing or proposed land-disturbing activities for which the operator is seeking permit coverage, the limits of land disturbance, construction entrances, on-site support activities, and all water bodies receiving stormwater discharges from the site;

4. If off-site support activities will be used, the name and physical location address, when available, of all off-site support activities, including city or county; latitude and longitude in decimal degrees (six digits - ten-thousandths place); and whether or not the off-site support activity will be covered under this general permit or a separate VPDES permit;

5. If excavated material (i.e., fill) will be transported off site for disposal, the name and physical location address, when available, of all off-site excavated material disposal areas, including city or county; latitude and longitude in decimal degrees (six digits – ten-thousandths place); and the contents of the excavated material;

6. Status of the construction activity: federal, state, public, or private;

7. Nature of the construction activity (e.g., commercial, industrial, residential, agricultural, oil and gas, etc.);

8. If stormwater management plans for the construction activity have been approved by an entity with department approved annual standards and specifications, the name of the entity with the department approved annual standards and specifications. A copy of the annual standard and specification entity form shall be submitted with the registration statement;

9. If the construction activity was previously authorized to discharge under the general permit effective July 1, 2014, the date of erosion and sediment control plan approval for the estimated area to be disturbed by the construction activity during this permit term;

10. If the construction activity was previously authorized to discharge under the general permit effective July 1, 2014, whether land disturbance has commenced;

11. Name of the receiving waters and sixth order Hydrologic Unit Code (HUC);

12. If the discharge is through a municipal separate storm sewer system (MS4), the name of the MS4 operator;

13. Estimated project start date and completion date;

14. Total land area of development and estimated area to be disturbed by the construction activity during this permit term (to the nearest one-hundredth of an acre);

15. Whether the area to be disturbed by the construction activity is part of a larger common plan of development or sale;

16. If nutrient credits are to be used to demonstrate compliance with the water quality technical criteria as allowed in 9VAC25-870-65 F, a letter of availability from an appropriate nutrient bank that nonpoint source nutrient credits are available;

17. A stormwater pollution prevention plan (SWPPP) shall be prepared in accordance with the requirements of the General VPDES Permit for Stormwater Discharges from Construction Activities prior to submitting the registration statement. By signing the registration statement, the operator certifies that the SWPPP has been prepared; and

18. The following certification: "I certify under penalty of law that I have read and understand this registration statement and that this document and all attachments were prepared in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information submitted is to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment for knowing violations."

C. The registration statement shall be signed in accordance with 9VAC25-880-70, Part III K.

VIRGINIA ACTS OF ASSEMBLY -- 2023 SESSION

CHAPTER 48

An Act to amend and reenact §§ 62.1-44.15:24 and 62.1-44.15:28, as they are currently effective and as they may become effective, 62.1-44.15:34, as it may become effective, and 62.1-44.15:51, 62.1-44.15:55, and 62.1-44.15:58, as they are currently effective and as they may become effective, of the Code of Virginia, relating to stormwater management; streamlining; federal conformity.

[H 1848]

Approved March 17, 2023

Be it enacted by the General Assembly of Virginia:

1. That §§ 62.1-44.15:24 and 62.1-44.15:28, as they are currently effective and as they may become effective, 62.1-44.15:34, as it may become effective, and 62.1-44.15:51, 62.1-44.15:55, and 62.1-44.15:58, as they are currently effective and as they may become effective, of the Code of Virginia are amended and reenacted as follows:

§ 62.1-44.15:24. (For expiration date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345) Definitions.

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

"Agreement in lieu of a stormwater management plan" means a contract between the VSMP authority and the owner or permittee that specifies methods that shall be implemented to comply with the requirements of a VSMP for the construction of a *(i) single-family residence or (ii) farm building or structure on a parcel of land with a total impervious cover percentage, including the impervious cover from the farm building or structure to be constructed, of less than five percent*; such contract may be executed by the VSMP authority in lieu of a stormwater management plan.

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

"CWA" means the federal Clean Water Act (33 U.S.C. § 1251 et seq.), formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972, 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 any subsequent revisions thereto.

"Department" means the Department of Environmental Quality.

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

"Farm building or structure" means the same as that term is defined in § 36-97 and also includes any building or structure used for agritourism activity, as defined in § 3.2-6400, and any related impervious surfaces including roads, driveways, and parking areas.

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

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

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

1. Owned or operated by a federal, state, city, town, county, district, association, or other public body, created by or pursuant to state law, having jurisdiction or delegated authority for erosion and sediment control and stormwater management, or a designated and approved management agency under § 208 of the CWA that discharges to surface waters;

2. Designed or used for collecting or conveying stormwater;

3. That is not a combined sewer; and

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

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

"Nonpoint source pollution" means pollution such as sediment, nitrogen, phosphorus, hydrocarbons,

heavy metals, and toxics whose sources cannot be pinpointed but rather are washed from the land surface in a diffuse manner by stormwater runoff.

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

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

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

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

"Rural Tidewater locality" means any locality that is (i) subject to the provisions of the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq.) and (ii) eligible to join the Rural Coastal Virginia Community Enhancement Authority established by Chapter 76 (§ 15.2-7600 et seq.) of Title 15.2.

"Small construction activity" means:

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

The Board may waive the otherwise applicable requirements in a general permit for a stormwater discharge from construction activities that disturb less than five acres where stormwater controls are not needed based on an approved total maximum daily load (TMDL) that addresses the pollutants of concern or, for nonimpaired waters that do not require TMDLs, an equivalent analysis that determines allocations for small construction sites for the pollutants of concern or that determines that such allocations are not needed to protect water quality based on consideration of existing in-stream concentrations, expected growth in pollutant contributions from all sources, and a margin of safety. For the purpose of this subdivision, the pollutants of concern include sediment or a parameter that addresses sediment, such as total suspended solids, turbidity, or siltation, and any other pollutant that has been identified as a cause of impairment of any water body that will receive a discharge from the construction activity. The operator shall certify to the Board that the construction activity will take place, and that stormwater discharges will occur, within the drainage area addressed by the TMDL or provide an equivalent analysis.

As of the start date in the table of start dates for electronic submissions of Virginia Pollutant Discharge Elimination System (VPDES) information within the regulation governing the implementation of electronic reporting requirements for certain VPDES permittees, facilities, and entities, all certifications submitted in support of such waiver shall be submitted electronically by the owner or operator to the Department in compliance with (i) this subdivision; (ii) 40 C.F.R. Part 3, including, in all cases, 40 C.F.R. Part 3 Subpart D; (iii) the regulation addressing signatories to state permit applications and reports; and (iv) regulations addressing the VPDES electronic reporting requirements. Such regulations addressing the VPDES electronic reporting requirements shall not undo existing requirements for electronic reporting. Prior to such date, and independent of the regulations addressing the VPDES electronic reporting requirements, a permittee shall be required to report electronically if specified by a particular permit.

2. Any other construction activity designated by either the Board or the Regional Administrator of the U.S. Environmental Protection Agency, based on the potential for contribution to a violation of a water quality standard or for significant contribution of pollutants to surface waters.

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

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

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

"Subdivision" means the same as defined in § 15.2-2201.

"Virginia Stormwater Management Program" or "VSMP" means a program approved by the Soil and Water Conservation Board after September 13, 2011, and until June 30, 2013, or the State Water Control Board on and after June 30, 2013, that has been established by a VSMP authority to manage the quality and quantity of runoff resulting from land-disturbing activities and shall include such items as local ordinances, rules, permit requirements, annual standards and specifications, policies and guidelines,

technical materials, and requirements for plan review, inspection, enforcement, where authorized in this article, and evaluation consistent with the requirements of this article and associated regulations.

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

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

"Water quantity technical criteria" means standards set forth in regulations adopted pursuant to this article that establish minimum design criteria for measures to control localized flooding and stream channel erosion.

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

§ 62.1-44.15:24. (For effective date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345) Definitions.

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

"Agreement in lieu of a plan" means a contract between the VESMP authority or the Board acting as a VSMP authority and the owner or permittee that specifies methods that shall be implemented to comply with the requirements of this article for the construction of a *(i) single-family detached residential structure or (ii) farm building or structure on a parcel of land with a total impervious cover percentage, including the impervious cover from the farm building or structure to be constructed, of less than five percent*; such contract may be executed by the VESMP authority in lieu of a soil erosion control and stormwater management plan or by the Board acting as a VSMP authority in lieu of a stormwater management plan.

"Applicant" means any person submitting a soil erosion control and stormwater management plan to a VESMP authority, or a stormwater management plan to the Board when it is serving as a VSMP authority, for approval in order to obtain authorization to commence a land-disturbing activity.

"CWA" means the federal Clean Water Act (33 U.S.C. § 1251 et seq.), formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972, 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 any subsequent revisions thereto.

"Department" means the Department of Environmental Quality.

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

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

"Farm building or structure" means the same as that term is defined in § 36-97 and also includes any building or structure used for agritourism activity, as defined in § 3.2-6400, and any related impervious surfaces including roads, driveways, and parking areas.

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

"Land disturbance" or "land-disturbing activity" means a man-made change to the land surface that may result in soil erosion or has the potential to change its runoff characteristics, including construction activity such as the clearing, grading, excavating, or filling of land.

"Land-disturbance approval" means the same as that term is defined in § 62.1-44.3.

"Municipal separate storm sewer" or "MS4" means the same as that term is defined in § 62.1-44.3.

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

"Natural channel design concepts" means the utilization of engineering analysis and fluvial geomorphic processes to create, rehabilitate, restore, or stabilize an open conveyance system for the purpose of creating or recreating a stream that conveys its bankfull storm event within its banks and

allows larger flows to access its bankfull bench and its floodplain.

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

"Owner" means the same as that term is defined in § 62.1-44.3. For a regulated land-disturbing activity that does not require a permit, "owner" also means the owner or owners of the freehold of the premises or lesser estate therein, mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee, or other person, firm, or corporation in control of a property.

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

"Permit" means a Virginia Pollutant Discharge Elimination System (VPDES) permit issued by the Board pursuant to § 62.1-44.15 for stormwater discharges from a land-disturbing activity or MS4.

"Permittee" means the person to whom the permit is issued.

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

"Rural Tidewater locality" means any locality that is (i) subject to the provisions of the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq.) and (ii) eligible to join the Rural Coastal Virginia Community Enhancement Authority established by Chapter 76 (§ 15.2-7600 et seq.) of Title 15.2.

"Small construction activity" means:

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

The Board may waive the otherwise applicable requirements in a general permit for a stormwater discharge from construction activities that disturb less than five acres where stormwater controls are not needed based on an approved total maximum daily load (TMDL) that addresses the pollutants of concern or, for nonimpaired waters that do not require TMDLs, an equivalent analysis that determines allocations for small construction sites for the pollutants of concern or that determines that such allocations are not needed to protect water quality based on consideration of existing in-stream concentrations, expected growth in pollutant contributions from all sources, and a margin of safety. For the purpose of this subdivision, the pollutants of concern include sediment or a parameter that addresses sediment, such as total suspended solids, turbidity, or siltation, and any other pollutant that has been identified as a cause of impairment of any water body that will receive a discharge from the construction activity. The operator shall certify to the Board that the construction activity will take place, and that stormwater discharges will occur, within the drainage area addressed by the TMDL or provide an equivalent analysis.

As of the start date in the table of start dates for electronic submissions of Virginia Pollutant Discharge Elimination System (VPDES) information within the regulation governing the implementation of electronic reporting requirements for certain VPDES permittees, facilities, and entities, all certifications submitted in support of such waiver shall be submitted electronically by the owner or operator to the Department in compliance with (i) this subdivision; (ii) 40 C.F.R. Part 3, including, in all cases, 40 C.F.R. Part 3 Subpart D; (iii) the regulation addressing signatories to state permit applications and reports; and (iv) regulations addressing the VPDES electronic reporting requirements. Such regulations addressing the VPDES electronic reporting requirements shall not undo existing requirements for electronic reporting. Prior to such date, and independent of the regulations addressing the VPDES electronic reporting requirements, a permittee shall be required to report electronically if specified by a particular permit.

2. Any other construction activity designated by either the Board or the Regional Administrator of the U.S. Environmental Protection Agency, based on the potential for contribution to a violation of a water quality standard or for significant contribution of pollutants to surface waters.

"Soil erosion" means the movement of soil by wind or water into state waters or onto lands in the Commonwealth.

"Soil Erosion Control and Stormwater Management plan" or "plan" means a document describing methods for controlling soil erosion and managing stormwater in accordance with the requirements adopted pursuant to this article.

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

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

"Subdivision" means the same as that term is defined in § 15.2-2201.

"Virginia Erosion and Sediment Control Program" or "VЕСP" means a program approved by the Board that is established by a VЕСP authority pursuant to Article 2.4 (§ 62.1-44.15:51 et seq.) for the effective control of soil erosion, sediment deposition, and nonagricultural runoff associated with a land-disturbing activity to prevent the unreasonable degradation of properties, stream channels, waters, and other natural resources. The VЕСP shall include, where applicable, such items as local ordinances, rules, policies and guidelines, technical materials, and requirements for plan review, inspection, and evaluation consistent with the requirements of Article 2.4 (§ 62.1-44.15:51 et seq.).

"Virginia Erosion and Sediment Control Program authority" or "VЕСP authority" means a locality that is approved by the Board to operate a Virginia Erosion and Sediment Control Program in accordance with Article 2.4 (§ 62.1-44.15:51 et seq.). Only a locality for which the Department administered a Virginia Stormwater Management Program as of July 1, 2017, is authorized to choose to operate a VЕСP pursuant to Article 2.4 (§ 62.1-44.15:51 et seq.).

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

"Virginia Erosion and Stormwater Management Program authority" or "VESMP authority" means the Board or a locality approved by the Board to operate a Virginia Erosion and Stormwater Management Program. For state agency or federal entity land-disturbing activities and land-disturbing activities subject to approved standards and specifications, the Board shall serve as the VESMP authority.

"Virginia Stormwater Management Program" or "VSMP" means a program established by the Board pursuant to § 62.1-44.15:27.1 on behalf of a locality on or after July 1, 2014, to manage the quality and quantity of runoff resulting from any land-disturbing activity that (i) disturbs one acre or more of land or (ii) disturbs less than one acre of land and is part of a larger common plan of development or sale that results in one acre or more of land disturbance.

"Virginia Stormwater Management Program authority" or "VSMP authority" means the Board when administering a VSMP on behalf of a locality that, pursuant to subdivision B 3 of § 62.1-44.15:27, has chosen not to adopt and administer a VESMP.

"Water quality technical criteria" means standards set forth in regulations adopted pursuant to this article that establish minimum design criteria for measures to control nonpoint source pollution.

"Water quantity technical criteria" means standards set forth in regulations adopted pursuant to this article that establish minimum design criteria for measures to control localized flooding and stream channel erosion.

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

§ 62.1-44.15:28. (For expiration date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345) Development of regulations.

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

1. Establish standards and procedures for administering a VSMP;
2. Establish minimum design criteria for measures to control nonpoint source pollution and localized flooding, and incorporate the stormwater management regulations adopted pursuant to the Erosion and Sediment Control Law (§ 62.1-44.15:51 et seq.), as they relate to the prevention of stream channel erosion. These criteria shall be periodically modified as required in order to reflect current engineering methods;
3. Require the provision of long-term responsibility for and maintenance of stormwater management control devices and other techniques specified to manage the quality and quantity of runoff;
4. Require as a minimum the inclusion in VSMPs of certain administrative procedures that include, but are not limited to, specifying the time period within which a VSMP authority shall grant land-disturbing activity approval, the conditions and processes under which approval shall be granted, the procedures for communicating disapproval, the conditions under which an approval may be changed, and requirements for inspection of approved projects;

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

by the following:

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

b. Fees collected pursuant to this section shall be in addition to any general fund appropriation made to the Department or other supporting revenue from a VSMP; however, the fees shall be set at a level sufficient for the Department and the VSMP to fully carry out their responsibilities under this article and its attendant regulations and local ordinances or standards and specifications where applicable. When establishing a VSMP, the VSMP authority shall assess the statewide fee schedule and shall have the authority to reduce or increase such fees, and to consolidate such fees with other program-related charges, but in no case shall such fee changes affect the amount established in the regulations as available to the Department for program oversight responsibilities pursuant to subdivision 5 a. A VSMP's portion of the fees shall be used solely to carry out the VSMP's responsibilities under this article and its attendant regulations, ordinances, or annual standards and specifications.

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

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

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

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

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

7. Establish a procedure by which a stormwater management plan that is approved for a residential, commercial, or industrial subdivision shall govern the development of the individual parcels, including those parcels developed under subsequent owners;

8. Notwithstanding the provisions of subdivision 5, establish a procedure by which ~~neither a registration statement nor~~ payment of the Department's portion of the statewide permit fee established pursuant to that subdivision shall *not* be required for coverage under the General Permit for Discharges of Stormwater from Construction Activities for construction activity involving a single-family detached residential structure, within or outside a common plan of development or sale;

9. Provide for the certification and use of a proprietary best management practice only if another state, regional, or national program has verified its nutrient or sediment removal effectiveness and all of such program's established test protocol requirements were met or exceeded. As used in this subdivision and any regulations or guidance adopted pursuant to this subdivision, "certification" means a determination by the Department that a proprietary best management practice is approved for use in accordance with this article;

10. Require that VSMPs maintain after-development runoff rate of flow and characteristics that replicate, as nearly as practicable, the existing predevelopment runoff characteristics and site hydrology,

or improve upon the contributing share of the existing predevelopment runoff characteristics and site hydrology if stream channel erosion or localized flooding is an existing predevelopment condition. Except where more stringent requirements are necessary to address total maximum daily load requirements or to protect exceptional state waters, any land-disturbing activity that provides for stormwater management shall satisfy the conditions of this subsection if the practices are designed to (i) detain the water quality volume and to release it over 48 hours; (ii) detain and release over a 24-hour period the expected rainfall resulting from the one year, 24-hour storm; and (iii) reduce the allowable peak flow rate resulting from the 1.5-year, two-year, and 10-year, 24-hour storms to a level that is less than or equal to the peak flow rate from the site assuming it was in a good forested condition, achieved through multiplication of the forested peak flow rate by a reduction factor that is equal to the runoff volume from the site when it was in a good forested condition divided by the runoff volume from the site in its proposed condition, and shall be exempt from any flow rate capacity and velocity requirements for natural or man-made channels as defined in any regulations promulgated pursuant to this section or any ordinances adopted pursuant to § 62.1-44.15:27 or 62.1-44.15:33;

11. Encourage low-impact development designs, regional and watershed approaches, and nonstructural means for controlling stormwater;

12. Promote the reclamation and reuse of stormwater for uses other than potable water in order to protect state waters and the public health and to minimize the direct discharge of pollutants into state waters;

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

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

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

16. Require the owner of property that is zoned for residential use and on which is located a privately owned stormwater management facility serving one or more residential properties to record the long-term maintenance and inspection requirements for such facility with the deed for the owner's property; ~~and~~

17. Require that all final plan elements, specifications, or calculations whose preparation requires a license under Chapter 4 (§ 54.1-400 et seq.) or 22 (§ 54.1-2200 et seq.) of Title 54.1 be appropriately signed and sealed by a professional who is licensed to engage in practice in the Commonwealth. Nothing in this subdivision shall authorize any person to engage in practice outside his area of professional competence; *and*

18. *Establish a procedure by which a registration statement shall not be required for coverage under the General Permit for Discharges of Stormwater from Construction Activities for a small construction activity involving a single-family detached residential structure, within or outside a common plan of development or sale.*

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

§ 62.1-44.15:28. (For effective date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345) Development of regulations.

The Board is authorized to adopt regulations that establish requirements for the effective control of soil erosion, sediment deposition, and stormwater, including nonagricultural runoff, that shall be met in any VESMP to prevent the unreasonable degradation of properties, stream channels, waters, and other natural resources, and that specify minimum technical criteria and administrative procedures for VESMPs. The regulations shall:

1. Establish standards and procedures for administering a VESMP;

2. Establish minimum standards of effectiveness of the VESMP and criteria and procedures for reviewing and evaluating its effectiveness. The minimum standards of program effectiveness established by the Board shall provide that (i) no soil erosion control and stormwater management plan shall be approved until it is reviewed by a plan reviewer certified pursuant to § 62.1-44.15:30, (ii) each inspection of a land-disturbing activity shall be conducted by an inspector certified pursuant to § 62.1-44.15:30, and (iii) each VESMP shall contain a program administrator, a plan reviewer, and an inspector, each of whom is certified pursuant to § 62.1-44.15:30 and all of whom may be the same person;

3. Be based upon relevant physical and developmental information concerning the watersheds and drainage basins of the Commonwealth, including data relating to land use, soils, hydrology, geology, size of land area being disturbed, proximate water bodies and their characteristics, transportation, and public facilities and services;

4. Include any survey of lands and waters as the Board deems appropriate or as any applicable law requires to identify areas, including multijurisdictional and watershed areas, with critical soil erosion and sediment problems;

5. Contain conservation standards for various types of soils and land uses, which shall include criteria, techniques, and methods for the control of soil erosion and sediment resulting from land-disturbing activities;

6. Establish water quality and water quantity technical criteria. These criteria shall be periodically modified as required in order to reflect current engineering methods;

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

8. Require as a minimum the inclusion in VESMPs of certain administrative procedures that include, but are not limited to, specifying the time period within which a VESMP authority shall grant land-disturbance approval, the conditions and processes under which such approval shall be granted, the procedures for communicating disapproval, the conditions under which an approval may be changed, and requirements for inspection of approved projects;

9. Establish a statewide fee schedule to cover all costs associated with the implementation of a VESMP related to land-disturbing activities where permit coverage is required, and for land-disturbing activities where the Board serves as a VESMP authority or VSMP authority. Such fee attributes include the costs associated with plan review, permit registration statement review, permit issuance, permit coverage verification, inspections, reporting, and compliance activities associated with the land-disturbing activities as well as program oversight costs. The fee schedule shall also include a provision for a reduced fee for a land-disturbing activity that disturbs 2,500 square feet or more but less than one acre in an area of a locality designated as a Chesapeake Bay Preservation Area pursuant to the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq.). The fee schedule shall be governed by the following:

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

b. Fees collected pursuant to this section shall be in addition to any general fund appropriation made to the Department or other supporting revenue from a VESMP; however, the fees shall be set at a level sufficient for the Department, the Board, and the VESMP to fully carry out their responsibilities under this article and local ordinances or standards and specifications where applicable. When establishing a VESMP, the VESMP authority shall assess the statewide fees pursuant to the schedule and shall have the authority to reduce or increase such fees, and to consolidate such fees with other program-related charges, but in no case shall such fee changes affect the amount established in the regulations as available to the Department for program oversight responsibilities pursuant to subdivision a. A VESMP's portion of the fees shall be used solely to carry out the VESMP's responsibilities under this article and associated ordinances;

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

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

e. Notwithstanding the other provisions of this subdivision 9, establish a procedure by which ~~neither a registration statement nor~~ payment of the Department's portion of the statewide fee established pursuant to this subdivision 9 shall *not* be required for coverage under the General Permit for Discharges of Stormwater from Construction Activities for construction activity involving a single-family detached residential structure, within or outside a common plan of development or sale;

f. Establish a procedure by which a registration statement shall not be required for coverage under the General Permit for Discharges of Stormwater from Construction Activities for a small construction activity involving a single-family detached residential structure, within or outside a common plan of development or sale;

10. Establish statewide standards for soil erosion control and stormwater management from land-disturbing activities;

11. Establish a procedure by which a soil erosion control and stormwater management plan or stormwater management plan that is approved for a residential, commercial, or industrial subdivision shall govern the development of the individual parcels, including those parcels developed under subsequent owners;

12. Provide for the certification and use of a proprietary best management practice only if another state, regional, or national program has verified its nutrient or sediment removal effectiveness and all of such program's established test protocol requirements were met or exceeded. As used in this subdivision and any regulations or guidance adopted pursuant to this subdivision, "certification" means a determination by the Department that a proprietary best management practice is approved for use in accordance with this article;

13. Require that VESMPs maintain after-development runoff rate of flow and characteristics that replicate, as nearly as practicable, the existing predevelopment runoff characteristics and site hydrology, or improve upon the contributing share of the existing predevelopment runoff characteristics and site hydrology if stream channel erosion or localized flooding is an existing predevelopment condition.

a. Except where more stringent requirements are necessary to address total maximum daily load requirements or to protect exceptional state waters, any land-disturbing activity that was subject to the water quantity requirements that were in effect pursuant to this article prior to July 1, 2014, shall be deemed to satisfy the conditions of this subsection if the practices are designed to (i) detain the water volume equal to the first one-half inch of runoff multiplied by the impervious surface of the land development project and to release it over 48 hours; (ii) detain and release over a 24-hour period the expected rainfall resulting from the one year, 24-hour storm; and (iii) reduce the allowable peak flow rate resulting from the 1.5-year, two-year, and 10-year, 24-hour storms to a level that is less than or equal to the peak flow rate from the site assuming it was in a good forested condition, achieved through multiplication of the forested peak flow rate by a reduction factor that is equal to the runoff volume from the site when it was in a good forested condition divided by the runoff volume from the site in its proposed condition. Any land-disturbing activity that complies with these requirements shall be exempt from any flow rate capacity and velocity requirements for natural or man-made channels as defined in any regulations promulgated pursuant to this section or any ordinances adopted pursuant to § 62.1-44.15:27 or 62.1-44.15:33;

b. Any stream restoration or relocation project that incorporates natural channel design concepts is not a man-made channel and shall be exempt from any flow rate capacity and velocity requirements for natural or man-made channels as defined in any regulations promulgated pursuant to this article;

14. Encourage low-impact development designs, regional and watershed approaches, and nonstructural means for controlling stormwater;

15. Promote the reclamation and reuse of stormwater for uses other than potable water in order to protect state waters and the public health and to minimize the direct discharge of pollutants into state waters;

16. Establish procedures to be followed when a locality chooses to change the type of program it administers pursuant to subsection D of § 62.1-44.15:27;

17. Establish a statewide permit fee schedule for stormwater management related to MS4 permits;

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

19. Require the owner of property that is zoned for residential use and on which is located a privately owned stormwater management facility serving one or more residential properties to record the long-term maintenance and inspection requirements for such facility with the deed for the owner's property; and

20. Require that all final plan elements, specifications, or calculations whose preparation requires a license under Chapter 4 (§ 54.1-400 et seq.) or 22 (§ 54.1-2200 et seq.) of Title 54.1 be appropriately signed and sealed by a professional who is licensed to engage in practice in the Commonwealth. Nothing in this subdivision shall authorize any person to engage in practice outside his area of professional competence.

§ 62.1-44.15:34. (For effective date, see notes) Regulated activities; submission and approval of a permit application; security for performance; exemptions.

A. A person shall not conduct any land-disturbing activity until (i) he has submitted to the appropriate VESMP authority an application that includes a permit registration statement, if required, a soil erosion control and stormwater management plan or an executed agreement in lieu of a plan, if required, and (ii) the VESMP authority has issued its land-disturbance approval. In addition, as a prerequisite to engaging in an approved land-disturbing activity, the name of the individual who will be assisting the owner in carrying out the activity and holds a Responsible Land Disturber certificate pursuant to § 62.1-44.15:30 shall be submitted to the VESMP authority. Any VESMP authority may waive the Responsible Land Disturber certificate requirement for an agreement in lieu of a plan ~~for construction of a single-family detached residential structure~~; however, if a violation occurs during the land-disturbing activity ~~for the single-family detached residential structure~~, then the owner shall correct the violation and provide the name of the individual holding a Responsible Land Disturber certificate as provided by § 62.1-14:30. Failure to provide the name of an individual holding a Responsible Land Disturber certificate prior to engaging in land-disturbing activities may result in revocation of the land-disturbance approval and shall subject the owner to the penalties provided in this article.

1. A VESMP authority that is implementing its program pursuant to subsection A of § 62.1-44.15:27

or subdivision B 1 of § 62.1-44.15:27 shall determine the completeness of any application within 15 days after receipt, and shall act on any application within 60 days after it has been determined by the VESMP authority to be complete. The VESMP authority shall issue either land-disturbance approval or denial and provide written rationale for any denial. Prior to issuing a land-disturbance approval, a VESMP authority shall be required to obtain evidence of permit coverage when such coverage is required. The VESMP authority also shall determine whether any resubmittal of a previously disapproved application is complete within 15 days after receipt and shall act on the resubmitted application within 45 days after receipt.

2. A VESMP authority implementing its program in coordination with the Department pursuant to subdivision B 2 of § 62.1-44.15:27 shall determine the completeness of any application within 15 days after receipt, and shall act on any application within 60 days after it has been determined by the VESMP authority to be complete. The VESMP authority shall forward a soil erosion control and stormwater management plan to the Department for review within five days of receipt. If the plan is incomplete, the Department shall return the plan to the locality immediately and the application process shall start over. If the plan is complete, the Department shall review it for compliance with the water quality and water quantity technical criteria and provide its recommendation to the VESMP authority. The VESMP authority shall either (i) issue the land-disturbance approval or (ii) issue a denial and provide a written rationale for the denial. In no case shall a locality have more than 60 days for its decision on an application after it has been determined to be complete. Prior to issuing a land-disturbance approval, a VESMP authority shall be required to obtain evidence of permit coverage when such coverage is required.

The VESMP authority also shall forward to the Department any resubmittal of a previously disapproved application within five days after receipt, and the VESMP authority shall determine whether the plan is complete within 15 days of its receipt of the plan. The Department shall review the plan for compliance with the water quality and water quantity technical criteria and provide its recommendation to the VESMP authority, and the VESMP authority shall act on the resubmitted application within 45 days after receipt.

3. When a state agency or federal entity submits a soil erosion control and stormwater management plan for a project, land disturbance shall not commence until the Board has reviewed and approved the plan and has issued permit coverage when it is required.

a. The Board shall not approve a soil erosion control and stormwater management plan submitted by a state agency or federal entity for a project involving a land-disturbing activity (i) in any locality that has not adopted a local program with more stringent ordinances than those of the state program or (ii) in multiple jurisdictions with separate local programs, unless the plan is consistent with the requirements of the state program.

b. The Board shall not approve a soil erosion control and stormwater management plan submitted by a state agency or federal entity for a project involving a land-disturbing activity in one locality with a local program with more stringent ordinances than those of the state program, unless the plan is consistent with the requirements of the local program.

c. If onsite changes occur, the state agency or federal entity shall submit an amended soil erosion control and stormwater management plan to the Department.

d. The state agency or federal entity responsible for the land-disturbing activity shall ensure compliance with the approved plan. As necessary, the Board shall provide project oversight and enforcement.

4. Prior to issuance of any land-disturbance approval, the VESMP authority may also require an applicant, excluding state agencies and federal entities, to submit a reasonable performance bond with surety, cash escrow, letter of credit, any combination thereof, or such other legal arrangement acceptable to the VESMP authority, to ensure that measures could be taken by the VESMP authority at the applicant's expense should he fail, after proper notice, within the time specified to comply with the conditions imposed by the VESMP authority as a result of his land-disturbing activity. If the VESMP authority takes such action upon such failure by the applicant, the VESMP 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 VESMP authority's conditions, such bond, cash escrow, letter of credit, or other legal arrangement, or the unexpended or unobligated portion thereof, shall be refunded to the applicant or terminated.

B. The VESMP authority may require changes to an approved soil erosion control and stormwater management plan in the following cases:

1. Where inspection has revealed that the plan is inadequate to satisfy applicable regulations or ordinances; or

2. Where the owner finds that because of changed circumstances or for other reasons the plan cannot be effectively carried out, and proposed amendments to the plan, consistent with the requirements of this article, are agreed to by the VESMP authority and the owner.

C. In order to prevent further erosion, a VESMP authority may require approval of a soil erosion control and stormwater management plan for any land identified as an erosion impact area by the

VESMP authority.

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

E. The following requirements shall apply to land-disturbing activities in the Commonwealth:

1. Any land-disturbing activity that (i) disturbs one acre or more of land or (ii) disturbs less than one acre of land and is part of a larger common plan of development or sale that results in one acre or greater of land disturbance may, in accordance with regulations adopted by the Board, be required to obtain permit coverage.

2. For a land-disturbing activity occurring in an area not designated as a Chesapeake Bay Preservation Area subject to the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq.):

a. Soil erosion control requirements and water quantity technical criteria adopted pursuant to this article shall apply to any activity that disturbs 10,000 square feet or more, although the locality may reduce this regulatory threshold to a smaller area of disturbed land. A plan addressing these requirements shall be submitted to the VESMP authority in accordance with subsection A. This subdivision shall also apply to additions or modifications to existing single-family detached residential structures.

b. Soil erosion control requirements and water quantity and water quality technical criteria shall apply to any activity that (i) disturbs one acre or more of land or (ii) disturbs less than one acre of land and is part of a larger common plan of development or sale that results in one acre or greater of land disturbance, although the locality may reduce this regulatory threshold to a smaller area of disturbed land. A plan addressing these requirements shall be submitted to the VESMP authority in accordance with subsection A.

3. For a land-disturbing activity occurring in an area designated as a Chesapeake Bay Preservation Area subject to the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq.):

a. Soil erosion control and water quantity and water quality technical criteria shall apply to any land-disturbing activity that disturbs 2,500 square feet or more of land, other than a single-family detached residential structure. However, the governing body of any affected locality may reduce this regulatory threshold to a smaller area of disturbed land. A plan addressing these requirements shall be submitted to the VESMP authority in accordance with subsection A.

b. For land-disturbing activities for single-family detached residential structures, soil erosion control and water quantity technical criteria shall apply to any land-disturbing activity that disturbs 2,500 square feet or more of land, and the locality also may require compliance with the water quality technical criteria. A plan addressing these requirements shall be submitted to the VESMP authority in accordance with subsection A.

F. Notwithstanding any other provisions of this article, the following activities are not required to comply with the requirements of this article unless otherwise required by federal law:

1. Minor land-disturbing activities, including home gardens and individual home landscaping, repairs, and maintenance work;

2. Installation, maintenance, or repair of any individual service connection;

3. Installation, maintenance, or repair of any underground utility line when such activity occurs on an existing hard surfaced road, street, or sidewalk, provided the land-disturbing activity is confined to the area of the road, street, or sidewalk that is hard surfaced;

4. Installation, maintenance, or repair of any septic tank line or drainage field unless included in an overall plan for land-disturbing activity relating to construction of the building to be served by the septic tank system;

5. Permitted surface or deep mining operations and projects, or oil and gas operations and projects conducted pursuant to Title 45.2;

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

7. Installation of fence and sign posts or telephone and electric poles and other kinds of posts or poles;

8. Shoreline erosion control projects on tidal waters when all of the land-disturbing activities are within the regulatory authority of and approved by local wetlands boards, the Marine Resources Commission, or the United States Army Corps of Engineers; however, any associated land that is

disturbed outside of this exempted area shall remain subject to this article and the regulations adopted pursuant thereto;

9. Repair or rebuilding of the tracks, rights-of-way, bridges, communication facilities, and other related structures and facilities of a railroad company;

10. Land-disturbing activities in response to a public emergency where the related work requires immediate authorization to avoid imminent endangerment to human health or the environment. In such situations, the VESMP authority shall be advised of the disturbance within seven days of commencing the land-disturbing activity, and compliance with the administrative requirements of subsection A is required within 30 days of commencing the land-disturbing activity; and

11. Discharges to a sanitary sewer or a combined sewer system that are not from a land-disturbing activity.

G. Notwithstanding any other provision of this article, the following activities are required to comply with the soil erosion control requirements but are not required to comply with the water quantity and water quality technical criteria, unless otherwise required by federal law:

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

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

3. Discharges from a land-disturbing activity to a sanitary sewer or a combined sewer system.

§ 62.1-44.15:51. (For expiration date, see notes) Definitions.

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

"Agreement in lieu of a plan" means a contract between the plan-approving authority and the owner that specifies conservation measures that must be implemented in the construction of a *(i) single-family residence or (ii) farm building or structure on a parcel of land with a total impervious cover percentage, including the impervious cover from the farm building or structure to be constructed, of less than five percent*; this contract may be executed by the plan-approving authority in lieu of a formal site plan.

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

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

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

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

"Department" means the Department of Environmental Quality.

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

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

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

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

"Farm building or structure" means the same as that term is defined in § 36-97 and also includes any building or structure used for agritourism activity, as defined in § 3.2-6400, and any related impervious surfaces including roads, driveways, and parking areas.

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

1. Minor land-disturbing activities such as home gardens and individual home landscaping, repairs, and maintenance work;
2. Individual service connections;
3. Installation, maintenance, or repair of any underground public utility lines when such activity occurs on an existing hard surfaced road, street, or sidewalk, provided the land-disturbing activity is confined to the area of the road, street, or sidewalk that is hard surfaced;
4. Septic tank lines or drainage fields unless included in an overall plan for land-disturbing activity relating to construction of the building to be served by the septic tank system;
5. Permitted surface or deep mining operations and projects, or oil and gas operations and projects conducted pursuant to Title 45.2;
6. Tilling, planting, or harvesting of agricultural, horticultural, or forest crops, livestock feedlot operations, or as additionally set forth by the Board in regulation, including engineering operations as follows: construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds, ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage, and land irrigation; however, this exception shall not apply to harvesting of forest crops unless the area on which harvesting occurs is reforested artificially or naturally in accordance with the provisions of Chapter 11 (§ 10.1-1100 et seq.) of Title 10.1 or is converted to bona fide agricultural or improved pasture use as described in subsection B of § 10.1-1163;
7. Repair or rebuilding of the tracks, rights-of-way, bridges, communication facilities, and other related structures and facilities of a railroad company;
8. Agricultural engineering operations, including but not limited to the construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds not required to comply with the provisions of the Dam Safety Act (§ 10.1-604 et seq.), ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage, and land irrigation;
9. Disturbed land areas of less than 10,000 square feet in size or 2,500 square feet in all areas of the jurisdictions designated as subject to the Chesapeake Bay Preservation Area Designation and Management Regulations; however, the governing body of the program authority may reduce this exception to a smaller area of disturbed land or qualify the conditions under which this exception shall apply;
10. Installation of fence and sign posts or telephone and electric poles and other kinds of posts or poles;
11. Shoreline erosion control projects on tidal waters when all of the land-disturbing activities are within the regulatory authority of and approved by local wetlands boards, the Marine Resources Commission, or the United States Army Corps of Engineers; however, any associated land that is disturbed outside of this exempted area shall remain subject to this article and the regulations adopted pursuant thereto; and
12. Emergency work to protect life, limb, or property, and emergency repairs; however, if the land-disturbing activity would have required an approved erosion and sediment control plan, if the activity were not an emergency, then the land area disturbed shall be shaped and stabilized in accordance with the requirements of the VESCP authority.

"Natural channel design concepts" means the utilization of engineering analysis and fluvial geomorphic processes to create, rehabilitate, restore, or stabilize an open conveyance system for the purpose of creating or recreating a stream that conveys its bankfull storm event within its banks and allows larger flows to access its bankfull bench and its floodplain.

"Owner" means the owner or owners of the freehold of the premises or lesser estate therein, mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee, or other person, firm, or corporation in control of a property.

"Peak flow rate" means the maximum instantaneous flow from a given storm condition at a particular location.

"Permittee" means the person to whom the local permit authorizing land-disturbing activities is issued or the person who certifies that the approved erosion and sediment control plan will be followed.

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

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

"Town" means an incorporated town.

"Virginia Erosion and Sediment Control Program" or "VESCP" means a program approved by the Board that has been established by a VESCP authority for the effective control of soil erosion, sediment

deposition, and nonagricultural runoff associated with a land-disturbing activity to prevent the unreasonable degradation of properties, stream channels, waters, and other natural resources and shall include such items where applicable as local ordinances, rules, permit requirements, annual standards and specifications, policies and guidelines, technical materials, and requirements for plan review, inspection, enforcement where authorized in this article, and evaluation consistent with the requirements of this article and its associated regulations.

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

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

§ 62.1-44.15:51. (For effective date, see notes) Definitions.

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

"Agreement in lieu of a plan" means a contract between the VЕСP authority and the owner that specifies conservation measures that must be implemented in the construction of a (i) single-family detached residential structure or (ii) farm building or structure on a parcel of land with a total impervious cover percentage, including the impervious cover from the farm building or structure to be constructed, of less than five percent; this contract may be executed by the VЕСP authority in lieu of a formal site plan.

"Applicant" means any person submitting an erosion and sediment control plan for approval in order to obtain authorization for land-disturbing activities to commence.

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

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

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

"Department" means the Department of Environmental Quality.

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

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

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

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

"Farm building or structure" means the same as that term is defined in § 36-97 and also includes any building or structure used for agritourism activity, as defined in § 3.2-6400, and any related impervious surfaces including roads, driveways, and parking areas.

"Land disturbance" or "land-disturbing activity" means any man-made change to the land surface that may result in soil erosion or has the potential to change its runoff characteristics, including the clearing, grading, excavating, transporting, and filling of land.

"Natural channel design concepts" means the utilization of engineering analysis and fluvial geomorphic processes to create, rehabilitate, restore, or stabilize an open conveyance system for the purpose of creating or recreating a stream that conveys its bankfull storm event within its banks and allows larger flows to access its bankfull bench and its floodplain.

"Owner" means the same as provided in § 62.1-44.3. For a land-disturbing activity that is regulated under this article, "owner" also includes the owner or owners of the freehold of the premises or lesser

estate therein, mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee, or other person, firm, or corporation in control of a property.

"Peak flow rate" means the maximum instantaneous flow from a given storm condition at a particular location.

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

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

"Soil erosion" means the movement of soil by wind or water into state waters or onto lands in the Commonwealth.

"Town" means an incorporated town.

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

"Virginia Erosion and Sediment Control Program authority" or "VESCP authority" means a locality approved by the Board to operate a Virginia Erosion and Sediment Control Program. A locality that has chosen not to establish a Virginia Erosion and Stormwater Management Program pursuant to subdivision B 3 of § 62.1-44.15:27 is required to become a VESCP authority in accordance with this article.

"Virginia Stormwater Management Program" or "VSMP" means a program established by the Board pursuant to § 62.1-44.15:27.1 on behalf of a locality on or after July 1, 2014, to manage the quality and quantity of runoff resulting from any land-disturbing activity that (i) disturbs one acre or more of land or (ii) disturbs less than one acre of land and is part of a larger common plan of development or sale that results in one acre or greater of land disturbance.

§ 62.1-44.15:55. (For expiration date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345) Regulated land-disturbing activities; submission and approval of erosion and sediment control plan.

A. Except as provided in § 62.1-44.15:56 for state agency and federal entity land-disturbing activities, no person shall engage in any land-disturbing activity until he has submitted to the VESCP authority an erosion and sediment control plan for the land-disturbing activity and the plan has been reviewed and approved. Upon the development of an online reporting system by the Department, but no later than July 1, 2014, a VESCP authority shall then be required to obtain evidence of Virginia Stormwater Management Program permit coverage where it is required prior to providing approval to begin land disturbance. Where land-disturbing activities involve lands under the jurisdiction of more than one VESCP, an erosion and sediment control plan may, at the request of one or all of the VESCP authorities, be submitted to the Department for review and approval rather than to each jurisdiction concerned. The Department may charge the jurisdictions requesting the review a fee sufficient to cover the cost associated with conducting the review. 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 part of the administrative procedures. Where the land-disturbing activity results from the construction of a (i) single-family residence or (ii) *farm building or structure on a parcel of land with a total impervious cover percentage, including the impervious cover from the farm building or structure to be constructed, of less than five percent*, an agreement in lieu of a plan may be substituted for an erosion and sediment control plan if executed by the VESCP authority.

B. The VESCP authority shall review erosion and sediment control plans submitted to it and grant written approval within 60 days of the receipt of the plan if it determines that the plan meets the requirements of this article and the Board's regulations and if the person responsible for carrying out the plan certifies that he will properly perform the erosion and sediment control measures included in the plan and shall comply with the provisions of this article. In addition, as a prerequisite to engaging in the land-disturbing activities shown on the approved plan, the person responsible for carrying out the plan shall provide the name of an individual holding a certificate of competence to the VESCP authority, as provided by § 62.1-44.15:52, who will be in charge of and responsible for carrying out the land-disturbing activity. However, any VESCP authority may waive the certificate of competence requirement for an agreement in lieu of a plan ~~for construction of a single-family residence~~. If a violation occurs during the land-disturbing activity, then the person responsible for carrying out the agreement in lieu of a plan shall correct the violation and provide the name of an individual holding a certificate of competence, as provided by § 62.1-44.15:52. Failure to provide the name of an individual holding a certificate of competence prior to engaging in land-disturbing activities may result in

revocation of the approval of the plan and the person responsible for carrying out the plan shall be subject to the penalties provided in this article.

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

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

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

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

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

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

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

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

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

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

§ 62.1-44.15:55. (For effective date, see notes) Regulated land-disturbing activities; submission and approval of erosion and sediment control plan.

A. Except as provided in § 62.1-44.15:31 for a land-disturbing activity conducted by a state agency, federal entity, or other specified entity, no person shall engage in any land-disturbing activity until he has submitted to the VESCP authority an erosion and sediment control plan for the land-disturbing activity and the plan has been reviewed and approved. Where Virginia Pollutant Discharge Elimination

System permit coverage is required, a VESCP authority shall be required to obtain evidence of such coverage from the Department's online reporting system prior to approving the erosion and sediment control plan. A VESCP authority may enter into an agreement with an adjacent VESCP or VESMP authority regarding the administration of multijurisdictional projects specifying who shall be responsible for all or part of the administrative procedures. Should adjacent authorities fail to come to such an agreement, each shall be responsible for administering the area of the multijurisdictional project that lies within its jurisdiction. Where the land-disturbing activity results from the construction of a *(i) single-family residence or (ii) farm building or structure on a parcel of land with a total impervious cover percentage, including the impervious cover from the farm building or structure to be constructed, of less than five percent*, an agreement in lieu of a plan may be substituted for an erosion and sediment control plan if executed by the VESCP authority.

B. The VESCP authority shall review erosion and sediment control plans submitted to it and grant written approval within 60 days of the receipt of the plan if it determines that the plan meets the requirements of this article and the Board's regulations and if the person responsible for carrying out the plan certifies that he will properly perform the erosion and sediment control measures included in the plan and shall comply with the provisions of this article. In addition, as a prerequisite to engaging in the land-disturbing activities shown on the approved plan, the person responsible for carrying out the plan shall provide the name of an individual holding a certificate to the VESCP authority, as provided by § 62.1-44.15:52, who will be in charge of and responsible for carrying out the land-disturbing activity. However, any VESCP authority may waive the certificate requirement for an agreement in lieu of a plan ~~for construction of a single-family residence~~. If a violation occurs during the land-disturbing activity, then the person responsible for carrying out the agreement in lieu of a plan shall correct the violation and provide the name of an individual holding a certificate, as provided by § 62.1-44.15:52. Failure to provide the name of an individual holding a certificate prior to engaging in land-disturbing activities may result in revocation of the approval of the plan and the person responsible for carrying out the plan shall be subject to the penalties provided in this article.

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

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

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

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

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

F. Notwithstanding any other provisions of this article, the following activities are not required to comply with the requirements of this article unless otherwise required by federal law:

1. Disturbance of a land area of less than 10,000 square feet in size or less than 2,500 square feet in an area designated as a Chesapeake Bay Preservation Area pursuant to the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq.). However, the governing body of the program authority may reduce this exception to a smaller area of disturbed land or qualify the conditions under which this exception shall apply;
2. Minor land-disturbing activities such as home gardens and individual home landscaping, repairs, and maintenance work;
3. Installation, maintenance, or repair of any individual service connection;
4. Installation, maintenance, or repair of any underground utility line when such activity occurs on an existing hard surfaced road, street, or sidewalk, provided the land-disturbing activity is confined to the area of the road, street, or sidewalk that is hard surfaced;
5. Installation, maintenance, or repair of any septic tank line or drainage field unless included in an overall plan for land-disturbing activity relating to construction of the building to be served by the septic tank system;
6. Permitted surface or deep mining operations and projects, or oil and gas operations and projects conducted pursuant to Title 45.2;
7. Clearing of lands specifically for bona fide agricultural purposes; the management, tilling, planting, or harvesting of agricultural, horticultural, or forest crops; livestock feedlot operations; agricultural

engineering operations, including construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds, ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage, and land irrigation; or as additionally set forth by the Board in regulations. However, this exception shall not apply to harvesting of forest crops unless the area on which harvesting occurs is reforested artificially or naturally in accordance with the provisions of Chapter 11 (§ 10.1-1100 et seq.) of Title 10.1 or is converted to bona fide agricultural or improved pasture use as described in subsection B of § 10.1-1163;

8. Installation of fence and sign posts or telephone and electric poles and other kinds of posts or poles;

9. Shoreline erosion control projects on tidal waters when all of the land-disturbing activities are within the regulatory authority of and approved by local wetlands boards, the Marine Resources Commission, or the United States Army Corps of Engineers; however, any associated land that is disturbed outside of this exempted area shall remain subject to this article and the regulations adopted pursuant thereto;

10. Land-disturbing activities in response to a public emergency where the related work requires immediate authorization to avoid imminent endangerment to human health or the environment. In such situations, the VESMP authority shall be advised of the disturbance within seven days of commencing the land-disturbing activity, and compliance with the administrative requirements of subsection A is required within 30 days of commencing the land-disturbing activity;

11. Discharges to a sanitary sewer or a combined sewer system that are not from a land-disturbing activity; and

12. Repair or rebuilding of the tracks, rights-of-way, bridges, communication facilities, and other related structures and facilities of a railroad company.

§ 62.1-44.15:58. (For contingent expiration date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345) Monitoring, reports, and inspections.

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

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

C. Upon issuance of an inspection report denoting a violation of this section, § 62.1-44.15:55 or 62.1-44.15:56, in conjunction with or subsequent to a notice to comply as specified in subsection A, a VESCP authority, where authorized to enforce this article, or the Department may issue an order requiring that all or part of the land-disturbing activities permitted on the site be stopped until the specified corrective measures have been taken or, if land-disturbing activities have commenced without an approved plan as provided in § 62.1-44.15:55, requiring that all of the land-disturbing activities be stopped until an approved plan or any required permits are obtained. Where the alleged noncompliance is causing or is in imminent danger of causing harmful erosion of lands or sediment deposition in waters within the watersheds of the Commonwealth, or where the land-disturbing activities have commenced without an approved erosion and sediment control plan or any required permits, such an order may be issued whether or not the alleged violator has been issued a notice to comply as specified in subsection A. Otherwise, such an order may be issued only after the alleged violator has failed to comply with a notice to comply. The order for noncompliance with a plan shall be served in the same manner as a notice to comply, and shall remain in effect for seven days from the date of service pending application by the VESCP authority, the Department, or alleged violator for appropriate relief to the circuit court of the jurisdiction wherein the violation was alleged to have occurred or other appropriate court. The order for disturbance without an approved plan or permits shall be served upon the owner by mailing with

confirmation of delivery to the address specified in the land records of the locality, shall be posted on the site where the disturbance is occurring, and shall remain in effect until such time as permits and plan approvals are secured, except in such situations where an agricultural exemption applies. If the alleged violator has not obtained an approved erosion and sediment control plan or any required permit within seven days from the date of service of the order, the Department or the chief administrative officer or his designee on behalf of the VESCP authority may issue a subsequent order to the owner requiring that all construction and other work on the site, other than corrective measures, be stopped until an approved erosion and sediment control plan and any required permits have been obtained. The subsequent order shall be served upon the owner by mailing with confirmation of delivery to the address specified in the permit application or the land records of the locality in which the site is located. The owner may appeal the issuance of any order to the circuit court of the jurisdiction wherein the violation was alleged to have occurred or other appropriate court. Any person violating or failing, neglecting, or refusing to obey an order issued by the Department or the chief administrative officer or his designee on behalf of the VESCP authority may be compelled in a proceeding instituted in the circuit court of the jurisdiction wherein the violation was alleged to have occurred or other appropriate court to obey same and to comply therewith by injunction, mandamus, or other appropriate remedy. Upon completion and approval of corrective action or obtaining an approved plan or any required permits, the order shall immediately be lifted. Nothing in this section shall prevent the Department, the Board, or the chief administrative officer or his designee on behalf of the VESCP authority from taking any other action specified in § 62.1-44.15:63.

§ 62.1-44.15:58. (For contingent effective date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345) Monitoring, reports, and inspections.

A. The VESCP authority (i) shall provide for periodic inspections of the land-disturbing activity and require that an individual holding a certificate, as provided by § 62.1-44.15:52, will be in charge of and responsible for carrying out the land-disturbing activity and (ii) may require monitoring and reports from the person responsible for carrying out the erosion and sediment control plan, to ensure compliance with the approved plan and to determine whether the measures required in the plan are effective in controlling erosion and sediment. However, any VESCP authority may waive the certificate requirement for an agreement in lieu of a plan for construction of a single family detached residential structure. The owner shall be given notice of the inspection. When the VESCP authority or the Board determines that there is a failure to comply with the conditions of land-disturbance approval or to obtain an approved plan or a land-disturbance approval prior to commencing land-disturbing activity, the VESCP authority or the Board may serve a notice to comply upon the owner or person responsible for carrying out the land-disturbing activity. Such notice to comply shall be served by delivery by facsimile, e-mail, or other technology; by mailing with confirmation of delivery to the address specified in the plan or land-disturbance application, if available, or in the land records of the locality; or by delivery at the site to a person previously identified to the VESCP authority by the owner. The notice to comply shall specify the measures needed to comply with the land-disturbance approval conditions or shall identify the plan approval or land-disturbance approval needed to comply with this article and shall specify a reasonable time within which such measures shall be completed. In any instance in which a required land-disturbance approval has not been obtained, the VESCP authority or the Board may require immediate compliance. In any other case, the VESCP authority or the Board may establish the time for compliance by taking into account the risk of damage to natural resources and other relevant factors. Notwithstanding any other provision in this subsection, a VESCP authority or the Board may count any days of noncompliance as days of violation should the VESCP authority or the Board take an enforcement action. The issuance of a notice to comply by the Board shall not be considered a case decision as defined in § 2.2-4001. Upon failure to comply within the time specified, any plan approval or land-disturbance approval may be revoked and the VESCP authority or the Board may pursue enforcement as provided by § 62.1-44.15:63.

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

C. Upon issuance of an inspection report denoting a violation of this section or § 62.1-44.15:55, in conjunction with or subsequent to a notice to comply as specified in subsection A, a VESCP authority or the Board may issue a stop work order requiring that all or part of the land-disturbing activities on the site be stopped until the specified corrective measures have been taken or, if land-disturbing activities have commenced without an approved plan as provided in § 62.1-44.15:55, requiring that all of the land-disturbing activities be stopped until an approved plan is obtained. When such an order is issued by the Board, it shall be issued in accordance with the procedures of the Administrative Process Act (§ 2.2-4000 et seq.). Where the alleged noncompliance is causing or is in imminent danger of causing harmful erosion of lands or sediment deposition in waters within the watersheds of the Commonwealth, or where the land-disturbing activities have commenced without an approved erosion

and sediment control plan, such a stop work order may be issued whether or not the alleged violator has been issued a notice to comply as specified in subsection A. Otherwise, such an order may be issued only after the alleged violator has failed to comply with a notice to comply. The order for noncompliance with a plan shall be served in the same manner as a notice to comply, and shall remain in effect for seven days from the date of service pending application by the VESCP authority, the Board, or alleged violator for appropriate relief to the circuit court of the jurisdiction wherein the violation was alleged to have occurred or other appropriate court. The stop work order for disturbance without an approved plan shall be served upon the owner by mailing with confirmation of delivery to the address specified in the land records of the locality, shall be posted on the site where the disturbance is occurring, and shall remain in effect until such time as plan approvals are secured, except in such situations where an agricultural exemption applies. If the alleged violator has not obtained an approved erosion and sediment control plan within seven days from the date of service of the stop work order, the Board or the chief administrative officer or his designee on behalf of the VESCP authority may issue a subsequent order to the owner requiring that all construction and other work on the site, other than corrective measures, be stopped until an approved erosion and sediment control plan has been obtained. The subsequent order shall be served upon the owner by mailing with confirmation of delivery to the address specified in the plan or the land records of the locality in which the site is located. The owner may appeal the issuance of any order to the circuit court of the jurisdiction wherein the violation was alleged to have occurred or other appropriate court. Any person violating or failing, neglecting, or refusing to obey an order issued by the Board or the chief administrative officer or his designee on behalf of the VESCP authority may be compelled in a proceeding instituted in the circuit court of the jurisdiction wherein the violation was alleged to have occurred or other appropriate court to obey same and to comply therewith by injunction, mandamus, or other appropriate remedy. Upon completion and approval of corrective action or obtaining an approved plan, the order shall immediately be lifted. Nothing in this section shall prevent the Board or the chief administrative officer or his designee on behalf of the VESCP authority from taking any other action specified in § 62.1-44.15:63.

VIRGINIA ACTS OF ASSEMBLY -- 2023 SESSION

CHAPTER 49

An Act to amend and reenact §§ 62.1-44.15:24 and 62.1-44.15:28, as they are currently effective and as they may become effective, 62.1-44.15:34, as it may become effective, and 62.1-44.15:51, 62.1-44.15:55, and 62.1-44.15:58, as they are currently effective and as they may become effective, of the Code of Virginia, relating to stormwater management; streamlining; federal conformity.

[S 1376]

Approved March 17, 2023

Be it enacted by the General Assembly of Virginia:

1. That §§ 62.1-44.15:24 and 62.1-44.15:28, as they are currently effective and as they may become effective, 62.1-44.15:34, as it may become effective, and 62.1-44.15:51, 62.1-44.15:55, and 62.1-44.15:58, as they are currently effective and as they may become effective, of the Code of Virginia are amended and reenacted as follows:

§ 62.1-44.15:24. (For expiration date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345) Definitions.

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

"Agreement in lieu of a stormwater management plan" means a contract between the VSMP authority and the owner or permittee that specifies methods that shall be implemented to comply with the requirements of a VSMP for the construction of a (i) single-family residence or (ii) farm building or structure on a parcel of land with a total impervious cover percentage, including the impervious cover from the farm building or structure to be constructed, of less than five percent; such contract may be executed by the VSMP authority in lieu of a stormwater management plan.

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

"CWA" means the federal Clean Water Act (33 U.S.C. § 1251 et seq.), formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972, 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 any subsequent revisions thereto.

"Department" means the Department of Environmental Quality.

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

"Farm building or structure" means the same as that term is defined in § 36-97 and also includes any building or structure used for agritourism activity, as defined in § 3.2-6400, and any related impervious surfaces including roads, driveways, and parking areas.

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

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

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

1. Owned or operated by a federal, state, city, town, county, district, association, or other public body, created by or pursuant to state law, having jurisdiction or delegated authority for erosion and sediment control and stormwater management, or a designated and approved management agency under § 208 of the CWA that discharges to surface waters;

2. Designed or used for collecting or conveying stormwater;

3. That is not a combined sewer; and

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

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

"Nonpoint source pollution" means pollution such as sediment, nitrogen, phosphorus, hydrocarbons,

heavy metals, and toxics whose sources cannot be pinpointed but rather are washed from the land surface in a diffuse manner by stormwater runoff.

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

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

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

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

"Rural Tidewater locality" means any locality that is (i) subject to the provisions of the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq.) and (ii) eligible to join the Rural Coastal Virginia Community Enhancement Authority established by Chapter 76 (§ 15.2-7600 et seq.) of Title 15.2.

"Small construction activity" means:

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

The Board may waive the otherwise applicable requirements in a general permit for a stormwater discharge from construction activities that disturb less than five acres where stormwater controls are not needed based on an approved total maximum daily load (TMDL) that addresses the pollutants of concern or, for nonimpaired waters that do not require TMDLs, an equivalent analysis that determines allocations for small construction sites for the pollutants of concern or that determines that such allocations are not needed to protect water quality based on consideration of existing in-stream concentrations, expected growth in pollutant contributions from all sources, and a margin of safety. For the purpose of this subdivision, the pollutants of concern include sediment or a parameter that addresses sediment, such as total suspended solids, turbidity, or siltation, and any other pollutant that has been identified as a cause of impairment of any water body that will receive a discharge from the construction activity. The operator shall certify to the Board that the construction activity will take place, and that stormwater discharges will occur, within the drainage area addressed by the TMDL or provide an equivalent analysis.

As of the start date in the table of start dates for electronic submissions of Virginia Pollutant Discharge Elimination System (VPDES) information within the regulation governing the implementation of electronic reporting requirements for certain VPDES permittees, facilities, and entities, all certifications submitted in support of such waiver shall be submitted electronically by the owner or operator to the Department in compliance with (i) this subdivision; (ii) 40 C.F.R. Part 3, including, in all cases, 40 C.F.R. Part 3 Subpart D; (iii) the regulation addressing signatories to state permit applications and reports; and (iv) regulations addressing the VPDES electronic reporting requirements. Such regulations addressing the VPDES electronic reporting requirements shall not undo existing requirements for electronic reporting. Prior to such date, and independent of the regulations addressing the VPDES electronic reporting requirements, a permittee shall be required to report electronically if specified by a particular permit.

2. Any other construction activity designated by either the Board or the Regional Administrator of the U.S. Environmental Protection Agency, based on the potential for contribution to a violation of a water quality standard or for significant contribution of pollutants to surface waters.

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

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

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

"Subdivision" means the same as defined in § 15.2-2201.

"Virginia Stormwater Management Program" or "VSMP" means a program approved by the Soil and Water Conservation Board after September 13, 2011, and until June 30, 2013, or the State Water Control Board on and after June 30, 2013, that has been established by a VSMP authority to manage the quality and quantity of runoff resulting from land-disturbing activities and shall include such items as local ordinances, rules, permit requirements, annual standards and specifications, policies and guidelines,

technical materials, and requirements for plan review, inspection, enforcement, where authorized in this article, and evaluation consistent with the requirements of this article and associated regulations.

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

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

"Water quantity technical criteria" means standards set forth in regulations adopted pursuant to this article that establish minimum design criteria for measures to control localized flooding and stream channel erosion.

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

§ 62.1-44.15:24. (For effective date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345) Definitions.

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

"Agreement in lieu of a plan" means a contract between the VESMP authority or the Board acting as a VSMP authority and the owner or permittee that specifies methods that shall be implemented to comply with the requirements of this article for the construction of a *(i) single-family detached residential structure or (ii) farm building or structure on a parcel of land with a total impervious cover percentage, including the impervious cover from the farm building or structure to be constructed, of less than five percent*; such contract may be executed by the VESMP authority in lieu of a soil erosion control and stormwater management plan or by the Board acting as a VSMP authority in lieu of a stormwater management plan.

"Applicant" means any person submitting a soil erosion control and stormwater management plan to a VESMP authority, or a stormwater management plan to the Board when it is serving as a VSMP authority, for approval in order to obtain authorization to commence a land-disturbing activity.

"CWA" means the federal Clean Water Act (33 U.S.C. § 1251 et seq.), formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972, 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 any subsequent revisions thereto.

"Department" means the Department of Environmental Quality.

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

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

"Farm building or structure" means the same as that term is defined in § 36-97 and also includes any building or structure used for agritourism activity, as defined in § 3.2-6400, and any related impervious surfaces including roads, driveways, and parking areas.

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

"Land disturbance" or "land-disturbing activity" means a man-made change to the land surface that may result in soil erosion or has the potential to change its runoff characteristics, including construction activity such as the clearing, grading, excavating, or filling of land.

"Land-disturbance approval" means the same as that term is defined in § 62.1-44.3.

"Municipal separate storm sewer" or "MS4" means the same as that term is defined in § 62.1-44.3.

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

"Natural channel design concepts" means the utilization of engineering analysis and fluvial geomorphic processes to create, rehabilitate, restore, or stabilize an open conveyance system for the purpose of creating or recreating a stream that conveys its bankfull storm event within its banks and

allows larger flows to access its bankfull bench and its floodplain.

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

"Owner" means the same as that term is defined in § 62.1-44.3. For a regulated land-disturbing activity that does not require a permit, "owner" also means the owner or owners of the freehold of the premises or lesser estate therein, mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee, or other person, firm, or corporation in control of a property.

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

"Permit" means a Virginia Pollutant Discharge Elimination System (VPDES) permit issued by the Board pursuant to § 62.1-44.15 for stormwater discharges from a land-disturbing activity or MS4.

"Permittee" means the person to whom the permit is issued.

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

"Rural Tidewater locality" means any locality that is (i) subject to the provisions of the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq.) and (ii) eligible to join the Rural Coastal Virginia Community Enhancement Authority established by Chapter 76 (§ 15.2-7600 et seq.) of Title 15.2.

"Small construction activity" means:

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

The Board may waive the otherwise applicable requirements in a general permit for a stormwater discharge from construction activities that disturb less than five acres where stormwater controls are not needed based on an approved total maximum daily load (TMDL) that addresses the pollutants of concern or, for nonimpaired waters that do not require TMDLs, an equivalent analysis that determines allocations for small construction sites for the pollutants of concern or that determines that such allocations are not needed to protect water quality based on consideration of existing in-stream concentrations, expected growth in pollutant contributions from all sources, and a margin of safety. For the purpose of this subdivision, the pollutants of concern include sediment or a parameter that addresses sediment, such as total suspended solids, turbidity, or siltation, and any other pollutant that has been identified as a cause of impairment of any water body that will receive a discharge from the construction activity. The operator shall certify to the Board that the construction activity will take place, and that stormwater discharges will occur, within the drainage area addressed by the TMDL or provide an equivalent analysis.

As of the start date in the table of start dates for electronic submissions of Virginia Pollutant Discharge Elimination System (VPDES) information within the regulation governing the implementation of electronic reporting requirements for certain VPDES permittees, facilities, and entities, all certifications submitted in support of such waiver shall be submitted electronically by the owner or operator to the Department in compliance with (i) this subdivision; (ii) 40 C.F.R. Part 3, including, in all cases, 40 C.F.R. Part 3 Subpart D; (iii) the regulation addressing signatories to state permit applications and reports; and (iv) regulations addressing the VPDES electronic reporting requirements. Such regulations addressing the VPDES electronic reporting requirements shall not undo existing requirements for electronic reporting. Prior to such date, and independent of the regulations addressing the VPDES electronic reporting requirements, a permittee shall be required to report electronically if specified by a particular permit.

2. Any other construction activity designated by either the Board or the Regional Administrator of the U.S. Environmental Protection Agency, based on the potential for contribution to a violation of a water quality standard or for significant contribution of pollutants to surface waters.

"Soil erosion" means the movement of soil by wind or water into state waters or onto lands in the Commonwealth.

"Soil Erosion Control and Stormwater Management plan" or "plan" means a document describing methods for controlling soil erosion and managing stormwater in accordance with the requirements adopted pursuant to this article.

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

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

"Subdivision" means the same as that term is defined in § 15.2-2201.

"Virginia Erosion and Sediment Control Program" or "VЕСP" means a program approved by the Board that is established by a VЕСP authority pursuant to Article 2.4 (§ 62.1-44.15:51 et seq.) for the effective control of soil erosion, sediment deposition, and nonagricultural runoff associated with a land-disturbing activity to prevent the unreasonable degradation of properties, stream channels, waters, and other natural resources. The VЕСP shall include, where applicable, such items as local ordinances, rules, policies and guidelines, technical materials, and requirements for plan review, inspection, and evaluation consistent with the requirements of Article 2.4 (§ 62.1-44.15:51 et seq.).

"Virginia Erosion and Sediment Control Program authority" or "VЕСP authority" means a locality that is approved by the Board to operate a Virginia Erosion and Sediment Control Program in accordance with Article 2.4 (§ 62.1-44.15:51 et seq.). Only a locality for which the Department administered a Virginia Stormwater Management Program as of July 1, 2017, is authorized to choose to operate a VЕСP pursuant to Article 2.4 (§ 62.1-44.15:51 et seq.).

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

"Virginia Erosion and Stormwater Management Program authority" or "VЕСMP authority" means the Board or a locality approved by the Board to operate a Virginia Erosion and Stormwater Management Program. For state agency or federal entity land-disturbing activities and land-disturbing activities subject to approved standards and specifications, the Board shall serve as the VЕСMP authority.

"Virginia Stormwater Management Program" or "VSMP" means a program established by the Board pursuant to § 62.1-44.15:27.1 on behalf of a locality on or after July 1, 2014, to manage the quality and quantity of runoff resulting from any land-disturbing activity that (i) disturbs one acre or more of land or (ii) disturbs less than one acre of land and is part of a larger common plan of development or sale that results in one acre or more of land disturbance.

"Virginia Stormwater Management Program authority" or "VSMP authority" means the Board when administering a VSMP on behalf of a locality that, pursuant to subdivision B 3 of § 62.1-44.15:27, has chosen not to adopt and administer a VЕСMP.

"Water quality technical criteria" means standards set forth in regulations adopted pursuant to this article that establish minimum design criteria for measures to control nonpoint source pollution.

"Water quantity technical criteria" means standards set forth in regulations adopted pursuant to this article that establish minimum design criteria for measures to control localized flooding and stream channel erosion.

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

§ 62.1-44.15:28. (For expiration date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345) Development of regulations.

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

1. Establish standards and procedures for administering a VSMP;
2. Establish minimum design criteria for measures to control nonpoint source pollution and localized flooding, and incorporate the stormwater management regulations adopted pursuant to the Erosion and Sediment Control Law (§ 62.1-44.15:51 et seq.), as they relate to the prevention of stream channel erosion. These criteria shall be periodically modified as required in order to reflect current engineering methods;
3. Require the provision of long-term responsibility for and maintenance of stormwater management control devices and other techniques specified to manage the quality and quantity of runoff;
4. Require as a minimum the inclusion in VSMPs of certain administrative procedures that include, but are not limited to, specifying the time period within which a VSMP authority shall grant land-disturbing activity approval, the conditions and processes under which approval shall be granted, the procedures for communicating disapproval, the conditions under which an approval may be changed, and requirements for inspection of approved projects;

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

by the following:

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

b. Fees collected pursuant to this section shall be in addition to any general fund appropriation made to the Department or other supporting revenue from a VSMP; however, the fees shall be set at a level sufficient for the Department and the VSMP to fully carry out their responsibilities under this article and its attendant regulations and local ordinances or standards and specifications where applicable. When establishing a VSMP, the VSMP authority shall assess the statewide fee schedule and shall have the authority to reduce or increase such fees, and to consolidate such fees with other program-related charges, but in no case shall such fee changes affect the amount established in the regulations as available to the Department for program oversight responsibilities pursuant to subdivision 5 a. A VSMP's portion of the fees shall be used solely to carry out the VSMP's responsibilities under this article and its attendant regulations, ordinances, or annual standards and specifications.

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

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

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

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

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

7. Establish a procedure by which a stormwater management plan that is approved for a residential, commercial, or industrial subdivision shall govern the development of the individual parcels, including those parcels developed under subsequent owners;

8. Notwithstanding the provisions of subdivision 5, establish a procedure by which ~~neither a registration statement nor~~ payment of the Department's portion of the statewide permit fee established pursuant to that subdivision shall *not* be required for coverage under the General Permit for Discharges of Stormwater from Construction Activities for construction activity involving a single-family detached residential structure, within or outside a common plan of development or sale;

9. Provide for the certification and use of a proprietary best management practice only if another state, regional, or national program has verified its nutrient or sediment removal effectiveness and all of such program's established test protocol requirements were met or exceeded. As used in this subdivision and any regulations or guidance adopted pursuant to this subdivision, "certification" means a determination by the Department that a proprietary best management practice is approved for use in accordance with this article;

10. Require that VSMPs maintain after-development runoff rate of flow and characteristics that replicate, as nearly as practicable, the existing predevelopment runoff characteristics and site hydrology,

or improve upon the contributing share of the existing predevelopment runoff characteristics and site hydrology if stream channel erosion or localized flooding is an existing predevelopment condition. Except where more stringent requirements are necessary to address total maximum daily load requirements or to protect exceptional state waters, any land-disturbing activity that provides for stormwater management shall satisfy the conditions of this subsection if the practices are designed to (i) detain the water quality volume and to release it over 48 hours; (ii) detain and release over a 24-hour period the expected rainfall resulting from the one year, 24-hour storm; and (iii) reduce the allowable peak flow rate resulting from the 1.5-year, two-year, and 10-year, 24-hour storms to a level that is less than or equal to the peak flow rate from the site assuming it was in a good forested condition, achieved through multiplication of the forested peak flow rate by a reduction factor that is equal to the runoff volume from the site when it was in a good forested condition divided by the runoff volume from the site in its proposed condition, and shall be exempt from any flow rate capacity and velocity requirements for natural or man-made channels as defined in any regulations promulgated pursuant to this section or any ordinances adopted pursuant to § 62.1-44.15:27 or 62.1-44.15:33;

11. Encourage low-impact development designs, regional and watershed approaches, and nonstructural means for controlling stormwater;

12. Promote the reclamation and reuse of stormwater for uses other than potable water in order to protect state waters and the public health and to minimize the direct discharge of pollutants into state waters;

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

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

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

16. Require the owner of property that is zoned for residential use and on which is located a privately owned stormwater management facility serving one or more residential properties to record the long-term maintenance and inspection requirements for such facility with the deed for the owner's property; ~~and~~

17. Require that all final plan elements, specifications, or calculations whose preparation requires a license under Chapter 4 (§ 54.1-400 et seq.) or 22 (§ 54.1-2200 et seq.) of Title 54.1 be appropriately signed and sealed by a professional who is licensed to engage in practice in the Commonwealth. Nothing in this subdivision shall authorize any person to engage in practice outside his area of professional competence; *and*

18. *Establish a procedure by which a registration statement shall not be required for coverage under the General Permit for Discharges of Stormwater from Construction Activities for a small construction activity involving a single-family detached residential structure, within or outside a common plan of development or sale.*

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

§ 62.1-44.15:28. (For effective date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345) Development of regulations.

The Board is authorized to adopt regulations that establish requirements for the effective control of soil erosion, sediment deposition, and stormwater, including nonagricultural runoff, that shall be met in any VESMP to prevent the unreasonable degradation of properties, stream channels, waters, and other natural resources, and that specify minimum technical criteria and administrative procedures for VESMPs. The regulations shall:

1. Establish standards and procedures for administering a VESMP;

2. Establish minimum standards of effectiveness of the VESMP and criteria and procedures for reviewing and evaluating its effectiveness. The minimum standards of program effectiveness established by the Board shall provide that (i) no soil erosion control and stormwater management plan shall be approved until it is reviewed by a plan reviewer certified pursuant to § 62.1-44.15:30, (ii) each inspection of a land-disturbing activity shall be conducted by an inspector certified pursuant to § 62.1-44.15:30, and (iii) each VESMP shall contain a program administrator, a plan reviewer, and an inspector, each of whom is certified pursuant to § 62.1-44.15:30 and all of whom may be the same person;

3. Be based upon relevant physical and developmental information concerning the watersheds and drainage basins of the Commonwealth, including data relating to land use, soils, hydrology, geology, size of land area being disturbed, proximate water bodies and their characteristics, transportation, and public facilities and services;

4. Include any survey of lands and waters as the Board deems appropriate or as any applicable law requires to identify areas, including multijurisdictional and watershed areas, with critical soil erosion and sediment problems;

5. Contain conservation standards for various types of soils and land uses, which shall include criteria, techniques, and methods for the control of soil erosion and sediment resulting from land-disturbing activities;

6. Establish water quality and water quantity technical criteria. These criteria shall be periodically modified as required in order to reflect current engineering methods;

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

8. Require as a minimum the inclusion in VESMPs of certain administrative procedures that include, but are not limited to, specifying the time period within which a VESMP authority shall grant land-disturbance approval, the conditions and processes under which such approval shall be granted, the procedures for communicating disapproval, the conditions under which an approval may be changed, and requirements for inspection of approved projects;

9. Establish a statewide fee schedule to cover all costs associated with the implementation of a VESMP related to land-disturbing activities where permit coverage is required, and for land-disturbing activities where the Board serves as a VESMP authority or VSMP authority. Such fee attributes include the costs associated with plan review, permit registration statement review, permit issuance, permit coverage verification, inspections, reporting, and compliance activities associated with the land-disturbing activities as well as program oversight costs. The fee schedule shall also include a provision for a reduced fee for a land-disturbing activity that disturbs 2,500 square feet or more but less than one acre in an area of a locality designated as a Chesapeake Bay Preservation Area pursuant to the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq.). The fee schedule shall be governed by the following:

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

b. Fees collected pursuant to this section shall be in addition to any general fund appropriation made to the Department or other supporting revenue from a VESMP; however, the fees shall be set at a level sufficient for the Department, the Board, and the VESMP to fully carry out their responsibilities under this article and local ordinances or standards and specifications where applicable. When establishing a VESMP, the VESMP authority shall assess the statewide fees pursuant to the schedule and shall have the authority to reduce or increase such fees, and to consolidate such fees with other program-related charges, but in no case shall such fee changes affect the amount established in the regulations as available to the Department for program oversight responsibilities pursuant to subdivision a. A VESMP's portion of the fees shall be used solely to carry out the VESMP's responsibilities under this article and associated ordinances;

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

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

e. Notwithstanding the other provisions of this subdivision 9, establish a procedure by which ~~neither a registration statement nor~~ payment of the Department's portion of the statewide fee established pursuant to this subdivision 9 shall *not* be required for coverage under the General Permit for Discharges of Stormwater from Construction Activities for construction activity involving a single-family detached residential structure, within or outside a common plan of development or sale;

f. Establish a procedure by which a registration statement shall not be required for coverage under the General Permit for Discharges of Stormwater from Construction Activities for a small construction activity involving a single-family detached residential structure, within or outside a common plan of development or sale;

10. Establish statewide standards for soil erosion control and stormwater management from land-disturbing activities;

11. Establish a procedure by which a soil erosion control and stormwater management plan or stormwater management plan that is approved for a residential, commercial, or industrial subdivision shall govern the development of the individual parcels, including those parcels developed under subsequent owners;

12. Provide for the certification and use of a proprietary best management practice only if another state, regional, or national program has verified its nutrient or sediment removal effectiveness and all of such program's established test protocol requirements were met or exceeded. As used in this subdivision and any regulations or guidance adopted pursuant to this subdivision, "certification" means a determination by the Department that a proprietary best management practice is approved for use in accordance with this article;

13. Require that VESMPs maintain after-development runoff rate of flow and characteristics that replicate, as nearly as practicable, the existing predevelopment runoff characteristics and site hydrology, or improve upon the contributing share of the existing predevelopment runoff characteristics and site hydrology if stream channel erosion or localized flooding is an existing predevelopment condition.

a. Except where more stringent requirements are necessary to address total maximum daily load requirements or to protect exceptional state waters, any land-disturbing activity that was subject to the water quantity requirements that were in effect pursuant to this article prior to July 1, 2014, shall be deemed to satisfy the conditions of this subsection if the practices are designed to (i) detain the water volume equal to the first one-half inch of runoff multiplied by the impervious surface of the land development project and to release it over 48 hours; (ii) detain and release over a 24-hour period the expected rainfall resulting from the one year, 24-hour storm; and (iii) reduce the allowable peak flow rate resulting from the 1.5-year, two-year, and 10-year, 24-hour storms to a level that is less than or equal to the peak flow rate from the site assuming it was in a good forested condition, achieved through multiplication of the forested peak flow rate by a reduction factor that is equal to the runoff volume from the site when it was in a good forested condition divided by the runoff volume from the site in its proposed condition. Any land-disturbing activity that complies with these requirements shall be exempt from any flow rate capacity and velocity requirements for natural or man-made channels as defined in any regulations promulgated pursuant to this section or any ordinances adopted pursuant to § 62.1-44.15:27 or 62.1-44.15:33;

b. Any stream restoration or relocation project that incorporates natural channel design concepts is not a man-made channel and shall be exempt from any flow rate capacity and velocity requirements for natural or man-made channels as defined in any regulations promulgated pursuant to this article;

14. Encourage low-impact development designs, regional and watershed approaches, and nonstructural means for controlling stormwater;

15. Promote the reclamation and reuse of stormwater for uses other than potable water in order to protect state waters and the public health and to minimize the direct discharge of pollutants into state waters;

16. Establish procedures to be followed when a locality chooses to change the type of program it administers pursuant to subsection D of § 62.1-44.15:27;

17. Establish a statewide permit fee schedule for stormwater management related to MS4 permits;

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

19. Require the owner of property that is zoned for residential use and on which is located a privately owned stormwater management facility serving one or more residential properties to record the long-term maintenance and inspection requirements for such facility with the deed for the owner's property; and

20. Require that all final plan elements, specifications, or calculations whose preparation requires a license under Chapter 4 (§ 54.1-400 et seq.) or 22 (§ 54.1-2200 et seq.) of Title 54.1 be appropriately signed and sealed by a professional who is licensed to engage in practice in the Commonwealth. Nothing in this subdivision shall authorize any person to engage in practice outside his area of professional competence.

§ 62.1-44.15:34. (For effective date, see notes) Regulated activities; submission and approval of a permit application; security for performance; exemptions.

A. A person shall not conduct any land-disturbing activity until (i) he has submitted to the appropriate VESMP authority an application that includes a permit registration statement, if required, a soil erosion control and stormwater management plan or an executed agreement in lieu of a plan, if required, and (ii) the VESMP authority has issued its land-disturbance approval. In addition, as a prerequisite to engaging in an approved land-disturbing activity, the name of the individual who will be assisting the owner in carrying out the activity and holds a Responsible Land Disturber certificate pursuant to § 62.1-44.15:30 shall be submitted to the VESMP authority. Any VESMP authority may waive the Responsible Land Disturber certificate requirement for an agreement in lieu of a plan ~~for construction of a single-family detached residential structure~~; however, if a violation occurs during the land-disturbing activity ~~for the single-family detached residential structure~~, then the owner shall correct the violation and provide the name of the individual holding a Responsible Land Disturber certificate as provided by § 62.1-14:30. Failure to provide the name of an individual holding a Responsible Land Disturber certificate prior to engaging in land-disturbing activities may result in revocation of the land-disturbance approval and shall subject the owner to the penalties provided in this article.

1. A VESMP authority that is implementing its program pursuant to subsection A of § 62.1-44.15:27

or subdivision B 1 of § 62.1-44.15:27 shall determine the completeness of any application within 15 days after receipt, and shall act on any application within 60 days after it has been determined by the VESMP authority to be complete. The VESMP authority shall issue either land-disturbance approval or denial and provide written rationale for any denial. Prior to issuing a land-disturbance approval, a VESMP authority shall be required to obtain evidence of permit coverage when such coverage is required. The VESMP authority also shall determine whether any resubmittal of a previously disapproved application is complete within 15 days after receipt and shall act on the resubmitted application within 45 days after receipt.

2. A VESMP authority implementing its program in coordination with the Department pursuant to subdivision B 2 of § 62.1-44.15:27 shall determine the completeness of any application within 15 days after receipt, and shall act on any application within 60 days after it has been determined by the VESMP authority to be complete. The VESMP authority shall forward a soil erosion control and stormwater management plan to the Department for review within five days of receipt. If the plan is incomplete, the Department shall return the plan to the locality immediately and the application process shall start over. If the plan is complete, the Department shall review it for compliance with the water quality and water quantity technical criteria and provide its recommendation to the VESMP authority. The VESMP authority shall either (i) issue the land-disturbance approval or (ii) issue a denial and provide a written rationale for the denial. In no case shall a locality have more than 60 days for its decision on an application after it has been determined to be complete. Prior to issuing a land-disturbance approval, a VESMP authority shall be required to obtain evidence of permit coverage when such coverage is required.

The VESMP authority also shall forward to the Department any resubmittal of a previously disapproved application within five days after receipt, and the VESMP authority shall determine whether the plan is complete within 15 days of its receipt of the plan. The Department shall review the plan for compliance with the water quality and water quantity technical criteria and provide its recommendation to the VESMP authority, and the VESMP authority shall act on the resubmitted application within 45 days after receipt.

3. When a state agency or federal entity submits a soil erosion control and stormwater management plan for a project, land disturbance shall not commence until the Board has reviewed and approved the plan and has issued permit coverage when it is required.

a. The Board shall not approve a soil erosion control and stormwater management plan submitted by a state agency or federal entity for a project involving a land-disturbing activity (i) in any locality that has not adopted a local program with more stringent ordinances than those of the state program or (ii) in multiple jurisdictions with separate local programs, unless the plan is consistent with the requirements of the state program.

b. The Board shall not approve a soil erosion control and stormwater management plan submitted by a state agency or federal entity for a project involving a land-disturbing activity in one locality with a local program with more stringent ordinances than those of the state program, unless the plan is consistent with the requirements of the local program.

c. If onsite changes occur, the state agency or federal entity shall submit an amended soil erosion control and stormwater management plan to the Department.

d. The state agency or federal entity responsible for the land-disturbing activity shall ensure compliance with the approved plan. As necessary, the Board shall provide project oversight and enforcement.

4. Prior to issuance of any land-disturbance approval, the VESMP authority may also require an applicant, excluding state agencies and federal entities, to submit a reasonable performance bond with surety, cash escrow, letter of credit, any combination thereof, or such other legal arrangement acceptable to the VESMP authority, to ensure that measures could be taken by the VESMP authority at the applicant's expense should he fail, after proper notice, within the time specified to comply with the conditions imposed by the VESMP authority as a result of his land-disturbing activity. If the VESMP authority takes such action upon such failure by the applicant, the VESMP 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 VESMP authority's conditions, such bond, cash escrow, letter of credit, or other legal arrangement, or the unexpended or unobligated portion thereof, shall be refunded to the applicant or terminated.

B. The VESMP authority may require changes to an approved soil erosion control and stormwater management plan in the following cases:

1. Where inspection has revealed that the plan is inadequate to satisfy applicable regulations or ordinances; or

2. Where the owner finds that because of changed circumstances or for other reasons the plan cannot be effectively carried out, and proposed amendments to the plan, consistent with the requirements of this article, are agreed to by the VESMP authority and the owner.

C. In order to prevent further erosion, a VESMP authority may require approval of a soil erosion control and stormwater management plan for any land identified as an erosion impact area by the

VESMP authority.

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

E. The following requirements shall apply to land-disturbing activities in the Commonwealth:

1. Any land-disturbing activity that (i) disturbs one acre or more of land or (ii) disturbs less than one acre of land and is part of a larger common plan of development or sale that results in one acre or greater of land disturbance may, in accordance with regulations adopted by the Board, be required to obtain permit coverage.

2. For a land-disturbing activity occurring in an area not designated as a Chesapeake Bay Preservation Area subject to the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq.):

a. Soil erosion control requirements and water quantity technical criteria adopted pursuant to this article shall apply to any activity that disturbs 10,000 square feet or more, although the locality may reduce this regulatory threshold to a smaller area of disturbed land. A plan addressing these requirements shall be submitted to the VESMP authority in accordance with subsection A. This subdivision shall also apply to additions or modifications to existing single-family detached residential structures.

b. Soil erosion control requirements and water quantity and water quality technical criteria shall apply to any activity that (i) disturbs one acre or more of land or (ii) disturbs less than one acre of land and is part of a larger common plan of development or sale that results in one acre or greater of land disturbance, although the locality may reduce this regulatory threshold to a smaller area of disturbed land. A plan addressing these requirements shall be submitted to the VESMP authority in accordance with subsection A.

3. For a land-disturbing activity occurring in an area designated as a Chesapeake Bay Preservation Area subject to the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq.):

a. Soil erosion control and water quantity and water quality technical criteria shall apply to any land-disturbing activity that disturbs 2,500 square feet or more of land, other than a single-family detached residential structure. However, the governing body of any affected locality may reduce this regulatory threshold to a smaller area of disturbed land. A plan addressing these requirements shall be submitted to the VESMP authority in accordance with subsection A.

b. For land-disturbing activities for single-family detached residential structures, soil erosion control and water quantity technical criteria shall apply to any land-disturbing activity that disturbs 2,500 square feet or more of land, and the locality also may require compliance with the water quality technical criteria. A plan addressing these requirements shall be submitted to the VESMP authority in accordance with subsection A.

F. Notwithstanding any other provisions of this article, the following activities are not required to comply with the requirements of this article unless otherwise required by federal law:

1. Minor land-disturbing activities, including home gardens and individual home landscaping, repairs, and maintenance work;

2. Installation, maintenance, or repair of any individual service connection;

3. Installation, maintenance, or repair of any underground utility line when such activity occurs on an existing hard surfaced road, street, or sidewalk, provided the land-disturbing activity is confined to the area of the road, street, or sidewalk that is hard surfaced;

4. Installation, maintenance, or repair of any septic tank line or drainage field unless included in an overall plan for land-disturbing activity relating to construction of the building to be served by the septic tank system;

5. Permitted surface or deep mining operations and projects, or oil and gas operations and projects conducted pursuant to Title 45.2;

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

7. Installation of fence and sign posts or telephone and electric poles and other kinds of posts or poles;

8. Shoreline erosion control projects on tidal waters when all of the land-disturbing activities are within the regulatory authority of and approved by local wetlands boards, the Marine Resources Commission, or the United States Army Corps of Engineers; however, any associated land that is

disturbed outside of this exempted area shall remain subject to this article and the regulations adopted pursuant thereto;

9. Repair or rebuilding of the tracks, rights-of-way, bridges, communication facilities, and other related structures and facilities of a railroad company;

10. Land-disturbing activities in response to a public emergency where the related work requires immediate authorization to avoid imminent endangerment to human health or the environment. In such situations, the VESMP authority shall be advised of the disturbance within seven days of commencing the land-disturbing activity, and compliance with the administrative requirements of subsection A is required within 30 days of commencing the land-disturbing activity; and

11. Discharges to a sanitary sewer or a combined sewer system that are not from a land-disturbing activity.

G. Notwithstanding any other provision of this article, the following activities are required to comply with the soil erosion control requirements but are not required to comply with the water quantity and water quality technical criteria, unless otherwise required by federal law:

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

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

3. Discharges from a land-disturbing activity to a sanitary sewer or a combined sewer system.

§ 62.1-44.15:51. (For expiration date, see notes) Definitions.

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

"Agreement in lieu of a plan" means a contract between the plan-approving authority and the owner that specifies conservation measures that must be implemented in the construction of a *(i) single-family residence or (ii) farm building or structure on a parcel of land with a total impervious cover percentage, including the impervious cover from the farm building or structure to be constructed, of less than five percent*; this contract may be executed by the plan-approving authority in lieu of a formal site plan.

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

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

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

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

"Department" means the Department of Environmental Quality.

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

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

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

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

"Farm building or structure" means the same as that term is defined in § 36-97 and also includes any building or structure used for agritourism activity, as defined in § 3.2-6400, and any related impervious surfaces including roads, driveways, and parking areas.

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

1. Minor land-disturbing activities such as home gardens and individual home landscaping, repairs, and maintenance work;
2. Individual service connections;
3. Installation, maintenance, or repair of any underground public utility lines when such activity occurs on an existing hard surfaced road, street, or sidewalk, provided the land-disturbing activity is confined to the area of the road, street, or sidewalk that is hard surfaced;
4. Septic tank lines or drainage fields unless included in an overall plan for land-disturbing activity relating to construction of the building to be served by the septic tank system;
5. Permitted surface or deep mining operations and projects, or oil and gas operations and projects conducted pursuant to Title 45.2;
6. Tilling, planting, or harvesting of agricultural, horticultural, or forest crops, livestock feedlot operations, or as additionally set forth by the Board in regulation, including engineering operations as follows: construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds, ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage, and land irrigation; however, this exception shall not apply to harvesting of forest crops unless the area on which harvesting occurs is reforested artificially or naturally in accordance with the provisions of Chapter 11 (§ 10.1-1100 et seq.) of Title 10.1 or is converted to bona fide agricultural or improved pasture use as described in subsection B of § 10.1-1163;
7. Repair or rebuilding of the tracks, rights-of-way, bridges, communication facilities, and other related structures and facilities of a railroad company;
8. Agricultural engineering operations, including but not limited to the construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds not required to comply with the provisions of the Dam Safety Act (§ 10.1-604 et seq.), ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage, and land irrigation;
9. Disturbed land areas of less than 10,000 square feet in size or 2,500 square feet in all areas of the jurisdictions designated as subject to the Chesapeake Bay Preservation Area Designation and Management Regulations; however, the governing body of the program authority may reduce this exception to a smaller area of disturbed land or qualify the conditions under which this exception shall apply;
10. Installation of fence and sign posts or telephone and electric poles and other kinds of posts or poles;
11. Shoreline erosion control projects on tidal waters when all of the land-disturbing activities are within the regulatory authority of and approved by local wetlands boards, the Marine Resources Commission, or the United States Army Corps of Engineers; however, any associated land that is disturbed outside of this exempted area shall remain subject to this article and the regulations adopted pursuant thereto; and
12. Emergency work to protect life, limb, or property, and emergency repairs; however, if the land-disturbing activity would have required an approved erosion and sediment control plan, if the activity were not an emergency, then the land area disturbed shall be shaped and stabilized in accordance with the requirements of the VESCP authority.

"Natural channel design concepts" means the utilization of engineering analysis and fluvial geomorphic processes to create, rehabilitate, restore, or stabilize an open conveyance system for the purpose of creating or recreating a stream that conveys its bankfull storm event within its banks and allows larger flows to access its bankfull bench and its floodplain.

"Owner" means the owner or owners of the freehold of the premises or lesser estate therein, mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee, or other person, firm, or corporation in control of a property.

"Peak flow rate" means the maximum instantaneous flow from a given storm condition at a particular location.

"Permittee" means the person to whom the local permit authorizing land-disturbing activities is issued or the person who certifies that the approved erosion and sediment control plan will be followed.

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

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

"Town" means an incorporated town.

"Virginia Erosion and Sediment Control Program" or "VESCP" means a program approved by the Board that has been established by a VESCP authority for the effective control of soil erosion, sediment

deposition, and nonagricultural runoff associated with a land-disturbing activity to prevent the unreasonable degradation of properties, stream channels, waters, and other natural resources and shall include such items where applicable as local ordinances, rules, permit requirements, annual standards and specifications, policies and guidelines, technical materials, and requirements for plan review, inspection, enforcement where authorized in this article, and evaluation consistent with the requirements of this article and its associated regulations.

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

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

§ 62.1-44.15:51. (For effective date, see notes) Definitions.

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

"Agreement in lieu of a plan" means a contract between the VЕСP authority and the owner that specifies conservation measures that must be implemented in the construction of a (i) single-family detached residential structure or (ii) farm building or structure on a parcel of land with a total impervious cover percentage, including the impervious cover from the farm building or structure to be constructed, of less than five percent; this contract may be executed by the VЕСP authority in lieu of a formal site plan.

"Applicant" means any person submitting an erosion and sediment control plan for approval in order to obtain authorization for land-disturbing activities to commence.

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

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

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

"Department" means the Department of Environmental Quality.

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

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

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

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

"Farm building or structure" means the same as that term is defined in § 36-97 and also includes any building or structure used for agritourism activity, as defined in § 3.2-6400, and any related impervious surfaces including roads, driveways, and parking areas.

"Land disturbance" or "land-disturbing activity" means any man-made change to the land surface that may result in soil erosion or has the potential to change its runoff characteristics, including the clearing, grading, excavating, transporting, and filling of land.

"Natural channel design concepts" means the utilization of engineering analysis and fluvial geomorphic processes to create, rehabilitate, restore, or stabilize an open conveyance system for the purpose of creating or recreating a stream that conveys its bankfull storm event within its banks and allows larger flows to access its bankfull bench and its floodplain.

"Owner" means the same as provided in § 62.1-44.3. For a land-disturbing activity that is regulated under this article, "owner" also includes the owner or owners of the freehold of the premises or lesser

estate therein, mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee, or other person, firm, or corporation in control of a property.

"Peak flow rate" means the maximum instantaneous flow from a given storm condition at a particular location.

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

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

"Soil erosion" means the movement of soil by wind or water into state waters or onto lands in the Commonwealth.

"Town" means an incorporated town.

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

"Virginia Erosion and Sediment Control Program authority" or "VESCP authority" means a locality approved by the Board to operate a Virginia Erosion and Sediment Control Program. A locality that has chosen not to establish a Virginia Erosion and Stormwater Management Program pursuant to subdivision B 3 of § 62.1-44.15:27 is required to become a VESCP authority in accordance with this article.

"Virginia Stormwater Management Program" or "VSMP" means a program established by the Board pursuant to § 62.1-44.15:27.1 on behalf of a locality on or after July 1, 2014, to manage the quality and quantity of runoff resulting from any land-disturbing activity that (i) disturbs one acre or more of land or (ii) disturbs less than one acre of land and is part of a larger common plan of development or sale that results in one acre or greater of land disturbance.

§ 62.1-44.15:55. (For expiration date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345) Regulated land-disturbing activities; submission and approval of erosion and sediment control plan.

A. Except as provided in § 62.1-44.15:56 for state agency and federal entity land-disturbing activities, no person shall engage in any land-disturbing activity until he has submitted to the VESCP authority an erosion and sediment control plan for the land-disturbing activity and the plan has been reviewed and approved. Upon the development of an online reporting system by the Department, but no later than July 1, 2014, a VESCP authority shall then be required to obtain evidence of Virginia Stormwater Management Program permit coverage where it is required prior to providing approval to begin land disturbance. Where land-disturbing activities involve lands under the jurisdiction of more than one VESCP, an erosion and sediment control plan may, at the request of one or all of the VESCP authorities, be submitted to the Department for review and approval rather than to each jurisdiction concerned. The Department may charge the jurisdictions requesting the review a fee sufficient to cover the cost associated with conducting the review. 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 part of the administrative procedures. Where the land-disturbing activity results from the construction of a *(i) single-family residence or (ii) farm building or structure on a parcel of land with a total impervious cover percentage, including the impervious cover from the farm building or structure to be constructed, of less than five percent*, an agreement in lieu of a plan may be substituted for an erosion and sediment control plan if executed by the VESCP authority.

B. The VESCP authority shall review erosion and sediment control plans submitted to it and grant written approval within 60 days of the receipt of the plan if it determines that the plan meets the requirements of this article and the Board's regulations and if the person responsible for carrying out the plan certifies that he will properly perform the erosion and sediment control measures included in the plan and shall comply with the provisions of this article. In addition, as a prerequisite to engaging in the land-disturbing activities shown on the approved plan, the person responsible for carrying out the plan shall provide the name of an individual holding a certificate of competence to the VESCP authority, as provided by § 62.1-44.15:52, who will be in charge of and responsible for carrying out the land-disturbing activity. However, any VESCP authority may waive the certificate of competence requirement for an agreement in lieu of a plan ~~for construction of a single-family residence~~. If a violation occurs during the land-disturbing activity, then the person responsible for carrying out the agreement in lieu of a plan shall correct the violation and provide the name of an individual holding a certificate of competence, as provided by § 62.1-44.15:52. Failure to provide the name of an individual holding a certificate of competence prior to engaging in land-disturbing activities may result in

revocation of the approval of the plan and the person responsible for carrying out the plan shall be subject to the penalties provided in this article.

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

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

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

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

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

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

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

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

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

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

§ 62.1-44.15:55. (For effective date, see notes) Regulated land-disturbing activities; submission and approval of erosion and sediment control plan.

A. Except as provided in § 62.1-44.15:31 for a land-disturbing activity conducted by a state agency, federal entity, or other specified entity, no person shall engage in any land-disturbing activity until he has submitted to the VESCP authority an erosion and sediment control plan for the land-disturbing activity and the plan has been reviewed and approved. Where Virginia Pollutant Discharge Elimination

System permit coverage is required, a VESCP authority shall be required to obtain evidence of such coverage from the Department's online reporting system prior to approving the erosion and sediment control plan. A VESCP authority may enter into an agreement with an adjacent VESCP or VESMP authority regarding the administration of multijurisdictional projects specifying who shall be responsible for all or part of the administrative procedures. Should adjacent authorities fail to come to such an agreement, each shall be responsible for administering the area of the multijurisdictional project that lies within its jurisdiction. Where the land-disturbing activity results from the construction of a *(i) single-family residence or (ii) farm building or structure on a parcel of land with a total impervious cover percentage, including the impervious cover from the farm building or structure to be constructed, of less than five percent*, an agreement in lieu of a plan may be substituted for an erosion and sediment control plan if executed by the VESCP authority.

B. The VESCP authority shall review erosion and sediment control plans submitted to it and grant written approval within 60 days of the receipt of the plan if it determines that the plan meets the requirements of this article and the Board's regulations and if the person responsible for carrying out the plan certifies that he will properly perform the erosion and sediment control measures included in the plan and shall comply with the provisions of this article. In addition, as a prerequisite to engaging in the land-disturbing activities shown on the approved plan, the person responsible for carrying out the plan shall provide the name of an individual holding a certificate to the VESCP authority, as provided by § 62.1-44.15:52, who will be in charge of and responsible for carrying out the land-disturbing activity. However, any VESCP authority may waive the certificate requirement for an agreement in lieu of a plan ~~for construction of a single-family residence~~. If a violation occurs during the land-disturbing activity, then the person responsible for carrying out the agreement in lieu of a plan shall correct the violation and provide the name of an individual holding a certificate, as provided by § 62.1-44.15:52. Failure to provide the name of an individual holding a certificate prior to engaging in land-disturbing activities may result in revocation of the approval of the plan and the person responsible for carrying out the plan shall be subject to the penalties provided in this article.

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

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

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

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

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

F. Notwithstanding any other provisions of this article, the following activities are not required to comply with the requirements of this article unless otherwise required by federal law:

1. Disturbance of a land area of less than 10,000 square feet in size or less than 2,500 square feet in an area designated as a Chesapeake Bay Preservation Area pursuant to the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq.). However, the governing body of the program authority may reduce this exception to a smaller area of disturbed land or qualify the conditions under which this exception shall apply;
2. Minor land-disturbing activities such as home gardens and individual home landscaping, repairs, and maintenance work;
3. Installation, maintenance, or repair of any individual service connection;
4. Installation, maintenance, or repair of any underground utility line when such activity occurs on an existing hard surfaced road, street, or sidewalk, provided the land-disturbing activity is confined to the area of the road, street, or sidewalk that is hard surfaced;
5. Installation, maintenance, or repair of any septic tank line or drainage field unless included in an overall plan for land-disturbing activity relating to construction of the building to be served by the septic tank system;
6. Permitted surface or deep mining operations and projects, or oil and gas operations and projects conducted pursuant to Title 45.2;
7. Clearing of lands specifically for bona fide agricultural purposes; the management, tilling, planting, or harvesting of agricultural, horticultural, or forest crops; livestock feedlot operations; agricultural

engineering operations, including construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds, ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage, and land irrigation; or as additionally set forth by the Board in regulations. However, this exception shall not apply to harvesting of forest crops unless the area on which harvesting occurs is reforested artificially or naturally in accordance with the provisions of Chapter 11 (§ 10.1-1100 et seq.) of Title 10.1 or is converted to bona fide agricultural or improved pasture use as described in subsection B of § 10.1-1163;

8. Installation of fence and sign posts or telephone and electric poles and other kinds of posts or poles;

9. Shoreline erosion control projects on tidal waters when all of the land-disturbing activities are within the regulatory authority of and approved by local wetlands boards, the Marine Resources Commission, or the United States Army Corps of Engineers; however, any associated land that is disturbed outside of this exempted area shall remain subject to this article and the regulations adopted pursuant thereto;

10. Land-disturbing activities in response to a public emergency where the related work requires immediate authorization to avoid imminent endangerment to human health or the environment. In such situations, the VESMP authority shall be advised of the disturbance within seven days of commencing the land-disturbing activity, and compliance with the administrative requirements of subsection A is required within 30 days of commencing the land-disturbing activity;

11. Discharges to a sanitary sewer or a combined sewer system that are not from a land-disturbing activity; and

12. Repair or rebuilding of the tracks, rights-of-way, bridges, communication facilities, and other related structures and facilities of a railroad company.

§ 62.1-44.15:58. (For contingent expiration date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345) Monitoring, reports, and inspections.

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

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

C. Upon issuance of an inspection report denoting a violation of this section, § 62.1-44.15:55 or 62.1-44.15:56, in conjunction with or subsequent to a notice to comply as specified in subsection A, a VESCP authority, where authorized to enforce this article, or the Department may issue an order requiring that all or part of the land-disturbing activities permitted on the site be stopped until the specified corrective measures have been taken or, if land-disturbing activities have commenced without an approved plan as provided in § 62.1-44.15:55, requiring that all of the land-disturbing activities be stopped until an approved plan or any required permits are obtained. Where the alleged noncompliance is causing or is in imminent danger of causing harmful erosion of lands or sediment deposition in waters within the watersheds of the Commonwealth, or where the land-disturbing activities have commenced without an approved erosion and sediment control plan or any required permits, such an order may be issued whether or not the alleged violator has been issued a notice to comply as specified in subsection A. Otherwise, such an order may be issued only after the alleged violator has failed to comply with a notice to comply. The order for noncompliance with a plan shall be served in the same manner as a notice to comply, and shall remain in effect for seven days from the date of service pending application by the VESCP authority, the Department, or alleged violator for appropriate relief to the circuit court of the jurisdiction wherein the violation was alleged to have occurred or other appropriate court. The order for disturbance without an approved plan or permits shall be served upon the owner by mailing with

confirmation of delivery to the address specified in the land records of the locality, shall be posted on the site where the disturbance is occurring, and shall remain in effect until such time as permits and plan approvals are secured, except in such situations where an agricultural exemption applies. If the alleged violator has not obtained an approved erosion and sediment control plan or any required permit within seven days from the date of service of the order, the Department or the chief administrative officer or his designee on behalf of the VESCP authority may issue a subsequent order to the owner requiring that all construction and other work on the site, other than corrective measures, be stopped until an approved erosion and sediment control plan and any required permits have been obtained. The subsequent order shall be served upon the owner by mailing with confirmation of delivery to the address specified in the permit application or the land records of the locality in which the site is located. The owner may appeal the issuance of any order to the circuit court of the jurisdiction wherein the violation was alleged to have occurred or other appropriate court. Any person violating or failing, neglecting, or refusing to obey an order issued by the Department or the chief administrative officer or his designee on behalf of the VESCP authority may be compelled in a proceeding instituted in the circuit court of the jurisdiction wherein the violation was alleged to have occurred or other appropriate court to obey same and to comply therewith by injunction, mandamus, or other appropriate remedy. Upon completion and approval of corrective action or obtaining an approved plan or any required permits, the order shall immediately be lifted. Nothing in this section shall prevent the Department, the Board, or the chief administrative officer or his designee on behalf of the VESCP authority from taking any other action specified in § 62.1-44.15:63.

§ 62.1-44.15:58. (For contingent effective date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345) Monitoring, reports, and inspections.

A. The VESCP authority (i) shall provide for periodic inspections of the land-disturbing activity and require that an individual holding a certificate, as provided by § 62.1-44.15:52, will be in charge of and responsible for carrying out the land-disturbing activity and (ii) may require monitoring and reports from the person responsible for carrying out the erosion and sediment control plan, to ensure compliance with the approved plan and to determine whether the measures required in the plan are effective in controlling erosion and sediment. However, any VESCP authority may waive the certificate requirement for an agreement in lieu of a plan for construction of a single family detached residential structure. The owner shall be given notice of the inspection. When the VESCP authority or the Board determines that there is a failure to comply with the conditions of land-disturbance approval or to obtain an approved plan or a land-disturbance approval prior to commencing land-disturbing activity, the VESCP authority or the Board may serve a notice to comply upon the owner or person responsible for carrying out the land-disturbing activity. Such notice to comply shall be served by delivery by facsimile, e-mail, or other technology; by mailing with confirmation of delivery to the address specified in the plan or land-disturbance application, if available, or in the land records of the locality; or by delivery at the site to a person previously identified to the VESCP authority by the owner. The notice to comply shall specify the measures needed to comply with the land-disturbance approval conditions or shall identify the plan approval or land-disturbance approval needed to comply with this article and shall specify a reasonable time within which such measures shall be completed. In any instance in which a required land-disturbance approval has not been obtained, the VESCP authority or the Board may require immediate compliance. In any other case, the VESCP authority or the Board may establish the time for compliance by taking into account the risk of damage to natural resources and other relevant factors. Notwithstanding any other provision in this subsection, a VESCP authority or the Board may count any days of noncompliance as days of violation should the VESCP authority or the Board take an enforcement action. The issuance of a notice to comply by the Board shall not be considered a case decision as defined in § 2.2-4001. Upon failure to comply within the time specified, any plan approval or land-disturbance approval may be revoked and the VESCP authority or the Board may pursue enforcement as provided by § 62.1-44.15:63.

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

C. Upon issuance of an inspection report denoting a violation of this section or § 62.1-44.15:55, in conjunction with or subsequent to a notice to comply as specified in subsection A, a VESCP authority or the Board may issue a stop work order requiring that all or part of the land-disturbing activities on the site be stopped until the specified corrective measures have been taken or, if land-disturbing activities have commenced without an approved plan as provided in § 62.1-44.15:55, requiring that all of the land-disturbing activities be stopped until an approved plan is obtained. When such an order is issued by the Board, it shall be issued in accordance with the procedures of the Administrative Process Act (§ 2.2-4000 et seq.). Where the alleged noncompliance is causing or is in imminent danger of causing harmful erosion of lands or sediment deposition in waters within the watersheds of the Commonwealth, or where the land-disturbing activities have commenced without an approved erosion

and sediment control plan, such a stop work order may be issued whether or not the alleged violator has been issued a notice to comply as specified in subsection A. Otherwise, such an order may be issued only after the alleged violator has failed to comply with a notice to comply. The order for noncompliance with a plan shall be served in the same manner as a notice to comply, and shall remain in effect for seven days from the date of service pending application by the VESCP authority, the Board, or alleged violator for appropriate relief to the circuit court of the jurisdiction wherein the violation was alleged to have occurred or other appropriate court. The stop work order for disturbance without an approved plan shall be served upon the owner by mailing with confirmation of delivery to the address specified in the land records of the locality, shall be posted on the site where the disturbance is occurring, and shall remain in effect until such time as plan approvals are secured, except in such situations where an agricultural exemption applies. If the alleged violator has not obtained an approved erosion and sediment control plan within seven days from the date of service of the stop work order, the Board or the chief administrative officer or his designee on behalf of the VESCP authority may issue a subsequent order to the owner requiring that all construction and other work on the site, other than corrective measures, be stopped until an approved erosion and sediment control plan has been obtained. The subsequent order shall be served upon the owner by mailing with confirmation of delivery to the address specified in the plan or the land records of the locality in which the site is located. The owner may appeal the issuance of any order to the circuit court of the jurisdiction wherein the violation was alleged to have occurred or other appropriate court. Any person violating or failing, neglecting, or refusing to obey an order issued by the Board or the chief administrative officer or his designee on behalf of the VESCP authority may be compelled in a proceeding instituted in the circuit court of the jurisdiction wherein the violation was alleged to have occurred or other appropriate court to obey same and to comply therewith by injunction, mandamus, or other appropriate remedy. Upon completion and approval of corrective action or obtaining an approved plan, the order shall immediately be lifted. Nothing in this section shall prevent the Board or the chief administrative officer or his designee on behalf of the VESCP authority from taking any other action specified in § 62.1-44.15:63.

ORM form for TAB D will be provided prior to the board meeting

TAB E



Commonwealth of Virginia

VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

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Travis A. Voyles
Secretary of Natural and Historic Resources

Michael S. Rolband, PE, PWD, PWS Emeritus
Director
(804) 698-4020

MEMORANDUM

TO: State Water Control Board Members

FROM: Scott Morris, Water Division Director

A handwritten signature in black ink, appearing to read "Scott Morris".

DATE: May 31, 2023

SUBJECT: Final Exempt Action: Amendment to change the Certification of Nonpoint Source Nutrient Credits (9VAC25-900 et seq.) in response to Chapter 723 of the 2023 Virginia Acts of Assembly

At the June 22, 2023, meeting of the State Water Control Board, the Department will present the Board with final amendments to the Certification of Nonpoint Source Nutrient Credits (9VAC25-900 et seq.). These amendments are necessary to implement Chapter 723 of the 2023 Acts of Assembly.

Chapter 723 of the 2023 Acts of Assembly provides that in the certification and recertification of credits under this subsection, the Department may substitute a delivery factor that is deemed by the Director to be based on the best available scientific and technical information appropriate for the tributaries located outside of the Chesapeake Bay watershed as an alternative to any delivery factor derived from the application of the Chesapeake Bay Program watershed model. These regulatory amendments are exempt from the state administrative procedures for adoption of regulations because they are necessary to conform to Virginia statutory law (§ 2.2-4006(A)(4)(a) of the Code of Virginia). A copy of Chapter 723 of the 2023 Virginia Acts of Assembly is attached to this memorandum. The Office of the Attorney General will be sent the regulation for certification of authority to adopt the amendments.

After making a presentation on the proposed amendments and answering any questions the Board may have, staff will ask the Board for final approval of amendments to the Certification of

State Water Control Board Members
May 31, 2023

Nonpoint Source Nutrient Credits (9VAC25-900 et seq.) and affirm that the Board will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

ATTACHMENTS

- TH09- Exempt Action Final Regulation Agency Background Document for the Certification of Nonpoint Source Nutrient Credits
- Project 7568- Final Exempt Action: Amendment to change the Certification of Nonpoint Source Nutrient Credits (9VAC25-900 et seq.) in response to Chapter 723 of the 2023 Virginia Acts of Assembly
- Chapters 723 of the 2023 Acts of Assembly

PRESENTER CONTACT INFORMATION

Name: Scott Morris, Water Division Director

Phone: (804) 659-1383

Email: anthony.morris@deq.virginia.gov



townhall.virginia.gov

Exempt Action: Final Regulation Agency Background Document

Agency name	State Water Control Board
Virginia Administrative Code (VAC) Chapter citation(s)	9VAC25-900
VAC Chapter title(s)	Certification of Nonpoint Source Nutrient Credits
Action title	Amendment to change the Certification of Nonpoint Source Nutrient Credits (9VAC25-900 et seq.) in response to Chapter 723 of the 2023 Virginia Acts of Assembly
Final agency action date	June 22, 2023
Date this document prepared	May 17, 2023

This information is required for executive branch review pursuant to Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19. In addition, this information is required by the Virginia Registrar of Regulations pursuant to the Virginia Register Act (§ 2.2-4100 et seq. of the Code of Virginia). Regulations must conform to the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Brief Summary

Provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.

This final exempt regulatory action is necessary to implement Chapter 723 of the 2023 Acts of Assembly, which provides that in the certification and recertification of credits under this subsection, the Department may substitute a delivery factor that is deemed by the Director to be based on the best available scientific and technical information appropriate for the tributaries located outside of the Chesapeake Bay watershed as an alternative to any delivery factor derived from the application of the Chesapeake Bay Program watershed model. This action will amend 9VAC25-900, Certification of Nonpoint source Nutrient Credits, to include this new statutory provision.

These regulatory amendments are exempt from the state administrative procedures for adoption of regulations because they are necessary to conform to Virginia statutory law (§ 2.2-4006(A)(4)(a) of the Code of Virginia).

Mandate and Impetus

Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, internal staff review, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, "mandate" has the same meaning as defined in the ORM procedures, "a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part."

SB959 passed during the 2023 Session of the General Assembly. This bill provides that in the certification and recertification of credits under this subsection, the Department may substitute a delivery factor that is deemed by the Director to be based on the best available scientific and technical information appropriate for the tributaries located outside of the Chesapeake Bay watershed as an alternative to any delivery factor derived from the application of the Chesapeake Bay Program watershed model. The Governor signed this bill into law on March 27, 2023 (SB959 – Chapter 723 of the 2023 Acts of Assembly) and these changes will become effective July 1, 2023. This regulatory action is required to conform the existing regulation to changes in Code.

Statement of Final Agency Action

Provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) the name of the agency taking the action; and 3) the title of the regulation.

On June 22, 2023, the State Water Control Board approved final amendments to the Certification of Nonpoint Source Nutrient Credits (9VAC25-990 et seq.) and affirmed that the Board will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

1 **Project 7568 - Exempt Final Final Exempt Action: Amendment to change the Certification**
2 **of Nonpoint Source Nutrient Credits (9VAC25-900 et seq.) in response to Chapter 723 of**
3 **the 2023 Virginia Acts of Assembly**

4 **State Water Control Board**

5 **Final exempt- SB 959 CH900 Credit calculation procedure updates**
6 **9VAC25-900-110. Credit calculation procedures.**

7 A. Pursuant to this section, the applicant shall calculate the potential nutrient credits generated
8 by the practices implemented at the nutrient credit-generating projects. The applicable delivery
9 factors, dependent upon the tributary in which the nutrient credit-generating project is located,
10 shall be applied when calculating the potential credits generated.

11 B. For agricultural practices, except land use conversion, the potential nutrient credits shall
12 be calculated using removal efficiencies for practices approved by the department. In the
13 Chesapeake Bay Watershed, these practices shall be approved by the department based on the
14 efficiencies assigned by the Chesapeake Bay Program. In the Southern Rivers watersheds, these
15 practices shall be approved by the department based on submitted calculations and
16 demonstrations. The standards and specifications for implementation of the practices will be
17 established by the department and shall be in accordance with the VACS BMP Manual or the
18 FOTG, as applicable.

19 C. For urban practices, the potential nutrient credits shall be calculated using the applicable
20 removal efficiencies pursuant to 9VAC25-870-65 or using the best available scientific and
21 technical information available at the time of nutrient credit certification as approved by the
22 department. Limitations on potential nutrient credits from certain BMPs are:

23 1. In the Chesapeake Bay Watershed, nutrient load reductions from practices in place
24 prior to July 1, 2005, may not be used to generate credits. Removal efficiencies shall be
25 based upon those efficiencies approved by the Chesapeake Bay Program partnership
26 where applicable. These efficiencies shall be reviewed at the time of certification renewal
27 and adjusted as necessary based upon changes made by the Chesapeake Bay Program
28 Partnership.

29 2. In the Southern Rivers watersheds, nutrient load reductions from practices in place prior
30 to July 1, 2009, may not be used to generate credits.

31 D. For land use conversions, conversion of land to a more intensive land use activity will not
32 generate nutrient credits. The number of potential nutrient credits shall be determined by
33 calculating the nutrient credits per acre and multiplying that number by the total acreage that will
34 undergo land use conversion. The nutrient credits per acre is equal to the amount calculated by
35 subtracting the load per acre of nutrient nonpoint source pollution for the proposed land use after
36 conversion from the load per acre for the preconversion land use. The values used for the loadings
37 per acre in this calculation shall be based on the applicable loading levels provided in the WIP or
38 the approved TMDL, where applicable. The preconversion land use shall be based on the land
39 use as of the date specified in 9VAC25-900-100 E. The load per acre for the preconversion land
40 use shall reflect the implementation of any applicable baseline practices necessary to comply with
41 9VAC25-900-100 B, C, and D. No credits shall be generated from the conversion of land within
42 35 feet of a water body with perennial water flow as measured from the top of the channel bank.

43 E. For wetland or stream restoration, an existing conditions assessment survey will be
44 completed prior to restoration activities to use as a pre-restoration condition (baseline pursuant
45 to of 9VAC25-900-100 F) and will be used for comparison to post-restoration conditions. The
46 potential number of credits shall be determined by applying protocols or guidance on a case-by-

47 case basis using the best available scientific and technical information, as approved by the
48 department.

49 F. For a practice not previously approved by the department, the department will perform a
50 case-by-case review in order to calculate the number of potential nutrient credits generated. The
51 owner shall submit the removal efficiency calculation information for the practice and the
52 calculation of the potential number of credits generated using that efficiency. The department may
53 also request that the submittal include requirements for demonstration projects, the collection of
54 sufficient data to evaluate the results, and any other information the department deems necessary
55 to determine the validity of the credits. In the Chesapeake Bay Watershed, for a practice not
56 approved by the Chesapeake Bay Program Partnership, the department will perform a case-by-
57 case review in order to calculate the number of potential nutrient credits generated on a term
58 basis.

59 G. In the certification and recertification of credits, the Department may substitute a delivery
60 factor that is deemed by the Director to be based on the best available scientific and technical
61 information appropriate for the tributaries located outside of the Chesapeake Bay watershed as
62 an alternative to any delivery factor derived from the application of the Chesapeake Bay Program
63 watershed model.

VIRGINIA ACTS OF ASSEMBLY -- 2023 SESSION

CHAPTER 723

An Act to amend and reenact § 62.1-44.19:20, as it is currently effective and as it shall become effective, of the Code of Virginia, relating to nutrient credit calculations outside the Chesapeake Bay watershed.

[S 959]

Approved March 27, 2023

Be it enacted by the General Assembly of Virginia:

1. That § 62.1-44.19:20, as it is currently effective and as it shall become effective, of the Code of Virginia is amended and reenacted as follows:

§ 62.1-44.19:20. (Contingent expiration date) Nutrient credit certification.

A. The Board may adopt regulations for the purpose of establishing procedures for the certification of point source nutrient credits except that no certification shall be required for point source nitrogen and point source phosphorus credits generated by point sources regulated under the Watershed General Virginia Pollutant Discharge Elimination System Permit issued pursuant to § 62.1-44.19:14. The Board shall adopt regulations for the purpose of establishing procedures for the certification of nonpoint source nutrient credits.

B. Regulations adopted pursuant to this section shall:

1. Establish procedures for the certification and registration of credits, including:

a. Certifying credits that may be generated from effective nutrient controls or removal practices, including activities associated with the types of facilities or practices historically regulated by the Board, such as water withdrawal and treatment and wastewater collection, treatment, and beneficial reuse;

b. Certifying credits that may be generated from agricultural and urban stormwater best management practices, use or management of manures, managed turf, land use conversion, stream or wetlands projects, shellfish aquaculture, algal harvesting, and other established or innovative methods of nutrient control or removal, as appropriate;

c. Establishing a process and standards for wetland or stream credits to be converted to nutrient credits. Such process and standards shall only apply to wetland or stream credits that were established after July 1, 2005, and have not been transferred or used. Under no circumstances shall such credits be used for both wetland or stream credit and nutrient credit purposes;

d. Certifying credits from multiple practices that are bundled as a package by the applicant;

e. Prohibiting the certification of credits generated from activities funded by federal or state water quality grant funds other than controls and practices under subdivision B 1 a; however, baseline levels may be achieved through the use of such grants;

f. Establishing a timely and efficient certification process including application requirements, a reasonable application fee schedule not to exceed \$10,000 per application, and review and approval procedures;

g. Requiring public notification of a proposed nutrient credit-generating entity; and

h. Establishing a timeline for the consideration of certification applications for land conversion projects. The timeline shall provide that within 30 days of receipt of an application the Department shall, if warranted, conduct a site visit and that within 45 days of receipt of an application the Department shall either determine that the application is complete or request additional specific information from the applicant. A determination that an application for a land conversion project is complete shall not require the Department to issue the certification. The Department shall deny, approve, or approve with conditions an application within 15 days of the Department's determination that the application is complete. When the request for credit release is made concurrently with the application for a land conversion project certification, the concurrent release shall be processed on the same timeline. When the request for credit release is from a previously approved land conversion project, the Department shall schedule a site visit, if warranted, within 30 days of the request and shall deny, approve, or approve with conditions the release within 15 days of the site visit or determination that a site visit is not warranted. The timelines set out in this subdivision shall be implemented prior to adoption of regulations. The Department shall release credits from a land conversion project after it is satisfied that the applicant has met the criteria for release in an approved nutrient reduction implementation plan.

2. Establish credit calculation procedures for proposed credit-generating practices, including the determination of:

a. Baselines for credits certified under subdivision B 1 a in accordance with any applicable provisions of the Virginia Chesapeake Bay TMDL Watershed Implementation Plan or approved TMDLs;

b. Baselines established for agricultural practices, which shall be those actions necessary to achieve a

level of reduction assigned in the Virginia Chesapeake Bay TMDL Watershed Implementation Plan or approved TMDLs as implemented on the tract, field, or other land area under consideration;

c. Baselines for urban practices from new development and redevelopment, which shall be in compliance with postconstruction nutrient loading requirements of the Virginia Stormwater Management Program regulations. Baselines for all other existing development shall be at a level necessary to achieve the reductions assigned in the urban sector in the Virginia Chesapeake Bay TMDL Watershed Implementation Plan or approved TMDLs;

d. Baselines for land use conversion, which shall be based on the pre-conversion land use and the level of reductions assigned in the Virginia Chesapeake Bay TMDL Watershed Implementation Plan or approved TMDLs applicable to that land use;

e. Baselines for other nonpoint source credit-generating practices, which shall be based on the Virginia Chesapeake Bay TMDL Watershed Implementation Plan or approved TMDLs using the best available scientific and technical information;

f. Unless otherwise established by the Board, for certification within the Chesapeake Bay Watershed a credit-generating practice that involves land use conversion, which shall represent controls beyond those in place as of July 1, 2005. For other waters for which a TMDL has been approved, the practice shall represent controls beyond those in place at the time of TMDL approval;

g. Baseline dates for all other credit-generating practices, which shall be based on the Virginia Chesapeake Bay TMDL Watershed Implementation Plan or approved TMDLs; and

h. Credit quantities, which shall be established using the best available scientific and technical information at the time of certification;

3. Provide certification of credits on an appropriate temporal basis, such as annual, term of years, or perpetual, depending on the nature of the credit-generating practice. A credit shall be certified for a term of no less than 12 months;

4. Establish requirements to reasonably assure the generation of the credit depending on the nature of the credit-generating activity and use, such as legal instruments for perpetual credits, operation and maintenance requirements, and associated financial assurance requirements. Financial assurance requirements may include letters of credit, escrows, surety bonds, insurance, and where the credits are used or generated by a locality, authority, utility, sanitation district, or permittee operating an MS4 or a point source permitted under this article, its existing tax or rate authority. In lieu of long-term management fund financial assurance mechanisms established or required by regulation for projects generating credits from stream restoration, a third-party long-term steward approved by the Department, such as a public agency, nongovernmental organization or private land manager, may hold long-term management funds in a separate interest-bearing account to be used only for the long-term management of the stream restoration project;

5. Establish appropriate reporting requirements;

6. Provide for the ability of the Department to inspect or audit for compliance with the requirements of such regulations;

7. Provide that the option to acquire nutrient credits for compliance purposes shall not eliminate any requirement to comply with local water quality requirements;

8. Establish a credit retirement requirement whereby five percent of nonpoint source credits in the Chesapeake Bay Watershed other than controls and practices under subdivision B 1 a are permanently retired at the time of certification pursuant to this section for the purposes of offsetting growth in unregulated nutrient loads; and

9. Establish such other requirements as the Board deems necessary and appropriate.

C. ~~Prior to the adoption of such regulations, the~~ *The* Board shall certify (i) credits that may be generated from effective nutrient controls or removal practices, including activities associated with the types of facilities or practices historically regulated by the Board, such as water withdrawal and treatment and wastewater collection, treatment, and beneficial reuse, ~~on a case-by-case basis~~ using the best available scientific and technical information and (ii) credits that are located in tributaries outside of the Chesapeake Bay watershed as defined in § 62.1-44.15:35, using an average of the nutrient removal rates for each practice identified in Appendix A of the Department's document "Trading Nutrient Reductions from Nonpoint Source Best Management Practices in the Chesapeake Bay Watershed: Guidance for Agricultural Landowners and Your Potential Trading Partners-"; *however, in the certification and recertification of credits under this subsection, the Department may substitute a delivery factor that is deemed by the Director to be based on the best available scientific and technical information appropriate for the tributaries located outside of the Chesapeake Bay watershed as an alternative to any delivery factor derived from the application of the Chesapeake Bay Program watershed model.*

D. The Department shall establish and maintain an online Virginia Nutrient Credit Registry of credits as follows:

1. The registry shall include all nonpoint source credits certified pursuant to this article and may include point source nitrogen and point source phosphorus credits generated from point sources covered by the general permit issued pursuant to § 62.1-44.19:14 or point source nutrient credits certified

pursuant to this section at the option of the owner. No other credits shall be valid for compliance purposes.

2. Registration of credits on the registry shall not preclude or restrict the right of the owner of such credits from transferring the credits on such commercial terms as may be established by and between the owner and the regulated or unregulated party acquiring the credits.

3. The Department shall establish procedures for the listing and tracking of credits on the registry, including but not limited to (i) notification of the availability of new nutrient credits to the locality where the credit-generating practice is implemented at least five business days prior to listing on the registry to provide the locality an opportunity to acquire such credits at fair market value for compliance purposes and (ii) notification that the listing of credits on the registry does not constitute a representation by the Board or the owner that the credits will satisfy the specific regulatory requirements applicable to the prospective user's intended use and that the prospective user is encouraged to contact the Board for technical assistance to identify limitations, if any, applicable to the intended use.

4. The registry shall be publicly accessible without charge.

E. The owner or operator of a nonpoint source nutrient credit-generating entity that fails to comply with the provisions of this section shall be subject to the enforcement and penalty provisions of § 62.1-44.19:22.

F. Nutrient credits from stormwater nonpoint nutrient credit-generating facilities in receipt of a Nonpoint Nutrient Offset Authorization for Transfer letter from the Department prior to July 1, 2012, shall be considered certified nutrient credits and shall not be subject to further certification requirements or to the credit retirement requirement under subdivision B 8. However, such facilities shall be subject to the other provisions of this article, including registration, inspection, reporting, and enforcement.

§ 62.1-44.19:20. (Contingent effective date) Nutrient credit certification.

A. The Board may adopt regulations for the purpose of establishing procedures for the certification of point source nutrient credits except that no certification shall be required for point source nitrogen and point source phosphorus credits generated by point sources regulated under the Watershed General Virginia Pollutant Discharge Elimination System Permit issued pursuant to § 62.1-44.19:14. The Board shall adopt regulations for the purpose of establishing procedures for the certification of nonpoint source nutrient credits.

B. Regulations adopted pursuant to this section shall:

1. Establish procedures for the certification and registration of credits, including:

a. Certifying credits that may be generated from effective nutrient controls or removal practices, including activities associated with the types of facilities or practices historically regulated by the Board, such as water withdrawal and treatment and wastewater collection, treatment, and beneficial reuse;

b. Certifying credits that may be generated from agricultural and urban stormwater best management practices, use or management of manures, managed turf, land use conversion, stream or wetlands projects, shellfish aquaculture, algal harvesting, and other established or innovative methods of nutrient control or removal, as appropriate;

c. Establishing a process and standards for wetland or stream credits to be converted to nutrient credits. Such process and standards shall only apply to wetland or stream credits that were established after July 1, 2005, and have not been transferred or used. Under no circumstances shall such credits be used for both wetland or stream credit and nutrient credit purposes;

d. Certifying credits from multiple practices that are bundled as a package by the applicant;

e. Prohibiting the certification of credits generated from activities funded by federal or state water quality grant funds other than controls and practices under subdivision B 1 a; however, baseline levels may be achieved through the use of such grants;

f. Establishing a timely and efficient certification process including application requirements, a reasonable application fee schedule not to exceed \$10,000 per application, and review and approval procedures;

g. Requiring public notification of a proposed nutrient credit-generating entity; and

h. Establishing a timeline for the consideration of certification applications for land conversion projects. The timeline shall provide that within 30 days of receipt of an application the Department shall, if warranted, conduct a site visit and that within 45 days of receipt of an application the Department shall either determine that the application is complete or request additional specific information from the applicant. A determination that an application for a land conversion project is complete shall not require the Department to issue the certification. The Department shall deny, approve, or approve with conditions an application within 15 days of the Department's determination that the application is complete. When the request for credit release is made concurrently with the application for a land conversion project certification, the concurrent release shall be processed on the same timeline. When the request for credit release is from a previously approved land conversion project, the Department shall schedule a site visit, if warranted, within 30 days of the request and shall deny, approve, or approve with conditions the release within 15 days of the site visit or determination that a site visit is not warranted. The timelines set out in this subdivision shall be implemented prior to adoption of regulations. The Department shall release credits from a land conversion project after it is

satisfied that the applicant has met the criteria for release in an approved nutrient reduction implementation plan.

2. Establish credit calculation procedures for proposed credit-generating practices, including the determination of:

a. Baselines for credits certified under subdivision B 1 a in accordance with any applicable provisions of the Virginia Chesapeake Bay TMDL Watershed Implementation Plan or approved TMDLs;

b. Baselines established for agricultural practices, which shall be those actions necessary to achieve a level of reduction assigned in the Virginia Chesapeake Bay TMDL Watershed Implementation Plan or approved TMDLs as implemented on the tract, field, or other land area under consideration;

c. Baselines for urban practices from new development and redevelopment, which shall be in compliance with postconstruction nutrient loading requirements of the Virginia Stormwater Management Program regulations. Baselines for all other existing development shall be at a level necessary to achieve the reductions assigned in the urban sector in the Virginia Chesapeake Bay TMDL Watershed Implementation Plan or approved TMDLs;

d. Baselines for land use conversion, which shall be based on the pre-conversion land use and the level of reductions assigned in the Virginia Chesapeake Bay TMDL Watershed Implementation Plan or approved TMDLs applicable to that land use;

e. Baselines for other nonpoint source credit-generating practices, which shall be based on the Virginia Chesapeake Bay TMDL Watershed Implementation Plan or approved TMDLs using the best available scientific and technical information;

f. Unless otherwise established by the Board, for certification within the Chesapeake Bay Watershed a credit-generating practice that involves land use conversion, which shall represent controls beyond those in place as of July 1, 2005. For other waters for which a TMDL has been approved, the practice shall represent controls beyond those in place at the time of TMDL approval;

g. Baseline dates for all other credit-generating practices, which shall be based on the Virginia Chesapeake Bay TMDL Watershed Implementation Plan or approved TMDLs; and

h. Credit quantities, which shall be established using the best available scientific and technical information at the time of certification;

3. Provide certification of credits on an appropriate temporal basis, such as annual, term of years, or perpetual, depending on the nature of the credit-generating practice. A credit shall be certified for a term of no less than 12 months;

4. Establish requirements to reasonably assure the generation of the credit depending on the nature of the credit-generating activity and use, such as legal instruments for perpetual credits, operation and maintenance requirements, and associated financial assurance requirements. Financial assurance requirements may include letters of credit, escrows, surety bonds, insurance, and where the credits are used or generated by a locality, authority, utility, sanitation district, or permittee operating an MS4 or a point source permitted under this article, its existing tax or rate authority. In lieu of long-term management fund financial assurance mechanisms established or required by regulation for projects generating credits from stream restoration, a third-party long-term steward approved by the Department, such as a public agency, nongovernmental organization or private land manager, may hold long-term management funds in a separate interest-bearing account to be used only for the long-term management of the stream restoration project. Notwithstanding any release schedule set out in regulations of the Board, the Department may accelerate the release of a maximum of 50 percent of nutrient credits from a stream restoration project based on (i) a determination that the level of risk for restoration failure is low, (ii) the provision of additional financial assurance in an amount adequate to cover the cost of project repair or replacement in the event of failure, and (iii) the experience of the applicant or the applicant's agents who will implement the stream restoration project;

5. Establish appropriate reporting requirements;

6. Provide for the ability of the Department to inspect or audit for compliance with the requirements of such regulations;

7. Provide that the option to acquire nutrient credits for compliance purposes shall not eliminate any requirement to comply with local water quality requirements;

8. Establish a credit retirement requirement whereby five percent of nonpoint source credits in the Chesapeake Bay Watershed other than controls and practices under subdivision B 1 a are permanently retired at the time of certification pursuant to this section for the purposes of offsetting growth in unregulated nutrient loads; and

9. Establish such other requirements as the Board deems necessary and appropriate.

C. ~~Prior to the adoption of such regulations,~~ the Board shall certify (i) credits that may be generated from effective nutrient controls or removal practices, including activities associated with the types of facilities or practices historically regulated by the Board, such as water withdrawal and treatment and wastewater collection, treatment, and beneficial reuse, ~~on a case-by-case basis~~ using the best available scientific and technical information and (ii) credits that are located in tributaries outside of the Chesapeake Bay watershed as defined in § 62.1-44.15:35, using an average of the nutrient removal rates for each practice identified in Appendix A of the Department's document "Trading Nutrient

Reductions from Nonpoint Source Best Management Practices in the Chesapeake Bay Watershed: Guidance for Agricultural Landowners and Your Potential Trading Partners-"; *however, in the certification and recertification of credits under this subsection, the Department may substitute a delivery factor that is deemed by the Director to be based on the best available scientific and technical information appropriate for the tributaries located outside of the Chesapeake Bay watershed as an alternative to any delivery factor derived from the application of the Chesapeake Bay Program watershed model.*

D. The Department shall establish and maintain an online Virginia Nutrient Credit Registry of credits as follows:

1. The registry shall include all nonpoint source credits certified pursuant to this article and may include point source nitrogen and point source phosphorus credits generated from point sources covered by the general permit issued pursuant to § 62.1-44.19:14 or point source nutrient credits certified pursuant to this section at the option of the owner. No other credits shall be valid for compliance purposes.

2. Registration of credits on the registry shall not preclude or restrict the right of the owner of such credits from transferring the credits on such commercial terms as may be established by and between the owner and the regulated or unregulated party acquiring the credits.

3. The Department shall establish procedures for the listing and tracking of credits on the registry, including but not limited to (i) notification of the availability of new nutrient credits to the locality where the credit-generating practice is implemented at least five business days prior to listing on the registry to provide the locality an opportunity to acquire such credits at fair market value for compliance purposes and (ii) notification that the listing of credits on the registry does not constitute a representation by the Board or the owner that the credits will satisfy the specific regulatory requirements applicable to the prospective user's intended use and that the prospective user is encouraged to contact the Board for technical assistance to identify limitations, if any, applicable to the intended use.

4. The registry shall be publicly accessible without charge.

E. The owner or operator of a nonpoint source nutrient credit-generating entity that fails to comply with the provisions of this section shall be subject to the enforcement and penalty provisions of § 62.1-44.19:22.

F. Nutrient credits from stormwater nonpoint nutrient credit-generating facilities in receipt of a Nonpoint Nutrient Offset Authorization for Transfer letter from the Department prior to July 1, 2012, shall be considered certified nutrient credits and shall not be subject to further certification requirements or to the credit retirement requirement under subdivision B 8. However, such facilities shall be subject to the other provisions of this article, including registration, inspection, reporting, and enforcement.

ORM form for TAB E will be provided prior to the board meeting

TAB F



Commonwealth of Virginia

VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

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Travis A. Voyles
Secretary of Natural and Historic Resources

Michael S. Rolband, PE, PWD, PWS Emeritus
Director
(804) 698-4020

MEMORANDUM

TO: State Water Control Board Members
FROM: Melanie Davenport, Director, Regulatory Affairs and Outreach 
DATE: May 23, 2023
SUBJECT: Virginia Erosion and Stormwater Management Regulation (9VAC25-875)

Background:

Chapters 68 and 758 of the 2016 Acts of Assembly (the "Consolidation Bill") combine the Department of Environmental Quality's (DEQ or department) existing statutory programs relating to soil erosion and sediment control and stormwater management. The ninth enactment in the Consolidation Bill directs the State Water Control Board (Board) to adopt regulations to carry out the purposes of the Acts. The staff is bringing the Virginia Erosion and Stormwater Management Regulation before the Board as a final regulation to request its adoption with an effective date of July 1, 2024, and repealing the current Erosion and Sediment Control Regulations (9VAC25-840); Erosion and Sediment Control and Stormwater Management Certification Regulations (9VAC25-850); and Virginia Stormwater Management Program Regulation (9VAC25-870) on July 1, 2024.

Development of Final Regulation:

The ninth enactment in the Consolidation Bill exempts this regulatory action from the requirements of Article 2 (§ 2.2-4006 et seq.) of the Administrative Process Act (§ 2.2-4000 et seq.). In lieu of these requirements, the ninth enactment instructs the department to (i) provide a Notice of Intended Regulatory Action, (ii) form a stakeholders advisory group, (iii) provide for a 60-day public comment period prior to the Board's adoption of the regulation, and (iv) provide the Board with a written summary of comments received and responses to comments prior to the Board's adoption of the regulation.

In accordance with the ninth enactment of the Consolidation Bill, the department provided a Notice of Intended Regulatory Action (35:12 VA.R. 1399 February 4, 2019), formed a 25-member regulatory advisory panel (RAP) to assist in the development of the regulation, and held seven public meetings with the advisory group between June 18, 2019, and September 13, 2022. A 60-day public comment period for the draft regulations was held from February 7-April 10, 2023, and included a public hearing held on March 15, 2023. The comments that the department

received during the 60-day public comment period and the department's response to comments are included in the attached Town Hall (TH-09) document.

The Virginia Erosion and Stormwater Management Regulation takes into consideration the recommendations of the RAP formed for this regulatory action and comments received during the 60-day public comment period.

Final Regulation:

In accordance with the Consolidation Bill, the Virginia Erosion and Stormwater Management Regulation (9VAC25-875) implements the requirements of the acts by establishing regulatory requirements for localities, state agencies, federal entities, other specified entities, and the department to oversee programs for erosion control and stormwater management. The regulation accomplishes this by consolidating requirements in the current Erosion and Sediment Control Regulations (9VAC25-840); Erosion and Sediment Control and Stormwater Certification Regulations (9VAC25-850); and Virginia Stormwater Management Program Regulation (9VAC25-870) into one new chapter of the Virginia Administrative Code and repealing each of the existing chapters. Through consolidation, the new regulation clarifies applicability and requirements of programs, eliminates redundancies, and corrects inconsistencies between erosion and sediment control and stormwater management regulations. In addition, the Virginia Erosion and Stormwater Management Regulation incorporates statutory changes that were made by the Consolidation Bill and that will become effective at the time that this regulation becomes effective on July 1, 2024. No substantive changes to existing erosion and sediment control minimum standards or to the post-construction stormwater management technical criteria are part of this regulatory action.

The structure of the Virginia Erosion and Stormwater Management Regulation was organized into Parts that differentiate among programmatic requirements for local authorities, technical requirements for owners and operators, and certification requirements. These organizational Parts are shown below along with a brief description of the contents of each Part:

- **Part I: Definitions and applicability for Virginia Erosion and Stormwater Management Programs and Virginia Erosion and Sediment Control Programs.**
 - Part I contains definitions and an applicability section that apply to the entirety of Chapter 875. These definitions are taken from 9VAC25-840, 9VAC25-850, 9VAC25-870 and state law.
 - Revisions to the meaning of terms from 9VAC25-840, 9VAC25-850, and 9VAC25-870 were made to reconcile differences between the same term appearing in different chapters and to incorporate statutory changes.

- **Part II: Virginia Erosion and Stormwater Management Program.**
 - Part II applies to local governments that operate a Virginia Erosion and Stormwater Management Program (VESMP) authority and to the department in its capacity as a Virginia Stormwater Management Program (VSMP) authority and in its role providing administrative oversight to VESMPs. As required by the Consolidation Bill, Part II is applicable to local governments that currently operate a VSMP authority or a municipal separate storm sewer system (MS4) and

those that currently operate a Virginia Erosion and Sediment Control Program (VESCP) authority and choose to become a VESMP authority pursuant to § 62.1-44.15:27 B.

- The provisions of Part II lay out the roles and program administration requirements for VESMP authorities and the department as the VSMP authority. In addition, Part II spells out the process and administrative requirements for a VESMP authority to coordinate plan review with the department and the department's authorization and review procedures for VESMPs.
- The sections of Part II combine requirements from 9VAC25-840, 9VAC25-870, and new statutory provisions of the Virginia Erosion and Stormwater Management Act (VESMA). In combining requirements in this way, Part II consolidates both the erosion and sediment control and stormwater management program requirements under a VESMP.
- **Part III: Virginia Erosion and Sediment Control Program**
 - Part III applies to local governments that operate only a VESCP authority, as allowed by the Consolidation Bill, and the department in its role providing administrative oversight of VESCPs. These localities are those that currently operate only an erosion and sediment control program and opt not to become a VESMP authority pursuant to § 62.1-44.15:27 B.
 - The provisions of Part III lay out the roles and program administration requirements for VESCP authorities. In addition, Part III spells out the process and administrative requirements for a VESCP authority to coordinate erosion and sediment control plan review for solar projects with the department and the department's authorization and review procedures for VESCPs.
 - Sections of Part III include provisions from 9VAC25-840, 9VAC25-870, and new statutory requirements in the Virginia Erosion and Sediment Control Law for Localities Not Administering a Virginia Erosion and Stormwater Management Program (ESCL). The provisions of Part III capture only the erosion and sediment control requirements for a VESCP.
- **Part IV: Certification of VESCP, VSMP, and VESMP personnel.**
 - Part IV spells out the applicability, eligibility, and requirements for certifications in erosion and sediment control and stormwater management.
 - The provisions of Part IV are taken from Chapter 850. In addition, certifications have been added to account for dual program administrator, plan reviewer, inspector, and dual combined administrator roles that may exist in VESMP localities.
- **Part V: Criteria and Requirements for Regulated Land-Disturbing Activities.**
 - Part V applies to all individuals or entities conducting regulated land-disturbing activities whether they are operating in a locality that is or will be a VESCP

authority, a locality with a VESMP authority, or a locality where the department is the VSMP.

- Part V lays out the erosion and sediment control and stormwater management technical criteria and requirements for regulated land-disturbing activities. Part V also includes exceptions to water quantity and water quality technical criteria for certain land-disturbing activity that is “grandfathered”, and projects covered by time limits of applicability.
- The requirements of Part V come from 9VAC25-840, 9VAC25-870, and new statutory provisions of the VESMA and ESCL that will become effective. This captures all existing requirements and technical criteria for erosion and sediment control and stormwater management. No substantive changes to existing erosion and sediment control minimum standards or to the post-construction stormwater management technical criteria were part of this regulatory action.
- **Part VI: Standards and Specifications Program.**
 - Part VI applies to any state agency, federal entity, or other public or private entity that is authorized to submit standards and specifications to the department for approval.
 - Part VI lays out the requirements for any entity that submits standards and specifications to the department for approval. It also spells out the department’s authority to perform random site inspections and assess a charge associated with its administrative costs.
 - The provisions of Part VI are taken from 9VAC25-870 and new statutory language in the VESMA that will become effective.
- **Part VII: Virginia Pollutant Discharge Elimination System (VPDES) Permits.**
 - Part VII is carried over from when the Department of Conservation and Recreation (DCR) operated the erosion and sediment control and stormwater program. DCR did not have a VPDES regulation, which required them to create this part so that they could issue a construction general permit. Due to this history, Part VII has been kept in Chapter 875.
 - Part VII captures the provisions of Chapter 870 that spell out requirements for VPDES permits. The sections and language for this part are taken directly from Chapter 870 with minor language changes.
- **Part VIII: Fees.**
 - Part VIII captures the fees sections from 9VAC25-870 that are applicable to stormwater management for land-disturbing activities and to MS4s. These sections and language were taken directly from 9VAC25-870 with the exception of language referencing fees that applied prior to July 30, 2014, which has been deleted as this language is no longer applicable. None of the fee amounts in Part VIII have changed.

The Office of the Attorney General has been sent the regulation for certification of authority to adopt the regulation.

Attachments: RAP Membership, Virginia Erosion and Stormwater Management Regulation (9VAC25-875), and Town Hall Agency Final Background Document.

**RAP MEMBERSHIP (as of 2019 Membership Memo)
 Virginia Erosion and Stormwater Management Regulation
 9VAC25-875**

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Exempt Action: Final Regulation Agency Background Document

Agency name	State Water Control Board
Virginia Administrative Code (VAC) Chapter citation(s)	9 VAC 25-840 (repeal); 9 VAC 25-850 (repeal); 9 VAC 25-870 (repeal); 9VAC25-875 (new)
VAC Chapter title(s)	Erosion and Sediment Control Regulations (repeal); Erosion and Sediment Control and Stormwater Management Certification Regulations (repeal); Virginia Stormwater Management Program (VSMP) Regulation (repeal); Virginia Erosion and Stormwater Management Regulation (new)
Action title	Consolidation of Virginia Erosion Control and Stormwater Management Programs
Final agency action date	June 22, 2023
Date this document prepared	May 15, 2023

This information is required for executive branch review pursuant to Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19. In addition, this information is required by the Virginia Registrar of Regulations pursuant to the Virginia Register Act (§ 2.2-4100 et seq. of the Code of Virginia). Regulations must conform to the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Brief Summary

Provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.

This regulatory action consolidates 9VAC25-840 (Erosion and Sediment Control Regulations), 9VAC25-850 (Erosion and Sediment Control and Stormwater Certification Regulations), and 9VAC25-870 (Virginia Stormwater Management Program Regulations) into a single regulatory chapter, the Virginia Erosion and Stormwater Management Regulation (9VAC25-875). Through consolidating these three chapters, the new regulation clarifies program requirements, eliminates redundancies, and corrects inconsistencies between erosion and sediment control regulations and stormwater management program regulations. No

substantive changes to existing erosion and sediment control minimum standards or to the post-construction stormwater management technical criteria are part of this regulatory action.

As a result of the creation of Chapter 875, this action also repeals Chapters 840, 850, and 870.

Acronyms and Definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.

Consolidation Bill: Chapters 758 and 68 of the 2016 Acts of Assembly (House Bill 1250, Senate Bill 673)

CGP: General VPDES Permit for Discharges of Stormwater from Construction Activities

DEQ (or Department): Department of Environmental Quality

EPA (U.S. EPA): United States Environmental Protection Agency

ESCL: Erosion and Sediment Control Law for Localities Not Administering a Virginia Erosion and Stormwater Management Program, Code of Virginia § 62.1-44.15:51 et seq.

NPDES: National Pollutant Discharge Elimination System

USC: United States Code

VAC: Virginia Administrative Code

VESCH: Virginia Erosion and Sediment Control Handbook

VESCP: Virginia Erosion and Sediment Control Program

VESMA: Virginia Erosion and Stormwater Management Act, Code of Virginia § 62.1-44.15:24 et seq.

VESMP: Virginia Erosion and Stormwater Management Program

VPDES: Virginia Pollutant Discharge Elimination System

VSMH: Virginia Stormwater Management Handbook

VSMP: Virginia Stormwater Management Program

Mandate and Impetus

Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, internal staff review, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, "mandate" has the same meaning as defined in the ORM procedures, "a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part."

Chapters 758 and 68 of the 2016 Acts of Assembly (House Bill 1250 and Senate Bill 673, the "Consolidation Bill") amend the existing Stormwater Management Act and Virginia Erosion and Sediment Control Law to create the Virginia Erosion and Stormwater Management Act (VESMA) and Erosion and Sediment Control Law for Localities Not Administering a Virginia Erosion and Stormwater Management Program (ESCL). The VESMA combines erosion and sediment control program requirements and stormwater management program requirements into one program for localities that will be required or choose to administer a Virginia Erosion and Stormwater Management Program (VESMP). The ninth enactment in the Consolidation Bill directs the State Water Control Board (the Board) to adopt regulations to implement the requirements of the acts. Consistent with the Notice of Regulatory Action, the Virginia Erosion and Stormwater Management Regulation (9VAC25-875) consolidates and clarifies program requirements, eliminate redundancies, and correct inconsistencies between the Erosion and Sediment Control Regulations (9VAC25-840) and the Virginia Stormwater Management Program (VSMP) Regulation (9VAC25-870).

Statement of Final Agency Action

Provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) the name of the agency taking the action; and 3) the title of the regulation.

On June 22, 2023, the State Water Control Board adopted the Virginia Erosion and Stormwater Management Regulation (9VAC25-875) as final regulations with an effective date of July 1, 2024, and repealed the current Erosion and Sediment Control Regulations (9VAC25-840); Erosion and Sediment Control and Stormwater Certification Regulations (9VAC25-850); and Virginia Stormwater Management Program Regulation (9VAC25-870) effective July 1, 2024, and affirmed that the Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration and revision.

Periodic Review and Small Business Impact Review Report of Findings

If you are using this form to report the result of a periodic review/small business impact review that is being conducted as part of this regulatory action, and was announced during the NOIRA stage, indicate whether the regulatory change meets the criteria set out in EO 19 and the ORM procedures, e.g., is necessary for the protection of public health, safety, and welfare; minimizes the economic impact on small businesses consistent with the stated objectives of applicable law; and is clearly written and easily understandable. In addition, as required by § 2.2-4007.1 E and F of the Code of Virginia, discuss the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation. Also, discuss why the agency's decision, consistent with applicable law, will minimize the economic impact of regulations on small businesses.

(1) The content of the stormwater regulations continues to be needed. The regulations address stormwater management requirements that are necessary to protect the health and safety of citizens of the Commonwealth. The Board initiated this regulatory action at the direction of the Virginia General Assembly to consolidate and clarify program requirements, eliminate redundancies, and correct inconsistencies between the erosion and sediment control and stormwater management program regulations.

(2) The comments received on the NOIRA for this action focused primarily on suggestions for how the consolidated regulation should be organized and considering updates to make defined terms and program requirements clearer. Additional comments were received about specific technical requirements, but those comments are outside of the scope of this action. No comments were submitted that raised concerns that this action would create additional burdens on small businesses or the regulated community.

(3) This regulation reflects the complex nature of the stormwater and erosion and sediment control laws, which create three types of oversight (VESMP, VSMP, and VESCP authorities) and combine elements of the erosion and sediment control program, which originated under the Soil Conservation Districts Law in 1973, and the stormwater management program which became law in 1989 and is based, in part, on federal requirements in the Clean Water Act. This regulatory action is a result of the Consolidation Bill and, through the promulgation of Chapter 875, and repeal of Chapters 840, 850, and 870, the department attempted to alleviate some of the complexity in the regulatory programs by organizing Chapter 875 into separate parts that allow regulated parties to access only the parts of the regulation that apply to them. Of

potential value to small businesses, Chapter 875 separates the technical criteria that apply to owners and operators into Part V of the regulation. These provisions had previously been intermixed with requirements applying to local authorities. This should make the regulation easier to use and bring greater clarity about what is required.

(4) These regulations do not overlap, duplicate, or conflict with state or federal laws or regulations. The existing regulations did cause confusion concerning requirements of the erosion and sediment control requirements and stormwater management program requirements. The consolidated regulation provides a single state regulation for the regulated community to reference to comply with erosion and sediment control and stormwater management program requirements.

(5) This regulation was last updated in 2022 to implement legislative changes. The content of this regulation is being reorganized into a single chapter to locate all requirements related to erosion and sediment control and stormwater management into a single regulation. Through consolidation of the three chapters, the new regulation clarifies program requirements, eliminates redundancies, and corrects inconsistencies between erosion and sediment control regulations and stormwater management program regulations. No substantive changes to existing erosion and sediment control minimum standards or to the post-construction stormwater management technical criteria are part of this regulatory action. As such, this regulatory action should have minimal economic impact on small businesses.

Public Comment

Summarize all comments received during the NOIRA public comment period following the publication of the previous stage, and provide the agency's response. Include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. If no comment was received, enter a specific statement to that effect.

Commenter	Comment	Agency response
David Nunally, Caroline County	Focus on the WIP III 2025 target date, so that we can focus on achieving results rather than dealing with constant changes.	Chapter 875 will become effective on July 1, 2024, which is ahead of the WIP III 2025 target date.
	Propose regulations that facilitate water quality improvement projects to reduce pollution versus BMPs to offsite [sic] increased pollutant loads from new development.	BMP development and enhancements are out of the scope of this regulatory update; however, the department is in the process of updating the non-proprietary BMP specifications in the Virginia BMP Clearinghouse.
	Caroline County has drafted a consolidated ordinance-type document following basic program functions and recommends considering this organization for the final regulations: administration, plan review and approval, inspection, and enforcement.	The department considered multiple organization strategies during the regulatory process. Chapter 875 organizes the parts of the regulation around the most likely end user for each part (ex., VESMP authority, VESCP authority, regulated community, etc.).
	The County requests that the regulations allow for "local option or alternatives that would best serve	Wherever possible, the department preserved discretion for local authorities to

	each locality." Examples of "SWM-lite" and alternative ESC inspection program were provided.	organize and run their programs in a way that works best for them.
	The County requests clarification on "agricultural buildings, roads, and engineering practices (ESC vs SWM), buffer requirements (CBPA vs CGP stream buffers statewide), wetland permits (VWP vs USACOE), and a clear "lead" authority for erosion control on construction projects."	The department resolved conflicts and contradictions that existed between the erosion and sediment control and stormwater management programs, to the extent possible. However, substantive changes to the definitions, buffer requirements, and other existing regulatory requirements that are not in the VESMA or ESCL are beyond the scope of this regulatory action. The department may issue guidance, consistent with requirements in the Administrative Process Act, to provide further clarification about the issues identified in this comment.
Chris Swanson, VDOT	The RAP should clarify the requirements of projects operating under standards and specifications. Specific elements should include identifying and eliminating redundancies and or conflicting provisions for construction inspection and addressing more stringent local criteria.	The final regulation clarifies the standards and specifications by organizing standards and specifications program by compiling program requirements into its own regulatory part. In addition, throughout the regulation, the department sought to eliminate redundancies and conflicting provisions wherever possible.
	The RAP should clarify the definition and requirements for routine maintenance as it relates to coverage under the VPDES General Permit for discharges of stormwater from construction activities (CGP or state general permit).	The final regulation addresses the issue of conflicting definitions by creating one definitions section that applies to the entire Chapter 875. Where a word or term has a meaning that is unique to a specific part, it is defined in a definitions section for that part. Additional definitions and requirements are in the regulation for the CGP, 9VAC25-880.
Richard Jacobs, Culpeper Soil and Water Conservation District	There has been a tendencies [sic] to apply VESCP criteria to VSMP. For instance the 2- and 10-year channel criteria was intended for temporary drainage structures used only during the construction phase of a project. Stormwater management facilities and permanent drainage ditches should be designed on their expected life span (i.e. 10-year design storm for velocity and capacity).	The final regulation addresses this issue by organizing Chapter 875 into parts and articles that clearly delineate between erosion and sediment control and stormwater management requirements.
	The VESCH desperately needs to be updated. Sediment Basins and Trap designs need to be updated to include the many configurations and stormwater facility conversion.	Updates to the Virginia Erosion and Sediment Control Handbook (VESCH, 1992) and Virginia Stormwater Management Handbook (VSMH, 1999) are outside of the scope of the regulatory action. The

	<p>Seeding specifications should be updated to include soil testing and fertilizing requirements consistent with the Nutrient Management Program. Channel Lining and slope stabilization materials and specifications needs clarification. Channel design needs to be improved.</p>	<p>department is reviewing both handbooks and other manuals and guidance to produce a new Virginia Stormwater Management Handbook.</p>
	<p>The VSMH and the Clearinghouse Specifications needs to be finalized. Having two different sets of specifications make [sic] no sense. The newer specifications should override the older ones. I hope this NOIRA will address these guidance documents.</p>	<p>VESCH and VSMH updates are outside of the scope of the regulatory action, however, the department is reviewing these items for any needed updates and is in the process of updating the non-proprietary BMP specifications in the Virginia BMP Clearinghouse.</p>

Detail of All Changes Proposed in this Regulatory Action

*List all changes proposed in this action and the rationale for the changes. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. * Put an asterisk next to any substantive changes.*

The regulator action includes the repeal of 9VAC25-840 (Erosion and Sediment Control Regulations), 9VAC25-850 (Erosion and Sediment Control and Stormwater Certification Regulations), and 9VAC25-870 (Virginia Stormwater Management Program Regulations).

A new regulation Chapter 875 has been created to consolidate and clarify program requirements, eliminate redundancies, and correct inconsistencies between the erosion and sediment control and stormwater management program regulations.

New chapter-section number, if applicable	Previous chapter-section number(s)	Current requirements in VAC	Change, intent, rationale, and likely impact of updated requirements
9VAC25-875-10	None	None	New section. This section provides clarity about which words and terms apply to which Parts of the regulation. The likely impact is improve navigation of the definition sections in Chapter 875.

<p>9VAC25-875-20</p>	<p>9VAC25-840-10; 9VAC25-850-10; 9VAC25-870-10; and §§ 62.1-44.15:24 & 51 of the Code of Virginia</p>	<p>Definitions.</p>	<p>This section combines definitions from Chapter 840, Chapter 870, Chapter 850, and §§ 62.1-44.3, 62.1-44.15:24, and 62.1-44.15:51 of the Code of Virginia that are applicable in all parts of Chapter 875.</p> <p>The following terms have been added or revised to be consistent with the law:</p> <ul style="list-style-type: none"> • “Agreement in lieu of a plan” • “Applicant” • “Erosion impact area” • “Land disturbance” or “land-disturbing activity” • “Land-disturbance approval” • “Municipal separate storm sewer system” • “Natural channel design concepts” • “Owner” • “Permit” • “Permittee” • “Soil erosion” • “Soil Erosion Control and Stormwater Management plan” or “plan” • “Virginia Erosion and Sediment Control Program” or “VЕСP” • “Virginia Erosion and Sediment Control Program authority” or “VЕСP authority” • “Virginia Erosion and Stormwater Management Program” or “VЕСMP” • “Virginia Erosion and Stormwater Management Program authority” or “VЕСMP authority” • “Virginia Stormwater Management Program” or “VSMР” • “Virginia Stormwater Management Program authority” or “VSMР authority” • “Water quality technical criteria”
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			<ul style="list-style-type: none"> • “Water quantity technical criteria” <p>The following terms have been removed because they are no longer part of the statute:</p> <ul style="list-style-type: none"> • “Chesapeake Bay Preservation Act land-disturbing activity” • “State permit” <p>The following terms have been added or revised to define terms in the body of the regulation that are new or changed with the statute:</p> <ul style="list-style-type: none"> • “Adequate channel”- Definition from 9VAC25-840-10 has been replaced with the definition from 9VAC25-870-93. This was done to create consistency and eliminate confusion with the use of “watercourse,” which is an undefined term. • “Certified inspector for ESC”- Name of this term altered to create distinction between ESC and SWM. • “Certified inspector for SWM”- Name of this term altered to create distinction between ESC and SWM. • “Certified plan review for ESC”- Name of this term altered to create distinction between ESC and SWM. • “Certified plan review for SWM”- Name of this term altered to create distinction between ESC and SWM. • “Certified program administrator for ESC”- Name of this term altered to create distinction between ESC and SWM. • “Certified program administrator for SWM”- Name of this term altered to create distinction between ESC and SWM. • “Combined administrator for ESC”- altered to account for
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			<p>the ESC component of a VESMP authority.</p> <ul style="list-style-type: none"> • “Combined administrator for SWM”- altered to account for the SWM component of a VESMP authority. • “Dual combined administrator for ESC and SWM”- new definition to account for a single person performing combined duties for a VESMP authority. • “Erosion and Sediment Control Law for Localities Not Administering a Virginia Erosion and Stormwater Management Plan” or “ESCL”- Renames “Erosion and Sediment Control Law” and “ESC act” to reflect changes in statute. • “Inspector”- added to provide clarity. • “Soil Erosion Control and Stormwater Management Plan” or “ESM plan”- added language to clarify that an ESM plan may consist of aspects of an ESC and SWM plan. • “Stormwater management plan”- removed unnecessary reference to agreement in lieu of a plan, as that term is defined elsewhere. • “Virginia Erosion and Stormwater Management Act” or “VESMA”- added to account for the new consolidated statute, which replaces the “Stormwater Management Act.” <p>All other definitions in this section remain unchanged or have minor changes to reflect new citations and references created by the naming and numbering scheme of Chapter 875 and the State Water Control Law.</p>
<p>9VAC25-875-30</p>	<p>9VAC25-870-15</p>	<p>Applicability of incorporated references based on the dates that they became effective.</p>	<p>Updates date of incorporation of federal regulations.</p>

9VAC25-875-40	9VAC25-870-10	Definitions.	<p>This section contains definitions that apply only to Part II of Chapter 875, which lays out the requirements for Virginia Erosion and Stormwater Management Programs.</p> <p>Definitions in this section remain unchanged or have minor changes to reflect new citations and references created by the naming and numbering scheme of Chapter 875 and the State Water Control Law.</p>
9VAC25-875-50	9VAC25-870-20; and 9VAC25-840-20	Purpose.	<p>Change to location and citation of this section due to the consolidation of Chapters 840, 850, and 870 into a new single regulatory chapter.</p> <p>Updates citations and references to reflect naming and numbering schemes in statute and this chapter.</p>
9VAC25-875-60	9VAC25-870-30; and 9VAC25-840-30	Applicability.	<p>Changes to this section simplify the applicability requirements of 9VAC25-870-30.</p> <p>The intent of these changes is to provide a simple guide to users of this regulation about which entities Part II of this chapter applies to.</p>
9VAC25-875-70	§ 62.1-44.15:34 E of the Code of Virginia	Regulated land-disturbing activities.	<p>This is a new section that incorporates the requirements of § 62.1-44.15:34 E of the Code of Virginia, which contains new statutory requirements that apply to land-disturbing activities in Virginia.</p> <p>At the request of TAC members, additional language specifying the circumstances under which an agreement in lieu of a plan may be used for single family detached residential structures was added. The intent of this addition is to add clarity to where agreements in lieu of a plan may be used as a substitute for an erosion and sediment control plan.</p>
9VAC25-875-80	9AVC25-870-103	Requirements for Chesapeake Bay Preservation Act land-disturbing activities.	Change to location and citation of this section due to the consolidation

			<p>of Chapters 840, 850, and 870 into a new single regulatory chapter.</p> <p>Regulatory citations have been updated to reflect the creation of Chapter 875.</p> <p>Change of the phrase “Chesapeake Bay Preservation Act land-disturbing activity” to “land-disturbing activity in a Chesapeake Bay Preservation Area.” This change as made to reflect the removal of “Chesapeake Bay Preservation Act land-disturbing activity” as a defined term in the VESMA. This update is not anticipated to have an impact on regulated entities.</p>
9VAC25-875-90	§§ 62.1-44.15:34 F and G of the Code of Virginia	Activities not required to comply with the VESMA.	New regulatory section created to incorporate new statutory language created by Chapters 758 and 68 of the 2016 Acts of Assembly. The impact of this update is to detail activities that are not required to comply with VESMA unless otherwise required by federal law.
9VAC25-875-100	<p>9VAC25-870-104;</p> <p>9AVC25-870-106;</p> <p>§ 62.1-44.15:26.1 of the Code of Virginia; and</p> <p>§ 62.1-44.15:27 H of the Code of Virginia</p>	<p>Criteria for programs operated by a VSMP authority; and</p> <p>Additional requirements for VSMP authorities.</p>	<p>Changes were made to this section to combine the requirements of 9VAC25-870-104, 9VAC25-870-106, and §§ 62.1-44.15:26.1 and 62.1-44.15:27 H of the Code of Virginia into a single regulatory section.</p> <p>This new section provides a comprehensive list of the criteria required for erosion and stormwater management programs operated by a VESMP authority.</p>
9AVC25-875-110	<p>9VAC25-870-108;</p> <p>§ 62.1-44.15:34 of the Code of Virginia;</p> <p>§ 62.1-44.15:35 D of</p>	Stormwater management plan review.	This section in Chapter 875 replaces 9VAC25-870-108 with statutory language from §§ 62.1-44.15:34, 62.1-44.15:35 D, and 62.1-44.15:50 of the Code of Virginia. This makes the new plan review requirements section compliant with new statutory language and provides a more comprehensive breakdown of

	<p>the Code of Virginia; and</p> <p>§ 62.1-44.15:50 of the Code of Virginia;</p>		<p>requirements than existed in Chapter 870.</p>
9VAC25-875-120	<p>§ 62.1-44.15:27 B 2 of the Code of Virginia; and</p> <p>§ 62.1-44.15:34 A 2 of the Code of Virginia</p>	<p>Plan review coordination with the department.</p>	<p>New regulatory section created to incorporate new statutory language created by Chapters 758 and 68 of the 2016 Acts of Assembly. The impact of this update is to allow VESMP authorities to coordinate the plan review component of their programs with the department.</p>
9VAC25-875-130	9VAC25-870-112	<p>Long-term maintenance of permanent stormwater management facilities.</p>	<p>Change to location and citation of this section due to the consolidation of Chapters 840, 850, and 870 into a new single regulatory chapter.</p> <p>Subsections B and C have been copied from 9VAC25-870-112. The old subsection C from 9VAC25-870-112 has been removed.</p> <p>Subsection A of this new section is new language that was developed in coordination with DPOR to reflect requirements applicable with professional licensing.</p>
9VAC25-875-140	<p>9VAC25-870-114; and</p> <p>9VAC25-840-60</p>	<p>Inspections; and</p> <p>Maintenance and inspections.</p>	<p>Combines the maintenance and inspection sections from 9VAC25-840 and 9VAC25-870 into a single inspections section for VESMP authorities. The intent of this change is to capture the maintenance and inspection requirements from both erosion and sediment control programs and stormwater management programs under a combined erosion and stormwater management program.</p> <p>Regulatory citations are updated to reflect the creation of Chapter 875.</p> <p>References to VESCP authority and VSMP authority are updated to reflect the creation of VESMP authority.</p>

			No changes have been made to the requirements in this section.
9VAC25-875-150	9VAC25-870-116; § 62.1-44.15:48 of the Code of Virginia; and § 62.1-44.15:49 of the Code of Virginia	Enforcement.	Change to location and citation of this section due to the consolidation of Chapters 840, 850, and 870 into a new single regulatory chapter. References to VESCP authority and VSMP authority are updated to reflect the creation of VESMP authority. Removes a subsection detailing maximum penalties and listing types of violations and replaces this language with a citation directly to the Code of Virginia. This change cites to new statutory language that changes the minimum and maximum penalties for violations.
9VAC25-875-160	9VAC25-870-118	Hearings.	Change to location and citation of this section due to the consolidation of Chapters 840, 850, and 870 into a new single regulatory chapter. Updates citations to the Code of Virginia to reflect changes made by Chapters 758 and 68 of the 2016 Acts of Assembly. Changes references to the Stormwater Management Act to the VESMA to reflect the new name for Article 2.3 of the State Water Control Law.
9VAC25-875-170	9VAC25-870-122; and 9VAC25-840-50	Exceptions; and Variances.	Combines the variances section from 9VAC25-840 and exceptions section from 9VAC25-870 into a single variances and exceptions section for VESMP authorities. The intent of this change is to capture the variances and exceptions requirements from both erosion and sediment control programs and stormwater management programs under a combined erosion and stormwater management program. Regulatory citations are updated to reflect the creation of Chapter 875.

			<p>References to VESCP authority and VSMP authority are updated to reflect the creation of VESMP authority.</p> <p>No changes have been made to the requirements in this section.</p>
9VAC25-875-180	<p>9VAC25-870-126; and</p> <p>9VAC25-840-65</p>	<p>Reports and recordkeeping; and</p> <p>Reporting.</p>	<p>Combines the reporting section from 9VAC25-840 and the reports and recordkeeping section from 9VAC25-870 into a single variances and exceptions section for VESMP authorities. The intent of this change is to capture the reporting and recordkeeping requirements from both erosion and sediment control programs and stormwater management programs under a combined erosion and stormwater management program.</p> <p>Regulatory citations are updated to reflect the creation of Chapter 875.</p> <p>References to VESCP authority and VSMP authority are updated to reflect the creation of VESMP authority.</p> <p>No changes have been made to the requirements in this section.</p>
9VAC25-875-190	<p>9VAC25-870-144; and</p> <p>9VAC25-840-90</p>	<p>Virginia stormwater management program review; and</p> <p>Review and evaluation of VESCPs: minimum program standards.</p>	<p>Change to location and citation of these sections due to the consolidation of Chapters 840, 850, and 870 into a new single regulatory chapter.</p> <p>Updates citations to the Code of Virginia to reflect changes made by Chapters 758 and 68 of the 2016 Acts of Assembly.</p> <p>References to VESCP authority and VSMP authority are updated to reflect the creation of VESMP authority.</p> <p>No changes have been made to the requirements in this section.</p>
9VAC25-875-200	§ 62.1-44.15:27.1 of	Criteria for a VSMP.	Incorporates new statutory requirements for the department to administer a VSMP on behalf of

	the Code of Virginia		<p>localities that opt to not adopt a VESMP.</p> <p>New language in this section details the requirements under which the department will administer a VSMP and the schedule for stormwater management plan review and approval.</p>
9VAC25-875-210	9VAC25-840-10	Definitions.	<p>This section contains definitions that apply only to Part III of Chapter 875, which lays out the requirements for Virginia Erosion and Sediment Control Programs.</p> <p>“Agreement-in-lieu of a plan” definition has been updated to incorporate legislative changes from the 2023 General Assembly Session.</p> <p>All other definitions in this section remain unchanged or have minor changes to reflect new citations and references created by the naming and numbering scheme of Chapter 875 and the State Water Control Law.</p>
9VAC25-875-220	9VAC25-870-20; and 9VAC25-840-20	Purpose.	<p>Changes adopt the structure and language of 9VAC25-870-20 while ensuring that the content of 9VAC25-840-20 is maintained and the references are updated to reflect VESCP localities.</p> <p>The intent of these changes are to create consistency in the structure of sections between the VESMP and VESCP parts of the chapter.</p> <p>Language referencing standards and specifications was removed from this section as it is no longer relevant to VESCPs.</p>
9VAC25-875-230	9VAC25-870-30; and 9VAC25-840-30	Applicability.	<p>Changes to this section simplify the applicability requirements of 9VAC25-840-30.</p> <p>The intent of these changes is to provide a simple guide to users of this regulation about which entities Part III of this chapter applies to.</p>

9VAC25-875-240	9VAC25-840-80	Criteria for determining status of land-disturbing activity.	<p>Change to location and citation of this section due to the consolidation of Chapters 840, 850, and 870 into a new single regulatory chapter.</p> <p>Updates citations and references to reflect naming and numbering schemes in statute and this chapter.</p>
9VAC25-875-250	§ 62.1-44.15:34 E of the Code of Virginia	Regulated land-disturbing activities.	<p>Incorporates new statutory requirements from § 62.1-44.15:34 E of the Code of Virginia.</p> <p>New language in this section details the requirements that apply to land-disturbing activities.</p>
9VAC25-857-260	9VAC25-870-103	Requirements for Chesapeake Bay Preservation Act land-disturbing activities.	<p>Change to location and citation of this section due to the consolidation of Chapters 840, 850, and 870 into a new single regulatory chapter.</p> <p>Updates citations and references to reflect naming and numbering schemes in statute and this chapter.</p> <p>Removes language relating to the General VPDES Permit for Discharges of Stormwater from Construction Activities because these permits are not relevant to VESCPs.</p>
9VAC25-875-270	9VAC25-840-100	State agency projects.	<p>Change to location and citation of this section due to the consolidation of Chapters 840, 850, and 870 into a new single regulatory chapter.</p> <p>Updates citations and references to reflect naming and numbering schemes in statute and this chapter.</p> <p>No changes have been made to the requirements in this section.</p>
9VAC25-875-280	§ 62.1-44.15:55 F of the Code of Virginia	Activities not required to comply with the ESCL.	<p>Incorporates new statutory requirements from § 62.1-44.15:55 F of the Code of Virginia.</p> <p>New language in this section details the types of activities that are not required to comply with the requirements VESCP authorities.</p>

9VAC25-875-290	§ 62.1-44.15:54 of the Code of Virginia	Criteria for programs operated by a VESCP authority.	<p>Incorporates new statutory requirements from § 62.1-44.15:54 of the Code of Virginia.</p> <p>New language in this section details the required criteria for programs operated by a VESCP authority.</p> <p>At the request of TAC members, additional language specifying the circumstances under which an agreement in lieu of a plan may be used for single family detached residential structures was added. The intent of this addition is to add clarity to where agreements in lieu of a plan may be used as a substitute for an erosion and sediment control plan.</p> <p>In response to public comment, subsection G has been moved from the technical criteria Part to this section because it is more applicable to VESCPs.</p>
9AVC25-875-300	§ 62.1-44.15:55 of the Code of Virginia	Plan review requirements.	This is a new section incorporating the new statutory language of § 62.1-44.15:55 of the Code of Virginia.
9VAC25-875-310	9VAC25-840-45	Department review of erosion and sediment control plans for solar projects.	<p>Change to location and citation of this section due to the consolidation of Chapters 840, 850, and 870 into a new single regulatory chapter.</p> <p>No changes have been made to the requirements in this section.</p>
9VAC25-875-320	9VAC25-870-58	Responsibility for long-term maintenance of permanent stormwater management facilities.	This section was included in Part III of Chapter 875 to explain the reporting, enforcement, and compliance structure for entities having responsibility for long-term maintenance of stormwater management facilities in localities that operate as a VESCP authority.
9VAC25-875-330	9VAC25-840-60	Maintenance and inspections.	<p>Change to location and citation of this section due to the consolidation of Chapters 840, 850, and 870 into a new single regulatory chapter.</p> <p>No changes have been made to the requirements in this section.</p>

9VAC25-875-340	9VAC25-870-116	Enforcement.	<p>This is a new section for VESCPs that has been added to incorporate enforcement provisions from the ESCL. The structure of this section is based on the existing VSMP enforcement section from 9VAC25-870-116.</p> <p>Changes are made to the language to remove provisions that are not relevant to VESCPs and the statutory citations have been updated to cite the appropriate provisions from ESCL.</p>
9VAC25-875-350	9VAC25-840-50	Variations.	<p>Change to location and citation of this section due to the consolidation of Chapters 840, 850, and 870 into a new single regulatory chapter.</p> <p>No changes have been made to the requirements in this section.</p>
9VAC25-875-360	9VAC25-840-65	Reporting.	<p>Change to location and citation of this section due to the consolidation Chapters 840, 850, and 870 into a new single regulatory chapter.</p> <p>Updates citations and references to reflect naming and numbering schemes in statute and this chapter.</p> <p>No changes have been made to the requirements in this section.</p>
9VAC25-875-370	9VAC25-840-90	Review and evaluation of VESCPs: minimum program standards.	<p>Change to location and citation of this section due to the consolidation Chapters 840, 850, and 870 into a new single regulatory chapter.</p> <p>Updates citations and references to reflect new statutory citations and the new naming and numbering schemes in statute and this chapter.</p> <p>Minor language changes were made to improve clarity and readability, but no requirements were changed, added, or removed from this section.</p>
9VAC25-875-380	9VAC25-850-20	Purpose.	<p>Change to location and citation of this section due to the consolidation</p>

			<p>of Chapters 840, 850, and 870 into a new single regulatory chapter.</p> <p>No changes have been made to the language in this section.</p>
9VAC25-875-390	9VAC25-850-30	Applicability.	<p>Change to location and citation of this section due to the consolidation of Chapters 840, 850, and 870 into a new single regulatory chapter.</p> <p>Local authority references were updated to make clear that staff of a VESCP authority, VSMP authority, or VESMP authority must be certified.</p> <p>Subsection 3 was added to make clear that personnel implementing approved standards and specifications are required to obtain certifications comparable to those of VESMP personnel. This is a current requirement in statute but was not previously a part of the regulations.</p>
9VAC25-875-400	9VAC25-850-40	Certificates.	<p>Change to location and citation of this section due to the consolidation of Chapters 840, 850, and 870 into a new single regulatory chapter.</p> <p>Additional certifications were added to allow for the certification of personnel that carry out duties in the areas of both erosion and sediment control and stormwater management in VESMP localities.</p> <p>Additional language was added to each certification subsection to clarify which personnel are required to obtain which certifications in a VESCP, VSMP, or VESMP authority.</p> <p>Updates citations and references to reflect new statutory citations and the new naming and numbering schemes in statute and this chapter.</p>
9VAC25-875-410	9VAC25-850-50	Eligibility requirements.	<p>Change to location and citation of this section due to the consolidation of Chapters 840, 850, and 870 into a new single regulatory chapter.</p>

			<p>Language was added to account for the additional certifications that may exist in a VESMP authority.</p> <p>Subsection 2 has been shortened and new language has been inserted to clarify that a passing examination score must be obtained within one year of completing a training program.</p> <p>Subsection D was added detail that a responsible land disturber certificate can be obtained and renewed through a department-approved training program.</p> <p>Updates citations and references to reflect new statutory citations and the new naming and numbering schemes in statute and this chapter.</p>
9VAC25-875-420	9VAC25-850-55	Classification acknowledgment for the purposes of program compliance reviews.	<p>Change to location and citation of this section due to the consolidation of Chapters 840, 850, and 870 into a new single regulatory chapter.</p> <p>Updates citations and references to reflect new statutory citations and the new naming and numbering schemes in statute and this chapter.</p> <p>No changes were made to the requirements of this section.</p>
9VAC25-875-430	9VAC25-850-60	Fees.	<p>Change to location and citation of this section due to the consolidation of Chapters 840, 850, and 870 into a new single regulatory chapter.</p> <p>Responsible land disturber certificates were added to the list of certificates requiring a fee to be collected.</p> <p>Language was inserted providing the department discretion to authorize a fee refund.</p>
9VAC25-875-440	9VAC25-850-70	Examination.	<p>This section was changed to reflect that DEQ administers exams through a third party rather than developing and administering exams in house. These changes</p>

			resulted in removing some of the language from this section.
9VAC25-875-460	9VAC25-850-90	Discipline of certified personnel.	<p>Change to location and citation of this section due to the consolidation of Chapters 840, 850, and 870 into a new single regulatory chapter.</p> <p>Updates citations and references to reflect new statutory citations and the new naming and numbering schemes in statute and this chapter.</p> <p>Minor modifications were made in the way the regulation references the individual holding a certification or certificate.</p> <p>No changes to the requirements of the section were made.</p>
9VAC25-875-470	9VAC25-870-53	Applicability.	<p>This section has been expanded to provide greater clarity on the types of land disturbing activities that Article 1 of Part V of Chapter 875 is applicable to.</p> <p>The section was reorganized into subsections A and B to make it easier to read and understand.</p>
9VAC25-875-480	9VAC25-870-47	Applicability of other laws and regulations; time limits on applicability of approved design criteria.	<p>Change to location and citation of this section due to the consolidation of Chapters 840, 850, and 870 into a new single regulatory chapter.</p> <p>Updates citations and references to reflect new statutory citations and the new naming and numbering schemes in statute and this chapter.</p> <p>No changes were made to the requirements of this section.</p>
9VAC25-875-490	9VAC25-870-48	Grandfathering.	<p>Change to location and citation of this section due to the consolidation of Chapters 840, 850, and 870 into a new single regulatory chapter.</p> <p>Updates citations and references to reflect new statutory citations and the new naming and numbering schemes in statute and this chapter.</p>

			No changes were made to the requirements of this section.
9VAC25-875-500	9VAC25-870-54	Stormwater pollution prevention plan requirements.	<p>Change to location and citation of this section due to the consolidation of Chapters 840, 850, and 870 into a new single regulatory chapter.</p> <p>Updates citations and references to reflect new statutory citations and the new naming and numbering schemes in statute and this chapter.</p> <p>No changes were made to the requirements of this section.</p>
9VAC25-875-510	9VAC25-870-55	Stormwater management plans.	<p>Change to location and citation of this section due to the consolidation of Chapters 840, 850, and 870 into a new single regulatory chapter.</p> <p>Updates citations and references to reflect new statutory citations and the new naming and numbering schemes in statute and this chapter.</p> <p>Subsection D of 9VAC25-870-55 has been relocated in the new regulations to the section on long-term maintenance of stormwater management facilities.</p>
9VAC25-875-520	9VAC25-870-56	Pollution prevention plans.	<p>Change to location and citation of this section due to the consolidation Chapters 840, 850, and 870 into a new single regulatory chapter.</p> <p>No changes were made to the requirements of this section.</p>
9VAC25-875-530	9VAC25-870-59; and § 62.1-44.15:34 A of the Code of Virginia	Applying for state permit coverage.	<p>This section copies the language of 9VAC25-870-59 into a new section in Chapter 875.</p> <p>Statutory requirements from § 62.1-44.15:34 A of the Code of Virginia were added to further clarify what must be submitted when applying to permit coverage. This captures changes in statutory language created by Chapters 758 and 68 of the 2016 Acts of Assembly.</p> <p>At the request of TAC members, additional language specifying the</p>

			<p>circumstances under which an agreement in lieu of a plan may be used for single family detached residential structures was added. The intent of this addition is to add clarity to where agreements in lieu of a plan may be used as a substitute for an erosion and sediment control plan.</p>
9VAC25-875-535	9VAC25-870-112	Long-term maintenance of permanent stormwater management facilities.	<p>This section has been copied from 9VAC25-875-130. It contains the same requirements as that section. This was added to Part V of Chapter 875 to help ensure operators understand what must be submitted to a VESMP authority.</p>
9VAC25-875-540	9VAC25-840-30	Scope and applicability.	<p>Change to location and citation of this section due to the consolidation of Chapters 840, 850, and 870 into a new single regulatory chapter.</p> <p>Updates citations and references to reflect new statutory citations and the new naming and numbering schemes in statute and this chapter.</p> <p>In response to public comment, 9VAC25-875-540 A was revised to remove references to specific local authorities. This greatly simplifies the section and makes clear that the minimum standards that operators must meet are applicable in all localities regardless of whether they are a VESMP or VESCP locality.</p>
9VAC25-875-550	9VAC25-840-70; and § 62.1-44.15:55 B of the Code of Virginia.	Developments.	<p>Change to location and citation of this section due to the consolidation of Chapters 840, 850, and 870 into a new single regulatory chapter.</p> <p>Updates citations and references to reflect new statutory citations and the new naming and numbering schemes in statute and this chapter.</p> <p>Subsection A was revised to add language on the contents of an erosion and sediment control plan. This language comes from the definition of erosion and sediment control plan and was added here to</p>

			<p>eliminate the need to refer back to the Definitions section.</p> <p>Subsection B was added to incorporate new statutory language of § 62.1-44.15:55 B of the Code of Virginia.</p>
9VAC25-875-560	9VAC25-840-40	Minimum standards.	<p>Change to location and citation of this section due to the consolidation of Chapters 840, 850, and 870 into a new single regulatory chapter.</p> <p>Updates citations and references to reflect new statutory citations and the new naming and numbering schemes in statute and this chapter.</p> <p>No changes were made to the requirements of this section.</p>
9VAC25-875-570	9VAC25-870-62	Applicability.	<p>Change to location and citation of this section due to the consolidation of Chapters 840, 850, and 870 into a new single regulatory chapter.</p> <p>Updates citations and references to reflect new statutory citations and the new naming and numbering schemes in statute and this chapter.</p> <p>Language that was previously added to account for changes in the board's authority has been removed as it is no longer relevant.</p>
9VAC25-875-580	9VAC25-870-63	Water quality design criteria requirements.	<p>Change to location and citation of this section due to the consolidation of Chapters 840, 850, and 870 into a new single regulatory chapter.</p> <p>Updates citations and references to reflect new statutory citations and the new naming and numbering schemes in statute and this chapter.</p> <p>The requirement in 9VAC25-870-63 C that the department review water quality design criteria after completion of the 2017 Chesapeake Bay Phase III Watershed Implementation Plan was removed. This requirement is no longer relevant since the deadline has passed.</p>

9VAC25-875-590	9VAC25-870-65	Water quality compliance.	<p>Change to location and citation of this section due to the consolidation of Chapters 840, 850, and 870 into a new single regulatory chapter.</p> <p>Updates citations and references to reflect new statutory citations and the new naming and numbering schemes in statute and this chapter.</p> <p>No changes were made to the requirements of this section.</p>
9VAC25-875-600	9VAC25-870-66	Water quantity.	<p>Change to location and citation of this section due to the consolidation of Chapters 840, 850, and 870 into a new single regulatory chapter.</p> <p>Updates citations and references to reflect new statutory citations and the new naming and numbering schemes in statute and this chapter.</p> <p>No changes were made to the requirements of this section.</p>
9VAC25-875-610	9VAC25-870-69; and § 62.1-44.15:35 of the Code of Virginia	Offsite compliance options.	<p>This change replaces the offsite compliance options section of Chapter 870 with new statutory language detailing the use of offsite compliance options.</p> <p>This language was added to the regulation to make it easier for operators to find the necessary information.</p>
9AVC25-875-620	9VAC25-870-72	Design storms and hydrologic methods.	<p>Change to location and citation of this section due to the consolidation of Chapters 840, 850, and 870 into a new single regulatory chapter.</p> <p>Updates citations and references to reflect new statutory citations and the new naming and numbering schemes in statute and this chapter.</p> <p>No changes were made to the requirements of this section.</p>
9AVC25-875-630	9VAC25-870-74	Stormwater harvesting.	<p>Change to location and citation of this section due to the consolidation of Chapters 840, 850, and 870 into a new single regulatory chapter.</p>

			No changes were made to the requirements of this section.
9AVC25-875-640	9VAC25-870-76	Linear development projects.	Change to location and citation of this section due to the consolidation of Chapters 840, 850, and 870 into a new single regulatory chapter. No changes were made to the requirements of this section.
9AVC25-875-650	9VAC25-870-85	Stormwater management impoundment structures or facilities.	Change to location and citation of this section due to the consolidation of Chapters 840, 850, and 870 into a new single regulatory chapter. Updates citations and references to reflect new statutory citations and the new naming and numbering schemes in statute and this chapter. No changes were made to the requirements of this section.
9AVC25-875-660	9VAC25-870-92	Comprehensive stormwater management plans.	Change to location and citation of this section due to the consolidation of Chapters 840, 850, and 870 into a new single regulatory chapter. Updates citations and references to reflect new statutory citations and the new naming and numbering schemes in statute and this chapter. No changes were made to the requirements of this section.
9VAC25-875-670	9VAC25-870-93	Definitions.	This section contains definitions that apply only to Article IV of Part II of Chapter 875, which lays out the requirements for water quantity and water quality technical criteria for grandfathered projects and time limits of applicability projects. Definitions in this section remain unchanged or have minor changes to reflect new citations and references created by the naming and numbering scheme of Chapter 875 and the State Water Control Law.

9AVC25-875-680	9VAC25-870-94	Applicability.	<p>Change to location and citation of this section due to the consolidation of Chapters 840, 850, and 870 into a new single regulatory chapter.</p> <p>Updates citations and references to reflect new statutory citations and the new naming and numbering schemes in statute and this chapter.</p> <p>No changes were made to the requirements of this section.</p>
9AVC25-875-690	9VAC25-870-95	General.	<p>Change to location and citation of this section due to the consolidation of Chapters 840, 850, and 870 into a new single regulatory chapter.</p> <p>Updates citations and references to reflect new statutory citations and the new naming and numbering schemes in statute and this chapter.</p> <p>No changes were made to the requirements of this section.</p>
9AVC25-875-700	9VAC25-870-96	Water quality.	<p>Change to location and citation of this section due to the consolidation of Chapters 840, 850, and 870 into a new single regulatory chapter.</p> <p>Updates citations and references to reflect new statutory citations and the new naming and numbering schemes in statute and this chapter.</p> <p>Subsection E was added to this section to capture the newly created section 9VAC25-875-610, which outlines the use of offsite nutrient credits.</p>
9AVC25-875-710	9VAC25-870-97	Stream channel erosion.	<p>Change to location and citation of this section due to the consolidation of Chapters 840, 850, and 870 into a new single regulatory chapter.</p> <p>Updates citations and references to reflect new statutory citations and the new naming and numbering schemes in statute and this chapter.</p> <p>No changes were made to the requirements of this section.</p>

9AVC25-875-720	9VAC25-870-98	Flooding.	<p>Change to location and citation of this section due to the consolidation of Chapters 840, 850, and 870 into a new single regulatory chapter.</p> <p>Updates citations and references to reflect new statutory citations and the new naming and numbering schemes in statute and this chapter.</p> <p>No changes were made to the requirements of this section.</p>
9AVC25-875-730	9VAC25-870-99	Regional (watershed-wide) stormwater management plans.	<p>Change to location and citation of this section due to the consolidation of Chapters 840, 850, and 870 into a new single regulatory chapter.</p> <p>Updates citations and references to reflect new statutory citations and the new naming and numbering schemes in statute and this chapter.</p> <p>No changes were made to the requirements of this section.</p>
9VAC25-875-740	9VAC25-870-51	Chesapeake Bay Preservation Act land-disturbing activity.	<p>Change to location and citation of this section due to the consolidation of Chapters 840, 850, and 870 into a new single regulatory chapter.</p> <p>Updates citations and references to reflect new statutory citations and the new naming and numbering schemes in statute and this chapter.</p> <p>No changes were made to the requirements of this section.</p>
9VAC25-875-750	9VAC25-870-52; and § 62.1-44.15:27.2 of the Code of Virginia	Chesapeake Bay Preservation Act land-disturbing activities in rural Tidewater localities.	<p>Change to location and citation of this section due to the consolidation of Chapters 840, 850, and 870 into a new single regulatory chapter.</p> <p>Updates citations and references to reflect new statutory citations and the new naming and numbering schemes in statute and this chapter.</p> <p>Adds statutory language from and cites to § 62.1-44.15:27.2 of the Code of Virginia, which provides the requirements for a locality that elects to use tiered water quantity control standards.</p>

<p>9VAC25-875-760</p>	<p>§ 62.1-44.15:34 of the Code of Virginia</p>	<p>Soil erosion control and stormwater management for land-disturbing activities.</p>	<p>This is a newly created section that incorporates the statutory language of § 62.1-44.15:34 A 3 of the Code of Virginia. This stipulates the requirements for state agencies and federal entities to submit soil erosion control and stormwater management plans.</p> <p>The language of this section is taken directly from code.</p>
<p>9VAC25-875-770</p>	<p>9VAC25-840-100</p>	<p>State agency projects.</p>	<p>Change to location and citation of this section due to the consolidation of Chapters 840, 850, and 870 into a new single regulatory chapter.</p> <p>Updates citations and references to reflect new statutory citations and the new naming and numbering schemes in statute and this chapter.</p> <p>No changes were made to the requirements of this section.</p>
<p>9VAC25-875-780</p>	<p>9VAC25-870-180</p>	<p>Administrative procedures: stormwater management permit applications.</p>	<p>Change to location and citation of this section due to the consolidation of Chapters 840, 850, and 870 into a new single regulatory chapter.</p> <p>Updates citations and references to reflect new statutory citations and the new naming and numbering schemes in statute and this chapter.</p> <p>Subsection A from 9VAC25-870-180 has been removed from this section in Chapter 875. This subsection was removed because it is no longer applicable in Part V of Chapter 875.</p>
<p>9VAC25-875-790</p>	<p>9VAC25-870-200</p>	<p>Administrative procedures: maintenance and inspections.</p>	<p>Change to location and citation of this section due to the consolidation of Chapters 840, 850, and 870 into a new single regulatory chapter.</p> <p>No changes were made to the requirements of this section.</p>
<p>9VAC25-875-800</p>	<p>9VAC25-870-210</p>	<p>Reporting on stormwater management.</p>	<p>Change to location and citation of this section due to the consolidation of Chapters 840, 850, and 870 into a new single regulatory chapter.</p>

			<p>Updates citations and references to reflect new statutory citations and the new naming and numbering schemes in statute and this chapter.</p> <p>No changes were made to the requirements of this section.</p>
9VAC25-875-810	<p>9VAC25-870-160; and</p> <p>§ 62.1-44.15:34 A 3 b of the Code of Virginia</p>	Technical criteria and requirements for state projects.	The language in this section has been changed to comply with new statutory language in § 62.1-44.15:34 A 3 of the Code of Virginia.
9VAC25-875-820	None	Applicability.	This is a new section created by the department to clarify the entities to which Part VI of Chapter 875 applies.
9VAC25-875-830	§ 62.1-44.15:31 of the Code of Virginia	Standards and specifications for state agencies, federal entities, and other specified entities.	This is a new section that was created to incorporate new statutory language from § 62.1-44.15:31 of the Code of Virginia. The language of this section is taken directly from statute.
9VAC25-875-850	9VAC25-870-10	Definitions.	<p>This section contains definitions that apply on to Part VII of Chapter 875, which lays out the requirements for Virginia Pollutant Discharge Elimination System (VPDES) Permits.</p> <p>Definitions in this section remain unchanged or have minor changes to reflect new citations and references created by the naming and numbering scheme of Chapter 875 and the State Water Control Law.</p>
9AVC25-875-860	9VAC25-870-300	Exclusions.	<p>Change to location and citation of this section due to the consolidation of Chapters 840, 850, and 870 into a new single regulatory chapter.</p> <p>No changes were made to the language or requirements of this section.</p>
9AVC25-875-870	9VAC25-870-310	Prohibitions.	Change to location and citation of this section due to the consolidation

			<p>of Chapters 840, 850, and 870 into a new single regulatory chapter.</p> <p>Updates citations and references to reflect new regulatory citations and the new naming and numbering schemes in statute and this chapter.</p> <p>No changes were made to the requirements of this section.</p>
9AVC25-875-880	9VAC25-870-320	Effect of a state permit.	<p>Change to location and citation of this section due to the consolidation of Chapters 840, 850, and 870 into a new single regulatory chapter.</p> <p>Updates references to reflect the new naming and numbering schemes in statute and this chapter.</p> <p>No changes were made to the requirements of this section.</p>
9AVC25-875-890	9VAC25-870-330	Continuation of expiring state permits.	<p>Change to location and citation of this section due to the consolidation of Chapters 840, 850, and 870 into a new single regulatory chapter.</p> <p>No changes were made to the requirements of this section.</p>
9AVC25-875-900	9VAC25-870-340	Confidentiality of information.	<p>Change to location and citation of this section due to the consolidation of Chapters 840, 850, and 870 into a new single regulatory chapter.</p> <p>No changes were made to the requirements of this section.</p>
9AVC25-875-910	9VAC25-870-350	Guidance documents.	<p>Change to location and citation of this section due to the consolidation of Chapters 840, 850, and 870 into a new single regulatory chapter.</p> <p>Updates references to reflect the new naming and numbering schemes in statute and this chapter.</p> <p>No changes were made to the requirements of this section.</p>
9AVC25-875-920	9VAC25-870-360	Application for a state permit.	<p>Change to location and citation of this section due to the consolidation of Chapters 840, 850, and 870 into a new single regulatory chapter.</p>

			No changes were made to the requirements of this section.
9AVC25-875-930	9VAC25-870-365	Permit rationale.	Change to location and citation of this section due to the consolidation of Chapters 840, 850, and 870 into a new single regulatory chapter. No changes were made to the requirements of this section.
9AVC25-875-940	9VAC25-870-370	Signatories to state permit applications and reports.	Change to location and citation of this section due to the consolidation of Chapters 840, 850, and 870 into a new single regulatory chapter. No changes were made to the requirements of this section.
9AVC25-875-950	9VAC25-870-380	Stormwater discharges.	Change to location and citation of this section due to the consolidation of Chapters 840, 850, and 870 into a new single regulatory chapter. No changes were made to the requirements of this section.
9AVC25-875-960	9VAC25-870-390	Effluent sampling procedures.	Change to location and citation of this section due to the consolidation of Chapters 840, 850, and 870 into a new single regulatory chapter. Updates references and citations to reflect the new naming and numbering schemes in statute and this chapter. No changes were made to the requirements of this section.
9AVC25-875-970	9VAC25-870-400	Small municipal separate storm sewer systems.	Change to location and citation of this section due to the consolidation of Chapters 840, 850, and 870 into a new single regulatory chapter. Updates references and citations to reflect the new naming and numbering schemes in statute and this chapter. No changes were made to the requirements of this section.

9AVC25-875-980	9VAC25-870-410	General permits.	<p>Change to location and citation of this section due to the consolidation of Chapters 840, 850, and 870 into a new single regulatory chapter.</p> <p>Updates references and citations to reflect the new naming and numbering schemes in statute and this chapter.</p> <p>No changes were made to the requirements of this section.</p>
9AVC25-875-990	9VAC25-870-420	New sources and new discharges.	<p>Change to location and citation of this section due to the consolidation of Chapters 840, 850, and 870 into a new single regulatory chapter.</p> <p>Updates references and citations to reflect the new naming and numbering schemes in statute and this chapter.</p> <p>No changes were made to the requirements of this section.</p>
9VAC25-875-1000	9VAC25-870-430	Conditions applicable to all state permits.	<p>Change to location and citation of this section due to the consolidation of Chapters 840, 850, and 870 into a new single regulatory chapter.</p> <p>Updates references and citations to reflect the new naming and numbering schemes in statute and this chapter.</p> <p>No changes were made to the requirements of this section.</p>
9VAC25-875-1010	9VAC25-870-440	Additional conditions applicable to municipal separate storm sewer state permits.	<p>Change to location and citation of this section due to the consolidation of Chapters 840, 850, and 870 into a new single regulatory chapter.</p> <p>Updates references and citations to reflect the new naming and numbering schemes in statute and this chapter.</p> <p>No changes were made to the requirements of this section.</p>
9VAC25-875-1020	9VAC25-870-450	Establishing state permits.	<p>Change to location and citation of this section due to the consolidation</p>

			<p>of Chapters 840, 850, and 870 into a new single regulatory chapter.</p> <p>Updates references and citations to reflect the new naming and numbering schemes in statute and this chapter.</p> <p>No changes were made to the requirements of this section.</p>
9VAC25-875-1030	9VAC25-870-460	Establishing limitations, standards, and other state permit conditions.	<p>Change to location and citation of this section due to the consolidation of Chapters 840, 850, and 870 into a new single regulatory chapter.</p> <p>Updates references and citations to reflect the new naming and numbering schemes in statute and this chapter.</p> <p>No changes were made to the requirements of this section.</p>
9VAC25-875-1040	9VAC25-870-470	Calculating state permit conditions.	<p>Change to location and citation of this section due to the consolidation of Chapters 840, 850, and 870 into a new single regulatory chapter.</p> <p>Updates references and citations to reflect the new naming and numbering schemes in statute and this chapter.</p> <p>No changes were made to the requirements of this section.</p>
9VAC25-875-1050	9VAC25-870-480	Duration of state permits.	<p>Change to location and citation of this section due to the consolidation of Chapters 840, 850, and 870 into a new single regulatory chapter.</p> <p>Updates references and citations to reflect the new naming and numbering schemes in statute and this chapter.</p> <p>No changes were made to the requirements of this section.</p>
9VAC25-875-1060	9VAC25-870-490	Schedules of compliance.	<p>Change to location and citation of this section due to the consolidation of Chapters 840, 850, and 870 into a new single regulatory chapter.</p>

			<p>Updates references and citations to reflect the new naming and numbering schemes in statute and this chapter.</p> <p>No changes were made to the requirements of this section.</p>
9VAC25-875-1070	9VAC25-870-500	Draft state permits.	<p>Change to location and citation of this section due to the consolidation of Chapters 840, 850, and 870 into a new single regulatory chapter.</p> <p>Updates references and citations to reflect the new naming and numbering schemes in statute and this chapter.</p> <p>No changes were made to the requirements of this section.</p>
9VAC25-875-1080	9VAC25-870-510	Statement of basis.	<p>Change to location and citation of this section due to the consolidation of Chapters 840, 850, and 870 into a new single regulatory chapter.</p> <p>Updates references and citations to reflect the new naming and numbering schemes in statute and this chapter.</p> <p>No changes were made to the requirements of this section.</p>
9VAC25-875-1090	9VAC25-870-520	Fact sheet.	<p>Change to location and citation of this section due to the consolidation of Chapters 840, 850, and 870 into a new single regulatory chapter.</p> <p>Updates references and citations to reflect the new naming and numbering schemes in statute and this chapter.</p> <p>No changes were made to the requirements of this section.</p>
9VAC25-875-1100	9VAC25-870-530	Public notice of draft state permit actions and public comment period.	<p>Change to location and citation of this section due to the consolidation of Chapters 840, 850, and 870 into a new single regulatory chapter.</p> <p>Updates references and citations to reflect the new naming and</p>

			<p>numbering schemes in statute and this chapter.</p> <p>No changes were made to the requirements of this section.</p>
9VAC25-875-1110	9VAC25-870-540	Public comments and requests for public hearings.	<p>Change to location and citation of this section due to the consolidation of Chapters 840, 850, and 870 into a new single regulatory chapter.</p> <p>Updates references and citations to reflect the new naming and numbering schemes in statute and this chapter.</p> <p>No changes were made to the requirements of this section.</p>
9VAC25-875-1120	9VAC25-870-550	Public hearings.	<p>Change to location and citation of this section due to the consolidation of Chapters 840, 850, and 870 into a new single regulatory chapter.</p> <p>Updates references and citations to reflect the new naming and numbering schemes in statute and this chapter.</p> <p>No changes were made to the requirements of this section.</p>
9VAC25-875-1130	9VAC25-870-555	Criteria for requesting and granting a public hearing in a permit action.	<p>Change to location and citation of this section due to the consolidation of Chapters 840, 850, and 870 into a new single regulatory chapter.</p> <p>Updates references and citations to reflect the new naming and numbering schemes in statute and this chapter.</p> <p>No changes were made to the requirements of this section.</p>
9VAC25-875-1140	9VAC25-870-556	Controversial permits.	<p>Change to location and citation of this section due to the consolidation of Chapters 840, 850, and 870 into a new single regulatory chapter.</p> <p>No changes were made to the requirements of this section.</p>
9VAC25-875-1150	9VAC25-870-557	Controversial permits reporting.	<p>Change to location and citation of this section due to the consolidation</p>

			<p>of Chapters 840, 850, and 870 into a new single regulatory chapter.</p> <p>No changes were made to the requirements of this section.</p>
9VAC25-875-1160	9VAC25-870-560	Response to comments.	<p>Change to location and citation of this section due to the consolidation of Chapters 840, 850, and 870 into a new single regulatory chapter.</p> <p>No changes were made to the requirements of this section.</p>
9VAC25-875-1170	9VAC25-870-570	Conditions requested by the Corps of Engineers and other government agencies.	<p>Change to location and citation of this section due to the consolidation of Chapters 840, 850, and 870 into a new single regulatory chapter.</p> <p>Updates references and citations to reflect the new naming and numbering schemes in statute and this chapter.</p> <p>No changes were made to the requirements of this section.</p>
9VAC25-875-1180	9VAC25-870-580	Decision on variances.	<p>Change to location and citation of this section due to the consolidation of Chapters 840, 850, and 870 into a new single regulatory chapter.</p> <p>Updates references and citations to reflect the new naming and numbering schemes in statute and this chapter.</p> <p>No changes were made to the requirements of this section.</p>
9VAC25-875-1190	9VAC25-870-590	Appeals of variances.	<p>Change to location and citation of this section due to the consolidation of Chapters 840, 850, and 870 into a new single regulatory chapter.</p> <p>No changes were made to the requirements of this section.</p>
9VAC25-875-1200	9VAC25-870-600	Computation of time.	<p>Change to location and citation of this section due to the consolidation of Chapters 840, 850, and 870 into a new single regulatory chapter.</p> <p>No changes were made to the requirements of this section.</p>

9VAC25-875-1210	9VAC25-870-610	Modification, revocation and reissuance, or termination of state permits.	<p>Change to location and citation of this section due to the consolidation of Chapters 840, 850, and 870 into a new single regulatory chapter.</p> <p>Updates references and citations to reflect the new naming and numbering schemes in statute and this chapter.</p> <p>No changes were made to the requirements of this section.</p>
9VAC25-875-1220	9VAC25-870-620	Transfer of state permits.	<p>Change to location and citation of this section due to the consolidation of Chapters 840, 850, and 870 into a new single regulatory chapter.</p> <p>Updates references and citations to reflect the new naming and numbering schemes in statute and this chapter.</p> <p>No changes were made to the requirements of this section.</p>
9VAC25-875-1230	9VAC25-870-630	Modification or revocation and reissuance of state permits.	<p>Change to location and citation of this section due to the consolidation of Chapters 840, 850, and 870 into a new single regulatory chapter.</p> <p>Updates references and citations to reflect the new naming and numbering schemes in statute and this chapter.</p> <p>No changes were made to the requirements of this section.</p>
9VAC25-875-1240	9VAC25-870-640	Minor modifications of individual state permits.	<p>Change to location and citation of this section due to the consolidation of Chapters 840, 850, and 870 into a new single regulatory chapter.</p> <p>Updates references and citations to reflect the new naming and numbering schemes in statute and this chapter.</p> <p>No changes were made to the requirements of this section.</p>
9VAC25-875-1250	9VAC25-870-650	Termination of state permits.	<p>Change to location and citation of this section due to the consolidation</p>

			<p>of Chapters 840, 850, and 870 into a new single regulatory chapter.</p> <p>Updates references and citations to reflect the new naming and numbering schemes in statute and this chapter.</p> <p>No changes were made to the requirements of this section.</p>
9VAC25-875-1260	9VAC25-870-660	Enforcement.	<p>Change to location and citation of this section due to the consolidation of Chapters 840, 850, and 870 into a new single regulatory chapter.</p> <p>Updates references and citations to reflect the new naming and numbering schemes in statute and this chapter.</p> <p>No changes were made to the requirements of this section.</p>
9VAC25-875-1270	9VAC25-870-680	Transition.	<p>Change to location and citation of this section due to the consolidation of Chapters 840, 850, and 870 into a new single regulatory chapter.</p> <p>Updates references and citations to reflect the new naming and numbering schemes in statute and this chapter.</p> <p>No changes were made to the requirements of this section.</p>
9VAC25-875-1280	9VAC25-31-950 et seq.	Electronic reporting.	<p>This new section was added to Chapter 875 and cites to the corresponding electronic reporting section in Chapter 31. This was done to improve clarity and consistency between regulatory chapters that govern VPDES permits.</p>
9VAC25-875-1290	9VAC25-870-700	Purpose.	<p>Change to location and citation of this section due to the consolidation of Chapters 840, 850, and 870 into a new single regulatory chapter.</p> <p>Updates references and citations to reflect the new naming and numbering schemes in statute and this chapter.</p>

			No changes were made to the requirements of this section.
9VAC25-875-1300	9VAC25-870-720	Authority.	Change to location and citation of this section due to the consolidation of Chapters 840, 850, and 870 into a new single regulatory chapter. No changes were made to the requirements of this section.
9VAC25-875-1310	9VAC25-870-730	Applicability.	Change to location and citation of this section due to the consolidation of Chapters 840, 850, and 870 into a new single regulatory chapter. Updates references and citations to reflect the new naming and numbering schemes in statute and this chapter. No changes were made to the requirements of this section.
9VAC25-875-1320	9VAC25-870-740	Exemptions.	Change to location and citation of this section due to the consolidation of Chapters 840, 850, and 870 into a new single regulatory chapter. Updates references and citations to reflect the new naming and numbering schemes in statute and this chapter. No changes were made to the requirements of this section.
9VAC25-875-1330	9VAC25-870-750	Due dates for state permits.	Change to location and citation of this section due to the consolidation of Chapters 840, 850, and 870 into a new single regulatory chapter. Updates references and citations to reflect the new naming and numbering schemes in statute and this chapter. No changes were made to the requirements of this section.
9VAC25-875-1340	9VAC25-870-760	Method of payment.	Change to location and citation of this section due to the consolidation of Chapters 840, 850, and 870 into a new single regulatory chapter.

			<p>Updates references and citations to reflect the new naming and numbering schemes in statute and this chapter.</p> <p>No changes were made to the requirements of this section.</p>
9VAC25-875-1350	9VAC25-870-770	Incomplete and late payments.	<p>Change to location and citation of this section due to the consolidation of Chapters 840, 850, and 870 into a new single regulatory chapter.</p> <p>Updates references and citations to reflect the new naming and numbering schemes in statute and this chapter.</p> <p>No changes were made to the requirements of this section.</p>
9VAC25-875-1360	9VAC25-870-780	Deposit and use of fees.	<p>Change to location and citation of this section due to the consolidation of Chapters 840, 850, and 870 into a new single regulatory chapter.</p> <p>Updates references and citations to reflect the new naming and numbering schemes in statute and this chapter.</p> <p>No changes were made to the requirements of this section.</p>
9VAC25-875-1370	9VAC25-870-790	General.	<p>Change to location and citation of this section due to the consolidation of Chapters 840, 850, and 870 into a new single regulatory chapter.</p> <p>Subsection B was removed because it is no longer relevant after July 1, 2014.</p>
9VAC25-875-1380	9VAC25-870-800	Fee schedules for municipal separate storm sewer system new state permit issuance.	<p>Change to location and citation of this section due to the consolidation of Chapters 840, 850, and 870 into a new single regulatory chapter.</p> <p>No changes were made to the requirements of this section.</p>
9VAC25-875-1390	9VAC25-870-810	Fee schedules for major modification of MS4 individual	<p>Change to location and citation of this section due to the consolidation</p>

		permits requested by the operator.	<p>of Chapters 840, 850, and 870 into a new single regulatory chapter.</p> <p>No changes were made to the requirements of this section.</p>
9VAC25-875-1400	9VAC25-870-820	Fees for an individual permit or coverage under the General Permit for Discharges of Stormwater from Construction Activities.	<p>Change to location and citation of this section due to the consolidation of Chapters 840, 850, and 870 into a new single regulatory chapter.</p> <p>Updates references and citations to reflect the new naming and numbering schemes in statute and this chapter.</p> <p>References to “Chesapeake Bay Preservation Act land-disturbing activities” were changed to “land-disturbing activities in a Chesapeake Bay Preservation Area.” This was done to reflect the General Assembly’s removal of “Chesapeake Bay Preservation Act land-disturbing activity” as a defined term.</p> <p>The paragraph and fee schedule referencing fees that are applicable until June 30, 2014, was removed because these fees are no longer relevant. Other language in this section reference the July 1, 2014, date was also removed.</p>
9VAC25-875-1410	9VAC25-870-825	Fees for the modification or transfer of individual permits or of registration statements for the General Permit for Discharges of Stormwater from Construction Activities.	<p>Change to location and citation of this section due to the consolidation of Chapters 840, 850, and 870 into a new single regulatory chapter.</p> <p>Updates references and citations to reflect the new naming and numbering schemes in statute and this chapter.</p> <p>No changes were made to the requirements of this section.</p>
9VAC25-875-1420	9VAC25-870-830	State permit maintenance fees.	<p>Change to location and citation of this section due to the consolidation of Chapters 840, 850, and 870 into a new single regulatory chapter.</p> <p>Updates references and citations to reflect the new naming and</p>

			<p>numbering schemes in statute and this chapter.</p> <p>References to “Chesapeake Bay Preservation Act land-disturbing activities” were changed to “land-disturbing activities in a Chesapeake Bay Preservation Area.” This was done to reflect the General Assembly’s removal of “Chesapeake Bay Preservation Act land-disturbing activity” as a defined term.</p> <p>Language stating that no maintenance fee shall be required for a General Permit for Discharge of Stormwater from Construction Activities until approved programs exist was removed.</p>
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Public Comment on Draft regulation

DEQ accepted public comment on the draft Virginia Erosion and Stormwater Management Regulation for 60 days prior to presenting them to the Board for final adoption. Comments were accepted February 8, 2023 through April 10, 2023. Comments received and responses to comments are listed below.

Commenter	Comment	Agency response
Charlie Armstrong	<p>Bond Reduction/Release Provisions:</p> <p>Lines 1315-1317: "9VAC25-875-100 G. A VESMP authority may require, excluding state and federal entities, the submission of a reasonable performance bond or other financial surety and provide for the release of such sureties in accordance with the criteria set forth in § 62.1- 44.15:34 of the Code of Virginia." This section references release of surety bonds per criteria in § 62.1-44.15:34 , but § 62.1-44.15:34 does not have sufficient criteria to define release requirements or procedures. A good model for this procedure can be found in § 15.2-2245 and should be mirrored here.</p>	<p>Thank you for your comment. The suggested changes to be beyond the scope of this regulatory action.</p>
Alan J Stein	<p>I think we should maintain the RGGI to prevent damage from the change in climate. Also, when I go camping during the warm months, I see where livestock are wading in the streams. Where this can be prevented I think it would be beneficial to the quality of the water for fish and recreational use. I not sure what can be done to prevent this and farmers may have an issue with this. I propose they receive assistance to</p>	<p>Thank you for your comment. The suggested changes are beyond the scope of this regulatory action.</p>

	<p>maintain buffers to prevent this and runoff of feces from livestock. This could also reduce health problems and save money in the long run.</p>	
<p>Kelsey Ryan, PE; Gordon</p>	<p>Numbering within 9VAC25-875-560:</p> <p>Thank you for the opportunity to comment on this draft regulation. Our comments are as follows:</p> <ol style="list-style-type: none"> 1. On line 2966, it appears this line numbering should be changed from a (g.) to a (17) to align with current E&S minimum standard 17. 2. On line 2975, it appears this line numbering should be changed from a (h.) to an (18) to align with current E&S minimum standard 18. 3. On line 2981, it appears this line numbering should be changed from an (i.) to a (19) and all subsequent line numbering should be updated accordingly to align with current E&S minimum standard 19. 	<p>Thank you for your comment, the numbering issues in 9VAC25-875-560 have been corrected.</p>
<p>Beatriz Patino, City of Newport News</p>	<p>Water quantity compliance for disturbance greater than 10,000 square feet:</p> <p>The code of Virginia Section 62.1-44.15:34.E.2.a, indicates "Soil erosion control requirements and water quantity technical criteria adopted pursuant to this article shall apply to any activity that disturbs 10,000 square feet or more, although the locality may reduce this regulatory threshold to a smaller area of disturbed land. A plan addressing these requirements shall be submitted to the VESMP authority in accordance with subsection A. This subdivision shall also apply to additions or modifications to existing single-family detached residential structures."</p> <p>If we are interpreting this section correctly, any land disturbance activity greater than 10,000 square feet would require compliance with water quantity criteria (channel and flood protection).</p> <p>The current draft of the regulation "Part V. Criteria and requirements for Regulated Land-Disturbing Activities" line 2464 in particular does not refer to 9VAC25-875-600 but only to 9VAC25-875-560 which might create confusion when interpreting the land disturbance area threshold for water quantity requirements.</p>	<p>Thank you for your comment. The department has addressed each of your comments as follows:</p> <p>Water quantity compliance for disturbance greater than 10,000 square feet:</p> <p>Subsection 1 in 9VAC25-875-70, 9VAC25-875-250, and 9VAC25-470 specifies applicable requirements in Article 2 and Article 3 of Part V of Chapter 875 rather than citing an individual section. This more inclusive reference should clarify that compliance with erosion and sediment control minimum standards and water quality and water quantity requirements is required.</p> <p>Definitions:</p> <p>The department deleted the duplicate definition of "Ten-year storm," clarified the definition of "municipal separate storm sewer system," corrected the definition</p>

	<p>Definitions:</p> <p>"Ten-year storm" definition is duplicated at lines 949 and 971.</p> <p>Line 525: "municipal separate storm sewer" definition appears to be missing the word "System."</p> <p>Line 130: The definition of "certified Plan reviewer for SWM" refers to a "program administrator". Shouldn't this refer to "Plan Reviewer"?</p>	<p>of "certified plan reviewer for SWM."</p>
<p>MacKenzie Bauman, PE, Gordon</p>	<p>9VAC25-875-110:</p> <p>Thank you for the opportunity to comment on the draft regulation. In section 9AVC25-875-110.C.1, the sentence is either missing "VESMP authority" after "by the" or "by the" should be removed.</p> <p><u>C. A VESMP authority shall approve or disapprove an ESM plan according to the following:</u></p> <p><u>1. A VESMP authority shall determine the completeness of any application within 15 days after receipt, and shall act on any application within 60 days after it has been determined by the to be complete.</u></p>	<p>Thank you for your comment. The department corrected the drafting error.</p>
<p>Mike Short, Alex Deuson, Michael Hare; Tetra Tech</p>	<p>ESC and SWM Clarifications:</p> <p>Line 62: Recommend clarifying "watercourse" within the "Adequate channel" definition or create a new definition. The word "watercourse" can be implied as a natural channel in its context of the "Adequate channel" definition; however, the word "adequate" (line 3041) is implied as a man-made channel. Suggest "watercourse" be defined or clarified as a natural channel, man-made channel, or restored channel. The whole document should be reviewed for consistency in definition and context of channels and watercourses to avoid confusion.</p> <p>Lines 2609-2610: Consider specifying a reasonable time period (i.e., 21 days) within which completion of stabilization activities is required. Deferring responsibility for determining when complete stabilization is required to the</p>	<p>Thank you for your comments, the department has addressed each comment as follows:</p> <p><i>"Adequate channel" definition:</i> The department has replaced the 9VAC25-875-20 with the definition originally from 9VAC25-875-670. Doing this replaces the word "watercourse" with the word "channel." "Channel" is a defined term in Chapter 875, which should address any confusion.</p> <p><i>Specify reasonable time period:</i> By imposing a specific timeline on local programs that does not currently exist, this suggested change would be outside of the scope of this regulatory action.</p>

	<p>VESMP Authority produces wide-ranging and arbitrary timeframes, which are often too lenient (lengthy) to adequately protect Commonwealth resources or too strict (short) to enable practicable compliance. Specifying a timeframe for completion of stabilization would both better protect the resources of the Commonwealth and enable the development community to plan and implement required compliance measures.</p> <p>Line 2615: Consider expounding on what makes use of a skimmer device infeasible, i.e., “unless documented as technically infeasible or unreasonably cost prohibitive”.</p> <p>Line 2881: Consider specifying the time period within which completion of stabilization is required.</p> <p>Line 2948: Item 16 should be qualified to state its criteria do NOT apply to underground utility lines installed within the limits of a permitted land disturbance activity otherwise controlled by Department-approved methods. Item 16 contains several requirements which are unreasonable for, and should not apply to, construction sites where the chief land disturbing activity is not the installation of underground utility lines.</p> <p>Lines 2966-3082: Part 25-875-560 contains the erosion and sediment control minimum standards, commonly referred to as MS-19, except that the numbering ceases at Item 16. Beginning on line 2966, Items 17, 18, and 19(a-n) are erroneously listed as a continued subset of Item 16 (specifically, sub-items g-i).</p> <p>Line 3321: Consider modifying item E. to expand the specification of “good hydrologic condition” to include allowable predevelopment cover types. For example, Pennsylvania regulations’ allowable predevelopment cover types are ONLY forested, meadow, and impervious. Doing so would preclude arbitrary assignment of predevelopment cover types by permittees and better align with water quality objectives in the VRRM, which only considers FOS/COS, Turf, and Impervious.</p> <p>Line 3415: Please reconsider the use of the Modified Rational Method for drainage areas of 200 acres or less. Acreage is more limited in other requirements (PWC DCSM – 20 acres), and the method is simplified and less accurate</p>	<p>The department has not made the suggested change.</p> <p><i>Skimmer device:</i> Suggested change is outside the scope of this regulatory action. The department has not made the suggested change.</p> <p><i>Time period for stabilization:</i> Suggested change is outside the scope of this regulatory action. The department has not made the suggested change.</p> <p><i>Minimum standard 16:</i> The suggested change is an update to technical criteria, which is beyond the scope of this regulatory action. The department has not made the suggested change.</p> <p><i>9VAC25-875-560 numbering:</i> The department has corrected the numbering errors in this section.</p> <p><i>Expand “good hydrologic condition”:</i> The suggested change is an update to technical criteria, which is beyond the scope of this regulatory action. The department has not made the suggested change.</p> <p><i>Use of Modified Rational Method:</i> The suggested change is an update to technical criteria, which is beyond the scope of this regulatory action. The department has not made the suggested change.</p> <p><i>Proprietary BMPs for post-construction stormwater management:</i> The suggested change is an update to technical criteria, which is beyond the scope of this regulatory action. The department has not made the suggested change.</p>
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	<p>when determining detention volumes during hydraulic basin routing (Iowa Design Manual 2B-1 limits hydraulic routing to 5 acres).</p> <p>Proprietary BMPs for post-construction stormwater management are discussed; however, they are not discussed for during-construction erosion and sediment control. Recommend a section discussing the use of the expansive (since the 1992 Virginia ESC Handbook was written) industry and research of proprietary erosion and sediment control measures.</p>	
<p>John Friedman, County of Fairfax</p>	<p>Please consider the following comments on the Draft Virginia Erosion and Stormwater Management Regulation, 9VAC25-875. Also note that these are staff comments and do not represent an adopted position of the Fairfax County Board of Supervisors:</p> <p>1) Lines 115-118. In addition to employees and agents of VESCPs, the definition of “Certified inspector for ESC” should include a reference to employees and agents of VESMP authorities because staff of VESMPs perform E&S inspections.</p> <p>2) Lines 124-128. In addition to employees and agents of VESCPs, the definition of “Certified plan reviewer for ESC” should include a reference to employees and agents of VESMP authorities because staff of VESMPs perform E&S plan review.</p> <p>3) Lines 130-133. The definition of “Certified plan reviewer for SWM” should reference VESMP authorities not VESCP authorities and plan review not program administration.</p> <p>4) Lines 170-171. The definition of “Combined administrator” should also reference VESMP authorities.</p> <p>5) Lines 620-621. Consider not defining “permit” to mean a VPDES permit and continue spelling out VPDES permit throughout the regulations. Just using “permit” to mean VPDES permit will be confusing because of the many other locally issued types of permits.</p> <p>6) Lines 714-715. The last sentence in the definition of “Responsible land disturber” refers to “ESC plan or permit.” Permit is previously</p>	<p>Thank you for your comments, the department has addressed each comment as follows:</p> <p>1) The department revised the definition of “Certified inspector for ESC” as recommended.</p> <p>2) The department revised the definition of “Certified plan reviewer for ESC” as recommended.</p> <p>3) The department revised the definition of “Certified plan reviewer for SWM” as recommended.</p> <p>4) The department revised the definition of “Combined administrator” as recommended.</p> <p>5) The department did not revise the definition for “Permit.” The definition in Chapter 875 is the definition that is used in statute.</p> <p>6) The department revised the definition of “Responsible land disturber” to clarify that “permit” as used in this definition has the meaning as it is defined in Chapter 875.</p> <p>7) The department revised the definition of “Stormwater management plan” as recommended.</p> <p>8) The department revised the definition of “Agreement in lieu of</p>

	<p>defined as a VPDES permit, Is that what is meant here?</p> <p>7) Lines 898-899. The definition “Stormwater management plan” refers to the “requirements of a VSMP.” It should be “VSMP or VESMP.”</p> <p>8) Lines 1088-1096. The definition of “Agreement in lieu of a plan” does not match the definition in VA Code § 62.1-44.15:24. Also, farm buildings should be added to the list per HB1848.</p> <p>9) Lines 1102-1106. The definition of “Development” should be revised to match 9VAC25- 840-10. The proposed definition is originally from 9VAC25-870-10 with the addition of “Stormwater Management.” “Stormwater management” is not “development;” it is a concept.</p> <p>10) Lines 1145-1147. This should be made consistent with VA Code § 62.1-44.15:34.E.2.a by adding “although the locality may reduce this regulatory threshold to a smaller area of disturbed land.”</p> <p>11) Lines 1149-1153. This should be made consistent with VA Code § 62.1-44.15:34.E.3.b. Water quality compliance is a local option for single-family detached residential structures not a requirement.</p> <p>12) Lines 1436-1442. Delete cross-reference to 9VAC25-875-110. 9VAC25-875-110 doesn’t mention construction record drawings.</p> <p>13) Line 1458. This says “At the discretion of the authority.” It should be more specific and say “VESMP authority.”</p> <p>14) Lines 1472-1487. Is this section intended for E&S inspection only? If so, it should clearly state that.</p> <p>15) Line 1572. Should this be Part V not Part II. The technical criteria are in Part V.</p> <p>16) Lines 1716-1722. For an agreement in lieu of a plan, farm buildings need to be added for consistency with HB 1848.</p> <p>17) Line 1744. The acronym in parentheses should be VESCP not ESCL.</p>	<p>a plan” to be consistent with legislative changes from the 2023 General Assembly Session.</p> <p>9) The department revised the definition of “Development” as recommended.</p> <p>10) The department made this suggested revision.</p> <p>11) The department made this suggested revision.</p> <p>12) The department removed the cross reference to 9VAC25-875-110 as suggested.</p> <p>13) The department added “VESMP authority” as suggested to improve clarity.</p> <p>14) The department did not change this section. Subsections B 1 and B 2 make clear that the inspection requirements 9VAC25-875-140 B apply to erosion and sediment control only.</p> <p>15) The department made this suggested revision.</p> <p>16) The department revised the definition of “Agreement in lieu of a plan” to be consistent with legislative changes from the 2023 General Assembly Session.</p> <p>17) The department did not make this suggested revision. The acronym used correctly references the Erosion and Sediment Control Law.</p> <p>18) The department did not make this suggested revision. With new statutory language repealing 62.1-44.15:56, the department no longer has oversight of approved standards and specifications under the ESCL. That authority now exists in the VESMA under 62.1-44.15:31.</p>
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	<p>18) Line 1751. The department in its administration of entities submitting statewide standards and specifications should be added to this provision.</p> <p>19) Line 1793. Because this is for VESCPs only, the correct reference is § 62.1-44.15:55.</p> <p>20) Lines 1795-1797. This should be made consistent with VA Code § 62.1-44.15:55.F.1 by adding “However, the governing body of the program authority may reduce this regulatory threshold to a smaller area of disturbed land.”</p> <p>21) Lines 1799-1814. Paragraphs 2-4 should be deleted. Part III is for VESCPs and these paragraphs are for quality and quantity criteria.</p> <p>22) Line 1815. The correct reference should be 9VAC25-875-260 not 857.</p> <p>23) Line 1815. Why are requirements related to VPDES permits included in Part III for localities only administering VESCPs.</p> <p>24) Line 2232. Are dual certificates required for plan reviewers and inspectors for VESMP authorities?</p> <p>25) Lines 2332-2338. If an ESC and SWM plan reviewer is certified for ESC review by virtue of holding a PE license and doesn't have an ESC certificate, how would they go about obtaining a dual certificate?</p> <p>26) Lines 2363-2387. Are references to fees necessary in this section when fees are covered in 9VAC25-875-430.</p> <p>27) Lines 2366-2367. This is new. How is it different from #4 (lines 2384-2385) and vice versa.</p> <p>28) Line 2387. Why is there no fee for this?</p> <p>29) Line 2459. 9VAC25-875-470 duplicates 9VAC25-875-70. Why is it needed? Also, see prior comments on 9VAC25-875-70.</p> <p>30) Line 2488. Should this refer to “this part” rather than “this chapter.”</p> <p>31) Line 2564. This should be “VESCP or VESMP or the department ...”</p>	<p>19) The department has corrected this reference to 62.1-44.15:65. The commentor's suggested reference to 62.1-44.15:55 seems to be a typo.</p> <p>20) The department made this suggested addition.</p> <p>21) The department agreed that paragraphs 3 and 4 should be removed because they do not apply to VESCPs. These subsections were removed.</p> <p>22) The department corrected this typo.</p> <p>23) The department agreed with this comment and removed the language in this subsection that references VPDES permits to prevent confusion.</p> <p>24) Whether dual certificates are required for plan reviewers and inspectors for VESMP authorities will depend on how the locality chooses to organize their authority. It is possible that a locality could have staff that only does one or the other and therefore does not require a dual certificate.</p> <p>25) The department's training division has a process for addressing this comment, but that process has never been spelled out in regulation.</p> <p>26) The department is leaving the reference to fees in this section. Leaving this reference provides useful information that recertification also requires fees.</p> <p>27) These subsections address different requirements. One is for continuing education contact hours and the other is for completing department-approved training programs.</p>
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	<p>32) Lines 2569-2570. This should be “VSMP or VESMP or the department.”</p> <p>33) Line 2761. This should include VESMPs adopted under VA Code § 62.1-44.15:27 if the technical criteria are for both programs.</p> <p>34) Lines 2790-2797. Should this be in Article 3 of Part III?</p> <p>35) Lines 2812-2870. The requirements for preparation of a complete E&S plan are new and appear to be outside the scope of the consolidation.</p> <p>36) Lines 2966-2973. This should be #17 not “g” under #16.</p> <p>37) Lines 2975-2979. This should be #18 not “h” under #16.</p> <p>38) Lines 2981-3082. This should be #19 then “a” through “n.”</p> <p>39) Lines 3088-3093. There are no VESMPs prior to July 1, 2022, so this date makes no sense.</p> <p>40) Lines 3146-3160. The listed BMPs reference the March 1, 2011. Will localities be able to use the draft 2013 standards?</p> <p>41) Line 3342. Only the department can act as a VSMP authority so why not make that clear?</p> <p>42) Line 3453. The citation is 9VAC25-875 not 9VAC25-TEC.</p> <p>43) Line 7631. Why include a date that has already passed?</p>	<p>28) The department uses a third party to administer exams. Any fees are set by and paid to that third party rather than the department.</p> <p>29) The department made the revisions suggested to 9VAC25-875-70. This section is repeated here because Part V is meant to be read by owners and operators while Parts II and III apply to VESMP and VESCP authorities. Repeating this section is intended to prevent an owner or operator from having to find that information elsewhere.</p> <p>30) Chapter is the better reference here. 9VAC25-875-480 A states that the regulations should not be read as contradicting federal or state laws, which makes the broader reference to the entirety of Chapter 875 appropriate.</p> <p>31) The department added VESMP authority as suggested.</p> <p>32) This section was revised to add “or the department.” It is not necessary to also add “VSMP” because the department is now the only VSMP.</p> <p>33) In response to this and other comments, the department revised 9VAC25-875-540 A to remove references to specific local authorities. This greatly simplifies the section and makes clear that the minimum standards that operators must meet are applicable in all localities regardless of whether they are a VESMP or VESCP locality.</p> <p>34) The department agrees with this comment and moved this section to create 9VAC25-875-290 G.</p> <p>35) After consideration, the department agrees that adding</p>
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		<p>new requirements in 9VAC25-875-550 D is outside the scope of this regulatory action. This subsection has been removed. In its place, Subsection A was revised to add language on the contents of an erosion and sediment control plan. This language comes from the definition of erosion and sediment control plan and was added here to eliminate the need to refer back to the Definitions section.</p> <p>36-38) This numbering error has been corrected.</p> <p>39) The department agrees with this comment. Some of the language in this section was carried over from existing regulations and is no longer relevant. This language has been removed.</p> <p>40) Updating these dates is something that may be addressed in the future but is beyond the scope of this regulatory action.</p> <p>41) This has been revised to reference “the department” rather than “a VSMP authority” address this comment.</p> <p>42) This reference has been revised to say Part V of this chapter.</p> <p>43) The reference to June 30, 2014, as well as the corresponding fee table have been removed as they are no longer relevant.</p>
<p>Jason Williams, Dominion Energy Services, Inc.</p>	<p><i>Comments on the Draft Virginia Erosion and Stormwater Management Regulation</i></p> <p>Under 9VAC25-875-30. <i>Definitions</i>, Dominion Energy appreciates the consolidation of the terms “land disturbance” and “land disturbing activity” into one consolidated definition.</p>	<p>Thank you for your comments, the department has addressed each comment as follows:</p> <p><i>9VAC25-875-30. Definitions:</i> The definitions in the regulations are based on definitions in 62.1-</p>

	<p>Previously the terms were divergent. Ensuring that the definition is the same between both ESC and SWM regulations will provide greater consistency for project regulation.</p> <p>Under 9VAC25-875-100. <i>Criteria for programs operated by a VESMP authority</i>, subsection 9VAC25-875- 100. I.3. Dominion Energy recommends defining ‘reasonable time’ in regard to notifying operators of the incompleteness of notice of termination (NOT) applications. It is common to receive no feedback from DEQ regarding missing items from NOT packages, and so defining the number of days that constitute a ‘reasonable time’ will provide certainty for the regulated community regarding permit closeout dates.</p> <p>Subsection 9VAC25-875-110.C.4. <i>Plan review requirements</i>, appears to include an additional 15-day completeness review timeframe for all resubmissions. Please provide clarification that this does not add on to the 45-day timeline for resubmission reviews. Dominion Energy recommends the following edit:</p> <p>The VESMP authority also shall determine whether any resubmittal of a previously disapproved application is complete within 15 days after receipt and shall act on the resubmitted application within 45 days after receipt including determination of completeness within the first 15 days.</p> <p>Section 9VAC25-875-130. <i>Long-term maintenance of stormwater management facilities</i> addresses the requirement for operators to submit construction record drawings for permanent stormwater management facilities to the VESMP authority. The proposed language at 9VAC25-875-130.A. diverges from the current practice in requiring that the drawing “shall contain a statement signed by a professional registered in the Commonwealth of Virginia...stating that to the best of their knowledge, the construction record drawing shows all adjustments and revisions to the stormwater management plan made during construction...”. As drafted the proposed language creates a potentially burdensome threshold, that all adjustments and revisions made during construction, must be reflected in the construction record drawing. Such a threshold regarding the extent of documentation that must be produced to certify may lead to</p>	<p>44.15:24 and 62.1-44.14:51, which are similar but not the same. For the regulations, the definition in the VESMA will be used except in Part II, where the definition from the ESCL will be applicable.</p> <p><i>9VAC25-875-100. Criteria for programs operated by a VESMP authority:</i> The department did not make the suggested change. The language as it is stated preserves flexibility for local authorities in operating their programs.</p> <p><i>9VAC25-875-110 C 4. Plan review requirements:</i> The department made the suggested revision to make this subsection clearer.</p> <p><i>9VAC25-875-130. Long-term maintenance of stormwater management facilities:</i> The department did not make the suggested revisions. This language was developed in coordination with the Department of Professional and Occupational Regulation to be more consistent with their requirements for professional licensing.</p> <p><i>9VAC25-875-250. Regulated land-disturbing activities:</i> The department agrees that common plan of development is not relevant to erosion and sediment control and has removed that reference as suggested.</p> <p><i>9VAC25-875-280 E. Activities not required to comply with the VESCP:</i> This exemption is introduced in 62.1-44.15:55 F 11 as it will be effective on July 1, 2024. The department incorporated this new statutory language verbatim.</p> <p><i>9VAC25-875-300. Plan review requirements:</i></p>
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	<p>increased project costs for production of post construction, surveyed, as-built drawings, which have not been common practice to date. We would also expect DEQ's workload would increase due to additional modifications to process. Dominion suggests that this language remain consistent with language currently found in 9VAC25-870-55 which requires the engineer to certify that "stormwater management facilities have been constructed in accordance with the approved plan."</p> <p>In 9VAC25-875-250. <i>Regulated land-disturbing activities</i>, Part III of the proposed regulation includes requirements for the Virginia ESC Program (currently outlined in 9VAC25-840). As drafted, this section incorporates the concept of Common Plan of Development or Sale (CPOD) into the ESC program, which is applicable where land disturbing activity (LDA) reaches 10,000 square feet. Provisions related to CPOD were incorporated into federal construction stormwater permitting requirements in 2004 where the total LDA is greater than one acre. The definition of CPOD and associated requirements have since been incorporated into the Virginia SWM Program Regulations found in 9VAC25-870, which also apply where LDA is greater than one acre. To avoid lowering the applicability threshold and adding unintended regulatory requirements, we recommend that requirements and considerations related to CPOD be removed from sections of the proposed regulation that address the ESC Program and remain in those sections for project subject to SWM Program requirements.</p> <p>Subsection 9VAC25-875-280.E.11. <i>Activities not required to comply with the VESCP</i>, appears to be modified from the current regulation by removing an existing exemption. As drafted the proposed language does not exempt land disturbing activities discharging to sanitary sewers or combined sewers. Dominion Energy requests that DEQ clarify whether it is DEQ's intent to remove this exemption.</p> <p>Section 9VAC25-875-300. <i>Plan review requirements</i>, discusses ESC Plan review requirements, item D states, "For sites requiring coverage under the General VPDES Permit for Discharges of Stormwater from Construction Activities, the VESCP authority shall obtain evidence of such coverage prior to approving the erosion and sediment control plan." This</p>	<p>This requirement is taken directly from 62.1-44.15:55 A and cannot be changed through this action. The department recognizes the issue Dominion identified and will consider ways to address this through future actions.</p> <p><i>9VAC25-875-320. Long-term maintenance of stormwater management facilities:</i> As DEQ is the VSMP authority for localities that opt-out under 62.1-44.15:27 B 3, the VESCP authority is the appropriate entity to receive a copy of the recorded instrument that establishes long-term maintenance in localities that are VESCP authorities.</p> <p><i>9VAC25-875-540 A 3. Applicability:</i> The department revised this section as suggested and removed the "annual" timeframe from standards and specifications.</p> <p><i>9VAC25-875-350. Variances:</i> The department removed references to VESMPs and VSMPs in this section as suggested.</p> <p><i>9VAC25-875-500. Stormwater pollution prevention plan requirements:</i> The department did not make the suggested revision. The language of this section comes directly from 9VAC25-870-54, which does not include a reference to standards and specifications. The department sought to maintain that separation and included the requirements for standards and specifications in Part VI of Chapter 875.</p> <p><i>9VAC25-875-590 B. Water quality compliance:</i> The suggested revision is beyond the scope of this regulatory</p>
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	<p>proposed language requires an applicant to hold evidence of VAR10 Construction General Permit coverage prior to approval of the ESC plan. Under the current regulations and standard practice, particularly in cases where DEQ is the VSMP authority, ESC plan approval is obtained and provided directly to DEQ before DEQ will issue coverage under the VAR10 Construction General Permit. Dominion Energy recommends avoiding this significant process change as it is likely to cause additional confusion for the regulated community, local ESC program authorities, and DEQ and result in overall delays in permit issuance. Dominion Energy suggests that the proposed language be removed from the proposed regulations.</p> <p>As drafted, 9VAC25-875-320. <i>Long-term maintenance of stormwater management facilities</i>, states that recorded instruments related to long term maintenance of stormwater management facilities must be submitted to the VESCP authority. The current process requires the long-term maintenance instruments to be submitted to the appropriate VSMP authority for approval and then recorded in the local land records. Dominion recommends that this requirement be removed as it is sufficiently covered in the VSMP language.</p> <p>Subsection 9VAC25-875-540.A.3 pertaining to <i>Applicability</i> uses the “annual” timeframe when referring to “standards and specifications” holders. Dominion Energy suggests that the reference to “annual” in the context of standards and specifications be removed to be consistent with the current terminology in Part VI Standards and specifications program.</p> <p>Section 9VAC25-875-350. <i>Variances</i>, states that a VSMP Authority in addition to VESMP and VESCP Authorities, may grant a variance to the ESC requirements. It is Dominion Energy’s understanding that ‘variances’ are deviations to the ESC Minimum Standards or regulations and may only be approved by VESCP or VESMP Authorities. Dominion Energy recommends removing the option for VSMP Authorities to grant exceptions for ESC variances.</p> <p>Section 9VAC25-875-500. <i>Stormwater pollution prevention plan requirements</i>, should be updated to account for approval of ESC and SWM plans by standards and specifications holders.</p>	<p>action. The department did not make the suggested revision.</p> <p><i>9VAC25-875-610 B 2. Offsite compliance options:</i> The department did not make the suggested revisions. Subsection B 2 is taken directly from 62.1-44.15:35 C 2 and is consistent with the statutory requirements as they will be effective on July 1, 2024. The department will determine if additional guidance is necessary in the future to interpret the regulatory requirement.</p> <p><i>9VAC25-875-610 E 1. Offsite compliance options:</i> The department did not make the suggested revisions. Subsection B 2 is taken directly from 62.1-44.15:35 H 1 and is consistent with the statutory requirements as they will be effective on July 1, 2024. The department will determine if additional guidance is necessary in the future to interpret the regulatory requirement.</p> <p><i>9VAC25-875-760. Soil erosion control and stormwater management of land-disturbing activities:</i> The language of this section specifically limits applicability to state agencies and federal entities that have not submitted standards and specifications. The requirements for standards and specifications holders are in Part VI of Chapter 875.</p>
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	<p>In 9VAC25-875-590.B pertaining to <i>Water quality compliance</i>, lists best management practices (BMPs) approved for use as necessary to effectively reduce phosphorus load and runoff volume. Dominion Energy recommends that this list be removed from the regulation as BMP specifications evolve quickly resulting in an outdated list in the regulation. In current design situations, more recent BMPs, either finalized or draft, are typically used in lieu of the BMPs listed in the draft regulation.</p> <p>Subsection 9VAC25-875-610.B.2 pertaining to <i>Offsite compliance options</i>, was updated to change 'offsite options' to "nutrient credits" under certain subsections, thus removing informative guidance on how to utilize other offsite options besides nutrient credits. Please provide guidance for use of other offsite compliance options besides nutrient credits (e.g. adjacent properties).</p> <p>In subsection 9VAC25-875-610.E.1 pertaining to the <i>documentation of the acquisition of nutrient credits</i>, please provide clarity on DEQ's expectations for when operators are expected to supply nutrient credit documentation to the VESMP or VSMP Authority. If utilized to meet water quality reductions, letters of availability are acquired during SWM plan review and approval. Affidavits of sale are obtained prior to the commencement of land disturbance and are maintained within the Stormwater Pollution Prevention Plan during construction and provided to DEQ alongside the Notice of Termination.</p> <p>Section 9VAC25-875-760 for <i>Soil erosion control and stormwater management of land disturbing activities</i>, begins with the statement that the department shall act as a VESMP authority where state agencies and federal entities have not submitted standards and specifications to the department for approval. This implies that standards and specifications holders are VESMP authorities. Dominion Energy recommends clarifying that DEQ is the VESMP for all entities that hold department approved standards and specifications.</p>	
AquaLaw	We would like to thank DEQ for allowing VAMSA to participate on the Regulatory Advisory Panel (RAP), alongside individual VAMSA Members and other stakeholders. Obviously, DEQ's work	Thank you for your comments, the department has addressed each comment as follows:

<p>Michelle Ashworth, VAMSA</p>	<p>to consolidate three sets of regulations and amend both the General Permit for Discharges of Stormwater from Construction Activities (CGP) and the General VPDES Permit for Discharges of Stormwater from Small Municipal Separate Storm Sewer Systems (Small MS4 GP), while also considering the diverse viewpoints of the RAP Members, was a significant undertaking. DEQ staff were extraordinarily professional during this process and should be congratulated for bringing the Proposed Consolidated Regulations to the finish line.</p> <p>VAMSA also appreciates the changes DEQ made to the Proposed Consolidation Regulations. In addition to the “Agreement-in-Lieu” changes discussed below, DEQ agreed to delete earlier proposed language that required a draft ordinance, a funding and staffing plan, and policies and procedures as a part of a local package for VESMP approval. Current VSMP authorities have already submitted extensive information to support their programs. We appreciate DEQ’s flexibility on this point. Similarly, DEQ revised the text regarding requiring inspections and reports from state or federal entities from discretionary (“the department may”) to mandatory (“the department shall”) (l. 4048- 4050) and deleted the use of the term “VESMP Lite” (l. 1406).</p> <p>With that said, work now shifts to localities. Once the Consolidated Regulations are finalized, localities will have until July 1, 2024 (less than 15 months from today) to adopt and implement local ordinances that include the new regulatory requirements. This will be the most extensive local code change associated with stormwater that localities have undertaken since the 2014 adoption of VSMP programs. We urge DEQ to circulate a model ordinance as soon as feasible for local use. VAMSA Members appreciate DEQ’s assistance and patience as we work diligently to move forward with local ordinance adoption.</p> <p>Lastly, VAMSA requests that DEQ and the State Water Control Board consider individual comments filed by VAMSA Members. VAMSA Members are on the front lines of implementation, and their real-world experience is invaluable as the State moves forward with these regulations.</p>	<p>A. VAMSA supports revisions to the “agreement-in-lieu” definition: Upon further discussion, the department believes that adding the qualifying language to the definition of “agreement-in-lieu of a plan” is beyond the scope of this action because it alters a statutory definition. The department also recognizes the value in adding clarification on when these plans may be used. To address this, the department has inserted the clarifying language in appropriate sections in the body of the regulation. The department feels this approach provides the desired clarity without altering a statutory definition.</p> <p><i>9VAC25-875-210:</i> The department has revised the “agreement-in-lieu” definition to be consistent with 62.1-44.15:55 A. This removes the inconsistency between definitions.</p> <p>B. Additional requested changes:</p> <p><i>1. E&S minimum standards numbering:</i> The department corrected this numbering error.</p> <p><i>2 Variance text in Article 3-9VAC25-875-350. Variances:</i> The department removed references to VESMPs and VSMPs in this section as suggested.</p> <p><i>3. VESMP Inspection Program-9VAC25-875-140. Inspections:</i> The department corrected this cross reference. It now correctly references subsections D and E.</p>
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	<p>II. COMMENTS</p> <p>A. VAMSA Supports Revisions to the “Agreement-in-Lieu” Definition</p> <p>In the Proposed Consolidated Regulations, DEQ has included a revised definition of “Agreement in lieu of a plan” (9VAC25-875-30, Definitions, l. 1088-1096; 9VAC25-875- 210, Definitions, l. 1716-1722) that states that an Agreement in lieu of a plan (AIL) can only be used for a single family detached residential structure with less than one acre of land disturbance if it is either: (1) located in a common plan of development or sale with an approved stormwater pollution prevention plan (SWPPP) consistent with 9VAC25- 875-500 and a permit, if required or (2) it is located outside of a common plan of development or sale.</p> <p>VAMSA supports this definition because, as RAP Members shared during recent meetings, some developers attempt to use an AIL for each individual residential home in a development even though there is no overarching SWPPP in place for the larger development. DEQ’s proposed language closes this potential loophole and requires that developments have a soil erosion control and stormwater management plan (9VAC25- 875-30) or a formal site plan (9VAC25-875-210).</p> <p>On a minor point, 9VAC25-875-210 states that an AIL may be executed by the VESCP authority in lieu of a “formal site plan...” Article 2.4 (Erosion and Sediment Control Law) actually states that no person may engage in land-disturbing activity until it submits an “erosion and sediment control plan.” VA Code §62.1-44.15:55(A). VAMSA questions whether the term “formal site plan” should be “erosion and sediment control plan.”</p> <p>B. VAMSA Requests Additional Text Changes</p> <p>VAMSA shares the following questions and concerns regarding specific parts of the Proposed Consolidated Regulations:</p> <p>1. E&S Minimum Standards Numbering – 9VAC25-875-560 (Erosion and sediment control criteria, techniques, and methods: minimum standards) includes MS-17, MS-18, and MS-19, however, they are incorrectly provided as</p>	
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	<p>subcategories of MS-16. VAMSA believes I. 2966-2973 is MS-17, I. 2975-2979 is MS-18, and I. 2981- 3082 is MS-19.</p> <p>2. Variance Text in Article 3 – 9VAC25-875-350 (Variances) at I. 2115-2117 states that a variance to waive or modify requirements may be requested from the VESMP, VSMP, or VESCP authority under certain conditions. VAMSA is unclear why VSMP is included. If DEQ is acting as a VSMP, we assume there will be a VESCP authority in place pursuant to VA Code §62.1-44.15:27(B)(3) to conduct erosion and sediment control plans reviews under VA Code §62.1-44.15:55(B).</p> <p>3. VESMP Inspection Program – 9VAC25-875-140 (Inspections) at I. 1494-1497 states that a VESMP authority must ensure that each stormwater management facility is inspected by the authority or its designee at least once every five years “except as provided in subsections C and D of this section.” VAMSA recommends deleting the reference to C; there does not appear to be an exception to inspections provided in subsection C.</p>	
<p>Jill Sunderland, Hampton Roads Planning District Commission</p>	<p>I. Timeline for Model Ordinances</p> <p>Local stormwater ordinances are required to be updated by July 1, 2024. To make the appropriate changes and have assurance that our ordinances comply with the Consolidated Regulation, we need model ordinances. DEQ representatives have indicated that they will be provided; however, no timeline has been mentioned. Please commit to a deadline of when the model ordinances will be available so that localities can plan accordingly and inform local leadership.</p> <p>II. Future Permit Fee Increases</p> <p>DEQ convened a Fees RAP in 2022 to discuss increases to the Construction General Permit and annual MS4 permit maintenance fee schedules. While no permit fee increases were proposed in the draft Consolidated Regulation, it is our understanding based on discussions during the Fees RAP, that DEQ will need to increase these fees in the near future. Should DEQ decide to move forward with permit fee increases, please provide the localities as much notice as possible so that they can work it into their budget planning processes, which are</p>	<p>Thank you for your comments, the department has addressed each comment as follows:</p> <p>I. Timeline for model ordinances: Thank you for sharing your concerns about local ordinances. The department will develop and provide a model ordinance as soon as possible after the State Water Control Board approves the regulation.</p> <p>II. Future permit fee increases: Action to amend the fees for the stormwater program has been put on hold indefinitely. The department expects to reconvene the RAP to develop a proposed regulation, so localities will have a input in the timing and setting of any changes to the fees.</p> <p>III. Definition of land disturbance: The definition of “land disturbance” or “land-disturbing</p>

	<p>completed years in advance. For reference, some of our localities are currently working on budgets for FY2026.</p> <p>III. Definition of Land Disturbance</p> <p>For clarification, we request the following addition to the definition of land disturbance or land-disturbing activity, which is found on line 1108 of the draft Consolidated Regulation.</p> <p>“Land disturbance” or “land-disturbing activity” means a temporary or permanent man-made change to the land surface that may result in soil erosion or has potential to change its runoff characteristics, including construction activity such as the clearing, grading, excavating, or filling of land”.</p> <p>We appreciate the opportunity to work with DEQ on regulatory updates and thank you for considering these comments.</p>	<p>activity” comes from the Virginia Erosion and Stormwater Management Act, Va. Code § 62.1-44.14:24. The department appreciates the comment but will keep the definition from the statute as is.</p>
<p>Alex Foraste, Virginia Department of Transportation</p>	<p>COMMENT #1: The proposed draft of 9 VAC 25-875-840, “Technical criteria and requirements for state projects” (Part VI, Standards and Specifications Program), extends regulatory reach beyond the clear legislative purpose of § 62.1-44.15:31, the pertinent statute establishing the Standards and Specifications program.</p> <p>Proposed Draft 9 VAC 25-875-840, Technical criteria and requirements for state projects (Lines 4165 4171) (emphasis added):</p> <p>A. Erosion and sediment control and stormwater management plans prepared for state projects shall comply with the technical criteria outlined in Part V of this chapter and any locality’s VESCP or VESMP authority’s technical requirements adopted pursuant to §§ 62.1-44.15:28 and 62.1- 44.15:52 of the Code of Virginia.</p> <p>B. The department may establish criteria for selecting either the site or a planning area on which to apply the water quality criteria.</p> <p>As provided in § 62.1-44.15:31 (A), the Standards and Specifications Program is “an alternative to submitting soil erosion control and stormwater management plans for ... land-disturbing activities.” The General Assembly has determined that the Virginia Department of Transportation (VDOT) shall, and any other</p>	<p>Thank you for your comments, the department has addressed each comment as follows:</p> <p>Comment #1: <i>9VAC25-875-840. Technical criteria and requirements for state projects:</i> The department agrees with VDOT’s assessment of this issue. This section should not have been included in Part VI (Standards and specifications program) because it states requirements for state projects that do not have standards and specifications. The department has addressed the issue raised by removing 9VAC25-875-840. This language now only appears in its appropriate location in 9VAC25-875-810.</p> <p>Comment #2: <i>9VAC25-875-130. Long-term maintenance of stormwater management facilities:</i> The department did not make the suggested revisions. This language was developed in coordination with the Department of Professional and Occupational Regulation to be more consistent</p>

	<p>state agency or federal entity may, submit standards and specifications for its conduct of landdisturbing activities, instead of submitting individual soil erosion control and stormwater management plans to the Board. The Standards and Specifications Program is also available for other specified entities engaged in the construction, installation, and maintenance of linear utilities.</p> <p>While § 62.1-44.15:31 (D) provides that the “[a]pproval of standards and specifications by the Department does not relieve the owner or operator of the duty to comply with any other applicable local ordinances or regulations[,]” (emphasis added) the General Assembly clearly did not intend that land-disturbing activities occurring pursuant to an approved Standards and Specifications Program comply with any locality’s VESCP or VESMP authority’s technical requirements, as set forth above in proposed draft 9 VAC 25-875-840 (A). Such an interpretation would necessarily eviscerate the legislative purpose of the Standards & Specifications program as an efficient and transparent alternative approach for multijurisdictional, statewide land-disturbing activities conducted by state and federal government.</p> <p>Had the General Assembly intended to require that activities taken pursuant to an approved Standards and Specification Program adhere to more stringent VESCP and VESMP local program requirements, as set forth above in proposed draft 9 VAC 25-875-840 (A), it surely would have done so. For example, the General Assembly clearly and expressly stated such intent in subdivision A(3)(b) of § 62.1-44.15:34, which applies to those land disturbing activities taken by state and federal entities not covered by a Standards and Specifications Program:</p> <p>b. The Board shall not approve a soil erosion control and stormwater management plan submitted by a state agency or federal entity for a project involving a land-disturbing activity <i>in one locality with a local program with more stringent ordinances than those of the state program, unless the plan is consistent with the requirements of the local program.</i> (Emphasis added)</p> <p>In conclusion, by creating the Standards and Specifications Program, the General Assembly</p>	<p>with their requirements for professional licensing.</p>
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	<p>provided a programmatic alternative to adherence with varying ordinances and local requirements and submission of individual project plans to the Board. To require otherwise, by regulation, that entities operating pursuant to the Standards and Specifications Program must adhere to such varying ordinances and local requirements as would be required of non-Standards and Specifications entities, is clearly in conflict with a harmonious interpretation of the relevant provisions included in both § 62.1-44.15:31 and § 62.1-44.15:34 of the Stormwater Management Act.</p> <p>SPECIFIC REDLINE ASSOCIATED WITH COMMENT #1:</p> <p>Since draft 9 VAC 25-875-830 (D) (lines 4126-4130) already provides that “all standards and specifications submitted to the Department...shall be consistent with the requirements of the VESMA” and that the “[a]pproval of standards and specifications by the Department does not relieve the owner or operator of the duty to comply with any other applicable local ordinances or regulations” which is verbatim from the VESMA, VDOT proposes to strike the following language in order to bring the draft regulation into conformance with the governing statute establishing the Standards and Specifications program.</p> <p>Proposed Draft 9 VAC 25-870-840 (A) (lines 4165-4168):</p> <p><i>Erosion and sediment control and stormwater management plans prepared for state projects shall comply with the technical criteria outlined in Part V of this chapter and any locality’s VESCP or VESMP authority’s technical requirements adopted pursuant to §§ 62.1-44.15:28 and 62.1-44.15:52 of the Code of Virginia.</i></p> <p>COMMENT #2:</p> <p>It is unclear as to whether the regulatory requirement for proposed draft 9 VAC 25-875-130 (A) below is intended (i) to ensure that the construction record drawing accurately documents what was constructed or (ii) to document “all adjustments and revisions” on the construction plan. The submission of a construction plan provides a template from</p>	
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	<p>which future long-term inspections will be conducted and therefore must be accurate.</p> <p>Proposed Draft 9 VAC 25-875-130 (A) (lines 1436-1442):</p> <p><i>The operator shall submit a construction record drawing for permanent stormwater management facilities to the VESMP authority in accordance with 9VAC25-875-110. The record drawing shall contain a statement signed by a professional registered in the Commonwealth of Virginia pursuant to Chapter 4 of Title 54.1 of the Code of Virginia, stating that to the best of their knowledge, the construction record drawing shows all adjustments and revisions to the stormwater management plan made during construction and serve as a permanent record of the actual location of all constructed elements.</i></p> <p>SPECIFIC REDLINE ASSOCIATED WITH COMMENT #2:</p> <p>As an alternative to the above, the proposed new language at the end of subsection A should be stricken and replaced with one of the following options:</p> <p><i>The operator shall submit a construction record drawing for permanent stormwater management facilities to the VESMP authority in accordance with 9VAC25-875-110. The record drawing shall contain a statement signed by a professional registered in the Commonwealth of Virginia pursuant to Chapter 4 of Title 54.1 of the Code of Virginia, stating that to the best of their knowledge, the construction record drawing shows all adjustments and revisions to the stormwater management plan made during construction and serve as a permanent record of the actual location of all constructed elements.</i></p> <p>Option A: <u><i>“the stormwater management facilities have been constructed in accordance with the approved plan“</i></u></p> <p>Option B: <u><i>“the construction record drawing accurately demonstrates the stormwater management facility as it was built and is consistent with the final approved plans”</i></u></p>	
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<p>Richard Jacobs; Culpeper Soil and Water Conservation District</p>	<p>Line 62. Adequate Channel definition. Does this include manmade stormwater conveyances? A storm sewer, culvert or ditch can be an adequate channel. Watercourse is not defined. Adequate Outlet or outfall or stable outlet/outfall should be defined. Maybe this could be addressed when the technical criteria is updated.</p> <p>Line 1093 and line 1119. Agreement in Lieu of plan. I thought SFHs were legally allowed to have agreement in lieu if less than 5 acres for both E&S and SWM. Why does this and other sections reference a 1 acre limit for agreement in lieu? This is not consistent with current practice on large residential lots that may have a driveway, drain field and house that disturbs more than 1 acre. See line 1968 where no limitations on the size of SFH is mentioned.</p> <p>Line 1102. Development. Is stormwater management development? Not sure why a stand alone “stormwater management” would be development. Land disturbance is the trigger for development.</p> <p>Line 1147, 1151, 1157, 1162. Clarify that “...E&S criteria defined in part V article 2 (9VAC25-875-540 et seq.)”, SWM criteria of Part V article 3 (9VAC25-875-570 et seq.) unless...”</p> <p>Line 1361 and 1371. The timeline for review in an VESMP, VESCP and VSMP should be identical. I do not see the value of a 15-day completeness determination. Any lacking information is part of the rejection letter. See line 1983-1993. There are conflicting timelines. Written approval within 60 days but written disapproval within 45 days.</p> <p>Line 1436-1437. Does the record drawing get reviewed and accepted? Section 9VAC25-875-110 does not define the criteria for record drawings. It might be better to include language and reference to 9VAC25-875-100 (i).</p> <p>Line 1572. Exceptions to provisions of Part II is not correct. Exceptions are for technical criteria in Part V article 3 and 4.</p> <p>Line 1583. Add “...of the erosion and sediment control requirements of article 2 part V...”</p> <p>Line 2013. Should this be titled “...for solar projects”</p>	<p>Thank you for your comments, the department has addressed each comment as follows:</p> <p>9VAC25-875-20. Definitions: <i>Line 62 “Adequate Channel.”</i> The department has replaced the 9VAC25-875-20 with the definition originally from 9VAC25-875-670. Doing this replaces the word “watercourse” with the word “channel.” “Channel” is a defined term in Chapter 875, which should address any confusion.</p> <p><i>Line 1093 and line 1119 “Agreement-in-lieu of a plan.”</i> The department revised the definition of “Agreement in lieu of a plan” to be consistent with legislative changes from the 2023 General Assembly Session.</p> <p><i>Line 1102 “Development.”</i> The department corrected this definition. The reference to stormwater management was a drafting error.</p> <p>9VAC25-875-70. Regulated land-disturbing activities. <i>Lines 1147, 1151, 1157, and 1162.</i> The department added the clarifying references as suggested.</p> <p>9VAC25-875-110 C 4. Plan review requirements <i>Lines 1361 and 1371.</i> The department has revised this section to address confusion about the timelines. The 15-day completeness determination was included in this section to incorporate statutory language from 62.1-44.15:34 A 1 as it will be effective on July 1, 2024.</p> <p>9VAC25-875-130 A. Long-term maintenance of stormwater management facilities. <i>Lines 1436-1437.</i> The department accepts an engineer’s signature as</p>
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	<p>Line 2016. Is the July 1, 2020 date still applicable?</p> <p>Line 2041. This line should be subsection A. Line 2042 should be subsection B. Does the department enforce SWMF maintenance agreements when development is less than 1 acre? May need another subsection C to cover VESCP responsibility for ensuring compliance with maintenance agreements on developments less than 1 acre.</p> <p>Line 2115. Reference the E&S requirements of Part V article 2 for variances.</p> <p>Line 2239. Should the section of the regulations be cited? For example, ESC administrator administers program pursuant to part III of 9VAC25-875-210 et seq. Do this for all certificates. Reference Part II 9VAC25-875-30et seq.</p> <p>Line 2324-2330. Licensed professional engineers employed by VESMP, VSMP, or VESCP should still carry relevant certification per the program authority requirements. This conflicts with the line 2369 that exempts P.E. from continuing education. P.E. do not always know the stormwater regulations. At the very least they should go through the certification program and exam. The continuing education programs offer by DEQ is useful for P.E. for their license renewals.</p> <p>Line 2441. Should “informal fact finding” be “formal fact finding”.</p> <p>Line 2459. Does 9VAC25-875-470 duplicates 9VAC25-875-70? I thought administrative criteria should be in the administrative sections of the relevant programs.</p> <p>Line 2494-2507. Is time limits of applicability still relevant? It has already been two permit cycles (2014 and 2019) by the time this regulation will be adopted in July 1, 2024.</p> <p>Line 2562. “Regulations” cite article 2 of Part V (9VAC25-875-540 et seq.)</p> <p>Line 2568. “Regulations” cite article 3 part V (9VAC25-875-570 et seq.)</p> <p>Line 2727. Should this be reference in Part II?</p>	<p>confirmation of the accuracy of the submitted drawing.</p> <p>9VAC25-875-170. Variances and exceptions. <i>Line 1572.</i> The department changed the reference in this section to Part V as suggested.</p> <p><i>Line 1583.</i> The department made the suggested addition.</p> <p>9VAC25-875-310. Plan review coordination with the department for solar projects. <i>Line 2013.</i> The department has updated the section title as suggested.</p> <p><i>Line 2016.</i> The department left the July 1, 2020 date because that is the date the exists in statute.</p> <p>9VAC25-875-320. Long-term maintenance of stormwater management facilities. <i>Line 2041.</i> The department has broken this paragraph into subsections A and B as suggested.</p> <p>9VAC25-875-350. Variances. <i>Line 2115.</i> The department added the reference to Article 2 of Part V as suggested.</p> <p>9VAC25-875-400. Certificates and certifications. <i>Line 2239.</i> The department did not make the suggested revisions. This section is meant only to spell out certifications that are required, and we feel that it accomplishes that is written.</p> <p><i>Lines 2324-2330.</i> DPOR sets licensing and renewal requirements for professional engineers. This section does not exempt professional engineers from those licensing requirements.</p>
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	<p>Line 3091 and line 3168. Does the date reference need updating?</p> <p>Line 3140. Consider removing the list from the regulations. Reference the clearinghouse or stormwater handbook for the list.</p> <p>Line 3260, line 3296, Line 3321-3332. Consider moving limits of analysis verbiage and subsection E and F to Design Storms and Hydrologic Methods (9VAC25-875-620). They need their own section.</p> <p><u>Technical Criteria Comment:</u> Attached to this public comment are draft language revisions for Minimum Standard 19 (line 2981) for the consideration for updating the technical criteria in the future.</p> <p>It should be clear that for water quantity there is the MS-19 standards under E&S for <u>Adequate Stormwater Conveyance</u> (Channel, Ditch, Storm Sewer or Pipe) to an <u>Adequate Stormwater Outfall</u> (An Adequate Stormwater Conveyance at the property line or dissipation and dispersion of concentrated as sheet flow); and there is the post construction quantity controls for <u>Channel Protection</u> (1-year) and <u>Flood Protection</u> (10-year) which should apply regardless of the condition of downstream stormwater conveyances. With a four-tier approach we can minimize erosion from the source of runoff and ensure that downstream properties are protected from increases in runoff.</p>	<p>9VAC25-875-460. Discipline of certified personnel or certificate holders. <i>Line 2441.</i> The department did not make the suggested revision. The department feels that an informal fact finding is an appropriate proceeding to make a case decision.</p> <p>9VAC25-875-470. Applicability. <i>Line 2459.</i> This section is repeated here because Part V is meant to be read by owners and operators while Parts II and III apply to VESMP and VESCP authorities. Repeating this section is intended to prevent an owner or operator from having to find that information elsewhere.</p> <p>9VAC25-875-480. Applicability of other laws and regulations; time limits on applicability of approved design criteria. <i>Lines 2495-2507.</i> The department acknowledges this comment, but feels it is best to leave this section in the regulation at this time.</p> <p>9VAC25-875-500. Stormwater pollution prevention plan requirements. <i>Lines 2562 and 2568.</i> The department made the suggested revisions.</p> <p>9VAC25-875-530. Applying for permit coverage. <i>Line 2727.</i> The department did not make the suggested reference. References in Part II are intended to reference to the technical criteria required for certain thresholds of land disturbance. This section is an administrative requirement for an operator to apply for a permit.</p> <p>9VAC25-875-570. Applicability. <i>Line 3091.</i> The department agrees with this comment and has removed this date because it is no longer relevant.</p>
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		<p>9VAC25-875-590. Water quality compliance. <i>Line 3140.</i> The suggested revision is beyond the scope of this regulatory action. The department did not make the suggested revision.</p> <p>9VAC25-875-600. Water quantity. <i>Lines 3260.</i> This revision is outside of the scope of this action. The department did not make the suggested revision.</p> <p><i>Line 3296.</i> This revision is outside of the scope of this action. The department did not make the suggested revision.</p> <p><i>Lines 3321-3332.</i> This revision is outside of the scope of this action. The department did not make the suggested revision.</p> <p>Technical criteria comment:</p> <p>The department received the suggested revisions to technical criteria. These revisions are outside the scope of this regulatory action.</p>
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This regulatory action repeals the following chapters in their entirety: 9VAC25-840, 9VAC25-850 and 9VAC25-870. All language on lines 7 to 11529 will be repealed.

Regulatory text of the new chapter (9VAC25-875) begins on page 254.

1 **Project 5787 – Final- for June 22, 2023 State Water Control Board meeting**

2 **State Water Control Board**

3 **Consolidation of Virginia Erosion Control and Stormwater Management Programs**

4 Chapter 840

5 Erosion and Sediment Control Regulations (REPEALED)

6 **9VAC25-840-10. Definitions. (Repealed.)**

7 The following words and terms when used in this chapter, shall have the following meanings
8 unless the context clearly indicates otherwise. In addition, some terms not defined herein are
9 defined in § 62.1-44.15:51 of the Erosion and Sediment Control Law.

10 "Act" means the Erosion and Sediment Control Law, Article 2.4 (§ 62.1-44.15:51 et seq.) of
11 Chapter 3.1 of Title 62.1 of the Code of Virginia.

12 "Adequate channel" means a watercourse that will convey the designated frequency storm
13 event without overtopping its banks or causing erosive damage to the bed, banks and overbank
14 sections of the same.

15 "Agreement in lieu of a plan" means a contract between the VESCP authority and the owner
16 that specifies conservation measures that must be implemented in the construction of a single-
17 family residence; this contract may be executed by the VESCP authority in lieu of an erosion and
18 sediment control plan.

19 "Applicant" means any person submitting an erosion and sediment control plan or an
20 agreement in lieu of a plan for approval or requesting the issuance of a permit, when required,
21 authorizing land-disturbing activities to commence.

22 "Board" means the State Water Control Board. When used outside the context of the
23 promulgation of regulations, including regulations to establish general permits, "board" means the
24 Department of Environmental Quality.

25 "Causeway" means a temporary structural span constructed across a flowing watercourse or
26 wetland to allow construction traffic to access the area without causing erosion damage.

27 "Channel" means a natural stream or manmade waterway.

28 "Cofferdam" means a watertight temporary structure in a river, lake, etc., for keeping the water
29 from an enclosed area that has been pumped dry so that bridge foundations, dams, etc., may be
30 constructed.

31 "Dam" means a barrier to confine or raise water for storage or diversion, to create a hydraulic
32 head, to prevent gully erosion, or to retain soil, rock or other debris.

33 "Denuded" means a term applied to land that has been physically disturbed and no longer
34 supports vegetative cover.

35 "Department" means the Department of Environmental Quality.

36 "Development" means a tract or parcel of land developed or to be developed as a single unit
37 under single ownership or unified control which is to be used for any business or industrial purpose
38 or is to contain three or more residential dwelling units.

39 "Dike" means an earthen embankment constructed to confine or control water, especially one
40 built along the banks of a river to prevent overflow of lowlands; levee.

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

42 ~~"District" or "soil and water conservation district" means a political subdivision of the~~
43 ~~Commonwealth organized in accordance with the provisions of Article 3 (§ 10.1-506 et seq.) of~~
44 ~~Chapter 5 of Title 10.1 of the Code of Virginia.~~

45 ~~"Diversion" means a channel with a supporting ridge on the lower side constructed across or~~
46 ~~at the bottom of a slope for the purpose of intercepting surface runoff.~~

47 ~~"Dormant" means denuded land that is not actively being brought to a desired grade or~~
48 ~~condition.~~

49 ~~"Energy dissipator" means a nonerodible structure that reduces the velocity of concentrated~~
50 ~~flow to reduce its erosive effects.~~

51 ~~"Erosion and Sediment Control Plan" or "plan" means a document containing material for the~~
52 ~~conservation of soil and water resources of a unit or group of units of land. It may include~~
53 ~~appropriate maps, an appropriate soil and water plan inventory and management information with~~
54 ~~needed interpretations, and a record of decisions contributing to conservation treatment. The plan~~
55 ~~shall contain all major conservation decisions and all information deemed necessary by the plan-~~
56 ~~approving authority to assure that the entire unit or units of land will be so treated to achieve the~~
57 ~~conservation objectives.~~

58 ~~"Flume" means a constructed device lined with erosion-resistant materials intended to convey~~
59 ~~water on steep grades.~~

60 ~~"Live watercourse" means a definite channel with bed and banks within which concentrated~~
61 ~~water flows continuously.~~

62 ~~"Locality" means a county, city or town.~~

63 ~~"Natural stream" means nontidal waterways that are part of the natural topography. They~~
64 ~~usually maintain a continuous or seasonal flow during the year and are characterized as being~~
65 ~~irregular in cross-section with a meandering course. Constructed channels such as drainage~~
66 ~~ditches or swales shall not be considered natural streams.~~

67 ~~"Nonerodible" means a material, e.g., riprap, concrete, plastic, etc., that will not experience~~
68 ~~surface wear due to natural forces.~~

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

73 ~~"Post-development" means conditions that may be reasonably expected or anticipated to exist~~
74 ~~after completion of the land development activity on a specific site or tract of land.~~

75 ~~"Program administrator" means the person or persons responsible for administering and~~
76 ~~enforcing the erosion and sediment control program of a VESCP authority.~~

77 ~~"Pre-development" means conditions at the time the erosion and sediment control plan is~~
78 ~~submitted to the VESCP authority. Where phased development or plan approval occurs~~
79 ~~(preliminary grading, roads and utilities, etc.), the existing conditions at the time the erosion and~~
80 ~~sediment control plan for the initial phase is submitted for approval shall establish pre-~~
81 ~~development conditions.~~

82 ~~"Sediment basin" means a temporary impoundment built to retain sediment and debris with a~~
83 ~~controlled stormwater release structure.~~

84 ~~"Sediment trap" means a temporary impoundment built to retain sediment and debris that is~~
85 ~~formed by constructing an earthen embankment with a stone outlet.~~

86 ~~"Sheet flow" (also called overland flow) means shallow, unconcentrated and irregular flow~~
87 ~~down a slope. The length of strip for overland flow usually does not exceed 200 feet under natural~~
88 ~~conditions.~~

89 ~~"Shore erosion control project" means an erosion control project approved by local wetlands~~
 90 ~~boards, the Virginia Marine Resources Commission, the department, or the United States Army~~
 91 ~~Corps of Engineers and located on tidal waters and within nonvegetated or vegetated wetlands~~
 92 ~~as defined in Title 28.2 of the Code of Virginia.~~

93 ~~"Slope drain" means tubing or conduit made of nonerosive material extending from the top to~~
 94 ~~the bottom of a cut or fill slope with an energy dissipator at the outlet end.~~

95 ~~"Stabilized" means land that has been treated to withstand normal exposure to natural forces~~
 96 ~~without incurring erosion damage.~~

97 ~~"Storm sewer inlet" means a structure through which stormwater is introduced into an~~
 98 ~~underground conveyance system.~~

99 ~~"Stormwater detention" means the process of temporarily impounding runoff and discharging~~
 100 ~~it through a hydraulic outlet structure to a downstream conveyance system.~~

101 ~~"Temporary vehicular stream crossing" means a temporary nonerodible structural span~~
 102 ~~installed across a flowing watercourse for use by construction traffic. Structures may include~~
 103 ~~bridges, round pipes or pipe arches constructed on or through nonerodible material.~~

104 ~~"Ten-year storm" means a storm that is capable of producing rainfall expected to be equaled~~
 105 ~~or exceeded on the average of once in 10 years. It may also be expressed as an exceedance~~
 106 ~~probability with a 10% chance of being equaled or exceeded in any given year.~~

107 ~~"Two-year storm" means a storm that is capable of producing rainfall expected to be equaled~~
 108 ~~or exceeded on the average of once in two years. It may also be expressed as an exceedance~~
 109 ~~probability with a 50% chance of being equaled or exceeded in any given year.~~

110 ~~"Twenty-five year storm" means a storm that is capable of producing rainfall expected to be~~
 111 ~~equaled or exceeded on the average of once in 25 years. It may also be expressed as exceedance~~
 112 ~~probability with a 4.0% chance of being equaled or exceeded in any given year.~~

113 ~~"Virginia Erosion and Sediment Control Program" or "VESCP" means a program approved by~~
 114 ~~the department that has been established by a VESCP authority for the effective control of soil~~
 115 ~~erosion, sediment deposition, and nonagricultural runoff associated with a land-disturbing activity~~
 116 ~~to prevent the unreasonable degradation of properties, stream channels, waters, and other natural~~
 117 ~~resources and shall include such items where applicable as local ordinances, rules, permit~~
 118 ~~requirements, annual standards and specifications, policies and guidelines, technical materials,~~
 119 ~~and requirements for plan review, inspection, enforcement where authorized in this article, and~~
 120 ~~evaluation consistent with the requirements of the Act and this chapter.~~

121 ~~"Virginia Erosion and Sediment Control Program authority" or "VESCP authority" means an~~
 122 ~~authority approved by the department to operate a Virginia Erosion and Sediment Control~~
 123 ~~Program. An authority may include a state entity, including the department; a federal entity; a~~
 124 ~~district, county, city, or town; or for linear projects subject to annual standards and specifications,~~
 125 ~~electric, natural gas and telephone utility companies, interstate and intrastate natural gas pipeline~~
 126 ~~companies, railroad companies, or authorities created pursuant to § 15.2-5102 of the Code of~~
 127 ~~Virginia.~~

128 **9VAC25-840-20. Purpose. (Repealed.)**

129 ~~The purpose of this chapter is to form the basis for the administration, implementation and~~
 130 ~~enforcement of the Act. The intent of this chapter is to establish the framework for compliance~~
 131 ~~with the Act while at the same time providing flexibility for innovative solutions to erosion and~~
 132 ~~sediment control concerns.~~

133 **9VAC25-840-30. Scope and applicability. (Repealed.)**

134 ~~A. This chapter sets forth minimum standards for the effective control of soil erosion, sediment~~
 135 ~~deposition, and nonagricultural runoff that must be met:~~

- 136 1. In VESCPs adopted under § 62.1-44.15:54 of the Act;
 137 2. In erosion and sediment control plans that may be submitted directly to the department
 138 pursuant to § 62.1-44.15:55 A of the Act;
 139 3. In annual general erosion and sediment control standards and specifications that
 140 electric, natural gas, and telephone utility companies, interstate and intrastate natural gas
 141 pipeline companies, and railroad companies are required to file, and authorities created
 142 pursuant to § 15.2-5102 of the Code of Virginia may file with the department pursuant to
 143 § 62.1-44.15:55 D of the Act;
 144 4. In erosion and sediment control plans or annual standards and specifications that state
 145 agencies are required to file with the department pursuant to § 62.1-44.15:56 of the Act;
 146 and
 147 5. In erosion and sediment control plans or annual standards and specifications that
 148 federal agencies may submit to the department pursuant to § 62.1-44.15:56 of the Act.

149 B. The submission of annual standards and specifications to the department does not
 150 eliminate the need where applicable for a project specific Erosion and Sediment Control Plan.

151 C. In accordance with Item 36011 of Chapter 3 of the 2012 Virginia Acts of Assembly, Special
 152 Session 1, public institutions of higher education, including community colleges, colleges, and
 153 universities, shall be subject to project review and compliance for state erosion and sediment
 154 control requirements by the VESCP authority of the locality within which the land-disturbing
 155 activity is located, unless such institution submits annual specifications to the department in
 156 accordance with § 62.1-44.15:56 A (i) of the Code of Virginia.

157 D. Any VESCP authority that administers a VESCP may charge applicants a reasonable fee
 158 to defray the costs of program administration. Such fee may be in addition to any fee charged for
 159 administration of a Virginia stormwater management program, although payment of fees may be
 160 consolidated in order to provide greater convenience and efficiency for those responsible for
 161 compliance with the programs. A VESCP authority shall hold a public hearing prior to establishing
 162 a schedule of fees. The fee shall not exceed an amount commensurate with the services
 163 rendered, taking into consideration the time, skill, and the VESCP authority's expense involved.

164 **9VAC25-840-40. Minimum standards. (Repealed.)**

165 A VESCP must be consistent with the following criteria, techniques and methods:

- 166 1. Permanent or temporary soil stabilization shall be applied to denuded areas within
 167 seven days after final grade is reached on any portion of the site. Temporary soil
 168 stabilization shall be applied within seven days to denuded areas that may not be at final
 169 grade but will remain dormant for longer than 14 days. Permanent stabilization shall be
 170 applied to areas that are to be left dormant for more than one year.
 171 2. During construction of the project, soil stock piles and borrow areas shall be stabilized
 172 or protected with sediment trapping measures. The applicant is responsible for the
 173 temporary protection and permanent stabilization of all soil stockpiles on site as well as
 174 borrow areas and soil intentionally transported from the project site.
 175 3. A permanent vegetative cover shall be established on denuded areas not otherwise
 176 permanently stabilized. Permanent vegetation shall not be considered established until a
 177 ground cover is achieved that is uniform, mature enough to survive and will inhibit erosion.
 178 4. Sediment basins and traps, perimeter dikes, sediment barriers and other measures
 179 intended to trap sediment shall be constructed as a first step in any land-disturbing activity
 180 and shall be made functional before upslope land disturbance takes place.
 181 5. Stabilization measures shall be applied to earthen structures such as dams, dikes and
 182 diversions immediately after installation.

- 183 ~~6. Sediment traps and sediment basins shall be designed and constructed based upon~~
184 ~~the total drainage area to be served by the trap or basin.~~
- 185 ~~a. The minimum storage capacity of a sediment trap shall be 134 cubic yards per acre~~
186 ~~of drainage area and the trap shall only control drainage areas less than three acres.~~
- 187 ~~b. Surface runoff from disturbed areas that is comprised of flow from drainage areas~~
188 ~~greater than or equal to three acres shall be controlled by a sediment basin. The~~
189 ~~minimum storage capacity of a sediment basin shall be 134 cubic yards per acre of~~
190 ~~drainage area. The outfall system shall, at a minimum, maintain the structural integrity~~
191 ~~of the basin during a 25-year storm of 24-hour duration. Runoff coefficients used in~~
192 ~~runoff calculations shall correspond to a bare earth condition or those conditions~~
193 ~~expected to exist while the sediment basin is utilized.~~
- 194 ~~7. Cut and fill slopes shall be designed and constructed in a manner that will minimize~~
195 ~~erosion. Slopes that are found to be eroding excessively within one year of permanent~~
196 ~~stabilization shall be provided with additional slope stabilizing measures until the problem~~
197 ~~is corrected.~~
- 198 ~~8. Concentrated runoff shall not flow down cut or fill slopes unless contained within an~~
199 ~~adequate temporary or permanent channel, flume or slope drain structure.~~
- 200 ~~9. Whenever water seeps from a slope face, adequate drainage or other protection shall~~
201 ~~be provided.~~
- 202 ~~10. All storm sewer inlets that are made operable during construction shall be protected~~
203 ~~so that sediment-laden water cannot enter the conveyance system without first being~~
204 ~~filtered or otherwise treated to remove sediment.~~
- 205 ~~11. Before newly constructed stormwater conveyance channels or pipes are made~~
206 ~~operational, adequate outlet protection and any required temporary or permanent channel~~
207 ~~lining shall be installed in both the conveyance channel and receiving channel.~~
- 208 ~~12. When work in a live watercourse is performed, precautions shall be taken to minimize~~
209 ~~encroachment, control sediment transport and stabilize the work area to the greatest~~
210 ~~extent possible during construction. Nonerodible material shall be used for the~~
211 ~~construction of causeways and cofferdams. Earthen fill may be used for these structures~~
212 ~~if armored by nonerodible cover materials.~~
- 213 ~~13. When a live watercourse must be crossed by construction vehicles more than twice in~~
214 ~~any six-month period, a temporary vehicular stream crossing constructed of nonerodible~~
215 ~~material shall be provided.~~
- 216 ~~14. All applicable federal, state and local requirements pertaining to working in or crossing~~
217 ~~live watercourses shall be met.~~
- 218 ~~15. The bed and banks of a watercourse shall be stabilized immediately after work in the~~
219 ~~watercourse is completed.~~
- 220 ~~16. Underground utility lines shall be installed in accordance with the following standards~~
221 ~~in addition to other applicable criteria:~~
- 222 ~~a. No more than 500 linear feet of trench may be opened at one time.~~
- 223 ~~b. Excavated material shall be placed on the uphill side of trenches.~~
- 224 ~~c. Effluent from dewatering operations shall be filtered or passed through an approved~~
225 ~~sediment trapping device, or both, and discharged in a manner that does not adversely~~
226 ~~affect flowing streams or off-site property.~~
- 227 ~~d. Material used for backfilling trenches shall be properly compacted in order to~~
228 ~~minimize erosion and promote stabilization.~~
- 229 ~~e. Restabilization shall be accomplished in accordance with this chapter.~~

- 230 f. ~~Applicable safety requirements shall be complied with.~~
- 231 17. ~~Where construction vehicle access routes intersect paved or public roads, provisions~~
232 ~~shall be made to minimize the transport of sediment by vehicular tracking onto the paved~~
233 ~~surface. Where sediment is transported onto a paved or public road surface, the road~~
234 ~~surface shall be cleaned thoroughly at the end of each day. Sediment shall be removed~~
235 ~~from the roads by shoveling or sweeping and transported to a sediment control disposal~~
236 ~~area. Street washing shall be allowed only after sediment is removed in this manner. This~~
237 ~~provision shall apply to individual development lots as well as to larger land-disturbing~~
238 ~~activities.~~
- 239 18. ~~All temporary erosion and sediment control measures shall be removed within 30 days~~
240 ~~after final site stabilization or after the temporary measures are no longer needed, unless~~
241 ~~otherwise authorized by the VESCP authority. Trapped sediment and the disturbed soil~~
242 ~~areas resulting from the disposition of temporary measures shall be permanently stabilized~~
243 ~~to prevent further erosion and sedimentation.~~
- 244 19. ~~Properties and waterways downstream from development sites shall be protected from~~
245 ~~sediment deposition, erosion and damage due to increases in volume, velocity and peak~~
246 ~~flow rate of stormwater runoff for the stated frequency storm of 24-hour duration in~~
247 ~~accordance with the following standards and criteria. Stream restoration and relocation~~
248 ~~projects that incorporate natural channel design concepts are not man-made channels~~
249 ~~and shall be exempt from any flow rate capacity and velocity requirements for natural or~~
250 ~~man-made channels:~~
- 251 a. ~~Concentrated stormwater runoff leaving a development site shall be discharged~~
252 ~~directly into an adequate natural or man-made receiving channel, pipe or storm sewer~~
253 ~~system. For those sites where runoff is discharged into a pipe or pipe system,~~
254 ~~downstream stability analyses at the outfall of the pipe or pipe system shall be~~
255 ~~performed.~~
- 256 b. ~~Adequacy of all channels and pipes shall be verified in the following manner:~~
- 257 (1) ~~The applicant shall demonstrate that the total drainage area to the point of analysis~~
258 ~~within the channel is 100 times greater than the contributing drainage area of the~~
259 ~~project in question; or~~
- 260 (2) ~~(a) Natural channels shall be analyzed by the use of a two-year storm to verify that~~
261 ~~stormwater will not overtop channel banks nor cause erosion of channel bed or banks;~~
- 262 ~~(b) All previously constructed man-made channels shall be analyzed by the use of a~~
263 ~~10-year storm to verify that stormwater will not overtop its banks and by the use of a~~
264 ~~two-year storm to demonstrate that stormwater will not cause erosion of channel bed~~
265 ~~or banks; and~~
- 266 ~~(c) Pipes and storm sewer systems shall be analyzed by the use of a 10-year storm to~~
267 ~~verify that stormwater will be contained within the pipe or system.~~
- 268 c. ~~If existing natural receiving channels or previously constructed man-made channels~~
269 ~~or pipes are not adequate, the applicant shall:~~
- 270 (1) ~~Improve the channels to a condition where a 10-year storm will not overtop the~~
271 ~~banks and a two-year storm will not cause erosion to the channel, the bed, or the~~
272 ~~banks;~~
- 273 (2) ~~Improve the pipe or pipe system to a condition where the 10-year storm is~~
274 ~~contained within the appurtenances;~~
- 275 (3) ~~Develop a site design that will not cause the pre-development peak runoff rate from~~
276 ~~a two-year storm to increase when runoff outfalls into a natural channel or will not~~

277 cause the pre-development peak runoff rate from a 10-year storm to increase when
278 runoff outfalls into a man-made channel; or

279 ~~(4) Provide a combination of channel improvement, stormwater detention or other~~
280 ~~measures which is satisfactory to the VESCP authority to prevent downstream~~
281 ~~erosion.~~

282 d. The applicant shall provide evidence of permission to make the improvements.

283 e. All hydrologic analyses shall be based on the existing watershed characteristics and
284 the ultimate development condition of the subject project.

285 f. If the applicant chooses an option that includes stormwater detention, he shall obtain
286 approval from the VESCP of a plan for maintenance of the detention facilities. The
287 plan shall set forth the maintenance requirements of the facility and the person
288 responsible for performing the maintenance.

289 g. Outfall from a detention facility shall be discharged to a receiving channel, and
290 energy dissipators shall be placed at the outfall of all detention facilities as necessary
291 to provide a stabilized transition from the facility to the receiving channel.

292 h. All on-site channels must be verified to be adequate.

293 i. Increased volumes of sheet flows that may cause erosion or sedimentation on
294 adjacent property shall be diverted to a stable outlet, adequate channel, pipe or pipe
295 system, or to a detention facility.

296 j. In applying these stormwater management criteria, individual lots or parcels in a
297 residential, commercial or industrial development shall not be considered to be
298 separate development projects. Instead, the development, as a whole, shall be
299 considered to be a single development project. Hydrologic parameters that reflect the
300 ultimate development condition shall be used in all engineering calculations.

301 k. All measures used to protect properties and waterways shall be employed in a
302 manner which minimizes impacts on the physical, chemical and biological integrity of
303 rivers, streams and other waters of the state.

304 l. Any plan approved prior to July 1, 2014, that provides for stormwater management
305 that addresses any flow rate capacity and velocity requirements for natural or man-
306 made channels shall satisfy the flow rate capacity and velocity requirements for natural
307 or man-made channels if the practices are designed to (i) detain the water quality
308 volume and to release it over 48 hours; (ii) detain and release over a 24-hour period
309 the expected rainfall resulting from the one year, 24-hour storm; and (iii) reduce the
310 allowable peak flow rate resulting from the 1.5, 2, and 10-year, 24-hour storms to a
311 level that is less than or equal to the peak flow rate from the site assuming it was in a
312 good forested condition, achieved through multiplication of the forested peak flow rate
313 by a reduction factor that is equal to the runoff volume from the site when it was in a
314 good forested condition divided by the runoff volume from the site in its proposed
315 condition, and shall be exempt from any flow rate capacity and velocity requirements
316 for natural or man-made channels as defined in any regulations promulgated pursuant
317 to § 62.1-44.15:54 or 62.1-44.15:65 of the Act.

318 m. For plans approved on and after July 1, 2014, the flow rate capacity and velocity
319 requirements of § 62.1-44.15:52 A of the Act and this subsection shall be satisfied by
320 compliance with water quantity requirements in the Stormwater Management Act
321 (§ 62.1-44.15:24 et seq. of the Code of Virginia) and attendant regulations, unless
322 such land-disturbing activities (i) are in accordance with provisions for time limits on
323 applicability of approved design criteria in 9VAC25-870-47 or grandfathering in
324 9VAC25-870-48 of the Virginia Stormwater Management Program (VSMP)

325 Regulation, in which case the flow rate capacity and velocity requirements of § 62.1-
326 44.15:52 A of the Act shall apply, or (ii) are exempt pursuant to § 62.1-44.15:34 C 7 of
327 the Act.

328 n. Compliance with the water quantity minimum standards set out in 9VAC25-870-66
329 of the Virginia Stormwater Management Program (VSMP) Regulation shall be deemed
330 to satisfy the requirements of this subdivision 19.

331 **9VAC25-840-45. Department review of erosion and sediment control plans for solar**
332 **projects. (Repealed.)**

333 A. Any VESCP authority that does not operate a regulated municipal separate storm sewer
334 system and for which the department did not administer a Virginia Stormwater Management
335 Program as of July 1, 2020, shall notify the department if it decides to have the department provide
336 the VESCP authority with (i) review of the erosion and sediment control plan required by § 62.1-
337 44.15:55 A of the Code of Virginia and (ii) a recommendation on the plan's compliance with the
338 requirements of this chapter for any solar project and its associated infrastructure with a rated
339 electrical generation capacity exceeding five megawatts.

340 B. Any VESCP authority that notifies the department pursuant to this section shall within five
341 days of receiving the erosion and sediment control plan forward the plan to the department for
342 review. If the plan forwarded to the department is incomplete, the department shall return the plan
343 to the VESCP authority immediately, and the application process shall start over. If the plan
344 forwarded to the department is complete, the department shall review the plan for compliance
345 with the requirements of this chapter and provide a recommendation to the VESCP authority. The
346 VESCP authority shall then (i) grant written approval of the plan or (ii) provide written notice of
347 disapproval of the plan in accordance with § 62.1-44.15:55 B of the Code of Virginia.

348 C. Any VESCP authority that notifies the department pursuant to this section shall within five
349 days of receiving the resubmittal of a previously disapproved erosion and sediment control plan
350 forward the resubmitted plan to the department for review. The department shall review the
351 resubmitted plan for compliance with the requirements of this chapter and provide a
352 recommendation to the VESCP authority. The VESCP authority shall then (i) grant written
353 approval of the plan or (ii) provide written notice of disapproval of the plan in accordance with §
354 62.1-44.15:55 B of the Code of Virginia.

355 **9VAC25-840-50. Variances. (Repealed.)**

356 The VESCP authority may waive or modify any of the requirements that are deemed
357 inappropriate or too restrictive for site conditions, by granting a variance. A variance may be
358 granted under these conditions:

359 1. At the time of plan submission, an applicant may request a variance to become part of
360 the approved erosion and sediment control plan. The applicant shall explain the reasons
361 for requesting variances in writing. Specific variances which are allowed by the VESCP
362 authority shall be documented in the plan.

363 2. During construction, the person responsible for implementing the approved plan may
364 request a variance in writing from the VESCP authority. The VESCP authority shall
365 respond in writing either approving or disapproving such a request. If the VESCP authority
366 does not approve a variance within 10 days of receipt of the request, the request shall be
367 considered to be disapproved. Following disapproval, the applicant may resubmit a
368 variance request with additional documentation.

369 3. The VESCP authority shall consider variance requests judiciously, keeping in mind both
370 the need of the applicant to maximize cost effectiveness and the need to protect off-site
371 properties and resources from damage.

372 **9VAC25-840-60. Maintenance and inspections. (Repealed.)**

373 A. All erosion and sediment control structures and systems shall be maintained, inspected
374 and repaired as needed to insure continued performance of their intended function. A statement
375 describing the maintenance responsibilities of the permittee shall be included in the approved
376 erosion and sediment control plan.

377 B. Periodic inspections are required on all projects by the VESCP authority. The VESCP
378 authority shall either:

379 1. Provide for an inspection during or immediately following initial installation of erosion
380 and sediment controls, at least once in every two-week period, within 48 hours following
381 any runoff producing storm event, and at the completion of the project prior to the release
382 of any performance bonds; or

383 2. Establish an alternative inspection program that ensures compliance with the approved
384 erosion and sediment control plan. Any alternative inspection program shall be:

385 a. Approved by the department prior to implementation;

386 b. Established in writing;

387 c. Based on a system of priorities that, at a minimum, address the amount of disturbed
388 project area, site conditions and stage of construction; and

389 d. Documented by inspection records.

390 **9VAC25-840-65. Reporting. (Repealed.)**

391 Each VESCP authority shall report to the department, at least monthly, in a method such as
392 an online reporting system and on a time schedule established by the department, a listing of
393 each land-disturbing activity for which a plan has been approved by the VESCP authority under
394 the Act and this chapter.

395 **9VAC25-840-70. Developments. (Repealed.)**

396 A. An erosion and sediment control plan shall be filed for a development and the buildings
397 constructed within, regardless of the phasing of construction.

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

402 C. Land-disturbing activity of less than 10,000 square feet on individual lots in a residential
403 development shall not be considered exempt from the provisions of the Act and this chapter if the
404 total land-disturbing activity in the development is equal to or greater than 10,000 square feet.

405 **9VAC25-840-80. Criteria for determining status of land-disturbing activity. (Repealed.)**

406 A. The program administrator shall determine the validity of a claim of exempt status by a
407 property owner who disturbs 10,000 square feet or more or 2,500 square feet or more in all areas
408 of jurisdictions designated as subject to the Chesapeake Bay Preservation Area Designation and
409 Management Regulations (9VAC25-830). As soon as a nonexempt status is determined, the
410 requirements of the Act shall be immediately enforced.

411 B. Should a land-disturbing activity not begin during the 180-day period following plan
412 approval or cease for more than 180 days, the VESCP authority may evaluate the existing
413 approved erosion and sediment control plan to determine whether the plan still satisfies local and
414 state erosion and sediment control criteria and to verify that all design factors are still valid. If the
415 VESCP authority finds the previously filed plan to be inadequate, a modified plan shall be
416 submitted and approved prior to the resumption of land-disturbing activity.

417 C. Shore erosion control projects are not subject to this chapter. However, land-disturbing
418 activity immediately outside the limits of the shore erosion project is subject to the Act and this
419 chapter.

420 D. Whenever land-disturbing activity involves activity at a separate location (including but not
421 limited to borrow and disposal areas), the VESCP authority may either:

- 422 1. Consider the off-site activity as being part of the proposed land-disturbing activity; or
- 423 2. If the off-site activity is already covered by an approved erosion and sediment control
424 plan, the VESCP authority may require the applicant to provide proof of the approval and
425 to certify that the plan will be implemented in accordance with a the Act and this chapter.

426 **9VAC25-840-90. Review and evaluation of VESCPs: minimum program standards.**
427 **(Repealed.)**

428 A. This section sets forth the criteria that will be used by the department to determine whether
429 a VESCP operating under authority of the Act, satisfies minimum standards of effectiveness, as
430 follows.

431 Each VESCP must contain an ordinance or other appropriate document or documents
432 adopted by the VESCP authority. Such document or documents must be consistent with the Act
433 and this chapter, including the following criteria:

- 434 1. The document or documents shall include or reference the definition of land-disturbing
435 activity including exemptions, as well as any other significant terms, as necessary to
436 produce an effective VESCP.
- 437 2. The document or documents shall identify the VESCP authority and any soil and water
438 conservation district, adjacent locality, or other public or private entities that the VESCP
439 authority entered into agreements or contracts with to assist with carrying out the
440 provisions of the Act and this chapter, and must include the requirements and design
441 standards to be used in the program.
- 442 3. The document or documents shall include procedures for submission and approval of
443 plans, issuance of permits, monitoring and inspections of land-disturbing activities. The
444 position, agency, department, or other party responsible for conducting inspections shall
445 be identified. The VESCP authority shall maintain, either on-site or in VESCP files, a copy
446 of the approved plan and a record of inspections for each active land-disturbing activity.
- 447 4. Each VESCP operated by a county, city, or town shall include provisions for the
448 integration of the VESCP with Virginia stormwater management, flood insurance, flood
449 plain management, and other programs requiring compliance prior to authorizing a land-
450 disturbing activity in order to make the submission and approval of plans, issuance of
451 permits, payment of fees, and coordination of inspection and enforcement activities more
452 convenient and efficient both for the local governments and those responsible for
453 compliance with the programs.
- 454 5. The VESCP authority must take appropriate enforcement actions, where authorized to
455 do so, to achieve compliance with the program and maintain a record of enforcement
456 actions for all active land-disturbing activities.

457 B. The department shall periodically conduct a comprehensive review and evaluation of local
458 programs. The department will coordinate the review with its other program reviews for the same
459 entity to avoid redundancy. The review and evaluation of a local program shall consist of the
460 following: (i) consultation with the local program administrator or designee or designees; (ii) review
461 of the local ordinance and other applicable documents; (iii) review of plans approved by the
462 program; (iv) inspection of regulated activities; and (v) review of enforcement actions where
463 authorized to do so. The department is also authorized to conduct a partial program compliance
464 review.

465 C. Local programs shall be reviewed and evaluated for effectiveness in carrying out the Act
466 and this chapter using the criteria in this section.

467 D. If deficiencies noted in the review will cause the erosion and sediment control program to
468 be inconsistent with the state program and this chapter, the department shall provide the VESCP
469 authority with a copy of its decision that specifies the deficiencies, action needed to be taken, and
470 an approved corrective action plan and schedule required to attain the minimum standard of
471 effectiveness. If the VESCP authority has not implemented the necessary compliance actions
472 identified by the department within the corrective action schedule, or such additional period as is
473 granted to complete the implementation of the corrective action, then the department shall have
474 the authority to (i) issue a special order to any VESCP imposing a civil penalty set out in § 62.1-
475 44.15:54 F of the Act or (ii) revoke its approval of the VESCP. The Administrative Process Act (§
476 2.2-4000 et seq. of the Code of Virginia) shall govern the review activities and proceedings of the
477 department and the judicial review thereof. In lieu of issuing a special order or revoking the
478 program, the department is authorized to take legal action against a VESCP to ensure
479 compliance.

480 E. Review and evaluation of VESCPs shall be conducted according to a schedule adopted by
481 the department.

482 **9VAC25-840-100. State agency projects. (Repealed.)**

483 A. All state agency land-disturbing activities that are not exempt and that have commenced
484 without an approved erosion and sediment control plan shall immediately cease until the state
485 agency has submitted annual standards and specifications for its conduct of land-disturbing
486 activities which has been reviewed and approved by the department as being consistent with the
487 Act and this chapter, or an erosion and sediment control plan has been submitted to and approved
488 by the department. A formal "Notice of Plan Requirement" will be sent to the state agency under
489 whose purview the project lies since that agency is responsible for compliance with the Act and
490 this chapter.

491 B. Where inspections by department personnel reveal deficiencies in carrying out an approved
492 plan, the person responsible for carrying out the plan, as well as the state agency responsible,
493 will be issued a notice to comply with specific actions and the deadlines that shall be met. Failure
494 to meet the prescribed deadlines can result in the issuance of a stop work order for all land-
495 disturbing activities on the project at the discretion of the department. The stop work order will be
496 lifted once the required erosion and sediment control measures are in place and inspected by
497 department staff.

498 C. Whenever the Commonwealth or any of its agencies fails to comply within the time provided
499 in an appropriate final order, the director of the department may petition for compliance as follows:
500 For violations in the Natural and Historic Resources Secretariat, to the Secretary of Natural and
501 Historic Resources; for violations in other secretariats, to the appropriate Secretary; for violations
502 in other state agencies, to the head of such agency. Where the petition does not achieve timely
503 compliance, the director shall bring the matter to the Governor for resolution. The department may
504 also pursue enforcement as provided by § 62.1-44.15:63 of the Act.

505 D. Where compliance will require the appropriation of funds, the director shall cooperate with
506 the appropriate agency head in seeking such an appropriation; where the director determines that
507 an emergency exists, he shall petition the Governor for funds from the Civil Contingency Fund or
508 other appropriate source.

509 Chapter 850

510 Erosion and Sediment Control and Stormwater Management Certification Regulations
511 (REPEALED)512 **9VAC25-850-10. Definitions. (Repealed.)**

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

515 "Applicant" means any person submitting a request to be considered for certification.

516 "Board" means the State Water Control Board. When used outside the context of the
517 promulgation of regulations, including regulations to establish general permits, "board" means the
518 Department of Environmental Quality.

519 "Certification" means the process whereby the department, on behalf of the Commonwealth,
520 issues a certificate to persons who have completed department-approved training programs and
521 met any additional eligibility requirements of 9VAC25-850-50 related to the specified
522 classifications (9VAC25-850-40) within the areas of ESC or SWM or in other ways demonstrated
523 adequate knowledge and experience in accordance with the eligibility requirements of 9VAC25-
524 850-50 in the specified classifications within the areas of ESC or SWM.

525 "Certified combined administrator for ESC" means an employee or agent of a VESCP
526 authority who holds a certificate of competence from the department in the combined ESC
527 classifications of program administrator, plan reviewer, and project inspector in the area of ESC.

528 "Certified combined administrator for SWM" means an employee or agent of a VSMP authority
529 who holds a certificate of competence from the department in the combined classifications of
530 program administrator, plan reviewer, and project inspector in the area of SWM.

531 "Certified plan reviewer for ESC" means an employee or agent of a VESCP authority who: (i)
532 holds a certificate of competence from the department in the classification of plan reviewer in the
533 area of ESC; (ii) is licensed as a professional engineer, architect, certified landscape architect, or
534 land surveyor pursuant to Article 1 (§ 54.1-400 et seq.) of Chapter 4 of Title 54.1 of the Code of
535 Virginia; or (iii) is a professional soil scientist as defined in Chapter 22 (§ 54.1-2200 et seq.) of
536 Title 54.1 of the Code of Virginia.

537 "Certified plan reviewer for SWM" means an employee or agent of a VSMP authority who
538 holds a certificate of competence from the department in the classification of plan reviewer in the
539 area of SWM.

540 "Certified program administrator for ESC" means an employee or agent of a VESCP authority
541 who holds a certificate of competence from the department in the classification of program
542 administrator in the area of ESC.

543 "Certified program administrator for SWM" means an employee or agent of a VSMP authority
544 who holds a certificate of competence from the department in the classification of program
545 administrator in the area of SWM.

546 "Certified project inspector for ESC" means an employee or agent of a VESCP authority who
547 holds a certificate of competence from the department in the classification of project inspector in
548 the area of ESC.

549 "Certified project inspector for SWM" means an employee or agent of a VSMP authority who
550 holds a certificate of competence from the department in the classification of project inspector in
551 the area of SWM.

552 "Classification" means the four specific certificate of competence classifications within the
553 areas of ESC or SWM that make up activities being performed (program administrator, plan
554 reviewer, project inspector, and combined administrator).

555 ~~"Combined administrator for ESC" means anyone who is responsible for performing the~~
556 ~~combined duties of a program administrator, plan reviewer and project inspector of a VESCP~~
557 ~~authority.~~

558 ~~"Combined administrator for SWM" means anyone who is responsible for performing the~~
559 ~~combined duties of a program administrator, plan reviewer and project inspector of a VSMP~~
560 ~~authority.~~

561 ~~"Department" means the Department of Environmental Quality.~~

562 ~~"Erosion and sediment control plan" or "ESC plan" means a document containing material for~~
563 ~~the conservation of soil and water resources of a unit or group of units of land. It may include~~
564 ~~appropriate maps, an appropriate soil and water plan inventory and management information with~~
565 ~~needed interpretations, and a record of all decisions contributing to conservation treatment. The~~
566 ~~plan shall contain all major conservation decisions to ensure that the entire unit or units of land~~
567 ~~will be so treated to achieve the conservation objective.~~

568 ~~"ESC" means erosion and sediment control.~~

569 ~~"ESC Act" means the Erosion and Sediment Control Law, Article 2.4 (§ 62.1-44.15:51 et seq.)~~
570 ~~of Chapter 3.1 of Title 62.1 of the Code of Virginia.~~

571 ~~"Plan reviewer" means anyone who is responsible for determining the accuracy of ESC plans~~
572 ~~and supporting documents or SWM plans and supporting documents for approval by a VESCP~~
573 ~~authority or a VSMP authority as may be applicable in the areas of ESC or SWM.~~

574 ~~"Program administrator" means the person or persons responsible for administering and~~
575 ~~enforcing the VESCP or VSMP of a VESCP authority or a VSMP authority as may be applicable~~
576 ~~in the areas of ESC or SWM.~~

577 ~~"Project inspector" means anyone who, as a representative of a VESCP authority or a VSMP~~
578 ~~authority, is responsible for periodically examining the ESC or SWM activities and premises of a~~
579 ~~land-disturbing activity for compliance with the ESC Act and Regulations or the SWM Act and~~
580 ~~Regulations as may be applicable.~~

581 ~~"Responsible land disturber" or "RLD" means an individual holding a certificate issued by the~~
582 ~~department who is responsible for carrying out the land-disturbing activity in accordance with the~~
583 ~~approved ESC plan. The RLD may be the owner, applicant, permittee, designer, superintendent,~~
584 ~~project manager, contractor, or any other project or development team member. The RLD must~~
585 ~~be designated on the ESC plan or permit as a prerequisite for engaging in land disturbance.~~

586 ~~"Stormwater management plan" or "SWM plan" means a document containing material~~
587 ~~describing methods for complying with the requirements of a VSMP and the SWM Act and its~~
588 ~~attendant regulations.~~

589 ~~"SWM" means stormwater management.~~

590 ~~"SWM Act" means the Virginia Stormwater Management Act, Article 2.3 (§ 62.1-44.15:24 et~~
591 ~~seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia.~~

592 ~~"Virginia Erosion and Sediment Control Program" or "VESCP" means a program approved by~~
593 ~~the department that has been established by a VESCP authority for the effective control of soil~~
594 ~~erosion, sediment deposition, and nonagricultural runoff associated with a land-disturbing activity~~
595 ~~to prevent the unreasonable degradation of properties, stream channels, waters, and other natural~~
596 ~~resources and shall include such items where applicable as local ordinances, rules, permit~~
597 ~~requirements, annual standards and specifications, policies and guidelines, technical materials,~~
598 ~~and requirements for plan review, inspection, enforcement where authorized in the ESC Act and~~
599 ~~this chapter, and evaluation consistent with the requirements of the ESC Act and this chapter.~~

600 ~~"Virginia Erosion and Sediment Control Program authority" or "VESCP authority" means an~~
601 ~~authority approved by the department to operate a Virginia erosion and sediment control program.~~

602 An authority may include a state entity, including the department; a federal entity; a district, county,
 603 city, or town; or for linear projects subject to annual standards and specifications, electric, natural
 604 gas and telephone utility companies, interstate and intrastate natural gas pipeline companies,
 605 railroad companies, or authorities created pursuant to § 15.2-5102 of the Code of Virginia.

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

613 "Virginia Stormwater Management Program authority" or "VSMP authority" means an
 614 authority approved by the department after September 13, 2011, to operate a Virginia Stormwater
 615 Management Program or, until such approval is given, the department. An authority may include
 616 a locality; state entity, including the department; federal entity; or, for linear projects subject to
 617 annual standards and specifications in accordance with subsection B of § 62.1-44.15:31 of the
 618 Code of Virginia, electric, natural gas, and telephone utility companies, interstate and intrastate
 619 natural gas pipeline companies, railroad companies, or authorities created pursuant to § 15.2-
 620 5102 of the Code of Virginia.

621 **9VAC25-850-20. Purpose. (Repealed.)**

622 The purpose of this chapter is to guide the issuance of certificates of competence required by
 623 §§ 62.1-44.15:52 E and 62.1-44.15:53 of the ESC Act and § 62.1-44.15:30 of the SWM Act.

624 **9VAC25-850-30. Applicability. (Repealed.)**

625 This chapter is applicable to:

- 626 1. Every VESCP authority or VSMP authority that administers a VESCP or VSMP as may
 627 be applicable. Staff of a VESCP authority must be certified in accordance with §§ 62.1-
 628 44.15:51 E and 62.1-44.15:53 of the ESC Act. Staff of a VSMP authority must be certified
 629 in accordance with § 62.1-44.15:30 of the SWM Act.
- 630 2. Anyone who is contracted by a VESCP authority or a VSMP authority to perform any or
 631 all of the functions of that authority as may be applicable. This person will be subject to
 632 the same certification requirements as the authority.
- 633 3. Anyone voluntarily seeking certificates of competence from the department for
 634 classifications described in 9VAC25-850-40.

635 **9VAC25-850-40. Certificates. (Repealed.)**

636 A. Certificates of competence shall be issued by the department in accordance with the
 637 requirements of 9VAC25-850-50 for the following classifications:

- 638 1. Program administrator for ESC. The person employed as the VESCP administrator.
- 639 2. Plan reviewer for ESC. The person who reviews ESC plans to be approved by the
 640 VESCP authority.
- 641 3. Project inspector for ESC. The person responsible for inspecting erosion and sediment
 642 control practices to ensure compliance with the Virginia Erosion and Sediment Control
 643 Law and Regulations.
- 644 4. Combined administrator for ESC. The person responsible for performing the combined
 645 duties of program administrator, plan reviewer and project inspector for a VESCP
 646 authority.
- 647 5. Program administrator for SWM. The person employed as the VSMP administrator.

648 ~~6. Plan reviewer for SWM. The person who reviews SWM plans to be approved by the~~
 649 ~~VSMP authority.~~

650 ~~7. Project inspector for SWM. The person responsible for inspecting regulated activities to~~
 651 ~~ensure compliance with the SWM Act and Regulations.~~

652 ~~8. Combined administrator for SWM. The person responsible for performing the combined~~
 653 ~~duties of program administrator, plan reviewer, and project inspector for a VSMP authority.~~

654 ~~B. A certificate shall be issued by the department for the responsible land disturber or RLD for~~
 655 ~~ESC. The RLD is the person responsible for carrying out the land-disturbing activity.~~

656 ~~C. Any person employed as a plan reviewer who is licensed as a professional engineer,~~
 657 ~~architect, certified landscape architect, or land surveyor pursuant to Article 1 (§ 54.1-400 et seq.)~~
 658 ~~of Chapter 4 of Title 54.1 of the Code of Virginia or as a professional soil scientist as defined in~~
 659 ~~Chapter 22 (§ 54.1-2200 et seq.) of Title 54.1 of the Code of Virginia shall qualify as a certified~~
 660 ~~plan reviewer for ESC and will not require a certificate of competence from the department. In lieu~~
 661 ~~of a person holding this department certificate of competence, such person shall produce a~~
 662 ~~current professional license or certification upon request of the department.~~

663 ~~D. Any person who holds a valid and unexpired certificate of competence issued by the~~
 664 ~~department in the classification of ESC or SWM, or who obtains such a certificate, and who later~~
 665 ~~successfully obtains an additional certificate of competence from the department in the parallel~~
 666 ~~ESC or SWM classification may surrender both certificates of competence to the department and~~
 667 ~~request in writing issuance of a dual certificate showing certification in both classifications. Such~~
 668 ~~a request must be made while both of the ESC and SWM certificates of competence obtained are~~
 669 ~~valid and unexpired. The expiration date of the dual certificate shall be three years from the date~~
 670 ~~of expiration of the additional certificate acquired.~~

671 **9VAC25-850-50. Eligibility requirements. (Repealed.)**

672 ~~A. Certification may be obtained by satisfactorily completing and submitting an application to~~
 673 ~~the department in accordance with 9VAC25-850-80 and:~~

674 ~~1. By obtaining a total of 800 hours of experience as an ESC or SWM plan reviewer,~~
 675 ~~project inspector, or combined administrator and obtaining a passing score on the~~
 676 ~~certification examination administered by the department in the applicable ESC or SWM~~
 677 ~~area; or~~

678 ~~2. By enrolling in and completing, within 12 months, a department-approved training~~
 679 ~~program in the classifications of program administrator, plan reviewer, project inspector,~~
 680 ~~or combined administrator and obtaining within one year of completion of the training~~
 681 ~~program a passing score on the certification examination administered by the department~~
 682 ~~in the applicable ESC or SWM area.~~

683 ~~a. The training program for project inspectors for ESC will consist of attending and~~
 684 ~~completing courses/seminars in "Basic Erosion and Sediment Control in Virginia" and~~
 685 ~~"Erosion and Sediment Control for Inspectors."~~

686 ~~b. The training program for plan reviewers for ESC will consist of attending and~~
 687 ~~completing courses/seminars in "Basic Erosion and Sediment Control in Virginia" and~~
 688 ~~"Erosion and Sediment Control for Plan Reviewers."~~

689 ~~c. The training program for program administrators for ESC will consist of attending~~
 690 ~~the course "Basic Erosion and Sediment Control in Virginia."~~

691 ~~d. The training program for combined administrators for ESC will consist of attending~~
 692 ~~the courses/seminars "Basic Erosion and Sediment Control in Virginia," "Erosion and~~
 693 ~~Sediment Control for Inspectors," and "Erosion and Sediment Control for Plan~~
 694 ~~Reviewers."~~

695 ~~e. The training program for project inspectors for SWM will consist of attending and~~
 696 ~~completing courses/seminars in "Basic Stormwater Management in Virginia" and~~
 697 ~~"Stormwater Management for Inspectors."~~

698 ~~f. The training program for plan reviewers for SWM will consist of attending and~~
 699 ~~completing courses/seminars in "Basic Stormwater Management in Virginia" and~~
 700 ~~"Stormwater Management for Plan Reviewers."~~

701 ~~g. The training program for program administrators for SWM will consist of attending~~
 702 ~~the seminar "Basic Stormwater Management in Virginia."~~

703 ~~h. The training program for combined administrators for SWM will consist of attending~~
 704 ~~the courses/seminars "Basic Stormwater Management in Virginia," "Stormwater~~
 705 ~~Management for Inspectors," and "Stormwater Management for Plan Reviewers."~~

706 ~~3. By enrolling in and completing the training program and obtaining a passing score on~~
 707 ~~the certification examination administered by the department for responsible land~~
 708 ~~disturbance for ESC.~~

709 ~~B. Certification and recertification shall be valid for three years and will expire on the last day~~
 710 ~~of the expiration month except as otherwise set out in 9VAC25-850-40 D or 9VAC25-850-90.~~

711 ~~C. Recertification may be obtained for classifications outlined in 9VAC25-850-40 of this~~
 712 ~~chapter prior to the expiration date of a certification by:~~

713 ~~1. Obtaining a passing score on the recertification examination;~~

714 ~~2. Successfully completing a department-approved training program during the last 12~~
 715 ~~months of the term of the certificate but prior to its expiration date;~~

716 ~~3. Being a professional registered in the Commonwealth pursuant to Article 1 (§ 54.1-400~~
 717 ~~et seq.) of Chapter 4 of Title 54.1 of the Code of Virginia or a professional soil scientist as~~
 718 ~~defined in Chapter 22 (§ 54.1-2200 et seq.) of Title 54.1, and paying the required fee for~~
 719 ~~recertification. Such professionals shall be deemed to satisfy the provisions of this~~
 720 ~~subsection for classifications in subdivisions A 1 through 4 and subsection B of 9VAC25-~~
 721 ~~850-40. However, such professionals when in the classification of plan reviewer for ESC~~
 722 ~~shall be exempt from the recertification requirements and fees of this chapter provided~~
 723 ~~they maintain their professional license;~~

724 ~~4. Being a professional registered in the Commonwealth pursuant to Article 1 (§ 54.1-400~~
 725 ~~et seq.) of Chapter 4 of Title 54.1 of the Code of Virginia and paying the required fee for~~
 726 ~~recertification. Such professionals shall be deemed to satisfy the provisions of this~~
 727 ~~subsection for classifications in subdivisions A 5 through 8 and subsection B of 9VAC25-~~
 728 ~~850-40; or~~

729 ~~5. Completing continuing professional education hours in accordance with department~~
 730 ~~guidance.~~

731 ~~**9VAC25-850-55. Classification acknowledgment for the purposes of program compliance**~~
 732 ~~**reviews. (Repealed.)**~~

733 ~~For the purposes of VESCP or VSMP compliance reviews and evaluations, the certification~~
 734 ~~requirements of §§ 62.1-44.15:53 and 62.1-44.15:30 of the Code of Virginia shall be deemed to~~
 735 ~~have been met if the VESCP or the VSMP authority has a person or persons enrolled in the~~
 736 ~~department's ESC or SWM training programs set forth in 9VAC25-850-50 A 1 and A 2 a through~~
 737 ~~h for the necessary classifications and such person or persons obtains certification within one~~
 738 ~~year of completing the necessary training programs.~~

739 ~~**9VAC25-850-60. Fees. (Repealed.)**~~

740 ~~A. Certification, recertification, and dual certificate issuance fees shall be collected to cover~~
 741 ~~the administrative cost for the certification program.~~

742 B. A fee will also be charged to present education and training program courses/seminars
743 which support the certification program.

744 C. Fees are nonrefundable and shall not be prorated.

745 **9VAC25-850-70. Examination. (Repealed.)**

746 A. A department-approved examination shall be administered at least twice a year.

747 B. An individual may take the certification examination for the desired certificate of
748 competence after fulfilling the prerequisite experience requirement or completing a department-
749 approved training program in accordance with 9VAC25-850-50.

750 C. An individual who is unable to take an examination at the time scheduled shall notify the
751 department within 48 hours prior to the date of the examination unless a later time is established
752 by the department; such an individual may be rescheduled for the next examination. Failure to
753 notify the department may require an individual to submit a new application and payment of fees
754 in accordance with this chapter.

755 D. An applicant who is unsuccessful in passing an examination will be allowed to pay the
756 appropriate fee and retake the appropriate exam within one year without resubmitting an
757 application. After the one-year period has elapsed, an applicant will be required to submit a new
758 application with the appropriate fee in accordance with this chapter in order to take the
759 examination. Application for examination must be received at least 60 days prior to the scheduled
760 examination unless a later date is established by the department to be eligible to sit for the
761 examination.

762 E. A minimum passing score of 70% will be required on the appropriate certification exam(s).

763 F. All applicants will be notified within 60 days of the results of the examination.

764 **9VAC25-850-80. Application. (Repealed.)**

765 A. Any person seeking certification or recertification by a combination of experience and
766 examination or by the combination of completion of the training program and examination shall
767 submit a completed application in a manner prescribed by the department with the appropriate
768 fee(s). The application shall contain the following:

- 769 1. The applicant's name, address, daytime phone number, email address, and name and
770 address of business or organization as well as the date the application was filled out.
 - 771 2. The classification of certification the applicant is applying for as set forth in 9VAC25-
772 850-40, and designation whether the applicant is applying for initial certification or
773 recertification.
 - 774 3. If any special arrangements must be provided for because of a handicap.
 - 775 4. A verification of all work experience signed and dated by applicant's supervisor, if
776 required.
 - 777 5. A signed statement that the information provided in the application is true and accurate.
- 778 Incomplete applications will be returned to the applicant. All applications must be received
779 by the department at least 60 days prior to the scheduled examination date, unless a later
780 date is established by the department, in order to be able to sit for the examination.

781 The department may establish other acceptable forms of documentation for the components
782 of the application that provide similar assurances as those set forth in this subsection.

783 B. All complete applications of candidates will be reviewed by the department to determine
784 eligibility for certification. All applicants will be notified of the results of the review. Any applicant
785 may appeal the review, in writing, to the department within 30 days of the department's
786 determination. No applicant will be approved for certification unless he meets the requirements of
787 this chapter.

788 C. Applicants who have been found ineligible to sit for an examination may request further
 789 consideration by submitting a letter to the department with the necessary evidence of additional
 790 qualifications. No additional fee will be required provided that all requirements for certification are
 791 met within one year from the date of original application.

792 **9VAC25-850-90. Discipline of certified personnel. (Repealed.)**

793 The department may suspend, revoke or refuse to grant or renew the certification of any
 794 person if the department, in an informal fact finding under § 2.2-4019 of the Code of Virginia, finds
 795 that:

- 796 1. The certification was obtained or renewed through fraud or misinterpretation;
- 797 2. The certified person has violated or cooperated with others in violating any provision of
 798 this chapter;
- 799 3. The certified person has not demonstrated reasonable care, judgment, or application of
 800 his knowledge and ability in the performance of his duties; or
- 801 4. The certified person has made any material misrepresentation in the course of
 802 performing his duties.

803 Chapter 870

804 Virginia Stormwater Management Program (VSMP) Regulation (REPEALED)

805 Part I

806 Definitions, Purpose, and Applicability

807 **9VAC25-870-10. Definitions. (Repealed.)**

808 The following words and terms used in this chapter have the following meanings unless the
 809 context clearly indicates otherwise.

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

812 "Administrator" means the Administrator of the United States Environmental Protection
 813 Agency or an authorized representative.

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

818 "Applicable standards and limitations" means all state, interstate, and federal standards and
 819 limitations to which a discharge or a related activity is subject under the Clean Water Act (CWA)
 820 (33 USC § 1251 et seq.) and the Act, including effluent limitations, water quality standards,
 821 standards of performance, toxic effluent standards or prohibitions, best management practices,
 822 and standards for sewage sludge use or disposal under §§ 301, 302, 303, 304, 306, 307, 308,
 823 403, and 405 of CWA.

824 "Approval authority" means the State Water Control Board or its designee.

825 "Approved program" or "approved state" means a state or interstate program that has been
 826 approved or authorized by EPA under 40 CFR Part 123.

827 "Average monthly discharge limitation" means the highest allowable average of daily
 828 discharges over a calendar month, calculated as the sum of all daily discharges measured during
 829 a calendar month divided by the number of daily discharges measured during that month.

830 ~~"Average weekly discharge limitation" means the highest allowable average of daily~~
831 ~~discharges over a calendar week, calculated as the sum of all daily discharges measured during~~
832 ~~a calendar week divided by the number of daily discharges measured during that week.~~

833 ~~"Best management practice" or "BMP" means schedules of activities, prohibitions of practices,~~
834 ~~maintenance procedures, and other management practices, including both structural and~~
835 ~~nonstructural practices, to prevent or reduce the pollution of surface waters and groundwater~~
836 ~~systems. This includes:~~

837 ~~1. "Nonproprietary best management practice" means both structural and nonstructural~~
838 ~~practices to prevent or reduce the pollution of surface waters and groundwater systems~~
839 ~~that are in the public domain and are not protected by trademark or patent or copyright.~~

840 ~~2. "Proprietary best management practice" means both structural and nonstructural~~
841 ~~practices to prevent or reduce the pollution of surface waters and groundwater systems~~
842 ~~that are privately owned and controlled and may be protected by trademark or patent or~~
843 ~~copyright.~~

844 ~~"Board" means the State Water Control Board. When used outside the context of the~~
845 ~~promulgation of regulations, including regulations to establish general permits, "board" means the~~
846 ~~Department of Environmental Quality.~~

847 ~~"Bypass" means the intentional diversion of waste streams from any portion of a treatment~~
848 ~~facility.~~

849 ~~"Channel" means a natural or manmade waterway.~~

850 ~~"Chesapeake Bay Preservation Act" means Article 2.5 (§ 62.1-44.15:67 et seq.) of Chapter~~
851 ~~3.1 of Title 62.1 of the Code of Virginia.~~

852 ~~"Chesapeake Bay Preservation Act land-disturbing activity" means a land-disturbing activity~~
853 ~~including clearing, grading, or excavation that results in a land disturbance equal to or greater~~
854 ~~than 2,500 square feet and less than one acre in all areas of jurisdictions designated as subject~~
855 ~~to the Chesapeake Bay Preservation Area Designation and Management Regulations (9VAC25-~~
856 ~~830) adopted pursuant to the Chesapeake Bay Preservation Act.~~

857 ~~"Chesapeake Bay Preservation Area" means any land designated by a local government~~
858 ~~pursuant to Part III (9VAC25-830-70 et seq.) of the Chesapeake Bay Preservation Area~~
859 ~~Designation and Management Regulations and § 62.1-44.15:74 of the Chesapeake Bay~~
860 ~~Preservation Act. A Chesapeake Bay Preservation Area shall consist of a Resource Protection~~
861 ~~Area and a Resource Management Area as defined in the Chesapeake Bay Preservation Area~~
862 ~~Designation and Management Regulations (9VAC25-830).~~

863 ~~"Chesapeake Bay watershed" means all land areas draining to the following Virginia river~~
864 ~~basins: Potomac River Basin, James River Basin, Rappahannock River Basin, Chesapeake Bay~~
865 ~~and its small coastal basins, and York River Basin.~~

866 ~~"Common plan of development or sale" means a contiguous area where separate and distinct~~
867 ~~construction activities may be taking place at different times on different schedules.~~

868 ~~"Comprehensive stormwater management plan" means a plan, which may be integrated with~~
869 ~~other land use plans or regulations, that specifies how the water quality components, quantity~~
870 ~~components, or both of stormwater are to be managed on the basis of an entire watershed or a~~
871 ~~portion thereof. The plan may also provide for the remediation of erosion, flooding, and water~~
872 ~~quality and quantity problems caused by prior development.~~

873 ~~"Construction activity" means any clearing, grading, or excavation associated with large~~
874 ~~construction activity or associated with small construction activity.~~

875 ~~"Contiguous zone" means the entire zone established by the United States under Article 24~~
876 ~~of the Convention on the Territorial Sea and the Contiguous Zone (37 FR 11906 June 15, 1972).~~

877 ~~"Continuous discharge" means a discharge which occurs without interruption throughout the~~
 878 ~~operating hours of the facility, except for infrequent shutdowns for maintenance, process changes,~~
 879 ~~or other similar activities.~~

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

882 ~~"Controversial permit" means a water permitting action for which a public hearing has been~~
 883 ~~granted pursuant to 9VAC25-870-550 and 9VAC25-870-555.~~

884 ~~"Co-operator" means an operator of a state permit that is only responsible for state permit~~
 885 ~~conditions relating to the discharge for which it is the operator.~~

886 ~~"Clean Water Act" or "CWA" means the federal Clean Water Act (33 USC § 1251 et seq.),~~
 887 ~~formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control~~
 888 ~~Act Amendments of 1972, Public Law 92-500, as amended by Public Law 95-217, Public Law 95-~~
 889 ~~576, Public Law 96-483, and Public Law 97-117, or any subsequent revisions thereto.~~

890 ~~"CWA and regulations" means the Clean Water Act (CWA) and applicable regulations~~
 891 ~~published in the Code of Federal Regulations promulgated thereunder. For the purposes of this~~
 892 ~~chapter, it includes state program requirements.~~

893 ~~"Daily discharge" means the discharge of a pollutant measured during a calendar day or any~~
 894 ~~24-hour period that reasonably represents the calendar day for purposes of sampling. For~~
 895 ~~pollutants with limitations expressed in units of mass, the daily discharge is calculated as the total~~
 896 ~~mass of the pollutant discharged over the day. For pollutants with limitations expressed in other~~
 897 ~~units of measurement, the daily discharge is calculated as the average measurement of the~~
 898 ~~pollutant over the day.~~

899 ~~"Department" means the Department of Environmental Quality.~~

900 ~~"Development" means land disturbance and the resulting landform associated with the~~
 901 ~~construction of residential, commercial, industrial, institutional, recreation, transportation, or utility~~
 902 ~~facilities or structures or the clearing of land for nonagricultural or nonsilvicultural purposes. The~~
 903 ~~regulation of discharges from development, for purposes of this chapter, does not include the~~
 904 ~~exemptions found in 9VAC25-870-300.~~

905 ~~"Direct discharge" means the discharge of a pollutant.~~

906 ~~"Director" means the Director of the Department of Environmental Quality or his designee.~~

907 ~~"Discharge," when used without qualification, means the discharge of a pollutant.~~

908 ~~"Discharge of a pollutant" means:~~

909 ~~1. Any addition of any pollutant or combination of pollutants to state waters from any point~~
 910 ~~source; or~~

911 ~~2. Any addition of any pollutant or combination of pollutants to the waters of the contiguous~~
 912 ~~zone or the ocean from any point source other than a vessel or other floating craft which~~
 913 ~~is being used as a means of transportation.~~

914 ~~This definition includes additions of pollutants into surface waters from: surface runoff that is~~
 915 ~~collected or channeled by man; discharges through pipes, sewers, or other conveyances owned~~
 916 ~~by a state, municipality, or other person that do not lead to a treatment works; and discharges~~
 917 ~~through pipes, sewers, or other conveyances, leading into privately owned treatment works. This~~
 918 ~~term does not include an addition of pollutants by any indirect discharger.~~

919 ~~"Discharge Monitoring Report" or "DMR" means the form supplied by the department, or an~~
 920 ~~equivalent form developed by the operator and approved by the department, for the reporting of~~
 921 ~~self-monitoring results by operators.~~

922 ~~"Draft state permit" means a document indicating the department's tentative decision to issue~~
 923 ~~or deny, modify, revoke and reissue, terminate, or reissue a state individual or general permit. A~~

924 notice of intent to deny a state individual or general permit is a type of draft state permit. A denial
925 of a request for modification, revocation and reissuance, or termination is not a draft state permit.

926 "Drainage area" means a land area, water area, or both from which runoff flows to a common
927 point.

928 "Effluent limitation" means any restriction imposed by the board on quantities, discharge rates,
929 and concentrations of pollutants which are discharged from point sources into surface waters, the
930 waters of the contiguous zone, or the ocean.

931 "Effluent limitations guidelines" means a regulation published by the administrator under §
932 304(b) of the CWA to adopt or revise effluent limitations.

933 "Environmental Protection Agency" or "EPA" means the United States Environmental
934 Protection Agency.

935 "Erosion and Sediment Control Law" means Article 2.4 (§ 62.1-44.15:51 et seq.) of Chapter
936 3.1 of Title 62.1 of the Code of Virginia.

937 "ESC" means erosion and sediment control.

938 "Existing state permit" means for the purposes of this chapter a state permit issued by the
939 department and currently held by a state permit applicant.

940 "Existing source" means any source that is not a new source or a new discharger.

941 "Facilities or equipment" means buildings, structures, process or production equipment or
942 machinery that form a permanent part of a new source and that will be used in its operation, if
943 these facilities or equipment are of such value as to represent a substantial commitment to
944 construct. It excludes facilities or equipment used in connection with feasibility, engineering, and
945 design studies regarding the new source or water pollution treatment for the new source.

946 "Facility or activity" means any point source or treatment works treating domestic sewage or
947 any other facility or activity (including land or appurtenances thereto) that is subject to regulation
948 under the VSMP.

949 "Flood fringe" means the portion of the floodplain outside the floodway that is usually covered
950 with water from the 100-year flood or storm event. This includes the flood or floodway fringe
951 designated by the Federal Emergency Management Agency.

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

955 "Floodplain" means the area adjacent to a channel, river, stream, or other water body that is
956 susceptible to being inundated by water normally associated with the 100-year flood or storm
957 event. This includes the floodplain designated by the Federal Emergency Management Agency.

958 "Flood-prone area" means the component of a natural or restored stormwater conveyance
959 system that is outside the main channel. Flood-prone areas may include the floodplain, the
960 floodway, the flood fringe, wetlands, riparian buffers, or other areas adjacent to the main channel.

961 "Floodway" means the channel of a river or other watercourse and the adjacent land areas,
962 usually associated with flowing water, that must be reserved in order to discharge the 100-year
963 flood or storm event without cumulatively increasing the water surface elevation more than one
964 foot. This includes the floodway designated by the Federal Emergency Management Agency.

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

967 "Hazardous substance" means any substance designated under the Code of Virginia or 40
968 CFR Part 116 pursuant to § 311 of the CWA.

969 "Hydrologic Unit Code" or "HUC" means a watershed unit established in the most recent
970 version of Virginia's 6th Order National Watershed Boundary Dataset unless specifically identified
971 as another order.

972 "Illicit discharge" means any discharge to a municipal separate storm sewer that is not
973 composed entirely of stormwater, except discharges pursuant to a separate VPDES or state
974 permit (other than the state permit for discharges from the municipal separate storm sewer),
975 discharges resulting from firefighting activities, and discharges identified by and in compliance
976 with 9VAC25-870-400-D-2-c(3).

977 "Impervious cover" means a surface composed of material that significantly impedes or
978 prevents natural infiltration of water into soil.

979 "Incorporated place" means a city, town, township, or village that is incorporated under the
980 Code of Virginia.

981 "Indian country" means (i) all land within the limits of any Indian reservation under the
982 jurisdiction of the United States government, notwithstanding the issuance of any patent, and
983 including rights-of-way running through the reservation; (ii) all dependent Indian communities with
984 the borders of the United States whether within the originally or subsequently acquired territory
985 thereof, and whether within or without the limits of a state; and (iii) all Indian allotments, the Indian
986 titles to which have not been extinguished, including rights-of-way running through the same.

987 "Indirect discharger" means a nondomestic discharger introducing "pollutants" to a "publicly
988 owned treatment works (POTW)."

989 "Inspection" means an on-site review of the project's compliance with the permit or the state
990 permit, the VSMP, and any applicable design criteria, or an on-site review to obtain information
991 or conduct surveys or investigations necessary in the implementation or enforcement of the Act
992 and this chapter.

993 "Interstate agency" means an agency of two or more states established by or under an
994 agreement or compact approved by Congress, or any other agency of two or more states having
995 substantial powers or duties pertaining to the control of pollution as determined and approved by
996 the administrator under the CWA and regulations.

997 "Karst area" means any land area predominantly underlain at the surface or shallow
998 subsurface by limestone, dolomite, or other soluble bedrock regardless of any obvious surface
999 karst features.

1000 "Karst features" means sinkholes, sinking and losing streams, caves, large flow springs, and
1001 other such landscape features found in karst areas.

1002 "Land disturbance" or "land-disturbing activity" means a manmade change to the land surface
1003 that potentially changes its runoff characteristics including clearing, grading, or excavation, except
1004 that the term shall not include those exemptions specified in § 62.1-44.15:34 of the Code of
1005 Virginia.

1006 "Large construction activity" means construction activity including clearing, grading, and
1007 excavation, except operations that result in the disturbance of less than five acres of total land
1008 area. Large construction activity also includes the disturbance of less than five acres of total land
1009 area that is a part of a larger common plan of development or sale if the larger common plan will
1010 ultimately disturb five acres or more. Large construction activity does not include routine
1011 maintenance that is performed to maintain the original line and grade, hydraulic capacity, or
1012 original purpose of the facility.

1013 "Large municipal separate storm sewer system" means all municipal separate storm sewers
1014 that are either:

1015 1. Located in an incorporated place with a population of 250,000 or more as determined
1016 by the 1990 decennial census by the Bureau of Census (40 CFR Part 122 Appendix F);

- 1017 ~~2. Located in the counties listed in 40 CFR Part 122 Appendix H, except municipal~~
 1018 ~~separate storm sewers that are located in the incorporated places, townships or towns~~
 1019 ~~within such counties;~~
- 1020 ~~3. Owned or operated by a municipality other than those described in subdivision 1 or 2~~
 1021 ~~of this definition and that are designated by the department as part of the large or medium~~
 1022 ~~municipal separate storm sewer system due to the interrelationship between the~~
 1023 ~~discharges of the designated storm sewer and the discharges from municipal separate~~
 1024 ~~storm sewers described under subdivision 1 or 2 of this definition. In making this~~
 1025 ~~determination the department may consider the following factors:~~
- 1026 ~~a. Physical interconnections between the municipal separate storm sewers;~~
 1027 ~~b. The location of discharges from the designated municipal separate storm sewer~~
 1028 ~~relative to discharges from municipal separate storm sewers described in subdivision~~
 1029 ~~4 of this definition;~~
- 1030 ~~c. The quantity and nature of pollutants discharged to surface waters;~~
 1031 ~~d. The nature of the receiving surface waters; and~~
- 1032 ~~e. Other relevant factors;~~
- 1033 ~~4. The department may, upon petition, designate as a large municipal separate storm~~
 1034 ~~sewer system, municipal separate storm sewers located within the boundaries of a region~~
 1035 ~~defined by a stormwater management regional authority based on a jurisdictional,~~
 1036 ~~watershed, or other appropriate basis that includes one or more of the systems described~~
 1037 ~~in this definition.~~
- 1038 ~~"Layout" means a conceptual drawing sufficient to provide for the specified stormwater~~
 1039 ~~management facilities required at the time of approval.~~
- 1040 ~~"Linear development project" means a land-disturbing activity that is linear in nature such as,~~
 1041 ~~but not limited to, (i) the construction of electric and telephone utility lines, and natural gas~~
 1042 ~~pipelines; (ii) construction of tracks, rights-of-way, bridges, communication facilities, and other~~
 1043 ~~related structures of a railroad company; (iii) highway construction projects; (iv) construction of~~
 1044 ~~stormwater channels and stream restoration activities; and (v) water and sewer lines. Private~~
 1045 ~~subdivision roads or streets shall not be considered linear development projects.~~
- 1046 ~~"Locality" means a county, city, or town.~~
- 1047 ~~"Localized flooding" means smaller scale flooding that may occur outside of a stormwater~~
 1048 ~~conveyance system. This may include high water, ponding, or standing water from stormwater~~
 1049 ~~runoff, which is likely to cause property damage or unsafe conditions.~~
- 1050 ~~"Main channel" means the portion of the stormwater conveyance system that contains the~~
 1051 ~~base flow and small frequent storm events.~~
- 1052 ~~"Major facility" means any facility or activity classified as such by the regional administrator in~~
 1053 ~~conjunction with the department.~~
- 1054 ~~"Major modification" means, for the purposes of this chapter, the modification or amendment~~
 1055 ~~of an existing state permit before its expiration that is not a minor modification as defined in this~~
 1056 ~~regulation.~~
- 1057 ~~"Major municipal separate storm sewer outfall" or "major outfall" means a municipal separate~~
 1058 ~~storm sewer outfall that discharges from a single pipe with an inside diameter of 36 inches or~~
 1059 ~~more or its equivalent (discharge from a single conveyance other than circular pipe which is~~
 1060 ~~associated with a drainage area of more than 50 acres); or for municipal separate storm sewers~~
 1061 ~~that receive stormwater from lands zoned for industrial activity (based on comprehensive zoning~~
 1062 ~~plans or the equivalent), with an outfall that discharges from a single pipe with an inside diameter~~

1063 of 12 inches or more or from its equivalent (discharge from other than a circular pipe associated
1064 with a drainage area of two acres or more).

1065 "Manmade" means constructed by man.

1066 "Maximum daily discharge limitation" means the highest allowable daily discharge.

1067 "Maximum extent practicable" or "MEP" means the technology-based discharge standard for
1068 municipal separate storm sewer systems established by CWA § 402(p). MEP is achieved, in part,
1069 by selecting and implementing effective structural and nonstructural best management practices
1070 (BMPs) and rejecting ineffective BMPs and replacing them with effective best management
1071 practices (BMPs). MEP is an iterative standard, which evolves over time as urban runoff
1072 management knowledge increases. As such, the operator's MS4 program must continually be
1073 assessed and modified to incorporate improved programs, control measures, BMPs, etc., to attain
1074 compliance with water quality standards.

1075 "Medium municipal separate storm sewer system" means all municipal separate storm sewers
1076 that are either:

1077 1. Located in an incorporated place with a population of 100,000 or more but less than
1078 250,000 as determined by the 1990 decennial census by the Bureau of Census (40 CFR
1079 Part 122 Appendix G);

1080 2. Located in the counties listed in 40 CFR Part 122 Appendix I, except municipal separate
1081 storm sewers that are located in the incorporated places, townships or towns within such
1082 counties;

1083 3. Owned or operated by a municipality other than those described in subdivision 1 or 2
1084 of this definition and that are designated by the department as part of the large or medium
1085 municipal separate storm sewer system due to the interrelationship between the
1086 discharges of the designated storm sewer and the discharges from municipal separate
1087 storm sewers described under subdivision 1 or 2 of this definition. In making this
1088 determination the department may consider the following factors:

1089 a. Physical interconnections between the municipal separate storm sewers;

1090 b. The location of discharges from the designated municipal separate storm sewer
1091 relative to discharges from municipal separate storm sewers described in subdivision
1092 1 of this definition;

1093 c. The quantity and nature of pollutants discharged to surface waters;

1094 d. The nature of the receiving surface waters; or

1095 e. Other relevant factors;

1096 4. The department may, upon petition, designate as a medium municipal separate storm
1097 sewer system, municipal separate storm sewers located within the boundaries of a region
1098 defined by a stormwater management regional authority based on a jurisdictional,
1099 watershed, or other appropriate basis that includes one or more of the systems described
1100 in subdivisions 1, 2, and 3 of this definition.

1101 "Minimize" means to reduce or eliminate the discharge of pollutants to the extent achievable
1102 using stormwater controls that are technologically available and economically practicable.

1103 "Minor modification" means, for the purposes of this chapter, minor modification or
1104 amendment of an existing state permit before its expiration for the reasons listed at 40 CFR
1105 122.63 and as specified in 9VAC25-870-640. Minor modification for the purposes of this chapter
1106 also means other modifications and amendments not requiring extensive review and evaluation
1107 including changes in EPA promulgated test protocols, increasing monitoring frequency
1108 requirements, changes in sampling locations, and changes to compliance dates within the overall
1109 compliance schedules. A minor state permit modification or amendment does not substantially

1110 alter state permit conditions, substantially increase or decrease the amount of surface water
 1111 impacts, increase the size of the operation, or reduce the capacity of the facility to protect human
 1112 health or the environment.

1113 "~~Municipal separate storm sewer~~" means a conveyance or system of conveyances otherwise
 1114 known as a municipal separate storm sewer system, including roads with drainage systems,
 1115 municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains:

1116 1. Owned or operated by a federal, state, city, town, county, district, association, or other
 1117 public body, created by or pursuant to state law, having jurisdiction or delegated authority
 1118 for erosion and sediment control and stormwater management, or a designated and
 1119 approved management agency under § 208 of the CWA that discharges to surface waters;

1120 2. Designed or used for collecting or conveying stormwater;

1121 3. That is not a combined sewer; and

1122 4. That is not part of a publicly owned treatment works.

1123 "~~Municipal separate storm sewer system~~" or "~~MS4~~" means all separate storm sewers that are
 1124 defined as "large" or "medium" or "small" municipal separate storm sewer systems or designated
 1125 under 9VAC25-870-380 A-1.

1126 "~~Municipal Separate Storm Sewer System Management Program~~" or "~~MS4 Program~~" means
 1127 a management program covering the duration of a state permit for a municipal separate storm
 1128 sewer system that includes a comprehensive planning process that involves public participation
 1129 and intergovernmental coordination, to reduce the discharge of pollutants to the maximum extent
 1130 practicable, to protect water quality, and to satisfy the appropriate water quality requirements of
 1131 the CWA and regulations and the Act and attendant regulations, using management practices,
 1132 control techniques, and system, design and engineering methods, and such other provisions that
 1133 are appropriate.

1134 "~~Municipality~~" means a city, town, county, district, association, or other public body created by
 1135 or under state law and having jurisdiction over disposal of sewage, industrial wastes, or other
 1136 wastes, or an Indian tribe or an authorized Indian tribal organization, or a designated and
 1137 approved management agency under § 208 of the CWA.

1138 "~~National Pollutant Discharge Elimination System~~" or "~~NPDES~~" means the national program
 1139 for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing state permits,
 1140 and imposing and enforcing pretreatment requirements under §§ 307, 402, 318, and 405 of the
 1141 CWA. The term includes an approved program.

1142 "~~Natural channel design concepts~~" means the utilization of engineering analysis based on
 1143 fluvial geomorphic processes to create, rehabilitate, restore, or stabilize an open conveyance
 1144 system for the purpose of creating or recreating a stream that conveys its bankfull storm event
 1145 within its banks and allows larger flows to access its floodplain.

1146 "~~Natural stream~~" means a tidal or nontidal watercourse that is part of the natural topography.
 1147 It usually maintains a continuous or seasonal flow during the year and is characterized as being
 1148 irregular in cross-section with a meandering course. Constructed channels such as drainage
 1149 ditches or swales shall not be considered natural streams; however, channels designed utilizing
 1150 natural channel design concepts may be considered natural streams.

1151 "~~New discharger~~" means any building, structure, facility, or installation:

1152 1. From which there is or may be a discharge of pollutants;

1153 2. That did not commence the discharge of pollutants at a particular site prior to August
 1154 13, 1979;

1155 3. Which is not a new source; and

1156 4. Which has never received a finally effective separate VPDES or state permit for
1157 discharges at that site.

1158 This definition includes an indirect discharger that commences discharging into surface waters
1159 after August 13, 1979. It also includes any existing mobile point source (other than an offshore or
1160 coastal oil and gas exploratory drilling rig or a coastal oil and gas developmental drilling rig) such
1161 as a seafood processing rig, seafood processing vessel, or aggregate plant, that begins
1162 discharging at a site for which it does not have a separate VPDES or state permit; and any
1163 offshore or coastal mobile oil and gas exploratory drilling rig or coastal mobile oil and gas
1164 developmental drilling rig that commences the discharge of pollutants after August 13, 1979.

1165 "New permit" means, for the purposes of this chapter, a state permit issued by the department
1166 to a state permit applicant that does not currently hold and has never held a state permit of that
1167 type, for that activity, at that location. An application for a new permit issued pursuant to this
1168 chapter, 9VAC25-880, or 9VAC25-890 shall not be subject to §§ 62.1-44.15:3 A and 62.1-44.15:4
1169 D of the Code of Virginia.

1170 "New source," means any building, structure, facility, or installation from which there is or may
1171 be a discharge of pollutants, the construction of which commenced:

1172 1. After promulgation of standards of performance under § 306 of the CWA that are
1173 applicable to such source; or

1174 2. After proposal of standards of performance in accordance with § 306 of the CWA that
1175 are applicable to such source, but only if the standards are promulgated in accordance
1176 with § 306 of the CWA within 120 days of their proposal.

1177 "Nonpoint source pollution" means pollution such as sediment, nitrogen, phosphorous,
1178 hydrocarbons, heavy metals, and toxics whose sources cannot be pinpointed but rather are
1179 washed from the land surface in a diffuse manner by stormwater runoff.

1180 "Oil and gas exploration, production, processing, or treatment operations or transmission
1181 facilities" means all field activities or operations associated with exploration, production, or
1182 treatment operations, or transmission facilities, including activities necessary to prepare a site for
1183 drilling and for the movement and placement of drilling equipment, whether or not such field
1184 activities or operations may be considered to be construction activity. (33 USC § 1362(24))

1185 "Operator" means the owner or operator of any facility or activity subject to the Act and this
1186 chapter. In the context of stormwater associated with a large or small construction activity,
1187 operator means any person associated with a construction project that meets either of the
1188 following two criteria: (i) the person has direct operational control over construction plans and
1189 specifications, including the ability to make modifications to those plans and specifications or (ii)
1190 the person has day-to-day operational control of those activities at a project that are necessary to
1191 ensure compliance with a stormwater pollution prevention plan for the site or other state permit
1192 or VSMP authority permit conditions (i.e., they are authorized to direct workers at a site to carry
1193 out activities required by the stormwater pollution prevention plan or comply with other permit
1194 conditions). In the context of stormwater discharges from Municipal Separate Storm Sewer
1195 Systems (MS4s), operator means the operator of the regulated MS4 system.

1196 "Outfall" means, when used in reference to municipal separate storm sewers, a point source
1197 at the point where a municipal separate storm sewer discharges to surface waters and does not
1198 include open conveyances connecting two municipal separate storm sewers, or pipes, tunnels or
1199 other conveyances which connect segments of the same stream or other surface waters and are
1200 used to convey surface waters.

1201 "Overburden" means any material of any nature, consolidated or unconsolidated, that overlies
1202 a mineral deposit, excluding topsoil or similar naturally occurring surface materials that are not
1203 disturbed by mining operations.

1204 ~~"Owner" means the Commonwealth or any of its political subdivisions including sanitation~~
 1205 ~~district commissions and authorities, and any public or private institution, corporation, association,~~
 1206 ~~firm, or company organized or existing under the laws of this or any other state or country, or any~~
 1207 ~~officer or agency of the United States, or any person or group of persons acting individually or as~~
 1208 ~~a group that owns, operates, charters, rents, or otherwise exercises control over or is responsible~~
 1209 ~~for any actual or potential discharge of sewage, industrial wastes, or other wastes or pollutants to~~
 1210 ~~state waters, or any facility or operation that has the capability to alter the physical, chemical, or~~
 1211 ~~biological properties of state waters in contravention of § 62.1-44.5 of the Code of Virginia, the~~
 1212 ~~Act, and this chapter.~~

1213 ~~"Peak flow rate" means the maximum instantaneous flow from a prescribed design storm at a~~
 1214 ~~particular location.~~

1215 ~~"Percent impervious" means the impervious area within the site divided by the area of the site~~
 1216 ~~multiplied by 100.~~

1217 ~~"Permit" or "VSMP authority permit" means an approval to conduct a land-disturbing activity~~
 1218 ~~issued by the VSMP authority for the initiation of a land-disturbing activity after evidence of general~~
 1219 ~~permit coverage has been provided where applicable.~~

1220 ~~"Permittee" means the person to whom the state permit or VSMP authority permit is issued,~~
 1221 ~~including any owner or operator whose construction site is covered under a state construction~~
 1222 ~~general permit.~~

1223 ~~"Person" means any individual, corporation, partnership, association, state, municipality,~~
 1224 ~~commission, or political subdivision of a state, governmental body, including a federal, state, or~~
 1225 ~~local entity as applicable, any interstate body or any other legal entity.~~

1226 ~~"Point of discharge" means a location at which concentrated stormwater runoff is released.~~

1227 ~~"Point source" means any discernible, confined, and discrete conveyance including any pipe,~~
 1228 ~~ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal~~
 1229 ~~feeding operation, landfill leachate collection system, vessel, or other floating craft from which~~
 1230 ~~pollutants are or may be discharged. This term does not include return flows from irrigated~~
 1231 ~~agriculture or agricultural stormwater runoff.~~

1232 ~~"Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage,~~
 1233 ~~garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials~~
 1234 ~~(except those regulated under the Atomic Energy Act of 1954, as amended (42 USC § 2011 et~~
 1235 ~~seq.)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and~~
 1236 ~~agricultural waste discharged into water. It does not mean:~~

1237 ~~1. Sewage from vessels; or~~

1238 ~~2. Water, gas, or other material that is injected into a well to facilitate production of oil or~~
 1239 ~~gas, or water derived in association with oil and gas production and disposed of in a well~~
 1240 ~~if the well is used either to facilitate production or for disposal purposes and is approved~~
 1241 ~~by the department and if the department determines that the injection or disposal will not~~
 1242 ~~result in the degradation of groundwater or surface water resources.~~

1243 ~~"Pollutant discharge" means the average amount of a particular pollutant measured in pounds~~
 1244 ~~per year or other standard reportable unit as appropriate, delivered by stormwater runoff.~~

1245 ~~"Pollution" means such alteration of the physical, chemical, or biological properties of any~~
 1246 ~~state waters as will or is likely to create a nuisance or render such waters (a) harmful or detrimental~~
 1247 ~~or injurious to the public health, safety, or welfare, or to the health of animals, fish or aquatic life;~~
 1248 ~~(b) unsuitable with reasonable treatment for use as present or possible future sources of public~~
 1249 ~~water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other~~
 1250 ~~reasonable uses, provided that (i) an alteration of the physical, chemical, or biological property of~~
 1251 ~~state waters, or a discharge or deposit of sewage, industrial wastes or other wastes to state waters~~

1252 by any owner which by itself is not sufficient to cause pollution, but which, in combination with
 1253 such alteration of or discharge or deposit to state waters by other owners, is sufficient to cause
 1254 pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii)
 1255 contributing to the contravention of standards of water quality duly established by the State Water
 1256 Control Board, are "pollution" for the terms and purposes of this chapter.

1257 "Postdevelopment" refers to conditions that reasonably may be expected or anticipated to
 1258 exist after completion of the land development activity on a specific site.

1259 "Predevelopment" refers to the conditions that exist at the time that plans for the land
 1260 development of a tract of land are submitted to the VSMP authority. Where phased development
 1261 or plan approval occurs (preliminary grading, demolition of existing structures, roads and utilities,
 1262 etc.), the existing conditions at the time prior to the first item being submitted shall establish
 1263 predevelopment conditions.

1264 "Prior developed lands" means land that has been previously utilized for residential,
 1265 commercial, industrial, institutional, recreation, transportation, or utility facilities or structures, and
 1266 that will have the impervious areas associated with those uses altered during a land-disturbing
 1267 activity.

1268 "Privately owned treatment works" or "PVOTW" means any device or system that is (i) used
 1269 to treat wastes from any facility whose operator is not the operator of the treatment works and (ii)
 1270 not a POTW.

1271 "Publicly owned treatment works" or "POTW" means a treatment works as defined by § 212
 1272 of the CWA that is owned by a state or municipality (as defined by § 502(4) of the CWA). This
 1273 definition includes any devices and systems used in the storage, treatment, recycling, and
 1274 reclamation of municipal sewage or industrial wastes of a liquid nature. It also includes sewers,
 1275 pipes, and other conveyances only if they convey wastewater to a POTW treatment plant. The
 1276 term also means the municipality as defined in § 502(4) of the CWA, that has jurisdiction over the
 1277 indirect discharges to and the discharges from such a treatment works.

1278 "Qualified personnel" means a person knowledgeable in the principles and practices of
 1279 erosion and sediment and stormwater management controls who possesses the skills to assess
 1280 conditions at the construction site for the operator that could impact stormwater quality and
 1281 quantity and to assess the effectiveness of any sediment and erosion control measures or
 1282 stormwater management facilities selected to control the quality and quantity of stormwater
 1283 discharges from the construction activity. For VSMP authorities this requires the use of a person
 1284 who holds a certificate of competency from the department in the area of project inspection for
 1285 ESC and project inspection for SWM or combined administrator for ESC and combined
 1286 administrator for SWM as defined in 9VAC25-850-10 or a combination of ESC and SWM
 1287 qualifications from these two areas.

1288 "Recommencing discharger" means a source that recommences discharge after terminating
 1289 operations.

1290 "Regional administrator" means the Regional Administrator of Region III of the Environmental
 1291 Protection Agency or the authorized representative of the regional administrator.

1292 "Revoked state permit" means, for the purposes of this chapter, an existing state permit that
 1293 is terminated by the department before its expiration.

1294 "Runoff coefficient" means the fraction of total rainfall that will appear at a conveyance as
 1295 runoff.

1296 "Runoff" or "stormwater runoff" means that portion of precipitation that is discharged across
 1297 the land surface or through conveyances to one or more waterways.

1298 "Runoff characteristics" includes maximum velocity, peak flow rate, volume, and flow duration.

1299 ~~"Runoff volume" means the volume of water that runs off the site from a prescribed design~~
 1300 ~~storm.~~

1301 ~~"Rural Tidewater locality" means any locality that is (i) subject to the provisions of the~~
 1302 ~~Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq. of the Code of Virginia) and (ii) eligible~~
 1303 ~~to join the Rural Coastal Virginia Community Enhancement Authority established by Chapter 76~~
 1304 ~~(§ 15.2-7600 et seq.) of Title 15.2 of the Code of Virginia.~~

1305 ~~"Schedule of compliance" means a schedule of remedial measures included in a state permit,~~
 1306 ~~including an enforceable sequence of interim requirements (for example, actions, operations, or~~
 1307 ~~milestone events) leading to compliance with the Act, the CWA, and regulations.~~

1308 ~~"Secretary" means the Secretary of the Army, acting through the Chief of Engineers.~~

1309 ~~"Severe property damage" means substantial physical damage to property, damage to the~~
 1310 ~~treatment facilities that causes them to become inoperable, or substantial and permanent loss of~~
 1311 ~~natural resources that can reasonably be expected to occur in the absence of a bypass. Severe~~
 1312 ~~property damage does not mean economic loss caused by delays in production.~~

1313 ~~"Significant materials" means, but is not limited to: raw materials; fuels; materials such as~~
 1314 ~~solvents, detergents, and plastic pellets; finished materials such as metallic products; raw~~
 1315 ~~materials used in food processing or production; hazardous substances designated under §~~
 1316 ~~401(14) of CERCLA (42 USC § 9601(14)); any chemical the facility is required to report pursuant~~
 1317 ~~to § 313 of Title III of SARA (42 USC § 11023); fertilizers; pesticides; and waste products such as~~
 1318 ~~ashes, slag, and sludge that have the potential to be released with stormwater discharges.~~

1319 ~~"Single jurisdiction" means, for the purposes of this chapter, a single county or city. The term~~
 1320 ~~county includes incorporated towns which are part of the county.~~

1321 ~~"Site" means the land or water area where any facility or land-disturbing activity is physically~~
 1322 ~~located or conducted, including adjacent land used or preserved in connection with the facility or~~
 1323 ~~land-disturbing activity. Areas channelward of mean low water in tidal Virginia shall not be~~
 1324 ~~considered part of a site.~~

1325 ~~"Site hydrology" means the movement of water on, across, through, and off the site as~~
 1326 ~~determined by parameters including soil types, soil permeability, vegetative cover, seasonal water~~
 1327 ~~tables, slopes, land cover, and impervious cover.~~

1328 ~~"Small construction activity" means:~~

1329 ~~1. Construction activities including clearing, grading, and excavating that results in land~~
 1330 ~~disturbance of equal to or greater than one acre and less than five acres. Small~~
 1331 ~~construction activity also includes the disturbance of less than one acre of total land area~~
 1332 ~~that is part of a larger common plan of development or sale if the larger common plan will~~
 1333 ~~ultimately disturb equal to or greater than one and less than five acres. Small construction~~
 1334 ~~activity does not include routine maintenance that is performed to maintain the original line~~
 1335 ~~and grade, hydraulic capacity, or original purpose of the facility. The department may~~
 1336 ~~waive the otherwise applicable requirements in a general permit for a stormwater~~
 1337 ~~discharge from construction activities that disturb less than five acres where stormwater~~
 1338 ~~controls are not needed based on an approved "total maximum daily load" (TMDL) that~~
 1339 ~~addresses the pollutants of concern or, for nonimpaired waters that do not require TMDLs,~~
 1340 ~~an equivalent analysis that determines allocations for small construction sites for the~~
 1341 ~~pollutants of concern or that determines that such allocations are not needed to protect~~
 1342 ~~water quality based on consideration of existing in-stream concentrations, expected~~
 1343 ~~growth in pollutant contributions from all sources, and a margin of safety. For the purpose~~
 1344 ~~of this subdivision, the pollutants of concern include sediment or a parameter that~~
 1345 ~~addresses sediment (such as total suspended solids, turbidity, or siltation) and any other~~
 1346 ~~pollutant that has been identified as a cause of impairment of any water body that will~~

1347 receive a discharge from the construction activity. The operator must certify to the
1348 department that the construction activity will take place, and stormwater discharges will
1349 occur, within the drainage area addressed by the TMDL or equivalent analysis. As of the
1350 start date in Table 1 of 9VAC25-31-1020, all certifications submitted in support of the
1351 waiver shall be submitted electronically by the owner or operator to the department in
1352 compliance with this subdivision and 40 CFR Part 3 (including, in all cases, 40 CFR Part
1353 3 Subpart D), 9VAC25-870-370, and Part XI (9VAC25-31-950 et seq.) of the Virginia
1354 Pollutant Discharge Elimination System (VPDES) Permit Regulation. Part XI of 9VAC25-
1355 31 is not intended to undo existing requirements for electronic reporting. Prior to this date,
1356 and independent of Part XI of 9VAC25-31, permittees may be required to report
1357 electronically if specified by a particular permit.

1358 2. Any other construction activity designated by either the department or the EPA regional
1359 administrator, based on the potential for contribution to a violation of a water quality
1360 standard or for significant contribution of pollutants to surface waters.

1361 "Small municipal separate storm sewer system" or "small MS4" means all separate storm
1362 sewers that are (i) owned or operated by the United States, a state, city, town, borough, county,
1363 parish, district, association, or other public body (created by or pursuant to state law) having
1364 jurisdiction over disposal of sewage, industrial wastes, stormwater, or other wastes, including
1365 special districts under state law such as a sewer district, flood control district or drainage district,
1366 or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and
1367 approved management agency under § 208 of the CWA that discharges to surface waters and
1368 (ii) not defined as "large" or "medium" municipal separate storm sewer systems or designated
1369 under 9VAC25-870-380 A 1. This term includes systems similar to separate storm sewer systems
1370 in municipalities, such as systems at military bases, large hospital or prison complexes, and
1371 highway and other thoroughfares. The term does not include separate storm sewers in very
1372 discrete areas, such as individual buildings.

1373 "Source" means any building, structure, facility, or installation from which there is or may be
1374 a discharge of pollutants.

1375 "State" means the Commonwealth of Virginia.

1376 "State application" or "application" means the standard form or forms, including any additions,
1377 revisions, or modifications to the forms, approved by the administrator and the department for
1378 applying for a state permit.

1379 "State/EPA agreement" means an agreement between the EPA regional administrator and
1380 the state that coordinates EPA and state activities, responsibilities, and programs including those
1381 under the CWA and the Act.

1382 "State permit" means an approval to conduct a land-disturbing activity issued by the
1383 department in the form of a state stormwater individual permit or coverage issued under a state
1384 general permit or an approval issued by the department for stormwater discharges from an MS4.
1385 Under these state permits, the Commonwealth imposes and enforces requirements pursuant to
1386 the federal Clean Water Act and regulations, the Act, and this chapter. As the mechanism that
1387 imposes and enforces requirements pursuant to the federal Clean Water Act and regulations, a
1388 state permit for stormwater discharges from an MS4 and, after June 30, 2014, a state permit for
1389 conducting a land-disturbing activity issued pursuant to the Act, are also types of Virginia Pollutant
1390 Discharge Elimination System (VPDES) Permits. State permit does not include any state permit
1391 that has not yet been the subject of final department action, such as a draft state permit. Approvals
1392 issued pursuant to this chapter, 9VAC25-880, and 9VAC25-890 are not issuances of a permit
1393 under § 62.1-44.15.01 of the Code of Virginia.

1394 ~~"State project" means any land development project that is undertaken by any state agency,~~
 1395 ~~board, commission, authority, or any branch of state government, including state-supported~~
 1396 ~~institutions of higher learning.~~

1397 ~~"State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 et seq.) of Title 62.1 of the Code~~
 1398 ~~of Virginia.~~

1399 ~~"State waters" means all water, on the surface and under the ground, wholly or partially within~~
 1400 ~~or bordering the Commonwealth or within its jurisdiction, including wetlands.~~

1401 ~~"Stormwater" means precipitation that is discharged across the land surface or through~~
 1402 ~~conveyances to one or more waterways and that may include stormwater runoff, snow melt runoff,~~
 1403 ~~and surface runoff and drainage.~~

1404 ~~"Stormwater conveyance system" means a combination of drainage components that are~~
 1405 ~~used to convey stormwater discharge, either within or downstream of the land-disturbing activity.~~
 1406 ~~This includes:~~

1407 ~~1. "Manmade stormwater conveyance system" means a pipe, ditch, vegetated swale, or~~
 1408 ~~other stormwater conveyance system constructed by man except for restored stormwater~~
 1409 ~~conveyance systems;~~

1410 ~~2. "Natural stormwater conveyance system" means the main channel of a natural stream~~
 1411 ~~and the flood-prone area adjacent to the main channel; or~~

1412 ~~3. "Restored stormwater conveyance system" means a stormwater conveyance system~~
 1413 ~~that has been designed and constructed using natural channel design concepts. Restored~~
 1414 ~~stormwater conveyance systems include the main channel and the flood-prone area~~
 1415 ~~adjacent to the main channel.~~

1416 ~~"Stormwater discharge associated with construction activity" means a discharge of~~
 1417 ~~stormwater runoff from areas where land-disturbing activities (e.g., clearing, grading, or~~
 1418 ~~excavation); construction materials or equipment storage or maintenance (e.g., fill piles, borrow~~
 1419 ~~area, concrete truck washout, fueling); or other industrial stormwater directly related to the~~
 1420 ~~construction process (e.g., concrete or asphalt batch plants) are located.~~

1421 ~~"Stormwater discharge associated with large construction activity" means the discharge of~~
 1422 ~~stormwater from large construction activities.~~

1423 ~~"Stormwater discharge associated with small construction activity" means the discharge of~~
 1424 ~~stormwater from small construction activities.~~

1425 ~~"Stormwater management facility" means a control measure that controls stormwater runoff~~
 1426 ~~and changes the characteristics of that runoff including the quantity and quality, the period of~~
 1427 ~~release or the velocity of flow.~~

1428 ~~"Stormwater management plan" means a document containing material for describing~~
 1429 ~~methods for complying with the requirements of the VSMP or this chapter. An agreement in lieu~~
 1430 ~~of a stormwater management plan as defined in this chapter shall be considered to meet the~~
 1431 ~~requirements of a stormwater management plan.~~

1432 ~~"Stormwater Pollution Prevention Plan" or "SWPPP" means a document that is prepared in~~
 1433 ~~accordance with good engineering practices and that identifies potential sources of pollutants that~~
 1434 ~~may reasonably be expected to affect the quality of stormwater discharges. A SWPPP required~~
 1435 ~~under a VSMP for construction activities shall identify and require the implementation of control~~
 1436 ~~measures and shall include or incorporate by reference an approved erosion and sediment control~~
 1437 ~~plan, an approved stormwater management plan, and a pollution prevention plan.~~

1438 ~~"Subdivision" means the same as defined in § 15.2-2201 of the Code of Virginia.~~

1439 ~~"Surface waters" means:~~

- 1440 1. All waters that are currently used, were used in the past, or may be susceptible to use
 1441 in interstate or foreign commerce, including all waters that are subject to the ebb and flow
 1442 of the tide;
- 1443 2. All interstate waters, including interstate wetlands;
- 1444 3. All other waters such as intrastate lakes, rivers, streams (including intermittent streams),
 1445 mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or
 1446 natural ponds the use, degradation, or destruction of which would affect or could affect
 1447 interstate or foreign commerce including any such waters:
- 1448 a. That are or could be used by interstate or foreign travelers for recreational or other
 1449 purposes;
- 1450 b. From which fish or shellfish are or could be taken and sold in interstate or foreign
 1451 commerce; or
- 1452 c. That are used or could be used for industrial purposes by industries in interstate
 1453 commerce;
- 1454 4. All impoundments of waters otherwise defined as surface waters under this definition;
- 1455 5. Tributaries of waters identified in subdivisions 1 through 4 of this definition;
- 1456 6. The territorial sea; and
- 1457 7. Wetlands adjacent to waters (other than waters that are themselves wetlands) identified
 1458 in subdivisions 1 through 6 of this definition.

1459 Waste treatment systems, including treatment ponds or lagoons designed to meet the
 1460 requirements of the CWA and the law, are not surface waters. Surface waters do not include prior
 1461 converted cropland. Notwithstanding the determination of an area's status as prior converted
 1462 cropland by any other agency, for the purposes of the CWA, the final authority regarding the CWA
 1463 jurisdiction remains with the EPA.

1464 "SWM" means stormwater management.

1465 "Total dissolved solids" means the total dissolved (filterable) solids as determined by use of
 1466 the method specified in 40 CFR Part 136.

1467 "Total maximum daily load" or "TMDL" means the sum of the individual wasteload allocations
 1468 for point sources, load allocations (LAs) for nonpoint sources, natural background loading, and a
 1469 margin of safety. TMDLs can be expressed in terms of either mass per time, toxicity, or other
 1470 appropriate measure. The TMDL process provides for point versus nonpoint source trade-offs.

1471 "TMDL Action Plan" means the scheduled steps of activities that the MS4 operator will take
 1472 to address the assumptions and requirements of the TMDL wasteload allocation. TMDL action
 1473 plans may be implemented in multiple phases over more than one state permit cycle.

1474 "Toxic pollutant" means any pollutant listed as toxic under § 307(a)(1) of the CWA or, in the
 1475 case of sludge use or disposal practices, any pollutant identified in regulations implementing §
 1476 405(d) of the CWA.

1477 "Upset" means an exceptional incident in which there is unintentional and temporary
 1478 noncompliance with technology based state permit effluent limitations because of factors beyond
 1479 the reasonable control of the operator. An upset does not include noncompliance to the extent
 1480 caused by operational error, improperly designed treatment facilities, inadequate treatment
 1481 facilities, lack of preventive maintenance, or careless or improper operation.

1482 "Variance" means any mechanism or provision under § 301 or § 316 of the CWA or under 40
 1483 CFR Part 125, or in the applicable federal effluent limitations guidelines that allows modification
 1484 to or waiver of the generally applicable effluent limitation requirements or time deadlines of the
 1485 CWA. This includes provisions that allow the establishment of alternative limitations based on
 1486 fundamentally different factors or on § 301(c), § 301(g), § 301(h), § 301(i), or § 316(a) of the CWA.

1487 "Virginia Erosion and Sediment Control Program" or "VESCP" means a program approved by
1488 the department that has been established by a VESCP authority for the effective control of soil
1489 erosion, sediment deposition, and nonagricultural runoff associated with a land-disturbing activity
1490 to prevent the unreasonable degradation of properties, stream channels, waters, and other natural
1491 resources and shall include such items where applicable as local ordinances, rules, permit
1492 requirements, annual standards and specifications, policies and guidelines, technical materials,
1493 and requirements for plan review, inspection, enforcement where authorized in the Erosion and
1494 Sediment Control Act and its attendant regulations, and evaluation consistent with the
1495 requirements of the Erosion and Sediment Control Act and its attendant regulations.

1496 "Virginia Erosion and Sediment Control Program authority" or "VESCP authority" means an
1497 authority approved by the department to operate a Virginia Erosion and Sediment Control
1498 Program. An authority may include a state entity, including the department; a federal entity; a
1499 district, county, city, or town; or for linear projects subject to annual standards and specifications,
1500 electric, natural gas and telephone utility companies, interstate and intrastate natural gas pipeline
1501 companies, railroad companies, or authorities created pursuant to § 15.2-5102 of the Code of
1502 Virginia.

1503 "Virginia Pollutant Discharge Elimination System (VPDES) permit" or "VPDES permit" means
1504 a document issued by the department pursuant to the State Water Control Law authorizing, under
1505 prescribed conditions, the potential or actual discharge of pollutants from a point source to surface
1506 waters.

1507 "Virginia Stormwater Management Act" means Article 2.3 (§ 62.1-44.15:24 et seq.) of Chapter
1508 3.1 of Title 62.1 of the Code of Virginia.

1509 "Virginia Stormwater BMP Clearinghouse Website" means a website that contains detailed
1510 design standards and specifications for control measures that may be used in Virginia to comply
1511 with the requirements of the Virginia Stormwater Management Act and associated regulations.

1512 "Virginia Stormwater Management Handbook" means a collection of pertinent information that
1513 provides general guidance for compliance with the Act and associated regulations and is
1514 developed by the department with advice from a stakeholder advisory committee.

1515 "Virginia Stormwater Management Program" or "VSMP" means a program approved by the
1516 department after September 13, 2011, that has been established by a VSMP authority to manage
1517 the quality and quantity of runoff resulting from land-disturbing activities and shall include such
1518 items as local ordinances, rules, permit requirements, annual standards and specifications,
1519 policies and guidelines, technical materials, and requirements for plan review, inspection,
1520 enforcement, where authorized in the Act and associated regulations, and evaluation consistent
1521 with the requirements of the SWM Act and associated regulations.

1522 "VSMP authority" means an authority approved by the department after September 13, 2011,
1523 to operate a Virginia Stormwater Management Program or the department. An authority may
1524 include a locality as set forth in § 62.1-44.15:27 of the Code of Virginia; state entity, including the
1525 department; federal entity; or, for linear projects subject to annual standards and specifications in
1526 accordance with subsection B of § 62.1-44.15:31 of the Code of Virginia, electric, natural gas,
1527 and telephone utility companies, interstate and intrastate natural gas pipeline companies, railroad
1528 companies, or authorities created pursuant to § 15.2-5102 of the Code of Virginia. Prior to
1529 approval, the department must find that the ordinances adopted by the locality's VSMP authority
1530 are consistent with the Act and this chapter including the General Permit for Discharges of
1531 Stormwater from Construction Activities (9VAC25-880).

1532 "Wasteload allocation" or "wasteload" or "WLA" means the portion of a receiving surface
1533 water's loading or assimilative capacity allocated to one of its existing or future point sources of
1534 pollution. WLAs are a type of water quality-based effluent limitation.

1535 ~~"Water quality standards" or "WQS" means provisions of state or federal law that consist of a~~
 1536 ~~designated use or uses for the waters of the Commonwealth and water quality criteria for such~~
 1537 ~~waters based on such uses. Water quality standards are to protect the public health or welfare,~~
 1538 ~~enhance the quality of water, and serve the purposes of the State Water Control Law (§ 62.1-44.2~~
 1539 ~~et seq. of the Code of Virginia), the Act (§ 62.1-44.15:24 et seq. of the Code of Virginia), and the~~
 1540 ~~CWA (33 USC § 1251 et seq.).~~

1541 ~~"Water quantity technical criteria" means standards that establish minimum design criteria for~~
 1542 ~~measures to control localized flooding and stream channel erosion.~~

1543 ~~"Watershed" means a defined land area drained by a river or stream, karst system, or system~~
 1544 ~~of connecting rivers or streams such that all surface water within the area flows through a single~~
 1545 ~~outlet. In karst areas, the karst feature to which the water drains may be considered the single~~
 1546 ~~outlet for the watershed.~~

1547 ~~"Wetlands" means those areas that are inundated or saturated by surface water or~~
 1548 ~~groundwater at a frequency and duration sufficient to support, and that under normal~~
 1549 ~~circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil~~
 1550 ~~conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.~~

1551 ~~"Whole effluent toxicity" means the aggregate toxic effect of an effluent measured directly by~~
 1552 ~~a toxicity test.~~

1553 **9VAC25-870-10. Definitions. (Repealed.)**

1554 The following words and terms used in this chapter have the following meanings unless the
 1555 context clearly indicates otherwise.

1556 "Act" means the Virginia Stormwater Management Act, Article 2.3 (§ 62.1-44.15:24 et seq.) of
 1557 Chapter 3.1 of Title 62.1 of the Code of Virginia.

1558 "Administrator" means the Administrator of the United States Environmental Protection
 1559 Agency or an authorized representative.

1560 "Agreement in lieu of a stormwater management plan" means a contract between the VSMP
 1561 authority and the owner or permittee that specifies methods that shall be implemented to comply
 1562 with the requirements of a VSMP for the construction of a single-family residence; such contract
 1563 may be executed by the VSMP authority in lieu of a stormwater management plan.

1564 "Applicable standards and limitations" means all state, interstate, and federal standards and
 1565 limitations to which a discharge or a related activity is subject under the Clean Water Act (CWA)
 1566 (33 USC § 1251 et seq.) and the Act, including effluent limitations, water quality standards,
 1567 standards of performance, toxic effluent standards or prohibitions, best management practices,
 1568 and standards for sewage sludge use or disposal under §§ 301, 302, 303, 304, 306, 307, 308,
 1569 403, and 405 of CWA.

1570 "Approval authority" means the State Water Control Board or its designee.

1571 "Approved program" or "approved state" means a state or interstate program that has been
 1572 approved or authorized by EPA under 40 CFR Part 123.

1573 "Average monthly discharge limitation" means the highest allowable average of daily
 1574 discharges over a calendar month, calculated as the sum of all daily discharges measured during
 1575 a calendar month divided by the number of daily discharges measured during that month.

1576 "Average weekly discharge limitation" means the highest allowable average of daily
 1577 discharges over a calendar week, calculated as the sum of all daily discharges measured during
 1578 a calendar week divided by the number of daily discharges measured during that week.

1579 "Best management practice" or "BMP" means schedules of activities, prohibitions of practices,
 1580 maintenance procedures, and other management practices, including both structural and

1581 nonstructural practices, to prevent or reduce the pollution of surface waters and groundwater
1582 systems. This includes:

1583 1. "Nonproprietary best management practice" means both structural and nonstructural
1584 practices to prevent or reduce the pollution of surface waters and groundwater systems
1585 that are in the public domain and are not protected by trademark or patent or copyright.

1586 2. "Proprietary best management practice" means both structural and nonstructural
1587 practices to prevent or reduce the pollution of surface waters and groundwater systems
1588 that are privately owned and controlled and may be protected by trademark or patent or
1589 copyright.

1590 "Board" means the State Water Control Board. When used outside the context of the
1591 promulgation of regulations, including regulations to establish general permits, "board" means the
1592 Department of Environmental Quality.

1593 "Bypass" means the intentional diversion of waste streams from any portion of a treatment
1594 facility.

1595 "Channel" means a natural or manmade waterway.

1596 "Chesapeake Bay Preservation Act" means Article 2.5 (§ 62.1-44.15:67 et seq.) of Chapter
1597 3.1 of Title 62.1 of the Code of Virginia.

1598 "Chesapeake Bay Preservation Act land-disturbing activity" means a land-disturbing activity
1599 including clearing, grading, or excavation that results in a land disturbance equal to or greater
1600 than 2,500 square feet and less than one acre in all areas of jurisdictions designated as subject
1601 to the Chesapeake Bay Preservation Area Designation and Management Regulations (9VAC25-
1602 830) adopted pursuant to the Chesapeake Bay Preservation Act.

1603 "Chesapeake Bay Preservation Area" means any land designated by a local government
1604 pursuant to Part III (9VAC25-830-70 et seq.) of the Chesapeake Bay Preservation Area
1605 Designation and Management Regulations and § 62.1-44.15:74 of the Chesapeake Bay
1606 Preservation Act. A Chesapeake Bay Preservation Area shall consist of a Resource Protection
1607 Area and a Resource Management Area as defined in the Chesapeake Bay Preservation Area
1608 Designation and Management Regulations (9VAC25-830).

1609 "Chesapeake Bay watershed" means all land areas draining to the following Virginia river
1610 basins: Potomac River Basin, James River Basin, Rappahannock River Basin, Chesapeake Bay
1611 and its small coastal basins, and York River Basin.

1612 "Common plan of development or sale" means a contiguous area where separate and distinct
1613 construction activities may be taking place at different times on different schedules.

1614 "Comprehensive stormwater management plan" means a plan, which may be integrated with
1615 other land use plans or regulations, that specifies how the water quality components, quantity
1616 components, or both of stormwater are to be managed on the basis of an entire watershed or a
1617 portion thereof. The plan may also provide for the remediation of erosion, flooding, and water
1618 quality and quantity problems caused by prior development.

1619 "Construction activity" means any clearing, grading, or excavation associated with large
1620 construction activity or associated with small construction activity.

1621 "Contiguous zone" means the entire zone established by the United States under Article 24
1622 of the Convention on the Territorial Sea and the Contiguous Zone (37 FR 11906 June 15, 1972).

1623 "Continuous discharge" means a discharge which occurs without interruption throughout the
1624 operating hours of the facility, except for infrequent shutdowns for maintenance, process changes,
1625 or other similar activities.

1626 "Control measure" means any BMP, stormwater facility, or other method used to minimize the
1627 discharge of pollutants to state waters.

1628 "Controversial permit" means a water permitting action for which a public hearing has been
1629 granted pursuant to 9VAC25-870-550 and 9VAC25-870-555.

1630 "Co-operator" means an operator of a state permit that is only responsible for state permit
1631 conditions relating to the discharge for which it is the operator.

1632 "Clean Water Act" or "CWA" means the federal Clean Water Act (33 USC § 1251 et seq.),
1633 formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control
1634 Act Amendments of 1972, Public Law 92-500, as amended by Public Law 95-217, Public Law 95-
1635 576, Public Law 96-483, and Public Law 97-117, or any subsequent revisions thereto.

1636 "CWA and regulations" means the Clean Water Act (CWA) and applicable regulations
1637 published in the Code of Federal Regulations promulgated thereunder. For the purposes of this
1638 chapter, it includes state program requirements.

1639 "Daily discharge" means the discharge of a pollutant measured during a calendar day or any
1640 24-hour period that reasonably represents the calendar day for purposes of sampling. For
1641 pollutants with limitations expressed in units of mass, the daily discharge is calculated as the total
1642 mass of the pollutant discharged over the day. For pollutants with limitations expressed in other
1643 units of measurement, the daily discharge is calculated as the average measurement of the
1644 pollutant over the day.

1645 "Department" means the Department of Environmental Quality.

1646 "Development" means land disturbance and the resulting landform associated with the
1647 construction of residential, commercial, industrial, institutional, recreation, transportation, or utility
1648 facilities or structures or the clearing of land for nonagricultural or nonsilvicultural purposes. The
1649 regulation of discharges from development, for purposes of this chapter, does not include the
1650 exemptions found in 9VAC25-870-300.

1651 "Direct discharge" means the discharge of a pollutant.

1652 "Director" means the Director of the Department of Environmental Quality or his designee.

1653 "Discharge," when used without qualification, means the discharge of a pollutant.

1654 "Discharge of a pollutant" means:

1655 1. Any addition of any pollutant or combination of pollutants to state waters from any point
1656 source; or

1657 2. Any addition of any pollutant or combination of pollutants to the waters of the contiguous
1658 zone or the ocean from any point source other than a vessel or other floating craft which
1659 is being used as a means of transportation.

1660 This definition includes additions of pollutants into surface waters from: surface runoff that is
1661 collected or channeled by man; discharges through pipes, sewers, or other conveyances owned
1662 by a state, municipality, or other person that do not lead to a treatment works; and discharges
1663 through pipes, sewers, or other conveyances, leading into privately owned treatment works. This
1664 term does not include an addition of pollutants by any indirect discharger.

1665 "Discharge Monitoring Report" or "DMR" means the form supplied by the department, or an
1666 equivalent form developed by the operator and approved by the department, for the reporting of
1667 self-monitoring results by operators.

1668 "Draft state permit" means a document indicating the department's tentative decision to issue
1669 or deny, modify, revoke and reissue, terminate, or reissue a state individual or general permit. A
1670 notice of intent to deny a state individual or general permit is a type of draft state permit. A denial
1671 of a request for modification, revocation and reissuance, or termination is not a draft state permit.

1672 "Drainage area" means a land area, water area, or both from which runoff flows to a common
1673 point.

- 1674 "Effluent limitation" means any restriction imposed by the board on quantities, discharge rates,
1675 and concentrations of pollutants which are discharged from point sources into surface waters, the
1676 waters of the contiguous zone, or the ocean.
- 1677 "Effluent limitations guidelines" means a regulation published by the administrator under §
1678 304(b) of the CWA to adopt or revise effluent limitations.
- 1679 "Environmental Protection Agency" or "EPA" means the United States Environmental
1680 Protection Agency.
- 1681 "Erosion and Sediment Control Law" means Article 2.4 (§ 62.1-44.15:51 et seq.) of Chapter
1682 3.1 of Title 62.1 of the Code of Virginia.
- 1683 "ESC" means erosion and sediment control.
- 1684 "Existing state permit" means for the purposes of this chapter a state permit issued by the
1685 department and currently held by a state permit applicant.
- 1686 "Existing source" means any source that is not a new source or a new discharger.
- 1687 "Facilities or equipment" means buildings, structures, process or production equipment or
1688 machinery that form a permanent part of a new source and that will be used in its operation, if
1689 these facilities or equipment are of such value as to represent a substantial commitment to
1690 construct. It excludes facilities or equipment used in connection with feasibility, engineering, and
1691 design studies regarding the new source or water pollution treatment for the new source.
- 1692 "Facility or activity" means any point source or treatment works treating domestic sewage or
1693 any other facility or activity (including land or appurtenances thereto) that is subject to regulation
1694 under the VSMP.
- 1695 "Flood fringe" means the portion of the floodplain outside the floodway that is usually covered
1696 with water from the 100-year flood or storm event. This includes the flood or floodway fringe
1697 designated by the Federal Emergency Management Agency.
- 1698 "Flooding" means a volume of water that is too great to be confined within the banks or walls
1699 of the stream, water body or conveyance system and that overflows onto adjacent lands, thereby
1700 causing or threatening damage.
- 1701 "Floodplain" means the area adjacent to a channel, river, stream, or other water body that is
1702 susceptible to being inundated by water normally associated with the 100-year flood or storm
1703 event. This includes the floodplain designated by the Federal Emergency Management Agency.
- 1704 "Flood-prone area" means the component of a natural or restored stormwater conveyance
1705 system that is outside the main channel. Flood-prone areas may include the floodplain, the
1706 floodway, the flood fringe, wetlands, riparian buffers, or other areas adjacent to the main channel.
- 1707 "Floodway" means the channel of a river or other watercourse and the adjacent land areas,
1708 usually associated with flowing water, that must be reserved in order to discharge the 100-year
1709 flood or storm event without cumulatively increasing the water surface elevation more than one
1710 foot. This includes the floodway designated by the Federal Emergency Management Agency.
- 1711 "General permit" means a state permit authorizing a category of discharges under the CWA
1712 and the Act within a geographical area.
- 1713 "Hazardous substance" means any substance designated under the Code of Virginia or 40
1714 CFR Part 116 pursuant to § 311 of the CWA.
- 1715 "Hydrologic Unit Code" or "HUC" means a watershed unit established in the most recent
1716 version of Virginia's 6th Order National Watershed Boundary Dataset unless specifically identified
1717 as another order.
- 1718 "Illicit discharge" means any discharge to a municipal separate storm sewer that is not
1719 composed entirely of stormwater, except discharges pursuant to a separate VPDES or state
1720 permit (other than the state permit for discharges from the municipal separate storm sewer),

1721 discharges resulting from firefighting activities, and discharges identified by and in compliance
1722 with 9VAC25-870-400 D 2 c (3).

1723 "Impervious cover" means a surface composed of material that significantly impedes or
1724 prevents natural infiltration of water into soil.

1725 "Incorporated place" means a city, town, township, or village that is incorporated under the
1726 Code of Virginia.

1727 "Indian country" means (i) all land within the limits of any Indian reservation under the
1728 jurisdiction of the United States government, notwithstanding the issuance of any patent, and
1729 including rights-of-way running through the reservation; (ii) all dependent Indian communities with
1730 the borders of the United States whether within the originally or subsequently acquired territory
1731 thereof, and whether within or without the limits of a state; and (iii) all Indian allotments, the Indian
1732 titles to which have not been extinguished, including rights-of-way running through the same.

1733 "Indirect discharger" means a nondomestic discharger introducing "pollutants" to a "publicly
1734 owned treatment works (POTW)."

1735 "Inspection" means an on-site review of the project's compliance with the permit or the state
1736 permit, the VSMP, and any applicable design criteria, or an on-site review to obtain information
1737 or conduct surveys or investigations necessary in the implementation or enforcement of the Act
1738 and this chapter.

1739 "Interstate agency" means an agency of two or more states established by or under an
1740 agreement or compact approved by Congress, or any other agency of two or more states having
1741 substantial powers or duties pertaining to the control of pollution as determined and approved by
1742 the administrator under the CWA and regulations.

1743 "Karst area" means any land area predominantly underlain at the surface or shallow
1744 subsurface by limestone, dolomite, or other soluble bedrock regardless of any obvious surface
1745 karst features.

1746 "Karst features" means sinkholes, sinking and losing streams, caves, large flow springs, and
1747 other such landscape features found in karst areas.

1748 "Land disturbance" or "land-disturbing activity" means a manmade change to the land surface
1749 that potentially changes its runoff characteristics including clearing, grading, or excavation, except
1750 that the term shall not include those exemptions specified in § 62.1-44.15:34 of the Code of
1751 Virginia.

1752 "Large construction activity" means construction activity including clearing, grading, and
1753 excavation, except operations that result in the disturbance of less than five acres of total land
1754 area. Large construction activity also includes the disturbance of less than five acres of total land
1755 area that is a part of a larger common plan of development or sale if the larger common plan will
1756 ultimately disturb five acres or more. Large construction activity does not include routine
1757 maintenance that is performed to maintain the original line and grade, hydraulic capacity, or
1758 original purpose of the facility.

1759 "Large municipal separate storm sewer system" means all municipal separate storm sewers
1760 that are either:

- 1761 1. Located in an incorporated place with a population of 250,000 or more as determined
1762 by the 1990 decennial census by the Bureau of Census (40 CFR Part 122 Appendix F);
- 1763 2. Located in the counties listed in 40 CFR Part 122 Appendix H, except municipal
1764 separate storm sewers that are located in the incorporated places, townships or towns
1765 within such counties;
- 1766 3. Owned or operated by a municipality other than those described in subdivision 1 or 2
1767 of this definition and that are designated by the department as part of the large or medium

1768 municipal separate storm sewer system due to the interrelationship between the
 1769 discharges of the designated storm sewer and the discharges from municipal separate
 1770 storm sewers described under subdivision 1 or 2 of this definition. In making this
 1771 determination the department may consider the following factors:

- 1772 a. Physical interconnections between the municipal separate storm sewers;
- 1773 b. The location of discharges from the designated municipal separate storm sewer
- 1774 relative to discharges from municipal separate storm sewers described in subdivision
- 1775 1 of this definition;
- 1776 c. The quantity and nature of pollutants discharged to surface waters;
- 1777 d. The nature of the receiving surface waters; and
- 1778 e. Other relevant factors;

1779 4. The department may, upon petition, designate as a large municipal separate storm
 1780 sewer system, municipal separate storm sewers located within the boundaries of a region
 1781 defined by a stormwater management regional authority based on a jurisdictional,
 1782 watershed, or other appropriate basis that includes one or more of the systems described
 1783 in this definition.

1784 "Layout" means a conceptual drawing sufficient to provide for the specified stormwater
 1785 management facilities required at the time of approval.

1786 "Linear development project" means a land-disturbing activity that is linear in nature such as,
 1787 but not limited to, (i) the construction of electric and telephone utility lines, and natural gas
 1788 pipelines; (ii) construction of tracks, rights-of-way, bridges, communication facilities, and other
 1789 related structures of a railroad company; (iii) highway construction projects; (iv) construction of
 1790 stormwater channels and stream restoration activities; and (v) water and sewer lines. Private
 1791 subdivision roads or streets shall not be considered linear development projects.

1792 "Locality" means a county, city, or town.

1793 "Localized flooding" means smaller scale flooding that may occur outside of a stormwater
 1794 conveyance system. This may include high water, ponding, or standing water from stormwater
 1795 runoff, which is likely to cause property damage or unsafe conditions.

1796 "Main channel" means the portion of the stormwater conveyance system that contains the
 1797 base flow and small frequent storm events.

1798 "Major facility" means any facility or activity classified as such by the regional administrator in
 1799 conjunction with the department.

1800 "Major modification" means, for the purposes of this chapter, the modification or amendment
 1801 of an existing state permit before its expiration that is not a minor modification as defined in this
 1802 regulation.

1803 "Major municipal separate storm sewer outfall" or "major outfall" means a municipal separate
 1804 storm sewer outfall that discharges from a single pipe with an inside diameter of 36 inches or
 1805 more or its equivalent (discharge from a single conveyance other than circular pipe which is
 1806 associated with a drainage area of more than 50 acres); or for municipal separate storm sewers
 1807 that receive stormwater from lands zoned for industrial activity (based on comprehensive zoning
 1808 plans or the equivalent), with an outfall that discharges from a single pipe with an inside diameter
 1809 of 12 inches or more or from its equivalent (discharge from other than a circular pipe associated
 1810 with a drainage area of two acres or more).

1811 "Manmade" means constructed by man.

1812 "Maximum daily discharge limitation" means the highest allowable daily discharge.

1813 "Maximum extent practicable" or "MEP" means the technology-based discharge standard for
 1814 municipal separate storm sewer systems established by CWA § 402(p). MEP is achieved, in part,

1815 by selecting and implementing effective structural and nonstructural best management practices
 1816 (BMPs) and rejecting ineffective BMPs and replacing them with effective best management
 1817 practices (BMPs). MEP is an iterative standard, which evolves over time as urban runoff
 1818 management knowledge increases. As such, the operator's MS4 program must continually be
 1819 assessed and modified to incorporate improved programs, control measures, BMPs, etc., to attain
 1820 compliance with water quality standards.

1821 "Medium municipal separate storm sewer system" means all municipal separate storm sewers
 1822 that are either:

1823 1. Located in an incorporated place with a population of 100,000 or more but less than
 1824 250,000 as determined by the 1990 decennial census by the Bureau of Census (40 CFR
 1825 Part 122 Appendix G);

1826 2. Located in the counties listed in 40 CFR Part 122 Appendix I, except municipal separate
 1827 storm sewers that are located in the incorporated places, townships or towns within such
 1828 counties;

1829 3. Owned or operated by a municipality other than those described in subdivision 1 or 2
 1830 of this definition and that are designated by the department as part of the large or medium
 1831 municipal separate storm sewer system due to the interrelationship between the
 1832 discharges of the designated storm sewer and the discharges from municipal separate
 1833 storm sewers described under subdivision 1 or 2 of this definition. In making this
 1834 determination the department may consider the following factors:

1835 a. Physical interconnections between the municipal separate storm sewers;

1836 b. The location of discharges from the designated municipal separate storm sewer
 1837 relative to discharges from municipal separate storm sewers described in subdivision
 1838 1 of this definition;

1839 c. The quantity and nature of pollutants discharged to surface waters;

1840 d. The nature of the receiving surface waters; or

1841 e. Other relevant factors;

1842 4. The department may, upon petition, designate as a medium municipal separate storm
 1843 sewer system, municipal separate storm sewers located within the boundaries of a region
 1844 defined by a stormwater management regional authority based on a jurisdictional,
 1845 watershed, or other appropriate basis that includes one or more of the systems described
 1846 in subdivisions 1, 2, and 3 of this definition.

1847 "Minimize" means to reduce or eliminate the discharge of pollutants to the extent achievable
 1848 using stormwater controls that are technologically available and economically practicable.

1849 "Minor modification" means, for the purposes of this chapter, minor modification or
 1850 amendment of an existing state permit before its expiration for the reasons listed at 40 CFR
 1851 122.63 and as specified in 9VAC25-870-640. Minor modification for the purposes of this chapter
 1852 also means other modifications and amendments not requiring extensive review and evaluation
 1853 including changes in EPA promulgated test protocols, increasing monitoring frequency
 1854 requirements, changes in sampling locations, and changes to compliance dates within the overall
 1855 compliance schedules. A minor state permit modification or amendment does not substantially
 1856 alter state permit conditions, substantially increase or decrease the amount of surface water
 1857 impacts, increase the size of the operation, or reduce the capacity of the facility to protect human
 1858 health or the environment.

1859 "Municipal separate storm sewer" means a conveyance or system of conveyances otherwise
 1860 known as a municipal separate storm sewer system, including roads with drainage systems,
 1861 municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains:

- 1862 1. Owned or operated by a federal, state, city, town, county, district, association, or other
 1863 public body, created by or pursuant to state law, having jurisdiction or delegated authority
 1864 for erosion and sediment control and stormwater management, or a designated and
 1865 approved management agency under § 208 of the CWA that discharges to surface waters;
 1866 2. Designed or used for collecting or conveying stormwater;
 1867 3. That is not a combined sewer; and
 1868 4. That is not part of a publicly owned treatment works.

1869 "Municipal separate storm sewer system" or "MS4" means all separate storm sewers that are
 1870 defined as "large" or "medium" or "small" municipal separate storm sewer systems or designated
 1871 under 9VAC25-870-380 A 1.

1872 "Municipal Separate Storm Sewer System Management Program" or "MS4 Program" means
 1873 a management program covering the duration of a state permit for a municipal separate storm
 1874 sewer system that includes a comprehensive planning process that involves public participation
 1875 and intergovernmental coordination, to reduce the discharge of pollutants to the maximum extent
 1876 practicable, to protect water quality, and to satisfy the appropriate water quality requirements of
 1877 the CWA and regulations and the Act and attendant regulations, using management practices,
 1878 control techniques, and system, design and engineering methods, and such other provisions that
 1879 are appropriate.

1880 "Municipality" means a city, town, county, district, association, or other public body created by
 1881 or under state law and having jurisdiction over disposal of sewage, industrial wastes, or other
 1882 wastes, or an Indian tribe or an authorized Indian tribal organization, or a designated and
 1883 approved management agency under § 208 of the CWA.

1884 "National Pollutant Discharge Elimination System" or "NPDES" means the national program
 1885 for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing state permits,
 1886 and imposing and enforcing pretreatment requirements under §§ 307, 402, 318, and 405 of the
 1887 CWA. The term includes an approved program.

1888 "Natural channel design concepts" means the utilization of engineering analysis based on
 1889 fluvial geomorphic processes to create, rehabilitate, restore, or stabilize an open conveyance
 1890 system for the purpose of creating or recreating a stream that conveys its bankfull storm event
 1891 within its banks and allows larger flows to access its floodplain.

1892 "Natural stream" means a tidal or nontidal watercourse that is part of the natural topography.
 1893 It usually maintains a continuous or seasonal flow during the year and is characterized as being
 1894 irregular in cross-section with a meandering course. Constructed channels such as drainage
 1895 ditches or swales shall not be considered natural streams; however, channels designed utilizing
 1896 natural channel design concepts may be considered natural streams.

1897 "New discharger" means any building, structure, facility, or installation:

- 1898 1. From which there is or may be a discharge of pollutants;
 1899 2. That did not commence the discharge of pollutants at a particular site prior to August
 1900 13, 1979;
 1901 3. Which is not a new source; and
 1902 4. Which has never received a finally effective separate VPDES or state permit for
 1903 discharges at that site.

1904 This definition includes an indirect discharger that commences discharging into surface waters
 1905 after August 13, 1979. It also includes any existing mobile point source (other than an offshore or
 1906 coastal oil and gas exploratory drilling rig or a coastal oil and gas developmental drilling rig) such
 1907 as a seafood processing rig, seafood processing vessel, or aggregate plant, that begins
 1908 discharging at a site for which it does not have a separate VPDES or state permit; and any

1909 offshore or coastal mobile oil and gas exploratory drilling rig or coastal mobile oil and gas
1910 developmental drilling rig that commences the discharge of pollutants after August 13, 1979.

1911 "New permit" means, for the purposes of this chapter, a state permit issued by the department
1912 to a state permit applicant that does not currently hold and has never held a state permit of that
1913 type, for that activity, at that location. An application for a new permit issued pursuant to this
1914 chapter, 9VAC25-880, or 9VAC25-890 shall not be subject to §§ 62.1-44.15:3 A and 62.1-44.15:4
1915 D of the Code of Virginia.

1916 "New source," means any building, structure, facility, or installation from which there is or may
1917 be a discharge of pollutants, the construction of which commenced:

1918 1. After promulgation of standards of performance under § 306 of the CWA that are
1919 applicable to such source; or

1920 2. After proposal of standards of performance in accordance with § 306 of the CWA that
1921 are applicable to such source, but only if the standards are promulgated in accordance
1922 with § 306 of the CWA within 120 days of their proposal.

1923 "Nonpoint source pollution" means pollution such as sediment, nitrogen, phosphorous,
1924 hydrocarbons, heavy metals, and toxics whose sources cannot be pinpointed but rather are
1925 washed from the land surface in a diffuse manner by stormwater runoff.

1926 "Oil and gas exploration, production, processing, or treatment operations or transmission
1927 facilities" means all field activities or operations associated with exploration, production, or
1928 treatment operations, or transmission facilities, including activities necessary to prepare a site for
1929 drilling and for the movement and placement of drilling equipment, whether or not such field
1930 activities or operations may be considered to be construction activity. (33 USC § 1362(24))

1931 "Operator" means the owner or operator of any facility or activity subject to the Act and this
1932 chapter. In the context of stormwater associated with a large or small construction activity,
1933 operator means any person associated with a construction project that meets either of the
1934 following two criteria: (i) the person has direct operational control over construction plans and
1935 specifications, including the ability to make modifications to those plans and specifications or (ii)
1936 the person has day-to-day operational control of those activities at a project that are necessary to
1937 ensure compliance with a stormwater pollution prevention plan for the site or other state permit
1938 or VSMP authority permit conditions (i.e., they are authorized to direct workers at a site to carry
1939 out activities required by the stormwater pollution prevention plan or comply with other permit
1940 conditions). In the context of stormwater discharges from Municipal Separate Storm Sewer
1941 Systems (MS4s), operator means the operator of the regulated MS4 system.

1942 "Outfall" means, when used in reference to municipal separate storm sewers, a point source
1943 at the point where a municipal separate storm sewer discharges to surface waters and does not
1944 include open conveyances connecting two municipal separate storm sewers, or pipes, tunnels or
1945 other conveyances which connect segments of the same stream or other surface waters and are
1946 used to convey surface waters.

1947 "Overburden" means any material of any nature, consolidated or unconsolidated, that overlies
1948 a mineral deposit, excluding topsoil or similar naturally occurring surface materials that are not
1949 disturbed by mining operations.

1950 "Owner" means the Commonwealth or any of its political subdivisions including sanitation
1951 district commissions and authorities, and any public or private institution, corporation, association,
1952 firm, or company organized or existing under the laws of this or any other state or country, or any
1953 officer or agency of the United States, or any person or group of persons acting individually or as
1954 a group that owns, operates, charters, rents, or otherwise exercises control over or is responsible
1955 for any actual or potential discharge of sewage, industrial wastes, or other wastes or pollutants to
1956 state waters, or any facility or operation that has the capability to alter the physical, chemical, or

1957 biological properties of state waters in contravention of § 62.1-44.5 of the Code of Virginia, the
1958 Act, and this chapter.

1959 "Peak flow rate" means the maximum instantaneous flow from a prescribed design storm at a
1960 particular location.

1961 "Percent impervious" means the impervious area within the site divided by the area of the site
1962 multiplied by 100.

1963 "Permit" or "VSMP authority permit" means an approval to conduct a land-disturbing activity
1964 issued by the VSMP authority for the initiation of a land-disturbing activity after evidence of general
1965 permit coverage has been provided where applicable.

1966 "Permittee" means the person to whom the state permit or VSMP authority permit is issued,
1967 including any owner or operator whose construction site is covered under a state construction
1968 general permit.

1969 "Person" means any individual, corporation, partnership, association, state, municipality,
1970 commission, or political subdivision of a state, governmental body, including a federal, state, or
1971 local entity as applicable, any interstate body or any other legal entity.

1972 "Point of discharge" means a location at which concentrated stormwater runoff is released.

1973 "Point source" means any discernible, confined, and discrete conveyance including any pipe,
1974 ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal
1975 feeding operation, landfill leachate collection system, vessel, or other floating craft from which
1976 pollutants are or may be discharged. This term does not include return flows from irrigated
1977 agriculture or agricultural stormwater runoff.

1978 "Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage,
1979 garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials
1980 (except those regulated under the Atomic Energy Act of 1954, as amended (42 USC § 2011 et
1981 seq.)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and
1982 agricultural waste discharged into water. It does not mean:

- 1983** 1. Sewage from vessels; or
- 1984** 2. Water, gas, or other material that is injected into a well to facilitate production of oil or
1985 gas, or water derived in association with oil and gas production and disposed of in a well
1986 if the well is used either to facilitate production or for disposal purposes and is approved
1987 by the department and if the department determines that the injection or disposal will not
1988 result in the degradation of groundwater or surface water resources.

1989 "Pollutant discharge" means the average amount of a particular pollutant measured in pounds
1990 per year or other standard reportable unit as appropriate, delivered by stormwater runoff.

1991 "Pollution" means such alteration of the physical, chemical, or biological properties of any
1992 state waters as will or is likely to create a nuisance or render such waters (a) harmful or detrimental
1993 or injurious to the public health, safety, or welfare, or to the health of animals, fish or aquatic life;
1994 (b) unsuitable with reasonable treatment for use as present or possible future sources of public
1995 water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other
1996 reasonable uses, provided that (i) an alteration of the physical, chemical, or biological property of
1997 state waters, or a discharge or deposit of sewage, industrial wastes or other wastes to state waters
1998 by any owner which by itself is not sufficient to cause pollution, but which, in combination with
1999 such alteration of or discharge or deposit to state waters by other owners, is sufficient to cause
2000 pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii)
2001 contributing to the contravention of standards of water quality duly established by the State Water
2002 Control Board, are "pollution" for the terms and purposes of this chapter.

2003 "Postdevelopment" refers to conditions that reasonably may be expected or anticipated to
2004 exist after completion of the land development activity on a specific site.

2005 "Predevelopment" refers to the conditions that exist at the time that plans for the land
2006 development of a tract of land are submitted to the VSMP authority. Where phased development
2007 or plan approval occurs (preliminary grading, demolition of existing structures, roads and utilities,
2008 etc.), the existing conditions at the time prior to the first item being submitted shall establish
2009 predevelopment conditions.

2010 "Prior developed lands" means land that has been previously utilized for residential,
2011 commercial, industrial, institutional, recreation, transportation, or utility facilities or structures, and
2012 that will have the impervious areas associated with those uses altered during a land-disturbing
2013 activity.

2014 "Privately owned treatment works" or "PVOTW" means any device or system that is (i) used
2015 to treat wastes from any facility whose operator is not the operator of the treatment works and (ii)
2016 not a POTW.

2017 "Publicly owned treatment works" or "POTW" means a treatment works as defined by § 212
2018 of the CWA that is owned by a state or municipality (as defined by § 502(4) of the CWA). This
2019 definition includes any devices and systems used in the storage, treatment, recycling, and
2020 reclamation of municipal sewage or industrial wastes of a liquid nature. It also includes sewers,
2021 pipes, and other conveyances only if they convey wastewater to a POTW treatment plant. The
2022 term also means the municipality as defined in § 502(4) of the CWA, that has jurisdiction over the
2023 indirect discharges to and the discharges from such a treatment works.

2024 "Qualified personnel" means a person knowledgeable in the principles and practices of
2025 erosion and sediment and stormwater management controls who possesses the skills to assess
2026 conditions at the construction site for the operator that could impact stormwater quality and
2027 quantity and to assess the effectiveness of any sediment and erosion control measures or
2028 stormwater management facilities selected to control the quality and quantity of stormwater
2029 discharges from the construction activity. For VSMP authorities this requires the use of a person
2030 who holds a certificate of competency from the department in the area of project inspection for
2031 ESC and project inspection for SWM or combined administrator for ESC and combined
2032 administrator for SWM as defined in 9VAC25-850-10 or a combination of ESC and SWM
2033 qualifications from these two areas.

2034 "Recommencing discharger" means a source that recommences discharge after terminating
2035 operations.

2036 "Regional administrator" means the Regional Administrator of Region III of the Environmental
2037 Protection Agency or the authorized representative of the regional administrator.

2038 "Revoked state permit" means, for the purposes of this chapter, an existing state permit that
2039 is terminated by the department before its expiration.

2040 "Runoff coefficient" means the fraction of total rainfall that will appear at a conveyance as
2041 runoff.

2042 "Runoff" or "stormwater runoff" means that portion of precipitation that is discharged across
2043 the land surface or through conveyances to one or more waterways.

2044 "Runoff characteristics" includes maximum velocity, peak flow rate, volume, and flow duration.

2045 "Runoff volume" means the volume of water that runs off the site from a prescribed design
2046 storm.

2047 "Rural Tidewater locality" means any locality that is (i) subject to the provisions of the
2048 Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq. of the Code of Virginia) and (ii) eligible
2049 to join the Rural Coastal Virginia Community Enhancement Authority established by Chapter 76
2050 (§ 15.2-7600 et seq.) of Title 15.2 of the Code of Virginia.

2051 "Schedule of compliance" means a schedule of remedial measures included in a state permit,
2052 including an enforceable sequence of interim requirements (for example, actions, operations, or
2053 milestone events) leading to compliance with the Act, the CWA, and regulations.

2054 "Secretary" means the Secretary of the Army, acting through the Chief of Engineers.

2055 "Severe property damage" means substantial physical damage to property, damage to the
2056 treatment facilities that causes them to become inoperable, or substantial and permanent loss of
2057 natural resources that can reasonably be expected to occur in the absence of a bypass. Severe
2058 property damage does not mean economic loss caused by delays in production.

2059 "Significant materials" means, but is not limited to: raw materials; fuels; materials such as
2060 solvents, detergents, and plastic pellets; finished materials such as metallic products; raw
2061 materials used in food processing or production; hazardous substances designated under §
2062 101(14) of CERCLA (42 USC § 9601(14)); any chemical the facility is required to report pursuant
2063 to § 313 of Title III of SARA (42 USC § 11023); fertilizers; pesticides; and waste products such as
2064 ashes, slag, and sludge that have the potential to be released with stormwater discharges.

2065 "Single jurisdiction" means, for the purposes of this chapter, a single county or city. The term
2066 county includes incorporated towns which are part of the county.

2067 "Site" means the land or water area where any facility or land-disturbing activity is physically
2068 located or conducted, including adjacent land used or preserved in connection with the facility or
2069 land-disturbing activity. Areas channelward of mean low water in tidal Virginia shall not be
2070 considered part of a site.

2071 "Site hydrology" means the movement of water on, across, through, and off the site as
2072 determined by parameters including soil types, soil permeability, vegetative cover, seasonal water
2073 tables, slopes, land cover, and impervious cover.

2074 "Small construction activity" means:

2075 1. Construction activities including clearing, grading, and excavating that results in land
2076 disturbance of equal to or greater than one acre and less than five acres. Small
2077 construction activity also includes the disturbance of less than one acre of total land area
2078 that is part of a larger common plan of development or sale if the larger common plan will
2079 ultimately disturb equal to or greater than one and less than five acres. Small construction
2080 activity does not include routine maintenance that is performed to maintain the original line
2081 and grade, hydraulic capacity, or original purpose of the facility. The department may
2082 waive the otherwise applicable requirements in a general permit for a stormwater
2083 discharge from construction activities that disturb less than five acres where stormwater
2084 controls are not needed based on an approved "total maximum daily load" (TMDL) that
2085 addresses the pollutants of concern or, for nonimpaired waters that do not require TMDLs,
2086 an equivalent analysis that determines allocations for small construction sites for the
2087 pollutants of concern or that determines that such allocations are not needed to protect
2088 water quality based on consideration of existing in-stream concentrations, expected
2089 growth in pollutant contributions from all sources, and a margin of safety. For the purpose
2090 of this subdivision, the pollutants of concern include sediment or a parameter that
2091 addresses sediment (such as total suspended solids, turbidity, or siltation) and any other
2092 pollutant that has been identified as a cause of impairment of any water body that will
2093 receive a discharge from the construction activity. The operator must certify to the
2094 department that the construction activity will take place, and stormwater discharges will
2095 occur, within the drainage area addressed by the TMDL or equivalent analysis. As of the
2096 start date in Table 1 of 9VAC25-31-1020, all certifications submitted in support of the
2097 waiver shall be submitted electronically by the owner or operator to the department in
2098 compliance with this subdivision and 40 CFR Part 3 (including, in all cases, 40 CFR Part
2099 3 Subpart D), 9VAC25-870-370, and Part XI (9VAC25-31-950 et seq.) of the Virginia

2100 Pollutant Discharge Elimination System (VPDES) Permit Regulation. Part XI of 9VAC25-
2101 31 is not intended to undo existing requirements for electronic reporting. Prior to this date,
2102 and independent of Part XI of 9VAC25-31, permittees may be required to report
2103 electronically if specified by a particular permit.

2104 2. Any other construction activity designated by either the department or the EPA regional
2105 administrator, based on the potential for contribution to a violation of a water quality
2106 standard or for significant contribution of pollutants to surface waters.

2107 "Small municipal separate storm sewer system" or "small MS4" means all separate storm
2108 sewers that are (i) owned or operated by the United States, a state, city, town, borough, county,
2109 parish, district, association, or other public body (created by or pursuant to state law) having
2110 jurisdiction over disposal of sewage, industrial wastes, stormwater, or other wastes, including
2111 special districts under state law such as a sewer district, flood control district or drainage district,
2112 or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and
2113 approved management agency under § 208 of the CWA that discharges to surface waters and
2114 (ii) not defined as "large" or "medium" municipal separate storm sewer systems or designated
2115 under 9VAC25-870-380 A 1. This term includes systems similar to separate storm sewer systems
2116 in municipalities, such as systems at military bases, large hospital or prison complexes, and
2117 highway and other thoroughfares. The term does not include separate storm sewers in very
2118 discrete areas, such as individual buildings.

2119 "Source" means any building, structure, facility, or installation from which there is or may be
2120 a discharge of pollutants.

2121 "State" means the Commonwealth of Virginia.

2122 "State application" or "application" means the standard form or forms, including any additions,
2123 revisions, or modifications to the forms, approved by the administrator and the department for
2124 applying for a state permit.

2125 "State/EPA agreement" means an agreement between the EPA regional administrator and
2126 the state that coordinates EPA and state activities, responsibilities, and programs including those
2127 under the CWA and the Act.

2128 "State permit" means an approval to conduct a land-disturbing activity issued by the
2129 department in the form of a state stormwater individual permit or coverage issued under a state
2130 general permit or an approval issued by the department for stormwater discharges from an MS4.
2131 Under these state permits, the Commonwealth imposes and enforces requirements pursuant to
2132 the federal Clean Water Act and regulations, the Act, and this chapter. As the mechanism that
2133 imposes and enforces requirements pursuant to the federal Clean Water Act and regulations, a
2134 state permit for stormwater discharges from an MS4 and, after June 30, 2014, a state permit for
2135 conducting a land-disturbing activity issued pursuant to the Act, are also types of Virginia Pollutant
2136 Discharge Elimination System (VPDES) Permits. State permit does not include any state permit
2137 that has not yet been the subject of final department action, such as a draft state permit. Approvals
2138 issued pursuant to this chapter, 9VAC25-880, and 9VAC25-890 are not issuances of a permit
2139 under § 62.1-44.15.01 of the Code of Virginia.

2140 "State project" means any land development project that is undertaken by any state agency,
2141 board, commission, authority, or any branch of state government, including state-supported
2142 institutions of higher learning.

2143 "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 et seq.) of Title 62.1 of the Code
2144 of Virginia.

2145 "State waters" means all water, on the surface and under the ground, wholly or partially within
2146 or bordering the Commonwealth or within its jurisdiction, including wetlands.

2147 "Stormwater" means precipitation that is discharged across the land surface or through
2148 conveyances to one or more waterways and that may include stormwater runoff, snow melt runoff,
2149 and surface runoff and drainage.

2150 "Stormwater conveyance system" means a combination of drainage components that are
2151 used to convey stormwater discharge, either within or downstream of the land-disturbing activity.
2152 This includes:

2153 1. "Manmade stormwater conveyance system" means a pipe, ditch, vegetated swale, or
2154 other stormwater conveyance system constructed by man except for restored stormwater
2155 conveyance systems;

2156 2. "Natural stormwater conveyance system" means the main channel of a natural stream
2157 and the flood-prone area adjacent to the main channel; or

2158 3. "Restored stormwater conveyance system" means a stormwater conveyance system
2159 that has been designed and constructed using natural channel design concepts. Restored
2160 stormwater conveyance systems include the main channel and the flood-prone area
2161 adjacent to the main channel.

2162 "Stormwater discharge associated with construction activity" means a discharge of
2163 stormwater runoff from areas where land-disturbing activities (e.g., clearing, grading, or
2164 excavation); construction materials or equipment storage or maintenance (e.g., fill piles, borrow
2165 area, concrete truck washout, fueling); or other industrial stormwater directly related to the
2166 construction process (e.g., concrete or asphalt batch plants) are located.

2167 "Stormwater discharge associated with large construction activity" means the discharge of
2168 stormwater from large construction activities.

2169 "Stormwater discharge associated with small construction activity" means the discharge of
2170 stormwater from small construction activities.

2171 "Stormwater management facility" means a control measure that controls stormwater runoff
2172 and changes the characteristics of that runoff including the quantity and quality, the period of
2173 release or the velocity of flow.

2174 "Stormwater management plan" means a document containing material for describing
2175 methods for complying with the requirements of the VSMP or this chapter. An agreement in lieu
2176 of a stormwater management plan as defined in this chapter shall be considered to meet the
2177 requirements of a stormwater management plan.

2178 "Stormwater Pollution Prevention Plan" or "SWPPP" means a document that is prepared in
2179 accordance with good engineering practices and that identifies potential sources of pollutants that
2180 may reasonably be expected to affect the quality of stormwater discharges. A SWPPP required
2181 under a VSMP for construction activities shall identify and require the implementation of control
2182 measures and shall include or incorporate by reference an approved erosion and sediment control
2183 plan, an approved stormwater management plan, and a pollution prevention plan.

2184 "Subdivision" means the same as defined in § 15.2-2201 of the Code of Virginia.

2185 "Surface waters" means:

2186 1. All waters that are currently used, were used in the past, or may be susceptible to use
2187 in interstate or foreign commerce, including all waters that are subject to the ebb and flow
2188 of the tide;

2189 2. All interstate waters, including interstate wetlands;

2190 3. All other waters such as intrastate lakes, rivers, streams (including intermittent streams),
2191 mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or
2192 natural ponds the use, degradation, or destruction of which would affect or could affect
2193 interstate or foreign commerce including any such waters:

- 2194 a. That are or could be used by interstate or foreign travelers for recreational or other
2195 purposes;
- 2196 b. From which fish or shellfish are or could be taken and sold in interstate or foreign
2197 commerce; or
- 2198 c. That are used or could be used for industrial purposes by industries in interstate
2199 commerce;
- 2200 4. All impoundments of waters otherwise defined as surface waters under this definition;
- 2201 5. Tributaries of waters identified in subdivisions 1 through 4 of this definition;
- 2202 6. The territorial sea; and
- 2203 7. Wetlands adjacent to waters (other than waters that are themselves wetlands) identified
2204 in subdivisions 1 through 6 of this definition.
- 2205 Waste treatment systems, including treatment ponds or lagoons designed to meet the
2206 requirements of the CWA and the law, are not surface waters. Surface waters do not include prior
2207 converted cropland. Notwithstanding the determination of an area's status as prior converted
2208 cropland by any other agency, for the purposes of the CWA, the final authority regarding the CWA
2209 jurisdiction remains with the EPA.
- 2210 "SWM" means stormwater management.
- 2211 "Total dissolved solids" means the total dissolved (filterable) solids as determined by use of
2212 the method specified in 40 CFR Part 136.
- 2213 "Total maximum daily load" or "TMDL" means the sum of the individual wasteload allocations
2214 for point sources, load allocations (LAs) for nonpoint sources, natural background loading, and a
2215 margin of safety. TMDLs can be expressed in terms of either mass per time, toxicity, or other
2216 appropriate measure. The TMDL process provides for point versus nonpoint source trade-offs.
- 2217 "TMDL Action Plan" means the scheduled steps of activities that the MS4 operator will take
2218 to address the assumptions and requirements of the TMDL wasteload allocation. TMDL action
2219 plans may be implemented in multiple phases over more than one state permit cycle.
- 2220 "Toxic pollutant" means any pollutant listed as toxic under § 307(a)(1) of the CWA or, in the
2221 case of sludge use or disposal practices, any pollutant identified in regulations implementing §
2222 405(d) of the CWA.
- 2223 "Upset" means an exceptional incident in which there is unintentional and temporary
2224 noncompliance with technology based state permit effluent limitations because of factors beyond
2225 the reasonable control of the operator. An upset does not include noncompliance to the extent
2226 caused by operational error, improperly designed treatment facilities, inadequate treatment
2227 facilities, lack of preventive maintenance, or careless or improper operation.
- 2228 "Variance" means any mechanism or provision under § 301 or § 316 of the CWA or under 40
2229 CFR Part 125, or in the applicable federal effluent limitations guidelines that allows modification
2230 to or waiver of the generally applicable effluent limitation requirements or time deadlines of the
2231 CWA. This includes provisions that allow the establishment of alternative limitations based on
2232 fundamentally different factors or on § 301(c), § 301(g), § 301(h), § 301(i), or § 316(a) of the CWA.
- 2233 "Virginia Erosion and Sediment Control Program" or "VESCP" means a program approved by
2234 the department that has been established by a VESCP authority for the effective control of soil
2235 erosion, sediment deposition, and nonagricultural runoff associated with a land-disturbing activity
2236 to prevent the unreasonable degradation of properties, stream channels, waters, and other natural
2237 resources and shall include such items where applicable as local ordinances, rules, permit
2238 requirements, annual standards and specifications, policies and guidelines, technical materials,
2239 and requirements for plan review, inspection, enforcement where authorized in the Erosion and

- 2240** Sediment Control Act and its attendant regulations, and evaluation consistent with the
2241 requirements of the Erosion and Sediment Control Act and its attendant regulations.
- 2242** "Virginia Erosion and Sediment Control Program authority" or "VЕСP authority" means an
2243 authority approved by the department to operate a Virginia Erosion and Sediment Control
2244 Program. An authority may include a state entity, including the department; a federal entity; a
2245 district, county, city, or town; or for linear projects subject to annual standards and specifications,
2246 electric, natural gas and telephone utility companies, interstate and intrastate natural gas pipeline
2247 companies, railroad companies, or authorities created pursuant to § 15.2-5102 of the Code of
2248 Virginia.
- 2249** "Virginia Pollutant Discharge Elimination System (VPDES) permit" or "VPDES permit" means
2250 a document issued by the department pursuant to the State Water Control Law authorizing, under
2251 prescribed conditions, the potential or actual discharge of pollutants from a point source to surface
2252 waters.
- 2253** "Virginia Stormwater Management Act" means Article 2.3 (§ 62.1-44.15:24 et seq.) of Chapter
2254 3.1 of Title 62.1 of the Code of Virginia.
- 2255** "Virginia Stormwater BMP Clearinghouse Website" means a website that contains detailed
2256 design standards and specifications for control measures that may be used in Virginia to comply
2257 with the requirements of the Virginia Stormwater Management Act and associated regulations.
- 2258** "Virginia Stormwater Management Handbook" means a collection of pertinent information that
2259 provides general guidance for compliance with the Act and associated regulations and is
2260 developed by the department with advice from a stakeholder advisory committee.
- 2261** "Virginia Stormwater Management Program" or "VSMP" means a program approved by the
2262 department after September 13, 2011, that has been established by a VSMP authority to manage
2263 the quality and quantity of runoff resulting from land-disturbing activities and shall include such
2264 items as local ordinances, rules, permit requirements, annual standards and specifications,
2265 policies and guidelines, technical materials, and requirements for plan review, inspection,
2266 enforcement, where authorized in the Act and associated regulations, and evaluation consistent
2267 with the requirements of the SWM Act and associated regulations.
- 2268** "VSMP authority" means an authority approved by the department after September 13, 2011,
2269 to operate a Virginia Stormwater Management Program or the department. An authority may
2270 include a locality as set forth in § 62.1-44.15:27 of the Code of Virginia; state entity, including the
2271 department; federal entity; or, for linear projects subject to annual standards and specifications in
2272 accordance with subsection B of § 62.1-44.15:31 of the Code of Virginia, electric, natural gas,
2273 and telephone utility companies, interstate and intrastate natural gas pipeline companies, railroad
2274 companies, or authorities created pursuant to § 15.2-5102 of the Code of Virginia. Prior to
2275 approval, the department must find that the ordinances adopted by the locality's VSMP authority
2276 are consistent with the Act and this chapter including the General Permit for Discharges of
2277 Stormwater from Construction Activities (9VAC25-880).
- 2278** "Wasteload allocation" or "wasteload" or "WLA" means the portion of a receiving surface
2279 water's loading or assimilative capacity allocated to one of its existing or future point sources of
2280 pollution. WLAs are a type of water quality-based effluent limitation.
- 2281** "Water quality standards" or "WQS" means provisions of state or federal law that consist of a
2282 designated use or uses for the waters of the Commonwealth and water quality criteria for such
2283 waters based on such uses. Water quality standards are to protect the public health or welfare,
2284 enhance the quality of water, and serve the purposes of the State Water Control Law (§ 62.1-44.2
2285 et seq. of the Code of Virginia), the Act (§ 62.1-44.15:24 et seq. of the Code of Virginia), and the
2286 CWA (33 USC § 1251 et seq.).

2287 "Water quantity technical criteria" means standards that establish minimum design criteria for
2288 measures to control localized flooding and stream channel erosion.

2289 "Watershed" means a defined land area drained by a river or stream, karst system, or system
2290 of connecting rivers or streams such that all surface water within the area flows through a single
2291 outlet. In karst areas, the karst feature to which the water drains may be considered the single
2292 outlet for the watershed.

2293 "Wetlands" means those areas that are inundated or saturated by surface water or
2294 groundwater at a frequency and duration sufficient to support, and that under normal
2295 circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil
2296 conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

2297 "Whole effluent toxicity" means the aggregate toxic effect of an effluent measured directly by
2298 a toxicity test.

2299 ~~9VAC25-870-15. Applicability of incorporated references based on the dates that they~~
2300 ~~became effective. (Repealed.)~~

2301 ~~Except as noted, when a regulation of the United States set forth in the Code of Federal~~
2302 ~~Regulations is referenced and incorporated in this chapter, that regulation shall be as it exists and~~
2303 ~~has been published in the July 1, 2017, update. The final rules published in the Federal Register~~
2304 ~~on July 5, 2017 (82 FR 30997), which corrects 40 CFR 441.30, and on August 28, 2017 (82 FR~~
2305 ~~40836), which amends 40 CFR Part 136, are also incorporated by reference in this chapter.~~

2306 ~~9VAC25-870-15. Applicability of incorporated references based on the dates that they~~
2307 ~~became effective. (Repealed.)~~

2308 ~~Except as noted, when a regulation of the United States set forth in the Code of Federal~~
2309 ~~Regulations is referenced and incorporated in this chapter, that regulation shall be as it exists and~~
2310 ~~has been published in the July 1, 2017, update. The final rules published in the Federal Register~~
2311 ~~on July 5, 2017 (82 FR 30997), which corrects 40 CFR 441.30, and on August 28, 2017 (82 FR~~
2312 ~~40836), which amends 40 CFR Part 136, are also incorporated by reference in this chapter.~~

2313 ~~9VAC25-870-20. Purposes. (Repealed.)~~

2314 ~~The purposes of this chapter are to provide a framework for the administration, implementation~~
2315 ~~and enforcement of the Virginia Stormwater Management Act (Act) and to delineate the~~
2316 ~~procedures and requirements to be followed in connection with state permits issued by the~~
2317 ~~department pursuant to the Clean Water Act (CWA) and the Virginia Stormwater Management~~
2318 ~~Act and permits issued by a VSMP authority, while at the same time providing flexibility for~~
2319 ~~innovative solutions to stormwater management issues. The chapter also establishes the~~
2320 ~~department's procedures for the authorization of a VSMP, the department's procedures for~~
2321 ~~approving the administration of a VSMP by a VSMP authority and department oversight~~
2322 ~~authorities for a VSMP, and the required technical criteria for stormwater management for land-~~
2323 ~~disturbing activities.~~

2324 ~~9VAC25-870-20. Purposes. (Repealed.)~~

2325 ~~The purposes of this chapter are to provide a framework for the administration, implementation~~
2326 ~~and enforcement of the Virginia Stormwater Management Act (Act) and to delineate the~~
2327 ~~procedures and requirements to be followed in connection with state permits issued by the~~
2328 ~~department pursuant to the Clean Water Act (CWA) and the Virginia Stormwater Management~~
2329 ~~Act and permits issued by a VSMP authority, while at the same time providing flexibility for~~
2330 ~~innovative solutions to stormwater management issues. The chapter also establishes the~~
2331 ~~department's procedures for the authorization of a VSMP, the department's procedures for~~
2332 ~~approving the administration of a VSMP by a VSMP authority and department oversight~~
2333 ~~authorities for a VSMP, and the required technical criteria for stormwater management for land-~~
2334 ~~disturbing activities.~~

2335 9VAC25-870-30. Applicability. (Repealed.)**2336** This chapter is applicable to:

- 2337** 1. Every VSMP authority that administers a VSMP;
- 2338** 2. The department in its oversight of VSMPs or in its administration of the Virginia
- 2339** Stormwater Management Program;
- 2340** 3. Every MS4 program;
- 2341** 4. Every state agency project regulated and every federal entity project covered under the
- 2342** Act and this chapter; and
- 2343** 5. Every land-disturbing activity regulated under § 62.1-44.15:34 of the Code of Virginia
- 2344** unless otherwise exempted in § 62.1-44.15:34 B.

2345 9VAC25-870-30. Applicability. (Repealed.)**2346 9VAC25-870-30. Applicability.****2347** This chapter is applicable to:

- 2348** 1. Every VSMP authority that administers a VSMP;
- 2349** 2. The department in its oversight of VSMPs or in its administration of the Virginia
- 2350** Stormwater Management Program;
- 2351** 3. Every MS4 program;
- 2352** 4. Every state agency project regulated and every federal entity project covered under the
- 2353** Act and this chapter; and
- 2354** 5. Every land-disturbing activity regulated under § 62.1-44.15:34 of the Code of Virginia
- 2355** unless otherwise exempted in § 62.1-44.15:34 B.

2356 Part II**2357** Administrative and Technical Criteria for Land-Disturbing Activities**2358 9VAC25-870-40. Authority. (Repealed.)**

2359 Pursuant to the Virginia Stormwater Management Act, the board is required to take actions

2360 ensuring the general health, safety, and welfare of the citizens of the Commonwealth as well as

2361 protecting the quality and quantity of state waters from the potential harm of unmanaged

2362 stormwater. In addition to other authority granted to the board under the Stormwater Management

2363 Act, the board is authorized pursuant to §§ 62.1-44.15:25 and 62.1-44.15:28 of the Code of

2364 Virginia to adopt regulations that specify standards and procedures for VSMPs, to establish

2365 statewide standards for stormwater management for land-disturbing activities, and to protect

2366 properties, the quality and quantity of state waters, the physical integrity of stream channels, and

2367 other natural resources.

2368 9VAC25-870-40. Authority. (Repealed.)**2369 9VAC25-870-40. Authority.**

2370 Pursuant to the Virginia Stormwater Management Act, the board is required to take actions

2371 ensuring the general health, safety, and welfare of the citizens of the Commonwealth as well as

2372 protecting the quality and quantity of state waters from the potential harm of unmanaged

2373 stormwater. In addition to other authority granted to the board under the Stormwater Management

2374 Act, the board is authorized pursuant to §§ 62.1-44.15:25 and 62.1-44.15:28 of the Code of

2375 Virginia to adopt regulations that specify standards and procedures for VSMPs, to establish

2376 statewide standards for stormwater management for land-disturbing activities, and to protect

2377 properties, the quality and quantity of state waters, the physical integrity of stream channels, and

2378 other natural resources.

2379 **9VAC25-870-45. Implementation date. (Repealed.)**

2380 The technical criteria in Part II A and Part II B shall be implemented by a VSMP authority when
 2381 a General Permit for Discharges of Stormwater from Construction Activities has been issued that
 2382 incorporates such criteria. Until that time, the required technical criteria shall be found in Part II
 2383 C. VSMPs adopted in accordance with the Act and this chapter shall become effective July 1,
 2384 2014, unless otherwise specified by the department.

2385 **9VAC25-870-45. Implementation date. (Repealed.)**

2386 The technical criteria in Part II A and Part II B shall be implemented by a VSMP authority when
 2387 a General Permit for Discharges of Stormwater from Construction Activities has been issued that
 2388 incorporates such criteria. Until that time, the required technical criteria shall be found in Part II
 2389 C. VSMPs adopted in accordance with the Act and this chapter shall become effective July 1,
 2390 2014, unless otherwise specified by the department.

2391 **9VAC25-870-46. General objectives. (Repealed.)**

2392 The physical, chemical, biological, and hydrologic characteristics and the water quality and
 2393 quantity of the receiving state waters shall be maintained, protected, or improved in accordance
 2394 with the requirements of this part. Objectives include, but are not limited to, supporting state
 2395 designated uses and water quality standards. All control measures used shall be employed in a
 2396 manner that minimizes impacts on receiving state waters.

2397 **9VAC25-870-46. General objectives. (Repealed.)**

2398 The physical, chemical, biological, and hydrologic characteristics and the water quality and
 2399 quantity of the receiving state waters shall be maintained, protected, or improved in accordance
 2400 with the requirements of this part. Objectives include, but are not limited to, supporting state
 2401 designated uses and water quality standards. All control measures used shall be employed in a
 2402 manner that minimizes impacts on receiving state waters.

2403 **9VAC25-870-47. Applicability of other laws and regulations; time limits on applicability of
 2404 approved design criteria. (Repealed.)**

2405 A. Nothing in this chapter shall be construed as limiting the applicability of other laws and
 2406 regulations, including, but not limited to, the CWA, Virginia Stormwater Management Act, Virginia
 2407 Erosion and Sediment Control Law, and the Chesapeake Bay Preservation Act, except as
 2408 provided in § 62.1-44.15:27 K of the Code of Virginia, and all applicable regulations adopted in
 2409 accordance with those laws, or the rights of other federal agencies, state agencies, or local
 2410 governments to impose more stringent technical criteria or other requirements as allowed by law.

2411 B. Land-disturbing activities that obtain an initial state permit or commence land disturbance
 2412 prior to July 1, 2014, shall be conducted in accordance with the Part II C (9VAC25-870-93 et seq.)
 2413 technical criteria of this chapter. Such projects shall remain subject to the Part II C technical
 2414 criteria for two additional state permit cycles. After such time, portions of the project not under
 2415 construction shall become subject to any new technical criteria adopted by the board.

2416 C. Land-disturbing activities that obtain an initial state permit on or after July 1, 2014, shall be
 2417 conducted in accordance with the Part II B (9VAC25-870-62 et seq.) technical criteria of this
 2418 chapter, except as provided for in 9VAC25-870-48. Land-disturbing activities conducted in
 2419 accordance with the Part II B technical criteria shall remain subject to the Part II B technical criteria
 2420 for two additional state permit cycles. After such time, portions of the project not under
 2421 construction shall become subject to any new technical criteria adopted by the board.

2422 D. Nothing in this section shall preclude an operator from constructing to a more stringent
 2423 standard at his discretion.

2424 ~~9VAC25-870-47. Applicability of other laws and regulations; time limits on applicability of~~
 2425 ~~approved design criteria. (Repealed.)~~

2426 **9VAC25-870-47. Applicability of other laws and regulations; time limits on applicability of**
 2427 **approved design criteria.**

2428 A. Nothing in this chapter shall be construed as limiting the applicability of other laws and
 2429 regulations, including, but not limited to, the CWA, Virginia Stormwater Management Act, Virginia
 2430 Erosion and Sediment Control Law, and the Chesapeake Bay Preservation Act, except as
 2431 provided in § 62.1-44.15:27 K of the Code of Virginia, and all applicable regulations adopted in
 2432 accordance with those laws, or the rights of other federal agencies, state agencies, or local
 2433 governments to impose more stringent technical criteria or other requirements as allowed by law.

2434 B. Land-disturbing activities that obtain an initial state permit or commence land disturbance
 2435 prior to July 1, 2014, shall be conducted in accordance with the Part II C (9VAC25-870-93 et seq.)
 2436 technical criteria of this chapter. Such projects shall remain subject to the Part II C technical
 2437 criteria for two additional state permit cycles. After such time, portions of the project not under
 2438 construction shall become subject to any new technical criteria adopted by the board.

2439 C. Land-disturbing activities that obtain an initial state permit on or after July 1, 2014, shall be
 2440 conducted in accordance with the Part II B (9VAC25-870-62 et seq.) technical criteria of this
 2441 chapter, except as provided for in 9VAC25-870-48. Land-disturbing activities conducted in
 2442 accordance with the Part II B technical criteria shall remain subject to the Part II B technical criteria
 2443 for two additional state permit cycles. After such time, portions of the project not under
 2444 construction shall become subject to any new technical criteria adopted by the board.

2445 D. Nothing in this section shall preclude an operator from constructing to a more stringent
 2446 standard at his discretion.

2447 **9VAC25-870-48. Grandfathering. (Repealed.)**

2448 ~~A. Any land-disturbing activity shall be considered grandfathered by the VSMP authority and~~
 2449 ~~shall be subject to the Part II C (9VAC25-870-93 et seq.) technical criteria of this chapter provided:~~

2450 ~~1. A proffered or conditional zoning plan, zoning with a plan of development, preliminary~~
 2451 ~~or final subdivision plat, preliminary or final site plan, or any document determined by the~~
 2452 ~~locality to be equivalent thereto (i) was approved by the locality prior to July 1, 2012, (ii)~~
 2453 ~~provided a layout as defined in 9VAC25-870-10, (iii) will comply with the Part II C technical~~
 2454 ~~criteria of this chapter, and (iv) has not been subsequently modified or amended in a~~
 2455 ~~manner resulting in an increase in the amount of phosphorus leaving each point of~~
 2456 ~~discharge, and such that there is no increase in the volume or rate of runoff;~~

2457 ~~2. A state permit has not been issued prior to July 1, 2014; and~~

2458 ~~3. Land disturbance did not commence prior to July 1, 2014.~~

2459 ~~B. Locality, state, and federal projects shall be considered grandfathered by the VSMP~~
 2460 ~~authority and shall be subject to the Part II C technical criteria of this chapter provided:~~

2461 ~~1. There has been an obligation of locality, state, or federal funding, in whole or in part,~~
 2462 ~~prior to July 1, 2012, or the department has approved a stormwater management plan~~
 2463 ~~prior to July 1, 2012;~~

2464 ~~2. A state permit has not been issued prior to July 1, 2014; and~~

2465 ~~3. Land disturbance did not commence prior to July 1, 2014.~~

2466 ~~C. Land-disturbing activities grandfathered under subsections A and B of this section shall~~
 2467 ~~remain subject to the Part II C technical criteria of this chapter for one additional state permit~~
 2468 ~~cycle. After such time, portions of the project not under construction shall become subject to any~~
 2469 ~~new technical criteria adopted by the board.~~

2470 D. In cases where governmental bonding or public debt financing has been issued for a project
2471 prior to July 1, 2012, such project shall be subject to the technical criteria of Part II C.

2472 E. Nothing in this section shall preclude an operator from constructing to a more stringent
2473 standard at his discretion.

2474 **9VAC25-870-48. Grandfathering. (Repealed.)**

2475 A. Any land disturbing activity shall be considered grandfathered by the VSMP authority and
2476 shall be subject to the Part II C (9VAC25-870-93 et seq.) technical criteria of this chapter provided:

2477 1. A proffered or conditional zoning plan, zoning with a plan of development, preliminary
2478 or final subdivision plat, preliminary or final site plan, or any document determined by the
2479 locality to be equivalent thereto (i) was approved by the locality prior to July 1, 2012, (ii)
2480 provided a layout as defined in 9VAC25-870-10, (iii) will comply with the Part II C technical
2481 criteria of this chapter, and (iv) has not been subsequently modified or amended in a
2482 manner resulting in an increase in the amount of phosphorus leaving each point of
2483 discharge, and such that there is no increase in the volume or rate of runoff;

2484 2. A state permit has not been issued prior to July 1, 2014; and

2485 3. Land disturbance did not commence prior to July 1, 2014.

2486 B. Locality, state, and federal projects shall be considered grandfathered by the VSMP
2487 authority and shall be subject to the Part II C technical criteria of this chapter provided:

2488 1. There has been an obligation of locality, state, or federal funding, in whole or in part,
2489 prior to July 1, 2012, or the department has approved a stormwater management plan
2490 prior to July 1, 2012;

2491 2. A state permit has not been issued prior to July 1, 2014; and

2492 3. Land disturbance did not commence prior to July 1, 2014.

2493 C. Land disturbing activities grandfathered under subsections A and B of this section shall
2494 remain subject to the Part II C technical criteria of this chapter for one additional state permit
2495 cycle. After such time, portions of the project not under construction shall become subject to any
2496 new technical criteria adopted by the board.

2497 D. In cases where governmental bonding or public debt financing has been issued for a project
2498 prior to July 1, 2012, such project shall be subject to the technical criteria of Part II C.

2499 E. Nothing in this section shall preclude an operator from constructing to a more stringent
2500 standard at his discretion.

2501 **9VAC25-870-51. Chesapeake Bay Preservation Act land-disturbing activity. (Repealed.)**

2502 A. In order to protect the quality of state waters and to control the discharge of stormwater
2503 pollutants from land disturbing activities, runoff associated with Chesapeake Bay Preservation
2504 Act land disturbing activities shall be regulated by localities subject to the Chesapeake Bay
2505 Preservation Act or, in the case of state and federal agency projects, the department. In regulating
2506 such land disturbing activities in accordance with subsection B of this section, localities shall have
2507 the same authority and responsibilities as set forth in these regulations for VSMP authorities.

2508 B. After June 30, 2014, such land disturbing activities shall not require completion of a
2509 registration statement or require coverage under the General Permit for Discharges of Stormwater
2510 from Construction Activities but shall be subject to the following technical criteria and program
2511 and administrative requirements:

2512 1. An erosion and sediment control plan consistent with the requirements of the Virginia
2513 Erosion and Sediment Control Law and regulations must be designed and implemented
2514 during land disturbing activities. Prior to land disturbance, this plan must be approved by
2515 either the VESCP authority or the department in accordance with the Virginia Erosion and
2516 Sediment Control Law and attendant regulations.

- 2517 ~~2. A stormwater management plan consistent with the requirements of the Virginia~~
 2518 ~~Stormwater Management Act and regulations must be designed and implemented during~~
 2519 ~~the land-disturbing activity. The stormwater management plan shall be developed and~~
 2520 ~~submitted in accordance with 9VAC25-870-55. Prior to land disturbance, this plan must~~
 2521 ~~be approved by the VSMP authority.~~
- 2522 ~~3. Exceptions may be requested in accordance with 9VAC25-870-57.~~
- 2523 ~~4. Long-term maintenance of stormwater management facilities shall be provided for and~~
 2524 ~~conducted in accordance with 9VAC25-870-58.~~
- 2525 ~~5. Water quality design criteria in 9VAC25-870-63 shall be applied to the site.~~
- 2526 ~~6. Water quality compliance shall be achieved in accordance with 9VAC25-870-65.~~
- 2527 ~~7. Channel protection and flood protection shall be achieved in accordance with 9VAC25-~~
 2528 ~~870-66 or as permitted by subsection B of 9VAC25-870-52.~~
- 2529 ~~8. Offsite compliance options in accordance with 9VAC25-870-69 shall be available to~~
 2530 ~~Chesapeake Bay Preservation Act land-disturbing activities.~~
- 2531 ~~9. Such land-disturbing activities shall be subject to the design storm and hydrologic~~
 2532 ~~methods set out in 9VAC25-870-72, linear development controls in 9VAC25-870-76, and~~
 2533 ~~criteria associated with stormwater impoundment structures or facilities in 9VAC25-870-~~
 2534 ~~85.~~

2535 **9VAC25-870-51. Chesapeake Bay Preservation Act land-disturbing activity. (Repealed.)**

2536 **9VAC25-870-51. Chesapeake Bay Preservation Act land-disturbing activity.**

2537 A. In order to protect the quality of state waters and to control the discharge of stormwater
 2538 pollutants from land-disturbing activities, runoff associated with Chesapeake Bay Preservation
 2539 Act land-disturbing activities shall be regulated by localities subject to the Chesapeake Bay
 2540 Preservation Act or, in the case of state and federal agency projects, the department. In regulating
 2541 such land-disturbing activities in accordance with subsection B of this section, localities shall have
 2542 the same authority and responsibilities as set forth in these regulations for VSMP authorities.

2543 B. After June 30, 2014, such land-disturbing activities shall not require completion of a
 2544 registration statement or require coverage under the General Permit for Discharges of Stormwater
 2545 from Construction Activities but shall be subject to the following technical criteria and program
 2546 and administrative requirements:

- 2547 1. An erosion and sediment control plan consistent with the requirements of the Virginia
 2548 Erosion and Sediment Control Law and regulations must be designed and implemented
 2549 during land disturbing activities. Prior to land disturbance, this plan must be approved by
 2550 either the VESCP authority or the department in accordance with the Virginia Erosion and
 2551 Sediment Control Law and attendant regulations.
- 2552 2. A stormwater management plan consistent with the requirements of the Virginia
 2553 Stormwater Management Act and regulations must be designed and implemented during
 2554 the land-disturbing activity. The stormwater management plan shall be developed and
 2555 submitted in accordance with 9VAC25-870-55. Prior to land disturbance, this plan must
 2556 be approved by the VSMP authority.
- 2557 3. Exceptions may be requested in accordance with 9VAC25-870-57.
- 2558 4. Long-term maintenance of stormwater management facilities shall be provided for and
 2559 conducted in accordance with 9VAC25-870-58.
- 2560 5. Water quality design criteria in 9VAC25-870-63 shall be applied to the site.
- 2561 6. Water quality compliance shall be achieved in accordance with 9VAC25-870-65.

- 2562 7. Channel protection and flood protection shall be achieved in accordance with 9VAC25-
2563 870-66 or as permitted by subsection B of 9VAC25-870-52.
- 2564 8. Offsite compliance options in accordance with 9VAC25-870-69 shall be available to
2565 Chesapeake Bay Preservation Act land-disturbing activities.
- 2566 9. Such land-disturbing activities shall be subject to the design storm and hydrologic
2567 methods set out in 9VAC25-870-72, linear development controls in 9VAC25-870-76, and
2568 criteria associated with stormwater impoundment structures or facilities in 9VAC25-870-
2569 85.

2570 **9VAC25-870-52. Chesapeake Bay Preservation Act land-disturbing activities in rural**
2571 **Tidewater localities. (Repealed.)**

2572 A. ~~Acceptance of signed and sealed plans in lieu of local plan review. In lieu of a local plan~~
2573 ~~review or retaining a local certified plan reviewer, a rural Tidewater locality may accept plans and~~
2574 ~~supporting calculations for erosion and sediment control and stormwater management for any~~
2575 ~~land-disturbing activity equal to or greater than 2,500 square feet but less than one acre if the~~
2576 ~~following criteria are met:~~

- 2577 1. ~~The plans are prepared and submitted by a professional licensed to engage in practice~~
2578 ~~in the Commonwealth under Chapter 4 (§ 54.1-400 et seq.) or 22 (§ 54.1-2200 et seq.) of~~
2579 ~~Title 54.1 of the Code of Virginia and who shall hold a certificate of competence in the~~
2580 ~~appropriate subject area, as provided in § 62.1-44.15:30 of the Code of Virginia; and~~
- 2581 2. ~~The plan and supporting calculations are appropriately signed and sealed by the~~
2582 ~~professional with a certification that states: "This plan is designed in accordance with~~
2583 ~~applicable state law and regulations."~~

2584 B. ~~Tiered approach to water quantity technical criteria compliance.~~

2585 1. ~~A rural Tidewater locality may adopt the following tiered approach to water quantity~~
2586 ~~management based on the percent impervious cover of the watershed in accordance with~~
2587 ~~this subsection for land-disturbing activities that disturb an area of 2,500 square feet or~~
2588 ~~more but less than one acre:~~

2589 a. ~~For less than 5.0% impervious cover, apply the Virginia Erosion and Sediment~~
2590 ~~Control Regulation Minimum Standard 19 in effect prior to July 1, 2014, adopted by~~
2591 ~~the board pursuant to Article 2.4 (§ 62.1-44.15:51 et seq.) of Chapter 3.1 of Title 62.1~~
2592 ~~of the Code of Virginia, for the protection of downstream properties and waterways~~
2593 ~~from sediment deposition, erosion, and damage due to increases in volume, velocity,~~
2594 ~~and peak flow rate of stormwater runoff for the stated frequency storm of 24-hour~~
2595 ~~duration.~~

2596 b. ~~For 5.0% or more impervious cover but less than 7.5%, detain and release over a~~
2597 ~~24-hour period the expected rainfall resulting from the one-year, 24-hour storm, which~~
2598 ~~practices shall be exempt from any flow rate capacity and velocity requirements for~~
2599 ~~natural or man-made channels.~~

2600 c. ~~For 7.5% impervious cover or more, apply the water quantity technical criteria in~~
2601 ~~accordance with 9VAC25-870-66.~~

2602 2. ~~The establishment and conduct of the tiered approach by the locality pursuant to this~~
2603 ~~section shall be subject to review by the department.~~

2604 3. ~~Prior to the adoption and implementation of the tiered approach to water quantity~~
2605 ~~management, the local governing body shall:~~

2606 a. ~~Develop a watershed map that includes the following:~~

2607 ~~(1) The boundaries of the locality and each watershed located partially or wholly within~~
 2608 ~~the locality based on the most recent version of Virginia's 6th order National~~
 2609 ~~Watershed Boundary Dataset;~~

2610 ~~(2) The percentage of impervious cover within each watershed. Data provided by the~~
 2611 ~~Virginia Geographic Information Network (VGIN) shall be sufficient for the initial~~
 2612 ~~determination of impervious cover percentage at the time of the initial adoption of the~~
 2613 ~~map; and~~

2614 ~~(3) The locations at which the governing body expects or proposes that development~~
 2615 ~~should occur and may indicate the projected future percentage of impervious cover~~
 2616 ~~based on proposed development. The governing body may designate certain areas~~
 2617 ~~within a watershed in which it proposes that denser than average development shall~~
 2618 ~~occur and may designate environmentally sensitive areas in which the water quantity~~
 2619 ~~technical criteria in 9VAC25-870-66 shall apply.~~

2620 ~~b. After the watershed map has been developed, the governing body may then~~
 2621 ~~approve and adopt the map by a majority vote of its membership and publish it as the~~
 2622 ~~official watershed map of the locality. No official watershed map shall be adopted by~~
 2623 ~~the governing body or have any effect until it is approved by an ordinance duly passed~~
 2624 ~~by the governing body of the locality after a public hearing, preceded by public notice~~
 2625 ~~as required by § 15.2-2204 of the Code of Virginia. Within 30 days after adoption of~~
 2626 ~~the official watershed map, the governing body shall file the watershed map in the~~
 2627 ~~office of the clerk of the circuit court.~~

2628 ~~4. At least once per year, the governing body shall by majority vote make additions to or~~
 2629 ~~modifications of the official watershed map to reflect actual development projects. The~~
 2630 ~~governing body shall change the indication on the map of the impervious cover percentage~~
 2631 ~~within a watershed where the percentage has changed and shall update the map and~~
 2632 ~~supporting datasets with actual development project information, including single-family~~
 2633 ~~housing projects and any projects covered by the General VPDES Permit for Discharges~~
 2634 ~~of Stormwater from Construction Activities and administered by the department for opt-~~
 2635 ~~out localities pursuant to § 62.1-44.15:27 of the Code of Virginia. The governing body may~~
 2636 ~~incorporate into the official watershed map the most recent VGIN data, including data on~~
 2637 ~~state and federal projects that are not reviewed or approved by the locality. The governing~~
 2638 ~~body shall keep current its impervious cover percentage for each watershed located within~~
 2639 ~~the locality, as reflected in the official watershed map, and shall make the map and such~~
 2640 ~~percentages available to the public.~~

2641 ~~5. The locality shall notify the department and update the official watershed map within 12~~
 2642 ~~months of the approval of the development plan for any project that exceeds the percent~~
 2643 ~~impervious cover percentage of the watershed in which it is located and causes the~~
 2644 ~~impervious cover percentage for the watershed to increase such that the watershed~~
 2645 ~~percent impervious cover is categorized by the next higher tier pursuant to subdivision B~~
 2646 ~~4 of this section.~~

2647 ~~6. No official watershed map or its adopting or amending ordinance shall take precedence~~
 2648 ~~over any duly adopted zoning ordinance, comprehensive plan, or other local land-use~~
 2649 ~~ordinance, and in the case of a conflict, the official watershed map or ordinance shall yield~~
 2650 ~~to such land-use ordinance.~~

2651 ~~**9VAC25-870-52. Chesapeake Bay Preservation Act land-disturbing activities in rural**~~
 2652 ~~**Tidewater localities. (Repealed.)**~~

2653 ~~A. Acceptance of signed and sealed plans in lieu of local plan review. In lieu of a local plan~~
 2654 ~~review or retaining a local certified plan reviewer, a rural Tidewater locality may accept plans and~~
 2655 ~~supporting calculations for erosion and sediment control and stormwater management for any~~

2656 ~~land-disturbing activity equal to or greater than 2,500 square feet but less than one acre if the~~
 2657 ~~following criteria are met:~~

2658 ~~1. The plans are prepared and submitted by a professional licensed to engage in practice~~
 2659 ~~in the Commonwealth under Chapter 4 (§ 54.1-400 et seq.) or 22 (§ 54.1-2200 et seq.) of~~
 2660 ~~Title 54.1 of the Code of Virginia and who shall hold a certificate of competence in the~~
 2661 ~~appropriate subject area, as provided in § 62.1-44.15:30 of the Code of Virginia; and~~

2662 ~~2. The plan and supporting calculations are appropriately signed and sealed by the~~
 2663 ~~professional with a certification that states: "This plan is designed in accordance with~~
 2664 ~~applicable state law and regulations."~~

2665 ~~B. Tiered approach to water quantity technical criteria compliance.~~

2666 ~~1. A rural Tidewater locality may adopt the following tiered approach to water quantity~~
 2667 ~~management based on the percent impervious cover of the watershed in accordance with~~
 2668 ~~this subsection for land-disturbing activities that disturb an area of 2,500 square feet or~~
 2669 ~~more but less than one acre:~~

2670 ~~a. For less than 5.0% impervious cover, apply the Virginia Erosion and Sediment~~
 2671 ~~Control Regulation Minimum Standard 19 in effect prior to July 1, 2014, adopted by~~
 2672 ~~the board pursuant to Article 2.4 (§ 62.1-44.15:51 et seq.) of Chapter 3.1 of Title 62.1~~
 2673 ~~of the Code of Virginia, for the protection of downstream properties and waterways~~
 2674 ~~from sediment deposition, erosion, and damage due to increases in volume, velocity,~~
 2675 ~~and peak flow rate of stormwater runoff for the stated frequency storm of 24-hour~~
 2676 ~~duration.~~

2677 ~~b. For 5.0% or more impervious cover but less than 7.5%, detain and release over a~~
 2678 ~~24-hour period the expected rainfall resulting from the one year, 24-hour storm, which~~
 2679 ~~practices shall be exempt from any flow rate capacity and velocity requirements for~~
 2680 ~~natural or man-made channels.~~

2681 ~~c. For 7.5% impervious cover or more, apply the water quantity technical criteria in~~
 2682 ~~accordance with 9VAC25-870-66.~~

2683 ~~2. The establishment and conduct of the tiered approach by the locality pursuant to this~~
 2684 ~~section shall be subject to review by the department.~~

2685 ~~3. Prior to the adoption and implementation of the tiered approach to water quantity~~
 2686 ~~management, the local governing body shall:~~

2687 ~~a. Develop a watershed map that includes the following:~~

2688 ~~(1) The boundaries of the locality and each watershed located partially or wholly within~~
 2689 ~~the locality based on the most recent version of Virginia's 6th order National~~
 2690 ~~Watershed Boundary Dataset;~~

2691 ~~(2) The percentage of impervious cover within each watershed. Data provided by the~~
 2692 ~~Virginia Geographic Information Network (VGIN) shall be sufficient for the initial~~
 2693 ~~determination of impervious cover percentage at the time of the initial adoption of the~~
 2694 ~~map; and~~

2695 ~~(3) The locations at which the governing body expects or proposes that development~~
 2696 ~~should occur and may indicate the projected future percentage of impervious cover~~
 2697 ~~based on proposed development. The governing body may designate certain areas~~
 2698 ~~within a watershed in which it proposes that denser than average development shall~~
 2699 ~~occur and may designate environmentally sensitive areas in which the water quantity~~
 2700 ~~technical criteria in 9VAC25-870-66 shall apply.~~

2701 ~~b. After the watershed map has been developed, the governing body may then~~
 2702 ~~approve and adopt the map by a majority vote of its membership and publish it as the~~

2703 ~~official watershed map of the locality. No official watershed map shall be adopted by~~
 2704 ~~the governing body or have any effect until it is approved by an ordinance duly passed~~
 2705 ~~by the governing body of the locality after a public hearing, preceded by public notice~~
 2706 ~~as required by § 15.2-2204 of the Code of Virginia. Within 30 days after adoption of~~
 2707 ~~the official watershed map, the governing body shall file the watershed map in the~~
 2708 ~~office of the clerk of the circuit court.~~

2709 ~~4. At least once per year, the governing body shall by majority vote make additions to or~~
 2710 ~~modifications of the official watershed map to reflect actual development projects. The~~
 2711 ~~governing body shall change the indication on the map of the impervious cover percentage~~
 2712 ~~within a watershed where the percentage has changed and shall update the map and~~
 2713 ~~supporting datasets with actual development project information, including single-family~~
 2714 ~~housing projects and any projects covered by the General VPDES Permit for Discharges~~
 2715 ~~of Stormwater from Construction Activities and administered by the department for opt-~~
 2716 ~~out localities pursuant to § 62.1-44.15:27 of the Code of Virginia. The governing body may~~
 2717 ~~incorporate into the official watershed map the most recent VGIN data, including data on~~
 2718 ~~state and federal projects that are not reviewed or approved by the locality. The governing~~
 2719 ~~body shall keep current its impervious cover percentage for each watershed located within~~
 2720 ~~the locality, as reflected in the official watershed map, and shall make the map and such~~
 2721 ~~percentages available to the public.~~

2722 ~~5. The locality shall notify the department and update the official watershed map within 12~~
 2723 ~~months of the approval of the development plan for any project that exceeds the percent~~
 2724 ~~impervious cover percentage of the watershed in which it is located and causes the~~
 2725 ~~impervious cover percentage for the watershed to increase such that the watershed~~
 2726 ~~percent impervious cover is categorized by the next higher tier pursuant to subdivision B~~
 2727 ~~4 of this section.~~

2728 ~~6. No official watershed map or its adopting or amending ordinance shall take precedence~~
 2729 ~~over any duly adopted zoning ordinance, comprehensive plan, or other local land use~~
 2730 ~~ordinance, and in the case of a conflict, the official watershed map or ordinance shall yield~~
 2731 ~~to such land use ordinance.~~

2732 Part II A

2733 General Administrative Criteria for Regulated Land-Disturbing Activities

2734 **9VAC25-870-53. Applicability. (Repealed.)**

2735 This part applies to all regulated land-disturbing activities.

2736 **9VAC25-870-53. Applicability. (Repealed.)**

2737 This part applies to all regulated land-disturbing activities.

2738 **9VAC25-870-54. Stormwater pollution prevention plan requirements. (Repealed.)**

2739 ~~A. A stormwater pollution prevention plan shall include, but not be limited to, an approved~~
 2740 ~~erosion and sediment control plan, an approved stormwater management plan, a pollution~~
 2741 ~~prevention plan for regulated land-disturbing activities, and a description of any additional control~~
 2742 ~~measures necessary to address a TMDL pursuant to subsection E of this section.~~

2743 ~~B. An erosion and sediment control plan consistent with the requirements of the Virginia~~
 2744 ~~Erosion and Sediment Control Law and regulations must be designed and implemented during~~
 2745 ~~construction activities. Prior to land disturbance, this plan must be approved by either the VESCP~~
 2746 ~~authority or the department in accordance with the Virginia Erosion and Sediment Control Law~~
 2747 ~~and attendant regulations.~~

2748 ~~C. A stormwater management plan consistent with the requirements of the Virginia~~
 2749 ~~Stormwater Management Act and regulations must be designed and implemented during~~

2750 construction activities. Prior to land disturbance, this plan must be approved by the VSMP
2751 authority.

2752 D. A pollution prevention plan that identifies potential sources of pollutants that may
2753 reasonably be expected to affect the quality of stormwater discharges from the construction site
2754 and describe control measures that will be used to minimize pollutants in stormwater discharges
2755 from the construction site must be developed before land disturbance commences.

2756 E. In addition to the requirements of subsections A through D of this section, if a specific WLA
2757 for a pollutant has been established in an approved TMDL and is assigned to stormwater
2758 discharges from a construction activity, additional control measures must be identified and
2759 implemented by the operator so that discharges are consistent with the assumptions and
2760 requirements of the WLA.

2761 F. The stormwater pollution prevention plan must address the following requirements as
2762 specified in 40 CFR 450.21, to the extent otherwise required by state law or regulations and any
2763 applicable requirements of a state permit:

- 2764 1. Control stormwater volume and velocity within the site to minimize soil erosion;
- 2765 2. Control stormwater discharges, including both peak flow rates and total stormwater
2766 volume, to minimize erosion at outlets and to minimize downstream channel and stream
2767 bank erosion;
- 2768 3. Minimize the amount of soil exposed during construction activity;
- 2769 4. Minimize the disturbance of steep slopes;
- 2770 5. Minimize sediment discharges from the site. The design, installation and maintenance
2771 of erosion and sediment controls must address factors such as the amount, frequency,
2772 intensity and duration of precipitation, the nature of resulting stormwater runoff, and soil
2773 characteristics, including the range of soil particle sizes expected to be present on the site;
- 2774 6. Provide and maintain natural buffers around surface waters, direct stormwater to
2775 vegetated areas to increase sediment removal and maximize stormwater infiltration,
2776 unless infeasible;
- 2777 7. Minimize soil compaction and, unless infeasible, preserve topsoil;
- 2778 8. Stabilization of disturbed areas must, at a minimum, be initiated immediately whenever
2779 any clearing, grading, excavating, or other earth disturbing activities have permanently
2780 ceased on any portion of the site, or temporarily ceased on any portion of the site and will
2781 not resume for a period exceeding 14 calendar days. Stabilization must be completed
2782 within a period of time determined by the VSMP authority. In arid, semiarid, and drought-
2783 stricken areas where initiating vegetative stabilization measures immediately is infeasible,
2784 alternative stabilization measures must be employed as specified by the VSMP authority;
2785 and
- 2786 9. Utilize outlet structures that withdraw water from the surface, unless infeasible, when
2787 discharging from basins and impoundments.

2788 G. The SWPPP shall be amended whenever there is a change in design, construction,
2789 operation, or maintenance that has a significant effect on the discharge of pollutants to state
2790 waters and that has not been previously addressed in the SWPPP. The SWPPP must be
2791 maintained at a central location onsite. If an onsite location is unavailable, notice of the SWPPP's
2792 location must be posted near the main entrance at the construction site.

2793 **9VAC25-870-54. Stormwater pollution prevention plan requirements. (Repealed.)**

2794 A. A stormwater pollution prevention plan shall include, but not be limited to, an approved
2795 erosion and sediment control plan, an approved stormwater management plan, a pollution

2796 prevention plan for regulated land-disturbing activities, and a description of any additional control
2797 measures necessary to address a TMDL pursuant to subsection E of this section.

2798 B. An erosion and sediment control plan consistent with the requirements of the Virginia
2799 Erosion and Sediment Control Law and regulations must be designed and implemented during
2800 construction activities. Prior to land disturbance, this plan must be approved by either the VESCP
2801 authority or the department in accordance with the Virginia Erosion and Sediment Control Law
2802 and attendant regulations.

2803 C. A stormwater management plan consistent with the requirements of the Virginia
2804 Stormwater Management Act and regulations must be designed and implemented during
2805 construction activities. Prior to land disturbance, this plan must be approved by the VSMP
2806 authority.

2807 D. A pollution prevention plan that identifies potential sources of pollutants that may
2808 reasonably be expected to affect the quality of stormwater discharges from the construction site
2809 and describe control measures that will be used to minimize pollutants in stormwater discharges
2810 from the construction site must be developed before land disturbance commences.

2811 E. In addition to the requirements of subsections A through D of this section, if a specific WLA
2812 for a pollutant has been established in an approved TMDL and is assigned to stormwater
2813 discharges from a construction activity, additional control measures must be identified and
2814 implemented by the operator so that discharges are consistent with the assumptions and
2815 requirements of the WLA.

2816 F. The stormwater pollution prevention plan must address the following requirements as
2817 specified in 40 CFR 450.21, to the extent otherwise required by state law or regulations and any
2818 applicable requirements of a state permit:

- 2819 1. Control stormwater volume and velocity within the site to minimize soil erosion;
- 2820 2. Control stormwater discharges, including both peak flow rates and total stormwater
2821 volume, to minimize erosion at outlets and to minimize downstream channel and stream
2822 bank erosion;
- 2823 3. Minimize the amount of soil exposed during construction activity;
- 2824 4. Minimize the disturbance of steep slopes;
- 2825 5. Minimize sediment discharges from the site. The design, installation and maintenance
2826 of erosion and sediment controls must address factors such as the amount, frequency,
2827 intensity and duration of precipitation, the nature of resulting stormwater runoff, and soil
2828 characteristics, including the range of soil particle sizes expected to be present on the site;
- 2829 6. Provide and maintain natural buffers around surface waters, direct stormwater to
2830 vegetated areas to increase sediment removal and maximize stormwater infiltration,
2831 unless infeasible;
- 2832 7. Minimize soil compaction and, unless infeasible, preserve topsoil;
- 2833 8. Stabilization of disturbed areas must, at a minimum, be initiated immediately whenever
2834 any clearing, grading, excavating, or other earth disturbing activities have permanently
2835 ceased on any portion of the site, or temporarily ceased on any portion of the site and will
2836 not resume for a period exceeding 14 calendar days. Stabilization must be completed
2837 within a period of time determined by the VSMP authority. In arid, semiarid, and drought-
2838 stricken areas where initiating vegetative stabilization measures immediately is infeasible,
2839 alternative stabilization measures must be employed as specified by the VSMP authority;
- 2840 and
- 2841 9. Utilize outlet structures that withdraw water from the surface, unless infeasible, when
2842 discharging from basins and impoundments.

2843 ~~G. The SWPPP shall be amended whenever there is a change in design, construction,~~
 2844 ~~operation, or maintenance that has a significant effect on the discharge of pollutants to state~~
 2845 ~~waters and that has not been previously addressed in the SWPPP. The SWPPP must be~~
 2846 ~~maintained at a central location onsite. If an onsite location is unavailable, notice of the SWPPP's~~
 2847 ~~location must be posted near the main entrance at the construction site.~~

2848 **9VAC25-870-55. Stormwater management plans. (Repealed.)**

2849 ~~A. A stormwater management plan shall be developed and submitted to the VSMP authority.~~
 2850 ~~The stormwater management plan shall be implemented as approved or modified by the VSMP~~
 2851 ~~authority and shall be developed in accordance with the following:~~

2852 ~~1. A stormwater management plan for a land-disturbing activity shall apply the stormwater~~
 2853 ~~management technical criteria set forth in this part to the entire land-disturbing activity.~~
 2854 ~~Individual lots in new residential, commercial, or industrial developments, including those~~
 2855 ~~developed under subsequent owners, shall not be considered separate land-disturbing~~
 2856 ~~activities.~~

2857 ~~2. A stormwater management plan shall consider all sources of surface runoff and all~~
 2858 ~~sources of subsurface and groundwater flows converted to surface runoff.~~

2859 ~~B. A complete stormwater management plan shall include the following elements:~~

2860 ~~1. Information on the type of and location of stormwater discharges, information on the~~
 2861 ~~features to which stormwater is being discharged including surface waters or karst~~
 2862 ~~features if present, and predevelopment and postdevelopment drainage areas;~~

2863 ~~2. Contact information including the name, address, telephone number, and email address~~
 2864 ~~of the owner and the tax reference number and parcel number of the property or properties~~
 2865 ~~affected;~~

2866 ~~3. A narrative that includes a description of current site conditions and final site conditions~~
 2867 ~~or if allowed by the VSMP authority, the information provided and documented during the~~
 2868 ~~review process that addresses the current and final site conditions;~~

2869 ~~4. A general description of the proposed stormwater management facilities and the~~
 2870 ~~mechanism through which the facilities will be operated and maintained after construction~~
 2871 ~~is complete;~~

2872 ~~5. Information on the proposed stormwater management facilities, including (i) the type of~~
 2873 ~~facilities; (ii) location, including geographic coordinates; (iii) acres treated; and (iv) the~~
 2874 ~~surface waters or karst features into which the facility will discharge;~~

2875 ~~6. Hydrologic and hydraulic computations, including runoff characteristics;~~

2876 ~~7. Documentation and calculations verifying compliance with the water quality and quantity~~
 2877 ~~requirements of these regulations;~~

2878 ~~8. A map of the site that depicts the topography of the site and includes:~~

2879 ~~a. All contributing drainage areas;~~

2880 ~~b. Existing streams, ponds, culverts, ditches, wetlands, other water bodies, and~~
 2881 ~~floodplains;~~

2882 ~~c. Soil types, geologic formations if karst features are present in the area, forest cover,~~
 2883 ~~and other vegetative areas;~~

2884 ~~d. Current land use including existing structures, roads, and locations of known utilities~~
 2885 ~~and easements;~~

2886 ~~e. Sufficient information on adjoining parcels to assess the impacts of stormwater from~~
 2887 ~~the site on these parcels;~~

2888 ~~f. The limits of clearing and grading, and the proposed drainage patterns on the site;~~

2889 g. ~~Proposed buildings, roads, parking areas, utilities, and stormwater management~~
2890 ~~facilities; and~~

2891 h. ~~Proposed land use with tabulation of the percentage of surface area to be adapted~~
2892 ~~to various uses, including planned locations of utilities, roads, and easements;~~

2893 9. ~~If an operator intends to meet the requirements established in 9VAC25-870-63 or~~
2894 ~~9VAC25-870-66 through the use of off-site compliance options, where applicable, then a~~
2895 ~~letter of availability from the off-site provider must be included; and~~

2896 10. ~~If payment of a fee is required with the stormwater management plan submission by~~
2897 ~~the VSMP authority, the fee and the required fee form in accordance with Part XIII~~
2898 ~~(9VAC25-870-700 et seq.) must have been submitted.~~

2899 C. ~~All final plan elements, specifications, or calculations of the stormwater management plans~~
2900 ~~whose preparation requires a license under Chapter 4 (§ 54.1-400 et seq.) or 22 (§ 54.1-2200 et~~
2901 ~~seq.) of Title 54.1 of the Code of Virginia shall be appropriately signed and sealed by a~~
2902 ~~professional who is licensed to engage in practice in the Commonwealth of Virginia. Nothing in~~
2903 ~~this subsection shall authorize any person to engage in practice outside his area of professional~~
2904 ~~competence.~~

2905 D. ~~A construction record drawing for permanent stormwater management facilities shall be~~
2906 ~~submitted to the VSMP authority in accordance with 9VAC25-870-108 and 9VAC25-870-112. The~~
2907 ~~construction record drawing shall be appropriately sealed and signed by a professional registered~~
2908 ~~in the Commonwealth of Virginia, certifying that the stormwater management facilities have been~~
2909 ~~constructed in accordance with the approved plan.~~

2910 **9VAC25-870-55. Stormwater management plans. (Repealed.)**

2911 A. ~~A stormwater management plan shall be developed and submitted to the VSMP authority.~~
2912 ~~The stormwater management plan shall be implemented as approved or modified by the VSMP~~
2913 ~~authority and shall be developed in accordance with the following:~~

2914 1. ~~A stormwater management plan for a land-disturbing activity shall apply the stormwater~~
2915 ~~management technical criteria set forth in this part to the entire land-disturbing activity.~~
2916 ~~Individual lots in new residential, commercial, or industrial developments, including those~~
2917 ~~developed under subsequent owners, shall not be considered separate land-disturbing~~
2918 ~~activities.~~

2919 2. ~~A stormwater management plan shall consider all sources of surface runoff and all~~
2920 ~~sources of subsurface and groundwater flows converted to surface runoff.~~

2921 B. ~~A complete stormwater management plan shall include the following elements:~~

2922 1. ~~Information on the type of and location of stormwater discharges, information on the~~
2923 ~~features to which stormwater is being discharged including surface waters or karst~~
2924 ~~features if present, and predevelopment and postdevelopment drainage areas;~~

2925 2. ~~Contact information including the name, address, telephone number, and email address~~
2926 ~~of the owner and the tax reference number and parcel number of the property or properties~~
2927 ~~affected;~~

2928 3. ~~A narrative that includes a description of current site conditions and final site conditions~~
2929 ~~or if allowed by the VSMP authority, the information provided and documented during the~~
2930 ~~review process that addresses the current and final site conditions;~~

2931 4. ~~A general description of the proposed stormwater management facilities and the~~
2932 ~~mechanism through which the facilities will be operated and maintained after construction~~
2933 ~~is complete;~~

- 2934 5. Information on the proposed stormwater management facilities, including (i) the type of
 2935 facilities; (ii) location, including geographic coordinates; (iii) acres treated; and (iv) the
 2936 surface waters or karst features into which the facility will discharge;
- 2937 6. Hydrologic and hydraulic computations, including runoff characteristics;
- 2938 7. Documentation and calculations verifying compliance with the water quality and quantity
 2939 requirements of these regulations;
- 2940 8. A map of the site that depicts the topography of the site and includes:
- 2941 a. All contributing drainage areas;
- 2942 b. Existing streams, ponds, culverts, ditches, wetlands, other water bodies, and
 2943 floodplains;
- 2944 c. Soil types, geologic formations if karst features are present in the area, forest cover,
 2945 and other vegetative areas;
- 2946 d. Current land use including existing structures, roads, and locations of known utilities
 2947 and easements;
- 2948 e. Sufficient information on adjoining parcels to assess the impacts of stormwater from
 2949 the site on these parcels;
- 2950 f. The limits of clearing and grading, and the proposed drainage patterns on the site;
- 2951 g. Proposed buildings, roads, parking areas, utilities, and stormwater management
 2952 facilities; and
- 2953 h. Proposed land use with tabulation of the percentage of surface area to be adapted
 2954 to various uses, including planned locations of utilities, roads, and easements;
- 2955 9. If an operator intends to meet the requirements established in 9VAC25-870-63 or
 2956 9VAC25-870-66 through the use of off-site compliance options, where applicable, then a
 2957 letter of availability from the off-site provider must be included; and
- 2958 10. If payment of a fee is required with the stormwater management plan submission by
 2959 the VSMP authority, the fee and the required fee form in accordance with Part XIII
 2960 (9VAC25-870-700 et seq.) must have been submitted.
- 2961 C. All final plan elements, specifications, or calculations of the stormwater management plans
 2962 whose preparation requires a license under Chapter 4 (§ 54.1-400 et seq.) or 22 (§ 54.1-2200 et
 2963 seq.) of Title 54.1 of the Code of Virginia shall be appropriately signed and sealed by a
 2964 professional who is licensed to engage in practice in the Commonwealth of Virginia. Nothing in
 2965 this subsection shall authorize any person to engage in practice outside his area of professional
 2966 competence.
- 2967 D. A construction record drawing for permanent stormwater management facilities shall be
 2968 submitted to the VSMP authority in accordance with 9VAC25-870-108 and 9VAC25-870-112. The
 2969 construction record drawing shall be appropriately sealed and signed by a professional registered
 2970 in the Commonwealth of Virginia, certifying that the stormwater management facilities have been
 2971 constructed in accordance with the approved plan.
- 2972 **9VAC25-870-56. Pollution prevention plans. (Repealed.)**
- 2973 A. A plan for implementing pollution prevention measures during construction activities shall
 2974 be developed, implemented, and updated as necessary. The pollution prevention plan shall detail
 2975 the design, installation, implementation, and maintenance of effective pollution prevention
 2976 measures as specified in 40 CFR 450.21(d) to minimize the discharge of pollutants. At a minimum,
 2977 such measures must be designed, installed, implemented, and maintained to:

2978 1. Minimize the discharge of pollutants from equipment and vehicle washing, wheel wash
 2979 water, and other wash waters. Wash waters must be treated in a sediment basin or
 2980 alternative control that provides equivalent or better treatment prior to discharge;

2981 2. Minimize the exposure of building materials, building products, construction wastes,
 2982 trash, landscape materials, fertilizers, pesticides, herbicides, detergents, sanitary waste,
 2983 and other materials present on the site to precipitation and to stormwater; and

2984 3. Minimize the discharge of pollutants from spills and leaks and implement chemical spill
 2985 and leak prevention and response procedures.

2986 B. The pollution prevention plan shall include effective best management practices to prohibit
 2987 the following discharges in accordance with 40 CFR 450.21(e):

2988 1. Wastewater from washout of concrete, unless managed by an appropriate control;

2989 2. Wastewater from washout and cleanout of stucco, paint, form release oils, curing
 2990 compounds, and other construction materials;

2991 3. Fuels, oils, or other pollutants used in vehicle and equipment operation and
 2992 maintenance; and

2993 4. Soaps or solvents used in vehicle and equipment washing.

2994 C. Discharges from dewatering activities, including discharges from dewatering of trenches
 2995 and excavations, are prohibited unless managed by appropriate controls in accordance with 40
 2996 CFR 450.21(c).

2997 **9VAC25-870-56. Pollution prevention plans. (Repealed.)**

2998 A. A plan for implementing pollution prevention measures during construction activities shall
 2999 be developed, implemented, and updated as necessary. The pollution prevention plan shall detail
 3000 the design, installation, implementation, and maintenance of effective pollution prevention
 3001 measures as specified in 40 CFR 450.21(d) to minimize the discharge of pollutants. At a minimum,
 3002 such measures must be designed, installed, implemented, and maintained to:

3003 1. Minimize the discharge of pollutants from equipment and vehicle washing, wheel wash
 3004 water, and other wash waters. Wash waters must be treated in a sediment basin or
 3005 alternative control that provides equivalent or better treatment prior to discharge;

3006 2. Minimize the exposure of building materials, building products, construction wastes,
 3007 trash, landscape materials, fertilizers, pesticides, herbicides, detergents, sanitary waste,
 3008 and other materials present on the site to precipitation and to stormwater; and

3009 3. Minimize the discharge of pollutants from spills and leaks and implement chemical spill
 3010 and leak prevention and response procedures.

3011 B. The pollution prevention plan shall include effective best management practices to prohibit
 3012 the following discharges in accordance with 40 CFR 450.21(e):

3013 1. Wastewater from washout of concrete, unless managed by an appropriate control;

3014 2. Wastewater from washout and cleanout of stucco, paint, form release oils, curing
 3015 compounds, and other construction materials;

3016 3. Fuels, oils, or other pollutants used in vehicle and equipment operation and
 3017 maintenance; and

3018 4. Soaps or solvents used in vehicle and equipment washing.

3019 C. Discharges from dewatering activities, including discharges from dewatering of trenches
 3020 and excavations, are prohibited unless managed by appropriate controls in accordance with 40
 3021 CFR 450.21(c).

3022 **9VAC25-870-57. Requesting an exception. (Repealed.)**

3023 A request for an exception for Part II B or Part II C of this chapter, including the reasons for
 3024 making the request, may be submitted in writing to the VSMP authority. Economic hardship alone
 3025 is not a sufficient reason to request an exception from the requirements of this chapter. The
 3026 request for an exception will be reviewed pursuant to 9VAC25-870-122. An exception to the
 3027 requirement that the land-disturbing activity obtain a state permit will not be granted by the VSMP
 3028 authority.

3029 **9VAC25-870-57. Requesting an exception. (Repealed.)**

3030 A request for an exception for Part II B or Part II C of this chapter, including the reasons for
 3031 making the request, may be submitted in writing to the VSMP authority. Economic hardship alone
 3032 is not a sufficient reason to request an exception from the requirements of this chapter. The
 3033 request for an exception will be reviewed pursuant to 9VAC25-870-122. An exception to the
 3034 requirement that the land-disturbing activity obtain a state permit will not be granted by the VSMP
 3035 authority.

3036 **9VAC25-870-58. Responsibility for long-term maintenance of permanent stormwater
 3037 management facilities. (Repealed.)**

3038 A recorded instrument shall be submitted to the VSMP authority in accordance with 9VAC25-
 3039 870-112.

3040 **9VAC25-870-58. Responsibility for long-term maintenance of permanent stormwater
 3041 management facilities. (Repealed.)**

3042 A recorded instrument shall be submitted to the VSMP authority in accordance with 9VAC25-
 3043 870-112.

3044 **9VAC25-870-59. Applying for state permit coverage. (Repealed.)**

3045 The operator must submit a complete and accurate registration statement, if such statement
 3046 is required, on the official department form to the VSMP authority in order to apply for state permit
 3047 coverage. The registration statement must be signed by the operator in accordance with 9VAC25-
 3048 870-370. In accordance with § 62.1-44.15:28 of the Code of Virginia, no registration statement is
 3049 required for the construction of a single-family detached residential structure within or outside a
 3050 common plan of development or sale.

3051 **9VAC25-870-59. Applying for state permit coverage. (Repealed.)**

3052 The operator must submit a complete and accurate registration statement, if such statement
 3053 is required, on the official department form to the VSMP authority in order to apply for state permit
 3054 coverage. The registration statement must be signed by the operator in accordance with 9VAC25-
 3055 870-370. In accordance with § 62.1-44.15:28 of the Code of Virginia, no registration statement is
 3056 required for the construction of a single-family detached residential structure within or outside a
 3057 common plan of development or sale.

3058 Part II B

3059 Technical Criteria for Regulated Land-Disturbing Activities

3060 **9VAC25-870-62. Applicability. (Repealed.)**

3061 In accordance with the board's authority and except as provided in 9VAC25-870-48, this part
 3062 establishes the minimum technical criteria that shall be employed by a state agency in accordance
 3063 with an implementation schedule set by the board, or by a VSMP authority that has been approved
 3064 by the board prior to July 1, 2022, or the department thereafter, to protect the quality and quantity
 3065 of state waters from the potential harm of unmanaged stormwater runoff resulting from land-
 3066 disturbing activities.

3067 **9VAC25-870-62. Applicability. (Repealed.)**

3068 In accordance with the board's authority and except as provided in 9VAC25-870-48, this part
 3069 establishes the minimum technical criteria that shall be employed by a state agency in accordance
 3070 with an implementation schedule set by the board, or by a VSMP authority that has been approved
 3071 by the board prior to July 1, 2022, or the department thereafter, to protect the quality and quantity
 3072 of state waters from the potential harm of unmanaged stormwater runoff resulting from land-
 3073 disturbing activities.

3074 **9VAC25-870-63. Water quality design criteria requirements. (Repealed.)**

3075 A. In order to protect the quality of state waters and to control the discharge of stormwater
 3076 pollutants from regulated activities, the following minimum design criteria and statewide standards
 3077 for stormwater management shall be applied to the site.

3078 1. New development. The total phosphorus load of new development projects shall not
 3079 exceed 0.41 pounds per acre per year, as calculated pursuant to 9VAC25-870-65.

3080 2. Development on prior developed lands.

3081 a. For land-disturbing activities disturbing greater than or equal to one acre that result
 3082 in no net increase in impervious cover from the predevelopment condition, the total
 3083 phosphorus load shall be reduced at least 20% below the predevelopment total
 3084 phosphorus load.

3085 b. For regulated land-disturbing activities disturbing less than one acre that result in
 3086 no net increase in impervious cover from the predevelopment condition, the total
 3087 phosphorus load shall be reduced at least 10% below the predevelopment total
 3088 phosphorus load.

3089 c. For land-disturbing activities that result in a net increase in impervious cover over
 3090 the predevelopment condition, the design criteria for new development shall be applied
 3091 to the increased impervious area. Depending on the area of disturbance, the criteria
 3092 of subdivisions a or b above, shall be applied to the remainder of the site.

3093 d. In lieu of subdivision c of this subsection, the total phosphorus load of a linear
 3094 development project occurring on prior developed lands shall be reduced 20% below
 3095 the predevelopment total phosphorus load.

3096 e. The total phosphorus load shall not be required to be reduced to below the
 3097 applicable standard for new development unless a more stringent standard has been
 3098 established by a locality.

3099 B. Compliance with subsection A of this section shall be determined in accordance with
 3100 9VAC25-870-65.

3101 C. Upon completion of the 2017 Chesapeake Bay Phase III Watershed Implementation Plan,
 3102 the department shall review the water quality design criteria standards.

3103 D. Nothing in this section shall prohibit a locality's VSMP authority from establishing more
 3104 stringent water quality design criteria requirements in accordance with § 62.1-44.15:33 of the
 3105 Code of Virginia.

3106 **9VAC25-870-63. Water quality design criteria requirements. (Repealed.)**

3107 A. In order to protect the quality of state waters and to control the discharge of stormwater
 3108 pollutants from regulated activities, the following minimum design criteria and statewide standards
 3109 for stormwater management shall be applied to the site.

3110 1. New development. The total phosphorus load of new development projects shall not
 3111 exceed 0.41 pounds per acre per year, as calculated pursuant to 9VAC25-870-65.

3112 2. Development on prior developed lands.

3113 ~~a. For land-disturbing activities disturbing greater than or equal to one acre that result~~
 3114 ~~in no net increase in impervious cover from the predevelopment condition, the total~~
 3115 ~~phosphorus load shall be reduced at least 20% below the predevelopment total~~
 3116 ~~phosphorus load.~~

3117 ~~b. For regulated land-disturbing activities disturbing less than one acre that result in~~
 3118 ~~no net increase in impervious cover from the predevelopment condition, the total~~
 3119 ~~phosphorus load shall be reduced at least 10% below the predevelopment total~~
 3120 ~~phosphorus load.~~

3121 ~~c. For land-disturbing activities that result in a net increase in impervious cover over~~
 3122 ~~the predevelopment condition, the design criteria for new development shall be applied~~
 3123 ~~to the increased impervious area. Depending on the area of disturbance, the criteria~~
 3124 ~~of subdivisions a or b above, shall be applied to the remainder of the site.~~

3125 ~~d. In lieu of subdivision c of this subsection, the total phosphorus load of a linear~~
 3126 ~~development project occurring on prior developed lands shall be reduced 20% below~~
 3127 ~~the predevelopment total phosphorus load.~~

3128 ~~e. The total phosphorus load shall not be required to be reduced to below the~~
 3129 ~~applicable standard for new development unless a more stringent standard has been~~
 3130 ~~established by a locality.~~

3131 ~~B. Compliance with subsection A of this section shall be determined in accordance with~~
 3132 ~~9VAC25-870-65.~~

3133 ~~C. Upon completion of the 2017 Chesapeake Bay Phase III Watershed Implementation Plan,~~
 3134 ~~the department shall review the water quality design criteria standards.~~

3135 ~~D. Nothing in this section shall prohibit a locality's VSMP authority from establishing more~~
 3136 ~~stringent water quality design criteria requirements in accordance with § 62.1-44.15:33 of the~~
 3137 ~~Code of Virginia.~~

3138 **9VAC25-870-65. Water quality compliance. (Repealed.)**

3139 ~~A. Compliance with the water quality design criteria set out in subdivisions A 1 and A 2 of~~
 3140 ~~9VAC25-870-63 shall be determined by utilizing the Virginia Runoff Reduction Method or another~~
 3141 ~~equivalent methodology that is approved by the department.~~

3142 ~~B. The nonproprietary BMPs listed in this subsection are approved for use in accordance with~~
 3143 ~~the Virginia Runoff Reduction Method. Other approved nonproprietary BMPs found on the Virginia~~
 3144 ~~Stormwater BMP Clearinghouse Website may also be utilized. Design specifications and the~~
 3145 ~~pollutant removal efficiencies for all approved nonproprietary BMPs are found on the Virginia~~
 3146 ~~Stormwater BMP Clearinghouse Website.~~

3147 ~~1. Vegetated Roof (Version 2.3, March 1, 2011);~~

3148 ~~2. Rooftop Disconnection (Version 1.9, March 1, 2011);~~

3149 ~~3. Rainwater Harvesting (Version 1.9.5, March 1, 2011);~~

3150 ~~4. Soil Amendments (Version 1.8, March 1, 2011);~~

3151 ~~5. Permeable Pavement (Version 1.8, March 1, 2011);~~

3152 ~~6. Grass Channel (Version 1.9, March 1, 2011);~~

3153 ~~7. Bioretention (Version 1.9, March 1, 2011);~~

3154 ~~8. Infiltration (Version 1.9, March 1, 2011);~~

3155 ~~9. Dry Swale (Version 1.9, March 1, 2011);~~

3156 ~~10. Wet Swale (Version 1.9, March 1, 2011);~~

3157 ~~11. Sheet Flow to Filter/Open Space (Version 1.9, March 1, 2011);~~

3158 ~~12. Extended Detention Pond (Version 1.9, March 1, 2011);~~

- 3159 13. Filtering Practice (Version 1.8, March 1, 2011);
 3160 14. Constructed Wetland (Version 1.9, March 1, 2011); and
 3161 15. Wet Pond (Version 1.9, March 1, 2011).

3162 ~~C. Nonproprietary BMPs differing from those listed in subsection B of this section shall be~~
 3163 ~~reviewed and approved by the director in accordance with procedures established by the~~
 3164 ~~department.~~

3165 ~~D. Proprietary BMPs listed on the Virginia Stormwater BMP Clearinghouse Website are~~
 3166 ~~approved for use in accordance with the Virginia Runoff Reduction Method. Any proprietary BMP~~
 3167 ~~approved for use after July 1, 2020, must meet the requirements of § 62.1-44.15:28 A 9 of the~~
 3168 ~~Code of Virginia.~~

3169 ~~E. A VSMP authority may establish limitations on the use of specific BMPs in accordance with~~
 3170 ~~§ 62.1-44.15:33 of the Code of Virginia.~~

3171 ~~F. The VSMP authority shall have the discretion to allow for application of the design criteria~~
 3172 ~~to each drainage area of the site. However, where a site drains to more than one HUC, the~~
 3173 ~~pollutant load reduction requirements shall be applied independently within each HUC unless~~
 3174 ~~reductions are achieved in accordance with a comprehensive watershed stormwater~~
 3175 ~~management plan in accordance with 9VAC25-870-92.~~

3176 ~~G. Offsite alternatives where allowed in accordance with 9VAC25-870-69 may be utilized to~~
 3177 ~~meet the design criteria of subsection A of 9VAC25-870-63.~~

3178 ~~H. Any publicly owned treatment works that is permitted under the watershed general VPDES~~
 3179 ~~permit pursuant to § 62.1-44.19:14 of the Code of Virginia and is constructing or expanding the~~
 3180 ~~treatment works, wastewater collection system, or other facility used for public wastewater utility~~
 3181 ~~operations may, in accordance with § 62.1-44.19:21.2 C of the Code of Virginia, permanently~~
 3182 ~~retire a portion of its wasteload allocation to meet the design criteria of subsection A of 9VAC25-~~
 3183 ~~870-63. Notice shall be given by such applicant to the VSMP authority and to the department.~~

3184 **9VAC25-870-65. Water quality compliance. (Repealed.)**

3185 ~~A. Compliance with the water quality design criteria set out in subdivisions A 1 and A 2 of~~
 3186 ~~9VAC25-870-63 shall be determined by utilizing the Virginia Runoff Reduction Method or another~~
 3187 ~~equivalent methodology that is approved by the department.~~

3188 ~~B. The nonproprietary BMPs listed in this subsection are approved for use in accordance with~~
 3189 ~~the Virginia Runoff Reduction Method. Other approved nonproprietary BMPs found on the Virginia~~
 3190 ~~Stormwater BMP Clearinghouse Website may also be utilized. Design specifications and the~~
 3191 ~~pollutant removal efficiencies for all approved nonproprietary BMPs are found on the Virginia~~
 3192 ~~Stormwater BMP Clearinghouse Website.~~

- 3193 1. Vegetated Roof (Version 2.3, March 1, 2011);
 3194 2. Rooftop Disconnection (Version 1.9, March 1, 2011);
 3195 3. Rainwater Harvesting (Version 1.9.5, March 1, 2011);
 3196 4. Soil Amendments (Version 1.8, March 1, 2011);
 3197 5. Permeable Pavement (Version 1.8, March 1, 2011);
 3198 6. Grass Channel (Version 1.9, March 1, 2011);
 3199 7. Bioretention (Version 1.9, March 1, 2011);
 3200 8. Infiltration (Version 1.9, March 1, 2011);
 3201 9. Dry Swale (Version 1.9, March 1, 2011);
 3202 10. Wet Swale (Version 1.9, March 1, 2011);
 3203 11. Sheet Flow to Filter/Open Space (Version 1.9, March 1, 2011);

- 3204 12. Extended Detention Pond (Version 1.9, March 1, 2011);
 3205 13. Filtering Practice (Version 1.8, March 1, 2011);
 3206 14. Constructed Wetland (Version 1.9, March 1, 2011); and
 3207 15. Wet Pond (Version 1.9, March 1, 2011).

3208 ~~C. Nonproprietary BMPs differing from those listed in subsection B of this section shall be~~
 3209 ~~reviewed and approved by the director in accordance with procedures established by the~~
 3210 ~~department.~~

3211 ~~D. Proprietary BMPs listed on the Virginia Stormwater BMP Clearinghouse Website are~~
 3212 ~~approved for use in accordance with the Virginia Runoff Reduction Method. Any proprietary BMP~~
 3213 ~~approved for use after July 1, 2020, must meet the requirements of § 62.1-44.15:28 A 9 of the~~
 3214 ~~Code of Virginia.~~

3215 ~~E. A VSMP authority may establish limitations on the use of specific BMPs in accordance with~~
 3216 ~~§ 62.1-44.15:33 of the Code of Virginia.~~

3217 ~~F. The VSMP authority shall have the discretion to allow for application of the design criteria~~
 3218 ~~to each drainage area of the site. However, where a site drains to more than one HUC, the~~
 3219 ~~pollutant load reduction requirements shall be applied independently within each HUC unless~~
 3220 ~~reductions are achieved in accordance with a comprehensive watershed stormwater~~
 3221 ~~management plan in accordance with 9VAC25-870-92.~~

3222 ~~G. Offsite alternatives where allowed in accordance with 9VAC25-870-69 may be utilized to~~
 3223 ~~meet the design criteria of subsection A of 9VAC25-870-63.~~

3224 ~~H. Any publicly owned treatment works that is permitted under the watershed general VPDES~~
 3225 ~~permit pursuant to § 62.1-44.19:14 of the Code of Virginia and is constructing or expanding the~~
 3226 ~~treatment works, wastewater collection system, or other facility used for public wastewater utility~~
 3227 ~~operations may, in accordance with § 62.1-44.19:21.2 C of the Code of Virginia, permanently~~
 3228 ~~retire a portion of its wasteload allocation to meet the design criteria of subsection A of 9VAC25-~~
 3229 ~~870-63. Notice shall be given by such applicant to the VSMP authority and to the department.~~

3230 **9VAC25-870-66. Water quantity. (Repealed.)**

3231 ~~A. Channel protection and flood protection shall be addressed in accordance with the~~
 3232 ~~minimum standards set out in this section, which are established pursuant to the requirements of~~
 3233 ~~§ 62.1-44.15:28 of the Code of Virginia or as permitted in accordance with § 62.1-44.15:27.2 of~~
 3234 ~~the Code of Virginia. Nothing in this section shall prohibit a locality's VSMP authority from~~
 3235 ~~establishing a more stringent standard in accordance with § 62.1-44.15:33 of the Code of Virginia~~
 3236 ~~especially where more stringent requirements are necessary to address total maximum daily load~~
 3237 ~~requirements or to protect exceptional state waters. Compliance with the minimum standards set~~
 3238 ~~out in this section shall be deemed to satisfy the requirements of subdivision 19 of 9VAC25-840-~~
 3239 ~~40 (Minimum standards; Virginia Erosion and Sediment Control Regulations).~~

3240 ~~B. Channel protection. Concentrated stormwater flow shall be released into a stormwater~~
 3241 ~~conveyance system and shall meet the criteria in subdivision 1, 2, or 3 of this subsection, where~~
 3242 ~~applicable, from the point of discharge to a point to the limits of analysis in subdivision 4 of this~~
 3243 ~~subsection.~~

3244 ~~1. Manmade stormwater conveyance systems. When stormwater from a development is~~
 3245 ~~discharged to a manmade stormwater conveyance system, following the land-disturbing~~
 3246 ~~activity, either:~~

3247 ~~a. The manmade stormwater conveyance system shall convey the postdevelopment~~
 3248 ~~peak flow rate from the two-year 24-hour storm event without causing erosion of the~~
 3249 ~~system. Detention of stormwater or downstream improvements may be incorporated~~

- 3250 into the approved land-disturbing activity to meet this criterion, at the discretion of the
3251 VSMP authority; or
- 3252 b. The peak discharge requirements for concentrated stormwater flow to natural
3253 stormwater conveyance systems in subdivision 3 of this subsection shall be met.
- 3254 2. Restored stormwater conveyance systems. When stormwater from a development is
3255 discharged to a restored stormwater conveyance system that has been restored using
3256 natural design concepts, following the land-disturbing activity, either:
- 3257 a. The development shall be consistent, in combination with other stormwater runoff,
3258 with the design parameters of the restored stormwater conveyance system that is
3259 functioning in accordance with the design objectives; or
- 3260 b. The peak discharge requirements for concentrated stormwater flow to natural
3261 stormwater conveyance systems in subdivision 3 of this subsection shall be met.
- 3262 3. Natural stormwater conveyance systems. When stormwater from a development is
3263 discharged to a natural stormwater conveyance system, the maximum peak flow rate from
3264 the one-year 24-hour storm following the land-disturbing activity shall be calculated either:
- 3265 a. In accordance with the following methodology:
- 3266
$$Q_{\text{Developed}} \leq I.F. * (Q_{\text{Pre-developed}} * RV_{\text{Pre-Developed}}) / RV_{\text{Developed}}$$
- 3267 Under no condition shall $Q_{\text{Developed}}$ be greater than $Q_{\text{Pre-Developed}}$ nor shall $Q_{\text{Developed}}$ be
3268 required to be less than that calculated in the equation $(Q_{\text{Forest}} * RV_{\text{Forest}}) / RV_{\text{Developed}}$;
3269 where
- 3270 I.F. (Improvement Factor) equals 0.8 for sites > 1 acre or 0.9 for sites ≤ 1 acre.
- 3271 $Q_{\text{Developed}}$ = The allowable peak flow rate of runoff from the developed site.
- 3272 $RV_{\text{Developed}}$ = The volume of runoff from the site in the developed condition.
- 3273 $Q_{\text{Pre-Developed}}$ = The peak flow rate of runoff from the site in the pre-developed condition.
- 3274 $RV_{\text{Pre-Developed}}$ = The volume of runoff from the site in pre-developed condition.
- 3275 Q_{Forest} = The peak flow rate of runoff from the site in a forested condition.
- 3276 RV_{Forest} = The volume of runoff from the site in a forested condition; or
- 3277 b. In accordance with another methodology that is demonstrated by the VSMP
3278 authority to achieve equivalent results and is approved by the department.
- 3279 4. Limits of analysis. Unless subdivision 3 of this subsection is utilized to show compliance
3280 with the channel protection criteria, stormwater conveyance systems shall be analyzed for
3281 compliance with channel protection criteria to a point where either:
- 3282 a. Based on land area, the site's contributing drainage area is less than or equal to
3283 1.0% of the total watershed area; or
- 3284 b. Based on peak flow rate, the site's peak flow rate from the one-year 24-hour storm
3285 is less than or equal to 1.0% of the existing peak flow rate from the one-year 24-hour
3286 storm prior to the implementation of any stormwater quantity control measures.
- 3287 C. Flood protection. Concentrated stormwater flow shall be released into a stormwater
3288 conveyance system and shall meet one of the following criteria as demonstrated by use of
3289 acceptable hydrologic and hydraulic methodologies:
- 3290 1. Concentrated stormwater flow to stormwater conveyance systems that currently do not
3291 experience localized flooding during the 10-year 24-hour storm event: The point of
3292 discharge releases stormwater into a stormwater conveyance system that, following the
3293 land-disturbing activity, confines the postdevelopment peak flow rate from the 10-year 24-
3294 hour storm event within the stormwater conveyance system. Detention of stormwater or

3295 ~~downstream improvements may be incorporated into the approved land-disturbing activity~~
 3296 ~~to meet this criterion, at the discretion of the VSMP authority.~~

3297 ~~2. Concentrated stormwater flow to stormwater conveyance systems that currently~~
 3298 ~~experience localized flooding during the 10-year 24-hour storm event. The point of~~
 3299 ~~discharge either:~~

3300 ~~a. Confines the postdevelopment peak flow rate from the 10-year 24-hour storm event~~
 3301 ~~within the stormwater conveyance system to avoid the localized flooding. Detention of~~
 3302 ~~stormwater or downstream improvements may be incorporated into the approved land-~~
 3303 ~~disturbing activity to meet this criterion, at the discretion of the VSMP authority; or~~

3304 ~~b. Releases a postdevelopment peak flow rate for the 10-year 24-hour storm event~~
 3305 ~~that is less than the predevelopment peak flow rate from the 10-year 24-hour storm~~
 3306 ~~event. Downstream stormwater conveyance systems do not require any additional~~
 3307 ~~analysis to show compliance with flood protection criteria if this option is utilized.~~

3308 ~~3. Limits of analysis. Unless subdivision 2 b of this subsection is utilized to comply with~~
 3309 ~~the flood protection criteria, stormwater conveyance systems shall be analyzed for~~
 3310 ~~compliance with flood protection criteria to a point where:~~

3311 ~~a. The site's contributing drainage area is less than or equal to 1.0% of the total~~
 3312 ~~watershed area draining to a point of analysis in the downstream stormwater~~
 3313 ~~conveyance system;~~

3314 ~~b. Based on peak flow rate, the site's peak flow rate from the 10-year 24-hour storm~~
 3315 ~~event is less than or equal to 1.0% of the existing peak flow rate from the 10-year 24-~~
 3316 ~~hour storm event prior to the implementation of any stormwater quantity control~~
 3317 ~~measures; or~~

3318 ~~c. The stormwater conveyance system enters a mapped floodplain or other flood-~~
 3319 ~~prone area, adopted by ordinance, of any locality.~~

3320 ~~D. Increased volumes of sheet flow resulting from pervious or disconnected impervious areas,~~
 3321 ~~or from physical spreading of concentrated flow through level spreaders, must be identified and~~
 3322 ~~evaluated for potential impacts on down-gradient properties or resources. Increased volumes of~~
 3323 ~~sheet flow that will cause or contribute to erosion, sedimentation, or flooding of down-gradient~~
 3324 ~~properties or resources shall be diverted to a stormwater management facility or a stormwater~~
 3325 ~~conveyance system that conveys the runoff without causing down-gradient erosion,~~
 3326 ~~sedimentation, or flooding. If all runoff from the site is sheet flow and the conditions of this~~
 3327 ~~subsection are met, no further water quantity controls are required.~~

3328 ~~E. For purposes of computing predevelopment runoff, all pervious lands on the site shall be~~
 3329 ~~assumed to be in good hydrologic condition in accordance with the U.S. Department of~~
 3330 ~~Agriculture's Natural Resources Conservation Service (NRCS) standards, regardless of~~
 3331 ~~conditions existing at the time of computation. Predevelopment runoff calculations utilizing other~~
 3332 ~~hydrologic conditions may be utilized provided that it is demonstrated to and approved by the~~
 3333 ~~VSMP authority that actual site conditions warrant such considerations.~~

3334 ~~F. Predevelopment and postdevelopment runoff characteristics and site hydrology shall be~~
 3335 ~~verified by site inspections, topographic surveys, available soil mapping or studies, and~~
 3336 ~~calculations consistent with good engineering practices. Guidance provided in the Virginia~~
 3337 ~~Stormwater Management Handbook and on the Virginia Stormwater BMP Clearinghouse Website~~
 3338 ~~shall be considered appropriate practices.~~

3339 **9VAC25-870-66. Water quantity. (Repealed.)**

3340 ~~A. Channel protection and flood protection shall be addressed in accordance with the~~
 3341 ~~minimum standards set out in this section, which are established pursuant to the requirements of~~
 3342 ~~§ 62.1-44.15:28 of the Code of Virginia or as permitted in accordance with § 62.1-44.15:27.2 of~~

3343 the Code of Virginia. Nothing in this section shall prohibit a locality's VSMP authority from
 3344 establishing a more stringent standard in accordance with § 62.1-44.15:33 of the Code of Virginia
 3345 especially where more stringent requirements are necessary to address total maximum daily load
 3346 requirements or to protect exceptional state waters. Compliance with the minimum standards set
 3347 out in this section shall be deemed to satisfy the requirements of subdivision 19 of 9VAC25-840-
 3348 40 (Minimum standards; Virginia Erosion and Sediment Control Regulations).

3349 B. Channel protection. Concentrated stormwater flow shall be released into a stormwater
 3350 conveyance system and shall meet the criteria in subdivision 1, 2, or 3 of this subsection, where
 3351 applicable, from the point of discharge to a point to the limits of analysis in subdivision 4 of this
 3352 subsection.

3353 1. Manmade stormwater conveyance systems. When stormwater from a development is
 3354 discharged to a manmade stormwater conveyance system, following the land-disturbing
 3355 activity, either:

3356 a. The manmade stormwater conveyance system shall convey the postdevelopment
 3357 peak flow rate from the two-year 24-hour storm event without causing erosion of the
 3358 system. Detention of stormwater or downstream improvements may be incorporated
 3359 into the approved land-disturbing activity to meet this criterion, at the discretion of the
 3360 VSMP authority; or

3361 b. The peak discharge requirements for concentrated stormwater flow to natural
 3362 stormwater conveyance systems in subdivision 3 of this subsection shall be met.

3363 2. Restored stormwater conveyance systems. When stormwater from a development is
 3364 discharged to a restored stormwater conveyance system that has been restored using
 3365 natural design concepts, following the land-disturbing activity, either:

3366 a. The development shall be consistent, in combination with other stormwater runoff,
 3367 with the design parameters of the restored stormwater conveyance system that is
 3368 functioning in accordance with the design objectives; or

3369 b. The peak discharge requirements for concentrated stormwater flow to natural
 3370 stormwater conveyance systems in subdivision 3 of this subsection shall be met.

3371 3. Natural stormwater conveyance systems. When stormwater from a development is
 3372 discharged to a natural stormwater conveyance system, the maximum peak flow rate from
 3373 the one-year 24-hour storm following the land-disturbing activity shall be calculated either:

3374 a. In accordance with the following methodology:

$$3375 Q_{\text{Developed}} \leq I.F. * (Q_{\text{Pre-developed}} * RV_{\text{Pre-Developed}}) / RV_{\text{Developed}}$$

3376 Under no condition shall $Q_{\text{Developed}}$ be greater than $Q_{\text{Pre-Developed}}$ nor shall $Q_{\text{Developed}}$ be
 3377 required to be less than that calculated in the equation $(Q_{\text{Forest}} * RV_{\text{Forest}}) / RV_{\text{Developed}}$;
 3378 where

3379 I.F. (Improvement Factor) equals 0.8 for sites > 1 acre or 0.9 for sites ≤ 1 acre.

3380 $Q_{\text{Developed}}$ = The allowable peak flow rate of runoff from the developed site.

3381 $RV_{\text{Developed}}$ = The volume of runoff from the site in the developed condition.

3382 $Q_{\text{Pre-Developed}}$ = The peak flow rate of runoff from the site in the pre-developed condition.

3383 $RV_{\text{Pre-Developed}}$ = The volume of runoff from the site in pre-developed condition.

3384 Q_{Forest} = The peak flow rate of runoff from the site in a forested condition.

3385 RV_{Forest} = The volume of runoff from the site in a forested condition; or

3386 b. In accordance with another methodology that is demonstrated by the VSMP
 3387 authority to achieve equivalent results and is approved by the department.

3388 ~~4. Limits of analysis. Unless subdivision 3 of this subsection is utilized to show compliance~~
 3389 ~~with the channel protection criteria, stormwater conveyance systems shall be analyzed for~~
 3390 ~~compliance with channel protection criteria to a point where either:~~

3391 ~~a. Based on land area, the site's contributing drainage area is less than or equal to~~
 3392 ~~1.0% of the total watershed area; or~~

3393 ~~b. Based on peak flow rate, the site's peak flow rate from the one-year 24-hour storm~~
 3394 ~~is less than or equal to 1.0% of the existing peak flow rate from the one-year 24-hour~~
 3395 ~~storm prior to the implementation of any stormwater quantity control measures.~~

3396 ~~C. Flood protection. Concentrated stormwater flow shall be released into a stormwater~~
 3397 ~~conveyance system and shall meet one of the following criteria as demonstrated by use of~~
 3398 ~~acceptable hydrologic and hydraulic methodologies:~~

3399 ~~1. Concentrated stormwater flow to stormwater conveyance systems that currently do not~~
 3400 ~~experience localized flooding during the 10-year 24-hour storm event: The point of~~
 3401 ~~discharge releases stormwater into a stormwater conveyance system that, following the~~
 3402 ~~land-disturbing activity, confines the postdevelopment peak flow rate from the 10-year 24-~~
 3403 ~~hour storm event within the stormwater conveyance system. Detention of stormwater or~~
 3404 ~~downstream improvements may be incorporated into the approved land-disturbing activity~~
 3405 ~~to meet this criterion, at the discretion of the VSMP authority.~~

3406 ~~2. Concentrated stormwater flow to stormwater conveyance systems that currently~~
 3407 ~~experience localized flooding during the 10-year 24-hour storm event: The point of~~
 3408 ~~discharge either:~~

3409 ~~a. Confines the postdevelopment peak flow rate from the 10-year 24-hour storm event~~
 3410 ~~within the stormwater conveyance system to avoid the localized flooding. Detention of~~
 3411 ~~stormwater or downstream improvements may be incorporated into the approved land-~~
 3412 ~~disturbing activity to meet this criterion, at the discretion of the VSMP authority; or~~

3413 ~~b. Releases a postdevelopment peak flow rate for the 10-year 24-hour storm event~~
 3414 ~~that is less than the predevelopment peak flow rate from the 10-year 24-hour storm~~
 3415 ~~event. Downstream stormwater conveyance systems do not require any additional~~
 3416 ~~analysis to show compliance with flood protection criteria if this option is utilized.~~

3417 ~~3. Limits of analysis. Unless subdivision 2 b of this subsection is utilized to comply with~~
 3418 ~~the flood protection criteria, stormwater conveyance systems shall be analyzed for~~
 3419 ~~compliance with flood protection criteria to a point where:~~

3420 ~~a. The site's contributing drainage area is less than or equal to 1.0% of the total~~
 3421 ~~watershed area draining to a point of analysis in the downstream stormwater~~
 3422 ~~conveyance system;~~

3423 ~~b. Based on peak flow rate, the site's peak flow rate from the 10-year 24-hour storm~~
 3424 ~~event is less than or equal to 1.0% of the existing peak flow rate from the 10-year 24-~~
 3425 ~~hour storm event prior to the implementation of any stormwater quantity control~~
 3426 ~~measures; or~~

3427 ~~c. The stormwater conveyance system enters a mapped floodplain or other flood-~~
 3428 ~~prone area, adopted by ordinance, of any locality.~~

3429 ~~D. Increased volumes of sheet flow resulting from pervious or disconnected impervious areas,~~
 3430 ~~or from physical spreading of concentrated flow through level spreaders, must be identified and~~
 3431 ~~evaluated for potential impacts on down-gradient properties or resources. Increased volumes of~~
 3432 ~~sheet flow that will cause or contribute to erosion, sedimentation, or flooding of down-gradient~~
 3433 ~~properties or resources shall be diverted to a stormwater management facility or a stormwater~~
 3434 ~~conveyance system that conveys the runoff without causing down-gradient erosion,~~

3435 sedimentation, or flooding. If all runoff from the site is sheet flow and the conditions of this
3436 subsection are met, no further water quantity controls are required.

3437 E. For purposes of computing predevelopment runoff, all pervious lands on the site shall be
3438 assumed to be in good hydrologic condition in accordance with the U.S. Department of
3439 Agriculture's Natural Resources Conservation Service (NRCS) standards, regardless of
3440 conditions existing at the time of computation. Predevelopment runoff calculations utilizing other
3441 hydrologic conditions may be utilized provided that it is demonstrated to and approved by the
3442 VSMP authority that actual site conditions warrant such considerations.

3443 F. Predevelopment and postdevelopment runoff characteristics and site hydrology shall be
3444 verified by site inspections, topographic surveys, available soil mapping or studies, and
3445 calculations consistent with good engineering practices. Guidance provided in the Virginia
3446 Stormwater Management Handbook and on the Virginia Stormwater BMP Clearinghouse Website
3447 shall be considered appropriate practices.

3448 **9VAC25-870-69. Offsite compliance options. (Repealed.)**

3449 A. Offsite compliance options that a VSMP authority may allow an operator to use to meet
3450 required phosphorus nutrient reductions include the following:

- 3451 1. Offsite controls utilized in accordance with a comprehensive stormwater management
3452 plan adopted pursuant to 9VAC25-870-92 for the local watershed within which a project
3453 is located;
- 3454 2. A locality pollutant loading pro rata share program established pursuant to § 15.2-2243
3455 of the Code of Virginia or similar local funding mechanism;
- 3456 3. The nonpoint nutrient offset program established pursuant to § 62.1-44.15:35 of the
3457 Code of Virginia;
- 3458 4. Any other offsite options approved by an applicable state agency or state board; and
- 3459 5. When an operator has additional properties available within the same HUC or upstream
3460 HUC that the land-disturbing activity directly discharges to or within the same watershed
3461 as determined by the VSMP authority, offsite stormwater management facilities on those
3462 properties may be utilized to meet the required phosphorus nutrient reductions from the
3463 land-disturbing activity.

3464 B. Notwithstanding subsection A of this section, and pursuant to § 62.1-44.15:35 of the Code
3465 of Virginia, operators shall be allowed to utilize offsite options identified in subsection A of this
3466 section under any of the following conditions:

- 3467 1. Less than five acres of land will be disturbed;
- 3468 2. The post-construction phosphorus control requirement is less than 10 pounds per year;
3469 or
- 3470 3. At least 75% of the required phosphorus nutrient reductions are achieved on-site. If at
3471 least 75% of the required phosphorus nutrient reductions cannot be met on-site, and the
3472 operator can demonstrate to the satisfaction of the VSMP authority that (i) alternative site
3473 designs have been considered that may accommodate on-site best management
3474 practices, (ii) on-site best management practices have been considered in alternative site
3475 designs to the maximum extent practicable, (iii) appropriate on-site best management
3476 practices will be implemented, and (iv) full compliance with postdevelopment nonpoint
3477 nutrient runoff compliance requirements cannot practicably be met on-site, then the
3478 required phosphorus nutrient reductions may be achieved, in whole or in part, through the
3479 use of off-site compliance options.

3480 C. Notwithstanding subsections A and B of this section, offsite options shall not be allowed:

3481 1. Unless the selected offsite option achieves the necessary nutrient reductions prior to
 3482 the commencement of the operator's land-disturbing activity. In the case of a phased
 3483 project, the operator may acquire or achieve offsite nutrient reductions prior to the
 3484 commencement of each phase of land-disturbing activity in an amount sufficient for each
 3485 phase.

3486 2. In contravention of local water quality-based limitations at the point of discharge that
 3487 are (i) consistent with the determinations made pursuant to subsection B of § 62.1-44.19:7
 3488 of the Code of Virginia, (ii) contained in a municipal separate storm sewer system (MS4)
 3489 program plan accepted by the department, or (iii) as otherwise may be established or
 3490 approved by the department.

3491 D. In order to meet the requirements of 9VAC25-870-66, offsite options described in
 3492 subdivisions 1 and 2 of subsection A of this section may be utilized.

3493 **9VAC25-870-69. Offsite compliance options. (Repealed.)**

3494 A. Offsite compliance options that a VSMP authority may allow an operator to use to meet
 3495 required phosphorus nutrient reductions include the following:

3496 1. Offsite controls utilized in accordance with a comprehensive stormwater management
 3497 plan adopted pursuant to 9VAC25-870-92 for the local watershed within which a project
 3498 is located;

3499 2. A locality pollutant loading pro rata share program established pursuant to § 15.2-2243
 3500 of the Code of Virginia or similar local funding mechanism;

3501 3. The nonpoint nutrient offset program established pursuant to § 62.1-44.15:35 of the
 3502 Code of Virginia;

3503 4. Any other offsite options approved by an applicable state agency or state board; and

3504 5. When an operator has additional properties available within the same HUC or upstream
 3505 HUC that the land-disturbing activity directly discharges to or within the same watershed
 3506 as determined by the VSMP authority, offsite stormwater management facilities on those
 3507 properties may be utilized to meet the required phosphorus nutrient reductions from the
 3508 land-disturbing activity.

3509 B. Notwithstanding subsection A of this section, and pursuant to § 62.1-44.15:35 of the Code
 3510 of Virginia, operators shall be allowed to utilize offsite options identified in subsection A of this
 3511 section under any of the following conditions:

3512 1. Less than five acres of land will be disturbed;

3513 2. The post-construction phosphorus control requirement is less than 10 pounds per year;
 3514 or

3515 3. At least 75% of the required phosphorus nutrient reductions are achieved on-site. If at
 3516 least 75% of the required phosphorus nutrient reductions cannot be met on-site, and the
 3517 operator can demonstrate to the satisfaction of the VSMP authority that (i) alternative site
 3518 designs have been considered that may accommodate on-site best management
 3519 practices, (ii) on-site best management practices have been considered in alternative site
 3520 designs to the maximum extent practicable, (iii) appropriate on-site best management
 3521 practices will be implemented, and (iv) full compliance with postdevelopment nonpoint
 3522 nutrient runoff compliance requirements cannot practicably be met on-site, then the
 3523 required phosphorus nutrient reductions may be achieved, in whole or in part, through the
 3524 use of off-site compliance options.

3525 C. Notwithstanding subsections A and B of this section, offsite options shall not be allowed:

3526 1. Unless the selected offsite option achieves the necessary nutrient reductions prior to
 3527 the commencement of the operator's land-disturbing activity. In the case of a phased

3528 project, the operator may acquire or achieve offsite nutrient reductions prior to the
 3529 commencement of each phase of land-disturbing activity in an amount sufficient for each
 3530 phase.

3531 2. In contravention of local water quality-based limitations at the point of discharge that
 3532 are (i) consistent with the determinations made pursuant to subsection B of § 62.1-44.19:7
 3533 of the Code of Virginia, (ii) contained in a municipal separate storm sewer system (MS4)
 3534 program plan accepted by the department, or (iii) as otherwise may be established or
 3535 approved by the department.

3536 D. In order to meet the requirements of 9VAC25-870-66, offsite options described in
 3537 subdivisions 1 and 2 of subsection A of this section may be utilized.

3538 **9VAC25-870-72. Design storms and hydrologic methods. (Repealed.)**

3539 A. Unless otherwise specified, the prescribed design storms are the one-year, two-year, and
 3540 10-year 24-hour storms using the site-specific rainfall precipitation frequency data recommended
 3541 by the U.S. National Oceanic and Atmospheric Administration (NOAA) Atlas 14. Partial duration
 3542 time series shall be used for the precipitation data.

3543 B. Unless otherwise specified, all hydrologic analyses shall be based on the existing
 3544 watershed characteristics and how the ultimate development condition of the subject project will
 3545 be addressed.

3546 C. The U.S. Department of Agriculture's Natural Resources Conservation Service (NRCS)
 3547 synthetic 24-hour rainfall distribution and models, including, but not limited to TR-55 and TR-20;
 3548 hydrologic and hydraulic methods developed by the U.S. Army Corps of Engineers; or other
 3549 standard hydrologic and hydraulic methods, shall be used to conduct the analyses described in
 3550 this part.

3551 D. For drainage areas of 200 acres or less, the VSMP authority may allow for the use of the
 3552 Rational Method for evaluating peak discharges.

3553 E. For drainage areas of 200 acres or less, the VSMP authority may allow for the use of the
 3554 Modified Rational Method for evaluating volumetric flows to stormwater conveyances.

3555 **9VAC25-870-72. Design storms and hydrologic methods. (Repealed.)**

3556 A. Unless otherwise specified, the prescribed design storms are the one-year, two-year, and
 3557 10-year 24-hour storms using the site-specific rainfall precipitation frequency data recommended
 3558 by the U.S. National Oceanic and Atmospheric Administration (NOAA) Atlas 14. Partial duration
 3559 time series shall be used for the precipitation data.

3560 B. Unless otherwise specified, all hydrologic analyses shall be based on the existing
 3561 watershed characteristics and how the ultimate development condition of the subject project will
 3562 be addressed.

3563 C. The U.S. Department of Agriculture's Natural Resources Conservation Service (NRCS)
 3564 synthetic 24-hour rainfall distribution and models, including, but not limited to TR-55 and TR-20;
 3565 hydrologic and hydraulic methods developed by the U.S. Army Corps of Engineers; or other
 3566 standard hydrologic and hydraulic methods, shall be used to conduct the analyses described in
 3567 this part.

3568 D. For drainage areas of 200 acres or less, the VSMP authority may allow for the use of the
 3569 Rational Method for evaluating peak discharges.

3570 E. For drainage areas of 200 acres or less, the VSMP authority may allow for the use of the
 3571 Modified Rational Method for evaluating volumetric flows to stormwater conveyances.

3572 **9VAC25-870-74. Stormwater harvesting. (Repealed.)**

3573 In accordance with § 62.1-44.15:28 of the Code of Virginia, stormwater harvesting is
 3574 encouraged for the purposes of landscape irrigation systems, fire protection systems, flushing

3575 water closets and urinals, and other water handling systems to the extent such systems are
3576 consistent with federal, state, and local regulations.

3577 **9VAC25-870-74. Stormwater harvesting. (Repealed.)**

3578 In accordance with § 62.1-44.15:28 of the Code of Virginia, stormwater harvesting is
3579 encouraged for the purposes of landscape irrigation systems, fire protection systems, flushing
3580 water closets and urinals, and other water handling systems to the extent such systems are
3581 consistent with federal, state, and local regulations.

3582 **9VAC25-870-76. Linear development projects. (Repealed.)**

3583 Linear development projects shall control postdevelopment stormwater runoff in accordance
3584 with a site-specific stormwater management plan or a comprehensive watershed stormwater
3585 management plan developed in accordance with these regulations.

3586 **9VAC25-870-76. Linear development projects. (Repealed.)**

3587 Linear development projects shall control postdevelopment stormwater runoff in accordance
3588 with a site-specific stormwater management plan or a comprehensive watershed stormwater
3589 management plan developed in accordance with these regulations.

3590 **9VAC25-870-85. Stormwater management impoundment structures or facilities.**
3591 **(Repealed.)**

3592 A. Stormwater management wet ponds and extended detention ponds that are not covered
3593 by the Impounding Structure Regulations (4VAC50-20) shall, at a minimum, be engineered for
3594 structural integrity for the 100-year storm event.

3595 B. Construction of stormwater management impoundment structures or facilities may occur in
3596 karst areas only after a study of the geology and hydrology of the area has been conducted to
3597 determine the presence or absence of karst features that may be impacted by stormwater runoff
3598 and BMP placement.

3599 C. Discharge of stormwater runoff to a karst feature shall meet the water quality criteria set
3600 out in 9VAC25-870-63 and the water quantity criteria set out in 9VAC25-870-66. Permanent
3601 stormwater management impoundment structures or facilities shall only be constructed in karst
3602 features after completion of a geotechnical investigation that identifies any necessary
3603 modifications to the BMP to ensure its structural integrity and maintain its water quality and
3604 quantity efficiencies. The person responsible for the land-disturbing activity is encouraged to
3605 screen for known existence of heritage resources in the karst features. Any Class V Underground
3606 Injection Control Well registration statements for stormwater discharges to improved sinkholes
3607 shall be included in the SWPPP.

3608 **9VAC25-870-85. Stormwater management impoundment structures or facilities.**
3609 **(Repealed.)**

3610 A. Stormwater management wet ponds and extended detention ponds that are not covered
3611 by the Impounding Structure Regulations (4VAC50-20) shall, at a minimum, be engineered for
3612 structural integrity for the 100-year storm event.

3613 B. Construction of stormwater management impoundment structures or facilities may occur in
3614 karst areas only after a study of the geology and hydrology of the area has been conducted to
3615 determine the presence or absence of karst features that may be impacted by stormwater runoff
3616 and BMP placement.

3617 C. Discharge of stormwater runoff to a karst feature shall meet the water quality criteria set
3618 out in 9VAC25-870-63 and the water quantity criteria set out in 9VAC25-870-66. Permanent
3619 stormwater management impoundment structures or facilities shall only be constructed in karst
3620 features after completion of a geotechnical investigation that identifies any necessary
3621 modifications to the BMP to ensure its structural integrity and maintain its water quality and

3622 quantity efficiencies. The person responsible for the land-disturbing activity is encouraged to
 3623 screen for known existence of heritage resources in the karst features. Any Class V Underground
 3624 Injection Control Well registration statements for stormwater discharges to improved sinkholes
 3625 shall be included in the SWPPP.

3626 **9VAC25-870-92. Comprehensive stormwater management plans. (Repealed.)**

3627 A locality's VSMP authority may develop comprehensive stormwater management plans to
 3628 be approved by the department that meet the water quality objectives, quantity objectives, or both
 3629 of this chapter:

3630 1. Such plans shall ensure that offsite reductions equal to or greater than those that would
 3631 be required on each contributing site are achieved within the same HUC or within another
 3632 locally designated watershed. Pertaining to water quantity objectives, the plan may
 3633 provide for implementation of a combination of channel improvement, stormwater
 3634 detention, or other measures that are satisfactory to the locality's VSMP authority to
 3635 prevent downstream erosion and flooding.

3636 2. If the land use assumptions upon which the plan was based change or if any other
 3637 amendments are deemed necessary by the locality's VSMP authority, such authority shall
 3638 provide plan amendments to the department for review and approval.

3639 3. During the plan's implementation, the locality's VSMP authority shall document nutrient
 3640 reductions accredited to the BMPs specified in the plan.

3641 4. State and federal agencies may develop comprehensive stormwater management
 3642 plans, and may participate in locality-developed comprehensive stormwater management
 3643 plans where practicable and permitted by the locality's VSMP authority.

3644 **9VAC25-870-92. Comprehensive stormwater management plans. (Repealed.)**

3645 A locality's VSMP authority may develop comprehensive stormwater management plans to
 3646 be approved by the department that meet the water quality objectives, quantity objectives, or both
 3647 of this chapter:

3648 1. Such plans shall ensure that offsite reductions equal to or greater than those that would
 3649 be required on each contributing site are achieved within the same HUC or within another
 3650 locally designated watershed. Pertaining to water quantity objectives, the plan may
 3651 provide for implementation of a combination of channel improvement, stormwater
 3652 detention, or other measures that are satisfactory to the locality's VSMP authority to
 3653 prevent downstream erosion and flooding.

3654 2. If the land use assumptions upon which the plan was based change or if any other
 3655 amendments are deemed necessary by the locality's VSMP authority, such authority shall
 3656 provide plan amendments to the department for review and approval.

3657 3. During the plan's implementation, the locality's VSMP authority shall document nutrient
 3658 reductions accredited to the BMPs specified in the plan.

3659 4. State and federal agencies may develop comprehensive stormwater management
 3660 plans, and may participate in locality-developed comprehensive stormwater management
 3661 plans where practicable and permitted by the locality's VSMP authority.

3662 **Part II C**

3663 **Technical Criteria for Regulated Land-Disturbing Activities:**
 3664 **Grandfathered Projects and Projects Subject to the Provisions of 9VAC25-870-47 B**

3665 **9VAC25-870-93. Definitions. (Repealed.)**

3666 For the purposes of Part II C only, the following words and terms have the following meanings
 3667 unless the context clearly indicates otherwise:

3668 "Adequate channel" means a channel that will convey the designated frequency storm event
3669 without overtopping the channel bank nor causing erosive damage to the channel bed or banks.

3670 "Aquatic bench" means a 10-foot to 15-foot wide bench around the inside perimeter of a
3671 permanent pool that ranges in depth from zero to 12 inches. Vegetated with emergent plants, the
3672 bench augments pollutant removal, provides habitats, conceals trash and water level fluctuations,
3673 and enhances safety.

3674 "Average land cover condition" means a measure of the average amount of impervious
3675 surfaces within a watershed, assumed to be 16% or a calculated watershed-specific value for the
3676 average land cover condition as approved by the Chesapeake Bay Local Assistance Board prior
3677 to September 13, 2011.

3678 "Bioretention basin" means a water quality BMP engineered to filter the water quality volume
3679 (i) through an engineered planting bed consisting of a vegetated surface layer (vegetation, mulch,
3680 ground cover), planting soil, and sand bed and (ii) into the in-situ material.

3681 "Bioretention filter" means a bioretention basin with the addition of a sand filter collector pipe
3682 system beneath the planting bed.

3683 "Constructed wetlands" means areas intentionally designed and created to emulate the water
3684 quality improvement function of wetlands for the primary purpose of removing pollutants from
3685 stormwater.

3686 "Development" means a tract of land developed or to be developed as a unit under single
3687 ownership or unified control which is to be used for any business or industrial purpose or is to
3688 contain three or more residential dwelling units.

3689 "Grassed swale" means an earthen conveyance system which is broad and shallow with
3690 erosion resistant grasses and check dams, engineered to remove pollutants from stormwater
3691 runoff by filtration through grass and infiltration into the soil.

3692 "Infiltration facility" means a stormwater management facility that temporarily impounds runoff
3693 and discharges it via infiltration through the surrounding soil. While an infiltration facility may also
3694 be equipped with an outlet structure to discharge impounded runoff, such discharge is normally
3695 reserved for overflow and other emergency conditions. Since an infiltration facility impounds runoff
3696 only temporarily, it is normally dry during nonrainfall periods. Infiltration basin, infiltration trench,
3697 infiltration dry well, and porous pavement shall be considered infiltration facilities.

3698 "Nonpoint source pollutant runoff load" or "pollutant discharge" means the average amount of
3699 a particular pollutant measured in pounds per year, delivered in a diffuse manner by stormwater
3700 runoff.

3701 "Planning area" means a designated portion of the parcel on which the land development
3702 project is located. Planning areas shall be established by delineation on a master plan. Once
3703 established, planning areas shall be applied consistently for all future projects.

3704 "Sand filter" means a contained bed of sand that acts to filter the first flush of runoff. The runoff
3705 is then collected beneath the sand bed and conveyed to an adequate discharge point or infiltrated
3706 into the in-situ soils.

3707 "Shallow marsh" means a zone within a stormwater extended detention basin that exists from
3708 the surface of the normal pool to a depth of six to 18 inches, and has a large surface area and,
3709 therefore, requires a reliable source of baseflow, groundwater supply, or a sizeable drainage area
3710 to maintain the desired water surface elevations to support emergent vegetation.

3711 "Stormwater detention basin" or "detention basin" means a stormwater management facility
3712 that temporarily impounds runoff and discharges it through a hydraulic outlet structure to a
3713 downstream conveyance system. While a certain amount of outflow may also occur via infiltration
3714 through the surrounding soil, such amounts are negligible when compared to the outlet structure

3715 discharge rates and are, therefore, not considered in the facility's design. Since a detention facility
3716 impounds runoff only temporarily, it is normally dry during nonrainfall periods.

3717 ~~"Stormwater extended detention basin" or "extended detention basin" means a stormwater~~
3718 ~~management facility that temporarily impounds runoff and discharges it through a hydraulic outlet~~
3719 ~~structure over a specified period of time to a downstream conveyance system for the purpose of~~
3720 ~~water quality enhancement or stream channel erosion control. While a certain amount of outflow~~
3721 ~~may also occur via infiltration through the surrounding soil, such amounts are negligible when~~
3722 ~~compared to the outlet structure discharge rates and, therefore, are not considered in the facility's~~
3723 ~~design. Since an extended detention basin impounds runoff only temporarily, it is normally dry~~
3724 ~~during nonrainfall periods.~~

3725 ~~"Stormwater extended detention basin-enhanced" or "extended detention basin-enhanced"~~
3726 ~~means an extended detention basin modified to increase pollutant removal by providing a shallow~~
3727 ~~marsh in the lower stage of the basin.~~

3728 ~~"Stormwater retention basin" or "retention basin" means a stormwater management facility~~
3729 ~~that includes a permanent impoundment, or normal pool of water, for the purpose of enhancing~~
3730 ~~water quality and, therefore, is normally wet even during nonrainfall periods. Storm runoff inflows~~
3731 ~~may be temporarily stored above this permanent impoundment for the purpose of reducing~~
3732 ~~flooding or stream channel erosion.~~

3733 ~~"Stormwater retention basin I" or "retention basin I" means a retention basin with the volume~~
3734 ~~of the permanent pool equal to three times the water quality volume.~~

3735 ~~"Stormwater retention basin II" or "retention basin II" means a retention basin with the volume~~
3736 ~~of the permanent pool equal to four times the water quality volume.~~

3737 ~~"Stormwater retention basin III" or "retention basin III" means a retention basin with the volume~~
3738 ~~of the permanent pool equal to four times the water quality volume with the addition of an aquatic~~
3739 ~~bench.~~

3740 ~~"Vegetated filter strip" means a densely vegetated section of land engineered to accept runoff~~
3741 ~~as overland sheet flow from upstream development. It shall adopt any natural vegetated form,~~
3742 ~~from grassy meadow to small forest. The vegetative cover facilitates pollutant removal through~~
3743 ~~filtration, sediment deposition, infiltration, and absorption, and is dedicated for that purpose.~~

3744 ~~"Water quality volume" means the volume equal to the first 1/2 inch of runoff multiplied by the~~
3745 ~~impervious surface of the land development project.~~

3746 **9VAC25-870-93. Definitions. (Repealed.)**

3747 For the purposes of Part II C only, the following words and terms have the following meanings
3748 unless the context clearly indicates otherwise:

3749 ~~"Adequate channel" means a channel that will convey the designated frequency storm event~~
3750 ~~without overtopping the channel bank nor causing erosive damage to the channel bed or banks.~~

3751 ~~"Aquatic bench" means a 10-foot to 15-foot wide bench around the inside perimeter of a~~
3752 ~~permanent pool that ranges in depth from zero to 12 inches. Vegetated with emergent plants, the~~
3753 ~~bench augments pollutant removal, provides habitats, conceals trash and water level fluctuations,~~
3754 ~~and enhances safety.~~

3755 ~~"Average land cover condition" means a measure of the average amount of impervious~~
3756 ~~surfaces within a watershed, assumed to be 16% or a calculated watershed-specific value for the~~
3757 ~~average land cover condition as approved by the Chesapeake Bay Local Assistance Board prior~~
3758 ~~to September 13, 2011.~~

3759 ~~"Bioretention basin" means a water quality BMP engineered to filter the water quality volume~~
3760 ~~(i) through an engineered planting bed consisting of a vegetated surface layer (vegetation, mulch,~~
3761 ~~ground cover), planting soil, and sand bed and (ii) into the in-situ material.~~

3762 "Bioretention filter" means a bioretention basin with the addition of a sand filter collector pipe
3763 system beneath the planting bed.

3764 "Constructed wetlands" means areas intentionally designed and created to emulate the water
3765 quality improvement function of wetlands for the primary purpose of removing pollutants from
3766 stormwater.

3767 "Development" means a tract of land developed or to be developed as a unit under single
3768 ownership or unified control which is to be used for any business or industrial purpose or is to
3769 contain three or more residential dwelling units.

3770 "Grassed swale" means an earthen conveyance system which is broad and shallow with
3771 erosion resistant grasses and check dams, engineered to remove pollutants from stormwater
3772 runoff by filtration through grass and infiltration into the soil.

3773 "Infiltration facility" means a stormwater management facility that temporarily impounds runoff
3774 and discharges it via infiltration through the surrounding soil. While an infiltration facility may also
3775 be equipped with an outlet structure to discharge impounded runoff, such discharge is normally
3776 reserved for overflow and other emergency conditions. Since an infiltration facility impounds runoff
3777 only temporarily, it is normally dry during nonrainfall periods. Infiltration basin, infiltration trench,
3778 infiltration dry well, and porous pavement shall be considered infiltration facilities.

3779 "Nonpoint source pollutant runoff load" or "pollutant discharge" means the average amount of
3780 a particular pollutant measured in pounds per year, delivered in a diffuse manner by stormwater
3781 runoff.

3782 "Planning area" means a designated portion of the parcel on which the land development
3783 project is located. Planning areas shall be established by delineation on a master plan. Once
3784 established, planning areas shall be applied consistently for all future projects.

3785 "Sand filter" means a contained bed of sand that acts to filter the first flush of runoff. The runoff
3786 is then collected beneath the sand bed and conveyed to an adequate discharge point or infiltrated
3787 into the in-situ soils.

3788 "Shallow marsh" means a zone within a stormwater extended detention basin that exists from
3789 the surface of the normal pool to a depth of six to 18 inches, and has a large surface area and,
3790 therefore, requires a reliable source of baseflow, groundwater supply, or a sizeable drainage area
3791 to maintain the desired water surface elevations to support emergent vegetation.

3792 "Stormwater detention basin" or "detention basin" means a stormwater management facility
3793 that temporarily impounds runoff and discharges it through a hydraulic outlet structure to a
3794 downstream conveyance system. While a certain amount of outflow may also occur via infiltration
3795 through the surrounding soil, such amounts are negligible when compared to the outlet structure
3796 discharge rates and are, therefore, not considered in the facility's design. Since a detention facility
3797 impounds runoff only temporarily, it is normally dry during nonrainfall periods.

3798 "Stormwater extended detention basin" or "extended detention basin" means a stormwater
3799 management facility that temporarily impounds runoff and discharges it through a hydraulic outlet
3800 structure over a specified period of time to a downstream conveyance system for the purpose of
3801 water quality enhancement or stream channel erosion control. While a certain amount of outflow
3802 may also occur via infiltration through the surrounding soil, such amounts are negligible when
3803 compared to the outlet structure discharge rates and, therefore, are not considered in the facility's
3804 design. Since an extended detention basin impounds runoff only temporarily, it is normally dry
3805 during nonrainfall periods.

3806 "Stormwater extended detention basin-enhanced" or "extended detention basin-enhanced"
3807 means an extended detention basin modified to increase pollutant removal by providing a shallow
3808 marsh in the lower stage of the basin.

3809 ~~"Stormwater retention basin" or "retention basin" means a stormwater management facility~~
 3810 ~~that includes a permanent impoundment, or normal pool of water, for the purpose of enhancing~~
 3811 ~~water quality and, therefore, is normally wet even during nonrainfall periods. Storm runoff inflows~~
 3812 ~~may be temporarily stored above this permanent impoundment for the purpose of reducing~~
 3813 ~~flooding or stream channel erosion.~~

3814 ~~"Stormwater retention basin I" or "retention basin I" means a retention basin with the volume~~
 3815 ~~of the permanent pool equal to three times the water quality volume.~~

3816 ~~"Stormwater retention basin II" or "retention basin II" means a retention basin with the volume~~
 3817 ~~of the permanent pool equal to four times the water quality volume.~~

3818 ~~"Stormwater retention basin III" or "retention basin III" means a retention basin with the volume~~
 3819 ~~of the permanent pool equal to four times the water quality volume with the addition of an aquatic~~
 3820 ~~bench.~~

3821 ~~"Vegetated filter strip" means a densely vegetated section of land engineered to accept runoff~~
 3822 ~~as overland sheet flow from upstream development. It shall adopt any natural vegetated form,~~
 3823 ~~from grassy meadow to small forest. The vegetative cover facilitates pollutant removal through~~
 3824 ~~filtration, sediment deposition, infiltration, and absorption, and is dedicated for that purpose.~~

3825 ~~"Water quality volume" means the volume equal to the first 1/2 inch of runoff multiplied by the~~
 3826 ~~impervious surface of the land development project.~~

3827 **9VAC25-870-94. Applicability. (Repealed.)**

3828 ~~This part specifies the technical criteria for regulated land-disturbing activities that are not~~
 3829 ~~subject to the technical criteria of Part II B in accordance with 9VAC25-870-48.~~

3830 **9VAC25-870-94. Applicability. (Repealed.)**

3831 ~~This part specifies the technical criteria for regulated land-disturbing activities that are not~~
 3832 ~~subject to the technical criteria of Part II B in accordance with 9VAC25-870-48.~~

3833 **9VAC25-870-95. General. (Repealed.)**

3834 ~~A. Determination of flooding and channel erosion impacts to receiving streams due to land-~~
 3835 ~~disturbing activities shall be measured at each point of discharge from the land disturbance and~~
 3836 ~~such determination shall include any runoff from the balance of the watershed that also~~
 3837 ~~contributes to that point of discharge.~~

3838 ~~B. The specified design storms shall be defined as either a 24-hour storm using the rainfall~~
 3839 ~~distribution recommended by the U.S. Department of Agriculture's Natural Resources~~
 3840 ~~Conservation Service (NRCS) when using NRCS methods or as the storm of critical duration that~~
 3841 ~~produces the greatest required storage volume at the site when using a design method such as~~
 3842 ~~the Modified Rational Method.~~

3843 ~~C. For purposes of computing runoff, all pervious lands in the site shall be assumed prior to~~
 3844 ~~development to be in good condition (if the lands are pastures, lawns, or parks), with good cover~~
 3845 ~~(if the lands are woods), or with conservation treatment (if the lands are cultivated); regardless of~~
 3846 ~~conditions existing at the time of computation.~~

3847 ~~D. Construction of stormwater management facilities or modifications to channels shall comply~~
 3848 ~~with all applicable laws, regulations, and ordinances. Evidence of approval of all necessary~~
 3849 ~~permits shall be presented.~~

3850 ~~E. Impounding structures that are not covered by the Impounding Structure Regulations~~
 3851 ~~(4VAC50-20) shall be engineered for structural integrity during the 100-year storm event.~~

3852 ~~F. Predevelopment and postdevelopment runoff rates shall be verified by calculations that are~~
 3853 ~~consistent with good engineering practices.~~

3854 ~~G. Outflows from a stormwater management facility or stormwater conveyance system shall~~
 3855 ~~be discharged to an adequate channel.~~

~~H. Proposed residential, commercial, or industrial subdivisions shall apply these stormwater management criteria to the land disturbance as a whole. Individual lots in new subdivisions shall not be considered separate land-disturbing activities, but rather the entire subdivision shall be considered a single land development project. Hydrologic parameters shall reflect the ultimate land disturbance and shall be used in all engineering calculations.~~

~~I. All stormwater management facilities shall have an inspection and maintenance plan that identifies the owner and the responsible party for carrying out the inspection and maintenance plan.~~

~~J. Construction of stormwater management impoundment structures within a Federal Emergency Management Agency (FEMA) designated 100-year floodplain shall be avoided whenever possible. When this is unavoidable, all stormwater management facility construction shall be in compliance with all applicable regulations under the National Flood Insurance Program, 44 CFR Part 59.~~

~~K. Natural channel characteristics shall be preserved to the maximum extent practicable.~~

~~L. Land-disturbing activities shall comply with the Virginia Erosion and Sediment Control Law and attendant regulations.~~

~~M. Flood control and stormwater management facilities that drain or treat water from multiple development projects or from a significant portion of a watershed may be allowed in resource protection areas defined in the Chesapeake Bay Preservation Act provided such facilities are allowed and constructed in accordance with the Stormwater Management Act and this chapter, and provided that (i) the local government has conclusively established that the location of the facility within the resource protection area is the optimum location; (ii) the size of the facility is the minimum necessary to provide necessary flood control, stormwater treatment, or both; (iii) the facility must be consistent with a comprehensive stormwater management plan developed and approved in accordance with 9VAC25-870-92 or with a VSMP that has been approved prior to July 1, 2012, by the board, the Chesapeake Bay Local Assistance Board prior to its abolishment on July 1, 2012, or the Board of Conservation and Recreation; (iv) all applicable permits for construction in state or federal waters must be obtained from the appropriate state and federal agencies, such as the U.S. Army Corps of Engineers, the department, and the Virginia Marine Resources Commission; (v) approval must be received from the local government prior to construction; and (vi) routine maintenance is allowed to be performed on such facilities to assure that they continue to function as designed. It is not the intent of this subdivision to allow a best management practice that collects and treats runoff from only an individual lot or some portion of the lot to be located within a resource protection area.~~

9VAC25-870-95. General. (Repealed.)

~~A. Determination of flooding and channel erosion impacts to receiving streams due to land-disturbing activities shall be measured at each point of discharge from the land disturbance and such determination shall include any runoff from the balance of the watershed that also contributes to that point of discharge.~~

~~B. The specified design storms shall be defined as either a 24-hour storm using the rainfall distribution recommended by the U.S. Department of Agriculture's Natural Resources Conservation Service (NRCS) when using NRCS methods or as the storm of critical duration that produces the greatest required storage volume at the site when using a design method such as the Modified Rational Method.~~

~~C. For purposes of computing runoff, all pervious lands in the site shall be assumed prior to development to be in good condition (if the lands are pastures, lawns, or parks), with good cover (if the lands are woods), or with conservation treatment (if the lands are cultivated); regardless of conditions existing at the time of computation.~~

3904 D. Construction of stormwater management facilities or modifications to channels shall comply
 3905 with all applicable laws, regulations, and ordinances. Evidence of approval of all necessary
 3906 permits shall be presented.

3907 E. Impounding structures that are not covered by the Impounding Structure Regulations
 3908 (4VAC50-20) shall be engineered for structural integrity during the 100-year storm event.

3909 F. Predevelopment and postdevelopment runoff rates shall be verified by calculations that are
 3910 consistent with good engineering practices.

3911 G. Outflows from a stormwater management facility or stormwater conveyance system shall
 3912 be discharged to an adequate channel.

3913 H. Proposed residential, commercial, or industrial subdivisions shall apply these stormwater
 3914 management criteria to the land disturbance as a whole. Individual lots in new subdivisions shall
 3915 not be considered separate land-disturbing activities, but rather the entire subdivision shall be
 3916 considered a single land development project. Hydrologic parameters shall reflect the ultimate
 3917 land disturbance and shall be used in all engineering calculations.

3918 I. All stormwater management facilities shall have an inspection and maintenance plan that
 3919 identifies the owner and the responsible party for carrying out the inspection and maintenance
 3920 plan.

3921 J. Construction of stormwater management impoundment structures within a Federal
 3922 Emergency Management Agency (FEMA) designated 100-year floodplain shall be avoided
 3923 whenever possible. When this is unavoidable, all stormwater management facility construction
 3924 shall be in compliance with all applicable regulations under the National Flood Insurance Program,
 3925 44 CFR Part 59.

3926 K. Natural channel characteristics shall be preserved to the maximum extent practicable.

3927 L. Land-disturbing activities shall comply with the Virginia Erosion and Sediment Control Law
 3928 and attendant regulations.

3929 M. Flood control and stormwater management facilities that drain or treat water from multiple
 3930 development projects or from a significant portion of a watershed may be allowed in resource
 3931 protection areas defined in the Chesapeake Bay Preservation Act provided such facilities are
 3932 allowed and constructed in accordance with the Stormwater Management Act and this chapter,
 3933 and provided that (i) the local government has conclusively established that the location of the
 3934 facility within the resource protection area is the optimum location; (ii) the size of the facility is the
 3935 minimum necessary to provide necessary flood control, stormwater treatment, or both; (iii) the
 3936 facility must be consistent with a comprehensive stormwater management plan developed and
 3937 approved in accordance with 9VAC25-870-92 or with a VSMP that has been approved prior to
 3938 July 1, 2012, by the board, the Chesapeake Bay Local Assistance Board prior to its abolishment
 3939 on July 1, 2012, or the Board of Conservation and Recreation; (iv) all applicable permits for
 3940 construction in state or federal waters must be obtained from the appropriate state and federal
 3941 agencies, such as the U.S. Army Corps of Engineers, the department, and the Virginia Marine
 3942 Resources Commission; (v) approval must be received from the local government prior to
 3943 construction; and (vi) routine maintenance is allowed to be performed on such facilities to assure
 3944 that they continue to function as designed. It is not the intent of this subdivision to allow a best
 3945 management practice that collects and treats runoff from only an individual lot or some portion of
 3946 the lot to be located within a resource protection area.

3947 **9VAC25-870-96. Water quality. (Repealed.)**

3948 A. Compliance with the water quality criteria may be achieved by applying the performance-
 3949 based criteria or the technology-based criteria to either the site or a planning area.

3950 B. Performance-based criteria. For land-disturbing activities, the calculated postdevelopment
 3951 nonpoint source pollutant runoff load shall be compared to the calculated predevelopment load

3952 based upon the average land cover condition or the existing site condition. A BMP shall be
 3953 located, designed, and maintained to achieve the target pollutant removal efficiencies specified
 3954 in Table 1 of this section to effectively reduce the pollutant load to the required level based upon
 3955 the following four applicable land development situations for which the performance criteria apply:

3956 1. Situation 1 consists of land-disturbing activities where the existing percent impervious
 3957 cover is less than or equal to the average land cover condition and the proposed
 3958 improvements will create a total percent impervious cover that is less than the average
 3959 land cover condition.

3960 Requirement: No reduction in the after disturbance pollutant discharge is required.

3961 2. Situation 2 consists of land-disturbing activities where the existing percent impervious
 3962 cover is less than or equal to the average land cover condition and the proposed
 3963 improvements will create a total percent impervious cover that is greater than the average
 3964 land cover condition.

3965 Requirement: The pollutant discharge after disturbance shall not exceed the existing
 3966 pollutant discharge based on the average land cover condition.

3967 3. Situation 3 consists of land-disturbing activities where the existing percent impervious
 3968 cover is greater than the average land cover condition.

3969 Requirement: The pollutant discharge after disturbance shall not exceed (i) the pollutant
 3970 discharge based on existing conditions less 10% or (ii) the pollutant discharge based on
 3971 the average land cover condition, whichever is greater.

3972 4. Situation 4 consists of land-disturbing activities where the existing percent impervious
 3973 cover is served by an existing stormwater management BMP that addresses water quality.

3974 Requirement: The pollutant discharge after disturbance shall not exceed the existing
 3975 pollutant discharge based on the existing percent impervious cover while served by the
 3976 existing BMP. The existing BMP shall be shown to have been designed and constructed
 3977 in accordance with proper design standards and specifications, and to be in proper
 3978 functioning condition.

3979 C. Technology-based criteria. For land-disturbing activities, the postdeveloped stormwater
 3980 runoff from the impervious cover shall be treated by an appropriate BMP as required by the
 3981 postdeveloped condition percent impervious cover as specified in Table 1 of this section. The
 3982 selected BMP shall be located, designed, and maintained to perform at the target pollutant
 3983 removal efficiency specified in Table 1 or those found in 9VAC25-870-65. Design standards and
 3984 specifications for the BMPs in Table 1 that meet the required target pollutant removal efficiency
 3985 are available in the 1999 Virginia Stormwater Management Handbook. Other approved BMPs
 3986 available on the Virginia Stormwater BMP Clearinghouse Website may also be utilized.

Table 1*

Water Quality BMP*	Target Phosphorus Removal Efficiency	Percent Impervious Cover
Vegetated filter strip	10%	16-21%
Grassed swale	15%	
Constructed wetlands	20%	22-37%
Extended detention (2 x WQ Vol)	35%	
Retention basin I (3 x WQ Vol)	40%	
Bioretention basin	50%	38-66%

Bioretention filter	50%	
Extended detention-enhanced	50%	
Retention basin II (4 x WQ Vol)	50%	
Infiltration (1 x WQ Vol)	50%	
Sand filter	65%	
Infiltration (2 x WQ Vol)	65%	67-100%
Retention basin III (4 x WQ Vol with aquatic bench)	65%	
*Innovative or alternate BMPs not included in this table may be allowed at the discretion of the local program administrator or the department. Innovative or alternate BMPs not included in this table that target appropriate nonpoint source pollution other than phosphorous may be allowed at the discretion of the local program administrator or the department.		

3987 **9VAC25-870-96. Water quality. (Repealed.)**

3988 A. Compliance with the water quality criteria may be achieved by applying the performance-
3989 based criteria or the technology-based criteria to either the site or a planning area.

3990 B. Performance-based criteria. For land-disturbing activities, the calculated postdevelopment
3991 nonpoint source pollutant runoff load shall be compared to the calculated predevelopment load
3992 based upon the average land cover condition or the existing site condition. A BMP shall be
3993 located, designed, and maintained to achieve the target pollutant removal efficiencies specified
3994 in Table 1 of this section to effectively reduce the pollutant load to the required level based upon
3995 the following four applicable land development situations for which the performance criteria apply:

3996 1. Situation 1 consists of land-disturbing activities where the existing percent impervious
3997 cover is less than or equal to the average land cover condition and the proposed
3998 improvements will create a total percent impervious cover that is less than the average
3999 land cover condition.

4000 Requirement: No reduction in the after disturbance pollutant discharge is required.

4001 2. Situation 2 consists of land-disturbing activities where the existing percent impervious
4002 cover is less than or equal to the average land cover condition and the proposed
4003 improvements will create a total percent impervious cover that is greater than the average
4004 land cover condition.

4005 Requirement: The pollutant discharge after disturbance shall not exceed the existing
4006 pollutant discharge based on the average land cover condition.

4007 3. Situation 3 consists of land-disturbing activities where the existing percent impervious
4008 cover is greater than the average land cover condition.

4009 Requirement: The pollutant discharge after disturbance shall not exceed (i) the pollutant
4010 discharge based on existing conditions less 10% or (ii) the pollutant discharge based on
4011 the average land cover condition, whichever is greater.

4012 4. Situation 4 consists of land-disturbing activities where the existing percent impervious
4013 cover is served by an existing stormwater management BMP that addresses water quality.

4014 Requirement: The pollutant discharge after disturbance shall not exceed the existing
4015 pollutant discharge based on the existing percent impervious cover while served by the
4016 existing BMP. The existing BMP shall be shown to have been designed and constructed

4017 in accordance with proper design standards and specifications, and to be in proper
4018 functioning condition.

4019 C. Technology-based criteria. For land-disturbing activities, the postdeveloped stormwater
4020 runoff from the impervious cover shall be treated by an appropriate BMP as required by the
4021 postdeveloped condition percent impervious cover as specified in Table 1 of this section. The
4022 selected BMP shall be located, designed, and maintained to perform at the target pollutant
4023 removal efficiency specified in Table 1 or those found in 9VAC25-870-65. Design standards and
4024 specifications for the BMPs in Table 1 that meet the required target pollutant removal efficiency
4025 are available in the 1999 Virginia Stormwater Management Handbook. Other approved BMPs
4026 available on the Virginia Stormwater BMP Clearinghouse Website may also be utilized.

Table 1*

Water Quality BMP*	Target Phosphorus Removal Efficiency	Percent Impervious Cover
Vegetated filter strip	10%	16-21%
Grassed swale	15%	
Constructed wetlands	20%	22-37%
Extended detention (2 x WQ Vol)	35%	
Retention basin I (3 x WQ Vol)	40%	
Bioretention basin	50%	38-66%
Bioretention filter	50%	
Extended detention-enhanced	50%	
Retention basin II (4 x WQ Vol)	50%	
Infiltration (1 x WQ Vol)	50%	
Sand filter	65%	67-100%
Infiltration (2 x WQ Vol)	65%	
Retention basin III (4 x WQ Vol with aquatic bench)	65%	
*Innovative or alternate BMPs not included in this table may be allowed at the discretion of the local program administrator or the department. Innovative or alternate BMPs not included in this table that target appropriate nonpoint source pollution other than phosphorous may be allowed at the discretion of the local program administrator or the department.		

4027 **9VAC25-870-97. Stream channel erosion. (Repealed.)**

4028 A. Properties and receiving waterways downstream of any land-disturbing activity shall be
4029 protected from erosion and damage due to changes in runoff rate of flow and hydrologic
4030 characteristics, including, but not limited to, changes in volume, velocity, frequency, duration, and
4031 peak flow rate of stormwater runoff in accordance with the minimum design standards set out in
4032 this section.

4033 B. The VSMP authority shall require compliance with subdivision 19 of 9VAC25-840-40 of the
 4034 Erosion and Sediment Control Regulations, promulgated pursuant to the Erosion and Sediment
 4035 Control Law.

4036 C. The locality's VSMP authority may determine that some watersheds or receiving stream
 4037 systems require enhanced criteria in order to address the increased frequency of bankfull flow
 4038 conditions (top of bank) brought on by land-disturbing activities or where more stringent
 4039 requirements are necessary to address total maximum daily load requirements or to protect
 4040 exceptional waters. Therefore, in lieu of the reduction of the two-year postdeveloped peak rate of
 4041 runoff as required in subsection B of this section, the land development project being considered
 4042 shall provide 24-hour extended detention of the runoff generated by the one-year, 24-hour
 4043 duration storm.

4044 D. In addition to subsections B and C of this section, a locality's VSMP authority by local
 4045 ordinance may in accordance with § 62.1-44.15:33 of the Code of Virginia, or the board by state
 4046 regulation may, adopt more stringent channel analysis criteria or design standards to ensure that
 4047 the natural level of channel erosion, to the maximum extent practicable, will not increase due to
 4048 the land-disturbing activities. These criteria may include, but are not limited to, the following:

- 4049 1. Criteria and procedures for channel analysis and classification.
- 4050 2. Procedures for channel data collection.
- 4051 3. Criteria and procedures for the determination of the magnitude and frequency of natural
 4052 sediment transport loads.
- 4053 4. Criteria for the selection of proposed natural or manmade channel linings.

4054 **9VAC25-870-97. Stream channel erosion. (Repealed.)**

4055 A. Properties and receiving waterways downstream of any land-disturbing activity shall be
 4056 protected from erosion and damage due to changes in runoff rate of flow and hydrologic
 4057 characteristics, including, but not limited to, changes in volume, velocity, frequency, duration, and
 4058 peak flow rate of stormwater runoff in accordance with the minimum design standards set out in
 4059 this section.

4060 B. The VSMP authority shall require compliance with subdivision 19 of 9VAC25-840-40 of the
 4061 Erosion and Sediment Control Regulations, promulgated pursuant to the Erosion and Sediment
 4062 Control Law.

4063 C. The locality's VSMP authority may determine that some watersheds or receiving stream
 4064 systems require enhanced criteria in order to address the increased frequency of bankfull flow
 4065 conditions (top of bank) brought on by land-disturbing activities or where more stringent
 4066 requirements are necessary to address total maximum daily load requirements or to protect
 4067 exceptional waters. Therefore, in lieu of the reduction of the two-year postdeveloped peak rate of
 4068 runoff as required in subsection B of this section, the land development project being considered
 4069 shall provide 24-hour extended detention of the runoff generated by the one-year, 24-hour
 4070 duration storm.

4071 D. In addition to subsections B and C of this section, a locality's VSMP authority by local
 4072 ordinance may in accordance with § 62.1-44.15:33 of the Code of Virginia, or the board by state
 4073 regulation may, adopt more stringent channel analysis criteria or design standards to ensure that
 4074 the natural level of channel erosion, to the maximum extent practicable, will not increase due to
 4075 the land-disturbing activities. These criteria may include, but are not limited to, the following:

- 4076 1. Criteria and procedures for channel analysis and classification.
- 4077 2. Procedures for channel data collection.
- 4078 3. Criteria and procedures for the determination of the magnitude and frequency of natural
 4079 sediment transport loads.

4080 4. Criteria for the selection of proposed natural or manmade channel linings.

4081 **9VAC25-870-98. Flooding. (Repealed.)**

4082 A. Downstream properties and waterways shall be protected from damages from localized
4083 flooding due to changes in runoff rate of flow and hydrologic characteristics, including, but not
4084 limited to, changes in volume, velocity, frequency, duration, and peak flow rate of stormwater
4085 runoff in accordance with the minimum design standards set out in this section.

4086 B. The 10-year postdeveloped peak rate of runoff from the development site shall not exceed
4087 the 10-year predeveloped peak rate of runoff.

4088 C. In lieu of subsection B of this section, localities may, by ordinance in accordance with
4089 § 62.1-44.15:33 of the Code of Virginia, adopt alternate design criteria based upon geographic,
4090 land use, topographic, geologic factors, or other downstream conveyance factors as appropriate.

4091 D. Linear development projects shall not be required to control postdeveloped stormwater
4092 runoff for flooding, except in accordance with a watershed or regional stormwater management
4093 plan.

4094 **9VAC25-870-98. Flooding. (Repealed.)**

4095 A. Downstream properties and waterways shall be protected from damages from localized
4096 flooding due to changes in runoff rate of flow and hydrologic characteristics, including, but not
4097 limited to, changes in volume, velocity, frequency, duration, and peak flow rate of stormwater
4098 runoff in accordance with the minimum design standards set out in this section.

4099 B. The 10-year postdeveloped peak rate of runoff from the development site shall not exceed
4100 the 10-year predeveloped peak rate of runoff.

4101 C. In lieu of subsection B of this section, localities may, by ordinance in accordance with
4102 § 62.1-44.15:33 of the Code of Virginia, adopt alternate design criteria based upon geographic,
4103 land use, topographic, geologic factors, or other downstream conveyance factors as appropriate.

4104 D. Linear development projects shall not be required to control postdeveloped stormwater
4105 runoff for flooding, except in accordance with a watershed or regional stormwater management
4106 plan.

4107 **9VAC25-870-99. Regional (watershed-wide) stormwater management plans. (Repealed.)**

4108 Water quality requirements and where allowed, water quantity requirements, may be achieved
4109 in accordance with sections 9VAC25-870-69 and 9VAC25-870-92.

4110 **9VAC25-870-99. Regional (watershed-wide) stormwater management plans. (Repealed.)**

4111 Water quality requirements and where allowed, water quantity requirements, may be achieved
4112 in accordance with sections 9VAC25-870-69 and 9VAC25-870-92.

4113 **Part III**

4114 **General Provisions Applicable to VSMPs and VSMP Authorities**

4115 **9VAC25-870-100. Applicability. (Repealed.)**

4116 This part establishes the department's procedures for the authorization of a VSMP, the
4117 department's procedures for the administration of a VSMP by a locality's VSMP authority or by
4118 other VSMP authorities where the procedures may be applicable, and department oversight
4119 authorities for a VSMP.

4120 **9VAC25-870-100. Applicability. (Repealed.)**

4121 This part establishes the department's procedures for the authorization of a VSMP, the
4122 department's procedures for the administration of a VSMP by a locality's VSMP authority or by
4123 other VSMP authorities where the procedures may be applicable, and department oversight
4124 authorities for a VSMP.

4125 **9VAC25-870-102. Authority. (Repealed.)**

4126 A. ~~If an authorized entity pursuant to § 62.1-44.15:27 of the Code of Virginia has adopted a~~
 4127 ~~VSMP in accordance with the Virginia Stormwater Management Act and the department has~~
 4128 ~~deemed such program adoption consistent with the Virginia Stormwater Management Act and~~
 4129 ~~these regulations in accordance with § 62.1-44.15:27 of the Code of Virginia, the department may~~
 4130 ~~authorize the entity to administer a VSMP. Pursuant to § 62.1-44.15:28 of the Code of Virginia,~~
 4131 ~~the board is required to establish standards and procedures for such an authorization.~~

4132 B. ~~In the case of a land-disturbing activity located on property controlled by a regional~~
 4133 ~~industrial facility authority established pursuant to Chapter 64 (§ 15.2-6400 et seq.) of Title 15.2~~
 4134 ~~of the Code of Virginia, if a participating local member of such an authority also administers a~~
 4135 ~~VSMP, such locality shall be authorized to administer the VSMP on authority property in~~
 4136 ~~accordance with an agreement entered into with all relevant localities and the existing VSMP for~~
 4137 ~~the property.~~

4138 **9VAC25-870-102. Authority. (Repealed.)**

4139 A. ~~If an authorized entity pursuant to § 62.1-44.15:27 of the Code of Virginia has adopted a~~
 4140 ~~VSMP in accordance with the Virginia Stormwater Management Act and the department has~~
 4141 ~~deemed such program adoption consistent with the Virginia Stormwater Management Act and~~
 4142 ~~these regulations in accordance with § 62.1-44.15:27 of the Code of Virginia, the department may~~
 4143 ~~authorize the entity to administer a VSMP. Pursuant to § 62.1-44.15:28 of the Code of Virginia,~~
 4144 ~~the board is required to establish standards and procedures for such an authorization.~~

4145 B. ~~In the case of a land-disturbing activity located on property controlled by a regional~~
 4146 ~~industrial facility authority established pursuant to Chapter 64 (§ 15.2-6400 et seq.) of Title 15.2~~
 4147 ~~of the Code of Virginia, if a participating local member of such an authority also administers a~~
 4148 ~~VSMP, such locality shall be authorized to administer the VSMP on authority property in~~
 4149 ~~accordance with an agreement entered into with all relevant localities and the existing VSMP for~~
 4150 ~~the property.~~

4151 **9VAC25-870-103. Requirements for Chesapeake Bay Preservation Act land-disturbing**
 4152 **activities. (Repealed.)**

4153 A. ~~Localities subject to the Chesapeake Bay Preservation Act shall regulate runoff associated~~
 4154 ~~with Chesapeake Bay Preservation Act land-disturbing activities in accordance with the following:~~

4155 1. ~~After June 30, 2014, such land-disturbing activities shall not require completion of a~~
 4156 ~~registration statement or require coverage under the General Permit for Discharges of~~
 4157 ~~Stormwater from Construction Activities but shall be subject to the technical criteria and~~
 4158 ~~program and administrative requirements set out in 9VAC25-870-51.~~

4159 2. ~~A local or VSMP authority permit, as applicable, shall be issued permitting the land-~~
 4160 ~~disturbing activity.~~

4161 3. ~~The locality shall regulate such land-disturbing activities in compliance with the:~~

4162 a. ~~Program requirements in 9VAC25-870-104;~~

4163 b. ~~Plan review requirements in 9VAC25-870-108 with the exception of subsection D of~~
 4164 ~~9VAC25-870-108 or as allowed in subsection A of 9VAC25-870-52;~~

4165 c. ~~Long-term stormwater management facility requirements of 9VAC25-870-112;~~

4166 d. ~~Inspection requirements of 9VAC25-870-114 with the exception of subdivisions A 3~~
 4167 ~~and A 4 of 9VAC25-870-114;~~

4168 e. ~~Enforcement components of 9VAC25-870-116;~~

4169 f. ~~Hearing requirements of 9VAC25-870-118;~~

4170 g. ~~Exception conditions of 9VAC25-870-122 excluding subsection C of 9VAC25-870-~~
 4171 ~~122 which is not applicable; and~~

4172 h. Reporting and recordkeeping requirements of 9VAC25-870-126 with the exception
4173 of subdivision B 3 of 9VAC25-870-126.

4174 B. A locality subject to the Chesapeake Bay Preservation Act shall adopt an ordinance that
4175 incorporates the components of this section.

4176 C. In accordance with subdivision A 5 of § 62.1-44.15:28 of the Code of Virginia, a locality's
4177 VSMP authority may collect a permit issuance fee from the applicant of \$290 and an annual
4178 maintenance fee of \$50 for such land-disturbing activities.

4179 **9VAC25-870-103. Requirements for Chesapeake Bay Preservation Act land-disturbing**
4180 **activities. (Repealed.)**

4181 A. Localities subject to the Chesapeake Bay Preservation Act shall regulate runoff associated
4182 with Chesapeake Bay Preservation Act land-disturbing activities in accordance with the following:

4183 1. After June 30, 2014, such land-disturbing activities shall not require completion of a
4184 registration statement or require coverage under the General Permit for Discharges of
4185 Stormwater from Construction Activities but shall be subject to the technical criteria and
4186 program and administrative requirements set out in 9VAC25-870-51.

4187 2. A local or VSMP authority permit, as applicable, shall be issued permitting the land-
4188 disturbing activity.

4189 3. The locality shall regulate such land-disturbing activities in compliance with the:

4190 a. Program requirements in 9VAC25-870-104;

4191 b. Plan review requirements in 9VAC25-870-108 with the exception of subsection D of
4192 9VAC25-870-108 or as allowed in subsection A of 9VAC25-870-52;

4193 c. Long-term stormwater management facility requirements of 9VAC25-870-112;

4194 d. Inspection requirements of 9VAC25-870-114 with the exception of subdivisions A 3
4195 and A 4 of 9VAC25-870-114;

4196 e. Enforcement components of 9VAC25-870-116;

4197 f. Hearing requirements of 9VAC25-870-118;

4198 g. Exception conditions of 9VAC25-870-122 excluding subsection C of 9VAC25-870-
4199 122 which is not applicable; and

4200 h. Reporting and recordkeeping requirements of 9VAC25-870-126 with the exception
4201 of subdivision B 3 of 9VAC25-870-126.

4202 B. A locality subject to the Chesapeake Bay Preservation Act shall adopt an ordinance that
4203 incorporates the components of this section.

4204 C. In accordance with subdivision A 5 of § 62.1-44.15:28 of the Code of Virginia, a locality's
4205 VSMP authority may collect a permit issuance fee from the applicant of \$290 and an annual
4206 maintenance fee of \$50 for such land-disturbing activities.

4207 **Part III A**

4208 **Programs Operated by a VSMP Authority**

4209 **9VAC25-870-104. Criteria for programs operated by a VSMP authority. (Repealed.)**

4210 A. All VSMP authorities shall require compliance with the provisions of Part II (9VAC25-870-
4211 40 et seq.) of this chapter.

4212 B. When a locality's VSMP authority has adopted requirements more stringent than those
4213 imposed by this chapter in accordance with § 62.1-44.15:33 of the Code of Virginia or
4214 implemented a comprehensive stormwater management plan, the department shall consider such
4215 requirements in its review of state projects within that locality in accordance with Part IV (9VAC25-
4216 870-160 et seq.) of this chapter.

4217 C. Nothing in this part shall be construed as authorizing a locality to regulate, or to require
4218 prior approval by the locality for, a state or federal project, unless authorized by separate statute.

4219 D. A VSMP authority may require, excluding state and federal entities, the submission of a
4220 reasonable performance bond or other financial surety and provide for the release of such sureties
4221 in accordance with the criteria set forth in § 62.1-44.15:34 of the Code of Virginia.

4222 **9VAC25-870-104. Criteria for programs operated by a VSMP authority. (Repealed.)**

4223 A. All VSMP authorities shall require compliance with the provisions of Part II (9VAC25-870-
4224 40 et seq.) of this chapter.

4225 B. When a locality's VSMP authority has adopted requirements more stringent than those
4226 imposed by this chapter in accordance with § 62.1-44.15:33 of the Code of Virginia or
4227 implemented a comprehensive stormwater management plan, the department shall consider such
4228 requirements in its review of state projects within that locality in accordance with Part IV (9VAC25-
4229 870-160 et seq.) of this chapter.

4230 C. Nothing in this part shall be construed as authorizing a locality to regulate, or to require
4231 prior approval by the locality for, a state or federal project, unless authorized by separate statute.

4232 D. A VSMP authority may require, excluding state and federal entities, the submission of a
4233 reasonable performance bond or other financial surety and provide for the release of such sureties
4234 in accordance with the criteria set forth in § 62.1-44.15:34 of the Code of Virginia.

4235 **9VAC25-870-106. Additional requirements for VSMP authorities. (Repealed.)**

4236 A. A locality's VSMP authority shall adopt ordinances, and other VSMP authorities shall
4237 provide program documentation, that ensure compliance with the requirements set forth in
4238 9VAC25-870-460 L.

4239 B. The locality's VSMP authority shall adopt ordinances, and other VSMP authorities shall
4240 provide program documentation, at least as stringent as the provisions of the General Permit for
4241 Discharges of Stormwater from Construction Activities.

4242 **9VAC25-870-106. Additional requirements for VSMP authorities. (Repealed.)**

4243 A. A locality's VSMP authority shall adopt ordinances, and other VSMP authorities shall
4244 provide program documentation, that ensure compliance with the requirements set forth in
4245 9VAC25-870-460 L.

4246 B. The locality's VSMP authority shall adopt ordinances, and other VSMP authorities shall
4247 provide program documentation, at least as stringent as the provisions of the General Permit for
4248 Discharges of Stormwater from Construction Activities.

4249 **9VAC25-870-108. Stormwater management plan review. (Repealed.)**

4250 A. A VSMP authority shall review and approve stormwater management plans.

4251 B. A VSMP authority shall approve or disapprove a stormwater management plan according
4252 to the following:

4253 1. The VSMP authority shall determine the completeness of a plan in accordance with
4254 9VAC25-870-55, and shall notify the applicant of any determination, within 15 calendar
4255 days of receipt. Where available to the applicant, electronic communication may be
4256 considered communication in writing.

4257 a. If within those 15 calendar days the plan is deemed to be incomplete, the applicant
4258 shall be notified in writing of the reasons the plan is deemed incomplete.

4259 b. If a determination of completeness is made and communicated to the applicant
4260 within the 15 calendar days, an additional 60 calendar days from the date of the
4261 communication will be allowed for the review of the plan.

4262 c. If a determination of completeness is not made and communicated to the applicant
 4263 within the 15 calendar days, the plan shall be deemed complete as of the date of
 4264 submission and a total of 60 calendar days from the date of submission will be allowed
 4265 for the review of the plan.

4266 d. The VSMP authority shall review, within 45 calendar days of the date of
 4267 resubmission, any plan that has been previously disapproved.

4268 2. During the review period, the plan shall be approved or disapproved and the decision
 4269 communicated in writing to the person responsible for the land-disturbing activity or his
 4270 designated agent. If the plan is not approved, the reasons for not approving the plan shall
 4271 be provided in writing. Approval or denial shall be based on the plan's compliance with the
 4272 requirements of this chapter and of the VSMP authority. Where available to the applicant,
 4273 electronic communication may be considered communication in writing.

4274 3. If a plan meeting all requirements of this chapter and of the VSMP authority is submitted
 4275 and no action is taken within the time specified above, the plan shall be deemed approved.

4276 C. Each approved plan may be modified in accordance with the following:

4277 1. Modifications to an approved stormwater management plan shall be allowed only after
 4278 review and written approval by the VSMP authority. The VSMP authority shall have 60
 4279 calendar days to respond in writing either approving or disapproving such requests.

4280 2. Based on an inspection, the VSMP authority may require amendments to the approved
 4281 stormwater management plan to address any deficiencies within a time frame set by the
 4282 VSMP authority.

4283 D. Upon the development of an online reporting system by the department, but no later than
 4284 July 1, 2014, a VSMP authority shall then be required to obtain evidence of state permit coverage,
 4285 where it is required, prior to providing approval to begin land disturbance.

4286 E. The VSMP authority shall require the submission of a construction record drawing for
 4287 permanent stormwater management facilities in accordance with 9VAC25-870-55. A VSMP
 4288 authority may elect not to require construction record drawings for stormwater management
 4289 facilities for which maintenance agreements are not required pursuant to 9VAC25-870-112.

4290 **9VAC25-870-108. Stormwater management plan review. (Repealed.)**

4291 A. A VSMP authority shall review and approve stormwater management plans.

4292 B. A VSMP authority shall approve or disapprove a stormwater management plan according
 4293 to the following:

4294 1. The VSMP authority shall determine the completeness of a plan in accordance with
 4295 9VAC25-870-55, and shall notify the applicant of any determination, within 15 calendar
 4296 days of receipt. Where available to the applicant, electronic communication may be
 4297 considered communication in writing.

4298 a. If within those 15 calendar days the plan is deemed to be incomplete, the applicant
 4299 shall be notified in writing of the reasons the plan is deemed incomplete.

4300 b. If a determination of completeness is made and communicated to the applicant
 4301 within the 15 calendar days, an additional 60 calendar days from the date of the
 4302 communication will be allowed for the review of the plan.

4303 c. If a determination of completeness is not made and communicated to the applicant
 4304 within the 15 calendar days, the plan shall be deemed complete as of the date of
 4305 submission and a total of 60 calendar days from the date of submission will be allowed
 4306 for the review of the plan.

4307 d. The VSMP authority shall review, within 45 calendar days of the date of
 4308 resubmission, any plan that has been previously disapproved.

4309 2. During the review period, the plan shall be approved or disapproved and the decision
 4310 communicated in writing to the person responsible for the land-disturbing activity or his
 4311 designated agent. If the plan is not approved, the reasons for not approving the plan shall
 4312 be provided in writing. Approval or denial shall be based on the plan's compliance with the
 4313 requirements of this chapter and of the VSMP authority. Where available to the applicant,
 4314 electronic communication may be considered communication in writing.

4315 3. If a plan meeting all requirements of this chapter and of the VSMP authority is submitted
 4316 and no action is taken within the time specified above, the plan shall be deemed approved.

4317 C. Each approved plan may be modified in accordance with the following:

4318 1. Modifications to an approved stormwater management plan shall be allowed only after
 4319 review and written approval by the VSMP authority. The VSMP authority shall have 60
 4320 calendar days to respond in writing either approving or disapproving such requests.

4321 2. Based on an inspection, the VSMP authority may require amendments to the approved
 4322 stormwater management plan to address any deficiencies within a time frame set by the
 4323 VSMP authority.

4324 D. Upon the development of an online reporting system by the department, but no later than
 4325 July 1, 2014, a VSMP authority shall then be required to obtain evidence of state permit coverage,
 4326 where it is required, prior to providing approval to begin land disturbance.

4327 E. The VSMP authority shall require the submission of a construction record drawing for
 4328 permanent stormwater management facilities in accordance with 9VAC25-870-55. A VSMP
 4329 authority may elect not to require construction record drawings for stormwater management
 4330 facilities for which maintenance agreements are not required pursuant to 9VAC25-870-112.

4331 **9VAC25-870-112. Long-term maintenance of permanent stormwater management facilities.**
 4332 **(Repealed.)**

4333 A. The VSMP authority shall require the provision of long-term responsibility for and
 4334 maintenance of stormwater management facilities and other techniques specified to manage the
 4335 quality and quantity of runoff. Such requirements shall be set forth in an instrument recorded in
 4336 the local land records prior to state permit termination or earlier as required by the VSMP authority
 4337 and shall at a minimum:

4338 1. Be submitted to the VSMP authority for review and approval prior to the approval of
 4339 the stormwater management plan;

4340 2. Be stated to run with the land;

4341 3. Provide for all necessary access to the property for purposes of maintenance and
 4342 regulatory inspections;

4343 4. Provide for inspections and maintenance and the submission of inspection and
 4344 maintenance reports to the VSMP authority; and

4345 5. Be enforceable by all appropriate governmental parties.

4346 B. At the discretion of the VSMP authority, such recorded instruments need not be required
 4347 for stormwater management facilities designed to treat stormwater runoff primarily from an
 4348 individual residential lot on which they are located, provided it is demonstrated to the satisfaction
 4349 of the VSMP authority that future maintenance of such facilities will be addressed through an
 4350 enforceable mechanism at the discretion of the VSMP authority.

4351 C. In addition to the requirements of subsection A of this section, any owner of property that
 4352 is zoned for residential use and on which is located a privately owned stormwater management
 4353 facility serving one or more residential properties shall record the long-term maintenance and
 4354 inspection requirements for such facility with the deed for the property.

4355 **9VAC25-870-112. Long-term maintenance of permanent stormwater management facilities.**
 4356 **(Repealed.)**

4357 ~~A. The VSMP authority shall require the provision of long-term responsibility for and~~
 4358 ~~maintenance of stormwater management facilities and other techniques specified to manage the~~
 4359 ~~quality and quantity of runoff. Such requirements shall be set forth in an instrument recorded in~~
 4360 ~~the local land records prior to state permit termination or earlier as required by the VSMP authority~~
 4361 ~~and shall at a minimum:~~

- 4362 ~~1. Be submitted to the VSMP authority for review and approval prior to the approval of~~
 4363 ~~the stormwater management plan;~~
- 4364 ~~2. Be stated to run with the land;~~
- 4365 ~~3. Provide for all necessary access to the property for purposes of maintenance and~~
 4366 ~~regulatory inspections;~~
- 4367 ~~4. Provide for inspections and maintenance and the submission of inspection and~~
 4368 ~~maintenance reports to the VSMP authority; and~~
- 4369 ~~5. Be enforceable by all appropriate governmental parties.~~

4370 ~~B. At the discretion of the VSMP authority, such recorded instruments need not be required~~
 4371 ~~for stormwater management facilities designed to treat stormwater runoff primarily from an~~
 4372 ~~individual residential lot on which they are located, provided it is demonstrated to the satisfaction~~
 4373 ~~of the VSMP authority that future maintenance of such facilities will be addressed through an~~
 4374 ~~enforceable mechanism at the discretion of the VSMP authority.~~

4375 ~~C. In addition to the requirements of subsection A of this section, any owner of property that~~
 4376 ~~is zoned for residential use and on which is located a privately owned stormwater management~~
 4377 ~~facility serving one or more residential properties shall record the long-term maintenance and~~
 4378 ~~inspection requirements for such facility with the deed for the property.~~

4379 **9VAC25-870-114. Inspections. (Repealed.)**

4380 ~~A. The VSMP authority shall inspect the land-disturbing activity during construction for:~~

- 4381 ~~1. Compliance with the approved erosion and sediment control plan;~~
- 4382 ~~2. Compliance with the approved stormwater management plan;~~
- 4383 ~~3. Development, updating, and implementation of a pollution prevention plan; and~~
- 4384 ~~4. Development and implementation of any additional control measures necessary to~~
 4385 ~~address a TMDL.~~

4386 ~~B. The VSMP authority shall establish an inspection program that ensures that stormwater~~
 4387 ~~management facilities are being adequately maintained as designed after completion of land-~~
 4388 ~~disturbing activities. Inspection programs shall:~~

- 4389 ~~1. Be approved by the department;~~
- 4390 ~~2. Ensure that each stormwater management facility is inspected by the VSMP authority,~~
 4391 ~~or its designee, not to include the owner, except as provided in subsections C and D of~~
 4392 ~~this section, at least once every five years; and~~
- 4393 ~~3. Be documented by records.~~

4394 ~~C. The VSMP authority may utilize the inspection reports of the owner of a stormwater~~
 4395 ~~management facility as part of an inspection program established in subsection B of this section~~
 4396 ~~if the inspection is conducted by a person who is licensed as a professional engineer, architect,~~
 4397 ~~landscape architect, or land surveyor pursuant to Article 1 (§ 54.1-400 et seq.) of Chapter 4 of~~
 4398 ~~Title 54.1; a person who works under the direction and oversight of the licensed professional~~
 4399 ~~engineer, architect, landscape architect, or land surveyor; or a person who holds an appropriate~~
 4400 ~~certificate of competence from the department.~~

4401 D. If a recorded instrument is not required pursuant to 9VAC25-870-112, a VSMP authority
 4402 shall develop a strategy for addressing maintenance of stormwater management facilities
 4403 designed to treat stormwater runoff primarily from an individual residential lot on which they are
 4404 located. Such a strategy may include periodic inspections, homeowner outreach and education,
 4405 or other method targeted at promoting the long-term maintenance of such facilities. Such facilities
 4406 shall not be subject to the requirement for an inspection to be conducted by the VSMP authority.

4407 **9VAC25-870-114. Inspections. (Repealed.)**

4408 A. The VSMP authority shall inspect the land-disturbing activity during construction for:

- 4409 1. Compliance with the approved erosion and sediment control plan;
- 4410 2. Compliance with the approved stormwater management plan;
- 4411 3. Development, updating, and implementation of a pollution prevention plan; and
- 4412 4. Development and implementation of any additional control measures necessary to
 4413 address a TMDL.

4414 B. The VSMP authority shall establish an inspection program that ensures that stormwater
 4415 management facilities are being adequately maintained as designed after completion of land-
 4416 disturbing activities. Inspection programs shall:

- 4417 1. Be approved by the department;
- 4418 2. Ensure that each stormwater management facility is inspected by the VSMP authority,
 4419 or its designee, not to include the owner, except as provided in subsections C and D of
 4420 this section, at least once every five years; and
- 4421 3. Be documented by records.

4422 C. The VSMP authority may utilize the inspection reports of the owner of a stormwater
 4423 management facility as part of an inspection program established in subsection B of this section
 4424 if the inspection is conducted by a person who is licensed as a professional engineer, architect,
 4425 landscape architect, or land surveyor pursuant to Article 1 (§ 54.1-400 et seq.) of Chapter 4 of
 4426 Title 54.1; a person who works under the direction and oversight of the licensed professional
 4427 engineer, architect, landscape architect, or land surveyor; or a person who holds an appropriate
 4428 certificate of competence from the department.

4429 D. If a recorded instrument is not required pursuant to 9VAC25-870-112, a VSMP authority
 4430 shall develop a strategy for addressing maintenance of stormwater management facilities
 4431 designed to treat stormwater runoff primarily from an individual residential lot on which they are
 4432 located. Such a strategy may include periodic inspections, homeowner outreach and education,
 4433 or other method targeted at promoting the long-term maintenance of such facilities. Such facilities
 4434 shall not be subject to the requirement for an inspection to be conducted by the VSMP authority.

4435 **9VAC25-870-116. Enforcement. (Repealed.)**

4436 A. A locality's VSMP authority shall incorporate components from subdivisions 1 and 2 of this
 4437 subsection.

4438 1. Informal and formal administrative enforcement procedures may include:

- 4439 a. Verbal warnings and inspection reports;
- 4440 b. Notices of corrective action;
- 4441 c. Consent special orders and civil charges in accordance with subdivision 6 of § 62.1-
 4442 44.15:25 and § 62.1-44.15:48 D 2 of the Code of Virginia;
- 4443 d. Notices to comply in accordance with § 62.1-44.15:37 of the Code of Virginia;
- 4444 e. Special orders in accordance with subdivision 6 of § 62.1-44.15:25 of the Code of
 4445 Virginia;

- 4446 f. Emergency special orders in accordance with subdivision 6 of § 62.1-44.15:25 of the
4447 Code of Virginia; and
- 4448 g. Public notice and comment periods for proposed settlements and consent special
4449 orders pursuant to 9VAC25-870-660.
- 4450 2. Civil and criminal judicial enforcement procedures may include:
- 4451 a. Schedule of civil penalties in accordance with § 62.1-44.15:48 of the Code of
4452 Virginia;
- 4453 b. Criminal penalties in accordance with § 62.1-44.15:48 B and C of the Code of
4454 Virginia; and
- 4455 c. Injunctions in accordance with §§ 62.1-44.15:25, 62.1-44.15:42, and 62.1-44.15:48
4456 D 1 of the Code of Virginia.
- 4457 B. A locality's VSMP authority shall develop policies and procedures that outline the steps to
4458 be taken regarding enforcement actions under the Stormwater Management Act and attendant
4459 regulations and local ordinances.
- 4460 C. Pursuant to § 62.1-44.15:48 A of the Code of Virginia, the locality's VSMP authority has
4461 the discretion to impose a maximum penalty of \$32,500 per violation per day in accordance with
4462 § 62.1-44.15:48 A of the Code of Virginia. Such penalty may reflect the degree of harm caused
4463 by the violation and take into account the economic benefit to the violator from noncompliance.
4464 Violations include, but are not limited to:
- 4465 1. No state permit registration;
- 4466 2. No SWPPP;
- 4467 3. Incomplete SWPPP;
- 4468 4. SWPPP not available for review;
- 4469 5. No approved erosion and sediment control plan;
- 4470 6. Failure to install stormwater BMPs or erosion and sediment controls;
- 4471 7. Stormwater BMPs or erosion and sediment controls improperly installed or maintained;
- 4472 8. Operational deficiencies;
- 4473 9. Failure to conduct required inspections;
- 4474 10. Incomplete, improper, or missed inspections.
- 4475 D. Pursuant to subdivision 2 of § 62.1-44.15:25 of the Code of Virginia, authorization to
4476 administer a VSMP program shall not remove from the department the authority to enforce the
4477 provisions of the Act and attendant regulations.
- 4478 E. The department may terminate state permit coverage during its term and require application
4479 for an individual state permit or deny a state permit renewal application for failure to comply with
4480 state permit conditions or on its own initiative in accordance with the Act and this chapter.
- 4481 F. Pursuant to § 62.1-44.15:48 A of the Code of Virginia, civil penalties recovered by a
4482 locality's VSMP authority shall be paid into the treasury of the locality in which the violation
4483 occurred and are to be used for the purpose of minimizing, preventing, managing, or mitigating
4484 pollution of the waters of the locality and abating environmental pollution therein in such manner
4485 as the court may, by order, direct.
- 4486 G. The VSMP authority may use additional guidance concerning suggested penalty amounts
4487 provided by the department.
- 4488 **9VAC25-870-116. Enforcement. (Repealed.)**
- 4489 A. A locality's VSMP authority shall incorporate components from subdivisions 1 and 2 of this
4490 subsection.

- 4491 1. Informal and formal administrative enforcement procedures may include:
- 4492 a. Verbal warnings and inspection reports;
- 4493 b. Notices of corrective action;
- 4494 c. Consent special orders and civil charges in accordance with subdivision 6 of § 62.1-
- 4495 44.15:25 and § 62.1-44.15:48 D 2 of the Code of Virginia;
- 4496 d. Notices to comply in accordance with § 62.1-44.15:37 of the Code of Virginia;
- 4497 e. Special orders in accordance with subdivision 6 of § 62.1-44.15:25 of the Code of
- 4498 Virginia;
- 4499 f. Emergency special orders in accordance with subdivision 6 of § 62.1-44.15:25 of the
- 4500 Code of Virginia; and
- 4501 g. Public notice and comment periods for proposed settlements and consent special
- 4502 orders pursuant to 9VAC25-870-660.
- 4503 2. Civil and criminal judicial enforcement procedures may include:
- 4504 a. Schedule of civil penalties in accordance with § 62.1-44.15:48 of the Code of
- 4505 Virginia;
- 4506 b. Criminal penalties in accordance with § 62.1-44.15:48 B and C of the Code of
- 4507 Virginia; and
- 4508 c. Injunctions in accordance with §§ 62.1-44.15:25, 62.1-44.15:42, and 62.1-44.15:48
- 4509 D 1 of the Code of Virginia.
- 4510 B. A locality's VSMP authority shall develop policies and procedures that outline the steps to
- 4511 be taken regarding enforcement actions under the Stormwater Management Act and attendant
- 4512 regulations and local ordinances.
- 4513 C. Pursuant to § 62.1-44.15:48 A of the Code of Virginia, the locality's VSMP authority has
- 4514 the discretion to impose a maximum penalty of \$32,500 per violation per day in accordance with
- 4515 § 62.1-44.15:48 A of the Code of Virginia. Such penalty may reflect the degree of harm caused
- 4516 by the violation and take into account the economic benefit to the violator from noncompliance.
- 4517 Violations include, but are not limited to:
- 4518 1. No state permit registration;
- 4519 2. No SWPPP;
- 4520 3. Incomplete SWPPP;
- 4521 4. SWPPP not available for review;
- 4522 5. No approved erosion and sediment control plan;
- 4523 6. Failure to install stormwater BMPs or erosion and sediment controls;
- 4524 7. Stormwater BMPs or erosion and sediment controls improperly installed or maintained;
- 4525 8. Operational deficiencies;
- 4526 9. Failure to conduct required inspections;
- 4527 10. Incomplete, improper, or missed inspections.
- 4528 D. Pursuant to subdivision 2 of § 62.1-44.15:25 of the Code of Virginia, authorization to
- 4529 administer a VSMP program shall not remove from the department the authority to enforce the
- 4530 provisions of the Act and attendant regulations.
- 4531 E. The department may terminate state permit coverage during its term and require application
- 4532 for an individual state permit or deny a state permit renewal application for failure to comply with
- 4533 state permit conditions or on its own initiative in accordance with the Act and this chapter.
- 4534 F. Pursuant to § 62.1-44.15:48 A of the Code of Virginia, civil penalties recovered by a
- 4535 locality's VSMP authority shall be paid into the treasury of the locality in which the violation

4536 occurred and are to be used for the purpose of minimizing, preventing, managing, or mitigating
 4537 pollution of the waters of the locality and abating environmental pollution therein in such manner
 4538 as the court may, by order, direct.

4539 G. The VSMP authority may use additional guidance concerning suggested penalty amounts
 4540 provided by the department.

4541 **9VAC25-870-118. Hearings. (Repealed.)**

4542 Any permit applicant, permittee, or person subject to state permit requirements under the
 4543 Stormwater Management Act aggrieved by any action of the department taken without a formal
 4544 hearing may demand in writing a formal hearing pursuant to § 62.1-44.15:44 of the Code of
 4545 Virginia and shall ensure that all hearings held under this chapter shall be conducted in a manner
 4546 consistent with § 62.1-44.26 of the Code of Virginia or as otherwise provided by law. A locality
 4547 holding hearings under this chapter shall do so in a manner consistent with local hearing
 4548 procedures. The provisions of the Administrative Process Act (§ 2.2-4000 et seq. of the Code of
 4549 Virginia) shall not apply to decisions rendered by localities. Appeals of decisions rendered by
 4550 localities shall be conducted in accordance with local appeal procedures and shall include an
 4551 opportunity for judicial review in the circuit court of the locality in which the land disturbance occurs
 4552 or is proposed to occur. Unless otherwise provided by law, the circuit court shall conduct such
 4553 review in accordance with the standards established in § 2.2-4027 of the Code of Virginia, and
 4554 the decisions of the circuit court shall be subject to review by the Court of Appeals, as in other
 4555 cases under this chapter.

4556 **9VAC25-870-118. Hearings. (Repealed.)**

4557 Any permit applicant, permittee, or person subject to state permit requirements under the
 4558 Stormwater Management Act aggrieved by any action of the department taken without a formal
 4559 hearing may demand in writing a formal hearing pursuant to § 62.1-44.15:44 of the Code of
 4560 Virginia and shall ensure that all hearings held under this chapter shall be conducted in a manner
 4561 consistent with § 62.1-44.26 of the Code of Virginia or as otherwise provided by law. A locality
 4562 holding hearings under this chapter shall do so in a manner consistent with local hearing
 4563 procedures. The provisions of the Administrative Process Act (§ 2.2-4000 et seq. of the Code of
 4564 Virginia) shall not apply to decisions rendered by localities. Appeals of decisions rendered by
 4565 localities shall be conducted in accordance with local appeal procedures and shall include an
 4566 opportunity for judicial review in the circuit court of the locality in which the land disturbance occurs
 4567 or is proposed to occur. Unless otherwise provided by law, the circuit court shall conduct such
 4568 review in accordance with the standards established in § 2.2-4027 of the Code of Virginia, and
 4569 the decisions of the circuit court shall be subject to review by the Court of Appeals, as in other
 4570 cases under this chapter.

4571 **9VAC25-870-122. Exceptions. (Repealed.)**

4572 A. A VSMP authority may grant exceptions to the provisions of Part II B or Part II C of this
 4573 chapter. An exception may be granted provided that (i) the exception is the minimum necessary
 4574 to afford relief, (ii) reasonable and appropriate conditions shall be imposed as necessary upon
 4575 any exception granted so that the intent of the Act and this chapter are preserved, (iii) granting
 4576 the exception will not confer any special privileges that are denied in other similar circumstances,
 4577 and (iv) exception requests are not based upon conditions or circumstances that are self-imposed
 4578 or self-created.

4579 B. Economic hardship alone is not sufficient reason to grant an exception from the
 4580 requirements of this chapter.

4581 C. Under no circumstance shall the VSMP authority grant an exception to the requirement
 4582 that the land-disturbing activity obtain required state permits, nor approve the use of a BMP not
 4583 found on the Virginia Stormwater BMP Clearinghouse Website, except where allowed under Part
 4584 II C (9VAC25-870-93 et seq.) of this chapter.

4585 D. Exceptions to requirements for phosphorus reductions shall not be allowed unless offsite
4586 options available through 9VAC25-870-69 have been considered and found not available.

4587 E. A record of all exceptions granted shall be maintained by the VSMP authority in accordance
4588 with 9VAC25-870-126.

4589 **9VAC25-870-122. Exceptions. (Repealed.)**

4590 A. A VSMP authority may grant exceptions to the provisions of Part II B or Part II C of this
4591 chapter. An exception may be granted provided that (i) the exception is the minimum necessary
4592 to afford relief, (ii) reasonable and appropriate conditions shall be imposed as necessary upon
4593 any exception granted so that the intent of the Act and this chapter are preserved, (iii) granting
4594 the exception will not confer any special privileges that are denied in other similar circumstances,
4595 and (iv) exception requests are not based upon conditions or circumstances that are self-imposed
4596 or self-created.

4597 B. Economic hardship alone is not sufficient reason to grant an exception from the
4598 requirements of this chapter.

4599 C. Under no circumstance shall the VSMP authority grant an exception to the requirement
4600 that the land-disturbing activity obtain required state permits, nor approve the use of a BMP not
4601 found on the Virginia Stormwater BMP Clearinghouse Website, except where allowed under Part
4602 II C (9VAC25-870-93 et seq.) of this chapter.

4603 D. Exceptions to requirements for phosphorus reductions shall not be allowed unless offsite
4604 options available through 9VAC25-870-69 have been considered and found not available.

4605 E. A record of all exceptions granted shall be maintained by the VSMP authority in accordance
4606 with 9VAC25-870-126.

4607 **9VAC25-870-126. Reports and recordkeeping. (Repealed.)**

4608 A. On a fiscal year basis (July 1 to June 30), a VSMP authority shall report to the department
4609 by October 1 of each year in a format provided by the department. The information to be provided
4610 shall include the following:

4611 1. Information on each permanent stormwater management facility completed during the
4612 fiscal year to include type of stormwater management facility, geographic coordinates,
4613 acres treated, and the surface waters or karst features into which the stormwater
4614 management facility will discharge;

4615 2. Number and type of enforcement actions during the fiscal year; and

4616 3. Number of exceptions granted during the fiscal year.

4617 B. A VSMP authority shall keep records in accordance with the following:

4618 1. Project records, including approved stormwater management plans, shall be kept for
4619 three years after state permit termination or project completion.

4620 2. Stormwater management facility inspection records shall be documented and retained
4621 for at least five years from the date of inspection.

4622 3. Construction record drawings shall be maintained in perpetuity or until a stormwater
4623 management facility is removed.

4624 4. All registration statements submitted in accordance with 9VAC25-870-59 shall be
4625 documented and retained for at least three years from the date of project completion or
4626 state permit termination.

4627 **9VAC25-870-126. Reports and recordkeeping. (Repealed.)**

4628 A. On a fiscal year basis (July 1 to June 30), a VSMP authority shall report to the department
4629 by October 1 of each year in a format provided by the department. The information to be provided
4630 shall include the following:

4631 ~~1. Information on each permanent stormwater management facility completed during the~~
 4632 ~~fiscal year to include type of stormwater management facility, geographic coordinates,~~
 4633 ~~acres treated, and the surface waters or karst features into which the stormwater~~
 4634 ~~management facility will discharge;~~

4635 ~~2. Number and type of enforcement actions during the fiscal year; and~~

4636 ~~3. Number of exceptions granted during the fiscal year.~~

4637 ~~B. A VSMP authority shall keep records in accordance with the following:~~

4638 ~~1. Project records, including approved stormwater management plans, shall be kept for~~
 4639 ~~three years after state permit termination or project completion.~~

4640 ~~2. Stormwater management facility inspection records shall be documented and retained~~
 4641 ~~for at least five years from the date of inspection.~~

4642 ~~3. Construction record drawings shall be maintained in perpetuity or until a stormwater~~
 4643 ~~management facility is removed.~~

4644 ~~4. All registration statements submitted in accordance with 9VAC25-870-59 shall be~~
 4645 ~~documented and retained for at least three years from the date of project completion or~~
 4646 ~~state permit termination.~~

4647 ~~Part III-B~~

4648 ~~Department of Environmental Quality Procedures for Review of VSMPs~~

4649 ~~**9VAC25-870-142. Authority and applicability. (Repealed.)**~~

4650 ~~This part specifies the criteria that the department will utilize in reviewing a VSMP authority's~~
 4651 ~~administration of a VSMP pursuant to § 62.1-44.15:38 of the Code of Virginia following the~~
 4652 ~~department's approval of such program in accordance with the Act and this chapter.~~

4653 ~~**9VAC25-870-142. Authority and applicability. (Repealed.)**~~

4654 ~~This part specifies the criteria that the department will utilize in reviewing a VSMP authority's~~
 4655 ~~administration of a VSMP pursuant to § 62.1-44.15:38 of the Code of Virginia following the~~
 4656 ~~department's approval of such program in accordance with the Act and this chapter.~~

4657 ~~**9VAC25-870-144. Virginia stormwater management program review. (Repealed.)**~~

4658 ~~A. The department shall review each department-approved VSMP at least once every five~~
 4659 ~~years on a review schedule approved by the department. The department may review a VSMP~~
 4660 ~~on a more frequent basis if deemed necessary by the department and shall notify the VSMP~~
 4661 ~~authority if such review is scheduled.~~

4662 ~~B. The review of a department-approved VSMP shall consist of the following:~~

4663 ~~1. Consultation with the VSMP administrator or designee;~~

4664 ~~2. A review of the local ordinance(s) and other applicable documents;~~

4665 ~~3. A review of a subset of the plans approved by the VSMP authority for consistency of~~
 4666 ~~application including exceptions granted and calculations or other documentation that~~
 4667 ~~demonstrates that required nutrient reductions are achieved using appropriate on-site and~~
 4668 ~~off-site compliance options;~~

4669 ~~4. A review of the funding and staffing plan developed in accordance with 9VAC25-870-~~
 4670 ~~148;~~

4671 ~~5. An inspection of regulated activities; and~~

4672 ~~6. A review of enforcement actions and an accounting of amounts recovered through~~
 4673 ~~enforcement actions where applicable.~~

4674 C. The department shall coordinate the once per five year review with its other program
4675 reviews for the same entity to avoid redundancy.

4676 D. The department shall determine if the VSMP and ordinances where applicable are
4677 consistent with the Act and state stormwater management regulations and notify the VSMP
4678 authority of its findings. The Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia)
4679 shall govern the review activities and proceedings of the department and the judicial review
4680 thereof.

4681 E. If the department determines that the deficiencies noted in the review will cause the VSMP
4682 to be out of compliance with the Act and attendant regulations, the department shall notify the
4683 VSMP authority concerning the deficiencies and provide a reasonable period of time in
4684 accordance with § 62.1-44.15:38 of the Code of Virginia for corrective action to be taken. If the
4685 VSMP authority agrees to the corrective action approved by the department, the VSMP will be
4686 considered to be conditionally compliant with the Act and attendant regulations until a subsequent
4687 finding of compliance is issued by the department. If the VSMP authority fails to implement the
4688 necessary compliance actions identified by the department within the specified time, the
4689 department may take action pursuant to § 62.1-44.15:38 of the Code of Virginia.

4690 **9VAC25-870-144. Virginia stormwater management program review. (Repealed.)**

4691 A. The department shall review each department-approved VSMP at least once every five
4692 years on a review schedule approved by the department. The department may review a VSMP
4693 on a more frequent basis if deemed necessary by the department and shall notify the VSMP
4694 authority if such review is scheduled.

4695 B. The review of a department-approved VSMP shall consist of the following:

- 4696 1. Consultation with the VSMP administrator or designee;
- 4697 2. A review of the local ordinance(s) and other applicable documents;
- 4698 3. A review of a subset of the plans approved by the VSMP authority for consistency of
4699 application including exceptions granted and calculations or other documentation that
4700 demonstrates that required nutrient reductions are achieved using appropriate on-site and
4701 off-site compliance options;
- 4702 4. A review of the funding and staffing plan developed in accordance with 9VAC25-870-
4703 148;
- 4704 5. An inspection of regulated activities; and
- 4705 6. A review of enforcement actions and an accounting of amounts recovered through
4706 enforcement actions where applicable.

4707 C. The department shall coordinate the once per five year review with its other program
4708 reviews for the same entity to avoid redundancy.

4709 D. The department shall determine if the VSMP and ordinances where applicable are
4710 consistent with the Act and state stormwater management regulations and notify the VSMP
4711 authority of its findings. The Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia)
4712 shall govern the review activities and proceedings of the department and the judicial review
4713 thereof.

4714 E. If the department determines that the deficiencies noted in the review will cause the VSMP
4715 to be out of compliance with the Act and attendant regulations, the department shall notify the
4716 VSMP authority concerning the deficiencies and provide a reasonable period of time in
4717 accordance with § 62.1-44.15:38 of the Code of Virginia for corrective action to be taken. If the
4718 VSMP authority agrees to the corrective action approved by the department, the VSMP will be
4719 considered to be conditionally compliant with the Act and attendant regulations until a subsequent
4720 finding of compliance is issued by the department. If the VSMP authority fails to implement the

4721 necessary compliance actions identified by the department within the specified time, the
 4722 department may take action pursuant to § 62.1-44.15:38 of the Code of Virginia.

4723 Part III-C

4724 Authorization Procedures for Virginia Stormwater Management Programs

4725 **9VAC25-870-146. Authority and applicability. (Repealed.)**

4726 Subdivision A 1 of § 62.1-44.15:28 of the Code of Virginia requires that the board establish
 4727 standards and procedures for administering a VSMP. In accordance with that requirement, and
 4728 with the further authority conferred upon the department by the Virginia Stormwater Management
 4729 Act, this part specifies the procedures the department will utilize in authorizing a VSMP authority
 4730 to administer a VSMP.

4731 **9VAC25-870-146. Authority and applicability. (Repealed.)**

4732 Subdivision A 1 of § 62.1-44.15:28 of the Code of Virginia requires that the board establish
 4733 standards and procedures for administering a VSMP. In accordance with that requirement, and
 4734 with the further authority conferred upon the department by the Virginia Stormwater Management
 4735 Act, this part specifies the procedures the department will utilize in authorizing a VSMP authority
 4736 to administer a VSMP.

4737 **9VAC25-870-148. Virginia stormwater management program administrative requirements.**
 4738 **(Repealed.)**

4739 A. A VSMP shall provide for the following:

- 4740 1. Identification of the authority accepting complete registration statements and of the
 4741 authorities completing plan review, plan approval, inspection, and enforcement;
- 4742 2. Submission and approval of erosion and sediment control plans in accordance with the
 4743 Virginia Erosion and Sediment Control Law and attendant regulations and the submission
 4744 and approval of stormwater management plans;
- 4745 3. Requirements to ensure compliance with 9VAC25-870-54, 9VAC25-870-55, and
 4746 9VAC25-870-56;
- 4747 4. Requirements for inspections and monitoring of construction activities by the operator
 4748 for compliance with local ordinances;
- 4749 5. Requirements for long-term inspection and maintenance of stormwater management
 4750 facilities;
- 4751 6. Collection, distribution to the state if required, and expenditure of fees;
- 4752 7. Enforcement procedures and civil penalties where applicable;
- 4753 8. Policies and procedures to obtain and release bonds, if applicable; and
- 4754 9. Procedures for complying with the applicable reporting and recordkeeping requirements
 4755 in 9VAC25-870-126.

4756 B. A locality's VSMP authority shall adopt and enforce an ordinance that incorporates the
 4757 components set out in subdivisions 1 through 5 and 7 of subsection A of this section. Other VSMP
 4758 authorities shall provide supporting documentation that incorporates the components set out in
 4759 subdivisions 1 through 5 of subsection A of this section in a format acceptable to the department.

4760 C. Notice of termination of general permit coverage.

- 4761 1. A VSMP authority shall recommend that the department terminate coverage under a
 4762 General VPDES Permit for Discharges of Stormwater from Construction Activities
 4763 (Construction General Permit) within 60 days of receiving a complete notice of termination
 4764 from the operator of the construction activity.

4765 ~~2. Coverage under a Construction General Permit shall be deemed to be terminated 90~~
 4766 ~~days after the receipt by the VSMP authority of a complete notice of termination from the~~
 4767 ~~operator of the construction activity.~~

4768 ~~3. If a VSMP authority receives a notice of termination of a Construction General Permit~~
 4769 ~~that it determines to be incomplete, the VSMP authority shall, within a reasonable time,~~
 4770 ~~inform the operator of the construction activity of such incompleteness and provide the~~
 4771 ~~operator with a detailed list itemizing the elements of information that are missing from the~~
 4772 ~~notice.~~

4773 **~~9VAC25-870-148. Virginia stormwater management program administrative requirements.~~**
 4774 **~~(Repealed.)~~**

4775 ~~A. A VSMP shall provide for the following:~~

4776 ~~1. Identification of the authority accepting complete registration statements and of the~~
 4777 ~~authorities completing plan review, plan approval, inspection, and enforcement;~~

4778 ~~2. Submission and approval of erosion and sediment control plans in accordance with the~~
 4779 ~~Virginia Erosion and Sediment Control Law and attendant regulations and the submission~~
 4780 ~~and approval of stormwater management plans;~~

4781 ~~3. Requirements to ensure compliance with 9VAC25-870-54, 9VAC25-870-55, and~~
 4782 ~~9VAC25-870-56;~~

4783 ~~4. Requirements for inspections and monitoring of construction activities by the operator~~
 4784 ~~for compliance with local ordinances;~~

4785 ~~5. Requirements for long-term inspection and maintenance of stormwater management~~
 4786 ~~facilities;~~

4787 ~~6. Collection, distribution to the state if required, and expenditure of fees;~~

4788 ~~7. Enforcement procedures and civil penalties where applicable;~~

4789 ~~8. Policies and procedures to obtain and release bonds, if applicable; and~~

4790 ~~9. Procedures for complying with the applicable reporting and recordkeeping requirements~~
 4791 ~~in 9VAC25-870-126.~~

4792 ~~B. A locality's VSMP authority shall adopt and enforce an ordinance that incorporates the~~
 4793 ~~components set out in subdivisions 1 through 5 and 7 of subsection A of this section. Other VSMP~~
 4794 ~~authorities shall provide supporting documentation that incorporates the components set out in~~
 4795 ~~subdivisions 1 through 5 of subsection A of this section in a format acceptable to the department.~~

4796 ~~C. Notice of termination of general permit coverage.~~

4797 ~~1. A VSMP authority shall recommend that the department terminate coverage under a~~
 4798 ~~General VPDES Permit for Discharges of Stormwater from Construction Activities~~
 4799 ~~(Construction General Permit) within 60 days of receiving a complete notice of termination~~
 4800 ~~from the operator of the construction activity.~~

4801 ~~2. Coverage under a Construction General Permit shall be deemed to be terminated 90~~
 4802 ~~days after the receipt by the VSMP authority of a complete notice of termination from the~~
 4803 ~~operator of the construction activity.~~

4804 ~~3. If a VSMP authority receives a notice of termination of a Construction General Permit~~
 4805 ~~that it determines to be incomplete, the VSMP authority shall, within a reasonable time,~~
 4806 ~~inform the operator of the construction activity of such incompleteness and provide the~~
 4807 ~~operator with a detailed list itemizing the elements of information that are missing from the~~
 4808 ~~notice.~~

4809 **9VAC25-870-150. Authorization procedures for Virginia stormwater management**
 4810 **programs. (Repealed.)**

4811 A. A locality adopting a VSMP in accordance with § 62.1-44.15:27 of the Code of Virginia must
 4812 submit to the department an application package that, at a minimum, contains the following:

- 4813 1. The draft VSMP ordinance(s) as required in 9VAC25-870-148;
- 4814 2. A funding and staffing plan;
- 4815 3. The policies and procedures including, but not limited to:
- 4816 a. Agreements with soil and water conservation districts, adjacent localities, or other
 4817 public or private entities for the administration, plan review, inspection, and
 4818 enforcement components of the program; and
- 4819 b. Contracts with third-party professionals who hold certificates of competence in the
 4820 appropriate subject areas, as provided in subsection A of § 62.1-44.15:30 of the Code
 4821 of Virginia, to carry out any or all of the responsibilities that Article 2.3 (§ 62.1-44.15:24
 4822 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia requires of a VSMP
 4823 authority, including plan review and inspection but not including enforcement; and
- 4824 4. Such ordinances, plans, policies, and procedures must account for any town lying within
 4825 the county as part of the locality's VSMP program unless such towns choose to adopt their
 4826 own program.

4827 B. Upon receipt of an application package, the department or its designee shall have 30
 4828 calendar days to determine the completeness of the application package. If an application
 4829 package is deemed to be incomplete based on the criteria set out in subsection A of this section,
 4830 the department or its designee must identify to the VSMP authority applicant in writing the reasons
 4831 the application package is deemed deficient.

4832 C. Upon receipt of a complete application package, the department or its designee shall have
 4833 120 calendar days for the review of the application package, unless an extension of time, not to
 4834 exceed 12 months unless otherwise specified by the department in accordance with § 62.1-
 4835 44.15:27 of the Code of Virginia, is requested by the department, provided the VSMP authority
 4836 applicant has made substantive progress. During the 120-day review period, the department or
 4837 its designee shall either approve or disapprove the application, or notify the locality of a time
 4838 extension for the review, and communicate its decision to the VSMP authority applicant in writing.
 4839 If the application is not approved, the reasons for not approving the application shall be provided
 4840 to the VSMP authority applicant in writing. Approval or denial shall be based on the application's
 4841 compliance with the Virginia Stormwater Management Act and this chapter.

4842 D. A VSMP authority applicant in accordance with § 62.1-44.15:27 of the Code of Virginia
 4843 shall submit a complete application package for the department's review pursuant to a schedule
 4844 set by the department in accordance with § 62.1-44.15:27 and shall adopt a VSMP consistent
 4845 with the Act and this chapter within the timeframe established pursuant to § 62.1-44.15:27 or
 4846 otherwise established by the department.

4847 E. A locality or other authorized entity not required to adopt a VSMP in accordance with §
 4848 62.1-44.15:27 of the Code of Virginia but electing to adopt a VSMP shall notify the department.
 4849 Such notification shall include a proposed adoption date for a local stormwater management
 4850 program on or after July 1, 2014, in accordance with a schedule developed by the department.

4851 **9VAC25-870-150. Authorization procedures for Virginia stormwater management**
 4852 **programs. (Repealed.)**

4853 A. A locality adopting a VSMP in accordance with § 62.1-44.15:27 of the Code of Virginia must
 4854 submit to the department an application package that, at a minimum, contains the following:

- 4855 1. The draft VSMP ordinance(s) as required in 9VAC25-870-148;

- 4856 2. A funding and staffing plan;
- 4857 3. The policies and procedures including, but not limited to:
- 4858 a. Agreements with soil and water conservation districts, adjacent localities, or other
- 4859 public or private entities for the administration, plan review, inspection, and
- 4860 enforcement components of the program; and
- 4861 b. Contracts with third-party professionals who hold certificates of competence in the
- 4862 appropriate subject areas, as provided in subsection A of § 62.1-44.15:30 of the Code
- 4863 of Virginia, to carry out any or all of the responsibilities that Article 2.3 (§ 62.1-44.15:24
- 4864 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia requires of a VSMP
- 4865 authority, including plan review and inspection but not including enforcement; and
- 4866 4. Such ordinances, plans, policies, and procedures must account for any town lying within
- 4867 the county as part of the locality's VSMP program unless such towns choose to adopt their
- 4868 own program.
- 4869 B. Upon receipt of an application package, the department or its designee shall have 30
- 4870 calendar days to determine the completeness of the application package. If an application
- 4871 package is deemed to be incomplete based on the criteria set out in subsection A of this section,
- 4872 the department or its designee must identify to the VSMP authority applicant in writing the reasons
- 4873 the application package is deemed deficient.
- 4874 C. Upon receipt of a complete application package, the department or its designee shall have
- 4875 120 calendar days for the review of the application package, unless an extension of time, not to
- 4876 exceed 12 months unless otherwise specified by the department in accordance with § 62.1-
- 4877 44.15:27 of the Code of Virginia, is requested by the department, provided the VSMP authority
- 4878 applicant has made substantive progress. During the 120-day review period, the department or
- 4879 its designee shall either approve or disapprove the application, or notify the locality of a time
- 4880 extension for the review, and communicate its decision to the VSMP authority applicant in writing.
- 4881 If the application is not approved, the reasons for not approving the application shall be provided
- 4882 to the VSMP authority applicant in writing. Approval or denial shall be based on the application's
- 4883 compliance with the Virginia Stormwater Management Act and this chapter.
- 4884 D. A VSMP authority applicant in accordance with § 62.1-44.15:27 of the Code of Virginia
- 4885 shall submit a complete application package for the department's review pursuant to a schedule
- 4886 set by the department in accordance with § 62.1-44.15:27 and shall adopt a VSMP consistent
- 4887 with the Act and this chapter within the timeframe established pursuant to § 62.1-44.15:27 or
- 4888 otherwise established by the department.
- 4889 E. A locality or other authorized entity not required to adopt a VSMP in accordance with §
- 4890 62.1-44.15:27 of the Code of Virginia but electing to adopt a VSMP shall notify the department.
- 4891 Such notification shall include a proposed adoption date for a local stormwater management
- 4892 program on or after July 1, 2014, in accordance with a schedule developed by the department.

4893 Part IV

4894 Technical Criteria and State Permit Application Requirements for State Projects

4895 **9VAC25-870-160. Technical criteria and requirements for state projects. (Repealed.)**

4896 A. This part specifies technical criteria and administrative procedures for all state projects.

4897 B. Stormwater management state permit applications prepared for state projects shall comply

4898 with the technical criteria outlined in Part II (9VAC25-870-40 et seq.) of this chapter and, to the

4899 largest extent practicable, any locality's VSMP authority's technical requirements adopted

4900 pursuant to the Act. It shall be the responsibility of the state agency to demonstrate that the

4901 locality's VSMP authority's technical requirements are not practicable for the project under

4902 consideration.

4903 C. The department may establish criteria for selecting either the site or a planning area on
4904 which to apply the water quality criteria.

4905 D. As a minimum, a stormwater management state permit application shall contain the
4906 following:

- 4907 1. The location and the design of the proposed stormwater management facilities.
- 4908 2. Overall site plan with pre-developed and post-developed condition drainage area maps.
- 4909 3. Comprehensive hydrologic and hydraulic computations of the predevelopment and
4910 postdevelopment runoff conditions for the required design storms, considered individually.
- 4911 4. Calculations verifying compliance with the water quality requirements.
- 4912 5. A description of the requirements for maintenance of the stormwater management
4913 facilities and a recommended schedule of inspection and maintenance.
- 4914 6. The identification of a person or persons who will be responsible for maintenance.
- 4915 7. All final plan elements, specifications, or calculations whose preparation requires a
4916 license under Chapter 4 (§ 54.1-400 et seq.) or 22 (§ 54.1-2200 et seq.) of Title 54.1 of
4917 the Code of Virginia shall be appropriately signed and sealed by a professional who is
4918 licensed to engage in practice in the Commonwealth of Virginia. Nothing in this subsection
4919 shall authorize any person to engage in practice outside his area of professional
4920 competence.

4921 **9VAC25-870-160. Technical criteria and requirements for state projects. (Repealed.)**

4922 A. This part specifies technical criteria and administrative procedures for all state projects.

4923 B. Stormwater management state permit applications prepared for state projects shall comply
4924 with the technical criteria outlined in Part II (9VAC25-870-40 et seq.) of this chapter and, to the
4925 largest extent practicable, any locality's VSMP authority's technical requirements adopted
4926 pursuant to the Act. It shall be the responsibility of the state agency to demonstrate that the
4927 locality's VSMP authority's technical requirements are not practicable for the project under
4928 consideration.

4929 C. The department may establish criteria for selecting either the site or a planning area on
4930 which to apply the water quality criteria.

4931 D. As a minimum, a stormwater management state permit application shall contain the
4932 following:

- 4933 1. The location and the design of the proposed stormwater management facilities.
- 4934 2. Overall site plan with pre-developed and post-developed condition drainage area maps.
- 4935 3. Comprehensive hydrologic and hydraulic computations of the predevelopment and
4936 postdevelopment runoff conditions for the required design storms, considered individually.
- 4937 4. Calculations verifying compliance with the water quality requirements.
- 4938 5. A description of the requirements for maintenance of the stormwater management
4939 facilities and a recommended schedule of inspection and maintenance.
- 4940 6. The identification of a person or persons who will be responsible for maintenance.
- 4941 7. All final plan elements, specifications, or calculations whose preparation requires a
4942 license under Chapter 4 (§ 54.1-400 et seq.) or 22 (§ 54.1-2200 et seq.) of Title 54.1 of
4943 the Code of Virginia shall be appropriately signed and sealed by a professional who is
4944 licensed to engage in practice in the Commonwealth of Virginia. Nothing in this subsection
4945 shall authorize any person to engage in practice outside his area of professional
4946 competence.

4947 **9VAC25-870-170. Requirements for state stormwater management annual standards and**
 4948 **specifications. (Repealed.)**

4949 A. Standards and specifications may, and after June 30, 2014, shall, be submitted to the
 4950 department by a state agency on an annual basis. Such standards and specifications shall be
 4951 consistent with the requirements of the Act, this chapter, the General Permit for Discharges of
 4952 Stormwater from Construction Activities (9VAC25-880), and the Erosion and Sediment Control
 4953 Law and associated regulations. Each project constructed in accordance with the requirements
 4954 of the Act, this chapter, and where required standards and specifications shall obtain coverage
 4955 issued under the state general permit prior to land disturbance. State agency stormwater
 4956 management standards and specifications describe how land-disturbing activities shall be
 4957 conducted and shall include, but are not limited to:

- 4958 1. Technical criteria to meet the requirements of the Act and this chapter;
- 4959 2. Provisions for the preparation of individual stormwater management and erosion and
 4960 sediment control plans for each project. In addition, the individual plans, to the maximum
 4961 extent practicable, shall comply with any locality's VSMP authority's technical
 4962 requirements adopted pursuant to the Act. It shall be the responsibility of the state agency
 4963 to demonstrate that the locality's VSMP authority's technical requirements are not
 4964 practicable for the project under consideration;
- 4965 3. Provisions for the long-term responsibility and maintenance of stormwater management
 4966 control devices and other techniques specified to manage the quantity and quality of
 4967 runoff, including an inspection and maintenance schedule, shall be developed and
 4968 implemented;
- 4969 4. Provisions for erosion and sediment control and stormwater management program
 4970 administration, plan design, review and approval, and construction inspection and
 4971 enforcement;
- 4972 5. Provisions for ensuring that responsible personnel and contractors obtain certifications
 4973 or qualifications for erosion and sediment control and stormwater management
 4974 comparable to those required for VSMP authorities;
- 4975 6. Implementation of a project tracking and notification system to the department of all
 4976 land-disturbing activities covered under the Act and this chapter; and
- 4977 7. Requirements for documenting on-site changes as they occur to ensure compliance
 4978 with the requirements of the Act and this chapter.

4979 B. Copies of such stormwater management specifications and standards including, but not
 4980 limited to, design manuals, technical guides and handbooks, shall be submitted.

4981 **9VAC25-870-170. Requirements for state stormwater management annual standards and**
 4982 **specifications. (Repealed.)**

4983 A. Standards and specifications may, and after June 30, 2014, shall, be submitted to the
 4984 department by a state agency on an annual basis. Such standards and specifications shall be
 4985 consistent with the requirements of the Act, this chapter, the General Permit for Discharges of
 4986 Stormwater from Construction Activities (9VAC25-880), and the Erosion and Sediment Control
 4987 Law and associated regulations. Each project constructed in accordance with the requirements
 4988 of the Act, this chapter, and where required standards and specifications shall obtain coverage
 4989 issued under the state general permit prior to land disturbance. State agency stormwater
 4990 management standards and specifications describe how land-disturbing activities shall be
 4991 conducted and shall include, but are not limited to:

- 4992 1. Technical criteria to meet the requirements of the Act and this chapter;
- 4993 2. Provisions for the preparation of individual stormwater management and erosion and
 4994 sediment control plans for each project. In addition, the individual plans, to the maximum

4995 extent practicable, shall comply with any locality's VSMP authority's technical
 4996 requirements adopted pursuant to the Act. It shall be the responsibility of the state agency
 4997 to demonstrate that the locality's VSMP authority's technical requirements are not
 4998 practicable for the project under consideration;

4999 3. Provisions for the long-term responsibility and maintenance of stormwater management
 5000 control devices and other techniques specified to manage the quantity and quality of
 5001 runoff, including an inspection and maintenance schedule, shall be developed and
 5002 implemented;

5003 4. Provisions for erosion and sediment control and stormwater management program
 5004 administration, plan design, review and approval, and construction inspection and
 5005 enforcement;

5006 5. Provisions for ensuring that responsible personnel and contractors obtain certifications
 5007 or qualifications for erosion and sediment control and stormwater management
 5008 comparable to those required for VSMP authorities;

5009 6. Implementation of a project tracking and notification system to the department of all
 5010 land-disturbing activities covered under the Act and this chapter; and

5011 7. Requirements for documenting on-site changes as they occur to ensure compliance
 5012 with the requirements of the Act and this chapter.

5013 B. Copies of such stormwater management specifications and standards including, but not
 5014 limited to, design manuals, technical guides and handbooks, shall be submitted.

5015 **9VAC25-870-180. Administrative procedures: stormwater management permit**
 5016 **applications. (Repealed.)**

5017 A. Within 30 days after receipt of a complete state permit application (registration statement)
 5018 submitted by a state agency, the department shall issue or deny the state permit.

5019 1. The department shall transmit its decision in writing to the state agency that submitted
 5020 the state permit application.

5021 2. Denied state permit applications shall be revised and resubmitted to the department.

5022 B. Approval of a state permit application (registration statement) for a state project shall be
 5023 subject to the following conditions:

5024 1. The state agency shall comply with all applicable requirements of the state permit and
 5025 this chapter, and shall certify that all land clearing, construction, land development, and
 5026 drainage will be done according to the state permit.

5027 2. The land development shall be conducted only within the area specified in the state
 5028 permit.

5029 3. No changes may be made to a plan for which a state permit has been issued without
 5030 review and written approval by the department.

5031 4. The department shall be notified one week prior to the pre-construction meeting and
 5032 one week prior to the commencement of land-disturbing activity.

5033 5. The department shall conduct random inspections of the project to ensure compliance
 5034 with the state permit.

5035 6. The department shall require inspections and reports from the state agency responsible
 5036 for compliance with the state permit and to determine if the measures required in the state
 5037 permit provide effective stormwater management.

5038 C. Compliance with the state permit shall be subject to the following conditions:

- 5039 1. Where inspection by the responsible state agency reveals deficiencies in carrying out
 5040 a permitted activity, the responsible state agency shall ensure compliance with the issued
 5041 state permit, state permit conditions, and plan specifications.
- 5042 2. Where inspections by department personnel reveal deficiencies in carrying out the state
 5043 permit, the responsible state agency shall be issued a notice to comply, with corrective
 5044 actions specified and the deadline within which the work shall be performed.
- 5045 3. Whenever the Commonwealth or any of its agencies fail to comply within the time
 5046 provided in a notice to comply, the director may petition the secretary of a given secretariat
 5047 or an agency head for a given state agency for compliance. Where the petition does not
 5048 achieve timely compliance, the director shall bring the matter to the Governor for
 5049 resolution.
- 5050 4. Where compliance will require the appropriation of funds, the director shall cooperate
 5051 with the appropriate agency head in seeking such an appropriation; where the director
 5052 determines that an emergency exists, he shall petition the Governor for funds from the
 5053 Civil Contingency Fund or other appropriate source.
- 5054 5. The department may also seek compliance through other means specified in the Act
 5055 and this chapter.

5056 **9VAC25-870-180. Administrative procedures: stormwater management permit**
 5057 **applications. (Repealed.)**

5058 A. Within 30 days after receipt of a complete state permit application (registration statement)
 5059 submitted by a state agency, the department shall issue or deny the state permit.

5060 1. The department shall transmit its decision in writing to the state agency that submitted
 5061 the state permit application.

5062 2. Denied state permit applications shall be revised and resubmitted to the department.

5063 B. Approval of a state permit application (registration statement) for a state project shall be
 5064 subject to the following conditions:

5065 1. The state agency shall comply with all applicable requirements of the state permit and
 5066 this chapter, and shall certify that all land clearing, construction, land development, and
 5067 drainage will be done according to the state permit.

5068 2. The land development shall be conducted only within the area specified in the state
 5069 permit.

5070 3. No changes may be made to a plan for which a state permit has been issued without
 5071 review and written approval by the department.

5072 4. The department shall be notified one week prior to the pre-construction meeting and
 5073 one week prior to the commencement of land-disturbing activity.

5074 5. The department shall conduct random inspections of the project to ensure compliance
 5075 with the state permit.

5076 6. The department shall require inspections and reports from the state agency responsible
 5077 for compliance with the state permit and to determine if the measures required in the state
 5078 permit provide effective stormwater management.

5079 C. Compliance with the state permit shall be subject to the following conditions:

5080 1. Where inspection by the responsible state agency reveals deficiencies in carrying out
 5081 a permitted activity, the responsible state agency shall ensure compliance with the issued
 5082 state permit, state permit conditions, and plan specifications.

5083 ~~2. Where inspections by department personnel reveal deficiencies in carrying out the state~~
 5084 ~~permit, the responsible state agency shall be issued a notice to comply, with corrective~~
 5085 ~~actions specified and the deadline within which the work shall be performed.~~

5086 ~~3. Whenever the Commonwealth or any of its agencies fail to comply within the time~~
 5087 ~~provided in a notice to comply, the director may petition the secretary of a given secretariat~~
 5088 ~~or an agency head for a given state agency for compliance. Where the petition does not~~
 5089 ~~achieve timely compliance, the director shall bring the matter to the Governor for~~
 5090 ~~resolution.~~

5091 ~~4. Where compliance will require the appropriation of funds, the director shall cooperate~~
 5092 ~~with the appropriate agency head in seeking such an appropriation; where the director~~
 5093 ~~determines that an emergency exists, he shall petition the Governor for funds from the~~
 5094 ~~Civil Contingency Fund or other appropriate source.~~

5095 ~~5. The department may also seek compliance through other means specified in the Act~~
 5096 ~~and this chapter.~~

5097 **9VAC25-870-190. (Reserved). (Repealed.)**

5098 **9VAC25-870-190. (Reserved)**

5099 Historical Notes

5100 Derived from Virginia Register Volume 30, Issue 2, eff. October 23, 2013.

5101 **9VAC25-870-190. (Reserved). (Repealed.)**

5102 **9VAC25-870-190. (Reserved)**

5103 Historical Notes

5104 Derived from Virginia Register Volume 30, Issue 2, eff. October 23, 2013.

5105 **9VAC25-870-200. Administrative procedures: maintenance and inspections. (Repealed.)**

5106 ~~A. Responsibility for the operation and maintenance of stormwater management facilities shall~~
 5107 ~~remain with the state agency and shall pass to any successor or owner. If portions of the land are~~
 5108 ~~to be sold, legally binding arrangements shall be made to pass the basic responsibility to~~
 5109 ~~successors in title. These arrangements shall designate for each state project the property owner,~~
 5110 ~~governmental agency, or other legally established entity to be permanently responsible for~~
 5111 ~~maintenance.~~

5112 ~~B. At a minimum, a stormwater management facility shall be inspected by the responsible~~
 5113 ~~state agency on an annual basis and after any storm which causes the capacity of the facility~~
 5114 ~~principal spillway to be exceeded.~~

5115 ~~C. During construction of the stormwater management facilities, the department shall make~~
 5116 ~~inspections on a random basis.~~

5117 ~~D. The department shall require inspections and reports from the state agency responsible for~~
 5118 ~~ensuring compliance with the state permit and to determine if the measures required in the state~~
 5119 ~~permit provide effective stormwater management.~~

5120 ~~E. Inspection reports shall be maintained as part of the land disturbance project file.~~

5121 **9VAC25-870-200. Administrative procedures: maintenance and inspections. (Repealed.)**

5122 ~~A. Responsibility for the operation and maintenance of stormwater management facilities shall~~
 5123 ~~remain with the state agency and shall pass to any successor or owner. If portions of the land are~~
 5124 ~~to be sold, legally binding arrangements shall be made to pass the basic responsibility to~~
 5125 ~~successors in title. These arrangements shall designate for each state project the property owner,~~
 5126 ~~governmental agency, or other legally established entity to be permanently responsible for~~
 5127 ~~maintenance.~~

5128 ~~B. At a minimum, a stormwater management facility shall be inspected by the responsible~~
 5129 ~~state agency on an annual basis and after any storm which causes the capacity of the facility~~
 5130 ~~principal spillway to be exceeded.~~

5131 ~~C. During construction of the stormwater management facilities, the department shall make~~
 5132 ~~inspections on a random basis.~~

5133 ~~D. The department shall require inspections and reports from the state agency responsible for~~
 5134 ~~ensuring compliance with the state permit and to determine if the measures required in the state~~
 5135 ~~permit provide effective stormwater management.~~

5136 ~~E. Inspection reports shall be maintained as part of the land disturbance project file.~~

5137 ~~Part V~~

5138 ~~Reporting~~

5139 ~~**9VAC25-870-210. Reporting on stormwater management. (Repealed.)**~~

5140 ~~State agencies shall report annually, on a schedule to be specified, to the department on the~~
 5141 ~~extent to which stormwater management programs have reduced nonpoint source pollution to the~~
 5142 ~~Commonwealth's waters and mitigated the effects of localized flooding. The report shall provide~~
 5143 ~~the following: data on the number and types of stormwater management facilities installed in the~~
 5144 ~~preceding year, the drainage area or watershed size served, the receiving stream or hydrologic~~
 5145 ~~unit, a summary of monitoring data, if any, and other data useful in determining the effectiveness~~
 5146 ~~of the programs and BMP technologies in current use. VSMP authorities shall report in~~
 5147 ~~accordance with 9VAC25-870-126.~~

5148 ~~**9VAC25-870-210. Reporting on stormwater management. (Repealed.)**~~

5149 ~~State agencies shall report annually, on a schedule to be specified, to the department on the~~
 5150 ~~extent to which stormwater management programs have reduced nonpoint source pollution to the~~
 5151 ~~Commonwealth's waters and mitigated the effects of localized flooding. The report shall provide~~
 5152 ~~the following: data on the number and types of stormwater management facilities installed in the~~
 5153 ~~preceding year, the drainage area or watershed size served, the receiving stream or hydrologic~~
 5154 ~~unit, a summary of monitoring data, if any, and other data useful in determining the effectiveness~~
 5155 ~~of the programs and BMP technologies in current use. VSMP authorities shall report in~~
 5156 ~~accordance with 9VAC25-870-126.~~

5157 ~~**9VAC25-870-220. through 9VAC25-870-290. (Reserved). (Repealed.)**~~

5158 ~~**9VAC25-870-220 through 9VAC25-870-290. (Reserved)**~~

5159 ~~Historical Notes~~

5160 ~~Derived from Virginia Register Volume 30, Issue 2, eff. October 23, 2013.~~

5161 ~~**9VAC25-870-220. through 9VAC25-870-290. (Reserved). (Repealed.)**~~

5162 ~~**9VAC25-870-220 through 9VAC25-870-290. (Reserved)**~~

5163 ~~Historical Notes~~

5164 ~~Derived from Virginia Register Volume 30, Issue 2, eff. October 23, 2013.~~

5165 ~~Part VI~~

5166 ~~General Program Requirements Related to MS4s and Land-Disturbing Activities~~

5167 ~~**9VAC25-870-300. Exclusions. (Repealed.)**~~

5168 ~~The following discharges do not require state permits:~~

5169 ~~1. Any discharge of sewage from vessels, effluent from properly functioning marine~~
 5170 ~~engines, laundry, shower, and galley sink wastes, or any other discharge incidental to the~~
 5171 ~~normal operation of a vessel. This exclusion does not apply to rubbish, trash, garbage, or~~

- 5172 other such materials discharged overboard; nor to other discharges when the vessel is
 5173 operating in a capacity other than as a means of transportation such as when used as an
 5174 energy or mining facility, a storage facility or a seafood processing facility, or when secured
 5175 to a storage facility or a seafood processing facility, or when secured to the bed of the
 5176 ocean, contiguous zone or surface waters for the purpose of mineral or oil exploration or
 5177 development.
- 5178 2. Discharges of dredged or fill material into surface waters that are regulated under § 404
 5179 of the CWA.
- 5180 3. The introduction of sewage, industrial wastes or other pollutants into publicly owned
 5181 treatment works by indirect dischargers. Plans or agreements to switch to this method of
 5182 disposal in the future do not relieve dischargers of the obligation to have and comply with
 5183 state permits until all discharges of pollutants to surface waters are eliminated. This
 5184 exclusion does not apply to the introduction of pollutants to privately owned treatment
 5185 works or to other discharges through pipes, sewers, or other conveyances owned by a
 5186 state, municipality, or other party not leading to treatment works.
- 5187 4. Any discharge in compliance with the instructions of an on-scene coordinator pursuant
 5188 to 40 CFR Part 300 (The National Oil and Hazardous Substances Pollution Contingency
 5189 Plan) or 33 CFR 153.10(e) (Pollution by Oil and Hazardous Substances).
- 5190 5. Any introduction of pollutants from nonpoint source agricultural and silvicultural
 5191 activities, including stormwater runoff from orchards, cultivated crops, pastures, range
 5192 lands, and forest lands, but not discharges from concentrated animal feeding operations,
 5193 discharges from concentrated aquatic animal production facilities, discharges to
 5194 aquaculture projects, and discharges from silvicultural point sources.
- 5195 6. Return flows from irrigated agriculture.
- 5196 7. Discharges into a privately owned treatment works, except as the department may
 5197 otherwise require.

5198 **9VAC25-870-300. Exclusions. (Repealed.)**

5199 The following discharges do not require state permits:

- 5200 1. Any discharge of sewage from vessels, effluent from properly functioning marine
 5201 engines, laundry, shower, and galley sink wastes, or any other discharge incidental to the
 5202 normal operation of a vessel. This exclusion does not apply to rubbish, trash, garbage, or
 5203 other such materials discharged overboard; nor to other discharges when the vessel is
 5204 operating in a capacity other than as a means of transportation such as when used as an
 5205 energy or mining facility, a storage facility or a seafood processing facility, or when secured
 5206 to a storage facility or a seafood processing facility, or when secured to the bed of the
 5207 ocean, contiguous zone or surface waters for the purpose of mineral or oil exploration or
 5208 development.
- 5209 2. Discharges of dredged or fill material into surface waters that are regulated under § 404
 5210 of the CWA.
- 5211 3. The introduction of sewage, industrial wastes or other pollutants into publicly owned
 5212 treatment works by indirect dischargers. Plans or agreements to switch to this method of
 5213 disposal in the future do not relieve dischargers of the obligation to have and comply with
 5214 state permits until all discharges of pollutants to surface waters are eliminated. This
 5215 exclusion does not apply to the introduction of pollutants to privately owned treatment
 5216 works or to other discharges through pipes, sewers, or other conveyances owned by a
 5217 state, municipality, or other party not leading to treatment works.

- 5218 4. Any discharge in compliance with the instructions of an on-scene coordinator pursuant
 5219 to 40 CFR Part 300 (The National Oil and Hazardous Substances Pollution Contingency
 5220 Plan) or 33 CFR 153.10(e) (Pollution by Oil and Hazardous Substances).
 5221 5. Any introduction of pollutants from nonpoint source agricultural and silvicultural
 5222 activities, including stormwater runoff from orchards, cultivated crops, pastures, range
 5223 lands, and forest lands, but not discharges from concentrated animal feeding operations,
 5224 discharges from concentrated aquatic animal production facilities, discharges to
 5225 aquaculture projects, and discharges from silvicultural point sources.
 5226 6. Return flows from irrigated agriculture.
 5227 7. Discharges into a privately owned treatment works, except as the department may
 5228 otherwise require.

5229 **9VAC25-870-310. Prohibitions. (Repealed.)**

5230 A. Except in compliance with a state permit issued by the department pursuant to the Virginia
 5231 Stormwater Management Act, it shall be unlawful for any person to discharge stormwater into
 5232 state waters from Municipal Separate Storm Sewer Systems or land-disturbing activities.

5233 B. Any person in violation of subsection A of this section, who discharges or causes or allows
 5234 a discharge of stormwater into or upon state waters from Municipal Separate Storm Sewer
 5235 Systems or land-disturbing activities, or who discharges or causes or allows a discharge that may
 5236 reasonably be expected to enter state waters in violation of subsection A of this section, shall
 5237 notify the department of the discharge immediately upon discovery of the discharge but in no case
 5238 later than 24 hours after said discovery. A written report of the unauthorized discharge shall be
 5239 submitted by the owner, to the department, within five days of discovery of the discharge. The
 5240 written report shall contain:

- 5241 1. A description of the nature and location of the discharge;
- 5242 2. The cause of the discharge;
- 5243 3. The date on which the discharge occurred;
- 5244 4. The length of time that the discharge continued;
- 5245 5. The volume of the discharge;
- 5246 6. If the discharge is continuing, how long it is expected to continue;
- 5247 7. If the discharge is continuing, what the expected total volume of the discharge will be;
- 5248 and
- 5249 8. Any steps planned or taken to reduce, eliminate, and prevent a recurrence of the
 5250 present discharge or any future discharges not authorized by the state permit.

5251 C. No state permit may be issued:

- 5252 1. When the conditions of the state permit do not provide for compliance with the
 5253 applicable requirements of the CWA or the Act, or regulations promulgated under the CWA
 5254 or the Act;
- 5255 2. When the state permit applicant is required to obtain a state or other appropriate
 5256 certification under § 401 of the CWA and that certification has not been obtained or waived;
- 5257 3. When the regional administrator has objected to issuance of the state permit;
- 5258 4. When the imposition of conditions cannot ensure compliance with the applicable water
 5259 quality requirements of all affected states;
- 5260 5. When, in the judgment of the Secretary of the Army, anchorage and navigation in or on
 5261 any of the waters of the United States would be substantially impaired by the discharge;
- 5262 6. For the discharge of any radiological, chemical, or biological warfare agent or high-level
 5263 radioactive waste;

5264 7. For any discharge inconsistent with a plan or plan amendment approved under § 208(b)
5265 of the CWA;

5266 8. For any discharge to the territorial sea, the waters of the contiguous zone, or the oceans
5267 in the following circumstances:

5268 a. Before the promulgation of guidelines under § 403(c) of the CWA (for determining
5269 degradation of the waters of the territorial seas, the contiguous zone, and the oceans)
5270 unless the department determines state permit issuance to be in the public interest; or

5271 b. After promulgation of guidelines under § 403(c) of the CWA, when insufficient
5272 information exists to make a reasonable judgment whether the discharge complies
5273 with them.

5274 9. To a new source or a new discharger, if the discharge from its construction or operation
5275 will cause or contribute to the violation of water quality standards. The owner or operator
5276 of a new source or new discharger proposing to discharge into a water segment which
5277 does not meet applicable water quality standards or is not expected to meet those
5278 standards even after the application of the effluent limitations required by the Act and §§
5279 301(b)(1)(A) and 301(b)(1)(B) of the CWA, and for which the department has performed
5280 a pollutants load allocation for the pollutant to be discharged, must demonstrate, before
5281 the close of the public comment period, that:

5282 a. There are sufficient remaining pollutant load allocations to allow for the discharge;
5283 and

5284 b. The existing dischargers into that segment are subject to compliance schedules
5285 designed to bring the segment into compliance with applicable water quality standards.
5286 The department may waive the submission of information by the new source or new
5287 discharger required by this subdivision if the department determines that it already has
5288 adequate information to evaluate the request. An explanation of the development of
5289 limitations to meet the criteria of this paragraph is to be included in the fact sheet to
5290 the state permit under 9VAC25-870-520.

5291 **9VAC25-870-310. Prohibitions. (Repealed.)**

5292 A. Except in compliance with a state permit issued by the department pursuant to the Virginia
5293 Stormwater Management Act, it shall be unlawful for any person to discharge stormwater into
5294 state waters from Municipal Separate Storm Sewer Systems or land-disturbing activities.

5295 B. Any person in violation of subsection A of this section, who discharges or causes or allows
5296 a discharge of stormwater into or upon state waters from Municipal Separate Storm Sewer
5297 Systems or land-disturbing activities, or who discharges or causes or allows a discharge that may
5298 reasonably be expected to enter state waters in violation of subsection A of this section, shall
5299 notify the department of the discharge immediately upon discovery of the discharge but in no case
5300 later than 24 hours after said discovery. A written report of the unauthorized discharge shall be
5301 submitted by the owner, to the department, within five days of discovery of the discharge. The
5302 written report shall contain:

5303 1. A description of the nature and location of the discharge;

5304 2. The cause of the discharge;

5305 3. The date on which the discharge occurred;

5306 4. The length of time that the discharge continued;

5307 5. The volume of the discharge;

5308 6. If the discharge is continuing, how long it is expected to continue;

5309 7. If the discharge is continuing, what the expected total volume of the discharge will be;

5310 and

5311 ~~8. Any steps planned or taken to reduce, eliminate, and prevent a recurrence of the~~
 5312 ~~present discharge or any future discharges not authorized by the state permit.~~

5313 ~~C. No state permit may be issued:~~

5314 ~~1. When the conditions of the state permit do not provide for compliance with the~~
 5315 ~~applicable requirements of the CWA or the Act, or regulations promulgated under the CWA~~
 5316 ~~or the Act;~~

5317 ~~2. When the state permit applicant is required to obtain a state or other appropriate~~
 5318 ~~certification under § 401 of the CWA and that certification has not been obtained or waived;~~

5319 ~~3. When the regional administrator has objected to issuance of the state permit;~~

5320 ~~4. When the imposition of conditions cannot ensure compliance with the applicable water~~
 5321 ~~quality requirements of all affected states;~~

5322 ~~5. When, in the judgment of the Secretary of the Army, anchorage and navigation in or on~~
 5323 ~~any of the waters of the United States would be substantially impaired by the discharge;~~

5324 ~~6. For the discharge of any radiological, chemical, or biological warfare agent or high-level~~
 5325 ~~radioactive waste;~~

5326 ~~7. For any discharge inconsistent with a plan or plan amendment approved under § 208(b)~~
 5327 ~~of the CWA;~~

5328 ~~8. For any discharge to the territorial sea, the waters of the contiguous zone, or the oceans~~
 5329 ~~in the following circumstances:~~

5330 ~~a. Before the promulgation of guidelines under § 403(c) of the CWA (for determining~~
 5331 ~~degradation of the waters of the territorial seas, the contiguous zone, and the oceans)~~
 5332 ~~unless the department determines state permit issuance to be in the public interest; or~~

5333 ~~b. After promulgation of guidelines under § 403(c) of the CWA, when insufficient~~
 5334 ~~information exists to make a reasonable judgment whether the discharge complies~~
 5335 ~~with them.~~

5336 ~~9. To a new source or a new discharger, if the discharge from its construction or operation~~
 5337 ~~will cause or contribute to the violation of water quality standards. The owner or operator~~
 5338 ~~of a new source or new discharger proposing to discharge into a water segment which~~
 5339 ~~does not meet applicable water quality standards or is not expected to meet those~~
 5340 ~~standards even after the application of the effluent limitations required by the Act and §§~~
 5341 ~~301(b)(1)(A) and 301(b)(1)(B) of the CWA, and for which the department has performed~~
 5342 ~~a pollutants load allocation for the pollutant to be discharged, must demonstrate, before~~
 5343 ~~the close of the public comment period, that:~~

5344 ~~a. There are sufficient remaining pollutant load allocations to allow for the discharge;~~
 5345 ~~and~~

5346 ~~b. The existing dischargers into that segment are subject to compliance schedules~~
 5347 ~~designed to bring the segment into compliance with applicable water quality standards.~~
 5348 ~~The department may waive the submission of information by the new source or new~~
 5349 ~~discharger required by this subdivision if the department determines that it already has~~
 5350 ~~adequate information to evaluate the request. An explanation of the development of~~
 5351 ~~limitations to meet the criteria of this paragraph is to be included in the fact sheet to~~
 5352 ~~the state permit under 9VAC25-870-520.~~

5353 **9VAC25-870-320. Effect of a state permit. (Repealed.)**

5354 ~~A. Except for any toxic effluent standards and prohibitions imposed under § 307 of the CWA~~
 5355 ~~and standards for sewage sludge use or disposal under § 405(d) of the CWA, compliance with a~~
 5356 ~~state permit during its term constitutes compliance, for purposes of enforcement, with the Act and~~
 5357 ~~with §§ 301, 302, 306, 307, 318, 403, and 405 (a) through (b) of the CWA. However, a state permit~~

5358 may be modified, revoked and reissued, or terminated during its term for cause as set forth in this
5359 chapter.

5360 B. The issuance of a state permit does not convey any property rights of any sort, or any
5361 exclusive privilege.

5362 C. The issuance of a state permit does not authorize any injury to persons or property or
5363 invasion of other private rights, or any infringement of state or local law or regulations.

5364 **9VAC25-870-320. Effect of a state permit. (Repealed.)**

5365 A. Except for any toxic effluent standards and prohibitions imposed under § 307 of the CWA
5366 and standards for sewage sludge use or disposal under § 405(d) of the CWA, compliance with a
5367 state permit during its term constitutes compliance, for purposes of enforcement, with the Act and
5368 with §§ 301, 302, 306, 307, 318, 403, and 405 (a) through (b) of the CWA. However, a state permit
5369 may be modified, revoked and reissued, or terminated during its term for cause as set forth in this
5370 chapter.

5371 B. The issuance of a state permit does not convey any property rights of any sort, or any
5372 exclusive privilege.

5373 C. The issuance of a state permit does not authorize any injury to persons or property or
5374 invasion of other private rights, or any infringement of state or local law or regulations.

5375 **9VAC25-870-330. Continuation of expiring state permits. (Repealed.)**

5376 A. The state permit shall expire at the end of its term, except that the conditions of an expired
5377 state permit continue in force until the effective date of a new state permit if:

5378 1. The permittee has submitted a timely application as required by this chapter, which is
5379 a complete application for a new state permit; and

5380 2. The department, through no fault of the permittee, does not issue a new state permit
5381 with an effective date on or before the expiration date of the previous state permit.

5382 B. State permits continued under this section remain fully effective and enforceable.

5383 C. When the permittee is not in compliance with the conditions of the expiring or expired state
5384 permit the department may choose to do any or all of the following:

5385 1. Initiate enforcement action based upon the state permit which has been continued;

5386 2. Issue a notice of intent to deny the new state permit. If the state permit is denied, the
5387 owner or operator would then be required to cease the activities authorized by the
5388 continued state permit or be subject to enforcement action for operating without a state
5389 permit;

5390 3. Issue a new state permit with appropriate conditions; or

5391 4. Take other actions authorized by this chapter.

5392 **9VAC25-870-330. Continuation of expiring state permits. (Repealed.)**

5393 A. The state permit shall expire at the end of its term, except that the conditions of an expired
5394 state permit continue in force until the effective date of a new state permit if:

5395 1. The permittee has submitted a timely application as required by this chapter, which is
5396 a complete application for a new state permit; and

5397 2. The department, through no fault of the permittee, does not issue a new state permit
5398 with an effective date on or before the expiration date of the previous state permit.

5399 B. State permits continued under this section remain fully effective and enforceable.

5400 C. When the permittee is not in compliance with the conditions of the expiring or expired state
5401 permit the department may choose to do any or all of the following:

5402 1. Initiate enforcement action based upon the state permit which has been continued;

- 5403 ~~2. Issue a notice of intent to deny the new state permit. If the state permit is denied, the~~
 5404 ~~owner or operator would then be required to cease the activities authorized by the~~
 5405 ~~continued state permit or be subject to enforcement action for operating without a state~~
 5406 ~~permit;~~
 5407 ~~3. Issue a new state permit with appropriate conditions; or~~
 5408 ~~4. Take other actions authorized by this chapter.~~

5409 **9VAC25-870-340. Confidentiality of information. (Repealed.)**

5410 ~~A. The department or the VSMP authority may require every state permit applicant or state~~
 5411 ~~permittee to furnish when requested such application materials, plans, specifications, and other~~
 5412 ~~pertinent information as may be necessary to determine the effect of his discharge on the quality~~
 5413 ~~of state waters, or such other information as may be necessary to accomplish the purposes of the~~
 5414 ~~Act and this chapter. Any personal information shall not be disclosed except to an appropriate~~
 5415 ~~official of the department or VSMP authority or as may be authorized pursuant to the Virginia~~
 5416 ~~Freedom of Information Act (§ 2.2-3700 et seq. of the Code of Virginia). However:~~

5417 ~~1. Disclosure of records of the department or the VSMP authority relating to (i) active~~
 5418 ~~federal environmental enforcement actions that are considered confidential under federal~~
 5419 ~~law and (ii) enforcement strategies, including proposed sanctions for enforcement actions~~
 5420 ~~is prohibited. Upon request, such records shall be disclosed after a proposed sanction~~
 5421 ~~resulting from the investigation has been determined by the department or the VSMP~~
 5422 ~~authority.~~

5423 ~~2. Any secret formula, secret processes, or secret methods other than effluent data~~
 5424 ~~submitted to the department pursuant to this chapter may be claimed as confidential by~~
 5425 ~~the submitter in accordance with 40 CFR 122.7. Any such claim must be asserted at the~~
 5426 ~~time of submission in the manner prescribed on the application form or instructions or, in~~
 5427 ~~the case of other submissions, by stamping the words "secret formulae," "secret~~
 5428 ~~processes" "secret methods" on each page containing such information. If no claim is~~
 5429 ~~made at the time of submission, the department may make the information available to~~
 5430 ~~the public without further notice. If a claim is asserted, the information will be treated in~~
 5431 ~~accordance with the procedures in the Virginia Freedom of Information Act (§ 2.2-3700 et~~
 5432 ~~seq. of the Code of Virginia).~~

5433 ~~3. This section shall not be construed to prohibit the disclosure of records related to~~
 5434 ~~inspection reports, notices of violation, and documents detailing the nature of any land-~~
 5435 ~~disturbing activity that may have occurred, or similar documents.~~

5436 ~~B. Claims of confidentiality for the following information will be denied:~~

- 5437 ~~1. The name and address of any state permit applicant or state permittee;~~
 5438 ~~2. State permit applications, state permits, and effluent data.~~

5439 ~~C. Information required by state permit application forms provided by the department may not~~
 5440 ~~be claimed confidential. This includes information submitted on the forms themselves and any~~
 5441 ~~attachments used to supply information required by the forms.~~

5442 **9VAC25-870-340. Confidentiality of information. (Repealed.)**

5443 ~~A. The department or the VSMP authority may require every state permit applicant or state~~
 5444 ~~permittee to furnish when requested such application materials, plans, specifications, and other~~
 5445 ~~pertinent information as may be necessary to determine the effect of his discharge on the quality~~
 5446 ~~of state waters, or such other information as may be necessary to accomplish the purposes of the~~
 5447 ~~Act and this chapter. Any personal information shall not be disclosed except to an appropriate~~
 5448 ~~official of the department or VSMP authority or as may be authorized pursuant to the Virginia~~
 5449 ~~Freedom of Information Act (§ 2.2-3700 et seq. of the Code of Virginia). However:~~

5450 1. Disclosure of records of the department or the VSMP authority relating to (i) active
 5451 federal environmental enforcement actions that are considered confidential under federal
 5452 law and (ii) enforcement strategies, including proposed sanctions for enforcement actions
 5453 is prohibited. Upon request, such records shall be disclosed after a proposed sanction
 5454 resulting from the investigation has been determined by the department or the VSMP
 5455 authority.

5456 2. Any secret formula, secret processes, or secret methods other than effluent data
 5457 submitted to the department pursuant to this chapter may be claimed as confidential by
 5458 the submitter in accordance with 40 CFR 122.7. Any such claim must be asserted at the
 5459 time of submission in the manner prescribed on the application form or instructions or, in
 5460 the case of other submissions, by stamping the words "secret formulae," "secret
 5461 processes" "secret methods" on each page containing such information. If no claim is
 5462 made at the time of submission, the department may make the information available to
 5463 the public without further notice. If a claim is asserted, the information will be treated in
 5464 accordance with the procedures in the Virginia Freedom of Information Act (§ 2.2-3700 et
 5465 seq. of the Code of Virginia).

5466 3. This section shall not be construed to prohibit the disclosure of records related to
 5467 inspection reports, notices of violation, and documents detailing the nature of any land-
 5468 disturbing activity that may have occurred, or similar documents.

5469 B. Claims of confidentiality for the following information will be denied:

- 5470 1. The name and address of any state permit applicant or state permittee;
- 5471 2. State permit applications, state permits, and effluent data.

5472 C. Information required by state permit application forms provided by the department may not
 5473 be claimed confidential. This includes information submitted on the forms themselves and any
 5474 attachments used to supply information required by the forms.

5475 **9VAC25-870-350. Guidance documents. (Repealed.)**

5476 The department may develop and use guidance, as appropriate, to implement technical and
 5477 regulatory details of the state permit program. Such guidance is distinguished from regulation by
 5478 the fact that it is not binding on either the department or permittees. If a more appropriate
 5479 methodology than that called for in guidance is available in a given situation, the more appropriate
 5480 methodology shall be used to the extent it is consistent with applicable regulations and the
 5481 Stormwater Management Act.

5482 **9VAC25-870-350. Guidance documents. (Repealed.)**

5483 The department may develop and use guidance, as appropriate, to implement technical and
 5484 regulatory details of the state permit program. Such guidance is distinguished from regulation by
 5485 the fact that it is not binding on either the department or permittees. If a more appropriate
 5486 methodology than that called for in guidance is available in a given situation, the more appropriate
 5487 methodology shall be used to the extent it is consistent with applicable regulations and the
 5488 Stormwater Management Act.

5489 **Part VII**

5490 **State Permit Applications**

5491 **9VAC25-870-360. Application for a state permit. (Repealed.)**

5492 A. Duty to apply. Any person who discharges or proposes to discharge stormwater into or
 5493 upon state waters from municipal separate storm sewer systems or land-disturbing activities and
 5494 who does not have an effective state permit, except persons covered by general permits,
 5495 excluded from the requirement for a state permit by this chapter, shall submit a complete
 5496 application in accordance with this section.

5497 B. Who applies. When a facility or activity is owned by one person but is operated by another
5498 person, it is the operator's duty to obtain a state permit.

5499 C. Time to apply. Any person proposing a new discharge shall submit an application at least
5500 180 days before the date on which the discharge is to commence, unless permission for a later
5501 date has been granted by the department. Stormwater discharges from large construction
5502 activities and stormwater discharges associated with small construction activities shall submit
5503 applications at least 90 days before the date on which construction is to commence. Different
5504 submittal dates may be required under the terms of applicable general permits. Persons
5505 proposing a new discharge are encouraged to submit their applications well in advance of the 90-
5506 day or 180-day requirements to avoid delay.

5507 D. Duty to reapply. All state permittees with a currently effective state permit shall submit a
5508 new application at least 180 days before the expiration date of the existing state permit unless
5509 permission for a later date has been granted by the department. The department shall not grant
5510 permission for applications to be submitted later than the expiration date of the existing state
5511 permit.

5512 E. Completeness. The department shall not issue a state permit before receiving a complete
5513 application for a state permit except for general permits. An application for a state permit is
5514 complete when the department receives an application form and any supplemental information
5515 which are completed to its satisfaction. The completeness of any application for a state permit
5516 shall be judged independently of the status of any other state permit application or state permit
5517 for the same facility or activity.

5518 F. Information requirements. All applicants for state permits shall provide the following
5519 information using the application form provided by the department:

- 5520 1. The activities conducted by the state permit applicant which require it to obtain a state
5521 permit;
- 5522 2. Name, mailing address, and location of the facility for which the application is submitted;
- 5523 3. Up to four SIC codes which best reflect the principal products or services provided by
5524 the facility;
- 5525 4. The operator's name, address, telephone number, email address, ownership status,
5526 and status as federal, state, private, public, or other entity;
- 5527 5. Whether the facility is located on Indian lands;
- 5528 6. A listing of all permits or construction approvals received, applied for, or to be applied
5529 for under any of the following programs:
 - 5530 a. Hazardous Waste Management program under the Resource Conservation and
5531 Recovery Act (RCRA) (42 USC § 6921);
 - 5532 b. UIC program under the Safe Drinking Water Act (SDWA) (42 USC § 300h);
 - 5533 c. VPDES program under the CWA and the State Water Control Law;
 - 5534 d. Prevention of Significant Deterioration (PSD) program under the Clean Air Act (42
5535 USC § 4701 et seq.);
 - 5536 e. Nonattainment program under the Clean Air Act (42 USC § 4701 et seq.);
 - 5537 f. National Emission Standards for Hazardous Pollutants (NESHAPS) preconstruction
5538 approval under the Clean Air Act (42 USC § 4701 et seq.);
 - 5539 g. Ocean dumping permits under the Marine Protection Research and Sanctuaries Act
5540 (33 USC § 14 et seq.);
 - 5541 h. Dredge or fill permits under § 404 of the CWA;
 - 5542 i. A state permit under the CWA and the Virginia Stormwater Management Act; and

- 5543 j. ~~Other relevant environmental permits, including state permits;~~
- 5544 7. ~~A topographic map (or other map if a topographic map is unavailable) extending one~~
- 5545 ~~mile beyond the property boundaries of the source, which depicts: the facility and (i) each~~
- 5546 ~~of its intake and discharge structures; (ii) each of its hazardous waste treatment, storage,~~
- 5547 ~~or disposal facilities; (iii) each well where fluids from the facility are injected underground;~~
- 5548 ~~and (iv) those wells, springs, other surface water bodies, and drinking water wells listed in~~
- 5549 ~~public records or otherwise known to the state permit applicant in the map area; and~~
- 5550 8. ~~A brief description of the nature of the business.~~
- 5551 G. ~~Variance requests. A discharger which is not a publicly owned treatment works (POTW)~~
- 5552 ~~may request a variance from otherwise applicable effluent limitations under any of the following~~
- 5553 ~~statutory or regulatory provisions within the times specified in this subsection:~~
- 5554 1. ~~Fundamentally different factors.~~
- 5555 a. ~~A request for a variance based on the presence of fundamentally different factors~~
- 5556 ~~from those on which the effluent limitations guideline was based shall be filed as~~
- 5557 ~~follows:~~
- 5558 (1) ~~For a request from best practicable control technology currently available (BPT),~~
- 5559 ~~by the close of the public comment period for the draft state permit; or~~
- 5560 (2) ~~For a request from best available technology economically achievable (BAT) and/or~~
- 5561 ~~best conventional pollutant control technology (BCT), by no later than 180 days after~~
- 5562 ~~the date on which an effluent limitation guideline is published in the Federal Register~~
- 5563 ~~for a request based on an effluent limitation guideline promulgated on or after February~~
- 5564 ~~4, 1987.~~
- 5565 b. ~~The request shall explain how the requirements of the applicable regulatory or~~
- 5566 ~~statutory criteria have been met.~~
- 5567 2. ~~A request for a variance from the BAT requirements for CWA § 301(b)(2)(F) pollutants~~
- 5568 ~~(commonly called nonconventional pollutants) pursuant to § 301(c) of the CWA because~~
- 5569 ~~of the economic capability of the owner or operator, or pursuant to § 301(g) of the CWA~~
- 5570 ~~(provided, however, that a § 301(g) variance may only be requested for ammonia,~~
- 5571 ~~chlorine, color, iron, total phenols (when determined by the administrator to be a pollutant~~
- 5572 ~~covered by § 301(b)(2)(F) of the CWA) and any other pollutant that the administrator lists~~
- 5573 ~~under § 301(g)(4) of the CWA) must be made as follows:~~
- 5574 a. ~~For those requests for a variance from an effluent limitation based upon an effluent~~
- 5575 ~~limitation guideline by:~~
- 5576 (1) ~~Submitting an initial request to the regional administrator, as well as to the~~
- 5577 ~~department, stating the name of the discharger, the state permit number, the outfall~~
- 5578 ~~number(s), the applicable effluent guideline, and whether the discharger is requesting~~
- 5579 ~~a § 301(c) or § 301(g) of the CWA modification, or both. This request must have been~~
- 5580 ~~filed not later than 270 days after promulgation of an applicable effluent limitation~~
- 5581 ~~guideline; and~~
- 5582 (2) ~~Submitting a completed request no later than the close of the public comment~~
- 5583 ~~period for the draft state permit demonstrating that: (i) all reasonable ascertainable~~
- 5584 ~~issues have been raised and all reasonably available arguments and materials~~
- 5585 ~~supporting their position have been submitted; and (ii) that the applicable requirements~~
- 5586 ~~of 40 CFR Part 125 have been met. Notwithstanding this provision, the complete~~
- 5587 ~~application for a request under § 301(g) of the CWA shall be filed 180 days before~~
- 5588 ~~EPA must make a decision (unless the Regional Administrator establishes a shorter~~
- 5589 ~~or longer period); or~~

5590 b. For those requests for a variance from effluent limitations not based on effluent
5591 limitation guidelines, the request need only comply with subdivision 2 a (2) of this
5592 subsection and need not be preceded by an initial request under subdivision 2 a (1) of
5593 this subsection.

5594 3. A modification under ~~§ 302(b)(2)~~ of the CWA of requirements under ~~§ 302(a)~~ of the
5595 CWA for achieving water quality related effluent limitations may be requested no later than
5596 the close of the public comment period for the draft state permit on the state permit from
5597 which the modification is sought.

5598 4. A variance for alternate effluent limitations for the thermal component of any discharge
5599 must be filed with a timely application for a state permit under this section, except that if
5600 thermal effluent limitations are established on a case-by-case basis or are based on water
5601 quality standards the request for a variance may be filed by the close of the public
5602 comment period for the draft state permit. A copy of the request shall be sent
5603 simultaneously to the department.

5604 H. Expedited variance procedures and time extensions.

5605 1. Notwithstanding the time requirements in subsection G of this section, the department
5606 may notify a state permit applicant before a draft state permit is issued that the draft state
5607 permit will likely contain limitations which are eligible for variances. In the notice the
5608 department may require the state permit applicant as a condition of consideration of any
5609 potential variance request to submit a request explaining how the requirements of 40 CFR
5610 Part 125 applicable to the variance have been met and may require its submission within
5611 a specified reasonable time after receipt of the notice. The notice may be sent before the
5612 state permit application has been submitted. The draft or final state permit may contain
5613 the alternative limitations which may become effective upon final grant of the variance.

5614 2. A discharger who cannot file a timely complete request required under subdivisions G
5615 2 a (2) or G 2 b of this section may request an extension. The extension may be granted
5616 or denied at the discretion of the department. Extensions shall be no more than six months
5617 in duration.

5618 I. Recordkeeping. State permit applicants shall keep records of all data used to complete state
5619 permit applications and any supplemental information submitted under this section for a period of
5620 at least three years from the date the application is signed.

5621 **9VAC25-870-360. Application for a state permit. (Repealed.)**

5622 A. Duty to apply. Any person who discharges or proposes to discharge stormwater into or
5623 upon state waters from municipal separate storm sewer systems or land-disturbing activities and
5624 who does not have an effective state permit, except persons covered by general permits,
5625 excluded from the requirement for a state permit by this chapter, shall submit a complete
5626 application in accordance with this section.

5627 B. Who applies. When a facility or activity is owned by one person but is operated by another
5628 person, it is the operator's duty to obtain a state permit.

5629 C. Time to apply. Any person proposing a new discharge shall submit an application at least
5630 180 days before the date on which the discharge is to commence, unless permission for a later
5631 date has been granted by the department. Stormwater discharges from large construction
5632 activities and stormwater discharges associated with small construction activities shall submit
5633 applications at least 90 days before the date on which construction is to commence. Different
5634 submittal dates may be required under the terms of applicable general permits. Persons
5635 proposing a new discharge are encouraged to submit their applications well in advance of the 90-
5636 day or 180-day requirements to avoid delay.

5637 ~~D. Duty to reapply. All state permittees with a currently effective state permit shall submit a~~
5638 ~~new application at least 180 days before the expiration date of the existing state permit unless~~
5639 ~~permission for a later date has been granted by the department. The department shall not grant~~
5640 ~~permission for applications to be submitted later than the expiration date of the existing state~~
5641 ~~permit.~~

5642 ~~E. Completeness. The department shall not issue a state permit before receiving a complete~~
5643 ~~application for a state permit except for general permits. An application for a state permit is~~
5644 ~~complete when the department receives an application form and any supplemental information~~
5645 ~~which are completed to its satisfaction. The completeness of any application for a state permit~~
5646 ~~shall be judged independently of the status of any other state permit application or state permit~~
5647 ~~for the same facility or activity.~~

5648 ~~F. Information requirements. All applicants for state permits shall provide the following~~
5649 ~~information using the application form provided by the department:~~

- 5650 ~~1. The activities conducted by the state permit applicant which require it to obtain a state~~
5651 ~~permit;~~
- 5652 ~~2. Name, mailing address, and location of the facility for which the application is submitted;~~
- 5653 ~~3. Up to four SIC codes which best reflect the principal products or services provided by~~
5654 ~~the facility;~~
- 5655 ~~4. The operator's name, address, telephone number, email address, ownership status,~~
5656 ~~and status as federal, state, private, public, or other entity;~~
- 5657 ~~5. Whether the facility is located on Indian lands;~~
- 5658 ~~6. A listing of all permits or construction approvals received, applied for, or to be applied~~
5659 ~~for under any of the following programs:~~
 - 5660 ~~a. Hazardous Waste Management program under the Resource Conservation and~~
5661 ~~Recovery Act (RCRA) (42 USC § 6921);~~
 - 5662 ~~b. UIC program under the Safe Drinking Water Act (SDWA) (42 USC § 300h);~~
 - 5663 ~~c. VPDES program under the CWA and the State Water Control Law;~~
 - 5664 ~~d. Prevention of Significant Deterioration (PSD) program under the Clean Air Act (42~~
5665 ~~USC § 4701 et seq.);~~
 - 5666 ~~e. Nonattainment program under the Clean Air Act (42 USC § 4701 et seq.);~~
 - 5667 ~~f. National Emission Standards for Hazardous Pollutants (NESHAPS) preconstruction~~
5668 ~~approval under the Clean Air Act (42 USC § 4701 et seq.);~~
 - 5669 ~~g. Ocean dumping permits under the Marine Protection Research and Sanctuaries Act~~
5670 ~~(33 USC § 14 et seq.);~~
 - 5671 ~~h. Dredge or fill permits under § 404 of the CWA;~~
 - 5672 ~~i. A state permit under the CWA and the Virginia Stormwater Management Act; and~~
 - 5673 ~~j. Other relevant environmental permits, including state permits;~~
- 5674 ~~7. A topographic map (or other map if a topographic map is unavailable) extending one~~
5675 ~~mile beyond the property boundaries of the source, which depicts: the facility and (i) each~~
5676 ~~of its intake and discharge structures; (ii) each of its hazardous waste treatment, storage,~~
5677 ~~or disposal facilities; (iii) each well where fluids from the facility are injected underground;~~
5678 ~~and (iv) those wells, springs, other surface water bodies, and drinking water wells listed in~~
5679 ~~public records or otherwise known to the state permit applicant in the map area; and~~
5680 ~~8. A brief description of the nature of the business.~~

5681 ~~G. Variance requests. A discharger which is not a publicly owned treatment works (POTW)~~
5682 ~~may request a variance from otherwise applicable effluent limitations under any of the following~~
5683 ~~statutory or regulatory provisions within the times specified in this subsection:~~

5684 ~~1. Fundamentally different factors.~~

5685 ~~a. A request for a variance based on the presence of fundamentally different factors~~
5686 ~~from those on which the effluent limitations guideline was based shall be filed as~~
5687 ~~follows:~~

5688 ~~(1) For a request from best practicable control technology currently available (BPT),~~
5689 ~~by the close of the public comment period for the draft state permit; or~~

5690 ~~(2) For a request from best available technology economically achievable (BAT) and/or~~
5691 ~~best conventional pollutant control technology (BCT), by no later than 180 days after~~
5692 ~~the date on which an effluent limitation guideline is published in the Federal Register~~
5693 ~~for a request based on an effluent limitation guideline promulgated on or after February~~
5694 ~~4, 1987.~~

5695 ~~b. The request shall explain how the requirements of the applicable regulatory or~~
5696 ~~statutory criteria have been met.~~

5697 ~~2. A request for a variance from the BAT requirements for CWA § 301(b)(2)(F) pollutants~~
5698 ~~(commonly called nonconventional pollutants) pursuant to § 301(c) of the CWA because~~
5699 ~~of the economic capability of the owner or operator, or pursuant to § 301(g) of the CWA~~
5700 ~~(provided, however, that a § 301(g) variance may only be requested for ammonia,~~
5701 ~~chlorine, color, iron, total phenols (when determined by the administrator to be a pollutant~~
5702 ~~covered by § 301(b)(2)(F) of the CWA) and any other pollutant that the administrator lists~~
5703 ~~under § 301(g)(4) of the CWA) must be made as follows:~~

5704 ~~a. For those requests for a variance from an effluent limitation based upon an effluent~~
5705 ~~limitation guideline by:~~

5706 ~~(1) Submitting an initial request to the regional administrator, as well as to the~~
5707 ~~department, stating the name of the discharger, the state permit number, the outfall~~
5708 ~~number(s), the applicable effluent guideline, and whether the discharger is requesting~~
5709 ~~a § 301(c) or § 301(g) of the CWA modification, or both. This request must have been~~
5710 ~~filed not later than 270 days after promulgation of an applicable effluent limitation~~
5711 ~~guideline; and~~

5712 ~~(2) Submitting a completed request no later than the close of the public comment~~
5713 ~~period for the draft state permit demonstrating that: (i) all reasonable ascertainable~~
5714 ~~issues have been raised and all reasonably available arguments and materials~~
5715 ~~supporting their position have been submitted; and (ii) that the applicable requirements~~
5716 ~~of 40 CFR Part 125 have been met. Notwithstanding this provision, the complete~~
5717 ~~application for a request under § 301(g) of the CWA shall be filed 180 days before~~
5718 ~~EPA must make a decision (unless the Regional Administrator establishes a shorter~~
5719 ~~or longer period); or~~

5720 ~~b. For those requests for a variance from effluent limitations not based on effluent~~
5721 ~~limitation guidelines, the request need only comply with subdivision 2 a (2) of this~~
5722 ~~subsection and need not be preceded by an initial request under subdivision 2 a (1) of~~
5723 ~~this subsection.~~

5724 ~~3. A modification under § 302(b)(2) of the CWA of requirements under § 302(a) of the~~
5725 ~~CWA for achieving water quality related effluent limitations may be requested no later than~~
5726 ~~the close of the public comment period for the draft state permit on the state permit from~~
5727 ~~which the modification is sought.~~

5728 4. A variance for alternate effluent limitations for the thermal component of any discharge
 5729 must be filed with a timely application for a state permit under this section, except that if
 5730 thermal effluent limitations are established on a case-by-case basis or are based on water
 5731 quality standards the request for a variance may be filed by the close of the public
 5732 comment period for the draft state permit. A copy of the request shall be sent
 5733 simultaneously to the department.

5734 H. Expedited variance procedures and time extensions.

5735 1. Notwithstanding the time requirements in subsection G of this section, the department
 5736 may notify a state permit applicant before a draft state permit is issued that the draft state
 5737 permit will likely contain limitations which are eligible for variances. In the notice the
 5738 department may require the state permit applicant as a condition of consideration of any
 5739 potential variance request to submit a request explaining how the requirements of 40 CFR
 5740 Part 125 applicable to the variance have been met and may require its submission within
 5741 a specified reasonable time after receipt of the notice. The notice may be sent before the
 5742 state permit application has been submitted. The draft or final state permit may contain
 5743 the alternative limitations which may become effective upon final grant of the variance.

5744 2. A discharger who cannot file a timely complete request required under subdivisions G
 5745 2 a (2) or G 2 b of this section may request an extension. The extension may be granted
 5746 or denied at the discretion of the department. Extensions shall be no more than six months
 5747 in duration.

5748 I. Recordkeeping. State permit applicants shall keep records of all data used to complete state
 5749 permit applications and any supplemental information submitted under this section for a period of
 5750 at least three years from the date the application is signed.

5751 **9VAC25-870-365. Permit rationale. (Repealed.)**

5752 In granting a permit pursuant to this chapter, the department shall provide in writing a clear
 5753 and concise statement of the legal basis, scientific rationale, and justification for the decision
 5754 reached. When the decision of the department is to deny a permit, the department shall, in
 5755 consultation with legal counsel, provide a clear and concise statement explaining the reason for
 5756 the denial, the scientific justification for the same, and how the department's decision is in
 5757 compliance with applicable laws and regulations. Copies of the decision, certified by the director,
 5758 shall be mailed by certified mail to the permittee or applicant.

5759 **9VAC25-870-365. Permit rationale. (Repealed.)**

5760 In granting a permit pursuant to this chapter, the department shall provide in writing a clear
 5761 and concise statement of the legal basis, scientific rationale, and justification for the decision
 5762 reached. When the decision of the department is to deny a permit, the department shall, in
 5763 consultation with legal counsel, provide a clear and concise statement explaining the reason for
 5764 the denial, the scientific justification for the same, and how the department's decision is in
 5765 compliance with applicable laws and regulations. Copies of the decision, certified by the director,
 5766 shall be mailed by certified mail to the permittee or applicant.

5767 **9VAC25-870-370. Signatories to state permit applications and reports. (Repealed.)**

5768 A. All state permit applications shall be signed as follows:

5769 1. For a corporation: by a responsible corporate officer. For the purpose of this section, a
 5770 responsible corporate officer means: (i) a president, secretary, treasurer, or vice president
 5771 of the corporation in charge of a principal business function, or any other person who
 5772 performs similar policy-making or decision-making functions for the corporation, or (ii) the
 5773 manager of one or more manufacturing, production, or operating facilities, provided the
 5774 manager is authorized to make management decisions that govern the operation of the
 5775 regulated facility, including having the explicit or implicit duty of making major capital

5776 investment recommendations, and initiating and directing other comprehensive measures
 5777 to assure long-term environmental compliance with environmental laws and regulations;
 5778 the manager can ensure that the necessary systems are established or actions taken to
 5779 gather complete and accurate information for state permit application requirements; and
 5780 where authority to sign documents has been assigned or delegated to the manager in
 5781 accordance with corporate procedures;

5782 2. For a partnership or sole proprietorship: by a general partner or the proprietor,
 5783 respectively; or

5784 3. For a municipality, state, federal, or other public agency: by either a principal executive
 5785 officer or ranking elected official. For purposes of this section, a principal executive officer
 5786 of a federal agency includes (i) the chief executive officer of the agency, or (ii) a senior
 5787 executive officer having responsibility for the overall operations of a principal geographic
 5788 unit of the agency.

5789 B. All reports required by state permits, and other information requested by the department
 5790 shall be signed by a person described in subsection A of this section, or by a duly authorized
 5791 representative of that person. A person is a duly authorized representative only if:

5792 1. The authorization is made in writing by a person described in subsection A of this
 5793 section;

5794 2. The authorization specifies either an individual or a position having responsibility for the
 5795 overall operation of the regulated facility or activity such as the position of plant manager,
 5796 operator of a well or a well field, superintendent, position of equivalent responsibility, or
 5797 an individual or position having overall responsibility for environmental matters for the
 5798 company. A duly authorized representative may thus be either a named individual or any
 5799 individual occupying a named position; and

5800 3. The written authorization is submitted to the department.

5801 C. If an authorization under subsection B of this section is no longer accurate because a
 5802 different individual or position has responsibility for the overall operation of the facility, a new
 5803 authorization satisfying the requirements of subsection B of this section must be submitted to the
 5804 department prior to or together with any reports, or information to be signed by an authorized
 5805 representative.

5806 D. Any person signing a document under subsection A or B of this section shall make the
 5807 following certification:

5808 "I certify under penalty of law that this document and all attachments were prepared under
 5809 my direction or supervision in accordance with a system designed to assure that qualified
 5810 personnel properly gather and evaluate the information submitted. Based on my inquiry of
 5811 the person or persons who manage the system, or those persons directly responsible for
 5812 gathering the information, the information submitted is, to the best of my knowledge and
 5813 belief, true, accurate, and complete. I am aware that there are significant penalties for
 5814 submitting false information, including the possibility of fine and imprisonment for knowing
 5815 violations."

5816 E. Electronic reporting. If documents described in subsection A or B of this section are
 5817 submitted electronically by or on behalf of a VPDES-regulated facility, any person providing the
 5818 electronic signature for such documents shall meet all relevant requirements of this section and
 5819 shall ensure that all of the relevant requirements of Part XI (9VAC25-31-950 et seq.) of the Virginia
 5820 Pollutant Discharge Elimination System (VPDES) Permit Regulation and 40 CFR Part 3
 5821 (including, in all cases, 40 CFR Part 3 Subpart D) are met for that submission.

5822 **9VAC25-870-370. Signatories to state permit applications and reports. (Repealed.)**

5823 A. All state permit applications shall be signed as follows:

5824 1. For a corporation: by a responsible corporate officer. For the purpose of this section, a
5825 responsible corporate officer means: (i) a president, secretary, treasurer, or vice president
5826 of the corporation in charge of a principal business function, or any other person who
5827 performs similar policy-making or decision-making functions for the corporation, or (ii) the
5828 manager of one or more manufacturing, production, or operating facilities, provided the
5829 manager is authorized to make management decisions that govern the operation of the
5830 regulated facility, including having the explicit or implicit duty of making major capital
5831 investment recommendations, and initiating and directing other comprehensive measures
5832 to assure long-term environmental compliance with environmental laws and regulations;
5833 the manager can ensure that the necessary systems are established or actions taken to
5834 gather complete and accurate information for state permit application requirements; and
5835 where authority to sign documents has been assigned or delegated to the manager in
5836 accordance with corporate procedures;

5837 2. For a partnership or sole proprietorship: by a general partner or the proprietor,
5838 respectively; or

5839 3. For a municipality, state, federal, or other public agency: by either a principal executive
5840 officer or ranking elected official. For purposes of this section, a principal executive officer
5841 of a federal agency includes (i) the chief executive officer of the agency, or (ii) a senior
5842 executive officer having responsibility for the overall operations of a principal geographic
5843 unit of the agency.

5844 B. All reports required by state permits, and other information requested by the department
5845 shall be signed by a person described in subsection A of this section, or by a duly authorized
5846 representative of that person. A person is a duly authorized representative only if:

5847 1. The authorization is made in writing by a person described in subsection A of this
5848 section;

5849 2. The authorization specifies either an individual or a position having responsibility for the
5850 overall operation of the regulated facility or activity such as the position of plant manager,
5851 operator of a well or a well field, superintendent, position of equivalent responsibility, or
5852 an individual or position having overall responsibility for environmental matters for the
5853 company. A duly authorized representative may thus be either a named individual or any
5854 individual occupying a named position; and

5855 3. The written authorization is submitted to the department.

5856 C. If an authorization under subsection B of this section is no longer accurate because a
5857 different individual or position has responsibility for the overall operation of the facility, a new
5858 authorization satisfying the requirements of subsection B of this section must be submitted to the
5859 department prior to or together with any reports, or information to be signed by an authorized
5860 representative.

5861 D. Any person signing a document under subsection A or B of this section shall make the
5862 following certification:

5863 "I certify under penalty of law that this document and all attachments were prepared under
5864 my direction or supervision in accordance with a system designed to assure that qualified
5865 personnel properly gather and evaluate the information submitted. Based on my inquiry of
5866 the person or persons who manage the system, or those persons directly responsible for
5867 gathering the information, the information submitted is, to the best of my knowledge and
5868 belief, true, accurate, and complete. I am aware that there are significant penalties for
5869 submitting false information, including the possibility of fine and imprisonment for knowing
5870 violations."

5871 E. Electronic reporting. If documents described in subsection A or B of this section are
 5872 submitted electronically by or on behalf of a VPDES-regulated facility, any person providing the
 5873 electronic signature for such documents shall meet all relevant requirements of this section and
 5874 shall ensure that all of the relevant requirements of Part XI (9VAC25-31-950 et seq.) of the Virginia
 5875 Pollutant Discharge Elimination System (VPDES) Permit Regulation and 40 CFR Part 3
 5876 (including, in all cases, 40 CFR Part 3 Subpart D) are met for that submission.

5877 **9VAC25-870-380. Stormwater discharges. (Repealed.)**

5878 A. State permit requirements.

5879 1. Prior to October 1, 1994, discharges composed entirely of stormwater shall not be
 5880 required to obtain a state permit except:

5881 a. A discharge with respect to which a state permit has been issued prior to February
 5882 4, 1987;

5883 b. A stormwater discharge associated with large construction activity;

5884 c. A discharge from a large municipal separate storm sewer system;

5885 d. A discharge from a medium municipal separate storm sewer system; or

5886 e. A discharge that either the department or the regional administrator determines to
 5887 contribute to a violation of a water quality standard or is a significant contributor of
 5888 pollutants to surface waters. This designation may include a discharge from any
 5889 conveyance or system of conveyances used for collecting and conveying stormwater
 5890 runoff or a system of discharges from municipal separate storm sewers, except for
 5891 those discharges from conveyances that do not require a state permit under
 5892 subdivision 2 of this subsection or agricultural stormwater runoff that is exempted from
 5893 the definition of point source.

5894 The department may designate discharges from municipal separate storm sewers on
 5895 a system-wide or jurisdiction-wide basis. In making this determination the department
 5896 may consider the following factors:

5897 (1) The location of the discharge with respect to surface waters;

5898 (2) The size of the discharge;

5899 (3) The quantity and nature of the pollutants discharged to surface waters; and

5900 (4) Other relevant factors.

5901 2. The department may not require a state permit for discharges of stormwater runoff from
 5902 mining operations or oil and gas exploration, production, processing or treatment
 5903 operations, or transmission facilities, composed entirely of flows that are from
 5904 conveyances or systems of conveyances (including but not limited to pipes, conduits,
 5905 ditches, and channels) used for collecting and conveying precipitation runoff and that are
 5906 not contaminated by contact with or that has not come into contact with, any overburden,
 5907 raw material, intermediate products, finished product, by-product or waste products
 5908 located on the site of such operations.

5909 3. a. State permits must be obtained for all discharges from large and medium municipal
 5910 separate storm sewer systems.

5911 b. The department may either issue one system-wide state permit covering all
 5912 discharges from municipal separate storm sewers within a large or medium municipal
 5913 storm sewer system or issue distinct state permits for appropriate categories of
 5914 discharges within a large or medium municipal separate storm sewer system including,
 5915 but not limited to: all discharges owned or operated by the same municipality; located
 5916 within the same jurisdiction; all discharges within a system that discharge to the same

5917 watershed; discharges within a system that are similar in nature; or for individual
5918 discharges from municipal separate storm sewers within the system.

5919 c. The operator of a discharge from a municipal separate storm sewer that is part of a
5920 large or medium municipal separate storm sewer system must either:

5921 (1) Participate in a state permit application (to be a state permittee or a state co-
5922 permittee) with one or more other operators of discharges from the large or medium
5923 municipal storm sewer system that covers all, or a portion of all, discharges from the
5924 municipal separate storm sewer system;

5925 (2) Submit a distinct state permit application that only covers discharges from the
5926 municipal separate storm sewers for which the operator is responsible; or

5927 (3) A regional authority may be responsible for submitting a state permit application
5928 under the following guidelines:

5929 (a) The regional authority together with state permit co-applicants shall have authority
5930 over a stormwater management program that is in existence, or shall be in existence
5931 at the time Part 1 of the application is due;

5932 (b) The state permit applicant or co-applicants shall establish their ability to make a
5933 timely submission of Part 1 and Part 2 of the municipal application;

5934 (c) Each of the operators of municipal separate storm sewers within large or medium
5935 municipal separate storm sewer systems, that are under the purview of the designated
5936 regional authority, shall comply with the application requirements of subsection C of
5937 this section.

5938 d. One state permit application may be submitted for all or a portion of all municipal
5939 separate storm sewers within adjacent or interconnected large or medium municipal
5940 separate storm sewer systems. The department may issue one system-wide state
5941 permit covering all, or a portion of all municipal separate storm sewers in adjacent or
5942 interconnected large or medium municipal separate storm sewer systems.

5943 e. State permits for all or a portion of all discharges from large or medium municipal
5944 separate storm sewer systems that are issued on a system-wide, jurisdiction-wide,
5945 watershed or other basis may specify different conditions relating to different
5946 discharges covered by the state permit, including different management programs for
5947 different drainage areas that contribute stormwater to the system.

5948 f. State co-permittees need only comply with state permit conditions relating to
5949 discharges from the municipal separate storm sewers for which they are operators.

5950 4. In addition to meeting the requirements of subsection B of this section, an operator of
5951 a stormwater discharge associated with a large construction activity that discharges
5952 through a large or medium municipal separate storm sewer system shall submit to the
5953 operator of the municipal separate storm sewer system receiving the discharge no later
5954 than May 15, 1991, or 180 days prior to commencing such discharge: the name of the
5955 facility; a contact person and phone number; the location of the discharge; a description,
5956 including Standard Industrial Classification, that best reflects the principal products or
5957 services provided by each facility; and any existing state permit number.

5958 5. The department may issue state permits for municipal separate storm sewers that are
5959 designated under subdivision A 1 e of this section on a system-wide basis, jurisdiction-
5960 wide basis, watershed basis or other appropriate basis, or may issue state permits for
5961 individual discharges.

5962 6. Conveyances that discharge stormwater runoff combined with municipal sewage are
5963 point sources that must obtain separate VPDES permits in accordance with the
5964 procedures of 9VAC25-31 and are not subject to the provisions of this section.

- 5965 ~~7. Whether a discharge from a municipal separate storm sewer is or is not subject to~~
5966 ~~regulation under this subsection shall have no bearing on whether the owner or operator~~
5967 ~~of the discharge is eligible for funding under Title II, Title III or Title VI of the CWA.~~
- 5968 ~~8. a. On and after October 1, 1994, for discharges composed entirely of stormwater, that~~
5969 ~~are not required by subdivision 1 of this subsection to obtain a state permit, operators shall~~
5970 ~~be required to obtain a state permit only if:~~
- 5971 ~~(1) The discharge is from a small MS4 required to be regulated pursuant to 9VAC25-~~
5972 ~~870-400-B;~~
- 5973 ~~(2) The discharge is a stormwater discharge associated with small construction activity~~
5974 ~~as defined in 9VAC25-870-10;~~
- 5975 ~~(3) The department or the EPA regional administrator determines that stormwater~~
5976 ~~controls are needed for the discharge based on wasteload allocations that are part of~~
5977 ~~"total maximum daily loads" (TMDLs) that address the pollutant(s) of concern; or~~
- 5978 ~~(4) The department or the EPA regional administrator determines that the discharge,~~
5979 ~~or category of discharges within a geographic area, contributes to a violation of a water~~
5980 ~~quality standard or is a significant contributor of pollutants to surface waters.~~
- 5981 ~~b. Operators of small MS4s designated pursuant to subdivisions 8 a (1), (3), and (4)~~
5982 ~~of this subsection shall seek coverage under a state permit in accordance with~~
5983 ~~9VAC25-870-400 C through E. Operators of nonmunicipal sources designated~~
5984 ~~pursuant to subdivisions 8 a (2), (3), and (4) of this subsection shall seek coverage~~
5985 ~~under a state permit in accordance with subdivision B 1 of this section.~~
- 5986 ~~c. Operators of stormwater discharges designated pursuant to subdivisions 8 a (3) and~~
5987 ~~(4) of this subsection shall apply to the department for a state permit within 180 days~~
5988 ~~of receipt of notice, unless permission for a later date is granted by the department.~~
- 5989 ~~B. Application requirements for stormwater discharges associated with large and small~~
5990 ~~construction activity.~~
- 5991 ~~1. Dischargers of stormwater associated with large and small construction activity are~~
5992 ~~required to apply for an individual state permit or seek coverage under a promulgated~~
5993 ~~stormwater general permit. Facilities that are required to obtain an individual state permit,~~
5994 ~~or any discharge of stormwater that the department is evaluating for designation under~~
5995 ~~subdivision A 1 e of this section and is not a municipal separate storm sewer, shall submit~~
5996 ~~a state application in accordance with the requirements of 9VAC25-870-360 as modified~~
5997 ~~and supplemented by the provisions of this subsection.~~
- 5998 ~~a. The operator of an existing or new stormwater discharge that is associated with a~~
5999 ~~large or small construction activity shall provide a narrative description of:~~
- 6000 ~~(1) The location (including a map) and the nature of the construction activity;~~
- 6001 ~~(2) The total area of the site and the area of the site that is expected to undergo~~
6002 ~~excavation during the life of the state permit;~~
- 6003 ~~(3) Proposed measures, including best management practices, to control pollutants in~~
6004 ~~stormwater discharges during construction, including a brief description of applicable~~
6005 ~~state and VESCP requirements;~~
- 6006 ~~(4) Proposed measures to control pollutants in stormwater discharges that will occur~~
6007 ~~after construction operations have been completed, including a brief description of~~
6008 ~~applicable state or local VESCP requirements;~~
- 6009 ~~(5) An estimate of the runoff coefficient of the site and the increase in impervious area~~
6010 ~~after the construction addressed in the state permit application is completed, the~~

6011 ~~nature of fill material and existing data describing the soil or the quality of the~~
6012 ~~discharge; and~~

6013 ~~(6) The name of the receiving water.~~

6014 ~~(7) Location of Chesapeake Bay Preservation Areas.~~

6015 ~~b. State permit applicants shall provide such other information the department may~~
6016 ~~reasonably require to determine whether to issue a state permit.~~

6017 ~~C. Application requirements for large and medium municipal separate storm sewer~~
6018 ~~discharges. The operator of a discharge from a large or medium municipal separate storm sewer~~
6019 ~~or a municipal separate storm sewer that is designated by the department under subdivision A 1~~
6020 ~~e of this section may submit a jurisdiction-wide or system-wide state permit application. Where~~
6021 ~~more than one public entity owns or operates a municipal separate storm sewer within a~~
6022 ~~geographic area (including adjacent or interconnected municipal separate storm sewer systems),~~
6023 ~~such operators may be a state permit coapplicant to the same application. State permit~~
6024 ~~applications for discharges from large and medium municipal storm sewers or municipal storm~~
6025 ~~sewers designated under subdivision A 1 e of this section shall include;~~

6026 ~~1. Part 1 of the application shall consist of:~~

6027 ~~a. The state permit applicants' name, address, telephone number, and email address;~~
6028 ~~ownership status; status as a state or local government entity; and the name, address,~~
6029 ~~telephone number, and email address of a contact person;~~

6030 ~~b. A description of existing legal authority to control discharges to the municipal~~
6031 ~~separate storm sewer system. When existing legal authority is not sufficient to meet~~
6032 ~~the criteria provided in subdivision 2 a of this subsection, the description shall list~~
6033 ~~additional authorities as will be necessary to meet the criteria and shall include a~~
6034 ~~schedule and commitment to seek such additional authority that will be needed to meet~~
6035 ~~the criteria;~~

6036 ~~c. Source identification.~~

6037 ~~(1) A description of the historic use of ordinances, guidance or other controls that~~
6038 ~~limited the discharge of nonstormwater discharges to any publicly owned treatment~~
6039 ~~works serving the same area as the municipal separate storm sewer system.~~

6040 ~~(2) A USGS 7.5 minute topographic map (or equivalent topographic map with a scale~~
6041 ~~between 1:10,000 and 1:24,000, if cost effective) extending one mile beyond the~~
6042 ~~service boundaries of the municipal storm sewer system covered by the state permit~~
6043 ~~application. The following information shall be provided:~~

6044 ~~(a) The location of known municipal storm sewer system outfalls discharging to surface~~
6045 ~~waters;~~

6046 ~~(b) A description of the land use activities (e.g., divisions indicating undeveloped,~~
6047 ~~residential, commercial, agricultural, and industrial uses) accompanied with estimates~~
6048 ~~of population densities and projected growth for a 10-year period within the drainage~~
6049 ~~area served by the separate storm sewer. For each land use type, an estimate of an~~
6050 ~~average runoff coefficient shall be provided;~~

6051 ~~(c) The location and a description of the activities of the facility of each currently~~
6052 ~~operating or closed municipal landfill or other treatment, storage or disposal facility for~~
6053 ~~municipal waste;~~

6054 ~~(d) The location and the state permit number of any known discharge to the municipal~~
6055 ~~storm sewer that has been issued a state permit;~~

6056 ~~(e) The location of major structural controls for stormwater discharge (retention basins,~~
6057 ~~detention basins, major infiltration devices, etc.); and~~

6058 ~~(f) The identification of publicly owned parks, recreational areas, and other open lands;~~
6059 ~~d. Discharge characterization.~~

6060 ~~(1) Monthly mean rain and snow fall estimates (or summary of weather bureau data)~~
6061 ~~and the monthly average number of storm events.~~

6062 ~~(2) Existing quantitative data describing the volume and quality of discharges from the~~
6063 ~~municipal storm sewer, including a description of the outfalls sampled, sampling~~
6064 ~~procedures and analytical methods used.~~

6065 ~~(3) A list of water bodies that receive discharges from the municipal separate storm~~
6066 ~~sewer system, including downstream segments, lakes and estuaries, where pollutants~~
6067 ~~from the system discharges may accumulate and cause water degradation and a brief~~
6068 ~~description of known water quality impacts. At a minimum, the description of impacts~~
6069 ~~shall include a description of whether the water bodies receiving such discharges have~~
6070 ~~been:~~

6071 ~~(a) Assessed and reported in § 305(b) of the CWA reports submitted by the state, the~~
6072 ~~basis for the assessment (evaluated or monitored), a summary of designated use~~
6073 ~~support and attainment of the State Water Control Law and the CWA goals (fishable~~
6074 ~~and swimmable waters), and causes of nonsupport of designated uses;~~

6075 ~~(b) Listed under § 304(l)(1)(A)(i), 304(l)(1)(A)(ii), or 304(l)(1)(B) of the CWA that is not~~
6076 ~~expected to meet water quality standards or water quality goals;~~

6077 ~~(c) Listed in State Nonpoint Source Assessments required by § 319(a) of the CWA~~
6078 ~~that, without additional action to control nonpoint sources of pollution, cannot~~
6079 ~~reasonably be expected to attain or maintain water quality standards due to storm~~
6080 ~~sewers, construction, highway maintenance and runoff from municipal landfills and~~
6081 ~~municipal sludge adding significant pollution (or contributing to a violation of water~~
6082 ~~quality standards);~~

6083 ~~(d) Identified and classified according to eutrophic condition of publicly owned lakes~~
6084 ~~listed in state reports required under § 314(a) of the CWA (include the following: a~~
6085 ~~description of those publicly owned lakes for which uses are known to be impaired; a~~
6086 ~~description of procedures, processes, and methods to control the discharge of~~
6087 ~~pollutants from municipal separate storm sewers into such lakes; and a description of~~
6088 ~~methods and procedures to restore the quality of such lakes);~~

6089 ~~(e) Areas of concern of the Great Lakes identified by the International Joint~~
6090 ~~Commission;~~

6091 ~~(f) Designated estuaries under the National Estuary Program under § 320 of the CWA;~~

6092 ~~(g) Recognized by the state permit applicant as highly valued or sensitive waters;~~

6093 ~~(h) Defined by the state or U.S. Fish and Wildlife Service's National Wetlands Inventory~~
6094 ~~as wetlands; and~~

6095 ~~(i) Found to have pollutants in bottom sediments, fish tissue or biosurvey data.~~

6096 ~~(4) Results of a field screening analysis for illicit connections and illegal dumping for~~
6097 ~~either selected field screening points or major outfalls covered in the state permit~~
6098 ~~application. At a minimum, a screening analysis shall include a narrative description,~~
6099 ~~for either each field screening point or major outfall, of visual observations made during~~
6100 ~~dry weather periods. If any flow is observed, two grab samples shall be collected~~
6101 ~~during a 24-hour period with a minimum period of four hours between samples. For all~~
6102 ~~such samples, a narrative description of the color, odor, turbidity, the presence of an~~
6103 ~~oil sheen or surface scum as well as any other relevant observations regarding the~~
6104 ~~potential presence of nonstormwater discharges or illegal dumping shall be provided.~~

6105 In addition, a narrative description of the results of a field analysis using suitable
6106 methods to estimate pH, total chlorine, total copper, total phenol, and detergents (or
6107 surfactants) shall be provided along with a description of the flow rate. Where the field
6108 analysis does not involve analytical methods approved under 40 CFR Part 136, the
6109 state permit applicant shall provide a description of the method used including the
6110 name of the manufacturer of the test method along with the range and accuracy of the
6111 test. Field screening points shall be either major outfalls or other outfall points (or any
6112 other point of access such as manholes) randomly located throughout the storm sewer
6113 system by placing a grid over a drainage system map and identifying those cells of the
6114 grid which contain a segment of the storm sewer system or major outfall. The field
6115 screening points shall be established using the following guidelines and criteria:

6116 (a) A grid system consisting of perpendicular north-south and east-west lines spaced
6117 1/4 mile apart shall be overlaid on a map of the municipal storm sewer system, creating
6118 a series of cells;

6119 (b) All cells that contain a segment of the storm sewer system shall be identified; one
6120 field screening point shall be selected in each cell; major outfalls may be used as field
6121 screening points;

6122 (c) Field screening points should be located downstream of any sources of suspected
6123 illegal or illicit activity;

6124 (d) Field screening points shall be located to the degree practicable at the farthest
6125 manhole or other accessible location downstream in the system, within each cell;
6126 however, safety of personnel and accessibility of the location should be considered in
6127 making this determination;

6128 (e) Hydrological conditions; total drainage area of the site; population density of the
6129 site; traffic density; age of the structures or buildings in the area; history of the area;
6130 and land use types;

6131 (f) For medium municipal separate storm sewer systems, no more than 250 cells need
6132 to have identified field screening points; in large municipal separate storm sewer
6133 systems, no more than 500 cells need to have identified field screening points; cells
6134 established by the grid that contain no storm sewer segments will be eliminated from
6135 consideration; if fewer than 250 cells in medium municipal sewers are created, and
6136 fewer than 500 in large systems are created by the overlay on the municipal sewer
6137 map, then all those cells which contain a segment of the sewer system shall be subject
6138 to field screening (unless access to the separate storm sewer system is impossible);
6139 and

6140 (g) Large or medium municipal separate storm sewer systems which are unable to
6141 utilize the procedures described in subdivisions 1 d (4) (a) through (f) of this
6142 subsection, because a sufficiently detailed map of the separate storm sewer systems
6143 is unavailable, shall field screen no more than 500 or 250 major outfalls respectively
6144 (or all major outfalls in the system, if less); in such circumstances, the state permit
6145 applicant shall establish a grid system consisting of north-south and east-west lines
6146 spaced 1/4 mile apart as an overlay to the boundaries of the municipal storm sewer
6147 system, thereby creating a series of cells; the state permit applicant will then select
6148 major outfalls in as many cells as possible until at least 500 major outfalls (large
6149 municipalities) or 250 major outfalls (medium municipalities) are selected; a field
6150 screening analysis shall be undertaken at these major outfalls.

6151 (5) Information and a proposed program to meet the requirements of subdivision 2 c
6152 of this subsection. Such description shall include: the location of outfalls or field
6153 screening points appropriate for representative data collection under subdivision 2 c

6154 ~~(1) of this subsection, a description of why the outfall or field screening point is~~
 6155 ~~representative, the seasons during which sampling is intended, and a description of~~
 6156 ~~the sampling equipment. The proposed location of outfalls or field screening points for~~
 6157 ~~such sampling should reflect water quality concerns (see subdivision 1 d (3) of this~~
 6158 ~~subsection) to the extent practicable;~~

6159 ~~e. Management programs.~~

6160 ~~(1) A description of the existing management programs to control pollutants from the~~
 6161 ~~municipal separate storm sewer system. The description shall provide information on~~
 6162 ~~existing structural and source controls, including operation and maintenance~~
 6163 ~~measures for structural controls, that are currently being implemented. Such controls~~
 6164 ~~may include, but are not limited to, procedures to control pollution resulting from~~
 6165 ~~construction activities, floodplain management controls, wetland protection measures,~~
 6166 ~~best management practices for new subdivisions; and emergency spill response~~
 6167 ~~programs. The description may address controls established under state law as well~~
 6168 ~~as local requirements.~~

6169 ~~(2) A description of the existing program to identify illicit connections to the municipal~~
 6170 ~~storm sewer system. The description should include inspection procedures and~~
 6171 ~~methods for detecting and preventing illicit discharges, and describe areas where this~~
 6172 ~~program has been implemented; and~~

6173 ~~f. Fiscal resources. A description of the financial resources currently available to the~~
 6174 ~~municipality to complete Part 2 of the state permit application. A description of the~~
 6175 ~~municipality's budget for existing stormwater programs, including an overview of the~~
 6176 ~~municipality's financial resources and budget, including overall indebtedness and~~
 6177 ~~assets, and sources of funds for stormwater programs.~~

6178 ~~2. Part 2 of the application shall consist of:~~

6179 ~~a. A demonstration that the state permit applicant can operate pursuant to legal~~
 6180 ~~authority established by statute, ordinance or series of contracts that authorizes or~~
 6181 ~~enables the state permit applicant at a minimum to:~~

6182 ~~(1) Control through ordinance, state permit, contract, order or similar means, the~~
 6183 ~~contribution of pollutants to the municipal storm sewer by stormwater discharges~~
 6184 ~~associated with industrial activity and the quality of stormwater discharged from sites~~
 6185 ~~of industrial activity;~~

6186 ~~(2) Prohibit through ordinance, order or similar means, illicit discharges to the~~
 6187 ~~municipal separate storm sewer;~~

6188 ~~(3) Control through ordinance, order or similar means the discharge to a municipal~~
 6189 ~~separate storm sewer of spills, dumping or disposal of materials other than stormwater;~~

6190 ~~(4) Control through interagency agreements among state permit coapplicants the~~
 6191 ~~contribution of pollutants from one portion of the municipal system to another portion~~
 6192 ~~of the municipal system;~~

6193 ~~(5) Require compliance with conditions in ordinances, state permits, contracts or~~
 6194 ~~orders; and~~

6195 ~~(6) Carry out all inspection, surveillance and monitoring procedures necessary to~~
 6196 ~~determine compliance and noncompliance with state permit conditions including the~~
 6197 ~~prohibition on illicit discharges to the municipal separate storm sewer;~~

6198 ~~b. The location of any major outfall that discharges to surface waters that was not~~
 6199 ~~reported under subdivision 1 c (2) (a) of this subsection. Provide an inventory,~~
 6200 ~~organized by watershed of the name and address, and a description (such as SIC~~
 6201 ~~codes) that best reflects the principal products or services provided by each facility~~

6202 that may discharge, to the municipal separate storm sewer, stormwater associated
6203 with industrial activity;

6204 c. When quantitative data for a pollutant are required under subdivision 2 c (1) (c) of
6205 this subsection, the state permit applicant must collect a sample of effluent in
6206 accordance with 9VAC25-870-390 and analyze it for the pollutant in accordance with
6207 analytical methods approved under 40 CFR Part 136. When no analytical method is
6208 approved the state permit applicant may use any suitable method but must provide a
6209 description of the method. The state permit applicant must provide information
6210 characterizing the quality and quantity of discharges covered in the state permit
6211 application, including:

6212 (1) Quantitative data from representative outfalls designated by the department (based
6213 on information received in Part 1 of the application, the department shall designate
6214 between five and 10 outfalls or field screening points as representative of the
6215 commercial, residential and industrial land use activities of the drainage area
6216 contributing to the system or, where there are less than five outfalls) covered in the
6217 application, the department shall designate all outfalls developed as follows:

6218 (a) For each outfall or field screening point designated under this subsection, samples
6219 shall be collected of stormwater discharges from three storm events occurring at least
6220 one month apart in accordance with the requirements at 9VAC25-870-390 (the
6221 department may allow exemptions to sampling three storm events when climatic
6222 conditions create good cause for such exemptions);

6223 (b) A narrative description shall be provided of the date and duration of the storm event
6224 or events sampled, rainfall estimates of the storm event which generated the sampled
6225 discharge and the duration between the storm event sampled and the end of the
6226 previous measurable (greater than 0.1 inch rainfall) storm event;

6227 (c) For samples collected and described under subdivisions 2 c (1) (a) and (1) (b) of
6228 this subsection, quantitative data shall be provided for: the organic pollutants listed in
6229 Table II; the pollutants listed in Table III (toxic metals, cyanide, and total phenols) of
6230 40 CFR Part 122 Appendix D, and for the following pollutants:

6231 Total suspended solids (TSS)

6232 Total dissolved solids (TDS)

6233 Chemical oxygen demand (COD)

6234 Biochemical oxygen demand (BOD₅)

6235 Oil and grease

6236 Fecal coliform

6237 Fecal streptococcus

6238 pH

6239 Total Kjeldahl nitrogen

6240 Nitrate plus nitrite

6241 Dissolved phosphorus

6242 Total ammonia plus organic nitrogen

6243 Total phosphorus

6244 (d) Additional limited quantitative data required by the department for determining state
6245 permit conditions (the department may require that quantitative data shall be provided
6246 for additional parameters, and may establish sampling conditions such as the location,

6247 ~~season of sample collection, form of precipitation (snow melt, rainfall) and other~~
6248 ~~parameters necessary to ensure representativeness);~~

6249 ~~(2) Estimates of the annual pollutant load of the cumulative discharges to surface~~
6250 ~~waters from all identified municipal outfalls and the event mean concentration of the~~
6251 ~~cumulative discharges to surface waters from all identified municipal outfalls during a~~
6252 ~~storm event (as described under 9VAC25-870-390) for BOD₅, COD, TSS, dissolved~~
6253 ~~solids, total nitrogen, total ammonia plus organic nitrogen, total phosphorus, dissolved~~
6254 ~~phosphorus, cadmium, copper, lead, and zinc. Estimates shall be accompanied by a~~
6255 ~~description of the procedures for estimating constituent loads and concentrations,~~
6256 ~~including any modeling, data analysis, and calculation methods;~~

6257 ~~(3) A proposed schedule to provide estimates for each major outfall identified in either~~
6258 ~~subdivision 2 b or 1 c (2) (a) of this subsection of the seasonal pollutant load and of~~
6259 ~~the event mean concentration of a representative storm for any constituent detected~~
6260 ~~in any sample required under subdivision 2 c (1) of this subsection; and~~

6261 ~~(4) A proposed monitoring program for representative data collection for the term of~~
6262 ~~the state permit that describes the location of outfalls or field screening points to be~~
6263 ~~sampled (or the location of instream stations), why the location is representative, the~~
6264 ~~frequency of sampling, parameters to be sampled, and a description of sampling~~
6265 ~~equipment;~~

6266 ~~d. A proposed management program that covers the duration of the state permit. It~~
6267 ~~shall include a comprehensive planning process that involves public participation and,~~
6268 ~~where necessary, intergovernmental coordination to reduce the discharge of pollutants~~
6269 ~~to the maximum extent practicable using management practices, control techniques~~
6270 ~~and system, design and engineering methods, and such other provisions that are~~
6271 ~~appropriate. The program shall also include a description of staff and equipment~~
6272 ~~available to implement the program. Separate proposed programs may be submitted~~
6273 ~~by each state permit coapplicant. Proposed programs may impose controls on a~~
6274 ~~system wide basis, a watershed basis, a jurisdiction basis, or on individual outfalls.~~
6275 ~~Proposed programs will be considered by the department when developing state~~
6276 ~~permit conditions to reduce pollutants in discharges to the maximum extent~~
6277 ~~practicable. Proposed management programs shall describe priorities for~~
6278 ~~implementing controls. Such programs shall be based on:~~

6279 ~~(1) A description of structural and source control measures to reduce pollutants from~~
6280 ~~runoff from commercial and residential areas that are discharged from the municipal~~
6281 ~~storm sewer system that are to be implemented during the life of the state permit,~~
6282 ~~accompanied with an estimate of the expected reduction of pollutant loads and a~~
6283 ~~proposed schedule for implementing such controls. At a minimum, the description shall~~
6284 ~~include:~~

6285 ~~(a) A description of maintenance activities and a maintenance schedule for structural~~
6286 ~~controls to reduce pollutants (including floatables) in discharges from municipal~~
6287 ~~separate storm sewers;~~

6288 ~~(b) A description of planning procedures including a comprehensive master plan to~~
6289 ~~develop, implement and enforce controls to reduce the discharge of pollutants from~~
6290 ~~municipal separate storm sewers which receive discharges from areas of new~~
6291 ~~development and significant redevelopment. Such plan shall address controls to~~
6292 ~~reduce pollutants in discharges from municipal separate storm sewers after~~
6293 ~~construction is completed. Controls to reduce pollutants in discharges from municipal~~
6294 ~~separate storm sewers containing construction site runoff are addressed in subdivision~~
6295 ~~2 d (4) of this subsection;~~

6296 ~~(c) A description of practices for operating and maintaining public streets, roads and~~
6297 ~~highways and procedures for reducing the impact on receiving waters of discharges~~
6298 ~~from municipal storm sewer systems, including pollutants discharged as a result of~~
6299 ~~deicing activities;~~

6300 ~~(d) A description of procedures to assure that flood management projects assess the~~
6301 ~~impacts on the water quality of receiving water bodies and that existing structural flood~~
6302 ~~control devices have been evaluated to determine if retrofitting the device to provide~~
6303 ~~additional pollutant removal from stormwater is feasible;~~

6304 ~~(e) A description of a program to monitor pollutants in runoff from operating or closed~~
6305 ~~municipal landfills or other treatment, storage or disposal facilities for municipal waste,~~
6306 ~~which shall identify priorities and procedures for inspections and establishing and~~
6307 ~~implementing control measures for such discharges (this program can be coordinated~~
6308 ~~with the program developed under subdivision 2 d (3) of this subsection); and~~

6309 ~~(f) A description of a program to reduce to the maximum extent practicable, pollutants~~
6310 ~~in discharges from municipal separate storm sewers associated with the application of~~
6311 ~~pesticides, herbicides and fertilizer that will include, as appropriate, controls such as~~
6312 ~~educational activities, permits, certifications and other measures for commercial~~
6313 ~~applicators and distributors, and controls for application in public right-of-ways and at~~
6314 ~~municipal facilities;~~

6315 ~~(2) A description of a program, including a schedule, to detect and remove (or require~~
6316 ~~the discharger to the municipal separate storm sewer to obtain a separate state permit~~
6317 ~~for) illicit discharges and improper disposal into the storm sewer. The proposed~~
6318 ~~program shall include:~~

6319 ~~(a) A description of a program, including inspections, to implement and enforce an~~
6320 ~~ordinance, orders or similar means to prevent illicit discharges to the municipal~~
6321 ~~separate storm sewer system; this program description shall address all types of illicit~~
6322 ~~discharges, however the following category of nonstormwater discharges or flows shall~~
6323 ~~be addressed where such discharges are identified by the municipality as sources of~~
6324 ~~pollutants to surface waters: water line flushing, landscape irrigation, diverted stream~~
6325 ~~flows, rising groundwaters, uncontaminated groundwater infiltration to separate storm~~
6326 ~~sewers, uncontaminated pumped groundwater, discharges from potable water~~
6327 ~~sources, foundation drains, air conditioning condensation, irrigation water, springs,~~
6328 ~~water from crawl space pumps, footing drains, lawn watering, individual residential car~~
6329 ~~washing, flows from riparian habitats and wetlands, dechlorinated swimming pool~~
6330 ~~discharges, and street wash water (program descriptions shall address discharges or~~
6331 ~~flows from firefighting only where such discharges or flows are identified as significant~~
6332 ~~sources of pollutants to surface waters);~~

6333 ~~(b) A description of procedures to conduct on-going field screening activities during~~
6334 ~~the life of the state permit, including areas or locations that will be evaluated by such~~
6335 ~~field screens;~~

6336 ~~(c) A description of procedures to be followed to investigate portions of the separate~~
6337 ~~storm sewer system that, based on the results of the field screen, or other appropriate~~
6338 ~~information, indicate a reasonable potential of containing illicit discharges or other~~
6339 ~~sources of nonstormwater (such procedures may include: sampling procedures for~~
6340 ~~constituents such as fecal coliform, fecal streptococcus, surfactants (Methylene Blue~~
6341 ~~Active Substances—MBAS), residual chlorine, fluorides and potassium; testing with~~
6342 ~~fluorometric dyes; or conducting in storm sewer inspections where safety and other~~
6343 ~~considerations allow. Such description shall include the location of storm sewers that~~
6344 ~~have been identified for such evaluation);~~

- 6345 ~~(d) A description of procedures to prevent, contain, and respond to spills that may~~
6346 ~~discharge into the municipal separate storm sewer;~~
- 6347 ~~(e) A description of a program to promote, publicize, and facilitate public reporting of~~
6348 ~~the presence of illicit discharges or water quality impacts associated with discharges~~
6349 ~~from municipal separate storm sewers;~~
- 6350 ~~(f) A description of educational activities, public information activities, and other~~
6351 ~~appropriate activities to facilitate the proper management and disposal of used oil and~~
6352 ~~toxic materials; and~~
- 6353 ~~(g) A description of controls to limit infiltration of seepage from municipal sanitary~~
6354 ~~sewers to municipal separate storm sewer systems where necessary;~~
- 6355 ~~(3) A description of a program to monitor and control pollutants in stormwater~~
6356 ~~discharges to municipal systems from municipal landfills, hazardous waste treatment,~~
6357 ~~disposal and recovery facilities, industrial facilities that are subject to § 313 of Title III~~
6358 ~~of the Superfund Amendments and Reauthorization Act of 1986 (SARA, 42 USC §~~
6359 ~~11023), and industrial facilities that the municipal permit applicant determines are~~
6360 ~~contributing a substantial pollutant loading to the municipal storm sewer system. The~~
6361 ~~program shall:~~
- 6362 ~~(a) Identify priorities and procedures for inspections and establishing and~~
6363 ~~implementing control measures for such discharges;~~
- 6364 ~~(b) Describe a monitoring program for stormwater discharges associated with the~~
6365 ~~industrial facilities identified in subdivision 2 d (3) of this subsection, to be implemented~~
6366 ~~during the term of the state permit, including the submission of quantitative data on~~
6367 ~~the following constituents: any pollutants limited in effluent guidelines subcategories,~~
6368 ~~where applicable; any pollutant listed in an existing separate VPDES permit for a~~
6369 ~~facility; oil and grease, COD, pH, BOD₅, TSS, total phosphorus, total Kjeldahl nitrogen,~~
6370 ~~nitrate plus nitrite nitrogen, and any information on discharges required under~~
6371 ~~9VAC25-870-390 F and G; and~~
- 6372 ~~(4) A description of a program to implement and maintain structural and nonstructural~~
6373 ~~best management practices to reduce pollutants in stormwater runoff from~~
6374 ~~construction sites to the municipal storm sewer system, which shall include:~~
- 6375 ~~(a) A description of procedures for site planning that incorporate consideration of~~
6376 ~~potential water quality impacts;~~
- 6377 ~~(b) A description of requirements for nonstructural and structural best management~~
6378 ~~practices;~~
- 6379 ~~(c) A description of procedures for identifying priorities for inspecting sites and~~
6380 ~~enforcing control measures that consider the nature of the construction activity,~~
6381 ~~topography, and the characteristics of soils and receiving water quality; and~~
- 6382 ~~(d) A description of appropriate educational and training measures for construction site~~
6383 ~~operators;~~
- 6384 ~~e. Estimated reductions in loadings of pollutants from discharges of municipal storm~~
6385 ~~sewer constituents from municipal storm sewer systems expected as the result of the~~
6386 ~~municipal stormwater quality management program. The assessment shall also~~
6387 ~~identify known impacts of stormwater controls on groundwater;~~
- 6388 ~~f. For each fiscal year to be covered by the state permit, a fiscal analysis of the~~
6389 ~~necessary capital and operation and maintenance expenditures necessary to~~
6390 ~~accomplish the activities of the programs under subdivisions 2 c and d of this~~
6391 ~~subsection. Such analysis shall include a description of the source of funds that are~~

6392 proposed to meet the necessary expenditures, including legal restrictions on the use
6393 of such funds;

6394 g. Where more than one legal entity submits an application, the application shall
6395 contain a description of the roles and responsibilities of each legal entity and
6396 procedures to ensure effective coordination; and

6397 h. Where requirements under subdivisions 1 d (5), 2 b, 2 c (2), and 2 d of this
6398 subsection are not practicable or are not applicable, the department may exclude any
6399 operator of a discharge from a municipal separate storm sewer that is designated
6400 under subdivision A 1 e of this section, or that is located in the counties listed in 40
6401 CFR Part 122 Appendix H or Appendix I (except municipal separate storm sewers that
6402 are located in the incorporated places, townships or towns within such counties) from
6403 such requirements. The department shall not exclude the operator of a discharge from
6404 a municipal separate storm sewer identified in 40 CFR Part 122 Appendix F, G, H or I
6405 from any of the state permit application requirements under this subdivision except
6406 where authorized under this subsection.

6407 **D. Petitions.**

6408 1. Any operator of a municipal separate storm sewer system may petition the appropriate
6409 authority or the department to require a separate state permit for any discharge into the
6410 municipal separate storm sewer system.

6411 2. Any person may petition the department to require a state permit for a discharge which
6412 is composed entirely of stormwater which contributes to a violation of a water quality
6413 standard or is a significant contributor of pollutants to surface waters.

6414 3. Any person may petition the department for the designation of a large, medium or small
6415 municipal separate storm sewer system as defined by this chapter.

6416 4. The department shall make a final determination on any petition received under this
6417 section within 90 days after receiving the petition with the exception of petitions to
6418 designate a small MS4, in which case the department shall make a final determination on
6419 the petition within 180 days after its receipt.

6420 **9VAC25-870-380. Stormwater discharges. (Repealed.)**

6421 **A. State permit requirements.**

6422 1. Prior to October 1, 1994, discharges composed entirely of stormwater shall not be
6423 required to obtain a state permit except:

6424 a. A discharge with respect to which a state permit has been issued prior to February
6425 4, 1987;

6426 b. A stormwater discharge associated with large construction activity;

6427 c. A discharge from a large municipal separate storm sewer system;

6428 d. A discharge from a medium municipal separate storm sewer system; or

6429 e. A discharge that either the department or the regional administrator determines to
6430 contribute to a violation of a water quality standard or is a significant contributor of
6431 pollutants to surface waters. This designation may include a discharge from any
6432 conveyance or system of conveyances used for collecting and conveying stormwater
6433 runoff or a system of discharges from municipal separate storm sewers, except for
6434 those discharges from conveyances that do not require a state permit under
6435 subdivision 2 of this subsection or agricultural stormwater runoff that is exempted from
6436 the definition of point source.

6437 The department may designate discharges from municipal separate storm sewers on
6438 a system-wide or jurisdiction-wide basis. In making this determination the department
6439 may consider the following factors:

- 6440 (1) The location of the discharge with respect to surface waters;
6441 (2) The size of the discharge;
6442 (3) The quantity and nature of the pollutants discharged to surface waters; and
6443 (4) Other relevant factors.

6444 2. The department may not require a state permit for discharges of stormwater runoff from
6445 mining operations or oil and gas exploration, production, processing or treatment
6446 operations, or transmission facilities, composed entirely of flows that are from
6447 conveyances or systems of conveyances (including but not limited to pipes, conduits,
6448 ditches, and channels) used for collecting and conveying precipitation runoff and that are
6449 not contaminated by contact with or that has not come into contact with, any overburden,
6450 raw material, intermediate products, finished product, by-product or waste products
6451 located on the site of such operations.

6452 3. a. State permits must be obtained for all discharges from large and medium municipal
6453 separate storm sewer systems.

6454 b. The department may either issue one system-wide state permit covering all
6455 discharges from municipal separate storm sewers within a large or medium municipal
6456 storm sewer system or issue distinct state permits for appropriate categories of
6457 discharges within a large or medium municipal separate storm sewer system including,
6458 but not limited to: all discharges owned or operated by the same municipality; located
6459 within the same jurisdiction; all discharges within a system that discharge to the same
6460 watershed; discharges within a system that are similar in nature; or for individual
6461 discharges from municipal separate storm sewers within the system.

6462 c. The operator of a discharge from a municipal separate storm sewer that is part of a
6463 large or medium municipal separate storm sewer system must either:

6464 (1) Participate in a state permit application (to be a state permittee or a state co-
6465 permittee) with one or more other operators of discharges from the large or medium
6466 municipal storm sewer system that covers all, or a portion of all, discharges from the
6467 municipal separate storm sewer system;

6468 (2) Submit a distinct state permit application that only covers discharges from the
6469 municipal separate storm sewers for which the operator is responsible; or

6470 (3) A regional authority may be responsible for submitting a state permit application
6471 under the following guidelines:

6472 (a) The regional authority together with state permit co-applicants shall have authority
6473 over a stormwater management program that is in existence, or shall be in existence
6474 at the time Part 1 of the application is due;

6475 (b) The state permit applicant or co-applicants shall establish their ability to make a
6476 timely submission of Part 1 and Part 2 of the municipal application;

6477 (c) Each of the operators of municipal separate storm sewers within large or medium
6478 municipal separate storm sewer systems, that are under the purview of the designated
6479 regional authority, shall comply with the application requirements of subsection C of
6480 this section.

6481 d. One state permit application may be submitted for all or a portion of all municipal
6482 separate storm sewers within adjacent or interconnected large or medium municipal
6483 separate storm sewer systems. The department may issue one system-wide state

6484 permit covering all, or a portion of all municipal separate storm sewers in adjacent or
6485 interconnected large or medium municipal separate storm sewer systems.

6486 e. State permits for all or a portion of all discharges from large or medium municipal
6487 separate storm sewer systems that are issued on a system-wide, jurisdiction-wide,
6488 watershed or other basis may specify different conditions relating to different
6489 discharges covered by the state permit, including different management programs for
6490 different drainage areas that contribute stormwater to the system.

6491 f. State co-permittees need only comply with state permit conditions relating to
6492 discharges from the municipal separate storm sewers for which they are operators.

6493 4. In addition to meeting the requirements of subsection B of this section, an operator of
6494 a stormwater discharge associated with a large construction activity that discharges
6495 through a large or medium municipal separate storm sewer system shall submit to the
6496 operator of the municipal separate storm sewer system receiving the discharge no later
6497 than May 15, 1991, or 180 days prior to commencing such discharge: the name of the
6498 facility; a contact person and phone number; the location of the discharge; a description,
6499 including Standard Industrial Classification, that best reflects the principal products or
6500 services provided by each facility; and any existing state permit number.

6501 5. The department may issue state permits for municipal separate storm sewers that are
6502 designated under subdivision A 1 e of this section on a system-wide basis, jurisdiction-
6503 wide basis, watershed basis or other appropriate basis, or may issue state permits for
6504 individual discharges.

6505 6. Conveyances that discharge stormwater runoff combined with municipal sewage are
6506 point sources that must obtain separate VPDES permits in accordance with the
6507 procedures of 9VAC25-31 and are not subject to the provisions of this section.

6508 7. Whether a discharge from a municipal separate storm sewer is or is not subject to
6509 regulation under this subsection shall have no bearing on whether the owner or operator
6510 of the discharge is eligible for funding under Title II, Title III or Title VI of the CWA.

6511 8. a. On and after October 1, 1994, for discharges composed entirely of stormwater, that
6512 are not required by subdivision 1 of this subsection to obtain a state permit, operators shall
6513 be required to obtain a state permit only if:

6514 (1) The discharge is from a small MS4 required to be regulated pursuant to 9VAC25-
6515 870-400 B;

6516 (2) The discharge is a stormwater discharge associated with small construction activity
6517 as defined in 9VAC25-870-10;

6518 (3) The department or the EPA regional administrator determines that stormwater
6519 controls are needed for the discharge based on wasteload allocations that are part of
6520 "total maximum daily loads" (TMDLs) that address the pollutant(s) of concern; or

6521 (4) The department or the EPA regional administrator determines that the discharge,
6522 or category of discharges within a geographic area, contributes to a violation of a water
6523 quality standard or is a significant contributor of pollutants to surface waters.

6524 b. Operators of small MS4s designated pursuant to subdivisions 8 a (1), (3), and (4)
6525 of this subsection shall seek coverage under a state permit in accordance with
6526 9VAC25-870-400 C through E. Operators of nonmunicipal sources designated
6527 pursuant to subdivisions 8 a (2), (3), and (4) of this subsection shall seek coverage
6528 under a state permit in accordance with subdivision B 1 of this section.

6529 c. Operators of stormwater discharges designated pursuant to subdivisions 8 a (3) and
6530 (4) of this subsection shall apply to the department for a state permit within 180 days
6531 of receipt of notice, unless permission for a later date is granted by the department.

6532 ~~B. Application requirements for stormwater discharges associated with large and small~~
 6533 ~~construction activity.~~

6534 ~~1. Dischargers of stormwater associated with large and small construction activity are~~
 6535 ~~required to apply for an individual state permit or seek coverage under a promulgated~~
 6536 ~~stormwater general permit. Facilities that are required to obtain an individual state permit,~~
 6537 ~~or any discharge of stormwater that the department is evaluating for designation under~~
 6538 ~~subdivision A 1 e of this section and is not a municipal separate storm sewer, shall submit~~
 6539 ~~a state application in accordance with the requirements of 9VAC25-870-360 as modified~~
 6540 ~~and supplemented by the provisions of this subsection.~~

6541 ~~a. The operator of an existing or new stormwater discharge that is associated with a~~
 6542 ~~large or small construction activity shall provide a narrative description of:~~

6543 ~~(1) The location (including a map) and the nature of the construction activity;~~

6544 ~~(2) The total area of the site and the area of the site that is expected to undergo~~
 6545 ~~excavation during the life of the state permit;~~

6546 ~~(3) Proposed measures, including best management practices, to control pollutants in~~
 6547 ~~stormwater discharges during construction, including a brief description of applicable~~
 6548 ~~state and VESCP requirements;~~

6549 ~~(4) Proposed measures to control pollutants in stormwater discharges that will occur~~
 6550 ~~after construction operations have been completed, including a brief description of~~
 6551 ~~applicable state or local VESCP requirements;~~

6552 ~~(5) An estimate of the runoff coefficient of the site and the increase in impervious area~~
 6553 ~~after the construction addressed in the state permit application is completed, the~~
 6554 ~~nature of fill material and existing data describing the soil or the quality of the~~
 6555 ~~discharge; and~~

6556 ~~(6) The name of the receiving water.~~

6557 ~~(7) Location of Chesapeake Bay Preservation Areas.~~

6558 ~~b. State permit applicants shall provide such other information the department may~~
 6559 ~~reasonably require to determine whether to issue a state permit.~~

6560 ~~C. Application requirements for large and medium municipal separate storm sewer~~
 6561 ~~discharges. The operator of a discharge from a large or medium municipal separate storm sewer~~
 6562 ~~or a municipal separate storm sewer that is designated by the department under subdivision A 1~~
 6563 ~~e of this section may submit a jurisdiction-wide or system-wide state permit application. Where~~
 6564 ~~more than one public entity owns or operates a municipal separate storm sewer within a~~
 6565 ~~geographic area (including adjacent or interconnected municipal separate storm sewer systems),~~
 6566 ~~such operators may be a state permit coapplicant to the same application. State permit~~
 6567 ~~applications for discharges from large and medium municipal storm sewers or municipal storm~~
 6568 ~~sewers designated under subdivision A 1 e of this section shall include;~~

6569 ~~1. Part 1 of the application shall consist of:~~

6570 ~~a. The state permit applicants' name, address, telephone number, and email address;~~
 6571 ~~ownership status; status as a state or local government entity; and the name, address,~~
 6572 ~~telephone number, and email address of a contact person;~~

6573 ~~b. A description of existing legal authority to control discharges to the municipal~~
 6574 ~~separate storm sewer system. When existing legal authority is not sufficient to meet~~
 6575 ~~the criteria provided in subdivision 2 a of this subsection, the description shall list~~
 6576 ~~additional authorities as will be necessary to meet the criteria and shall include a~~
 6577 ~~schedule and commitment to seek such additional authority that will be needed to meet~~
 6578 ~~the criteria;~~

- 6579 e. Source identification.
- 6580 (1) A description of the historic use of ordinances, guidance or other controls that
6581 limited the discharge of nonstormwater discharges to any publicly owned treatment
6582 works serving the same area as the municipal separate storm sewer system.
- 6583 (2) A USGS 7.5 minute topographic map (or equivalent topographic map with a scale
6584 between 1:10,000 and 1:24,000, if cost effective) extending one mile beyond the
6585 service boundaries of the municipal storm sewer system covered by the state permit
6586 application. The following information shall be provided:
- 6587 (a) The location of known municipal storm sewer system outfalls discharging to surface
6588 waters;
- 6589 (b) A description of the land use activities (e.g., divisions indicating undeveloped,
6590 residential, commercial, agricultural, and industrial uses) accompanied with estimates
6591 of population densities and projected growth for a 10-year period within the drainage
6592 area served by the separate storm sewer. For each land use type, an estimate of an
6593 average runoff coefficient shall be provided;
- 6594 (c) The location and a description of the activities of the facility of each currently
6595 operating or closed municipal landfill or other treatment, storage or disposal facility for
6596 municipal waste;
- 6597 (d) The location and the state permit number of any known discharge to the municipal
6598 storm sewer that has been issued a state permit;
- 6599 (e) The location of major structural controls for stormwater discharge (retention basins,
6600 detention basins, major infiltration devices, etc.); and
- 6601 (f) The identification of publicly owned parks, recreational areas, and other open lands;
- 6602 d. Discharge characterization.
- 6603 (1) Monthly mean rain and snow fall estimates (or summary of weather bureau data)
6604 and the monthly average number of storm events.
- 6605 (2) Existing quantitative data describing the volume and quality of discharges from the
6606 municipal storm sewer, including a description of the outfalls sampled, sampling
6607 procedures and analytical methods used.
- 6608 (3) A list of water bodies that receive discharges from the municipal separate storm
6609 sewer system, including downstream segments, lakes and estuaries, where pollutants
6610 from the system discharges may accumulate and cause water degradation and a brief
6611 description of known water quality impacts. At a minimum, the description of impacts
6612 shall include a description of whether the water bodies receiving such discharges have
6613 been:
- 6614 (a) Assessed and reported in § 305(b) of the CWA reports submitted by the state, the
6615 basis for the assessment (evaluated or monitored), a summary of designated use
6616 support and attainment of the State Water Control Law and the CWA goals (fishable
6617 and swimmable waters), and causes of nonsupport of designated uses;
- 6618 (b) Listed under § 304(l)(1)(A)(i), 304(l)(1)(A)(ii), or 304(l)(1)(B) of the CWA that is not
6619 expected to meet water quality standards or water quality goals;
- 6620 (c) Listed in State Nonpoint Source Assessments required by § 319(a) of the CWA
6621 that, without additional action to control nonpoint sources of pollution, cannot
6622 reasonably be expected to attain or maintain water quality standards due to storm
6623 sewers, construction, highway maintenance and runoff from municipal landfills and
6624 municipal sludge adding significant pollution (or contributing to a violation of water
6625 quality standards);

6626 ~~(d) Identified and classified according to eutrophic condition of publicly owned lakes~~
6627 ~~listed in state reports required under § 314(a) of the CWA (include the following: a~~
6628 ~~description of those publicly owned lakes for which uses are known to be impaired; a~~
6629 ~~description of procedures, processes, and methods to control the discharge of~~
6630 ~~pollutants from municipal separate storm sewers into such lakes; and a description of~~
6631 ~~methods and procedures to restore the quality of such lakes);~~
6632 ~~(e) Areas of concern of the Great Lakes identified by the International Joint~~
6633 ~~Commission;~~
6634 ~~(f) Designated estuaries under the National Estuary Program under § 320 of the CWA;~~
6635 ~~(g) Recognized by the state permit applicant as highly valued or sensitive waters;~~
6636 ~~(h) Defined by the state or U.S. Fish and Wildlife Service's National Wetlands Inventory~~
6637 ~~as wetlands; and~~
6638 ~~(i) Found to have pollutants in bottom sediments, fish tissue or biosurvey data.~~
6639 ~~(4) Results of a field screening analysis for illicit connections and illegal dumping for~~
6640 ~~either selected field screening points or major outfalls covered in the state permit~~
6641 ~~application. At a minimum, a screening analysis shall include a narrative description,~~
6642 ~~for either each field screening point or major outfall, of visual observations made during~~
6643 ~~dry weather periods. If any flow is observed, two grab samples shall be collected~~
6644 ~~during a 24-hour period with a minimum period of four hours between samples. For all~~
6645 ~~such samples, a narrative description of the color, odor, turbidity, the presence of an~~
6646 ~~oil sheen or surface scum as well as any other relevant observations regarding the~~
6647 ~~potential presence of nonstormwater discharges or illegal dumping shall be provided.~~
6648 ~~In addition, a narrative description of the results of a field analysis using suitable~~
6649 ~~methods to estimate pH, total chlorine, total copper, total phenol, and detergents (or~~
6650 ~~surfactants) shall be provided along with a description of the flow rate. Where the field~~
6651 ~~analysis does not involve analytical methods approved under 40 CFR Part 136, the~~
6652 ~~state permit applicant shall provide a description of the method used including the~~
6653 ~~name of the manufacturer of the test method along with the range and accuracy of the~~
6654 ~~test. Field screening points shall be either major outfalls or other outfall points (or any~~
6655 ~~other point of access such as manholes) randomly located throughout the storm sewer~~
6656 ~~system by placing a grid over a drainage system map and identifying those cells of the~~
6657 ~~grid which contain a segment of the storm sewer system or major outfall. The field~~
6658 ~~screening points shall be established using the following guidelines and criteria:~~
6659 ~~(a) A grid system consisting of perpendicular north-south and east-west lines spaced~~
6660 ~~1/4 mile apart shall be overlaid on a map of the municipal storm sewer system, creating~~
6661 ~~a series of cells;~~
6662 ~~(b) All cells that contain a segment of the storm sewer system shall be identified; one~~
6663 ~~field screening point shall be selected in each cell; major outfalls may be used as field~~
6664 ~~screening points;~~
6665 ~~(c) Field screening points should be located downstream of any sources of suspected~~
6666 ~~illegal or illicit activity;~~
6667 ~~(d) Field screening points shall be located to the degree practicable at the farthest~~
6668 ~~manhole or other accessible location downstream in the system, within each cell;~~
6669 ~~however, safety of personnel and accessibility of the location should be considered in~~
6670 ~~making this determination;~~
6671 ~~(e) Hydrological conditions; total drainage area of the site; population density of the~~
6672 ~~site; traffic density; age of the structures or buildings in the area; history of the area;~~
6673 ~~and land use types;~~

6674 (f) For medium municipal separate storm sewer systems, no more than 250 cells need
 6675 to have identified field screening points; in large municipal separate storm sewer
 6676 systems, no more than 500 cells need to have identified field screening points; cells
 6677 established by the grid that contain no storm sewer segments will be eliminated from
 6678 consideration; if fewer than 250 cells in medium municipal sewers are created, and
 6679 fewer than 500 in large systems are created by the overlay on the municipal sewer
 6680 map, then all these cells which contain a segment of the sewer system shall be subject
 6681 to field screening (unless access to the separate storm sewer system is impossible);
 6682 and

6683 (g) Large or medium municipal separate storm sewer systems which are unable to
 6684 utilize the procedures described in subdivisions 1 d (4) (a) through (f) of this
 6685 subsection, because a sufficiently detailed map of the separate storm sewer systems
 6686 is unavailable, shall field screen no more than 500 or 250 major outfalls respectively
 6687 (or all major outfalls in the system, if less); in such circumstances, the state permit
 6688 applicant shall establish a grid system consisting of north-south and east-west lines
 6689 spaced 1/4 mile apart as an overlay to the boundaries of the municipal storm sewer
 6690 system, thereby creating a series of cells; the state permit applicant will then select
 6691 major outfalls in as many cells as possible until at least 500 major outfalls (large
 6692 municipalities) or 250 major outfalls (medium municipalities) are selected; a field
 6693 screening analysis shall be undertaken at these major outfalls.

6694 (5) Information and a proposed program to meet the requirements of subdivision 2 c
 6695 of this subsection. Such description shall include: the location of outfalls or field
 6696 screening points appropriate for representative data collection under subdivision 2 c
 6697 (1) of this subsection, a description of why the outfall or field screening point is
 6698 representative, the seasons during which sampling is intended, and a description of
 6699 the sampling equipment. The proposed location of outfalls or field screening points for
 6700 such sampling should reflect water quality concerns (see subdivision 1 d (3) of this
 6701 subsection) to the extent practicable;

6702 e. Management programs.

6703 (1) A description of the existing management programs to control pollutants from the
 6704 municipal separate storm sewer system. The description shall provide information on
 6705 existing structural and source controls, including operation and maintenance
 6706 measures for structural controls, that are currently being implemented. Such controls
 6707 may include, but are not limited to, procedures to control pollution resulting from
 6708 construction activities, floodplain management controls, wetland protection measures,
 6709 best management practices for new subdivisions; and emergency spill response
 6710 programs. The description may address controls established under state law as well
 6711 as local requirements.

6712 (2) A description of the existing program to identify illicit connections to the municipal
 6713 storm sewer system. The description should include inspection procedures and
 6714 methods for detecting and preventing illicit discharges, and describe areas where this
 6715 program has been implemented; and

6716 f. Fiscal resources. A description of the financial resources currently available to the
 6717 municipality to complete Part 2 of the state permit application. A description of the
 6718 municipality's budget for existing stormwater programs, including an overview of the
 6719 municipality's financial resources and budget, including overall indebtedness and
 6720 assets, and sources of funds for stormwater programs.

6721 2. Part 2 of the application shall consist of:

- 6722 a. ~~A demonstration that the state permit applicant can operate pursuant to legal
6723 authority established by statute, ordinance or series of contracts that authorizes or
6724 enables the state permit applicant at a minimum to:~~
- 6725 ~~(1) Control through ordinance, state permit, contract, order or similar means, the
6726 contribution of pollutants to the municipal storm sewer by stormwater discharges
6727 associated with industrial activity and the quality of stormwater discharged from sites
6728 of industrial activity;~~
- 6729 ~~(2) Prohibit through ordinance, order or similar means, illicit discharges to the
6730 municipal separate storm sewer;~~
- 6731 ~~(3) Control through ordinance, order or similar means the discharge to a municipal
6732 separate storm sewer of spills, dumping or disposal of materials other than stormwater;~~
- 6733 ~~(4) Control through interagency agreements among state permit coapplicants the
6734 contribution of pollutants from one portion of the municipal system to another portion
6735 of the municipal system;~~
- 6736 ~~(5) Require compliance with conditions in ordinances, state permits, contracts or
6737 orders; and~~
- 6738 ~~(6) Carry out all inspection, surveillance and monitoring procedures necessary to
6739 determine compliance and noncompliance with state permit conditions including the
6740 prohibition on illicit discharges to the municipal separate storm sewer;~~
- 6741 b. ~~The location of any major outfall that discharges to surface waters that was not
6742 reported under subdivision 1 c (2) (a) of this subsection. Provide an inventory,
6743 organized by watershed of the name and address, and a description (such as SIC
6744 codes) that best reflects the principal products or services provided by each facility
6745 that may discharge, to the municipal separate storm sewer, stormwater associated
6746 with industrial activity;~~
- 6747 c. ~~When quantitative data for a pollutant are required under subdivision 2 c (1) (c) of
6748 this subsection, the state permit applicant must collect a sample of effluent in
6749 accordance with 9VAC25-870-390 and analyze it for the pollutant in accordance with
6750 analytical methods approved under 40 CFR Part 136. When no analytical method is
6751 approved the state permit applicant may use any suitable method but must provide a
6752 description of the method. The state permit applicant must provide information
6753 characterizing the quality and quantity of discharges covered in the state permit
6754 application, including:~~
- 6755 ~~(1) Quantitative data from representative outfalls designated by the department (based
6756 on information received in Part 1 of the application, the department shall designate
6757 between five and 10 outfalls or field screening points as representative of the
6758 commercial, residential and industrial land use activities of the drainage area
6759 contributing to the system or, where there are less than five outfalls) covered in the
6760 application, the department shall designate all outfalls developed as follows:~~
- 6761 ~~(a) For each outfall or field screening point designated under this subsection, samples
6762 shall be collected of stormwater discharges from three storm events occurring at least
6763 one month apart in accordance with the requirements at 9VAC25-870-390 (the
6764 department may allow exemptions to sampling three storm events when climatic
6765 conditions create good cause for such exemptions);~~
- 6766 ~~(b) A narrative description shall be provided of the date and duration of the storm event
6767 or events sampled, rainfall estimates of the storm event which generated the sampled
6768 discharge and the duration between the storm event sampled and the end of the
6769 previous measurable (greater than 0.1 inch rainfall) storm event;~~

6770 ~~(c) For samples collected and described under subdivisions 2 c (1) (a) and (1) (b) of~~
6771 ~~this subsection, quantitative data shall be provided for: the organic pollutants listed in~~
6772 ~~Table II; the pollutants listed in Table III (toxic metals, cyanide, and total phenols) of~~
6773 ~~40 CFR Part 122 Appendix D, and for the following pollutants:~~
6774 ~~Total suspended solids (TSS)~~
6775 ~~Total dissolved solids (TDS)~~
6776 ~~Chemical oxygen demand (COD)~~
6777 ~~Biochemical oxygen demand (BOD₅)~~
6778 ~~Oil and grease~~
6779 ~~Fecal coliform~~
6780 ~~Fecal streptococcus~~
6781 ~~pH~~
6782 ~~Total Kjeldahl nitrogen~~
6783 ~~Nitrate plus nitrite~~
6784 ~~Dissolved phosphorus~~
6785 ~~Total ammonia plus organic nitrogen~~
6786 ~~Total phosphorus~~
6787 ~~(d) Additional limited quantitative data required by the department for determining state~~
6788 ~~permit conditions (the department may require that quantitative data shall be provided~~
6789 ~~for additional parameters, and may establish sampling conditions such as the location,~~
6790 ~~season of sample collection, form of precipitation (snow melt, rainfall) and other~~
6791 ~~parameters necessary to ensure representativeness);~~
6792 ~~(2) Estimates of the annual pollutant load of the cumulative discharges to surface~~
6793 ~~waters from all identified municipal outfalls and the event mean concentration of the~~
6794 ~~cumulative discharges to surface waters from all identified municipal outfalls during a~~
6795 ~~storm event (as described under 9VAC25-870-390) for BOD₅, COD, TSS, dissolved~~
6796 ~~solids, total nitrogen, total ammonia plus organic nitrogen, total phosphorus, dissolved~~
6797 ~~phosphorus, cadmium, copper, lead, and zinc. Estimates shall be accompanied by a~~
6798 ~~description of the procedures for estimating constituent loads and concentrations,~~
6799 ~~including any modeling, data analysis, and calculation methods;~~
6800 ~~(3) A proposed schedule to provide estimates for each major outfall identified in either~~
6801 ~~subdivision 2 b or 1 c (2) (a) of this subsection of the seasonal pollutant load and of~~
6802 ~~the event mean concentration of a representative storm for any constituent detected~~
6803 ~~in any sample required under subdivision 2 c (1) of this subsection; and~~
6804 ~~(4) A proposed monitoring program for representative data collection for the term of~~
6805 ~~the state permit that describes the location of outfalls or field screening points to be~~
6806 ~~sampled (or the location of instream stations), why the location is representative, the~~
6807 ~~frequency of sampling, parameters to be sampled, and a description of sampling~~
6808 ~~equipment;~~
6809 ~~d. A proposed management program that covers the duration of the state permit. It~~
6810 ~~shall include a comprehensive planning process that involves public participation and,~~
6811 ~~where necessary, intergovernmental coordination to reduce the discharge of pollutants~~
6812 ~~to the maximum extent practicable using management practices, control techniques~~
6813 ~~and system, design and engineering methods, and such other provisions that are~~
6814 ~~appropriate. The program shall also include a description of staff and equipment~~
6815 ~~available to implement the program. Separate proposed programs may be submitted~~

6816 by each state permit coapplicant. Proposed programs may impose controls on a
6817 system wide basis, a watershed basis, a jurisdiction basis, or on individual outfalls.
6818 Proposed programs will be considered by the department when developing state
6819 permit conditions to reduce pollutants in discharges to the maximum extent
6820 practicable. Proposed management programs shall describe priorities for
6821 implementing controls. Such programs shall be based on:

6822 (1) A description of structural and source control measures to reduce pollutants from
6823 runoff from commercial and residential areas that are discharged from the municipal
6824 storm sewer system that are to be implemented during the life of the state permit,
6825 accompanied with an estimate of the expected reduction of pollutant loads and a
6826 proposed schedule for implementing such controls. At a minimum, the description shall
6827 include:

6828 (a) A description of maintenance activities and a maintenance schedule for structural
6829 controls to reduce pollutants (including floatables) in discharges from municipal
6830 separate storm sewers;

6831 (b) A description of planning procedures including a comprehensive master plan to
6832 develop, implement and enforce controls to reduce the discharge of pollutants from
6833 municipal separate storm sewers which receive discharges from areas of new
6834 development and significant redevelopment. Such plan shall address controls to
6835 reduce pollutants in discharges from municipal separate storm sewers after
6836 construction is completed. Controls to reduce pollutants in discharges from municipal
6837 separate storm sewers containing construction site runoff are addressed in subdivision
6838 2 d (4) of this subsection;

6839 (c) A description of practices for operating and maintaining public streets, roads and
6840 highways and procedures for reducing the impact on receiving waters of discharges
6841 from municipal storm sewer systems, including pollutants discharged as a result of
6842 deicing activities;

6843 (d) A description of procedures to assure that flood management projects assess the
6844 impacts on the water quality of receiving water bodies and that existing structural flood
6845 control devices have been evaluated to determine if retrofitting the device to provide
6846 additional pollutant removal from stormwater is feasible;

6847 (e) A description of a program to monitor pollutants in runoff from operating or closed
6848 municipal landfills or other treatment, storage or disposal facilities for municipal waste,
6849 which shall identify priorities and procedures for inspections and establishing and
6850 implementing control measures for such discharges (this program can be coordinated
6851 with the program developed under subdivision 2 d (3) of this subsection); and

6852 (f) A description of a program to reduce to the maximum extent practicable, pollutants
6853 in discharges from municipal separate storm sewers associated with the application of
6854 pesticides, herbicides and fertilizer that will include, as appropriate, controls such as
6855 educational activities, permits, certifications and other measures for commercial
6856 applicators and distributors, and controls for application in public right-of-ways and at
6857 municipal facilities;

6858 (2) A description of a program, including a schedule, to detect and remove (or require
6859 the discharger to the municipal separate storm sewer to obtain a separate state permit
6860 for) illicit discharges and improper disposal into the storm sewer. The proposed
6861 program shall include:

6862 (a) A description of a program, including inspections, to implement and enforce an
6863 ordinance, orders or similar means to prevent illicit discharges to the municipal
6864 separate storm sewer system; this program description shall address all types of illicit

6865 discharges, however the following category of nonstormwater discharges or flows shall
6866 be addressed where such discharges are identified by the municipality as sources of
6867 pollutants to surface waters: water line flushing, landscape irrigation, diverted stream
6868 flows, rising groundwaters, uncontaminated groundwater infiltration to separate storm
6869 sewers, uncontaminated pumped groundwater, discharges from potable water
6870 sources, foundation drains, air conditioning condensation, irrigation water, springs,
6871 water from crawl space pumps, footing drains, lawn watering, individual residential car
6872 washing, flows from riparian habitats and wetlands, dechlorinated swimming pool
6873 discharges, and street wash water (program descriptions shall address discharges or
6874 flows from firefighting only where such discharges or flows are identified as significant
6875 sources of pollutants to surface waters);

6876 (b) A description of procedures to conduct on-going field screening activities during
6877 the life of the state permit, including areas or locations that will be evaluated by such
6878 field screens;

6879 (c) A description of procedures to be followed to investigate portions of the separate
6880 storm sewer system that, based on the results of the field screen, or other appropriate
6881 information, indicate a reasonable potential of containing illicit discharges or other
6882 sources of nonstormwater (such procedures may include: sampling procedures for
6883 constituents such as fecal coliform, fecal streptococcus, surfactants (Methylene Blue
6884 Active Substances—MBAS), residual chlorine, fluorides and potassium; testing with
6885 fluorometric dyes; or conducting in storm sewer inspections where safety and other
6886 considerations allow. Such description shall include the location of storm sewers that
6887 have been identified for such evaluation);

6888 (d) A description of procedures to prevent, contain, and respond to spills that may
6889 discharge into the municipal separate storm sewer;

6890 (e) A description of a program to promote, publicize, and facilitate public reporting of
6891 the presence of illicit discharges or water quality impacts associated with discharges
6892 from municipal separate storm sewers;

6893 (f) A description of educational activities, public information activities, and other
6894 appropriate activities to facilitate the proper management and disposal of used oil and
6895 toxic materials; and

6896 (g) A description of controls to limit infiltration of seepage from municipal sanitary
6897 sewers to municipal separate storm sewer systems where necessary;

6898 (3) A description of a program to monitor and control pollutants in stormwater
6899 discharges to municipal systems from municipal landfills, hazardous waste treatment,
6900 disposal and recovery facilities, industrial facilities that are subject to § 313 of Title III
6901 of the Superfund Amendments and Reauthorization Act of 1986 (SARA, 42 USC §
6902 11023), and industrial facilities that the municipal permit applicant determines are
6903 contributing a substantial pollutant loading to the municipal storm sewer system. The
6904 program shall:

6905 (a) Identify priorities and procedures for inspections and establishing and
6906 implementing control measures for such discharges;

6907 (b) Describe a monitoring program for stormwater discharges associated with the
6908 industrial facilities identified in subdivision 2 d (3) of this subsection, to be implemented
6909 during the term of the state permit, including the submission of quantitative data on
6910 the following constituents: any pollutants limited in effluent guidelines subcategories,
6911 where applicable; any pollutant listed in an existing separate VPDES permit for a
6912 facility; oil and grease, COD, pH, BOD₅, TSS, total phosphorus, total Kjeldahl nitrogen,

6913 ~~nitrate plus nitrite nitrogen, and any information on discharges required under~~
 6914 ~~9VAC25-870-390 F and G; and~~

6915 ~~(4) A description of a program to implement and maintain structural and nonstructural~~
 6916 ~~best management practices to reduce pollutants in stormwater runoff from~~
 6917 ~~construction sites to the municipal storm sewer system, which shall include:~~

6918 ~~(a) A description of procedures for site planning that incorporate consideration of~~
 6919 ~~potential water quality impacts;~~

6920 ~~(b) A description of requirements for nonstructural and structural best management~~
 6921 ~~practices;~~

6922 ~~(c) A description of procedures for identifying priorities for inspecting sites and~~
 6923 ~~enforcing control measures that consider the nature of the construction activity,~~
 6924 ~~topography, and the characteristics of soils and receiving water quality; and~~

6925 ~~(d) A description of appropriate educational and training measures for construction site~~
 6926 ~~operators;~~

6927 ~~e. Estimated reductions in loadings of pollutants from discharges of municipal storm~~
 6928 ~~sewer constituents from municipal storm sewer systems expected as the result of the~~
 6929 ~~municipal stormwater quality management program. The assessment shall also~~
 6930 ~~identify known impacts of stormwater controls on groundwater;~~

6931 ~~f. For each fiscal year to be covered by the state permit, a fiscal analysis of the~~
 6932 ~~necessary capital and operation and maintenance expenditures necessary to~~
 6933 ~~accomplish the activities of the programs under subdivisions 2 c and d of this~~
 6934 ~~subsection. Such analysis shall include a description of the source of funds that are~~
 6935 ~~proposed to meet the necessary expenditures, including legal restrictions on the use~~
 6936 ~~of such funds;~~

6937 ~~g. Where more than one legal entity submits an application, the application shall~~
 6938 ~~contain a description of the roles and responsibilities of each legal entity and~~
 6939 ~~procedures to ensure effective coordination; and~~

6940 ~~h. Where requirements under subdivisions 1 d (5), 2 b, 2 c (2), and 2 d of this~~
 6941 ~~subsection are not practicable or are not applicable, the department may exclude any~~
 6942 ~~operator of a discharge from a municipal separate storm sewer that is designated~~
 6943 ~~under subdivision A 1 e of this section, or that is located in the counties listed in 40~~
 6944 ~~CFR Part 122 Appendix H or Appendix I (except municipal separate storm sewers that~~
 6945 ~~are located in the incorporated places, townships or towns within such counties) from~~
 6946 ~~such requirements. The department shall not exclude the operator of a discharge from~~
 6947 ~~a municipal separate storm sewer identified in 40 CFR Part 122 Appendix F, G, H or I~~
 6948 ~~from any of the state permit application requirements under this subdivision except~~
 6949 ~~where authorized under this subsection.~~

6950 ~~D. Petitions.~~

6951 ~~1. Any operator of a municipal separate storm sewer system may petition the appropriate~~
 6952 ~~authority or the department to require a separate state permit for any discharge into the~~
 6953 ~~municipal separate storm sewer system.~~

6954 ~~2. Any person may petition the department to require a state permit for a discharge which~~
 6955 ~~is composed entirely of stormwater which contributes to a violation of a water quality~~
 6956 ~~standard or is a significant contributor of pollutants to surface waters.~~

6957 ~~3. Any person may petition the department for the designation of a large, medium or small~~
 6958 ~~municipal separate storm sewer system as defined by this chapter.~~

6959 4. The department shall make a final determination on any petition received under this
6960 section within 90 days after receiving the petition with the exception of petitions to
6961 designate a small MS4, in which case the department shall make a final determination on
6962 the petition within 180 days after its receipt.

6963 **9VAC25-870-390. Effluent sampling procedures. (Repealed.)**

6964 State permit applicants for discharges from large and small municipal storm sewers or
6965 municipal storm sewers designated under 9VAC25-870-380 A 1 e shall provide the following
6966 information to the department, using application forms provided by the department.

6967 A. Information on stormwater discharges that is to be provided as specified in 9VAC25-870-
6968 380. When quantitative data for a pollutant are required, the state permit applicant must collect a
6969 sample of effluent and analyze it for the pollutant in accordance with analytical methods approved
6970 under 40 CFR Part 136. When no analytical method is approved the state permit applicant may
6971 use any suitable method but must provide a description of the method. When an a state permit
6972 applicant has two or more outfalls with substantially identical effluents, the department may allow
6973 the state permit applicant to test only one outfall and report that the quantitative data also apply
6974 to the substantially identical outfalls. The requirements in subsections E and F of this section that
6975 a state permit applicant must provide quantitative data for certain pollutants known or believed to
6976 be present do not apply to pollutants present in a discharge solely as the result of their presence
6977 in intake water; however, an applicant must report such pollutants as present. Grab samples must
6978 be used for pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, fecal
6979 coliform, and fecal streptococcus. For all other pollutants, 24-hour composite samples must be
6980 used. However, a minimum of one grab sample may be taken for effluents from holding ponds or
6981 other impoundments with a retention period greater than 24 hours. In addition, for discharges
6982 other than stormwater discharges, the department may waive composite sampling for any outfall
6983 for which the state permit applicant demonstrates that the use of an automatic sampler is
6984 infeasible and that the minimum of four grab samples will be a representative sample of the
6985 effluent being discharged.

6986 B. For stormwater discharges, all samples shall be collected from the discharge resulting from
6987 a storm event that is greater than 0.1 inch and at least 72 hours from the previously measurable
6988 (greater than 0.1 inch rainfall) storm event. Where feasible, the variance in the duration of the
6989 event and the total rainfall of the event should not exceed 50% from the average or median rainfall
6990 event in that area. For all state permit applicants, a flow-weighted composite shall be taken for
6991 either the entire discharge or for the first three hours of the discharge. The flow-weighted
6992 composite sample for a stormwater discharge may be taken with a continuous sampler or as a
6993 combination of a minimum of three sample aliquots taken in each hour of discharge for the entire
6994 discharge or for the first three hours of the discharge, with each aliquot being separated by a
6995 minimum period of 15 minutes. However, a minimum of one grab sample may be taken for
6996 stormwater discharges from holding ponds or other impoundments with a retention period greater
6997 than 24 hours. For a flow-weighted composite sample, only one analysis of the composite of
6998 aliquots is required. For stormwater discharge samples taken from discharges associated with
6999 industrial activities, quantitative data must be reported for the grab sample taken during the first
7000 30 minutes (or as soon thereafter as practicable) of the discharge for all pollutants specified in
7001 9VAC25-870-380 C 1. For all stormwater state permit applicants taking flow-weighted
7002 composites, quantitative data must be reported for all pollutants specified in 9VAC25-870-380
7003 except pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, fecal coliform,
7004 and fecal streptococcus. The department may allow or establish appropriate site-specific
7005 sampling procedures or requirements, including sampling locations, the season in which the
7006 sampling takes place, the minimum duration between the previous measurable storm event and
7007 the storm event sampled, the minimum or maximum level of precipitation required for an
7008 appropriate storm event, the form of precipitation sampled (snow melt or rain fall), protocols for

7009 collecting samples under 40 CFR Part 136, and additional time for submitting data on a case-by-
 7010 case basis. A state permit applicant is expected to know or have reason to believe that a pollutant
 7011 is present in an effluent based on an evaluation of the expected use, production, or storage of the
 7012 pollutant, or on any previous analyses for the pollutant. (For example, any pesticide manufactured
 7013 by a facility may be expected to be present in contaminated stormwater runoff from the facility.)

7014 C. Every state permit applicant must report quantitative data for every outfall for the following
 7015 pollutants:

- 7016 Biochemical oxygen demand (BOD₅)
- 7017 Chemical oxygen demand
- 7018 Total organic carbon
- 7019 Total suspended solids
- 7020 Ammonia (as N)
- 7021 Temperature (both winter and summer)
- 7022 pH

7023 D. The department may waive the reporting requirements for individual point sources or for a
 7024 particular industry category for one or more of the pollutants listed in subsection C of this section
 7025 if the state permit applicant has demonstrated that such a waiver is appropriate because
 7026 information adequate to support issuance of a state permit can be obtained with less stringent
 7027 requirements.

7028 E. Each state permit applicant with processes in one or more primary industry category (see
 7029 40 CFR Part 122 Appendix A) contributing to a discharge must report quantitative data for the
 7030 following pollutants in each outfall containing process wastewater:

- 7031 1. The organic toxic pollutants in the fractions designated in Table I of 40 CFR Part 122
 7032 Appendix D for the state permit applicant's industrial category or categories unless the
 7033 state permit applicant qualifies as a small business. Table II of 40 CFR Part 122 Appendix
 7034 D lists the organic toxic pollutants in each fraction. The fractions result from the sample
 7035 preparation required by the analytical procedure that uses gas chromatography/mass
 7036 spectrometry. A determination that a state permit applicant falls within a particular
 7037 industrial category for the purposes of selecting fractions for testing is not conclusive as
 7038 to the state permit applicant's inclusion in that category for any other purposes; and
- 7039 2. The pollutants listed in Table III of 40 CFR Part 122 Appendix D (the toxic metals,
 7040 cyanide, and total phenols):

7041 F. 1. Each state permit applicant must indicate whether it knows or has reason to believe that
 7042 any of the pollutants in Table IV of 40 CFR Part 122 Appendix D (certain conventional and
 7043 nonconventional pollutants) is discharged from each outfall. If an applicable effluent limitations
 7044 guideline either directly limits the pollutant or, by its express terms, indirectly limits the pollutant
 7045 through limitations on an indicator, the state permit applicant must report quantitative data. For
 7046 every pollutant discharged that is not so limited in an effluent limitations guideline, the state permit
 7047 applicant must either report quantitative data or briefly describe the reasons the pollutant is
 7048 expected to be discharged.

7049 2. Each applicant must indicate whether it knows or has reason to believe that any of the
 7050 pollutants listed in Table II or Table III of 40 CFR Part 122 Appendix D (the toxic pollutants
 7051 and total phenols) for which quantitative data are not otherwise required under subsection
 7052 E of this section, is discharged from each outfall. For every pollutant expected to be
 7053 discharged in concentrations of 10 ppb or greater the state permit applicant must report
 7054 quantitative data. For acrolein, acrylonitrile, 2,4 dinitrophenol, and 2-methyl-4,6
 7055 dinitrophenol, where any of these four pollutants are expected to be discharged in

7056 concentrations of 100 ppb or greater the state permit applicant must report quantitative
 7057 data. For every pollutant expected to be discharged in concentrations less than 10 ppb,
 7058 or in the case of acrolein, acrylonitrile, 2,4 dinitrophenol, and 2-methyl-4,6 dinitrophenol,
 7059 in concentrations less than 100 ppb, the state permit applicant must either submit
 7060 quantitative data or briefly describe the reasons the pollutant is expected to be discharged.
 7061 A state permit applicant qualifying as a small business is not required to analyze for
 7062 pollutants listed in Table II of 40 CFR Part 122 Appendix D (the organic toxic pollutants).

7063 G. Each state permit applicant must indicate whether it knows or has reason to believe that
 7064 any of the pollutants in Table V of 40 CFR Part 122 Appendix D (certain hazardous substances
 7065 and asbestos) are discharged from each outfall. For every pollutant expected to be discharged,
 7066 the state permit applicant must briefly describe the reasons the pollutant is expected to be
 7067 discharged, and report any quantitative data it has for any pollutant.

7068 H. Each state permit applicant must report qualitative data, generated using a screening
 7069 procedure not calibrated with analytical standards, for 2,3,7,8-tetrachlorodibenzo-p-dioxin
 7070 (TCDD) if it:

7071 1. Uses or manufactures 2,4,5-trichlorophenoxy acetic acid (2,4,5,-T); 2-(2,4,5-
 7072 trichlorophenoxy) propanoic acid (Silvex, 2,4,5,-TP); 2-(2,4,5-trichlorophenoxy) ethyl, 2,2-
 7073 dichloropropionate (Erbon); O,O-dimethyl O-(2,4,5-trichlorophenyl) phosphorothioate
 7074 (Ronnel); 2,4,5-trichlorophenol (TCP); or hexachlorophene (HCP); or

7075 2. Knows or has reason to believe that TCDD is or may be present in an effluent.

7076 **9VAC25-870-390. Effluent sampling procedures. (Repealed.)**

7077 State permit applicants for discharges from large and small municipal storm sewers or
 7078 municipal storm sewers designated under 9VAC25-870-380 A 1 e shall provide the following
 7079 information to the department, using application forms provided by the department.

7080 A. Information on stormwater discharges that is to be provided as specified in 9VAC25-870-
 7081 380. When quantitative data for a pollutant are required, the state permit applicant must collect a
 7082 sample of effluent and analyze it for the pollutant in accordance with analytical methods approved
 7083 under 40 CFR Part 136. When no analytical method is approved the state permit applicant may
 7084 use any suitable method but must provide a description of the method. When an a state permit
 7085 applicant has two or more outfalls with substantially identical effluents, the department may allow
 7086 the state permit applicant to test only one outfall and report that the quantitative data also apply
 7087 to the substantially identical outfalls. The requirements in subsections E and F of this section that
 7088 a state permit applicant must provide quantitative data for certain pollutants known or believed to
 7089 be present do not apply to pollutants present in a discharge solely as the result of their presence
 7090 in intake water; however, an applicant must report such pollutants as present. Grab samples must
 7091 be used for pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, fecal
 7092 coliform, and fecal streptococcus. For all other pollutants, 24-hour composite samples must be
 7093 used. However, a minimum of one grab sample may be taken for effluents from holding ponds or
 7094 other impoundments with a retention period greater than 24 hours. In addition, for discharges
 7095 other than stormwater discharges, the department may waive composite sampling for any outfall
 7096 for which the state permit applicant demonstrates that the use of an automatic sampler is
 7097 infeasible and that the minimum of four grab samples will be a representative sample of the
 7098 effluent being discharged.

7099 B. For stormwater discharges, all samples shall be collected from the discharge resulting from
 7100 a storm event that is greater than 0.1 inch and at least 72 hours from the previously measurable
 7101 (greater than 0.1 inch rainfall) storm event. Where feasible, the variance in the duration of the
 7102 event and the total rainfall of the event should not exceed 50% from the average or median rainfall
 7103 event in that area. For all state permit applicants, a flow-weighted composite shall be taken for
 7104 either the entire discharge or for the first three hours of the discharge. The flow-weighted

7105 composite sample for a stormwater discharge may be taken with a continuous sampler or as a
 7106 combination of a minimum of three sample aliquots taken in each hour of discharge for the entire
 7107 discharge or for the first three hours of the discharge, with each aliquot being separated by a
 7108 minimum period of 15 minutes. However, a minimum of one grab sample may be taken for
 7109 stormwater discharges from holding ponds or other impoundments with a retention period greater
 7110 than 24 hours. For a flow-weighted composite sample, only one analysis of the composite of
 7111 aliquots is required. For stormwater discharge samples taken from discharges associated with
 7112 industrial activities, quantitative data must be reported for the grab sample taken during the first
 7113 30 minutes (or as soon thereafter as practicable) of the discharge for all pollutants specified in
 7114 9VAC25-870-380 C 1. For all stormwater state permit applicants taking flow-weighted
 7115 composites, quantitative data must be reported for all pollutants specified in 9VAC25-870-380
 7116 except pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, fecal coliform,
 7117 and fecal streptococcus. The department may allow or establish appropriate site-specific
 7118 sampling procedures or requirements, including sampling locations, the season in which the
 7119 sampling takes place, the minimum duration between the previous measurable storm event and
 7120 the storm event sampled, the minimum or maximum level of precipitation required for an
 7121 appropriate storm event, the form of precipitation sampled (snow melt or rain fall), protocols for
 7122 collecting samples under 40 CFR Part 136, and additional time for submitting data on a case-by-
 7123 case basis. A state permit applicant is expected to know or have reason to believe that a pollutant
 7124 is present in an effluent based on an evaluation of the expected use, production, or storage of the
 7125 pollutant, or on any previous analyses for the pollutant. (For example, any pesticide manufactured
 7126 by a facility may be expected to be present in contaminated stormwater runoff from the facility.)

7127 C. Every state permit applicant must report quantitative data for every outfall for the following
 7128 pollutants:

- 7129 Biochemical oxygen demand (BOD₅)
- 7130 Chemical oxygen demand
- 7131 Total organic carbon
- 7132 Total suspended solids
- 7133 Ammonia (as N)
- 7134 Temperature (both winter and summer)
- 7135 pH

7136 D. The department may waive the reporting requirements for individual point sources or for a
 7137 particular industry category for one or more of the pollutants listed in subsection C of this section
 7138 if the state permit applicant has demonstrated that such a waiver is appropriate because
 7139 information adequate to support issuance of a state permit can be obtained with less stringent
 7140 requirements.

7141 E. Each state permit applicant with processes in one or more primary industry category (see
 7142 40 CFR Part 122 Appendix A) contributing to a discharge must report quantitative data for the
 7143 following pollutants in each outfall containing process wastewater:

- 7144 1. The organic toxic pollutants in the fractions designated in Table I of 40 CFR Part 122
 7145 Appendix D for the state permit applicant's industrial category or categories unless the
 7146 state permit applicant qualifies as a small business. Table II of 40 CFR Part 122 Appendix
 7147 D lists the organic toxic pollutants in each fraction. The fractions result from the sample
 7148 preparation required by the analytical procedure that uses gas chromatography/mass
 7149 spectrometry. A determination that a state permit applicant falls within a particular
 7150 industrial category for the purposes of selecting fractions for testing is not conclusive as
 7151 to the state permit applicant's inclusion in that category for any other purposes; and

7152 2. The pollutants listed in Table III of 40 CFR Part 122 Appendix D (the toxic metals,
7153 cyanide, and total phenols).

7154 F. 1. Each state permit applicant must indicate whether it knows or has reason to believe that
7155 any of the pollutants in Table IV of 40 CFR Part 122 Appendix D (certain conventional and
7156 nonconventional pollutants) is discharged from each outfall. If an applicable effluent limitations
7157 guideline either directly limits the pollutant or, by its express terms, indirectly limits the pollutant
7158 through limitations on an indicator, the state permit applicant must report quantitative data. For
7159 every pollutant discharged that is not so limited in an effluent limitations guideline, the state permit
7160 applicant must either report quantitative data or briefly describe the reasons the pollutant is
7161 expected to be discharged.

7162 2. Each applicant must indicate whether it knows or has reason to believe that any of the
7163 pollutants listed in Table II or Table III of 40 CFR Part 122 Appendix D (the toxic pollutants
7164 and total phenols) for which quantitative data are not otherwise required under subsection
7165 E of this section, is discharged from each outfall. For every pollutant expected to be
7166 discharged in concentrations of 10 ppb or greater the state permit applicant must report
7167 quantitative data. For acrolein, acrylonitrile, 2,4 dinitrophenol, and 2-methyl-4,6
7168 dinitrophenol, where any of these four pollutants are expected to be discharged in
7169 concentrations of 100 ppb or greater the state permit applicant must report quantitative
7170 data. For every pollutant expected to be discharged in concentrations less than 10 ppb,
7171 or in the case of acrolein, acrylonitrile, 2,4 dinitrophenol, and 2-methyl-4,6 dinitrophenol,
7172 in concentrations less than 100 ppb, the state permit applicant must either submit
7173 quantitative data or briefly describe the reasons the pollutant is expected to be discharged.
7174 A state permit applicant qualifying as a small business is not required to analyze for
7175 pollutants listed in Table II of 40 CFR Part 122 Appendix D (the organic toxic pollutants).

7176 G. Each state permit applicant must indicate whether it knows or has reason to believe that
7177 any of the pollutants in Table V of 40 CFR Part 122 Appendix D (certain hazardous substances
7178 and asbestos) are discharged from each outfall. For every pollutant expected to be discharged,
7179 the state permit applicant must briefly describe the reasons the pollutant is expected to be
7180 discharged, and report any quantitative data it has for any pollutant.

7181 H. Each state permit applicant must report qualitative data, generated using a screening
7182 procedure not calibrated with analytical standards, for 2,3,7,8-tetrachlorodibenzo-p-dioxin
7183 (TCDD) if it:

7184 1. Uses or manufactures 2,4,5-trichlorophenoxy acetic acid (2,4,5-T); 2-(2,4,5-
7185 trichlorophenoxy) propanoic acid (Silvex, 2,4,5-TP); 2-(2,4,5-trichlorophenoxy) ethyl, 2,2-
7186 dichloropropionate (Erbon); O,O-dimethyl O-(2,4,5-trichlorophenyl) phosphorothioate
7187 (Ronnel); 2,4,5-trichlorophenol (TCP); or hexachlorophene (HCP); or

7188 2. Knows or has reason to believe that TCDD is or may be present in an effluent.

7189 **9VAC25-870-400. Small municipal separate storm sewer systems. (Repealed.)**

7190 A. Objectives of the stormwater regulations for small MS4s.

7191 1. Subsections A through G of this section are written in a "readable regulation" format
7192 that includes both rule requirements and guidance. The recommended guidance is
7193 distinguished from the regulatory requirements by putting the guidance in a separate
7194 subdivision headed by the word "Note."

7195 2. Under the statutory mandate in § 402(p)(6) of the Clean Water Act, the purpose of this
7196 portion of the stormwater program is to designate additional sources that need to be
7197 regulated to protect water quality and to establish a comprehensive stormwater program
7198 to regulate these sources.

- 7199 3. Stormwater runoff continues to harm the nation's waters. Runoff from lands modified by
 7200 human activities can harm surface water resources in several ways including by changing
 7201 natural hydrologic patterns and by elevating pollutant concentrations and loadings.
 7202 Stormwater runoff may contain or mobilize high levels of contaminants, such as sediment,
 7203 suspended solids, nutrients, heavy metals, pathogens, toxins, oxygen-demanding
 7204 substances, and floatables.
- 7205 4. The department strongly encourages partnerships and the watershed approach as the
 7206 management framework for efficiently, effectively, and consistently protecting and
 7207 restoring aquatic ecosystems and protecting public health.
- 7208 B. As an operator of a small MS4, am I regulated under the state's stormwater program?
- 7209 1. Unless you qualify for a waiver under subdivision 3 of this subsection, you are regulated
 7210 if you operate a small MS4, including but not limited to systems operated by federal, state,
 7211 tribal, and local governments, including the Virginia Department of Transportation; and
- 7212 a. Your small MS4 is located in an urbanized area as determined by the latest
 7213 decennial census by the Bureau of the Census (If your small MS4 is not located
 7214 entirely within an urbanized area, only the portion that is within the urbanized area is
 7215 regulated); or
- 7216 b. You are designated by the department, including where the designation is pursuant
 7217 to subdivisions C 3 a and b of this section or is based upon a petition under 9VAC25-
 7218 870-380 D.
- 7219 2. You may be the subject of a petition to the department to require a state permit for your
 7220 discharge of stormwater. If the department determines that you need a state permit, you
 7221 are required to comply with subsections C through E of this section.
- 7222 3. The department may waive the requirements otherwise applicable to you if you meet
 7223 the criteria of subdivision 4 or 5 of this subsection. If you receive a waiver under this
 7224 section, you may subsequently be required to seek coverage under a state permit in
 7225 accordance with subdivision C 1 of this section if circumstances change. (See also
 7226 subdivision E 2 of this section).
- 7227 4. The department may waive state permit coverage if your MS4 serves a population of
 7228 less than 1,000 within the urbanized area and you meet the following criteria:
- 7229 a. Your system is not contributing substantially to the pollutant loadings of a physically
 7230 interconnected MS4 that is regulated by the department; and
- 7231 b. If you discharge any pollutants that have been identified as a cause of impairment
 7232 of any water body to which you discharge, stormwater controls are not needed based
 7233 on wasteload allocations that are part of an approved "total maximum daily load"
 7234 (TMDL) that addresses the pollutants of concern.
- 7235 5. The department may waive state permit coverage if your MS4 serves a population under
 7236 10,000 and you meet the following criteria:
- 7237 a. The department has evaluated all surface waters, including small streams,
 7238 tributaries, lakes, and ponds, that receive a discharge from your MS4;
- 7239 b. For all such waters, the department has determined that stormwater controls are
 7240 not needed based on wasteload allocations that are part of an approved TMDL that
 7241 addresses the pollutants of concern or, if a TMDL has not been developed or
 7242 approved, an equivalent analysis that determines sources and allocations for the
 7243 pollutants of concern;
- 7244 c. For the purpose of subdivision 5 of this subsection, the pollutants of concern include
 7245 biochemical oxygen demand (BOD), sediment or a parameter that addresses

- 7246 sediment (such as total suspended solids, turbidity or siltation), pathogens, oil and
 7247 grease, and any pollutant that has been identified as a cause of impairment of any
 7248 water body that will receive a discharge from your MS4; and
- 7249 d. The department has determined that future discharges from your MS4 do not have
 7250 the potential to result in exceedances of water quality standards, including impairment
 7251 of designated uses, or other significant water quality impacts, including habitat and
 7252 biological impacts.
- 7253 G. If I am an operator of a regulated small MS4, how do I apply for a state permit and when
 7254 do I have to apply?
- 7255 1. If you operate a regulated small MS4 under subsection B of this section, you must seek
 7256 coverage under a state permit issued by the department.
- 7257 2. You must seek authorization to discharge under a general or individual state permit, as
 7258 follows:
- 7259 a. If the department has issued a general permit applicable to your discharge and you
 7260 are seeking coverage under the general permit, you must submit a registration
 7261 statement that includes the information on your best management practices and
 7262 measurable goals required by subdivision D 4 of this section. You may file your own
 7263 registration statement, or you and other municipalities or governmental entities may
 7264 jointly submit a registration statement. If you want to share responsibilities for meeting
 7265 the minimum measures with other municipalities or governmental entities, you must
 7266 submit a registration statement that describes which minimum measures you will
 7267 implement and identify the entities that will implement the other minimum measures
 7268 within the area served by your MS4. The general permit will explain any other steps
 7269 necessary to obtain permit authorization.
- 7270 b. (1) If you are seeking authorization to discharge under an individual state permit
 7271 and wish to implement a program under subsection D of this section, you must submit
 7272 an application to the department that includes the information required under 9VAC25-
 7273 870-360 F and subdivision D 4 of this section, an estimate of square mileage served
 7274 by your small MS4, and any additional information that the department requests. A
 7275 storm sewer map that satisfies the requirement of subdivision D 2 c (1) of this section
 7276 will satisfy the map requirement in 9VAC25-870-360 F 7.
- 7277 (2) If you are seeking authorization to discharge under an individual state permit and
 7278 wish to implement a program that is different from the program under subsection D of
 7279 this section, you will need to comply with the state permit application requirements of
 7280 9VAC25-870-380 C. You must submit both parts of the application requirements in
 7281 9VAC25-870-380 C 1 and 2 by March 10, 2003. You do not need to submit the
 7282 information required by 9VAC25-870-380 C 1 b and C 2 regarding your legal authority,
 7283 unless you intend for the state permit writer to take such information into account when
 7284 developing your other state permit conditions.
- 7285 (3) If allowed by the department, you and another regulated entity may jointly apply
 7286 under either subdivision 2 b (1) or (2) of this subsection to be state co-permittees under
 7287 an individual state permit.
- 7288 c. If your small MS4 is in the same urbanized area as a medium or large MS4 with a
 7289 state permit and that other MS4 is willing to have you participate in its stormwater
 7290 program, you and the other MS4 may jointly seek a modification of the other MS4 state
 7291 permit to include you as a limited state co-permittee. As a limited state co-permittee,
 7292 you will be responsible for compliance with the state permit's conditions applicable to
 7293 your jurisdiction. If you choose this option you will need to comply with the state permit
 7294 application requirements of 9VAC25-870-380, rather than the requirements of

7295 subsection D of this section. You do not need to comply with the specific application
 7296 requirements of 9VAC25-870-380 C 1 c and d and 9VAC25-870-380 C 2 c (discharge
 7297 characterization). You may satisfy the requirements in 9VAC25-870-380 C 1 e and 2
 7298 d (identification of a management program) by referring to the other MS4's stormwater
 7299 management program.

7300 d. NOTE: In referencing an MS4's stormwater management program, you should
 7301 briefly describe how the existing plan will address discharges from your small MS4 or
 7302 would need to be supplemented in order to adequately address your discharges. You
 7303 should also explain your role in coordinating stormwater pollutant control activities in
 7304 your MS4 and detail the resources available to you to accomplish the plan.

7305 3. If you operate a regulated small MS4:

7306 a. Designated under subdivision B 1 a of this section, you must apply for coverage
 7307 under a state permit or apply for a modification of an existing state permit under
 7308 subdivision 2 c of this subsection within 180 days of notice, unless the department
 7309 grants a later date.

7310 b. Designated under subdivision B 1 b of this section, you must apply for coverage
 7311 under a state permit or apply for a modification of an existing state permit under
 7312 subdivision 2 c of this subsection within 180 days of notice, unless the department
 7313 grants a later date.

7314 D. As an operator of a regulated small MS4, what will my MS4 state permit require?

7315 1. Your MS4 state permit will require at a minimum that you develop, implement, and
 7316 enforce a stormwater management program designed to reduce the discharge of
 7317 pollutants from your MS4 to the maximum extent practicable (MEP), to protect water
 7318 quality, and to satisfy the appropriate water quality requirements of the Clean Water Act,
 7319 the Virginia Stormwater Management Act, and the State Water Control Law. Your
 7320 stormwater management program must include the minimum control measures described
 7321 in subdivision 2 of this subsection unless you apply for a state permit under 9VAC25-870-
 7322 380 C. For purposes of this section, narrative effluent limitations requiring implementation
 7323 of best management practices (BMPs) are generally the most appropriate form of effluent
 7324 limitations when designed to satisfy technology requirements (including reductions of
 7325 pollutants to the maximum extent practicable) and to protect water quality. Implementation
 7326 of best management practices consistent with the provisions of the stormwater
 7327 management program required pursuant to this section and the provisions of the state
 7328 permit required pursuant to subsection C of this section constitutes compliance with the
 7329 standard of reducing pollutants to the maximum extent practicable. The department will
 7330 specify a time period of up to five years from the date of state permit issuance for you to
 7331 develop and implement your program.

7332 2. Minimum control measures:

7333 a. Public education and outreach on stormwater impacts.

7334 (1) You must implement a public education program to distribute educational materials
 7335 to the community or conduct equivalent outreach activities about the impacts of
 7336 stormwater discharges on water bodies and the steps that the public can take to
 7337 reduce pollutants in stormwater runoff.

7338 (2) NOTE: You may use stormwater educational materials provided by the state, your
 7339 tribe, EPA, environmental, public interest or trade organizations, or other MS4s. The
 7340 public education program should inform individuals and households about the steps
 7341 they can take to reduce stormwater pollution, such as ensuring proper septic system
 7342 maintenance, ensuring the proper use and disposal of landscape and garden

7343 chemicals including fertilizers and pesticides, protecting and restoring riparian
 7344 vegetation, and properly disposing of used motor oil or household hazardous wastes.
 7345 The department recommends that the program inform individuals and groups how to
 7346 become involved in local stream and beach restoration activities as well as activities
 7347 that are coordinated by youth service and conservation corps or other citizen groups.
 7348 The department recommends that the public education program be tailored, using a
 7349 mix of locally appropriate strategies, to target specific audiences and communities.
 7350 Examples of strategies include: distributing brochures or fact sheets, sponsoring
 7351 speaking engagements before community groups, providing public service
 7352 announcements, implementing educational programs targeted at school-age children,
 7353 and conducting community-based projects such as storm drain stenciling, and
 7354 watershed and beach cleanups. In addition, the department recommends that some
 7355 of the materials or outreach programs be directed toward targeted groups of
 7356 commercial, industrial, and institutional entities likely to have significant stormwater
 7357 impacts. For example, providing information to restaurants on the impact of grease
 7358 clogging storm drains and to garages on the impact of oil discharges. You are
 7359 encouraged to tailor your outreach program to address the viewpoints and concerns
 7360 of all communities, particularly minority and disadvantaged communities, as well as
 7361 any special concerns relating to children.

7362 b. Public involvement/participation.

7363 (1) You must, at a minimum, comply with state, tribal, and local public notice
 7364 requirements when implementing a public involvement/participation program.

7365 (2) The department recommends that the public be included in developing,
 7366 implementing, and reviewing your stormwater management program and that the
 7367 public participation process should make efforts to reach out and engage all economic
 7368 and ethnic groups. Opportunities for members of the public to participate in program
 7369 development and implementation include serving as citizen representatives on a local
 7370 stormwater management panel, attending public hearings, working as citizen
 7371 volunteers to educate other individuals about the program, assisting in program
 7372 coordination with other pre-existing programs, or participating in volunteer monitoring
 7373 efforts. (Citizens should obtain approval where necessary for lawful access to
 7374 monitoring sites.)

7375 c. Illicit discharge detection and elimination.

7376 (1) You must develop, implement and enforce a program to detect and eliminate illicit
 7377 discharges (as defined in 9VAC25-870-10) into your small MS4.

7378 (2) You must:

7379 (a) Develop, if not already completed, a storm sewer system map, showing the location
 7380 of all outfalls and the names and location of all surface waters that receive discharges
 7381 from those outfalls;

7382 (b) To the extent allowable under state, tribal or local law, effectively prohibit, through
 7383 ordinance or other regulatory mechanism, nonstormwater discharges into your storm
 7384 sewer system and implement appropriate enforcement procedures and actions;

7385 (c) Develop and implement a plan to detect and address nonstormwater discharges,
 7386 including illegal dumping, to your system; and

7387 (d) Inform public employees, businesses, and the general public of hazards associated
 7388 with illegal discharges and improper disposal of waste.

7389 (3) You need to address the following categories of nonstormwater discharges or flows
 7390 (i.e., illicit discharges) only if you identify them as significant contributors of pollutants

7391 to your small MS4: water line flushing, landscape irrigation, diverted stream flows,
 7392 rising groundwaters, uncontaminated groundwater infiltration (as defined in 40 CFR
 7393 35.2005(20)), uncontaminated pumped groundwater, discharges from potable water
 7394 sources, foundation drains, air conditioning condensation, irrigation water, springs,
 7395 water from crawl space pumps, footing drains, lawn watering, individual residential car
 7396 washing, flows from riparian habitats and wetlands, dechlorinated swimming pool
 7397 discharges, and street wash water. (Discharges or flows from fire-fighting activities are
 7398 excluded from the effective prohibition against nonstormwater and need only be
 7399 addressed where they are identified as significant sources of pollutants to surface
 7400 waters.)

7401 (4) NOTE: The department recommends that the plan to detect and address illicit
 7402 discharges include the following four components: (i) procedures for locating priority
 7403 areas likely to have illicit discharges, (ii) procedures for tracing the source of an illicit
 7404 discharge, (iii) procedures for removing the source of the discharge, and (iv)
 7405 procedures for program evaluation and assessment. The department recommends
 7406 visually screening outfalls during dry weather and conducting field tests of selected
 7407 pollutants as part of the procedures for locating priority areas. Illicit discharge
 7408 education actions may include storm drain stenciling; a program to promote, publicize,
 7409 and facilitate public reporting of illicit connections or discharges; and distribution of
 7410 outreach materials.

7411 d. Construction site stormwater runoff control.

7412 (1) You must develop, implement, and enforce a program to reduce pollutants in any
 7413 stormwater runoff to your small MS4 from construction activities that result in a land
 7414 disturbance of greater than or equal to one acre, or equal to or greater than 2,500
 7415 square feet in all areas of the jurisdictions designated as subject to the Chesapeake
 7416 Bay Preservation Area Designation and Management Regulations adopted pursuant
 7417 to the Chesapeake Bay Preservation Act. Reduction of stormwater discharges from
 7418 construction activity disturbing less than one acre must be included in your program if
 7419 that construction activity is part of a larger common plan of development or sale that
 7420 would disturb one acre or more. If the department waives requirements for stormwater
 7421 discharges associated with small construction activity in accordance with the definition
 7422 in 9VAC25-870-10, you are not required to develop, implement, and/or enforce a
 7423 program to reduce pollutant discharges from such sites.

7424 (2) Your program must include the development and implementation of, at a minimum:

7425 (a) An ordinance or other regulatory mechanism to require erosion and sediment
 7426 controls, as well as sanctions to ensure compliance, to the extent allowable under
 7427 state, tribal, or local law;

7428 (b) Requirements for construction site operators to implement appropriate erosion and
 7429 sediment control best management practices;

7430 (c) Requirements for construction site operators to control waste such as discarded
 7431 building materials, concrete truck washout, chemicals, litter, and sanitary waste at the
 7432 construction site that may cause adverse impacts to water quality;

7433 (d) Procedures for site plan review which incorporate consideration of potential water
 7434 quality impacts;

7435 (e) Procedures for receipt and consideration of information submitted by the public;
 7436 and

7437 (f) Procedures for site inspection and enforcement of control measures.

7438 ~~(3) NOTE: Examples of sanctions to ensure compliance include nonmonetary~~
7439 ~~penalties, fines, bonding requirements and/or state permit denials for noncompliance.~~
7440 ~~The department recommends that procedures for site plan review include the review~~
7441 ~~of individual pre-construction site plans to ensure consistency with VESCP~~
7442 ~~requirements. Procedures for site inspections and enforcement of control measures~~
7443 ~~could include steps to identify priority sites for inspection and enforcement based on~~
7444 ~~the nature of the construction activity, topography, and the characteristics of soils and~~
7445 ~~receiving water quality. You are encouraged to provide appropriate educational and~~
7446 ~~training measures for construction site operators. You may wish to require a~~
7447 ~~stormwater pollution prevention plan for construction sites within your jurisdiction that~~
7448 ~~discharge into your system. (See 9VAC25-870-460 L and subdivision E 2 of this~~
7449 ~~section.) The department may recognize that another government entity may be~~
7450 ~~responsible for implementing one or more of the minimum measures on your behalf.~~
7451 ~~e. Post-construction stormwater management in new development and~~
7452 ~~redevelopment.~~

7453 ~~(1) You must develop, implement, and enforce a program to address stormwater runoff~~
7454 ~~from new development and redevelopment projects that disturb greater than or equal~~
7455 ~~to one acre, including projects less than one acre that are part of a larger common~~
7456 ~~plan of development or sale, that discharge into your small MS4. Your program must~~
7457 ~~ensure that controls are in place that would prevent or minimize water quality impacts.~~

7458 ~~(2) You must:~~

7459 ~~(a) Develop and implement strategies that include a combination of structural and/or~~
7460 ~~nonstructural best management practices (BMPs) appropriate for your community;~~
7461 ~~(b) Use an ordinance or other regulatory mechanism to address post-construction~~
7462 ~~runoff from new development and redevelopment projects to the extent allowable~~
7463 ~~under state, tribal or local law; and~~

7464 ~~(c) Ensure adequate long-term operation and maintenance of BMPs.~~

7465 ~~(3) NOTE: If water quality impacts are considered from the beginning stages of a~~
7466 ~~project, new development and potentially redevelopment provide more opportunities~~
7467 ~~for water quality protection. The department recommends that the BMPs chosen be~~
7468 ~~appropriate for the local community, minimize water quality impacts, and attempt to~~
7469 ~~maintain pre-development runoff conditions. In choosing appropriate BMPs, the~~
7470 ~~department encourages you to participate in locally based watershed planning efforts~~
7471 ~~that attempt to involve a diverse group of stakeholders, including interested citizens.~~
7472 ~~When developing a program that is consistent with this measure's intent, the~~
7473 ~~department recommends that you adopt a planning process that identifies the~~
7474 ~~municipality's program goals (e.g., minimize water quality impacts resulting from post-~~
7475 ~~construction runoff from new development and redevelopment), implementation~~
7476 ~~strategies (e.g., adopt a combination of structural and/or nonstructural BMPs),~~
7477 ~~operation and maintenance policies and procedures, and enforcement procedures. In~~
7478 ~~developing your program, you should consider assessing existing ordinances, policies,~~
7479 ~~programs and studies that address stormwater runoff quality. In addition to assessing~~
7480 ~~these existing documents and programs, you should provide opportunities to the public~~
7481 ~~to participate in the development of the program. Nonstructural BMPs are preventative~~
7482 ~~actions that involve management and source controls such as: (i) policies and~~
7483 ~~ordinances that provide requirements and standards to direct growth to identified~~
7484 ~~areas, protect sensitive areas such as wetlands and riparian areas, maintain and/or~~
7485 ~~increase open space (including a dedicated funding source for open space~~
7486 ~~acquisition), provide buffers along sensitive water bodies, minimize impervious~~

7487 surfaces, and minimize disturbance of soils and vegetation; (ii) policies or ordinances
7488 that encourage infill development in higher density urban areas, and areas with
7489 existing infrastructure; (iii) education programs for developers and the public about
7490 project designs that minimize water quality impacts; and (iv) measures such as
7491 minimization of percent impervious area after development and minimization of directly
7492 connected impervious areas. Structural BMPs include: storage practices such as wet
7493 ponds and extended detention outlet structures; filtration practices such as grassed
7494 swales, sand filters and filter strips; and infiltration practices such as infiltration basins
7495 and infiltration trenches. The department recommends that you ensure the appropriate
7496 implementation of the structural BMPs by considering some or all of the following: pre-
7497 construction review of BMP designs; inspections during construction to verify BMPs
7498 are built as designed; post-construction inspection and maintenance of BMPs; and
7499 penalty provisions for the noncompliance with design, construction or operation and
7500 maintenance. Stormwater technologies are constantly being improved, and the
7501 department recommends that your requirements be responsive to these changes,
7502 developments or improvements in control technologies.

7503 f. Pollution prevention/good housekeeping for municipal operations.

7504 (1) You must develop and implement an operation and maintenance program that
7505 includes a training component and has the ultimate goal of preventing or reducing
7506 pollutant runoff from municipal operations. Using training materials that are available
7507 from EPA, state, tribe, or other organizations, your program must include employee
7508 training to prevent and reduce stormwater pollution from activities such as park and
7509 open space maintenance, fleet and building maintenance, new construction and land
7510 disturbances, and stormwater system maintenance.

7511 (2) NOTE: The department recommends that, at a minimum, you consider the
7512 following in developing your program: maintenance activities, maintenance schedules,
7513 and long-term inspection procedures for structural and nonstructural stormwater
7514 controls to reduce floatables and other pollutants discharged from your separate storm
7515 sewers; controls for reducing or eliminating the discharge of pollutants from streets,
7516 roads, highways, municipal parking lots, maintenance and storage yards, fleet or
7517 maintenance shops with outdoor storage areas, salt/sand storage locations and snow
7518 disposal areas operated by you, and waste transfer stations; procedures for properly
7519 disposing of waste removed from the separate storm sewers and areas listed above
7520 (such as dredge spoil, accumulated sediments, floatables, and other debris); and ways
7521 to ensure that new flood management projects assess the impacts on water quality
7522 and examine existing projects for incorporating additional water quality protection
7523 devices or practices. Operation and maintenance should be an integral component of
7524 all stormwater management programs. This measure is intended to improve the
7525 efficiency of these programs and require new programs where necessary. Properly
7526 developed and implemented operation and maintenance programs reduce the risk of
7527 water quality problems.

7528 3. If an existing VSMP requires you to implement one or more of the minimum control
7529 measures of subdivision 2 of this subsection, the department may include conditions in
7530 your state permit that direct you to follow that VSMP's requirements rather than the
7531 requirements of subdivision 2 of this subsection. A VSMP is a local, state or tribal
7532 municipal stormwater management program that imposes, at a minimum, the relevant
7533 requirements of subdivision 2 of this subsection.

7534 4. a. In your state permit application (either a registration statement for coverage under a
7535 general permit or an individual permit application), you must identify and submit to the
7536 department the following information:

- 7537 ~~(1) The best management practices (BMPs) that you or another entity will implement~~
7538 ~~for each of the stormwater minimum control measures provided in subdivision 2 of this~~
7539 ~~subsection;~~
- 7540 ~~(2) The measurable goals for each of the BMPs including, as appropriate, the months~~
7541 ~~and years in which you will undertake required actions, including interim milestones~~
7542 ~~and the frequency of the action; and~~
- 7543 ~~(3) The person or persons responsible for implementing or coordinating your~~
7544 ~~stormwater management program.~~
- 7545 ~~b. If you obtain coverage under a general permit, you are not required to meet any~~
7546 ~~measurable goals identified in your registration statement in order to demonstrate~~
7547 ~~compliance with the minimum control measures in subdivisions 2 c through f of this~~
7548 ~~subsection unless, prior to submitting your registration statement, EPA or the~~
7549 ~~department has provided or issued a menu of BMPs that addresses each such~~
7550 ~~minimum measure. Even if no regulatory authority issues the menu of BMPs, however,~~
7551 ~~you still must comply with other requirements of the general permit, including good~~
7552 ~~faith implementation of BMPs designed to comply with the minimum measures.~~
- 7553 ~~c. NOTE: Either EPA or the department will provide a menu of BMPs. You may choose~~
7554 ~~BMPs from the menu or select others that satisfy the minimum control measures.~~
- 7555 ~~5. a. You must comply with any more stringent effluent limitations in your state permit,~~
7556 ~~including state permit requirements that modify or are in addition to the minimum control~~
7557 ~~measures based on an approved total maximum daily load (TMDL) or equivalent analysis.~~
7558 ~~The department may include such more stringent limitations based on a TMDL or~~
7559 ~~equivalent analysis that determines such limitations are needed to protect water quality.~~
- 7560 ~~b. NOTE: The department strongly recommends that until the evaluation of the~~
7561 ~~stormwater program in subsection G of this section, no additional requirements~~
7562 ~~beyond the minimum control measures be imposed on regulated small MS4s without~~
7563 ~~the agreement of the operator of the affected small MS4, except where an approved~~
7564 ~~TMDL or equivalent analysis provides adequate information to develop more specific~~
7565 ~~measures to protect water quality.~~
- 7566 ~~6. You must comply with other applicable state permit requirements, standards and~~
7567 ~~conditions established in the individual or general permit developed consistent with the~~
7568 ~~provisions of 9VAC25-31-190 through 9VAC25-31-250, as appropriate.~~
- 7569 ~~7. Evaluation and assessment.~~
- 7570 ~~a. You must evaluate program compliance, the appropriateness of your identified best~~
7571 ~~management practices, and progress towards achieving your identified measurable~~
7572 ~~goals. The department may determine monitoring requirements for you in accordance~~
7573 ~~with monitoring plans appropriate to your watershed. Participation in a group~~
7574 ~~monitoring program is encouraged.~~
- 7575 ~~b. You must keep records required by the state permit for at least three years. You~~
7576 ~~must submit your records to the department only when specifically asked to do so. You~~
7577 ~~must make your records, including a description of your stormwater management~~
7578 ~~program, available to the public at reasonable times during regular business hours~~
7579 ~~(see 9VAC25-870-340 for confidentiality provision). You may assess a reasonable~~
7580 ~~charge for copying. You may require a member of the public to provide advance notice.~~
- 7581 ~~c. Unless you are relying on another entity to satisfy your state permit obligations under~~
7582 ~~subdivision E 1 of this section, you must submit annual reports to the department for~~
7583 ~~your first state permit term. For subsequent state permit terms, you must submit~~
7584 ~~reports in years two and four unless the department requires more frequent reports.~~

7585 As of the start date in Table 1 of 9VAC25-31-1020, all reports submitted in compliance
 7586 with this subsection shall be submitted electronically by the owner, operator, or the
 7587 duly authorized representative of the small MS4 to the department in compliance with
 7588 this section and 40 CFR Part 3 (including, in all cases, 40 CFR Part 3 Subpart D),
 7589 9VAC25-870-370, and Part XI (9VAC25-31-950 et seq.) of the Virginia Pollutant
 7590 Discharge Elimination System (VPDES) Permit Regulation. Part XI of 9VAC25-31 is
 7591 not intended to undo existing requirements for electronic reporting. Prior to this date,
 7592 and independent of Part XI of 9VAC25-31, the owner, operator, or the duly authorized
 7593 representative of the small MS4 may be required to report electronically if specified by
 7594 a particular permit. Your report must include:

- 7595 (1) The status of compliance with state permit conditions, an assessment of the
 7596 appropriateness of your identified best management practices and progress towards
 7597 achieving your identified measurable goals for each of the minimum control measures;
 7598 (2) Results of information collected and analyzed, including monitoring data, if any,
 7599 during the reporting period;
 7600 (3) A summary of the stormwater activities you plan to undertake during the next
 7601 reporting cycle;
 7602 (4) A change in any identified best management practices or measurable goals for any
 7603 of the minimum control measures; and
 7604 (5) Notice that you are relying on another governmental entity to satisfy some of your
 7605 state permit obligations (if applicable).

7606 E. As an operator of a regulated small MS4, may I share the responsibility to implement the
 7607 minimum control measures with other entities?

7608 1. You may rely on another entity to satisfy your state permit obligations to implement a
 7609 minimum control measure if:

- 7610 a. The other entity, in fact, implements the control measure;
- 7611 b. The particular control measure, or component thereof, is at least as stringent as the
 7612 corresponding state permit requirement; and
- 7613 c. The other entity agrees to implement the control measure on your behalf. In the
 7614 reports you must submit under subdivision D 7 c of this section, you must also specify
 7615 that you rely on another entity to satisfy some of your state permit obligations. If you
 7616 are relying on another governmental entity regulated under the state permit program
 7617 to satisfy all of your state permit obligations, including your obligation to file periodic
 7618 reports required by subdivision D 7 c of this section, you must note that fact in your
 7619 registration statement, but you are not required to file the periodic reports. You remain
 7620 responsible for compliance with your state permit obligations if the other entity fails to
 7621 implement the control measure (or component thereof). Therefore, the department
 7622 encourages you to enter into a legally binding agreement with that entity if you want to
 7623 minimize any uncertainty about compliance with your state permit.

7624 2. In some cases, the department may recognize, either in your individual permit or in a
 7625 general permit, that another governmental entity is responsible under a state permit for
 7626 implementing one or more of the minimum control measures for your small MS4. Where
 7627 the department does so, you are not required to include such minimum control measure(s)
 7628 in your stormwater management program. Your state permit may be reopened and
 7629 modified to include the requirement to implement a minimum control measure if the entity
 7630 fails to implement it.

7631 F. As an operator of a regulated small MS4, what happens if I don't comply with the application
 7632 or state permit requirements in subsections C through E of this section?

7633 State permits are enforceable under the Clean Water Act and the Virginia Stormwater
 7634 Management Act. Violators may be subject to the enforcement actions and penalties described
 7635 in Clean Water Act §§ 309(b), (c), and (g) and 505 or under §§ 62.1-44.15:39 through 62.1-
 7636 44.15:48 of the Code of Virginia. Compliance with a state permit issued pursuant to § 402 of the
 7637 Clean Water Act is deemed compliance, for purposes of §§ 309 and 505, with §§ 301, 302, 306,
 7638 307, and 403, except any standard imposed under § 307 for toxic pollutants injurious to human
 7639 health. If you are covered as a state co-permittee under an individual permit or under a general
 7640 permit by means of a joint registration statement, you remain subject to the enforcement actions
 7641 and penalties for the failure to comply with the terms of the state permit in your jurisdiction except
 7642 as set forth in subdivision E 2 of this section.

7643 G. Will the small MS4 stormwater program regulations at subsections B through F of this
 7644 section change in the future?

7645 EPA intends to conduct an enhanced research effort and compile a comprehensive evaluation
 7646 of the NPDES MS4 stormwater program. The board will reevaluate the regulations based on data
 7647 from the EPA NPDES MS4 stormwater program, from research on receiving water impacts from
 7648 stormwater, and the effectiveness of best management practices (BMPs), as well as other
 7649 relevant information sources.

7650 **9VAC25-870-400. Small municipal separate storm sewer systems. (Repealed.)**

7651 A. Objectives of the stormwater regulations for small MS4s.

7652 1. Subsections A through G of this section are written in a "readable regulation" format
 7653 that includes both rule requirements and guidance. The recommended guidance is
 7654 distinguished from the regulatory requirements by putting the guidance in a separate
 7655 subdivision headed by the word "Note."

7656 2. Under the statutory mandate in § 402(p)(6) of the Clean Water Act, the purpose of this
 7657 portion of the stormwater program is to designate additional sources that need to be
 7658 regulated to protect water quality and to establish a comprehensive stormwater program
 7659 to regulate these sources.

7660 3. Stormwater runoff continues to harm the nation's waters. Runoff from lands modified by
 7661 human activities can harm surface water resources in several ways including by changing
 7662 natural hydrologic patterns and by elevating pollutant concentrations and loadings.
 7663 Stormwater runoff may contain or mobilize high levels of contaminants, such as sediment,
 7664 suspended solids, nutrients, heavy metals, pathogens, toxins, oxygen-demanding
 7665 substances, and floatables.

7666 4. The department strongly encourages partnerships and the watershed approach as the
 7667 management framework for efficiently, effectively, and consistently protecting and
 7668 restoring aquatic ecosystems and protecting public health.

7669 B. As an operator of a small MS4, am I regulated under the state's stormwater program?

7670 1. Unless you qualify for a waiver under subdivision 3 of this subsection, you are regulated
 7671 if you operate a small MS4, including but not limited to systems operated by federal, state,
 7672 tribal, and local governments, including the Virginia Department of Transportation; and

7673 a. Your small MS4 is located in an urbanized area as determined by the latest
 7674 decennial census by the Bureau of the Census (If your small MS4 is not located
 7675 entirely within an urbanized area, only the portion that is within the urbanized area is
 7676 regulated); or

7677 b. You are designated by the department, including where the designation is pursuant
 7678 to subdivisions C 3 a and b of this section or is based upon a petition under 9VAC25-
 7679 870-380 D.

- 7680 2. You may be the subject of a petition to the department to require a state permit for your
 7681 discharge of stormwater. If the department determines that you need a state permit, you
 7682 are required to comply with subsections C through E of this section.
- 7683 3. The department may waive the requirements otherwise applicable to you if you meet
 7684 the criteria of subdivision 4 or 5 of this subsection. If you receive a waiver under this
 7685 section, you may subsequently be required to seek coverage under a state permit in
 7686 accordance with subdivision C 1 of this section if circumstances change. (See also
 7687 subdivision E 2 of this section).
- 7688 4. The department may waive state permit coverage if your MS4 serves a population of
 7689 less than 1,000 within the urbanized area and you meet the following criteria:
- 7690 a. Your system is not contributing substantially to the pollutant loadings of a physically
 7691 interconnected MS4 that is regulated by the department; and
- 7692 b. If you discharge any pollutants that have been identified as a cause of impairment
 7693 of any water body to which you discharge, stormwater controls are not needed based
 7694 on wasteload allocations that are part of an approved "total maximum daily load"
 7695 (TMDL) that addresses the pollutants of concern.
- 7696 5. The department may waive state permit coverage if your MS4 serves a population under
 7697 10,000 and you meet the following criteria:
- 7698 a. The department has evaluated all surface waters, including small streams,
 7699 tributaries, lakes, and ponds, that receive a discharge from your MS4;
- 7700 b. For all such waters, the department has determined that stormwater controls are
 7701 not needed based on wasteload allocations that are part of an approved TMDL that
 7702 addresses the pollutants of concern or, if a TMDL has not been developed or
 7703 approved, an equivalent analysis that determines sources and allocations for the
 7704 pollutants of concern;
- 7705 c. For the purpose of subdivision 5 of this subsection, the pollutants of concern include
 7706 biochemical oxygen demand (BOD), sediment or a parameter that addresses
 7707 sediment (such as total suspended solids, turbidity or siltation), pathogens, oil and
 7708 grease, and any pollutant that has been identified as a cause of impairment of any
 7709 water body that will receive a discharge from your MS4; and
- 7710 d. The department has determined that future discharges from your MS4 do not have
 7711 the potential to result in exceedances of water quality standards, including impairment
 7712 of designated uses, or other significant water quality impacts, including habitat and
 7713 biological impacts.
- 7714 C. If I am an operator of a regulated small MS4, how do I apply for a state permit and when
 7715 do I have to apply?
- 7716 1. If you operate a regulated small MS4 under subsection B of this section, you must seek
 7717 coverage under a state permit issued by the department.
- 7718 2. You must seek authorization to discharge under a general or individual state permit, as
 7719 follows:
- 7720 a. If the department has issued a general permit applicable to your discharge and you
 7721 are seeking coverage under the general permit, you must submit a registration
 7722 statement that includes the information on your best management practices and
 7723 measurable goals required by subdivision D 4 of this section. You may file your own
 7724 registration statement, or you and other municipalities or governmental entities may
 7725 jointly submit a registration statement. If you want to share responsibilities for meeting
 7726 the minimum measures with other municipalities or governmental entities, you must
 7727 submit a registration statement that describes which minimum measures you will

7728 implement and identify the entities that will implement the other minimum measures
7729 within the area served by your MS4. The general permit will explain any other steps
7730 necessary to obtain permit authorization.

7731 b. (1) If you are seeking authorization to discharge under an individual state permit
7732 and wish to implement a program under subsection D of this section, you must submit
7733 an application to the department that includes the information required under 9VAC25-
7734 870-360 F and subdivision D 4 of this section, an estimate of square mileage served
7735 by your small MS4, and any additional information that the department requests. A
7736 storm sewer map that satisfies the requirement of subdivision D 2 c (1) of this section
7737 will satisfy the map requirement in 9VAC25-870-360 F 7.

7738 (2) If you are seeking authorization to discharge under an individual state permit and
7739 wish to implement a program that is different from the program under subsection D of
7740 this section, you will need to comply with the state permit application requirements of
7741 9VAC25-870-380 C. You must submit both parts of the application requirements in
7742 9VAC25-870-380 C 1 and 2 by March 10, 2003. You do not need to submit the
7743 information required by 9VAC25-870-380 C 1 b and C 2 regarding your legal authority,
7744 unless you intend for the state permit writer to take such information into account when
7745 developing your other state permit conditions.

7746 (3) If allowed by the department, you and another regulated entity may jointly apply
7747 under either subdivision 2 b (1) or (2) of this subsection to be state co-permittees under
7748 an individual state permit.

7749 c. If your small MS4 is in the same urbanized area as a medium or large MS4 with a
7750 state permit and that other MS4 is willing to have you participate in its stormwater
7751 program, you and the other MS4 may jointly seek a modification of the other MS4 state
7752 permit to include you as a limited state co-permittee. As a limited state co-permittee,
7753 you will be responsible for compliance with the state permit's conditions applicable to
7754 your jurisdiction. If you choose this option you will need to comply with the state permit
7755 application requirements of 9VAC25-870-380, rather than the requirements of
7756 subsection D of this section. You do not need to comply with the specific application
7757 requirements of 9VAC25-870-380 C 1 c and d and 9VAC25-870-380 C 2 c (discharge
7758 characterization). You may satisfy the requirements in 9VAC25-870-380 C 1 e and 2
7759 d (identification of a management program) by referring to the other MS4's stormwater
7760 management program.

7761 d. NOTE: In referencing an MS4's stormwater management program, you should
7762 briefly describe how the existing plan will address discharges from your small MS4 or
7763 would need to be supplemented in order to adequately address your discharges. You
7764 should also explain your role in coordinating stormwater pollutant control activities in
7765 your MS4 and detail the resources available to you to accomplish the plan.

7766 3. If you operate a regulated small MS4:

7767 a. Designated under subdivision B 1 a of this section, you must apply for coverage
7768 under a state permit or apply for a modification of an existing state permit under
7769 subdivision 2 c of this subsection within 180 days of notice, unless the department
7770 grants a later date.

7771 b. Designated under subdivision B 1 b of this section, you must apply for coverage
7772 under a state permit or apply for a modification of an existing state permit under
7773 subdivision 2 c of this subsection within 180 days of notice, unless the department
7774 grants a later date.

7775 D. As an operator of a regulated small MS4, what will my MS4 state permit require?

7776 1. Your MS4 state permit will require at a minimum that you develop, implement, and
7777 enforce a stormwater management program designed to reduce the discharge of
7778 pollutants from your MS4 to the maximum extent practicable (MEP), to protect water
7779 quality, and to satisfy the appropriate water quality requirements of the Clean Water Act,
7780 the Virginia Stormwater Management Act, and the State Water Control Law. Your
7781 stormwater management program must include the minimum control measures described
7782 in subdivision 2 of this subsection unless you apply for a state permit under 9VAC25-870-
7783 380 C. For purposes of this section, narrative effluent limitations requiring implementation
7784 of best management practices (BMPs) are generally the most appropriate form of effluent
7785 limitations when designed to satisfy technology requirements (including reductions of
7786 pollutants to the maximum extent practicable) and to protect water quality. Implementation
7787 of best management practices consistent with the provisions of the stormwater
7788 management program required pursuant to this section and the provisions of the state
7789 permit required pursuant to subsection C of this section constitutes compliance with the
7790 standard of reducing pollutants to the maximum extent practicable. The department will
7791 specify a time period of up to five years from the date of state permit issuance for you to
7792 develop and implement your program.

7793 2. Minimum control measures:

7794 a. Public education and outreach on stormwater impacts.

7795 (1) You must implement a public education program to distribute educational materials
7796 to the community or conduct equivalent outreach activities about the impacts of
7797 stormwater discharges on water bodies and the steps that the public can take to
7798 reduce pollutants in stormwater runoff.

7799 (2) NOTE: You may use stormwater educational materials provided by the state, your
7800 tribe, EPA, environmental, public interest or trade organizations, or other MS4s. The
7801 public education program should inform individuals and households about the steps
7802 they can take to reduce stormwater pollution, such as ensuring proper septic system
7803 maintenance, ensuring the proper use and disposal of landscape and garden
7804 chemicals including fertilizers and pesticides, protecting and restoring riparian
7805 vegetation, and properly disposing of used motor oil or household hazardous wastes.
7806 The department recommends that the program inform individuals and groups how to
7807 become involved in local stream and beach restoration activities as well as activities
7808 that are coordinated by youth service and conservation corps or other citizen groups.
7809 The department recommends that the public education program be tailored, using a
7810 mix of locally appropriate strategies, to target specific audiences and communities.
7811 Examples of strategies include: distributing brochures or fact sheets, sponsoring
7812 speaking engagements before community groups, providing public service
7813 announcements, implementing educational programs targeted at school-age children,
7814 and conducting community-based projects such as storm drain stenciling, and
7815 watershed and beach cleanups. In addition, the department recommends that some
7816 of the materials or outreach programs be directed toward targeted groups of
7817 commercial, industrial, and institutional entities likely to have significant stormwater
7818 impacts. For example, providing information to restaurants on the impact of grease
7819 clogging storm drains and to garages on the impact of oil discharges. You are
7820 encouraged to tailor your outreach program to address the viewpoints and concerns
7821 of all communities, particularly minority and disadvantaged communities, as well as
7822 any special concerns relating to children.

7823 b. Public involvement/participation.

7824 ~~(1) You must, at a minimum, comply with state, tribal, and local public notice~~
7825 ~~requirements when implementing a public involvement/participation program.~~

7826 ~~(2) The department recommends that the public be included in developing,~~
7827 ~~implementing, and reviewing your stormwater management program and that the~~
7828 ~~public participation process should make efforts to reach out and engage all economic~~
7829 ~~and ethnic groups. Opportunities for members of the public to participate in program~~
7830 ~~development and implementation include serving as citizen representatives on a local~~
7831 ~~stormwater management panel, attending public hearings, working as citizen~~
7832 ~~volunteers to educate other individuals about the program, assisting in program~~
7833 ~~coordination with other pre-existing programs, or participating in volunteer monitoring~~
7834 ~~efforts. (Citizens should obtain approval where necessary for lawful access to~~
7835 ~~monitoring sites.)~~

7836 ~~c. Illicit discharge detection and elimination.~~

7837 ~~(1) You must develop, implement and enforce a program to detect and eliminate illicit~~
7838 ~~discharges (as defined in 9VAC25-870-10) into your small MS4.~~

7839 ~~(2) You must:~~

7840 ~~(a) Develop, if not already completed, a storm sewer system map, showing the location~~
7841 ~~of all outfalls and the names and location of all surface waters that receive discharges~~
7842 ~~from those outfalls;~~

7843 ~~(b) To the extent allowable under state, tribal or local law, effectively prohibit, through~~
7844 ~~ordinance or other regulatory mechanism, nonstormwater discharges into your storm~~
7845 ~~sewer system and implement appropriate enforcement procedures and actions;~~

7846 ~~(c) Develop and implement a plan to detect and address nonstormwater discharges,~~
7847 ~~including illegal dumping, to your system; and~~

7848 ~~(d) Inform public employees, businesses, and the general public of hazards associated~~
7849 ~~with illegal discharges and improper disposal of waste.~~

7850 ~~(3) You need to address the following categories of nonstormwater discharges or flows~~
7851 ~~(i.e., illicit discharges) only if you identify them as significant contributors of pollutants~~
7852 ~~to your small MS4: water line flushing, landscape irrigation, diverted stream flows,~~
7853 ~~rising groundwaters, uncontaminated groundwater infiltration (as defined in 40 CFR~~
7854 ~~35.2005(20)), uncontaminated pumped groundwater, discharges from potable water~~
7855 ~~sources, foundation drains, air conditioning condensation, irrigation water, springs,~~
7856 ~~water from crawl space pumps, footing drains, lawn watering, individual residential car~~
7857 ~~washing, flows from riparian habitats and wetlands, dechlorinated swimming pool~~
7858 ~~discharges, and street wash water. (Discharges or flows from fire-fighting activities are~~
7859 ~~excluded from the effective prohibition against nonstormwater and need only be~~
7860 ~~addressed where they are identified as significant sources of pollutants to surface~~
7861 ~~waters.)~~

7862 ~~(4) NOTE: The department recommends that the plan to detect and address illicit~~
7863 ~~discharges include the following four components: (i) procedures for locating priority~~
7864 ~~areas likely to have illicit discharges, (ii) procedures for tracing the source of an illicit~~
7865 ~~discharge, (iii) procedures for removing the source of the discharge, and (iv)~~
7866 ~~procedures for program evaluation and assessment. The department recommends~~
7867 ~~visually screening outfalls during dry weather and conducting field tests of selected~~
7868 ~~pollutants as part of the procedures for locating priority areas. Illicit discharge~~
7869 ~~education actions may include storm drain stenciling; a program to promote, publicize,~~
7870 ~~and facilitate public reporting of illicit connections or discharges; and distribution of~~
7871 ~~outreach materials.~~

- 7872 d. ~~Construction site stormwater runoff control.~~
- 7873 (1) ~~You must develop, implement, and enforce a program to reduce pollutants in any~~
- 7874 ~~stormwater runoff to your small MS4 from construction activities that result in a land~~
- 7875 ~~disturbance of greater than or equal to one acre, or equal to or greater than 2,500~~
- 7876 ~~square feet in all areas of the jurisdictions designated as subject to the Chesapeake~~
- 7877 ~~Bay Preservation Area Designation and Management Regulations adopted pursuant~~
- 7878 ~~to the Chesapeake Bay Preservation Act. Reduction of stormwater discharges from~~
- 7879 ~~construction activity disturbing less than one acre must be included in your program if~~
- 7880 ~~that construction activity is part of a larger common plan of development or sale that~~
- 7881 ~~would disturb one acre or more. If the department waives requirements for stormwater~~
- 7882 ~~discharges associated with small construction activity in accordance with the definition~~
- 7883 ~~in 9VAC25-870-10, you are not required to develop, implement, and/or enforce a~~
- 7884 ~~program to reduce pollutant discharges from such sites.~~
- 7885 (2) ~~Your program must include the development and implementation of, at a minimum:~~
- 7886 ~~(a) An ordinance or other regulatory mechanism to require erosion and sediment~~
- 7887 ~~controls, as well as sanctions to ensure compliance, to the extent allowable under~~
- 7888 ~~state, tribal, or local law;~~
- 7889 ~~(b) Requirements for construction site operators to implement appropriate erosion and~~
- 7890 ~~sediment control best management practices;~~
- 7891 ~~(c) Requirements for construction site operators to control waste such as discarded~~
- 7892 ~~building materials, concrete truck washout, chemicals, litter, and sanitary waste at the~~
- 7893 ~~construction site that may cause adverse impacts to water quality;~~
- 7894 ~~(d) Procedures for site plan review which incorporate consideration of potential water~~
- 7895 ~~quality impacts;~~
- 7896 ~~(e) Procedures for receipt and consideration of information submitted by the public;~~
- 7897 ~~and~~
- 7898 ~~(f) Procedures for site inspection and enforcement of control measures.~~
- 7899 (3) ~~NOTE: Examples of sanctions to ensure compliance include nonmonetary~~
- 7900 ~~penalties, fines, bonding requirements and/or state permit denials for noncompliance.~~
- 7901 ~~The department recommends that procedures for site plan review include the review~~
- 7902 ~~of individual pre-construction site plans to ensure consistency with VESCP~~
- 7903 ~~requirements. Procedures for site inspections and enforcement of control measures~~
- 7904 ~~could include steps to identify priority sites for inspection and enforcement based on~~
- 7905 ~~the nature of the construction activity, topography, and the characteristics of soils and~~
- 7906 ~~receiving water quality. You are encouraged to provide appropriate educational and~~
- 7907 ~~training measures for construction site operators. You may wish to require a~~
- 7908 ~~stormwater pollution prevention plan for construction sites within your jurisdiction that~~
- 7909 ~~discharge into your system. (See 9VAC25-870-460 L and subdivision E 2 of this~~
- 7910 ~~section.) The department may recognize that another government entity may be~~
- 7911 ~~responsible for implementing one or more of the minimum measures on your behalf.~~
- 7912 e. ~~Post-construction stormwater management in new development and~~
- 7913 ~~redevelopment.~~
- 7914 (1) ~~You must develop, implement, and enforce a program to address stormwater runoff~~
- 7915 ~~from new development and redevelopment projects that disturb greater than or equal~~
- 7916 ~~to one acre, including projects less than one acre that are part of a larger common~~
- 7917 ~~plan of development or sale, that discharge into your small MS4. Your program must~~
- 7918 ~~ensure that controls are in place that would prevent or minimize water quality impacts.~~
- 7919 (2) ~~You must:~~

7920 (a) Develop and implement strategies that include a combination of structural and/or
7921 nonstructural best management practices (BMPs) appropriate for your community;

7922 (b) Use an ordinance or other regulatory mechanism to address post-construction
7923 runoff from new development and redevelopment projects to the extent allowable
7924 under state, tribal or local law; and

7925 (c) Ensure adequate long-term operation and maintenance of BMPs.

7926 (3) NOTE: If water quality impacts are considered from the beginning stages of a
7927 project, new development and potentially redevelopment provide more opportunities
7928 for water quality protection. The department recommends that the BMPs chosen be
7929 appropriate for the local community, minimize water quality impacts, and attempt to
7930 maintain pre-development runoff conditions. In choosing appropriate BMPs, the
7931 department encourages you to participate in locally based watershed planning efforts
7932 that attempt to involve a diverse group of stakeholders, including interested citizens.
7933 When developing a program that is consistent with this measure's intent, the
7934 department recommends that you adopt a planning process that identifies the
7935 municipality's program goals (e.g., minimize water quality impacts resulting from post-
7936 construction runoff from new development and redevelopment), implementation
7937 strategies (e.g., adopt a combination of structural and/or nonstructural BMPs),
7938 operation and maintenance policies and procedures, and enforcement procedures. In
7939 developing your program, you should consider assessing existing ordinances, policies,
7940 programs and studies that address stormwater runoff quality. In addition to assessing
7941 these existing documents and programs, you should provide opportunities to the public
7942 to participate in the development of the program. Nonstructural BMPs are preventative
7943 actions that involve management and source controls such as: (i) policies and
7944 ordinances that provide requirements and standards to direct growth to identified
7945 areas, protect sensitive areas such as wetlands and riparian areas, maintain and/or
7946 increase open space (including a dedicated funding source for open space
7947 acquisition), provide buffers along sensitive water bodies, minimize impervious
7948 surfaces, and minimize disturbance of soils and vegetation; (ii) policies or ordinances
7949 that encourage infill development in higher density urban areas, and areas with
7950 existing infrastructure; (iii) education programs for developers and the public about
7951 project designs that minimize water quality impacts; and (iv) measures such as
7952 minimization of percent impervious area after development and minimization of directly
7953 connected impervious areas. Structural BMPs include: storage practices such as wet
7954 ponds and extended detention outlet structures; filtration practices such as grassed
7955 swales, sand filters and filter strips; and infiltration practices such as infiltration basins
7956 and infiltration trenches. The department recommends that you ensure the appropriate
7957 implementation of the structural BMPs by considering some or all of the following: pre-
7958 construction review of BMP designs; inspections during construction to verify BMPs
7959 are built as designed; post-construction inspection and maintenance of BMPs; and
7960 penalty provisions for the noncompliance with design, construction or operation and
7961 maintenance. Stormwater technologies are constantly being improved, and the
7962 department recommends that your requirements be responsive to these changes,
7963 developments or improvements in control technologies.

7964 f. Pollution prevention/good housekeeping for municipal operations.

7965 (1) You must develop and implement an operation and maintenance program that
7966 includes a training component and has the ultimate goal of preventing or reducing
7967 pollutant runoff from municipal operations. Using training materials that are available
7968 from EPA, state, tribe, or other organizations, your program must include employee
7969 training to prevent and reduce stormwater pollution from activities such as park and

- 7970 open space maintenance, fleet and building maintenance, new construction and land
7971 disturbances, and stormwater system maintenance.
- 7972 (2) NOTE: The department recommends that, at a minimum, you consider the
7973 following in developing your program: maintenance activities, maintenance schedules,
7974 and long-term inspection procedures for structural and nonstructural stormwater
7975 controls to reduce floatables and other pollutants discharged from your separate storm
7976 sewers; controls for reducing or eliminating the discharge of pollutants from streets,
7977 roads, highways, municipal parking lots, maintenance and storage yards, fleet or
7978 maintenance shops with outdoor storage areas, salt/sand storage locations and snow
7979 disposal areas operated by you, and waste transfer stations; procedures for properly
7980 disposing of waste removed from the separate storm sewers and areas listed above
7981 (such as dredge spoil, accumulated sediments, floatables, and other debris); and ways
7982 to ensure that new flood management projects assess the impacts on water quality
7983 and examine existing projects for incorporating additional water quality protection
7984 devices or practices. Operation and maintenance should be an integral component of
7985 all stormwater management programs. This measure is intended to improve the
7986 efficiency of these programs and require new programs where necessary. Properly
7987 developed and implemented operation and maintenance programs reduce the risk of
7988 water quality problems.
- 7989 3. If an existing VSMP requires you to implement one or more of the minimum control
7990 measures of subdivision 2 of this subsection, the department may include conditions in
7991 your state permit that direct you to follow that VSMP's requirements rather than the
7992 requirements of subdivision 2 of this subsection. A VSMP is a local, state or tribal
7993 municipal stormwater management program that imposes, at a minimum, the relevant
7994 requirements of subdivision 2 of this subsection.
- 7995 4. a. In your state permit application (either a registration statement for coverage under a
7996 general permit or an individual permit application), you must identify and submit to the
7997 department the following information:
- 7998 (1) The best management practices (BMPs) that you or another entity will implement
7999 for each of the stormwater minimum control measures provided in subdivision 2 of this
8000 subsection;
- 8001 (2) The measurable goals for each of the BMPs including, as appropriate, the months
8002 and years in which you will undertake required actions, including interim milestones
8003 and the frequency of the action; and
- 8004 (3) The person or persons responsible for implementing or coordinating your
8005 stormwater management program.
- 8006 b. If you obtain coverage under a general permit, you are not required to meet any
8007 measurable goals identified in your registration statement in order to demonstrate
8008 compliance with the minimum control measures in subdivisions 2 c through f of this
8009 subsection unless, prior to submitting your registration statement, EPA or the
8010 department has provided or issued a menu of BMPs that addresses each such
8011 minimum measure. Even if no regulatory authority issues the menu of BMPs, however,
8012 you still must comply with other requirements of the general permit, including good
8013 faith implementation of BMPs designed to comply with the minimum measures.
- 8014 c. NOTE: Either EPA or the department will provide a menu of BMPs. You may choose
8015 BMPs from the menu or select others that satisfy the minimum control measures.
- 8016 5. a. You must comply with any more stringent effluent limitations in your state permit,
8017 including state permit requirements that modify or are in addition to the minimum control
8018 measures based on an approved total maximum daily load (TMDL) or equivalent analysis.

8019 The department may include such more stringent limitations based on a TMDL or
8020 equivalent analysis that determines such limitations are needed to protect water quality.

8021 b. NOTE: The department strongly recommends that until the evaluation of the
8022 stormwater program in subsection G of this section, no additional requirements
8023 beyond the minimum control measures be imposed on regulated small MS4s without
8024 the agreement of the operator of the affected small MS4, except where an approved
8025 TMDL or equivalent analysis provides adequate information to develop more specific
8026 measures to protect water quality.

8027 6. You must comply with other applicable state permit requirements, standards and
8028 conditions established in the individual or general permit developed consistent with the
8029 provisions of 9VAC25-31-190 through 9VAC25-31-250, as appropriate.

8030 7. Evaluation and assessment.

8031 a. You must evaluate program compliance, the appropriateness of your identified best
8032 management practices, and progress towards achieving your identified measurable
8033 goals. The department may determine monitoring requirements for you in accordance
8034 with monitoring plans appropriate to your watershed. Participation in a group
8035 monitoring program is encouraged.

8036 b. You must keep records required by the state permit for at least three years. You
8037 must submit your records to the department only when specifically asked to do so. You
8038 must make your records, including a description of your stormwater management
8039 program, available to the public at reasonable times during regular business hours
8040 (see 9VAC25-870-340 for confidentiality provision). You may assess a reasonable
8041 charge for copying. You may require a member of the public to provide advance notice.

8042 c. Unless you are relying on another entity to satisfy your state permit obligations under
8043 subdivision E 1 of this section, you must submit annual reports to the department for
8044 your first state permit term. For subsequent state permit terms, you must submit
8045 reports in years two and four unless the department requires more frequent reports.
8046 As of the start date in Table 1 of 9VAC25-31-1020, all reports submitted in compliance
8047 with this subsection shall be submitted electronically by the owner, operator, or the
8048 duly authorized representative of the small MS4 to the department in compliance with
8049 this section and 40 CFR Part 3 (including, in all cases, 40 CFR Part 3 Subpart D),
8050 9VAC25-870-370, and Part XI (9VAC25-31-950 et seq.) of the Virginia Pollutant
8051 Discharge Elimination System (VPDES) Permit Regulation. Part XI of 9VAC25-31 is
8052 not intended to undo existing requirements for electronic reporting. Prior to this date,
8053 and independent of Part XI of 9VAC25-31, the owner, operator, or the duly authorized
8054 representative of the small MS4 may be required to report electronically if specified by
8055 a particular permit. Your report must include:

8056 (1) The status of compliance with state permit conditions, an assessment of the
8057 appropriateness of your identified best management practices and progress towards
8058 achieving your identified measurable goals for each of the minimum control measures;

8059 (2) Results of information collected and analyzed, including monitoring data, if any,
8060 during the reporting period;

8061 (3) A summary of the stormwater activities you plan to undertake during the next
8062 reporting cycle;

8063 (4) A change in any identified best management practices or measurable goals for any
8064 of the minimum control measures; and

8065 (5) Notice that you are relying on another governmental entity to satisfy some of your
8066 state permit obligations (if applicable).

8067 E. As an operator of a regulated small MS4, may I share the responsibility to implement the
 8068 minimum control measures with other entities?

8069 1. You may rely on another entity to satisfy your state permit obligations to implement a
 8070 minimum control measure if:

8071 a. The other entity, in fact, implements the control measure;

8072 b. The particular control measure, or component thereof, is at least as stringent as the
 8073 corresponding state permit requirement; and

8074 c. The other entity agrees to implement the control measure on your behalf. In the
 8075 reports you must submit under subdivision D 7 c of this section, you must also specify
 8076 that you rely on another entity to satisfy some of your state permit obligations. If you
 8077 are relying on another governmental entity regulated under the state permit program
 8078 to satisfy all of your state permit obligations, including your obligation to file periodic
 8079 reports required by subdivision D 7 c of this section, you must note that fact in your
 8080 registration statement, but you are not required to file the periodic reports. You remain
 8081 responsible for compliance with your state permit obligations if the other entity fails to
 8082 implement the control measure (or component thereof). Therefore, the department
 8083 encourages you to enter into a legally binding agreement with that entity if you want to
 8084 minimize any uncertainty about compliance with your state permit.

8085 2. In some cases, the department may recognize, either in your individual permit or in a
 8086 general permit, that another governmental entity is responsible under a state permit for
 8087 implementing one or more of the minimum control measures for your small MS4. Where
 8088 the department does so, you are not required to include such minimum control measure(s)
 8089 in your stormwater management program. Your state permit may be reopened and
 8090 modified to include the requirement to implement a minimum control measure if the entity
 8091 fails to implement it.

8092 F. As an operator of a regulated small MS4, what happens if I don't comply with the application
 8093 or state permit requirements in subsections C through E of this section?

8094 State permits are enforceable under the Clean Water Act and the Virginia Stormwater
 8095 Management Act. Violators may be subject to the enforcement actions and penalties described
 8096 in Clean Water Act §§ 309(b), (c), and (g) and 505 or under §§ 62.1-44.15:39 through 62.1-
 8097 44.15:48 of the Code of Virginia. Compliance with a state permit issued pursuant to § 402 of the
 8098 Clean Water Act is deemed compliance, for purposes of §§ 309 and 505, with §§ 301, 302, 306,
 8099 307, and 403, except any standard imposed under § 307 for toxic pollutants injurious to human
 8100 health. If you are covered as a state co-permittee under an individual permit or under a general
 8101 permit by means of a joint registration statement, you remain subject to the enforcement actions
 8102 and penalties for the failure to comply with the terms of the state permit in your jurisdiction except
 8103 as set forth in subdivision E 2 of this section.

8104 G. Will the small MS4 stormwater program regulations at subsections B through F of this
 8105 section change in the future?

8106 EPA intends to conduct an enhanced research effort and compile a comprehensive evaluation
 8107 of the NPDES MS4 stormwater program. The board will reevaluate the regulations based on data
 8108 from the EPA NPDES MS4 stormwater program, from research on receiving water impacts from
 8109 stormwater, and the effectiveness of best management practices (BMPs), as well as other
 8110 relevant information sources.

8111 **9VAC25-870-410. General permits. (Repealed.)**

8112 A. The department may issue a general permit in accordance with the following:

- 8113 1. The general permit shall be written to cover one or more categories or subcategories of
8114 discharges, except those covered by individual permits, within a geographic area. The
8115 area should correspond to existing geographic or political boundaries, such as:
- 8116 a. Designated planning areas under §§ 208 and 303 of CWA;
 - 8117 b. Sewer districts or sewer authorities;
 - 8118 c. City, county, or state political boundaries;
 - 8119 d. State highway systems;
 - 8120 e. Standard metropolitan statistical areas as defined by the Office of Management and
8121 Budget;
 - 8122 f. Urbanized areas as designated by the Bureau of the Census according to criteria in
8123 30 FR 15202 (May 1, 1974); or
 - 8124 g. Any other appropriate division or combination of boundaries.
- 8125 2. The general permit may be written to regulate one or more categories within the area
8126 described in subdivision 1 of this subsection, where the sources within a covered
8127 subcategory of discharges are stormwater point sources.
- 8128 3. Where sources within a specific category of dischargers are subject to water quality-
8129 based limits imposed pursuant to 9VAC25-870-460, the sources in that specific category
8130 or subcategory shall be subject to the same water quality-based effluent limitations.
- 8131 4. The general permit must clearly identify the applicable conditions for each category or
8132 subcategory of dischargers covered by the permit.
- 8133 5. The general permit may exclude specified sources or areas from coverage.
- 8134 B. Administration:
- 8135 1. General permits may be issued, modified, revoked and reissued, or terminated in
8136 accordance with applicable requirements of this chapter.
- 8137 2. Authorization to discharge:
- 8138 a. Except as provided in subdivisions 2 e and 2 f of this subsection, dischargers
8139 seeking coverage under a general permit shall submit to the department a written
8140 notice of intent to be covered by the general permit. A discharger who fails to submit
8141 a notice of intent in accordance with the terms of the state permit is not authorized to
8142 discharge, under the terms of the general permit unless the general permit, in
8143 accordance with subdivision 2 e of this subsection, contains a provision that a notice
8144 of intent is not required or the department notifies a discharger (or treatment works
8145 treating domestic sewage) that it is covered by a general permit in accordance with
8146 subdivision 2 f of this subsection. A complete and timely notice of intent (NOI) to be
8147 covered in accordance with general permit requirements fulfills the requirements for
8148 permit applications for the purposes of this chapter. As of the start date in Table 1 of
8149 9VAC25-31-1020, all notices of intent submitted in compliance with this subdivision
8150 shall be submitted electronically by the discharger (or treatment works treating
8151 domestic sewage) to the department in compliance with this subdivision and 40 CFR
8152 Part 3 (including, in all cases, 40 CFR Part 3 Subpart D), 9VAC25-870-370, and Part
8153 XI (9VAC25-31-950 et seq.) of the Virginia Pollutant Discharge Elimination System
8154 (VPDES) Permit Regulation. Part XI of 9VAC25-31 is not intended to undo existing
8155 requirements for electronic reporting. Prior to this date, and independent of Part XI of
8156 9VAC25-31, dischargers (or treatment works treating domestic sewage) may be
8157 required to report electronically if specified by a particular permit.
 - 8158 b. The contents of the notice of intent shall be specified in the general permit and shall
8159 require the submission of information necessary for adequate program

8160 implementation, including at a minimum, the legal name and address of the owner or
 8161 operator, the facility name and address, type of facility or discharges, and the receiving
 8162 stream or streams, and other required data elements as identified in Appendix A to 40
 8163 CFR Part 127 as adopted by reference in 9VAC25-31-1030. All notices of intent shall
 8164 be signed in accordance with 9VAC25-870-370.

8165 c. General permits shall specify the deadlines for submitting notices of intent to be
 8166 covered and the date or dates when a discharger is authorized to discharge under the
 8167 state permit.

8168 d. General permits shall specify whether a discharger that has submitted a complete
 8169 and timely notice of intent to be covered in accordance with the general permit and
 8170 that is eligible for coverage under the state permit, is authorized to discharge in
 8171 accordance with the state permit either upon receipt of the notice of intent by the
 8172 department, after a waiting period specified in the general permit, on a date specified
 8173 in the general permit, or upon receipt of notification of inclusion by the department.
 8174 Coverage may be terminated or revoked in accordance with subdivision 3 of this
 8175 subsection.

8176 e. Stormwater discharges associated with small construction activity may, at the
 8177 discretion of the department, be authorized to discharge under a general permit
 8178 without submitting a notice of intent where the department finds that a notice of intent
 8179 requirement would be inappropriate. In making such a finding, the department shall
 8180 consider the (i) type of discharge, (ii) expected nature of the discharge, (iii) potential
 8181 for toxic and conventional pollutants in the discharges, (iv) expected volume of the
 8182 discharges, (v) other means of identifying discharges covered by the state permit, and
 8183 (vi) estimated number of discharges to be covered by the state permit. The department
 8184 shall provide in the public notice of the general permit the reasons for not requiring a
 8185 notice of intent.

8186 f. The department may notify a discharger that it is covered by a general permit, even
 8187 if the discharger has not submitted a notice of intent to be covered. A discharger so
 8188 notified may request an individual permit under subdivision 3 c of this subsection.

8189 3. Requiring an individual permit.

8190 a. The department may require any discharger authorized by a general permit to apply
 8191 for and obtain an individual permit. Any interested person may request the department
 8192 to take action under this subdivision. Cases where an individual permit may be
 8193 required include the following:

8194 (1) The discharger is not in compliance with the conditions of the general permit;

8195 (2) A change has occurred in the availability of demonstrated technology or practices
 8196 for the control or abatement of pollutants applicable to the point source;

8197 (3) Effluent limitation guidelines are promulgated for point sources covered by the
 8198 general permit;

8199 (4) A water quality management plan, established by the department pursuant to
 8200 9VAC25-720, containing requirements applicable to such point sources is approved;

8201 (5) Circumstances have changed since the time of the request to be covered so that
 8202 the discharger is no longer appropriately controlled under the general permit, or either
 8203 a temporary or permanent reduction or elimination of the authorized discharge is
 8204 necessary;

8205 (6) The discharge(s) is a significant contributor of pollutants. In making this
 8206 determination, the department may consider the following factors:

8207 (a) The location of the discharge with respect to surface waters;

- 8208 ~~(b) The size of the discharge;~~
- 8209 ~~(c) The quantity and nature of the pollutants discharged to surface waters; and~~
- 8210 ~~(d) Other relevant factors;~~
- 8211 ~~b. State permits required on a case-by-case basis.~~
- 8212 ~~(1) The department may determine, on a case-by-case basis, that certain stormwater~~
- 8213 ~~discharges, and certain other facilities covered by general permits that do not generally~~
- 8214 ~~require an individual permit may be required to obtain an individual permit because of~~
- 8215 ~~their contributions to water pollution.~~
- 8216 ~~(2) Whenever the department decides that an individual permit is required under this~~
- 8217 ~~subsection, except as provided in subdivision 3 b (3) of this subsection, the department~~
- 8218 ~~shall notify the discharger in writing of that decision and the reasons for it, and shall~~
- 8219 ~~send an application form with the notice. The discharger must apply for a permit within~~
- 8220 ~~60 days of notice, unless permission for a later date is granted by the department. The~~
- 8221 ~~question whether the designation was proper will remain open for consideration during~~
- 8222 ~~the public comment period for the draft state permit and in any subsequent public~~
- 8223 ~~hearing.~~
- 8224 ~~(3) Prior to a case-by-case determination that an individual permit is required for a~~
- 8225 ~~stormwater discharge under this subsection, the department may require the~~
- 8226 ~~discharger to submit a state permit application or other information regarding the~~
- 8227 ~~discharge under the Act and § 308 of the CWA. In requiring such information, the~~
- 8228 ~~department shall notify the discharger in writing and shall send an application form~~
- 8229 ~~with the notice. The discharger must apply for a state permit under 9VAC25-870-380~~
- 8230 ~~A 1 within 60 days of notice or under 9VAC25-870-380 A 8 within 180 days of notice,~~
- 8231 ~~unless permission for a later date is granted by the department. The question whether~~
- 8232 ~~the initial designation was proper will remain open for consideration during the public~~
- 8233 ~~comment period for the draft state permit and in any subsequent public hearing.~~
- 8234 ~~c. Any owner or operator authorized by a general permit may request to be excluded~~
- 8235 ~~from the coverage of the general permit by applying for an individual permit. The owner~~
- 8236 ~~or operator shall submit an application under 9VAC25-870-360 with reasons~~
- 8237 ~~supporting the request. The request shall be processed under the applicable parts of~~
- 8238 ~~this chapter. The request shall be granted by issuing of an individual permit if the~~
- 8239 ~~reasons cited by the owner or operator are adequate to support the request.~~
- 8240 ~~d. When an individual permit is issued to an owner or operator otherwise subject to a~~
- 8241 ~~general permit, the applicability of the general permit to the individual permit state~~
- 8242 ~~permittee is automatically terminated on the effective date of the individual permit.~~
- 8243 ~~e. A source excluded from a general permit solely because it already has an individual~~
- 8244 ~~permit may request that the individual permit be revoked, and that it be covered by the~~
- 8245 ~~general permit. Upon revocation of the individual permit, the general permit shall apply~~
- 8246 ~~to the source.~~

8247 **9VAC25-870-410. General permits. (Repealed.)**

- 8248 ~~A. The department may issue a general permit in accordance with the following:~~
- 8249 ~~1. The general permit shall be written to cover one or more categories or subcategories of~~
- 8250 ~~discharges, except those covered by individual permits, within a geographic area. The~~
- 8251 ~~area should correspond to existing geographic or political boundaries, such as:~~
- 8252 ~~a. Designated planning areas under §§ 208 and 303 of CWA;~~
- 8253 ~~b. Sewer districts or sewer authorities;~~
- 8254 ~~c. City, county, or state political boundaries;~~

- 8255 ~~d. State highway systems;~~
- 8256 ~~e. Standard metropolitan statistical areas as defined by the Office of Management and~~
- 8257 ~~Budget;~~
- 8258 ~~f. Urbanized areas as designated by the Bureau of the Census according to criteria in~~
- 8259 ~~30 FR 15202 (May 1, 1974); or~~
- 8260 ~~g. Any other appropriate division or combination of boundaries.~~
- 8261 ~~2. The general permit may be written to regulate one or more categories within the area~~
- 8262 ~~described in subdivision 1 of this subsection, where the sources within a covered~~
- 8263 ~~subcategory of discharges are stormwater point sources.~~
- 8264 ~~3. Where sources within a specific category of dischargers are subject to water quality-~~
- 8265 ~~based limits imposed pursuant to 9VAC25-870-460, the sources in that specific category~~
- 8266 ~~or subcategory shall be subject to the same water quality-based effluent limitations.~~
- 8267 ~~4. The general permit must clearly identify the applicable conditions for each category or~~
- 8268 ~~subcategory of dischargers covered by the permit.~~
- 8269 ~~5. The general permit may exclude specified sources or areas from coverage.~~
- 8270 ~~B. Administration.~~
- 8271 ~~1. General permits may be issued, modified, revoked and reissued, or terminated in~~
- 8272 ~~accordance with applicable requirements of this chapter.~~
- 8273 ~~2. Authorization to discharge.~~
- 8274 ~~a. Except as provided in subdivisions 2 e and 2 f of this subsection, dischargers~~
- 8275 ~~seeking coverage under a general permit shall submit to the department a written~~
- 8276 ~~notice of intent to be covered by the general permit. A discharger who fails to submit~~
- 8277 ~~a notice of intent in accordance with the terms of the state permit is not authorized to~~
- 8278 ~~discharge, under the terms of the general permit unless the general permit, in~~
- 8279 ~~accordance with subdivision 2 e of this subsection, contains a provision that a notice~~
- 8280 ~~of intent is not required or the department notifies a discharger (or treatment works~~
- 8281 ~~treating domestic sewage) that it is covered by a general permit in accordance with~~
- 8282 ~~subdivision 2 f of this subsection. A complete and timely notice of intent (NOI) to be~~
- 8283 ~~covered in accordance with general permit requirements fulfills the requirements for~~
- 8284 ~~permit applications for the purposes of this chapter. As of the start date in Table 1 of~~
- 8285 ~~9VAC25-31-1020, all notices of intent submitted in compliance with this subdivision~~
- 8286 ~~shall be submitted electronically by the discharger (or treatment works treating~~
- 8287 ~~domestic sewage) to the department in compliance with this subdivision and 40 CFR~~
- 8288 ~~Part 3 (including, in all cases, 40 CFR Part 3 Subpart D), 9VAC25-870-370, and Part~~
- 8289 ~~XI (9VAC25-31-950 et seq.) of the Virginia Pollutant Discharge Elimination System~~
- 8290 ~~(VPDES) Permit Regulation. Part XI of 9VAC25-31 is not intended to undo existing~~
- 8291 ~~requirements for electronic reporting. Prior to this date, and independent of Part XI of~~
- 8292 ~~9VAC25-31, dischargers (or treatment works treating domestic sewage) may be~~
- 8293 ~~required to report electronically if specified by a particular permit.~~
- 8294 ~~b. The contents of the notice of intent shall be specified in the general permit and shall~~
- 8295 ~~require the submission of information necessary for adequate program~~
- 8296 ~~implementation, including at a minimum, the legal name and address of the owner or~~
- 8297 ~~operator, the facility name and address, type of facility or discharges, and the receiving~~
- 8298 ~~stream or streams, and other required data elements as identified in Appendix A to 40~~
- 8299 ~~CFR Part 127 as adopted by reference in 9VAC25-31-1030. All notices of intent shall~~
- 8300 ~~be signed in accordance with 9VAC25-870-370.~~

8301 ~~c. General permits shall specify the deadlines for submitting notices of intent to be~~
 8302 ~~covered and the date or dates when a discharger is authorized to discharge under the~~
 8303 ~~state permit.~~

8304 ~~d. General permits shall specify whether a discharger that has submitted a complete~~
 8305 ~~and timely notice of intent to be covered in accordance with the general permit and~~
 8306 ~~that is eligible for coverage under the state permit, is authorized to discharge in~~
 8307 ~~accordance with the state permit either upon receipt of the notice of intent by the~~
 8308 ~~department, after a waiting period specified in the general permit, on a date specified~~
 8309 ~~in the general permit, or upon receipt of notification of inclusion by the department.~~
 8310 ~~Coverage may be terminated or revoked in accordance with subdivision 3 of this~~
 8311 ~~subsection.~~

8312 ~~e. Stormwater discharges associated with small construction activity may, at the~~
 8313 ~~discretion of the department, be authorized to discharge under a general permit~~
 8314 ~~without submitting a notice of intent where the department finds that a notice of intent~~
 8315 ~~requirement would be inappropriate. In making such a finding, the department shall~~
 8316 ~~consider the (i) type of discharge, (ii) expected nature of the discharge, (iii) potential~~
 8317 ~~for toxic and conventional pollutants in the discharges, (iv) expected volume of the~~
 8318 ~~discharges, (v) other means of identifying discharges covered by the state permit, and~~
 8319 ~~(vi) estimated number of discharges to be covered by the state permit. The department~~
 8320 ~~shall provide in the public notice of the general permit the reasons for not requiring a~~
 8321 ~~notice of intent.~~

8322 ~~f. The department may notify a discharger that it is covered by a general permit, even~~
 8323 ~~if the discharger has not submitted a notice of intent to be covered. A discharger so~~
 8324 ~~notified may request an individual permit under subdivision 3 c of this subsection.~~

8325 ~~3. Requiring an individual permit.~~

8326 ~~a. The department may require any discharger authorized by a general permit to apply~~
 8327 ~~for and obtain an individual permit. Any interested person may request the department~~
 8328 ~~to take action under this subdivision. Cases where an individual permit may be~~
 8329 ~~required include the following:~~

8330 ~~(1) The discharger is not in compliance with the conditions of the general permit;~~

8331 ~~(2) A change has occurred in the availability of demonstrated technology or practices~~
 8332 ~~for the control or abatement of pollutants applicable to the point source;~~

8333 ~~(3) Effluent limitation guidelines are promulgated for point sources covered by the~~
 8334 ~~general permit;~~

8335 ~~(4) A water quality management plan, established by the department pursuant to~~
 8336 ~~9VAC25-720, containing requirements applicable to such point sources is approved;~~

8337 ~~(5) Circumstances have changed since the time of the request to be covered so that~~
 8338 ~~the discharger is no longer appropriately controlled under the general permit, or either~~
 8339 ~~a temporary or permanent reduction or elimination of the authorized discharge is~~
 8340 ~~necessary;~~

8341 ~~(6) The discharge(s) is a significant contributor of pollutants. In making this~~
 8342 ~~determination, the department may consider the following factors:~~

8343 ~~(a) The location of the discharge with respect to surface waters;~~

8344 ~~(b) The size of the discharge;~~

8345 ~~(c) The quantity and nature of the pollutants discharged to surface waters; and~~

8346 ~~(d) Other relevant factors;~~

8347 ~~b. State permits required on a case-by-case basis.~~

8348 (1) The department may determine, on a case-by-case basis, that certain stormwater
 8349 discharges, and certain other facilities covered by general permits that do not generally
 8350 require an individual permit may be required to obtain an individual permit because of
 8351 their contributions to water pollution.

8352 (2) Whenever the department decides that an individual permit is required under this
 8353 subsection, except as provided in subdivision 3 b (3) of this subsection, the department
 8354 shall notify the discharger in writing of that decision and the reasons for it, and shall
 8355 send an application form with the notice. The discharger must apply for a permit within
 8356 60 days of notice, unless permission for a later date is granted by the department. The
 8357 question whether the designation was proper will remain open for consideration during
 8358 the public comment period for the draft state permit and in any subsequent public
 8359 hearing.

8360 (3) Prior to a case-by-case determination that an individual permit is required for a
 8361 stormwater discharge under this subsection, the department may require the
 8362 discharger to submit a state permit application or other information regarding the
 8363 discharge under the Act and § 308 of the CWA. In requiring such information, the
 8364 department shall notify the discharger in writing and shall send an application form
 8365 with the notice. The discharger must apply for a state permit under 9VAC25-870-380
 8366 A 1 within 60 days of notice or under 9VAC25-870-380 A 8 within 180 days of notice,
 8367 unless permission for a later date is granted by the department. The question whether
 8368 the initial designation was proper will remain open for consideration during the public
 8369 comment period for the draft state permit and in any subsequent public hearing.

8370 c. Any owner or operator authorized by a general permit may request to be excluded
 8371 from the coverage of the general permit by applying for an individual permit. The owner
 8372 or operator shall submit an application under 9VAC25-870-360 with reasons
 8373 supporting the request. The request shall be processed under the applicable parts of
 8374 this chapter. The request shall be granted by issuing of an individual permit if the
 8375 reasons cited by the owner or operator are adequate to support the request.

8376 d. When an individual permit is issued to an owner or operator otherwise subject to a
 8377 general permit, the applicability of the general permit to the individual permit state
 8378 permittee is automatically terminated on the effective date of the individual permit.

8379 e. A source excluded from a general permit solely because it already has an individual
 8380 permit may request that the individual permit be revoked, and that it be covered by the
 8381 general permit. Upon revocation of the individual permit, the general permit shall apply
 8382 to the source.

8383 **9VAC25-870-420. New sources and new discharges. (Repealed.)**

8384 A. Criteria for new source determination.

8385 1. Except as otherwise provided in an applicable new source performance standard, a
 8386 source is a new source if it meets the definition of new source in this chapter and

8387 a. It is constructed at a site at which no other source is located;

8388 b. It totally replaces the process or production equipment that causes the discharge of
 8389 pollutants at an existing source; or

8390 c. Its processes are substantially independent of an existing source at the same site.
 8391 In determining whether these processes are substantially independent, the
 8392 department shall consider such factors as the extent to which the new facility is
 8393 integrated with the existing plant and the extent to which the new facility is engaged in
 8394 the same general type of activity as the existing source.

- 8395 ~~2. A source meeting the requirements of subdivisions 1 a, b, or c of this subsection is a~~
8396 ~~new source only if a new source performance standard is independently applicable to it.~~
8397 ~~If there is no such independently applicable standard, the source is a new discharger.~~
- 8398 ~~3. Construction on a site at which an existing source is located results in a state permit~~
8399 ~~modification subject to 9VAC25-870-630 rather than a new source (or a new discharger)~~
8400 ~~if the construction does not create a new building, structure, facility, or installation meeting~~
8401 ~~the criteria of subdivisions 1 b or c of this subsection but otherwise alters, replaces, or~~
8402 ~~adds to existing process or production equipment.~~
- 8403 ~~4. Construction of a new source has commenced if the owner or operator has:~~
- 8404 ~~a. Begun, or caused to begin as part of a continuous on-site construction program:~~
- 8405 ~~(1) Any placement, assembly, or installation of facilities or equipment; or~~
- 8406 ~~(2) Significant site preparation work including clearing, excavation or removal of~~
8407 ~~existing buildings, structures, or facilities which is necessary for the placement,~~
8408 ~~assembly, or installation of new source facilities or equipment; or~~
- 8409 ~~b. Entered into a binding contractual obligation for the purchase of facilities or~~
8410 ~~equipment which are intended to be used in its operation within a reasonable time.~~
8411 ~~Options to purchase or contracts which can be terminated or modified without~~
8412 ~~substantial loss, and contracts for feasibility engineering, and design studies do not~~
8413 ~~constitute a contractual obligation under the paragraph.~~
- 8414 ~~B. Effect of compliance with new source performance standards. The provisions of this~~
8415 ~~subsection do not apply to existing sources which modify their pollution control facilities or~~
8416 ~~construct new pollution control facilities and achieve performance standards, but which are neither~~
8417 ~~new sources or new dischargers or otherwise do not meet the requirements of this subdivision.~~
- 8418 ~~1. Except as provided in subdivision 2 of this subsection, any new discharger, the~~
8419 ~~construction of which commenced after October 18, 1972, or new source which meets the~~
8420 ~~applicable promulgated new source performance standards before the commencement of~~
8421 ~~discharge, may not be subject to any more stringent new source performance standards~~
8422 ~~or to any more stringent technology-based standards under § 301(b)(2) of the CWA for~~
8423 ~~the soonest ending of the following periods:~~
- 8424 ~~a. Ten years from the date that construction is completed;~~
- 8425 ~~b. Ten years from the date the source begins to discharge process or other~~
8426 ~~nonconstruction related wastewater; or~~
- 8427 ~~c. The period of depreciation or amortization of the facility for the purposes of § 167 or~~
8428 ~~§ 169 (or both) of the Internal Revenue Code of 1954 (26 USC 167 and 26 USC 169,~~
8429 ~~respectively).~~
- 8430 ~~2. The protection from more stringent standards of performance afforded by subdivision 1~~
8431 ~~of this subsection does not apply to:~~
- 8432 ~~a. Additional or more stringent state permit conditions that are not technology based;~~
8433 ~~for example, conditions based on water quality standards, or toxic effluent standards~~
8434 ~~or prohibitions under the Act and § 307(a) of the CWA; or~~
- 8435 ~~b. Additional state permit conditions controlling toxic pollutants or hazardous~~
8436 ~~substances that are not controlled by new source performance standards. This~~
8437 ~~includes state permit conditions controlling pollutants other than those identified as~~
8438 ~~toxic pollutants or hazardous substances when control of these pollutants has been~~
8439 ~~specifically identified as the method to control the toxic pollutants or hazardous~~
8440 ~~substances.~~

- 8441 ~~3. When a separate VPDES or state permit issued to a source with a protection period~~
 8442 ~~under subdivision 1 of this subsection will expire on or after the expiration of the protection~~
 8443 ~~period, that permit shall require the owner or operator of the source to comply with the~~
 8444 ~~requirements of § 301 of the CWA and any other then applicable requirements of the CWA~~
 8445 ~~and the Act immediately upon the expiration of the protection period. No additional period~~
 8446 ~~for achieving compliance with these requirements may be allowed except when necessary~~
 8447 ~~to achieve compliance with requirements promulgated less than three years before the~~
 8448 ~~expiration of the protection period.~~
- 8449 ~~4. The owner or operator of a new source, a new discharger which commenced discharge~~
 8450 ~~after August 13, 1979, or a recommencing discharger shall install and have in operating~~
 8451 ~~condition, and shall start-up all pollution control equipment required to meet the conditions~~
 8452 ~~of its state permits before beginning to discharge. Within the shortest feasible time (not to~~
 8453 ~~exceed 90 days), the owner or operator must meet all state permit conditions. The~~
 8454 ~~requirements of this paragraph do not apply if the owner or operator is issued a state~~
 8455 ~~permit containing a compliance schedule under 9VAC25-870-490 A 2.~~
- 8456 ~~5. After the effective date of new source performance standards, it shall be unlawful for~~
 8457 ~~any owner or operator of any new source to operate the source in violation of those~~
 8458 ~~standards applicable to the source.~~

8459 **9VAC25-870-420. New sources and new discharges. (Repealed.)**

- 8460 **A. Criteria for new source determination.**
- 8461 ~~1. Except as otherwise provided in an applicable new source performance standard, a~~
 8462 ~~source is a new source if it meets the definition of new source in this chapter and~~
- 8463 ~~a. It is constructed at a site at which no other source is located;~~
 8464 ~~b. It totally replaces the process or production equipment that causes the discharge of~~
 8465 ~~pollutants at an existing source; or~~
 8466 ~~c. Its processes are substantially independent of an existing source at the same site.~~
 8467 ~~In determining whether these processes are substantially independent, the~~
 8468 ~~department shall consider such factors as the extent to which the new facility is~~
 8469 ~~integrated with the existing plant and the extent to which the new facility is engaged in~~
 8470 ~~the same general type of activity as the existing source.~~
- 8471 ~~2. A source meeting the requirements of subdivisions 1 a, b, or c of this subsection is a~~
 8472 ~~new source only if a new source performance standard is independently applicable to it.~~
 8473 ~~If there is no such independently applicable standard, the source is a new discharger.~~
- 8474 ~~3. Construction on a site at which an existing source is located results in a state permit~~
 8475 ~~modification subject to 9VAC25-870-630 rather than a new source (or a new discharger)~~
 8476 ~~if the construction does not create a new building, structure, facility, or installation meeting~~
 8477 ~~the criteria of subdivisions 1 b or c of this subsection but otherwise alters, replaces, or~~
 8478 ~~adds to existing process or production equipment.~~
- 8479 ~~4. Construction of a new source has commenced if the owner or operator has:~~
- 8480 ~~a. Begun, or caused to begin as part of a continuous on-site construction program:~~
 8481 ~~(1) Any placement, assembly, or installation of facilities or equipment; or~~
 8482 ~~(2) Significant site preparation work including clearing, excavation or removal of~~
 8483 ~~existing buildings, structures, or facilities which is necessary for the placement,~~
 8484 ~~assembly, or installation of new source facilities or equipment; or~~
- 8485 ~~b. Entered into a binding contractual obligation for the purchase of facilities or~~
 8486 ~~equipment which are intended to be used in its operation within a reasonable time.~~
 8487 ~~Options to purchase or contracts which can be terminated or modified without~~

8488 substantial loss, and contracts for feasibility engineering, and design studies do not
8489 constitute a contractual obligation under the paragraph.

8490 B. ~~Effect of compliance with new source performance standards. The provisions of this~~
8491 ~~subsection do not apply to existing sources which modify their pollution control facilities or~~
8492 ~~construct new pollution control facilities and achieve performance standards, but which are neither~~
8493 ~~new sources or new dischargers or otherwise do not meet the requirements of this subdivision.~~

8494 1. ~~Except as provided in subdivision 2 of this subsection, any new discharger, the~~
8495 ~~construction of which commenced after October 18, 1972, or new source which meets the~~
8496 ~~applicable promulgated new source performance standards before the commencement of~~
8497 ~~discharge, may not be subject to any more stringent new source performance standards~~
8498 ~~or to any more stringent technology-based standards under § 301(b)(2) of the CWA for~~
8499 ~~the soonest ending of the following periods:~~

8500 a. ~~Ten years from the date that construction is completed;~~

8501 b. ~~Ten years from the date the source begins to discharge process or other~~
8502 ~~nonconstruction related wastewater; or~~

8503 c. ~~The period of depreciation or amortization of the facility for the purposes of § 167 or~~
8504 ~~§ 169 (or both) of the Internal Revenue Code of 1954 (26 USC 167 and 26 USC 169,~~
8505 ~~respectively).~~

8506 2. ~~The protection from more stringent standards of performance afforded by subdivision 1~~
8507 ~~of this subsection does not apply to:~~

8508 a. ~~Additional or more stringent state permit conditions that are not technology based;~~
8509 ~~for example, conditions based on water quality standards, or toxic effluent standards~~
8510 ~~or prohibitions under the Act and § 307(a) of the CWA; or~~

8511 b. ~~Additional state permit conditions controlling toxic pollutants or hazardous~~
8512 ~~substances that are not controlled by new source performance standards. This~~
8513 ~~includes state permit conditions controlling pollutants other than those identified as~~
8514 ~~toxic pollutants or hazardous substances when control of these pollutants has been~~
8515 ~~specifically identified as the method to control the toxic pollutants or hazardous~~
8516 ~~substances.~~

8517 3. ~~When a separate VPDES or state permit issued to a source with a protection period~~
8518 ~~under subdivision 1 of this subsection will expire on or after the expiration of the protection~~
8519 ~~period, that permit shall require the owner or operator of the source to comply with the~~
8520 ~~requirements of § 301 of the CWA and any other then applicable requirements of the CWA~~
8521 ~~and the Act immediately upon the expiration of the protection period. No additional period~~
8522 ~~for achieving compliance with these requirements may be allowed except when necessary~~
8523 ~~to achieve compliance with requirements promulgated less than three years before the~~
8524 ~~expiration of the protection period.~~

8525 4. ~~The owner or operator of a new source, a new discharger which commenced discharge~~
8526 ~~after August 13, 1979, or a recommencing discharger shall install and have in operating~~
8527 ~~condition, and shall start-up all pollution control equipment required to meet the conditions~~
8528 ~~of its state permits before beginning to discharge. Within the shortest feasible time (not to~~
8529 ~~exceed 90 days), the owner or operator must meet all state permit conditions. The~~
8530 ~~requirements of this paragraph do not apply if the owner or operator is issued a state~~
8531 ~~permit containing a compliance schedule under 9VAC25-870-490 A 2.~~

8532 5. ~~After the effective date of new source performance standards, it shall be unlawful for~~
8533 ~~any owner or operator of any new source to operate the source in violation of those~~
8534 ~~standards applicable to the source.~~

8535

Part VIII

8536

State Permit Conditions

8537 **9VAC25-870-430. Conditions applicable to all state permits. (Repealed.)**

8538 The following conditions apply to all state permits. Additional conditions applicable to state
8539 permits are in 9VAC25-870-440. All conditions applicable to state permits shall be incorporated
8540 into the state permits either expressly or by reference. If incorporated by reference, a specific
8541 citation to this regulation must be given in the state permit.

8542 A. The state permittee shall comply with all conditions of the state permit. Any state permit
8543 noncompliance constitutes a violation of the Act and the CWA, except that noncompliance with
8544 certain provisions of the state permit may constitute a violation of the Act but not the CWA. State
8545 permit noncompliance is grounds for enforcement action; for state permit termination, revocation
8546 and reissuance, or modification; or denial of a state permit renewal application.

8547 The state permittee shall comply with effluent standards or prohibitions established under §
8548 307(a) of the CWA for toxic pollutants within the time provided in the chapters that establish these
8549 standards or prohibitions, even if the state permit has not yet been modified to incorporate the
8550 requirement.

8551 B. If the state permittee wishes to continue an activity regulated by the state permit after the
8552 expiration date of the state permit, the state permittee must apply for and obtain a new state
8553 permit.

8554 C. It shall not be a defense for a state permittee in an enforcement action that it would have
8555 been necessary to halt or reduce the permitted activity in order to maintain compliance with the
8556 conditions of the state permit.

8557 D. The state permittee shall take all reasonable steps to minimize or prevent any discharge in
8558 violation of the state permit that has a reasonable likelihood of adversely affecting human health
8559 or the environment.

8560 E. The state permittee shall at all times properly operate and maintain all facilities and systems
8561 of treatment and control (and related appurtenances) that are installed or used by the state
8562 permittee to achieve compliance with the conditions of the state permit. Proper operation and
8563 maintenance also includes adequate laboratory controls and appropriate quality assurance
8564 procedures. This provision requires the operation of back-up or auxiliary facilities or similar
8565 systems that are installed by a state permittee only when the operation is necessary to achieve
8566 compliance with the conditions of the state permit.

8567 F. State permits may be modified, revoked and reissued, or terminated for cause. The filing
8568 of a request by the state permittee for a state permit modification, revocation and reissuance, or
8569 termination, or a notification of planned changes or anticipated noncompliance does not stay any
8570 state permit condition.

8571 G. State permits do not convey any property rights of any sort, or any exclusive privilege.

8572 H. The state permittee shall furnish to the department, within a reasonable time, any
8573 information that the department may request to determine whether cause exists for modifying,
8574 revoking and reissuing, or terminating the state permit or to determine compliance with the state
8575 permit. The department may require the state permittee to furnish, upon request, such plans,
8576 specifications, and other pertinent information as may be necessary to determine the effect of the
8577 wastes from his discharge on the quality of state waters, or such other information as may be
8578 necessary to accomplish the purposes of the Act. The state permittee shall also furnish to the
8579 department upon request, copies of records required to be kept by the state permit.

8580 I. ~~The state permittee shall allow the director, the department, or an authorized representative~~
 8581 ~~(including an authorized contractor acting as a representative of the administrator), upon~~
 8582 ~~presentation of credentials and other documents as may be required by law, to:~~

- 8583 1. ~~Enter upon the state permittee's premises where a regulated facility or activity is located~~
 8584 ~~or conducted, or where records must be kept under the conditions of the state permit;~~
 8585 2. ~~Have access to and copy, at reasonable times, any records that must be kept under the~~
 8586 ~~conditions of the state permit;~~
 8587 3. ~~Inspect at reasonable times any facilities, equipment (including monitoring and control~~
 8588 ~~equipment), practices, or operations regulated or required under the state permit; and~~
 8589 4. ~~Sample or monitor at reasonable times, for the purposes of assuring state permit~~
 8590 ~~compliance or as otherwise authorized by the CWA and the Act, any substances or~~
 8591 ~~parameters at any location.~~

8592 J. ~~Monitoring and records.~~

- 8593 1. ~~Samples and measurements taken for the purpose of monitoring shall be representative~~
 8594 ~~of the monitored activity.~~
 8595 2. ~~The state permittee shall retain records of all monitoring information, including all~~
 8596 ~~calibration and maintenance records and all original strip chart recordings for continuous~~
 8597 ~~monitoring instrumentation, copies of all reports required by the state permit, and records~~
 8598 ~~of all data used to complete the application for the state permit, for a period of at least~~
 8599 ~~three years from the date of the sample, measurement, report or application. This period~~
 8600 ~~of retention shall be extended automatically during the course of any unresolved litigation~~
 8601 ~~regarding the regulated activity or regarding control standards applicable to the state~~
 8602 ~~permittee, or as requested by the department.~~
 8603 3. ~~Records of monitoring information shall include:~~
 8604 a. ~~The date, exact place, and time of sampling or measurements;~~
 8605 b. ~~The individual or individuals who performed the sampling or measurements;~~
 8606 c. ~~The date or dates analyses were performed;~~
 8607 d. ~~The individual or individuals who performed the analyses;~~
 8608 e. ~~The analytical techniques or methods used; and~~
 8609 f. ~~The results of such analyses.~~
 8610 4. ~~Monitoring results must be conducted according to test procedures approved under 40~~
 8611 ~~CFR Part 136 or alternative EPA approved methods, unless other test procedures have~~
 8612 ~~been specified in the state permit. Analyses performed according to test procedures~~
 8613 ~~approved under 40 CFR Part 136 shall be performed by an environmental laboratory~~
 8614 ~~certified under regulations adopted by the Department of General Services (1VAC30-45~~
 8615 ~~or 1VAC30-46).~~

8616 K. ~~All applications, reports, or information submitted to the VSMP authority and department~~
 8617 ~~shall be signed and certified as required by 9VAC25-870-370.~~

8618 L. ~~Reporting requirements.~~

- 8619 1. ~~The state permittee shall give notice to the department as soon as possible of any~~
 8620 ~~planned physical alterations or additions to the permitted facility. Notice is required only~~
 8621 ~~when:~~
 8622 a. ~~The alteration or addition to a permitted facility may meet one of the criteria for~~
 8623 ~~determining whether a facility is a new source in 9VAC25-870-420 A; or~~

- 8624 ~~b. The alteration or addition could significantly change the nature or increase the~~
8625 ~~quantity of pollutants discharged. This notification applies to pollutants that are not~~
8626 ~~subject to effluent limitations in the state permit.~~
- 8627 ~~2. The state permittee shall give advance notice to the department of any planned changes~~
8628 ~~in the permitted facility or activity that may result in noncompliance with state permit~~
8629 ~~requirements.~~
- 8630 ~~3. State permits are not transferable to any person except in accordance with 9VAC25-~~
8631 ~~870-620.~~
- 8632 ~~4. Monitoring results shall be reported at the intervals specified in the state permit.~~
- 8633 ~~a. Monitoring results must be reported on a Discharge Monitoring Report (DMR) or~~
8634 ~~forms provided or specified by the department. As of the start date in Table 1 of~~
8635 ~~9VAC25-31-1020, all reports and forms submitted in compliance with this subdivision~~
8636 ~~shall be submitted electronically by the permittee to the department in compliance with~~
8637 ~~this section and 40 CFR Part 3 (including, in all cases, 40 CFR Part 3 Subpart D),~~
8638 ~~9VAC25-870-370, and Part XI (9VAC25-31-950 et seq.) of the Virginia Pollutant~~
8639 ~~Discharge Elimination System (VPDES) Permit Regulation. Part XI of 9VAC25-31 is~~
8640 ~~not intended to undo existing requirements for electronic reporting. Prior to this date,~~
8641 ~~and independent of Part XI of 9VAC25-31, permittees may be required to report~~
8642 ~~electronically if specified by a particular permit.~~
- 8643 ~~b. If the state permittee monitors any pollutant specifically addressed by the state~~
8644 ~~permit more frequently than required by the state permit using test procedures~~
8645 ~~approved under 40 CFR Part 136 or as otherwise specified in the state permit, the~~
8646 ~~results of this monitoring shall be included in the calculation and reporting of the data~~
8647 ~~submitted in the DMR or reporting form specified by the department.~~
- 8648 ~~c. Calculations for all limitations that require averaging of measurements shall utilize~~
8649 ~~an arithmetic mean unless otherwise specified in the permit.~~
- 8650 ~~5. Reports of compliance or noncompliance with, or any progress reports on, interim and~~
8651 ~~final requirements contained in any compliance schedule of the state permit shall be~~
8652 ~~submitted no later than 14 days following each schedule date.~~
- 8653 ~~6. If any unusual or extraordinary discharge including a bypass or upset should occur from~~
8654 ~~a facility and such discharge enters or could be expected to enter state waters, the state~~
8655 ~~permittee shall promptly notify, in no case later than 24 hours, the department by~~
8656 ~~telephone after the discovery of such discharge. This notification shall provide all available~~
8657 ~~details of the incident, including any adverse effects on aquatic life and the known number~~
8658 ~~of fish killed. The state permittee shall reduce the report to writing and shall submit it to~~
8659 ~~the department within five days of discovery of the discharge in accordance with~~
8660 ~~subdivision 7 a of this subsection. Unusual and extraordinary discharges include but are~~
8661 ~~not limited to any discharge resulting from:~~
- 8662 ~~a. Unusual spillage of materials resulting directly or indirectly from processing~~
8663 ~~operations;~~
- 8664 ~~b. Breakdown of processing or accessory equipment;~~
- 8665 ~~c. Failure or taking out of service of the treatment plant or auxiliary facilities (such as~~
8666 ~~sewer lines or wastewater pump stations); and~~
- 8667 ~~d. Flooding or other acts of nature.~~
- 8668 ~~7. Twenty-four hour and five-day reporting.~~
- 8669 ~~a. The state permittee shall report any noncompliance that may endanger health or~~
8670 ~~the environment. Any information shall be provided orally within 24 hours from the time~~

8671 the state permittee becomes aware of the circumstances. A report in the format
8672 required by the department shall also be provided within five days of the time the state
8673 permittee becomes aware of the circumstances. The five-day report shall contain a
8674 description of the noncompliance and its cause; the period of noncompliance,
8675 including exact dates and times, and if the noncompliance has not been corrected, the
8676 anticipated time it is expected to continue; and steps taken or planned to reduce,
8677 eliminate, and prevent reoccurrence of the noncompliance.

8678 (1) For noncompliance events related to combined sewer overflows, sanitary sewer
8679 overflows, or bypass events, these reports must include the data described in
8680 subdivision 7 a of this subsection (with the exception of time of discovery), as well as
8681 the type of event (i.e., combined sewer overflows, sanitary sewer overflows, or bypass
8682 events); type of sewer overflow structure (e.g., manhole, combine sewer overflow
8683 outfall); discharge volumes untreated by the treatment works treating domestic
8684 sewage; types of human health and environmental impacts of the sewer overflow
8685 event; and whether the noncompliance was related to wet weather.

8686 (2) As of the start date in Table 1 of 9VAC25-31-1020, all reports related to combined
8687 sewer overflows, sanitary sewer overflows, or bypass events submitted in compliance
8688 with this subdivision 7 shall be submitted electronically by the permittee to the
8689 department in compliance with this subdivision 7 and 40 CFR Part 3 (including, in all
8690 cases, 40 CFR Part 3 Subpart D), 9VAC25-870-370, and Part XI (9VAC25-31-950 et
8691 seq.) of the Virginia Pollutant Discharge Elimination System (VPDES) Permit
8692 Regulation. Part XI of 9VAC25-31 is not intended to undo existing requirements for
8693 electronic reporting. Prior to this date, and independent of Part XI of 9VAC25-31,
8694 permittees may be required to electronically submit reports related to combined sewer
8695 overflows, sanitary sewer overflows, or bypass events under this subdivision 7 by a
8696 particular permit.

8697 (3) The director may also require permittees to electronically submit reports not related
8698 to combined sewer overflows, sanitary sewer overflows, or bypass events under this
8699 subdivision 7.

8700 b. The following shall be reported within 24 hours under this subdivision:

8701 (1) Any unanticipated bypass that exceeds any effluent limitation in the state permit.

8702 (2) Any upset that exceeds any effluent limitation in the state permit.

8703 (3) Violation of a maximum daily discharge limitation for any of the pollutants listed in
8704 the state permit to be reported within 24 hours.

8705 c. The department may waive the five-day report on a case-by-case basis for reports
8706 under this subdivision if the oral report has been received within 24 hours.

8707 8. The state permittee shall report all instances of noncompliance not reported under
8708 subdivisions 4, 5, 6, and 7 of this subsection, in the format required by the department, at
8709 the time the next monitoring reports are submitted. The reports shall contain the
8710 information listed in subdivision 7 of this subsection.

8711 a. For noncompliance events related to combined sewer overflows, sanitary sewer
8712 overflows, or bypass events, these reports shall contain the information described in
8713 subdivision 7 a of this subsection and the applicable required data in Appendix A to
8714 40 CFR Part 127 as adopted by reference in 9VAC25-31-1030.

8715 b. As of the start date in Table 1 of 9VAC25-31-1020, all reports related to combined
8716 sewer overflows, sanitary sewer overflows, or bypass events submitted in compliance
8717 with this subdivision 8 shall be submitted electronically by the permittee to the
8718 department in compliance with this subdivision 8 and 40 CFR Part 3 (including, in all

8719 cases, 40 CFR Part 3 Subpart D), 9VAC25-870-370, and Part XI (9VAC25-31-950 et
 8720 seq.) of the Virginia Pollutant Discharge Elimination System (VPDES) Permit
 8721 Regulation. Part XI of 9VAC25-31 is not intended to undo existing requirements for
 8722 electronic reporting. Prior to this date, and independent of Part XI of 9VAC25-31,
 8723 permittees may be required to electronically submit reports related to combined sewer
 8724 overflows, sanitary sewer overflows, or bypass events under this section by a
 8725 particular permit.

8726 c. The director may also require permittees to electronically submit reports not related
 8727 to combined sewer overflows, sanitary sewer overflows, or bypass events under this
 8728 section.

8729 9. Where the state permittee becomes aware that it failed to submit any relevant facts in
 8730 a permit application, or submitted incorrect information in a state permit application or in
 8731 any report to the department, it shall promptly submit such facts or information.

8732 10. The owner, operator, or the duly authorized representative of an VPDES-regulated
 8733 entity is required to electronically submit the required information, as specified in Appendix
 8734 A to 40 CFR Part 127 as adopted by reference in 9VAC25-31-1030, to the department.

8735 M. Bypass.

8736 1. The state permittee may allow any bypass to occur that does not cause effluent
 8737 limitations to be exceeded, but only if it also is for essential maintenance to assure efficient
 8738 operation. These bypasses are not subject to the provisions of subdivisions 2 and 3 of this
 8739 subsection.

8740 2. Notice.

8741 a. Anticipated bypass. If the state permittee knows in advance of the need for a
 8742 bypass, it shall submit prior notice, if possible at least 10 days before the date of the
 8743 bypass. As of the start date in Table 1 of 9VAC25-31-1020, all notices submitted in
 8744 compliance with this subdivision shall be submitted electronically by the permittee to
 8745 the department in compliance with this subsection and 40 CFR Part 3 (including, in all
 8746 cases, 40 CFR Part 3 Subpart D), 9VAC25-870-370, and Part XI (9VAC25-31-950 et
 8747 seq.) of the Virginia Pollutant Discharge Elimination System (VPDES) Permit
 8748 Regulation. Part XI of 9VAC25-31 is not intended to undo existing requirements for
 8749 electronic reporting. Prior to this date, and independent of Part XI of 9VAC25-31,
 8750 permittees may be required to report electronically if specified by a particular permit.

8751 b. Unanticipated bypass. The state permittee shall submit notice of an unanticipated
 8752 bypass as required in subdivision L 7 of this section. As of the start date in Table 1 of
 8753 9VAC25-31-1020, all notices submitted in compliance with this subdivision shall be
 8754 submitted electronically by the permittee to the department in compliance with this
 8755 subdivision and 40 CFR Part 3 (including, in all cases, 40 CFR Part 3 Subpart D),
 8756 9VAC25-870-370, and Part XI (9VAC25-31-950 et seq.) of the Virginia Pollutant
 8757 Discharge Elimination System (VPDES) Permit Regulation. Part XI of 9VAC25-31 is
 8758 not intended to undo existing requirements for electronic reporting. Prior to this date,
 8759 and independent of Part XI of 9VAC25-31, permittees may be required to report
 8760 electronically if specified by a particular permit.

8761 3. Prohibition of bypass.

8762 a. Bypass is prohibited, and the department may take enforcement action against a
 8763 state permittee for bypass, unless:

8764 (1) Bypass was unavoidable to prevent loss of life, personal injury, or severe property
 8765 damage;

8766 ~~(2) There were no feasible alternatives to the bypass, such as the use of auxiliary~~
 8767 ~~treatment facilities, retention of untreated wastes, or maintenance during normal~~
 8768 ~~periods of equipment downtime. This condition is not satisfied if adequate back-up~~
 8769 ~~equipment should have been installed in the exercise of reasonable engineering~~
 8770 ~~judgment to prevent a bypass that occurred during normal periods of equipment~~
 8771 ~~downtime or preventive maintenance; and~~

8772 ~~(3) The state permittee submitted notices as required under subdivision 2 of this~~
 8773 ~~subsection.~~

8774 ~~b. The department may approve an anticipated bypass, after considering its adverse~~
 8775 ~~effects, if the department determines that it will meet the three conditions listed in~~
 8776 ~~subdivision 3 a of this subsection.~~

8777 ~~N. Upset.~~

8778 ~~1. An upset constitutes an affirmative defense to an action brought for noncompliance with~~
 8779 ~~such technology based state permit effluent limitations if the requirements of subdivision~~
 8780 ~~2 of this subsection are met. No determination made during administrative review of claims~~
 8781 ~~that noncompliance was caused by upset, and before an action for noncompliance, is final~~
 8782 ~~administrative action subject to judicial review.~~

8783 ~~2. A state permittee who wishes to establish the affirmative defense of upset shall~~
 8784 ~~demonstrate, through properly signed, contemporaneous operating logs, or other relevant~~
 8785 ~~evidence that:~~

8786 ~~a. An upset occurred and that the state permittee can identify the cause or causes of~~
 8787 ~~the upset;~~

8788 ~~b. The permitted facility was at the time being properly operated;~~

8789 ~~c. The state permittee submitted notice of the upset as required in subdivision L 7 b~~
 8790 ~~(2) of this section (24-hour notice); and~~

8791 ~~d. The state permittee complied with any remedial measures required under~~
 8792 ~~subsection D of this section.~~

8793 ~~3. In any enforcement proceeding the state permittee seeking to establish the occurrence~~
 8794 ~~of an upset has the burden of proof.~~

8795 **9VAC25-870-430. Conditions applicable to all state permits. (Repealed.)**

8796 ~~The following conditions apply to all state permits. Additional conditions applicable to state~~
 8797 ~~permits are in 9VAC25-870-440. All conditions applicable to state permits shall be incorporated~~
 8798 ~~into the state permits either expressly or by reference. If incorporated by reference, a specific~~
 8799 ~~citation to this regulation must be given in the state permit.~~

8800 ~~A. The state permittee shall comply with all conditions of the state permit. Any state permit~~
 8801 ~~noncompliance constitutes a violation of the Act and the CWA, except that noncompliance with~~
 8802 ~~certain provisions of the state permit may constitute a violation of the Act but not the CWA. State~~
 8803 ~~permit noncompliance is grounds for enforcement action; for state permit termination, revocation~~
 8804 ~~and reissuance, or modification; or denial of a state permit renewal application.~~

8805 ~~The state permittee shall comply with effluent standards or prohibitions established under §~~
 8806 ~~307(a) of the CWA for toxic pollutants within the time provided in the chapters that establish these~~
 8807 ~~standards or prohibitions, even if the state permit has not yet been modified to incorporate the~~
 8808 ~~requirement.~~

8809 ~~B. If the state permittee wishes to continue an activity regulated by the state permit after the~~
 8810 ~~expiration date of the state permit, the state permittee must apply for and obtain a new state~~
 8811 ~~permit.~~

8812 C. It shall not be a defense for a state permittee in an enforcement action that it would have
8813 been necessary to halt or reduce the permitted activity in order to maintain compliance with the
8814 conditions of the state permit.

8815 D. The state permittee shall take all reasonable steps to minimize or prevent any discharge in
8816 violation of the state permit that has a reasonable likelihood of adversely affecting human health
8817 or the environment.

8818 E. The state permittee shall at all times properly operate and maintain all facilities and systems
8819 of treatment and control (and related appurtenances) that are installed or used by the state
8820 permittee to achieve compliance with the conditions of the state permit. Proper operation and
8821 maintenance also includes adequate laboratory controls and appropriate quality assurance
8822 procedures. This provision requires the operation of back-up or auxiliary facilities or similar
8823 systems that are installed by a state permittee only when the operation is necessary to achieve
8824 compliance with the conditions of the state permit.

8825 F. State permits may be modified, revoked and reissued, or terminated for cause. The filing
8826 of a request by the state permittee for a state permit modification, revocation and reissuance, or
8827 termination, or a notification of planned changes or anticipated noncompliance does not stay any
8828 state permit condition.

8829 G. State permits do not convey any property rights of any sort, or any exclusive privilege.

8830 H. The state permittee shall furnish to the department, within a reasonable time, any
8831 information that the department may request to determine whether cause exists for modifying,
8832 revoking and reissuing, or terminating the state permit or to determine compliance with the state
8833 permit. The department may require the state permittee to furnish, upon request, such plans,
8834 specifications, and other pertinent information as may be necessary to determine the effect of the
8835 wastes from his discharge on the quality of state waters, or such other information as may be
8836 necessary to accomplish the purposes of the Act. The state permittee shall also furnish to the
8837 department upon request, copies of records required to be kept by the state permit.

8838 I. The state permittee shall allow the director, the department, or an authorized representative
8839 (including an authorized contractor acting as a representative of the administrator), upon
8840 presentation of credentials and other documents as may be required by law, to:

- 8841 1. Enter upon the state permittee's premises where a regulated facility or activity is located
8842 or conducted, or where records must be kept under the conditions of the state permit;
- 8843 2. Have access to and copy, at reasonable times, any records that must be kept under the
8844 conditions of the state permit;
- 8845 3. Inspect at reasonable times any facilities, equipment (including monitoring and control
8846 equipment), practices, or operations regulated or required under the state permit; and
- 8847 4. Sample or monitor at reasonable times, for the purposes of assuring state permit
8848 compliance or as otherwise authorized by the CWA and the Act, any substances or
8849 parameters at any location.

8850 J. Monitoring and records.

8851 1. Samples and measurements taken for the purpose of monitoring shall be representative
8852 of the monitored activity.

8853 2. The state permittee shall retain records of all monitoring information, including all
8854 calibration and maintenance records and all original strip chart recordings for continuous
8855 monitoring instrumentation, copies of all reports required by the state permit, and records
8856 of all data used to complete the application for the state permit, for a period of at least
8857 three years from the date of the sample, measurement, report or application. This period
8858 of retention shall be extended automatically during the course of any unresolved litigation

- 8859 regarding the regulated activity or regarding control standards applicable to the state
8860 permittee, or as requested by the department.
- 8861 3. Records of monitoring information shall include:
- 8862 a. The date, exact place, and time of sampling or measurements;
 - 8863 b. The individual or individuals who performed the sampling or measurements;
 - 8864 c. The date or dates analyses were performed;
 - 8865 d. The individual or individuals who performed the analyses;
 - 8866 e. The analytical techniques or methods used; and
 - 8867 f. The results of such analyses.
- 8868 4. Monitoring results must be conducted according to test procedures approved under 40
8869 CFR Part 136 or alternative EPA approved methods, unless other test procedures have
8870 been specified in the state permit. Analyses performed according to test procedures
8871 approved under 40 CFR Part 136 shall be performed by an environmental laboratory
8872 certified under regulations adopted by the Department of General Services (1VAC30-45
8873 or 1VAC30-46).
- 8874 K. All applications, reports, or information submitted to the VSMP authority and department
8875 shall be signed and certified as required by 9VAC25-870-370.
- 8876 L. Reporting requirements.
- 8877 1. The state permittee shall give notice to the department as soon as possible of any
8878 planned physical alterations or additions to the permitted facility. Notice is required only
8879 when:
 - 8880 a. The alteration or addition to a permitted facility may meet one of the criteria for
8881 determining whether a facility is a new source in 9VAC25-870-420 A; or
 - 8882 b. The alteration or addition could significantly change the nature or increase the
8883 quantity of pollutants discharged. This notification applies to pollutants that are not
8884 subject to effluent limitations in the state permit.
 - 8885 2. The state permittee shall give advance notice to the department of any planned changes
8886 in the permitted facility or activity that may result in noncompliance with state permit
8887 requirements.
 - 8888 3. State permits are not transferable to any person except in accordance with 9VAC25-
8889 870-620.
 - 8890 4. Monitoring results shall be reported at the intervals specified in the state permit.
 - 8891 a. Monitoring results must be reported on a Discharge Monitoring Report (DMR) or
8892 forms provided or specified by the department. As of the start date in Table 1 of
8893 9VAC25-31-1020, all reports and forms submitted in compliance with this subdivision
8894 shall be submitted electronically by the permittee to the department in compliance with
8895 this section and 40 CFR Part 3 (including, in all cases, 40 CFR Part 3 Subpart D),
8896 9VAC25-870-370, and Part XI (9VAC25-31-950 et seq.) of the Virginia Pollutant
8897 Discharge Elimination System (VPDES) Permit Regulation. Part XI of 9VAC25-31 is
8898 not intended to undo existing requirements for electronic reporting. Prior to this date,
8899 and independent of Part XI of 9VAC25-31, permittees may be required to report
8900 electronically if specified by a particular permit.
 - 8901 b. If the state permittee monitors any pollutant specifically addressed by the state
8902 permit more frequently than required by the state permit using test procedures
8903 approved under 40 CFR Part 136 or as otherwise specified in the state permit, the

- 8904 results of this monitoring shall be included in the calculation and reporting of the data
8905 submitted in the DMR or reporting form specified by the department.
- 8906 c. Calculations for all limitations that require averaging of measurements shall utilize
8907 an arithmetic mean unless otherwise specified in the permit.
- 8908 5. Reports of compliance or noncompliance with, or any progress reports on, interim and
8909 final requirements contained in any compliance schedule of the state permit shall be
8910 submitted no later than 14 days following each schedule date.
- 8911 6. If any unusual or extraordinary discharge including a bypass or upset should occur from
8912 a facility and such discharge enters or could be expected to enter state waters, the state
8913 permittee shall promptly notify, in no case later than 24 hours, the department by
8914 telephone after the discovery of such discharge. This notification shall provide all available
8915 details of the incident, including any adverse effects on aquatic life and the known number
8916 of fish killed. The state permittee shall reduce the report to writing and shall submit it to
8917 the department within five days of discovery of the discharge in accordance with
8918 subdivision 7 a of this subsection. Unusual and extraordinary discharges include but are
8919 not limited to any discharge resulting from:
- 8920 a. Unusual spillage of materials resulting directly or indirectly from processing
8921 operations;
- 8922 b. Breakdown of processing or accessory equipment;
- 8923 c. Failure or taking out of service of the treatment plant or auxiliary facilities (such as
8924 sewer lines or wastewater pump stations); and
- 8925 d. Flooding or other acts of nature.
- 8926 7. Twenty-four hour and five-day reporting.
- 8927 a. The state permittee shall report any noncompliance that may endanger health or
8928 the environment. Any information shall be provided orally within 24 hours from the time
8929 the state permittee becomes aware of the circumstances. A report in the format
8930 required by the department shall also be provided within five days of the time the state
8931 permittee becomes aware of the circumstances. The five-day report shall contain a
8932 description of the noncompliance and its cause; the period of noncompliance,
8933 including exact dates and times, and if the noncompliance has not been corrected, the
8934 anticipated time it is expected to continue; and steps taken or planned to reduce,
8935 eliminate, and prevent reoccurrence of the noncompliance.
- 8936 (1) For noncompliance events related to combined sewer overflows, sanitary sewer
8937 overflows, or bypass events, these reports must include the data described in
8938 subdivision 7 a of this subsection (with the exception of time of discovery), as well as
8939 the type of event (i.e., combined sewer overflows, sanitary sewer overflows, or bypass
8940 events); type of sewer overflow structure (e.g., manhole, combine sewer overflow
8941 outfall); discharge volumes untreated by the treatment works treating domestic
8942 sewage; types of human health and environmental impacts of the sewer overflow
8943 event; and whether the noncompliance was related to wet weather.
- 8944 (2) As of the start date in Table 1 of 9VAC25-31-1020, all reports related to combined
8945 sewer overflows, sanitary sewer overflows, or bypass events submitted in compliance
8946 with this subdivision 7 shall be submitted electronically by the permittee to the
8947 department in compliance with this subdivision 7 and 40 CFR Part 3 (including, in all
8948 cases, 40 CFR Part 3 Subpart D), 9VAC25-870-370, and Part XI (9VAC25-31-950 et
8949 seq.) of the Virginia Pollutant Discharge Elimination System (VPDES) Permit
8950 Regulation. Part XI of 9VAC25-31 is not intended to undo existing requirements for
8951 electronic reporting. Prior to this date, and independent of Part XI of 9VAC25-31,

8952 permittees may be required to electronically submit reports related to combined sewer
8953 overflows, sanitary sewer overflows, or bypass events under this subdivision 7 by a
8954 particular permit.

8955 ~~(3) The director may also require permittees to electronically submit reports not related~~
8956 ~~to combined sewer overflows, sanitary sewer overflows, or bypass events under this~~
8957 ~~subdivision 7.~~

8958 b. The following shall be reported within 24 hours under this subdivision:

8959 (1) Any unanticipated bypass that exceeds any effluent limitation in the state permit.

8960 (2) Any upset that exceeds any effluent limitation in the state permit.

8961 (3) Violation of a maximum daily discharge limitation for any of the pollutants listed in
8962 the state permit to be reported within 24 hours.

8963 c. The department may waive the five-day report on a case-by-case basis for reports
8964 under this subdivision if the oral report has been received within 24 hours.

8965 8. The state permittee shall report all instances of noncompliance not reported under
8966 subdivisions 4, 5, 6, and 7 of this subsection, in the format required by the department, at
8967 the time the next monitoring reports are submitted. The reports shall contain the
8968 information listed in subdivision 7 of this subsection.

8969 a. For noncompliance events related to combined sewer overflows, sanitary sewer
8970 overflows, or bypass events, these reports shall contain the information described in
8971 subdivision 7 a of this subsection and the applicable required data in Appendix A to
8972 40 CFR Part 127 as adopted by reference in 9VAC25-31-1030.

8973 b. As of the start date in Table 1 of 9VAC25-31-1020, all reports related to combined
8974 sewer overflows, sanitary sewer overflows, or bypass events submitted in compliance
8975 with this subdivision 8 shall be submitted electronically by the permittee to the
8976 department in compliance with this subdivision 8 and 40 CFR Part 3 (including, in all
8977 cases, 40 CFR Part 3 Subpart D), 9VAC25-870-370, and Part XI (9VAC25-31-950 et
8978 seq.) of the Virginia Pollutant Discharge Elimination System (VPDES) Permit
8979 Regulation. Part XI of 9VAC25-31 is not intended to undo existing requirements for
8980 electronic reporting. Prior to this date, and independent of Part XI of 9VAC25-31,
8981 permittees may be required to electronically submit reports related to combined sewer
8982 overflows, sanitary sewer overflows, or bypass events under this section by a
8983 particular permit.

8984 c. The director may also require permittees to electronically submit reports not related
8985 to combined sewer overflows, sanitary sewer overflows, or bypass events under this
8986 section.

8987 9. Where the state permittee becomes aware that it failed to submit any relevant facts in
8988 a permit application, or submitted incorrect information in a state permit application or in
8989 any report to the department, it shall promptly submit such facts or information.

8990 10. The owner, operator, or the duly authorized representative of an VPDES-regulated
8991 entity is required to electronically submit the required information, as specified in Appendix
8992 A to 40 CFR Part 127 as adopted by reference in 9VAC25-31-1030, to the department.

8993 M. Bypass.

8994 1. The state permittee may allow any bypass to occur that does not cause effluent
8995 limitations to be exceeded, but only if it also is for essential maintenance to assure efficient
8996 operation. These bypasses are not subject to the provisions of subdivisions 2 and 3 of this
8997 subsection.

8998 2. Notice.

8999 a. Anticipated bypass. If the state permittee knows in advance of the need for a
 9000 bypass, it shall submit prior notice, if possible at least 10 days before the date of the
 9001 bypass. As of the start date in Table 1 of 9VAC25-31-1020, all notices submitted in
 9002 compliance with this subdivision shall be submitted electronically by the permittee to
 9003 the department in compliance with this subsection and 40 CFR Part 3 (including, in all
 9004 cases, 40 CFR Part 3 Subpart D), 9VAC25-870-370, and Part XI (9VAC25-31-950 et
 9005 seq.) of the Virginia Pollutant Discharge Elimination System (VPDES) Permit
 9006 Regulation. Part XI of 9VAC25-31 is not intended to undo existing requirements for
 9007 electronic reporting. Prior to this date, and independent of Part XI of 9VAC25-31,
 9008 permittees may be required to report electronically if specified by a particular permit.

9009 b. Unanticipated bypass. The state permittee shall submit notice of an unanticipated
 9010 bypass as required in subdivision L 7 of this section. As of the start date in Table 1 of
 9011 9VAC25-31-1020, all notices submitted in compliance with this subdivision shall be
 9012 submitted electronically by the permittee to the department in compliance with this
 9013 subdivision and 40 CFR Part 3 (including, in all cases, 40 CFR Part 3 Subpart D),
 9014 9VAC25-870-370, and Part XI (9VAC25-31-950 et seq.) of the Virginia Pollutant
 9015 Discharge Elimination System (VPDES) Permit Regulation. Part XI of 9VAC25-31 is
 9016 not intended to undo existing requirements for electronic reporting. Prior to this date,
 9017 and independent of Part XI of 9VAC25-31, permittees may be required to report
 9018 electronically if specified by a particular permit.

9019 3. Prohibition of bypass.

9020 a. Bypass is prohibited, and the department may take enforcement action against a
 9021 state permittee for bypass, unless:

9022 (1) Bypass was unavoidable to prevent loss of life, personal injury, or severe property
 9023 damage;

9024 (2) There were no feasible alternatives to the bypass, such as the use of auxiliary
 9025 treatment facilities, retention of untreated wastes, or maintenance during normal
 9026 periods of equipment downtime. This condition is not satisfied if adequate back-up
 9027 equipment should have been installed in the exercise of reasonable engineering
 9028 judgment to prevent a bypass that occurred during normal periods of equipment
 9029 downtime or preventive maintenance; and

9030 (3) The state permittee submitted notices as required under subdivision 2 of this
 9031 subsection.

9032 b. The department may approve an anticipated bypass, after considering its adverse
 9033 effects, if the department determines that it will meet the three conditions listed in
 9034 subdivision 3 a of this subsection.

9035 N. Upset.

9036 1. An upset constitutes an affirmative defense to an action brought for noncompliance with
 9037 such technology based state permit effluent limitations if the requirements of subdivision
 9038 2 of this subsection are met. No determination made during administrative review of claims
 9039 that noncompliance was caused by upset, and before an action for noncompliance, is final
 9040 administrative action subject to judicial review.

9041 2. A state permittee who wishes to establish the affirmative defense of upset shall
 9042 demonstrate, through properly signed, contemporaneous operating logs, or other relevant
 9043 evidence that:

9044 a. An upset occurred and that the state permittee can identify the cause or causes of
 9045 the upset;

9046 b. The permitted facility was at the time being properly operated;

9047 c. The state permittee submitted notice of the upset as required in subdivision L 7 b
9048 (2) of this section (24-hour notice); and

9049 d. The state permittee complied with any remedial measures required under
9050 subsection D of this section.

9051 3. In any enforcement proceeding the state permittee seeking to establish the occurrence
9052 of an upset has the burden of proof.

9053 **9VAC25-870-440. Additional conditions applicable to municipal separate storm sewer state**
9054 **permits. (Repealed.)**

9055 In addition to those conditions set forth in 9VAC25-870-430, the operator of a large or medium
9056 municipal separate storm sewer system or a municipal separate storm sewer that has been
9057 designated by the department under 9VAC25-870-380 A 1 e must submit an annual report by a
9058 date specified in the state permit for such system. As of the start date in Table 1 of 9VAC25-31-
9059 1020, all reports submitted in compliance with this section shall be submitted electronically by the
9060 owner, operator, or the duly authorized representative of the MS4 to the department in compliance
9061 with this section and 40 CFR Part 3 (including, in all cases, 40 CFR Part 3 Subpart D), 9VAC25-
9062 870-370, and Part XI (9VAC25-31-950 et seq.) of the Virginia Pollutant Discharge Elimination
9063 System (VPDES) Permit Regulation. Part XI of 9VAC25-31 is not intended to undo existing
9064 requirements for electronic reporting. Prior to this date, and independent of Part XI of 9VAC25-
9065 31, the owner, operator, or the duly authorized representative of the small MS4 may be required
9066 to report electronically if specified by a particular permit. The report shall include:

9067 1. The status of implementing the components of the stormwater management program
9068 that are established as state permit conditions;

9069 2. Proposed changes to the stormwater management programs that are established as
9070 state permit conditions. Such proposed changes shall be consistent with 9VAC25-870-
9071 380 C 2 d;

9072 3. Revisions, if necessary, to the assessment of controls and the fiscal analysis reported
9073 in the state permit application;

9074 4. A summary of data, including monitoring data, that is accumulated throughout the
9075 reporting year;

9076 5. Annual expenditures and budget for year following each annual report;

9077 6. A summary describing the number and nature of enforcement actions, inspections, and
9078 public education programs; and

9079 7. Identification of water quality improvements or degradation.

9080 **9VAC25-870-440. Additional conditions applicable to municipal separate storm sewer state**
9081 **permits. (Repealed.)**

9082 In addition to those conditions set forth in 9VAC25-870-430, the operator of a large or medium
9083 municipal separate storm sewer system or a municipal separate storm sewer that has been
9084 designated by the department under 9VAC25-870-380 A 1 e must submit an annual report by a
9085 date specified in the state permit for such system. As of the start date in Table 1 of 9VAC25-31-
9086 1020, all reports submitted in compliance with this section shall be submitted electronically by the
9087 owner, operator, or the duly authorized representative of the MS4 to the department in compliance
9088 with this section and 40 CFR Part 3 (including, in all cases, 40 CFR Part 3 Subpart D), 9VAC25-
9089 870-370, and Part XI (9VAC25-31-950 et seq.) of the Virginia Pollutant Discharge Elimination
9090 System (VPDES) Permit Regulation. Part XI of 9VAC25-31 is not intended to undo existing
9091 requirements for electronic reporting. Prior to this date, and independent of Part XI of 9VAC25-
9092 31, the owner, operator, or the duly authorized representative of the small MS4 may be required
9093 to report electronically if specified by a particular permit. The report shall include:

- 9094 1. ~~The status of implementing the components of the stormwater management program~~
 9095 ~~that are established as state permit conditions;~~
- 9096 2. ~~Proposed changes to the stormwater management programs that are established as~~
 9097 ~~state permit conditions. Such proposed changes shall be consistent with 9VAC25-870-~~
 9098 ~~380 C 2 d;~~
- 9099 3. ~~Revisions, if necessary, to the assessment of controls and the fiscal analysis reported~~
 9100 ~~in the state permit application;~~
- 9101 4. ~~A summary of data, including monitoring data, that is accumulated throughout the~~
 9102 ~~reporting year;~~
- 9103 5. ~~Annual expenditures and budget for year following each annual report;~~
- 9104 6. ~~A summary describing the number and nature of enforcement actions, inspections, and~~
 9105 ~~public education programs; and~~
- 9106 7. ~~Identification of water quality improvements or degradation.~~

9107 **9VAC25-870-450. Establishing state permit conditions. (Repealed.)**

9108 A. ~~In addition to conditions required in all state permits, the department shall establish~~
 9109 ~~conditions, as required on a case-by-case basis, to provide for and assure compliance with all~~
 9110 ~~applicable requirements of the Stormwater Management Act, the State Water Control Law, the~~
 9111 ~~CWA, and attendant regulations. These shall include conditions under 9VAC25-870-480 (duration~~
 9112 ~~of state permits), 9VAC25-870-490 (schedules of compliance), 9VAC25-870-460 (monitoring),~~
 9113 ~~electronic reporting requirements of 40 CFR Part 3, and Part XI (9VAC25-31-950 et seq.) of the~~
 9114 ~~Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation.~~

9115 B. 1. ~~An applicable requirement is a state statutory or regulatory requirement which takes~~
 9116 ~~effect prior to final administrative disposition of a state permit. An applicable requirement is also~~
 9117 ~~any requirement that takes effect prior to the modification or revocation and reissuance of a state~~
 9118 ~~permit to the extent allowed in Part X of this chapter.~~

9119 2. ~~New or reissued state permits, and to the extent allowed under Part X of this chapter~~
 9120 ~~modified or revoked and reissued state permits, shall incorporate each of the applicable~~
 9121 ~~requirements referenced in 9VAC25-870-460 and 9VAC25-870-470.~~

9122 C. ~~All state permit conditions shall be incorporated either expressly or by reference. If~~
 9123 ~~incorporated by reference, a specific citation to the applicable regulations or requirements must~~
 9124 ~~be given in the state permit.~~

9125 **9VAC25-870-450. Establishing state permit conditions. (Repealed.)**

9126 A. ~~In addition to conditions required in all state permits, the department shall establish~~
 9127 ~~conditions, as required on a case-by-case basis, to provide for and assure compliance with all~~
 9128 ~~applicable requirements of the Stormwater Management Act, the State Water Control Law, the~~
 9129 ~~CWA, and attendant regulations. These shall include conditions under 9VAC25-870-480 (duration~~
 9130 ~~of state permits), 9VAC25-870-490 (schedules of compliance), 9VAC25-870-460 (monitoring),~~
 9131 ~~electronic reporting requirements of 40 CFR Part 3, and Part XI (9VAC25-31-950 et seq.) of the~~
 9132 ~~Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation.~~

9133 B. 1. ~~An applicable requirement is a state statutory or regulatory requirement which takes~~
 9134 ~~effect prior to final administrative disposition of a state permit. An applicable requirement is also~~
 9135 ~~any requirement that takes effect prior to the modification or revocation and reissuance of a state~~
 9136 ~~permit to the extent allowed in Part X of this chapter.~~

9137 2. ~~New or reissued state permits, and to the extent allowed under Part X of this chapter~~
 9138 ~~modified or revoked and reissued state permits, shall incorporate each of the applicable~~
 9139 ~~requirements referenced in 9VAC25-870-460 and 9VAC25-870-470.~~

9140 C. All state permit conditions shall be incorporated either expressly or by reference. If
 9141 incorporated by reference, a specific citation to the applicable regulations or requirements must
 9142 be given in the state permit.

9143 **9VAC25-870-460. Establishing limitations, standards, and other state permit conditions.**
 9144 **(Repealed.)**

9145 In addition to the conditions established under 9VAC25-870-450 A, each state permit shall
 9146 include conditions meeting the following requirements when applicable.

9147 A. 1. Technology-based effluent limitations and standards based on effluent limitations and
 9148 standards promulgated under § 301 of the CWA, on new source performance standards
 9149 promulgated under § 306 of CWA, on case-by-case effluent limitations determined under §
 9150 402(a)(1) of CWA, or a combination of the three. For new sources or new dischargers, these
 9151 technology-based limitations and standards are subject to the provisions of 9VAC25-870-420 B
 9152 (protection period).

9153 2. The department may authorize a discharger subject to technology-based effluent
 9154 limitations guidelines and standards in a state permit to forego sampling of a pollutant
 9155 found at 40 CFR Subchapter N if the discharger has demonstrated through sampling and
 9156 other technical factors that the pollutant is not present in the discharge or is present only
 9157 at background levels from intake water and without any increase in the pollutant due to
 9158 activities of the discharger. This waiver is good only for the term of the state permit and is
 9159 not available during the term of the first state permit issued to a discharger. Any request
 9160 for this waiver must be submitted when applying for a reissued state permit or modification
 9161 of a reissued state permit. The request must demonstrate through sampling or other
 9162 technical information, including information generated during an earlier state permit term,
 9163 that the pollutant is not present in the discharge or is present only at background levels
 9164 from intake water and without any increase in the pollutant due to activities of the
 9165 discharger. Any grant of the monitoring waiver must be included in the state permit as an
 9166 express state permit condition and the reasons supporting the grant must be documented
 9167 in the state permit's fact sheet or statement of basis. This provision does not supersede
 9168 certification processes and requirements already established in existing effluent limitations
 9169 guidelines and standards.

9170 B. Other effluent limitations and standards under §§ 301, 302, 303, 307, 318 and 405 of the
 9171 CWA. If any applicable toxic effluent standard or prohibition (including any schedule of compliance
 9172 specified in such effluent standard or prohibition) is promulgated under § 307(a) of the CWA for
 9173 a toxic pollutant and that standard or prohibition is more stringent than any limitation on the
 9174 pollutant in the state permit, the department shall institute proceedings under this chapter to
 9175 modify or revoke and reissue the state permit to conform to the toxic effluent standard or
 9176 prohibition.

9177 C. Water quality standards and state requirements. Any requirements in addition to or more
 9178 stringent than promulgated effluent limitations guidelines or standards under §§ 301, 304, 306,
 9179 307, 318 and 405 of the CWA necessary to:

9180 1. Achieve water quality standards established under the State Water Control Law and §
 9181 303 of the CWA, including state narrative criteria for water quality.

9182 a. Limitations must control all pollutants or pollutant parameters (either conventional,
 9183 nonconventional, or toxic pollutants) which the department determines are or may be
 9184 discharged at a level that will cause, have the reasonable potential to cause, or
 9185 contribute to an excursion above any Virginia water quality standard, including Virginia
 9186 narrative criteria for water quality.

9187 b. When determining whether a discharge causes, has the reasonable potential to
 9188 cause, or contributes to an in-stream excursion above a narrative or numeric criteria

9189 within a Virginia water quality standard, the department shall use procedures that
9190 account for existing controls on point and nonpoint sources of pollution, the variability
9191 of the pollutant or pollutant parameter in the effluent, the sensitivity of the species to
9192 toxicity testing (when evaluating whole effluent toxicity), and where appropriate, the
9193 dilution of the effluent in the receiving water.

9194 c. When the department determines, using the procedures in subdivision 1 b of this
9195 subsection, that a discharge causes, has the reasonable potential to cause, or
9196 contributes to an in-stream excursion above the allowable ambient concentration of a
9197 Virginia numeric criteria within a Virginia water quality standard for an individual
9198 pollutant, the state permit must contain effluent limits for that pollutant.

9199 d. Except as provided in this subdivision, when the department determines, using the
9200 procedures in subdivision 1 b of this subsection, toxicity testing data, or other
9201 information, that a discharge causes, has the reasonable potential to cause, or
9202 contributes to an in-stream excursion above a narrative criterion within an applicable
9203 Virginia water quality standard, the state permit must contain effluent limits for whole
9204 effluent toxicity. Limits on whole effluent toxicity are not necessary where the
9205 department demonstrates in the fact sheet or statement of basis of the state permit,
9206 using the procedures in subdivision 1 b of this subsection, that chemical-specific limits
9207 for the effluent are sufficient to attain and maintain applicable numeric and narrative
9208 Virginia water quality standards.

9209 e. Where Virginia has not established a water quality criterion for a specific chemical
9210 pollutant that is present in an effluent at a concentration that causes, has the
9211 reasonable potential to cause, or contributes to an excursion above a narrative
9212 criterion within an applicable Virginia water quality standard, the department must
9213 establish effluent limits using one or more of the following options:

9214 (1) Establish effluent limits using a calculated numeric water quality criterion for the
9215 pollutant which the department demonstrates will attain and maintain applicable
9216 narrative water quality criteria and will fully protect the designated use. Such a criterion
9217 may be derived using a proposed Virginia criterion, or an explicit policy or regulation
9218 interpreting Virginia's narrative water quality criterion, supplemented with other
9219 relevant information which may include: EPA's Water Quality Standards Handbook,
9220 August 1994, risk assessment data, exposure data, information about the pollutant
9221 from the Food and Drug Administration, and current EPA criteria documents;

9222 (2) Establish effluent limits on a case-by-case basis, using EPA's water quality criteria,
9223 published under § 307(a) of the CWA, supplemented where necessary by other
9224 relevant information; or

9225 (3) Establish effluent limitations on an indicator parameter for the pollutant of concern,
9226 provided:

9227 (a) The state permit identifies which pollutants are intended to be controlled by the use
9228 of the effluent limitation;

9229 (b) The fact sheet required by 9VAC25-870-520 sets forth the basis for the limit,
9230 including a finding that compliance with the effluent limit on the indicator parameter
9231 will result in controls on the pollutant of concern which are sufficient to attain and
9232 maintain applicable water quality standards;

9233 (c) The state permit requires all effluent and ambient monitoring necessary to show
9234 that during the term of the state permit the limit on the indicator parameter continues
9235 to attain and maintain applicable water quality standards; and

- 9236 ~~(d) The state permit contains a reopener clause allowing the department to modify or~~
 9237 ~~revoke and reissue the state permit if the limits on the indicator parameter no longer~~
 9238 ~~attain and maintain applicable water quality standards.~~
- 9239 ~~f. When developing water quality-based effluent limits under this subdivision the~~
 9240 ~~department shall ensure that:~~
- 9241 ~~(1) The level of water quality to be achieved by limits on point sources established~~
 9242 ~~under this subsection is derived from, and complies with all applicable water quality~~
 9243 ~~standards; and~~
- 9244 ~~(2) Effluent limits developed to protect a narrative water quality criterion, a numeric~~
 9245 ~~water quality criterion, or both, are consistent with the assumptions and requirements~~
 9246 ~~of any available wasteload allocation for the discharge prepared by Virginia and~~
 9247 ~~approved by EPA pursuant to 40 CFR 130.7;~~
- 9248 ~~2. Attain or maintain a specified water quality through water quality related effluent limits~~
 9249 ~~established under the State Water Control Law and § 302 of the CWA;~~
- 9250 ~~3. Conform to the conditions of a Virginia Water Protection Permit (VWPP) issued under~~
 9251 ~~the State Water Control Law and § 401 of the CWA;~~
- 9252 ~~4. Conform to applicable water quality requirements under § 401(a)(2) of the CWA when~~
 9253 ~~the discharge affects a state other than Virginia;~~
- 9254 ~~5. Incorporate any more stringent limitations, treatment standards, or schedule of~~
 9255 ~~compliance requirements established under the Act or regulations in accordance with §~~
 9256 ~~301(b)(1)(C) of the CWA;~~
- 9257 ~~6. Ensure consistency with the requirements of a Water Quality Management plan~~
 9258 ~~established by the State Water Control Board pursuant to 9VAC25-720 and approved by~~
 9259 ~~EPA under § 208(b) of the CWA;~~
- 9260 ~~7. Incorporate § 403(c) criteria under 40 CFR Part 125, Subpart M, for ocean discharges;~~
 9261 ~~or~~
- 9262 ~~8. Incorporate alternative effluent limitations or standards where warranted by~~
 9263 ~~fundamentally different factors, under 40 CFR Part 125, Subpart D.~~
- 9264 ~~D. Technology-based controls for toxic pollutants. Limitations established under subsections~~
 9265 ~~A, B, or C of this section, to control pollutants meeting the criteria listed in subdivision 1 of this~~
 9266 ~~subsection. Limitations will be established in accordance with subdivision 2 of this subsection. An~~
 9267 ~~explanation of the development of these limitations shall be included in the fact sheet.~~
- 9268 ~~1. Limitations must control all toxic pollutants that the department determines (based on~~
 9269 ~~information reported in a permit application or in a notification required by the state permit~~
 9270 ~~or on other information) are or may be discharged at a level greater than the level that can~~
 9271 ~~be achieved by the technology-based treatment requirements appropriate to the state~~
 9272 ~~permittee; or~~
- 9273 ~~2. The requirement that the limitations control the pollutants meeting the criteria of~~
 9274 ~~subdivision 1 of this subsection will be satisfied by:~~
- 9275 ~~a. Limitations on those pollutants; or~~
- 9276 ~~b. Limitations on other pollutants that, in the judgment of the department, will provide~~
 9277 ~~treatment of the pollutants under subdivision 1 of this subsection to the levels required~~
 9278 ~~by the Stormwater Management Act, the State Water Control Law, and 40 CFR Part~~
 9279 ~~125, Subpart A.~~
- 9280 ~~E. A notification level that exceeds the notification level of 9VAC25-870-440 A 1 a, b, or c,~~
 9281 ~~upon a petition from the state permittee or on the department's initiative. This new notification~~

9282 level may not exceed the level which can be achieved by the technology-based treatment
9283 requirements appropriate to the state permittee.

9284 F. Twenty-four-hour reporting. Pollutants for which the state permittee must report violations
9285 of maximum daily discharge limitations under 9VAC25-870-430 L 7 b (3) (24-hour reporting) shall
9286 be listed in the state permit. This list shall include any toxic pollutant or hazardous substance, or
9287 any pollutant specifically identified as the method to control a toxic pollutant or hazardous
9288 substance.

9289 G. Durations for state permits, as set forth in 9VAC25-870-480.

9290 H. Monitoring requirements:

9291 1. Requirements concerning the proper use, maintenance, and installation, when
9292 appropriate, of monitoring equipment or methods (including biological monitoring methods
9293 when appropriate);

9294 2. Required monitoring including type, intervals, and frequency sufficient to yield data that
9295 are representative of the monitored activity including, when appropriate, continuous
9296 monitoring;

9297 3. Applicable reporting requirements based upon the impact of the regulated activity and
9298 as specified in 9VAC25-870-430, subdivisions 5 through 8 of this subsection, and Part XI
9299 (9VAC25-31-950 et seq.) of the Virginia Pollutant Discharge Elimination System (VPDES)
9300 Permit Regulation. Reporting shall be no less frequent than specified in the above
9301 regulation;

9302 4. To assure compliance with state permit limitations, requirements to monitor:

9303 a. The mass (or other measurement specified in the state permit) for each pollutant
9304 limited in the state permit;

9305 b. The volume of effluent discharged from each outfall;

9306 c. Other measurements as appropriate including pollutants; frequency, rate of
9307 discharge, etc., for noncontinuous discharges; pollutants subject to notification
9308 requirements; or as determined to be necessary on a case-by-case basis pursuant to
9309 the Stormwater Management Act, the State Water Control Law, and § 405(d)(4) of the
9310 CWA;

9311 d. According to test procedures approved under 40 CFR Part 136 for the analyses of
9312 pollutants having approved methods under that part, or alternative EPA approved
9313 methods, and according to a test procedure specified in the state permit for pollutants
9314 with no approved methods; and

9315 e. With analyses performed according to test procedures approved under 40 CFR Part
9316 136 being performed by an environmental laboratory certified under regulations
9317 adopted by the Department of General Services (1VAC30-45 or 1VAC30-46).

9318 5. Except as provided in subdivisions 7 and 8 of this subsection, requirements to report
9319 monitoring results shall be established on a case-by-case basis with a frequency
9320 dependent on the nature and effect of the discharge, but in no case less than once a year.
9321 All results shall be electronically reported in compliance with 40 CFR Part 3 (including, in
9322 all cases, 40 CFR Part 3 Subpart D), 9VAC25-870-370, and Part XI (9VAC25-31-950 et
9323 seq.) of the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation;

9324 6. Requirements to report monitoring results for stormwater discharges associated with
9325 industrial activity that are subject to an effluent limitation guideline shall be established on
9326 a case-by-case basis with a frequency dependent on the nature and effect of the
9327 discharge, but in no case less than once a year;

- 9328 ~~7. Requirements to report monitoring results for stormwater discharges (other than those~~
 9329 ~~addressed in subdivision 6 of this subsection) shall be established on a case-by-case~~
 9330 ~~basis with a frequency dependent on the nature and effect of the discharge. At a minimum,~~
 9331 ~~a state permit for such a discharge must require:~~
- 9332 ~~a. The discharger to conduct an annual inspection of the facility site to identify areas~~
 9333 ~~contributing to a stormwater discharge and evaluate whether measures to reduce~~
 9334 ~~pollutant loading identified in a stormwater pollution prevention plan are adequate and~~
 9335 ~~properly implemented in accordance with the terms of the state permit or whether~~
 9336 ~~additional control measures are needed;~~
- 9337 ~~b. The discharger to maintain for a period of three years a record summarizing the~~
 9338 ~~results of the inspection and a certification that the facility is in compliance with the~~
 9339 ~~plan and the state permit, and identifying any incidents of noncompliance;~~
- 9340 ~~c. Such report and certification be signed in accordance with 9VAC25-870-370; and~~
- 9341 ~~8. State permits which do not require the submittal of monitoring result reports at least~~
 9342 ~~annually shall require that the state permittee report all instances of noncompliance not~~
 9343 ~~reported under 9VAC25-870-430 L 1, 4, 5, 6, and 7 at least annually.~~
- 9344 ~~I. Best management practices to control or abate the discharge of pollutants when:~~
- 9345 ~~1. Authorized under § 402(p) of the CWA for the control of stormwater discharges;~~
 9346 ~~2. Numeric effluent limitations are infeasible; or~~
 9347 ~~3. The practices are reasonably necessary to achieve effluent limitations and standards~~
 9348 ~~or to carry out the purposes and intent of the Stormwater Management Act, the State~~
 9349 ~~Water Control Law, and the CWA.~~
- 9350 ~~J. Reissued state permits.~~
- 9351 ~~1. In the case of effluent limitations established on the basis of § 402(a)(1)(B) of the CWA,~~
 9352 ~~a state permit may not be renewed, reissued, or modified on the basis of effluent~~
 9353 ~~guidelines promulgated under § 304(b) of the CWA subsequent to the original issuance of~~
 9354 ~~such state permit, to contain effluent limitations that are less stringent than the comparable~~
 9355 ~~effluent limitations in the previous state permit. In the case of effluent limitations~~
 9356 ~~established on the basis of § 301(b)(1)(C) or § 303(d) or (e) of the CWA, a state permit~~
 9357 ~~may not be renewed, reissued, or modified to contain effluent limitations that are less~~
 9358 ~~stringent than the comparable effluent limitations in the previous state permit except in~~
 9359 ~~compliance with § 303(d)(4) of the CWA.~~
- 9360 ~~2. Exceptions. A state permit with respect to which subdivision 1 of this subsection applies~~
 9361 ~~may be renewed, reissued, or modified to contain a less stringent effluent limitation~~
 9362 ~~applicable to a pollutant, if:~~
- 9363 ~~a. Material and substantial alterations or additions to the permitted facility occurred~~
 9364 ~~after permit issuance that justify the application of a less stringent effluent limitation;~~
- 9365 ~~b. (1) Information is available that was not available at the time of state permit issuance~~
 9366 ~~(other than revised regulations, guidance, or test methods) and that would have~~
 9367 ~~justified the application of a less stringent effluent limitation at the time of state permit~~
 9368 ~~issuance; or~~
- 9369 ~~(2) The department determines that technical mistakes or mistaken interpretations of~~
 9370 ~~the Act were made in issuing the state permit under § 402(a)(1)(B) of the CWA;~~
- 9371 ~~c. A less stringent effluent limitation is necessary because of events over which the~~
 9372 ~~state permittee has no control and for which there is no reasonably available remedy;~~

9373 ~~d. The state permittee has received a state permit modification under the Stormwater~~
 9374 ~~Management Act, the State Water Control Law, and § 301(c), 301(g), 301(h), 301(i),~~
 9375 ~~301(k), 301(n), or 316(a) of the CWA; or~~

9376 ~~e. The state permittee has installed the treatment facilities required to meet the effluent~~
 9377 ~~limitations in the previous state permit and has properly operated and maintained the~~
 9378 ~~facilities but has nevertheless been unable to achieve the previous effluent limitations,~~
 9379 ~~in which case the limitations in the reviewed, reissued, or modified state permit may~~
 9380 ~~reflect the level of pollutant control actually achieved (but shall not be less stringent~~
 9381 ~~than required by effluent guidelines in effect at the time of state permit renewal,~~
 9382 ~~reissuance, or modification).~~

9383 ~~Subdivision 2 b of this subsection shall not apply to any revised waste load allocations~~
 9384 ~~or any alternative grounds for translating water quality standards into effluent~~
 9385 ~~limitations, except where the cumulative effect of such revised allocations results in a~~
 9386 ~~decrease in the amount of pollutants discharged into the concerned waters, and such~~
 9387 ~~revised allocations are not the result of a discharger eliminating or substantially~~
 9388 ~~reducing its discharge of pollutants due to complying with the requirements of the Act~~
 9389 ~~or the CWA or for reasons otherwise unrelated to water quality.~~

9390 ~~3. In no event may a state permit with respect to which subdivision 2 of this subsection~~
 9391 ~~applies be renewed, reissued, or modified to contain an effluent limitation that is less~~
 9392 ~~stringent than required by effluent guidelines in effect at the time the state permit is~~
 9393 ~~renewed, reissued, or modified. In no event may such a state permit to discharge into~~
 9394 ~~waters be renewed, issued, or modified to contain a less stringent effluent limitation if the~~
 9395 ~~implementation of such limitation would result in a violation of a Virginia water quality~~
 9396 ~~standard applicable to such waters.~~

9397 ~~K. Navigation. Any conditions that the Secretary of the Army considers necessary to ensure~~
 9398 ~~that navigation and anchorage will not be substantially impaired in accordance with 9VAC25-870-~~
 9399 ~~570.~~

9400 ~~L. Qualifying state, tribal, or local programs.~~

9401 ~~1. For stormwater discharges associated with small construction activity identified in~~
 9402 ~~9VAC25-870-10, the department may include state permit conditions that incorporate~~
 9403 ~~qualifying state, tribal, or local erosion and sediment control program requirements by~~
 9404 ~~reference. Where a qualifying state, tribal, or local program does not include one or more~~
 9405 ~~of the elements in this subdivision, then the department must include those elements as~~
 9406 ~~conditions in the state permit. A qualifying state, tribal, or local erosion and sediment~~
 9407 ~~control program is one that includes:~~

9408 ~~a. Requirements for construction site operators to implement appropriate erosion and~~
 9409 ~~sediment control best management practices;~~

9410 ~~b. Requirements for construction site operators to control waste such as discarded~~
 9411 ~~building materials, concrete truck washout, chemicals, litter, and sanitary waste at the~~
 9412 ~~construction site that may cause adverse impacts to water quality;~~

9413 ~~c. Requirements for construction site operators to develop and implement a~~
 9414 ~~stormwater pollution prevention plan. A stormwater pollution prevention plan includes~~
 9415 ~~site descriptions; descriptions of appropriate control measures; copies of approved~~
 9416 ~~state, tribal or local requirements; maintenance procedures; inspection procedures;~~
 9417 ~~and identification of nonstormwater discharges; and~~

9418 ~~d. Requirements to submit a site plan for review that incorporates consideration of~~
 9419 ~~potential water quality impacts.~~

9420 2. For stormwater discharges from construction activity that does not meet the definition
 9421 of a small construction activity, the department may include state permit conditions that
 9422 incorporate qualifying state, tribal, or local erosion and sediment control program
 9423 requirements by reference. A qualifying state, tribal or local erosion and sediment control
 9424 program is one that includes the elements listed in subdivision 1 of this subsection and
 9425 any additional requirements necessary to achieve the applicable technology-based
 9426 standards of "best available technology" and "best conventional technology" based on the
 9427 best professional judgment of the state permit writer.

9428 **9VAC25-870-460. Establishing limitations, standards, and other state permit conditions.**
 9429 **(Repealed.)**

9430 In addition to the conditions established under 9VAC25-870-450 A, each state permit shall
 9431 include conditions meeting the following requirements when applicable.

9432 A. 1. Technology-based effluent limitations and standards based on effluent limitations and
 9433 standards promulgated under § 301 of the CWA, on new source performance standards
 9434 promulgated under § 306 of CWA, on case-by-case effluent limitations determined under §
 9435 402(a)(1) of CWA, or a combination of the three. For new sources or new dischargers, these
 9436 technology-based limitations and standards are subject to the provisions of 9VAC25-870-420 B
 9437 (protection period).

9438 2. The department may authorize a discharger subject to technology-based effluent
 9439 limitations guidelines and standards in a state permit to forego sampling of a pollutant
 9440 found at 40 CFR Subchapter N if the discharger has demonstrated through sampling and
 9441 other technical factors that the pollutant is not present in the discharge or is present only
 9442 at background levels from intake water and without any increase in the pollutant due to
 9443 activities of the discharger. This waiver is good only for the term of the state permit and is
 9444 not available during the term of the first state permit issued to a discharger. Any request
 9445 for this waiver must be submitted when applying for a reissued state permit or modification
 9446 of a reissued state permit. The request must demonstrate through sampling or other
 9447 technical information, including information generated during an earlier state permit term,
 9448 that the pollutant is not present in the discharge or is present only at background levels
 9449 from intake water and without any increase in the pollutant due to activities of the
 9450 discharger. Any grant of the monitoring waiver must be included in the state permit as an
 9451 express state permit condition and the reasons supporting the grant must be documented
 9452 in the state permit's fact sheet or statement of basis. This provision does not supersede
 9453 certification processes and requirements already established in existing effluent limitations
 9454 guidelines and standards.

9455 B. Other effluent limitations and standards under §§ 301, 302, 303, 307, 318 and 405 of the
 9456 CWA. If any applicable toxic effluent standard or prohibition (including any schedule of compliance
 9457 specified in such effluent standard or prohibition) is promulgated under § 307(a) of the CWA for
 9458 a toxic pollutant and that standard or prohibition is more stringent than any limitation on the
 9459 pollutant in the state permit, the department shall institute proceedings under this chapter to
 9460 modify or revoke and reissue the state permit to conform to the toxic effluent standard or
 9461 prohibition.

9462 C. Water quality standards and state requirements. Any requirements in addition to or more
 9463 stringent than promulgated effluent limitations guidelines or standards under §§ 301, 304, 306,
 9464 307, 318 and 405 of the CWA necessary to:

9465 1. Achieve water quality standards established under the State Water Control Law and §
 9466 303 of the CWA, including state narrative criteria for water quality.

9467 a. Limitations must control all pollutants or pollutant parameters (either conventional,
 9468 nonconventional, or toxic pollutants) which the department determines are or may be

9469 discharged at a level that will cause, have the reasonable potential to cause, or
9470 contribute to an excursion above any Virginia water quality standard, including Virginia
9471 narrative criteria for water quality.

9472 b. When determining whether a discharge causes, has the reasonable potential to
9473 cause, or contributes to an in-stream excursion above a narrative or numeric criteria
9474 within a Virginia water quality standard, the department shall use procedures that
9475 account for existing controls on point and nonpoint sources of pollution, the variability
9476 of the pollutant or pollutant parameter in the effluent, the sensitivity of the species to
9477 toxicity testing (when evaluating whole effluent toxicity), and where appropriate, the
9478 dilution of the effluent in the receiving water.

9479 c. When the department determines, using the procedures in subdivision 1 b of this
9480 subsection, that a discharge causes, has the reasonable potential to cause, or
9481 contributes to an in-stream excursion above the allowable ambient concentration of a
9482 Virginia numeric criteria within a Virginia water quality standard for an individual
9483 pollutant, the state permit must contain effluent limits for that pollutant.

9484 d. Except as provided in this subdivision, when the department determines, using the
9485 procedures in subdivision 1 b of this subsection, toxicity testing data, or other
9486 information, that a discharge causes, has the reasonable potential to cause, or
9487 contributes to an in-stream excursion above a narrative criterion within an applicable
9488 Virginia water quality standard, the state permit must contain effluent limits for whole
9489 effluent toxicity. Limits on whole effluent toxicity are not necessary where the
9490 department demonstrates in the fact sheet or statement of basis of the state permit,
9491 using the procedures in subdivision 1 b of this subsection, that chemical-specific limits
9492 for the effluent are sufficient to attain and maintain applicable numeric and narrative
9493 Virginia water quality standards.

9494 e. Where Virginia has not established a water quality criterion for a specific chemical
9495 pollutant that is present in an effluent at a concentration that causes, has the
9496 reasonable potential to cause, or contributes to an excursion above a narrative
9497 criterion within an applicable Virginia water quality standard, the department must
9498 establish effluent limits using one or more of the following options:

9499 (1) Establish effluent limits using a calculated numeric water quality criterion for the
9500 pollutant which the department demonstrates will attain and maintain applicable
9501 narrative water quality criteria and will fully protect the designated use. Such a criterion
9502 may be derived using a proposed Virginia criterion, or an explicit policy or regulation
9503 interpreting Virginia's narrative water quality criterion, supplemented with other
9504 relevant information which may include: EPA's Water Quality Standards Handbook,
9505 August 1994, risk assessment data, exposure data, information about the pollutant
9506 from the Food and Drug Administration, and current EPA criteria documents;

9507 (2) Establish effluent limits on a case-by-case basis, using EPA's water quality criteria,
9508 published under § 307(a) of the CWA, supplemented where necessary by other
9509 relevant information; or

9510 (3) Establish effluent limitations on an indicator parameter for the pollutant of concern,
9511 provided:

9512 (a) The state permit identifies which pollutants are intended to be controlled by the use
9513 of the effluent limitation;

9514 (b) The fact sheet required by 9VAC25-870-520 sets forth the basis for the limit,
9515 including a finding that compliance with the effluent limit on the indicator parameter
9516 will result in controls on the pollutant of concern which are sufficient to attain and
9517 maintain applicable water quality standards;

9518 ~~(c) The state permit requires all effluent and ambient monitoring necessary to show~~
 9519 ~~that during the term of the state permit the limit on the indicator parameter continues~~
 9520 ~~to attain and maintain applicable water quality standards; and~~

9521 ~~(d) The state permit contains a reopener clause allowing the department to modify or~~
 9522 ~~revoke and reissue the state permit if the limits on the indicator parameter no longer~~
 9523 ~~attain and maintain applicable water quality standards.~~

9524 ~~f. When developing water quality-based effluent limits under this subdivision the~~
 9525 ~~department shall ensure that:~~

9526 ~~(1) The level of water quality to be achieved by limits on point sources established~~
 9527 ~~under this subsection is derived from, and complies with all applicable water quality~~
 9528 ~~standards; and~~

9529 ~~(2) Effluent limits developed to protect a narrative water quality criterion, a numeric~~
 9530 ~~water quality criterion, or both, are consistent with the assumptions and requirements~~
 9531 ~~of any available wasteload allocation for the discharge prepared by Virginia and~~
 9532 ~~approved by EPA pursuant to 40 CFR 130.7;~~

9533 ~~2. Attain or maintain a specified water quality through water quality related effluent limits~~
 9534 ~~established under the State Water Control Law and § 302 of the CWA;~~

9535 ~~3. Conform to the conditions of a Virginia Water Protection Permit (VWPP) issued under~~
 9536 ~~the State Water Control Law and § 401 of the CWA;~~

9537 ~~4. Conform to applicable water quality requirements under § 401(a)(2) of the CWA when~~
 9538 ~~the discharge affects a state other than Virginia;~~

9539 ~~5. Incorporate any more stringent limitations, treatment standards, or schedule of~~
 9540 ~~compliance requirements established under the Act or regulations in accordance with §~~
 9541 ~~301(b)(1)(C) of the CWA;~~

9542 ~~6. Ensure consistency with the requirements of a Water Quality Management plan~~
 9543 ~~established by the State Water Control Board pursuant to 9VAC25-720 and approved by~~
 9544 ~~EPA under § 208(b) of the CWA;~~

9545 ~~7. Incorporate § 403(c) criteria under 40 CFR Part 125, Subpart M, for ocean discharges;~~
 9546 ~~or~~

9547 ~~8. Incorporate alternative effluent limitations or standards where warranted by~~
 9548 ~~fundamentally different factors, under 40 CFR Part 125, Subpart D.~~

9549 ~~D. Technology-based controls for toxic pollutants. Limitations established under subsections~~
 9550 ~~A, B, or C of this section, to control pollutants meeting the criteria listed in subdivision 1 of this~~
 9551 ~~subsection. Limitations will be established in accordance with subdivision 2 of this subsection. An~~
 9552 ~~explanation of the development of these limitations shall be included in the fact sheet.~~

9553 ~~1. Limitations must control all toxic pollutants that the department determines (based on~~
 9554 ~~information reported in a permit application or in a notification required by the state permit~~
 9555 ~~or on other information) are or may be discharged at a level greater than the level that can~~
 9556 ~~be achieved by the technology-based treatment requirements appropriate to the state~~
 9557 ~~permittee; or~~

9558 ~~2. The requirement that the limitations control the pollutants meeting the criteria of~~
 9559 ~~subdivision 1 of this subsection will be satisfied by:~~

9560 ~~a. Limitations on those pollutants; or~~

9561 ~~b. Limitations on other pollutants that, in the judgment of the department, will provide~~
 9562 ~~treatment of the pollutants under subdivision 1 of this subsection to the levels required~~
 9563 ~~by the Stormwater Management Act, the State Water Control Law, and 40 CFR Part~~
 9564 ~~125, Subpart A.~~

9565 E. A notification level that exceeds the notification level of 9VAC25-870-440 A 1 a, b, or c,
 9566 upon a petition from the state permittee or on the department's initiative. This new notification
 9567 level may not exceed the level which can be achieved by the technology-based treatment
 9568 requirements appropriate to the state permittee.

9569 F. Twenty-four hour reporting. Pollutants for which the state permittee must report violations
 9570 of maximum daily discharge limitations under 9VAC25-870-430 L 7 b (3) (24-hour reporting) shall
 9571 be listed in the state permit. This list shall include any toxic pollutant or hazardous substance, or
 9572 any pollutant specifically identified as the method to control a toxic pollutant or hazardous
 9573 substance.

9574 G. Durations for state permits, as set forth in 9VAC25-870-480.

9575 H. Monitoring requirements.

9576 1. Requirements concerning the proper use, maintenance, and installation, when
 9577 appropriate, of monitoring equipment or methods (including biological monitoring methods
 9578 when appropriate);

9579 2. Required monitoring including type, intervals, and frequency sufficient to yield data that
 9580 are representative of the monitored activity including, when appropriate, continuous
 9581 monitoring;

9582 3. Applicable reporting requirements based upon the impact of the regulated activity and
 9583 as specified in 9VAC25-870-430, subdivisions 5 through 8 of this subsection, and Part XI
 9584 (9VAC25-31-950 et seq.) of the Virginia Pollutant Discharge Elimination System (VPDES)
 9585 Permit Regulation. Reporting shall be no less frequent than specified in the above
 9586 regulation;

9587 4. To assure compliance with state permit limitations, requirements to monitor:

9588 a. The mass (or other measurement specified in the state permit) for each pollutant
 9589 limited in the state permit;

9590 b. The volume of effluent discharged from each outfall;

9591 c. Other measurements as appropriate including pollutants; frequency, rate of
 9592 discharge, etc., for noncontinuous discharges; pollutants subject to notification
 9593 requirements; or as determined to be necessary on a case-by-case basis pursuant to
 9594 the Stormwater Management Act, the State Water Control Law, and § 405(d)(4) of the
 9595 CWA;

9596 d. According to test procedures approved under 40 CFR Part 136 for the analyses of
 9597 pollutants having approved methods under that part, or alternative EPA approved
 9598 methods, and according to a test procedure specified in the state permit for pollutants
 9599 with no approved methods; and

9600 e. With analyses performed according to test procedures approved under 40 CFR Part
 9601 136 being performed by an environmental laboratory certified under regulations
 9602 adopted by the Department of General Services (1VAC30-45 or 1VAC30-46).

9603 5. Except as provided in subdivisions 7 and 8 of this subsection, requirements to report
 9604 monitoring results shall be established on a case-by-case basis with a frequency
 9605 dependent on the nature and effect of the discharge, but in no case less than once a year.
 9606 All results shall be electronically reported in compliance with 40 CFR Part 3 (including, in
 9607 all cases, 40 CFR Part 3 Subpart D), 9VAC25-870-370, and Part XI (9VAC25-31-950 et
 9608 seq.) of the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation;

9609 6. Requirements to report monitoring results for stormwater discharges associated with
 9610 industrial activity that are subject to an effluent limitation guideline shall be established on

- 9611 ~~a case-by-case basis with a frequency dependent on the nature and effect of the~~
 9612 ~~discharge, but in no case less than once a year;~~
- 9613 ~~7. Requirements to report monitoring results for stormwater discharges (other than those~~
 9614 ~~addressed in subdivision 6 of this subsection) shall be established on a case-by-case~~
 9615 ~~basis with a frequency dependent on the nature and effect of the discharge. At a minimum,~~
 9616 ~~a state permit for such a discharge must require:~~
- 9617 ~~a. The discharger to conduct an annual inspection of the facility site to identify areas~~
 9618 ~~contributing to a stormwater discharge and evaluate whether measures to reduce~~
 9619 ~~pollutant loading identified in a stormwater pollution prevention plan are adequate and~~
 9620 ~~properly implemented in accordance with the terms of the state permit or whether~~
 9621 ~~additional control measures are needed;~~
- 9622 ~~b. The discharger to maintain for a period of three years a record summarizing the~~
 9623 ~~results of the inspection and a certification that the facility is in compliance with the~~
 9624 ~~plan and the state permit, and identifying any incidents of noncompliance;~~
- 9625 ~~c. Such report and certification be signed in accordance with 9VAC25-870-370; and~~
- 9626 ~~8. State permits which do not require the submittal of monitoring result reports at least~~
 9627 ~~annually shall require that the state permittee report all instances of noncompliance not~~
 9628 ~~reported under 9VAC25-870-430 L 1, 4, 5, 6, and 7 at least annually.~~
- 9629 ~~I. Best management practices to control or abate the discharge of pollutants when:~~
- 9630 ~~1. Authorized under § 402(p) of the CWA for the control of stormwater discharges;~~
 9631 ~~2. Numeric effluent limitations are infeasible; or~~
 9632 ~~3. The practices are reasonably necessary to achieve effluent limitations and standards~~
 9633 ~~or to carry out the purposes and intent of the Stormwater Management Act, the State~~
 9634 ~~Water Control Law, and the CWA.~~
- 9635 ~~J. Reissued state permits.~~
- 9636 ~~1. In the case of effluent limitations established on the basis of § 402(a)(1)(B) of the CWA,~~
 9637 ~~a state permit may not be renewed, reissued, or modified on the basis of effluent~~
 9638 ~~guidelines promulgated under § 304(b) of the CWA subsequent to the original issuance of~~
 9639 ~~such state permit, to contain effluent limitations that are less stringent than the comparable~~
 9640 ~~effluent limitations in the previous state permit. In the case of effluent limitations~~
 9641 ~~established on the basis of § 301(b)(1)(C) or § 303(d) or (e) of the CWA, a state permit~~
 9642 ~~may not be renewed, reissued, or modified to contain effluent limitations that are less~~
 9643 ~~stringent than the comparable effluent limitations in the previous state permit except in~~
 9644 ~~compliance with § 303(d)(4) of the CWA.~~
- 9645 ~~2. Exceptions. A state permit with respect to which subdivision 1 of this subsection applies~~
 9646 ~~may be renewed, reissued, or modified to contain a less stringent effluent limitation~~
 9647 ~~applicable to a pollutant, if:~~
- 9648 ~~a. Material and substantial alterations or additions to the permitted facility occurred~~
 9649 ~~after permit issuance that justify the application of a less stringent effluent limitation;~~
- 9650 ~~b. (1) Information is available that was not available at the time of state permit issuance~~
 9651 ~~(other than revised regulations, guidance, or test methods) and that would have~~
 9652 ~~justified the application of a less stringent effluent limitation at the time of state permit~~
 9653 ~~issuance; or~~
- 9654 ~~(2) The department determines that technical mistakes or mistaken interpretations of~~
 9655 ~~the Act were made in issuing the state permit under § 402(a)(1)(B) of the CWA;~~
- 9656 ~~c. A less stringent effluent limitation is necessary because of events over which the~~
 9657 ~~state permittee has no control and for which there is no reasonably available remedy;~~

9658 ~~d. The state permittee has received a state permit modification under the Stormwater~~
 9659 ~~Management Act, the State Water Control Law, and § 301(c), 301(g), 301(h), 301(i),~~
 9660 ~~301(k), 301(n), or 316(a) of the CWA; or~~

9661 ~~e. The state permittee has installed the treatment facilities required to meet the effluent~~
 9662 ~~limitations in the previous state permit and has properly operated and maintained the~~
 9663 ~~facilities but has nevertheless been unable to achieve the previous effluent limitations,~~
 9664 ~~in which case the limitations in the reviewed, reissued, or modified state permit may~~
 9665 ~~reflect the level of pollutant control actually achieved (but shall not be less stringent~~
 9666 ~~than required by effluent guidelines in effect at the time of state permit renewal,~~
 9667 ~~reissuance, or modification).~~

9668 ~~Subdivision 2 b of this subsection shall not apply to any revised waste load allocations~~
 9669 ~~or any alternative grounds for translating water quality standards into effluent~~
 9670 ~~limitations, except where the cumulative effect of such revised allocations results in a~~
 9671 ~~decrease in the amount of pollutants discharged into the concerned waters, and such~~
 9672 ~~revised allocations are not the result of a discharger eliminating or substantially~~
 9673 ~~reducing its discharge of pollutants due to complying with the requirements of the Act~~
 9674 ~~or the CWA or for reasons otherwise unrelated to water quality.~~

9675 ~~3. In no event may a state permit with respect to which subdivision 2 of this subsection~~
 9676 ~~applies be renewed, reissued, or modified to contain an effluent limitation that is less~~
 9677 ~~stringent than required by effluent guidelines in effect at the time the state permit is~~
 9678 ~~renewed, reissued, or modified. In no event may such a state permit to discharge into~~
 9679 ~~waters be renewed, issued, or modified to contain a less stringent effluent limitation if the~~
 9680 ~~implementation of such limitation would result in a violation of a Virginia water quality~~
 9681 ~~standard applicable to such waters.~~

9682 ~~K. Navigation. Any conditions that the Secretary of the Army considers necessary to ensure~~
 9683 ~~that navigation and anchorage will not be substantially impaired in accordance with 9VAC25-870-~~
 9684 ~~570.~~

9685 ~~L. Qualifying state, tribal, or local programs.~~

9686 ~~1. For stormwater discharges associated with small construction activity identified in~~
 9687 ~~9VAC25-870-10, the department may include state permit conditions that incorporate~~
 9688 ~~qualifying state, tribal, or local erosion and sediment control program requirements by~~
 9689 ~~reference. Where a qualifying state, tribal, or local program does not include one or more~~
 9690 ~~of the elements in this subdivision, then the department must include those elements as~~
 9691 ~~conditions in the state permit. A qualifying state, tribal, or local erosion and sediment~~
 9692 ~~control program is one that includes:~~

9693 ~~a. Requirements for construction site operators to implement appropriate erosion and~~
 9694 ~~sediment control best management practices;~~

9695 ~~b. Requirements for construction site operators to control waste such as discarded~~
 9696 ~~building materials, concrete truck washout, chemicals, litter, and sanitary waste at the~~
 9697 ~~construction site that may cause adverse impacts to water quality;~~

9698 ~~c. Requirements for construction site operators to develop and implement a~~
 9699 ~~stormwater pollution prevention plan. A stormwater pollution prevention plan includes~~
 9700 ~~site descriptions; descriptions of appropriate control measures; copies of approved~~
 9701 ~~state, tribal or local requirements; maintenance procedures; inspection procedures;~~
 9702 ~~and identification of nonstormwater discharges; and~~

9703 ~~d. Requirements to submit a site plan for review that incorporates consideration of~~
 9704 ~~potential water quality impacts.~~

9705 2. For stormwater discharges from construction activity that does not meet the definition
 9706 of a small construction activity, the department may include state permit conditions that
 9707 incorporate qualifying state, tribal, or local erosion and sediment control program
 9708 requirements by reference. A qualifying state, tribal or local erosion and sediment control
 9709 program is one that includes the elements listed in subdivision 1 of this subsection and
 9710 any additional requirements necessary to achieve the applicable technology-based
 9711 standards of "best available technology" and "best conventional technology" based on the
 9712 best professional judgment of the state permit writer.

9713 **9VAC25-870-470. Calculating state permit conditions. (Repealed.)**

9714 A. State permit effluent limitations, monitoring requirements, standards and prohibitions shall
 9715 be established for each outfall or discharge point of the permitted facility, except as otherwise
 9716 provided under 9VAC25-870-460.

9717 B. All state permit effluent limitations, standards, or prohibitions for a metal shall be expressed
 9718 in terms of total recoverable metal as defined in 40 CFR Part 136 unless:

- 9719 1. An applicable effluent standard or limitation has been promulgated under the CWA and
 9720 specifies the limitation for the metal in the dissolved or valent or total form; or
- 9721 2. In establishing state permit limitations on a case-by-case basis under 40 CFR 125.3, it
 9722 is necessary to express the limitation on the metal in the dissolved or valent or total form
 9723 to carry out the provisions of the CWA, Stormwater Management Act and the State Water
 9724 Control Law; or
- 9725 3. All approved analytical methods for the metal inherently measure only its dissolved form
 9726 (e.g., hexavalent chromium).

9727 C. Discharges that are not continuous, as defined in 9VAC25-870-10, shall be particularly
 9728 described and limited, considering the following factors, as appropriate:

- 9729 1. Frequency;
- 9730 2. Total mass;
- 9731 3. Maximum rate of discharge of pollutants during the discharge; and
- 9732 4. Prohibition or limitation of specified pollutants by mass, concentration, or other
 9733 appropriate measure.

9734 D. Mass Limitations.

9735 1. All pollutants limited in state permits shall have limitations, standards or prohibitions
 9736 expressed in terms of mass except:

- 9737 a. For pH, temperature, radiation, or other pollutants that cannot appropriately be
 9738 expressed by mass;
- 9739 b. When applicable standards and limitations are expressed in terms of other units of
 9740 measurement; or
- 9741 c. If in establishing technology-based state permit limitations on a case-by-case basis,
 9742 limitations expressed in terms of mass are infeasible because the mass of the pollutant
 9743 discharged cannot be related to a measure of operation (for example, discharges of
 9744 TSS from certain mining operations), and state permit conditions ensure that dilution
 9745 will not be used as a substitute for treatment.

9746 2. Pollutants limited in terms of mass additionally may be limited in terms of other units of
 9747 measurement, and the state permit shall require the state permittee to comply with both
 9748 limitations.

9749 **9VAC25-870-470. Calculating state permit conditions. (Repealed.)**

9750 A. State permit effluent limitations, monitoring requirements, standards and prohibitions shall
9751 be established for each outfall or discharge point of the permitted facility, except as otherwise
9752 provided under 9VAC25-870-460.

9753 B. All state permit effluent limitations, standards, or prohibitions for a metal shall be expressed
9754 in terms of total recoverable metal as defined in 40 CFR Part 136 unless:

9755 1. An applicable effluent standard or limitation has been promulgated under the CWA and
9756 specifies the limitation for the metal in the dissolved or valent or total form; or

9757 2. In establishing state permit limitations on a case-by-case basis under 40 CFR 125.3, it
9758 is necessary to express the limitation on the metal in the dissolved or valent or total form
9759 to carry out the provisions of the CWA, Stormwater Management Act and the State Water
9760 Control Law; or

9761 3. All approved analytical methods for the metal inherently measure only its dissolved form
9762 (e.g., hexavalent chromium).

9763 C. Discharges that are not continuous, as defined in 9VAC25-870-10, shall be particularly
9764 described and limited, considering the following factors, as appropriate:

9765 1. Frequency;

9766 2. Total mass;

9767 3. Maximum rate of discharge of pollutants during the discharge; and

9768 4. Prohibition or limitation of specified pollutants by mass, concentration, or other
9769 appropriate measure.

9770 D. Mass Limitations.

9771 1. All pollutants limited in state permits shall have limitations, standards or prohibitions
9772 expressed in terms of mass except:

9773 a. For pH, temperature, radiation, or other pollutants that cannot appropriately be
9774 expressed by mass;

9775 b. When applicable standards and limitations are expressed in terms of other units of
9776 measurement; or

9777 c. If in establishing technology-based state permit limitations on a case-by-case basis,
9778 limitations expressed in terms of mass are infeasible because the mass of the pollutant
9779 discharged cannot be related to a measure of operation (for example, discharges of
9780 TSS from certain mining operations), and state permit conditions ensure that dilution
9781 will not be used as a substitute for treatment.

9782 2. Pollutants limited in terms of mass additionally may be limited in terms of other units of
9783 measurement, and the state permit shall require the state permittee to comply with both
9784 limitations.

9785 **9VAC25-870-480. Duration of state permits. (Repealed.)**

9786 A. State permits shall be effective for a fixed term not to exceed five years.

9787 B. Except as provided in 9VAC25-870-330, the term of a state permit shall not be extended
9788 by modification beyond the maximum duration specified in this section.

9789 C. The department may issue any state permit for a duration that is less than the full allowable
9790 term under this section.

9791 D. A state permit may be issued to expire on or after the statutory deadline set forth in §§
9792 301(b)(2) (A), (C), and (E) of the CWA, if the state permit includes effluent limitations to meet the
9793 requirements of §§ 301(b)(2) (A), (C), (D), (E) and (F) of the CWA, whether or not applicable
9794 effluent limitations guidelines have been promulgated or approved.

9795 **9VAC25-870-480. Duration of state permits. (Repealed.)**

9796 A. State permits shall be effective for a fixed term not to exceed five years.

9797 B. Except as provided in 9VAC25-870-330, the term of a state permit shall not be extended
9798 by modification beyond the maximum duration specified in this section.

9799 C. The department may issue any state permit for a duration that is less than the full allowable
9800 term under this section.

9801 D. A state permit may be issued to expire on or after the statutory deadline set forth in §§
9802 301(b)(2) (A), (C), and (E) of the CWA, if the state permit includes effluent limitations to meet the
9803 requirements of §§ 301(b)(2) (A), (C), (D), (E) and (F) of the CWA, whether or not applicable
9804 effluent limitations guidelines have been promulgated or approved.

9805 **9VAC25-870-490. Schedules of compliance. (Repealed.)**

9806 A. The state permit may, when appropriate, specify a schedule of compliance leading to
9807 compliance with the Act, the CWA and regulations.

9808 1. Any schedules of compliance under this section shall require compliance as soon as
9809 possible, but not later than the applicable statutory deadline under the CWA.

9810 2. The first state permit issued to a new source or a new discharger shall contain a
9811 schedule of compliance only when necessary to allow a reasonable opportunity to attain
9812 compliance with requirements issued or revised after commencement of construction but
9813 less than three years before commencement of the relevant discharge. For recommencing
9814 dischargers, a schedule of compliance shall be available only when necessary to allow a
9815 reasonable opportunity to attain compliance with requirements issued or revised less than
9816 three years before recommencement of discharge.

9817 3. Schedules of compliance may be established in state permits for existing sources that
9818 are reissued or modified to contain new or more restrictive water quality-based effluent
9819 limitations. The schedule may allow a reasonable period of time, not to exceed the term
9820 of the state permit, for the discharger to attain compliance with the water quality-based
9821 limitations.

9822 4. Except as provided in subdivision B 1 b of this section, if a state permit establishes a
9823 schedule of compliance that exceeds one year from the date of state permit issuance, the
9824 schedule shall set forth interim requirements and the dates for their achievement.

9825 a. The time between interim dates shall not exceed one year.

9826 b. If the time necessary for completion of any interim requirement is more than one
9827 year and is not readily divisible into stages for completion, the state permit shall specify
9828 interim dates for the submission of reports of progress toward completion of the interim
9829 requirements and indicate a projected completion date.

9830 5. The state permit shall be written to require that no later than 14 days following each
9831 interim date and the final date of compliance, the state permittee shall notify the
9832 department in writing of its compliance or noncompliance with the interim or final
9833 requirements, or submit progress reports if subdivision 4 b of this subsection is applicable.

9834 B. A state permit applicant or state permittee may cease conducting regulated activities (by
9835 termination of direct discharge for sources) rather than continuing to operate and meet state
9836 permit requirements as follows:

9837 1. If the state permittee decides to cease conducting regulated activities at a given time
9838 within the term of a state permit that has already been issued:

9839 a. The state permit may be modified to contain a new or additional schedule leading
9840 to timely cessation of activities; or

9841 b. ~~The state permittee shall cease conducting permitted activities before~~
 9842 ~~noncompliance with any interim or final compliance schedule requirement already~~
 9843 ~~specified in the state permit;~~

9844 2. ~~If the decision to cease conducting regulated activities is made before issuance of a~~
 9845 ~~state permit whose term will include the termination date, the state permit shall contain a~~
 9846 ~~schedule leading to termination which will ensure timely compliance with applicable~~
 9847 ~~requirements no later than the statutory deadline;~~

9848 3. ~~If the state permittee is undecided whether to cease conducting regulated activities, the~~
 9849 ~~department may issue or modify a state permit to contain two schedules as follows:~~

9850 a. ~~Both schedules shall contain an identical interim deadline requiring a final decision~~
 9851 ~~on whether to cease conducting regulated activities no later than a date that ensures~~
 9852 ~~sufficient time to comply with applicable requirements in a timely manner if the decision~~
 9853 ~~is to continue conducting regulated activities;~~

9854 b. ~~One schedule shall lead to timely compliance with applicable requirements no later~~
 9855 ~~than the statutory deadline;~~

9856 c. ~~The second schedule shall lead to cessation of regulated activities by a date that~~
 9857 ~~will ensure timely compliance with applicable requirements no later than the statutory~~
 9858 ~~deadline; and~~

9859 d. ~~Each state permit containing two schedules shall include a requirement that after~~
 9860 ~~the state permittee has made a final decision under subdivision 3 a of this subsection~~
 9861 ~~it shall follow the schedule leading to compliance if the decision is to continue~~
 9862 ~~conducting regulated activities, and follow the schedule leading to termination if the~~
 9863 ~~decision is to cease conducting regulated activities; and~~

9864 4. ~~The state permit applicant's or state permittee's decision to cease conducting regulated~~
 9865 ~~activities shall be evidenced by a firm public commitment satisfactory to the department,~~
 9866 ~~such as a resolution of the board of directors of a corporation.~~

9867 **9VAC25-870-490. Schedules of compliance. (Repealed.)**

9868 A. ~~The state permit may, when appropriate, specify a schedule of compliance leading to~~
 9869 ~~compliance with the Act, the CWA and regulations.~~

9870 1. ~~Any schedules of compliance under this section shall require compliance as soon as~~
 9871 ~~possible, but not later than the applicable statutory deadline under the CWA.~~

9872 2. ~~The first state permit issued to a new source or a new discharger shall contain a~~
 9873 ~~schedule of compliance only when necessary to allow a reasonable opportunity to attain~~
 9874 ~~compliance with requirements issued or revised after commencement of construction but~~
 9875 ~~less than three years before commencement of the relevant discharge. For recommencing~~
 9876 ~~dischargers, a schedule of compliance shall be available only when necessary to allow a~~
 9877 ~~reasonable opportunity to attain compliance with requirements issued or revised less than~~
 9878 ~~three years before recommencement of discharge.~~

9879 3. ~~Schedules of compliance may be established in state permits for existing sources that~~
 9880 ~~are reissued or modified to contain new or more restrictive water quality-based effluent~~
 9881 ~~limitations. The schedule may allow a reasonable period of time, not to exceed the term~~
 9882 ~~of the state permit, for the discharger to attain compliance with the water quality-based~~
 9883 ~~limitations.~~

9884 4. ~~Except as provided in subdivision B 1 b of this section, if a state permit establishes a~~
 9885 ~~schedule of compliance that exceeds one year from the date of state permit issuance, the~~
 9886 ~~schedule shall set forth interim requirements and the dates for their achievement.~~

9887 a. ~~The time between interim dates shall not exceed one year.~~

9934 B. If the department tentatively decides to deny the individual state permit application, the
 9935 owner shall be advised of that decision and of the changes necessary to obtain approval. The
 9936 owner may withdraw the application prior to department action. If the application is not withdrawn
 9937 or modified to obtain the tentative approval to issue, the department shall provide public notice
 9938 and opportunity for a public hearing prior to department action on the application.

9939 C. If the department tentatively decides to issue a general permit, a draft general permit shall
 9940 be prepared under subsection D of this section.

9941 D. If the department decides to prepare a draft state permit, the draft state permit shall contain
 9942 the following information:

- 9943 1. All conditions under 9VAC25-870-430 and 9VAC25-870-450;
- 9944 2. All compliance schedules under 9VAC25-870-490;
- 9945 3. All monitoring requirements under 9VAC25-870-460; and
- 9946 4. Effluent limitations, standards, prohibitions and conditions under 9VAC25-870-430,
 9947 9VAC25-870-440, and 9VAC25-870-460, and all variances that are to be included.

9948 **9VAC25-870-500. Draft state permits. (Repealed.)**

9949 A. Once an application for an individual state permit is complete, the department shall
 9950 tentatively decide whether to prepare a draft individual state permit or to deny the application.

9951 B. If the department tentatively decides to deny the individual state permit application, the
 9952 owner shall be advised of that decision and of the changes necessary to obtain approval. The
 9953 owner may withdraw the application prior to department action. If the application is not withdrawn
 9954 or modified to obtain the tentative approval to issue, the department shall provide public notice
 9955 and opportunity for a public hearing prior to department action on the application.

9956 C. If the department tentatively decides to issue a general permit, a draft general permit shall
 9957 be prepared under subsection D of this section.

9958 D. If the department decides to prepare a draft state permit, the draft state permit shall contain
 9959 the following information:

- 9960 1. All conditions under 9VAC25-870-430 and 9VAC25-870-450;
- 9961 2. All compliance schedules under 9VAC25-870-490;
- 9962 3. All monitoring requirements under 9VAC25-870-460; and
- 9963 4. Effluent limitations, standards, prohibitions and conditions under 9VAC25-870-430,
 9964 9VAC25-870-440, and 9VAC25-870-460, and all variances that are to be included.

9965 **9VAC25-870-510. Statement of basis. (Repealed.)**

9966 A statement of basis shall be prepared for every draft state permit for which a fact sheet under
 9967 9VAC25-870-520 is not prepared. The statement of basis shall briefly describe the derivation of
 9968 the conditions of the draft state permit and the reasons for them or, in the case of notices of intent
 9969 to deny or terminate, reasons supporting the tentative decision. The statement of basis shall be
 9970 sent to the state permit applicant and, on request, to any other person.

9971 **9VAC25-870-510. Statement of basis. (Repealed.)**

9972 A statement of basis shall be prepared for every draft state permit for which a fact sheet under
 9973 9VAC25-870-520 is not prepared. The statement of basis shall briefly describe the derivation of
 9974 the conditions of the draft state permit and the reasons for them or, in the case of notices of intent
 9975 to deny or terminate, reasons supporting the tentative decision. The statement of basis shall be
 9976 sent to the state permit applicant and, on request, to any other person.

9977 **9VAC25-870-520. Fact sheet. (Repealed.)**

9978 A. A fact sheet shall be prepared for every draft individual state permit for a major facility or
 9979 activity, for every general permit, for every draft state permit that incorporates a variance or

9980 requires an explanation under subsection B 8 of this section, and for every draft state permit that
 9981 the department finds is the subject of wide-spread public interest or raises major issues. The fact
 9982 sheet shall briefly set forth the principal facts and the significant factual, legal, methodological and
 9983 policy questions considered in preparing the draft state permit. The department shall send this
 9984 fact sheet to the state permit applicant and, on request, to any other person.

9985 B. The fact sheet shall include, when applicable:

9986 1. A brief description of the type of facility or activity that is the subject of the draft state
 9987 permit;

9988 2. The type and quantity of wastes, fluids, or pollutants that are proposed to be or are
 9989 being treated, stored, disposed of, injected, emitted, or discharged;

9990 3. A brief summary of the basis for the draft state permit conditions including references
 9991 to applicable statutory or regulatory provisions;

9992 4. Reasons why any requested variances or alternatives to required standards do or do
 9993 not appear justified;

9994 5. A description of the procedures for reaching a final decision on the draft state permit
 9995 including:

9996 a. The beginning and ending dates of the comment period for the draft state permit
 9997 and the address where comments will be received;

9998 b. Procedures for requesting a public hearing and the nature of that hearing; and

9999 c. Any other procedures by which the public may participate in the final decision;

10000 6. Name, telephone number, and email address of a person to contact for additional
 10001 information;

10002 7. Any calculations or other necessary explanation of the derivation of specific effluent
 10003 limitations and conditions or standards for sewage sludge use or disposal, including a
 10004 citation to the applicable effluent limitation guideline, performance standard, or standard
 10005 for sewage sludge use or disposal and reasons why they are applicable or an explanation
 10006 of how the alternate effluent limitations were developed;

10007 8. When the draft state permit contains any of the following conditions, an explanation of
 10008 the reasons why such conditions are applicable:

10009 a. Limitations to control toxic pollutants;

10010 b. Limitations on indicator pollutants;

10011 c. Technology-based limitations set on a case-by-case basis;

10012 d. Limitations to meet the criteria for state permit issuance under 9VAC25-870-310; or

10013 e. Waivers from monitoring requirements granted under 9VAC25-870-460 A; and

10014 9. When appropriate, a sketch or detailed description of the location of the discharge or
 10015 regulated activity described in the application.

10016 **9VAC25-870-520. Fact sheet. (Repealed.)**

10017 A. A fact sheet shall be prepared for every draft individual state permit for a major facility or
 10018 activity, for every general permit, for every draft state permit that incorporates a variance or
 10019 requires an explanation under subsection B 8 of this section, and for every draft state permit that
 10020 the department finds is the subject of wide-spread public interest or raises major issues. The fact
 10021 sheet shall briefly set forth the principal facts and the significant factual, legal, methodological and
 10022 policy questions considered in preparing the draft state permit. The department shall send this
 10023 fact sheet to the state permit applicant and, on request, to any other person.

10024 B. The fact sheet shall include, when applicable:

- 10025 ~~1. A brief description of the type of facility or activity that is the subject of the draft state~~
 10026 ~~permit;~~
- 10027 ~~2. The type and quantity of wastes, fluids, or pollutants that are proposed to be or are~~
 10028 ~~being treated, stored, disposed of, injected, emitted, or discharged;~~
- 10029 ~~3. A brief summary of the basis for the draft state permit conditions including references~~
 10030 ~~to applicable statutory or regulatory provisions;~~
- 10031 ~~4. Reasons why any requested variances or alternatives to required standards do or do~~
 10032 ~~not appear justified;~~
- 10033 ~~5. A description of the procedures for reaching a final decision on the draft state permit~~
 10034 ~~including:~~
- 10035 ~~a. The beginning and ending dates of the comment period for the draft state permit~~
 10036 ~~and the address where comments will be received;~~
- 10037 ~~b. Procedures for requesting a public hearing and the nature of that hearing; and~~
- 10038 ~~c. Any other procedures by which the public may participate in the final decision;~~
- 10039 ~~6. Name, telephone number, and email address of a person to contact for additional~~
 10040 ~~information;~~
- 10041 ~~7. Any calculations or other necessary explanation of the derivation of specific effluent~~
 10042 ~~limitations and conditions or standards for sewage sludge use or disposal, including a~~
 10043 ~~citation to the applicable effluent limitation guideline, performance standard, or standard~~
 10044 ~~for sewage sludge use or disposal and reasons why they are applicable or an explanation~~
 10045 ~~of how the alternate effluent limitations were developed;~~
- 10046 ~~8. When the draft state permit contains any of the following conditions, an explanation of~~
 10047 ~~the reasons why such conditions are applicable:~~
- 10048 ~~a. Limitations to control toxic pollutants;~~
- 10049 ~~b. Limitations on indicator pollutants;~~
- 10050 ~~c. Technology-based limitations set on a case-by-case basis;~~
- 10051 ~~d. Limitations to meet the criteria for state permit issuance under 9VAC25-870-310; or~~
- 10052 ~~e. Waivers from monitoring requirements granted under 9VAC25-870-460 A; and~~
- 10053 ~~9. When appropriate, a sketch or detailed description of the location of the discharge or~~
 10054 ~~regulated activity described in the application.~~

10055 ~~**9VAC25-870-530. Public notice of draft state permit actions and public comment period.**~~
 10056 ~~**(Repealed.)**~~

10057 ~~A. Scope.~~

- 10058 ~~1. The department shall give public notice that the following actions have occurred:~~
- 10059 ~~a. A draft state permit has been prepared under 9VAC25-870-500 D;~~
- 10060 ~~b. A public hearing has been scheduled under 9VAC25-870-550; or~~
- 10061 ~~c. A new source determination has been made under 9VAC25-870-420.~~
- 10062 ~~2. No public notice is required when a request for an individual state permit modification,~~
 10063 ~~revocation and reissuance, or termination is denied under 9VAC25-870-610 B. Written~~
 10064 ~~notice of that denial shall be given to the requester and to the state permittee. Public notice~~
 10065 ~~shall not be required for submission or approval of plans and specifications or conceptual~~
 10066 ~~engineering reports not required to be submitted as part of the application.~~
- 10067 ~~3. Public notices may describe more than one draft state permit or draft state permit~~
 10068 ~~actions.~~

10069 ~~B. Timing.~~

- 10070 1. ~~Public notice of the preparation of a draft state permit required under subsection A of~~
 10071 ~~this section shall allow at least 30 days for public comment.~~
- 10072 2. ~~Public notice of a public hearing shall be given at least 30 days before the hearing.~~
 10073 ~~(Public notice of the hearing may be given at the same time as public notice of the draft~~
 10074 ~~state permit and the two notices may be combined.)~~
- 10075 C. ~~Methods. Public notice of activities described in subdivision A 1 of this section shall be~~
 10076 ~~given by the following methods:~~
- 10077 1. ~~By mailing, either by electronic or postal delivery, a copy of a notice to the following~~
 10078 ~~persons (any person otherwise entitled to receive notice under this subdivision may waive~~
 10079 ~~his rights to receive notice for any classes and categories of permits):~~
- 10080 a. ~~The state permit applicant (except for general permits when there is no state permit~~
 10081 ~~applicant);~~
- 10082 b. ~~Any other agency that the department knows has issued or is required to issue a~~
 10083 ~~VPDES permit;~~
- 10084 c. ~~Federal and state agencies with jurisdiction over fish, shellfish, and wildlife~~
 10085 ~~resources and over coastal zone management plans, the Advisory Council on Historic~~
 10086 ~~Preservation, State Historic Preservation Officers, including any affected states (Indian~~
 10087 ~~Tribes);~~
- 10088 d. ~~Any state agency responsible for plan development under § 208(b)(2), 208(b)(4) or~~
 10089 ~~§ 303(e) of the CWA and the U.S. Army Corps of Engineers, the U.S. Fish and Wildlife~~
 10090 ~~Service and the National Marine Fisheries Service;~~
- 10091 e. ~~Persons on a mailing list developed by:~~
- 10092 (1) ~~Including those who request in writing to be on the list;~~
- 10093 (2) ~~Soliciting persons for area lists from participants in past state permit proceedings~~
 10094 ~~in that area; and~~
- 10095 (3) ~~Notifying the public of the opportunity to be put on the mailing list through periodic~~
 10096 ~~publication in the public press, and in such publications as EPA regional and state~~
 10097 ~~funded newsletters, environmental bulletins, or state law journals. (The department~~
 10098 ~~may update the mailing list from time to time by requesting written indication of~~
 10099 ~~continued interest from those listed. The department may delete from the list the name~~
 10100 ~~of any person who fails to respond to such a request.);~~
- 10101 f. (1) ~~Any unit of local government having jurisdiction over the area where the facility~~
 10102 ~~is proposed to be located; and~~
- 10103 (2) ~~Each state agency having any authority under state law with respect to the~~
 10104 ~~construction or operation of such facility;~~
- 10105 2. ~~By publication once a week for two successive weeks in a newspaper of general~~
 10106 ~~circulation in the area affected by the discharge. The cost of public notice shall be paid by~~
 10107 ~~the owner; and~~
- 10108 3. ~~Any other method reasonably calculated to give actual notice of the action in question~~
 10109 ~~to the persons potentially affected by it, including press releases or any other forum or~~
 10110 ~~medium to elicit public participation.~~
- 10111 D. ~~Contents.~~
- 10112 1. ~~All public notices issued under this part shall contain the following minimum information:~~
- 10113 a. ~~Name and address of the office processing the state permit action for which notice~~
 10114 ~~is being given;~~

- 10115 ~~b. Name and address of the state permittee or state permit applicant and, if different,~~
 10116 ~~of the facility or activity regulated by the state permit, except in the case of draft general~~
 10117 ~~permits;~~
- 10118 ~~c. A brief description of the business conducted at the facility or activity described in~~
 10119 ~~the individual state permit application or the draft state permit, for general permits~~
 10120 ~~when there is no application;~~
- 10121 ~~d. Name, address, telephone number, and email address of a person from whom~~
 10122 ~~interested persons may obtain further information, including copies of the draft state~~
 10123 ~~permit, statement of basis or fact sheet, and the application;~~
- 10124 ~~e. A brief description of the procedures for submitting comments and the time and~~
 10125 ~~place of any public hearing that will be held, including a statement of procedures to~~
 10126 ~~request a public hearing (unless a hearing has already been scheduled) and other~~
 10127 ~~procedures by which the public may participate in the final individual or general state~~
 10128 ~~permit decision;~~
- 10129 ~~f. For an individual state permit, a general description of the location of each existing~~
 10130 ~~or proposed discharge point and the name of the receiving water; and~~
- 10131 ~~g. Any additional information considered necessary or proper.~~
- 10132 ~~2. In addition to the general public notice described in subdivision 1 of this subsection, the~~
 10133 ~~public notice of a public hearing under 9VAC25-870-550 shall contain the following~~
 10134 ~~information:~~
- 10135 ~~a. Reference to the date of previous public notices relating to the draft state permit;~~
- 10136 ~~b. Date, time, and place of the public hearing;~~
- 10137 ~~c. A brief description of the nature and purpose of the public hearing, including the~~
 10138 ~~applicable rules and procedures; and~~
- 10139 ~~d. A concise statement of the issues raised by the persons requesting the public~~
 10140 ~~hearing.~~
- 10141 ~~E. In addition to the general public notice described in subdivision D 1 of this section, all~~
 10142 ~~persons identified in subdivisions C 1 a through 1 d of this section shall be mailed, either by~~
 10143 ~~electronic or postal delivery, a copy of the fact sheet or statement of basis, the individual state~~
 10144 ~~permit application (if any) and the draft state permit (if any).~~
- 10145 **9VAC25-870-530. Public notice of draft state permit actions and public comment period.**
 10146 **(Repealed.)**
- 10147 ~~A. Scope.~~
- 10148 ~~1. The department shall give public notice that the following actions have occurred:~~
- 10149 ~~a. A draft state permit has been prepared under 9VAC25-870-500 D;~~
- 10150 ~~b. A public hearing has been scheduled under 9VAC25-870-550; or~~
- 10151 ~~c. A new source determination has been made under 9VAC25-870-420.~~
- 10152 ~~2. No public notice is required when a request for an individual state permit modification,~~
 10153 ~~revocation and reissuance, or termination is denied under 9VAC25-870-610 B. Written~~
 10154 ~~notice of that denial shall be given to the requester and to the state permittee. Public notice~~
 10155 ~~shall not be required for submission or approval of plans and specifications or conceptual~~
 10156 ~~engineering reports not required to be submitted as part of the application.~~
- 10157 ~~3. Public notices may describe more than one draft state permit or draft state permit~~
 10158 ~~actions.~~
- 10159 ~~B. Timing.~~

- 10160 1. ~~Public notice of the preparation of a draft state permit required under subsection A of~~
 10161 ~~this section shall allow at least 30 days for public comment.~~
- 10162 2. ~~Public notice of a public hearing shall be given at least 30 days before the hearing.~~
 10163 ~~(Public notice of the hearing may be given at the same time as public notice of the draft~~
 10164 ~~state permit and the two notices may be combined.)~~
- 10165 C. ~~Methods. Public notice of activities described in subdivision A 1 of this section shall be~~
 10166 ~~given by the following methods:~~
- 10167 1. ~~By mailing, either by electronic or postal delivery, a copy of a notice to the following~~
 10168 ~~persons (any person otherwise entitled to receive notice under this subdivision may waive~~
 10169 ~~his rights to receive notice for any classes and categories of permits):~~
- 10170 a. ~~The state permit applicant (except for general permits when there is no state permit~~
 10171 ~~applicant);~~
- 10172 b. ~~Any other agency that the department knows has issued or is required to issue a~~
 10173 ~~VPDES permit;~~
- 10174 c. ~~Federal and state agencies with jurisdiction over fish, shellfish, and wildlife~~
 10175 ~~resources and over coastal zone management plans, the Advisory Council on Historic~~
 10176 ~~Preservation, State Historic Preservation Officers, including any affected states (Indian~~
 10177 ~~Tribes);~~
- 10178 d. ~~Any state agency responsible for plan development under § 208(b)(2), 208(b)(4) or~~
 10179 ~~§ 303(e) of the CWA and the U.S. Army Corps of Engineers, the U.S. Fish and Wildlife~~
 10180 ~~Service and the National Marine Fisheries Service;~~
- 10181 e. ~~Persons on a mailing list developed by:~~
- 10182 ~~(1) Including those who request in writing to be on the list;~~
- 10183 ~~(2) Soliciting persons for area lists from participants in past state permit proceedings~~
 10184 ~~in that area; and~~
- 10185 ~~(3) Notifying the public of the opportunity to be put on the mailing list through periodic~~
 10186 ~~publication in the public press, and in such publications as EPA regional and state~~
 10187 ~~funded newsletters, environmental bulletins, or state law journals. (The department~~
 10188 ~~may update the mailing list from time to time by requesting written indication of~~
 10189 ~~continued interest from those listed. The department may delete from the list the name~~
 10190 ~~of any person who fails to respond to such a request.);~~
- 10191 f. ~~(1) Any unit of local government having jurisdiction over the area where the facility~~
 10192 ~~is proposed to be located; and~~
- 10193 ~~(2) Each state agency having any authority under state law with respect to the~~
 10194 ~~construction or operation of such facility;~~
- 10195 2. ~~By publication once a week for two successive weeks in a newspaper of general~~
 10196 ~~circulation in the area affected by the discharge. The cost of public notice shall be paid by~~
 10197 ~~the owner; and~~
- 10198 3. ~~Any other method reasonably calculated to give actual notice of the action in question~~
 10199 ~~to the persons potentially affected by it, including press releases or any other forum or~~
 10200 ~~medium to elicit public participation.~~
- 10201 D. ~~Contents.~~
- 10202 1. ~~All public notices issued under this part shall contain the following minimum information:~~
- 10203 a. ~~Name and address of the office processing the state permit action for which notice~~
 10204 ~~is being given;~~

- 10205 ~~b. Name and address of the state permittee or state permit applicant and, if different,~~
 10206 ~~of the facility or activity regulated by the state permit, except in the case of draft general~~
 10207 ~~permits;~~
- 10208 ~~c. A brief description of the business conducted at the facility or activity described in~~
 10209 ~~the individual state permit application or the draft state permit, for general permits~~
 10210 ~~when there is no application;~~
- 10211 ~~d. Name, address, telephone number, and email address of a person from whom~~
 10212 ~~interested persons may obtain further information, including copies of the draft state~~
 10213 ~~permit, statement of basis or fact sheet, and the application;~~
- 10214 ~~e. A brief description of the procedures for submitting comments and the time and~~
 10215 ~~place of any public hearing that will be held, including a statement of procedures to~~
 10216 ~~request a public hearing (unless a hearing has already been scheduled) and other~~
 10217 ~~procedures by which the public may participate in the final individual or general state~~
 10218 ~~permit decision;~~
- 10219 ~~f. For an individual state permit, a general description of the location of each existing~~
 10220 ~~or proposed discharge point and the name of the receiving water; and~~
- 10221 ~~g. Any additional information considered necessary or proper.~~
- 10222 ~~2. In addition to the general public notice described in subdivision 1 of this subsection, the~~
 10223 ~~public notice of a public hearing under 9VAC25-870-550 shall contain the following~~
 10224 ~~information:~~
- 10225 ~~a. Reference to the date of previous public notices relating to the draft state permit;~~
- 10226 ~~b. Date, time, and place of the public hearing;~~
- 10227 ~~c. A brief description of the nature and purpose of the public hearing, including the~~
 10228 ~~applicable rules and procedures; and~~
- 10229 ~~d. A concise statement of the issues raised by the persons requesting the public~~
 10230 ~~hearing.~~
- 10231 ~~E. In addition to the general public notice described in subdivision D 1 of this section, all~~
 10232 ~~persons identified in subdivisions C 1 a through 1 d of this section shall be mailed, either by~~
 10233 ~~electronic or postal delivery, a copy of the fact sheet or statement of basis, the individual state~~
 10234 ~~permit application (if any) and the draft state permit (if any).~~
- 10235 ~~**9VAC25-870-540. Public comments and requests for public hearings. (Repealed.)**~~
- 10236 ~~During the public comment period provided under 9VAC25-870-530, any interested person~~
 10237 ~~may submit written comments on the draft state permit and may request a public hearing, if no~~
 10238 ~~public hearing has already been scheduled. A request for a public hearing shall be in writing and~~
 10239 ~~shall meet the requirements of 9VAC25-870-550 and 9VAC25-870-555. All comments shall be~~
 10240 ~~considered in making the final decision and shall be answered as provided in 9VAC25-870-560.~~
- 10241 ~~**9VAC25-870-540. Public comments and requests for public hearings. (Repealed.)**~~
- 10242 ~~During the public comment period provided under 9VAC25-870-530, any interested person~~
 10243 ~~may submit written comments on the draft state permit and may request a public hearing, if no~~
 10244 ~~public hearing has already been scheduled. A request for a public hearing shall be in writing and~~
 10245 ~~shall meet the requirements of 9VAC25-870-550 and 9VAC25-870-555. All comments shall be~~
 10246 ~~considered in making the final decision and shall be answered as provided in 9VAC25-870-560.~~
- 10247 ~~**9VAC25-870-550. Public hearings. (Repealed.)**~~
- 10248 ~~A. 1. Procedures for public hearings and permits before the department are those set forth in~~
 10249 ~~9VAC25-870-555.~~
- 10250 ~~2. Public notice of the public hearing shall be given as specified in 9VAC25-870-530.~~

10251 ~~3. Any public hearing convened pursuant to this section shall be held in the geographical~~
 10252 ~~area of the proposed discharge, or in another appropriate area. Related groups of~~
 10253 ~~individual state permit applications may be considered at any such public hearing.~~

10254 ~~B. Any person may submit oral or written statements and data concerning the draft individual~~
 10255 ~~state permit. Reasonable limits may be set upon the time allowed for oral statements, and the~~
 10256 ~~submission of statements in writing may be required.~~

10257 ~~C. A recording or written transcript of the hearing shall be made available to the public.~~

10258 **9VAC25-870-550. Public hearings. (Repealed.)**

10259 ~~A. 1. Procedures for public hearings and permits before the department are those set forth in~~
 10260 ~~9VAC25-870-555.~~

10261 ~~2. Public notice of the public hearing shall be given as specified in 9VAC25-870-530.~~

10262 ~~3. Any public hearing convened pursuant to this section shall be held in the geographical~~
 10263 ~~area of the proposed discharge, or in another appropriate area. Related groups of~~
 10264 ~~individual state permit applications may be considered at any such public hearing.~~

10265 ~~B. Any person may submit oral or written statements and data concerning the draft individual~~
 10266 ~~state permit. Reasonable limits may be set upon the time allowed for oral statements, and the~~
 10267 ~~submission of statements in writing may be required.~~

10268 ~~C. A recording or written transcript of the hearing shall be made available to the public.~~

10269 **9VAC25-870-555. Criteria for requesting and granting a public hearing in a permit action.**
 10270 **(Repealed.)**

10271 ~~A. During the public comment period on a permit action in those instances where a public~~
 10272 ~~hearing is not mandatory under state or federal law or regulation, interested persons may request~~
 10273 ~~a public hearing to contest the action or terms and conditions of the permit.~~

10274 ~~B. Requests for a public hearing shall contain the following information:~~

10275 ~~1. The name and postal mailing or email address of the requester;~~

10276 ~~2. The names and addresses of all persons for whom the requester is acting as a~~
 10277 ~~representative;~~

10278 ~~3. The reason for the request for a public hearing;~~

10279 ~~4. A brief, informal statement setting forth the factual nature and extent of the interest of~~
 10280 ~~the requester or of the persons for whom the requester is acting as representative in the~~
 10281 ~~application or tentative determination, including an explanation of how and to what extent~~
 10282 ~~such interest would be directly and adversely affected by the issuance, denial,~~
 10283 ~~modification, or revocation of the permit in question; and~~

10284 ~~5. Where possible, specific references to the terms and the conditions of the permit in~~
 10285 ~~question, together with suggested revisions and alterations to those terms and conditions~~
 10286 ~~that the requester considers are needed to conform the permit to the intent and provisions~~
 10287 ~~of the basic laws of the State Water Control Board.~~

10288 ~~C. Upon completion of the public comment period on a permit action, the director shall review~~
 10289 ~~all timely requests for public hearing filed during the comment period on the permit action and,~~
 10290 ~~within 30 calendar days following the expiration of the time period for the submission of requests,~~
 10291 ~~shall grant a public hearing, unless the permittee or applicant agrees to a later date, if the director~~
 10292 ~~finds the following:~~

10293 ~~1. That there is a significant public interest in the issuance, denial, modification, or~~
 10294 ~~revocation of the permit in question as evidenced by receipt of a minimum of 25 individual~~
 10295 ~~requests for a public hearing;~~

- 10296 2. That the requesters raise substantial disputed issues relevant to the issuance, denial,
10297 modification, or revocation of the permit in question; and
- 10298 3. That the action requested by the interested party is not on its face inconsistent with or
10299 in violation of the basic laws of the State Water Control Board for a water permit action,
10300 federal law, or any regulation promulgated thereunder.
- 10301 D. The director shall notify by email or mail at his last known address (i) each requester and
10302 (ii) the applicant or permittee of the decision to grant or deny a public hearing.
- 10303 E. If the request for a public hearing is granted, the director shall:
- 10304 1. Schedule the hearing at a time between 45 and 75 days after emailing or mailing of the
10305 notice of the decision to grant the public hearing; and
- 10306 2. Cause, or require the applicant to publish, notice of a public hearing to be published
10307 once, in a newspaper of general circulation in the city or county where the facility or
10308 operation that is the subject of the permit or permit application is located at least 30 days
10309 before the hearing date.
- 10310 F. The public comment period shall remain open for 15 days after the close of the public
10311 hearing if required by § 62.1-44.15:01 of the Code of Virginia.
- 10312 G. The director may, at his discretion, convene a public hearing in a permit action.
- 10313 **9VAC25-870-555. Criteria for requesting and granting a public hearing in a permit action.**
10314 **(Repealed.)**
- 10315 A. During the public comment period on a permit action in those instances where a public
10316 hearing is not mandatory under state or federal law or regulation, interested persons may request
10317 a public hearing to contest the action or terms and conditions of the permit.
- 10318 B. Requests for a public hearing shall contain the following information:
- 10319 1. The name and postal mailing or email address of the requester;
- 10320 2. The names and addresses of all persons for whom the requester is acting as a
10321 representative;
- 10322 3. The reason for the request for a public hearing;
- 10323 4. A brief, informal statement setting forth the factual nature and extent of the interest of
10324 the requester or of the persons for whom the requester is acting as representative in the
10325 application or tentative determination, including an explanation of how and to what extent
10326 such interest would be directly and adversely affected by the issuance, denial,
10327 modification, or revocation of the permit in question; and
- 10328 5. Where possible, specific references to the terms and the conditions of the permit in
10329 question, together with suggested revisions and alterations to those terms and conditions
10330 that the requester considers are needed to conform the permit to the intent and provisions
10331 of the basic laws of the State Water Control Board.
- 10332 C. Upon completion of the public comment period on a permit action, the director shall review
10333 all timely requests for public hearing filed during the comment period on the permit action and,
10334 within 30 calendar days following the expiration of the time period for the submission of requests,
10335 shall grant a public hearing, unless the permittee or applicant agrees to a later date, if the director
10336 finds the following:
- 10337 1. That there is a significant public interest in the issuance, denial, modification, or
10338 revocation of the permit in question as evidenced by receipt of a minimum of 25 individual
10339 requests for a public hearing;
- 10340 2. That the requesters raise substantial disputed issues relevant to the issuance, denial,
10341 modification, or revocation of the permit in question; and

10342 3. That the action requested by the interested party is not on its face inconsistent with or
 10343 in violation of the basic laws of the State Water Control Board for a water permit action,
 10344 federal law, or any regulation promulgated thereunder.

10345 ~~D. The director shall notify by email or mail at his last known address (i) each requester and~~
 10346 ~~(ii) the applicant or permittee of the decision to grant or deny a public hearing.~~

10347 ~~E. If the request for a public hearing is granted, the director shall:~~

10348 ~~1. Schedule the hearing at a time between 45 and 75 days after emailing or mailing of the~~
 10349 ~~notice of the decision to grant the public hearing; and~~

10350 ~~2. Cause, or require the applicant to publish, notice of a public hearing to be published~~
 10351 ~~once, in a newspaper of general circulation in the city or county where the facility or~~
 10352 ~~operation that is the subject of the permit or permit application is located at least 30 days~~
 10353 ~~before the hearing date.~~

10354 ~~F. The public comment period shall remain open for 15 days after the close of the public~~
 10355 ~~hearing if required by § 62.1-44.15:01 of the Code of Virginia.~~

10356 ~~G. The director may, at his discretion, convene a public hearing in a permit action.~~

10357 **9VAC25-870-556. Controversial permits. (Repealed.)**

10358 ~~Before rendering a final decision on a controversial permit, the department shall publish a~~
 10359 ~~summary of public comments received during the applicable public comment period and public~~
 10360 ~~hearing. After such publication, the department shall publish responses to the public comment~~
 10361 ~~summary and hold a public hearing to provide an opportunity for individuals who previously~~
 10362 ~~commented, either at a public hearing or in writing during the applicable public comment period,~~
 10363 ~~to respond to the department's public comment summary and response. No new information will~~
 10364 ~~be accepted at that time. In making its decision, the department shall consider (i) the verbal and~~
 10365 ~~written comments received during the comment period and the public hearing made part of the~~
 10366 ~~record, (ii) any commentary of the board, and (iii) the agency files.~~

10367 **9VAC25-870-556. Controversial permits. (Repealed.)**

10368 ~~Before rendering a final decision on a controversial permit, the department shall publish a~~
 10369 ~~summary of public comments received during the applicable public comment period and public~~
 10370 ~~hearing. After such publication, the department shall publish responses to the public comment~~
 10371 ~~summary and hold a public hearing to provide an opportunity for individuals who previously~~
 10372 ~~commented, either at a public hearing or in writing during the applicable public comment period,~~
 10373 ~~to respond to the department's public comment summary and response. No new information will~~
 10374 ~~be accepted at that time. In making its decision, the department shall consider (i) the verbal and~~
 10375 ~~written comments received during the comment period and the public hearing made part of the~~
 10376 ~~record, (ii) any commentary of the board, and (iii) the agency files.~~

10377 **9VAC25-870-557. Controversial permits reporting. (Repealed.)**

10378 ~~At each regular meeting of the board, the department shall provide an overview and update~~
 10379 ~~regarding any controversial permits pending before the department that are relevant. Immediately~~
 10380 ~~after such presentation by the department, the board shall have an opportunity to respond to the~~
 10381 ~~department's presentation and provide commentary regarding such pending permits.~~

10382 **9VAC25-870-557. Controversial permits reporting. (Repealed.)**

10383 ~~At each regular meeting of the board, the department shall provide an overview and update~~
 10384 ~~regarding any controversial permits pending before the department that are relevant. Immediately~~
 10385 ~~after such presentation by the department, the board shall have an opportunity to respond to the~~
 10386 ~~department's presentation and provide commentary regarding such pending permits.~~

10387 **9VAC25-870-560. Response to comments. (Repealed.)**

10388 A. At the time that a final individual or general state permit is issued, the department shall
10389 issue a response to comments. This response shall:

10390 1. Specify which provisions, if any, of the draft individual or general state permit have been
10391 changed in the final individual or general state permit decision, and the reasons for the
10392 change; and

10393 2. Briefly describe and respond to all significant comments on the draft state permit raised
10394 during the public comment period, or during any public hearing.

10395 B. The response to comments shall be available to the public.

10396 **9VAC25-870-560. Response to comments. (Repealed.)**

10397 A. At the time that a final individual or general state permit is issued, the department shall
10398 issue a response to comments. This response shall:

10399 1. Specify which provisions, if any, of the draft individual or general state permit have been
10400 changed in the final individual or general state permit decision, and the reasons for the
10401 change; and

10402 2. Briefly describe and respond to all significant comments on the draft state permit raised
10403 during the public comment period, or during any public hearing.

10404 B. The response to comments shall be available to the public.

10405 **9VAC25-870-570. Conditions requested by the Corps of Engineers and other government
10406 agencies. (Repealed.)**

10407 A. If during the comment period for a draft state permit, the district engineer advises the
10408 department in writing that anchorage and navigation of any of the waters of the United States
10409 would be substantially impaired by the granting of an individual or general state permit, the
10410 individual or general state permit shall be denied and the individual state permit applicant so
10411 notified. If the district engineer advises the department that imposing specified conditions upon
10412 the individual or general state permit is necessary to avoid any substantial impairment of
10413 anchorage or navigation, then the department shall include the specified conditions in the
10414 individual or general state permit. Review or appeal of denial of an individual or general state
10415 permit or of conditions specified by the district engineer shall be made through the applicable
10416 procedures of the Corps of Engineers, and may not be made through the procedures provided in
10417 this part. If the conditions are stayed by a court of competent jurisdiction or by applicable
10418 procedures of the Corps of Engineers, those conditions shall be considered stayed in the
10419 individual or general state permit for the duration of that stay.

10420 B. If during the comment period the U.S. Fish and Wildlife Service, the National Marine
10421 Fisheries Service, or any other state or federal agency with jurisdiction over fish, wildlife, or public
10422 health advises the department in writing that the imposition of specified conditions upon the
10423 individual or general state permit is necessary to avoid substantial impairment of fish, shellfish, or
10424 wildlife resources, the department may include the specified conditions in the individual or general
10425 state permit to the extent they are determined necessary to carry out the provisions of this
10426 regulation, the Act and of the CWA.

10427 C. In appropriate cases the department may consult with one or more of the agencies referred
10428 to in this section before issuing a draft state permit and may reflect their views in the statement of
10429 basis, the fact sheet, or the draft state permit.

10430 **9VAC25-870-570. Conditions requested by the Corps of Engineers and other government
10431 agencies. (Repealed.)**

10432 A. If during the comment period for a draft state permit, the district engineer advises the
10433 department in writing that anchorage and navigation of any of the waters of the United States

10434 would be substantially impaired by the granting of an individual or general state permit, the
 10435 individual or general state permit shall be denied and the individual state permit applicant so
 10436 notified. If the district engineer advises the department that imposing specified conditions upon
 10437 the individual or general state permit is necessary to avoid any substantial impairment of
 10438 anchorage or navigation, then the department shall include the specified conditions in the
 10439 individual or general state permit. Review or appeal of denial of an individual or general state
 10440 permit or of conditions specified by the district engineer shall be made through the applicable
 10441 procedures of the Corps of Engineers, and may not be made through the procedures provided in
 10442 this part. If the conditions are stayed by a court of competent jurisdiction or by applicable
 10443 procedures of the Corps of Engineers, those conditions shall be considered stayed in the
 10444 individual or general state permit for the duration of that stay.

10445 B. If during the comment period the U.S. Fish and Wildlife Service, the National Marine
 10446 Fisheries Service, or any other state or federal agency with jurisdiction over fish, wildlife, or public
 10447 health advises the department in writing that the imposition of specified conditions upon the
 10448 individual or general state permit is necessary to avoid substantial impairment of fish, shellfish, or
 10449 wildlife resources, the department may include the specified conditions in the individual or general
 10450 state permit to the extent they are determined necessary to carry out the provisions of this
 10451 regulation, the Act and of the CWA.

10452 C. In appropriate cases the department may consult with one or more of the agencies referred
 10453 to in this section before issuing a draft state permit and may reflect their views in the statement of
 10454 basis, the fact sheet, or the draft state permit.

10455 **9VAC25-870-580. Decision on variances. (Repealed.)**

10456 A. The department may grant or deny requests for variances requested pursuant to 9VAC25-
 10457 870-360 G 4, subject to EPA objection. Decisions on these variances shall be made according to
 10458 the criteria of 40 CFR Part 125, Subpart H.

10459 B. The department may deny, or forward to the regional administrator with a written
 10460 concurrence, or submit to EPA without recommendation a completed request for:

- 10461 1. A variance based on the economic capability of the individual state permit applicant
 10462 submitted pursuant to 9VAC25-870-360 G 2; or
- 10463 2. A variance based on water quality related effluent limitations submitted pursuant to
 10464 9VAC25-870-360 G 3.

10465 C. If the EPA approves the variance, the department may prepare a draft individual state
 10466 permit incorporating the variance. Any public notice of a draft individual state permit for which a
 10467 variance or modification has been approved or denied shall identify the applicable procedures for
 10468 appealing that decision.

10469 D. The department may deny or forward to the administrator with a written concurrence a
 10470 completed request for:

- 10471 1. A variance based on the presence of fundamentally different factors from those on
 10472 which an effluent limitations guideline was based, made according to the criteria and
 10473 standards of 40 CFR Part 125, Subpart D; or
- 10474 2. A variance based upon certain water quality factors submitted pursuant to 9VAC25-
 10475 870-360 G 2.

10476 E. If the administrator approves the variance, the department may prepare a draft individual
 10477 state permit incorporating the variance. Any public notice of a draft individual state permit for
 10478 which a variance or modification has been approved or denied shall identify the applicable
 10479 procedures for appealing that decision.

10480 9VAC25-870-580. Decision on variances. (Repealed.)

~~10481 A. The department may grant or deny requests for variances requested pursuant to 9VAC25-
10482 870-360 G 4, subject to EPA objection. Decisions on these variances shall be made according to
10483 the criteria of 40 CFR Part 125, Subpart H.~~

~~10484 B. The department may deny, or forward to the regional administrator with a written
10485 concurrence, or submit to EPA without recommendation a completed request for:~~

~~10486 1. A variance based on the economic capability of the individual state permit applicant
10487 submitted pursuant to 9VAC25-870-360 G 2; or~~

~~10488 2. A variance based on water quality related effluent limitations submitted pursuant to
10489 9VAC25-870-360 G 3.~~

~~10490 C. If the EPA approves the variance, the department may prepare a draft individual state
10491 permit incorporating the variance. Any public notice of a draft individual state permit for which a
10492 variance or modification has been approved or denied shall identify the applicable procedures for
10493 appealing that decision.~~

~~10494 D. The department may deny or forward to the administrator with a written concurrence a
10495 completed request for:~~

~~10496 1. A variance based on the presence of fundamentally different factors from those on
10497 which an effluent limitations guideline was based, made according to the criteria and
10498 standards of 40 CFR Part 125, Subpart D; or~~

~~10499 2. A variance based upon certain water quality factors submitted pursuant to 9VAC25-
10500 870-360 G 2.~~

~~10501 E. If the administrator approves the variance, the department may prepare a draft individual
10502 state permit incorporating the variance. Any public notice of a draft individual state permit for
10503 which a variance or modification has been approved or denied shall identify the applicable
10504 procedures for appealing that decision.~~

10505 9VAC25-870-590. Appeals of variances. (Repealed.)

~~10506 When the department issues an individual state permit on which EPA has made a variance
10507 decision, separate appeals of the individual state permit and of the EPA variance decision are
10508 possible.~~

10509 9VAC25-870-590. Appeals of variances. (Repealed.)

~~10510 When the department issues an individual state permit on which EPA has made a variance
10511 decision, separate appeals of the individual state permit and of the EPA variance decision are
10512 possible.~~

10513 9VAC25-870-600. Computation of time. (Repealed.)

~~10514 A. Any time period scheduled to begin on the occurrence of an act or event shall begin on the
10515 day after the act or event.~~

~~10516 B. Any time period scheduled to begin before the occurrence of an act or event shall be
10517 computed so that the period ends on the day before the act or event.~~

~~10518 C. If the final day of any time period falls on a weekend or legal holiday, the time period shall
10519 be extended to the next working day.~~

~~10520 D. Whenever a party or interested person has the right or is required to act within a prescribed
10521 period after the service of notice or other paper upon him by mail or by electronic or postal
10522 delivery, three days shall be added to the prescribed time.~~

10523 **9VAC25-870-600. Computation of time. (Repealed.)**

10524 **9VAC25-870-600. Computation of time.**

10525 A. Any time period scheduled to begin on the occurrence of an act or event shall begin on the
10526 day after the act or event.

10527 B. Any time period scheduled to begin before the occurrence of an act or event shall be
10528 computed so that the period ends on the day before the act or event.

10529 C. If the final day of any time period falls on a weekend or legal holiday, the time period shall
10530 be extended to the next working day.

10531 D. Whenever a party or interested person has the right or is required to act within a prescribed
10532 period after the service of notice or other paper upon him by mail or by electronic or postal
10533 delivery, three days shall be added to the prescribed time.

10534 **Part X**

10535 **Transfer, Modification, Revocation and Reissuance, and Termination of State Permits**

10536 **9VAC25-870-610. Modification, revocation and reissuance, or termination of state permits.**
10537 **(Repealed.)**

10538 A. State permits may be modified, revoked and reissued, or terminated either at the request
10539 of any interested person (including the state permittee) or upon the department's initiative. When
10540 the department receives any information (for example, inspects the facility, receives information
10541 submitted by the state permittee as required in the state permit, receives a request for modification
10542 or revocation and reissuance, or conducts a review of the state permit file) it may determine
10543 whether one or more of the causes listed in this section for modification or revocation and
10544 reissuance, or both, exist. However, state permits may only be modified, revoked and reissued,
10545 or terminated for the reasons specified in 9VAC25-870-630 or 9VAC25-870-650. All requests
10546 shall be in writing and shall contain facts or reasons supporting the request. If cause does not
10547 exist under these sections, the department shall not modify, revoke and reissue or terminate the
10548 state permit. If a state permit modification satisfies the criteria for minor modifications, the state
10549 permit may be modified without a draft state permit or public review. Otherwise, a draft state
10550 permit must be prepared and other procedures in Part IX (9VAC25-870-500 et seq.) followed.

10551 B. If the department decides the request is not justified, it shall send the requester a brief
10552 written response giving a reason for the decision. Denials of requests for modification, revocation
10553 and reissuance, or termination are not subject to public notice, comment, or public hearings.

10554 C. 1. If the department tentatively decides to modify or revoke and reissue a state permit, it
10555 shall prepare a draft state permit incorporating the proposed changes. The department may
10556 request additional information and, in the case of a modified state permit, may require the
10557 submission of an updated application. In the case of revoked and reissued state permits, the
10558 department shall require the submission of a new application.

10559 2. In a state permit modification under this section, only those conditions to be modified
10560 shall be reopened when a new draft state permit is prepared. All other aspects of the
10561 existing state permit shall remain in effect for the duration of the unmodified state permit.
10562 When a state permit is revoked and reissued under this section, the entire state permit is
10563 reopened just as if the state permit had expired and was being reissued and the state
10564 permit is reissued for a new term. During any revocation and reissuance proceeding the
10565 state permittee shall comply with all conditions of the existing state permit until a new final
10566 state permit is reissued.

10567 3. Minor modifications as defined in 9VAC25-870-640 are not subject to the requirements
10568 of this section.

10569 ~~D. If the department tentatively decides to terminate a state permit under 9VAC25-870-650,~~
 10570 ~~where the state permittee objects, it shall do so in accordance with the Administrative Process~~
 10571 ~~Act (§ 2.2-4000 et seq. of the Code of Virginia).~~

10572 **9VAC25-870-610. Modification, revocation and reissuance, or termination of state permits.**
 10573 **(Repealed.)**

10574 ~~A. State permits may be modified, revoked and reissued, or terminated either at the request~~
 10575 ~~of any interested person (including the state permittee) or upon the department's initiative. When~~
 10576 ~~the department receives any information (for example, inspects the facility, receives information~~
 10577 ~~submitted by the state permittee as required in the state permit, receives a request for modification~~
 10578 ~~or revocation and reissuance, or conducts a review of the state permit file) it may determine~~
 10579 ~~whether one or more of the causes listed in this section for modification or revocation and~~
 10580 ~~reissuance, or both, exist. However, state permits may only be modified, revoked and reissued,~~
 10581 ~~or terminated for the reasons specified in 9VAC25-870-630 or 9VAC25-870-650. All requests~~
 10582 ~~shall be in writing and shall contain facts or reasons supporting the request. If cause does not~~
 10583 ~~exist under these sections, the department shall not modify, revoke and reissue or terminate the~~
 10584 ~~state permit. If a state permit modification satisfies the criteria for minor modifications, the state~~
 10585 ~~permit may be modified without a draft state permit or public review. Otherwise, a draft state~~
 10586 ~~permit must be prepared and other procedures in Part IX (9VAC25-870-500 et seq.) followed.~~

10587 ~~B. If the department decides the request is not justified, it shall send the requester a brief~~
 10588 ~~written response giving a reason for the decision. Denials of requests for modification, revocation~~
 10589 ~~and reissuance, or termination are not subject to public notice, comment, or public hearings.~~

10590 ~~C. 1. If the department tentatively decides to modify or revoke and reissue a state permit, it~~
 10591 ~~shall prepare a draft state permit incorporating the proposed changes. The department may~~
 10592 ~~request additional information and, in the case of a modified state permit, may require the~~
 10593 ~~submission of an updated application. In the case of revoked and reissued state permits, the~~
 10594 ~~department shall require the submission of a new application.~~

10595 ~~2. In a state permit modification under this section, only those conditions to be modified~~
 10596 ~~shall be reopened when a new draft state permit is prepared. All other aspects of the~~
 10597 ~~existing state permit shall remain in effect for the duration of the unmodified state permit.~~
 10598 ~~When a state permit is revoked and reissued under this section, the entire state permit is~~
 10599 ~~reopened just as if the state permit had expired and was being reissued and the state~~
 10600 ~~permit is reissued for a new term. During any revocation and reissuance proceeding the~~
 10601 ~~state permittee shall comply with all conditions of the existing state permit until a new final~~
 10602 ~~state permit is reissued.~~

10603 ~~3. Minor modifications as defined in 9VAC25-870-640 are not subject to the requirements~~
 10604 ~~of this section.~~

10605 ~~D. If the department tentatively decides to terminate a state permit under 9VAC25-870-650,~~
 10606 ~~where the state permittee objects, it shall do so in accordance with the Administrative Process~~
 10607 ~~Act (§ 2.2-4000 et seq. of the Code of Virginia).~~

10608 **9VAC25-870-620. Transfer of state permits. (Repealed.)**

10609 ~~A. Except as provided in subsection B of this section, a state permit may be transferred by the~~
 10610 ~~state permittee to a new owner or operator only if the state permit has been modified or revoked~~
 10611 ~~and reissued, or a minor modification made, to identify the new state permittee and incorporate~~
 10612 ~~such other requirements as may be necessary under the Virginia Stormwater Management Act~~
 10613 ~~and the CWA.~~

10614 ~~B. Automatic transfers. As an alternative to transfers under subsection A of this section, any~~
 10615 ~~state permit may be automatically transferred to a new state permittee if:~~

- 10616 ~~1. The current state permittee notifies the department at least 30 days in advance of the~~
 10617 ~~proposed transfer date in subdivision 2 of this subsection;~~
- 10618 ~~2. The notice includes a written agreement between the existing and new state permittees~~
 10619 ~~containing a specific date for transfer of state permit responsibility, coverage, and liability~~
 10620 ~~between them; and~~
- 10621 ~~3. The department does not notify the existing state permittee and the proposed new state~~
 10622 ~~permittee of its intent to modify or revoke and reissue the state permit. A modification~~
 10623 ~~under this subdivision may also be a minor modification. If this notice is not received, the~~
 10624 ~~transfer is effective on the date specified in the agreement mentioned in subdivision 2 of~~
 10625 ~~this subsection.~~

10626 **9VAC25-870-620. Transfer of state permits. (Repealed.)**

10627 A. Except as provided in subsection B of this section, a state permit may be transferred by the
 10628 state permittee to a new owner or operator only if the state permit has been modified or revoked
 10629 and reissued, or a minor modification made, to identify the new state permittee and incorporate
 10630 such other requirements as may be necessary under the Virginia Stormwater Management Act
 10631 and the CWA.

10632 B. Automatic transfers. As an alternative to transfers under subsection A of this section, any
 10633 state permit may be automatically transferred to a new state permittee if:

- 10634 1. The current state permittee notifies the department at least 30 days in advance of the
 10635 proposed transfer date in subdivision 2 of this subsection;
- 10636 2. The notice includes a written agreement between the existing and new state permittees
 10637 containing a specific date for transfer of state permit responsibility, coverage, and liability
 10638 between them; and
- 10639 3. The department does not notify the existing state permittee and the proposed new state
 10640 permittee of its intent to modify or revoke and reissue the state permit. A modification
 10641 under this subdivision may also be a minor modification. If this notice is not received, the
 10642 transfer is effective on the date specified in the agreement mentioned in subdivision 2 of
 10643 this subsection.

10644 **9VAC25-870-630. Modification or revocation and reissuance of state permits. (Repealed.)**

10645 A. Causes for modification. The following are causes for modification but not revocation and
 10646 reissuance of state permits except when the state permittee requests or agrees:

- 10647 1. There are material and substantial alterations or additions to the permitted facility or
 10648 activity that occurred after state permit issuance that justify the application of state permit
 10649 conditions that are different or absent in the existing state permit.
- 10650 2. The department has received new information. State permits may be modified during
 10651 their terms for this cause only if the information was not available at the time of state permit
 10652 issuance (other than revised regulations, guidance, or test methods) and would have
 10653 justified the application of different state permit conditions at the time of issuance. For
 10654 general permits this cause includes any information indicating that cumulative effects on
 10655 the environment are unacceptable. For new source or new discharger state permits this
 10656 cause shall include any significant information derived from effluent testing required on
 10657 the state permit application after issuance of the state permit.
- 10658 3. The standards or regulations on which the state permit was based have been changed
 10659 by promulgation of amended standards or regulations or by judicial decision after the state
 10660 permit was issued. State permits may be modified during their terms for this cause only
 10661 as follows:
- 10662 a. For promulgation of amended standards or regulations, when:

- 10663 ~~(1) The state permit condition requested to be modified was based on a promulgated~~
 10664 ~~effluent limitation guideline, EPA approved or promulgated water quality standards;~~
- 10665 ~~(2) EPA has revised, withdrawn, or modified that portion of the regulation or effluent~~
 10666 ~~limitation guideline on which the state permit condition was based, or has approved a~~
 10667 ~~state action with regard to a water quality standard on which the state permit condition~~
 10668 ~~was based; and~~
- 10669 ~~(3) A state permittee requests modification in accordance with this chapter within 90~~
 10670 ~~days after Federal Register notice of the action on which the request is based;~~
- 10671 ~~b. For judicial decisions, a court of competent jurisdiction has remanded and stayed~~
 10672 ~~EPA promulgated regulations or effluent limitation guidelines, if the remand and stay~~
 10673 ~~concern that portion of the regulations or guidelines on which the state permit condition~~
 10674 ~~was based and a request is filed by the state permittee in accordance with this chapter~~
 10675 ~~within 90 days of judicial remand; or~~
- 10676 ~~c. For changes based upon modified state certifications of state permits.~~
- 10677 ~~4. The department determines good cause exists for modification of a compliance~~
 10678 ~~schedule, such as an act of God, strike, flood, or materials shortage or other events over~~
 10679 ~~which the state permittee has little or no control and for which there is no reasonably~~
 10680 ~~available remedy. However, in no case may a compliance schedule be modified to extend~~
 10681 ~~beyond an applicable CWA statutory deadline.~~
- 10682 ~~5. When the state permittee has filed a request for a variance pursuant to 9VAC25-870-~~
 10683 ~~360 G within the time specified in this chapter.~~
- 10684 ~~6. When required to incorporate an applicable CWA § 307(a) toxic effluent standard or~~
 10685 ~~prohibition.~~
- 10686 ~~7. When required by the reopener conditions in a state permit that are established under~~
 10687 ~~9VAC25-870-460 B.~~
- 10688 ~~8. Upon failure to notify another state whose waters may be affected by a discharge.~~
- 10689 ~~9. When the level of discharge of any pollutant that is not limited in the state permit~~
 10690 ~~exceeds the level that can be achieved by the technology-based treatment requirements~~
 10691 ~~appropriate to the state permittee.~~
- 10692 ~~10. To establish a notification level as provided in 9VAC25-870-460 E.~~
- 10693 ~~11. To correct technical mistakes, such as errors in calculation, or mistaken interpretations~~
 10694 ~~of law made in determining state permit conditions.~~
- 10695 ~~12. When the discharger has installed the treatment technology considered by the state~~
 10696 ~~permit writer in setting effluent limitations imposed under the Act and § 402(a)(1) of the~~
 10697 ~~CWA and has properly operated and maintained the facilities but nevertheless has been~~
 10698 ~~unable to achieve those effluent limitations. In this case, the limitations in the modified~~
 10699 ~~state permit may reflect the level of pollutant control actually achieved (but shall not be~~
 10700 ~~less stringent than required by a subsequently promulgated effluent limitations guideline).~~
- 10701 ~~13. For a small MS4, to include an effluent limitation requiring implementation of a~~
 10702 ~~minimum control measure or measures as specified in 9VAC25-870-400 D 2 when:~~
- 10703 ~~a. The state permit does not include such measures based upon the determination~~
 10704 ~~that another entity was responsible for implementation of the requirements; and~~
- 10705 ~~b. The other entity fails to implement measures that satisfy the requirements.~~
- 10706 ~~B. Causes for modification or revocation and reissuance. The following are causes to modify~~
 10707 ~~or, alternatively, revoke and reissue a state permit:~~

10708 ~~1. Cause exists for termination under 9VAC25-870-650, and the department determines~~
 10709 ~~that modification or revocation and reissuance is appropriate; or~~

10710 ~~2. The department has received notification of a proposed transfer of the state permit. A~~
 10711 ~~state permit also may be modified to reflect a transfer after the effective date of an~~
 10712 ~~automatic transfer but will not be revoked and reissued after the effective date of the~~
 10713 ~~transfer except upon the request of the new state permittee.~~

10714 **9VAC25-870-630. Modification or revocation and reissuance of state permits. (Repealed.)**

10715 A. Causes for modification. The following are causes for modification but not revocation and
 10716 reissuance of state permits except when the state permittee requests or agrees.

10717 1. There are material and substantial alterations or additions to the permitted facility or
 10718 activity that occurred after state permit issuance that justify the application of state permit
 10719 conditions that are different or absent in the existing state permit.

10720 2. The department has received new information. State permits may be modified during
 10721 their terms for this cause only if the information was not available at the time of state permit
 10722 issuance (other than revised regulations, guidance, or test methods) and would have
 10723 justified the application of different state permit conditions at the time of issuance. For
 10724 general permits this cause includes any information indicating that cumulative effects on
 10725 the environment are unacceptable. For new source or new discharger state permits this
 10726 cause shall include any significant information derived from effluent testing required on
 10727 the state permit application after issuance of the state permit.

10728 3. The standards or regulations on which the state permit was based have been changed
 10729 by promulgation of amended standards or regulations or by judicial decision after the state
 10730 permit was issued. State permits may be modified during their terms for this cause only
 10731 as follows:

10732 a. For promulgation of amended standards or regulations, when:

10733 (1) The state permit condition requested to be modified was based on a promulgated
 10734 effluent limitation guideline, EPA approved or promulgated water quality standards;

10735 (2) EPA has revised, withdrawn, or modified that portion of the regulation or effluent
 10736 limitation guideline on which the state permit condition was based, or has approved a
 10737 state action with regard to a water quality standard on which the state permit condition
 10738 was based; and

10739 (3) A state permittee requests modification in accordance with this chapter within 90
 10740 days after Federal Register notice of the action on which the request is based;

10741 b. For judicial decisions, a court of competent jurisdiction has remanded and stayed
 10742 EPA promulgated regulations or effluent limitation guidelines, if the remand and stay
 10743 concern that portion of the regulations or guidelines on which the state permit condition
 10744 was based and a request is filed by the state permittee in accordance with this chapter
 10745 within 90 days of judicial remand; or

10746 c. For changes based upon modified state certifications of state permits.

10747 4. The department determines good cause exists for modification of a compliance
 10748 schedule, such as an act of God, strike, flood, or materials shortage or other events over
 10749 which the state permittee has little or no control and for which there is no reasonably
 10750 available remedy. However, in no case may a compliance schedule be modified to extend
 10751 beyond an applicable CWA statutory deadline.

10752 5. When the state permittee has filed a request for a variance pursuant to 9VAC25-870-
 10753 360 G within the time specified in this chapter.

- 10754 6. When required to incorporate an applicable CWA § 307(a) toxic effluent standard or
10755 prohibition.
- 10756 7. When required by the reopener conditions in a state permit that are established under
10757 9VAC25-870-460 B.
- 10758 8. Upon failure to notify another state whose waters may be affected by a discharge.
- 10759 9. When the level of discharge of any pollutant that is not limited in the state permit
10760 exceeds the level that can be achieved by the technology-based treatment requirements
10761 appropriate to the state permittee.
- 10762 10. To establish a notification level as provided in 9VAC25-870-460 E.
- 10763 11. To correct technical mistakes, such as errors in calculation, or mistaken interpretations
10764 of law made in determining state permit conditions.
- 10765 12. When the discharger has installed the treatment technology considered by the state
10766 permit writer in setting effluent limitations imposed under the Act and § 402(a)(1) of the
10767 CWA and has properly operated and maintained the facilities but nevertheless has been
10768 unable to achieve those effluent limitations. In this case, the limitations in the modified
10769 state permit may reflect the level of pollutant control actually achieved (but shall not be
10770 less stringent than required by a subsequently promulgated effluent limitations guideline).
- 10771 13. For a small MS4, to include an effluent limitation requiring implementation of a
10772 minimum control measure or measures as specified in 9VAC25-870-400 D 2 when:
- 10773 a. The state permit does not include such measures based upon the determination
10774 that another entity was responsible for implementation of the requirements; and
- 10775 b. The other entity fails to implement measures that satisfy the requirements.
- 10776 B. Causes for modification or revocation and reissuance. The following are causes to modify
10777 or, alternatively, revoke and reissue a state permit:
- 10778 1. Cause exists for termination under 9VAC25-870-650, and the department determines
10779 that modification or revocation and reissuance is appropriate; or
- 10780 2. The department has received notification of a proposed transfer of the state permit. A
10781 state permit also may be modified to reflect a transfer after the effective date of an
10782 automatic transfer but will not be revoked and reissued after the effective date of the
10783 transfer except upon the request of the new state permittee.
- 10784 **9VAC25-870-640. Minor modifications of individual state permits. (Repealed.)**
- 10785 ~~Upon the consent of the state permittee, the department may modify an individual state permit~~
10786 ~~to make the corrections or allowances for changes in the permitted activity listed in this section,~~
10787 ~~without following the procedures of Part IX of this chapter. Any individual state permit modification~~
10788 ~~not processed as a minor modification under this section must be made for cause and with draft~~
10789 ~~state permit and public notice. Minor modifications may only:~~
- 10790 ~~1. Correct typographical errors;~~
- 10791 ~~2. Require more frequent monitoring or reporting by the state permittee;~~
- 10792 ~~3. Change an interim compliance date in a schedule of compliance, provided the new date~~
10793 ~~is not more than 120 days after the date specified in the existing individual state permit~~
10794 ~~and does not interfere with attainment of the final compliance date requirement;~~
- 10795 ~~4. Allow for a change in ownership or operational control of a facility where the department~~
10796 ~~determines that no other change in the individual state permit is necessary, provided that~~
10797 ~~a written agreement containing a specific date for transfer of individual state permit~~
10798 ~~responsibility, coverage, and liability between the current and new individual state~~
10799 ~~permittees has been submitted to the department;~~

10800 ~~5. a. Change the construction schedule for a discharger which is a new source. No such~~
 10801 ~~change shall affect a discharger's obligation to have all pollution control equipment~~
 10802 ~~installed and in operation prior to discharge.~~

10803 ~~b. Delete a point source outfall when the discharge from that outfall is terminated and~~
 10804 ~~does not result in discharge of pollutants from other outfalls except in accordance with~~
 10805 ~~state permit limits; or~~

10806 ~~6. Require electronic reporting requirements (to replace paper reporting requirements)~~
 10807 ~~including those specified in 40 CFR Part 3 and Part XI (9VAC25-31-950 et seq.) of the~~
 10808 ~~Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation.~~

10809 **9VAC25-870-640. Minor modifications of individual state permits. (Repealed.)**

10810 ~~Upon the consent of the state permittee, the department may modify an individual state permit~~
 10811 ~~to make the corrections or allowances for changes in the permitted activity listed in this section,~~
 10812 ~~without following the procedures of Part IX of this chapter. Any individual state permit modification~~
 10813 ~~not processed as a minor modification under this section must be made for cause and with draft~~
 10814 ~~state permit and public notice. Minor modifications may only:~~

10815 ~~1. Correct typographical errors;~~

10816 ~~2. Require more frequent monitoring or reporting by the state permittee;~~

10817 ~~3. Change an interim compliance date in a schedule of compliance, provided the new date~~
 10818 ~~is not more than 120 days after the date specified in the existing individual state permit~~
 10819 ~~and does not interfere with attainment of the final compliance date requirement;~~

10820 ~~4. Allow for a change in ownership or operational control of a facility where the department~~
 10821 ~~determines that no other change in the individual state permit is necessary, provided that~~
 10822 ~~a written agreement containing a specific date for transfer of individual state permit~~
 10823 ~~responsibility, coverage, and liability between the current and new individual state~~
 10824 ~~permittees has been submitted to the department;~~

10825 ~~5. a. Change the construction schedule for a discharger which is a new source. No such~~
 10826 ~~change shall affect a discharger's obligation to have all pollution control equipment~~
 10827 ~~installed and in operation prior to discharge.~~

10828 ~~b. Delete a point source outfall when the discharge from that outfall is terminated and~~
 10829 ~~does not result in discharge of pollutants from other outfalls except in accordance with~~
 10830 ~~state permit limits; or~~

10831 ~~6. Require electronic reporting requirements (to replace paper reporting requirements)~~
 10832 ~~including those specified in 40 CFR Part 3 and Part XI (9VAC25-31-950 et seq.) of the~~
 10833 ~~Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation.~~

10834 **9VAC25-870-650. Termination of state permits. (Repealed.)**

10835 ~~A. The following are causes for terminating a state permit during its term, or for denying an~~
 10836 ~~individual state permit, or coverage under a general permit renewal application, after notice and~~
 10837 ~~opportunity for a hearing by the department.~~

10838 ~~1. The state permittee has violated any regulation or order of the board or department,~~
 10839 ~~any order of the VSMP authority, any provision of the Virginia Stormwater Management~~
 10840 ~~Act or this chapter, or any order of a court, where such violation results in the unreasonable~~
 10841 ~~degradation of properties, water quality, stream channels, and other natural resources, or~~
 10842 ~~the violation is representative of a pattern of serious or repeated violations that in the~~
 10843 ~~opinion of the department, demonstrates the state permittee's disregard for or inability to~~
 10844 ~~comply with applicable laws, regulations, state permit conditions, orders, rules, or~~
 10845 ~~requirements;~~

10846 ~~2. Noncompliance by the state permittee with any condition of the state permit;~~

- 10847 ~~3. The state permittee's failure to disclose fully all relevant material facts, or the state~~
 10848 ~~permittee's misrepresentation of any relevant material facts in applying for a state permit,~~
 10849 ~~or in any other report or document required under the Act or this chapter;~~
- 10850 ~~4. A determination that the permitted activity endangers human health or the environment~~
 10851 ~~and can only be regulated to acceptable levels by state permit modification or termination;~~
- 10852 ~~5. A change in any condition that requires either a temporary or permanent reduction or~~
 10853 ~~elimination of any discharge controlled by the state permit;~~
- 10854 ~~6. The activity for which the state permit was issued causes unreasonable degradation of~~
 10855 ~~properties, water quality, stream channels, and other natural resources; or~~
- 10856 ~~7. There exists a material change in the basis on which the state permit was issued that~~
 10857 ~~requires either a temporary or a permanent reduction or elimination of any discharge or~~
 10858 ~~land-disturbing activity controlled by the state permit necessary to prevent unreasonable~~
 10859 ~~degradation of properties, water quality, stream channels, and other natural resources.~~
- 10860 ~~B. The department shall follow the applicable procedures in this chapter in terminating any~~
 10861 ~~state permit under this section, except that if the entire discharge is permanently terminated by~~
 10862 ~~elimination of the flow or by connection to a POTW or a PVOTW (but not by land application or~~
 10863 ~~disposal into a well), the department may terminate the state permit by notice to the state~~
 10864 ~~permittee. Termination by notice shall be effective 30 days after notice is sent, unless the state~~
 10865 ~~permittee objects within that time. If the state permittee objects during that period, the department~~
 10866 ~~shall follow the applicable procedures for termination under 9VAC25-870-610 D. Expedited state~~
 10867 ~~permit termination procedures are not available to state permittees that are subject to pending~~
 10868 ~~state or federal enforcement actions including citizen suits brought under state or federal law. If~~
 10869 ~~requesting expedited state permit termination procedures, a state permittee must certify that it is~~
 10870 ~~not subject to any pending state or federal enforcement actions including citizen suits brought~~
 10871 ~~under state or federal law.~~
- 10872 ~~C. Permittees that wish to terminate their state permit must submit a notice of termination~~
 10873 ~~(NOT) to the department. If requesting expedited permit termination procedures, a permittee must~~
 10874 ~~certify in the NOT that it is not subject to any pending state or federal enforcement actions~~
 10875 ~~including citizen suits brought under state or federal law. As of the start date in Table 1 of 9VAC25-~~
 10876 ~~31-1020, all NOTs submitted in compliance with this subsection shall be submitted electronically~~
 10877 ~~by the permittee to the department in compliance with this subsection and 40 CFR Part 3~~
 10878 ~~(including, in all cases, 40 CFR Part 3 Subpart D), 9VAC25-870-370, and Part XI (9VAC25-31-~~
 10879 ~~950 et seq.) of the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation.~~
 10880 ~~Part XI of 9VAC25-31 is not intended to undo existing requirements for electronic reporting. Prior~~
 10881 ~~to this date, and independent of Part XI of 9VAC25-31, the permittee may be required to report~~
 10882 ~~electronically if specified by a particular permit.~~
- 10883 **9VAC25-870-650. Termination of state permits. (Repealed.)**
- 10884 ~~A. The following are causes for terminating a state permit during its term, or for denying an~~
 10885 ~~individual state permit, or coverage under a general permit renewal application, after notice and~~
 10886 ~~opportunity for a hearing by the department.~~
- 10887 ~~1. The state permittee has violated any regulation or order of the board or department,~~
 10888 ~~any order of the VSMP authority, any provision of the Virginia Stormwater Management~~
 10889 ~~Act or this chapter, or any order of a court, where such violation results in the unreasonable~~
 10890 ~~degradation of properties, water quality, stream channels, and other natural resources, or~~
 10891 ~~the violation is representative of a pattern of serious or repeated violations that in the~~
 10892 ~~opinion of the department, demonstrates the state permittee's disregard for or inability to~~
 10893 ~~comply with applicable laws, regulations, state permit conditions, orders, rules, or~~
 10894 ~~requirements;~~

- 10895 2. Noncompliance by the state permittee with any condition of the state permit;
- 10896 3. The state permittee's failure to disclose fully all relevant material facts, or the state
- 10897 permittee's misrepresentation of any relevant material facts in applying for a state permit,
- 10898 or in any other report or document required under the Act or this chapter;
- 10899 4. A determination that the permitted activity endangers human health or the environment
- 10900 and can only be regulated to acceptable levels by state permit modification or termination;
- 10901 5. A change in any condition that requires either a temporary or permanent reduction or
- 10902 elimination of any discharge controlled by the state permit;
- 10903 6. The activity for which the state permit was issued causes unreasonable degradation of
- 10904 properties, water quality, stream channels, and other natural resources; or
- 10905 7. There exists a material change in the basis on which the state permit was issued that
- 10906 requires either a temporary or a permanent reduction or elimination of any discharge or
- 10907 land-disturbing activity controlled by the state permit necessary to prevent unreasonable
- 10908 degradation of properties, water quality, stream channels, and other natural resources.

10909 B. The department shall follow the applicable procedures in this chapter in terminating any

10910 state permit under this section, except that if the entire discharge is permanently terminated by

10911 elimination of the flow or by connection to a POTW or a PVOTW (but not by land application or

10912 disposal into a well), the department may terminate the state permit by notice to the state

10913 permittee. Termination by notice shall be effective 30 days after notice is sent, unless the state

10914 permittee objects within that time. If the state permittee objects during that period, the department

10915 shall follow the applicable procedures for termination under 9VAC25-870-610 D. Expedited state

10916 permit termination procedures are not available to state permittees that are subject to pending

10917 state or federal enforcement actions including citizen suits brought under state or federal law. If

10918 requesting expedited state permit termination procedures, a state permittee must certify that it is

10919 not subject to any pending state or federal enforcement actions including citizen suits brought

10920 under state or federal law.

10921 C. Permittees that wish to terminate their state permit must submit a notice of termination

10922 (NOT) to the department. If requesting expedited permit termination procedures, a permittee must

10923 certify in the NOT that it is not subject to any pending state or federal enforcement actions

10924 including citizen suits brought under state or federal law. As of the start date in Table 1 of 9VAC25-

10925 31-1020, all NOTs submitted in compliance with this subsection shall be submitted electronically

10926 by the permittee to the department in compliance with this subsection and 40 CFR Part 3

10927 (including, in all cases, 40 CFR Part 3 Subpart D), 9VAC25-870-370, and Part XI (9VAC25-31-

10928 950 et seq.) of the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation.

10929 Part XI of 9VAC25-31 is not intended to undo existing requirements for electronic reporting. Prior

10930 to this date, and independent of Part XI of 9VAC25-31, the permittee may be required to report

10931 electronically if specified by a particular permit.

10932 **Part XI**

10933 **Enforcement of State Permits**

10934 **9VAC25-870-660. Enforcement. (Repealed.)**

- 10935 A. ~~The department may enforce the provisions of this chapter by:~~
- 10936 ~~1. Issuing directives in accordance with the Act;~~
- 10937 ~~2. Issuing special orders in accordance with the Act;~~
- 10938 ~~3. Issuing emergency special orders in accordance with the Act;~~
- 10939 ~~4. Seeking injunction, mandamus or other appropriate remedy as authorized by the Act;~~
- 10940 ~~5. Seeking civil penalties under the Act; or~~

10941 ~~6. Seeking remedies under the Act, the CWA or under other laws including the common~~
 10942 ~~law.~~

10943 ~~B. The department encourages citizen participation in all its activities, including enforcement.~~
 10944 ~~In particular:~~

10945 ~~1. The department will investigate citizen complaints and provide written response to all~~
 10946 ~~signed, written complaints from citizens concerning matters within the department's~~
 10947 ~~purview;~~

10948 ~~2. The department will not oppose intervention in any civil enforcement action when such~~
 10949 ~~intervention is authorized by statute or Supreme Court rule; and~~

10950 ~~3. At least 30 days prior to the final settlement of any civil enforcement action or the~~
 10951 ~~issuance of any consent special order, the department will publish public notice of such~~
 10952 ~~settlement or order in a newspaper of general circulation in the county, city or town in~~
 10953 ~~which the discharge is located, and in The Virginia Register of Regulations. This notice~~
 10954 ~~will identify the owner, specify the enforcement action to be taken and specify where a~~
 10955 ~~copy of the settlement or order can be obtained. A consent special order is a special order~~
 10956 ~~issued without a public hearing and with the written consent of the affected owner. For the~~
 10957 ~~purpose of this chapter, an emergency special order is not a consent special order. The~~
 10958 ~~department shall consider all comments received during the comment period before taking~~
 10959 ~~final action.~~

10960 ~~C. When a state permit is amended solely to reflect a new owner, and the previous owner had~~
 10961 ~~been issued a consent special order that, at the time of state permit amendment was still in full~~
 10962 ~~force and effect, a consent special order issued to the new owner does not have to go to public~~
 10963 ~~notice provided that:~~

10964 ~~1. The state permit amendment does not have to go to public notice; and~~

10965 ~~2. The terms of the new consent order are the same as issued to the previous owner.~~

10966 ~~D. Notwithstanding subdivision B 3 of this subsection, a special order may be issued by~~
 10967 ~~agreement without further notice when a hearing has been scheduled to issue a special order to~~
 10968 ~~the affected owner, whether or not the hearing is actually held.~~

10969 **9VAC25-870-660. Enforcement. (Repealed.)**

10970 ~~A. The department may enforce the provisions of this chapter by:~~

10971 ~~1. Issuing directives in accordance with the Act;~~

10972 ~~2. Issuing special orders in accordance with the Act;~~

10973 ~~3. Issuing emergency special orders in accordance with the Act;~~

10974 ~~4. Seeking injunction, mandamus or other appropriate remedy as authorized by the Act;~~

10975 ~~5. Seeking civil penalties under the Act; or~~

10976 ~~6. Seeking remedies under the Act, the CWA or under other laws including the common~~
 10977 ~~law.~~

10978 ~~B. The department encourages citizen participation in all its activities, including enforcement.~~
 10979 ~~In particular:~~

10980 ~~1. The department will investigate citizen complaints and provide written response to all~~
 10981 ~~signed, written complaints from citizens concerning matters within the department's~~
 10982 ~~purview;~~

10983 ~~2. The department will not oppose intervention in any civil enforcement action when such~~
 10984 ~~intervention is authorized by statute or Supreme Court rule; and~~

10985 ~~3. At least 30 days prior to the final settlement of any civil enforcement action or the~~
 10986 ~~issuance of any consent special order, the department will publish public notice of such~~

10987 settlement or order in a newspaper of general circulation in the county, city or town in
 10988 which the discharge is located, and in The Virginia Register of Regulations. This notice
 10989 will identify the owner, specify the enforcement action to be taken and specify where a
 10990 copy of the settlement or order can be obtained. A consent special order is a special order
 10991 issued without a public hearing and with the written consent of the affected owner. For the
 10992 purpose of this chapter, an emergency special order is not a consent special order. The
 10993 department shall consider all comments received during the comment period before taking
 10994 final action.

10995 C. When a state permit is amended solely to reflect a new owner, and the previous owner had
 10996 been issued a consent special order that, at the time of state permit amendment was still in full
 10997 force and effect, a consent special order issued to the new owner does not have to go to public
 10998 notice provided that:

- 10999 1. The state permit amendment does not have to go to public notice; and
- 11000 2. The terms of the new consent order are the same as issued to the previous owner.

11001 D. Notwithstanding subdivision B 3 of this subsection, a special order may be issued by
 11002 agreement without further notice when a hearing has been scheduled to issue a special order to
 11003 the affected owner, whether or not the hearing is actually held.

11004 Part XII

11005 Miscellaneous

11006 **9VAC25-870-680. Transition. (Repealed.)**

11007 Upon the effective date of this chapter the following will occur:

- 11008 1. All applications received after the effective date of this chapter will be processed in
 11009 accordance with these procedures.
- 11010 2. State permits issued by the Soil and Water Conservation Board allowing the discharge
 11011 of stormwater into surface waters from municipal separate storm sewer systems or land-
 11012 disturbing activities that have not expired or been revoked or terminated before or on the
 11013 program transfer date to the department shall continue to remain in effect until their
 11014 specified expiration dates.

11015 **9VAC25-870-680. Transition. (Repealed.)**

11016 Upon the effective date of this chapter the following will occur:

- 11017 1. All applications received after the effective date of this chapter will be processed in
 11018 accordance with these procedures.
- 11019 2. State permits issued by the Soil and Water Conservation Board allowing the discharge
 11020 of stormwater into surface waters from municipal separate storm sewer systems or land-
 11021 disturbing activities that have not expired or been revoked or terminated before or on the
 11022 program transfer date to the department shall continue to remain in effect until their
 11023 specified expiration dates.

11024 **9VAC25-870-690. (Reserved). (Repealed.)**

11025 Historical Notes

11026 Derived from Virginia Register Volume 30, Issue 2, eff. October 23, 2013.

11027 **9VAC25-870-690. (Reserved). (Repealed.)**

11028 **9VAC25-870-690. (Reserved)**

11029 Historical Notes

11030 Derived from Virginia Register Volume 30, Issue 2, eff. October 23, 2013.

11031 Part XIII

11032 Fees

11033 **9VAC25-870-700. Purpose. (Repealed.)**

11034 Sections 62.1-44.15:28 and 62.1-44.15:31 of the Code of Virginia authorize the establishment
 11035 of a statewide fee schedule, including administrative charges for state agencies, for stormwater
 11036 management for land-disturbing activities and for municipal separate storm sewer systems. This
 11037 part establishes the fee assessment and the collection and distribution systems for those fees.
 11038 The fees shall be established for individual permits or coverage under the General Permit for
 11039 Discharges of Stormwater from Construction Activities (state permits for stormwater management
 11040 for land-disturbing activities) to cover all costs associated with the implementation of a VSMP by
 11041 a VSMP authority that has been approved by the department. Such fee attributes include the
 11042 costs associated with plan review, registration statement review, permit issuance, state coverage
 11043 verification, inspections, reporting, database management, and compliance activities associated
 11044 with the land-disturbing activities as well as for program oversight costs. Fees shall also be
 11045 established for state permit maintenance, modification, and transfer.

11046 Fees collected pursuant to this part shall be in addition to any general fund appropriations
 11047 made to the department or other supporting revenue from a VSMP; however, the fees shall be
 11048 set at a level sufficient for the department and the VSMP authority to fully carry out their
 11049 responsibilities under the Act, this chapter, local ordinances, or standards and specifications
 11050 where applicable.

11051 When establishing a VSMP, the VSMP authority shall assess the statewide fee schedule and
 11052 shall have the authority to reduce or increase such fees, and to consolidate such fees with other
 11053 program-related charges, but in no case shall such fee changes affect the amount established in
 11054 9VAC25-870-820 as available to the department for program oversight responsibilities pursuant
 11055 to § 62.1-44.15:28 A 5 a of the Code of Virginia. Accordingly, should a VSMP authority
 11056 demonstrate to the department its ability to fully and successfully implement a VSMP without a
 11057 full implementation of the fees set out in this part, the department may authorize the administrative
 11058 establishment of a lower fee for that program provided that such reduction shall not reduce the
 11059 amount of fees due to the department for its program oversight and shall not affect the fee
 11060 schedules set forth herein.

11061 A VSMP authority may establish greater fees than those base fees specified by this part
 11062 should it be demonstrated to the department that such greater fees are necessary to properly
 11063 administer the VSMP. Any fee increases established by the VSMP authority beyond those base
 11064 fees established in this part shall not be subject to the fee distribution formula set out in 9VAC25-
 11065 870-780. Nothing in this part shall prohibit a locality from establishing other local fees authorized
 11066 by the Code of Virginia related to stormwater management within their jurisdictions.

11067 A VSMP's portion of the fees shall be used solely to carry out the VSMP's responsibilities
 11068 under the Act, this chapter, ordinances, or annual standards and specifications.

11069 As part of its program oversight, the department shall periodically assess the revenue
 11070 generated by both the VSMP authorities and the department to ensure that the fees have been
 11071 appropriately set and the fees may be adjusted through periodic regulatory actions should
 11072 significant deviations become apparent.

11073 **9VAC25-870-700. Purpose. (Repealed.)**

11074 Sections 62.1-44.15:28 and 62.1-44.15:31 of the Code of Virginia authorize the establishment
 11075 of a statewide fee schedule, including administrative charges for state agencies, for stormwater
 11076 management for land-disturbing activities and for municipal separate storm sewer systems. This
 11077 part establishes the fee assessment and the collection and distribution systems for those fees.

11078 The fees shall be established for individual permits or coverage under the General Permit for
 11079 Discharges of Stormwater from Construction Activities (state permits for stormwater management
 11080 for land-disturbing activities) to cover all costs associated with the implementation of a VSMP by
 11081 a VSMP authority that has been approved by the department. Such fee attributes include the
 11082 costs associated with plan review, registration statement review, permit issuance, state-coverage
 11083 verification, inspections, reporting, database management, and compliance activities associated
 11084 with the land-disturbing activities as well as for program oversight costs. Fees shall also be
 11085 established for state permit maintenance, modification, and transfer.

11086 Fees collected pursuant to this part shall be in addition to any general fund appropriations
 11087 made to the department or other supporting revenue from a VSMP; however, the fees shall be
 11088 set at a level sufficient for the department and the VSMP authority to fully carry out their
 11089 responsibilities under the Act, this chapter, local ordinances, or standards and specifications
 11090 where applicable.

11091 When establishing a VSMP, the VSMP authority shall assess the statewide fee schedule and
 11092 shall have the authority to reduce or increase such fees, and to consolidate such fees with other
 11093 program-related charges, but in no case shall such fee changes affect the amount established in
 11094 9VAC25-870-820 as available to the department for program oversight responsibilities pursuant
 11095 to § 62.1-44.15:28 A 5 a of the Code of Virginia. Accordingly, should a VSMP authority
 11096 demonstrate to the department its ability to fully and successfully implement a VSMP without a
 11097 full implementation of the fees set out in this part, the department may authorize the administrative
 11098 establishment of a lower fee for that program provided that such reduction shall not reduce the
 11099 amount of fees due to the department for its program oversight and shall not affect the fee
 11100 schedules set forth herein.

11101 A VSMP authority may establish greater fees than those base fees specified by this part
 11102 should it be demonstrated to the department that such greater fees are necessary to properly
 11103 administer the VSMP. Any fee increases established by the VSMP authority beyond those base
 11104 fees established in this part shall not be subject to the fee distribution formula set out in 9VAC25-
 11105 870-780. Nothing in this part shall prohibit a locality from establishing other local fees authorized
 11106 by the Code of Virginia related to stormwater management within their jurisdictions.

11107 A VSMP's portion of the fees shall be used solely to carry out the VSMP's responsibilities
 11108 under the Act, this chapter, ordinances, or annual standards and specifications.

11109 As part of its program oversight, the department shall periodically assess the revenue
 11110 generated by both the VSMP authorities and the department to ensure that the fees have been
 11111 appropriately set and the fees may be adjusted through periodic regulatory actions should
 11112 significant deviations become apparent.

11113 **9VAC25-870-720. Authority. (Repealed.)**

11114 The authority for this part is ~~§§ 62.1-44.15:28 and 62.1-44.15:29 of the Code of Virginia.~~

11115 **9VAC25-870-720. Authority. (Repealed.)**

11116 **9VAC25-870-720. Authority.**

11117 The authority for this part is §§ 62.1-44.15:28 and 62.1-44.15:29 of the Code of Virginia.

11118 **9VAC25-870-730. Applicability. (Repealed.)**

11119 A. This part applies to:

11120 1. ~~All persons seeking coverage of a MS4 under a new state permit. The fee due shall be~~
 11121 ~~as specified under 9VAC25-870-800.~~

11122 2. ~~All operators who request that an existing MS4 individual permit be modified, except as~~
 11123 ~~specifically exempt under 9VAC25-870-740. The fee due shall be as specified under~~
 11124 ~~9VAC25-870-810.~~

11125 ~~3. All persons seeking coverage under the General Permit for Discharges of Stormwater~~
 11126 ~~From Construction Activities or a person seeking an Individual Permit for Discharges of~~
 11127 ~~Stormwater From Construction Activities. The fee due shall be as specified under~~
 11128 ~~9VAC25-870-820.~~

11129 ~~4. All state permittees who request modifications to or transfers of their existing registration~~
 11130 ~~statement for coverage under a General Permit for Discharges of Stormwater From~~
 11131 ~~Construction Activities or of an Individual Permit for Discharges of Stormwater From~~
 11132 ~~Construction Activities. The fee due shall be as specified under 9VAC25-870-825 in~~
 11133 ~~addition to any additional fees necessary pursuant to 9VAC25-870-820 due to an increase~~
 11134 ~~in acreage.~~

11135 ~~5. Reinspection fees assessed by the department to recoup the costs associated with~~
 11136 ~~each visit to a land-disturbing project site that was necessary to check on the status of~~
 11137 ~~project site items noted to be in noncompliance and documented as such on a prior project~~
 11138 ~~inspection. The fee due shall be as specified under 9VAC25-870-790.~~

11139 ~~6. Business transaction costs assessed associated with processing credit card payments.~~

11140 ~~B. Persons who are applicants for an individual Municipal Separate Stormwater Sewer System~~
 11141 ~~permit as a result of existing state permit revocation shall be considered an applicant for a new~~
 11142 ~~state permit. The fee due shall be as specified under 9VAC25-870-800.~~

11143 ~~Persons whose coverage under the General Permit for Discharges of Stormwater From~~
 11144 ~~Construction Activities has been revoked shall reapply for an Individual Permit for Discharges of~~
 11145 ~~Stormwater From Construction Activities. The fee due shall be as specified under 9VAC25-870-~~
 11146 ~~820.~~

11147 ~~C. State and state permit coverage maintenance fees may apply to each state permit holder.~~
 11148 ~~The fee due shall be as specified under 9VAC25-870-830.~~

11149 **9VAC25-870-730. Applicability. (Repealed.)**

11150 ~~A. This part applies to:~~

11151 ~~1. All persons seeking coverage of a MS4 under a new state permit. The fee due shall be~~
 11152 ~~as specified under 9VAC25-870-800.~~

11153 ~~2. All operators who request that an existing MS4 individual permit be modified, except as~~
 11154 ~~specifically exempt under 9VAC25-870-740. The fee due shall be as specified under~~
 11155 ~~9VAC25-870-810.~~

11156 ~~3. All persons seeking coverage under the General Permit for Discharges of Stormwater~~
 11157 ~~From Construction Activities or a person seeking an Individual Permit for Discharges of~~
 11158 ~~Stormwater From Construction Activities. The fee due shall be as specified under~~
 11159 ~~9VAC25-870-820.~~

11160 ~~4. All state permittees who request modifications to or transfers of their existing registration~~
 11161 ~~statement for coverage under a General Permit for Discharges of Stormwater From~~
 11162 ~~Construction Activities or of an Individual Permit for Discharges of Stormwater From~~
 11163 ~~Construction Activities. The fee due shall be as specified under 9VAC25-870-825 in~~
 11164 ~~addition to any additional fees necessary pursuant to 9VAC25-870-820 due to an increase~~
 11165 ~~in acreage.~~

11166 ~~5. Reinspection fees assessed by the department to recoup the costs associated with~~
 11167 ~~each visit to a land-disturbing project site that was necessary to check on the status of~~
 11168 ~~project site items noted to be in noncompliance and documented as such on a prior project~~
 11169 ~~inspection. The fee due shall be as specified under 9VAC25-870-790.~~

11170 ~~6. Business transaction costs assessed associated with processing credit card payments.~~

~~11171 B. Persons who are applicants for an individual Municipal Separate Stormwater Sewer System
11172 permit as a result of existing state permit revocation shall be considered an applicant for a new
11173 state permit. The fee due shall be as specified under 9VAC25-870-800.~~

~~11174 Persons whose coverage under the General Permit for Discharges of Stormwater From
11175 Construction Activities has been revoked shall reapply for an Individual Permit for Discharges of
11176 Stormwater From Construction Activities. The fee due shall be as specified under 9VAC25-870-
11177 820.~~

~~11178 G. State and state permit coverage maintenance fees may apply to each state permit holder.
11179 The fee due shall be as specified under 9VAC25-870-830.~~

~~11180 **9VAC25-870-740. Exemptions. (Repealed.)**~~

~~11181 A. No state permit application fees will be assessed to:~~

~~11182 1. State permittees who request minor modifications to state permits as defined in
11183 9VAC25-870-10 or other minor amendments at the discretion of the VSMP authority.~~

~~11184 2. State permittees whose state permits are modified or amended at the request of the
11185 VSMP authority or department. This does not include errors in the registration statement
11186 identified by the VSMP authority or department or errors related to the acreage of the site.~~

~~11187 B. State permit modifications at the request of the state permittee resulting in changes to
11188 stormwater management plans that require additional review by the VSMP authority shall not be
11189 exempt pursuant to this section and shall be subject to fees specified under 9VAC25-870-825.~~

~~11190 **9VAC25-870-740. Exemptions. (Repealed.)**~~

~~11191 A. No state permit application fees will be assessed to:~~

~~11192 1. State permittees who request minor modifications to state permits as defined in
11193 9VAC25-870-10 or other minor amendments at the discretion of the VSMP authority.~~

~~11194 2. State permittees whose state permits are modified or amended at the request of the
11195 VSMP authority or department. This does not include errors in the registration statement
11196 identified by the VSMP authority or department or errors related to the acreage of the site.~~

~~11197 B. State permit modifications at the request of the state permittee resulting in changes to
11198 stormwater management plans that require additional review by the VSMP authority shall not be
11199 exempt pursuant to this section and shall be subject to fees specified under 9VAC25-870-825.~~

~~11200 **9VAC25-870-750. Due dates for state permits. (Repealed.)**~~

~~11201 A. Requests for a state permit, state permit modification, or general permit coverage shall not
11202 be processed until the fees required pursuant to this part are paid in accordance with 9VAC25-
11203 870-760.~~

~~11204 B. Individual permit or general permit coverage maintenance fees shall be paid annually to
11205 the department or the VSMP authority, as applicable. No state permit will be reissued or
11206 automatically continued without payment of the required fee. Individual permit or general permit
11207 coverage maintenance fees shall be applied until a Notice of Termination is effective.~~

~~11208 Permit maintenance fees for MS4 individual permits or MS4 general permit coverages are due
11209 by October 1 of each year. Effective April 1, 2014, any operator whose permit or general permit
11210 coverage (including operators whose permits or general permit coverages have been
11211 administratively continued) is effective as of April 1 of any given year shall pay the permit
11212 maintenance fee or fees to the department or the VSMP authority by October 1 of that same year.~~

~~11213 Permit maintenance fees for discharges of stormwater from construction activities pursuant to
11214 9VAC25-870-830 are due by April 1 of each year. After approval of a VSMP authority, including
11215 the department when acting in that capacity, any owner whose permit or general permit coverage
11216 authorizing discharges of stormwater from construction activities (including owners whose permits
11217 or general permit coverages have been administratively continued) is effective as of the effective~~

11218 ~~date of the VSMP authority shall pay the permit maintenance fee or fees to the department or the~~
 11219 ~~VSMP authority by April 1 of that same year.~~

11220 **9VAC25-870-750. Due dates for state permits. (Repealed.)**

11221 **9VAC25-870-750. Due dates for state permits.**

11222 A. Requests for a state permit, state permit modification, or general permit coverage shall not
 11223 be processed until the fees required pursuant to this part are paid in accordance with 9VAC25-
 11224 870-760.

11225 B. Individual permit or general permit coverage maintenance fees shall be paid annually to
 11226 the department or the VSMP authority, as applicable. No state permit will be reissued or
 11227 automatically continued without payment of the required fee. Individual permit or general permit
 11228 coverage maintenance fees shall be applied until a Notice of Termination is effective.

11229 Permit maintenance fees for MS4 individual permits or MS4 general permit coverages are due
 11230 by October 1 of each year. Effective April 1, 2014, any operator whose permit or general permit
 11231 coverage (including operators whose permits or general permit coverages have been
 11232 administratively continued) is effective as of April 1 of any given year shall pay the permit
 11233 maintenance fee or fees to the department or the VSMP authority by October 1 of that same year.

11234 Permit maintenance fees for discharges of stormwater from construction activities pursuant to
 11235 9VAC25-870-830 are due by April 1 of each year. After approval of a VSMP authority, including
 11236 the department when acting in that capacity, any owner whose permit or general permit coverage
 11237 authorizing discharges of stormwater from construction activities (including owners whose permits
 11238 or general permit coverages have been administratively continued) is effective as of the effective
 11239 date of the VSMP authority shall pay the permit maintenance fee or fees to the department or the
 11240 VSMP authority by April 1 of that same year.

11241 **9VAC25-870-760. Method of payment. (Repealed.)**

11242 ~~A. Fees shall be collected utilizing, where practicable, an online payment system. Until such~~
 11243 ~~system is operational, fees, as applicable, shall be, at the discretion of the department, submitted~~
 11244 ~~electronically or be paid by check, draft or postal money order payable to:~~

11245 ~~1. The Treasurer of Virginia, for a MS4 individual or general permit or for a coverage issued~~
 11246 ~~by the department under the General Permit for Discharges of Stormwater from~~
 11247 ~~Construction Activities or Individual Permit for Discharges of Stormwater from~~
 11248 ~~Construction Activities, and must be in U.S. currency, except that agencies and institutions~~
 11249 ~~of the Commonwealth of Virginia may submit Interagency Transfers for the amount of the~~
 11250 ~~fee. The Department of Environmental Quality may provide a means to pay fees~~
 11251 ~~electronically. Fees not submitted electronically shall be sent to the Virginia Department~~
 11252 ~~of Environmental Quality.~~

11253 ~~2. The VSMP authority, for VSMP operational costs of the VSMP authority under the~~
 11254 ~~General Permit for Discharges of Stormwater from Construction Activities, and must be in~~
 11255 ~~U.S. currency.~~

11256 ~~B. When fees are collected electronically pursuant to this part through credit cards, business~~
 11257 ~~transaction costs associated with processing such payments may be additionally assessed.~~

11258 ~~C. Nothing in this part shall prohibit the department and a VSMP authority from entering into~~
 11259 ~~an agreement whereby the total fee to be paid by the applicant for coverage under the General~~
 11260 ~~Permit for Discharges of Stormwater from Construction Activities is payable to the VSMP~~
 11261 ~~authority, and the VSMP authority transmits the department's portion set forth in 9VAC25-870-~~
 11262 ~~820 to the department on a schedule established by the department.~~

11263 ~~D. Required information for state permits or state permit coverage. All applicants, unless~~
 11264 ~~otherwise specified by the department, shall submit the following information along with the fee~~
 11265 ~~payment or utilize the department Permit Application Fee Form:~~

- 11266 1. Applicant name, address and daytime phone number.
 11267 2. The name of the facility/activity, and the facility/activity location.
 11268 3. The type of state permit applied for.
 11269 4. Whether the application is for a new state permit issuance, state permit reissuance,
 11270 state permit maintenance, or state permit modification.
 11271 5. The amount of fee submitted.
 11272 6. The existing state permit number, if applicable.
 11273 7. Other information as required by the VSMP authority.

11274 **9VAC25-870-760. Method of payment. (Repealed.)**

11275 A. Fees shall be collected utilizing, where practicable, an online payment system. Until such
 11276 system is operational, fees, as applicable, shall be, at the discretion of the department, submitted
 11277 electronically or be paid by check, draft or postal money order payable to:

- 11278 1. The Treasurer of Virginia, for a MS4 individual or general permit or for a coverage issued
 11279 by the department under the General Permit for Discharges of Stormwater from
 11280 Construction Activities or Individual Permit for Discharges of Stormwater from
 11281 Construction Activities, and must be in U.S. currency, except that agencies and institutions
 11282 of the Commonwealth of Virginia may submit Interagency Transfers for the amount of the
 11283 fee. The Department of Environmental Quality may provide a means to pay fees
 11284 electronically. Fees not submitted electronically shall be sent to the Virginia Department
 11285 of Environmental Quality.
 11286 2. The VSMP authority, for VSMP operational costs of the VSMP authority under the
 11287 General Permit for Discharges of Stormwater from Construction Activities, and must be in
 11288 U.S. currency.

11289 B. When fees are collected electronically pursuant to this part through credit cards, business
 11290 transaction costs associated with processing such payments may be additionally assessed.

11291 C. Nothing in this part shall prohibit the department and a VSMP authority from entering into
 11292 an agreement whereby the total fee to be paid by the applicant for coverage under the General
 11293 Permit for Discharges of Stormwater from Construction Activities is payable to the VSMP
 11294 authority, and the VSMP authority transmits the department's portion set forth in 9VAC25-870-
 11295 820 to the department on a schedule established by the department.

11296 D. Required information for state permits or state permit coverage. All applicants, unless
 11297 otherwise specified by the department, shall submit the following information along with the fee
 11298 payment or utilize the department Permit Application Fee Form:

- 11299 1. Applicant name, address and daytime phone number.
 11300 2. The name of the facility/activity, and the facility/activity location.
 11301 3. The type of state permit applied for.
 11302 4. Whether the application is for a new state permit issuance, state permit reissuance,
 11303 state permit maintenance, or state permit modification.
 11304 5. The amount of fee submitted.
 11305 6. The existing state permit number, if applicable.
 11306 7. Other information as required by the VSMP authority.

11307 **9VAC25-870-770. Incomplete and late payments. (Repealed.)**

11308 All incomplete payments will be deemed as nonpayments. The department or the VSMP
 11309 authority, as applicable, shall provide notification to the state applicant of any incomplete
 11310 payments.

11311 Interest may be charged for late payments at the underpayment rate set forth in § 58.1-15 of
 11312 the Code of Virginia and is calculated on a monthly basis at the applicable periodic rate.

11313 A 10% late payment fee shall be charged to any delinquent (over 90 days past due) account.

11314 The department and the VSMP authority are entitled to all remedies available under the Code
 11315 of Virginia in collecting any past due amount.

11316 **9VAC25-870-770. Incomplete and late payments. (Repealed.)**

11317 All incomplete payments will be deemed as nonpayments. The department or the VSMP
 11318 authority, as applicable, shall provide notification to the state applicant of any incomplete
 11319 payments.

11320 Interest may be charged for late payments at the underpayment rate set forth in § 58.1-15 of
 11321 the Code of Virginia and is calculated on a monthly basis at the applicable periodic rate.

11322 A 10% late payment fee shall be charged to any delinquent (over 90 days past due) account.

11323 The department and the VSMP authority are entitled to all remedies available under the Code
 11324 of Virginia in collecting any past due amount.

11325 **9VAC25-870-780. Deposit and use of fees. (Repealed.)**

11326 A. All fees collected by the department pursuant to this chapter shall be deposited into the
 11327 Virginia Stormwater Management Fund and shall be used and accounted for as specified in §
 11328 62.1-44.15:29 of the Code of Virginia. Fees collected by the department shall be exempt from
 11329 statewide indirect costs charged and collected by the Department of Accounts.

11330 B. All fees collected by a VSMP authority pursuant to this chapter shall be subject to
 11331 accounting review and shall be used solely to carry out the VSMP authority's responsibilities
 11332 pursuant to the Act, Part II and Part III A of this chapter, local ordinances, or annual standards
 11333 and specifications.

11334 Pursuant to subdivision A 5 a of § 62.1-44.15:28 of the Code of Virginia, whenever the
 11335 department has authorized the administration of a VSMP by a VSMP authority, 28% of the total
 11336 revenue generated by the statewide stormwater management fees collected in accordance with
 11337 9VAC25-870-820 shall be remitted on a schedule determined by the department to the State
 11338 Treasurer for deposit in the Virginia Stormwater Management Fund unless otherwise collected
 11339 electronically. If the VSMP authority waives or reduces any fee due in accordance with 9VAC25-
 11340 870-820, the VSMP authority shall remit the 28% portion that would be due to the Virginia
 11341 Stormwater Management Fund if such fee were charged in full. Any fee increases established by
 11342 the VSMP authority beyond the base fees established in this part shall not be subject to the fee
 11343 distribution formula.

11344 **9VAC25-870-780. Deposit and use of fees. (Repealed.)**

11345 A. All fees collected by the department pursuant to this chapter shall be deposited into the
 11346 Virginia Stormwater Management Fund and shall be used and accounted for as specified in §
 11347 62.1-44.15:29 of the Code of Virginia. Fees collected by the department shall be exempt from
 11348 statewide indirect costs charged and collected by the Department of Accounts.

11349 B. All fees collected by a VSMP authority pursuant to this chapter shall be subject to
 11350 accounting review and shall be used solely to carry out the VSMP authority's responsibilities
 11351 pursuant to the Act, Part II and Part III A of this chapter, local ordinances, or annual standards
 11352 and specifications.

11353 Pursuant to subdivision A 5 a of § 62.1-44.15:28 of the Code of Virginia, whenever the
 11354 department has authorized the administration of a VSMP by a VSMP authority, 28% of the total
 11355 revenue generated by the statewide stormwater management fees collected in accordance with
 11356 9VAC25-870-820 shall be remitted on a schedule determined by the department to the State
 11357 Treasurer for deposit in the Virginia Stormwater Management Fund unless otherwise collected

11358 electronically. If the VSMP authority waives or reduces any fee due in accordance with 9VAC25-
 11359 870-820, the VSMP authority shall remit the 28% portion that would be due to the Virginia
 11360 Stormwater Management Fund if such fee were charged in full. Any fee increases established by
 11361 the VSMP authority beyond the base fees established in this part shall not be subject to the fee
 11362 distribution formula.

11363 **9VAC25-870-790. General. (Repealed.)**

11364 A. The fees for individual permits, general permit coverage, state permit or registration
 11365 statement modification, or state permit transfers are considered separate actions and shall be
 11366 assessed a separate fee, as applicable.

11367 B. Until July 1, 2014, the department is authorized to assess a \$125 reinspection fee for each
 11368 visit to a project site that was necessary to check on the status of project site items noted to be in
 11369 noncompliance and documented as such on a prior project inspection.

11370 **9VAC25-870-790. General. (Repealed.)**

11371 **9VAC25-870-790. General.**

11372 A. The fees for individual permits, general permit coverage, state permit or registration
 11373 statement modification, or state permit transfers are considered separate actions and shall be
 11374 assessed a separate fee, as applicable.

11375 B. Until July 1, 2014, the department is authorized to assess a \$125 reinspection fee for each
 11376 visit to a project site that was necessary to check on the status of project site items noted to be in
 11377 noncompliance and documented as such on a prior project inspection.

11378 **9VAC25-870-800. Fee schedules for municipal separate storm sewer system new state
 11379 permit issuance. (Repealed.)**

11380 The following fee schedule applies to state permit applications for issuance of a new individual
 11381 municipal separate storm sewer system permit or coverage under a MS4 General Permit. All
 11382 regulated MS4s that apply for joint coverage under an individual permit or general permit
 11383 registration shall each pay the appropriate fees set out below.

Municipal Stormwater / MS4 Individual (Large and Medium)	\$16,000
Municipal Stormwater / MS4 Individual (Small)	\$8,000
Municipal Stormwater / MS4 General Permit (Small)	\$4,000

11384 **9VAC25-870-800. Fee schedules for municipal separate storm sewer system new state
 11385 permit issuance. (Repealed.)**

11386 **9VAC25-870-800. Fee schedules for municipal separate storm sewer system new state
 11387 permit issuance.**

11388 The following fee schedule applies to state permit applications for issuance of a new individual
 11389 municipal separate storm sewer system permit or coverage under a MS4 General Permit. All
 11390 regulated MS4s that apply for joint coverage under an individual permit or general permit
 11391 registration shall each pay the appropriate fees set out below.

Municipal Stormwater / MS4 Individual (Large and Medium)	\$16,000
Municipal Stormwater / MS4 Individual (Small)	\$8,000
Municipal Stormwater / MS4 General Permit (Small)	\$4,000

11392 **9VAC25-870-810. Fee schedules for major modification of MS4 individual permits
 11393 requested by the operator. (Repealed.)**

11394 The following fee schedule applies to state applications for major modification of an individual
 11395 MS4 permit requested by the state permittee:

Municipal Stormwater / MS4 Individual (Large and Medium)	\$5,000
Municipal Stormwater / MS4 Individual (Small)	\$2,500

11396 9VAC25-870-810. Fee schedules for major modification of MS4 individual permits
11397 requested by the operator. (Repealed.)

11398 The following fee schedule applies to state applications for major modification of an individual
11399 MS4 permit requested by the state permittee:

Municipal Stormwater / MS4 Individual (Large and Medium)	\$5,000
Municipal Stormwater / MS4 Individual (Small)	\$2,500

11400 9VAC25-870-820. Fees for an individual permit or coverage under the General Permit for
11401 Discharges of Stormwater from Construction Activities. (Repealed.)

11402 The following fees apply, until June 30, 2014, to coverage under the General Permit for
11403 Discharges of Stormwater from Construction Activities issued by the department prior to a VSMP
11404 authority being approved by the department in the area where the applicable land-disturbing
11405 activity is located, or where the department has issued an individual permit or coverage under the
11406 General Permit for Discharges of Stormwater from Construction Activities for a state or federal
11407 agency.

General / Stormwater Management - Phase I Land Clearing (Large Construction Activity - Sites or common plan areas greater than five acres)
General / Stormwater Management - Phase II Land Clearing (Small Construction Activity - Sites or common plan areas less than one acre and less than five acres)
General / Stormwater Management - Small Construction Activity/Land Clearing (Sites within designated areas where land disturbance acreage equal to or greater than 2,500 square feet and less than one acre) (Fee valid until July 1, 2014)
Individual Permit for Discharges of Stormwater from Construction Activities

11408 The following total fees to be paid by an applicant apply to (i) any operator seeking coverage
11409 under a July 1, 2014, General Permit for Discharges of Stormwater from Construction Activities
11410 or (ii) on or after July 1, 2014, to any operator seeking coverage under a General Permit for
11411 Discharges of Stormwater from Construction Activities, a state or federal agency that does not file
11412 annual standards and specifications, or an individual permit issued by the department. On and
11413 after approval by the department of a VSMP authority for coverage under the General Permit for
11414 Discharges of Stormwater from Construction Activities, no more than 50% of the total fee to be
11415 paid by an applicant set out in this part shall be due at the time that a stormwater management
11416 plan or an initial stormwater management plan is submitted for review in accordance with
11417 9VAC25-870-108. The remaining total fee balance to be paid by an applicant shall be due prior
11418 to the issuance of coverage under the General Permit for Discharges of Stormwater from
11419 Construction Activities.

11420 When a site or sites are purchased for development within a previously permitted common
11421 plan of development or sale, the applicant shall be subject to fees ("total fee to be paid by
11422 applicant" column) in accordance with the disturbed acreage of their site or sites according to the
11423 following table.

Fee type	Total fee to be paid by applicant (includes both VSMP and MS4 fees)
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	and department p applica
Chesapeake Bay Preservation Act Land-Disturbing Activity (not subject to General Permit coverage; sites within designated areas of Chesapeake Bay Act localities with land-disturbance acreage equal to or greater than 2,500 square feet and less than one acre)	\$29
General / Stormwater Management - Small Construction Activity/Chesapeake Bay Preservation Act Land-Disturbing Activity (not subject to General Permit coverage)/Land Clearing (Single-family detached residential structures within or outside a common plan of development or sale with land-disturbance acreage less than five acres)	\$20
General / Stormwater Management - Small Construction Activity/Land Clearing (Areas within common plans of development or sale with land-disturbance acreage less than one acre, except for single-family detached residential structures)	\$29
General / Stormwater Management - Small Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than one acre and less than five acres)	\$2,7
General / Stormwater Management - Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than five acres and less than 10 acres)	\$3,4
General / Stormwater Management - Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than 10 acres and less than 50 acres)	\$4,5
General / Stormwater Management - Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than 50 acres and less than 100 acres)	\$6,1
General / Stormwater Management - Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than 100 acres)	\$9,6
Individual Permit for Discharges of Stormwater from Construction Activities (This will be administered by the department)	\$15,0
* If the project is completely administered by the department such as may be the case for a state or federal project, the entire applicant fee shall be paid to the department.	

11424 The following fees apply, on or after July 1, 2014, to coverage under the General Permit for
 11425 Discharges of Stormwater from Construction Activities issued by the department for a state or
 11426 federal agency that has annual standards and specifications approved by the department.

General / Stormwater Management - Phase I Land Clearing (Large Construction Activity - Sites or common plans of development or sale with land-disturbance acreage greater than five acres)
General / Stormwater Management - Phase II Land Clearing (Small Construction Activity - Sites or common plans of development or sale with land-disturbance acreage greater than one acre and less than five acres)

11427 **9VAC25-870-820. Fees for an individual permit or coverage under the General Permit for**
 11428 **Discharges of Stormwater from Construction Activities. (Repealed.)**

11429 The following fees apply, until June 30, 2014, to coverage under the General Permit for
 11430 Discharges of Stormwater from Construction Activities issued by the department prior to a VSMP

11431 authority being approved by the department in the area where the applicable land-disturbing
 11432 activity is located, or where the department has issued an individual permit or coverage under the
 11433 General Permit for Discharges of Stormwater from Construction Activities for a state or federal
 11434 agency.

General / Stormwater Management - Phase I Land Clearing (Large Construction Activity - Sites or common plan areas greater than five acres)
General / Stormwater Management - Phase II Land Clearing (Small Construction Activity - Sites or common plan areas greater than one acre and less than five acres)
General / Stormwater Management - Small Construction Activity/Land Clearing (Sites within designated areas of land disturbance acreage equal to or greater than 2,500 square feet and less than one acre) (Fee valid until July 1, 2014)
Individual Permit for Discharges of Stormwater from Construction Activities

11435 The following total fees to be paid by an applicant apply to (i) any operator seeking coverage
 11436 under a July 1, 2014, General Permit for Discharges of Stormwater from Construction Activities
 11437 or (ii) on or after July 1, 2014, to any operator seeking coverage under a General Permit for
 11438 Discharges of Stormwater from Construction Activities, a state or federal agency that does not file
 11439 annual standards and specifications, or an individual permit issued by the department. On and
 11440 after approval by the department of a VSMP authority for coverage under the General Permit for
 11441 Discharges of Stormwater from Construction Activities, no more than 50% of the total fee to be
 11442 paid by an applicant set out in this part shall be due at the time that a stormwater management
 11443 plan or an initial stormwater management plan is submitted for review in accordance with
 11444 9VAC25-870-108. The remaining total fee balance to be paid by an applicant shall be due prior
 11445 to the issuance of coverage under the General Permit for Discharges of Stormwater from
 11446 Construction Activities.

11447 When a site or sites are purchased for development within a previously permitted common
 11448 plan of development or sale, the applicant shall be subject to fees ("total fee to be paid by
 11449 applicant" column) in accordance with the disturbed acreage of their site or sites according to the
 11450 following table.

Fee type	Total fee to be paid by applicant (includes both VSMP and department permit fees)
Chesapeake Bay Preservation Act Land-Disturbing Activity (not subject to General Permit coverage; sites within designated areas of Chesapeake Bay Act localities with land-disturbance acreage equal to or greater than 2,500 square feet and less than one acre)	\$29
General / Stormwater Management - Small Construction Activity/Chesapeake Bay Preservation Act Land-Disturbing Activity (not subject to General Permit coverage)/Land Clearing (Single-family detached residential structures within or outside a common plan of development or sale with land-disturbance acreage less than five acres)	\$20
General / Stormwater Management - Small Construction Activity/Land Clearing (Areas within common plans of development or sale with land-disturbance acreage less than one acre, except for single-family detached residential structures)	\$29

General / Stormwater Management - Small Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than one acre and less than five acres)	\$2,700
General / Stormwater Management - Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than five acres and less than 10 acres)	\$3,400
General / Stormwater Management - Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than 10 acres and less than 50 acres)	\$4,500
General / Stormwater Management - Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than 50 acres and less than 100 acres)	\$6,100
General / Stormwater Management - Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than 100 acres)	\$9,600
Individual Permit for Discharges of Stormwater from Construction Activities (This will be administered by the department)	\$15,000
* If the project is completely administered by the department such as may be the case for a state or federal project, the entire applicant fee shall be paid to the department.	

11451 The following fees apply, on or after July 1, 2014, to coverage under the General Permit for
 11452 Discharges of Stormwater from Construction Activities issued by the department for a state or
 11453 federal agency that has annual standards and specifications approved by the department.

General / Stormwater Management - Phase I Land Clearing (Large Construction Activity - Sites or common plans of development or sale with land-disturbance acreage greater than five acres)
General / Stormwater Management - Phase II Land Clearing (Small Construction Activity - Sites or common plans of development or sale with land-disturbance acreage greater than one acre and less than five acres)

11454 ~~9VAC25-870-825. Fees for the modification or transfer of individual permits or of~~
 11455 ~~registration statements for the General Permit for Discharges of Stormwater from~~
 11456 ~~Construction Activities. (Repealed.)~~

11457 The following fees apply to modification or transfer of individual permits or of registration
 11458 statements for the General Permit for Discharges of Stormwater from Construction Activities
 11459 issued by the department. If the state permit modifications result in changes to stormwater
 11460 management plans that require additional review by the VSMP authority, such reviews shall be
 11461 subject to the fees set out in this section. The fee assessed shall be based on the total disturbed
 11462 acreage of the site. In addition to the state permit modification fee, modifications resulting in an
 11463 increase in total disturbed acreage shall pay the difference in the initial state permit fee paid and
 11464 the state permit fee that would have applied for the total disturbed acreage in 9VAC25-870-820.
 11465 No modification or transfer fee shall be required until such department-approved programs exist.
 11466 These fees shall only be effective when assessed by a VSMP authority, including the department
 11467 when acting in that capacity, that has been approved by the department. No modification fee shall
 11468 be required for the General Permit for Discharges of Stormwater from Construction Activities for
 11469 a state or federal agency that is administering a project in accordance with approved annual
 11470 standards and specifications but shall apply to all other state or federal agency projects.

~~General / Stormwater Management – Small Construction Activity/Land Clearing (Areas within common plans of development or sale with land-disturbance acreage less than one acre, except for single-family detached residential structures)~~

~~General / Stormwater Management – Small Construction Activity/Chesapeake Bay Preservation Act Land-Disturbance Permit coverage)/Land Clearing (Single-family detached residential structures within or outside a common plan of development or sale with land-disturbance acreage less than five acres where the locality is the VSMP authority)~~

~~General / Stormwater Management – Small Construction Activity/Land Clearing (Single-family detached residential structures within or outside a common plan of development or sale with land-disturbance acreage less than five acres where the department is the VSMP authority)~~

~~General / Stormwater Management – Small Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than one and less than five acres)~~

~~General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than five acres and less than 10 acres)~~

~~General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than 10 acres and less than 50 acres)~~

~~General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than 50 acres and less than 100 acres)~~

~~General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than 100 acres)~~

~~Individual Permit for Discharges of Stormwater from Construction Activities~~

11471 9VAC25-870-825. Fees for the modification or transfer of individual permits or of
11472 registration statements for the General Permit for Discharges of Stormwater from
11473 Construction Activities. (Repealed.)

11474 The following fees apply to modification or transfer of individual permits or of registration
11475 statements for the General Permit for Discharges of Stormwater from Construction Activities
11476 issued by the department. If the state permit modifications result in changes to stormwater
11477 management plans that require additional review by the VSMP authority, such reviews shall be
11478 subject to the fees set out in this section. The fee assessed shall be based on the total disturbed
11479 acreage of the site. In addition to the state permit modification fee, modifications resulting in an
11480 increase in total disturbed acreage shall pay the difference in the initial state permit fee paid and
11481 the state permit fee that would have applied for the total disturbed acreage in 9VAC25-870-820.
11482 No modification or transfer fee shall be required until such department-approved programs exist.
11483 These fees shall only be effective when assessed by a VSMP authority, including the department
11484 when acting in that capacity, that has been approved by the department. No modification fee shall
11485 be required for the General Permit for Discharges of Stormwater from Construction Activities for
11486 a state or federal agency that is administering a project in accordance with approved annual
11487 standards and specifications but shall apply to all other state or federal agency projects.

~~General / Stormwater Management – Small Construction Activity/Land Clearing (Areas within common plans of development or sale with land-disturbance acreage less than one acre, except for single-family detached residential structures)~~

~~General / Stormwater Management – Small Construction Activity/Chesapeake Bay Preservation Act Land-Disturbance Permit coverage)/Land Clearing (Single-family detached residential structures within or outside a common plan of development or sale with land-disturbance acreage less than five acres where the locality is the VSMP authority)~~

~~General / Stormwater Management – Small Construction Activity/Land Clearing (Single-family detached residential structures within or outside a common plan of development or sale with land-disturbance acreage less than five acres where the department is the VSMP authority)~~

General / Stormwater Management – Small Construction Activity/Land Clearing (Sites or areas within common plan of development or sale with land disturbance acreage equal to or greater than one and less than five acres)

General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plan of development or sale with land disturbance acreage equal to or greater than five acres and less than 10 acres)

General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plan of development or sale with land disturbance acreage equal to or greater than 10 acres and less than 50 acres)

General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plan of development or sale with land disturbance acreage equal to or greater than 50 acres and less than 100 acres)

General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plan of development or sale with land disturbance acreage equal to or greater than 100 acres)

Individual Permit for Discharges of Stormwater from Construction Activities

11488 9VAC25-870-830. State permit maintenance fees. (Repealed.)

~~11489 The following annual permit maintenance fees apply to each state permit identified below, including expired state permits that have been administratively continued. With respect to the~~
~~11490 General Permit for Discharges of Stormwater from Construction Activities, these fees shall apply~~
~~11491 until the state permit coverage is terminated, and shall only be effective when assessed by a~~
~~11492 VSMP authority including the department when acting in that capacity that has been approved by~~
~~11493 the department. No maintenance fee shall be required for a General Permit for Discharges of~~
~~11494 Stormwater from Construction Activities until such department approved programs exist. No~~
~~11495 maintenance fee shall be required for the General Permit for Discharges of Stormwater from~~
~~11496 Construction Activities for a state or federal agency that is administering a project in accordance~~
~~11497 with approved annual standards and specifications but shall apply to all other state or federal~~
~~11498 agency projects. All regulated MS4s who are issued joint coverage under an individual permit or~~
~~11499 general permit registration shall each pay the appropriate fees set out below:~~
~~11500~~

~~Municipal Stormwater / MS4 Individual (Large and Medium)~~

~~Municipal Stormwater / MS4 Individual (Small)~~

~~Municipal Stormwater / MS4 General Permit (Small)~~

~~Chesapeake Bay Preservation Act Land Disturbing Activity (not subject to General Permit coverage; sites with Act localities with land disturbance acreage equal to or greater than 2,500 square feet and less than 1 acre)~~

~~General / Stormwater Management – Small Construction Activity/Land Clearing (Areas within common plans of development or sale with land disturbance acreage less than one acre, except for single-family detached residential structures)~~

~~General / Stormwater Management – Small Construction Activity/Chesapeake Bay Preservation Act Land-Disturbing Activity (not subject to General Permit coverage)/Land Clearing (Single-family detached residential structures within or outside a common plan of development or sale with land disturbance acreage less than five acres where the locality is the VSMP authority)~~

~~General / Stormwater Management – Small Construction Activity/Land Clearing (Single-family detached residential structures within or outside a common plan of development or sale with land disturbance acreage less than five acres where the department is the VSMP authority)~~

~~General / Stormwater Management – Small Construction Activity/Land Clearing (Sites or areas within common plan of development or sale with land disturbance equal to or greater than one acre and less than five acres)~~

~~General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plan of development or sale with land disturbance acreage equal to or greater than five acres and less than 10 acres)~~

~~General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plan of development or sale with land-disturbance acreage equal to or greater than 10 acres and less than 50 acres)~~

~~General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plan of development or sale with land-disturbance acreage equal to or greater than 50 acres and less than 100 acres)~~

~~General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plan of development or sale with land-disturbance acreage equal to or greater 100 acres)~~

Individual Permit for Discharges from Construction Activities

11501 9VAC25-870-830. State permit maintenance fees. (Repealed.)

11502 The following annual permit maintenance fees apply to each state permit identified below,
11503 including expired state permits that have been administratively continued. With respect to the
11504 General Permit for Discharges of Stormwater from Construction Activities, these fees shall apply
11505 until the state permit coverage is terminated, and shall only be effective when assessed by a
11506 VSMP authority including the department when acting in that capacity that has been approved by
11507 the department. No maintenance fee shall be required for a General Permit for Discharges of
11508 Stormwater from Construction Activities until such department approved programs exist. No
11509 maintenance fee shall be required for the General Permit for Discharges of Stormwater from
11510 Construction Activities for a state or federal agency that is administering a project in accordance
11511 with approved annual standards and specifications but shall apply to all other state or federal
11512 agency projects. All regulated MS4s who are issued joint coverage under an individual permit or
11513 general permit registration shall each pay the appropriate fees set out below:

Municipal Stormwater / MS4 Individual (Large and Medium)

Municipal Stormwater / MS4 Individual (Small)

Municipal Stormwater / MS4 General Permit (Small)

Chesapeake Bay Preservation Act Land-Disturbing Activity (not subject to General Permit coverage; sites with Act localities with land-disturbance acreage equal to or greater than 2,500 square feet and less than 1 acre)

General / Stormwater Management – Small Construction Activity/Land Clearing (Areas within common plans of development or sale with land-disturbance acreage less than one acre, except for single-family detached residential structures)

General / Stormwater Management – Small Construction Activity/Chesapeake Bay Preservation Act Land-Disturbing Activity (not subject to General Permit coverage)/Land Clearing (Single-family detached residential structures within or outside a common plan of development or sale with land-disturbance acreage less than five acres where the locality is the VSMP authority)

General / Stormwater Management – Small Construction Activity/Land Clearing (Single-family detached residential structures within or outside a common plan of development or sale with land-disturbance acreage less than five acres where the department is the VSMP authority)

General / Stormwater Management – Small Construction Activity/Land Clearing (Sites or areas within common plan of development or sale with land-disturbance equal to or greater than one acre and less than five acres)

General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plan of development or sale with land-disturbance acreage equal to or greater than five acres and less than 10 acres)

General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plan of development or sale with land-disturbance acreage equal to or greater than 10 acres and less than 50 acres)

General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plan of development or sale with land-disturbance acreage equal to or greater than 50 acres and less than 100 acres)

General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common disturbance acreage equal to or greater 100 acres)

Individual Permit for Discharges from Construction Activities

11514 ~~FORMS (9VAC25-870)(Repealed)</u~~

11515 [Application Form 1 – General Information, Consolidated Permits Program, EPA Form 3510-1](#)
11516 [\(rev. 8/90\)](#)

11517 [Construction Activity Operator Permit Fee Form \(rev. 9/14\)](#)

11518 ~~FORMS (9VAC25-870)(Repealed)</u~~

11519 [Application Form 1 – General Information, Consolidated Permits Program, EPA Form 3510-1](#)
11520 [\(rev. 8/90\)](#)

11521 [Construction Activity Operator Permit Fee Form \(rev. 9/14\)](#)

11522 ~~Documents Incorporated by Reference (9VAC25-870)(Repealed)</u~~

11523 [Virginia Runoff Reduction Method: Instructions & Documentation, March 28, 2011](#)

11524 [Virginia Erosion and Sediment Control Regulation Minimum Standard 19 in effect prior to July](#)
11525 [1, 2014](#)

11526 ~~Documents Incorporated by Reference (9VAC25-870)(Repealed)</u~~

11527 [Virginia Runoff Reduction Method: Instructions & Documentation, March 28, 2011](#)

11528 [Virginia Erosion and Sediment Control Regulation Minimum Standard 19 in effect prior to July](#)
11529 [1, 2014](#)

11530 Chapter 875

11531 Virginia Erosion and Stormwater Management Regulation

11532 Part I

11533 Definitions and applicability for Virginia Erosion and Stormwater Management Programs and
11534 Virginia Erosion and Sediment Control Programs

11535 **9VAC25-875-10. General.**

11536 For the purpose of applying the Virginia Erosion and Stormwater Management Regulation,
11537 the words and terms shall have the meanings given to them in 9VAC25-875-20. The words and
11538 terms defined in Part II, Part III, Article 4 (9VAC25-875-670 et seq) of Part V, and Part VII of this
11539 chapter are applicable only to the Part in which they are defined.

11540 **9VAC25-875-20. Definitions.**

11541 The following words and terms, when used in this chapter, shall have the following meanings,
11542 unless the context clearly indicates otherwise.

11543 "Adequate channel" means a channel that will convey the designated frequency storm event
11544 without overtopping the channel bank nor causing erosive damage to the channel bed or banks.

11545 "Agreement in lieu of a plan" means a contract between the VESMP authority or the
11546 department acting as a VSMP authority and the owner or permittee that specifies methods that
11547 shall be implemented to comply with the requirements of VESMA for the construction of (i) a
11548 single-family detached residential structure or (ii) a farm building or structure on a parcel of land
11549 with a total impervious cover percentage, including the impervious cover from the farm building
11550 or structure to be constructed, of less than five percent; such contract may be executed by the
11551 VESMP authority in lieu of a soil erosion control and stormwater management plan or by the
11552 department acting as a VSMP authority in lieu of a stormwater management plan.

11553 "Applicant" means person submitting a soil erosion control and stormwater management plan
11554 to a VESMP authority, or a stormwater management plan to the department when it is serving as
11555 a VSMP authority, for approval in order to obtain authorization to commence a land-disturbing
11556 activity.

11557 "Approval authority" means the department or its designee.

11558 "Best management practice" or "BMP" means schedules of activities, prohibitions of practices,
11559 maintenance procedures, and other management practices, including both structural and
11560 nonstructural practices, to prevent or reduce the pollution of surface waters and groundwater
11561 systems.

11562 1. "Nonproprietary best management practice" means both structural and nonstructural
11563 practices to prevent or reduce the pollution of surface waters and groundwater systems
11564 that are in the public domain and are not protected by trademark or patent or copyright.

11565 2. "Proprietary best management practice" means both structural and nonstructural
11566 practices to prevent or reduce the pollution of surface waters and groundwater systems
11567 that are privately owned and controlled and may be protected by trademark or patent or
11568 copyright.

11569 "Board" means the State Water Control Board. When used outside the context of the
11570 promulgation of regulations, including regulations to establish general permits, "board" means the
11571 Department of Environmental Quality.

11572 "Causeway" means a temporary structural span constructed across a flowing watercourse or
11573 wetland to allow construction traffic to access the area without causing erosion damage.

11574 "Certification" means the designation issued by the department, on behalf of the
11575 Commonwealth, to individuals who have completed department-approved training programs and
11576 met any additional eligibility requirements or in other ways demonstrated adequate knowledge
11577 and experience in accordance with the eligibility requirements of 9VAC25-875-410 related to the
11578 specified classifications (9VAC25-875-400) within the separate subject areas of ESC or SWM or
11579 both.

11580 "Certified inspector for ESC" means an employee or agent of a VESCP authority or VESMP
11581 authority who (i) holds a certification from the department in the area of project inspection or (ii)
11582 is enrolled in the department's training program for project inspection and successfully completes
11583 such program within one year after enrollment.

11584 "Certified inspector for SWM" means an employee or agent of a VESMP authority or VSMP
11585 authority who holds a certification from the department in the classification of inspector for project
11586 inspection in the area of SWM.

11587 "Certified plan reviewer for ESC" means an employee or agent of a VESCP authority or
11588 VESMP authority who (i) holds a certification from the department in the area of plan review, (ii)
11589 is enrolled in the department's training program for plan review and successfully completes such
11590 program within one year after enrollment, or (iii) is licensed as a professional engineer, architect,
11591 landscape architect, land surveyor pursuant to Article 1 (§ 54.1-400 et seq.) of Chapter 4 of Title
11592 54.1, or professional soil scientist as defined in § 54.1-2200.

- 11593 "Certified plan reviewer for SWM" means an employee or agent of a VESMP authority or
11594 VSMP authority who (i) holds a certification from the department in the area of plan review or (ii)
11595 is enrolled in the department's training program for plan review and successfully completes such
11596 program within one year after enrollment.
- 11597 "Certified program administrator for ESC" means an employee or agent of a VESCP authority
11598 or VESMP authority who holds a certification from the department in the classification of program
11599 administrator in the area of ESC.
- 11600 "Certified program administrator for SWM" means an employee or agent of a VESMP authority
11601 or VSMP authority who holds a certification from the department in the classification of program
11602 administrator in the area of SWM.
- 11603 "Channel" means a natural stream or manmade waterway.
- 11604 "Chesapeake Bay Preservation Act" means Article 2.5 (§ 62.1-44.15:67 et seq.) of Chapter
11605 3.1 of Title 62.1 of the Code of Virginia.
- 11606 "Chesapeake Bay Preservation Area" means any land designated by a local government
11607 pursuant to Part III (9VAC25-830-70 et seq.) of the Chesapeake Bay Preservation Area
11608 Designation and Management Regulations and § 62.1-44.15:74 of the Code of Virginia. A
11609 Chesapeake Bay Preservation Area shall consist of a Resource Protection Area and a Resource
11610 Management Area as defined in the Chesapeake Bay Preservation Area Designation and
11611 Management Regulations (9VAC25-830).
- 11612 "Chesapeake Bay watershed" means all land areas draining to the following Virginia river
11613 basins: Potomac River Basin, James River Basin, Rappahannock River Basin, Chesapeake Bay
11614 and its small coastal basins, and York River Basin.
- 11615 "Classification" means the four specific certification designations assigned to the roles of
11616 program administrator, plan reviewer, inspector, and combined administrator within the areas of
11617 ESC, SWM or both ESC and SWM for a dual classification.
- 11618 "Clean Water Act" or "CWA" means the federal Clean Water Act (33 USC § 1251 et seq.),
11619 formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control
11620 Act Amendments of 1972, Public Law 92-500, as amended by Public Law 95-217, Public Law 95-
11621 576, Public Law 96-483, and Public Law 97-117, or any subsequent revisions thereto.
- 11622 "Cofferdam" means a watertight temporary structure in a river, lake, etc., for keeping the water
11623 from an enclosed area that has been pumped dry so that bridge foundations, dams, etc., may be
11624 constructed.
- 11625 "Combined administrator for ESC" means anyone who is responsible for performing the
11626 combined duties of a program administrator, plan reviewer and inspector of a VESCP authority
11627 or the ESC component of a VESMP authority.
- 11628 "Combined administrator for SWM" means anyone who is responsible for performing the
11629 combined duties of a program administrator, plan reviewer and inspector of a VSMP authority or
11630 the SWM component of a VESMP authority.
- 11631 "Common plan of development or sale" means a contiguous area where separate and distinct
11632 construction activities may be taking place at different times on different schedules.
- 11633 "Comprehensive stormwater management plan" means a plan, which may be integrated with
11634 other land use plans or regulations that specifies how the water quality components, quantity
11635 components, or both of stormwater are to be managed on the basis of an entire watershed or a
11636 portion thereof. The plan may also provide for the remediation of erosion, flooding, and water
11637 quality and quantity problems caused by prior development.
- 11638 "Construction activity" means any clearing, grading, or excavation associated with large
11639 construction activity or associated with small construction activity.

11640 "Control measure" means any BMP, stormwater facility, or other method used to minimize the
11641 discharge of pollutants to state waters.

11642 "Controversial permit" means a water permitting action for which a public hearing has been
11643 granted pursuant to 9VAC25-875-1120 and 9VAC25-875-1130.

11644 "CWA and regulations" means the Clean Water Act and applicable regulations published in
11645 the Code of Federal Regulations promulgated thereunder. For the purposes of this chapter, it
11646 includes state program requirements.

11647 "Dam" means a barrier to confine or raise water for storage or diversion, to create a hydraulic
11648 head, to prevent gully erosion, or to retain soil, rock or other debris.

11649 "Denuded" means a term applied to land that has been physically disturbed and no longer
11650 supports vegetative cover.

11651 "Department" means the Department of Environmental Quality.

11652 "Dike" means an earthen embankment constructed to confine or control water, especially one
11653 built along the banks of a river to prevent overflow of lowlands; levee.

11654 "Director" means the Director of the Department of Environmental Quality or his designee.

11655 "Discharge" when used without qualification, means the discharge of a pollutant.

11656 "Discharge of a pollutant" means:

11657 1. Any addition of any pollutant or combination of pollutants to state waters from any point
11658 source; or

11659 2. Any addition of any pollutant or combination of pollutants to the waters of the contiguous
11660 zone or the ocean from any point source other than a vessel or other floating craft which
11661 is being used as a means of transportation.

11662 This definition includes additions of pollutants into surface waters from: surface runoff that
11663 is collected or channeled by man; discharges through pipes, sewers, or other
11664 conveyances owned by a state, municipality, or other person that do not lead to a
11665 treatment works; and discharges through pipes, sewers, or other conveyances, leading
11666 into privately owned treatment works. This term does not include an addition of pollutants
11667 by any indirect discharger.

11668 "District" or "soil and water conservation district" means a political subdivision of the
11669 Commonwealth organized in accordance with the provisions of Article 3 (§ 10.1-506 et seq.) of
11670 Chapter 5 of Title 10.1 of the Code of Virginia.

11671 "Diversion" means a channel with a supporting ridge on the lower side constructed across or
11672 at the bottom of a slope for the purpose of intercepting surface runoff.

11673 "Dormant" means denuded land that is not actively being brought to a desired grade or
11674 condition.

11675 "Drainage area" means a land area, water area, or both from which runoff flows to a common
11676 point.

11677 "Dual combined administrator for ESC and SWM" means anyone who is responsible for
11678 performing the combined duties of a program administrator, plan reviewer and inspector of a
11679 VESMP authority.

11680 "Energy dissipator" means a nonerodible structure which reduces the velocity of concentrated
11681 flow to reduce its erosive effects.

11682 "Environmental Protection Agency" or "EPA" means the United States Environmental
11683 Protection Agency.

11684 "Erosion and sediment control plan" means a document containing material for the
11685 conservation of soil and water resources of a unit or group of units of land. It may include

11686 appropriate maps, an appropriate soil and water plan inventory and management information with
11687 needed interpretations, and a record of decisions contributing to conservation treatment. The plan
11688 shall contain all major conservation decisions to ensure that the entire unit or units of land will be
11689 so treated to achieve the conservation objectives.

11690 "Erosion and Sediment Control Law for Localities Not Administering a Virginia Erosion and
11691 Stormwater Management Program" or "ESCL" means Article 2.4 (§ 62.1-44.15:51 et seq.) of
11692 Chapter 3.1 of Title 62.1 of the Code of Virginia.

11693 "Erosion impact area" means an area of land that is not associated with a current land-
11694 disturbing activity but is subject to persistent soil erosion resulting in the delivery of sediment onto
11695 neighboring properties or into state waters. This definition shall not apply to any lot or parcel of
11696 land of 10,000 square feet or less used for residential purposes or to shorelines where the erosion
11697 results from wave action or other coastal processes.

11698 "ESC" means erosion and sediment control.

11699 "Farm building or structure" means the same as that term is defined in § 36-97 of the Code of
11700 Virginia and also includes any building or structure used for agritourism activity, as defined in §
11701 3.2-6400 of the Code of Virginia, and any related impervious services including roads, driveways,
11702 and parking areas.

11703 "Flood fringe" means the portion of the floodplain outside the floodway that is usually covered
11704 with water from the 100-year flood or storm event. This includes the flood or floodway fringe
11705 designated by the Federal Emergency Management Agency.

11706 "Flooding" means a volume of water that is too great to be confined within the banks or walls
11707 of the stream, water body, or conveyance system and that overflows onto adjacent lands, thereby
11708 causing or threatening damage.

11709 "Floodplain" means the area adjacent to a channel, river, stream, or other water body that is
11710 susceptible to being inundated by water normally associated with the 100-year flood or storm
11711 event. This includes the floodplain designated by the Federal Emergency Management Agency.

11712 "Flood-prone area" means the component of a natural or restored stormwater conveyance
11713 system that is outside the main channel. Flood-prone areas may include the floodplain, the
11714 floodway, the flood fringe, wetlands, riparian buffers, or other areas adjacent to the main channel.

11715 "Floodway" means the channel of a river or other watercourse and the adjacent land areas,
11716 usually associated with flowing water, that must be reserved in order to discharge the 100-year
11717 flood or storm event without cumulatively increasing the water surface elevation more than one
11718 foot. This includes the floodway designated by the Federal Emergency Management Agency.

11719 "Flume" means a constructed device lined with erosion-resistant materials intended to convey
11720 water on steep grades.

11721 "General permit" means a permit authorizing a category of discharges under the CWA and
11722 the VESMA within a geographical area.

11723 "Hydrologic Unit Code" or "HUC" means a watershed unit established in the most recent
11724 version of Virginia's 6th Order National Watershed Boundary Dataset unless specifically identified
11725 as another order.

11726 "Impervious cover" means a surface composed of material that significantly impedes or
11727 prevents natural infiltration of water into soil.

11728 "Incorporated place" means a city, town, township, or village that is incorporated under the
11729 Code of Virginia.

11730 "Inspection" means an on-site review of the project's compliance with any applicable design
11731 criteria, or an on-site review to obtain information or conduct surveys or investigations necessary
11732 in the implementation or enforcement of the VESMA, ESCL, and applicable regulations.

11733 "Inspector" means the individual who, as a representative of a VESCP authority, a VESMP
11734 authority, or a VSMP authority, is responsible for periodically examining the ESC, SWM, or both
11735 ESC and SWM activities and premises of a land-disturbing activity for compliance with the ESCL
11736 VESMA, and associated regulations as may be applicable.

11737 "Karst area" means any land area predominantly underlain at the surface or shallow
11738 subsurface by limestone, dolomite, or other soluble bedrock regardless of any obvious surface
11739 karst features.

11740 "Karst features" means sinkholes, sinking and losing streams, caves, large flow springs, and
11741 other such landscape features found in karst areas.

11742 "Land disturbance" or "land-disturbing activity" means a man-made change to the land surface
11743 that may result in soil erosion or has the potential to change its runoff characteristics, including
11744 construction activity such as the clearing, grading, excavating, or filling of land.

11745 "Land-disturbance approval" means an approval allowing a land-disturbing activity to
11746 commence issued by (i) a VESMP or VSMP authority after the requirements of § 62.1-44.15:34
11747 of the Code of Virginia have been met or (ii) a VESCP authority after the requirements of § 62.1-
11748 44.15:55 of the Code of Virginia have been met.

11749 "Large construction activity" means construction activity including clearing, grading, and
11750 excavation, except operations that result in the disturbance of less than five acres of total land
11751 area. Large construction activity also includes the disturbance of less than five acres of total land
11752 area that is a part of a larger common plan of development or sale if the larger common plan will
11753 ultimately disturb five acres or more. Large construction activity does not include routine
11754 maintenance that is performed to maintain the original line and grade, hydraulic capacity, or
11755 original purpose of the facility.

11756 "Linear development project" means a land-disturbing activity that is linear in nature such as,
11757 but not limited to, (i) the construction of electric and telephone utility lines, and natural gas
11758 pipelines; (ii) construction of tracks, rights-of-way, bridges, communication facilities and other
11759 related structures of a railroad company; (iii) highway construction projects; (iv) construction of
11760 stormwater channels and stream restoration activities; and (v) water and sewer lines. Private
11761 subdivision roads or streets shall not be considered linear development projects.

11762 "Live watercourse" means a definite channel with bed and banks within which concentrated
11763 water flows continuously.

11764 "Locality" means a county, city, or town.

11765 "Localized flooding" means smaller scale flooding that may occur outside of a stormwater
11766 conveyance system. This may include high water, ponding, or standing water from stormwater
11767 runoff, which is likely to cause property damage or unsafe conditions.

11768 "Main channel" means the portion of the stormwater conveyance system that contains the
11769 base flow and small frequent storm events.

11770 "Major modification" means the modification or amendment of an existing MS4 individual
11771 permit before its expiration that is not a minor modification as defined in this chapter.

11772 "Manmade" means constructed by man.

11773 "Minimize" means to reduce or eliminate the discharge of pollutants to the extent achievable
11774 using stormwater controls that are technologically available and economically practicable.

11775 "Minor modification" means, for the purposes of this chapter, minor modification or
11776 amendment of an existing permit before its expiration for the reasons listed at 40 CFR 122.63 and
11777 as specified in 9VAC25-875-1240. Minor modification for the purposes of this chapter also means
11778 other modifications and amendments not requiring extensive review and evaluation including
11779 changes in EPA promulgated test protocols, increasing monitoring frequency requirements,

11780 changes in sampling locations, and changes to compliance dates within the overall compliance
11781 schedules. A minor permit modification or amendment does not substantially alter permit
11782 conditions, substantially increase or decrease the amount of surface water impacts, increase the
11783 size of the operation, or reduce the capacity of the facility to protect human health or the
11784 environment.

11785 "Municipal separate storm sewer system" or "MS4" means the same as the term "municipal
11786 separate storm sewer" is defined in § 62.1-44.3 of the Code of Virginia.

11787 "Municipal Separate Storm Sewer System Management Program" or "MS4 Program" means
11788 a management program covering the duration of a permit for a MS4 that includes a
11789 comprehensive planning process that involves public participation and intergovernmental
11790 coordination, to reduce the discharge of pollutants to the maximum extent practicable, to protect
11791 water quality, and to satisfy the appropriate water quality requirements of the CWA and
11792 regulations, and the VESMA and its attendant regulations, using management practices, control
11793 techniques, and system, design, and engineering methods, and such other provisions that are
11794 appropriate.

11795 "Natural channel design concepts" means the utilization of engineering analysis and fluvial
11796 geomorphic processes to create, rehabilitate, restore, or stabilize an open conveyance system
11797 for the purpose of creating or recreating a stream that conveys its bankfull storm event within its
11798 banks and allows larger flows to access its bankfull bench and its floodplain.

11799 "Natural stream" means a tidal or nontidal watercourse that is part of the natural topography.
11800 It usually maintains a continuous or seasonal flow during the year and is characterized as being
11801 irregular in cross-section with a meandering course. Constructed channels such as drainage
11802 ditches or swales shall not be considered natural streams; however, channels designed utilizing
11803 natural channel design concepts may be considered natural streams.

11804 "Nonerodible" means a material, e.g., riprap, concrete, plastic, etc., that will not experience
11805 surface wear due to natural forces.

11806 "Nonpoint source pollution" means pollution such as sediment, nitrogen, phosphorous,
11807 hydrocarbons, heavy metals, and toxics whose sources cannot be pinpointed but rather are
11808 washed from the land surface in a diffuse manner by stormwater.

11809 "Operator" means the owner or operator of any facility or activity subject to the VESMA and
11810 this chapter. In the context of stormwater associated with a large or small construction activity,
11811 operator means any person associated with a construction project that meets either of the
11812 following two criteria: (i) the person has direct operational control over construction plans and
11813 specifications, including the ability to make modifications to those plans and specifications or (ii)
11814 the person has day-to-day operational control of those activities at a project that are necessary to
11815 ensure compliance with a stormwater pollution prevention plan for the site or other permit or
11816 VESMP authority permit conditions (i.e., they are authorized to direct workers at a site to carry
11817 out activities required by the stormwater pollution prevention plan or comply with other permit
11818 conditions). In the context of stormwater discharges from an MS4, operator means the operator
11819 of the regulated MS4 system.

11820 "Owner" means the same as that term is defined in § 62.1-44.3 of the Code of Virginia. For a
11821 regulated land-disturbing activity that does not require a permit, "owner" also means the owner or
11822 owners of the freehold of the premises or lesser estate therein, mortgagee or vendee in
11823 possession, assignee of rents, receiver, executor, trustee, lessee, or other person, firm, or
11824 corporation in control of a property.

11825 "Peak flow rate" means the maximum instantaneous flow from a prescribed design storm at a
11826 particular location.

- 11827 "Percent impervious" means the impervious area within the site divided by the area of the site
11828 multiplied by 100.
- 11829 "Permit" means a VPDES permit issued by the department pursuant to § 62.1-44.15 of the
11830 Code of Virginia for stormwater discharges from a land-disturbing activity or MS4.
- 11831 "Permittee" means the person to whom the permit is issued.
- 11832 "Person" means any individual, partnership, firm, association, joint venture, public or private
11833 corporation, trust, estate, commission, board, public or private institution, utility, cooperative,
11834 county, city, town, or other political subdivision of the Commonwealth, governmental body,
11835 including a federal or state entity as applicable, any interstate body, or any other legal entity.
- 11836 "Plan reviewer" means anyone who is responsible for reviewing and evaluating ESC, SWM,
11837 or ESM plans and supporting documents for approval by a VESCP authority in the area of ESC,
11838 a VSMP authority in the area of SWM, or a VESMP authority in the areas of both ESC and SWM.
- 11839 "Point of discharge" means a location at which concentrated stormwater runoff is released.
- 11840 "Point source" means any discernible, confined, and discrete conveyance including any pipe,
11841 ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal
11842 feeding operation, landfill leachate collection system, vessel, or other floating craft from which
11843 pollutants are or may be discharged. This term does not include return flows from irrigated
11844 agriculture or agricultural stormwater runoff.
- 11845 "Pollutant discharge" means the average amount of a particular pollutant measured in pounds
11846 per year or other standard reportable unit as appropriate, delivered by stormwater runoff.
- 11847 "Pollution" means such alteration of the physical, chemical, or biological properties of any
11848 state waters as will or is likely to create a nuisance or render such waters (a) harmful or detrimental
11849 or injurious to the public health, safety, or welfare, or to the health of animals, fish or aquatic life;
11850 (b) unsuitable with reasonable treatment for use as present or possible future sources of public
11851 water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other
11852 reasonable uses, provided that (i) an alteration of the physical, chemical, or biological property of
11853 state waters, or a discharge or deposit of sewage, industrial wastes or other wastes to state waters
11854 by any owner which by itself is not sufficient to cause pollution, but which, in combination with
11855 such alteration of or discharge or deposit to state waters by other owners, is sufficient to cause
11856 pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii)
11857 contributing to the contravention of standards of water quality duly established by the State Water
11858 Control Board, are "pollution" for the terms and purposes of this chapter.
- 11859 "Post-development" refers to conditions that reasonably may be expected or anticipated to
11860 exist after completion of the land development activity on a specific site or tract of land.
- 11861 "Predevelopment" refers to the conditions that exist at the time that plans for the land-
11862 disturbing activity are submitted to the VESCP, VESMP, or VSMP authority. Where phased
11863 development or plan approval occurs (preliminary grading, demolition of existing structures, roads
11864 and utilities, etc.), the existing conditions at the time prior to the commencement of land-disturbing
11865 activity shall establish predevelopment conditions.
- 11866 "Prior developed lands" means land that has been previously utilized for residential,
11867 commercial, industrial, institutional, recreation, transportation, or utility facilities or structures, and
11868 that will have the impervious areas associated with those uses altered during a land-disturbing
11869 activity.
- 11870 "Program administrator" means the individual responsible for administering and enforcing the
11871 program of a VESCP authority in the area of ESC, the program of a VSMP authority in the area
11872 of SWM, or the program of a VESMP authority in the areas of both ESC and SWM.
- 11873 "Qualified personnel" means a person knowledgeable in the principles and practices of
11874 erosion and sediment and stormwater management controls who possesses the skills to assess

11875 conditions at the construction site for the operator that could impact stormwater quality and
11876 quantity and to assess the effectiveness of any sediment and erosion control measures or
11877 stormwater management facilities selected to control the quality and quantity of stormwater
11878 discharges from the construction activity.

11879 "Responsible land disturber" or "RLD" means an individual holding a certificate issued by the
11880 department who is responsible for carrying out the land-disturbing activity in accordance with the
11881 approved erosion and sediment control plan. The RLD may be the owner, applicant, permittee,
11882 designer, superintendent, project manager, contractor, or any other project or development team
11883 member. The RLD must be designated on the erosion and sediment control plan or permit as
11884 defined in this chapter as a prerequisite for engaging in land disturbance.

11885 "Runoff" or "stormwater runoff" means that portion of precipitation that is discharged across
11886 the land surface or through conveyances to one or more waterways.

11887 "Runoff characteristics" includes maximum velocity, peak flow rate, volume, and flow duration.

11888 "Runoff volume" means the volume of water that runs off the land development project from
11889 a prescribed storm event.

11890 "Rural Tidewater locality" means any locality that is (i) subject to the provisions of the
11891 Chesapeake Bay Preservation Act and (ii) eligible to join the Rural Coastal Virginia Community
11892 Enhancement Authority established by Chapter 76 (§ 15.2-7600 et seq.) of Title 15.2 of the Code
11893 of Virginia.

11894 "Sediment basin" means a temporary impoundment built to retain sediment and debris with a
11895 controlled stormwater release structure.

11896 "Sediment trap" means a temporary impoundment built to retain sediment and debris which
11897 is formed by constructing an earthen embankment with a stone outlet.

11898 "Sheet flow" (also called overland flow) means shallow, unconcentrated and irregular flow
11899 down a slope. The length of strip for overland flow usually does not exceed 200 feet under natural
11900 conditions.

11901 "Shoreline erosion control project" means an erosion control project approved by local
11902 wetlands boards, the Virginia Marine Resources Commission, the department, or the United
11903 States Army Corps of Engineers and located on tidal waters and within nonvegetated or vegetated
11904 wetlands as defined in Title 28.2 of the Code of Virginia.

11905 "Site" means the land or water area where any facility or land-disturbing activity is physically
11906 located or conducted, including adjacent land used or preserved in connection with the facility or
11907 land-disturbing activity. Areas channelward of mean low water in tidal Virginia shall not be
11908 considered part of a site.

11909 "Site hydrology" means the movement of water on, across, through, and off the site as
11910 determined by parameters including soil types, soil permeability, vegetative cover, seasonal water
11911 tables, slopes, land cover, and impervious cover.

11912 "Slope drain" means tubing or conduit made of nonerosive material extending from the top to
11913 the bottom of a cut or fill slope with an energy dissipator at the outlet end.

11914 "Small construction activity" means:

11915 1. Construction activities including clearing, grading, and excavating that results in land
11916 disturbance of equal to or greater than one acre and less than five acres. Small
11917 construction activity also includes the disturbance of less than one acre of total land area
11918 that is part of a larger common plan of development or sale if the larger common plan will
11919 ultimately disturb equal to or greater than one and less than five acres. Small construction
11920 activity does not include routine maintenance that is performed to maintain the original line
11921 and grade, hydraulic capacity, or original purpose of the facility. The department may

- 11922 waive the otherwise applicable requirements in a general permit for a stormwater
 11923 discharge from construction activities that disturb less than five acres where stormwater
 11924 controls are not needed based on an approved "total maximum daily load" (TMDL) that
 11925 addresses the pollutants of concern or, for nonimpaired waters that do not require TMDLs,
 11926 an equivalent analysis that determines allocations for small construction sites for the
 11927 pollutants of concern or that determines that such allocations are not needed to protect
 11928 water quality based on consideration of existing in-stream concentrations, expected
 11929 growth in pollutant contributions from all sources, and a margin of safety. For the purpose
 11930 of this subdivision, the pollutants of concern include sediment or a parameter that
 11931 addresses sediment (such as total suspended solids, turbidity, or siltation) and any other
 11932 pollutant that has been identified as a cause of impairment of any water body that will
 11933 receive a discharge from the construction activity. The operator shall certify to the
 11934 department that the construction activity will take place, and stormwater discharges will
 11935 occur, within the drainage area addressed by the TMDL or provide an equivalent analysis.
 11936 As of the start date in Table 1 of [9VAC25-31-1020](#), all certifications submitted in support
 11937 of the waiver shall be submitted electronically by the owner or operator to the department
 11938 in compliance with this subdivision and 40 CFR Part 3 (including, in all cases, 40 CFR
 11939 Part 3 Subpart D), [9VAC25-875-940](#), and Part XI ([9VAC25-31-950](#) et seq.) of the Virginia
 11940 Pollutant Discharge Elimination System (VPDES) Permit Regulation. Part XI of [9VAC25-](#)
 11941 [31](#) is not intended to undo existing requirements for electronic reporting. Prior to this date,
 11942 and independent of Part XI of [9VAC25-31](#), permittees may be required to report
 11943 electronically if specified by a particular permit.
- 11944 2. Any other construction activity designated by either the department or the EPA regional
 11945 administrator, based on the potential for contribution to a violation of a water quality
 11946 standard or for significant contribution of pollutants to surface waters.
- 11947 "Soil erosion" means the movement of soil by wind or water into state waters or onto lands in
 11948 the Commonwealth.
- 11949 "Soil erosion control and stormwater management plan," commonly referred to as the erosion
 11950 control and stormwater management plan, or "ESM plan" means a document describing methods
 11951 for controlling soil erosion and managing stormwater in accordance with the requirements
 11952 adopted pursuant to the VESMA. The ESM plan may consist of aspects of the erosion and
 11953 sediment control plan and the stormwater management plan as each is described in this chapter.
- 11954 "Stabilized" means land that has been treated to withstand normal exposure to natural forces
 11955 without incurring erosion damage.
- 11956 "State" means the Commonwealth of Virginia.
- 11957 "State application" or "application" means the standard form or forms, including any additions,
 11958 revisions, or modifications to the forms, approved by the administrator and the department for
 11959 applying for a permit.
- 11960 "State/EPA agreement" means an agreement between the EPA regional administrator and
 11961 the state that coordinates EPA and state activities, responsibilities, and programs including those
 11962 under the CWA and the VESMA.
- 11963 "State project" means any land development project that is undertaken by any state agency,
 11964 board, commission, authority, or any branch of state government, including state-supported
 11965 institutions of higher learning.
- 11966 "State Water Control Law" means Chapter 3.1 (§ [62.1-44.2](#) et seq.) of Title 62.1 of the Code
 11967 of Virginia.
- 11968 "State waters" means all water, on the surface and under the ground, wholly or partially within
 11969 or bordering the Commonwealth or within its jurisdiction, including wetlands.

11970 "Storm sewer inlet" means a structure through which stormwater is introduced into an
 11971 underground conveyance system.

11972 "Stormwater," for the purposes of the VESMA, means precipitation that is discharged across
 11973 the land surface or through conveyances to one or more waterways and that may include
 11974 stormwater runoff, snow melt runoff, and surface runoff and drainage.

11975 "Stormwater conveyance system" means a combination of drainage components that are
 11976 used to convey stormwater discharge, either within or downstream of the land-disturbing activity.
 11977 This includes:

11978 1. "Manmade stormwater conveyance system" means a pipe, ditch, vegetated swale, or
 11979 other stormwater conveyance system constructed by man except for restored stormwater
 11980 conveyance systems;

11981 2. "Natural stormwater conveyance system" means the main channel of a natural stream
 11982 and the flood-prone area adjacent to the main channel; or

11983 3. "Restored stormwater conveyance system" means a stormwater conveyance system
 11984 that has been designed and constructed using natural channel design concepts. Restored
 11985 stormwater conveyance systems include the main channel and the flood-prone area
 11986 adjacent to the main channel.

11987 "Stormwater detention" means the process of temporarily impounding runoff and discharging
 11988 it through a hydraulic outlet structure to a downstream conveyance system.

11989 "Stormwater management facility" means a control measure that controls stormwater runoff
 11990 and changes the characteristics of that runoff including the quantity and quality, the period of
 11991 release or the velocity of flow.

11992 "Stormwater management plan" means a document containing material describing methods
 11993 for complying with the requirements of a VESMP or VSMP.

11994 "Stormwater Pollution Prevention Plan" or "SWPPP" means a document that is prepared in
 11995 accordance with good engineering practices and that identifies potential sources of pollutants that
 11996 may reasonably be expected to affect the quality of stormwater discharges. A SWPPP required
 11997 under a VESMP or VSMP for construction activities shall identify and require the implementation
 11998 of control measures and shall include or incorporate by reference an approved erosion and
 11999 sediment control plan, an approved stormwater management plan, and a pollution prevention
 12000 plan.

12001 "Subdivision" means the same as defined in § 15.2-2201 of the Code of Virginia.

12002 "Surface waters" means:

12003 1. All waters that are currently used, were used in the past, or may be susceptible to use
 12004 in interstate or foreign commerce, including all waters that are subject to the ebb and flow
 12005 of the tide;

12006 2. All interstate waters, including interstate wetlands;

12007 3. All other waters such as intrastate lakes, rivers, streams (including intermittent streams),
 12008 mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or
 12009 natural ponds the use, degradation, or destruction of which would affect or could affect
 12010 interstate or foreign commerce including any such waters;

12011 a. That are or could be used by interstate or foreign travelers for recreational or other
 12012 purposes;

12013 b. From which fish or shellfish are or could be taken and sold in interstate or foreign
 12014 commerce; or

12015 c. That are used or could be used for industrial purposes by industries in interstate
 12016 commerce;

- 12017 4. All impoundments of waters otherwise defined as surface waters under this definition;
- 12018 5. Tributaries of waters identified in subdivisions 1 through 4 of this definition;
- 12019 6. The territorial sea; and
- 12020 7. Wetlands adjacent to waters (other than waters that are themselves wetlands) identified
- 12021 in subdivisions 1 through 6 of this definition.
- 12022 Waste treatment systems, including treatment ponds or lagoons designed to meet the
- 12023 requirements of the CWA and the law, are not surface waters. Surface waters do not include prior
- 12024 converted cropland. Notwithstanding the determination of an area's status as prior converted
- 12025 cropland by any other agency, for the purposes of the CWA, the final authority regarding the CWA
- 12026 jurisdiction remains with the EPA.
- 12027 "SWM" means stormwater management.
- 12028 "Temporary vehicular stream crossing" means a temporary nonerodible structural span
- 12029 installed across a flowing watercourse for use by construction traffic. Structures may include
- 12030 bridges, round pipes or pipe arches constructed on or through nonerodible material.
- 12031 "Ten-year storm" means a storm that is capable of producing rainfall expected to be equaled
- 12032 or exceeded on the average of once in 10 years. It may also be expressed as an exceedance
- 12033 probability with a 10% chance of being equaled or exceeded in any given year.
- 12034 "Total maximum daily load" or "TMDL" means the sum of the individual wasteload allocations
- 12035 for point sources, load allocations (LAs) for nonpoint sources, natural background loading, and a
- 12036 margin of safety. TMDLs can be expressed in terms of either mass per time, toxicity, or other
- 12037 appropriate measure. The TMDL process provides for point versus nonpoint source trade-offs.
- 12038 "TMDL Action Plan" means the scheduled steps of activities that the MS4 operator will take
- 12039 to address the assumptions and requirements of the TMDL wasteload allocation. TMDL action
- 12040 plans may be implemented in multiple phases over more than one permit cycle.
- 12041 "Town" means an incorporated town.
- 12042 "Two-year storm" means a storm that is capable of producing rainfall expected to be equaled
- 12043 or exceeded on the average of once in two years. It may also be expressed as an exceedance
- 12044 probability with a 50% chance of being equaled or exceeded in any given year.
- 12045 "Virginia Erosion and Sediment Control Program" or "VESCP" means a program approved by
- 12046 the department that is established by a VESCP authority for the effective control of soil erosion,
- 12047 sediment deposition, and nonagricultural runoff associated with a land-disturbing activity to
- 12048 prevent the unreasonable degradation of properties, stream channels, waters, and other natural
- 12049 resources and shall include such items where applicable as local ordinances, rules, policies and
- 12050 guidelines, technical materials, and requirements for plan review, inspection, and evaluation
- 12051 consistent with the requirements of the ESCL.
- 12052 "Virginia Erosion and Sediment Control Program authority" or "VESCP authority" means a
- 12053 locality that is approved by the department to operate a Virginia Erosion and Sediment Control
- 12054 Program in accordance with Article 2.4 (§ 62.1-44.15:51 et seq.) of the State Water Control Law.
- 12055 Only a locality for which the Department administered a Virginia Stormwater Management
- 12056 Program as of July 1, 2017, is authorized to choose to operate a VESCP pursuant to Article 2.4
- 12057 (§ 62.1-44.15:51 et seq.). A locality that has chosen not to establish a VESMP pursuant to
- 12058 subdivision B 3 of § 62.1-44.15:27 of the Code of Virginia is required to become a VESCP
- 12059 authority in accordance with the ESCL.
- 12060 "Virginia Erosion and Stormwater Management Act" or "VESMA" means Article 2.3 (§ 62.1-
- 12061 44.15:24 et seq.) of Chapter 3.1, State Water Control Law, of Title 62.1 of the Code of Virginia.
- 12062 "Virginia Erosion and Stormwater Management Program" or "VESMP" means a program
- 12063 established by a VESMP authority for the effective control of soil erosion and sediment deposition

12064 and the management of the quality and quantity of runoff resulting from land-disturbing activities
12065 to prevent the unreasonable degradation of properties, stream channels, waters, and other natural
12066 resources. The program shall include such items as local ordinances, rules, requirements for
12067 permits and land-disturbance approvals, policies and guidelines, technical materials, and
12068 requirements for plan review, inspection, and enforcement consistent with the requirements of the
12069 VESMA.

12070 "Virginia Erosion and Stormwater Management Program authority" or "VESMP authority"
12071 means the department or a locality approved by the department to operate a VESMP. For state
12072 agency or federal entity land-disturbing activities and land-disturbing activities subject to approved
12073 standards and specifications, the department shall serve as the VESMP authority.

12074 "Virginia Pollutant Discharge Elimination System permit" or "VPDES permit" means a
12075 document issued by the department pursuant to the State Water Control Law authorizing, under
12076 prescribed conditions, the potential or actual discharge of pollutants from a point source to surface
12077 waters.

12078 "Virginia Stormwater BMP Clearinghouse" means a collection that contains detailed design
12079 standards and specifications for control measures that may be used in Virginia to comply with the
12080 requirements of the VESMA and associated regulations.

12081 "Virginia Stormwater Management Handbook" means a collection of pertinent information that
12082 provides general guidance for compliance with the VESMA and associated regulations and is
12083 developed by the department with advice from a stakeholder advisory committee.

12084 "Virginia Stormwater Management Program" or "VSMP" means a program established by the
12085 department pursuant to § 62.1-44.15:27.1 of the Code of Virginia on behalf of a locality on or after
12086 July 1, 2014, to manage the quality and quantity of runoff resulting from any land-disturbing activity
12087 that (i) disturbs one acre or more of land or (ii) disturbs less than one acre of land and is part of a
12088 larger common plan of development or sale that results in one acre or more of land disturbance.

12089 "Virginia Stormwater Management Program authority" or "VSMP authority" means the
12090 department when administering a VSMP on behalf of a locality that, pursuant to subdivision B 3
12091 of § 62.1-44.15:27 of the Code of Virginia, has chosen not to adopt and administer a VESMP.

12092 "Wasteload allocation" or "wasteload" means the portion of a receiving surface water's loading
12093 or assimilative capacity allocated to one of its existing or future point sources of pollution.
12094 Wasteload allocations are a type of water quality-based effluent limitation.

12095 "Water quality technical criteria" means standards set forth in regulations adopted pursuant to
12096 the VESMA that establish minimum design criteria for measures to control nonpoint source
12097 pollution.

12098 "Water quantity technical criteria" means standards set forth in regulations adopted pursuant
12099 to the VESMA that establish minimum design criteria for measures to control localized flooding
12100 and stream channel erosion.

12101 "Watershed" means a defined land area drained by a river or stream, karst system, or system
12102 of connecting rivers or streams such that all surface water within the area flows through a single
12103 outlet. In karst areas, the karst feature to which water drains may be considered the single outlet
12104 for the watershed.

12105 "Wetlands" means those areas that are inundated or saturated by surface water or
12106 groundwater at a frequency and duration sufficient to support, and that under normal
12107 circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil
12108 conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

12109 **9VAC25-875-30. Applicability of incorporated by references based on the dates that they**
 12110 **became effective.**

12111 Except as noted, when a regulation of the United States set forth in the Code of Federal
 12112 Regulations is referenced and incorporated in this chapter, that regulation shall be as it exists and
 12113 has been published in the July 1, 2022, update.

12114 Part II

12115 Virginia Erosion and Stormwater Management Program

12116 Article 1

12117 Definitions, purpose, and applicability

12118 **9VAC25-875-40. Definitions.**

12119 For the purposes of Part II only, the following words and terms have the following meanings
 12120 unless the context clearly indicates otherwise:

12121 "Act" means the Virginia Erosion and Stormwater Management Act (VESMA), Article 2.3 (§
 12122 62.1-44.15:24 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia.

12123 "Development" means land disturbance and the resulting landform associated with the
 12124 construction of residential, commercial, industrial, institutional, recreation, transportation, or utility
 12125 facilities or structures or the clearing of land for nonagricultural or nonsilvicultural purposes. The
 12126 regulation of discharges from development, for purposes of stormwater management, does not
 12127 include the exclusions found in 9VAC25-875-860.

12128 **9VAC25-875-50. Purpose.**

12129 The purpose of this part is to provide the framework for the administration, implementation,
 12130 and enforcement of the VESMA. This part delineates the roles and responsibilities associated
 12131 with a locality's VESMP and the department's VSMP. This part also establishes the department's
 12132 procedures for approving the administration of a VESMP authority and includes the department's
 12133 oversight authority over a VESMP.

12134 **9VAC25-875-60. Applicability.**

12135 This part is applicable to:

- 12136 1. Any local government that administers a VESMP;
- 12137 2. The department that administers a VESMP and VSMP; and
- 12138 3. The department in its administrative oversight of VESMPs.

12139 Article 2

12140 Land-disturbing activities

12141 **9VAC25-875-70. Regulated land-disturbing activities.**

12142 A. Land-disturbing activities that meet one of the criteria below are regulated as follows:

12143 1. Land-disturbing activity that disturbs 10,000 square feet or more, although the locality
 12144 may reduce this regulatory threshold to a smaller area of disturbed land, is less than one
 12145 acre, not in an area of a locality designated as a Chesapeake Bay Preservation Area, and
 12146 not part of a common plan of development or sale, is subject to criteria defined in Article
 12147 2 (9VAC25-874-540 et seq.) of Part V of this chapter.

12148 2. Land-disturbing activity that disturbs 2,500 square feet or more, although the locality
 12149 may reduce this regulatory threshold to a smaller area of disturbed land, is less than one
 12150 acre, and in an area of a locality designated as a Chesapeake Bay Preservation Area is
 12151 subject to criteria defined in Article 2 (9VAC25-874-540 et seq.) and Article 3 (9VAC25-

12152 875-570 et seq.) of Part V unless Article 4 (9VAC25-875-670 et seq) of Part V of this
 12153 chapter is applicable, as determined in accordance with 9VAC25-875-480 and 9VAC25-
 12154 875-490. For land-disturbing activities for single-family detached residential structures,
 12155 Article 2 of Part V and water quantity technical criteria, 9VAC25-875-600, shall apply to
 12156 any land-disturbing activity that disturbs 2,500 square feet or more of land, and the locality
 12157 also may require compliance with the water quality technical criteria, 9VAC25-875-580
 12158 and 9VAC25-875-590.

12159 3. Land-disturbing activity that disturbs less than one acre, but is part of a larger common
 12160 plan of development or sale that disturbs one acre or more, is subject to criteria defined in
 12161 Article 2 (9VAC25-874-540 et seq.) and Article 3 (9VAC25-875-570 et seq.) of Part V
 12162 unless Article 4 (9VAC25-875-670 et seq) of Part V of this chapter is applicable, as
 12163 determined in accordance with 9VAC25-875-480 and 9VAC25-875-490.

12164 4. Land-disturbing activity that disturbs one acre or more is subject to criteria defined in
 12165 Article 2 (9VAC25-874-540 et seq.) and Article 3 (9VAC25-875-570 et seq.) of Part V
 12166 unless Article 4 (9VAC25-875-670 et seq.) of Part V is applicable, as determined in
 12167 accordance with 9VAC25-875-480 and 9VAC25-875-490.

12168 B. A locality may, by local ordinance adopted pursuant to §§ 62.1-44.15:33 or 62.1-44.15:65
 12169 of the Code of Virginia, adopt more stringent local requirements.

12170 **9VAC25-875-80. Land-disturbing activities in a Chesapeake Bay Preservation Area.**

12171 A. Localities subject to the Chesapeake Bay Preservation Act shall regulate runoff associated
 12172 with land-disturbing activities in a Chesapeake Bay Preservation Area that are equal to or greater
 12173 than 2,500 square feet but less than one acre in accordance with the following:

12174 1. After June 30, 2014, such land-disturbing activities shall not require completion of a
 12175 registration statement or require coverage under the General VPDES Permit for
 12176 Discharges of Stormwater from Construction Activities but shall be subject to the technical
 12177 criteria and program and administrative requirements set out in 9VAC25-875-740.

12178 2. A local land disturbance approval, as applicable, shall be provided for the land-
 12179 disturbing activity.

12180 3. The locality shall regulate such land-disturbing activities in compliance with the:

12181 a. Program requirements in 9VAC25-875-100;

12182 b. Plan review requirements in 9VAC25-875-110 with the exception of subsection D of
 12183 9VAC25-875-110 or as allowed in subsection A of 9VAC25-875-750;

12184 c. Long-term stormwater management facility requirements of 9VAC25-875-130;

12185 d. Inspection requirements of 9VAC25-875-140 with the exception of subdivisions A 3
 12186 and A 4 of 9VAC25-875-140;

12187 e. Enforcement components of 9VAC25-875-150;

12188 f. Hearing procedures in effect in the locality;

12189 g. Exception conditions of 9VAC25-875-170 excluding subsection A of 9VAC25-875-
 12190 170 which is not applicable; and

12191 h. Reporting and recordkeeping requirements of 9VAC25-875-180 with the exception
 12192 of subdivision B 3 of 9VAC25-875-180.

12193 B. A locality subject to the Chesapeake Bay Preservation Act shall adopt an ordinance that
 12194 incorporates the components of this section.

12195 C. As authorized by § 62.1-44.15:28 of the Code of Virginia, a locality may collect a fee as
 12196 specified in 9VAC25-875-1400.

12197 **9VAC25-875-90. Activities not required to comply with the VESMA.**

12198 A. Notwithstanding any other provisions of the VESMA, the following activities are not required
 12199 to comply with the requirements of the VESMA unless otherwise required by federal law:

12200 1. Minor land-disturbing activities, including home gardens and individual home
 12201 landscaping, repairs, and maintenance work;

12202 2. Installation, maintenance, or repair of any individual service connection;

12203 3. Installation, maintenance, or repair of any underground utility line when such activity
 12204 occurs on an existing hard surfaced road, street, or sidewalk, provided the land-disturbing
 12205 activity is confined to the area of the road, street, or sidewalk that is hard surfaced;

12206 4. Installation, maintenance, or repair of any septic tank line or drainage field unless
 12207 included in an overall plan for land-disturbing activity relating to construction of the building
 12208 to be served by the septic tank system;

12209 5. Permitted surface or deep mining operations and projects, or oil and gas operations
 12210 and projects conducted pursuant to Title 45.2 of the Code of Virginia;

12211 6. Clearing of lands specifically for bona fide agricultural purposes; the management,
 12212 tilling, planting, or harvesting of agricultural, horticultural, or forest crops; livestock feedlot
 12213 operations; agricultural engineering operations, including construction of terraces, terrace
 12214 outlets, check dams, desilting basins, dikes, ponds, ditches, strip cropping, lister furrowing,
 12215 contour cultivating, contour furrowing, land drainage, and land irrigation; or as additionally
 12216 set forth by the board in regulations. However, this exception shall not apply to harvesting
 12217 of forest crops unless the area on which harvesting occurs is reforested artificially or
 12218 naturally in accordance with the provisions of Chapter 11 (§ 10.1-1100 et seq.) of Title
 12219 10.1 of the Code of Virginia or is converted to bona fide agricultural or improved pasture
 12220 use as described in subsection B of § 10.1-1163 of the Code of Virginia;

12221 7. Installation of fence and sign posts or telephone and electric poles and other kinds of
 12222 posts or poles;

12223 8. Shoreline erosion control projects on tidal waters when all of the land-disturbing
 12224 activities are within the regulatory authority of and approved by local wetlands boards, the
 12225 Virginia Marine Resources Commission, or the United States Army Corps of Engineers;
 12226 however, any associated land that is disturbed outside of this exempted area shall remain
 12227 subject to the VESMA and the regulations adopted pursuant thereto;

12228 9. Repair or rebuilding of the tracks, rights-of-way, bridges, communication facilities, and
 12229 other related structures and facilities of a railroad company;

12230 10. Land-disturbing activities in response to a public emergency where the related work
 12231 requires immediate authorization to avoid imminent endangerment to human health or the
 12232 environment. In such situations, the VESMP or VSMP authority shall be advised of the
 12233 disturbance within seven days of commencing the land-disturbing activity, and compliance
 12234 with the administrative requirements of subsection A is required within 30 days of
 12235 commencing the land-disturbing activity; and

12236 11. Discharges to a sanitary sewer or a combined sewer system; that are not from a land-
 12237 disturbing activity.

12238 B. Notwithstanding any other provision of the VESMA, the following activities are required to
 12239 comply with the soil erosion control requirements but are not required to comply with the water
 12240 quantity and water quality technical criteria, unless otherwise required by federal law:

12241 1. Activities under a state or federal reclamation program to return an abandoned property
 12242 to an agricultural or open land use;

12243 2. Routine maintenance that is performed to maintain the original line and grade, hydraulic
 12244 capacity, or original construction of the project. The paving of an existing road with a
 12245 compacted or impervious surface and reestablishment of existing associated ditches and
 12246 shoulders shall be deemed routine maintenance if performed in accordance with this
 12247 subsection; and

12248 3. Discharges from a land-disturbing activity to a sanitary sewer or a combined sewer
 12249 system.

12250 Article 3

12251 Programs operated by a VESMP authority

12252 **9VAC25-875-100. Criteria for programs operated by a VESMP authority.**

12253 A. Each locality that operates a regulated MS4 or that chooses to administer a VESMP shall,
 12254 by ordinance, establish a VESMP that shall be administered in conjunction with a local MS4
 12255 management program, if applicable, and which shall include the following:

12256 1. Ordinances, policies, and technical materials consistent with regulations adopted in
 12257 accordance with the VESMA;

12258 2. Requirements for land-disturbance approvals;

12259 3. Requirements for plan review, inspection, and enforcement consistent with the
 12260 requirements of the VESMA, including provisions requiring periodic inspections of the
 12261 installation of stormwater management measures. A VESMP authority may require
 12262 monitoring and reports from the person responsible for meeting the permit conditions to
 12263 ensure compliance with the permit and to determine whether the measures required in the
 12264 permit provide effective stormwater management;

12265 4. Provisions charging each applicant a reasonable fee to defray the cost of program
 12266 administration for a regulated land-disturbing activity that does not require permit
 12267 coverage. Such fee may be in addition to any fee charged pursuant to the statewide fee
 12268 schedule established in accordance with subdivision 9 of § 62.1-44.15:28 of the Code of
 12269 Virginia, although payment of fees may be consolidated in order to provide greater
 12270 convenience and efficiency for those responsible for compliance with the program. A
 12271 VESMP authority shall hold a public hearing prior to establishing such fees. The fee shall
 12272 not exceed an amount commensurate with the services rendered, taking into
 12273 consideration the time, skill, and the VESMP authority's expense involved;

12274 5. Provisions for long-term responsibility for and maintenance of stormwater management
 12275 control devices and other techniques specified to manage the quality and quantity of
 12276 runoff; and

12277 6. Provisions for the coordination of the VESMP with flood insurance, flood plain
 12278 management, and other programs requiring compliance prior to authorizing land
 12279 disturbance in order to make the submission and approval of plans, issuance of land-
 12280 disturbance approvals, payment of fees, and coordination of inspection and enforcement
 12281 activities more convenient and efficient both for the local governments and those
 12282 responsible for compliance with the programs.

12283 B. A VESMP authority may enter into agreements or contracts with the department, soil and
 12284 water conservation districts, adjacent localities, planning district commissions, or other public or
 12285 private entities to carry out or assist with plan review and inspections.

12286 C. A VESMP authority shall obtain evidence of permit coverage from the department's online
 12287 reporting system, where such coverage is required, prior to providing land-disturbance approval.

12288 D. The VESMP authority responsible for regulating the land-disturbing activity shall require
 12289 compliance with its applicable ordinances and the conditions of its land-disturbance approval and
 12290 plan specifications.

12291 E. A locality serving as a VESMP authority is authorized to adopt more stringent soil erosion
 12292 control or stormwater management ordinances than those necessary to ensure compliance with
 12293 the board's minimum regulations when adopted in accordance with § 62.1-44.15:33 of the Code
 12294 of Virginia.

12295 F. Nothing in this part shall be construed as authorizing a locality to regulate, or to require
 12296 prior approval by the locality for, a state or federal project, unless authorized by separate statute.

12297 G. A VESMP authority may require, excluding state agencies and federal entities, the
 12298 submission of a reasonable performance bond or other financial surety and provide for the release
 12299 of such sureties in accordance with the criteria set forth in § 62.1-44.15:34 of the Code of Virginia.

12300 H. A VESMP authority shall have provisions for collection, distribution to the state if required,
 12301 and expenditure of permit fees.

12302 I. Notice of termination of general permit coverage.

12303 1. A VESMP authority shall recommend that the department terminate coverage under a
 12304 General VPDES Permit for Discharges of Stormwater from Construction Activities
 12305 (Construction General Permit) within 60 days of receiving a complete notice of termination
 12306 from the operator of the construction activity.

12307 2. Coverage under a Construction General Permit shall be deemed to be terminated 90
 12308 days after the receipt by the VESMP authority of a complete notice of termination from the
 12309 operator of the construction activity.

12310 3. If a VESMP authority receives a notice of termination of a Construction General Permit
 12311 that it determines to be incomplete, the VESMP authority shall, within a reasonable time,
 12312 inform the operator of the construction activity of such incompleteness and provide the
 12313 operator with a detailed list itemizing the elements of information that are missing from the
 12314 notice.

12315 **9VAC25-875-110. Plan review requirements.**

12316 A. A VESMP authority shall review and approve soil erosion control and stormwater
 12317 management (ESM) plans, except for activities not required to comply with the requirements of
 12318 the VESMA, pursuant to § 62.1-44.15:34 of the Code of Virginia. Activities not required to comply
 12319 with VESMA are defined in 9VAC25-875-90.

12320 B. Section 62.1-44.15:34 of the Code of Virginia and 9VAC25-875-530 state that a person
 12321 shall not conduct any land-disturbing activity until (i) he has submitted to the appropriate VESMP
 12322 authority an application that includes a permit registration statement, if required, a soil erosion
 12323 control and stormwater management plan or an executed agreement in lieu of a plan, if required,
 12324 and (ii) the VESMP authority has issued its land-disturbance approval. In addition, as a
 12325 prerequisite to engaging in an approved land-disturbing activity, the name of the individual who
 12326 will be assisting the owner in carrying out the activity and holds a Responsible Land Disturber
 12327 certificate pursuant to § 62.1-44.15:30 of the Code of Virginia shall be submitted to the VESMP
 12328 authority. Any VESMP authority may waive the Responsible Land Disturber certificate
 12329 requirement for an agreement in lieu of a plan; however, if a violation occurs during the land-
 12330 disturbing activity, then the owner shall correct the violation and provide the name of the individual
 12331 holding a Responsible Land Disturber certificate as provided by § 62.1-14:30 of the Code of
 12332 Virginia. Failure to provide the name of an individual holding a Responsible Land Disturber
 12333 certificate prior to engaging in land-disturbing activities may result in revocation of the land-
 12334 disturbance approval and shall subject the owner to the penalties provided by the VESMA.

12335 C. A VESMP authority shall approve or disapprove an ESM plan according to the following:

12336 1. A VESMP authority shall determine the completeness of any application within 15 days
 12337 after receipt, and shall act on any application within 60 days after it has been determined
 12338 to be complete.

12339 2. The VESMP authority shall issue either land-disturbance approval or denial and provide
 12340 written rationale for any denial.

12341 3. Prior to issuing a land-disturbance approval, a VESMP authority shall be required to
 12342 obtain evidence of permit coverage when such coverage is required.

12343 4. The VESMP authority shall act on the resubmitted application within 45 days after
 12344 receipt including determination of completeness within the first 15 days.

12345 D. Prior to issuance of any land-disturbance approval, the VESMP authority may also require
 12346 an applicant, excluding state agencies and federal entities, to submit a reasonable performance
 12347 bond with surety, cash escrow, letter of credit, any combination thereof, or such other legal
 12348 arrangement acceptable to the VESMP authority, to ensure that measures could be taken by the
 12349 VESMP authority at the applicant's expense should he fail, after proper notice, within the time
 12350 specified to comply with the conditions imposed by the VESMP authority as a result of his land-
 12351 disturbing activity. If the VESMP authority takes such action upon such failure by the applicant,
 12352 the VESMP authority may collect from the applicant the difference should the amount of the
 12353 reasonable cost of such action exceed the amount of the security held. Within 60 days of the
 12354 completion of the VESMP authority's conditions, such bond, cash escrow, letter of credit, or other
 12355 legal arrangement, or the unexpended or unobligated portion thereof, shall be refunded to the
 12356 applicant or terminated.

12357 E. The VESMP authority may require changes to an approved ESM plan in the following
 12358 cases:

12359 1. Where inspection has revealed that the plan is inadequate to satisfy applicable
 12360 regulations or ordinances; or

12361 2. Where the owner finds that because of changed circumstances or for other reasons the
 12362 plan cannot be effectively carried out, and proposed amendments to the plan, consistent
 12363 with the requirements of the Act, are agreed to by the VESMP authority and the owner.

12364 F. In order to prevent further erosion, a VESMP authority may require approval of an erosion
 12365 and sediment control plan and a stormwater management plan for any land identified as an
 12366 erosion impact area by the VESMP authority.

12367 G. A VESMP authority may enter into an agreement with an adjacent VESMP authority
 12368 regarding the administration of multijurisdictional projects, specifying who shall be responsible for
 12369 all or part of the administrative procedures. Should adjacent VESMP authorities fail to reach such
 12370 an agreement, each shall be responsible for administering the area of the multijurisdictional
 12371 project that lies within its jurisdiction.

12372 H. No VESMP authority may grant an exception to, or waiver of, post-development nonpoint
 12373 nutrient runoff compliance requirements unless offsite options have been considered and found
 12374 not available in accordance with subsection D of § 62.1-44.15:35 of the Code of Virginia.

12375 I. A VESMP authority is authorized to cooperate and enter into agreements with any federal
 12376 or state agency in connection with the requirements for land-disturbing activities in accordance
 12377 with § 62.1-44.15:50 of the Code of Virginia.

12378 **9VAC25-875-120. Plan review coordination with the department.**

12379 A. A VESCP authority that chooses to become a VESMP authority may opt to coordinate the
 12380 plan review component of its program with the department through an executed agreement
 12381 pursuant to § 62.1-44.15:27 B 2 of the Code of Virginia. The department may recover the cost of
 12382 the plan review service from the VESMP authority.

12383 B. A VESMP authority implementing its program in coordination with the department pursuant
 12384 to § 62.1-44.15:27 B 2 of the Code of Virginia shall determine the completeness of any application
 12385 within 15 days after receipt, and shall:

12386 1. Act on any application within 60 days after it has been determined by the VESMP
 12387 authority to be complete;

12388 2. Forward a soil erosion control and stormwater management plan to the department for
 12389 review within five days of receipt. If the plan is incomplete, the department shall return the
 12390 plan to the locality immediately and the application process shall start over. If the plan is
 12391 complete, the department shall review it for compliance with the water quality and water
 12392 quantity technical criteria and provide its recommendation to the VESMP authority; and

12393 3. Either (i) issue the land-disturbance approval or (ii) issue a denial and provide a written
 12394 rationale for the denial. In no case shall a locality have more than 60 days for its decision
 12395 on an application after it has been determined to be complete. Prior to issuing a land-
 12396 disturbance approval, a VESMP authority shall be required to obtain evidence of permit
 12397 coverage when such coverage is required.

12398 C. The VESMP authority also shall forward to the department any resubmittal of a previously
 12399 disapproved application within five days after receipt, and the VESMP authority shall determine
 12400 whether the plan is complete within 15 days of its receipt of the plan. The department shall review
 12401 the plan for compliance with the water quality and water quantity technical criteria and provide its
 12402 recommendation to the VESMP authority, and the VESMP authority shall act on the resubmitted
 12403 application within 45 days after receipt.

12404 **9VAC25-875-130. Long-term maintenance of stormwater management facilities.**

12405 A. As required in 9VAC25-875-535, the operator shall submit a construction record drawing
 12406 for permanent stormwater management facilities to the VESMP authority. The record drawing
 12407 shall contain a statement signed by a professional registered in the Commonwealth of Virginia
 12408 pursuant to Chapter 4 of Title 54.1 of the Code of Virginia, stating that to the best of their
 12409 knowledge, the construction record drawing shows all adjustments and revisions to the
 12410 stormwater management plan made during construction and serve as a permanent record of the
 12411 actual location of all constructed elements.

12412 B. The provision of long-term responsibility for and maintenance of stormwater management
 12413 facilities and other techniques specified to manage the quality or quantity of runoff is required.
 12414 Such requirements shall be set forth in an instrument recorded in the local land records prior to
 12415 permit termination or earlier as required by the authority and shall at a minimum:

12416 1. Be submitted to the authority for review and approval prior to the approval of the
 12417 stormwater management plan;

12418 2. Be stated to run with the land;

12419 3. Provide for all necessary access to the property for purposes of maintenance and
 12420 regulatory inspections;

12421 4. Provide for inspections and maintenance and the submission of inspection and
 12422 maintenance reports to the VESCP, VESMP, or VSMP authority; and

12423 5. Be enforceable by all appropriate governmental parties.

12424 C. At the discretion of the VESMP authority, such recorded instruments need not be required
 12425 for stormwater management facilities designed to treat stormwater runoff primarily from an
 12426 individual residential lot on which they are located, provided it is demonstrated to the satisfaction
 12427 of the authority that future maintenance of such facilities will be addressed through an enforceable
 12428 mechanism at the discretion of the authority.

12429 **9VAC25-875-140. Inspections.**

12430 A. The VESMP authority shall inspect the land-disturbing activity during construction for:

12431 1. Compliance with the approved erosion and sediment control plan;

12432 2. Compliance with the approved stormwater management plan;

12433 3. Development, updating, and implementation of a pollution prevention plan; and

12434 4. Development and implementation of any additional control measures necessary to
12435 address a TMDL.

12436 B. The VESMP authority shall conduct periodic inspections on all projects during construction.

12437 The VESMP authority shall either:

12438 1. Provide for an inspection during or immediately following initial installation of erosion
12439 and sediment controls, at least once in every two-week period, within 48 hours following
12440 any runoff producing storm event, and at the completion of the project prior to the release
12441 of any performance bonds; or

12442 2. Establish an alternative inspection program which ensures compliance with the
12443 approved erosion and sediment control plan. Any alternative inspection program shall be:

12444 a. Approved by the department prior to implementation;

12445 b. Established in writing;

12446 c. Based on a system of priorities that, at a minimum, address the amount of disturbed
12447 project area, site conditions and stage of construction; and

12448 d. Documented by inspection records.

12449 C. The VESMP authority shall establish an inspection program that ensures that permanent
12450 stormwater management facilities are being adequately maintained as designed after completion
12451 of land-disturbing activities. Inspection programs shall:

12452 1. Be approved by the department;

12453 2. Ensure that each stormwater management facility is inspected by the VESMP authority,
12454 or its designee, not to include the owner, except as provided in subsections D and E of
12455 this section, at least once every five years; and

12456 3. Be documented by records.

12457 D. The VESMP authority may utilize the inspection reports of the owner of a stormwater
12458 management facility as part of an inspection program established in subsection B of this section
12459 if the inspection is conducted by a person who is licensed as a professional engineer, architect,
12460 landscape architect, or land surveyor pursuant to Article 1 (§ 54.1-400 et seq.) of Chapter 4 of
12461 Title 54.1; a person who works under the direction and oversight of the licensed professional
12462 engineer, architect, landscape architect, or land surveyor; or a person who holds an appropriate
12463 certificate of competence from the department.

12464 E. If a recorded instrument is not required pursuant to 9VAC25-875-130, a VESMP authority
12465 shall develop a strategy for addressing maintenance of stormwater management facilities
12466 designed to treat stormwater runoff primarily from an individual residential lot on which they are
12467 located. Such a strategy may include periodic inspections, homeowner outreach and education,
12468 or other method targeted at promoting the long-term maintenance of such facilities. Such facilities
12469 shall not be subject to the requirement for an inspection to be conducted by the VESMP authority.

12470 **9VAC25-875-150. Enforcement.**

12471 A. A locality's VESMP authority shall incorporate components from subdivisions 1 and 2 of
12472 this subsection into its ordinance.

12473 1. Informal and formal administrative enforcement procedures may include:

12474 a. Right of entry in accordance with § 62.1-44.15:39 of the Code of Virginia.

- 12475 b. Verbal warnings and inspection reports;
- 12476 c. Notices of corrective action;
- 12477 d. Notices to comply in accordance with § 62.1-44.15:37 of the Code of Virginia;
- 12478 e. Stop work orders in accordance with § 62.1-44.15:37 of the Code of Virginia;
- 12479 f. Special orders in accordance with §§ 62.1-44.15:25.1 and 62.1-44.15:48 of the Code
- 12480 of Virginia;
- 12481 g. Consent orders in accordance with §§ 62.1-44.15:25.1 and 62.1-44.15:48 of the
- 12482 Code of Virginia;
- 12483 h. Public notice and comment periods.
- 12484 2. Civil and criminal judicial enforcement procedures may include:
- 12485 a. Schedule of civil penalties in accordance with §§ 62.1-44.15:25.1 and 62.1-44.15:48
- 12486 of the Code of Virginia;
- 12487 b. Criminal penalties in accordance with § 62.1-44.15:48 of the Code of Virginia; and
- 12488 c. Injunctions in accordance with § 62.1-44.15:48 of the Code of Virginia.
- 12489 B. A locality's VESMP authority shall develop policies and procedures that outline the steps
- 12490 to be taken regarding enforcement actions under the VESMA and attendant regulations and local
- 12491 ordinances.
- 12492 C. Each locality subject to an MS4 permit shall adopt an ordinance to implement a municipal
- 12493 separate storm sewer system management program that is consistent with this chapter and that
- 12494 contains provisions as required to comply with an MS4 permit. Such locality may utilize the civil
- 12495 penalty provisions in subdivision A 2 of § 62.1-44.15:48 of the Code of Virginia, the injunctive
- 12496 authority as provided for in subsection C of § 62.1-44.15:48, the civil charges as authorized in §
- 12497 62.1-44.15:25.1, and the criminal provisions in § 62.1-44.32, to enforce the ordinance. At the
- 12498 request of another MS4, the locality may apply the penalties provided for in this section to direct
- 12499 or indirect discharges to any MS4 located within its jurisdiction in accordance with § 62.1-44.15:49
- 12500 of the Code of Virginia.
- 12501 D. Penalties imposed in accordance with § 62.1-44.15:48 of the Code of Virginia may reflect
- 12502 the degree of harm caused by the violation and take into account the economic benefit to the
- 12503 violator from noncompliance.
- 12504 E. Pursuant to subsection L of § 62.1-44.15:27 of the Code of Virginia, authorization to
- 12505 administer a VESMP program shall not remove from the department the authority to enforce the
- 12506 provisions of the VESMA and attendant regulations.
- 12507 F. The department may terminate permit coverage during its term and require application for
- 12508 an individual permit or deny a permit renewal application for failure to comply with permit
- 12509 conditions or on its own initiative in accordance with the VESMA and this chapter.
- 12510 G. Pursuant to § 62.1-44.15:48 of the Code of Virginia, civil penalties recovered by a locality's
- 12511 VESMP authority shall be paid into the treasury of the locality in which the violation occurred and
- 12512 are to be used solely for stormwater management capital projects.
- 12513 **9VAC25-875-160. Hearings.**
- 12514 Any permit applicant, permittee, or person subject to permit requirements under the VESMA
- 12515 aggrieved by any action of the department taken without a formal hearing may demand in writing
- 12516 a formal hearing pursuant to § 62.1-44.25 of the Code of Virginia and shall ensure that all hearings
- 12517 held under this chapter shall be conducted in a manner consistent with § 62.1-44.26 of the Code
- 12518 of Virginia or as otherwise provided by law. A locality holding hearings under this chapter shall do
- 12519 so in a manner consistent with local hearing procedures. The provisions of the Administrative
- 12520 Process Act (§ 2.2-4000 et seq. of the Code of Virginia) shall not apply to decisions rendered by

12521 localities. Appeals of decisions rendered by localities shall be conducted in accordance with local
 12522 appeal procedures and shall include an opportunity for judicial review in the circuit court of the
 12523 locality in which the land disturbance occurs or is proposed to occur. Unless otherwise provided
 12524 by law, the circuit court shall conduct such review in accordance with the standards established
 12525 in § 2.2-4027 of the Code of Virginia, and the decisions of the circuit court shall be subject to
 12526 review by the Court of Appeals, as in other cases under this chapter.

12527 **9VAC25-875-170. Variances and exceptions.**

12528 A. A VESMP authority may grant variances to waive or modify any of the erosion and sediment
 12529 control requirements of Article 2 of Part V of this chapter that are deemed inappropriate or too
 12530 restrictive for site conditions may be requested from the VESMP authority under these conditions:

12531 1. At the time of plan submission, an applicant may request a variance to become part of
 12532 the approved erosion and sediment control plan. The applicant shall explain the reasons
 12533 for requesting variances in writing. Specific variances which are allowed by the authority
 12534 shall be documented in the plan.

12535 2. During construction, the person responsible for implementing the approved plan may
 12536 request a variance in writing from the authority. The authority shall respond in writing either
 12537 approving or disapproving such a request. If the authority does not approve a variance
 12538 within 10 days of receipt of the request, the request shall be considered to be disapproved.
 12539 Following disapproval, the applicant may resubmit a variance request with additional
 12540 documentation.

12541 B. A VESMP authority may grant exceptions to the provisions of Article 3 of Part V of this
 12542 chapter. An exception may be granted provided that (i) the exception is the minimum necessary
 12543 to afford relief, (ii) reasonable and appropriate conditions shall be imposed as necessary upon
 12544 any exception granted so that the intent of the VESMA and this chapter are preserved, (iii)
 12545 granting the exception will not confer any special privileges that are denied in other similar
 12546 circumstances, and (iv) exception requests are not based upon conditions or circumstances that
 12547 are self-imposed or self-created.

12548 C. Economic hardship alone is not a sufficient reason to grant an exception from the
 12549 requirements of this chapter.

12550 D. Under no circumstance shall the authority grant an exception to the requirement that the
 12551 land-disturbing activity obtain permits, nor approve the use of a BMP not found through
 12552 the Virginia Stormwater BMP Clearinghouse, except where allowed under Article 4 (9VAC25-875-
 12553 670 et seq.) of Part V of this chapter.

12554 E. Exceptions to requirements for phosphorus reductions shall not be allowed unless offsite
 12555 options available through 9VAC25-875-610 have been considered and found not available.

12556 F. A record of all exceptions granted shall be maintained by the authority in accordance with
 12557 9VAC25-875-180.

12558 **9VAC25-875-180. Reports and recordkeeping.**

12559 A. On a fiscal year basis (July 1 to June 30), a VESMP authority shall report to the department
 12560 by October 1 of each year in a format provided by the department. The information to be provided
 12561 shall include the following:

12562 1. Information, not previously reported to the department through other reporting
 12563 requirements, on each permanent stormwater management facility completed during the
 12564 fiscal year to include type of stormwater management facility, geographic coordinates,
 12565 acres treated, and the surface waters or karst features into which the stormwater
 12566 management facility will discharge;

12567 2. A listing of each land-disturbing activity for which a plan has been approved by the
 12568 VESMP authority;

- 12569 3. Number and type of enforcement actions during the fiscal year; and
 12570 4. Number of exceptions granted during the fiscal year.
 12571 B. A VESMP authority shall keep records in accordance with the following:
 12572 1. Project records, including approved soil erosion control and stormwater management
 12573 plans, shall be kept for three years after permit termination or project completion;
 12574 2. Stormwater management facility inspection records shall be documented and retained
 12575 for at least five years from the date of inspection;
 12576 3. Construction record drawings shall be maintained in perpetuity or until a stormwater
 12577 management facility is removed; and
 12578 4. All registration statements submitted in accordance with 9VAC25-875-530 shall be
 12579 documented and retained for at least three years from the date of project completion or
 12580 permit termination.

12581 Article 4

12582 Authorization and review procedures for VESMPs

12583 **9VAC25-875-190. Review and evaluation of VESMPs.**

12584 A. The department shall review each approved VESMP at least once every five years on a
 12585 review schedule approved by the department. The department may review a VESMP on a more
 12586 frequent basis if deemed necessary and shall notify the VESMP authority if such review is
 12587 scheduled.

12588 B. The review of an approved VESMP shall consist of the following:

- 12589 1. Consultation with the VESMP administrator or designee;
 12590 2. A review of the local ordinance(s) and other applicable documents;
 12591 3. A review of a subset of the plans approved by the VESMP authority for consistency of
 12592 application including exceptions granted and calculations or other documentation that
 12593 demonstrates that all erosion and sediment control minimum standards are met and
 12594 required nutrient reductions are achieved using appropriate on-site and off-site
 12595 compliance options;
 12596 4. Inspections of regulated activities; and
 12597 5. A review of enforcement actions and an accounting of amounts recovered through
 12598 enforcement actions where applicable.

12599 C. The department shall coordinate the once per five year review with its other program
 12600 reviews for the same entity to avoid redundancy.

12601 D. The department shall determine if the VESMP and ordinances where applicable are
 12602 consistent with the VESMA and the Virginia Erosion and Stormwater Management Regulation
 12603 and notify the VESMP authority of its findings. The Administrative Process Act (§ 2.2-4000 et seq.
 12604 of the Code of Virginia) shall govern the review activities and proceedings of the department and
 12605 the judicial review thereof.

12606 E. If the department determines that the deficiencies noted in the review will cause the VESMP
 12607 to be out of compliance with the VESMA and attendant regulations, the department shall notify
 12608 the VESMP authority concerning the deficiencies and provide a reasonable period of time in
 12609 accordance with § 62.1-44.15 (19) of the Code of Virginia for corrective action to be taken. If the
 12610 VESMP authority agrees to the corrective action approved by the department, the VESMP will be
 12611 considered to be conditionally compliant with the VESMA and attendant regulations until a
 12612 subsequent finding of compliance is issued by the department. If the VESMP authority fails to

12613 implement the necessary compliance actions identified by the department within the specified
 12614 time, the department may take action pursuant to § 62.1-44.15 (19) of the Code of Virginia.

12615 Article 5

12616 VSMP operated by the department

12617 **9VAC25-875-200. Criteria for a VSMP.**

12618 A. The department shall administer a VSMP on behalf of any locality that notifies the
 12619 department that it has chosen to not administer a VESMP as provided by subdivision B 3 of §
 12620 62.1-44.15:27 of the Code of Virginia.

12621 B. Per § 62.1-44.15:27.1 B of the Code of Virginia, the department shall administer a VSMP
 12622 consistent with the stormwater management requirements defined for a VESMP.

12623 C. The department shall review and approve stormwater management plans by the schedule
 12624 defined in 9VAC25-875-110, except for activities not required to comply with the requirements of
 12625 the VESMA, pursuant to § 62.1-44.15:34 of the Code of Virginia and 9VAC25-875-90.

12626 D. The director, or his designee, may perform any act of the department provided under the
 12627 VESMA and this chapter, except as limited by § 62.1-44.14 of the Code of Virginia.

12628 Part III

12629 Virginia Erosion and Sediment Control Program

12630 Article 1

12631 Definitions, purpose, and applicability

12632 **9VAC25-875-210. Definitions.**

12633 For the purposes of Part III only, the following words and terms have the following meanings
 12634 unless the context clearly indicates otherwise:

12635 "Act" means the Erosion and Sediment Control Law for Localities Not Administering a Virginia
 12636 Erosion and Stormwater Management Program (ESCL), Article 2.4 (§ 62.1-44.15:51 et seq.) of
 12637 Chapter 3.1 of Title 62.1 of the Code of Virginia.

12638 "Agreement in lieu of a plan" means a contract between the VESCP authority and the owner
 12639 that specifies conservation measures that must be implemented in the construction of (i) a single-
 12640 family detached residential structure or (ii) a farm building or structure on a parcel of land with a
 12641 total impervious cover percentage, including the impervious cover from the farm building or
 12642 structure to be constructed, of less than five percent; this contract may be executed by the VESCP
 12643 authority in lieu of a formal site plan.

12644 "Applicant" means any person submitting an erosion and sediment control plan for approval
 12645 in order to obtain authorization for land-disturbing activities to commence.

12646 "Development" means a tract or parcel of land developed or to be developed as a single unit
 12647 under single ownership or unified control which is to be used for any business or industrial purpose
 12648 or is to contain three or more residential dwelling units.

12649 "Land disturbance" or "land-disturbing activity" means any man-made change to the land
 12650 surface that may result in soil erosion or has the potential to change its runoff characteristics,
 12651 including the clearing, grading, excavating, transporting, and filling of land.

12652 "Owner" means the same as provided in § 62.1-44.3 of the Code of Virginia. For a land-
 12653 disturbing activity that is regulated under the ESCL, "owner" also includes the owner or owners
 12654 of the freehold of the premises or lesser estate therein, mortgagee or vendee in possession,
 12655 assignee of rents, receiver, executor, trustee, lessee, or other person, firm, or corporation in
 12656 control of a property.

12657 **9VAC25-875-220. Purpose.**

12658 The purpose of this part is to provide the framework for the administration, implementation,
 12659 and enforcement of the Virginia Erosion and Sediment Control Law for Localities Not
 12660 Administering a Virginia Erosion and Stormwater Management Program (ESCL). This part
 12661 delineates the roles associated with a VESCP. This part also establishes the department's
 12662 procedures for approving the administration of a VESCP authority and includes the department's
 12663 oversight authority over a VESCP.

12664 **9VAC25-875-230. Applicability.**

12665 This part is applicable to:

- 12666 1. Any local government that administers a VESCP;
 12667 2. The department that administers a VESCP; and
 12668 3. The department in its administrative oversight of VESCPs.

12669 Article 2

12670 Land-disturbing activities

12671 **9VAC25-875-240. Criteria for determining status of land-disturbing activity.**

12672 A. The program administrator shall determine the validity of a claim of exempt status by a
 12673 property owner who disturbs 10,000 square feet or more or 2,500 square feet or more in all areas
 12674 of jurisdictions designated as subject to the Chesapeake Bay Preservation Area Designation and
 12675 Management Regulations (9VAC25-830 et seq.). As soon as a nonexempt status is determined,
 12676 the requirements of the ESCL shall be immediately enforced.

12677 B. Should a land-disturbing activity not begin during the 180-day period following approval of
 12678 the erosion and sediment control plan or cease for more than 180 days, the VESCP authority may
 12679 evaluate the existing approved erosion and sediment control plan to determine whether the plan
 12680 still satisfies local and state erosion and sediment control criteria and to verify that all design
 12681 factors are still valid. If the VESCP authority finds the previously filed plan to be inadequate, a
 12682 modified plan shall be submitted and approved prior to the resumption of land-disturbing activity.

12683 C. Shoreline erosion control projects are not subject to Part V of this chapter. However, land-
 12684 disturbing activity immediately outside the limits of the shoreline erosion project is subject to the
 12685 ESCL and Part V of this chapter.

12686 D. Whenever land-disturbing activity involves activity at a separate location (including but not
 12687 limited to borrow and disposal areas), the VESCP authority may either:

- 12688 1. Consider the off-site activity as being part of the proposed land-disturbing activity; or
 12689 2. If the off-site activity is already covered by an approved erosion and sediment control
 12690 plan, the VESCP authority may require the applicant to provide proof of the approval and
 12691 to certify that the plan will be implemented in accordance with the ESCL and Part V of this
 12692 chapter.

12693 **9VAC25-875-250. Regulated land-disturbing activities.**

12694 A. Land-disturbing activities that meet one of the criteria below are regulated as follows:

- 12695 1. Land-disturbing activity that disturbs 10,000 square feet or more, although the locality
 12696 may reduce this regulatory threshold to a smaller area of disturbed land, is less than one
 12697 acre, not in an area of a locality designated as a Chesapeake Bay Preservation Area is
 12698 subject to criteria defined in Article 2 (9VAC25-875-540 et seq.) of Part V of this chapter.
 12699 2. Land-disturbing activity that disturbs 2,500 square feet or more, although the locality
 12700 may reduce this regulatory threshold to a smaller area of disturbed land, is less than one

12701 acre, and in an area of a locality designated as a Chesapeake Bay Preservation Area is
 12702 subject to criteria defined in Article 2 (9VAC25-875-540 et seq.) of Part V of this chapter.

12703 B. A locality may, by local ordinance adopted pursuant to §62.1-44.15:65 of the Code of
 12704 Virginia, adopt more stringent local requirements.

12705 **9VAC25-875-260. Land-disturbing activities in Chesapeake Bay Preservation Areas.**

12706 A. Localities subject to the Chesapeake Bay Preservation Act shall regulate runoff associated
 12707 with land-disturbing activities in a Chesapeake Bay Preservation Area equal to or greater than
 12708 2,500 square feet but less than one acre in accordance with the following:

12709 1. The technical criteria and program and administrative requirements set out in 9VAC25-
 12710 875-740;

12711 2. A local land disturbance approval, as applicable, shall be provided for the land-
 12712 disturbing activity;

12713 3. The locality shall regulate such land-disturbing activities in compliance with the:

12714 a. Program requirements in 9VAC25-875-100;

12715 b. Plan review requirements in 9VAC25-875-110 with the exception of subsection D of
 12716 9VAC25-875-110 or as allowed in subsection A of 9VAC25-875-750;

12717 c. Long-term stormwater management facility requirements of 9VAC25-875-130;

12718 d. Inspection requirements of 9VAC25-875-140 with the exception of subdivisions A 3
 12719 and A 4 of 9VAC25-875-140;

12720 e. Enforcement components of 9VAC25-875-150;

12721 f. Hearing procedures in effect in the locality;

12722 g. Exception conditions of 9VAC25-875-170 excluding subsection A of 9VAC25-875-
 12723 170 which is not applicable; and

12724 h. Reporting and recordkeeping requirements of 9VAC25-875-180 with the exception
 12725 of subdivision B 3 of 9VAC25-875-180.

12726 B. A locality subject to the Chesapeake Bay Preservation Act shall adopt an ordinance that
 12727 incorporates the components of this section.

12728 C. As authorized by § 62.1-44.15:28 of the Code of Virginia, a locality may collect a fee as
 12729 specified in 9VAC25-875-1400.

12730 **9VAC25-875-270. State agency land-disturbing activities.**

12731 A. All state agency land-disturbing activities that are not exempt and that have commenced
 12732 without an approved erosion and sediment control plan shall immediately cease until the state
 12733 agency has either (i) submitted standards and specifications for its conduct of land-disturbing
 12734 activities which has been reviewed and approved by the department as being consistent with the
 12735 ESCL and attendant regulations, or (ii) an erosion and sediment control plan has been submitted
 12736 to and approved by the department. A formal "Notice of Plan Requirement" will be sent to the
 12737 state agency under whose purview the project lies since that agency is responsible for compliance
 12738 with the ESCL and this chapter.

12739 B. Where inspections by department personnel reveal deficiencies in carrying out an approved
 12740 plan, the person responsible for carrying out the plan, as well as the state agency responsible,
 12741 will be issued a notice to comply with specific actions and the deadlines that shall be met. Failure
 12742 to meet the prescribed deadlines can result in the issuance of a stop work order for all land-
 12743 disturbing activities on the project at the discretion of the department. The stop work order will be
 12744 lifted once the required erosion and sediment control measures are in place and inspected by
 12745 department staff.

12746 C. Whenever the Commonwealth or any of its agencies fails to comply within the time provided
 12747 in an appropriate final order, the director of the department may petition for compliance as follows:
 12748 For violations in the Natural and Historic Resources Secretariat, to the Secretary of Natural and
 12749 Historic Resources; for violations in other secretariats, to the appropriate Secretary; for violations
 12750 in other state agencies, to the head of such agency. Where the petition does not achieve timely
 12751 compliance, the director shall bring the matter to the Governor for resolution. The department may
 12752 also pursue enforcement as provided by § 62.1-44.15:63 of the Act.

12753 D. Where compliance will require the appropriation of funds, the director shall cooperate with
 12754 the appropriate agency head in seeking such an appropriation; where the director determines that
 12755 an emergency exists, he shall petition the Governor for funds from the Civil Contingency Fund or
 12756 other appropriate source.

12757 **9VAC25-875-280. Activities not required to comply with the ESCL.**

12758 Notwithstanding any other provisions of the Erosion and Sediment Control Law for Localities
 12759 Not Administering a Virginia Erosion and Stormwater Management Program (ESCL), the following
 12760 activities are not required to comply with the ESCL unless otherwise required by federal law:

12761 1. Disturbance of a land area of less than 10,000 square feet in size or less than 2,500
 12762 square feet in an area designated as a Chesapeake Bay Preservation Area pursuant to
 12763 the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq. of the Code of Virginia).
 12764 However, the governing body of the program authority may reduce this exception to a
 12765 smaller area of disturbed land or qualify the conditions under which this exception shall
 12766 apply;

12767 2. Minor land-disturbing activities such as home gardens and individual home landscaping,
 12768 repairs, and maintenance work;

12769 3. Installation, maintenance, or repair of any individual service connection;

12770 4. Installation, maintenance, or repair of any underground utility line when such activity
 12771 occurs on an existing hard surfaced road, street, or sidewalk, provided the land-disturbing
 12772 activity is confined to the area of the road, street, or sidewalk that is hard surfaced;

12773 5. Installation, maintenance, or repair of any septic tank line or drainage field unless
 12774 included in an overall plan for land-disturbing activity relating to construction of the building
 12775 to be served by the septic tank system;

12776 6. Permitted surface or deep mining operations and projects, or oil and gas operations
 12777 and projects conducted pursuant to Title 45.2;

12778 7. Clearing of lands specifically for bona fide agricultural purposes; the management,
 12779 tilling, planting, or harvesting of agricultural, horticultural, or forest crops; livestock feedlot
 12780 operations; agricultural engineering operations, including construction of terraces, terrace
 12781 outlets, check dams, desilting basins, dikes, ponds, ditches, strip cropping, lister furrowing,
 12782 contour cultivating, contour furrowing, land drainage, and land irrigation; or as additionally
 12783 set forth by the board in regulations. However, this exception shall not apply to harvesting
 12784 of forest crops unless the area on which harvesting occurs is reforested artificially or
 12785 naturally in accordance with the provisions of Chapter 11 (§ 10.1-1100 et seq.) of Title
 12786 10.1 of the Code of Virginia or is converted to bona fide agricultural or improved pasture
 12787 use as described in subsection B of § 10.1-1163 of the Code of Virginia;

12788 8. Installation of fence and sign posts or telephone and electric poles and other kinds of
 12789 posts or poles;

12790 9. Shoreline erosion control projects on tidal waters when all of the land-disturbing
 12791 activities are within the regulatory authority of and approved by local wetlands boards, the
 12792 Virginia Marine Resources Commission, or the United States Army Corps of Engineers;

12793 however, any associated land that is disturbed outside of this exempted area shall remain
 12794 subject to the ESCL and the regulations adopted pursuant thereto;

12795 10. Land-disturbing activities in response to a public emergency where the related work
 12796 requires immediate authorization to avoid imminent endangerment to human health or the
 12797 environment. In such situations, the VESCP authority shall be advised of the disturbance
 12798 within seven days of commencing the land-disturbing activity, and compliance with the
 12799 administrative requirements of subsection A is required within 30 days of commencing the
 12800 land-disturbing activity;

12801 11. Discharges to a sanitary sewer or a combined sewer system that are not from a land-
 12802 disturbing activity; and

12803 12. Repair or rebuilding of the tracks, rights-of-way, bridges, communication facilities, and
 12804 other related structures and facilities of a railroad company.

12805 Article 3

12806 Programs operated by a VESCP authority

12807 **9VAC25-875-290. Criteria for programs operated by a VESCP authority.**

12808 A. At a minimum, a VESCP shall provide that (i) an erosion and sediment control plan shall
 12809 be reviewed and approved by a certified plan reviewer; (ii) inspections of land-disturbing activities
 12810 shall be conducted by a certified inspector; and (iii) a VESCP shall contain a certified program
 12811 administrator, a certified plan reviewer, and a certified project inspector, who may be the same
 12812 person pursuant to § 62.1-44.15:53 of the Code of Virginia. The requirements for each position
 12813 identified in this subsection are specified in Part IV of this chapter (9VAC25-875-380 et seq.).

12814 B. A VESCP authority may enter into agreements or contracts with soil and water conservation
 12815 districts, adjacent localities, or other public or private entities to assist with carrying out the
 12816 provisions of this chapter, including the review and determination of adequacy of erosion and
 12817 sediment control plans submitted for land-disturbing activities on a unit or units of land as well as
 12818 for monitoring, reports, inspections, and enforcement of such land-disturbing activities.

12819 C. The VESCP operated by a county, city, or town shall include provisions for the coordination
 12820 of the VESCP with flood insurance, flood plain management, and other programs requiring
 12821 compliance prior to authorizing a land-disturbing activity in order to make the submission and
 12822 approval of plans, payment of fees, and coordination of inspection and enforcement activities
 12823 more convenient and efficient both for the local governments and those responsible for
 12824 compliance with the programs pursuant to § 62-1.44-15:54 of the Code of Virginia.

12825 D. A VESCP authority may enter into an agreement with an adjacent VESCP or VESMP
 12826 authority regarding the administration of multijurisdictional projects specifying who shall be
 12827 responsible for all or part of the administrative procedures. Should adjacent authorities fail to
 12828 come to such an agreement, each shall be responsible for administering the area of the
 12829 multijurisdictional project that lies within its jurisdiction.

12830 E. Where the land-disturbing activity results from the construction of a (i single-family
 12831 detached residential structure or (ii) a farm building or structure on a parcel of land with a total
 12832 impervious cover percentage, including the impervious cover from the farm building or structure
 12833 to be constructed, of less than five percent, an agreement in lieu of a plan may be substituted for
 12834 an erosion and sediment control plan if executed by the VESCP authority pursuant to § 62-1.44-
 12835 15:55 A of the Code of Virginia. For a single-family detached residential structure with less than
 12836 one acre of land disturbance, an agreement in lieu of a plan may be used when either 1) it is
 12837 located within a common plan of development or sale with an approved stormwater pollution
 12838 prevention plan consistent with 9VAC25-875-500 and a permit, if required; or 2) the single-family
 12839 detached residential is located outside of a common plan of development or sale.

12840 F. A VESCP authority may adopt more stringent soil erosion and sediment control ordinances
12841 pursuant to § 62.1-44.15:65.

12842 G. Any VESCP authority that administers a VESCP may charge applicants a reasonable fee
12843 to defray the costs of program administration. A VESCP authority shall hold a public hearing prior
12844 to establishing a schedule of fees. The fee shall not exceed an amount commensurate with the
12845 services rendered, taking into consideration the time, skill, and the VESCP authority's expense
12846 involved.

12847 **9VAC25-875-300. Plan review requirements.**

12848 A. The VESCP authority shall review erosion and sediment control plans that detail the criteria,
12849 techniques, and methods as defined in 9VAC25-875-550 for land disturbing activities described
12850 in 9VAC25-875-560. Activities not required to comply with VESCL are defined in 9VAC25-875-
12851 280.

12852 B. When determined that the plan meets the minimum criteria, techniques, and methods as
12853 defined in 9VAC25-875-550, the VESCP authority shall review erosion and sediment control plans
12854 submitted and grant written approval within 60 days of the receipt of the plan.

12855 C. When the VESCP authority determines a plan is inadequate, written notice stating the
12856 specific reasons for disapproval shall be communicated to the applicant within 45 days. The notice
12857 shall specify the modifications, terms, and conditions that are necessary for approval of the plan.
12858 If no action is taken by the VESCP authority within 45 days, the plan shall be deemed approved
12859 and the proposed activity authorized. The VESCP authority shall act on any erosion and sediment
12860 control plan that has been previously deemed inadequate within 45 days after receipt of a revised
12861 plan if deemed adequate.

12862 D. For sites requiring coverage under the General VPDES Permit for Discharges of
12863 Stormwater from Construction Activities, the VESCP authority shall obtain evidence of such
12864 coverage prior to approving the erosion and sediment control plan.

12865 E. The person responsible for carrying out the plan shall provide the name of an individual
12866 holding a certificate to the VESCP authority who will be in charge of and responsible for carrying
12867 out the land-disturbing activity. However, the VESCP authority may waive the Responsible Land
12868 Disturber certificate requirement for an agreement in lieu of a plan in accordance with § 62.1-
12869 44.15:55 of the Code of Virginia.

12870 F. The VESCP authority may require approval of an erosion and sediment control plan for any
12871 land identified as an erosion impact area in accordance with § 62.1-44.15:55 of the Code of
12872 Virginia.

12873 G. All erosion and sediment control structures and systems shall be maintained, inspected
12874 and repaired as needed to ensure continued performance of their intended function. A statement
12875 describing the maintenance responsibilities of the individual responsible for carrying out the land-
12876 disturbing activity shall be included in the approved erosion and sediment control plan.

12877 **9VAC25-875-310. Plan review coordination with the department for solar projects.**

12878 A. Any VESCP authority that does not operate a regulated municipal separate storm sewer
12879 system and for which the department did not administer a Virginia Stormwater Management
12880 Program as of July 1, 2020, shall notify the department if it decides to have the department provide
12881 the VESCP authority with (i) review of the erosion and sediment control plan required by § 62.1-
12882 44.15:55 A of the Code of Virginia and (ii) a recommendation on the plan's compliance with the
12883 requirements of Part V of this chapter for any solar project and its associated infrastructure with
12884 a rated electrical generation capacity exceeding five megawatts.

12885 B. Any VESCP authority that notifies the department pursuant to this section shall within five
12886 days of receiving the erosion and sediment control plan forward the plan to the department for
12887 review. If the plan forwarded to the department is incomplete, the department shall return the plan

12888 to the VESCP authority immediately, and the application process shall start over. If the plan
 12889 forwarded to the department is complete, the department shall review the plan for compliance
 12890 with the requirements of Part V of this chapter and provide a recommendation to the VESCP
 12891 authority. The VESCP authority shall then (i) grant written approval of the plan or (ii) provide
 12892 written notice of disapproval of the plan in accordance with § 62.1-44.15:55 B of the Code of
 12893 Virginia.

12894 C. Any VESCP authority that notifies the department pursuant to this section shall within five
 12895 days of receiving the resubmittal of a previously disapproved erosion and sediment control plan
 12896 forward the resubmitted plan to the department for review. The department shall review the
 12897 resubmitted plan for compliance with the requirements of Part V this chapter and provide a
 12898 recommendation to the VESCP authority. The VESCP authority shall then (i) grant written
 12899 approval of the plan or (ii) provide written notice of disapproval of the plan in accordance with §
 12900 62.1-44.15:55 B of the Code of Virginia.

12901 **9VAC25-875-320. Long-term maintenance of stormwater management facilities.**

12902 A. A recorded instrument shall be submitted to the VESCP authority in accordance with
 12903 9VAC25-875-535.

12904 B. The department shall enforce permits and require compliance with its applicable
 12905 regulations, including when serving as a VSMP authority in a locality that chose not to adopt a
 12906 VESMP in accordance with § 62.1-44.15:27 of the Code of Virginia.

12907 **9VAC25-875-330. Inspections.**

12908 A. The VESCP authority (i) shall provide for periodic inspections of the land-disturbing activity
 12909 and require that an individual holding a certificate, as provided by § 62.1-44.15:52 of the Code of
 12910 Virginia, will be in charge of and responsible for carrying out the land-disturbing activity and (ii)
 12911 may require monitoring and reporting from the person responsible for carrying out the erosion and
 12912 sediment control plan, to ensure compliance with the approved plan and to determine whether
 12913 the measures required in the plan are effective in controlling erosion and sediment. However, any
 12914 VESCP authority may waive the certificate requirement for an agreement in lieu of a plan.

12915 B. Periodic inspections by the VESCP authority are required on all projects. The VESCP
 12916 authority shall either:

12917 1. Provide for an inspection during or immediately following initial installation of erosion
 12918 and sediment controls, at least once in every two-week period, within 48 hours following
 12919 any runoff producing storm event, and at the completion of the project prior to the release
 12920 of any performance bonds; or

12921 2. Establish an alternative inspection program which ensures compliance with the
 12922 approved erosion and sediment control plan. Any alternative inspection program shall be:

12923 a. Approved by the department prior to implementation;

12924 b. Established in writing;

12925 c. Based on a system of priorities that, at a minimum, address the amount of disturbed
 12926 project area, site conditions and stage of construction; and

12927 d. Documented by inspection records.

12928 **9VAC25-875-340. Enforcement.**

12929 A. Each VESCP authority shall incorporate components from subdivisions 1 and 2 of this
 12930 subsection.

12931 1. Informal and formal administrative enforcement procedures may include:

12932 a. Right of entry in accordance § 62.1-44.15:60 of the Code of Virginia.

12933 b. Verbal warnings and inspection reports;

- 12934 c. Notices of corrective action;
- 12935 d. Notices to comply in accordance with § 62.1-44.15:58 of the Code of Virginia;
- 12936 e. Consent special orders and civil charges in accordance § 62.1-44.15:63 of the Code
- 12937 of Virginia;
- 12938 f. Stop work orders in accordance with of § 62.1-44.15:58 of the Code of Virginia; and
- 12939 g. Public notice and comment periods for proposed settlements and consent special
- 12940 orders.
- 12941 2. Civil and judicial enforcement procedures may include:
- 12942 a. Schedule of civil penalties in accordance with § 62.1-44.15:54 and § 62.1-44.15:63
- 12943 of the Code of Virginia; and
- 12944 b. Injunctions in accordance § 62.1-44.15:58 and § 62.1-44.15:63 of the Code of
- 12945 Virginia.
- 12946 B. Each VESCP authority shall develop policies and procedures that outline the steps to be
- 12947 taken regarding enforcement actions under the ESCL and attendant regulations and local
- 12948 ordinances.
- 12949 C. Penalties imposed in accordance with §§ 62.1-44.15:54 and 62.1-44.15:63 of the Code of
- 12950 Virginia may reflect the degree of harm caused by the violation and take into account the
- 12951 economic benefit to the violator from noncompliance.
- 12952 D. Pursuant to § 62.1-44.15:25 of the Code of Virginia, authorization to administer a VESCP
- 12953 program shall not remove from the department the authority to enforce the provisions of the ESCL
- 12954 and attendant regulations.
- 12955 E. The department may terminate permit coverage during its term and require application for
- 12956 an individual permit or deny a permit renewal application for failure to comply with permit
- 12957 conditions or on its own initiative in accordance with the ESCL and this chapter.
- 12958 F. Pursuant to § 62.1-44.15:63 A of the Code of Virginia, civil penalties recovered by a VESCP
- 12959 authority shall be paid into the treasury of the locality in which the violation occurred and are to
- 12960 be used solely for stormwater management capital projects.
- 12961 **9VAC25-875-350. Variances.**
- 12962 A variance to waive or modify any of the erosion and sediment control requirements of Article
- 12963 2 of Part V of this chapter that are deemed inappropriate or too restrictive for site conditions may
- 12964 be requested from the VESCP authority under these conditions:
- 12965 1. At the time of plan submission, an applicant may request a variance to become part of
- 12966 the approved erosion and sediment control plan. The applicant shall explain the reasons
- 12967 for requesting variances in writing. Specific variances which are allowed by the authority
- 12968 shall be documented in the plan; or
- 12969 2. During construction, the person responsible for implementing the approved plan may
- 12970 request a variance in writing from the authority. The authority shall respond in writing either
- 12971 approving or disapproving such a request. If the authority does not approve a variance
- 12972 within 10 days of receipt of the request, the request shall be considered to be disapproved.
- 12973 Following disapproval, the applicant may resubmit a variance request with additional
- 12974 documentation.
- 12975 **9VAC25-875-360. VESCP reporting and record keeping requirements.**
- 12976 Each VESCP authority shall report to the department, at least monthly, in a method such as
- 12977 an online reporting system and on a time schedule established by the department, a listing of
- 12978 each land-disturbing activity for which a plan has been approved by the VESCP authority under
- 12979 the ESCL and Part III this chapter.

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Article 4

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Review procedures for VESCPs

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9VAC25-875-370. Review and evaluation of VESCPs.

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A. This section sets forth the criteria that will be used by the department to determine whether a locality operating a VESCP under authority of the ESCL, a "VESCP authority," satisfies minimum standards of effectiveness, as follows.

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Each VESCP must contain an ordinance or other appropriate document or documents adopted by the VESCP authority. Such document or documents must be consistent with the ESCL and Part III of this chapter, including the following criteria:

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1. The document or documents shall include or reference the definition of land-disturbing activity including exemptions, as well as any other significant terms, as necessary to produce an effective VESCP;

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2. The document or documents shall identify the VESCP authority and any soil and water conservation district, adjacent locality, or other public or private entities that the VESCP authority entered into agreements or contracts with to assist with carrying out the provisions of the ESCL and Part III of this chapter, and must include the requirements and design standards to be used in the program;

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3. The document or documents shall include procedures for submission and approval of plans, issuance of permits, monitoring and inspections of land-disturbing activities. The position, agency, department, or other party responsible for conducting inspections shall be identified. The VESCP authority shall maintain, either on-site or in VESCP files, a copy of the approved plan and a record of inspections for each active land-disturbing activity;

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4. Each VESCP operated by a county, city, or town shall include provisions for the integration of the VESCP with flood insurance, flood plain management, and other programs requiring compliance prior to authorizing a land-disturbing activity in order to make the submission and approval of plans, payment of fees, and coordination of inspection and enforcement activities more convenient and efficient both for the local governments and those responsible for compliance with the programs; and

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5. The VESCP authority must take appropriate enforcement actions, where authorized to do so, to achieve compliance with the program and maintain a record of enforcement actions for all active land-disturbing activities.

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B. The department shall periodically conduct a comprehensive review and evaluation of each VESCP authority pursuant to subdivision (19) of § 62.1-44.15. The department will coordinate the review with its other program reviews for the same entity to avoid redundancy. The review and evaluation of a VESCP authority shall consist of the following: (i) consultation with the local program administrator or designee or designees; (ii) review of the local ordinance and other applicable documents; (iii) review of plans approved by the VESCP authority; (iv) inspection of regulated activities; and (v) review of enforcement actions where authorized to do so. The department is also authorized to conduct a partial VESCP compliance review.

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C. Each VESCP authority shall be reviewed and evaluated by the department for effectiveness in carrying out the ESCL and Part III of this chapter using the criteria in this section.

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D. If deficiencies noted in the review will cause the VESCP to be inconsistent with the ESCL or this chapter, the department shall provide the VESCP authority with a copy of its decision that specifies the deficiencies, action needed to be taken, and an approved corrective action plan and schedule required to attain the minimum standard of effectiveness. If the VESCP authority has not implemented the necessary compliance actions identified by the department within the corrective action schedule, or such additional period as is granted to complete the implementation

13027 of the corrective action, then the department shall have the authority to (i) issue a special order
 13028 to any VESCP authority imposing a civil penalty set out in § 62.1-44.15 of the Code of Virginia or
 13029 (ii) revoke its approval of the VESCP. The Administrative Process Act (§ 2.2-4000 et seq. of the
 13030 Code of Virginia) and Article 5 of Chapter 3.1 of Title 62.1 if the Code of Virginia (§ 62.1-44.20 et
 13031 seq.) shall govern the review activities and proceedings of the department and the judicial review
 13032 thereof. In lieu of issuing a special order or revoking the program, the department is authorized to
 13033 take legal action against a VESCP authority to ensure compliance.

13034 E. Review and evaluation of VESCPs shall be conducted according to a schedule adopted by
 13035 the department in accordance with subdivision (19) of § 62.1-44.15 of the Code of Virginia.

13036 Part IV

13037 Certification of VESCP, VSMP, and VESMP personnel

13038 **9VAC25-875-380. Purpose.**

13039 The purpose of this part is to guide the issuance of certifications required by §§ 62.1-44.15:52
 13040 E and 62.1-44.15:53 of the ESCL and § 62.1-44.15:30 of the VESMA.

13041 **9VAC25-875-390. Applicability.**

13042 This part is applicable to:

13043 1. Every VESCP authority, VESMP authority, or VSMP authority that administers a
 13044 VESCP, VESMP, or VSMP as may be applicable. Staff of a VESCP authority must be
 13045 certified in accordance with §§ 62.1-44.15:52 E and 62.1-44.15:53 of the ESCL. Staff of a
 13046 VESMP authority or VSMP authority must be certified in accordance with § 62.1-44.15:30
 13047 of the VESMA.

13048 2. Anyone who is contracted by a VESCP authority, a VESMP authority, or a VSMP
 13049 authority to perform any or all of the functions of that authority as may be applicable. This
 13050 person will be subject to the same certification requirements as the authority.

13051 3. Any state agency, federal entity, or public or private entity authorized under § 62.1-
 13052 44.15:31 of the Code of Virginia to implement approved standards and specifications.
 13053 Personnel implementing approved standards and specifications pursuant to subsection
 13054 D.5 of § 62.1-44.15:31 of the Code of Virginia must obtain certifications or qualifications
 13055 comparable to those required for VESMP personnel pursuant to subsection C of § 62.1-
 13056 44.15:30 of the Code of Virginia.

13057 4. Anyone voluntarily seeking certifications or certificates from the department for
 13058 classifications described in 9VAC25-875-400.

13059 **9VAC25-875-400. Certificates and certifications.**

13060 A. Certifications shall be issued by the department to individuals who successfully complete
 13061 the department-approved training program, which includes obtaining a passing score on the
 13062 applicable certification examination, or otherwise fulfilling the requirements of 9VAC25-875-410
 13063 for the following classifications:

13064 1. Program administrator for ESC. This classification applies to individuals who administer
 13065 the program in the area of ESC pursuant to this chapter. This certification is a requirement
 13066 for any individual employed to perform the duties of a program administrator for ESC by a
 13067 VESCP or VESMP authority, or an agent of a VESCP or VESMP authority. This
 13068 certification also serves as the ESC component required for the dual program
 13069 administrator certification.

- 13070 2. Inspector for ESC. This classification applies to individuals who perform inspections of
13071 land-disturbing activities in the area of ESC pursuant to this chapter. This certification is a
13072 requirement for any individual employed as an inspector for ESC by a VESCP or VESMP
13073 authority, or an agent of a VESCP or VESMP authority. This certification also serves as
13074 the ESC component required for the dual inspector certification.
- 13075 3. Plan reviewer for ESC. This classification applies to individuals who review plans in the
13076 area of ESC for approval by a VESCP or VESMP authority pursuant to this chapter. This
13077 certification is a requirement for any individual employed as a plan reviewer for ESC by a
13078 VESCP or VESMP authority, or an agent of a VESCP or VESMP authority. This
13079 certification also serves as the ESC component required for the dual plan reviewer
13080 certification.
- 13081 4. Combined administrator for ESC. This classification applies to individuals who perform
13082 the combined duties of Program Administrator, Inspector, and Plan Reviewer in the area
13083 of ESC pursuant to this chapter. This certification is a requirement for any individual
13084 employed as a combined administrator for ESC by a VESCP or VESMP authority, or an
13085 agent of a VESCP or VESMP authority. This certification also serves as the ESC
13086 component required for the dual combined administrator certification.
- 13087 5. Program administrator for SWM. This classification applies to individuals who
13088 administer the program in the area of SWM pursuant to this chapter. This certification is a
13089 requirement for any individual employed to perform the duties of a program administrator
13090 for SWM by a VSMP or VESMP authority, or an agent of a VSMP or VESMP authority.
13091 This certification also serves as the SWM component required for the dual program
13092 certification.
- 13093 6. Inspector for SWM. This classification applies to individuals who conduct inspections in
13094 the area of SWM pursuant to this chapter. This certification is a requirement for any
13095 individual employed to perform the duties of an inspector for SWM by a VSMP or VESMP
13096 authority, or an agent of a VSMP or VESMP authority. This certification also serves as the
13097 SWM component required for the dual inspector certification.
- 13098 7. Plan reviewer for SWM. This classification applies to individuals who review plans in
13099 the area of SWM pursuant to this chapter. This certification is a requirement for any
13100 individual employed to perform the duties of a plan reviewer for SWM by a VSMP or
13101 VESMP authority, or an agent of a VSMP or VESMP authority. This certification also
13102 serves as the SWM component required for the dual plan reviewer certification.
- 13103 8. Combined administrator for SWM. This classification applies to individuals who perform
13104 the combined duties of Program Administrator, Inspector, and Plan Reviewer in the area
13105 of SWM pursuant to this chapter. This certification is a requirement for any individual
13106 employed to perform the duties of a combined administrator for SWM by a VSMP or
13107 VESMP authority, or an agent of a VSMP or VESMP authority. This certification also
13108 serves as the SWM component required for the dual combined administrator certification.
- 13109 9. Dual program administrator. This classification applies to individuals who administer the
13110 program in the areas of ESC and SWM pursuant to this chapter. This certification satisfies
13111 the requirement for any individual employed as a dual program administrator for ESC and
13112 SWM by a VESMP authority, an agent of a VESMP authority, or for personnel
13113 implementing department-approved standards and specifications pursuant to § 62.1-
13114 44.15:31 of the Code of Virginia and attendant regulations.
- 13115 10. Dual inspector. This classification applies to individuals who conduct inspections in the
13116 areas of ESC and SWM pursuant to this chapter. This certification satisfies the
13117 requirement for any individual employed as a dual inspector for ESC and SWM by a
13118 VESMP authority, an agent of a VESMP authority, or for personnel implementing

13119 department-approved standards and specifications pursuant to § 62.1-44.15:31 of the
 13120 Code of Virginia and attendant regulations.

13121 11. Dual plan reviewer. This classification applies to individuals who review plans in the
 13122 areas of ESC and SWM for approval by a VESMP authority pursuant to this chapter. This
 13123 certification satisfies the requirement for any individual employed as a dual plan reviewer
 13124 for ESC and SWM by a VESMP authority, an agent of a VESMP authority, or for personnel
 13125 implementing department-approved standards and specifications pursuant to § 62.1-
 13126 44.15:31 of the Code of Virginia and attendant regulations.

13127 12. Dual combined administrator. This classification applies to individuals who perform the
 13128 combined duties of program administrator, inspector, and plan reviewer in the areas of
 13129 ESC and SWM pursuant to this chapter. This certification satisfies the requirement for any
 13130 individual employed as a dual combined administrator for ESC and SWM by a VESMP
 13131 authority, an agent of a VESMP authority, or for personnel implementing department-
 13132 approved standards and specifications pursuant to § 62.1-44.15:31 of the Code of Virginia
 13133 and attendant regulations.

13134 B. The classifications in subdivisions A 1 through 8 of this section may be used to serve as
 13135 the ESC or SWM components required for personnel implementing department-approved
 13136 standards and specifications pursuant to § 62.1-44.15:31 of the Code of Virginia and attendant
 13137 regulations.

13138 C. A certificate shall be issued by the department for the responsible land disturber.

13139 D. Any individual employed as a plan reviewer who is licensed as a professional engineer,
 13140 architect, landscape architect, land surveyor pursuant to Article 1 (§ 54.1-400 et seq.) of Chapter
 13141 4 of Title 54.1 of the Code of Virginia, or professional soil scientist as defined in Chapter 22 (§
 13142 54.1-2200 et seq.) of Title 54.1 of the Code of Virginia shall qualify as a certified plan reviewer for
 13143 ESC and will not require a certification from the department. In lieu of an individual holding this
 13144 department certification, such individual shall produce a current professional license or
 13145 certification upon request of the department.

13146 E. Any individual who holds a valid and unexpired certification issued by the department in
 13147 the classification of ESC or SWM, or who obtains such certification, and who later successfully
 13148 obtains an additional certification from the department in the parallel ESC or SWM classification
 13149 may surrender both certifications to the department for issuance of a dual certification in both ESC
 13150 and SWM. Such a request must be made while both of the ESC and SWM certifications obtained
 13151 are valid and unexpired. The expiration date of the dual certification shall be three years from the
 13152 date of expiration of the additional certification acquired.

13153 **9VAC25-875-410. Eligibility requirements.**

13154 A. Certification may be achieved by:

13155 1. Obtaining a total of 800 hours of experience as an ESC, SWM, or dual program
 13156 administrator, plan reviewer, inspector, or combined administrator and obtaining a passing
 13157 score on the certification examination administered by the department in the applicable
 13158 ESC or SWM area; or both ESC and SWM for the dual certification; or

13159 2. Completing a department-approved training program in the classifications of program
 13160 administrator, plan reviewer, inspector, or combined administrator and, within one year of
 13161 completing the training program, obtain a passing score on the certification examination
 13162 administered by the department in the applicable ESC or SWM area, or both ESC and
 13163 SWM for the dual certification.

13164 a. Combined administrators must complete the training program for program
 13165 administrator, inspector, and plan reviewer within the applicable area of ESC or SWM.

13166 b. Dual combined administrators must complete the training program for program
 13167 administrator, inspector, and plan reviewer within both areas of ESC and SWM.

13168 B. Certification and recertification shall be valid for three years except as otherwise set out in
 13169 9VAC25-875-400 D or 9VAC25-875-460.

13170 C. Recertification may be obtained for classifications outlined in 9VAC25-875-400 of this part
 13171 prior to the expiration date of a certification by:

13172 1. Completing continuing education contact hours in accordance with department
 13173 guidance and paying the required fee for recertification;

13174 2. Being a professional registered in the Commonwealth pursuant to Article 1 (§ 54.1-400
 13175 et seq.) of Chapter 4 of Title 54.1 of the Code of Virginia or a professional soil scientist as
 13176 defined in Chapter 22 (§ 54.1-2200 et seq.) of Title 54.1 of the Code of Virginia, and paying
 13177 the required fee for recertification. Such professionals shall be deemed to satisfy the
 13178 provisions of this subsection for ESC classifications in subdivisions A 1 through 4 and of
 13179 9VAC25-875-400. However, such professionals when in the classification of plan reviewer
 13180 for ESC shall be exempt from the recertification requirements and fees of this part provided
 13181 they maintain their professional license;

13182 3. Being a professional registered in the Commonwealth pursuant to Article 1 (§ 54.1-400
 13183 et seq.) of Chapter 4 of Title 54.1 of the Code of Virginia and paying the required fee for
 13184 recertification. Such professionals shall be deemed to satisfy the provisions of this
 13185 subsection for SWM and dual classifications in subdivisions A 5 through 12 of 9VAC25-
 13186 875-400;

13187 4. Successfully completing a department-approved training program and paying the
 13188 required fee for recertification; or

13189 5. Obtaining a passing score on the recertification examination.

13190 D. Responsible land disturber (RLD) certificate may be obtained by completing a department-
 13191 approved training program for RLDs for ESC.

13192 1. The RLD certificate and any renewal thereof shall be valid for three years.

13193 2. Renewal of the RLD certificate may be obtained by completing a department-approved
 13194 training program for RLDs.

13195 3. Being a professional registered in the Commonwealth pursuant to Article 1 (§ 54.1-400
 13196 et seq.) of Chapter 4 of Title 54.1 of the Code of Virginia or a professional soil scientist as
 13197 defined in Chapter 22 (§ 54.1-2200 et seq.) of Title 54.1 of the Code of Virginia shall be
 13198 deemed to satisfy the provisions of this subsection for an RLD certificate in subsection C
 13199 of 9VAC25-875-400 or any renewal thereof.

13200 **9VAC25-875-420. Classification acknowledgment for the purposes of program compliance**
 13201 **reviews.**

13202 For the purposes of VESCP or VESMP compliance reviews and evaluations, the certification
 13203 requirements of §§ 62.1-44.15:53 and 62.1-44.15:30 of the Code of Virginia shall be deemed to
 13204 have been met if the VESCP or VESMP authority has an individual or individuals enrolled in the
 13205 department's ESC or SWM training programs set forth in 9VAC25-875-410 A 2 a and b for the
 13206 necessary classifications and such individual or individuals obtains certification within one year of
 13207 completing the necessary training programs.

13208 **9VAC25-875-430. Certification program fees.**

13209 A. Certification, recertification, dual certification, and RLD certificate issuance and reissuance
 13210 fees shall be collected to cover the administrative cost for the certification program.

13211 B. A fee will also be charged to present education and training programs that support the
 13212 certification program.

13213 C. Fees are nonrefundable, except as authorized by the department, and shall not be
 13214 prorated.

13215 **9VAC25-875-440. Examination.**

13216 A. A department-approved examination shall be administered by the department.

13217 B. An applicant may take the certification examination for the desired certification after fulfilling
 13218 the prerequisite experience requirement or completing a department-approved training program.

13219 C. An applicant who is unsuccessful in passing an examination will be allowed to pay the
 13220 appropriate fee and retake the appropriate examination.

13221 D. A minimum passing score of 70% will be required on the appropriate certification
 13222 examination(s).

13223 E. All applicants will be notified of the results within 60 days of the examination.

13224 **9VAC25-875-460. Discipline for certified personnel.**

13225 The department may suspend, revoke or refuse to grant or renew the certification or certificate
 13226 of any individual if the department, in an informal fact finding under § 2.2-4019 of the Code of
 13227 Virginia, finds that:

13228 1. The certification or certificate was obtained or renewed through fraud or
 13229 misrepresentation;

13230 2. The individual who holds a certification or certificate has violated or cooperated with
 13231 others in violating any provision of Part IV of this chapter;

13232 3. The individual who holds a certification or certificate has not demonstrated reasonable
 13233 care, judgment, or application of knowledge and ability in the performance of duties; or

13234 4. The individual who holds a certification or certificate has made any material
 13235 misrepresentation in the course of performing duties.

13236 Part V

13237 Criteria and Requirements for Regulated Land-Disturbing Activities

13238 Article 1

13239 Administrative criteria

13240 **9VAC25-875-470. Applicability.**

13241 A. Land-disturbing activities that meet one of the criteria below are regulated as follows:

13242 1. Land-disturbing activity that disturbs 10,000 square feet or more, although a locality
 13243 may reduce this regulatory threshold to a smaller area of disturbed land, is less than one
 13244 acre, not in an area of a locality designated as a Chesapeake Bay Preservation Area, and
 13245 not part of a common plan of development or sale, is subject to criteria defined in Article
 13246 2 (9VAC25-874-540 et seq.) of Part V of this chapter.

13247 2. Land-disturbing activity that disturbs 2,500 square feet or more, although a locality may
 13248 reduce this regulatory threshold to a smaller area of disturbed land, is less than one acre,
 13249 and in an area of a locality designated as a Chesapeake Bay Preservation Area is subject
 13250 to criteria defined in Article 2 (9VAC25-874-540 et seq.) and Article 3 (9VAC25-875-570
 13251 et seq.) of Part V unless Article 4 (9VAC25-875-670 et seq) of Part V of this chapter is
 13252 applicable, as determined in accordance with 9VAC25-875-480 and 9VAC25-875-490.

13253 3. Land-disturbing activity that disturbs less than one acre, but is part of a larger common
 13254 plan of development or sale that disturbs one acre or more, is subject to criteria defined in
 13255 Article 2 (9VAC25-874-540 et seq.) and Article 3 (9VAC25-875-570 et seq.) of Part V

13256 unless Article 4 (9VAC25-875-670 et seq) of Part V of this chapter is applicable, as
 13257 determined in accordance with 9VAC25-875-480 and 9VAC25-875-490.

13258 4. Land-disturbing activity that disturbs one acre or more is subject to criteria defined in
 13259 Article 2 (9VAC25-874-540 et seq.) and Article 3 (9VAC25-875-570 et seq.) of Part V
 13260 unless Article 4 (9VAC25-875-670 et seq) of Part V of this chapter is applicable, as
 13261 determined in accordance with 9VAC25-875-480 and 9VAC25-875-490.

13262 B. A locality may, by local ordinance adopted pursuant to §§ 62.1-44.15:33 or 62.1-44.15:65
 13263 of the Code of Virginia, adopt more stringent local requirements.

13264 **9VAC25-875-480. Applicability of other laws and regulations; time limits on applicability of**
 13265 **approved design criteria.**

13266 A. Nothing in this chapter shall be construed as limiting the applicability of other laws and
 13267 regulations, including, the Clean Water Act, VESMA, ESCL, and the Chesapeake Bay
 13268 Preservation Act, and all applicable regulations adopted in accordance with those laws, or the
 13269 rights of other federal agencies, state agencies, or local governments to impose more stringent
 13270 technical criteria or other requirements as allowed by law.

13271 B. Land-disturbing activities that obtain an initial permit or commence land disturbance prior
 13272 to July 1, 2014, shall be conducted in accordance with the technical criteria of Article 4 (9VAC25-
 13273 875-670 et seq) of Part V of this chapter. Such projects shall remain subject to the technical
 13274 criteria of Article 4 (9VAC25-875-670 et seq) of Part V of this chapter for two additional permit
 13275 cycles. After such time, portions of the project not under construction shall become subject to any
 13276 new technical criteria adopted by the board.

13277 C. Land-disturbing activities that obtain an initial permit on or after July 1, 2014, shall be
 13278 conducted in accordance with the technical criteria of Article 3 (9VAC25-875-570 et seq.) of Part
 13279 V this chapter, except as provided for in 9VAC25-875-490. Land-disturbing activities conducted
 13280 in accordance with the technical criteria of Article 3 (9VAC25-875-570 et seq.) of Part V shall
 13281 remain subject to the technical criteria of Article 3 (9VAC25-875-570 et seq.) of Part V of this
 13282 chapter for two additional permit cycles. After such time, portions of the project not under
 13283 construction shall become subject to any new technical criteria adopted by the board.

13284 D. Nothing in this section shall preclude an operator from constructing to a more stringent
 13285 standard at his discretion.

13286 **9VAC25-875-490. Grandfathering.**

13287 A. Any land-disturbing activity shall be considered grandfathered by the VESMP authority and
 13288 shall be subject to the technical criteria of Article 4 (9VAC25-875-670 et seq) of Part V of this
 13289 chapter provided:

13290 1. A proffered or conditional zoning plan, zoning with a plan of development, preliminary
 13291 or final subdivision plat, preliminary or final site plan, or any document determined by the
 13292 locality to be equivalent thereto (i) was approved by the locality prior to July 1, 2012, (ii)
 13293 provided a layout as defined in 9VAC25-875-670, (iii) will comply with the technical criteria
 13294 of Article 4 (9VAC25-875-670 et seq) of Part V of this chapter, and (iv) has not been
 13295 subsequently modified or amended in a manner resulting in an increase in the amount of
 13296 phosphorus leaving each point of discharge, and such that there is no increase in the
 13297 volume or rate of runoff;

13298 2. A permit has not been issued prior to July 1, 2014; and

13299 3. Land disturbance did not commence prior to July 1, 2014.

13300 B. Locality, state, and federal projects shall be considered grandfathered by the VESMP
 13301 authority and shall be subject to the technical criteria of Article 4 (9VAC25-875-670 et seq) of Part
 13302 V of this chapter provided:

13303 1. There has been an obligation of locality, state, or federal funding, in whole or in part,
 13304 prior to July 1, 2012, or the department has approved a stormwater management plan
 13305 prior to July 1, 2012;

13306 2. A permit has not been issued prior to July 1, 2014; and

13307 3. Land disturbance did not commence prior to July 1, 2014.

13308 C. Land disturbing activities grandfathered under subsections A and B of this section shall
 13309 remain subject to the technical criteria of Article 4 (9VAC25-875-670 et seq) of Part V of this
 13310 chapter for one additional permit cycle. After such time, portions of the project not under
 13311 construction shall become subject to any new technical criteria adopted by the board.

13312 D. In cases where governmental bonding or public debt financing has been issued for a project
 13313 prior to July 1, 2012, such project shall be subject to the technical criteria of Article 4 (9VAC25-
 13314 875-670 et seq) of Part V of this chapter.

13315 E. Nothing in this section shall preclude an operator from constructing to a more stringent
 13316 standard at his discretion.

13317 **9VAC25-875-500. Stormwater pollution prevention plan requirements.**

13318 A. A stormwater pollution prevention plan shall include, but not be limited to, an approved
 13319 erosion and sediment control plan, an approved stormwater management plan, a pollution
 13320 prevention plan for regulated land-disturbing activities, and a description of any additional control
 13321 measures necessary to address a TMDL pursuant to subsection E of this section.

13322 B. An erosion and sediment control plan consistent with the requirements of 9VAC25-875-
 13323 550 must be designed and implemented during construction activities. Prior to land disturbance,
 13324 this plan must be approved by the VESCP authority, VESMP authority, or the department.

13325 C. A stormwater management plan consistent with the requirements of 9VAC25-875-510 must
 13326 be designed and implemented during construction activities. Prior to land disturbance, this plan
 13327 must be approved by the VESMP authority or the department.

13328 D. A pollution prevention plan that identifies potential sources of pollutants that may
 13329 reasonably be expected to affect the quality of stormwater discharges from the construction site
 13330 and describe control measures that will be used to minimize pollutants in stormwater discharges
 13331 from the construction site must be developed before land disturbance commences.

13332 E. In addition to the requirements of subsections A through D of this section, if a specific
 13333 wasteload allocation for a pollutant has been established in an approved TMDL and is assigned
 13334 to stormwater discharges from a construction activity, additional control measures must be
 13335 identified and implemented by the operator so that discharges are consistent with the
 13336 assumptions and requirements of the wasteload allocation.

13337 F. The stormwater pollution prevention plan must address the following requirements as
 13338 specified in 40 CFR 450.21, to the extent otherwise required by state law or regulations and any
 13339 applicable requirements of a permit:

13340 1. Control stormwater volume and velocity within the site to minimize soil erosion;

13341 2. Control stormwater discharges, including both peak flow rates and total stormwater
 13342 volume, to minimize erosion at outlets and to minimize downstream channel and stream
 13343 bank erosion;

13344 3. Minimize the amount of soil exposed during construction activity;

13345 4. Minimize the disturbance of steep slopes;

13346 5. Minimize sediment discharges from the site. The design, installation and maintenance
 13347 of erosion and sediment controls must address factors such as the amount, frequency,
 13348 intensity and duration of precipitation, the nature of resulting stormwater runoff, and soil
 13349 characteristics, including the range of soil particle sizes expected to be present on the site;

13350 6. Provide and maintain natural buffers around surface waters, direct stormwater to
 13351 vegetated areas to increase sediment removal and maximize stormwater infiltration,
 13352 unless infeasible;

13353 7. Minimize soil compaction and, unless infeasible, preserve topsoil;

13354 8. Stabilization of disturbed areas must, at a minimum, be initiated immediately whenever
 13355 any clearing, grading, excavating, or other earth disturbing activities have permanently
 13356 ceased on any portion of the site, or temporarily ceased on any portion of the site and will
 13357 not resume for a period exceeding 14 calendar days. Stabilization must be completed
 13358 within a period of time determined by the VESMP authority or the department as the VSMP
 13359 authority. In arid, semiarid, and drought-stricken areas where initiating vegetative
 13360 stabilization measures immediately is infeasible, alternative stabilization measures must
 13361 be employed as specified by the VESMP authority or department; and

13362 9. Utilize outlet structures that withdraw water from the surface, unless infeasible, when
 13363 discharging from basins and impoundments.

13364 G. The SWPPP shall be amended whenever there is a change in design, construction,
 13365 operation, or maintenance that has a significant effect on the discharge of pollutants to state
 13366 waters and that has not been previously addressed in the SWPPP. The SWPPP must be
 13367 maintained at a central location onsite. If an onsite location is unavailable, notice of the SWPPP's
 13368 location must be posted near the main entrance at the construction site.

13369 **9VAC25-875-510. Stormwater management plan requirements.**

13370 A. A stormwater management plan shall be developed and submitted to the VESMP authority
 13371 or the department as the VSMP authority. The stormwater management plan shall be
 13372 implemented as approved or modified by the VESMP authority or department and shall be
 13373 developed in accordance with the following:

13374 1. A stormwater management plan for a land-disturbing activity shall apply the stormwater
 13375 management technical criteria set forth in this part to the entire land-disturbing activity.
 13376 Individual lots in new residential, commercial, or industrial developments, including those
 13377 developed under subsequent owners, shall not be considered separate land-disturbing
 13378 activities.

13379 2. A stormwater management plan shall consider all sources of surface runoff and all
 13380 sources of subsurface and groundwater flows converted to surface runoff.

13381 B. A complete stormwater management plan shall include the following elements:

13382 1. Information on the type of and location of stormwater discharges, information on the
 13383 features to which stormwater is being discharged including surface waters or karst
 13384 features if present, and predevelopment and post-development drainage areas;

13385 2. Contact information including the name, address, telephone number, and email address
 13386 of the owner and the tax reference number and parcel number of the property or properties
 13387 affected;

13388 3. A narrative that includes a description of current site conditions and final site conditions
 13389 or if allowed by the VESMP authority or department, the information provided and
 13390 documented during the review process that addresses the current and final site conditions;

13391 4. A general description of the proposed stormwater management facilities and the
 13392 mechanism through which the facilities will be operated and maintained after construction
 13393 is complete;

13394 5. Information on the proposed stormwater management facilities, including (i) detailed
 13395 narrative on the conversion to a long-term stormwater management facility if the facility
 13396 was used as a temporary ESC measure; (ii) the type of facilities; (iii) location, including

- 13397 geographic coordinates; (iv) acres treated; and (v) the surface waters or karst features
 13398 into which the facility will discharge;
- 13399 6. Hydrologic and hydraulic computations, including runoff characteristics;
 13400 7. Documentation and calculations verifying compliance with the water quality and quantity
 13401 requirements of this chapter;
- 13402 8. A map of the site that depicts the topography of the site and includes:
- 13403 a. All contributing drainage areas;
 13404 b. Existing streams, ponds, culverts, ditches, wetlands, other water bodies, and
 13405 floodplains;
 13406 c. Soil types, geologic formations if karst features are present in the area, forest cover,
 13407 and other vegetative areas;
 13408 d. Current land use including existing structures, roads, and locations of known utilities
 13409 and easements;
 13410 e. Sufficient information on adjoining parcels to assess the impacts of stormwater from
 13411 the site on these parcels;
 13412 f. The limits of clearing and grading, and the proposed drainage patterns on the site;
 13413 g. Proposed buildings, roads, parking areas, utilities, and stormwater management
 13414 facilities; and
 13415 h. Proposed land use with tabulation of the percentage of surface area to be adapted
 13416 to various uses, including planned locations of utilities, roads, and easements;
- 13417 9. If an operator intends to meet the requirements established in 9VAC25-875-580 or
 13418 9VAC25-875-600 through the use of off-site compliance options, where applicable, then
 13419 a letter of availability from the off-site provider must be included; and
- 13420 10. If payment of a fee is required with the stormwater management plan submission to
 13421 the VESMP authority or the department, the fee and the required fee form in accordance
 13422 with Part VIII (9VAC25-875-1290 et seq.) must have been submitted.
- 13423 C. All final plan elements, specifications, or calculations of the stormwater management plans
 13424 whose preparation requires a license under Chapter 4 (§ 54.1-400 et seq.) or 22 (§ 54.1- 2200 et
 13425 seq.) of Title 54.1 of the Code of Virginia shall be appropriately signed and sealed by a
 13426 professional who is licensed to engage in practice in the Commonwealth of Virginia. Nothing in
 13427 this subsection shall authorize any person to engage in practice outside his area of professional
 13428 competence.
- 13429 **9VAC25-875-520. Pollution prevention plans.**
- 13430 A. A plan for implementing pollution prevention measures during construction activities shall
 13431 be developed, implemented, and updated as necessary. The pollution prevention plan shall detail
 13432 the design, installation, implementation, and maintenance of effective pollution prevention
 13433 measures as specified in 40 CFR 450.21(d) to minimize the discharge of pollutants. At a minimum,
 13434 such measures must be designed, installed, implemented, and maintained to:
- 13435 1. Minimize the discharge of pollutants from equipment and vehicle washing, wheel wash
 13436 water, and other wash waters. Wash waters must be treated in a sediment basin or
 13437 alternative control that provides equivalent or better treatment prior to discharge;
- 13438 2. Minimize the exposure of building materials, building products, construction wastes,
 13439 trash, landscape materials, fertilizers, pesticides, herbicides, detergents, sanitary waste,
 13440 and other materials present on the site to precipitation and to stormwater; and
- 13441 3. Minimize the discharge of pollutants from spills and leaks and implement chemical spill
 13442 and leak prevention and response procedures.

13443 B. The pollution prevention plan shall include effective best management practices to prohibit
13444 the following discharges in accordance with 40 CFR 450.21(e):

13445 1. Wastewater from washout of concrete, unless managed by an appropriate control;

13446 2. Wastewater from washout and cleanout of stucco, paint, form release oils, curing
13447 compounds, and other construction materials;

13448 3. Fuels, oils, or other pollutants used in vehicle and equipment operation and
13449 maintenance; and

13450 4. Soaps or solvents used in vehicle and equipment washing.

13451 C. Discharges from dewatering activities, including discharges from dewatering of trenches
13452 and excavations, are prohibited unless managed by appropriate controls in accordance with 40
13453 CFR 450.21(c).

13454 **9VAC25-875-530. Applying for permit coverage.**

13455 A. The operator must submit a complete and accurate registration statement in accordance
13456 with 9VAC25-880 et seq., if such statement is required, on the official department form to the
13457 VESMP or department as the VSMP authority in order to apply for permit coverage. The
13458 registration statement must be signed by the operator in accordance with 9VAC25-875-940. In
13459 accordance with § 62.1-44.15:28 of the Code of Virginia, no registration statement is required for
13460 coverage under the General VPDES Permit for Discharges of Stormwater from Construction
13461 Activities (Construction General Permit) for a small construction activity involving a single-family
13462 detached residential structure within or outside a common plan of development or sale.

13463 B. A person shall not conduct any land-disturbing activity until (i) he has submitted to the
13464 appropriate VESMP authority or the department as the VSMP authority an application that
13465 includes: a permit registration statement, if required, an ESM plan or an executed agreement in
13466 lieu of a plan, if required, and (ii) the VESMP authority or department has issued its land-
13467 disturbance approval. For a single family detached residential structure with less than one acre
13468 of land disturbance, an agreement in lieu of a plan may be used when either 1) it is located within
13469 a common plan of development or sale with an approved stormwater pollution prevention plan
13470 consistent with 9VAC25-875-500 and a permit, if required; or 2) the single-family detached
13471 residential is located outside of a common plan of development or sale.

13472 C. In addition, as a prerequisite to engaging in an approved land-disturbing activity, the name
13473 of the individual who will be assisting the owner in carrying out the activity and holds a
13474 Responsible Land Disturber certificate pursuant to § 62.1-44.15:30 of the Code of Virginia shall
13475 be submitted to the VESMP authority or department.

13476 D. Any VESMP authority or the department as the VSMP authority may waive the Responsible
13477 Land Disturber certificate requirement for an agreement in lieu of a plan; however, if a violation
13478 occurs during the land-disturbing activity, then the owner shall correct the violation and provide
13479 the name of the individual holding a Responsible Land Disturber certificate as provided by § 62.1-
13480 14:30 of the Code of Virginia. Failure to provide the name of an individual holding a Responsible
13481 Land Disturber certificate prior to engaging in land-disturbing activities may result in revocation of
13482 the land-disturbance approval and shall subject the owner to the penalties provided in the
13483 VESMA.

13484 **9VAC25-875-535. Long-term maintenance of stormwater management facilities.**

13485 A. The operator shall submit a construction record drawing for permanent stormwater
13486 management facilities to the VESMP or VSMP authority based on the locality where the land-
13487 disturbing activity will occur. The record drawing shall contain a statement signed by a
13488 professional registered in the Commonwealth of Virginia pursuant to Chapter 4 of Title 54.1 of the
13489 Code of Virginia, stating that to the best of their knowledge, the construction record drawing shows

13490 all adjustments and revisions to the stormwater management plan made during construction and
 13491 serve as a permanent record of the actual location of all constructed elements.

13492 B. The provision of long-term responsibility for and maintenance of stormwater management
 13493 facilities and other techniques specified to manage the quality or quantity of runoff is required.
 13494 Such requirements shall be set forth in an instrument recorded in the local land records prior to
 13495 permit termination or earlier as required by the authority and shall at a minimum:

13496 1. Be submitted to the authority for review and approval prior to the approval of the
 13497 stormwater management plan;

13498 2. Be stated to run with the land;

13499 3. Provide for all necessary access to the property for purposes of maintenance and
 13500 regulatory inspections;

13501 4. Provide for inspections and maintenance and the submission of inspection and
 13502 maintenance reports to the VESCP, VSMP, or VESMP authority; and

13503 5. Be enforceable by all appropriate governmental parties.

13504 C. At the discretion of the VESMP authority, such recorded instruments need not be
 13505 required for stormwater management facilities designed to treat stormwater runoff primarily from
 13506 an individual residential lot on which they are located, provided it is demonstrated to the
 13507 satisfaction of the authority that future maintenance of such facilities will be addressed through
 13508 an enforceable mechanism at the discretion of the authority.

13509 Article 2

13510 Soil erosion requirements

13511 **9VAC25-875-540. Applicability.**

13512 A. This article sets forth minimum standards for the effective control of soil erosion, sediment
 13513 deposition, and nonagricultural runoff.

13514 B. In accordance with Item 360 I1 of Chapter 3 of the 2012 Virginia Acts of Assembly, Special
 13515 Session 1, public institutions of higher education, including community colleges, colleges, and
 13516 universities, shall be subject to project review and compliance for state erosion and sediment
 13517 control requirements by the VESCP or VESMP authority of the locality within which the land-
 13518 disturbing activity is located, unless such institution submits standards and specifications to the
 13519 department in accordance with § 62.1-44.15:31 of the Code of Virginia.

13520 **9VAC25-875-550. Erosion and sediment control plan requirements.**

13521 A. An erosion and sediment control plan shall be filed for a development and the buildings
 13522 constructed within, regardless of the phasing of construction. The erosion and sediment control
 13523 plan shall contain all major conservation decisions to ensure that the entire unit or units of land
 13524 will be so treated to achieve the conservation objectives in 9VAC25-875-560. The erosion and
 13525 sediment control plan may include:

13526 1. Appropriate maps;

13527 2. An appropriate soil and water plan inventory and management information with needed
 13528 interpretations; and

13529 3. A record of decisions contributing to conservation treatment.

13530 B. The person responsible for carrying out the plan shall provide the name of an individual
 13531 holding a certificate who will be in charge of and responsible for carrying out the land-disturbing
 13532 activity to the VESCP or VESMP authority. However, the VESCP or VESMP authority may waive
 13533 the Responsible Land Disturber certificate requirement for an agreement in lieu of a plan in
 13534 accordance with § 62.1-44.15:34 or § 62.1-44.15:55 of the Code of Virginia.

13535 C. If individual lots or sections in a residential development are being developed by different
 13536 property owners, all land-disturbing activities related to the building construction shall be covered
 13537 by an erosion and sediment control plan or an "Agreement in Lieu of a Plan" signed by the property
 13538 owner.

13539 D. Land-disturbing activity of less than 10,000 square feet on individual lots in a residential
 13540 development shall not be considered exempt from the provisions of the VESMA, ESCL, or this
 13541 chapter if the total land-disturbing activity in the development is equal to or greater than 10,000
 13542 square feet.

13543 **9VAC25-875-560. Erosion and sediment control criteria, techniques, and methods:**
 13544 **minimum standards.**

13545 An erosion and sediment control plan consistent with the following criteria, techniques, and
 13546 methods shall be submitted to the VESMP authority or VESCP authority for review and approval:

13547 1. Permanent or temporary soil stabilization shall be applied to denuded areas within
 13548 seven days after final grade is reached on any portion of the site. Temporary soil
 13549 stabilization shall be applied within seven days to denuded areas that may not be at final
 13550 grade but will remain dormant for longer than 14 days. Permanent stabilization shall be
 13551 applied to areas that are to be left dormant for more than one year.

13552 2. During construction of the project, soil stockpiles and borrow areas shall be stabilized
 13553 or protected with sediment trapping measures. The applicant is responsible for the
 13554 temporary protection and permanent stabilization of all soil stockpiles on site as well as
 13555 borrow areas and soil intentionally transported from the project site.

13556 3. A permanent vegetative cover shall be established on denuded areas not otherwise
 13557 permanently stabilized. Permanent vegetation shall not be considered established until a
 13558 ground cover is achieved that is uniform, mature enough to survive and will inhibit erosion.

13559 4. Sediment basins and traps, perimeter dikes, sediment barriers and other measures
 13560 intended to trap sediment shall be constructed as a first step in any land-disturbing activity
 13561 and shall be made functional before upslope land disturbance takes place.

13562 5. Stabilization measures shall be applied to earthen structures such as dams, dikes and
 13563 diversions immediately after installation.

13564 6. Sediment traps and sediment basins shall be designed and constructed based upon
 13565 the total drainage area to be served by the trap or basin.

13566 a. The minimum storage capacity of a sediment trap shall be 134 cubic yards per acre
 13567 of drainage area and the trap shall only control drainage areas less than three acres.

13568 b. Surface runoff from disturbed areas that is comprised of flow from drainage areas
 13569 greater than or equal to three acres shall be controlled by a sediment basin. The
 13570 minimum storage capacity of a sediment basin shall be 134 cubic yards per acre of
 13571 drainage area. The outfall system shall, at a minimum, maintain the structural integrity
 13572 of the basin during a 25-year storm of 24-hour duration. Runoff coefficients used in
 13573 runoff calculations shall correspond to a bare earth condition or those conditions
 13574 expected to exist while the sediment basin is utilized.

13575 7. Cut and fill slopes shall be designed and constructed in a manner that will minimize
 13576 erosion. Slopes that are found to be eroding excessively within one year of permanent
 13577 stabilization shall be provided with additional slope stabilizing measures until the problem
 13578 is corrected.

13579 8. Concentrated runoff shall not flow down cut or fill slopes unless contained within an
 13580 adequate temporary or permanent channel, flume or slope drain structure.

- 13581 9. Whenever water seeps from a slope face, adequate drainage or other protection shall
13582 be provided.
- 13583 10. All storm sewer inlets that are made operable during construction shall be protected
13584 so that sediment-laden water cannot enter the conveyance system without first being
13585 filtered or otherwise treated to remove sediment.
- 13586 11. Before newly constructed stormwater conveyance channels or pipes are made
13587 operational, adequate outlet protection and any required temporary or permanent channel
13588 lining shall be installed in both the conveyance channel and receiving channel.
- 13589 12. When work in a live watercourse is performed, precautions shall be taken to minimize
13590 encroachment, control sediment transport and stabilize the work area to the greatest
13591 extent possible during construction. Nonerodible material shall be used for the
13592 construction of causeways and cofferdams. Earthen fill may be used for these structures
13593 if armored by nonerodible cover materials.
- 13594 13. When a live watercourse must be crossed by construction vehicles more than twice in
13595 any six-month period, a temporary vehicular stream crossing constructed of nonerodible
13596 material shall be provided.
- 13597 14. All applicable federal, state and local requirements pertaining to working in or crossing
13598 live watercourses shall be met.
- 13599 15. The bed and banks of a watercourse shall be stabilized immediately after work in the
13600 watercourse is completed.
- 13601 16. Underground utility lines shall be installed in accordance with the following standards
13602 in addition to other applicable criteria:
- 13603 a. No more than 500 linear feet of trench may be opened at one time.
- 13604 b. Excavated material shall be placed on the uphill side of trenches.
- 13605 c. Effluent from dewatering operations shall be filtered or passed through an approved
13606 sediment trapping device, or both, and discharged in a manner that does not adversely
13607 affect flowing streams or off-site property.
- 13608 d. Material used for backfilling trenches shall be properly compacted in order to
13609 minimize erosion and promote stabilization.
- 13610 e. Restabilization shall be accomplished in accordance with this chapter.
- 13611 f. Applicable safety requirements shall be complied with.
- 13612 17. Where construction vehicle access routes intersect paved or public roads, provisions
13613 shall be made to minimize the transport of sediment by vehicular tracking onto the paved
13614 surface. Where sediment is transported onto a paved or public road surface, the road
13615 surface shall be cleaned thoroughly at the end of each day. Sediment shall be removed
13616 from the roads by shoveling or sweeping and transported to a sediment control disposal
13617 area. Street washing shall be allowed only after sediment is removed in this manner. This
13618 provision shall apply to individual development lots as well as to larger land-disturbing
13619 activities.
- 13620 18. All temporary erosion and sediment control measures shall be removed within 30 days
13621 after final site stabilization or after the temporary measures are no longer needed, unless
13622 otherwise authorized by the VESCP or VESMP authority. Trapped sediment and the
13623 disturbed soil areas resulting from the disposition of temporary measures shall be
13624 permanently stabilized to prevent further erosion and sedimentation.
- 13625 19. Properties and waterways downstream from development sites shall be protected from
13626 sediment deposition, erosion and damage due to increases in volume, velocity and peak
13627 flow rate of stormwater runoff for the stated frequency storm of 24-hour duration in

- 13628 accordance with the following standards and criteria. Stream restoration and relocation
13629 projects that incorporate natural channel design concepts are not man-made channels
13630 and shall be exempt from any flow rate capacity and velocity requirements for natural or
13631 manmade channels:
- 13632 a. Concentrated stormwater runoff leaving a development site shall be discharged
13633 directly into an adequate natural or man-made receiving channel, pipe or storm sewer
13634 system. For those sites where runoff is discharged into a pipe or pipe system,
13635 downstream stability analyses at the outfall of the pipe or pipe system shall be
13636 performed.
- 13637 b. Adequacy of all channels and pipes shall be verified in the following manner:
- 13638 (1) The applicant shall demonstrate that the total drainage area to the point of analysis
13639 within the channel is 100 times greater than the contributing drainage area of the
13640 project in question; or
- 13641 (2) (a) Natural channels shall be analyzed by the use of a two-year storm to verify that
13642 stormwater will not overtop channel banks nor cause erosion of channel bed or banks.
- 13643 (b) All previously constructed man-made channels shall be analyzed by the use of a
13644 10- year storm to verify that stormwater will not overtop its banks and by the use of a
13645 two-year storm to demonstrate that stormwater will not cause erosion of channel bed
13646 or banks; and
- 13647 (c) Pipes and storm sewer systems shall be analyzed by the use of a 10-year storm to
13648 verify that stormwater will be contained within the pipe or system.
- 13649 c. If existing natural receiving channels or previously constructed man-made channels
13650 or pipes are not adequate, the applicant shall:
- 13651 (1) Improve the channels to a condition where a 10-year storm will not overtop the
13652 banks and a two-year storm will not cause erosion to the channel, the bed, or the
13653 banks;
- 13654 (2) Improve the pipe or pipe system to a condition where the 10-year storm is
13655 contained within the appurtenances;
- 13656 (3) Develop a site design that will not cause the pre-development peak runoff rate from
13657 a two-year storm to increase when runoff outfalls into a natural channel or will not
13658 cause the pre-development peak runoff rate from a 10-year storm to increase when
13659 runoff outfalls into a man-made channel; or
- 13660 (4) Provide a combination of channel improvement, stormwater detention or other
13661 measures which is satisfactory to the VESCP or VESMP authority to prevent
13662 downstream erosion.
- 13663 d. The applicant shall provide evidence of permission to make the improvements.
- 13664 e. All hydrologic analyses shall be based on the existing watershed characteristics and
13665 the ultimate development condition of the subject project.
- 13666 f. If the applicant chooses an option that includes stormwater detention, he shall obtain
13667 approval from the VESCP or VESMP authority for a plan for maintenance of the
13668 detention facilities. The plan shall set forth the maintenance requirements of the facility
13669 and the person responsible for performing the maintenance.
- 13670 g. Outfall from a detention facility shall be discharged to a receiving channel, and
13671 energy dissipators shall be placed at the outfall of all detention facilities as necessary
13672 to provide a stabilized transition from the facility to the receiving channel.
- 13673 h. All on-site channels must be verified to be adequate.

13674 i. Increased volumes of sheet flows that may cause erosion or sedimentation on
 13675 adjacent property shall be diverted to a stable outlet, adequate channel, pipe or pipe
 13676 system, or to a detention facility.

13677 j. In applying these stormwater management criteria, individual lots or parcels in a
 13678 residential, commercial or industrial development shall not be considered to be
 13679 separate development projects. Instead, the development, as a whole, shall be
 13680 considered to be a single development project. Hydrologic parameters that reflect the
 13681 ultimate development condition shall be used in all engineering calculations.

13682 k. All measures used to protect properties and waterways shall be employed in a
 13683 manner which minimizes impacts on the physical, chemical and biological integrity of
 13684 ivers, streams and other waters of the state.

13685 l. Any plan approved prior to July 1, 2014, that provides for stormwater management
 13686 that addresses any flow rate capacity and velocity requirements for natural or
 13687 manmade channels shall satisfy the flow rate capacity and velocity requirements for
 13688 natural or man-made channels if the practices are designed to (i) detain the water
 13689 quality volume and to release it over 48 hours; (ii) detain and release over a 24-hour
 13690 period the expected rainfall resulting from the one year, 24-hour storm; and (iii) reduce
 13691 the allowable peak flow rate resulting from the 1.5, 2, and 10-year, 24-hour storms to
 13692 a level that is less than or equal to the peak flow rate from the site assuming it was in
 13693 a good forested condition, achieved through multiplication of the forested peak flow
 13694 rate by a reduction factor that is equal to the runoff volume from the site when it was
 13695 in a good forested condition divided by the runoff volume from the site in its proposed
 13696 condition, and shall be exempt from any flow rate capacity and velocity requirements
 13697 for natural or man-made channels as defined in any regulations promulgated pursuant
 13698 to § 62.1-44.15:28 of the VESMA or § 62.1-44.15:54 or § 62.1-44.15:65 of the ESCL.

13699 m. For plans approved on and after July 1, 2014, the flow rate capacity and velocity
 13700 requirements of § 62.1-44.15:52 A of the ESCL and this subsection shall be satisfied
 13701 by compliance with water quantity requirements in the VESMA and attendant
 13702 regulations, unless such land-disturbing activities (i) are in accordance with provisions
 13703 for time limits on applicability of approved design criteria in 9VAC25-875-480 or
 13704 grandfathering in 9VAC25-875-490, in which case the flow rate capacity and velocity
 13705 requirements of § 62.1-44.15:52 A of the ESCL shall apply, or (ii) are exempt pursuant
 13706 to § 62.1-44.15:34 G 2 of the VESMA.

13707 n. Compliance with the water quantity minimum standards set out in 9VAC25-875-600
 13708 shall be deemed to satisfy the requirements of this subdivision 19.

13709 Article 3

13710 Water quantity and water quality technical criteria

13711 **9VAC25-875-570. Applicability.**

13712 In accordance with the board's authority and except as provided in 9VAC25-875-490, Article
 13713 3 of Part V of this chapter establishes the minimum technical criteria that shall be employed to
 13714 protect the quality and quantity of state waters from the potential harm of unmanaged stormwater
 13715 runoff resulting from land-disturbing activities.

13716 **9VAC25-875-580. Water quality design criteria requirements.**

13717 A. In order to protect the quality of state waters and to control the discharge of stormwater
 13718 pollutants from regulated activities, the following minimum design criteria and statewide standards
 13719 for stormwater management shall be applied to the site.

- 13720 1. New development. The total phosphorus load of new development projects shall not
 13721 exceed 0.41 pounds per acre per year, as calculated pursuant to 9VAC25-875-590.
- 13722 2. Development on prior developed lands.
- 13723 a. For land-disturbing activities disturbing greater than or equal to one acre that result
 13724 in no net increase in impervious cover from the predevelopment condition, the total
 13725 phosphorus load shall be reduced at least 20% below the predevelopment total
 13726 phosphorus load.
- 13727 b. For regulated land-disturbing activities disturbing less than one acre that result in
 13728 no net increase in impervious cover from the predevelopment condition, the total
 13729 phosphorus load shall be reduced at least 10% below the predevelopment total
 13730 phosphorus load.
- 13731 c. For land-disturbing activities that result in a net increase in impervious cover over
 13732 the predevelopment condition, the design criteria for new development shall be applied
 13733 to the increased impervious area. Depending on the area of disturbance, the criteria
 13734 of subdivisions a or b above, shall be applied to the remainder of the site.
- 13735 d. In lieu of subdivision c of this subsection, the total phosphorus load of a linear
 13736 development project occurring on prior developed lands shall be reduced 20% below
 13737 the predevelopment total phosphorus load.
- 13738 e. The total phosphorus load shall not be required to be reduced to below the
 13739 applicable standard for new development unless a more stringent standard has been
 13740 established by a locality.
- 13741 B. Compliance with subsection A of this section shall be determined in accordance with
 13742 9VAC25-875-590.
- 13743 C. Nothing in this section shall prohibit a VESMP authority from establishing more stringent
 13744 water quality design criteria requirements in accordance with § 62.1-44.15:33 of the Code of
 13745 Virginia.
- 13746 **9VAC25-875-590. Water quality compliance.**
- 13747 A. Compliance with the water quality design criteria set out in subdivisions A 1 and A 2 of
 13748 9VAC25-875-580 shall be determined by utilizing the Virginia Runoff Reduction Method or
 13749 another equivalent methodology that is approved by the department.
- 13750 B. The BMPs listed in this subsection are approved for use as necessary to effectively reduce
 13751 the phosphorus load and runoff volume in accordance with the Virginia Runoff Reduction Method.
 13752 Other approved BMPs found through the Virginia Stormwater BMP Clearinghouse may also be
 13753 utilized. Design specifications and the pollutant removal efficiencies for all approved BMPs are
 13754 found through the Virginia Stormwater BMP Clearinghouse.
- 13755 1. Vegetated Roof (Version 2.3, March 1, 2011);
- 13756 2. Rooftop Disconnection (Version 1.9, March 1, 2011);
- 13757 3. Rainwater Harvesting (Version 1.9.5, March 1, 2011);
- 13758 4. Soil Amendments (Version 1.8, March 1, 2011);
- 13759 5. Permeable Pavement (Version 1.8, March 1, 2011);
- 13760 6. Grass Channel (Version 1.9, March 1, 2011);
- 13761 7. Bioretention (Version 1.9, March 1, 2011);
- 13762 8. Infiltration (Version 1.9, March 1, 2011);
- 13763 9. Dry Swale (Version 1.9, March 1, 2011);
- 13764 10. Wet Swale (Version 1.9, March 1, 2011);
- 13765 11. Sheet Flow to Filter/Open Space (Version 1.9, March 1, 2011);

13766 12. Extended Detention Pond (Version 1.9, March 1, 2011);

13767 13. Filtering Practice (Version 1.8, March 1, 2011);

13768 14. Constructed Wetland (Version 1.9, March 1, 2011); and

13769 15. Wet Pond (Version 1.9, March 1, 2011).

13770 C. Nonproprietary BMPs differing from those listed in subsection B of this section or
 13771 proprietary BMPs certified in other states shall be reviewed and approved by the director in
 13772 accordance with procedures established by the department.

13773 D. Proprietary BMPs listed through the Virginia Stormwater BMP Clearinghouse are approved
 13774 for use in accordance with the Virginia Runoff Reduction Method. Any proprietary BMP approved
 13775 for use after July 1, 2020, must meet the requirements of § 62.1-44.15:28 A 9 of the Code of
 13776 Virginia.

13777 E. A VESMP authority may establish limitations on the use of specific BMPs in accordance
 13778 with § 62.1-44.15:33 of the Code of Virginia.

13779 F. The VESMP authority or department as the VSMP authority shall have the discretion to
 13780 allow for application of the design criteria to each drainage area of the site. However, where a site
 13781 drains to more than one HUC, the pollutant load reduction requirements shall be applied
 13782 independently within each HUC unless reductions are achieved in accordance with a
 13783 comprehensive watershed stormwater management plan in accordance with 9VAC25-875-660.

13784 G. Offsite alternatives where allowed in accordance with 9VAC25-875-610 may be utilized to
 13785 meet the design criteria of subsection A of 9VAC25-875-580.

13786 H. Any publicly owned treatment works that is permitted under the watershed general VPDES
 13787 permit pursuant to § 62.1-44.19:14 of the Code of Virginia and is constructing or expanding the
 13788 treatment works, wastewater collection system, or other facility used for public wastewater utility
 13789 operations may, in accordance with § 62.1-44.19:21.2 C of the Code of Virginia, permanently
 13790 retire a portion of its wasteload allocation to meet the design criteria of subsection A of 9VAC25-
 13791 875-580. Notice shall be given by such applicant to the VESMP authority and to the department.

13792 **9VAC25-875-600. Water quantity.**

13793 A. Channel protection and flood protection shall be addressed in accordance with the
 13794 minimum standards set out in this section, which are established pursuant to the requirements of
 13795 § 62.1-44.15:28 of the Code of Virginia or as permitted in accordance with § 62.1-44.15:27.2 of
 13796 the Code of Virginia. Nothing in this section shall prohibit a locality's VESMP authority from
 13797 establishing a more stringent standard in accordance with § 62.1- 44.15:33 of the Code of Virginia
 13798 especially where more stringent requirements are necessary to address total maximum daily load
 13799 requirements or to protect exceptional state waters. Compliance with the minimum standards set
 13800 out in this section shall be deemed to satisfy the requirements of subdivision 19 of 9VAC25-875-
 13801 560.

13802 B. Channel protection. Concentrated stormwater flow shall be released into a stormwater
 13803 conveyance system and shall meet the criteria in subdivision 1, 2, or 3 of this subsection, where
 13804 applicable, from the point of discharge to a point to the limits of analysis in subdivision 4 of this
 13805 subsection.

13806 1. Manmade stormwater conveyance systems. When stormwater from a development is
 13807 discharged to a manmade stormwater conveyance system, following the land-disturbing
 13808 activity, either:

13809 a. The manmade stormwater conveyance system shall convey the post-development
 13810 peak flow rate from the two-year 24-hour storm event without causing erosion of the
 13811 system. Detention of stormwater or downstream improvements may be incorporated

- 13812 into the approved land-disturbing activity to meet this criterion, at the discretion of the
 13813 VESMP authority or department as the VSMP authority; or
- 13814 b. The peak discharge requirements for concentrated stormwater flow to natural
 13815 stormwater conveyance systems in subdivision 3 of this subsection shall be met.
- 13816 2. Restored stormwater conveyance systems. When stormwater from a development is
 13817 discharged to a restored stormwater conveyance system that has been restored using
 13818 natural design concepts, following the land-disturbing activity, either:
- 13819 a. The development shall be consistent, in combination with other stormwater runoff,
 13820 with the design parameters of the restored stormwater conveyance system that is
 13821 functioning in accordance with the design objectives; or
- 13822 b. The peak discharge requirements for concentrated stormwater flow to natural
 13823 stormwater conveyance systems in subdivision 3 of this subsection shall be met.
- 13824 3. Natural stormwater conveyance systems. When stormwater from a development is
 13825 discharged to a natural stormwater conveyance system, the maximum peak flow rate from
 13826 the one-year 24-hour storm following the land-disturbing activity shall be calculated either:
- 13827 a. In accordance with the following methodology:
- 13828 $Q_{\text{Developed}} \leq \text{I.F.} * (Q_{\text{Pre-developed}} * RV_{\text{Pre-Developed}}) / RV_{\text{Developed}}$
- 13829 Under no condition shall $Q_{\text{Developed}}$ be greater than $Q_{\text{Pre-Developed}}$ nor shall $Q_{\text{Developed}}$ be
 13830 required to be less than that calculated in the equation $(Q_{\text{Forest}} * RV_{\text{Forest}}) / RV_{\text{Developed}}$;
 13831 where
- 13832 I.F. (Improvement Factor) equals 0.8 for sites > 1 acre or 0.9 for sites ≤ 1 acre.
- 13833 $Q_{\text{Developed}}$ = The allowable peak flow rate of runoff from the developed site.
- 13834 $RV_{\text{Developed}}$ = The volume of runoff from the site in the developed condition.
- 13835 $Q_{\text{Pre-Developed}}$ = The peak flow rate of runoff from the site in the pre-developed condition.
- 13836 $RV_{\text{Pre-Developed}}$ = The volume of runoff from the site in pre-developed condition.
- 13837 Q_{Forest} = The peak flow rate of runoff from the site in a forested condition.
- 13838 RV_{Forest} = The volume of runoff from the site in a forested condition; or
- 13839 b. In accordance with another methodology that is demonstrated by the VESMP
 13840 authority to achieve equivalent results and is approved by the department.
- 13841 4. Limits of analysis. Unless subdivision 3 of this subsection is utilized to show compliance
 13842 with the channel protection criteria, stormwater conveyance systems shall be analyzed for
 13843 compliance with channel protection criteria to a point where either:
- 13844 a. Based on land area, the site's contributing drainage area is less than or equal to
 13845 1.0% of the total watershed area; or
- 13846 b. Based on peak flow rate, the site's peak flow rate from the one-year 24-hour storm
 13847 is less than or equal to 1.0% of the existing peak flow rate from the one-year 24-hour
 13848 storm prior to the implementation of any stormwater quantity control measures.
- 13849 C. Flood protection. Concentrated stormwater flow shall be released into a stormwater
 13850 conveyance system and shall meet one of the following criteria as demonstrated by use of
 13851 acceptable hydrologic and hydraulic methodologies:
- 13852 1. Concentrated stormwater flow to stormwater conveyance systems that currently do not
 13853 experience localized flooding during the 10-year 24-hour storm event: The point of
 13854 discharge releases stormwater into a stormwater conveyance system that, following the
 13855 land-disturbing activity, confines the post-development peak flow rate from the 10-year
 13856 24- hour storm event within the stormwater conveyance system. Detention of stormwater

13857 or downstream improvements may be incorporated into the approved land-disturbing
 13858 activity to meet this criterion, at the discretion of the VESMP authority.

13859 2. Concentrated stormwater flow to stormwater conveyance systems that currently
 13860 experience localized flooding during the 10-year 24-hour storm event: The point of
 13861 discharge either:

13862 a. Confines the post-development peak flow rate from the 10-year 24-hour storm event
 13863 within the stormwater conveyance system to avoid the localized flooding. Detention of
 13864 stormwater or downstream improvements may be incorporated into the approved land-
 13865 disturbing activity to meet this criterion, at the discretion of the VESMP authority or
 13866 department as the VSMP authority; or

13867 b. Releases a post-development peak flow rate for the 10-year 24-hour storm event
 13868 that is less than the predevelopment peak flow rate from the 10-year 24-hour storm
 13869 event. Downstream stormwater conveyance systems do not require any additional
 13870 analysis to show compliance with flood protection criteria if this option is utilized.

13871 3. Limits of analysis. Unless subdivision 2 b of this subsection is utilized to comply with
 13872 the flood protection criteria, stormwater conveyance systems shall be analyzed for
 13873 compliance with flood protection criteria to a point where:

13874 a. The site's contributing drainage area is less than or equal to 1.0% of the total
 13875 watershed area draining to a point of analysis in the downstream stormwater
 13876 conveyance system;

13877 b. Based on peak flow rate, the site's peak flow rate from the 10-year 24-hour storm
 13878 event is less than or equal to 1.0% of the existing peak flow rate from the 10-year 24-
 13879 hour storm event prior to the implementation of any stormwater quantity control
 13880 measures; or

13881 c. The stormwater conveyance system enters a mapped floodplain or other flood-
 13882 prone area, adopted by ordinance, of any locality.

13883 D. Increased volumes of sheet flow resulting from pervious or disconnected impervious areas,
 13884 or from physical spreading of concentrated flow through level spreaders, shall be identified and
 13885 evaluated for potential impacts on down-gradient properties or resources. Increased volumes of
 13886 sheet flow that will cause or contribute to erosion, sedimentation, or flooding of down gradient
 13887 properties or resources shall be diverted to a stormwater management facility or a stormwater
 13888 conveyance system that conveys the runoff without causing down-gradient erosion,
 13889 sedimentation, or flooding. If all runoff from the site is sheet flow and the conditions of this
 13890 subsection are met, no further water quantity controls are required.

13891 E. For purposes of computing predevelopment runoff, all pervious lands on the site shall be
 13892 assumed to be in good hydrologic condition in accordance with the U.S. Department of
 13893 Agriculture's Natural Resources Conservation Service (NRCS) standards, regardless of
 13894 conditions existing at the time of computation. Predevelopment runoff calculations utilizing other
 13895 hydrologic conditions may be utilized provided that it is demonstrated to and approved by the
 13896 VESMP authority that actual site conditions warrant such considerations.

13897 F. Predevelopment and post-development runoff characteristics and site hydrology shall be
 13898 verified by site inspections, topographic surveys, available soil mapping or studies, and
 13899 calculations consistent with good engineering practices. Guidance provided in the Virginia
 13900 Stormwater Management Handbook and the Virginia Stormwater BMP Clearinghouse shall be
 13901 considered appropriate practices.

13902 **9VAC25-875-610. Offsite compliance options.**

13903 A. No offsite option shall be used in contravention of local water quality-based limitations (i)
 13904 determined pursuant to subsection B of § 62.1-44.19:14 of the Code of Virginia, (ii) adopted

13905 pursuant to § 62.1-44.15:33 of the Code of Virginia or other applicable authority, (iii) deemed
 13906 necessary to protect public water supplies from demonstrated adverse nutrient impacts, or (iv) as
 13907 otherwise may be established or approved by the department. Where such a limitation exists,
 13908 offsite options may be used provided that such options do not preclude or impair compliance with
 13909 the local limitation.

13910 B. Unless prohibited by subsection A, a VESMP authority or the department as the VSMP
 13911 authority:

13912 1. May allow the use of offsite options for compliance with water quality and water quantity
 13913 technical criteria established pursuant to § 62.1-44.15:28 of the Code of Virginia, in whole
 13914 or in part; and

13915 2. Shall allow the use of nutrient credits for compliance with the water quality technical
 13916 criteria when:

13917 a. Less than five acres of land will be disturbed;

13918 b. The phosphorous water quality reduction requirement is less than 10 pounds per
 13919 year; or

13920 c. It is demonstrated to the satisfaction of the VESMP authority or department as the
 13921 VSMP authority that (i) alternative site designs have been considered that may
 13922 accommodate onsite best management practices, (ii) onsite best management
 13923 practices have been considered in alternative site designs to the maximum extent
 13924 practicable, (iii) appropriate onsite best management practices will be implemented,
 13925 and (iv) compliance with quality technical criteria cannot practicably be met onsite. The
 13926 requirements of clauses (i) through (iv) shall be deemed to have been met if it is
 13927 demonstrated that onsite control of at least 75 percent of the required phosphorous
 13928 water quality reduction will be achieved.

13929 C. The VESMP authority or department as the VSMP authority shall require that offsite options
 13930 approved by the department or applicable state board achieve the necessary phosphorous water
 13931 quality reductions prior to the commencement of the land-disturbing activity. In the case of a
 13932 phased project, the land disturber may acquire or achieve the offsite nutrient reductions prior to
 13933 the commencement of each phase of the land-disturbing activity in an amount sufficient for each
 13934 such phase.

13935 D. Nutrient credits shall not be used to address water quantity technical criteria.

13936 E. Nutrient credits shall be generated in the same or adjacent fourth order subbasin, as
 13937 defined by the hydrologic unit boundaries of the National Watershed Boundary Dataset, as the
 13938 land-disturbing activity. If no credits are available within these subbasins when the VESMP or
 13939 department as the VSMP authority accepts the final site design, credits available within the same
 13940 tributary may be used. The following requirements apply to the use of nutrient credits:

13941 1. Documentation of the acquisition of nutrient credits shall be provided to the VESMP
 13942 authority and the department or the department as the VSMP authority in a certification
 13943 from the credit provider documenting the number of phosphorus nutrient credits acquired
 13944 and the associated ratio of nitrogen nutrient credits at the credit-generating entity.

13945 2. Application fees are provided in 9VAC25-900 et seq. Fees shall be deposited into the
 13946 Virginia Stormwater Management Fund established by § 62.1-44.15:29 of the Code of
 13947 Virginia.

13948 3. For that portion of a site's compliance with water quality technical criteria being obtained
 13949 through nutrient credits, the land disturber shall (i) comply with a 1:1 ratio of the nutrient
 13950 credits to the site's remaining post-development nonpoint nutrient runoff compliance
 13951 requirement being met by credit use and (ii) use credits certified as perpetual credits

13952 pursuant to Article 4.02 (§ 62.1-44.19:12 et seq.) of Chapter 3.1 of Title 62.1 of the Code
 13953 of Virginia.

13954 4. A VESMP or department as the VSMP authority shall allow the full or partial substitution
 13955 of perpetual nutrient credits for existing onsite nutrient controls when (i) the nutrient credits
 13956 will compensate for 10 or fewer pounds of the annual phosphorous requirement
 13957 associated with the original land-disturbing activity or (ii) existing onsite controls are not
 13958 functioning as anticipated after reasonable attempts to comply with applicable
 13959 maintenance agreements or requirements and the use of nutrient credits will account for
 13960 the deficiency. Upon determination by the VESMP or department that the conditions
 13961 established by clause (i) or (ii) have been met, the party responsible for maintenance shall
 13962 be released from maintenance obligations related to the onsite phosphorous controls for
 13963 which the nutrient credits are substituted.

13964 F. Exchange of a credit released by the department is subject to the provisions of § 62.1-
 13965 44.15:35, 62.1-44.19:15, or 62.1-44.19:21 of the Code of Virginia. Where necessary to ensure
 13966 compliance with local water quality requirements, the exchange of a credit released by the
 13967 department is conditioned by 9VAC25-900-91 B and C.

13968 **9VAC25-875-620. Design storms and hydrologic methods.**

13969 A. Unless otherwise specified, the prescribed design storms are the one-year, two-year, and
 13970 10-year 24-hour storms using the site-specific rainfall precipitation frequency data recommended
 13971 by the U.S. National Oceanic and Atmospheric Administration (NOAA) Atlas 14. Partial duration
 13972 time series shall be used for the precipitation data.

13973 B. Unless otherwise specified, all hydrologic analyses shall be based on the existing
 13974 watershed characteristics and how the ultimate development condition of the subject project will
 13975 be addressed.

13976 C. The U.S. Department of Agriculture's Natural Resources Conservation Service (NRCS)
 13977 synthetic 24-hour rainfall distribution and models, including, but not limited to TR-55 and TR-20;
 13978 hydrologic and hydraulic methods developed by the U.S. Army Corps of Engineers; or other
 13979 standard hydrologic and hydraulic methods, shall be used to conduct the analyses described in
 13980 this part.

13981 D. For drainage areas of 200 acres or less, the VESMP authority or department as the VSMP
 13982 authority may allow for the use of the Rational Method for evaluating peak discharges.

13983 E. For drainage areas of 200 acres or less, the VESMP authority or department as the VSMP
 13984 authority may allow for the use of the Modified Rational Method for evaluating volumetric flows to
 13985 stormwater conveyances.

13986 **9VAC25-875-630. Stormwater harvesting.**

13987 In accordance with § 62.1-44.15:28 of the Code of Virginia, stormwater harvesting is
 13988 encouraged for the purposes of landscape irrigation systems, fire protection systems, flushing
 13989 water closets and urinals, and other water handling systems to the extent such systems are
 13990 consistent with federal, state, and local regulations.

13991 **9VAC25-875-640. Linear development projects.**

13992 Linear development projects shall control post-development stormwater runoff in accordance
 13993 with a site-specific stormwater management plan or a comprehensive watershed stormwater
 13994 management plan developed in accordance with these regulations.

13995 **9VAC25-875-650. Stormwater management impoundment structures or facilities.**

13996 A. Stormwater management wet ponds and extended detention ponds that are not covered
 13997 by the Impounding Structure Regulations (4VAC50-20) shall, at a minimum, be engineered for
 13998 structural integrity for the 100-year storm event.

13999 B. Construction of stormwater management impoundment structures or facilities may occur in
 14000 karst areas only after a study of the geology and hydrology of the area has been conducted to
 14001 determine the presence or absence of karst features that may be impacted by stormwater runoff
 14002 and BMP placement.

14003 C. Discharge of stormwater runoff to a karst feature shall meet the water quality criteria set
 14004 out in 9VAC25-875-580 and the water quantity criteria set out in 9VAC25-875-600. Permanent
 14005 stormwater management impoundment structures or facilities shall only be constructed in karst
 14006 features after completion of a geotechnical investigation that identifies any necessary
 14007 modifications to the BMP to ensure its structural integrity and maintain its water quality and
 14008 quantity efficiencies. The person responsible for the land-disturbing activity is encouraged to
 14009 screen for known existence of heritage resources in the karst features.

14010 **9VAC25-875-660. Comprehensive stormwater management plans.**

14011 A VESMP authority may develop comprehensive stormwater management plans to be
 14012 approved by the department that meet the water quality objectives, quantity objectives, or both of
 14013 Part V of this chapter:

14014 1. Such plans shall ensure that offsite reductions equal to or greater than those that would
 14015 be required on each contributing site are achieved within the same HUC or within another
 14016 locally designated watershed. Pertaining to water quantity objectives, the plan may
 14017 provide for implementation of a combination of channel improvement, stormwater
 14018 detention, or other measures that are satisfactory to the locality's VESMP authority to
 14019 prevent downstream erosion and flooding.

14020 2. If the land use assumptions upon which the plan was based change or if any other
 14021 amendments are deemed necessary by the locality's VESMP authority, such authority
 14022 shall provide plan amendments to the department for review and approval.

14023 3. During the plan's implementation, the locality's VESMP authority shall document
 14024 nutrient reductions credited to the BMPs specified in the plan.

14025 4. State agencies and federal entities may develop comprehensive stormwater
 14026 management plans, and may participate in locality-developed comprehensive stormwater
 14027 management plans where practicable and permitted by the locality's VESMP authority.

14028 Article 4

14029 Water quantity and water quality technical criteria for grandfathered projects and time limits of
 14030 applicability projects

14031 **9VAC25-875-670. Definitions.**

14032 For the purposes of Article 4 (9VAC25-875-670 et seq) of Part V of this chapter only, the
 14033 following words and terms have the following meanings unless the context clearly indicates
 14034 otherwise:

14035 "Aquatic bench" means a 10-foot to 15-foot wide bench around the inside perimeter of a
 14036 permanent pool that ranges in depth from zero to 12 inches. Vegetated with emergent plants, the
 14037 bench augments pollutant removal, provides habitats, conceals trash and water level fluctuations,
 14038 and enhances safety.

14039 "Average land cover condition" means a measure of the average amount of impervious
 14040 surfaces within a watershed, assumed to be 16% or a calculated watershed-specific value for the
 14041 average land cover condition as approved by the Chesapeake Bay Local Assistance Board prior
 14042 to September 13, 2011.

14043 "Bioretention basin" means a water quality BMP engineered to filter the water quality volume
 14044 (i) through an engineered planting bed consisting of a vegetated surface layer (vegetation, mulch,
 14045 ground cover), planting soil, and sand bed and (ii) into the in-situ material.

14046 "Bioretention filter" means a bioretention basin with the addition of a sand filter collector pipe
14047 system beneath the planting bed.

14048 "Constructed wetlands" means areas intentionally designed and created to emulate the water
14049 quality improvement function of wetlands for the primary purpose of removing pollutants from
14050 stormwater.

14051 "Development" means a tract of land developed or to be developed as a unit under single
14052 ownership or unified control which is to be used for any business or industrial purpose or is to
14053 contain three or more residential dwelling units.

14054 "Grassed swale" means an earthen conveyance system which is broad and shallow with
14055 erosion resistant grasses and check dams, engineered to remove pollutants from stormwater
14056 runoff by filtration through grass and infiltration into the soil.

14057 "Infiltration facility" means a stormwater management facility that temporarily impounds runoff
14058 and discharges it via infiltration through the surrounding soil. While an infiltration facility may also
14059 be equipped with an outlet structure to discharge impounded runoff, such discharge is normally
14060 reserved for overflow and other emergency conditions. Since an infiltration facility impounds runoff
14061 only temporarily, it is normally dry during nonrainfall periods. Infiltration basin, infiltration trench,
14062 infiltration dry well, and porous pavement shall be considered infiltration facilities.

14063 "Layout" means a conceptual drawing sufficient to provide for the specified stormwater
14064 management facilities required at the time of approval.

14065 "Nonpoint source pollutant runoff load" or "pollutant discharge" means the average amount of
14066 a particular pollutant measured in pounds per year, delivered in a diffuse manner by stormwater
14067 runoff.

14068 "Planning area" means a designated portion of the parcel on which the land development
14069 project is located. Planning areas shall be established by delineation on a master plan. Once
14070 established, planning areas shall be applied consistently for all future projects.

14071 "Sand filter" means a contained bed of sand that acts to filter the first flush of runoff. The runoff
14072 is then collected beneath the sand bed and conveyed to an adequate discharge point or infiltrated
14073 into the in-situ soils.

14074 "Shallow marsh" means a zone within a stormwater extended detention basin that exists from
14075 the surface of the normal pool to a depth of six to 18 inches, and has a large surface area and,
14076 therefore, requires a reliable source of baseflow, groundwater supply, or a sizeable drainage area
14077 to maintain the desired water surface elevations to support emergent vegetation.

14078 "Stormwater detention basin" or "detention basin" means a stormwater management facility
14079 that temporarily impounds runoff and discharges it through a hydraulic outlet structure to a
14080 downstream conveyance system. While a certain amount of outflow may also occur via infiltration
14081 through the surrounding soil, such amounts are negligible when compared to the outlet structure
14082 discharge rates and are, therefore, not considered in the facility's design. Since a detention facility
14083 impounds runoff only temporarily, it is normally dry during nonrainfall periods.

14084 "Stormwater extended detention basin" or "extended detention basin" means a stormwater
14085 management facility that temporarily impounds runoff and discharges it through a hydraulic outlet
14086 structure over a specified period of time to a downstream conveyance system for the purpose of
14087 water quality enhancement or stream channel erosion control. While a certain amount of outflow
14088 may also occur via infiltration through the surrounding soil, such amounts are negligible when
14089 compared to the outlet structure discharge rates and, therefore, are not considered in the facility's
14090 design. Since an extended detention basin impounds runoff only temporarily, it is normally dry
14091 during nonrainfall periods.

14092 "Stormwater extended detention basin-enhanced" or "extended detention basin-enhanced"
 14093 means an extended detention basin modified to increase pollutant removal by providing a shallow
 14094 marsh in the lower stage of the basin.

14095 "Stormwater retention basin" or "retention basin" means a stormwater management facility
 14096 that includes a permanent impoundment, or normal pool of water, for the purpose of enhancing
 14097 water quality and, therefore, is normally wet even during nonrainfall periods. Storm runoff inflows
 14098 may be temporarily stored above this permanent impoundment for the purpose of reducing
 14099 flooding or stream channel erosion.

14100 "Stormwater retention basin I" or "retention basin I" means a retention basin with the volume
 14101 of the permanent pool equal to three times the water quality volume.

14102 "Stormwater retention basin II" or "retention basin II" means a retention basin with the volume
 14103 of the permanent pool equal to four times the water quality volume.

14104 "Stormwater retention basin III" or "retention basin III" means a retention basin with the volume
 14105 of the permanent pool equal to four times the water quality volume with the addition of an aquatic
 14106 bench.

14107 "Vegetated filter strip" means a densely vegetated section of land engineered to accept runoff
 14108 as overland sheet flow from upstream development. It shall adopt any natural vegetated form,
 14109 from grassy meadow to small forest. The vegetative cover facilitates pollutant removal through
 14110 filtration, sediment deposition, infiltration, and absorption, and is dedicated for that purpose.

14111 "Water quality volume" means the volume equal to the first 1/2 inch of runoff multiplied by the
 14112 impervious surface of the land development project.

14113 **9VAC25-875-680. Applicability.**

14114 This part specifies the technical criteria for regulated land-disturbing activities that are not
 14115 subject to the technical criteria of Article 3 (9VAC25-875-570 et seq.) of Part V of this chapter in
 14116 accordance with 9VAC25-875-490.

14117 **9VAC25-875-690. General.**

14118 A. Determination of flooding and channel erosion impacts to receiving streams due to land-
 14119 disturbing activities shall be measured at each point of discharge from the land disturbance and
 14120 such determination shall include any runoff from the balance of the watershed that also
 14121 contributes to that point of discharge.

14122 B. The specified design storms shall be defined as either a 24-hour storm using the rainfall
 14123 distribution recommended by the U.S. Department of Agriculture's Natural Resources
 14124 Conservation Service (NRCS) when using NRCS methods or as the storm of critical duration that
 14125 produces the greatest required storage volume at the site when using a design method such as
 14126 the Modified Rational Method.

14127 C. For purposes of computing runoff, all pervious lands in the site shall be assumed prior to
 14128 development to be in good condition (if the lands are pastures, lawns, or parks), with good cover
 14129 (if the lands are woods), or with conservation treatment (if the lands are cultivated); regardless of
 14130 conditions existing at the time of computation.

14131 D. Construction of stormwater management facilities or modifications to channels shall comply
 14132 with all applicable laws, regulations, and ordinances. Evidence of approval of all necessary
 14133 permits shall be presented.

14134 E. Impounding structures that are not covered by the Impounding Structure Regulations
 14135 (4VAC50-20) shall be engineered for structural integrity during the 100-year storm event.

14136 F. Predevelopment and post-development runoff rates shall be verified by calculations that
 14137 are consistent with good engineering practices.

14138 G. Outflows from a stormwater management facility or stormwater conveyance system shall
14139 be discharged to an adequate channel.

14140 H. Proposed residential, commercial, or industrial subdivisions shall apply these stormwater
14141 management criteria to the land disturbance as a whole. Individual lots in new subdivisions shall
14142 not be considered separate land-disturbing activities, but rather the entire subdivision shall be
14143 considered a single land development project. Hydrologic parameters shall reflect the ultimate
14144 land disturbance and shall be used in all engineering calculations.

14145 I. All stormwater management facilities shall have an inspection and maintenance plan that
14146 identifies the owner and the responsible party for carrying out the inspection and maintenance
14147 plan.

14148 J. Construction of stormwater management impoundment structures within a Federal
14149 Emergency Management Agency (FEMA) designated 100-year floodplain shall be avoided
14150 whenever possible. When this is unavoidable, all stormwater management facility construction
14151 shall be in compliance with all applicable regulations under the National Flood Insurance Program,
14152 44 CFR Part 59.

14153 K. Natural channel characteristics shall be preserved to the maximum extent practicable.

14154 L. Land-disturbing activities shall comply with the ESCL or VESMA, as applicable, and
14155 attendant regulations.

14156 M. Flood control and stormwater management facilities that drain or treat water from multiple
14157 development projects or from a significant portion of a watershed may be allowed in Resource
14158 Protection Areas defined in the Chesapeake Bay Preservation Act provided such facilities are
14159 allowed and constructed in accordance with the VESMA and this chapter, and provided that (i)
14160 the local government has conclusively established that the location of the facility within the
14161 Resource Protection Area is the optimum location; (ii) the size of the facility is the minimum
14162 necessary to provide necessary flood control, stormwater treatment, or both; (iii) the facility must
14163 be consistent with a comprehensive stormwater management plan developed and approved in
14164 accordance with 9VAC25-875-660 or with a stormwater management plan that has been
14165 approved prior to July 1, 2012, by the department, the Chesapeake Bay Local Assistance Board
14166 prior to its abolishment on July 1, 2012, or the Board of Conservation and Recreation; (iv) all
14167 applicable permits for construction in state or federal waters must be obtained from the
14168 appropriate state and federal agencies; (v) approval must be received from the local government
14169 prior to construction; and (vi) routine maintenance is allowed to be performed on such facilities to
14170 assure that they continue to function as designed. It is not the intent of this subdivision to allow a
14171 best management practice that collects and treats runoff from only an individual lot or some
14172 portion of the lot to be located within a Resource Protection Area.

14173 **9VAC25-875-700. Water quality.**

14174 A. Compliance with the water quality criteria may be achieved by applying the performance-
14175 based criteria or the technology-based criteria to either the site or a planning area.

14176 B. Performance-based criteria. For land-disturbing activities, the calculated post-development
14177 nonpoint source pollutant runoff load shall be compared to the calculated predevelopment load
14178 based upon the average land cover condition or the existing site condition. A BMP shall be
14179 located, designed, and maintained to achieve the target pollutant removal efficiencies specified
14180 in Table 1 of this section to effectively reduce the pollutant load to the required level based upon
14181 the following four applicable land development situations for which the performance criteria apply:

14182 1. Situation 1 consists of land-disturbing activities where the existing percent impervious
14183 cover is less than or equal to the average land cover condition and the proposed
14184 improvements will create a total percent impervious cover that is less than the average
14185 land cover condition.

14186 Requirement: No reduction in the after disturbance pollutant discharge is required.
 14187 2. Situation 2 consists of land-disturbing activities where the existing percent impervious
 14188 cover is less than or equal to the average land cover condition and the proposed
 14189 improvements will create a total percent impervious cover that is greater than the average
 14190 land cover condition.

14191 Requirement: The pollutant discharge after disturbance shall not exceed the existing
 14192 pollutant discharge based on the average land cover condition.

14193 3. Situation 3 consists of land-disturbing activities where the existing percent impervious
 14194 cover is greater than the average land cover condition.

14195 Requirement: The pollutant discharge after disturbance shall not exceed (i) the pollutant
 14196 discharge based on existing conditions less 10% or (ii) the pollutant discharge based on
 14197 the average land cover condition, whichever is greater.

14198 4. Situation 4 consists of land-disturbing activities where the existing percent impervious
 14199 cover is served by an existing stormwater management BMP that addresses water quality.

14200 Requirement: The pollutant discharge after disturbance shall not exceed the existing
 14201 pollutant discharge based on the existing percent impervious cover while served by the
 14202 existing BMP. The existing BMP shall be shown to have been designed and constructed
 14203 in accordance with proper design standards and specifications, and to be in proper
 14204 functioning condition.

14205 C. Technology-based criteria. For land-disturbing activities, the post-developed stormwater
 14206 runoff from the impervious cover shall be treated by an appropriate BMP as required by the post-
 14207 developed condition percent impervious cover as specified in Table 1 of this section. The selected
 14208 BMP shall be located, designed, and maintained to perform at the target pollutant removal
 14209 efficiency specified in Table 1 or those found in 9VAC25-875-590.

14210 D. Design standards and specifications for the BMPs in Table 1 that meet the required target
 14211 pollutant removal efficiency are available in the Virginia Stormwater Management Handbook.
 14212 Other approved BMPs available through the Virginia Stormwater BMP Clearinghouse may also
 14213 be utilized.

14214 Table 1

<u>Water Quality BMP*</u>	<u>Target Phosphorus Removal Efficiency</u>	<u>Percent Impervious Cover</u>
<u>Vegetated filter strip</u>	<u>10%</u>	<u>16-21%</u>
<u>Grassed swale</u>	<u>15%</u>	
<u>Constructed wetlands</u>	<u>20%</u>	<u>22-37%</u>
<u>Extended detention (2 x WQ Vol)</u>	<u>35%</u>	
<u>Retention basin I (3 x WQ Vol)</u>	<u>40%</u>	

<u>Bioretention basin</u>	<u>50%</u>	<u>38-66%</u>
<u>Bioretention filter</u>	<u>50%</u>	
<u>Extended detention-enhanced</u>	<u>50%</u>	
<u>Retention basin II (4 x WQ Vol)</u>	<u>50%</u>	
<u>Infiltration (1 x WQ Vol)</u>	<u>50%</u>	
<u>Sand filter</u>	<u>65%</u>	<u>67-100%</u>
<u>Infiltration (2 x WQ Vol)</u>	<u>65%</u>	
<u>Retention basin III (4 x WQ Vol with aquatic bench)</u>	<u>65%</u>	
<u>*Innovative or alternate BMPs not included in this table may be allowed at the discretion of the local program administrator or the department. Innovative or alternate BMPs not included in this table that target appropriate nonpoint source pollution other than phosphorous may be allowed at the discretion of the local program administrator or the department</u>		

14215 E. The VESMP authority or department as the VSMP authority may allow the use of offsite
 14216 nutrient credits under Article 4 (9VAC25-875-670 et seq.) of Part V of this chapter in accordance
 14217 with 9VAC25-875-610.

14218 **9VAC25-875-710. Stream channel erosion.**

14219 A. Properties and receiving waterways downstream of any land-disturbing activity shall be
 14220 protected from erosion and damage due to changes in runoff rate of flow and hydrologic
 14221 characteristics, including, but not limited to, changes in volume, velocity, frequency, duration, and
 14222 peak flow rate of stormwater runoff in accordance with the minimum design standards set out in
 14223 this section.

14224 B. The VESMP authority or department as the VSMP authority shall require compliance with
 14225 subdivision 19 of 9VAC25-875-560.

14226 C. The locality's VESMP authority may determine that some watersheds or receiving stream
 14227 systems require enhanced criteria in order to address the increased frequency of bankfull flow
 14228 conditions (top of bank) brought on by land-disturbing activities or where more stringent
 14229 requirements are necessary to address total maximum daily load requirements or to protect
 14230 exceptional waters. Therefore, in lieu of the reduction of the two-year post-developed peak rate
 14231 of runoff as required in subsection B of this section, the land development project being
 14232 considered shall provide 24-hour extended detention of the runoff generated by the one-year, 24-
 14233 hour duration storm.

14234 D. In addition to subsections B and C of this section, a locality's VESMP authority by local
 14235 ordinance may in accordance with § 62.1-44.15:33 of the Code of Virginia, or the board by state
 14236 regulation may, adopt more stringent channel analysis criteria or design standards to ensure that
 14237 the natural level of channel erosion, to the maximum extent practicable, will not increase due to
 14238 the land-disturbing activities. These criteria may include, but are not limited to, the following:

14239 1. Criteria and procedures for channel analysis and classification.

14240 2. Procedures for channel data collection.

14241 3. Criteria and procedures for the determination of the magnitude and frequency of natural
 14242 sediment transport loads.

14243 4. Criteria for the selection of proposed natural or manmade channel linings.

14244 **9VAC25-875-720. Flooding.**

14245 A. Downstream properties and waterways shall be protected from damages from localized
 14246 flooding due to changes in runoff rate of flow and hydrologic characteristics, including, but not
 14247 limited to, changes in volume, velocity, frequency, duration, and peak flow rate of stormwater
 14248 runoff in accordance with the minimum design standards set out in this section.

14249 B. The 10-year post-developed peak rate of runoff from the development site shall not exceed
 14250 the 10-year pre-developed peak rate of runoff.

14251 C. In lieu of subsection B of this section, localities may, by ordinance in accordance with §
 14252 62.1-44.15:33 of the Code of Virginia, adopt alternate design criteria based upon geographic, land
 14253 use, topographic, geologic factors, or other downstream conveyance factors as appropriate.

14254 D. Linear development projects shall not be required to control post-developed stormwater
 14255 runoff for flooding, except in accordance with a watershed or regional stormwater management
 14256 plan.

14257 **9VAC25-875-730. Regional (watershed-wide) stormwater management plans.**

14258 Water quality requirements and where allowed, water quantity requirements, may be achieved
 14259 in accordance with sections 9VAC25-875-610 and 9VAC25-875-660.

14260 Article 5

14261 Criteria for land-disturbing activities in Chesapeake Bay Preservation Areas

14262 **9VAC25-875-740. Land-disturbing activities in Chesapeake Bay Preservation Areas.**

14263 A. In order to protect the quality of state waters and to control the discharge of stormwater
 14264 pollutants from land-disturbing activities, runoff associated with land-disturbing activities in
 14265 Chesapeake Bay Preservation Areas that are equal to or greater than 2,500 square feet but less
 14266 than one acre shall be regulated by localities subject to the Chesapeake Bay Preservation Act or,
 14267 in the case of state and federal agency projects, the department. In regulating such land-
 14268 disturbing activities in accordance with subsection B of this section, localities shall have the same
 14269 authority and responsibilities as set forth for VESCP and VESMP authorities.

14270 B. After June 30, 2014, such land-disturbing activities shall not require completion of a
 14271 registration statement or require coverage under the General VPDES Permit for Discharges of
 14272 Stormwater from Construction Activities but shall be subject to the following technical criteria and
 14273 program and administrative requirements unless excluded under 9VAC25-875-90 and 9VAC25-
 14274 875-280:

14275 1. An erosion and sediment control plan consistent with the requirements of 9VAC25-875-
 14276 550 must be designed and implemented during land-disturbing activities. Prior to land
 14277 disturbance, this plan must be approved by either the VESCP or VESMP authority in
 14278 accordance with this chapter;

14279 2. A stormwater management plan consistent with the requirements of 9VAC25-875-510
 14280 must be designed and implemented during the land-disturbing activity. The stormwater
 14281 management plan shall be developed and submitted in accordance with 9VAC25-875-
 14282 510. Prior to land disturbance, this plan must be approved by the VESCP or VESMP
 14283 authority;

14284 3. Exceptions may be requested in accordance with 9VAC25-875-170;

14285 4. Long-term maintenance of stormwater management facilities shall be provided for and
 14286 conducted in accordance with 9VAC25-875-535;

14287 5. Water quality design criteria in 9VAC25-875-580 shall be applied to the site;

14288 6. Water quality compliance shall be achieved in accordance with 9VAC25-875-590;

14289 7. Channel protection and flood protection shall be achieved in accordance with 9VAC25-
 14290 875-600 or as permitted by subsection B of 9VAC25-875-750;

14291 8. Offsite compliance options in accordance with 9VAC25-875-610 shall be available to
 14292 land-disturbing activities in Chesapeake Bay Preservation Areas that are equal to or
 14293 greater than 2,500 square feet but less than one acre; and

14294 9. Such land-disturbing activities shall be subject to the design storm and hydrologic
 14295 methods set out in 9VAC25-875-620, linear development controls in 9VAC25-875-640,
 14296 and criteria associated with stormwater impoundment structures or facilities in 9VAC25-
 14297 875-650.

14298 **9VAC25-875-750. Land-disturbing activities in Chesapeake Bay Preservation Areas in rural**
 14299 **Tidewater localities.**

14300 A. Acceptance of signed and sealed plans in lieu of local plan review. In lieu of a local plan
 14301 review or retaining a local certified plan reviewer, a rural Tidewater locality may accept plans and
 14302 supporting calculations for erosion and sediment control and stormwater management for any
 14303 land-disturbing activity equal to or greater than 2,500 square feet but less than one acre if the
 14304 following criteria are met:

14305 1. The plans are prepared and submitted by a professional licensed to engage in practice
 14306 in the Commonwealth under Chapter 4 (§ 54.1-400 et seq.) or 22 (§ 54.1-2200 et seq.) of
 14307 Title 54.1 of the Code of Virginia and who shall hold a certificate of competence in the
 14308 appropriate subject area, as provided in § 62.1-44.15:30 of the Code of Virginia; and

14309 2. The plan and supporting calculations are appropriately signed and sealed by the
 14310 professional with a certification that states: "This plan is designed in accordance with
 14311 applicable state law and regulations.

14312 B. For determining the water quantity technical criteria applicable to a land disturbance equal
 14313 to or greater than 2,500 square feet, but less than one acre, any rural Tidewater locality may elect
 14314 to use certain tiered water quantity control standards based on the percentage of impervious
 14315 cover in the watershed as provided in § 62.1-44.15:27.2 of the Code of Virginia.

14316 C. Tiered approach to water quantity technical criteria compliance.

14317 1. A rural Tidewater locality may adopt the following tiered approach to water quantity
 14318 management based on the percent impervious cover of the watershed in accordance with
 14319 this subsection for land-disturbing activities that disturb an area of 2,500 square feet or
 14320 more but less than one acre:

14321 a. For less than 5.0% impervious cover, apply the Virginia Erosion and Sediment
 14322 Control Minimum Standard 19 in effect prior to July 1, 2014, for the protection of
 14323 downstream properties and waterways from sediment deposition, erosion, and
 14324 damage due to increases in volume, velocity, and peak flow rate of stormwater runoff
 14325 for the stated frequency storm of 24-hour duration.

14326 b. For 5.0% or more impervious cover but less than 7.5%, detain and release over a
 14327 24-hour period the expected rainfall resulting from the one year, 24-hour storm, which
 14328 practices shall be exempt from any flow rate capacity and velocity requirements for
 14329 natural or man-made channels.

14330 c. For 7.5% impervious cover or more, apply the water quantity technical criteria in
 14331 accordance with 9VAC25-875-600.

14332 2. The establishment and conduct of the tiered approach by the locality pursuant to this
 14333 section shall be subject to review by the department.

14334 3. Prior to the adoption and implementation of the tiered approach to water quantity
 14335 management, the local governing body shall:

- 14336 a. Develop a watershed map that includes the following:
- 14337 1) The boundaries of the locality and each watershed located partially or wholly within
- 14338 the locality based on the most recent version of Virginia's 6th order National
- 14339 Watershed Boundary Dataset;
- 14340 2) The percentage of impervious cover within each watershed. Data provided by the
- 14341 Virginia Geographic Information Network (VGIN) shall be sufficient for the initial
- 14342 determination of impervious cover percentage at the time of the initial adoption of the
- 14343 map; and
- 14344 3) The locations at which the governing body expects or proposes that development
- 14345 should occur and may indicate the projected future percentage of impervious cover
- 14346 based on proposed development. The governing body may designate certain areas
- 14347 within a watershed in which it proposes that denser-than-average development shall
- 14348 occur and may designate environmentally sensitive areas in which the water quantity
- 14349 technical criteria in 9VAC25-875-600 shall apply.
- 14350 b. After the watershed map has been developed, the governing body may then
- 14351 approve and adopt the map by a majority vote of its membership and publish it as the
- 14352 official watershed map of the locality. No official watershed map shall be adopted by
- 14353 the governing body or have any effect until it is approved by an ordinance duly passed
- 14354 by the governing body of the locality after a public hearing, preceded by public notice
- 14355 as required by § 15.2-2204 of the Code of Virginia. Within 30 days after adoption of
- 14356 the official watershed map, the governing body shall file the watershed map in the
- 14357 office of the clerk of the circuit court.
- 14358 4. At least once per year, the governing body shall by majority vote make additions to or
- 14359 modifications of the official watershed map to reflect actual development projects. The
- 14360 governing body shall change the indication on the map of the impervious cover percentage
- 14361 within a watershed where the percentage has changed and shall update the map and
- 14362 supporting datasets with actual development project information, including single-family
- 14363 housing projects and any projects covered by the General VPDES Permit for Discharges
- 14364 of Stormwater from Construction Activities and administered by the department for opt-
- 14365 out localities pursuant to § 62.1-44.15:27 of the Code of Virginia. The governing body may
- 14366 incorporate into the official watershed map the most recent VGIN data, including data on
- 14367 state and federal projects that are not reviewed or approved by the locality. The governing
- 14368 body shall keep current its impervious cover percentage for each watershed located within
- 14369 the locality, as reflected in the official watershed map, and shall make the map and such
- 14370 percentages available to the public.
- 14371 5. The locality shall notify the department and update the official watershed map within 12
- 14372 months of the approval of the development plan for any project that exceeds the percent
- 14373 impervious cover percentage of the watershed in which it is located and causes the
- 14374 impervious cover percentage for the watershed to increase such that the watershed
- 14375 percent impervious cover is categorized by the next higher tier pursuant to subdivision B
- 14376 1 of this section.
- 14377 6. No official watershed map or its adopting or amending ordinance shall take precedence
- 14378 over any duly adopted zoning ordinance, comprehensive plan, or other local land-use
- 14379 ordinance, and in the case of a conflict, the official watershed map or ordinance shall yield
- 14380 to such land-use ordinance.

14381

Article 6

14382 Additional criteria and requirements for land-disturbing activities by state agencies and federal
 14383 entities

14384 **9VAC25-875-760. Soil erosion control and stormwater management for land-disturbing**
 14385 **activities.**

14386 The department shall act as a VESMP where state agencies and federal entities have not
 14387 submitted standards and specifications to the department for approval. When a state agency or
 14388 federal entity submits a soil erosion control and stormwater management plan (ESM plan) for a
 14389 project, land disturbance shall not commence until the department has reviewed and approved
 14390 the plan and has issued permit coverage when it is required in accordance with § 62.1-44.15:34
 14391 of the Code of Virginia.

14392 1. The department shall not approve an ESM plan submitted by a state agency or federal
 14393 entity for a project involving a land-disturbing activity (i) in any locality that has not adopted
 14394 a local program with more stringent ordinances than those of the state program or (ii) in
 14395 multiple jurisdictions with separate local programs, unless the plan is consistent with the
 14396 requirements of the state program.

14397 2. The department shall not approve an ESM plan submitted by a state agency or federal
 14398 entity for a project involving a land-disturbing activity in one locality with a local program
 14399 with more stringent ordinances than those of the state program, unless the plan is
 14400 consistent with the requirements of the local program.

14401 3. If onsite changes occur, the state agency or federal entity shall submit an amended
 14402 ESM plan to the department.

14403 4. The state agency or federal entity responsible for the land-disturbing activity shall
 14404 ensure compliance with the approved ESM plan. As necessary, the department shall
 14405 provide project oversight and enforcement.

14406 **9VAC25-875-770. State agency land-disturbing activities.**

14407 A. All state agency land-disturbing activities that are not exempt and that have commenced
 14408 without an approved erosion and sediment control plan shall immediately cease until the state
 14409 agency has either submitted standards and specifications for its conduct of land-disturbing
 14410 activities which has been reviewed and approved by the department as being consistent with the
 14411 VESMA and attendant regulations, or an erosion and sediment control plan has been submitted
 14412 to and approved by the department. A formal "Notice of Plan Requirement" will be sent to the
 14413 state agency under whose purview the project lies since that agency is responsible for compliance
 14414 with the State Water Control Law and this chapter.

14415 B. Where inspections by department personnel reveal deficiencies in carrying out an approved
 14416 plan, the person responsible for carrying out the plan, as well as the state agency responsible,
 14417 will be issued a notice to comply with specific actions and the deadlines that shall be met. Failure
 14418 to meet the prescribed deadlines can result in the issuance of a stop work order for all land-
 14419 disturbing activities on the project at the discretion of the department. The stop work order will be
 14420 lifted once the required erosion and sediment control measures are in place and inspected by
 14421 department staff.

14422 C. Whenever the Commonwealth or any of its agencies fails to comply within the time provided
 14423 in an appropriate final order, the director of the department may petition for compliance as follows:
 14424 For violations in the Natural and Historic Resources Secretariat, to the Secretary of Natural and
 14425 Historic Resources; for violations in other secretariats, to the appropriate Secretary; for violations
 14426 in other state agencies, to the head of such agency. Where the petition does not achieve timely
 14427 compliance, the director shall bring the matter to the Governor for resolution. The department may

14428 also pursue enforcement as provided by § 62.1-44.15:48 and Article 5 of the State Water Control
 14429 Law.

14430 D. Where compliance will require the appropriation of funds, the director shall cooperate with
 14431 the appropriate agency head in seeking such an appropriation; where the director determines that
 14432 an emergency exists, he shall petition the Governor for funds from the Civil Contingency Fund or
 14433 other appropriate source.

14434 **9VAC25-875-780. Stormwater management permit applications.**

14435 A. Approval of a permit application (registration statement) for a land-disturbing activity by a
 14436 state agency or federal entity shall be subject to the following conditions:

14437 1. The state agency or federal entity shall comply with all applicable requirements of the
 14438 permit (9VAC25-880 et seq) and shall certify that all land clearing, construction, land
 14439 development, and drainage will be done according to the permit.

14440 2. The land development shall be conducted only within the area specified in the approved
 14441 plan and covered by the permit.

14442 3. No changes may be made to a plan for which a permit has been issued without review
 14443 and written approval by the department.

14444 4. The department shall be notified at least one week prior to the pre-construction meeting
 14445 and at least one week prior to the commencement of land-disturbing activity.

14446 5. The department shall conduct random inspections of the project to ensure compliance
 14447 with the permit.

14448 6. The department shall require inspections and reports from the state agency or federal
 14449 entity responsible for compliance with the permit and to determine if the measures
 14450 required in the permit provide effective stormwater management.

14451 B. Compliance with the permit shall be subject to the following conditions:

14452 1. Where inspection by the responsible state agency or federal entity reveals deficiencies
 14453 in carrying out a permitted activity, the responsible state agency or federal entity shall
 14454 ensure compliance with the issued permit, permit conditions, and plan specifications.

14455 2. Where inspections by department personnel reveal deficiencies in carrying out the
 14456 permit, the responsible state agency or federal entity shall be issued a notice to comply,
 14457 with corrective actions specified and the deadline within which the work shall be
 14458 performed.

14459 3. Whenever the Commonwealth or any of its state agencies fail to comply within the time
 14460 provided in a notice to comply, the director may petition the secretary of a given secretariat
 14461 or an agency head for a given state agency for compliance. Where the petition does not
 14462 achieve timely compliance, the director shall bring the matter to the Governor for
 14463 resolution.

14464 4. Where compliance for a state agency will require the appropriation of funds, the director
 14465 shall cooperate with the appropriate agency head in seeking such an appropriation; where
 14466 the director determines that an emergency exists, he shall petition the Governor for funds
 14467 from the Civil Contingency Fund or other appropriate source.

14468 5. The department may also seek compliance through other means specified in the State
 14469 Water Control Law.

14470 **9VAC25-875-790. Maintenance and inspections.**

14471 A. Responsibility for the operation and maintenance of stormwater management facilities shall
 14472 remain with the state agency or federal entity and shall pass to any successor or owner. If portions
 14473 of the land are to be sold, legally binding arrangements shall be made to pass the basic
 14474 responsibility to successors in title. These arrangements shall designate for each project the

14475 property owner, governmental agency, or other legally established entity to be permanently
 14476 responsible for maintenance.

14477 B. At a minimum, a stormwater management facility shall be inspected by the responsible
 14478 state agency or federal entity on an annual basis and after any storm which causes the capacity
 14479 of the facility principal spillway to be exceeded.

14480 C. During construction of the stormwater management facilities, the department shall make
 14481 inspections on a random basis.

14482 D. The department shall require inspections and reports from the state agency or federal entity
 14483 responsible for ensuring compliance with the permit and to determine if the measures required in
 14484 the permit provide effective stormwater management.

14485 E. Inspection reports shall be maintained as part of the land disturbance project file.

14486 **9VAC25-875-800. Reporting on stormwater management.**

14487 State agencies shall report annually, on a schedule to be specified, to the department on the
 14488 extent to which stormwater management programs have reduced nonpoint source pollution to the
 14489 Commonwealth's waters and mitigated the effects of localized flooding. The report shall provide
 14490 the following: data on the number and types of stormwater management facilities installed in the
 14491 preceding year, the drainage area or watershed size served, the receiving stream or hydrologic
 14492 unit, a summary of monitoring data, if any, and other data useful in determining the effectiveness
 14493 of the programs and BMP technologies in current use.

14494 **9VAC25-875-810. Technical criteria and requirements for state or federal projects.**

14495 A. Erosion and sediment control and stormwater management plans prepared for state
 14496 projects shall comply with the technical criteria outlined in Part V of this chapter and any locality's
 14497 VESCP or VESMP authority's technical requirements adopted pursuant to §§ 62.1-44.15:28 and
 14498 62.1-44.15:52 of the Code of Virginia.

14499 B. The department may establish criteria for selecting either the site or a planning area on
 14500 which to apply the water quality criteria.

14501 Part VI

14502 Standards and specifications program

14503 **9VAC25-875-820. Applicability.**

14504 This part is applicable to any state agency, federal entity, or public or private entity that is
 14505 authorized to submit standards and specifications to the department in accordance with § 62.1-
 14506 44.15:31 of the Code of Virginia.

14507 **9VAC25-875-830. Standards and specifications for state agencies, federal entities, and**
 14508 **other specified entities.**

14509 The program requirements in Part V shall be implemented by a state agency or federal entity,
 14510 and other specified entities with department-approved standards and specifications.

14511 A. As an alternative to submitting soil erosion control and stormwater management plans
 14512 for its land-disturbing activities, the Virginia Department of Transportation shall, and any
 14513 other state agency or federal entity may, submit standards and specifications for its
 14514 conduct of land-disturbing activities for department approval. Approved standards and
 14515 specifications shall be consistent with the VESMA. The department shall have 60 days
 14516 after receipt in which to act on any standards and specifications submitted or resubmitted
 14517 to it for approval.

14518 B. As an alternative to submitting soil erosion control and stormwater management plans,
 14519 electric, natural gas, and telephone utility companies, interstate and intrastate natural gas
 14520 pipeline companies, railroad companies and authorities created pursuant to § 15.2-5102

14521 of the Code of Virginia may submit standards and specifications for department approval
 14522 that describe how land-disturbing activities shall be conducted. Such standards and
 14523 specifications may be submitted for the following types of projects:

14524 1. Construction, installation, or maintenance of electric transmission and distribution
 14525 lines, oil or gas transmission and distribution pipelines, communication utility lines, and
 14526 water and sewer lines; and

14527 2. Construction of the tracks, rights-of-way, bridges, communication facilities, and
 14528 other related structures and facilities of a railroad company.

14529 The department shall have 60 days after receipt in which to act on any standards and
 14530 specifications submitted or resubmitted to it for approval. A linear project not included
 14531 in subdivision 1 or 2, or for which the owner chooses not to submit standards and
 14532 specifications, shall comply with the requirements of the VESMP or the VESCP and
 14533 VSMP, as appropriate, in any locality within which the project is located.

14534 C. As an alternative to submitting soil erosion control and stormwater management plans,
 14535 any person engaging in more than one jurisdiction in the creation and operation of a
 14536 wetland mitigation or stream restoration bank that has been approved and is operated in
 14537 accordance with applicable federal and state guidance, laws, or regulations for the
 14538 establishment, use, and operation of a wetlands mitigation or stream restoration bank,
 14539 pursuant to a mitigation banking instrument signed by the department, the Virginia Marine
 14540 Resources Commission, or the U.S. Army Corps of Engineers, may submit standards and
 14541 specifications for department approval that describe how land-disturbing activities shall be
 14542 conducted. The department shall have 60 days after receipt in which to act on standards
 14543 and specifications submitted to it or resubmitted to it for approval.

14544 D. All standards and specifications submitted to the department shall be periodically
 14545 updated according to a schedule to be established by the department and shall be
 14546 consistent with the requirements of the VESMA. Approval of standards and specifications
 14547 by the department does not relieve the owner or operator of the duty to comply with any
 14548 other applicable local ordinances or regulations. Standards and specifications shall
 14549 include:

14550 1. Technical criteria to meet the requirements of the VESMA and regulations
 14551 developed under it;

14552 2. Provisions for the long-term responsibility and maintenance of any stormwater
 14553 management control devices and other techniques specified to manage the quantity
 14554 and quality of runoff;

14555 3. Provisions for administration of the standards and specifications program, project-
 14556 specific plan design, plan review and plan approval, and construction inspection and
 14557 compliance;

14558 4. Provisions for ensuring that personnel and contractors assisting the owner in
 14559 carrying out the land-disturbing activity obtain training or qualifications for soil erosion
 14560 control and stormwater management as set forth in Part IV (9VAC25-875-380 et seq.)
 14561 of this chapter;

14562 5. Provisions for ensuring that personnel implementing approved standards and
 14563 specifications pursuant to this section obtain certifications or qualifications comparable
 14564 to those required for VESMP personnel pursuant to subsection C of § 62.1-44.15:30
 14565 of the Code of Virginia;

14566 6. Implementation of a project tracking system that ensures notification to the
 14567 department of all land-disturbing activities covered under the VESMA; and

14568 7. Requirements for documenting onsite changes as they occur to ensure compliance
 14569 with the requirements of the VESMA.

14570 E. The department shall perform random site inspections or inspections in response to a
 14571 complaint to ensure compliance with the VESMA and this chapter.

14572 F. The department shall assess an administrative charge to cover the costs of services
 14573 rendered associated with its responsibilities pursuant to this section, including standards
 14574 and specifications review and approval, project inspections, and compliance. The
 14575 department may take enforcement actions in accordance with the VESMA and related
 14576 regulations.

14577 Part VII

14578 Virginia Pollutant Discharge Elimination System (VPDES) Permits

14579 Article 1

14580 Definitions

14581 **9VAC25-875-850. Definitions.**

14582 "Administrator" means the Administrator of the United States Environmental Protection
 14583 Agency or an authorized representative.

14584 "Applicable standards and limitations" means all state, interstate, and federal standards and
 14585 limitations to which a discharge or a related activity is subject under the Clean Water Act (CWA)
 14586 (33 USC § 1251 et seq.) and VESMA, including effluent limitations, water quality standards,
 14587 standards of performance, toxic effluent standards or prohibitions, best management practices,
 14588 and standards for sewage sludge use or disposal under §§ 301, 302, 303, 304, 306, 307, 308,
 14589 403, and 405 of the CWA.

14590 "Approved program" or "approved state" means a state or interstate program that has been
 14591 approved or authorized by EPA under 40 CFR Part 123.

14592 "Average monthly discharge limitation" means the highest allowable average of daily
 14593 discharges over a calendar month, calculated as the sum of all daily discharges measured during
 14594 a calendar month divided by the number of daily discharges measured during that month.

14595 "Average weekly discharge limitation" means the highest allowable average of daily
 14596 discharges over a calendar week, calculated as the sum of all daily discharges measured during
 14597 a calendar week divided by the number of daily discharges measured during that week.

14598 "Bypass" means the intentional diversion of waste streams from any portion of a treatment
 14599 facility.

14600 "Contiguous zone" means the entire zone established by the United States under Article 24
 14601 of the Convention on the Territorial Sea and the Contiguous Zone (37 FR 11906 June 15, 1972).

14602 "Continuous discharge" means a discharge which occurs without interruption throughout the
 14603 operating hours of the facility, except for infrequent shutdowns for maintenance, process changes,
 14604 or other similar activities.

14605 "Co-operator" means an operator of a permit that is only responsible for permit conditions
 14606 relating to the discharge for which it is the operator.

14607 "Daily discharge" means the discharge of a pollutant measured during a calendar day or any
 14608 24-hour period that reasonably represents the calendar day for purposes of sampling. For
 14609 pollutants with limitations expressed in units of mass, the daily discharge is calculated as the total
 14610 mass of the pollutant discharged over the day. For pollutants with limitations expressed in other
 14611 units of measurement, the daily discharge is calculated as the average measurement of the
 14612 pollutant over the day.

- 14613 "Discharge" when used without qualification, means the discharge of a pollutant.
- 14614 "Discharge of a pollutant" means:
- 14615 1. Any addition of any pollutant or combination of pollutants to state waters from any point
- 14616 source; or
- 14617 2. Any addition of any pollutant or combination of pollutants to the waters of the contiguous
- 14618 zone or the ocean from any point source other than a vessel or other floating craft which
- 14619 is being used as a means of transportation.
- 14620 This definition includes additions of pollutants into surface waters from: surface runoff that
- 14621 is collected or channeled by man; discharges through pipes, sewers, or other
- 14622 conveyances owned by a state, municipality, or other person that do not lead to a
- 14623 treatment works; and discharges through pipes, sewers, or other conveyances, leading
- 14624 into privately owned treatment works. This term does not include an addition of pollutants
- 14625 by any indirect discharger.
- 14626 "Discharge Monitoring Report" or "DMR" means the form supplied by the department, or an
- 14627 equivalent form developed by the operator and approved by the department, for the reporting of
- 14628 self-monitoring results by operators.
- 14629 "Draft permit" means a document indicating the department's tentative decision to issue or
- 14630 deny, modify, revoke and reissue, terminate, or reissue an individual or general permit. A notice
- 14631 of intent to deny a individual or general permit is a type of draft permit. A denial of a request for
- 14632 modification, revocation and reissuance, or termination is not a draft permit.
- 14633 "Effluent limitation" means any restriction imposed by the board on quantities, discharge rates,
- 14634 and concentrations of pollutants which are discharged from point sources into surface waters, the
- 14635 waters of the contiguous zone, or the ocean.
- 14636 "Effluent limitations guidelines" means a regulation published by the administrator under §
- 14637 304(b) of the CWA to adopt or revise effluent limitations.
- 14638 "Existing permit" means for the purposes of this chapter a permit issued by the department
- 14639 and currently held by a permit applicant.
- 14640 "Existing source" means any source that is not a new source or a new discharger.
- 14641 "Facilities or equipment" means buildings, structures, process or production equipment or
- 14642 machinery that form a permanent part of a new source and that will be used in its operation, if
- 14643 these facilities or equipment are of such value as to represent a substantial commitment to
- 14644 construct. It excludes facilities or equipment used in connection with feasibility, engineering, and
- 14645 design studies regarding the new source or water pollution treatment for the new source.
- 14646 "Facility or activity" means any VPDES point source or treatment works treating domestic
- 14647 sewage or any other facility or activity (including land or appurtenances thereto) that is subject to
- 14648 regulation under the VPDES program.
- 14649 "Hazardous substance" means any substance designated under the Code of Virginia or 40
- 14650 CFR Part 116 pursuant to § 311 of the CWA.
- 14651 "Illicit discharge" means any discharge to a municipal separate storm sewer that is not
- 14652 composed entirely of stormwater, except discharges pursuant to a separate VPDES or permit
- 14653 (other than the permit for discharges from the municipal separate storm sewer), discharges
- 14654 resulting from firefighting activities, and discharges identified by and in compliance with 9VAC25-
- 14655 875-970 D 2 c (3).
- 14656 "Indian country" means (i) all land within the limits of any Indian reservation under the
- 14657 jurisdiction of the United States government, notwithstanding the issuance of any patent, and
- 14658 including rights-of-way running through the reservation; (ii) all dependent Indian communities
- 14659 within the borders of the United States whether within the originally or subsequently acquired

14660 territory thereof, and whether within or without the limits of a state; and (iii) all Indian allotments,
14661 the Indian titles to which have not been extinguished, including rights-of-way running through the
14662 same.

14663 "Indirect discharger" means a nondomestic discharger introducing "pollutants" to a "publicly
14664 owned treatment works (POTW)."

14665 "Interstate agency" means an agency of two or more states established by or under an
14666 agreement or compact approved by Congress, or any other agency of two or more states having
14667 substantial powers or duties pertaining to the control of pollution as determined and approved by
14668 the administrator under the CWA and regulations.

14669 "Large municipal separate storm sewer system" means all municipal separate storm sewers
14670 that are either:

14671 1. Located in an incorporated place with a population of 250,000 or more as determined
14672 by the 1990 decennial census by the Bureau of Census (40 CFR Part 122 Appendix F);

14673 2. Located in the counties listed in 40 CFR Part 122 Appendix H, except municipal
14674 separate storm sewers that are located in the incorporated places, townships or towns
14675 within such counties;

14676 3. Owned or operated by a municipality other than those described in subdivision 1 or 2
14677 of this definition and that are designated by the department as part of the large or medium
14678 municipal separate storm sewer system due to the interrelationship between the
14679 discharges of the designated storm sewer and the discharges from municipal separate
14680 storm sewers described under subdivision 1 or 2 of this definition. In making this
14681 determination the department may consider the following factors:

14682 a. Physical interconnections between the municipal separate storm sewers;

14683 b. The location of discharges from the designated municipal separate storm sewer
14684 relative to

14685 discharges from municipal separate storm sewers described in subdivision 1 of this
14686 definition;

14687 c. The quantity and nature of pollutants discharged to surface waters;

14688 d. The nature of the receiving surface waters; and

14689 e. Other relevant factors;

14690 4. The department may, upon petition, designate as a large municipal separate storm
14691 sewer system, municipal separate storm sewers located within the boundaries of a region
14692 defined by a stormwater management regional authority based on a jurisdictional,
14693 watershed, or other appropriate basis that includes one or more of the systems described
14694 in this definition.

14695 "Major facility" means any facility or activity classified as such by the regional administrator in
14696 conjunction with the board.

14697 "Major municipal separate storm sewer outfall" or "major outfall" means a municipal separate
14698 storm sewer outfall that discharges from a single pipe with an inside diameter of 36 inches or
14699 more or its equivalent (discharge from a single conveyance other than circular pipe which is
14700 associated with a drainage area of more than 50 acres); or for municipal separate storm sewers
14701 that receive stormwater from lands zoned for industrial activity (based on comprehensive zoning
14702 plans or the equivalent), with an outfall that discharges from a single pipe with an inside diameter
14703 of 12 inches or more or from its equivalent (discharge from other than a circular pipe associated
14704 with a drainage area of two acres or more).

14705 "Maximum daily discharge limitation" means the highest allowable daily discharge.

14706 "Maximum extent practicable" or "MEP" means the technology-based discharge standard for
 14707 municipal separate storm sewer systems established by CWA § 402(p). MEP is achieved, in part,
 14708 by selecting and implementing effective structural and nonstructural best management practices
 14709 (BMPs) and rejecting ineffective BMPs and replacing them with effective best management
 14710 practices (BMPs). MEP is an iterative standard, which evolves over time as urban runoff
 14711 management knowledge increases. As such, the operator's MS4 program must continually be
 14712 assessed and modified to incorporate improved programs, control measures, BMPs, etc., to attain
 14713 compliance with water quality standards.

14714 "Medium municipal separate storm sewer system" means all municipal separate storm sewers
 14715 that are either:

14716 1. Located in an incorporated place with a population of 100,000 or more but less than
 14717 250,000 as determined by the 1990 decennial census by the Bureau of Census (40 CFR
 14718 Part 122 Appendix G);

14719 2. Located in the counties listed in 40 CFR Part 122 Appendix I, except municipal separate
 14720 storm sewers that are located in the incorporated places, townships or towns within such
 14721 counties;

14722 3. Owned or operated by a municipality other than those described in subdivision 1 or 2
 14723 of this definition and that are designated by the department as part of the large or medium
 14724 municipal separate storm sewer system due to the interrelationship between the
 14725 discharges of the designated storm sewer and the discharges from municipal separate
 14726 storm sewers described under subdivision 1 or 2 of this definition. In making this
 14727 determination the department may consider the following factors:

14728 a. Physical interconnections between the municipal separate storm sewers;

14729 b. The location of discharges from the designated municipal separate storm sewer
 14730 relative to discharges from municipal separate storm sewers described in subdivision
 14731 1 of this definition;

14732 c. The quantity and nature of pollutants discharged to surface waters;

14733 d. The nature of the receiving surface waters; or

14734 e. Other relevant factors;

14735 4. The department may, upon petition, designate as a medium municipal separate storm
 14736 sewer system, municipal separate storm sewers located within the boundaries of a region
 14737 defined by a stormwater management regional authority based on a jurisdictional,
 14738 watershed, or other appropriate basis that includes one or more of the systems described
 14739 in subdivisions 1, 2, and 3 of this definition.

14740 "Municipality" means a city, town, county, district, association, or other public body created by
 14741 or under state law and having jurisdiction over disposal of sewage, industrial wastes, or other
 14742 wastes, or an Indian tribe or an authorized Indian tribal organization, or a designated and
 14743 approved management agency under § 208 of the CWA.

14744 "New discharger" means any building, structure, facility, or installation:

14745 1. From which there is or may be a discharge of pollutants;

14746 2. That did not commence the discharge of pollutants at a particular site prior to August
 14747 13, 1979;

14748 3. Which is not a new source; and

14749 4. Which has never received a finally effective separate VPDES or permit for discharges
 14750 at that site.

14751 This definition includes an indirect discharger that commences discharging into surface
 14752 waters after August 13, 1979. It also includes any existing mobile point source (other than

14753 an offshore or coastal oil and gas exploratory drilling rig or a coastal oil and gas
 14754 developmental drilling rig) such as a seafood processing rig, seafood processing vessel,
 14755 or aggregate plant, that begins discharging at a site for which it does not have a separate
 14756 VPDES or permit; and any offshore or coastal mobile oil and gas exploratory drilling rig or
 14757 coastal mobile oil and gas developmental drilling rig that commences the discharge of
 14758 pollutants after August 13, 1979.

14759 "New source" means any building, structure, facility, or installation from which there is or may
 14760 be a discharge of pollutants, the construction of which commenced:

14761 1. After promulgation of standards of performance under § 306 of the CWA that are
 14762 applicable to such source; or

14763 2. After proposal of standards of performance in accordance with § 306 of the CWA that
 14764 are applicable to such source, but only if the standards are promulgated in accordance
 14765 with § 306 of the CWA within 120 days of their proposal.

14766 "Oil and gas exploration, production, processing, or treatment operations or transmission
 14767 facilities" means all field activities or operations associated with exploration, production, or
 14768 treatment operations, or transmission facilities, including activities necessary to prepare a site for
 14769 drilling and for the movement and placement of drilling equipment, whether or not such field
 14770 activities or operations may be considered to be construction activity. (33 USC § 1362(24))

14771 "Outfall" means, when used in reference to municipal separate storm sewers, a point source
 14772 at the point where a municipal separate storm sewer discharges to surface waters and does not
 14773 include open conveyances connecting two municipal separate storm sewers, or pipes, tunnels or
 14774 other conveyances which connect segments of the same stream or other surface waters and are
 14775 used to convey surface waters.

14776 "Overburden" means any material of any nature, consolidated or unconsolidated, that overlies
 14777 a mineral deposit, excluding topsoil or similar naturally occurring surface materials that are not
 14778 disturbed by mining operations.

14779 "Permit" means a VPDES permit issued by the department pursuant to § 62.1-44.15 for
 14780 stormwater discharges from a land-disturbing activity or MS4.

14781 "Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage,
 14782 garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials
 14783 (except those regulated under the Atomic Energy Act of 1954, as amended (42 USC § 2011 et
 14784 seq.)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and
 14785 agricultural waste discharged into water. It does not mean:

14786 1. Sewage from vessels; or

14787 2. Water, gas, or other material that is injected into a well to facilitate production of oil or
 14788 gas, or water derived in association with oil and gas production and disposed of in a well
 14789 if the well used either to facilitate production or for disposal purposes is approved by the
 14790 department and if the department determines that the injection or disposal will not result
 14791 in the degradation of groundwater or surface water resources.

14792 "Privately owned treatment works" or "PVOTW" means any device or system that is (i) used
 14793 to treat wastes from any facility whose operator is not the operator of the treatment works and (ii)
 14794 not a POTW.

14795 "Publicly owned treatment works" or "POTW" means a treatment works as defined by § 212
 14796 of the CWA that is owned by a state or municipality (as defined by § 502(4) of the CWA). This
 14797 definition includes any devices and systems used in the storage, treatment, recycling, and
 14798 reclamation of municipal sewage or industrial wastes of a liquid nature. It also includes sewers,
 14799 pipes, and other conveyances only if they convey wastewater to a POTW treatment plant. The

- 14800 term also means the municipality as defined in § 502(4) of the CWA, that has jurisdiction over the
14801 indirect discharges to and the discharges from such a treatment works.
- 14802 "Recommencing discharger" means a source that recommences discharge after terminating
14803 operations.
- 14804 "Regional administrator" means the Regional Administrator of Region III of the Environmental
14805 Protection Agency or the authorized representative of the regional administrator.
- 14806 "Revoked permit" means, an existing VPDES permit that is terminated by the department
14807 before its expiration.
- 14808 "Runoff coefficient" means the fraction of total rainfall that will appear at a conveyance as
14809 runoff.
- 14810 "Schedule of compliance" means a schedule of remedial measures included in a permit,
14811 including an enforceable sequence of interim requirements (for example, actions, operations, or
14812 milestone events) leading to compliance with the VESMA, the CWA, and regulations.
- 14813 "Secretary" means the Secretary of the Army, acting through the Chief of Engineers.
- 14814 "Severe property damage" means substantial physical damage to property, damage to the
14815 treatment facilities that causes them to become inoperable, or substantial and permanent loss of
14816 natural resources that can reasonably be expected to occur in the absence of a bypass. Severe
14817 property damage does not mean economic loss caused by delays in production.
- 14818 "Significant materials" means, but is not limited to: raw materials; fuels; materials such as
14819 solvents, detergents, and plastic pellets; finished materials such as metallic products; raw
14820 materials used in food processing or production; hazardous substances designated under §
14821 101(14) of CERCLA (42 USC § 9601(14)); any chemical the facility is required to report pursuant
14822 to § 313 of Title III of SARA (42 USC § 11023); fertilizers; pesticides; and waste products such as
14823 ashes, slag, and sludge that have the potential to be released with stormwater discharges.
- 14824 "Small municipal separate storm sewer system" or "small MS4" means all separate storm
14825 sewers that are (i) owned or operated by the United States, a state, city, town, borough, county,
14826 parish, district, association, or other public body (created by or pursuant to state law) having
14827 jurisdiction over disposal of sewage, industrial wastes, stormwater, or other wastes, including
14828 special districts under state law such as a sewer district, flood control district or drainage district,
14829 or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and
14830 approved management agency under § 208 of the CWA that discharges to surface waters and
14831 (ii) not defined as "large" or "medium" municipal separate storm sewer systems or designated
14832 under 9VAC25-875-950 A 1. This term includes systems similar to separate storm sewer systems
14833 in municipalities, such as systems at military bases, large hospital or prison complexes, and
14834 highway and other thoroughfares. The term does not include separate storm sewers in very
14835 discrete areas, such as individual buildings.
- 14836 "Source" means any building, structure, facility, or installation from which there is or may be
14837 a discharge of pollutants.
- 14838 "Stormwater discharge associated with construction activity" means a discharge of
14839 stormwater runoff from areas where land-disturbing activities (e.g., clearing, grading, or
14840 excavation); construction materials or equipment storage or maintenance (e.g., fill piles, borrow
14841 area, concrete truck washout, fueling); or other industrial stormwater directly related to the
14842 construction process (e.g., concrete or asphalt batch plants) are located.
- 14843 "Stormwater discharge associated with large construction activity" means the discharge of
14844 stormwater from large construction activities.
- 14845 "Stormwater discharge associated with small construction activity" means the discharge of
14846 stormwater from small construction activities.

14847 "Total dissolved solids" means the total dissolved (filterable) solids as determined by use of
 14848 the method specified in 40 CFR Part 136.

14849 "Toxic pollutant" means any pollutant listed as toxic under § 307(a)(1) of the CWA or, in the
 14850 case of sludge use or disposal practices, any pollutant identified in regulations implementing §
 14851 405(d) of the CWA.

14852 "Upset" means an exceptional incident in which there is unintentional and temporary
 14853 noncompliance with technology based permit effluent limitations because of factors beyond the
 14854 reasonable control of the operator. An upset does not include noncompliance to the extent caused
 14855 by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack
 14856 of preventive maintenance, or careless or improper operation.

14857 "Variance" means any mechanism or provision under § 301 or § 316 of the CWA or under 40
 14858 CFR Part 125, or in the applicable federal effluent limitations guidelines that allows modification
 14859 to or waiver of the generally applicable effluent limitation requirements or time deadlines of the
 14860 CWA. This includes provisions that allow the establishment of alternative limitations based on
 14861 fundamentally different factors or on § 301(c), § 301(g), § 301(h), § 301(i), or § 316(a) of the CWA.

14862 "Virginia Pollutant Discharge Elimination System permit" or "VPDES permit" means a
 14863 document issued by the department pursuant to the State Water Control Law authorizing, under
 14864 prescribed conditions, the potential or actual discharge of pollutants from a point source to surface
 14865 waters.

14866 "Water quality standards" or "WQS" means provisions of state or federal law that consist of a
 14867 designated use or uses for the waters of the Commonwealth and water quality criteria for such
 14868 waters based on such uses. Water quality standards are to protect the public health or welfare,
 14869 enhance the quality of water, and serve the purposes of the State Water Control Law (§ 62.1-44.2
 14870 et seq. of the Code of Virginia), the VESMA (§ 62.1-44.15:24 et seq. of the Code of Virginia), and
 14871 the CWA (33 USC § 1251 et seq.).

14872 "Whole effluent toxicity" means the aggregate toxic effect of an effluent measured directly by
 14873 a toxicity test.

14874 Article 2

14875 General program requirements related to MS4s and land-disturbing activities

14876 **9VAC25-875-860. Exclusions.**

14877 The following discharges do not require permits:

14878 1. Any discharge of sewage from vessels, effluent from properly functioning marine
 14879 engines, laundry, shower, and galley sink wastes, or any other discharge incidental to the
 14880 normal operation of a vessel. This exclusion does not apply to rubbish, trash, garbage, or
 14881 other such materials discharged overboard; nor to other discharges when the vessel is
 14882 operating in a capacity other than as a means of transportation such as when used as an
 14883 energy or mining facility, a storage facility or a seafood processing facility, or when secured
 14884 to a storage facility or a seafood processing facility, or when secured to the bed of the
 14885 ocean, contiguous zone or surface waters for the purpose of mineral or oil exploration or
 14886 development.

14887 2. Discharges of dredged or fill material into surface waters that are regulated under § 404
 14888 of the CWA.

14889 3. The introduction of sewage, industrial wastes or other pollutants into publicly owned
 14890 treatment works by indirect dischargers. Plans or agreements to switch to this method of
 14891 disposal in the future do not relieve dischargers of the obligation to have and comply with
 14892 permits until all discharges of pollutants to surface waters are eliminated. This exclusion
 14893 does not apply to the introduction of pollutants to privately owned treatment works or to

14894 other discharges through pipes, sewers, or other conveyances owned by a state,
 14895 municipality, or other party not leading to treatment works.

14896 4. Any discharge in compliance with the instructions of an on-scene coordinator pursuant
 14897 to 40 CFR Part 300 (The National Oil and Hazardous Substances Pollution Contingency
 14898 Plan) or 33 CFR 153.10(e) (Pollution by Oil and Hazardous Substances).

14899 5. Any introduction of pollutants from nonpoint source agricultural and silvicultural
 14900 activities, including stormwater runoff from orchards, cultivated crops, pastures, range
 14901 lands, and forest lands, but not discharges from concentrated animal feeding operations,
 14902 discharges from concentrated aquatic animal production facilities, discharges to
 14903 aquaculture projects, and discharges from silvicultural point sources.

14904 6. Return flows from irrigated agriculture.

14905 7. Discharges into a privately owned treatment works, except as the department may
 14906 otherwise require.

14907 **9VAC25-875-870. Prohibitions.**

14908 A. Except in compliance with a permit issued by the department pursuant to the Virginia
 14909 Erosion and Stormwater Management Act, it shall be unlawful for any person to discharge
 14910 stormwater into state waters from Municipal Separate Storm Sewer Systems or land-disturbing
 14911 activities.

14912 B. Any person in violation of subsection A of this section, who discharges or causes or allows
 14913 a discharge of stormwater into or upon state waters from Municipal Separate Storm Sewer
 14914 Systems or land-disturbing activities, or who discharges or causes or allows a discharge that may
 14915 reasonably be expected to enter state waters in violation of subsection A of this section, shall
 14916 notify the department of the discharge immediately upon discovery of the discharge but in no case
 14917 later than 24 hours after said discovery. A written report of the unauthorized discharge shall be
 14918 submitted by the owner, to the department, within five days of discovery of the discharge. The
 14919 written report shall contain:

14920 1. A description of the nature and location of the discharge;

14921 2. The cause of the discharge;

14922 3. The date on which the discharge occurred;

14923 4. The length of time that the discharge continued;

14924 5. The volume of the discharge;

14925 6. If the discharge is continuing, how long it is expected to continue;

14926 7. If the discharge is continuing, what the expected total volume of the discharge will be;
 14927 and

14928 8. Any steps planned or taken to reduce, eliminate, and prevent a recurrence of the
 14929 present discharge or any future discharges not authorized by the permit.

14930 C. No permit may be issued:

14931 1. When the conditions of the permit do not provide for compliance with the applicable
 14932 requirements of the CWA or the State Water Control Law, or regulations promulgated
 14933 under the CWA or the State Water Control Law;

14934 2. When the permit applicant is required to obtain a state or other appropriate certification
 14935 under § 401 of the CWA and that certification has not been obtained or waived;

14936 3. When the regional administrator has objected to issuance of the permit;

14937 4. When the imposition of conditions cannot ensure compliance with the applicable water
 14938 quality requirements of all affected states;

- 14939 5. When, in the judgment of the Secretary of the Army, anchorage and navigation in or on
 14940 any of the waters of the United States would be substantially impaired by the discharge;
- 14941 6. For the discharge of any radiological, chemical, or biological warfare agent or high-level
 14942 radioactive waste;
- 14943 7. For any discharge inconsistent with a plan or plan amendment approved under § 208(b)
 14944 of the CWA;
- 14945 8. For any discharge to the territorial sea, the waters of the contiguous zone, or the oceans
 14946 in the following circumstances:
- 14947 a. Before the promulgation of guidelines under § 403(c) of the CWA (for determining
 14948 degradation of the waters of the territorial seas, the contiguous zone, and the oceans)
 14949 unless the department determines permit issuance to be in the public interest; or
- 14950 b. After promulgation of guidelines under § 403(c) of the CWA, when insufficient
 14951 information exists to make a reasonable judgment whether the discharge complies
 14952 with them.
- 14953 9. To a new source or a new discharger, if the discharge from its construction or operation
 14954 will cause or contribute to the violation of water quality standards. The owner or operator
 14955 of a new source or new discharger proposing to discharge into a water segment which
 14956 does not meet applicable water quality standards or is not expected to meet those
 14957 standards even after the application of the effluent limitations required by the State Water
 14958 Control Law and §§ 301(b)(1)(A) and 301(b)(1)(B) of the CWA, and for which the
 14959 department has performed a pollutants load allocation for the pollutant to be discharged,
 14960 must demonstrate, before the close of the public comment period, that:
- 14961 a. There are sufficient remaining pollutant load allocations to allow for the discharge;
 14962 and
- 14963 b. The existing dischargers into that segment are subject to compliance schedules
 14964 designed to bring the segment into compliance with applicable water quality standards.
 14965 The department may waive the submission of information by the new source or new
 14966 discharger required by this subdivision if the department determines that it already has
 14967 adequate information to evaluate the request. An explanation of the development of
 14968 limitations to meet the criteria of this paragraph is to be included in the fact sheet to
 14969 the permit under [9VAC25-875-1090](#).
- 14970 **9VAC25-875-880. Effect of a permit.**
- 14971 A. Except for any toxic effluent standards and prohibitions imposed under § 307 of the CWA
 14972 and standards for sewage sludge use or disposal under § 405(d) of the CWA, compliance with a
 14973 permit during its term constitutes compliance, for purposes of enforcement, with the State Water
 14974 Control Law and with §§ 301, 302, 306, 307, 318, 403, and 405 (a) through (b) of the CWA.
 14975 However, a permit may be modified, revoked and reissued, or terminated during its term for cause
 14976 as set forth in this chapter.
- 14977 B. The issuance of a permit does not convey any property rights of any sort, or any exclusive
 14978 privilege.
- 14979 C. The issuance of a permit does not authorize any injury to persons or property or invasion
 14980 of other private rights, or any infringement of state or local law or regulations.
- 14981 **9VAC25-875-890. Continuation of expiring permits.**
- 14982 A. The permit shall expire at the end of its term, except that the conditions of an expired permit
 14983 continue in force until the effective date of a new permit if:
- 14984 1. The permittee has submitted a timely application as required by this chapter, which is
 14985 a complete application for a new permit; and

14986 2. The department, through no fault of the permittee, does not issue a new permit with an
 14987 effective date on or before the expiration date of the previous permit.

14988 B. Permits continued under this section remain fully effective and enforceable.

14989 C. When the permittee is not in compliance with the conditions of the expiring or expired permit
 14990 the department may choose to do any or all of the following:

14991 1. Initiate enforcement action based upon the permit which has been continued;

14992 2. Issue a notice of intent to deny the new permit. If the permit is denied, the owner or
 14993 operator would then be required to cease the activities authorized by the continued permit
 14994 or be subject to enforcement action for operating without a permit;

14995 3. Issue a new permit with appropriate conditions; or

14996 4. Take other actions authorized by this chapter.

14997 **9VAC25-875-900. Confidentiality of information.**

14998 A. The department or the VESMP authority may require every permit applicant or permittee
 14999 to furnish when requested such application materials, plans, specifications, and other pertinent
 15000 information as may be necessary to determine the effect of his discharge on the quality of state
 15001 waters, or such other information as may be necessary to accomplish the purposes of the State
 15002 Water Control Law and this chapter. Any personal information shall not be disclosed except to an
 15003 appropriate official of the department or VESMP authority or as may be authorized pursuant to
 15004 the Virginia Freedom of Information Act (§ 2.2-3700 et seq. of the Code of Virginia). However:

15005 1. Disclosure of records of the department or the VESMP authority relating to (i) active
 15006 federal environmental enforcement actions that are considered confidential under federal
 15007 law and (ii) enforcement strategies, including proposed sanctions for enforcement actions
 15008 is prohibited. Upon request, such records shall be disclosed after a proposed sanction
 15009 resulting from the investigation has been determined by the department or the VESMP
 15010 authority.

15011 2. Any secret formula, secret processes, or secret methods other than effluent data
 15012 submitted to the department pursuant to this chapter may be claimed as confidential by
 15013 the submitter in accordance with 40 CFR 122.7. Any such claim must be asserted at the
 15014 time of submission in the manner prescribed on the application form or instructions or, in
 15015 the case of other submissions, by stamping the words "secret formulae," "secret
 15016 processes" "secret methods" on each page containing such information. If no claim is
 15017 made at the time of submission, the department may make the information available to
 15018 the public without further notice. If a claim is asserted, the information will be treated in
 15019 accordance with the procedures in the Virginia Freedom of Information Act (§ 2.2-3700 et
 15020 seq. of the Code of Virginia).

15021 3. This section shall not be construed to prohibit the disclosure of records related to
 15022 inspection reports, notices of violation, and documents detailing the nature of any land-
 15023 disturbing activity that may have occurred, or similar documents.

15024 B. Claims of confidentiality for the following information will be denied:

15025 1. The name and address of any permit applicant or permittee;

15026 2. Permit applications, permits, and effluent data.

15027 C. Information required by permit application forms provided by the department may not be
 15028 claimed confidential. This includes information submitted on the forms themselves and any
 15029 attachments used to supply information required by the forms.

15030 **9VAC25-875-910. Guidance documents.**

15031 The department may develop and use guidance, as appropriate, to implement technical and
 15032 regulatory details of the VPDES permit program. Such guidance is distinguished from regulation

15033 by the fact that it is not binding on either the department or permittees. If a more appropriate
 15034 methodology than that called for in guidance is available in a given situation, the more appropriate
 15035 methodology shall be used to the extent it is consistent with applicable regulations and the Virginia
 15036 Erosion and Stormwater Management Act.

15037 Article 3

15038 Permit applications

15039 **9VAC25-875-920. Application for a permit.**

15040 A. Duty to apply. Any person who discharges or proposes to discharge stormwater into or
 15041 upon state waters from municipal separate storm sewer systems or land-disturbing activities and
 15042 who does not have an effective permit, except persons covered by general permits, excluded
 15043 from the requirement for a permit by this chapter, shall submit a complete application in
 15044 accordance with this section.

15045 B. Who applies. When a facility or activity is owned by one person but is operated by another
 15046 person, it is the operator's duty to obtain a permit.

15047 C. Time to apply. Any person proposing a new discharge shall submit an application at least
 15048 180 days before the date on which the discharge is to commence, unless permission for a later
 15049 date has been granted by the department. Stormwater discharges from large construction
 15050 activities and stormwater discharges associated with small construction activities shall submit
 15051 applications at least 90 days before the date on which construction is to commence. Different
 15052 submittal dates may be required under the terms of applicable general permits. Persons
 15053 proposing a new discharge are encouraged to submit their applications well in advance of the 90-
 15054 day or 180-day requirements to avoid delay.

15055 D. Duty to reapply. All permittees with a currently effective permit shall submit a new
 15056 application at least 180 days before the expiration date of the existing permit unless permission
 15057 for a later date has been granted by the department. The department shall not grant permission
 15058 for applications to be submitted later than the expiration date of the existing permit.

15059 E. Completeness. The department shall not issue a permit before receiving a complete
 15060 application for a permit except for general permits. An application for a permit is complete when
 15061 the department receives an application form and any supplemental information which are
 15062 completed to its satisfaction. The completeness of any application for a permit shall be judged
 15063 independently of the status of any other permit application or permit for the same facility or activity.

15064 F. Information requirements. All applicants for permits shall provide the following information
 15065 using the application form provided by the department:

- 15066 1. The activities conducted by the permit applicant which require it to obtain a permit;
- 15067 2. Name, mailing address, and location of the facility for which the application is submitted;
- 15068 3. Up to four SIC codes which best reflect the principal products or services provided by
 15069 the facility;
- 15070 4. The operator's name, address, telephone number, email address, ownership status,
 15071 and status as federal, state, private, public, or other entity;
- 15072 5. Whether the facility is located on Indian lands;
- 15073 6. A listing of all permits or construction approvals received, applied for, or to be applied
 15074 for under any of the following programs:
 - 15075 a. Hazardous Waste Management program under the Resource Conservation and
 15076 Recovery Act (RCRA) (42 USC § 6921);
 - 15077 b. Underground Injection Control (UIC) program under the Safe Drinking Water Act
 15078 (SDWA) (42 USC § 300h);

- 15079 c. VPDES program under the CWA and the State Water Control Law;
- 15080 d. Prevention of Significant Deterioration (PSD) program under the Clean Air Act (42
- 15081 USC § 4701 et seq.);
- 15082 e. Nonattainment program under the Clean Air Act (42 USC § 4701 et seq.);
- 15083 f. National Emission Standards for Hazardous Pollutants (NESHAPS) preconstruction
- 15084 approval under the Clean Air Act (42 USC § 4701 et seq.);
- 15085 g. Ocean dumping permits under the Marine Protection Research and Sanctuaries Act
- 15086 (33 USC § 14 et seq.);
- 15087 h. Dredge or fill permits under § 404 of the CWA;
- 15088 i. A permit under the CWA and the Virginia Erosion and Stormwater Management Act;
- 15089 and
- 15090 j. Other relevant environmental permits;
- 15091 7. A topographic map (or other map if a topographic map is unavailable) extending one
- 15092 mile beyond the property boundaries of the source, which depicts: the facility and (i) each
- 15093 of its intake and discharge structures; (ii) each of its hazardous waste treatment, storage,
- 15094 or disposal facilities; (iii) each well where fluids from the facility are injected underground;
- 15095 and (iv) those wells, springs, other surface water bodies, and drinking water wells listed in
- 15096 public records or otherwise known to the permit applicant in the map area; and
- 15097 8. A brief description of the nature of the business.
- 15098 G. Variance requests. A discharger which is not a publicly owned treatment works (POTW)
- 15099 may request a variance from otherwise applicable effluent limitations under any of the following
- 15100 statutory or regulatory provisions within the times specified in this subsection:
- 15101 1. Fundamentally different factors.
- 15102 a. A request for a variance based on the presence of fundamentally different factors
- 15103 from those on which the effluent limitations guideline was based shall be filed as
- 15104 follows:
- 15105 (1) For a request from best practicable control technology currently available (BPT),
- 15106 by the close of the public comment period for the draft permit; or
- 15107 (2) For a request from best available technology economically achievable (BAT) and/or
- 15108 best conventional pollutant control technology (BCT), by no later than 180 days after
- 15109 the date on which an effluent limitation guideline is published in the Federal Register
- 15110 for a request based on an effluent limitation guideline promulgated on or after February
- 15111 4, 1987.
- 15112 b. The request shall explain how the requirements of the applicable regulatory or
- 15113 statutory criteria have been met.
- 15114 2. A request for a variance from the BAT requirements for CWA § 301(b)(2)(F) pollutants
- 15115 (commonly called nonconventional pollutants) pursuant to § 301(c) of the CWA because
- 15116 of the economic capability of the owner or operator, or pursuant to § 301(g) of the CWA
- 15117 (provided, however, that a § 301(g) variance may only be requested for ammonia,
- 15118 chlorine, color, iron, total phenols (when determined by the administrator to be a pollutant
- 15119 covered by § 301(b)(2)(F) of the CWA) and any other pollutant that the administrator lists
- 15120 under § 301(g)(4) of the CWA) must be made as follows:
- 15121 a. For those requests for a variance from an effluent limitation based upon an effluent
- 15122 limitation guideline by:
- 15123 (1) Submitting an initial request to the regional administrator, as well as to the
- 15124 department, stating the name of the discharger, the permit number, the outfall

15125 number(s), the applicable effluent guideline, and whether the discharger is requesting
 15126 a § 301(c) or § 301(g) of the CWA modification, or both. This request must have been
 15127 filed not later than 270 days after promulgation of an applicable effluent limitation
 15128 guideline; and

15129 (2) Submitting a completed request no later than the close of the public comment
 15130 period for the draft permit demonstrating that: (i) all reasonable ascertainable issues
 15131 have been raised and all reasonably available arguments and materials supporting
 15132 their position have been submitted; and (ii) that the applicable requirements of 40 CFR
 15133 Part 125 have been met. Notwithstanding this provision, the complete application for
 15134 a request under § 301(g) of the CWA shall be filed 180 days before EPA must make
 15135 a decision (unless the Regional Administrator establishes a shorter or longer period);
 15136 or

15137 b. For those requests for a variance from effluent limitations not based on effluent
 15138 limitation guidelines, the request need only comply with subdivision 2 a (2) of this
 15139 subsection and need not be preceded by an initial request under subdivision 2 a (1) of
 15140 this subsection.

15141 3. A modification under § 302(b)(2) of the CWA of requirements under § 302(a) of the
 15142 CWA for achieving water quality related effluent limitations may be requested no later than
 15143 the close of the public comment period for the draft permit on the permit from which the
 15144 modification is sought.

15145 4. A variance for alternate effluent limitations for the thermal component of any discharge
 15146 must be filed with a timely application for a permit under this section, except that if thermal
 15147 effluent limitations are established on a case-by-case basis or are based on water quality
 15148 standards the request for a variance may be filed by the close of the public comment
 15149 period for the draft permit. A copy of the request shall be sent simultaneously to the
 15150 department.

15151 H. Expedited variance procedures and time extensions.

15152 1. Notwithstanding the time requirements in subsection G of this section, the department
 15153 may notify a permit applicant before a draft permit is issued that the draft permit will likely
 15154 contain limitations which are eligible for variances. In the notice the department may
 15155 require the permit applicant as a condition of consideration of any potential variance
 15156 request to submit a request explaining how the requirements of 40 CFR Part 125
 15157 applicable to the variance have been met and may require its submission within a specified
 15158 reasonable time after receipt of the notice. The notice may be sent before the permit
 15159 application has been submitted. The draft or final permit may contain the alternative
 15160 limitations which may become effective upon final grant of the variance.

15161 2. A discharger who cannot file a timely complete request required under subdivisions G
 15162 2 a (2) or G 2 b of this section may request an extension. The extension may be granted
 15163 or denied at the discretion of the department. Extensions shall be no more than six months
 15164 in duration.

15165 I. Recordkeeping. Permit applicants shall keep records of all data used to complete permit
 15166 applications and any supplemental information submitted under this section for a period of at least
 15167 three years from the date the application is signed.

15168 **9VAC25-875-930. Permit rationale.**

15169 In granting a permit pursuant to this chapter, the department shall provide in writing a clear
 15170 and concise statement of the legal basis, scientific rationale, and justification for the decision
 15171 reached. When the decision of the department is to deny a permit, the department shall, in
 15172 consultation with legal counsel, provide a clear and concise statement explaining the reason for

15173 the denial, the scientific justification for the same, and how the department's decision is in
 15174 compliance with applicable laws and regulations. Copies of the decision, certified by the director,
 15175 shall be mailed by certified mail to the permittee or applicant.

15176 **9VAC25-875-940. Signatories to permit applications and reports.**

15177 A. All permit applications shall be signed as follows:

15178 1. For a corporation: by a responsible corporate officer. For the purpose of this section, a
 15179 responsible corporate officer means: (i) a president, secretary, treasurer, or vice-president
 15180 of the corporation in charge of a principal business function, or any other person who
 15181 performs similar policy-making or decision-making functions for the corporation, or (ii) the
 15182 manager of one or more manufacturing, production, or operating facilities, provided the
 15183 manager is authorized to make management decisions that govern the operation of the
 15184 regulated facility, including having the explicit or implicit duty of making major capital
 15185 investment recommendations, and initiating and directing other comprehensive measures
 15186 to assure long-term environmental compliance with environmental laws and regulations;
 15187 the manager can ensure that the necessary systems are established or actions taken to
 15188 gather complete and accurate information for permit application requirements; and where
 15189 authority to sign documents has been assigned or delegated to the manager in
 15190 accordance with corporate procedures;

15191 2. For a partnership or sole proprietorship: by a general partner or the proprietor,
 15192 respectively; or

15193 3. For a municipality, state, federal, or other public agency: by either a principal executive
 15194 officer or ranking elected official. For purposes of this section, a principal executive officer
 15195 of a federal agency includes (i) the chief executive officer of the agency, or (ii) a senior
 15196 executive officer having responsibility for the overall operations of a principal geographic
 15197 unit of the agency.

15198 B. All reports required by permits, and other information requested by the department shall be
 15199 signed by a person described in subsection A of this section, or by a duly authorized
 15200 representative of that person. A person is a duly authorized representative only if:

15201 1. The authorization is made in writing by a person described in subsection A of this
 15202 section;

15203 2. The authorization specifies either an individual or a position having responsibility for the
 15204 overall operation of the regulated facility or activity such as the position of plant manager,
 15205 operator of a well or a well field, superintendent, position of equivalent responsibility, or
 15206 an individual or position having overall responsibility for environmental matters for the
 15207 company. A duly authorized representative may thus be either a named individual or any
 15208 individual occupying a named position; and

15209 3. The written authorization is submitted to the department.

15210 C. If an authorization under subsection B of this section is no longer accurate because a
 15211 different individual or position has responsibility for the overall operation of the facility, a new
 15212 authorization satisfying the requirements of subsection B of this section must be submitted to the
 15213 department prior to or together with any reports, or information to be signed by an authorized
 15214 representative.

15215 D. Any person signing a document under subsection A or B of this section shall make the
 15216 following certification:

15217 "I certify under penalty of law that this document and all attachments were prepared under
 15218 my direction or supervision in accordance with a system designed to assure that qualified
 15219 personnel properly gather and evaluate the information submitted. Based on my inquiry of
 15220 the person or persons who manage the system, or those persons directly responsible for

15221 gathering the information, the information submitted is, to the best of my knowledge and
 15222 belief, true, accurate, and complete. I am aware that there are significant penalties for
 15223 submitting false information, including the possibility of fine and imprisonment for knowing
 15224 violations."

15225 E. Electronic reporting. If documents described in subsection A or B of this section are
 15226 submitted electronically by or on behalf of a VPDES-regulated facility, any person providing the
 15227 electronic signature for such documents shall meet all relevant requirements of this section and
 15228 shall ensure that all of the relevant requirements of Part XI (9VAC25-31-950 et seq.) of the Virginia
 15229 Pollutant Discharge Elimination System (VPDES) Permit Regulation and 40 CFR Part 3
 15230 (including, in all cases, 40 CFR Part 3 Subpart D) are met for that submission.

15231 **9VAC25-875-950. Stormwater discharges.**

15232 A. Permit requirements.

15233 1. Prior to October 1, 1994, discharges composed entirely of stormwater shall not be
 15234 required to obtain a permit except:

15235 a. A discharge with respect to which a permit has been issued prior to February 4,
 15236 1987;

15237 b. A stormwater discharge associated with large construction activity;

15238 c. A discharge from a large municipal separate storm sewer system;

15239 d. A discharge from a medium municipal separate storm sewer system; or

15240 e. A discharge that either the department or the regional administrator determines to
 15241 contribute to a violation of a water quality standard or is a significant contributor of
 15242 pollutants to surface waters. This designation may include a discharge from any
 15243 conveyance or system of conveyances used for collecting and conveying stormwater
 15244 runoff or a system of discharges from municipal separate storm sewers, except for
 15245 those discharges from conveyances that do not require a permit under subdivision 2
 15246 of this subsection or agricultural stormwater runoff that is exempted from the definition
 15247 of point source.

15248 The department may designate discharges from municipal separate storm sewers on
 15249 a system-wide or jurisdiction-wide basis. In making this determination the department
 15250 may consider the following factors:

15251 (1) The location of the discharge with respect to surface waters;

15252 (2) The size of the discharge;

15253 (3) The quantity and nature of the pollutants discharged to surface waters; and

15254 (4) Other relevant factors.

15255 2. The department may not require a permit for discharges of stormwater runoff from
 15256 mining operations or oil and gas exploration, production, processing or treatment
 15257 operations, or transmission facilities, composed entirely of flows that are from
 15258 conveyances or systems of conveyances (including but not limited to pipes, conduits,
 15259 ditches, and channels) used for collecting and conveying precipitation runoff and that are
 15260 not contaminated by contact with or that has not come into contact with, any overburden,
 15261 raw material, intermediate products, finished product, by-product or waste products
 15262 located on the site of such operations.

15263 3. a. Permits must be obtained for all discharges from large and medium municipal
 15264 separate storm sewer systems.

15265 b. The department may either issue one system-wide permit covering all discharges
 15266 from municipal separate storm sewers within a large or medium municipal storm sewer
 15267 system or issue distinct permits for appropriate categories of discharges within a large

15268 or medium municipal separate storm sewer system including, but not limited to: all
 15269 discharges owned or operated by the same municipality; located within the same
 15270 jurisdiction; all discharges within a system that discharge to the same watershed;
 15271 discharges within a system that are similar in nature; or for individual discharges from
 15272 municipal separate storm sewers within the system.

15273 c. The operator of a discharge from a municipal separate storm sewer that is part of a
 15274 large or medium municipal separate storm sewer system must either:

15275 (1) Participate in a permit application (to be a permittee or a state co-permittee) with
 15276 one or more other operators of discharges from the large or medium municipal storm
 15277 sewer system that covers all, or a portion of all, discharges from the municipal separate
 15278 storm sewer system;

15279 (2) Submit a distinct permit application that only covers discharges from the municipal
 15280 separate storm sewers for which the operator is responsible; or

15281 (3) A regional authority may be responsible for submitting a permit application under
 15282 the following guidelines:

15283 (a) The regional authority together with permit co-applicants shall have authority over
 15284 a stormwater management program that is in existence, or shall be in existence at the
 15285 time Part 1 of the application is due;

15286 (b) The permit applicant or co-applicants shall establish their ability to make a timely
 15287 submission of Part 1 and Part 2 of the municipal application;

15288 (c) Each of the operators of municipal separate storm sewers within large or medium
 15289 municipal separate storm sewer systems, that are under the purview of the designated
 15290 regional authority, shall comply with the application requirements of subsection C of
 15291 this section.

15292 d. One permit application may be submitted for all or a portion of all municipal separate
 15293 storm sewers within adjacent or interconnected large or medium municipal separate
 15294 storm sewer systems. The department may issue one system-wide permit covering
 15295 all, or a portion of all municipal separate storm sewers in adjacent or interconnected
 15296 large or medium municipal separate storm sewer systems.

15297 e. Permits for all or a portion of all discharges from large or medium municipal separate
 15298 storm sewer systems that are issued on a system-wide, jurisdiction-wide, watershed
 15299 or other basis may specify different conditions relating to different discharges covered
 15300 by the permit, including different management programs for different drainage areas
 15301 that contribute stormwater to the system.

15302 f. State co-permittees need only comply with permit conditions relating to discharges
 15303 from the municipal separate storm sewers for which they are operators.

15304 4. In addition to meeting the requirements of subsection B of this section, an operator of
 15305 a stormwater discharge associated with a large construction activity that discharges
 15306 through a large or medium municipal separate storm sewer system shall submit to the
 15307 operator of the municipal separate storm sewer system receiving the discharge no later
 15308 than May 15, 1991, or 180 days prior to commencing such discharge: the name of the
 15309 facility; a contact person and phone number; the location of the discharge; a description,
 15310 including Standard Industrial Classification, that best reflects the principal products or
 15311 services provided by each facility; and any existing permit number.

15312 5. The department may issue permits for municipal separate storm sewers that are
 15313 designated under subdivision A 1 e of this section on a system-wide basis, jurisdiction-
 15314 wide basis, watershed basis or other appropriate basis, or may issue permits for individual
 15315 discharges.

15316 6. Conveyances that discharge stormwater runoff combined with municipal sewage are
 15317 point sources that must obtain separate VPDES permits in accordance with the
 15318 procedures of 9VAC25-31 and are not subject to the provisions of this section.

15319 7. Whether a discharge from a municipal separate storm sewer is or is not subject to
 15320 regulation under this subsection shall have no bearing on whether the owner or operator
 15321 of the discharge is eligible for funding under Title II, Title III or Title VI of the CWA.

15322 8. a. On and after October 1, 1994, for discharges composed entirely of stormwater, that
 15323 are not required by subdivision 1 of this subsection to obtain a permit, operators shall be
 15324 required to obtain a permit only if:

15325 (1) The discharge is from a small MS4 required to be regulated pursuant to 9VAC25-
 15326 875-970 B;

15327 (2) The discharge is a stormwater discharge associated with small construction activity
 15328 as defined in 9VAC25-875-850;

15329 (3) The department or the EPA regional administrator determines that stormwater
 15330 controls are needed for the discharge based on wasteload allocations that are part of
 15331 "total maximum daily loads" (TMDLs) that address the pollutant(s) of concern; or

15332 (4) The department or the EPA regional administrator determines that the discharge,
 15333 or category of discharges within a geographic area, contributes to a violation of a water
 15334 quality standard or is a significant contributor of pollutants to surface waters.

15335 b. Operators of small MS4s designated pursuant to subdivisions 8 a (1), (3), and (4)
 15336 of this subsection shall seek coverage under a permit in accordance with 9VAC25-
 15337 875-970 C through E. Operators of nonmunicipal sources designated pursuant to
 15338 subdivisions 8 a (2), (3), and (4) of this subsection shall seek coverage under a permit
 15339 in accordance with subdivision B 1 of this section.

15340 c. Operators of stormwater discharges designated pursuant to subdivisions 8 a (3) and
 15341 (4) of this subsection shall apply to the department for a permit within 180 days of
 15342 receipt of notice, unless permission for a later date is granted by the department.

15343 B. Application requirements for stormwater discharges associated with large and small
 15344 construction activity.

15345 1. Dischargers of stormwater associated with large and small construction activity are
 15346 required to apply for an individual permit or seek coverage under a promulgated
 15347 stormwater general permit. Facilities that are required to obtain an individual permit, or
 15348 any discharge of stormwater that the department is evaluating for designation under
 15349 subdivision A 1 e of this section and is not a municipal separate storm sewer, shall submit
 15350 a state application in accordance with the requirements of 9VAC25-875-920 as modified
 15351 and supplemented by the provisions of this subsection.

15352 a. The operator of an existing or new stormwater discharge that is associated with a
 15353 large or small construction activity shall provide a narrative description of:

15354 (1) The location (including a map) and the nature of the construction activity;

15355 (2) The total area of the site and the area of the site that is expected to undergo
 15356 excavation during the life of the permit;

15357 (3) Proposed measures, including best management practices, to control pollutants in
 15358 stormwater discharges during construction, including a brief description of applicable
 15359 state and VESCP requirements;

15360 (4) Proposed measures to control pollutants in stormwater discharges that will occur
 15361 after construction operations have been completed, including a brief description of
 15362 applicable state or local VESCP requirements;

- 15363 (5) An estimate of the runoff coefficient of the site and the increase in impervious area
 15364 after the construction addressed in the permit application is completed, the nature of
 15365 fill material and existing data describing the soil or the quality of the discharge;
- 15366 (6) The name of the receiving water; and
- 15367 (7) The location of Chesapeake Bay Preservation Areas.
- 15368 b. Permit applicants shall provide such other information the department may
 15369 reasonably require to determine whether to issue a permit.
- 15370 C. Application requirements for large and medium municipal separate storm sewer
 15371 discharges. The operator of a discharge from a large or medium municipal separate storm sewer
 15372 or a municipal separate storm sewer that is designated by the department under subdivision A 1
 15373 e of this section may submit a jurisdiction-wide or system-wide permit application. Where more
 15374 than one public entity owns or operates a municipal separate storm sewer within a geographic
 15375 area (including adjacent or interconnected municipal separate storm sewer systems), such
 15376 operators may be a permit coapplicant to the same application. Permit applications for discharges
 15377 from large and medium municipal storm sewers or municipal storm sewers designated under
 15378 subdivision A 1 e of this section shall include;
- 15379 1. Part 1 of the application shall consist of:
- 15380 a. The permit applicants' name, address, telephone number, and email address;
 15381 ownership status; status as a state or local government entity; and the name, address,
 15382 telephone number, and email address of a contact person;
- 15383 b. A description of existing legal authority to control discharges to the municipal
 15384 separate storm sewer system. When existing legal authority is not sufficient to meet
 15385 the criteria provided in subdivision 2 a of this subsection, the description shall list
 15386 additional authorities as will be necessary to meet the criteria and shall include a
 15387 schedule and commitment to seek such additional authority that will be needed to meet
 15388 the criteria;
- 15389 c. Source identification.
- 15390 (1) A description of the historic use of ordinances, guidance or other controls that
 15391 limited the discharge of nonstormwater discharges to any publicly owned treatment
 15392 works serving the same area as the municipal separate storm sewer system.
- 15393 (2) A USGS 7.5 minute topographic map (or equivalent topographic map with a scale
 15394 between 1:10,000 and 1:24,000, if cost effective) extending one mile beyond the
 15395 service boundaries of the municipal storm sewer system covered by the permit
 15396 application. The following information shall be provided:
- 15397 (a) The location of known municipal storm sewer system outfalls discharging to surface
 15398 waters;
- 15399 (b) A description of the land use activities (e.g., divisions indicating undeveloped,
 15400 residential, commercial, agricultural, and industrial uses) accompanied with estimates
 15401 of population densities and projected growth for a 10-year period within the drainage
 15402 area served by the separate storm sewer. For each land use type, an estimate of an
 15403 average runoff coefficient shall be provided;
- 15404 (c) The location and a description of the activities of the facility of each currently
 15405 operating or closed municipal landfill or other treatment, storage or disposal facility for
 15406 municipal waste;
- 15407 (d) The location and the permit number of any known discharge to the municipal storm
 15408 sewer that has been issued a permit;

- 15409 (e) The location of major structural controls for stormwater discharge (retention basins,
15410 detention basins, major infiltration devices, etc.); and
- 15411 (f) The identification of publicly owned parks, recreational areas, and other open lands;
15412 d. Discharge characterization.
- 15413 (1) Monthly mean rain and snow fall estimates (or summary of weather bureau data)
15414 and the monthly average number of storm events.
- 15415 (2) Existing quantitative data describing the volume and quality of discharges from the
15416 municipal storm sewer, including a description of the outfalls sampled, sampling
15417 procedures and analytical methods used.
- 15418 (3) A list of water bodies that receive discharges from the municipal separate storm
15419 sewer system, including downstream segments, lakes and estuaries, where pollutants
15420 from the system discharges may accumulate and cause water degradation and a brief
15421 description of known water quality impacts. At a minimum, the description of impacts
15422 shall include a description of whether the water bodies receiving such discharges have
15423 been:
- 15424 (a) Assessed and reported in § 305(b) of the CWA reports submitted by the state, the
15425 basis for the assessment (evaluated or monitored), a summary of designated use
15426 support and attainment of the State Water Control Law and the CWA goals (fishable
15427 and swimmable waters), and causes of nonsupport of designated uses;
- 15428 (b) Listed under § 304(l)(1)(A)(i), 304(l)(1)(A)(ii), or 304(l)(1)(B) of the CWA that is not
15429 expected to meet water quality standards or water quality goals;
- 15430 (c) Listed in State Nonpoint Source Assessments required by § 319(a) of the CWA
15431 that, without additional action to control nonpoint sources of pollution, cannot
15432 reasonably be expected to attain or maintain water quality standards due to storm
15433 sewers, construction, highway maintenance and runoff from municipal landfills and
15434 municipal sludge adding significant pollution (or contributing to a violation of water
15435 quality standards);
- 15436 (d) Identified and classified according to eutrophic condition of publicly owned lakes
15437 listed in state reports required under § 314(a) of the CWA (include the following: a
15438 description of those publicly owned lakes for which uses are known to be impaired; a
15439 description of procedures, processes, and methods to control the discharge of
15440 pollutants from municipal separate storm sewers into such lakes; and a description of
15441 methods and procedures to restore the quality of such lakes);
- 15442 (e) Areas of concern of the Great Lakes identified by the International Joint
15443 Commission;
- 15444 (f) Designated estuaries under the National Estuary Program under § 320 of the CWA;
- 15445 (g) Recognized by the permit applicant as highly valued or sensitive waters;
- 15446 (h) Defined by the state or U.S. Fish and Wildlife Service's National Wetlands Inventory
15447 as wetlands; and
- 15448 (i) Found to have pollutants in bottom sediments, fish tissue or biosurvey data.
- 15449 (4) Results of a field screening analysis for illicit connections and illegal dumping for
15450 either selected field screening points or major outfalls covered in the permit
15451 application. At a minimum, a screening analysis shall include a narrative description,
15452 for either each field screening point or major outfall, of visual observations made during
15453 dry weather periods. If any flow is observed, two grab samples shall be collected
15454 during a 24-hour period with a minimum period of four hours between samples. For all
15455 such samples, a narrative description of the color, odor, turbidity, the presence of an

15456 oil sheen or surface scum as well as any other relevant observations regarding the
15457 potential presence of nonstormwater discharges or illegal dumping shall be provided.
15458 In addition, a narrative description of the results of a field analysis using suitable
15459 methods to estimate pH, total chlorine, total copper, total phenol, and detergents (or
15460 surfactants) shall be provided along with a description of the flow rate. Where the field
15461 analysis does not involve analytical methods approved under 40 CFR Part 136, the
15462 permit applicant shall provide a description of the method used including the name of
15463 the manufacturer of the test method along with the range and accuracy of the test.
15464 Field screening points shall be either major outfalls or other outfall points (or any other
15465 point of access such as manholes) randomly located throughout the storm sewer
15466 system by placing a grid over a drainage system map and identifying those cells of the
15467 grid which contain a segment of the storm sewer system or major outfall. The field
15468 screening points shall be established using the following guidelines and criteria:
15469 (a) A grid system consisting of perpendicular north-south and east-west lines spaced
15470 1/4 mile apart shall be overlaid on a map of the municipal storm sewer system, creating
15471 a series of cells;
15472 (b) All cells that contain a segment of the storm sewer system shall be identified; one
15473 field screening point shall be selected in each cell; major outfalls may be used as field
15474 screening points;
15475 (c) Field screening points should be located downstream of any sources of suspected
15476 illegal or illicit activity;
15477 (d) Field screening points shall be located to the degree practicable at the farthest
15478 manhole or other accessible location downstream in the system, within each cell;
15479 however, safety of personnel and accessibility of the location should be considered in
15480 making this determination;
15481 (e) Hydrological conditions; total drainage area of the site; population density of the
15482 site; traffic density; age of the structures or buildings in the area; history of the area;
15483 and land use types;
15484 (f) For medium municipal separate storm sewer systems, no more than 250 cells need
15485 to have identified field screening points; in large municipal separate storm sewer
15486 systems, no more than 500 cells need to have identified field screening points; cells
15487 established by the grid that contain no storm sewer segments will be eliminated from
15488 consideration; if fewer than 250 cells in medium municipal sewers are created, and
15489 fewer than 500 in large systems are created by the overlay on the municipal sewer
15490 map, then all those cells which contain a segment of the sewer system shall be subject
15491 to field screening (unless access to the separate storm sewer system is impossible);
15492 and
15493 (g) Large or medium municipal separate storm sewer systems which are unable to
15494 utilize the procedures described in subdivisions 1 d (4) (a) through (f) of this
15495 subsection, because a sufficiently detailed map of the separate storm sewer systems
15496 is unavailable, shall field screen no more than 500 or 250 major outfalls respectively
15497 (or all major outfalls in the system, if less); in such circumstances, the permit applicant
15498 shall establish a grid system consisting of north-south and east-west lines spaced 1/4
15499 mile apart as an overlay to the boundaries of the municipal storm sewer system,
15500 thereby creating a series of cells; the permit applicant will then select major outfalls in
15501 as many cells as possible until at least 500 major outfalls (large municipalities) or 250
15502 major outfalls (medium municipalities) are selected; a field screening analysis shall be
15503 undertaken at these major outfalls.

15504 (5) Information and a proposed program to meet the requirements of subdivision 2 c
 15505 of this subsection. Such description shall include: the location of outfalls or field
 15506 screening points appropriate for representative data collection under subdivision 2 c
 15507 (1) of this subsection, a description of why the outfall or field screening point is
 15508 representative, the seasons during which sampling is intended, and a description of
 15509 the sampling equipment. The proposed location of outfalls or field screening points for
 15510 such sampling should reflect water quality concerns (see subdivision 1 d (3) of this
 15511 subsection) to the extent practicable;

15512 e. Management programs.

15513 (1) A description of the existing management programs to control pollutants from the
 15514 municipal separate storm sewer system. The description shall provide information on
 15515 existing structural and source controls, including operation and maintenance
 15516 measures for structural controls, that are currently being implemented. Such controls
 15517 may include, but are not limited to, procedures to control pollution resulting from
 15518 construction activities, floodplain management controls, wetland protection measures,
 15519 best management practices for new subdivisions; and emergency spill response
 15520 programs. The description may address controls established under state law as well
 15521 as local requirements.

15522 (2) A description of the existing program to identify illicit connections to the municipal
 15523 storm sewer system. The description should include inspection procedures and
 15524 methods for detecting and preventing illicit discharges, and describe areas where this
 15525 program has been implemented; and

15526 f. Fiscal resources. A description of the financial resources currently available to the
 15527 municipality to complete Part 2 of the permit application. A description of the
 15528 municipality's budget for existing stormwater programs, including an overview of the
 15529 municipality's financial resources and budget, including overall indebtedness and
 15530 assets, and sources of funds for stormwater programs.

15531 2. Part 2 of the application shall consist of:

15532 a. A demonstration that the permit applicant can operate pursuant to legal authority
 15533 established by statute, ordinance or series of contracts that authorizes or enables the
 15534 permit applicant at a minimum to:

15535 (1) Control through ordinance, permit, contract, order or similar means, the
 15536 contribution of pollutants to the municipal storm sewer by stormwater discharges
 15537 associated with industrial activity and the quality of stormwater discharged from sites
 15538 of industrial activity;

15539 (2) Prohibit through ordinance, order or similar means, illicit discharges to the
 15540 municipal separate storm sewer;

15541 (3) Control through ordinance, order or similar means the discharge to a municipal
 15542 separate storm sewer of spills, dumping or disposal of materials other than stormwater;

15543 (4) Control through interagency agreements among permit coapplicants the
 15544 contribution of pollutants from one portion of the municipal system to another portion
 15545 of the municipal system;

15546 (5) Require compliance with conditions in ordinances, permits, contracts or orders;
 15547 and

15548 (6) Carry out all inspection, surveillance and monitoring procedures necessary to
 15549 determine compliance and noncompliance with permit conditions including the
 15550 prohibition on illicit discharges to the municipal separate storm sewer;

15551 b. The location of any major outfall that discharges to surface waters that was not
 15552 reported under subdivision 1 c (2) (a) of this subsection. Provide an inventory,
 15553 organized by watershed of the name and address, and a description (such as SIC
 15554 codes) that best reflects the principal products or services provided by each facility
 15555 that may discharge, to the municipal separate storm sewer, stormwater associated
 15556 with industrial activity;

15557 c. When quantitative data for a pollutant are required under subdivision 2 c (1) (c) of
 15558 this subsection, the permit applicant must collect a sample of effluent in accordance
 15559 with 9VAC25-875-960 and analyze it for the pollutant in accordance with analytical
 15560 methods approved under 40 CFR Part 136. When no analytical method is approved
 15561 the permit applicant may use any suitable method but must provide a description of
 15562 the method. The permit applicant must provide information characterizing the quality
 15563 and quantity of discharges covered in the permit application, including:

15564 (1) Quantitative data from representative outfalls designated by the department (based
 15565 on information received in Part 1 of the application, the department shall designate
 15566 between five and 10 outfalls or field screening points as representative of the
 15567 commercial, residential and industrial land use activities of the drainage area
 15568 contributing to the system or, where there are less than five outfalls) covered in the
 15569 application, the department shall designate all outfalls developed as follows:

15570 (a) For each outfall or field screening point designated under this subsection, samples
 15571 shall be collected of stormwater discharges from three storm events occurring at least
 15572 one month apart in accordance with the requirements at 9VAC25-875-960 (the
 15573 department may allow exemptions to sampling three storm events when climatic
 15574 conditions create good cause for such exemptions);

15575 (b) A narrative description shall be provided of the date and duration of the storm event
 15576 or events sampled, rainfall estimates of the storm event which generated the sampled
 15577 discharge and the duration between the storm event sampled and the end of the
 15578 previous measurable (greater than 0.1 inch rainfall) storm event;

15579 (c) For samples collected and described under subdivisions 2 c (1) (a) and (1) (b) of
 15580 this subsection, quantitative data shall be provided for: the organic pollutants listed in
 15581 Table II; the pollutants listed in Table III (toxic metals, cyanide, and total phenols) of
 15582 40 CFR Part 122 Appendix D, and for the following pollutants:

15583 Total suspended solids (TSS)

15584 Total dissolved solids (TDS)

15585 Chemical oxygen demand (COD)

15586 Biochemical oxygen demand (BOD₅)

15587 Oil and grease

15588 Fecal coliform

15589 Fecal streptococcus

15590 pH

15591 Total Kjeldahl nitrogen

15592 Nitrate plus nitrite

15593 Dissolved phosphorus

15594 Total ammonia plus organic nitrogen

15595 Total phosphorus

15596 (d) Additional limited quantitative data required by the department for determining
15597 permit conditions (the department may require that quantitative data shall be provided
15598 for additional parameters, and may establish sampling conditions such as the location,
15599 season of sample collection, form of precipitation (snow melt, rainfall) and other
15600 parameters necessary to ensure representativeness):

15601 (2) Estimates of the annual pollutant load of the cumulative discharges to surface
15602 waters from all identified municipal outfalls and the event mean concentration of the
15603 cumulative discharges to surface waters from all identified municipal outfalls during a
15604 storm event (as described under 9VAC25-875-960) for BOD₅, COD, TSS, dissolved
15605 solids, total nitrogen, total ammonia plus organic nitrogen, total phosphorus, dissolved
15606 phosphorus, cadmium, copper, lead, and zinc. Estimates shall be accompanied by a
15607 description of the procedures for estimating constituent loads and concentrations,
15608 including any modeling, data analysis, and calculation methods:

15609 (3) A proposed schedule to provide estimates for each major outfall identified in either
15610 subdivision 2 b or 1 c (2) (a) of this subsection of the seasonal pollutant load and of
15611 the event mean concentration of a representative storm for any constituent detected
15612 in any sample required under subdivision 2 c (1) of this subsection; and

15613 (4) A proposed monitoring program for representative data collection for the term of
15614 the permit that describes the location of outfalls or field screening points to be sampled
15615 (or the location of instream stations), why the location is representative, the frequency
15616 of sampling, parameters to be sampled, and a description of sampling equipment;

15617 d. A proposed management program that covers the duration of the permit. It shall
15618 include a comprehensive planning process that involves public participation and,
15619 where necessary, intergovernmental coordination to reduce the discharge of pollutants
15620 to the maximum extent practicable using management practices, control techniques
15621 and system, design and engineering methods, and such other provisions that are
15622 appropriate. The program shall also include a description of staff and equipment
15623 available to implement the program. Separate proposed programs may be submitted
15624 by each permit coapplicant. Proposed programs may impose controls on a system
15625 wide basis, a watershed basis, a jurisdiction basis, or on individual outfalls. Proposed
15626 programs will be considered by the department when developing permit conditions to
15627 reduce pollutants in discharges to the maximum extent practicable. Proposed
15628 management programs shall describe priorities for implementing controls. Such
15629 programs shall be based on:

15630 (1) A description of structural and source control measures to reduce pollutants from
15631 runoff from commercial and residential areas that are discharged from the municipal
15632 storm sewer system that are to be implemented during the life of the permit,
15633 accompanied with an estimate of the expected reduction of pollutant loads and a
15634 proposed schedule for implementing such controls. At a minimum, the description shall
15635 include:

15636 (a) A description of maintenance activities and a maintenance schedule for structural
15637 controls to reduce pollutants (including floatables) in discharges from municipal
15638 separate storm sewers;

15639 (b) A description of planning procedures including a comprehensive master plan to
15640 develop, implement and enforce controls to reduce the discharge of pollutants from
15641 municipal separate storm sewers which receive discharges from areas of new
15642 development and significant redevelopment. Such plan shall address controls to
15643 reduce pollutants in discharges from municipal separate storm sewers after
15644 construction is completed. Controls to reduce pollutants in discharges from municipal

- 15645 separate storm sewers containing construction site runoff are addressed in subdivision
15646 2 d (4) of this subsection;
- 15647 (c) A description of practices for operating and maintaining public streets, roads and
15648 highways and procedures for reducing the impact on receiving waters of discharges
15649 from municipal storm sewer systems, including pollutants discharged as a result of
15650 deicing activities;
- 15651 (d) A description of procedures to assure that flood management projects assess the
15652 impacts on the water quality of receiving water bodies and that existing structural flood
15653 control devices have been evaluated to determine if retrofitting the device to provide
15654 additional pollutant removal from stormwater is feasible;
- 15655 (e) A description of a program to monitor pollutants in runoff from operating or closed
15656 municipal landfills or other treatment, storage or disposal facilities for municipal waste,
15657 which shall identify priorities and procedures for inspections and establishing and
15658 implementing control measures for such discharges (this program can be coordinated
15659 with the program developed under subdivision 2 d (3) of this subsection); and
- 15660 (f) A description of a program to reduce to the maximum extent practicable, pollutants
15661 in discharges from municipal separate storm sewers associated with the application of
15662 pesticides, herbicides and fertilizer that will include, as appropriate, controls such as
15663 educational activities, permits, certifications and other measures for commercial
15664 applicators and distributors, and controls for application in public right-of-ways and at
15665 municipal facilities;
- 15666 (2) A description of a program, including a schedule, to detect and remove (or require
15667 the discharger to the municipal separate storm sewer to obtain a separate permit for)
15668 illicit discharges and improper disposal into the storm sewer. The proposed program
15669 shall include:
- 15670 (a) A description of a program, including inspections, to implement and enforce an
15671 ordinance, orders or similar means to prevent illicit discharges to the municipal
15672 separate storm sewer system; this program description shall address all types of illicit
15673 discharges, however the following category of nonstormwater discharges or flows shall
15674 be addressed where such discharges are identified by the municipality as sources of
15675 pollutants to surface waters: water line flushing, landscape irrigation, diverted stream
15676 flows, rising groundwaters, uncontaminated groundwater infiltration to separate storm
15677 sewers, uncontaminated pumped groundwater, discharges from potable water
15678 sources, foundation drains, air conditioning condensation, irrigation water, springs,
15679 water from crawl space pumps, footing drains, lawn watering, individual residential car
15680 washing, flows from riparian habitats and wetlands, dechlorinated swimming pool
15681 discharges, and street wash water (program descriptions shall address discharges or
15682 flows from firefighting only where such discharges or flows are identified as significant
15683 sources of pollutants to surface waters);
- 15684 (b) A description of procedures to conduct on-going field screening activities during
15685 the life of the permit, including areas or locations that will be evaluated by such field
15686 screens;
- 15687 (c) A description of procedures to be followed to investigate portions of the separate
15688 storm sewer system that, based on the results of the field screen, or other appropriate
15689 information, indicate a reasonable potential of containing illicit discharges or other
15690 sources of nonstormwater (such procedures may include: sampling procedures for
15691 constituents such as fecal coliform, fecal streptococcus, surfactants (Methylene Blue
15692 Active Substances—MBAS), residual chlorine, fluorides and potassium; testing with
15693 fluorometric dyes; or conducting in storm sewer inspections where safety and other

15694 considerations allow. Such description shall include the location of storm sewers that
15695 have been identified for such evaluation);

15696 (d) A description of procedures to prevent, contain, and respond to spills that may
15697 discharge into the municipal separate storm sewer;

15698 (e) A description of a program to promote, publicize, and facilitate public reporting of
15699 the presence of illicit discharges or water quality impacts associated with discharges
15700 from municipal separate storm sewers;

15701 (f) A description of educational activities, public information activities, and other
15702 appropriate activities to facilitate the proper management and disposal of used oil and
15703 toxic materials; and

15704 (g) A description of controls to limit infiltration of seepage from municipal sanitary
15705 sewers to municipal separate storm sewer systems where necessary.

15706 (3) A description of a program to monitor and control pollutants in stormwater
15707 discharges to municipal systems from municipal landfills, hazardous waste treatment,
15708 disposal and recovery facilities, industrial facilities that are subject to § 313 of Title III
15709 of the Superfund Amendments and Reauthorization Act of 1986 (SARA, 42 USC §
15710 11023), and industrial facilities that the municipal permit applicant determines are
15711 contributing a substantial pollutant loading to the municipal storm sewer system. The
15712 program shall:

15713 (a) Identify priorities and procedures for inspections and establishing and
15714 implementing control measures for such discharges;

15715 (b) Describe a monitoring program for stormwater discharges associated with the
15716 industrial facilities identified in subdivision 2 d (3) of this subsection, to be implemented
15717 during the term of the permit, including the submission of quantitative data on the
15718 following constituents: any pollutants limited in effluent guidelines subcategories,
15719 where applicable; any pollutant listed in an existing separate VPDES permit for a
15720 facility; oil and grease, COD, pH, BOD₅, TSS, total phosphorus, total Kjeldahl nitrogen,
15721 nitrate plus nitrite nitrogen, and any information on discharges required under
15722 9VAC25-875-960 F and G; and

15723 (4) A description of a program to implement and maintain structural and nonstructural
15724 best management practices to reduce pollutants in stormwater runoff from
15725 construction sites to the municipal storm sewer system, which shall include:

15726 (a) A description of procedures for site planning that incorporate consideration of
15727 potential water quality impacts;

15728 (b) A description of requirements for nonstructural and structural best management
15729 practices;

15730 (c) A description of procedures for identifying priorities for inspecting sites and
15731 enforcing control measures that consider the nature of the construction activity,
15732 topography, and the characteristics of soils and receiving water quality; and

15733 (d) A description of appropriate educational and training measures for construction site
15734 operators;

15735 e. Estimated reductions in loadings of pollutants from discharges of municipal storm
15736 sewer constituents from municipal storm sewer systems expected as the result of the
15737 municipal stormwater quality management program. The assessment shall also
15738 identify known impacts of stormwater controls on groundwater;

15739 f. For each fiscal year to be covered by the permit, a fiscal analysis of the necessary
15740 capital and operation and maintenance expenditures necessary to accomplish the

15741 activities of the programs under subdivisions 2 c and d of this subsection. Such
 15742 analysis shall include a description of the source of funds that are proposed to meet
 15743 the necessary expenditures, including legal restrictions on the use of such funds;

15744 g. Where more than one legal entity submits an application, the application shall
 15745 contain a description of the roles and responsibilities of each legal entity and
 15746 procedures to ensure effective coordination; and

15747 h. Where requirements under subdivisions 1 d (5), 2 b, 2 c (2), and 2 d of this
 15748 subsection are not practicable or are not applicable, the department may exclude any
 15749 operator of a discharge from a municipal separate storm sewer that is designated
 15750 under subdivision A 1 e of this section, or that is located in the counties listed in 40
 15751 CFR Part 122 Appendix H or Appendix I (except municipal separate storm sewers that
 15752 are located in the incorporated places, townships or towns within such counties) from
 15753 such requirements. The department shall not exclude the operator of a discharge from
 15754 a municipal separate storm sewer identified in 40 CFR Part 122 Appendix F, G, H or I
 15755 from any of the permit application requirements under this subdivision except where
 15756 authorized under this subsection.

15757 D. Petitions.

15758 1. Any operator of a municipal separate storm sewer system may petition the appropriate
 15759 authority or the department to require a separate permit for any discharge into the
 15760 municipal separate storm sewer system.

15761 2. Any person may petition the department to require a permit for a discharge which is
 15762 composed entirely of stormwater which contributes to a violation of a water quality
 15763 standard or is a significant contributor of pollutants to surface waters.

15764 3. Any person may petition the department for the designation of a large, medium, or small
 15765 municipal separate storm sewer system as defined by this chapter.

15766 4. The department shall make a final determination on any petition received under this
 15767 section within 90 days after receiving the petition with the exception of petitions to
 15768 designate a small MS4, in which case the department shall make a final determination on
 15769 the petition within 180 days after its receipt.

15770 **9VAC25-875-960. Effluent sampling procedures.**

15771 Permit applicants for discharges from large and small municipal storm sewers or municipal
 15772 storm sewers designated under 9VAC25-875-950 A 1 e shall provide the following information to
 15773 the department, using application forms provided by the department.

15774 A. Information on stormwater discharges that is to be provided as specified in 9VAC25-
 15775 875-950. When quantitative data for a pollutant are required, the permit applicant must
 15776 collect a sample of effluent and analyze it for the pollutant in accordance with analytical
 15777 methods approved under 40 CFR Part 136. When no analytical method is approved the
 15778 permit applicant may use any suitable method but must provide a description of the
 15779 method. When a permit applicant has two or more outfalls with substantially identical
 15780 effluents, the department may allow the permit applicant to test only one outfall and report
 15781 that the quantitative data also apply to the substantially identical outfalls. The requirements
 15782 in subsections E and F of this section that a permit applicant must provide quantitative
 15783 data for certain pollutants known or believed to be present do not apply to pollutants
 15784 present in a discharge solely as the result of their presence in intake water; however, an
 15785 applicant must report such pollutants as present. Grab samples must be used for pH,
 15786 temperature, cyanide, total phenols, residual chlorine, oil and grease, fecal coliform, and
 15787 fecal streptococcus. For all other pollutants, 24-hour composite samples must be used.
 15788 However, a minimum of one grab sample may be taken for effluents from holding ponds

15789 or other impoundments with a retention period greater than 24 hours. In addition, for
 15790 discharges other than stormwater discharges, the department may waive composite
 15791 sampling for any outfall for which the permit applicant demonstrates that the use of an
 15792 automatic sampler is infeasible and that the minimum of four grab samples will be a
 15793 representative sample of the effluent being discharged.

15794 B. For stormwater discharges, all samples shall be collected from the discharge resulting
 15795 from a storm event that is greater than 0.1 inch and at least 72 hours from the previously
 15796 measurable (greater than 0.1 inch rainfall) storm event. Where feasible, the variance in
 15797 the duration of the event and the total rainfall of the event should not exceed 50% from
 15798 the average or median rainfall event in that area. For all permit applicants, a flow-weighted
 15799 composite shall be taken for either the entire discharge or for the first three hours of the
 15800 discharge. The flow-weighted composite sample for a stormwater discharge may be taken
 15801 with a continuous sampler or as a combination of a minimum of three sample aliquots
 15802 taken in each hour of discharge for the entire discharge or for the first three hours of the
 15803 discharge, with each aliquot being separated by a minimum period of 15 minutes.
 15804 However, a minimum of one grab sample may be taken for stormwater discharges from
 15805 holding ponds or other impoundments with a retention period greater than 24 hours. For
 15806 a flow-weighted composite sample, only one analysis of the composite of aliquots is
 15807 required. For stormwater discharge samples taken from discharges associated with
 15808 industrial activities, quantitative data must be reported for the grab sample taken during
 15809 the first 30 minutes (or as soon thereafter as practicable) of the discharge for all pollutants
 15810 specified in 9VAC25-875-950 C 1. For all stormwater permit applicants taking flow-
 15811 weighted composites, quantitative data must be reported for all pollutants specified in
 15812 9VAC25-875-950 except pH, temperature, cyanide, total phenols, residual chlorine, oil
 15813 and grease, fecal coliform, and fecal streptococcus. The department may allow or
 15814 establish appropriate site-specific sampling procedures or requirements, including
 15815 sampling locations, the season in which the sampling takes place, the minimum duration
 15816 between the previous measurable storm event and the storm event sampled, the minimum
 15817 or maximum level of precipitation required for an appropriate storm event, the form of
 15818 precipitation sampled (snow melt or rain fall), protocols for collecting samples under 40
 15819 CFR Part 136, and additional time for submitting data on a case-by-case basis. A permit
 15820 applicant is expected to know or have reason to believe that a pollutant is present in an
 15821 effluent based on an evaluation of the expected use, production, or storage of the
 15822 pollutant, or on any previous analyses for the pollutant. (For example, any pesticide
 15823 manufactured by a facility may be expected to be present in contaminated stormwater
 15824 runoff from the facility.)

15825 C. Every permit applicant must report quantitative data for every outfall for the following
 15826 pollutants:

15827 Biochemical oxygen demand (BOD₅)

15828 Chemical oxygen demand

15829 Total organic carbon

15830 Total suspended solids

15831 Ammonia (as N)

15832 Temperature (both winter and summer)

15833 pH

15834 D. The department may waive the reporting requirements for individual point sources or
 15835 for a particular industry category for one or more of the pollutants listed in subsection C of
 15836 this section if the permit applicant has demonstrated that such a waiver is appropriate

15837 because information adequate to support issuance of a permit can be obtained with less
15838 stringent requirements.

15839 E. Each permit applicant with processes in one or more primary industry category (see 40
15840 CFR Part 122 Appendix A) contributing to a discharge must report quantitative data for
15841 the following pollutants in each outfall containing process wastewater:

15842 1. The organic toxic pollutants in the fractions designated in Table I of 40 CFR Part
15843 122 Appendix D for the permit applicant's industrial category or categories unless the
15844 permit applicant qualifies as a small business. Table II of 40 CFR Part 122 Appendix
15845 D lists the organic toxic pollutants in each fraction. The fractions result from the sample
15846 preparation required by the analytical procedure that uses gas chromatography/mass
15847 spectrometry. A determination that a permit applicant falls within a particular industrial
15848 category for the purposes of selecting fractions for testing is not conclusive as to the
15849 permit applicant's inclusion in that category for any other purposes; and

15850 2. The pollutants listed in Table III of 40 CFR Part 122 Appendix D (the toxic metals,
15851 cyanide, and total phenols).

15852 F. 1. Each permit applicant must indicate whether it knows or has reason to believe that
15853 any of the pollutants in Table IV of 40 CFR Part 122 Appendix D (certain conventional and
15854 nonconventional pollutants) is discharged from each outfall. If an applicable effluent
15855 limitations guideline either directly limits the pollutant or, by its express terms, indirectly
15856 limits the pollutant through limitations on an indicator, the permit applicant must report
15857 quantitative data. For every pollutant discharged that is not so limited in an effluent
15858 limitations guideline, the permit applicant must either report quantitative data or briefly
15859 describe the reasons the pollutant is expected to be discharged.

15860 2. Each applicant must indicate whether it knows or has reason to believe that any of
15861 the pollutants listed in Table II or Table III of 40 CFR Part 122 Appendix D (the toxic
15862 pollutants and total phenols) for which quantitative data are not otherwise required
15863 under subsection E of this section, is discharged from each outfall. For every pollutant
15864 expected to be discharged in concentrations of 10 ppb or greater the permit applicant
15865 must report quantitative data. For acrolein, acrylonitrile, 2,4 dinitrophenol, and 2-
15866 methyl-4,6 dinitrophenol, where any of these four pollutants are expected to be
15867 discharged in concentrations of 100 ppb or greater the permit applicant must report
15868 quantitative data. For every pollutant expected to be discharged in concentrations less
15869 than 10 ppb, or in the case of acrolein, acrylonitrile, 2,4 dinitrophenol, and 2-methyl-
15870 4,6 dinitrophenol, in concentrations less than 100 ppb, the permit applicant must either
15871 submit quantitative data or briefly describe the reasons the pollutant is expected to be
15872 discharged. A permit applicant qualifying as a small business is not required to analyze
15873 for pollutants listed in Table II of 40 CFR Part 122 Appendix D (the organic toxic
15874 pollutants).

15875 G. Each permit applicant must indicate whether it knows or has reason to believe that any
15876 of the pollutants in Table V of 40 CFR Part 122 Appendix D (certain hazardous substances
15877 and asbestos) are discharged from each outfall. For every pollutant expected to be
15878 discharged, the permit applicant must briefly describe the reasons the pollutant is
15879 expected to be discharged, and report any quantitative data it has for any pollutant.

15880 H. Each permit applicant must report qualitative data, generated using a screening
15881 procedure not calibrated with analytical standards, for 2,3,7,8-tetrachlorodibenzo-p-dioxin
15882 (TCDD) if it:

15883 1. Uses or manufactures 2,4,5-trichlorophenoxy acetic acid (2,4,5,-T); 2-(2,4,5-
15884 trichlorophenoxy) propanoic acid (Silvex, 2,4,5,-TP); 2-(2,4,5-trichlorophenoxy) ethyl,
15885 2,2-dichloropropionate (Erbon); O,O-dimethyl O-(2,4,5-trichlorophenyl)

15886 phosphorothioate (Ronnel); 2,4,5-trichlorophenol (TCP); or hexachlorophene (HCP);
 15887 or

15888 2. Knows or has reason to believe that TCDD is or may be present in an effluent.

15889 **9VAC25-875-970. Small municipal separate storm sewer systems.**

15890 A. Objectives of the stormwater regulations for small MS4s.

15891 1. Subsections A through G of this section are written in a "readable regulation" format
 15892 that includes both rule requirements and guidance. The recommended guidance is
 15893 distinguished from the regulatory requirements by putting the guidance in a separate
 15894 subdivision headed by the word "Note."

15895 2. Under the statutory mandate in § 402(p)(6) of the Clean Water Act, the purpose of this
 15896 portion of the stormwater program is to designate additional sources that need to be
 15897 regulated to protect water quality and to establish a comprehensive stormwater program
 15898 to regulate these sources.

15899 3. Stormwater runoff continues to harm the nation's waters. Runoff from lands modified by
 15900 human activities can harm surface water resources in several ways including by changing
 15901 natural hydrologic patterns and by elevating pollutant concentrations and loadings.
 15902 Stormwater runoff may contain or mobilize high levels of contaminants, such as sediment,
 15903 suspended solids, nutrients, heavy metals, pathogens, toxins, oxygen-demanding
 15904 substances, and floatables.

15905 4. The department strongly encourages partnerships and the watershed approach as the
 15906 management framework for efficiently, effectively, and consistently protecting and
 15907 restoring aquatic ecosystems and protecting public health.

15908 B. As an operator of a small MS4, am I regulated under the state's stormwater program?

15909 1. Unless you qualify for a waiver under subdivision 3 of this subsection, you are regulated
 15910 if you operate a small MS4, including but not limited to systems operated by federal, state,
 15911 tribal, and local governments, including the Virginia Department of Transportation; and

15912 a. Your small MS4 is located in an urbanized area as determined by the latest
 15913 decennial census by the Bureau of the Census (If your small MS4 is not located
 15914 entirely within an urbanized area, only the portion that is within the urbanized area is
 15915 regulated); or

15916 b. You are designated by the department, including where the designation is pursuant
 15917 to subdivisions C 3 a and b of this section or is based upon a petition under 9VAC25-
 15918 875-950 D.

15919 2. You may be the subject of a petition to the department to require a permit for your
 15920 discharge of stormwater. If the department determines that you need a permit, you are
 15921 required to comply with subsections C through E of this section.

15922 3. The department may waive the requirements otherwise applicable to you if you meet
 15923 the criteria of subdivision 4 or 5 of this subsection. If you receive a waiver under this
 15924 section, you may subsequently be required to seek coverage under a permit in accordance
 15925 with subdivision C 1 of this section if circumstances change. (See also subdivision E 2 of
 15926 this section).

15927 4. The department may waive permit coverage if your MS4 serves a population of less
 15928 than 1,000 within the urbanized area and you meet the following criteria:

15929 a. Your system is not contributing substantially to the pollutant loadings of a physically
 15930 interconnected MS4 that is regulated by the department; and

15931 b. If you discharge any pollutants that have been identified as a cause of impairment
 15932 of any water body to which you discharge, stormwater controls are not needed based

15933 on wasteload allocations that are part of an approved "total maximum daily load"
 15934 (TMDL) that addresses the pollutants of concern.

15935 5. The department may waive permit coverage if your MS4 serves a population under
 15936 10,000 and you meet the following criteria:

15937 a. The department has evaluated all surface waters, including small streams,
 15938 tributaries, lakes, and ponds, that receive a discharge from your MS4;

15939 b. For all such waters, the department has determined that stormwater controls are
 15940 not needed based on wasteload allocations that are part of an approved TMDL that
 15941 addresses the pollutants of concern or, if a TMDL has not been developed or
 15942 approved, an equivalent analysis that determines sources and allocations for the
 15943 pollutants of concern;

15944 c. For the purpose of subdivision 5 of this subsection, the pollutants of concern include
 15945 biochemical oxygen demand (BOD), sediment or a parameter that addresses
 15946 sediment (such as total suspended solids, turbidity or siltation), pathogens, oil and
 15947 grease, and any pollutant that has been identified as a cause of impairment of any
 15948 water body that will receive a discharge from your MS4; and

15949 d. The department has determined that future discharges from your MS4 do not have
 15950 the potential to result in exceedances of water quality standards, including impairment
 15951 of designated uses, or other significant water quality impacts, including habitat and
 15952 biological impacts.

15953 C. If I am an operator of a regulated small MS4, how do I apply for a permit and when do I
 15954 have to apply?

15955 1. If you operate a regulated small MS4 under subsection B of this section, you must seek
 15956 coverage under a permit issued by the department.

15957 2. You must seek authorization to discharge under a general or individual permit, as
 15958 follows:

15959 a. If the department has issued a general permit applicable to your discharge and you
 15960 are seeking coverage under the general permit, you must submit a registration
 15961 statement that includes the information on your best management practices and
 15962 measurable goals required by subdivision D 4 of this section. You may file your own
 15963 registration statement, or you and other municipalities or governmental entities may
 15964 jointly submit a registration statement. If you want to share responsibilities for meeting
 15965 the minimum measures with other municipalities or governmental entities, you must
 15966 submit a registration statement that describes which minimum measures you will
 15967 implement and identify the entities that will implement the other minimum measures
 15968 within the area served by your MS4. The general permit will explain any other steps
 15969 necessary to obtain permit authorization.

15970 b. (1) If you are seeking authorization to discharge under an individual permit and wish
 15971 to implement a program under subsection D of this section, you must submit an
 15972 application to the department that includes the information required under 9VAC25-
 15973 875-920 F and subdivision D 4 of this section, an estimate of square mileage served
 15974 by your small MS4, and any additional information that the department requests. A
 15975 storm sewer map that satisfies the requirement of subdivision D 2 c (1) of this section
 15976 will satisfy the map requirement in 9VAC25-875-920 F 7.

15977 (2) If you are seeking authorization to discharge under an individual permit and wish
 15978 to implement a program that is different from the program under subsection D of this
 15979 section, you will need to comply with the permit application requirements of 9VAC25-
 15980 875-950 C. You must submit both parts of the application requirements in 9VAC25-

15981 875-950 C 1 and 2 by March 10, 2003. You do not need to submit the information
15982 required by 9VAC25-875-950 C 1 b and C 2 regarding your legal authority, unless you
15983 intend for the permit writer to take such information into account when developing your
15984 other permit conditions.

15985 (3) If allowed by the department, you and another regulated entity may jointly apply
15986 under either subdivision 2 b (1) or (2) of this subsection to be state co-permittees under
15987 an individual permit.

15988 c. If your small MS4 is in the same urbanized area as a medium or large MS4 with a
15989 permit and that other MS4 is willing to have you participate in its stormwater program,
15990 you and the other MS4 may jointly seek a modification of the other MS4 permit to
15991 include you as a limited state co-permittee. As a limited state co-permittee, you will be
15992 responsible for compliance with the permit's conditions applicable to your jurisdiction.
15993 If you choose this option you will need to comply with the permit application
15994 requirements of 9VAC25-875-950, rather than the requirements of subsection D of this
15995 section. You do not need to comply with the specific application requirements of
15996 9VAC25-875-950 C 1 c and d and 9VAC25-875-950 C 2 c (discharge
15997 characterization). You may satisfy the requirements in 9VAC25-875-950 C 1 e and 2
15998 d (identification of a management program) by referring to the other MS4's stormwater
15999 management program.

16000 d. NOTE: In referencing an MS4's stormwater management program, you should
16001 briefly describe how the existing plan will address discharges from your small MS4 or
16002 would need to be supplemented in order to adequately address your discharges. You
16003 should also explain your role in coordinating stormwater pollutant control activities in
16004 your MS4 and detail the resources available to you to accomplish the plan.

16005 3. If you operate a regulated small MS4:

16006 a. Designated under subdivision B 1 a of this section, you must apply for coverage
16007 under a permit or apply for a modification of an existing permit under subdivision 2 c
16008 of this subsection within 180 days of notice, unless the department grants a later date.

16009 b. Designated under subdivision B 1 b of this section, you must apply for coverage
16010 under a permit or apply for a modification of an existing permit under subdivision 2 c
16011 of this subsection within 180 days of notice, unless the department grants a later date.

16012 D. As an operator of a regulated small MS4, what will my MS4 permit require?

16013 1. Your MS4 permit will require at a minimum that you develop, implement, and enforce a
16014 stormwater management program designed to reduce the discharge of pollutants from
16015 your MS4 to the maximum extent practicable (MEP), to protect water quality, and to satisfy
16016 the appropriate water quality requirements of the Clean Water Act, the Virginia Erosion
16017 and Stormwater Management Act, and the State Water Control Law. Your stormwater
16018 management program must include the minimum control measures described in
16019 subdivision 2 of this subsection unless you apply for a permit under 9VAC25-875-950 C.
16020 For purposes of this section, narrative effluent limitations requiring implementation of best
16021 management practices (BMPs) are generally the most appropriate form of effluent
16022 limitations when designed to satisfy technology requirements (including reductions of
16023 pollutants to the maximum extent practicable) and to protect water quality. Implementation
16024 of best management practices consistent with the provisions of the stormwater
16025 management program required pursuant to this section and the provisions of the permit
16026 required pursuant to subsection C of this section constitutes compliance with the standard
16027 of reducing pollutants to the maximum extent practicable. The department will specify a
16028 time period of up to five years from the date of permit issuance for you to develop and
16029 implement your program.

16030 2. Minimum control measures.

16031 a. Public education and outreach on stormwater impacts.

16032 (1) You must implement a public education program to distribute educational materials
 16033 to the community or conduct equivalent outreach activities about the impacts of
 16034 stormwater discharges on water bodies and the steps that the public can take to
 16035 reduce pollutants in stormwater runoff.

16036 (2) NOTE: You may use stormwater educational materials provided by the state, your
 16037 tribe, EPA, environmental, public interest or trade organizations, or other MS4s. The
 16038 public education program should inform individuals and households about the steps
 16039 they can take to reduce stormwater pollution, such as ensuring proper septic system
 16040 maintenance, ensuring the proper use and disposal of landscape and garden
 16041 chemicals including fertilizers and pesticides, protecting and restoring riparian
 16042 vegetation, and properly disposing of used motor oil or household hazardous wastes.
 16043 The department recommends that the program inform individuals and groups how to
 16044 become involved in local stream and beach restoration activities as well as activities
 16045 that are coordinated by youth service and conservation corps or other citizen groups.
 16046 The department recommends that the public education program be tailored, using a
 16047 mix of locally appropriate strategies, to target specific audiences and communities.
 16048 Examples of strategies include: distributing brochures or fact sheets, sponsoring
 16049 speaking engagements before community groups, providing public service
 16050 announcements, implementing educational programs targeted at school-age children,
 16051 and conducting community-based projects such as storm drain stenciling, and
 16052 watershed and beach cleanups. In addition, the department recommends that some
 16053 of the materials or outreach programs be directed toward targeted groups of
 16054 commercial, industrial, and institutional entities likely to have significant stormwater
 16055 impacts. For example, providing information to restaurants on the impact of grease
 16056 clogging storm drains and to garages on the impact of oil discharges. You are
 16057 encouraged to tailor your outreach program to address the viewpoints and concerns
 16058 of all communities, particularly minority and disadvantaged communities, as well as
 16059 any special concerns relating to children.

16060 b. Public involvement/participation.

16061 (1) You must, at a minimum, comply with state, tribal, and local public notice
 16062 requirements when implementing a public involvement/participation program.

16063 (2) The department recommends that the public be included in developing,
 16064 implementing, and reviewing your stormwater management program and that the
 16065 public participation process should make efforts to reach out and engage all economic
 16066 and ethnic groups. Opportunities for members of the public to participate in program
 16067 development and implementation include serving as citizen representatives on a local
 16068 stormwater management panel, attending public hearings, working as citizen
 16069 volunteers to educate other individuals about the program, assisting in program
 16070 coordination with other pre-existing programs, or participating in volunteer monitoring
 16071 efforts. (Citizens should obtain approval where necessary for lawful access to
 16072 monitoring sites.)

16073 c. Illicit discharge detection and elimination.

16074 (1) You must develop, implement and enforce a program to detect and eliminate illicit
 16075 discharges (as defined in 9VAC25-875-850) into your small MS4.

16076 (2) You must:

16077 (a) Develop, if not already completed, a storm sewer system map, showing the location
 16078 of all outfalls and the names and location of all surface waters that receive discharges
 16079 from those outfalls;

16080 (b) To the extent allowable under state, tribal or local law, effectively prohibit, through
 16081 ordinance or other regulatory mechanism, nonstormwater discharges into your storm
 16082 sewer system and implement appropriate enforcement procedures and actions;

16083 (c) Develop and implement a plan to detect and address nonstormwater discharges,
 16084 including illegal dumping, to your system; and

16085 (d) Inform public employees, businesses, and the general public of hazards associated
 16086 with illegal discharges and improper disposal of waste.

16087 (3) You need to address the following categories of nonstormwater discharges or flows
 16088 (i.e., illicit discharges) only if you identify them as significant contributors of pollutants
 16089 to your small MS4: water line flushing, landscape irrigation, diverted stream flows,
 16090 rising groundwaters, uncontaminated groundwater infiltration (as defined in 40 CFR
 16091 35.2005(20)), uncontaminated pumped groundwater, discharges from potable water
 16092 sources, foundation drains, air conditioning condensation, irrigation water, springs,
 16093 water from crawl space pumps, footing drains, lawn watering, individual residential car
 16094 washing, flows from riparian habitats and wetlands, dechlorinated swimming pool
 16095 discharges, and street wash water. (Discharges or flows from fire-fighting activities are
 16096 excluded from the effective prohibition against nonstormwater and need only be
 16097 addressed where they are identified as significant sources of pollutants to surface
 16098 waters.)

16099 (4) NOTE: The department recommends that the plan to detect and address illicit
 16100 discharges include the following four components: (i) procedures for locating priority
 16101 areas likely to have illicit discharges, (ii) procedures for tracing the source of an illicit
 16102 discharge, (iii) procedures for removing the source of the discharge, and (iv)
 16103 procedures for program evaluation and assessment. The department recommends
 16104 visually screening outfalls during dry weather and conducting field tests of selected
 16105 pollutants as part of the procedures for locating priority areas. Illicit discharge
 16106 education actions may include storm drain stenciling; a program to promote, publicize,
 16107 and facilitate public reporting of illicit connections or discharges; and distribution of
 16108 outreach materials.

16109 d. Construction site stormwater runoff control.

16110 (1) You must develop, implement, and enforce a program to reduce pollutants in any
 16111 stormwater runoff to your small MS4 from construction activities that result in a land
 16112 disturbance of greater than or equal to one acre, or equal to or greater than 2,500
 16113 square feet in all areas of the jurisdictions designated as subject to the Chesapeake
 16114 Bay Preservation Area Designation and Management Regulations adopted pursuant
 16115 to the Chesapeake Bay Preservation Act. Reduction of stormwater discharges from
 16116 construction activity disturbing less than one acre must be included in your program if
 16117 that construction activity is part of a larger common plan of development or sale that
 16118 would disturb one acre or more. If the department waives requirements for stormwater
 16119 discharges associated with small construction activity in accordance with the definition
 16120 in 9VAC25-875-850, you are not required to develop, implement, and/or enforce a
 16121 program to reduce pollutant discharges from such sites.

16122 (2) Your program must include the development and implementation of, at a minimum:

16123 (a) An ordinance or other regulatory mechanism to require erosion and sediment
 16124 controls, as well as sanctions to ensure compliance, to the extent allowable under
 16125 state, tribal, or local law;

- 16126 (b) Requirements for construction site operators to implement appropriate erosion and
16127 sediment control best management practices;
- 16128 (c) Requirements for construction site operators to control waste such as discarded
16129 building materials, concrete truck washout, chemicals, litter, and sanitary waste at the
16130 construction site that may cause adverse impacts to water quality;
- 16131 (d) Procedures for site plan review which incorporate consideration of potential water
16132 quality impacts;
- 16133 (e) Procedures for receipt and consideration of information submitted by the public;
16134 and
- 16135 (f) Procedures for site inspection and enforcement of control measures.
- 16136 (3) NOTE: Examples of sanctions to ensure compliance include nonmonetary
16137 penalties, fines, bonding requirements and/or permit denials for noncompliance. The
16138 department recommends that procedures for site plan review include the review of
16139 individual pre-construction site plans to ensure consistency with erosion and sediment
16140 control requirements. Procedures for site inspections and enforcement of control
16141 measures could include steps to identify priority sites for inspection and enforcement
16142 based on the nature of the construction activity, topography, and the characteristics of
16143 soils and receiving water quality. You are encouraged to provide appropriate
16144 educational and training measures for construction site operators. You may wish to
16145 require a stormwater pollution prevention plan for construction sites within your
16146 jurisdiction that discharge into your system. (See 9VAC25-875-1030 L and subdivision
16147 E 2 of this section.) The department may recognize that another government entity
16148 may be responsible for implementing one or more of the minimum measures on your
16149 behalf.
- 16150 e. Post-construction stormwater management in new development and
16151 redevelopment.
- 16152 (1) You must develop, implement, and enforce a program to address stormwater runoff
16153 from new development and redevelopment projects that disturb greater than or equal
16154 to one acre, including projects less than one acre that are part of a larger common
16155 plan of development or sale, that discharge into your small MS4. Your program must
16156 ensure that controls are in place that would prevent or minimize water quality impacts.
- 16157 (2) You must:
- 16158 (a) Develop and implement strategies that include a combination of structural and/or
16159 nonstructural best management practices (BMPs) appropriate for your community;
- 16160 (b) Use an ordinance or other regulatory mechanism to address post-construction
16161 runoff from new development and redevelopment projects to the extent allowable
16162 under state, tribal or local law; and
- 16163 (c) Ensure adequate long-term operation and maintenance of BMPs.
- 16164 (3) NOTE: If water quality impacts are considered from the beginning stages of a
16165 project, new development and potentially redevelopment provide more opportunities
16166 for water quality protection. The department recommends that the BMPs chosen be
16167 appropriate for the local community, minimize water quality impacts, and attempt to
16168 maintain pre-development runoff conditions. In choosing appropriate BMPs, the
16169 department encourages you to participate in locally based watershed planning efforts
16170 that attempt to involve a diverse group of stakeholders, including interested citizens.
16171 When developing a program that is consistent with this measure's intent, the
16172 department recommends that you adopt a planning process that identifies the
16173 municipality's program goals (e.g., minimize water quality impacts resulting from post-

16174 construction runoff from new development and redevelopment), implementation
16175 strategies (e.g., adopt a combination of structural and/or nonstructural BMPs),
16176 operation and maintenance policies and procedures, and enforcement procedures. In
16177 developing your program, you should consider assessing existing ordinances, policies,
16178 programs and studies that address stormwater runoff quality. In addition to assessing
16179 these existing documents and programs, you should provide opportunities to the public
16180 to participate in the development of the program. Nonstructural BMPs are preventative
16181 actions that involve management and source controls such as: (i) policies and
16182 ordinances that provide requirements and standards to direct growth to identified
16183 areas, protect sensitive areas such as wetlands and riparian areas, maintain and/or
16184 increase open space (including a dedicated funding source for open space
16185 acquisition), provide buffers along sensitive water bodies, minimize impervious
16186 surfaces, and minimize disturbance of soils and vegetation; (ii) policies or ordinances
16187 that encourage infill development in higher density urban areas, and areas with
16188 existing infrastructure; (iii) education programs for developers and the public about
16189 project designs that minimize water quality impacts; and (iv) measures such as
16190 minimization of percent impervious area after development and minimization of directly
16191 connected impervious areas. Structural BMPs include: storage practices such as wet
16192 ponds and extended-detention outlet structures; filtration practices such as grassed
16193 swales, sand filters and filter strips; and infiltration practices such as infiltration basins
16194 and infiltration trenches. The department recommends that you ensure the appropriate
16195 implementation of the structural BMPs by considering some or all of the following: pre-
16196 construction review of BMP designs; inspections during construction to verify BMPs
16197 are built as designed; post-construction inspection and maintenance of BMPs; and
16198 penalty provisions for the noncompliance with design, construction or operation and
16199 maintenance. Stormwater technologies are constantly being improved, and the
16200 department recommends that your requirements be responsive to these changes,
16201 developments or improvements in control technologies.

16202 f. Pollution prevention/good housekeeping for municipal operations.

16203 (1) You must develop and implement an operation and maintenance program that
16204 includes a training component and has the ultimate goal of preventing or reducing
16205 pollutant runoff from municipal operations. Using training materials that are available
16206 from EPA, state, tribe, or other organizations, your program must include employee
16207 training to prevent and reduce stormwater pollution from activities such as park and
16208 open space maintenance, fleet and building maintenance, new construction and land
16209 disturbances, and stormwater system maintenance.

16210 (2) NOTE: The department recommends that, at a minimum, you consider the
16211 following in developing your program: maintenance activities, maintenance schedules,
16212 and long-term inspection procedures for structural and nonstructural stormwater
16213 controls to reduce floatables and other pollutants discharged from your separate storm
16214 sewers; controls for reducing or eliminating the discharge of pollutants from streets,
16215 roads, highways, municipal parking lots, maintenance and storage yards, fleet or
16216 maintenance shops with outdoor storage areas, salt/sand storage locations and snow
16217 disposal areas operated by you, and waste transfer stations; procedures for properly
16218 disposing of waste removed from the separate storm sewers and areas listed above
16219 (such as dredge spoil, accumulated sediments, floatables, and other debris); and ways
16220 to ensure that new flood management projects assess the impacts on water quality
16221 and examine existing projects for incorporating additional water quality protection
16222 devices or practices. Operation and maintenance should be an integral component of
16223 all stormwater management programs. This measure is intended to improve the

16224 efficiency of these programs and require new programs where necessary. Properly
16225 developed and implemented operation and maintenance programs reduce the risk of
16226 water quality problems.

16227 3. If an existing VESMP requires you to implement one or more of the minimum control
16228 measures of subdivision 2 of this subsection, the department may include conditions in
16229 your permit that direct you to follow that VESMP's requirements rather than the
16230 requirements of subdivision 2 of this subsection. A VESMP is a local, state or tribal
16231 municipal stormwater management program that imposes, at a minimum, the relevant
16232 requirements of subdivision 2 of this subsection.

16233 4. a. In your permit application (either a registration statement for coverage under a
16234 general permit or an individual permit application), you must identify and submit to the
16235 department the following information:

16236 (1) The best management practices (BMPs) that you or another entity will implement
16237 for each of the stormwater minimum control measures provided in subdivision 2 of this
16238 subsection;

16239 (2) The measurable goals for each of the BMPs including, as appropriate, the months
16240 and years in which you will undertake required actions, including interim milestones
16241 and the frequency of the action; and

16242 (3) The person or persons responsible for implementing or coordinating your
16243 stormwater management program.

16244 b. If you obtain coverage under a general permit, you are not required to meet any
16245 measurable goals identified in your registration statement in order to demonstrate
16246 compliance with the minimum control measures in subdivisions 2 c through f of this
16247 subsection unless, prior to submitting your registration statement, EPA or the
16248 department has provided or issued a menu of BMPs that addresses each such
16249 minimum measure. Even if no regulatory authority issues the menu of BMPs, however,
16250 you still must comply with other requirements of the general permit, including good
16251 faith implementation of BMPs designed to comply with the minimum measures.

16252 c. NOTE: Either EPA or the department will provide a menu of BMPs. You may choose
16253 BMPs from the menu or select others that satisfy the minimum control measures.

16254 5. a. You must comply with any more stringent effluent limitations in your permit, including
16255 permit requirements that modify or are in addition to the minimum control measures based
16256 on an approved total maximum daily load (TMDL) or equivalent analysis. The department
16257 may include such more stringent limitations based on a TMDL or equivalent analysis that
16258 determines such limitations are needed to protect water quality.

16259 b. NOTE: The department strongly recommends that until the evaluation of the
16260 stormwater program in subsection G of this section, no additional requirements
16261 beyond the minimum control measures be imposed on regulated small MS4s without
16262 the agreement of the operator of the affected small MS4, except where an approved
16263 TMDL or equivalent analysis provides adequate information to develop more specific
16264 measures to protect water quality.

16265 6. You must comply with other applicable permit requirements, standards and conditions
16266 established in the individual or general permit developed consistent with the provisions of
16267 [9VAC25-31-190](#) through [9VAC25-31-250](#), as appropriate.

16268 7. Evaluation and assessment.

16269 a. You must evaluate program compliance, the appropriateness of your identified best
16270 management practices, and progress towards achieving your identified measurable
16271 goals. The department may determine monitoring requirements for you in accordance

16272 with monitoring plans appropriate to your watershed. Participation in a group
 16273 monitoring program is encouraged.

16274 b. You must keep records required by the permit for at least three years. You must
 16275 submit your records to the department only when specifically asked to do so. You must
 16276 make your records, including a description of your stormwater management program,
 16277 available to the public at reasonable times during regular business hours (see
 16278 9VAC25-875-900 for confidentiality provision). You may assess a reasonable charge
 16279 for copying. You may require a member of the public to provide advance notice.

16280 c. Unless you are relying on another entity to satisfy your permit obligations under
 16281 subdivision E 1 of this section, you must submit annual reports to the department for
 16282 your first permit term. For subsequent permit terms, you must submit reports in years
 16283 two and four unless the department requires more frequent reports. As of the start date
 16284 in Table 1 of 9VAC25-31-1020, all reports submitted in compliance with this subsection
 16285 shall be submitted electronically by the owner, operator, or the duly authorized
 16286 representative of the small MS4 to the department in compliance with this section and
 16287 40 CFR Part 3 (including, in all cases, 40 CFR Part 3 Subpart D), 9VAC25-875-940,
 16288 and Part XI (9VAC25-31-950 et seq.) of the Virginia Pollutant Discharge Elimination
 16289 System (VPDES) Permit Regulation. Part XI of 9VAC25-31 is not intended to undo
 16290 existing requirements for electronic reporting. Prior to this date, and independent of
 16291 Part XI of 9VAC25-31, the owner, operator, or the duly authorized representative of
 16292 the small MS4 may be required to report electronically if specified by a particular
 16293 permit. Your report must include:

16294 (1) The status of compliance with permit conditions, an assessment of the
 16295 appropriateness of your identified best management practices and progress towards
 16296 achieving your identified measurable goals for each of the minimum control measures;

16297 (2) Results of information collected and analyzed, including monitoring data, if any,
 16298 during the reporting period;

16299 (3) A summary of the stormwater activities you plan to undertake during the next
 16300 reporting cycle;

16301 (4) A change in any identified best management practices or measurable goals for any
 16302 of the minimum control measures; and

16303 (5) Notice that you are relying on another governmental entity to satisfy some of your
 16304 permit obligations (if applicable).

16305 E. As an operator of a regulated small MS4, may I share the responsibility to implement the
 16306 minimum control measures with other entities?

16307 1. You may rely on another entity to satisfy your permit obligations to implement a
 16308 minimum control measure if:

16309 a. The other entity, in fact, implements the control measure;

16310 b. The particular control measure, or component thereof, is at least as stringent as the
 16311 corresponding permit requirement; and

16312 c. The other entity agrees to implement the control measure on your behalf. In the
 16313 reports you must submit under subdivision D 7 c of this section, you must also specify
 16314 that you rely on another entity to satisfy some of your permit obligations. If you are
 16315 relying on another governmental entity regulated under the permit program to satisfy
 16316 all of your permit obligations, including your obligation to file periodic reports required
 16317 by subdivision D 7 c of this section, you must note that fact in your registration
 16318 statement, but you are not required to file the periodic reports. You remain responsible
 16319 for compliance with your permit obligations if the other entity fails to implement the

16320 control measure (or component thereof). Therefore, the department encourages you
 16321 to enter into a legally binding agreement with that entity if you want to minimize any
 16322 uncertainty about compliance with your permit.

16323 2. In some cases, the department may recognize, either in your individual permit or in a
 16324 general permit, that another governmental entity is responsible under a permit for
 16325 implementing one or more of the minimum control measures for your small MS4. Where
 16326 the department does so, you are not required to include such minimum control measure(s)
 16327 in your stormwater management program. Your permit may be reopened and modified to
 16328 include the requirement to implement a minimum control measure if the entity fails to
 16329 implement it.

16330 F. As an operator of a regulated small MS4, what happens if I don't comply with the application
 16331 or permit requirements in subsections C through E of this section?

16332 Permits are enforceable under the Clean Water Act and the Virginia Erosion and Stormwater
 16333 Management Act. Violators may be subject to the enforcement actions and penalties described
 16334 in Clean Water Act §§ 309(b), (c), and (g) and 505 or under §§ [62.1-44.15:39](#) through [62.1-](#)
 16335 [44.15:48](#) of the Code of Virginia and Article 5 of the State Water Control Law. Compliance with a
 16336 permit issued pursuant to § 402 of the Clean Water Act is deemed compliance, for purposes of
 16337 §§ 309 and 505, with §§ 301, 302, 306, 307, and 403, except any standard imposed under § 307
 16338 for toxic pollutants injurious to human health. If you are covered as a state co-permittee under an
 16339 individual permit or under a general permit by means of a joint registration statement, you remain
 16340 subject to the enforcement actions and penalties for the failure to comply with the terms of the
 16341 permit in your jurisdiction except as set forth in subdivision E 2 of this section.

16342 G. Will the small MS4 stormwater program regulations at subsections B through F of this
 16343 section change in the future?

16344 EPA intends to conduct an enhanced research effort and compile a comprehensive evaluation
 16345 of the NPDES MS4 stormwater program. The board will reevaluate the regulations based on data
 16346 from the EPA NPDES MS4 stormwater program, from research on receiving water impacts from
 16347 stormwater, and the effectiveness of best management practices (BMPs), as well as other
 16348 relevant information sources.

16349 **9VAC25-875-980. General permits.**

16350 A. The department may issue a general permit in accordance with the following:

16351 1. The general permit shall be written to cover one or more categories or subcategories of
 16352 discharges, except those covered by individual permits, within a geographic area. The
 16353 area should correspond to existing geographic or political boundaries, such as:

16354 a. Designated planning areas under §§ 208 and 303 of CWA;

16355 b. Sewer districts or sewer authorities;

16356 c. City, county, or state political boundaries;

16357 d. State highway systems;

16358 e. Standard metropolitan statistical areas as defined by the Office of Management and
 16359 Budget;

16360 f. Urbanized areas as designated by the Bureau of the Census according to criteria in
 16361 30 FR 15202 (May 1, 1974); or

16362 g. Any other appropriate division or combination of boundaries.

16363 2. The general permit may be written to regulate one or more categories within the area
 16364 described in subdivision 1 of this subsection, where the sources within a covered
 16365 subcategory of discharges are stormwater point sources.

16366 3. Where sources within a specific category of dischargers are subject to water quality-
16367 based limits imposed pursuant to 9VAC25-875-1030, the sources in that specific category
16368 or subcategory shall be subject to the same water quality-based effluent limitations.

16369 4. The general permit must clearly identify the applicable conditions for each category or
16370 subcategory of dischargers covered by the permit.

16371 5. The general permit may exclude specified sources or areas from coverage.

16372 B. Administration.

16373 1. General permits may be issued, modified, revoked and reissued, or terminated in
16374 accordance with applicable requirements of this chapter.

16375 2. Authorization to discharge.

16376 a. Except as provided in subdivisions 2 e and 2 f of this subsection, dischargers
16377 seeking coverage under a general permit shall submit to the department a written
16378 notice of intent to be covered by the general permit. A discharger who fails to submit
16379 a notice of intent in accordance with the terms of the permit is not authorized to
16380 discharge, under the terms of the general permit unless the general permit, in
16381 accordance with subdivision 2 e of this subsection, contains a provision that a notice
16382 of intent is not required or the department notifies a discharger (or treatment works
16383 treating domestic sewage) that it is covered by a general permit in accordance with
16384 subdivision 2 f of this subsection. A complete and timely notice of intent (NOI) to be
16385 covered in accordance with general permit requirements fulfills the requirements for
16386 permit applications for the purposes of this chapter. As of the start date in Table 1 of
16387 [9VAC25-31-1020](#), all notices of intent submitted in compliance with this subdivision
16388 shall be submitted electronically by the discharger (or treatment works treating
16389 domestic sewage) to the department in compliance with this subdivision and 40 CFR
16390 Part 3 (including, in all cases, 40 CFR Part 3 Subpart D), 9VAC25-875-940, and Part
16391 XI ([9VAC25-31-950](#) et seq.) of the Virginia Pollutant Discharge Elimination System
16392 (VPDES) Permit Regulation. Part XI of [9VAC25-31](#) is not intended to undo existing
16393 requirements for electronic reporting. Prior to this date, and independent of Part XI of
16394 [9VAC25-31](#), dischargers (or treatment works treating domestic sewage) may be
16395 required to report electronically if specified by a particular permit.

16396 b. The contents of the notice of intent shall be specified in the general permit and shall
16397 require the submission of information necessary for adequate program
16398 implementation, including at a minimum, the legal name and address of the owner or
16399 operator, the facility name and address, type of facility or discharges, and the receiving
16400 stream or streams, and other required data elements as identified in Appendix A to 40
16401 CFR Part 127 as adopted by reference in [9VAC25-31-1030](#). All notices of intent shall
16402 be signed in accordance with 9VAC25-875-940.

16403 c. General permits shall specify the deadlines for submitting notices of intent to be
16404 covered and the date or dates when a discharger is authorized to discharge under the
16405 permit.

16406 d. General permits shall specify whether a discharger that has submitted a complete
16407 and timely notice of intent to be covered in accordance with the general permit and
16408 that is eligible for coverage under the permit, is authorized to discharge in accordance
16409 with the permit either upon receipt of the notice of intent by the department, after a
16410 waiting period specified in the general permit, on a date specified in the general permit,
16411 or upon receipt of notification of inclusion by the department. Coverage may be
16412 terminated or revoked in accordance with subdivision 3 of this subsection.

16413 e. Stormwater discharges associated with small construction activity may, at the
16414 discretion of the department, be authorized to discharge under a general permit
16415 without submitting a notice of intent where the department finds that a notice of intent
16416 requirement would be inappropriate. In making such a finding, the department shall
16417 consider the (i) type of discharge, (ii) expected nature of the discharge, (iii) potential
16418 for toxic and conventional pollutants in the discharges, (iv) expected volume of the
16419 discharges, (v) other means of identifying discharges covered by the permit, and (vi)
16420 estimated number of discharges to be covered by the permit. The department shall
16421 provide in the public notice of the general permit the reasons for not requiring a notice
16422 of intent.

16423 f. The department may notify a discharger that it is covered by a general permit, even
16424 if the discharger has not submitted a notice of intent to be covered. A discharger so
16425 notified may request an individual permit under subdivision 3 c of this subsection.

16426 3. Requiring an individual permit.

16427 a. The department may require any discharger authorized by a general permit to apply
16428 for and obtain an individual permit. Any interested person may request the department
16429 to take action under this subdivision. Cases where an individual permit may be
16430 required include the following:

16431 (1) The discharger is not in compliance with the conditions of the general permit;

16432 (2) A change has occurred in the availability of demonstrated technology or practices
16433 for the control or abatement of pollutants applicable to the point source;

16434 (3) Effluent limitation guidelines are promulgated for point sources covered by the
16435 general permit;

16436 (4) A water quality management plan, established by the department pursuant to
16437 [9VAC25-720](#), containing requirements applicable to such point sources is approved;

16438 (5) Circumstances have changed since the time of the request to be covered so that
16439 the discharger is no longer appropriately controlled under the general permit, or either
16440 a temporary or permanent reduction or elimination of the authorized discharge is
16441 necessary;

16442 (6) The discharge(s) is a significant contributor of pollutants. In making this
16443 determination, the department may consider the following factors:

16444 (a) The location of the discharge with respect to surface waters;

16445 (b) The size of the discharge;

16446 (c) The quantity and nature of the pollutants discharged to surface waters; and

16447 (d) Other relevant factors;

16448 b. Permits required on a case-by-case basis.

16449 (1) The department may determine, on a case-by-case basis, that certain stormwater
16450 discharges, and certain other facilities covered by general permits that do not generally
16451 require an individual permit may be required to obtain an individual permit because of
16452 their contributions to water pollution.

16453 (2) Whenever the department decides that an individual permit is required under this
16454 subsection, except as provided in subdivision 3 b (3) of this subsection, the department
16455 shall notify the discharger in writing of that decision and the reasons for it, and shall
16456 send an application form with the notice. The discharger must apply for a permit within
16457 60 days of notice, unless permission for a later date is granted by the department. The
16458 question whether the designation was proper will remain open for consideration during
16459 the public comment period for the draft permit and in any subsequent public hearing.

16460 (3) Prior to a case-by-case determination that an individual permit is required for a
 16461 stormwater discharge under this subsection, the department may require the
 16462 discharger to submit a permit application or other information regarding the discharge
 16463 under the State Water Control Law and § 308 of the CWA. In requiring such
 16464 information, the department shall notify the discharger in writing and shall send an
 16465 application form with the notice. The discharger must apply for a permit under
 16466 9VAC25-875-950 A 1 within 60 days of notice or under 9VAC25-875-950 A 8 within
 16467 180 days of notice, unless permission for a later date is granted by the department.
 16468 The question whether the initial designation was proper will remain open for
 16469 consideration during the public comment period for the draft permit and in any
 16470 subsequent public hearing.

16471 c. Any owner or operator authorized by a general permit may request to be excluded
 16472 from the coverage of the general permit by applying for an individual permit. The owner
 16473 or operator shall submit an application under 9VAC25-875-920 with reasons
 16474 supporting the request. The request shall be processed under the applicable parts of
 16475 this chapter. The request shall be granted by issuing of an individual permit if the
 16476 reasons cited by the owner or operator are adequate to support the request.

16477 d. When an individual permit is issued to an owner or operator otherwise subject to a
 16478 general permit, the applicability of the general permit to the individual permit permittee
 16479 is automatically terminated on the effective date of the individual permit.

16480 e. A source excluded from a general permit solely because it already has an individual
 16481 permit may request that the individual permit be revoked, and that it be covered by the
 16482 general permit. Upon revocation of the individual permit, the general permit shall apply
 16483 to the source.

16484 **9VAC25-875-990. New sources and new discharges.**

16485 **A. Criteria for new source determination.**

16486 1. Except as otherwise provided in an applicable new source performance standard, a
 16487 source is a new source if it meets the definition of new source in this chapter and

16488 a. It is constructed at a site at which no other source is located;

16489 b. It totally replaces the process or production equipment that causes the discharge of
 16490 pollutants at an existing source; or

16491 c. Its processes are substantially independent of an existing source at the same site.
 16492 In determining whether these processes are substantially independent, the
 16493 department shall consider such factors as the extent to which the new facility is
 16494 integrated with the existing plant and the extent to which the new facility is engaged in
 16495 the same general type of activity as the existing source.

16496 2. A source meeting the requirements of subdivisions 1 a, b, or c of this subsection is a
 16497 new source only if a new source performance standard is independently applicable to it.
 16498 If there is no such independently applicable standard, the source is a new discharger.

16499 3. Construction on a site at which an existing source is located results in a permit
 16500 modification subject to 9VAC25-875-1230 rather than a new source (or a new discharger)
 16501 if the construction does not create a new building, structure, facility, or installation meeting
 16502 the criteria of subdivisions 1 b or c of this subsection but otherwise alters, replaces, or
 16503 adds to existing process or production equipment.

16504 4. Construction of a new source has commenced if the owner or operator has:

16505 a. Begun, or caused to begin as part of a continuous on-site construction program:

16506 (1) Any placement, assembly, or installation of facilities or equipment; or

- 16507 (2) Significant site preparation work including clearing, excavation or removal of
16508 existing buildings, structures, or facilities which is necessary for the placement,
16509 assembly, or installation of new source facilities or equipment; or
- 16510 b. Entered into a binding contractual obligation for the purchase of facilities or
16511 equipment which are intended to be used in its operation within a reasonable time.
16512 Options to purchase or contracts which can be terminated or modified without
16513 substantial loss, and contracts for feasibility engineering, and design studies do not
16514 constitute a contractual obligation under the paragraph.
- 16515 B. Effect of compliance with new source performance standards. The provisions of this
16516 subsection do not apply to existing sources which modify their pollution control facilities or
16517 construct new pollution control facilities and achieve performance standards, but which are neither
16518 new sources or new dischargers or otherwise do not meet the requirements of this subdivision.
- 16519 1. Except as provided in subdivision 2 of this subsection, any new discharger, the
16520 construction of which commenced after October 18, 1972, or new source which meets the
16521 applicable promulgated new source performance standards before the commencement of
16522 discharge, may not be subject to any more stringent new source performance standards
16523 or to any more stringent technology-based standards under § 301(b)(2) of the CWA for
16524 the soonest ending of the following periods:
- 16525 a. Ten years from the date that construction is completed;
- 16526 b. Ten years from the date the source begins to discharge process or other
16527 nonconstruction related wastewater; or
- 16528 c. The period of depreciation or amortization of the facility for the purposes of § 167 or
16529 § 169 (or both) of the Internal Revenue Code of 1954 (26 USC 167 and 26 USC 169,
16530 respectively).
- 16531 2. The protection from more stringent standards of performance afforded by subdivision 1
16532 of this subsection does not apply to:
- 16533 a. Additional or more stringent permit conditions that are not technology based; for
16534 example, conditions based on water quality standards, or toxic effluent standards or
16535 prohibitions under the State Water Control Law and § 307(a) of the CWA; or
- 16536 b. Additional permit conditions controlling toxic pollutants or hazardous substances
16537 that are not controlled by new source performance standards. This includes permit
16538 conditions controlling pollutants other than those identified as toxic pollutants or
16539 hazardous substances when control of these pollutants has been specifically identified
16540 as the method to control the toxic pollutants or hazardous substances.
- 16541 3. When a separate VPDES or permit issued to a source with a protection period under
16542 subdivision 1 of this subsection will expire on or after the expiration of the protection
16543 period, that permit shall require the owner or operator of the source to comply with the
16544 requirements of § 301 of the CWA and any other then applicable requirements of the CWA
16545 and the State Water Control Law immediately upon the expiration of the protection period.
16546 No additional period for achieving compliance with these requirements may be allowed
16547 except when necessary to achieve compliance with requirements promulgated less than
16548 three years before the expiration of the protection period.
- 16549 4. The owner or operator of a new source, a new discharger which commenced discharge
16550 after August 13, 1979, or a recommencing discharger shall install and have in operating
16551 condition, and shall start-up all pollution control equipment required to meet the conditions
16552 of its permits before beginning to discharge. Within the shortest feasible time (not to
16553 exceed 90 days), the owner or operator must meet all permit conditions. The requirements

16554 of this paragraph do not apply if the owner or operator is issued a permit containing a
 16555 compliance schedule under 9VAC25-875-1060 A 2.

16556 5. After the effective date of new source performance standards, it shall be unlawful for
 16557 any owner or operator of any new source to operate the source in violation of those
 16558 standards applicable to the source.

16559 Article 4

16560 Permit conditions

16561 **9VAC25-875-1000. Conditions applicable to all permits.**

16562 The following conditions apply to all permits. Additional conditions applicable to permits are in
 16563 9VAC25-875-1010. All conditions applicable to permits shall be incorporated into the permits
 16564 either expressly or by reference. If incorporated by reference, a specific citation to this regulation
 16565 must be given in the permit.

16566 A. The permittee shall comply with all conditions of the permit. Any permit noncompliance
 16567 constitutes a violation of the State Water Control Law and the CWA, except that noncompliance
 16568 with certain provisions of the permit may constitute a violation of the State Water Control Law but
 16569 not the CWA. Permit noncompliance is grounds for enforcement action; for permit termination,
 16570 revocation and reissuance, or modification; or denial of a permit renewal application.

16571 The permittee shall comply with effluent standards or prohibitions established under § 307(a)
 16572 of the CWA for toxic pollutants within the time provided in the chapters that establish these
 16573 standards or prohibitions, even if the permit has not yet been modified to incorporate the
 16574 requirement.

16575 B. If the permittee wishes to continue an activity regulated by the permit after the expiration
 16576 date of the permit, the permittee must apply for and obtain a new permit.

16577 C. It shall not be a defense for a permittee in an enforcement action that it would have been
 16578 necessary to halt or reduce the permitted activity in order to maintain compliance with the
 16579 conditions of the permit.

16580 D. The permittee shall take all reasonable steps to minimize or prevent any discharge in
 16581 violation of the permit that has a reasonable likelihood of adversely affecting human health or the
 16582 environment.

16583 E. The permittee shall at all times properly operate and maintain all facilities and systems of
 16584 treatment and control (and related appurtenances) that are installed or used by the permittee to
 16585 achieve compliance with the conditions of the permit. Proper operation and maintenance also
 16586 includes adequate laboratory controls and appropriate quality assurance procedures. This
 16587 provision requires the operation of back-up or auxiliary facilities or similar systems that are
 16588 installed by a permittee only when the operation is necessary to achieve compliance with the
 16589 conditions of the permit.

16590 F. Permits may be modified, revoked and reissued, or terminated for cause. The filing of a
 16591 request by the permittee for a permit modification, revocation and reissuance, or termination, or
 16592 a notification of planned changes or anticipated noncompliance does not stay any permit
 16593 condition.

16594 G. Permits do not convey any property rights of any sort, or any exclusive privilege.

16595 H. The permittee shall furnish to the department, within a reasonable time, any information
 16596 that the department may request to determine whether cause exists for modifying, revoking and
 16597 reissuing, or terminating the permit or to determine compliance with the permit. The department
 16598 may require the permittee to furnish, upon request, such plans, specifications, and other pertinent
 16599 information as may be necessary to determine the effect of the wastes from his discharge on the
 16600 quality of state waters, or such other information as may be necessary to accomplish the purposes

16601 of the Act. The permittee shall also furnish to the department upon request, copies of records
16602 required to be kept by the permit.

16603 I. The permittee shall allow the director, the department, or an authorized representative
16604 (including an authorized contractor acting as a representative of the administrator), upon
16605 presentation of credentials and other documents as may be required by law, to:

16606 1. Enter upon the permittee's premises where a regulated facility or activity is located or
16607 conducted, or where records must be kept under the conditions of the permit;

16608 2. Have access to and copy, at reasonable times, any records that must be kept under the
16609 conditions of the permit;

16610 3. Inspect at reasonable times any facilities, equipment (including monitoring and control
16611 equipment), practices, or operations regulated or required under the permit; and

16612 4. Sample or monitor at reasonable times, for the purposes of assuring permit compliance
16613 or as otherwise authorized by the CWA and the Act, any substances or parameters at any
16614 location.

16615 J. Monitoring and records.

16616 1. Samples and measurements taken for the purpose of monitoring shall be representative
16617 of the monitored activity.

16618 2. The permittee shall retain records of all monitoring information, including all calibration
16619 and maintenance records and all original strip chart recordings for continuous monitoring
16620 instrumentation, copies of all reports required by the permit, and records of all data used
16621 to complete the application for the permit, for a period of at least three years from the date
16622 of the sample, measurement, report or application. This period of retention shall be
16623 extended automatically during the course of any unresolved litigation regarding the
16624 regulated activity or regarding control standards applicable to the permittee, or as
16625 requested by the department.

16626 3. Records of monitoring information shall include:

16627 a. The date, exact place, and time of sampling or measurements;

16628 b. The individual or individuals who performed the sampling or measurements;

16629 c. The date or dates analyses were performed;

16630 d. The individual or individuals who performed the analyses;

16631 e. The analytical techniques or methods used; and

16632 f. The results of such analyses.

16633 4. Monitoring results must be conducted according to test procedures approved under 40
16634 CFR Part 136 or alternative EPA approved methods, unless other test procedures have
16635 been specified in the permit. Analyses performed according to test procedures approved
16636 under 40 CFR Part 136 shall be performed by an environmental laboratory certified under
16637 regulations adopted by the Department of General Services ([1VAC30-45](#) or [1VAC30-46](#)).

16638 K. All applications, reports, or information submitted to the VESMP authority and department
16639 shall be signed and certified as required by 9VAC25-875-940.

16640 L. Reporting requirements.

16641 1. The permittee shall give notice to the department as soon as possible of any planned
16642 physical alterations or additions to the permitted facility. Notice is required only when:

16643 a. The alteration or addition to a permitted facility may meet one of the criteria for
16644 determining whether a facility is a new source in 9VAC25-875-990 A; or

- 16645 b. The alteration or addition could significantly change the nature or increase the
16646 quantity of pollutants discharged. This notification applies to pollutants that are not
16647 subject to effluent limitations in the permit.
- 16648 2. The permittee shall give advance notice to the department of any planned changes in
16649 the permitted facility or activity that may result in noncompliance with permit requirements.
- 16650 3. Permits are not transferable to any person except in accordance with 9VAC25-875-
16651 1220.
- 16652 4. Monitoring results shall be reported at the intervals specified in the permit.
- 16653 a. Monitoring results must be reported on a Discharge Monitoring Report (DMR) or
16654 forms provided or specified by the department. As of the start date in Table 1 of
16655 9VAC25-31-1020, all reports and forms submitted in compliance with this subdivision
16656 shall be submitted electronically by the permittee to the department in compliance with
16657 this section and 40 CFR Part 3 (including, in all cases, 40 CFR Part 3 Subpart D),
16658 9VAC25-875-940, and Part XI (9VAC25-31-950 et seq.) of the Virginia Pollutant
16659 Discharge Elimination System (VPDES) Permit Regulation. Part XI of 9VAC25-31 is
16660 not intended to undo existing requirements for electronic reporting. Prior to this date,
16661 and independent of Part XI of 9VAC25-31, permittees may be required to report
16662 electronically if specified by a particular permit.
- 16663 b. If the permittee monitors any pollutant specifically addressed by the permit more
16664 frequently than required by the permit using test procedures approved under 40 CFR
16665 Part 136 or as otherwise specified in the permit, the results of this monitoring shall be
16666 included in the calculation and reporting of the data submitted in the DMR or reporting
16667 form specified by the department.
- 16668 c. Calculations for all limitations that require averaging of measurements shall utilize
16669 an arithmetic mean unless otherwise specified in the permit.
- 16670 5. Reports of compliance or noncompliance with, or any progress reports on, interim and
16671 final requirements contained in any compliance schedule of the permit shall be submitted
16672 no later than 14 days following each schedule date.
- 16673 6. If any unusual or extraordinary discharge including a bypass or upset should occur from
16674 a facility and such discharge enters or could be expected to enter state waters, the
16675 permittee shall promptly notify, in no case later than 24 hours, the department by
16676 telephone after the discovery of such discharge. This notification shall provide all available
16677 details of the incident, including any adverse effects on aquatic life and the known number
16678 of fish killed. The permittee shall reduce the report to writing and shall submit it to the
16679 department within five days of discovery of the discharge in accordance with subdivision
16680 7 a of this subsection. Unusual and extraordinary discharges include but are not limited to
16681 any discharge resulting from:
- 16682 a. Unusual spillage of materials resulting directly or indirectly from processing
16683 operations;
- 16684 b. Breakdown of processing or accessory equipment;
- 16685 c. Failure or taking out of service of the treatment plant or auxiliary facilities (such as
16686 sewer lines or wastewater pump stations); and
- 16687 d. Flooding or other acts of nature.
- 16688 7. Twenty-four hour and five-day reporting.
- 16689 a. The permittee shall report any noncompliance that may endanger health or the
16690 environment. Any information shall be provided orally within 24 hours from the time
16691 the permittee becomes aware of the circumstances. A report in the format required by

16692 the department shall also be provided within five days of the time the permittee
16693 becomes aware of the circumstances. The five-day report shall contain a description
16694 of the noncompliance and its cause; the period of noncompliance, including exact
16695 dates and times, and if the noncompliance has not been corrected, the anticipated
16696 time it is expected to continue; and steps taken or planned to reduce, eliminate, and
16697 prevent reoccurrence of the noncompliance.

16698 (1) For noncompliance events related to combined sewer overflows, sanitary sewer
16699 overflows, or bypass events, these reports must include the data described in
16700 subdivision 7 a of this subsection (with the exception of time of discovery), as well as
16701 the type of event (i.e., combined sewer overflows, sanitary sewer overflows, or bypass
16702 events); type of sewer overflow structure (e.g., manhole, combine sewer overflow
16703 outfall); discharge volumes untreated by the treatment works treating domestic
16704 sewage; types of human health and environmental impacts of the sewer overflow
16705 event; and whether the noncompliance was related to wet weather.

16706 (2) As of the start date in Table 1 of [9VAC25-31-1020](#), all reports related to combined
16707 sewer overflows, sanitary sewer overflows, or bypass events submitted in compliance
16708 with this subdivision 7 shall be submitted electronically by the permittee to the
16709 department in compliance with this subdivision 7 and 40 CFR Part 3 (including, in all
16710 cases, 40 CFR Part 3 Subpart D), [9VAC25-875-940](#), and Part XI ([9VAC25-31-950](#) et
16711 seq.) of the Virginia Pollutant Discharge Elimination System (VPDES) Permit
16712 Regulation. Part XI of [9VAC25-31](#) is not intended to undo existing requirements for
16713 electronic reporting. Prior to this date, and independent of Part XI of [9VAC25-31](#),
16714 permittees may be required to electronically submit reports related to combined sewer
16715 overflows, sanitary sewer overflows, or bypass events under this subdivision 7 by a
16716 particular permit.

16717 (3) The director may also require permittees to electronically submit reports not related
16718 to combined sewer overflows, sanitary sewer overflows, or bypass events under this
16719 subdivision 7.

16720 b. The following shall be reported within 24 hours under this subdivision:

16721 (1) Any unanticipated bypass that exceeds any effluent limitation in the permit.

16722 (2) Any upset that exceeds any effluent limitation in the permit.

16723 (3) Violation of a maximum daily discharge limitation for any of the pollutants listed in
16724 the permit to be reported within 24 hours.

16725 c. The department may waive the five-day report on a case-by-case basis for reports
16726 under this subdivision if the oral report has been received within 24 hours.

16727 8. The permittee shall report all instances of noncompliance not reported under
16728 subdivisions 4, 5, 6, and 7 of this subsection, in the format required by the department, at
16729 the time the next monitoring reports are submitted. The reports shall contain the
16730 information listed in subdivision 7 of this subsection.

16731 a. For noncompliance events related to combined sewer overflows, sanitary sewer
16732 overflows, or bypass events, these reports shall contain the information described in
16733 subdivision 7 a of this subsection and the applicable required data in Appendix A to
16734 40 CFR Part 127 as adopted by reference in [9VAC25-31-1030](#).

16735 b. As of the start date in Table 1 of [9VAC25-31-1020](#), all reports related to combined
16736 sewer overflows, sanitary sewer overflows, or bypass events submitted in compliance
16737 with this subdivision 8 shall be submitted electronically by the permittee to the
16738 department in compliance with this subdivision 8 and 40 CFR Part 3 (including, in all
16739 cases, 40 CFR Part 3 Subpart D), [9VAC25-875-940](#), and Part XI ([9VAC25-31-950](#) et

16740 seq.) of the Virginia Pollutant Discharge Elimination System (VPDES) Permit
 16741 Regulation. Part XI of 9VAC25-31 is not intended to undo existing requirements for
 16742 electronic reporting. Prior to this date, and independent of Part XI of 9VAC25-31,
 16743 permittees may be required to electronically submit reports related to combined sewer
 16744 overflows, sanitary sewer overflows, or bypass events under this section by a
 16745 particular permit.

16746 c. The director may also require permittees to electronically submit reports not related
 16747 to combined sewer overflows, sanitary sewer overflows, or bypass events under this
 16748 section.

16749 9. Where the permittee becomes aware that it failed to submit any relevant facts in a permit
 16750 application, or submitted incorrect information in a permit application or in any report to
 16751 the department, it shall promptly submit such facts or information.

16752 10. The owner, operator, or the duly authorized representative of an VPDES-regulated
 16753 entity is required to electronically submit the required information, as specified in Appendix
 16754 A to 40 CFR Part 127 as adopted by reference in 9VAC25-31-1030, to the department.

16755 M. Bypass.

16756 1. The permittee may allow any bypass to occur that does not cause effluent limitations to
 16757 be exceeded, but only if it also is for essential maintenance to assure efficient operation.
 16758 These bypasses are not subject to the provisions of subdivisions 2 and 3 of this
 16759 subsection.

16760 2. Notice.

16761 a. Anticipated bypass. If the permittee knows in advance of the need for a bypass, it
 16762 shall submit prior notice, if possible at least 10 days before the date of the bypass. As
 16763 of the start date in Table 1 of 9VAC25-31-1020, all notices submitted in compliance
 16764 with this subdivision shall be submitted electronically by the permittee to the
 16765 department in compliance with this subsection and 40 CFR Part 3 (including, in all
 16766 cases, 40 CFR Part 3 Subpart D), 9VAC25-875-940, and Part XI (9VAC25-31-950 et
 16767 seq.) of the Virginia Pollutant Discharge Elimination System (VPDES) Permit
 16768 Regulation. Part XI of 9VAC25-31 is not intended to undo existing requirements for
 16769 electronic reporting. Prior to this date, and independent of Part XI of 9VAC25-31,
 16770 permittees may be required to report electronically if specified by a particular permit.

16771 b. Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass
 16772 as required in subdivision L 7 of this section. As of the start date in Table 1 of 9VAC25-
 16773 31-1020, all notices submitted in compliance with this subdivision shall be submitted
 16774 electronically by the permittee to the department in compliance with this subdivision
 16775 and 40 CFR Part 3 (including, in all cases, 40 CFR Part 3 Subpart D), 9VAC25-875-
 16776 940, and Part XI (9VAC25-31-950 et seq.) of the Virginia Pollutant Discharge
 16777 Elimination System (VPDES) Permit Regulation. Part XI of 9VAC25-31 is not intended
 16778 to undo existing requirements for electronic reporting. Prior to this date, and
 16779 independent of Part XI of 9VAC25-31, permittees may be required to report
 16780 electronically if specified by a particular permit.

16781 3. Prohibition of bypass.

16782 a. Bypass is prohibited, and the department may take enforcement action against a
 16783 permittee for bypass, unless:

16784 (1) Bypass was unavoidable to prevent loss of life, personal injury, or severe property
 16785 damage;

16786 (2) There were no feasible alternatives to the bypass, such as the use of auxiliary
 16787 treatment facilities, retention of untreated wastes, or maintenance during normal

16788 periods of equipment downtime. This condition is not satisfied if adequate back-up
 16789 equipment should have been installed in the exercise of reasonable engineering
 16790 judgment to prevent a bypass that occurred during normal periods of equipment
 16791 downtime or preventive maintenance; and
 16792 (3) The permittee submitted notices as required under subdivision 2 of this subsection.
 16793 b. The department may approve an anticipated bypass, after considering its adverse
 16794 effects, if the department determines that it will meet the three conditions listed in
 16795 subdivision 3 a of this subsection.

16796 N. Upset.

16797 1. An upset constitutes an affirmative defense to an action brought for noncompliance with
 16798 such technology based permit effluent limitations if the requirements of subdivision 2 of
 16799 this subsection are met. No determination made during administrative review of claims
 16800 that noncompliance was caused by upset, and before an action for noncompliance, is final
 16801 administrative action subject to judicial review.
 16802 2. A permittee who wishes to establish the affirmative defense of upset shall demonstrate,
 16803 through properly signed, contemporaneous operating logs, or other relevant evidence
 16804 that:
 16805 a. An upset occurred and that the permittee can identify the cause or causes of the
 16806 upset;
 16807 b. The permitted facility was at the time being properly operated;
 16808 c. The permittee submitted notice of the upset as required in subdivision L 7 b (2) of
 16809 this section (24-hour notice); and
 16810 d. The permittee complied with any remedial measures required under subsection D
 16811 of this section.
 16812 3. In any enforcement proceeding the permittee seeking to establish the occurrence of an
 16813 upset has the burden of proof.

16814 **9VAC25-875-1010. Additional conditions applicable to municipal separate storm sewer**
 16815 **permits.**

16816 In addition to those conditions set forth in 9VAC25-875-1000, the operator of a large or
 16817 medium municipal separate storm sewer system or a municipal separate storm sewer that has
 16818 been designated by the department under 9VAC25-875-950 A 1 e must submit an annual report
 16819 by a date specified in the permit for such system. As of the start date in Table 1 of [9VAC25-31-](#)
 16820 [1020](#), all reports submitted in compliance with this section shall be submitted electronically by the
 16821 owner, operator, or the duly authorized representative of the MS4 to the department in compliance
 16822 with this section and 40 CFR Part 3 (including, in all cases, 40 CFR Part 3 Subpart D), 9VAC25-
 16823 875-940, and Part XI ([9VAC25-31-950](#) et seq.) of the Virginia Pollutant Discharge Elimination
 16824 System (VPDES) Permit Regulation. Part XI of [9VAC25-31](#) is not intended to undo existing
 16825 requirements for electronic reporting. Prior to this date, and independent of Part XI of [9VAC25-](#)
 16826 [31](#), the owner, operator, or the duly authorized representative of the small MS4 may be required
 16827 to report electronically if specified by a particular permit. The report shall include:

16828 1. The status of implementing the components of the stormwater management program
 16829 that are established as permit conditions;
 16830 2. Proposed changes to the stormwater management programs that are established as
 16831 permit conditions. Such proposed changes shall be consistent with 9VAC25-875-950 C 2
 16832 d;
 16833 3. Revisions, if necessary, to the assessment of controls and the fiscal analysis reported
 16834 in the permit application;

16835 4. A summary of data, including monitoring data, that is accumulated throughout the
 16836 reporting year;

16837 5. Annual expenditures and budget for year following each annual report;

16838 6. A summary describing the number and nature of enforcement actions, inspections, and
 16839 public education programs; and

16840 7. Identification of water quality improvements or degradation.

16841 **9VAC25-875-1020. Establishing permit conditions.**

16842 A. In addition to conditions required in all permits, the department shall establish conditions,
 16843 as required on a case-by-case basis, to provide for and assure compliance with all applicable
 16844 requirements of the Virginia Erosion and Stormwater Management Act, the State Water Control
 16845 Law, the CWA, and attendant regulations. These shall include conditions under 9VAC25-875-
 16846 1050 (duration of permits), 9VAC25-875-1060 (schedules of compliance), 9VAC25-875-1030
 16847 (monitoring), electronic reporting requirements of 40 CFR Part 3, and Part XI (9VAC25-31-950 et
 16848 seq.) of the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation.

16849 B. 1. An applicable requirement is a state statutory or regulatory requirement which takes
 16850 effect prior to final administrative disposition of a permit. An applicable requirement is also any
 16851 requirement that takes effect prior to the modification or revocation and reissuance of a permit to
 16852 the extent allowed in Article 6 (9VAC25-875-1210 et seq.) of Part VII of this chapter.

16853 2. New or reissued permits, and to the extent allowed under Article 6 (9VAC25-875-1210
 16854 et seq.) of Part VII of this chapter modified or revoked and reissued permits, shall
 16855 incorporate each of the applicable requirements referenced in 9VAC25-875-1030 and
 16856 9VAC25-875-1040.

16857 C. All permit conditions shall be incorporated either expressly or by reference. If incorporated
 16858 by reference, a specific citation to the applicable regulations or requirements must be given in the
 16859 permit.

16860 **9VAC25-875-1030. Establishing limitations, standards, and other permit conditions.**

16861 In addition to the conditions established under 9VAC25-875-1020 A, each permit shall include
 16862 conditions meeting the following requirements when applicable.

16863 A. 1. Technology-based effluent limitations and standards based on effluent limitations and
 16864 standards promulgated under § 301 of the CWA, on new source performance standards
 16865 promulgated under § 306 of CWA, on case-by-case effluent limitations determined under §
 16866 402(a)(1) of CWA, or a combination of the three. For new sources or new dischargers, these
 16867 technology-based limitations and standards are subject to the provisions of 9VAC25-875-990 B
 16868 (protection period).

16869 2. The department may authorize a discharger subject to technology-based effluent
 16870 limitations guidelines and standards in a permit to forego sampling of a pollutant found at
 16871 40 CFR Subchapter N if the discharger has demonstrated through sampling and other
 16872 technical factors that the pollutant is not present in the discharge or is present only at
 16873 background levels from intake water and without any increase in the pollutant due to
 16874 activities of the discharger. This waiver is good only for the term of the permit and is not
 16875 available during the term of the first permit issued to a discharger. Any request for this
 16876 waiver must be submitted when applying for a reissued permit or modification of a reissued
 16877 permit. The request must demonstrate through sampling or other technical information,
 16878 including information generated during an earlier permit term, that the pollutant is not
 16879 present in the discharge or is present only at background levels from intake water and
 16880 without any increase in the pollutant due to activities of the discharger. Any grant of the
 16881 monitoring waiver must be included in the permit as an express permit condition and the
 16882 reasons supporting the grant must be documented in the permit's fact sheet or statement

16883 of basis. This provision does not supersede certification processes and requirements
16884 already established in existing effluent limitations guidelines and standards.

16885 B. Other effluent limitations and standards under §§ 301, 302, 303, 307, 318 and 405 of the
16886 CWA. If any applicable toxic effluent standard or prohibition (including any schedule of compliance
16887 specified in such effluent standard or prohibition) is promulgated under § 307(a) of the CWA for
16888 a toxic pollutant and that standard or prohibition is more stringent than any limitation on the
16889 pollutant in the permit, the department shall institute proceedings under this chapter to modify or
16890 revoke and reissue the permit to conform to the toxic effluent standard or prohibition.

16891 C. Water quality standards and state requirements. Any requirements in addition to or more
16892 stringent than promulgated effluent limitations guidelines or standards under §§ 301, 304, 306,
16893 307, 318 and 405 of the CWA necessary to:

16894 1. Achieve water quality standards established under the State Water Control Law and §
16895 303 of the CWA, including state narrative criteria for water quality.

16896 a. Limitations must control all pollutants or pollutant parameters (either conventional,
16897 nonconventional, or toxic pollutants) which the department determines are or may be
16898 discharged at a level that will cause, have the reasonable potential to cause, or
16899 contribute to an excursion above any Virginia water quality standard, including Virginia
16900 narrative criteria for water quality.

16901 b. When determining whether a discharge causes, has the reasonable potential to
16902 cause, or contributes to an in-stream excursion above a narrative or numeric criteria
16903 within a Virginia water quality standard, the department shall use procedures that
16904 account for existing controls on point and nonpoint sources of pollution, the variability
16905 of the pollutant or pollutant parameter in the effluent, the sensitivity of the species to
16906 toxicity testing (when evaluating whole effluent toxicity), and where appropriate, the
16907 dilution of the effluent in the receiving water.

16908 c. When the department determines, using the procedures in subdivision 1 b of this
16909 subsection, that a discharge causes, has the reasonable potential to cause, or
16910 contributes to an in-stream excursion above the allowable ambient concentration of a
16911 Virginia numeric criteria within a Virginia water quality standard for an individual
16912 pollutant, the permit must contain effluent limits for that pollutant.

16913 d. Except as provided in this subdivision, when the department determines, using the
16914 procedures in subdivision 1 b of this subsection, toxicity testing data, or other
16915 information, that a discharge causes, has the reasonable potential to cause, or
16916 contributes to an in-stream excursion above a narrative criterion within an applicable
16917 Virginia water quality standard, the permit must contain effluent limits for whole effluent
16918 toxicity. Limits on whole effluent toxicity are not necessary where the department
16919 demonstrates in the fact sheet or statement of basis of the permit, using the
16920 procedures in subdivision 1 b of this subsection, that chemical-specific limits for the
16921 effluent are sufficient to attain and maintain applicable numeric and narrative Virginia
16922 water quality standards.

16923 e. Where Virginia has not established a water quality criterion for a specific chemical
16924 pollutant that is present in an effluent at a concentration that causes, has the
16925 reasonable potential to cause, or contributes to an excursion above a narrative
16926 criterion within an applicable Virginia water quality standard, the department must
16927 establish effluent limits using one or more of the following options:

16928 (1) Establish effluent limits using a calculated numeric water quality criterion for the
16929 pollutant which the department demonstrates will attain and maintain applicable
16930 narrative water quality criteria and will fully protect the designated use. Such a criterion
16931 may be derived using a proposed Virginia criterion, or an explicit policy or regulation

- 16932 interpreting Virginia's narrative water quality criterion, supplemented with other
16933 relevant information which may include: EPA's Water Quality Standards Handbook,
16934 August 1994, risk assessment data, exposure data, information about the pollutant
16935 from the Food and Drug Administration, and current EPA criteria documents;
- 16936 (2) Establish effluent limits on a case-by-case basis, using EPA's water quality criteria,
16937 published under § 307(a) of the CWA, supplemented where necessary by other
16938 relevant information; or
- 16939 (3) Establish effluent limitations on an indicator parameter for the pollutant of concern,
16940 provided:
- 16941 (a) The permit identifies which pollutants are intended to be controlled by the use of
16942 the effluent limitation;
- 16943 (b) The fact sheet required by 9VAC25-875-1090 sets forth the basis for the limit,
16944 including a finding that compliance with the effluent limit on the indicator parameter
16945 will result in controls on the pollutant of concern which are sufficient to attain and
16946 maintain applicable water quality standards;
- 16947 (c) The permit requires all effluent and ambient monitoring necessary to show that
16948 during the term of the permit the limit on the indicator parameter continues to attain
16949 and maintain applicable water quality standards; and
- 16950 (d) The permit contains a reopener clause allowing the department to modify or revoke
16951 and reissue the permit if the limits on the indicator parameter no longer attain and
16952 maintain applicable water quality standards.
- 16953 f. When developing water quality-based effluent limits under this subdivision the
16954 department shall ensure that:
- 16955 (1) The level of water quality to be achieved by limits on point sources established
16956 under this subsection is derived from, and complies with all applicable water quality
16957 standards; and
- 16958 (2) Effluent limits developed to protect a narrative water quality criterion, a numeric
16959 water quality criterion, or both, are consistent with the assumptions and requirements
16960 of any available wasteload allocation for the discharge prepared by Virginia and
16961 approved by EPA pursuant to 40 CFR 130.7;
- 16962 2. Attain or maintain a specified water quality through water quality related effluent limits
16963 established under the State Water Control Law and § 302 of the CWA;
- 16964 3. Conform to the conditions of a Virginia Water Protection Permit (VWPP) issued under
16965 the State Water Control Law and § 401 of the CWA;
- 16966 4. Conform to applicable water quality requirements under § 401(a)(2) of the CWA when
16967 the discharge affects a state other than Virginia;
- 16968 5. Incorporate any more stringent limitations, treatment standards, or schedule of
16969 compliance requirements established under the State Water Control Law or regulations in
16970 accordance with § 301(b)(1)(C) of the CWA;
- 16971 6. Ensure consistency with the requirements of a Water Quality Management plan
16972 established by the State Water Control Board pursuant to 9VAC25-720 and approved by
16973 EPA under § 208(b) of the CWA;
- 16974 7. Incorporate § 403(c) criteria under 40 CFR Part 125, Subpart M, for ocean discharges;
16975 or
- 16976 8. Incorporate alternative effluent limitations or standards where warranted by
16977 fundamentally different factors, under 40 CFR Part 125, Subpart D.

16978 D. Technology-based controls for toxic pollutants. Limitations established under subsections
 16979 A, B, or C of this section, to control pollutants meeting the criteria listed in subdivision 1 of this
 16980 subsection. Limitations will be established in accordance with subdivision 2 of this subsection. An
 16981 explanation of the development of these limitations shall be included in the fact sheet.

16982 1. Limitations must control all toxic pollutants that the department determines (based on
 16983 information reported in a permit application or in a notification required by the permit or on
 16984 other information) are or may be discharged at a level greater than the level that can be
 16985 achieved by the technology-based treatment requirements appropriate to the permittee;
 16986 or

16987 2. The requirement that the limitations control the pollutants meeting the criteria of
 16988 subdivision 1 of this subsection will be satisfied by:

16989 a. Limitations on those pollutants; or

16990 b. Limitations on other pollutants that, in the judgment of the department, will provide
 16991 treatment of the pollutants under subdivision 1 of this subsection to the levels required
 16992 by the Virginia Erosion and Stormwater Management Act, the State Water Control
 16993 Law, and 40 CFR Part 125, Subpart A.

16994 E. A notification level that exceeds the notification level of 9VAC25-31-200, upon a petition
 16995 from the permittee or on the department's initiative. This new notification level may not exceed
 16996 the level which can be achieved by the technology-based treatment requirements appropriate to
 16997 the permittee.

16998 F. Twenty-four-hour reporting. Pollutants for which the permittee must report violations of
 16999 maximum daily discharge limitations under 9VAC25-875-1000 L 7 b (3) (24-hour reporting) shall
 17000 be listed in the permit. This list shall include any toxic pollutant or hazardous substance, or any
 17001 pollutant specifically identified as the method to control a toxic pollutant or hazardous substance.

17002 G. Durations for permits, as set forth in 9VAC25-875-1050.

17003 H. Monitoring requirements.

17004 1. Requirements concerning the proper use, maintenance, and installation, when
 17005 appropriate, of monitoring equipment or methods (including biological monitoring methods
 17006 when appropriate);

17007 2. Required monitoring including type, intervals, and frequency sufficient to yield data that
 17008 are representative of the monitored activity including, when appropriate, continuous
 17009 monitoring;

17010 3. Applicable reporting requirements based upon the impact of the regulated activity and
 17011 as specified in 9VAC25-875-1000, subdivisions 5 through 8 of this subsection, and Part
 17012 XI ([9VAC25-31-950](#) et seq.) of the Virginia Pollutant Discharge Elimination System
 17013 (VPDES) Permit Regulation. Reporting shall be no less frequent than specified in the
 17014 above regulation;

17015 4. To assure compliance with permit limitations, requirements to monitor:

17016 a. The mass (or other measurement specified in the permit) for each pollutant limited
 17017 in the permit;

17018 b. The volume of effluent discharged from each outfall;

17019 c. Other measurements as appropriate including pollutants; frequency, rate of
 17020 discharge, etc., for noncontinuous discharges; pollutants subject to notification
 17021 requirements; or as determined to be necessary on a case-by-case basis pursuant to
 17022 the Virginia Erosion and Stormwater Management Act, the State Water Control Law,
 17023 and § 405(d)(4) of the CWA;

- 17024 d. According to test procedures approved under 40 CFR Part 136 for the analyses of
17025 pollutants having approved methods under that part, or alternative EPA approved
17026 methods, and according to a test procedure specified in the permit for pollutants with
17027 no approved methods; and
- 17028 e. With analyses performed according to test procedures approved under 40 CFR Part
17029 136 being performed by an environmental laboratory certified under regulations
17030 adopted by the Department of General Services (1VAC30-45 or 1VAC30-46).
- 17031 5. Except as provided in subdivisions 7 and 8 of this subsection, requirements to report
17032 monitoring results shall be established on a case-by-case basis with a frequency
17033 dependent on the nature and effect of the discharge, but in no case less than once a year.
17034 All results shall be electronically reported in compliance with 40 CFR Part 3 (including, in
17035 all cases, 40 CFR Part 3 Subpart D), 9VAC25-875-940, and Part XI (9VAC25-31-950 et
17036 seq.) of the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation;
- 17037 6. Requirements to report monitoring results for stormwater discharges associated with
17038 industrial activity that are subject to an effluent limitation guideline shall be established on
17039 a case-by-case basis with a frequency dependent on the nature and effect of the
17040 discharge, but in no case less than once a year;
- 17041 7. Requirements to report monitoring results for stormwater discharges (other than those
17042 addressed in subdivision 6 of this subsection) shall be established on a case-by-case
17043 basis with a frequency dependent on the nature and effect of the discharge. At a minimum,
17044 a permit for such a discharge must require:
- 17045 a. The discharger to conduct an annual inspection of the facility site to identify areas
17046 contributing to a stormwater discharge and evaluate whether measures to reduce
17047 pollutant loading identified in a stormwater pollution prevention plan are adequate and
17048 properly implemented in accordance with the terms of the permit or whether additional
17049 control measures are needed;
- 17050 b. The discharger to maintain for a period of three years a record summarizing the
17051 results of the inspection and a certification that the facility is in compliance with the
17052 plan and the permit, and identifying any incidents of noncompliance;
- 17053 c. Such report and certification be signed in accordance with 9VAC25-875-940; and
- 17054 8. Permits which do not require the submittal of monitoring result reports at least annually
17055 shall require that the permittee report all instances of noncompliance not reported under
17056 9VAC25-875-1000 L 1, 4, 5, 6, and 7 at least annually.
- 17057 I. Best management practices to control or abate the discharge of pollutants when:
- 17058 1. Authorized under § 402(p) of the CWA for the control of stormwater discharges;
- 17059 2. Numeric effluent limitations are infeasible; or
- 17060 3. The practices are reasonably necessary to achieve effluent limitations and standards
17061 or to carry out the purposes and intent of the Virginia Erosion and Stormwater
17062 Management Act, the State Water Control Law, and the CWA.
- 17063 J. Reissued permits.
- 17064 1. In the case of effluent limitations established on the basis of § 402(a)(1)(B) of the CWA,
17065 a permit may not be renewed, reissued, or modified on the basis of effluent guidelines
17066 promulgated under § 304(b) of the CWA subsequent to the original issuance of such
17067 permit, to contain effluent limitations that are less stringent than the comparable effluent
17068 limitations in the previous permit. In the case of effluent limitations established on the basis
17069 of § 301(b)(1)(C) or § 303(d) or (e) of the CWA, a permit may not be renewed, reissued,
17070 or modified to contain effluent limitations that are less stringent than the comparable

17071 effluent limitations in the previous permit except in compliance with § 303(d)(4) of the
 17072 CWA.

17073 2. Exceptions. A permit with respect to which subdivision 1 of this subsection applies may
 17074 be renewed, reissued, or modified to contain a less stringent effluent limitation applicable
 17075 to a pollutant, if:

17076 a. Material and substantial alterations or additions to the permitted facility occurred
 17077 after permit issuance that justify the application of a less stringent effluent limitation;

17078 b. (1) Information is available that was not available at the time of permit issuance
 17079 (other than revised regulations, guidance, or test methods) and that would have
 17080 justified the application of a less stringent effluent limitation at the time of permit
 17081 issuance; or

17082 (2) The department determines that technical mistakes or mistaken interpretations of
 17083 the State Water Control Law were made in issuing the permit under § 402(a)(1)(B) of
 17084 the CWA;

17085 c. A less stringent effluent limitation is necessary because of events over which the
 17086 permittee has no control and for which there is no reasonably available remedy;

17087 d. The permittee has received a permit modification under the Virginia Erosion and
 17088 Stormwater Management Act, the State Water Control Law, and § 301(c), 301(g),
 17089 301(h), 301(i), 301(k), 301(n), or 316(a) of the CWA; or

17090 e. The permittee has installed the treatment facilities required to meet the effluent
 17091 limitations in the previous permit and has properly operated and maintained the
 17092 facilities but has nevertheless been unable to achieve the previous effluent limitations,
 17093 in which case the limitations in the reviewed, reissued, or modified permit may reflect
 17094 the level of pollutant control actually achieved (but shall not be less stringent than
 17095 required by effluent guidelines in effect at the time of permit renewal, reissuance, or
 17096 modification).

17097 Subdivision 2 b of this subsection shall not apply to any revised waste load allocations
 17098 or any alternative grounds for translating water quality standards into effluent
 17099 limitations, except where the cumulative effect of such revised allocations results in a
 17100 decrease in the amount of pollutants discharged into the concerned waters, and such
 17101 revised allocations are not the result of a discharger eliminating or substantially
 17102 reducing its discharge of pollutants due to complying with the requirements of the State
 17103 Water Control Law or the CWA or for reasons otherwise unrelated to water quality.

17104 3. In no event may a permit with respect to which subdivision 2 of this subsection applies
 17105 be renewed, reissued, or modified to contain an effluent limitation that is less stringent
 17106 than required by effluent guidelines in effect at the time the permit is renewed, reissued,
 17107 or modified. In no event may such a permit to discharge into waters be renewed, issued,
 17108 or modified to contain a less stringent effluent limitation if the implementation of such
 17109 limitation would result in a violation of a Virginia water quality standard applicable to such
 17110 waters.

17111 K. Navigation. Any conditions that the Secretary of the Army considers necessary to ensure
 17112 that navigation and anchorage will not be substantially impaired in accordance with 9VAC25-875-
 17113 1170.

17114 L. Qualifying state, tribal, or local programs.

17115 1. For stormwater discharges associated with small construction activity identified in
 17116 9VAC25-875-850, the department may include permit conditions that incorporate
 17117 qualifying state, tribal, or local erosion and sediment control program requirements by
 17118 reference. Where a qualifying state, tribal, or local program does not include one or more

17119 of the elements in this subdivision, then the department must include those elements as
 17120 conditions in the permit. A qualifying state, tribal, or local erosion and sediment control
 17121 program is one that includes:

17122 a. Requirements for construction site operators to implement appropriate erosion and
 17123 sediment control best management practices;

17124 b. Requirements for construction site operators to control waste such as discarded
 17125 building materials, concrete truck washout, chemicals, litter, and sanitary waste at the
 17126 construction site that may cause adverse impacts to water quality;

17127 c. Requirements for construction site operators to develop and implement a
 17128 stormwater pollution prevention plan. A stormwater pollution prevention plan includes
 17129 site descriptions; descriptions of appropriate control measures; copies of approved
 17130 state, tribal or local requirements; maintenance procedures; inspection procedures;
 17131 and identification of nonstormwater discharges; and

17132 d. Requirements to submit a site plan for review that incorporates consideration of
 17133 potential water quality impacts.

17134 2. For stormwater discharges from construction activity that does not meet the definition
 17135 of a small construction activity, the department may include permit conditions that
 17136 incorporate qualifying state, tribal, or local erosion and sediment control program
 17137 requirements by reference. A qualifying state, tribal or local erosion and sediment control
 17138 program is one that includes the elements listed in subdivision 1 of this subsection and
 17139 any additional requirements necessary to achieve the applicable technology-based
 17140 standards of "best available technology" and "best conventional technology" based on the
 17141 best professional judgment of the permit writer.

17142 **9VAC25-875-1040. Calculating permit conditions.**

17143 A. Permit effluent limitations, monitoring requirements, standards and prohibitions shall be
 17144 established for each outfall or discharge point of the permitted facility, except as otherwise
 17145 provided under 9VAC25-875-1030.

17146 B. All permit effluent limitations, standards, or prohibitions for a metal shall be expressed in
 17147 terms of total recoverable metal as defined in 40 CFR Part 136 unless:

17148 1. An applicable effluent standard or limitation has been promulgated under the CWA and
 17149 specifies the limitation for the metal in the dissolved or valent or total form; or

17150 2. In establishing permit limitations on a case-by-case basis under 40 CFR 125.3, it is
 17151 necessary to express the limitation on the metal in the dissolved or valent or total form to
 17152 carry out the provisions of the CWA, Virginia Erosion and Stormwater Management Act
 17153 and the State Water Control Law; or

17154 3. All approved analytical methods for the metal inherently measure only its dissolved form
 17155 (e.g., hexavalent chromium).

17156 C. Discharges that are not continuous, as defined in 9VAC25-875-850, shall be particularly
 17157 described and limited, considering the following factors, as appropriate:

17158 1. Frequency;

17159 2. Total mass;

17160 3. Maximum rate of discharge of pollutants during the discharge; and

17161 4. Prohibition or limitation of specified pollutants by mass, concentration, or other
 17162 appropriate measure.

17163 D. Mass Limitations.

- 17164 1. All pollutants limited in permits shall have limitations, standards or prohibitions
 17165 expressed in terms of mass except:
- 17166 a. For pH, temperature, radiation, or other pollutants that cannot appropriately be
 17167 expressed by mass;
- 17168 b. When applicable standards and limitations are expressed in terms of other units of
 17169 measurement; or
- 17170 c. If in establishing technology-based permit limitations on a case-by-case basis,
 17171 limitations expressed in terms of mass are infeasible because the mass of the pollutant
 17172 discharged cannot be related to a measure of operation (for example, discharges of
 17173 TSS from certain mining operations), and permit conditions ensure that dilution will not
 17174 be used as a substitute for treatment.
- 17175 2. Pollutants limited in terms of mass additionally may be limited in terms of other units of
 17176 measurement, and the permit shall require the permittee to comply with both limitations.
- 17177 **9VAC25-875-1050. Duration of permits.**
- 17178 A. Permits shall be effective for a fixed term not to exceed five years.
- 17179 B. Except as provided in 9VAC25-875-890, the term of a permit shall not be extended by
 17180 modification beyond the maximum duration specified in this section.
- 17181 C. The department may issue any permit for a duration that is less than the full allowable term
 17182 under this section.
- 17183 D. A permit may be issued to expire on or after the statutory deadline set forth in §§ 301(b)(2)
 17184 (A), (C), and (E) of the CWA, if the permit includes effluent limitations to meet the requirements
 17185 of §§ 301(b)(2) (A), (C), (D), (E) and (F) of the CWA, whether or not applicable effluent limitations
 17186 guidelines have been promulgated or approved.
- 17187 **9VAC25-875-1060. Schedules of compliance.**
- 17188 A. The permit may, when appropriate, specify a schedule of compliance leading to compliance
 17189 with the Act, the CWA and regulations.
- 17190 1. Any schedules of compliance under this section shall require compliance as soon as
 17191 possible, but not later than the applicable statutory deadline under the CWA.
- 17192 2. The first permit issued to a new source or a new discharger shall contain a schedule of
 17193 compliance only when necessary to allow a reasonable opportunity to attain compliance
 17194 with requirements issued or revised after commencement of construction but less than
 17195 three years before commencement of the relevant discharge. For recommencing
 17196 dischargers, a schedule of compliance shall be available only when necessary to allow a
 17197 reasonable opportunity to attain compliance with requirements issued or revised less than
 17198 three years before recommencement of discharge.
- 17199 3. Schedules of compliance may be established in permits for existing sources that are
 17200 reissued or modified to contain new or more restrictive water quality-based effluent
 17201 limitations. The schedule may allow a reasonable period of time, not to exceed the term
 17202 of the permit, for the discharger to attain compliance with the water quality-based
 17203 limitations.
- 17204 4. Except as provided in subdivision B 1 b of this section, if a permit establishes a schedule
 17205 of compliance that exceeds one year from the date of permit issuance, the schedule shall
 17206 set forth interim requirements and the dates for their achievement.
- 17207 a. The time between interim dates shall not exceed one year.
- 17208 b. If the time necessary for completion of any interim requirement is more than one
 17209 year and is not readily divisible into stages for completion, the permit shall specify

17210 interim dates for the submission of reports of progress toward completion of the interim
 17211 requirements and indicate a projected completion date.

17212 5. The permit shall be written to require that no later than 14 days following each interim
 17213 date and the final date of compliance, the permittee shall notify the department in writing
 17214 of its compliance or noncompliance with the interim or final requirements, or submit
 17215 progress reports if subdivision 4 b of this subsection is applicable.

17216 B. A permit applicant or permittee may cease conducting regulated activities (by termination
 17217 of direct discharge for sources) rather than continuing to operate and meet permit requirements
 17218 as follows:

17219 1. If the permittee decides to cease conducting regulated activities at a given time within
 17220 the term of a permit that has already been issued:

17221 a. The permit may be modified to contain a new or additional schedule leading to timely
 17222 cessation of activities; or

17223 b. The permittee shall cease conducting permitted activities before noncompliance
 17224 with any interim or final compliance schedule requirement already specified in the
 17225 permit;

17226 2. If the decision to cease conducting regulated activities is made before issuance of a
 17227 permit whose term will include the termination date, the permit shall contain a schedule
 17228 leading to termination which will ensure timely compliance with applicable requirements
 17229 no later than the statutory deadline;

17230 3. If the permittee is undecided whether to cease conducting regulated activities, the
 17231 department may issue or modify a permit to contain two schedules as follows:

17232 a. Both schedules shall contain an identical interim deadline requiring a final decision
 17233 on whether to cease conducting regulated activities no later than a date that ensures
 17234 sufficient time to comply with applicable requirements in a timely manner if the decision
 17235 is to continue conducting regulated activities;

17236 b. One schedule shall lead to timely compliance with applicable requirements no later
 17237 than the statutory deadline;

17238 c. The second schedule shall lead to cessation of regulated activities by a date that
 17239 will ensure timely compliance with applicable requirements no later than the statutory
 17240 deadline; and

17241 d. Each permit containing two schedules shall include a requirement that after the
 17242 permittee has made a final decision under subdivision 3 a of this subsection it shall
 17243 follow the schedule leading to compliance if the decision is to continue conducting
 17244 regulated activities, and follow the schedule leading to termination if the decision is to
 17245 cease conducting regulated activities; and

17246 4. The permit applicant's or permittee's decision to cease conducting regulated activities
 17247 shall be evidenced by a firm public commitment satisfactory to the department, such as a
 17248 resolution of the board of directors of a corporation.

17249 Article 5

17250 Public involvement

17251 **9VAC25-875-1070. Draft permits.**

17252 A. Once an application for an individual permit is complete, the department shall tentatively
 17253 decide whether to prepare a draft individual permit or to deny the application.

17254 B. If the department tentatively decides to deny the individual permit application, the owner
 17255 shall be advised of that decision and of the changes necessary to obtain approval. The owner

17256 may withdraw the application prior to department action. If the application is not withdrawn or
 17257 modified to obtain the tentative approval to issue, the department shall provide public notice and
 17258 opportunity for a public hearing prior to department action on the application.

17259 C. If the department tentatively decides to issue a general permit, a draft general permit shall
 17260 be prepared under subsection D of this section.

17261 D. If the department decides to prepare a draft permit, the draft permit shall contain the
 17262 following information:

17263 1. All conditions under 9VAC25-875-1000 and 9VAC25-875-1020;

17264 2. All compliance schedules under 9VAC25-875-1060;

17265 3. All monitoring requirements under 9VAC25-875-1030; and

17266 4. Effluent limitations, standards, prohibitions and conditions under 9VAC25-875-1000,
 17267 9VAC25-875-1010, and 9VAC25-875-1030, and all variances that are to be included.

17268 **9VAC25-875-1080. Statement of basis.**

17269 A statement of basis shall be prepared for every draft permit for which a fact sheet under
 17270 9VAC25-875-1090 is not prepared. The statement of basis shall briefly describe the derivation of
 17271 the conditions of the draft permit and the reasons for them or, in the case of notices of intent to
 17272 deny or terminate, reasons supporting the tentative decision. The statement of basis shall be sent
 17273 to the permit applicant and, on request, to any other person.

17274 **9VAC25-875-1090. Fact sheet.**

17275 A. A fact sheet shall be prepared for every draft individual permit for a major facility or activity,
 17276 for every general permit, for every draft permit that incorporates a variance or requires an
 17277 explanation under subsection B 8 of this section, and for every draft permit that the department
 17278 finds is the subject of wide-spread public interest or raises major issues. The fact sheet shall
 17279 briefly set forth the principal facts and the significant factual, legal, methodological and policy
 17280 questions considered in preparing the draft permit. The department shall send this fact sheet to
 17281 the permit applicant and, on request, to any other person.

17282 B. The fact sheet shall include, when applicable:

17283 1. A brief description of the type of facility or activity that is the subject of the draft permit;

17284 2. The type and quantity of wastes, fluids, or pollutants that are proposed to be or are
 17285 being treated, stored, disposed of, injected, emitted, or discharged;

17286 3. A brief summary of the basis for the draft permit conditions including references to
 17287 applicable statutory or regulatory provisions;

17288 4. Reasons why any requested variances or alternatives to required standards do or do
 17289 not appear justified;

17290 5. A description of the procedures for reaching a final decision on the draft permit including:

17291 a. The beginning and ending dates of the comment period for the draft permit and the
 17292 address where comments will be received;

17293 b. Procedures for requesting a public hearing and the nature of that hearing; and

17294 c. Any other procedures by which the public may participate in the final decision;

17295 6. Name, telephone number, and email address of a person to contact for additional
 17296 information;

17297 7. Any calculations or other necessary explanation of the derivation of specific effluent
 17298 limitations and conditions or standards for sewage sludge use or disposal, including a
 17299 citation to the applicable effluent limitation guideline, performance standard, or standard
 17300 for sewage sludge use or disposal and reasons why they are applicable or an explanation
 17301 of how the alternate effluent limitations were developed;

17302 8. When the draft permit contains any of the following conditions, an explanation of the
 17303 reasons why such conditions are applicable:

17304 a. Limitations to control toxic pollutants;

17305 b. Limitations on indicator pollutants;

17306 c. Technology-based limitations set on a case-by-case basis;

17307 d. Limitations to meet the criteria for permit issuance under 9VAC25-875-870; or

17308 e. Waivers from monitoring requirements granted under 9VAC25-875-1030 A; and

17309 9. When appropriate, a sketch or detailed description of the location of the discharge or
 17310 regulated activity described in the application.

17311 **9VAC25-875-1100. Public notice of draft permit actions and public comment period.**

17312 A. Scope.

17313 1. The department shall give public notice that the following actions have occurred:

17314 a. A draft permit has been prepared under 9VAC25-875-1070 D;

17315 b. A public hearing has been scheduled under 9VAC25-875-1120; or

17316 c. A new source determination has been made under 9VAC25-875-990.

17317 2. No public notice is required when a request for an individual permit modification,
 17318 revocation and reissuance, or termination is denied under 9VAC25-875-1210 B. Written
 17319 notice of that denial shall be given to the requester and to the permittee. Public notice shall
 17320 not be required for submission or approval of plans and specifications or conceptual
 17321 engineering reports not required to be submitted as part of the application.

17322 3. Public notices may describe more than one draft permit or draft permit actions.

17323 B. Timing.

17324 1. Public notice of the preparation of a draft permit required under subsection A of this
 17325 section shall allow at least 30 days for public comment.

17326 2. Public notice of a public hearing shall be given at least 30 days before the hearing.
 17327 (Public notice of the hearing may be given at the same time as public notice of the draft
 17328 permit and the two notices may be combined.)

17329 C. Methods. Public notice of activities described in subdivision A 1 of this section shall be
 17330 given by the following methods:

17331 1. By mailing, either by electronic or postal delivery, a copy of a notice to the following
 17332 persons (any person otherwise entitled to receive notice under this subdivision may waive
 17333 his rights to receive notice for any classes and categories of permits):

17334 a. The permit applicant (except for general permits when there is no permit applicant);

17335 b. Any other agency that the department knows has issued or is required to issue a
 17336 VPDES permit;

17337 c. Federal and state agencies with jurisdiction over fish, shellfish, and wildlife
 17338 resources and over coastal zone management plans, the Advisory Council on Historic
 17339 Preservation, State Historic Preservation Officers, including any affected states (Indian
 17340 Tribes);

17341 d. Any state agency responsible for plan development under § 208(b)(2), 208(b)(4) or
 17342 § 303(e) of the CWA and the U.S. Army Corps of Engineers, the U.S. Fish and Wildlife
 17343 Service and the National Marine Fisheries Service;

17344 e. Persons on a mailing list developed by:

17345 (1) Including those who request in writing to be on the list;

17346 (2) Soliciting persons for area lists from participants in past permit proceedings in that
 17347 area; and

17348 (3) Notifying the public of the opportunity to be put on the mailing list through periodic
 17349 publication in the public press, and in such publications as EPA regional and state
 17350 funded newsletters, environmental bulletins, or state law journals. (The department
 17351 may update the mailing list from time to time by requesting written indication of
 17352 continued interest from those listed. The department may delete from the list the name
 17353 of any person who fails to respond to such a request.);

17354 f. (1) Any unit of local government having jurisdiction over the area where the facility
 17355 is proposed to be located; and

17356 (2) Each state agency having any authority under state law with respect to the
 17357 construction or operation of such facility;

17358 2. By publication once a week for two successive weeks in a newspaper of general
 17359 circulation in the area affected by the discharge. The cost of public notice shall be paid by
 17360 the owner; and

17361 3. Any other method reasonably calculated to give actual notice of the action in question
 17362 to the persons potentially affected by it, including press releases or any other forum or
 17363 medium to elicit public participation.

17364 D. Contents.

17365 1. All public notices issued under this part shall contain the following minimum information:

17366 a. Name and address of the office processing the permit action for which notice is
 17367 being given;

17368 b. Name and address of the permittee or permit applicant and, if different, of the facility
 17369 or activity regulated by the permit, except in the case of draft general permits;

17370 c. A brief description of the business conducted at the facility or activity described in
 17371 the individual permit application or the draft permit, for general permits when there is
 17372 no application;

17373 d. Name, address, telephone number, and email address of a person from whom
 17374 interested persons may obtain further information, including copies of the draft permit,
 17375 statement of basis or fact sheet, and the application;

17376 e. A brief description of the procedures for submitting comments and the time and
 17377 place of any public hearing that will be held, including a statement of procedures to
 17378 request a public hearing (unless a hearing has already been scheduled) and other
 17379 procedures by which the public may participate in the final individual or general permit
 17380 decision;

17381 f. For an individual permit, a general description of the location of each existing or
 17382 proposed discharge point and the name of the receiving water; and

17383 g. Any additional information considered necessary or proper.

17384 2. In addition to the general public notice described in subdivision 1 of this subsection, the
 17385 public notice of a public hearing under 9VAC25-875-1120 shall contain the following
 17386 information:

17387 a. Reference to the date of previous public notices relating to the draft permit;

17388 b. Date, time, and place of the public hearing;

17389 c. A brief description of the nature and purpose of the public hearing, including the
 17390 applicable rules and procedures; and

17391 d. A concise statement of the issues raised by the persons requesting the public
 17392 hearing.

17393 E. In addition to the general public notice described in subdivision D 1 of this section, all
 17394 persons identified in subdivisions C 1 a through 1 d of this section shall be mailed, either by
 17395 electronic or postal delivery, a copy of the fact sheet or statement of basis, the individual permit
 17396 application (if any) and the draft permit (if any).

17397 **9VAC25-875-1110. Public comments and requests for public hearings.**

17398 During the public comment period provided under 9VAC25-875-1100, any interested person
 17399 may submit written comments on the draft permit and may request a public hearing, if no public
 17400 hearing has already been scheduled. A request for a public hearing shall be in writing and shall
 17401 meet the requirements of 9VAC25-875-1120 and 9VAC25-875-1130. All comments shall be
 17402 considered in making the final decision and shall be answered as provided in 9VAC25-875-1160.

17403 **9VAC25-875-1120. Public hearings.**

17404 A. 1. Procedures for public hearings and permits before the department are those set forth in
 17405 9VAC25-875-1130.

17406 2. Public notice of the public hearing shall be given as specified in 9VAC25-875-1100.

17407 3. Any public hearing convened pursuant to this section shall be held in the geographical
 17408 area of the proposed discharge, or in another appropriate area. Related groups of
 17409 individual permit applications may be considered at any such public hearing.

17410 B. Any person may submit oral or written statements and data concerning the draft individual
 17411 permit. Reasonable limits may be set upon the time allowed for oral statements, and the
 17412 submission of statements in writing may be required.

17413 C. A recording or written transcript of the hearing shall be made available to the public.

17414 **9VAC25-875-1130. Criteria for requesting and granting a public hearing in a permit action.**

17415 A. During the public comment period on a permit action in those instances where a public
 17416 hearing is not mandatory under state or federal law or regulation, interested persons may request
 17417 a public hearing to contest the action or terms and conditions of the permit.

17418 B. Requests for a public hearing shall contain the following information:

17419 1. The name and postal mailing or email address of the requester;

17420 2. The names and addresses of all persons for whom the requester is acting as a
 17421 representative;

17422 3. The reason for the request for a public hearing;

17423 4. A brief, informal statement setting forth the factual nature and extent of the interest of
 17424 the requester or of the persons for whom the requester is acting as representative in the
 17425 application or tentative determination, including an explanation of how and to what extent
 17426 such interest would be directly and adversely affected by the issuance, denial,
 17427 modification, or revocation of the permit in question; and

17428 5. Where possible, specific references to the terms and the conditions of the permit in
 17429 question, together with suggested revisions and alterations to those terms and conditions
 17430 that the requester considers are needed to conform the permit to the intent and provisions
 17431 of the basic laws of the State Water Control Board.

17432 C. Upon completion of the public comment period on a permit action, the director shall review
 17433 all timely requests for public hearing filed during the comment period on the permit action and,
 17434 within 30 calendar days following the expiration of the time period for the submission of requests,
 17435 shall grant a public hearing, unless the permittee or applicant agrees to a later date, if the director
 17436 finds the following:

17437 1. That there is a significant public interest in the issuance, denial, modification, or
 17438 revocation of the permit in question as evidenced by receipt of a minimum of 25 individual
 17439 requests for a public hearing;

17440 2. That the requesters raise substantial disputed issues relevant to the issuance, denial,
 17441 modification, or revocation of the permit in question; and

17442 3. That the action requested by the interested party is not on its face inconsistent with or
 17443 in violation of the basic laws of the State Water Control Board for a water permit action,
 17444 federal law, or any regulation promulgated thereunder.

17445 D. The director shall notify by email or mail at his last known address (i) each requester and
 17446 (ii) the applicant or permittee of the decision to grant or deny a public hearing.

17447 E. If the request for a public hearing is granted, the director shall:

17448 1. Schedule the hearing at a time between 45 and 75 days after emailing or mailing of the
 17449 notice of the decision to grant the public hearing; and

17450 2. Cause, or require the applicant to publish, notice of a public hearing to be published
 17451 once, in a newspaper of general circulation in the city or county where the facility or
 17452 operation that is the subject of the permit or permit application is located at least 30 days
 17453 before the hearing date.

17454 F. The public comment period shall remain open for 15 days after the close of the public
 17455 hearing if required by § 62.1-44.15:01 of the Code of Virginia.

17456 G. The director may, at his discretion, convene a public hearing in a permit action.

17457 **9VAC25-875-1140. Controversial permits.**

17458 Before rendering a final decision on a controversial permit, the department shall publish a
 17459 summary of public comments received during the applicable public comment period and public
 17460 hearing. After such publication, the department shall publish responses to the public comment
 17461 summary and hold a public hearing to provide an opportunity for individuals who previously
 17462 commented, either at a public hearing or in writing during the applicable public comment period,
 17463 to respond to the department's public comment summary and response. No new information will
 17464 be accepted at that time. In making its decision, the department shall consider (i) the verbal and
 17465 written comments received during the comment period and the public hearing made part of the
 17466 record, (ii) any commentary of the board, and (iii) the agency files.

17467 **9VAC25-875-1150. Controversial permits reporting.**

17468 At each regular meeting of the board, the department shall provide an overview and update
 17469 regarding any controversial permits pending before the department that are relevant. Immediately
 17470 after such presentation by the department, the board shall have an opportunity to respond to the
 17471 department's presentation and provide commentary regarding such pending permits.

17472 **9VAC25-875-1160. Response to comments.**

17473 A. At the time that a final individual or general permit is issued, the department shall issue a
 17474 response to comments. This response shall:

17475 1. Specify which provisions, if any, of the draft individual or general permit have been
 17476 changed in the final individual or general permit decision, and the reasons for the change;
 17477 and

17478 2. Briefly describe and respond to all significant comments on the draft permit raised during
 17479 the public comment period, or during any public hearing.

17480 B. The response to comments shall be available to the public.

17481 **9VAC25-875-1170. Conditions requested by the Corps of Engineers and other government**
17482 **agencies.**

17483 A. If during the comment period for a draft permit, the district engineer advises the department
17484 in writing that anchorage and navigation of any of the waters of the United States would be
17485 substantially impaired by the granting of an individual or general permit, the individual or general
17486 permit shall be denied and the individual permit applicant so notified. If the district engineer
17487 advises the department that imposing specified conditions upon the individual or general permit
17488 is necessary to avoid any substantial impairment of anchorage or navigation, then the department
17489 shall include the specified conditions in the individual or general permit. Review or appeal of denial
17490 of an individual or general permit or of conditions specified by the district engineer shall be made
17491 through the applicable procedures of the Corps of Engineers, and may not be made through the
17492 procedures provided in this part. If the conditions are stayed by a court of competent jurisdiction
17493 or by applicable procedures of the Corps of Engineers, those conditions shall be considered
17494 stayed in the individual or general permit for the duration of that stay.

17495 B. If during the comment period the U.S. Fish and Wildlife Service, the National Marine
17496 Fisheries Service, or any other state or federal agency with jurisdiction over fish, wildlife, or public
17497 health advises the department in writing that the imposition of specified conditions upon the
17498 individual or general permit is necessary to avoid substantial impairment of fish, shellfish, or
17499 wildlife resources, the department may include the specified conditions in the individual or general
17500 permit to the extent they are determined necessary to carry out the provisions of this regulation,
17501 the State Water Control Law and of the CWA.

17502 C. In appropriate cases the department may consult with one or more of the agencies referred
17503 to in this section before issuing a draft permit and may reflect their views in the statement of basis,
17504 the fact sheet, or the draft permit.

17505 **9VAC25-875-1180. Decisions on variances.**

17506 A. The department may grant or deny requests for variances requested pursuant to 9VAC25-
17507 875-920 G 4, subject to EPA objection. Decisions on these variances shall be made according to
17508 the criteria of 40 CFR Part 125, Subpart H.

17509 B. The department may deny, or forward to the regional administrator with a written
17510 concurrence, or submit to EPA without recommendation a completed request for:

17511 1. A variance based on the economic capability of the individual permit applicant submitted
17512 pursuant to 9VAC25-875-920 G 2; or

17513 2. A variance based on water quality related effluent limitations submitted pursuant to
17514 9VAC25-875-920 G 3.

17515 C. If the EPA approves the variance, the department may prepare a draft individual permit
17516 incorporating the variance. Any public notice of a draft individual permit for which a variance or
17517 modification has been approved or denied shall identify the applicable procedures for appealing
17518 that decision.

17519 D. The department may deny or forward to the administrator with a written concurrence a
17520 completed request for:

17521 1. A variance based on the presence of fundamentally different factors from those on
17522 which an effluent limitations guideline was based, made according to the criteria and
17523 standards of 40 CFR Part 125, Subpart D; or

17524 2. A variance based upon certain water quality factors submitted pursuant to 9VAC25-
17525 875-920 G 2.

17526 E. If the administrator approves the variance, the department may prepare a draft individual
17527 permit incorporating the variance. Any public notice of a draft individual permit for which a variance

17528 or modification has been approved or denied shall identify the applicable procedures for appealing
 17529 that decision.

17530 **9VAC25-875-1190. Appeals of variances.**

17531 When the department issues an individual permit on which EPA has made a variance
 17532 decision, separate appeals of the individual permit and of the EPA variance decision are possible.

17533 **9VAC25-875-1200. Computation of time.**

17534 A. Any time period scheduled to begin on the occurrence of an act or event shall begin on the
 17535 day after the act or event.

17536 B. Any time period scheduled to begin before the occurrence of an act or event shall be
 17537 computed so that the period ends on the day before the act or event.

17538 C. If the final day of any time period falls on a weekend or legal holiday, the time period shall
 17539 be extended to the next working day.

17540 D. Whenever a party or interested person has the right or is required to act within a prescribed
 17541 period after the service of notice or other paper upon him by mail or by electronic or postal
 17542 delivery, three days shall be added to the prescribed time.

17543 Article 6

17544 Transfer, modification, revocation and reissuance, and termination of permits

17545 **9VAC25-875-1210. Modification, revocation and reissuance, or termination of permits.**

17546 A. Permits may be modified, revoked and reissued, or terminated either at the request of any
 17547 interested person (including the permittee) or upon the department's initiative. When the
 17548 department receives any information (for example, inspects the facility, receives information
 17549 submitted by the permittee as required in the permit, receives a request for modification or
 17550 revocation and reissuance, or conducts a review of the permit file) it may determine whether one
 17551 or more of the causes listed in this section for modification or revocation and reissuance, or both,
 17552 exist. However, permits may only be modified, revoked and reissued, or terminated for the
 17553 reasons specified in 9VAC25-875-1230 or 9VAC25-875-1250. All requests shall be in writing and
 17554 shall contain facts or reasons supporting the request. If cause does not exist under these sections,
 17555 the department shall not modify, revoke and reissue or terminate the permit. If a permit
 17556 modification satisfies the criteria for minor modifications, the permit may be modified without a
 17557 draft permit or public review. Otherwise, a draft permit must be prepared and other procedures in
 17558 Article 5 (9VAC25-875-1070 et seq.) of Part VII of this chapter followed.

17559 B. If the department decides the request is not justified, it shall send the requester a brief
 17560 written response giving a reason for the decision. Denials of requests for modification, revocation
 17561 and reissuance, or termination are not subject to public notice, comment, or public hearings.

17562 C. 1. If the department tentatively decides to modify or revoke and reissue a permit, it shall
 17563 prepare a draft permit incorporating the proposed changes. The department may request
 17564 additional information and, in the case of a modified permit, may require the submission of an
 17565 updated application. In the case of revoked and reissued permits, the department shall require
 17566 the submission of a new application.

17567 2. In a permit modification under this section, only those conditions to be modified shall be
 17568 reopened when a new draft permit is prepared. All other aspects of the existing permit
 17569 shall remain in effect for the duration of the unmodified permit. When a permit is revoked
 17570 and reissued under this section, the entire permit is reopened just as if the permit had
 17571 expired and was being reissued and the permit is reissued for a new term. During any
 17572 revocation and reissuance proceeding the permittee shall comply with all conditions of the
 17573 existing permit until a new final permit is reissued.

17574 3. Minor modifications as defined in 9VAC25-875-1240 are not subject to the requirements
 17575 of this section.

17576 D. If the department tentatively decides to terminate a permit under 9VAC25-875-1250, where
 17577 the permittee objects, it shall do so in accordance with the Administrative Process Act (§ 2.2-4000
 17578 et seq. of the Code of Virginia).

17579 **9VAC25-875-1220. Transfer of permits.**

17580 A. Except as provided in subsection B of this section, a permit may be transferred by the
 17581 permittee to a new owner or operator only if the permit has been modified or revoked and
 17582 reissued, or a minor modification made, to identify the new permittee and incorporate such other
 17583 requirements as may be necessary under the Virginia Erosion and Stormwater Management Act
 17584 and the CWA.

17585 B. Automatic transfers. As an alternative to transfers under subsection A of this section, any
 17586 permit may be automatically transferred to a new permittee if:

17587 1. The current permittee notifies the department at least 30 days in advance of the
 17588 proposed transfer date in subdivision 2 of this subsection;

17589 2. The notice includes a written agreement between the existing and new permittees
 17590 containing a specific date for transfer of permit responsibility, coverage, and liability
 17591 between them; and

17592 3. The department does not notify the existing permittee and the proposed new permittee
 17593 of its intent to modify or revoke and reissue the permit. A modification under this
 17594 subdivision may also be a minor modification. If this notice is not received, the transfer is
 17595 effective on the date specified in the agreement mentioned in subdivision 2 of this
 17596 subsection.

17597 **9VAC25-875-1230. Modification or revocation and reissuance of permits.**

17598 A. Causes for modification. The following are causes for modification but not revocation and
 17599 reissuance of permits except when the permittee requests or agrees.

17600 1. There are material and substantial alterations or additions to the permitted facility or
 17601 activity that occurred after permit issuance that justify the application of permit conditions
 17602 that are different or absent in the existing permit.

17603 2. The department has received new information. Permits may be modified during their
 17604 terms for this cause only if the information was not available at the time of permit issuance
 17605 (other than revised regulations, guidance, or test methods) and would have justified the
 17606 application of different permit conditions at the time of issuance. For general permits this
 17607 cause includes any information indicating that cumulative effects on the environment are
 17608 unacceptable. For new source or new discharger permits this cause shall include any
 17609 significant information derived from effluent testing required on the permit application after
 17610 issuance of the permit.

17611 3. The standards or regulations on which the permit was based have been changed by
 17612 promulgation of amended standards or regulations or by judicial decision after the permit
 17613 was issued. Permits may be modified during their terms for this cause only as follows:

17614 a. For promulgation of amended standards or regulations, when:

17615 (1) The permit condition requested to be modified was based on a promulgated effluent
 17616 limitation guideline, EPA approved or promulgated water quality standards;

17617 (2) EPA has revised, withdrawn, or modified that portion of the regulation or effluent
 17618 limitation guideline on which the permit condition was based, or has approved a state
 17619 action with regard to a water quality standard on which the permit condition was based;
 17620 and

- 17621 (3) A permittee requests modification in accordance with this chapter within 90 days
 17622 after Federal Register notice of the action on which the request is based;
- 17623 b. For judicial decisions, a court of competent jurisdiction has remanded and stayed
 17624 EPA promulgated regulations or effluent limitation guidelines, if the remand and stay
 17625 concern that portion of the regulations or guidelines on which the permit condition was
 17626 based and a request is filed by the permittee in accordance with this chapter within 90
 17627 days of judicial remand; or
- 17628 c. For changes based upon modified state certifications of permits.
- 17629 4. The department determines good cause exists for modification of a compliance
 17630 schedule, such as an act of God, strike, flood, or materials shortage or other events over
 17631 which the permittee has little or no control and for which there is no reasonably available
 17632 remedy. However, in no case may a compliance schedule be modified to extend beyond
 17633 an applicable CWA statutory deadline.
- 17634 5. When the permittee has filed a request for a variance pursuant to 9VAC25-875-920 G
 17635 within the time specified in this chapter.
- 17636 6. When required to incorporate an applicable CWA § 307(a) toxic effluent standard or
 17637 prohibition.
- 17638 7. When required by the reopener conditions in a permit that are established under
 17639 9VAC25-875-1030 B.
- 17640 8. Upon failure to notify another state whose waters may be affected by a discharge.
- 17641 9. When the level of discharge of any pollutant that is not limited in the permit exceeds the
 17642 level that can be achieved by the technology-based treatment requirements appropriate
 17643 to the permittee.
- 17644 10. To establish a notification level as provided in 9VAC25-875-1030 E.
- 17645 11. To correct technical mistakes, such as errors in calculation, or mistaken interpretations
 17646 of law made in determining permit conditions.
- 17647 12. When the discharger has installed the treatment technology considered by the permit
 17648 writer in setting effluent limitations imposed under the State Water Control Law and §
 17649 402(a)(1) of the CWA and has properly operated and maintained the facilities but
 17650 nevertheless has been unable to achieve those effluent limitations. In this case, the
 17651 limitations in the modified permit may reflect the level of pollutant control actually achieved
 17652 (but shall not be less stringent than required by a subsequently promulgated effluent
 17653 limitations guideline).
- 17654 13. For a small MS4, to include an effluent limitation requiring implementation of a
 17655 minimum control measure or measures as specified in 9VAC25-875-970 D 2 when:
- 17656 a. The permit does not include such measures based upon the determination that
 17657 another entity was responsible for implementation of the requirements; and
- 17658 b. The other entity fails to implement measures that satisfy the requirements.
- 17659 B. Causes for modification or revocation and reissuance. The following are causes to modify
 17660 or, alternatively, revoke and reissue a permit:
- 17661 1. Cause exists for termination under 9VAC25-875-1250, and the department determines
 17662 that modification or revocation and reissuance is appropriate; or
- 17663 2. The department has received notification of a proposed transfer of the permit. A permit
 17664 also may be modified to reflect a transfer after the effective date of an automatic transfer
 17665 but will not be revoked and reissued after the effective date of the transfer except upon
 17666 the request of the new permittee.

17667 9VAC25-875-1240. Minor modifications of individual permits.

17668 Upon the consent of the permittee, the department may modify an individual permit to make
 17669 the corrections or allowances for changes in the permitted activity listed in this section, without
 17670 following the procedures of Article 5 (9VAC25-875-1070 et seq.) of Part VII of this chapter. Any
 17671 individual permit modification not processed as a minor modification under this section must be
 17672 made for cause and with draft permit and public notice. Minor modifications may only:

- 17673 1. Correct typographical errors;
 17674 2. Require more frequent monitoring or reporting by the permittee;
 17675 3. Change an interim compliance date in a schedule of compliance, provided the new date
 17676 is not more than 120 days after the date specified in the existing individual permit and
 17677 does not interfere with attainment of the final compliance date requirement;
 17678 4. Allow for a change in ownership or operational control of a facility where the department
 17679 determines that no other change in the individual permit is necessary, provided that a
 17680 written agreement containing a specific date for transfer of individual permit responsibility,
 17681 coverage, and liability between the current and new individual permittees has been
 17682 submitted to the department;
 17683 5. a. Change the construction schedule for a discharger which is a new source. No such
 17684 change shall affect a discharger's obligation to have all pollution control equipment
 17685 installed and in operation prior to discharge.
 17686 b. Delete a point source outfall when the discharge from that outfall is terminated and
 17687 does not result in discharge of pollutants from other outfalls except in accordance with
 17688 permit limits; or
 17689 6. Require electronic reporting requirements (to replace paper reporting requirements)
 17690 including those specified in 40 CFR Part 3 and Part XI (9VAC25-31-950 et seq.) of the
 17691 Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation.

17692 9VAC25-875-1250. Termination of permits.

17693 A. The following are causes for terminating a permit during its term, or for denying an individual
 17694 permit, or coverage under a general permit renewal application, after notice and opportunity for a
 17695 hearing by the department.

- 17696 1. The permittee has violated any regulation of the board or order of the department, any
 17697 order of the VESMP authority, any provision of the State Water Control Law or this chapter,
 17698 or any order of a court, where such violation results in the unreasonable degradation of
 17699 properties, water quality, stream channels, and other natural resources, or the violation is
 17700 representative of a pattern of serious or repeated violations that in the opinion of the
 17701 department, demonstrates the permittee's disregard for or inability to comply with
 17702 applicable laws, regulations, permit conditions, orders, rules, or requirements;
 17703 2. Noncompliance by the permittee with any condition of the permit;
 17704 3. The permittee's failure to disclose fully all relevant material facts, or the permittee's
 17705 misrepresentation of any relevant material facts in applying for a permit, or in any other
 17706 report or document required under the State Water Control Law or this chapter;
 17707 4. A determination that the permitted activity endangers human health or the environment
 17708 and can only be regulated to acceptable levels by permit modification or termination;
 17709 5. A change in any condition that requires either a temporary or permanent reduction or
 17710 elimination of any discharge controlled by the permit;
 17711 6. The activity for which the permit was issued causes unreasonable degradation of
 17712 properties, water quality, stream channels, and other natural resources; or

17713 7. There exists a material change in the basis on which the permit was issued that requires
 17714 either a temporary or a permanent reduction or elimination of any discharge or land-
 17715 disturbing activity controlled by the permit necessary to prevent unreasonable degradation
 17716 of properties, water quality, stream channels, and other natural resources.

17717 B. The department shall follow the applicable procedures in this chapter in terminating any
 17718 permit under this section, except that if the entire discharge is permanently terminated by
 17719 elimination of the flow or by connection to a POTW or a PVOTW (but not by land application or
 17720 disposal into a well), the department may terminate the permit by notice to the permittee.
 17721 Termination by notice shall be effective 30 days after notice is sent, unless the permittee objects
 17722 within that time. If the permittee objects during that period, the department shall follow the
 17723 applicable procedures for termination under 9VAC25-875-1210 D. Expedited permit termination
 17724 procedures are not available to permittees that are subject to pending state or federal
 17725 enforcement actions including citizen suits brought under state or federal law. If requesting
 17726 expedited permit termination procedures, a permittee must certify that it is not subject to any
 17727 pending state or federal enforcement actions including citizen suits brought under state or federal
 17728 law.

17729 C. Permittees that wish to terminate their permit must submit a notice of termination (NOT) to
 17730 the department. If requesting expedited permit termination procedures, a permittee must certify
 17731 in the NOT that it is not subject to any pending state or federal enforcement actions including
 17732 citizen suits brought under state or federal law. As of the start date in Table 1 of [9VAC25-31-](#)
 17733 [1020](#), all NOTs submitted in compliance with this subsection shall be submitted electronically by
 17734 the permittee to the department in compliance with this subsection and 40 CFR Part 3 (including,
 17735 in all cases, 40 CFR Part 3 Subpart D), 9VAC25-875-940, and Part XI ([9VAC25-31-950](#) et seq.)
 17736 of the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation. Part XI of
 17737 [9VAC25-31](#) is not intended to undo existing requirements for electronic reporting. Prior to this
 17738 date, and independent of Part XI of [9VAC25-31](#), the permittee may be required to report
 17739 electronically if specified by a particular permit.

17740 Article 7

17741 Enforcement of permits

17742 **9VAC25-875-1260. Enforcement.**

17743 A. The department may enforce the provisions of this chapter by:

- 17744 1. Issuing directives in accordance with the State Water Control Law;
- 17745 2. Issuing special orders in accordance with the State Water Control Law;
- 17746 3. Issuing emergency special orders in accordance with the State Water Control Law;
- 17747 4. Seeking injunction, mandamus or other appropriate remedy as authorized by the State
 17748 Water Control Law;
- 17749 5. Seeking civil penalties under the State Water Control Law; or
- 17750 6. Seeking remedies under the State Water Control Law, the CWA or under other laws
 17751 including the common law.

17752 B. The department encourages citizen participation in all its activities, including enforcement.
 17753 In particular:

- 17754 1. The department will investigate citizen complaints and provide written response to all
 17755 signed, written complaints from citizens concerning matters within the department's
 17756 purview;
- 17757 2. The department will not oppose intervention in any civil enforcement action when such
 17758 intervention is authorized by statute or Supreme Court rule; and

17759 3. At least 30 days prior to the final settlement of any civil enforcement action or the
 17760 issuance of any consent special order, the department will publish public notice of such
 17761 settlement or order in a newspaper of general circulation in the county, city or town in
 17762 which the discharge is located, and in The Virginia Register of Regulations. This notice
 17763 will identify the owner, specify the enforcement action to be taken and specify where a
 17764 copy of the settlement or order can be obtained. A consent special order is a special order
 17765 issued without a public hearing and with the written consent of the affected owner. For the
 17766 purpose of this chapter, an emergency special order is not a consent special order. The
 17767 department shall consider all comments received during the comment period before taking
 17768 final action.

17769 C. When a permit is amended solely to reflect a new owner, and the previous owner had been
 17770 issued a consent special order that, at the time of permit amendment was still in full force and
 17771 effect, a consent special order issued to the new owner does not have to go to public notice
 17772 provided that:

- 17773 1. The permit amendment does not have to go to public notice; and
 17774 2. The terms of the new consent order are the same as issued to the previous owner.

17775 D. Notwithstanding subdivision B 3 of this subsection, a special order may be issued by
 17776 agreement without further notice when a hearing has been scheduled to issue a special order to
 17777 the affected owner, whether or not the hearing is actually held.

17778 Article 8

17779 Miscellaneous

17780 **9VAC25-875-1270. Transition.**

17781 Upon the effective date of this chapter the following will occur:

- 17782 1. All applications received after the effective date of this chapter will be processed in
 17783 accordance with these procedures.
 17784 2. Permits issued by the Soil and Water Conservation Board allowing the discharge of
 17785 stormwater into surface waters from municipal separate storm sewer systems or land-
 17786 disturbing activities that have not expired or been revoked or terminated before or on the
 17787 program transfer date to the department shall continue to remain in effect until their
 17788 specified expiration dates.

17789 Article 9

17790 Electronic reporting requirements

17791 **9VAC25-875-1280. Electronic reporting.**

17792 Operators shall comply with the electronic reporting requirements set forth in Part XI of
 17793 9VAC25-31.

17794 Part VIII

17795 Fees

17796 Article 1

17797 Fees

17798 **9VAC25-875-1290. Purpose.**

17799 Sections [62.1-44.15:28](#) and [62.1-44.15:31](#) of the Code of Virginia authorize the establishment
 17800 of a statewide fee schedule, including administrative charges for state agencies, for stormwater
 17801 management for land-disturbing activities and for municipal separate storm sewer systems. This

17802 part establishes the fee assessment and the collection and distribution systems for those fees.
 17803 The fees shall be established for individual permits or coverage under the General VPDES Permit
 17804 for Discharges of Stormwater from Construction Activities (permits for stormwater management
 17805 for land-disturbing activities) to cover all costs associated with the implementation of a VESMP
 17806 by a VESMP authority that has been approved by the department. Such fee attributes include the
 17807 costs associated with plan review, registration statement review, permit issuance, state-coverage
 17808 verification, inspections, reporting, database management, and compliance activities associated
 17809 with the land-disturbing activities as well as for program oversight costs. Fees shall also be
 17810 established for permit maintenance, modification, and transfer.

17811 Fees collected pursuant to this part shall be in addition to any general fund appropriations
 17812 made to the department or other supporting revenue from a VESMP; however, the fees shall be
 17813 set at a level sufficient for the department and the VESMP authority to fully carry out their
 17814 responsibilities under the VESMA, this chapter, local ordinances, or standards and specifications
 17815 where applicable.

17816 When establishing a VESMP, the VESMP authority shall assess the statewide fee schedule
 17817 and shall have the authority to reduce or increase such fees, and to consolidate such fees with
 17818 other program-related charges, but in no case shall such fee changes affect the amount
 17819 established in 9VAC25-875-1400 as available to the department for program oversight
 17820 responsibilities pursuant to § 62.1-44.15:28 A 9 of the Code of Virginia. Accordingly, should a
 17821 VESMP authority demonstrate to the department its ability to fully and successfully implement a
 17822 VESMP without a full implementation of the fees set out in this part, the department may authorize
 17823 the administrative establishment of a lower fee for that program provided that such reduction shall
 17824 not reduce the amount of fees due to the department for its program oversight and shall not affect
 17825 the fee schedules set forth herein.

17826 A VESMP authority may establish greater fees than those base fees specified by this part
 17827 should it be demonstrated to the department that such greater fees are necessary to properly
 17828 administer the VESMP. Any fee increases established by the VESMP authority beyond those
 17829 base fees established in this part shall not be subject to the fee distribution formula set out in
 17830 9VAC25-875-1360. Nothing in this part shall prohibit a locality from establishing other local fees
 17831 authorized by the Code of Virginia related to stormwater management within their jurisdictions.

17832 A VESMP's portion of the fees shall be used solely to carry out the VESMP's responsibilities
 17833 under the VESMA, this chapter, ordinances, or standards and specifications.

17834 As part of its program oversight, the department shall periodically assess the revenue
 17835 generated by both the VESMP authorities and the department to ensure that the fees have been
 17836 appropriately set and the fees may be adjusted through periodic regulatory actions should
 17837 significant deviations become apparent.

17838 **9VAC25-875-1300. Authority.**

17839 The authority for this part is §§ 62.1-44.15:28 and 62.1-44.15:31 of the Code of Virginia.

17840 **9VAC25-875-1310. Applicability.**

17841 A. This part applies to:

17842 1. All persons seeking coverage of a MS4 under a new permit. The fee due shall be as
 17843 specified under 9VAC25-875-1380.

17844 2. All operators who request that an existing MS4 individual permit be modified, except as
 17845 specifically exempt under 9VAC25-875-1320. The fee due shall be as specified under
 17846 9VAC25-875-1390.

17847 3. All persons seeking coverage under the General VPDES Permit for Discharges of
 17848 Stormwater from Construction Activities or a person seeking an Individual VPDES Permit

17849 for Discharges of Stormwater from Construction Activities. The fee due shall be as
 17850 specified under 9VAC25-875-1400.

17851 4. All permittees who request modifications to or transfers of their existing registration
 17852 statement for coverage under a General VPDES Permit for Discharges of Stormwater from
 17853 Construction Activities or of an Individual VPDES Permit for Discharges of Stormwater
 17854 from Construction Activities. The fee due shall be as specified under 9VAC25-875-1410
 17855 in addition to any additional fees necessary pursuant to 9VAC25-875-1400 due to an
 17856 increase in acreage.

17857 5. Reinspection fees assessed by the department to recoup the costs associated with
 17858 each visit to a land-disturbing project site that was necessary to check on the status of
 17859 project site items noted to be in noncompliance and documented as such on a prior project
 17860 inspection. The fee due shall be as specified under 9VAC25-875-1370.

17861 6. Business transaction costs assessed associated with processing credit card payments.

17862 B. Persons who are applicants for an individual Municipal Separate Stormwater Sewer System
 17863 permit as a result of existing permit revocation shall be considered an applicant for a new permit.
 17864 The fee due shall be as specified under 9VAC25-875-1380.

17865 Persons whose coverage under the General VPDES Permit for Discharges of Stormwater
 17866 from Construction Activities has been revoked shall reapply for an Individual VPDES Permit for
 17867 Discharges of Stormwater from Construction Activities. The fee due shall be as specified under
 17868 9VAC25-875-1400.

17869 C. Permit maintenance fees may apply to each permit holder. The fee due shall be as
 17870 specified under 9VAC25-875-1420.

17871 **9VAC25-875-1320. Exemptions.**

17872 A. No permit application fees will be assessed to:

17873 1. Permittees who request minor modifications to permits as defined in 9VAC25-875-20
 17874 or other minor amendments at the discretion of the VESMP authority.

17875 2. Permittees whose permits are modified or amended at the request of the VESMP
 17876 authority or department. This does not include errors in the registration statement
 17877 identified by the VESMP authority or department or errors related to the acreage of the
 17878 site.

17879 B. Permit modifications at the request of the permittee resulting in changes to stormwater
 17880 management or ESM plans that require additional review by the VESMP authority shall not be
 17881 exempt pursuant to this section and shall be subject to fees specified under 9VAC25-875-1410.

17882 **9VAC25-875-1330. Due dates for permits.**

17883 A. Requests for a permit, permit modification, or general permit coverage shall not be
 17884 processed until the fees required pursuant to this part are paid in accordance with 9VAC25-875-
 17885 1340.

17886 B. Individual permit or general permit coverage maintenance fees shall be paid annually to
 17887 the department or the VESMP authority, as applicable. No permit will be reissued or automatically
 17888 continued without payment of the required fee. Individual permit or general permit coverage
 17889 maintenance fees shall be applied until a Notice of Termination is effective.

17890 Permit maintenance fees for MS4 individual permits or MS4 general permit coverages are due
 17891 by October 1 of each year. Effective April 1, 2014, any operator whose permit or general permit
 17892 coverage (including operators whose permits or general permit coverages have been
 17893 administratively continued) is effective as of April 1 of any given year shall pay the permit
 17894 maintenance fee or fees to the department or the VESMP authority by October 1 of that same
 17895 year.

17896 Permit maintenance fees for discharges of stormwater from construction activities pursuant to
 17897 9VAC25-875-1420 are due by April 1 of each year. After approval of a VESMP authority, including
 17898 the department when acting in that capacity, any owner whose permit or general permit coverage
 17899 authorizing discharges of stormwater from construction activities (including owners whose permits
 17900 or general permit coverages have been administratively continued) is effective as of the effective
 17901 date of the VESMP authority shall pay the permit maintenance fee or fees to the department or
 17902 the VESMP authority by April 1 of that same year.

17903 **9VAC25-875-1340. Method of payment.**

17904 A. Fees shall be collected utilizing, where practicable, an online payment system. Until such
 17905 system is operational, fees, as applicable, shall be, at the discretion of the department, submitted
 17906 electronically or be paid by check, draft or postal money order payable to:

17907 1. The Treasurer of Virginia, for a MS4 individual or general permit or for a coverage issued
 17908 by the department under the General VPDES Permit for Discharges of Stormwater from
 17909 Construction Activities or Individual VPDES Permit for Discharges of Stormwater from
 17910 Construction Activities, and must be in U.S. currency, except that agencies and institutions
 17911 of the Commonwealth of Virginia may submit Interagency Transfers for the amount of the
 17912 fee. The department may provide a means to pay fees electronically. Fees not submitted
 17913 electronically shall be sent to the Virginia Department of Environmental Quality.

17914 2. The VESMP authority, for VESMP operational costs of the VESMP authority under the
 17915 General VPDES Permit for Discharges of Stormwater from Construction Activities, and
 17916 must be in U.S. currency.

17917 B. When fees are collected electronically pursuant to this part through credit cards, business
 17918 transaction costs associated with processing such payments may be additionally assessed.

17919 C. Nothing in this part shall prohibit the department and a VESMP authority from entering into
 17920 an agreement whereby the total fee to be paid by the applicant for coverage under the General
 17921 VPDES Permit for Discharges of Stormwater from Construction Activities is payable to the
 17922 VESMP authority, and the VESMP authority transmits the department's portion set forth in
 17923 9VAC25-875-1400 to the department on a schedule established by the department.

17924 D. Required information for permits or permit coverage. All applicants, unless otherwise
 17925 specified by the department, shall submit the following information along with the fee payment or
 17926 utilize the department Permit Application Fee Form:

17927 1. Applicant name, address and daytime phone number.

17928 2. The name of the facility/activity, and the facility/activity location.

17929 3. The type of permit applied for.

17930 4. Whether the application is for a new permit issuance, permit reissuance, permit
 17931 maintenance, or permit modification.

17932 5. The amount of fee submitted.

17933 6. The existing permit number, if applicable.

17934 7. Other information as required by the VESMP authority.

17935 **9VAC25-875-1350. Incomplete and late payments.**

17936 All incomplete payments will be deemed as nonpayments. The department or the VESMP
 17937 authority, as applicable, shall provide notification to the applicant of any incomplete payments.

17938 Interest may be charged for late payments at the underpayment rate set forth in § 58.1-15 of
 17939 the Code of Virginia and is calculated on a monthly basis at the applicable periodic rate.

17940 A 10% late payment fee shall be charged to any delinquent (over 90 days past due) account.

17941 The department and the VESMP authority are entitled to all remedies available under the
 17942 Code of Virginia in collecting any past due amount.

17943 **9VAC25-875-1360. Deposit and use of fees.**

17944 A. All fees collected by the department pursuant to this chapter shall be deposited into the
 17945 Virginia Stormwater Management Fund and shall be used and accounted for as specified in §
 17946 62.1-44.15:29 of the Code of Virginia. Fees collected by the department shall be exempt from
 17947 statewide indirect costs charged and collected by the Department of Accounts.

17948 B. All fees collected by a VESMP authority pursuant to this chapter shall be subject to
 17949 accounting review and shall be used solely to carry out the VESMP authority's responsibilities
 17950 pursuant to the VESMA, Part V and Article 3 (9VAC25-875-100 et seq.) of Part II of this chapter,
 17951 local ordinances, or standards and specifications.

17952 Pursuant to subdivision A 9 of § 62.1-44.15:28 of the Code of Virginia, whenever the
 17953 department has authorized the administration of a VESMP by a VESMP authority, 28% of the
 17954 total revenue generated by the statewide stormwater management fees collected in accordance
 17955 with 9VAC25-875-1400 shall be remitted on a schedule determined by the department to the
 17956 State Treasurer for deposit in the Virginia Stormwater Management Fund unless otherwise
 17957 collected electronically. If the VESMP authority waives or reduces any fee due in accordance with
 17958 9VAC25-875-1400, the VESMP authority shall remit the 28% portion that would be due to the
 17959 Virginia Stormwater Management Fund if such fee were charged in full. Any fee increases
 17960 established by the VESMP authority beyond the base fees established in this part shall not be
 17961 subject to the fee distribution formula.

17962 **9VAC25-875-1370. General.**

17963 The fees for individual permits, general permit coverage, permit or registration statement
 17964 modification, or permit transfers are considered separate actions and shall be assessed a
 17965 separate fee, as applicable.

17966 **9VAC25-875-1380. Fee schedules for municipal separate storm sewer system new permit**
 17967 **issuance.**

17968 The following fee schedule applies to permit applications for issuance of a new individual
 17969 municipal separate storm sewer system permit or coverage under a MS4 General Permit. All
 17970 regulated MS4s that apply for joint coverage under an individual permit or general permit
 17971 registration shall each pay the appropriate fees set out below.

Municipal Stormwater / MS4 Individual (Large and Medium)	\$16,000
Municipal Stormwater / MS4 Individual (Small)	\$8,000
Municipal Stormwater / MS4 General Permit (Small)	\$4,000

17972 **9VAC25-875-1390. Fee schedules for major modification of MS4 individual permits**
 17973 **requested by the operator.**

17974 The following fee schedule applies to applications for major modification of an individual MS4
 17975 permit requested by the permittee:

Municipal Stormwater / MS4 Individual (Large and Medium)	\$5,000
Municipal Stormwater / MS4 Individual (Small)	\$2,500

17976 **9VAC25-875-1400. Fees for individual permit or coverage under the General Permit of**
 17977 **Discharges of Stormwater from Construction Activities.**

17978 The following total fees to be paid by an applicant apply to any operator seeking coverage
 17979 under a General VPDES Permit for Discharges of Stormwater from Construction Activities or a
 17980 state agency or federal entity that does not file standards and specifications, or an individual
 17981 permit issued by the department. On and after approval by the department of a VESMP authority

17982 for coverage under the General VPDES Permit for Discharges of Stormwater from Construction
 17983 Activities, no more than 50% of the total fee to be paid by an applicant set out in this part shall be
 17984 due at the time that a stormwater management plan or an initial stormwater management plan is
 17985 submitted for review in accordance with 9VAC25-875-530. The remaining total fee balance to be
 17986 paid by an applicant shall be due prior to the issuance of coverage under the General VPDES
 17987 Permit for Discharges of Stormwater from Construction Activities.

17988 When a site or sites are purchased for development within a previously permitted common
 17989 plan of development or sale, the applicant shall be subject to fees ("total fee to be paid by
 17990 applicant" column) in accordance with the disturbed acreage of their site or sites according to the
 17991 following table.

<u>Fee type</u>	<u>Total fee to be paid by applicant (includes both VESMP authority and department portions where applicable)</u>	<u>Department portion of "total fee to be paid by applicant" (based on 28% of total fee paid*)</u>
<u>Land-Disturbing Activity in a Chesapeake Bay Preservation Area (not subject to General Permit coverage; sites within designated areas of Chesapeake Bay Act localities with land-disturbance acreage equal to or greater than 2,500 square feet and less than one acre)</u>	<u>\$290</u>	<u>\$0</u>
<u>General / Stormwater Management - Small Construction Activity/Land-Disturbing Activity in a Chesapeake Bay Preservation Area (not subject to General Permit coverage)/Land Clearing (Single-family detached residential structures within or outside a common plan of development or sale with land-disturbance acreage less than five acres)</u>	<u>\$209</u>	<u>\$0</u>
<u>General / Stormwater Management - Small Construction Activity/Land Clearing (Areas within common plans of development or sale with land-disturbance acreage less than one acre, except for</u>	<u>\$290</u>	<u>\$81</u>

<u>single-family detached residential structures)</u>		
<u>General / Stormwater Management - Small Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than one acre and less than five acres)</u>	<u>\$2,700</u>	<u>\$756</u>
<u>General / Stormwater Management - Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than five acres and less than 10 acres)</u>	<u>\$3,400</u>	<u>\$952</u>
<u>General / Stormwater Management - Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than 10 acres and less than 50 acres)</u>	<u>\$4,500</u>	<u>\$1,260</u>
<u>General / Stormwater Management - Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than 50 acres and less than 100 acres)</u>	<u>\$6,100</u>	<u>\$1,708</u>
<u>General / Stormwater Management - Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage</u>	<u>\$9,600</u>	<u>\$2,688</u>

<u>equal to or greater than 100 acres)</u>		
<u>Individual VPDES Permit for Discharges of Stormwater from Construction Activities (This will be administered by the department)</u>	<u>\$15,000</u>	<u>\$15,000</u>
<u>* If the project is completely administered by the department such as may be the case for a state or federal project or projects covered by individual permits, the entire applicant fee shall be paid to the department.</u>		

17992 The following fees apply to coverage under the General VPDES Permit for Discharges of
17993 Stormwater from Construction Activities issued by the department for a state agency or federal
17994 entity that has standards and specifications approved by the department.

<u>General / Stormwater Management - Phase I Land Clearing (Large Construction Activity - Sites or common plans of development equal to or greater than five acres)</u>	<u>\$750</u>
<u>General / Stormwater Management - Phase II Land Clearing (Small Construction Activity - Sites or common plans of development equal to or greater than one acre and less than five acres)</u>	<u>\$450</u>

17995 **9VAC25-875-1410. Fees for the modification or transfer of individual permits or of**
17996 **registration statements for the General VPDES Permit for Discharges of Stormwater from**
17997 **Construction Activities.**

17998 The following fees apply to modification or transfer of individual permits or of registration
17999 statements for the General VPDES Permit for Discharges of Stormwater from Construction
18000 Activities issued by the department. If the permit modifications result in changes to stormwater
18001 management plans that require additional review by the VESMP authority, such reviews shall be
18002 subject to the fees set out in this section. The fee assessed shall be based on the total disturbed
18003 acreage of the site. In addition to the permit modification fee, modifications resulting in an increase
18004 in total disturbed acreage shall pay the difference in the initial permit fee paid and the permit fee
18005 that would have applied for the total disturbed acreage in 9VAC25-875-1400. No modification or
18006 transfer fee shall be required until such department-approved programs exist. These fees shall
18007 only be effective when assessed by a VESMP authority, including the department when acting in
18008 that capacity, that has been approved by the department. No modification fee shall be required
18009 for the General VPDES Permit for Discharges of Stormwater from Construction Activities for a
18010 state agency or federal entity that is administering a project in accordance with approved
18011 standards and specifications but shall apply to all other state or federal agency projects.

<u>General / Stormwater Management – Small Construction Activity/Land Clearing (Areas within common plans of development or sale with land-disturbance acreage less than one acre, except for single-family detached residential structures)</u>	<u>\$20</u>
<u>General / Stormwater Management – Small Construction Activity/Land-Disturbing Activity in a Chesapeake Bay Preservation Area (not subject to General Permit coverage)/Land Clearing (Single-family detached residential structures within or outside a common plan of development or sale with land-disturbance acreage less than five acres where the locality is the VESMP authority)</u>	<u>\$20</u>

<u>General / Stormwater Management – Small Construction Activity/Land Clearing (Single-family detached residential structures within or outside a common plan of development or sale with land-disturbance acreage less than five acres where the department is the VSMP authority)</u>	<u>\$0</u>
<u>General / Stormwater Management – Small Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than one and less than five acres)</u>	<u>\$200</u>
<u>General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than five acres and less than 10 acres)</u>	<u>\$250</u>
<u>General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than 10 acres and less than 50 acres)</u>	<u>\$300</u>
<u>General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than 50 acres and less than 100 acres)</u>	<u>\$450</u>
<u>General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than 100 acres)</u>	<u>\$700</u>
<u>Individual VPDES Permit for Discharges of Stormwater from Construction Activities</u>	<u>\$5,000</u>

18012 9VAC25-875-1420. Permit maintenance fees.

18013 The following annual permit maintenance fees apply to each permit identified below, including
 18014 expired permits that have been administratively continued. With respect to the General VPDES
 18015 Permit for Discharges of Stormwater from Construction Activities, these fees shall apply until the
 18016 permit coverage is terminated, and shall only be effective when assessed by a VESMP authority
 18017 including the department when acting in that capacity that has been approved by the department.
 18018 No maintenance fee shall be required for the General VPDES Permit for Discharges of
 18019 Stormwater from Construction Activities for a state agency or federal entity that is administering
 18020 a project in accordance with approved standards and specifications but shall apply to all other
 18021 state or federal agency projects. All regulated MS4s who are issued joint coverage under an
 18022 individual permit or general permit registration shall each pay the appropriate fees set out below:

<u>Municipal Stormwater / MS4 Individual (Large and Medium)</u>	<u>\$8,800</u>
<u>Municipal Stormwater / MS4 Individual (Small)</u>	<u>\$6,000</u>
<u>Municipal Stormwater / MS4 General Permit (Small)</u>	<u>\$3,000</u>
<u>Land-Disturbing Activity in a Chesapeake Bay Preservation Area (not subject to General Permit coverage; sites within designated areas of Chesapeake Bay Act localities with land-disturbance acreage equal to or greater than 2,500 square feet and less than 1 acre)</u>	<u>\$50</u>
<u>General / Stormwater Management – Small Construction Activity/Land Clearing (Areas within common plans of development or sale with land-disturbance acreage less than one acre, except for single-family detached residential structures)</u>	<u>\$50</u>

<u>General / Stormwater Management – Small Construction Activity/Land-Disturbing Activity in a Chesapeake Bay Preservation Area (not subject to General Permit coverage)/Land Clearing (Single-family detached residential structures within or outside a common plan of development or sale with land-disturbance acreage less than five acres where the locality is the VESMP authority)</u>	<u>\$50</u>
<u>General / Stormwater Management – Small Construction Activity/Land Clearing (Single-family detached residential structures within or outside a common plan of development or sale with land-disturbance acreage less than five acres where the department is the VSMP authority)</u>	<u>\$0</u>
<u>General / Stormwater Management – Small Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance equal to or greater than one acre and less than five acres)</u>	<u>\$400</u>
<u>General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than five acres and less than 10 acres)</u>	<u>\$500</u>
<u>General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than 10 acres and less than 50 acres)</u>	<u>\$650</u>
<u>General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than 50 acres and less than 100 acres)</u>	<u>\$900</u>
<u>General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater 100 acres)</u>	<u>\$1,400</u>
<u>Individual VPDES Permit for Discharges from Construction Activities</u>	<u>\$3,000</u>

- 18023 [Documents Incorporated by Reference \(9VAC25-875\)](#)
- 18024 [Virginia Runoff Reduction Method: Instructions & Documentation, March 28, 2011](#)
- 18025 [Virginia Erosion and Sediment Control Regulation Minimum Standard 19 in effect prior to July 1, 2014](#)
- 18026 [Virginia Erosion and Sediment Control Regulation Minimum Standard 19 in effect prior to July 1, 2014](#)

Office of Regulatory Management
Economic Review Form

Agency name	State Water Control Board
Virginia Administrative Code (VAC) Chapter citation(s)	9 VAC 25-840 (repeal); 9 VAC 25-850 (repeal); 9 VAC 25-870 (repeal); 9VAC25-875 (new)
VAC Chapter title(s)	Erosion and Sediment Control Regulations (repeal); Erosion and Sediment Control and Stormwater Management Certification Regulations (repeal); Virginia Stormwater Management Program (VSMP) Regulation (repeal); Virginia Erosion and Stormwater Management Regulation (new)
Action title	Consolidation of Virginia Erosion Control and Stormwater Management Programs
Date this document prepared	May 30, 2023
Regulatory Stage (including Issuance of Guidance Documents)	Final Exempt

Background

Chapters 68 and 758 of the 2016 Acts of Assembly (the “Consolidation Bill”) combine the Department of Environmental Quality’s (DEQ) existing statutory programs relating to soil erosion and sediment control and stormwater management. The ninth enactment in the Consolidation Bill directs the State Water Control Board (Board) to adopt regulations to carry out the purposes of the Acts. This regulatory action fulfills the requirements of the ninth enactment by repealing three chapters of the Virginia Administrative Code, the Erosion and Sediment Control Regulations (9VAC25-840), the Erosion and Sediment Control and Stormwater Certification Regulations (9VAC25-850), and the Virginia Stormwater Management Program (VSMP) Regulation (9VAC25-870), and consolidating the relevant requirements from each and new requirements in the Consolidation Bill into a new chapter, the Virginia Erosion and Stormwater Management Regulation (9VAC25-875).

The Virginia Erosion and Stormwater Management Regulation helps localities and the regulated community by clarifying program requirements, eliminating redundancies, and correcting inconsistencies between the current Erosion and Sediment Control Regulations and the Virginia Stormwater Management Program Regulation. This action does not change the substantive requirements for owners and operators to submit plans, obtain permits, and maintain compliance with requirements to control erosion and stormwater runoff from land-disturbing activities. It

does not change the substantive requirements for localities to operate programs for erosion and sediment control and stormwater management (or to have the Department of Environmental Quality (DEQ) serve as the stormwater management program authority). Nor does the action change the technical requirements such as erosion and sediment control minimum standards and post-construction stormwater management criteria that protect public health and the environment.

Cost Benefit Analysis

Complete Tables 1a and 1b for all regulatory actions. You do not need to complete Table 1c if the regulatory action is required by state statute or federal statute or regulation and leaves no discretion in its implementation.

Table 1a should provide analysis for the regulatory approach you are taking. Table 1b should provide analysis for the approach of leaving the current regulations intact (i.e., no further change is implemented). Table 1c should provide analysis for at least one alternative approach. You should not limit yourself to one alternative, however, and can add additional charts as needed.

Report both direct and indirect costs and benefits that can be monetized in Boxes 1 and 2. Report direct and indirect costs and benefits that cannot be monetized in Box 4. See the ORM Regulatory Economic Analysis Manual for additional guidance.

Table 1a: Costs and Benefits of the Proposed Changes (Primary Option)

<p>(1) Direct & Indirect Costs & Benefits (Monetized)</p>	<p>Direct & Indirect Costs:</p> <p>Chapters 68 and 758 of the 2016 Acts of Assembly (the “Consolidation Bill”) combine the Department of Environmental Quality’s (DEQ) existing statutory programs relating to soil erosion and sediment control and stormwater management. Pursuant to Chapters 656 and 666 of the 2023 Acts of Assembly, the Consolidation Bill will become effective July 1, 2024, the same date as the regulation that implements the requirements of the Acts – the Virginia Erosion and Stormwater Management Regulation, 9VAC25-875.</p> <p>Pursuant to Va. Code § 62.1-44.15:27 (effective July 1, 2024), Virginia Stormwater Management Program (VSMP) authorities are required to adopt and administer a Virginia Erosion and Stormwater Management Program (VESMP) consistent with the provisions of the Virginia Erosion and Stormwater Management Act (VESMA), which amends and renames the Stormwater Management Act (Va. Code § 62.1-44.15:24 et seq.). There are currently 92 localities in Virginia that are VSMP authorities. Each will have to revise its local ordinances to adopt and administer a VESMP. However, the localities will not need to make substantive changes to their plan review, inspection, or enforcement</p>
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programs to ensure compliance with the erosion control and stormwater management requirements in Chapter 875.

There are also over 150 localities in Virginia that are not VSMP authorities and can either adopt and administer a VESMP or continue to operate their Virginia Erosion and Sediment Control Program (VESCP) and have DEQ serve as the VSMP authority (Va. Code § 62.1-44.15:27 B.). If localities that are VESCP authorities continue to operate their programs, they will need to update their ordinances to reflect the change to Chapter 875 but will not need to make any substantive changes to their plan review, inspection, or enforcement requirements.

The VESMA changes the structure of stormwater and erosion and sediment control programs in the 92 localities that currently administer a VSMP and VESCP by combining the programs under the VESMP. Localities that only have a VESCP (where DEQ is the VSMP) will follow requirements in the Erosion and Sediment Control Law for Localities Not Administering a Virginia Erosion and Stormwater Management Program (which amends and renames the Erosion and Sediment Control Law), Va. Code § 62.1-44.15:51 et seq., effective July 1, 2024. However, their program and implementation of the erosion and sediment control requirements will be effectively unchanged.

With respect to the actual requirements for plan submittal, permitting, and meeting technical standards for erosion and sediment control and stormwater management, none of these change in Chapter 875. Chapters 68 and 758 of the 2016 Acts of Assembly change the organizational structure of programs by creating the VESMP, but do not change the substance of the programs for localities, DEQ, or the regulated community. As a result, the direct and indirect costs of the existing Chapters 840, 850, and 870 that are detailed in Table 1b remain the same for Chapter 875. There are no significant new direct or indirect costs associated with the proposed changes.

Direct Benefits:

By repealing three existing chapters (Chapters 840, 850, and 870) and consolidating requirements from each into a single chapter (Chapter 875), clarifying program requirements, eliminating redundancies, and correcting inconsistencies between erosion and sediment control regulations and stormwater management program regulations, this regulatory action makes the regulation easier to understand and implement.

	<p>Indirect Benefits:</p> <p>Improving the ease of use and clarity of program requirements saves time for localities and the regulated community, improves understanding of regulatory requirements, and should result in better compliance with the minimum standards for erosion and sediment control and stormwater management program requirements (i.e., limits on water quantity and water quality that are released to surface waters from land-disturbance sites). Better compliance protects state waters, water quality, habitat, and recreational use.</p>	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) No monetized direct or indirect costs associated with these regulatory changes.	(b) Unable to monetize direct and indirect benefits.
(3) Net Monetized Benefit	N/A	
(4) Other Costs & Benefits (Non-Monetized)	N/A	
(5) Information Sources		

Table 1b: Costs and Benefits under the Status Quo (No change to the regulation)

(1) Direct & Indirect Costs & Benefits (Monetized)	<p>Direct Costs:</p> <p>The State Water Control Law, Chapter 3.1 of Title 62.1 of the Code of Virginia, requires any person who conducts land-disturbing activity in the Commonwealth to comply with erosion and sediment control and stormwater management requirements if the land-disturbing activity affects more than the specified thresholds. See e.g., Va. Code § 62.1-44.15:55 A (erosion and sediment control plan required) and Va. Code § 62.1-44.15:34 A (registration statement and stormwater management plan required).</p> <p>Localities are required to adopt and administer programs for the effective control of soil erosion, sediment deposition, and nonagricultural runoff associated with a land-disturbing activity to prevent the unreasonable degradation of properties, stream channels, waters, and other natural resources (Va. Code § 62.1-44.15:54 A., called a “Virginia Erosion and Sediment Control Program (VESCP)). Localities that operate a regulated</p>
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municipal separate storm sewer system (MS4) are also required to operate a program to manage the quality and quantity of runoff resulting from land-disturbing activities through such items as local ordinances, rules, permit requirements, annual standards and specifications, policies and guidelines, technical materials, and requirements for plan review, inspection, and enforcement (Va. Code § 62.1-44.15:27 A., called a “Virginia Stormwater Management Program (VSMP)). Localities that do not operate a regulated MS4 may choose to administer a VESCP and VSMP or have the DEQ serve as the VSMP authority (Va. Code § 62.1-44.15:27 A.).

Persons who conduct land-disturbing activities submit the required erosion and sediment control plans and stormwater management plans (if required) to the VESCP and/or VSMP authority in the locality where the activity will occur for approval; or to DEQ if the agency is the VSMP authority. In localities that administer both a VESCP and a VSMP, both programs are typically within the same department. For example, in Henrico County, both are within the Department of Public Works’ Engineering and Environmental Services; in Roanoke County, both are within Development Services.

State agencies, federal entities, and other specified entities (primarily linear utilities) can submit annual standards and specifications to DEQ for approval to serve as VESCP and/or VSMP authorities rather than submitting erosion and sediment control plans and/or stormwater management plans to DEQ for approval. See e.g., Va. Code § 62.1-44.15:56 and Va. Code § 62.1-44.15:31.

Under the current regulations, there are direct costs to DEQ and localities in the staffing and staff time that is required to review and approve ESCP and VSMP authorities and to operate an ESCP and/or VSMP. Va. Code § 62.1-44.15:28 5 allows the Board to “[e]stablish by regulations a statewide permit fee schedule to cover all costs associated with the implementation of a VSMP...” The Board’s fee schedule is set out in 9VAC25-870-700 through 9VAC25-870-830.

The statewide fee schedules are supposed to ensure sufficient funding for a VSMP authority to fully carry out their responsibilities with the department and localities each receiving a portion of the fees collected. Va. Code § 62.1-44.15:28 5.b. Localities have discretion to reduce or increase these fees. Id.

The direct costs of the current regulations to operators are the staff, time, and technology costs to comply with the minimum requirements of Chapters 840 and 870; costs associated with personnel certification under Chapter 850; and the costs of any applicable fees under Chapter 870. In

FY 2023, DEQ's total personnel and discretionary costs for the stormwater program were approximately \$8.8 million. The MS4 program, which is included in Chapter 870 costs approximately \$1.4 million.

In 2018, DEQ submitted a Local Government mandate assessment for the Stormwater Management Program to the Commission on Local Governments as required by Executive Order 58 (2007). As part of this assessment, five localities that operate stormwater programs provided DEQ with information on the financial impact associated with the mandate. The impact varied depending on the size of the community and amount of development occurring.

Grayson County reported their locality had a net expenditure of less than \$5,000 to administer an erosion and sediment control program (DEQ is the VSMP authority). There was one staff member involved with the program in Grayson County.

Loudoun County reported their locality had annual operating costs of \$695,438, received \$218,791 from the state (for general permit registrations for projects located in the county), collected \$410,686 in permit fees, resulting in a net expenditure of \$66,522. There were 27 staff members involved with the stormwater program in Loudoun County.

Hanover County reported their locality had annual operating costs of \$3,039,524, received \$683,017 from state revenues, resulting in a total annual cost of \$2,356,507 to the locality. There were 12 staff members involved with the stormwater program in County.

Gloucester County reported their locality had annual operating costs of \$90,315, received \$20,300 in VSMP Permit fee revenue, resulting in a total annual cost of \$70,015. There were approximately 1.425 full time equivalent staff members involved with the stormwater program in Gloucester County.

The City of Hopewell reported their locality had annual capital costs of \$275,000, annual operating costs of \$523,620, resulting in the total annual cost of \$798,620 to the locality. There were 5 staff members involved with the stormwater program in the City of Hopewell (3 office personnel and 2 public works maintenance crew positions).

Indirect Costs:

The current regulations may have an indirect cost to local economic development. This cost can vary locality by locality based on how

	<p>localities decide to implement their ESCP and/or VSMP programs and on the fees that localities decide to set.</p> <p>Direct Benefits:</p> <p>The current regulations provide the direct benefit of improved water quality by establishing minimum standards for erosion and sediment control during land-disturbing activities and water quality and water quantity limits for stormwater runoff after construction activities are complete. Limits are achieved through the installation and maintenance of best management practices. This regulatory action does not change the existing minimum standards or post-construction stormwater management requirements.</p> <p>Indirect Benefits:</p> <p>Maintaining water quality has the indirect benefits of protecting public health through cleaner drinking water sources, protecting aquatic habitats, and promoting the recreational use of state waters.</p>
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(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	<p>(a) Direct costs are based on state fee schedules for different types of permits. Fee ranges for different permits are:</p> <p>(1) Fee schedules for MS4 new permit issuance- \$4,000-\$16,000.</p> <p>(2) Fee schedules for major modification of MS4 individual permits requested by the operator- \$2,500-\$5,000.</p> <p>(3) Fees for individual permit or coverage under the General Permit of Discharges of Stormwater from</p>	<p>(b) Unable to monetize direct and indirect benefits.</p>

	<p>Construction Activities- \$209-\$15,000.</p> <p>(4) Fees for the modification or transfer of individual permits or of registration statements for the General VPDES Permit for Discharges of Stormwater from Construction Activities- \$0-\$5,000.</p> <p>(5) Permit maintenance fees- \$0-\$8,800.</p> <p>Also see financial information provided by localities in Direct & Indirect Costs section above.</p>	
(3) Net Monetized Benefit	N/A	
(4) Other Costs & Benefits (Non-Monetized)	N/A	
(5) Information Sources	<p>Fee schedules from the Virginia Erosion and Stormwater Management Regulations. (9VAC25-875-1380 to 9VAC25-875-1420)</p> <p>2018 Local Government mandate assessment for the Stormwater Management Program (SNR.DEQ039 to the Commission on Local Governments as required by Executive Order 58 (2007))</p>	

Table 1c: Costs and Benefits under Alternative Approach(es)

(1) Direct & Indirect Costs & Benefits (Monetized)	<p>Chapters 68 and 758 of the 2016 Acts of Assembly (the “Consolidation Bill”) combine the Department of Environmental Quality’s (DEQ) existing statutory programs relating to soil erosion and sediment control and stormwater management. The ninth enactment in the Consolidation Bill directs the State Water Control Board (Board) to adopt regulations to carry out the purposes of the Acts. This regulatory change was limited in</p>
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	scope to the consolidation of the soil erosion and sediment control and stormwater management programs.	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	N/A	N/A
(3) Net Monetized Benefit	N/A	
(4) Other Costs & Benefits (Non-Monetized)	N/A	
(5) Information Sources	N/A	

Impact on Local Partners

Use this chart to describe impacts on local partners. See Part 8 of the ORM Cost Impact Analysis Guidance for additional guidance.

Table 2: Impact on Local Partners

(1) Direct & Indirect Costs & Benefits (Monetized)	<p>Direct Costs:</p> <p>The direct cost of this action to local partners is the time and resources necessary to update local ordinances. This cost will vary by locality depending on whether they currently operate a Virginia Stormwater Management Program (VSMP) or choose to operate a combined Virginia Erosion and Stormwater Management Program (VESMP) under the consolidated regulation.</p> <p>Under current statutory requirements and regulations, every locality is required to operate an Erosion and Sediment Control Program (VESCP), while some localities are also required to operate a VSMP. Under the new regulation, localities that operate both a VESCP and a VSMP are required to combine those programs into a VESMP. This will require updating local ordinances to reflect the combined VESMP and to correct citations and references to the new Chapter 875. This does not change the existing requirements under which 92 localities currently operate their separate VESCP and VSMP.</p> <p>In addition, over 150 localities that currently operate a VESCP only will have the discretion to continue only operating a VESCP or to operate a</p>
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	<p>combined VESMP. Those that choose to operate a combined VESMP will need to adopt a new ordinance establishing that program. Those that choose to continue to operate a VESCP only will need to update citations and references to the new Chapter 875.</p> <p>The substantive requirements for localities to review erosion and sediment control plans, stormwater management plans, inspect land-disturbing activities, and enforce erosion and sediment control and stormwater management requirements do not change under this regulatory action. Further, the technical standards for erosion and sediment control (the “minimum standards”) and stormwater management (post-construction best management practices for water quantity and water quality) that they implement and enforce remain the same.</p> <p>Indirect Costs:</p> <p>There may be an indirect cost in the time and effort that local staff members will need to adapt to the new consolidated program regulation. While not mandating additional requirements for localities, the new regulations are organized differently and introduce the “soil erosion control and stormwater management plan” (Va. Code § 62.1-44.15:24, effective July 1, 2024). Local staff may require time to become familiar with the structure of the new regulation and the “plan.”</p> <p>Direct Benefits:</p> <p>By repealing three existing chapters (Chapters 840, 850, and 870) and consolidating relevant requirements into a single chapter (Chapter 875), clarifying program requirements, eliminating redundancies, and correcting inconsistencies between erosion and sediment control regulations and stormwater management program regulations, this regulatory action makes the regulation easier to understand and more user friendly.</p> <p>Indirect Benefits:</p> <p>Improving the ease of use and clarity of program requirements should save localities time and reduce frustration when interacting with the erosion and stormwater management programs.</p>		
(2) Present Monetized Values	<table border="1" style="width: 100%;"> <tr> <td style="width: 50%;">Direct & Indirect Costs</td> <td style="width: 50%;">Direct & Indirect Benefits</td> </tr> </table>	Direct & Indirect Costs	Direct & Indirect Benefits
Direct & Indirect Costs	Direct & Indirect Benefits		

	(a) No monetized direct or indirect costs associated with the regulatory changes.	(b) Unable to monetize direct and indirect benefits.
(3) Other Costs & Benefits (Non-Monetized)	N/A	
(4) Assistance	N/A	
(5) Information Sources	N/A	

Impacts on Families

Use this chart to describe impacts on families. See Part 8 of the ORM Cost Impact Analysis Guidance for additional guidance.

Table 3: Impact on Families

(1) Direct & Indirect Costs & Benefits (Monetized)	<p>Direct & Indirect Costs:</p> <p>There are no direct or indirect costs that will have an impact on families. This action reorganizes and consolidates existing regulatory chapters into a single chapter. In doing so, the new regulation clarifies program requirements, eliminates redundancies, and corrects inconsistencies between erosion and sediment control regulations and stormwater management program regulations. All requirements in the new regulation are pulled from existing regulatory and statutory requirements. No substantive changes to existing erosion and sediment control minimum standards or to the post-construction stormwater management technical criteria are part of this regulatory action.</p> <p>Direct Benefits:</p> <p>There are no direct benefits that will have an impact on families.</p> <p>Indirect Benefits:</p> <p>This action has an indirect benefit for families by helping to improve water quality. Improved water quality promotes recreational use of state waters.</p>
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(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) No monetized direct or indirect costs associated with the regulatory changes.	(b) Unable to monetize direct and indirect benefits.
(3) Other Costs & Benefits (Non-Monetized)	N/A	
(4) Information Sources	N/A	

Impacts on Small Businesses

Use this chart to describe impacts on small businesses. See Part 8 of the ORM Cost Impact Analysis Guidance for additional guidance.

Table 4: Impact on Small Businesses

(1) Direct & Indirect Costs & Benefits (Monetized)	<p>Direct & Indirect Costs:</p> <p>There are no direct or indirect costs related to this regulatory action that will have an impact on small businesses. Small businesses that conduct land-disturbing activity, prepare plans associated with land-disturbing activity (i.e., erosion and sediment control plans, stormwater management plans, pollution prevention plans, etc.), or perform other activities related to land-disturbing activities (e.g., inspections, maintenance of stormwater best management practices) still have to comply with the same regulatory standards. This action reorganizes and consolidates existing regulatory chapters into a single chapter without making substantive changes to existing erosion and sediment control minimum standards or to the post-construction stormwater management technical criteria.</p> <p>Direct Benefits:</p> <p>By consolidating three existing chapters (Chapters 840, 850, and 870) into a single chapter (Chapter 875), clarifying program requirements, eliminating redundancies, and correcting inconsistencies between erosion and sediment control regulations and stormwater management program regulations, this regulatory action makes the regulation easier to understand and more user friendly.</p> <p>Indirect Benefits:</p>
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	Improving the ease of use and clarity of program requirements should save the end user time and reduce frustration when interacting with the erosion and stormwater management programs.	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) No monetized direct or indirect costs associated with the regulatory changes.	(b) Unable to monetize direct and indirect benefits.
(3) Other Costs & Benefits (Non-Monetized)	N/A	
(4) Alternatives	N/A	
(5) Information Sources	N/A	

Changes to Number of Regulatory Requirements

Table 5: Regulatory Reduction

For each individual action, please fill out the appropriate chart to reflect any change in regulatory requirements, costs, regulatory stringency, or the overall length of any guidance documents.

Change in Regulatory Requirements:

This regulatory action consolidates Chapters 840, 850, and 870 into a single new regulatory chapter- Chapter 875. To make Chapter 875 easier to navigate, requirements for a particular end user (VESMP, VESCP, standards and specifications holder, or owner/operator) are organized into separate Parts of the regulation. The intent of this was to allow a user to access the information they need by referring to their applicable part of the regulation rather than having to search through the entirety of the regulation. To accomplish this, some current requirements from Chapters 840 and 870 are repeated in Chapter 875. These duplicated requirements are captured as “additions” in Table 5. Sections of Chapter 875 that were only renumbered as part of the consolidation were excluded from the listing below since there were no changes to the regulatory language or regulatory requirements of those sections.

In addition, Chapter 875 incorporates revisions to code that were made as part of the Consolidation Bill. These new statutory requirements are marked with footnotes, which cite to the appropriate section of code requiring the addition of new requirements.

VAC Section(s) Involved	Initial Count	Additions	Subtractions	Net Change
<i>Part II: Virginia Erosion and Stormwater Management Program</i>				
9VAC25-875-100	7	14	3	+11 ¹
9VAC25-875-110	8	16	8	+8 ²
9VAC25-875-120	0	9	0	+9 ³
9VAC25-875-130	4	2	1	+1
9VAC25-875-150	4	1	1	0 ⁴
9VAC25-875-200	0	4	0	+4 ⁵
<i>Part III: Virginia Erosion and Sediment Control Program</i>				
9VAC25-875-250	0	3	0	+3 ⁶
9VAC25-875-290	0	6	0	+6 ⁷
9VAC25-875-300	0	10	0	+10 ⁸
9VAC25-875-340	0	6	0	+6
<i>Part IV: Certification of VESCP, VSMP, and VESMP Personnel</i>				
9VAC25-875-410	1	3	0	+3
9VAC25-875-440	4	0	2	-2
<i>Part V: Criteria for Regulated Land-Disturbing Activities</i>				

¹ Revisions include incorporating new statutory language from §§ 62.1-44.15:26.1 and 62.1-44.15:27 H of the Code of Virginia.

² Revisions include incorporating new statutory language from §§ 62.1-44.15:34, 62.1-44.15:35 D, and 62.1-44.15:50 of the Code of Virginia.

³ Revisions include incorporating new statutory language from §§ 62.1-44.15:27 B 2 and 62.1-44.15:34 A 2 of the Code of Virginia.

⁴ Revisions include incorporating new statutory language from §§ 62.1-44.15:48 and 62.1-44.15:49 of the Code of Virginia.

⁵ Revisions include incorporating new statutory language from § 62.1-44.15:27.1 of the Code of Virginia.

⁶ Revisions include incorporating new statutory language from § 62.1-44.15:34 E of the Code of Virginia.

⁷ Revisions include incorporating new statutory language from § 62.1-44.15:54 of the Code of Virginia.

⁸ Revisions include incorporating new statutory language from § 62.1-44.15:55 of the Code of Virginia.

9VAC25-875-530	2	4	0	+4 ⁹
9VAC25-875-550	3	1	0	+1 ¹⁰
9VAC25-875-580	8	0	1	-1
9VAC25-875-610	0	10	0	+10 ¹¹
9VAC25-875-700	8	1	0	+1
9VAC25-875-750	6	0	0	0
9VAC25-875-760	0	7	0	+7 ¹²
9VAC25-875-780	14	0	3	-3
9VAC25-875-810	3	3	3	0
<i>Part VI: Standards and specifications program</i>				
9VAC25-875-830	0	19	0	+19 ¹³
<i>Part VII: Virginia Pollutant Discharge Elimination System (VPDES) Permits</i>				
9VAC25-875-1280	0	22	0	+22 ¹⁴
<i>Part VIII: Fees</i>				
9VAC25-875-1370	1	0	1	-1
9VAC25-875-1400	4	0	1	-1
<i>Sections repealed and not replaced in Chapter 875.</i>				
9VAC25-850-80	5	0	5	-5
9VAC25-870-45	2	0	2	-2
9VAC25-870-46	2	0	2	-2
9VAC25-870-57	2	0	2	-2

⁹ Revisions include incorporating new statutory language from § 62.1-44.15:34 A of the Code of Virginia.

¹⁰ Revisions include incorporating new statutory language from § 62.1-44.15:55 B of the Code of Virginia.

¹¹ Revisions include incorporating new statutory language from § 62.1-44.15:35 of the Code of Virginia.

¹² Revisions include incorporating new statutory language from § 62.1-44.15:34 of the Code of Virginia.

¹³ Revisions include incorporating new statutory language from § 62.1-44.15:31 of the Code of Virginia.

¹⁴ This new section was added to Chapter 875 and cites to the corresponding electronic reporting section in Chapter 31. This was done to improve clarity and consistency between regulatory chapters that govern VPDES permits.

9VAC25-870-142	1	0	1	-1
9VAC25-870-146	1	0	1	-1
9VAC25-870-148	12	0	12	-12
9VAC25-875-150	11	0	11	-11
9VAC25-870-170	6	0	6	-6

TAB G



Commonwealth of Virginia

VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

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Travis A. Voyles
Secretary of Natural and Historic Resources

Michael S. Rolband, PE, PWD, PWS Emeritus
Director
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MEMORANDUM

TO: State Water Control Board Members

FROM: Allan Brockenbrough, Office of VPDES Permits *Allan Brockenbrough*

DATE: May 15, 2023

SUBJECT: VPDES General Permit Regulation for Concrete Products Facilities (9VAC25-193)

The current VPDES Concrete Products Facilities general permit will expire on December 31, 2023 and the regulation establishing this general permit is being amended to reissue another term. The staff is bringing this proposed regulation amendment before the State Water Control Board (Board) to request adoption of the amendments to the VPDES General Permit Regulation for Concrete Products Facilities (9VAC25-193). The staff will also recommend that the Board affirm that it will receive, consider and respond to petitions by any person at any time with respect to reconsideration or revision of this regulation, as provided by the Administrative Process Act.

The proposed regulation takes into consideration the recommendations of a technical advisory committee (TAC) formed for this regulatory action. A list of the TAC membership is attached.

Proposed amendments showing changes to the current regulation, the Agency Town Hall background document, Fact Sheet and Office of Regulatory Management (ORM) Economic Review Form are also attached. Substantive changes to the existing regulation are:

- Section 10 – Added definition for “corrective action” because these terms are used in the regulation. The definition is taken from the Industrial Stormwater (ISW) general permit 9VAC25-151 and were added to clarify various requirements in the regulation.
- Sections 40 and 70 – Updated the effective dates to reflect the new five-year term (January 1, 2024 – December 31, 2028).
- Section 60 C - Registration Questions – Added that once the 9VAC25-31-1020 (Electronic Reporting) date is established for this industry, registration statements shall be submitted electronically. Three months’ notice shall be given by the department about this requirement.

- Section 70 Part I B 14 – Dust suppression allowances were revised to reflect similar requirements in the construction stormwater general permit (9VAC25-880) to allow for discharge of dust suppression water provided it has been treated.
- Section 70 Part I B 16 - The current total maximum daily load (TMDL) requirement is expanded and clarified to mean these are TMDLs that have been approved prior to the term of the permit and that the department will provide written notification that the facility is subject to a TMDL requirement and that if the TMDL establishes a numerical waste load allocation (WLA) for that facility, the owner shall monitor and implement measures to meet the allocation. Also, at permit reissuance, the permittee shall submit a demonstration that the WLA is met. This change will result in an impact because there will be specific monitoring requirements for any facilities that have a numeric WLA in a TMDL. Currently all TMDLs applicable to these facilities are for TSS (total suspended solids) (in this case specifically sediment) and the facilities already monitor for TSS as part of the water quality limitations. There is a total dissolved solids (TDS) TMDL currently under development that may present additional monitoring requirements for some concrete facilities in the future.
- Section 70 Part II – Stormwater management requirements have been updated and re-ordered to match the order and language in the 2019 VPDES Industrial Stormwater General Permit. For example, monitoring requirements (visual and benchmark) have been moved to the beginning of Part II. Corrective actions, control measure “considerations” and eliminating and minimizing exposure requirements have been added. Also, routine facility inspections have been moved out of the “Stormwater Controls” and into its own subdivision of “Contents of the SWPPP” (Stormwater Pollution Prevention Plan). Other changes are being proposed because of TAC stakeholder suggestions. This includes deletion of the requirement to report duration of rainfall event on the DMR. Signature and SWPPP review and maintaining and updated SWPPP subsections have been moved to the end of Part II.
- Section 70 Part III C – Conditions Applicable to All Permits - Added under reporting, that once the 9VAC25-31-1020 (Electronic Reporting) date is established for this industry and 3 months’ notice is given, discharge monitoring reports shall be submitted electronically.

The Notice of Public Comment and Hearing was approved by the Board on November 29, 2022, the comment period was January 30, 2023 to March 31, 2023 with a public hearing held on March 10, 2023. Two individuals from the concrete industry attended the hearing. EPA provided comment in accordance with 40 CFR §123.44 entitled “EPA review of and objection to State permits” and the MOA between the Department and the EPA. All written and oral comments received and DEQ responses are included in the attached Town Hall Background Document.

No substantive changes were made from the proposed regulation.

The Office of the Attorney General will be sent the regulation for certification of authority to adopt the amendments.

Attachments: TAC Membership, Draft General Permit Regulation, Agency Background Document (Town Hall), Fact Sheet and ORM Economic Review Form.

TAC COMMITTEE MEMBERSHIP
VPDES Concrete Products Facilities General Permit Regulation
9VAC25-193

<p>Walter Beck Brian Parker, PE (alternate) Vulcan Construction Materials 9210 Arboretum Parkway, Suite 260 North Chesterfield, VA 23236 Phone: (804) 717-8374 Mobile: (804) 314-6118 beckw@vmcmail.com Phone: (804) 717-8325 Mobile: (804) 338-2010 parkerbr@vmcmail.com</p>	<p>Cliff Bocchicchio Environmental Manager Titan America LLC 5700 Lake Wright Drive, Suite 300 Norfolk, VA 23502 phone: 757-858-6537 (office) phone: 757-287-6672 (cell) cbocchicchio@titanamerica.com</p>
<p>Matt DiBella Managing Partner - Greensite Concrete Washout LLC 44095 Pipeline Plaza Suite 140 Ashburn, VA 20147 mobile - 703-887-8937 matt@greensiteconcretewashout.com</p>	<p>Tom Foley Environmental Manager Vulcan Materials - Mideast Division (571) 437-1279 cell (703) 713-3125 office 13880 Dulles Corner Lane, Suite 450 Herndon, VA 20171 foleyt@vmcmail.com</p>
<p>DEQ Staff on TAC: Elleanore Daub (CO, VPDES Permits) Allan Brockenbrough (CO, VPDES Permits)</p>	<p>DEQ Staff Technical Liaisons: Troy Nipper (CO, Water Compliance) Matt Stafford (CO, Stormwater Management Construction Compliance) Kevin Crider (BRRO, VPDES Permits) Alison Thompson (NRO, VPDES Permits) Amy Dooley (NRO, Compliance) Mark Evans (NRO, Compliance) Brad Ricks (PRO, Compliance) Joy Able (PRO, VPDES Permits) Loan Pham (TRO, VPDES Permits) Kelli Park (VRO, Compliance)</p>

3 **State Water Control Board**
4 **25-193 - Amend and Reissue Existing Regulation 2023**
5 Chapter 193

6 Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for
7 Concrete Products Facilities

8 **9VAC25-193-10. Definitions.**

9 The words and terms used in this chapter shall have the meanings defined in § 62.1-44.2 et
10 seq. of the Code of Virginia (State Water Control Law) and 9VAC25-31 (VPDES Permit
11 Regulation), unless the context clearly indicates otherwise, except that for the purposes of this
12 chapter:

13 "Best management practices" or "BMPs" means schedules of activities, practices and
14 prohibitions of practices, structures, vegetation, maintenance procedures, and other management
15 practices to prevent or reduce the discharge of pollutants to surface waters. BMPs also include
16 treatment requirements, operating procedures, and practices to control plant site runoff, spillage
17 or leaks, sludge or waste disposal, or drainage from raw material storage.

18 "Board" means the State Water Control Board. When used outside the context of the
19 promulgation of regulations, including regulations to establish general permits, "board" means the
20 Department of Environmental Quality.

21 "Corrective action" means any action to (i) repair, modify, or replace any stormwater control
22 used at the facility; (ii) clean up and properly dispose of spills, releases, or other deposits at the
23 facility; or (iii) return to compliance with permit requirements.

24 "Department" or "DEQ" means the [Virginia] Department of Environmental Quality.

25 "Industrial activity" means facilities or those portions of a facility where the primary purpose is
26 classified as:

- 27 1. North American Industry Classification System (NAICS) Code 327331 - Concrete Block
28 and Brick Manufacturing, (Executive Office of the President, Office of Management and
29 Budget, United States, 2017) and Standard Industrial Classification (SIC) Code 3271 -
30 Concrete Block and Brick (Office of Management and Budget (OMB) SIC Manual, 1987);
- 31 2. NAICS Code 327332 Concrete Pipe Manufacturing, NAICS Code 327390 Other
32 Concrete Product Manufacturing, NAICS Code 327999 All Other Miscellaneous
33 Nonmetallic Mineral Product Manufacturing (dry mix concrete manufacturing only) and
34 SIC Code 3272 - Concrete Products, Except Block and Brick; or
- 35 3. NAICS Code 327320 Ready-Mix Concrete Manufacturing and SIC Code 3273 - Ready-
36 Mixed Concrete, including both permanent and portable plants.

37 These facilities are collectively defined as "Concrete Products Facilities."

38 "Minimize" means reduce or eliminate to the extent achievable using control measures,
39 including best management practices, that are technologically available and economically
40 practicable and achievable in light of best industry practice.

41 "No discharge system" means process, commingled, or stormwater systems designed to
42 operate so that there is no discharge of wastewater or pollutants, except in storm events greater
43 than a 25-year, 24-hour storm event.

44 "Runoff coefficient" means the fraction of total rainfall that will appear at the conveyance as
45 runoff.

46 "Significant spills" includes releases of oil or hazardous substances in excess of reportable
47 quantities under § 311 of the Clean Water Act (see 40 CFR 110.10 and 40 CFR 117.21) or § 102
48 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) (42
49 USC § 9601 et seq.) (see 40 CFR 302.4).

50 "Total maximum daily load" or "TMDL" means a calculation of the maximum amount of a
51 pollutant that a ~~waterbody~~ water body can receive and still meet water quality standards and an
52 allocation of that amount to the pollutant's sources. A TMDL includes wasteload allocations
53 (WLAs) for point source discharges and load allocations (LAs) for nonpoint sources or natural
54 background, or both, and must include a margin of safety (MOS) and account for seasonal
55 variations.

56 "25-year, 24-hour storm event" means the maximum 24-hour precipitation event with a
57 probable recurrence interval of once in 25 years as established by the National Weather Service
58 or appropriate regional or state rainfall probability information.

59 "Vehicle or equipment degreasing" means the washing or steam cleaning of engines or other
60 drive components of a vehicle or piece of equipment in which the purpose is to degrease and
61 clean petroleum products from the equipment for maintenance purposes. Removing sediment
62 and concrete residue is not considered vehicle or equipment degreasing.

63 "Virginia Environmental Excellence Program" or "VEEP" means a voluntary program
64 established by the department to provide public recognition and regulatory incentives to
65 encourage higher levels of environmental performance for program participants that develop and
66 implement environmental management systems (EMSs). The program is based on the use of
67 EMSs that improve compliance, prevent pollution, and utilize other measures to improve
68 environmental performance.

69 **9VAC25-193-15. Applicability of incorporated references based on the dates that they**
70 **became effective.**

71 Except as noted, when a regulation of the U.S. Environmental Protection Agency set forth in
72 Title 40 of the Code of Federal Regulations is referenced or adopted in this chapter and
73 incorporated by reference, that regulation shall be as it exists and has been published as of July
74 1, ~~2018~~ 2022.

75 **9VAC25-193-40. Effective date of the permit.**

76 This general VPDES permit will become effective on January 1, ~~2019~~ 2024, and it will expire
77 on December 31, ~~2023~~ 2028. This general permit is effective for any covered owner upon
78 compliance with all the provisions of 9VAC25-193-50.

79 **9VAC25-193-50. Authorization to discharge.**

80 A. Any owner governed by this general permit is hereby authorized to discharge process
81 water, stormwater associated with this industrial activity, or commingled discharges of these types
82 to surface waters of the Commonwealth of Virginia provided that:

- 83 1. The owner submits a registration statement in accordance with 9VAC25-193-60, and
84 that registration statement is accepted by the ~~board~~ department;
- 85 2. The owner submits the required permit fee;
- 86 3. The owner complies with the applicable effluent limitations and other requirements of
87 9VAC25-193-70; and
- 88 4. The ~~board~~ department has not notified the owner that the discharge is not eligible for
89 coverage in accordance with subsection B of this section.

90 B. The ~~board~~ department will notify an owner that the discharge is not eligible for coverage
91 under this general permit in the event of any of the following:

- 92 1. The owner is required to obtain an individual permit in accordance with 9VAC25-31-170
93 B 3 of the ~~VPDES Permit Regulation~~;
- 94 2. The owner is proposing to discharge to state waters specifically named in other board
95 regulations that prohibit such discharges;
- 96 3. The discharge would violate the antidegradation policy in the Water Quality Standards
97 at 9VAC25-260-30; or
- 98 4. The discharge is not consistent with the assumptions and requirements of an ~~approved~~
99 applicable TMDL approved prior to the term of this general permit.
- 100 C. Compliance with this general permit constitutes compliance, for purposes of enforcement,
101 with §§ 301, 302, 306, 307, 318, 403, and 405(a) through 405(b) of the federal Clean Water Act
102 (33 USC § 1251 et seq.) and the State Water Control Law, with the exceptions stated in 9VAC25-
103 31-60 of the ~~VPDES Permit Regulation~~. Approval for coverage under this general permit does not
104 relieve any owner of the responsibility to comply with any other applicable federal, state, or local
105 statute, ordinance, or regulation.
- 106 D. Continuation of permit coverage.
- 107 1. Permit coverage shall expire at the end of its term. However, expiring permit coverages
108 are automatically continued if the owner has submitted a complete registration statement
109 at least 60 days prior to the expiration date of the permit, or a later submittal established
110 by the ~~board~~ department, which cannot extend beyond the expiration date of the permit.
111 The permittee is authorized to continue to discharge until such time as the ~~board~~
112 department either:
- 113 a. Issues coverage to the owner under this general permit; or
114 b. Notifies the owner that the discharge is not eligible for coverage under this general
115 permit.
- 116 2. When the owner that was covered under the expiring or expired general permit has
117 violated or is violating the conditions of that permit, the ~~board~~ department may choose to
118 do any or all of the following:
- 119 a. Initiate enforcement action based upon the general permit coverage that has been
120 continued;
- 121 b. Issue a notice of intent to deny coverage under the reissued general permit. If the
122 general permit coverage is denied, the owner would then be required to cease the
123 discharges authorized by the continued general permit coverage or be subject to
124 enforcement action for discharging without a permit;
- 125 c. Issue an individual permit with appropriate conditions; or
126 d. Take other actions authorized by the VPDES Permit Regulation (9VAC25-31).
- 127 **9VAC25-193-60. Registration statement.**
- 128 A. Deadlines for submitting registration statement. Any owner seeking coverage under this
129 general permit shall submit a complete VPDES general permit registration statement in
130 accordance with this ~~section~~ chapter, which shall serve as a notice of intent for coverage under
131 the general VPDES permit for concrete products facilities.
- 132 1. New facilities. Any owner proposing a new discharge shall submit a complete
133 registration statement at least 60 days prior to the date planned for commencement of the
134 discharge or a later submittal established by the ~~board~~ department.
- 135 2. Existing facilities.
- 136 a. Any owner covered by an individual VPDES permit that is proposing to be covered
137 by this general permit shall submit a complete registration statement at least 240 days

138 prior to the expiration date of the individual VPDES permit or a later submittal
139 established by the department.

140 b. Any owner that was authorized to discharge under the expiring general VPDES
141 permit for concrete products facilities and ~~who that~~ intends to continue coverage under
142 this general permit shall submit a complete registration statement to the ~~board~~
143 department at least 60 days prior to the expiration date of the existing permit or a later
144 submittal established by the ~~board~~ department.

145 B. Late registration statements. Registration statements for existing facilities covered under
146 subdivision A 2 b of this section will be accepted after the expiration date of this permit, but
147 authorization to discharge will not be retroactive.

148 C. The required registration statement shall contain the following information:

149 1. Facility name ~~and address, owner name, mailing, address, and telephone number, and~~
150 ~~email address~~ (if available);

151 2. ~~Operator or other Facility, owner and permit~~ contact name, mailing address, telephone
152 number, and email address ~~(if available) if different from owner;~~

153 3. Facility's Standard Industrial Classification (SIC) Codes;

154 4. Nature of business at facility;

155 5. Indicate if the facility is proposed or existing; if the facility has a current VPDES or VPA
156 Permit; and Permit Numbers for any current VPDES or VPA Permits;

157 6. Description of the wastewater treatment or reuse or recycle systems;

158 7. Indicate if there are any process wastewater, commingled process wastewater, and
159 stormwater or stormwater treatment units designed to operate as "no discharge";

160 8. If settling basins are used for treatment and control of process wastewater or
161 commingled process wastewater and stormwater, indicate the original date of
162 construction, and describe the materials lining the process or commingled settling basins;

163 9. Indicate if there are vehicle or equipment degreasing activities performed on site. If yes,
164 indicate if there is any process wastewater generated from these activities;

165 10. Description of any measures employed to reclaim, reuse, or dispose of the residual
166 concrete materials;

167 11. A schematic drawing that shows the sources of water used on the property, the
168 industrial operations contributing to or using water, the conceptual design of the methods
169 of treatment and disposal of wastewater and solids, and the stormwater pollution
170 prevention plan site map ~~(see pursuant to 9VAC25-193-70 Part II F-6-e)~~ D 2 b (2) for
171 existing covered facilities and for new facilities if operations have commenced. See
172 9VAC25-193-70 Part II D 1 for due dates;

173 12. A USGS ~~7.5-minute~~ 7.5-minute topographic map or equivalent ~~computer-generated~~
174 computer-generated map, extending to at least one mile beyond property boundary, which
175 shows the property boundary, the location of each of its existing and proposed intake and
176 discharge points, and the locations of any wells, springs, and other surface water bodies;

177 13. Discharge outfall information, including outfall numbers, description of wastewater
178 discharged from each outfall, estimated flow (gallons per day), receiving water bodies,
179 duration and frequency of each discharge (hours per day and days per week), and latitude
180 and longitude of outfall location;

181 14. Indicate which stormwater outfalls ~~will be~~ could operate as substantially identical or
182 representative outfalls (if any). ~~For stormwater outfalls that are to be represented by other~~
183 ~~outfall discharges, provide~~ Provide the following for each:

- 184 a. The locations of the outfalls;
- 185 b. Why the outfalls are expected to discharge substantially identical effluents,
- 186 including, where available, evaluation of monitoring data;
- 187 c. Estimates of the size of the total (pervious and impervious within property
- 188 boundaries) drainage area (in acres or square feet) for each of the outfalls; and
- 189 d. An estimate of the runoff coefficient of the drainage areas (low: under 40%; medium:
- 190 40% to 65%; high: above 65%);
- 191 15. Indicate if a ~~Stormwater Pollution Prevention Plan~~ stormwater pollution prevention plan
- 192 has been prepared and the date of the plan or the most recent update or review of the
- 193 plan;
- 194 16. Whether the facility will discharge to a municipal separate storm sewer system (MS4).
- 195 If "yes," the facility owner shall ~~notify~~ provide evidence that the MS4 owner has been
- 196 notified of the existence of the discharge ~~at the time of registration under this permit and~~
- 197 ~~include that notification with the registration statement.~~ The notification shall include the
- 198 following information: the name of the facility, a contact person and contact information
- 199 (telephone number and email), the location of the discharge, the nature of the discharge,
- 200 and the facility's VPDES general permit number (if assigned by DEQ);
- 201 17. For portable concrete products operations, submit a closure plan and include the
- 202 requirements specified by the operation and maintenance manual in 9VAC25-193-70 Part
- 203 I B 8 a (4) of the permit;
- 204 18. ~~For applicants other than a sole proprietor, the State Corporation Commission entity~~
- 205 ~~identification number~~ if the facility is required to obtain an entity identification number by
- 206 law; and
- 207 19. The following certification: "~~I hereby grant to duly authorized agents of the Department~~
- 208 ~~of Environmental Quality, upon presentation of credentials, permission to enter the~~
- 209 ~~property where the treatment works is located for the purpose of determining compliance~~
- 210 ~~with or the suitability of coverage under the General Permit. I certify under penalty of law~~
- 211 ~~that this document and all attachments were prepared under my direction or supervision~~
- 212 ~~in accordance with a system designed to assure that qualified personnel properly gather~~
- 213 ~~and evaluate the information submitted. Based on my inquiry of the person or persons~~
- 214 ~~who manage the system or those persons directly responsible for gathering the~~
- 215 ~~information, the information submitted is to the best of my knowledge and belief true,~~
- 216 ~~accurate, and complete. I am aware that there are significant penalties for submitting false~~
- 217 ~~information including the possibility of fine and imprisonment for knowing violations."~~
- 218 D. The registration statement shall be signed in accordance with the requirements of 9VAC25-
- 219 31-110 of the VPDES Permit Regulation.
- 220 E. Where to submit. The registration statement shall be delivered by either postal or electronic
- 221 mail to the DEQ regional office serving the area where the facility is located. Following notification
- 222 from the department of the start date for the required electronic submission of Notice of Intent to
- 223 Discharge forms (i.e., registration statements) as provided for in 9VAC25-31-1020, such forms
- 224 submitted after that date shall be electronically submitted to the department in compliance with
- 225 9VAC25-31-1020 and this section. There shall be at least a three-month notice provided between
- 226 the notification from the department and the date after which such forms must be submitted
- 227 electronically.

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9VAC25-193-70. General permit.

Any owner whose registration statement is accepted by the ~~board~~ department will receive coverage under the following general permit and shall comply with the requirements in the general permit and be subject to all requirements of 9VAC25-31-170 ~~of the VPDES Permit Regulation.~~

General Permit No: VAG11
 Effective Date: January 1, ~~2019~~ 2024
 Expiration Date: December 31, ~~2023~~ 2028
GENERAL PERMIT FOR CONCRETE PRODUCTS FACILITIES AUTHORIZATION TO DISCHARGE UNDER THE VIRGINIA POLLUTANT DISCHARGE ELIMINATION SYSTEM AND THE VIRGINIA STATE WATER CONTROL LAW

In compliance with the provisions of the Clean Water Act, as amended, and pursuant to the State Water Control Law and regulations adopted pursuant thereto, owners of concrete products facilities are authorized to discharge to surface waters within the boundaries of the Commonwealth of Virginia, except those specifically named in board regulations that prohibit such discharges.

The authorized discharge shall be in accordance with the information submitted with the registration statement, this cover page, Part I-Effluent Limitations, Monitoring Requirements, and Special Conditions, Part II-Stormwater Management, and Part III-Conditions Applicable to All VPDES Permits, as set forth in this permit.

Part I

Effluent Limitations, Monitoring Requirements, Special Conditions.

A. Effluent limitations and monitoring requirements.

1. Process wastewater. During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge process wastewater that may contain input from vehicle wash water, or vehicle or equipment degreasing activities, and may be commingled with stormwater associated with industrial activity, or both. Samples taken in compliance with the monitoring requirements specified ~~below~~ in the table in Part I A 1 shall be taken at outfalls:

Such discharges shall be limited and monitored by the permittee as specified ~~below~~ as follows:

EFFLUENT CHARACTERISTICS	DISCHARGE LIMITATIONS			MONITORING REQUIREMENTS	
	Average	Maximum	Minimum	Frequency ⁽³⁾	Sample Type
Flow (MGD)	NL	NL	NA	1/3 Months	Estimate
Total Suspended Solids (mg/l)	30	60	NA	1/3 Months	Grab
pH (standard units)	NA	9.0 ⁽¹⁾	6.0 ⁽¹⁾	1/3 Months	Grab
Total Petroleum Hydrocarbons ⁽²⁾ (mg/l)	NA	15	NA	1/3 Months	Grab

NL = No limitation, monitoring required

NA = Not applicable

(1)Where the Water Quality Standards (9VAC25-260) establish alternate standards for pH in the waters receiving the discharge, those standards shall be the maximum and minimum effluent limitations.

(2)Total Petroleum Hydrocarbons [(TPH)] limitation and monitoring are only required where a discharge contains process wastewater generated from the vehicle or equipment degreasing activities. [Total Petroleum Hydrocarbons TPH] shall be analyzed using EPA SW-846 Method 8015 B (1996), 8015C (2000), 8015C (2007), 8015 D (2003) for diesel range organics or EPA 40 CFR Part 136.

(3)1/3 months means one sample collected per calendar quarter with reports due to the DEQ regional office no later than the 10th day of April, July, October, and January.

263 2. Stormwater associated with industrial activity from concrete products facilities. During
 264 the period beginning with the permittee's coverage under this general permit and lasting
 265 until the permit's expiration date, the permittee is authorized to discharge stormwater
 266 associated with industrial activity that does not combine with other process wastewaters
 267 prior to discharge. Samples taken in compliance with the monitoring requirements
 268 specified below in the table in Part I A 2 shall be taken at outfalls:
 269 Such discharges shall be limited and monitored by the permittee as specified below as
 270 follows:

EFFLUENT CHARACTERISTICS	[DISCHARGE LIMITATIONS] BENCHMARK MONITORING		MONITORING REQUIREMENTS ^{(3), (5)}	
	Maximum	Minimum	Frequency ⁽⁴⁾	Sample Type
Flow (MG)	NL	NA	1/Year	Estimate ⁽¹⁾
Total Suspended Solids (mg/l)	[NL <u>100</u>] ⁽²⁾	NA	1/Year	Grab ⁽²⁾
pH (standard units)	[NL <u>9.0</u>] ⁽²⁾	[NL <u>6.0</u>] ⁽²⁾	1/Year	Grab ⁽²⁾

NL = No limitation, monitoring required

NA = Not applicable

(1)Estimate of the total volume of the discharge during the storm event ~~in accordance with the operation and maintenance manual.~~

(2) If the benchmark monitoring for total suspended solids (TSS) exceeds 100 mg/l maximum or the pH falls outside of the range of 6.0-9.0 standard units, the permittee shall evaluate the overall effectiveness of the stormwater pollution prevention plan (SWPPP) in controlling the discharge of pollutants to receiving waters [or if corrective actions are needed (Part II A 4)]. Benchmark concentration values are not effluent limitations. Exceedance of a benchmark concentration does not constitute a violation of this permit and does not indicate that violation of a water quality standard has occurred; however, it does signal that modifications to the SWPPP are necessary, unless justification is provided in the routine facility inspection.

(3)Specific storm event data shall be reported with the Discharge Monitoring Report (DMR) in accordance with Part II A.

(4)1/year means one sample taken per calendar year with the annual DMR due to the DEQ regional office no later than the 10th day of January of each year.

(5)Quarterly visual monitoring shall be performed and recorded in accordance with [~~Part II G~~ Part II A 1].

- 271 B. Special conditions.
- 272 1. There shall be no discharge of floating solids or visible foam in other than trace amounts.
- 273 There shall be no solids deposition or oil sheen from petroleum products in surface water
- 274 as a result of the industrial activity in the vicinity of the outfall.
- 275 2. Except as expressly authorized by this permit, no product, materials, industrial wastes,
- 276 or other wastes resulting from the purchase, sale, mining, extraction, transport,
- 277 preparation, or storage of raw or intermediate materials, final product, byproduct, or
- 278 wastes shall be handled, disposed of, or stored so as to permit a discharge of such
- 279 product, materials, industrial wastes, or other wastes to surface waters.
- 280 3. Vehicles and equipment utilized during the industrial activity on a site must be operated
- 281 and maintained in such a manner as to minimize the potential or actual point source
- 282 pollution of surface waters. Fuels, lubricants, coolants, and hydraulic fluids, or any other
- 283 petroleum products, shall not be disposed of by discharging on the ground or into surface
- 284 waters. Spent fluids shall be disposed of in a manner so as not to enter the surface or
- 285 ground waters of the state and in accordance with the applicable state and federal disposal
- 286 regulations. Any spilled fluids shall be cleaned up and disposed of in a manner so as not
- 287 to allow their entry into the surface or ground waters of the state.
- 288 4. All washdown and washout of trucks, mixers, transport buckets, forms, or other
- 289 equipment shall be conducted within designated washdown and washout areas. All
- 290 washdown and washout water shall be collected for recycle or collected and treated to
- 291 meet the limits in Part I A prior to discharge to the receiving stream.
- 292 5. Any waste concrete and any dredged solids from the settling basins shall be managed
- 293 within a designated area, and any wastewaters, including stormwater generated from
- 294 these activities, shall be collected for recycle or treated prior to discharge.
- 295 6. Wastewater should be reused or recycled whenever feasible.
- 296 7. No sewage discharges to surface waters are permitted under this general permit.
- 297 8. Operation and maintenance (O&M) manual.
- 298 a. Within 180 days after the date of coverage under this general permit, the permittee
- 299 shall develop or review and update, as appropriate, an O&M manual for the permitted
- 300 facility. The O&M manual shall include procedures and practices for the mitigation of
- 301 pollutant discharges for the protection of state waters from the facility's operations and
- 302 to ensure compliance with the requirements of the permit. The manual shall address,
- 303 at a minimum:
- 304 (1) O&M practices for the process wastewater treatment units, if applicable, and
- 305 chemical and material storage areas;
- 306 (2) Methods for estimating process wastewater flows, if applicable;
- 307 (3) Management and disposal procedures of process wastewater solids, if applicable;
- 308 (4) Temporary and long-term facility closure plans that shall include (i) treatment,
- 309 removal, and final disposition of residual wastewater, if applicable, contaminated
- 310 stormwater held at the facility, and solids; (ii) fate of structures; (iii) a removal plan for
- 311 all exposed industrial materials; and (iv) description of the stabilization of land in which
- 312 they were stored or placed;
- 313 (5) Testing requirements and procedures;
- 314 (6) Recordkeeping and reporting requirements; and
- 315 (7) Duties and roles of responsible officials.
- 316 b. The permittee shall operate the treatment works in accordance with the O&M
- 317 manual. The O&M manual shall be reviewed and updated at least annually and shall

318 be signed and certified in accordance with Part III K of this permit. The O&M manual
319 shall be made available for review by department personnel upon request.

320 c. For facilities that do not operate process wastewater treatment units, O&M
321 requirements included in Part I B 8 a (4) through 8 a (7) shall be included in either the
322 O&M manual or the ~~SWPPP~~ stormwater pollution prevention plan.

323 9. If the concrete products facility discharges through a municipal separate storm sewer
324 system to surface waters, the permittee shall notify the owner of the municipal separate
325 storm sewer system of the existence of the discharge and include that notification with the
326 registration statement. The notification shall include the following information: the name of
327 the facility, a contact person and contact information (telephone and email), the location
328 of the discharge, the nature of the discharge, and the facility's VPDES general permit
329 number.

330 10. The permittee shall ensure that all process wastewater basins and lagoons maintain
331 a minimum freeboard of one foot at all times except during a 72-hour transition period after
332 a ~~measurable~~ rainfall event that results in a discharge from the site. During the 72-hour
333 transition period, no discharge from the basins and lagoons shall occur unless it is in
334 accordance with this permit. Within 72 hours after a ~~measurable~~ rainfall event that results
335 in a discharge from the site, the freeboard in all basins and lagoons shall be returned to
336 the minimum freeboard of one foot. Where basins are operated in a series mode of
337 operation, the one-foot freeboard requirement for the upper basins may be waived
338 provided the final basin will maintain the freeboard requirements of this special condition.
339 A description of how the permittee will manage the facility to adhere to one foot of
340 freeboard shall be included in the O&M manual required in Part I B 8 a (1). Should the
341 one-foot freeboard not be restored by the end of the 72-hour transition period, the
342 permittee shall take measures to correct the problem before the next rain event. In
343 addition, the permittee shall immediately begin to monitor and document the freeboard on
344 a daily basis until the freeboard is returned to the minimum of one foot.

345 11. Process wastewater, commingled process wastewater, and stormwater or stormwater
346 treatment units designed to operate as "no discharge" shall have no discharge of
347 wastewater or pollutants except in storm events greater than a 25-year, 24-hour storm
348 event. In the event of such a discharge, the permittee shall report an unusual or
349 extraordinary discharge per Part III H of this permit. No sampling or DMR is required for
350 these discharges as they are considered to be discharging in emergency discharge
351 conditions. All other conditions in Part I B, Part II, and Part III apply. Any other discharge
352 from this type of system is prohibited and shall be reported as an unauthorized discharge
353 per Part III G of this permit. The operation of these systems shall not contravene the Water
354 Quality Standards (9VAC25-260), ~~as adopted and amended by the board~~, or any provision
355 of the State Water Control Law.

356 12. The permittee shall notify the department as soon as he the permittee knows or has
357 reason to believe:

358 a. That any activity has occurred or will occur that would result in the discharge, on a
359 routine or frequent basis, of any toxic pollutant that is not limited in this permit if that
360 discharge will exceed the highest of the following notification levels:

361 (1) One hundred micrograms per liter (100 µg/l) of the toxic pollutant;

362 (2) Two hundred micrograms per liter (200 µg/l) for acrolein and acrylonitrile; five
363 hundred micrograms per liter (500 µg/l) for 2,4-dinitrophenol and for 2-methyl-4,6-
364 dinitrophenol; and one milligram per liter (1 mg/l) for antimony;

365 (3) Five times the maximum concentration value reported for that pollutant in the permit
366 application; or

367 (4) The level established by the ~~board~~ department in accordance with 9VAC25-31-220
368 F.

369 b. That any activity has occurred or will occur ~~which that~~ would result in any discharge,
370 on a nonroutine or infrequent basis, of a toxic pollutant ~~which that~~ is not limited in this
371 permit if that discharge will exceed the highest of the following notification levels:

372 (1) Five hundred micrograms per liter (500 µg/l) of the toxic pollutant;

373 (2) One milligram per liter (1 mg/l) for antimony;

374 (3) Ten times the maximum concentration value reported for that pollutant in the permit
375 application; or

376 (4) The level established by the ~~board~~ department in accordance with 9VAC25-31-220
377 F.

378 13. All settling basins used for treatment and control of process wastewater or process
379 wastewater commingled with stormwater that were constructed on or after February 2,
380 1998, shall be lined with concrete or any other impermeable materials. Regardless of date
381 of construction, all settling basins used for treatment and control of process wastewater
382 or process wastewater commingled with stormwater that are expanded or dewatered for
383 major structural repairs shall be lined with concrete or any other impermeable materials.

384 14. ~~Settled wastewater may be used on site for the purposes of dust suppression or for~~
385 ~~spraying stockpiles.~~ Dust suppression shall be carried out as a best management practice
386 but not as a wastewater disposal method ~~provided that ponding or direct run-off from the~~
387 ~~site does not occur during or immediately following its application.~~ Water used for dust
388 suppression may be discharged provided that it has been filtered, settled, or similarly
389 treated. Settled wastewater may be used on site for the purpose of dust suppression or
390 for spraying stockpiles. Dust suppression shall not occur during a "measurable" rain event
391 (~~a storm event that results in an actual discharge from the site~~).

392 15. Compliance reporting under Part I A.

393 a. The quantification levels (QL) shall be less than or equal to the following
394 concentrations:

Effluent Characteristic	Quantification Level
TSS	1.0 mg/l
TPH	5.0 mg/l

395 The QL is defined as the lowest concentration used to calibrate a measurement
396 system in accordance with the procedures published for the test method.

397 b. Reporting.

398 (1) Monthly average. Compliance with the monthly average limitations or reporting
399 requirements for the parameters listed in Part I A shall be determined as follows: All
400 concentration data below the QL listed in subdivision 15 a of this subsection shall be
401 treated as zero. All concentration data equal to or above the QL listed shall be treated
402 as it is reported. An arithmetic average shall be calculated using all reported data,
403 including the defined zeros, for the month. This arithmetic average shall be reported
404 on the DMR as calculated. If all data are below the QL then the average shall be
405 reported as "<QL." If reporting for quantity is required on the DMR and the calculated
406 concentration is [~~<QL~~ less than QL] then report "<QL" for the quantity, otherwise use
407 the calculated concentration.

408 (2) Daily maximum. Compliance with the daily maximum limitations or reporting
409 requirements for the parameters listed in Part I A shall be determined as follows: All

410 concentration data below the QL listed in subdivision 15 a of this subsection shall be
411 treated as zero. All concentration data equal to or above the QL shall be treated as
412 reported. An arithmetic average of the values shall be calculated using all reported
413 data, including the defined zeros, collected for each day during the reporting month.
414 The maximum value of these daily averages thus determined shall be reported on the
415 DMR as the daily maximum. If all data are below the QL then the average shall be
416 reported as "<QL." If reporting for quantity is required on the DMR and the calculated
417 concentration is [~~<QL~~ less than QL] then report "<QL" for the quantity, otherwise use
418 the calculated concentration.

419 (3) Any single datum required shall be reported as "<QL" if it is less than the QL listed
420 in subdivision 15 a of this subsection. Otherwise the numerical value shall be reported.
421 The QL must be less than or equal to the QL in subdivision 15 a of this subsection.

422 (4) The permittee shall report at least two significant digits for a given parameter.
423 Regardless of the rounding convention used (i.e., five always rounding up or to the
424 nearest even number) by the permittee, the permittee shall use the convention
425 consistently and shall ensure that consulting laboratories employed by the permittee
426 use the same convention.

427 16. Discharges to waters with an approved total maximum daily load (TMDL). Owners of
428 facilities that are a source of the specified pollutant of concern to waters where ~~an~~
429 ~~approved TMDL has been established~~ a TMDL has been approved prior to the term of this
430 permit shall implement measures and controls that are consistent with the assumptions
431 and requirements of the TMDL. The department will provide written notification to the
432 owner that a facility is subject to the TMDL requirements. If the TMDL establishes a
433 numeric wasteload allocation that applies to discharges from the facility, the owner shall
434 perform monitoring for the pollutant of concern in accordance with the monitoring
435 frequencies in Part I A and implement measures necessary to meet that allocation. At
436 permit reissuance, the permittee shall submit a demonstration with the registration
437 statement to show the wasteload allocation is being met.

438 17. Adding or deleting outfalls. The permittee may add new or delete existing outfalls at
439 the facility as necessary and appropriate. The permittee shall update the O&M manual
440 and stormwater pollution prevention plan (SWPPP) and notify the department of all outfall
441 changes within 60 days of the change. The permittee shall submit an updated registration
442 statement including an updated SWPPP site map.

443 18. Notice of termination.

444 a. The owner may terminate coverage under this general permit by filing a complete
445 notice of termination with the department. The notice of termination may be filed after
446 one or more of the following conditions have been met:

447 (1) Operations have ceased at the facility, and there are no longer discharges of
448 process wastewater or stormwater associated with the industrial activity;

449 (2) A new owner has assumed responsibility for the facility. A notice of termination
450 does not have to be submitted if a VPDES Change of Ownership Agreement form has
451 been submitted;

452 (3) All discharges associated with this facility have been covered by an individual
453 VPDES permit or an alternative VPDES permit; or

454 (4) Termination of coverage is being requested for another reason, provided the ~~board~~
455 department agrees that coverage under this general permit is no longer needed.

456 b. The notice of termination shall contain the following information:

457 (1) Owner's name, mailing address, telephone number, and email address (if
458 available);
459 (2) Facility name and location;
460 (3) VPDES general permit registration number for the facility; and
461 (4) The basis for submitting the notice of termination, including:
462 (a) A statement indicating that a new owner has assumed responsibility for the facility;
463 (b) A statement indicating that operations have ceased at the facility, a closure plan
464 has been implemented according to the O&M manual, and there are no longer
465 discharges from the facility;
466 (c) A statement indicating that all discharges have been covered by an individual
467 VPDES permit; or
468 (d) A statement indicating that termination of coverage is being requested for another
469 reason (state the reason).
470 c. The following certification: "I certify under penalty of law that all concrete products
471 ~~waste water~~ wastewater and stormwater discharges from the identified facility that are
472 authorized by this VPDES general permit have been eliminated, or covered under a
473 VPDES individual or alternative permit, or that I am no longer the owner of the facility,
474 or permit coverage should be terminated for another reason listed above. I understand
475 that by submitting this notice of termination, that I am no longer authorized to discharge
476 concrete products ~~waste water~~ wastewater or stormwater in accordance with the
477 general permit, and that discharging pollutants to surface waters is unlawful where the
478 discharge is not authorized by a VPDES permit. I also understand that the submittal
479 of this notice of termination does not release an owner from liability for any violations
480 of this permit or the Clean Water Act."
481 d. The notice of termination shall be signed in accordance with Part III K.
482 e. The notice of termination shall be submitted to the DEQ regional office serving the
483 area where the concrete products facility discharge is located.
484 19. Temporary closure at inactive and unstaffed sites waiver.
485 a. A waiver of the effluent monitoring, benchmark monitoring, visual monitoring, and
486 routine facility inspections may be granted by the ~~board~~ department at a facility that is
487 both inactive and unstaffed and there are no industrial materials or activities exposed
488 to stormwater. The waiver request shall be submitted to the ~~board~~ department for
489 approval and shall include the information in the temporary closure plan specified in
490 Part I B 8 a (4);_i the facility's VPDES general permit registration number; a contact
491 person, telephone number, and email address (if available); the reason for the request;
492 the date the facility became or will become inactive and unstaffed; and the date the
493 closure plan will be completed. The waiver shall be signed and certified in accordance
494 with Part III K. If this waiver is granted, the permittee must retain a copy of the request
495 and the ~~board's~~ department's written approval of the waiver in the SWPPP. The
496 permittee is required to conduct an annual routine facility inspection in accordance
497 with Part II ~~F-6 f (5)~~ D 2 e. A stormwater discharge is not required at the time of this
498 annual routine facility inspection.
499 b. To reactivate the site the permittee must notify the department within 30 days of
500 reopening the facility and commencing any point source discharges of either treated
501 process wastewater or stormwater runoff associated with industrial activities. Upon
502 reactivation all effluent monitoring, benchmark monitoring, visual monitoring, and
503 routine facility inspections shall resume immediately. This notification must be

504 submitted to the department, signed in accordance with Part III K, and retained on site
505 at the facility covered by this permit in accordance with Part III B.

506 c. The ~~board~~ department retains the right to revoke this waiver when it is determined
507 that the discharge is causing, has a reasonable potential to cause, or contributes to a
508 water quality standards violation.

509 20. The discharges authorized by this permit shall be controlled as necessary to meet
510 applicable water quality standards.

511 21. Approval for coverage under this general permit does not relieve any owner of the
512 responsibility to comply with any other applicable federal, state, or local statute, ordinance,
513 or regulation.

514 Part II
515 Stormwater Management.

516 A. Monitoring ~~instructions~~ requirements.

517 1. Quarterly visual monitoring. The permittee shall perform and document visual
518 monitoring of stormwater discharges associated with industrial activity from each outfall,
519 except discharges waived in Part II A 1 d. The visual monitoring must be made during
520 normal working hours, at least once in each of the following three-month periods: January
521 through March, April through June, July through September, and October through
522 December.

523 a. Samples shall be collected in accordance with Part II A 3. No analytical tests are
524 required to be performed on the samples.

525 b. Samples will be in a clean, colorless glass or plastic container and examined in a
526 well-lit area.

527 c. The examination shall observe color, odor, clarity, floating solids, settled solids,
528 suspended solids, foam, oil sheen, and other obvious indicators of stormwater
529 pollution.

530 d. If no storm event resulted in discharge from the facility during a monitoring quarter,
531 the permittee is excused from visual monitoring for that quarter provided that
532 documentation is included with the monitoring records.

533 e. When adverse weather conditions prevent the collection of samples, a substitute
534 sample may be taken during a storm event that results in a discharge from the site in
535 the next monitoring period. Adverse weather conditions are those that are dangerous
536 or create inaccessibility for personnel and may include such things as local flooding,
537 high winds, electrical storms, or situations that otherwise make sampling
538 impracticable, such as drought or extended frozen conditions. Narrative
539 documentation of conditions necessitating the use of the waiver shall be kept with the
540 stormwater pollution prevention plan (SWPPP).

541 f. Visual monitoring documentation shall be maintained on site with the SWPPP and
542 shall include:

543 (1) Outfall location;

544 (2) Monitoring date and time;

545 (3) Monitoring personnel;

546 (4) Nature of the discharge (i.e., runoff or snow melt);

547 (5) Visual quality of the stormwater discharge, including observations of color, odor,
548 clarity, floating solids, settled solids, suspended solids, foam, oil sheen, and other
549 obvious indicators of stormwater pollution; and

550 (6) Probable sources of any observed stormwater contamination.

551 2. Benchmark monitoring. If the benchmark monitoring for total suspended solids exceeds
552 100 mg/l maximum or the pH falls outside of the range of 6.0 to 9.0 standard units, the
553 permittee shall evaluate the overall effectiveness of the SWPPP in controlling the
554 discharge of pollutants to receiving waters [or if corrective actions (Part II A 4) are needed
555]. Benchmark concentration values are not effluent limitations. Exceedance of a
556 benchmark concentration does not constitute a violation of this permit and does not
557 indicate that violation of a water quality standard has occurred; however, it does signal
558 that modifications to the SWPPP are necessary, unless justification is provided in a routine
559 facility inspection.

560 3. Monitoring instructions.

561 4. a. Collection and analysis of samples. Sampling requirements shall be assessed on
562 an outfall by outfall basis. Samples shall be collected and analyzed in accordance with
563 the requirements of Part III A.

564 2. b. When and how to sample. A minimum of one grab sample shall be taken resulting
565 from a storm event that results in an actual discharge from the site (~~defined as a~~
566 "measurable storm event"), providing the interval from the preceding measurable
567 storm event discharge is at least 72 hours. The 72-hour storm interval is waived if the
568 permittee is able to document with the DMR that less than a 72-hour interval is
569 representative for local storm events during the sampling period. The grab sample
570 shall be taken during the first 30 minutes of the discharge. If it is not practicable to take
571 the sample during the first 30 minutes, the sample may be taken during the first three
572 hours of discharge provided that the permittee explains with the SWPPP why a grab
573 sample during the first 30 minutes was impractical.

574 ~~3.~~ c. Recording of results. For each discharge measurement or sample taken pursuant
575 to the storm event monitoring requirements of this permit, the permittee shall record
576 and report with the DMR the following information:

577 ~~a.~~ (1) Date and duration (in hours) of the storm events sampled;

578 ~~b.~~ (2) Rainfall measurements or estimates (in inches) of the storm event that generated
579 the sampled discharge; and

580 ~~c.~~ Duration (3) Interval between the storm event sampled and the end of the previous
581 measurable storm event that resulted in a discharge from the site.

582 4. Corrective actions. The permittee shall review the SWPPP and modify it as necessary
583 to address any deficiencies noted in Part II A 4 a and 4 b. Revisions to the SWPPP shall
584 be completed within 60 days following the discovery of the deficiency. When control
585 measures need to be modified or added, implementation shall be completed before the
586 next anticipated storm event if possible, but no later than 60 days after the deficiency is
587 discovered, or as otherwise provided or approved by the department. In cases where
588 construction is necessary to implement control measures, the permittee shall include a
589 schedule in the SWPPP that provides for the completion of the control measures as
590 expeditiously as practicable, but no later than three years after the deficiency is
591 discovered. Where a construction compliance schedule is included in the SWPPP, the
592 SWPPP shall include appropriate nonstructural and temporary controls to be implemented
593 in the affected portion of the facility prior to completion of the permanent control measure.
594 The amount of time taken to modify a control measure or implement additional control
595 measures shall be documented in the SWPPP. The permittee shall take corrective action
596 whenever:

597 a. Benchmark monitoring; routine facility inspections; inspections by local, state, or
598 federal officials; or any other process, observation, or event result in a determination
599 that modifications to the stormwater control measures are necessary to meet the
600 permit requirements; or

601 b. The department determines or the permittee becomes aware that the stormwater
602 control measures are not stringent enough for the discharge to meet applicable water
603 quality standards.

604 Any corrective actions taken shall be documented and retained with the SWPPP.

605 B. Representative outfalls - substantially identical outfalls. If a facility has two or more
606 exclusively stormwater outfalls that discharge substantially identical effluents, based on
607 similarities of the industrial activities, significant materials, size of drainage areas, and stormwater
608 management practices occurring within the drainage areas of the outfalls, frequency of
609 discharges, and stormwater management practices occurring within the drainage areas of the
610 outfalls, the permittee may monitor the effluent stormwater of just one of the outfalls and report
611 that the observations also apply to the substantially identical outfall. Representative outfalls must
612 be identified in the registration statement submitted for coverage under this permit. Substantially
613 identical outfall monitoring can apply to quarterly visual and benchmark monitoring. The permittee
614 must include the following information in the SWPPP:

- 615 1. The locations of the outfalls;
- 616 2. ~~Why~~ An evaluation, including available monitoring data, indicating the outfalls are
617 expected to discharge substantially identical effluents, including evaluation of monitoring
618 data where available;
- 619 3. Estimates of the size of the drainage area (in square feet) for each of the outfalls; and
- 620 4. An estimate of the runoff coefficient of the drainage areas (low: under 40%; medium:
- 621 40% to 65%; high: above 65%).

622 ~~C. Quarterly visual monitoring of stormwater quality. The permittee shall perform and~~
623 ~~document visual monitoring of stormwater discharges associated with industrial activity from each~~
624 ~~outfall, except discharges waived in Part II C 4 . The visual monitoring must be made during~~
625 ~~normal working hours, at least once in each of the following three month periods: January through~~
626 ~~March, April through June, July through September, and October through December.~~

627 ~~1. Samples will be in a clean, colorless glass or plastic container and examined in a well-~~
628 ~~lit area.~~

629 ~~2. Samples will be collected within the first 30 minutes (or as soon thereafter as practical,~~
630 ~~but not to exceed three hours, provided that the permittee explains in the SWPPP why an~~
631 ~~examination during the first 30 minutes was impractical) of when the runoff or snowmelt~~
632 ~~begins discharging. All such samples shall be collected from the discharge resulting from~~
633 ~~a storm event that results in an actual discharge from the site (defined as a "measurable~~
634 ~~storm event") providing the interval from the preceding measurable storm event is at least~~
635 ~~72 hours. The required 72-hour storm event interval is waived where the preceding~~
636 ~~measurable storm event did not result in a measurable discharge from the facility. The 72-~~
637 ~~hour storm event interval may also be waived where the permittee documents that less~~
638 ~~than a 72-hour interval is representative for local storm events during the season when~~
639 ~~sampling is being conducted.~~

640 ~~3. The examination shall observe color, odor, clarity, floating solids, settled solids,~~
641 ~~suspended solids, foam, oil sheen, and other obvious indicators of stormwater pollution.~~

642 ~~4. If no qualifying storm event resulted in discharge from the facility during a monitoring~~
643 ~~period, or adverse weather conditions create dangerous conditions for personnel during~~

644 each measurable storm event during a monitoring period, visual monitoring is exempted
645 provided this is documented in the SWPPP.

646 5. Visual monitoring reports shall be maintained onsite with the SWPPP. The report shall
647 include the outfall location, the monitoring date and time, monitoring personnel, the nature
648 of the discharge (i.e., runoff or snow melt), visual quality of the stormwater discharge
649 (including observations of color, odor, clarity, floating solids, settled solids, suspended
650 solids, foam, oil sheen, and other obvious indicators of stormwater pollution), and probable
651 sources of any observed stormwater contamination.

652 6. Whenever the visual monitoring shows obvious indicators of stormwater pollution, the
653 SWPPP and stormwater controls shall be updated per Part II F.

654 D. Allowable nonstormwater discharges. The following nonstormwater discharges are
655 authorized by this permit.

656 1. Discharges from emergency firefighting activities;

657 2. Fire hydrant flushings;

658 3. Potable water including water line flushings;

659 4. Uncontaminated condensate from air conditioners, coolers, and other compressors and
660 from the outside storage of refrigerated gases or liquids;

661 5. Irrigation drainage;

662 6. Landscape watering provided all pesticides, herbicides, and fertilizer have been applied
663 in accordance with the approved labeling;

664 7. Pavement wash waters where no detergents or hazardous cleaning products are used
665 and no spills or leaks of toxic or hazardous materials have occurred (unless all spilled
666 material has been removed). Pavement wash waters shall be managed to prevent the
667 discharge of pollutants;

668 8. Routine external building washdown that does not use detergents or hazardous
669 cleaning products;

670 9. Uncontaminated ground water or spring water;

671 10. Foundation or footing drains where flows are not contaminated with process materials;
672 and

673 11. Incidental windblown mist from cooling towers that collects on rooftops or adjacent
674 portions of the facility, but not intentional discharges from the cooling tower (e.g., "piped"
675 cooling tower blowdown or drains).

676 E. C. Releases of hazardous substances or oil in excess of reportable quantities. The
677 discharge of hazardous substances or oil in the stormwater discharges from this facility shall be
678 prevented or minimized in accordance with the SWPPP for the facility. This permit does not
679 authorize the discharge of hazardous substances or oil resulting from an onsite on-site spill. This
680 permit does not relieve the permittee of the reporting requirements of 40 CFR Part 110, 40 CFR
681 Part 117, and 40 CFR Part 302 or § 62.1-44.34:19 of the Code of Virginia.

682 Where a release containing a hazardous substance or oil in an amount equal to or in excess
683 of a reportable quantity established under either 40 CFR Part 110, 40 CFR Part 117, or 40 CFR
684 Part 302 occurs during a 24-hour period:

685 1. The permittee is required to notify the department in accordance with the requirements
686 of Part III G as soon as he the permittee has knowledge of the discharge;

687 2. Where a release enters a municipal separate storm sewer system (MS4), the permittee
688 shall also notify the owner of the MS4; and

689 3. The SWPPP required by this permit shall be reviewed to identify measures to prevent
690 the reoccurrence of such releases and to respond to such releases, and the plan must be
691 modified where appropriate.

692 ~~F. D.~~ Stormwater pollution prevention plans (SWPPP). ~~A~~ An SWPPP shall be developed and
693 implemented for the facility covered by this permit. ~~The SWPPP shall include best management~~
694 ~~practices (BMPs) that are reasonable, economically practicable, and appropriate in light of current~~
695 ~~industry practices. The BMPs shall be selected, designed, installed, implemented, and maintained~~
696 ~~in accordance with good engineering practices to eliminate or reduce the pollutants in all~~
697 ~~stormwater discharges from the facility. The SWPPP shall also include any control measures~~
698 ~~necessary for the stormwater discharges to meet applicable water quality standards. The SWPPP~~
699 ~~is intended to document the selection, design, and installation of control measures, including~~
700 ~~BMPs, to minimize the pollutants in all stormwater discharges from the facility and to meet~~
701 ~~applicable effluent limitations and water quality standards.~~

702 The SWPPP requirements of this general permit may be fulfilled, in part, by incorporating by
703 reference other plans or documents, such as an erosion and sediment control plan, a spill
704 prevention control and countermeasure (SPCC) plan developed for the facility under § 311 of the
705 Clean Water Act, or BMP programs otherwise required for the facility provided that the
706 incorporated plan meets or exceeds the SWPPP requirements of Part II ~~F 6 (Contents of SWPPP)~~
707 D 2. All plans incorporated by reference into the SWPPP become enforceable under this permit.
708 If a plan incorporated by reference does not contain all the requirements of Part II ~~F 6 D 2~~, the
709 permittee shall develop the missing SWPPP elements and include them in the required plan.

710 1. ~~Deadlines for SWPPP preparation and compliance.~~

711 a. Owners of existing facilities that ~~were covered under the 2013 Concrete Products~~
712 ~~General Permit~~ who are continuing coverage under this general permit shall update
713 and implement any revisions to the SWPPP within 60 days of the ~~board~~ department
714 granting coverage under this permit.

715 b. Owners of new facilities, facilities previously covered by an expiring individual
716 permit, and existing facilities not currently covered by a VPDES permit ~~who~~ that elect
717 to be covered under this general permit shall prepare the SWPPP 60 days prior to
718 commencing operations and implement the SWPPP prior to ~~commencing operations~~
719 a stormwater discharge.

720 c. Where the owner of an existing facility that is covered by this permit changes, the
721 new owner of the facility shall update and implement any revisions to the SWPPP
722 within 60 days of the ownership change.

723 d. Upon a showing of good cause, the director may establish a later date in writing for
724 the preparation and compliance with the SWPPP.

725 ~~2. Signature and SWPPP review.~~

726 a. ~~The SWPPP shall be signed in accordance with Part III K and be retained on-site at~~
727 ~~the facility covered by this permit in accordance with Part III B. For inactive sites, the~~
728 ~~SWPPP may be kept at the nearest office of the permittee.~~

729 b. ~~The permittee shall make the SWPPP or other information available to the~~
730 ~~department upon request.~~

731 c. ~~The director, or his designee, may notify the permittee in writing at any time that the~~
732 ~~SWPPP, BMPs, or other components of the facility's stormwater program do not meet~~
733 ~~one or more of the requirements of this part. Such notification shall identify specific~~
734 ~~provisions of the permit that are not being met and may include required modifications~~
735 ~~to the stormwater program, additional monitoring requirements, and special reporting~~
736 ~~requirements. Within 60 days of such notification from the director, or as otherwise~~

737 provided by the director, the permittee shall make the required changes to the SWPPP
738 and shall submit to the department a written certification that the requested changes
739 have been made.

740 ~~3. Maintaining an updated SWPPP. The permittee shall review and amend the SWPPP~~
741 ~~as appropriate whenever:~~

742 ~~a. There is construction or a change in design, operation, or maintenance that has a~~
743 ~~significant effect on the discharge or the potential for the discharge of pollutants to~~
744 ~~surface waters;~~

745 ~~b. Routine inspections or visual monitoring determine that there are deficiencies in the~~
746 ~~BMPs;~~

747 ~~c. Inspections by local, state, or federal officials determine that modifications to the~~
748 ~~SWPPP are necessary;~~

749 ~~d. There is a spill, leak, or other release at the facility; or~~

750 ~~e. There is an unauthorized discharge from the facility.~~

751 ~~4. SWPPP modifications shall be made within 60 calendar days after discovery,~~
752 ~~observation, or event requiring a SWPPP modification. Implementation of new or modified~~
753 ~~BMPs (distinct from regular preventive maintenance of existing BMPs described in Part II~~
754 ~~F 7) shall be initiated before the next storm event if possible, but no later than 60 days~~
755 ~~after discovery, or as otherwise provided or approved by the director. The amount of time~~
756 ~~taken to modify a BMP or implement additional BMPs shall be documented in the SWPPP.~~

757 ~~5. If the SWPPP modification is based on a release or unauthorized discharge, include a~~
758 ~~description and date of the release, the circumstances leading to the release, actions~~
759 ~~taken in response to the release, and measures to prevent the recurrence of such~~
760 ~~releases. Unauthorized releases and discharges are subject to the reporting requirements~~
761 ~~of Part III G of this permit.~~

762 ~~6. 2. Contents of SWPPP. The SWPPP shall include, at a minimum, the following items:~~

763 ~~a. Pollution prevention team. Each SWPPP shall identify the staff individuals by name~~
764 ~~or title that comprise the facility's stormwater pollution prevention team. The pollution~~
765 ~~prevention team is responsible for assisting the facility or plant manager in developing,~~
766 ~~implementing, maintaining, revising, and ensuring compliance with the facility's~~
767 ~~SWPPP. Specific responsibilities of each staff individual on the team shall be identified~~
768 ~~and listed.~~

769 ~~b. Site description. The site description shall include the following:~~

770 ~~(1) A description of the industrial activities at the facility.~~

771 ~~(2) A site map identifying the following:~~

772 ~~(a) Boundaries of the property and the size of the property in acres;~~

773 ~~(b) Location and extent of significant structures and impervious surfaces;~~

774 ~~(c) Locations of all stormwater conveyances, including ditches, pipes, swales, and~~
775 ~~inlets, and the directions of stormwater flow using arrows to indicate which direction~~
776 ~~stormwater will flow;~~

777 ~~(d) Locations of stormwater control measures, including BMPs;~~

778 ~~(e) Locations of all surface water bodies, including wetlands;~~

779 ~~(f) Locations of identified potential pollutant sources identified in Part II D 2 c;~~

780 ~~(g) Locations where significant spills or leaks identified under Part II D 2 c (3) have~~
781 ~~occurred;~~

782 (h) Locations of stormwater outfalls, monitoring locations, an approximate outline of
783 the area draining to each outfall, the drainage area of each outfall in acres, the
784 longitude and latitude of each outfall, the location of any municipal separate storm
785 system (MS4) conveyance receiving discharge from the facility, and each outfall
786 identified with a unique numerical identification code. For example: Outfall number
787 001, Outfall Number 002;

788 (i) Location and description of all nonstormwater discharges;

789 (j) Location of any storage piles containing salt;

790 (k) Location and source of suspected run-on to the site from an adjacent property if
791 the run-on is suspected of containing significant quantities of pollutants; and

792 (l) Locations of fueling stations, vehicle or equipment degreasing activities,
793 maintenance areas, loading or unloading areas, vehicle washdown areas, vehicle
794 washout areas, bag house or other dust control device, recycle ponds, sedimentation
795 ponds, or clarifiers or other devices used for the treatment of process wastewater (and
796 the areas that drain to the treatment device).

797 c. Summary of potential pollutant sources. The plan SWPPP shall identify each
798 separate area at the facility where industrial materials or activities at the facility are
799 exposed to stormwater. Industrial materials or activities include: material handling
800 equipment or activities, industrial machinery, raw materials, industrial production and
801 processes, intermediate products, byproducts, final products, and waste products.
802 Material handling activities include: the storage, loading and unloading, transportation,
803 disposal, or conveyance of any raw material, intermediate product, final product, or
804 waste product. The description shall include:

805 (1) Activities in area. A list of the industrial activities (e.g., material storage, equipment
806 fueling and cleaning, cutting steel beams); and exposed to stormwater.

807 (2) Pollutants. A list of the associated pollutants, pollutant constituents, or industrial
808 chemicals for each industrial activity that could potentially be exposed to stormwater.
809 The pollutant list shall include all significant materials handled, treated, stored, or
810 disposed that have been exposed to stormwater in the three years prior to the date
811 this SWPPP was prepared or amended. This list shall include any hazardous
812 substances or oil at the facility.

813 c. Site map. The site map shall document:

814 (1) An outline of the drainage area of each stormwater outfall that are within the facility
815 boundaries;

816 (2) Each existing structural control measure to reduce pollutants in stormwater runoff;

817 (3) Surface water bodies;

818 (4) Locations where materials are exposed to precipitation;

819 (5) Locations where major spills or leaks identified under Part II F 6 d have occurred;

820 (6) Locations of fueling stations, vehicle or equipment degreasing activities,
821 maintenance areas, loading or unloading areas, vehicle wash down areas, vehicle
822 wash out areas, bag house or other dust control device, recycle ponds, sedimentation
823 ponds, or clarifiers or other devices used for the treatment of process wastewater (and
824 the areas that drain to the treatment device);

825 (7) Locations used for the storage or disposal of wastes; liquid storage tanks;
826 processing areas; and storage areas;

827 (8) Outfall locations, designation (e.g., 001) and the types of discharges contained in
828 the drainage areas of the outfalls;

829 ~~(9) For each area of the facility that generates stormwater discharges associated with~~
830 ~~industrial activity with a potential for containing significant amounts of pollutants,~~
831 ~~locations of stormwater conveyances including ditches, pipes, swales, and inlets, and~~
832 ~~the directions of stormwater flow and an identification of the types of pollutants that~~
833 ~~are likely to be present in stormwater discharges associated with industrial activity.~~
834 ~~Factors to consider include the toxicity of the chemicals; quantity of chemicals used,~~
835 ~~produced, or discharged; the likelihood of contact with stormwater; and history of leaks~~
836 ~~or spills of toxic or hazardous pollutants; and~~
837 ~~(10) Flows with a potential for causing erosion shall be identified.~~
838 ~~d. (3) Spills and leaks. A The SWPPP shall clearly identify areas where potential spills~~
839 ~~and leaks that can contribute pollutants to stormwater discharges can occur and their~~
840 ~~corresponding outfalls. The SWPPP shall include a list of significant spills and leaks~~
841 ~~of toxic or hazardous pollutants that actually occurred at exposed areas or that are~~
842 ~~exposed to precipitation or that otherwise drain to a stormwater conveyance at the~~
843 ~~facility after the date of three years prior to the date of coverage under this general~~
844 ~~permit. Such list shall be updated as appropriate during the term of the permit drained~~
845 ~~to a stormwater conveyance during the three-year period prior to the date this SWPPP~~
846 ~~was prepared or amended. The list shall be updated within 60 days of the incident if~~
847 ~~significant spills or leaks occur in exposed areas of the facility during the term of the~~
848 ~~permit.~~
849 ~~e. (4) Sampling data. The plan SWPPP shall include a summary of existing stormwater~~
850 ~~discharge sampling data taken at the facility. The summary shall include, at a~~
851 ~~minimum, any data collected during the previous three years.~~
852 ~~f. d. Stormwater controls.~~
853 ~~(1) BMPs Control measures shall be implemented for all areas identified in Part II F-6~~
854 ~~to prevent or control pollutants in stormwater discharges from the facility. All~~
855 ~~reasonable steps shall be taken to control or address the quality of discharges from~~
856 ~~the site that may not originate at the facility If applicable, regulated stormwater~~
857 ~~discharges from the facility include stormwater run-on that commingles with~~
858 ~~stormwater discharges associated with industrial activity at the facility. The SWPPP~~
859 ~~shall describe the type, location, and implementation of all BMPs control measures for~~
860 ~~each area where industrial materials or activities are exposed to stormwater. Selection~~
861 ~~of control measures shall take into consideration:~~
862 ~~(a) That preventing stormwater from coming into contact with polluting materials is~~
863 ~~generally more effective and less costly than trying to remove pollutants from~~
864 ~~stormwater;~~
865 ~~(b) Control measures generally must be used in combination with each other for most~~
866 ~~effective water quality protection;~~
867 ~~(c) Assessing the type and quantity of pollutants, including their potential to impact~~
868 ~~receiving water quality, is critical to designing effective control measures;~~
869 ~~(d) That minimizing impervious areas at the facility can reduce runoff and improve~~
870 ~~groundwater recharge and stream base flows in local streams; however, care must be~~
871 ~~taken to avoid groundwater contamination;~~
872 ~~(e) Flow attenuation by use of open vegetated swales and natural depressions can~~
873 ~~reduce instream impacts of erosive flows;~~
874 ~~(f) Conservation or restoration of riparian buffers will help protect streams from~~
875 ~~stormwater runoff and improve water quality; and~~

876 (g) Treatment interceptors (e.g., swirl separators and sand filters) may be appropriate
877 in some instances to minimize the discharge of pollutants.

878 (2) Good housekeeping measures. ~~Good housekeeping requires the clean and orderly~~
879 ~~maintenance of areas that may contribute pollutants to stormwater discharges. The~~
880 ~~permittee shall keep clean all exposed areas of the facility that are potential sources~~
881 ~~of pollutants in stormwater. Particular attention should be paid to areas where raw~~
882 ~~materials are stockpiled, material handling areas, storage areas, liquid storage tanks,~~
883 ~~vehicle fueling and maintenance areas, and loading or unloading areas. The SWPPP~~
884 ~~shall describe procedures performed to prevent The permittee shall perform the~~
885 ~~following good housekeeping measures to minimize pollutant discharges:~~

886 (a) Include a schedule for regular pickup and disposal of waste materials, along with
887 routine inspections for leaks and conditions of drums, tanks, and containers;

888 (b) Sweep or vacuum as feasible;

889 (c) Store materials in containers constructed of appropriate materials;

890 (d) Manage all waste containers to prevent a discharge of pollutants;

891 (e) Minimize the potential for waste, garbage, and floatable debris to be discharged by
892 keeping areas exposed to stormwater free of such materials or by intercepting such
893 materials prior to discharge; and

894 (f) Prevent or minimize the discharge of: spilled cement, aggregate (including sand
895 and gravel), kiln dust, fly ash, settled dust, or other significant material in stormwater
896 from paved portions of the site that are exposed to stormwater. Sweep or vacuum
897 paved surfaces of the site that are exposed to stormwater at regular intervals or use
898 other equivalent measures to minimize the potential discharge of these materials in
899 stormwater. Indicate in the SWPPP the frequency of sweeping, vacuuming, or other
900 equivalent measures (e.g., wash down the area and collect or treat and properly
901 dispose of the washdown water). Determine the frequency based on the amount of
902 industrial activity occurring in the area and the frequency of precipitation, but
903 sweeping, vacuuming, or other equivalent measures shall be performed at least once
904 a week in areas where cement, aggregate, kiln dust, fly ash, or settled dust are being
905 handled or processed. Prevent the exposure of fine granular solids (including cement,
906 fly ash, and kiln dust) to stormwater, where practicable, by storing these materials in
907 enclosed silos, hoppers, or buildings or under other covering. The generation of dust
908 and off-site vehicle tracking of raw, final, or waste materials, or sediments shall be
909 minimized.

910 (3) Preventive maintenance. A preventive maintenance program shall involve regular
911 inspection, testing, maintenance, and repairing of all industrial equipment and systems
912 to avoid breakdowns or failures that could result in leaks, spills, and other releases.
913 This program is in addition to the specific BMP maintenance required under Part II F
914 ~~7 (Maintenance of BMPs) E.~~

915 (4) Spill prevention and response procedures. The SWPPP shall describe the
916 procedures that will be followed for preventing and responding to spills and leaks,
917 including:

918 (a) Preventive measures ~~include, such as~~ barriers between material storage and traffic
919 areas, secondary containment provisions, and procedures for material storage and
920 handling;

921 (b) Response procedures ~~shall include (i), including~~ notification of appropriate facility
922 personnel, emergency agencies, and regulatory agencies and (ii) procedures for
923 stopping, containing, and cleaning up spills. Measures for cleaning up hazardous

924 material spills or leaks shall be consistent with applicable RCRA Resource
925 Conservation and Recovery Act regulations at 40 CFR Part 264 and 40 CFR Part 265.
926 Employees who may cause, detect, or respond to a spill or leak shall be trained in
927 these procedures and have necessary spill response equipment available. If possible,
928 one of these individuals shall be a member of the pollution prevention team;

929 (c) Procedures for plainly labeling containers (e.g., "used oil," "spent solvents,"
930 "fertilizers and pesticides," etc.) that could be susceptible to spillage or leakage to
931 encourage proper handling and facilitate rapid response if spills or leaks occur; and

932 (d) Contact information for individuals and agencies that must be notified in the event
933 of a spill shall be included in the SWPPP and in other locations where it will be readily
934 available.

935 ~~(5) Routine facility inspections.~~

936 ~~(a) During normal facility operating hours inspections of areas of the facility covered~~
937 ~~by the requirements in this permit must be conducted and shall include observations~~
938 ~~of the following:~~

939 ~~(i) Areas where industrial materials or activities are exposed to stormwater, including~~
940 ~~material handling areas, above-ground storage tanks, hoppers or silos, dust collection~~
941 ~~or containment systems, and truck wash down or equipment cleaning areas;~~

942 ~~(ii) Discharge points; and~~

943 ~~(iii) Best management practices.~~

944 ~~(b) Inspections shall be conducted at least quarterly. At least once each calendar year,~~
945 ~~the routine facility inspection should be conducted during a period when a stormwater~~
946 ~~discharge is occurring.~~

947 ~~(c) Inspections shall be performed by personnel who possess the knowledge and skills~~
948 ~~to assess conditions and activities that could impact stormwater quality at the facility~~
949 ~~and who can also evaluate the effectiveness of BMPs. At least one member of the~~
950 ~~stormwater pollution prevention team shall participate.~~

951 ~~(d) Routine facility inspections shall be documented and maintained with the SWPPP.~~
952 ~~Document all findings including:~~

953 ~~(i) Inspection date;~~

954 ~~(ii) Names of the inspectors; and~~

955 ~~(iii) Observations of any discharges; the physical condition of and around all outfalls~~
956 ~~(e.g., concrete product in the stream or turbidity); leaks or spills from industrial~~
957 ~~equipment, drums, tanks or other containers; offsite tracking of industrial materials or~~
958 ~~sediment; any additional best management practices that need to be repaired,~~
959 ~~maintained, or added; and any incidents of noncompliance.~~

960 ~~(e) A set of tracking or followup procedures shall be used to ensure that appropriate~~
961 ~~actions are taken in response to the inspections. Records of inspections shall be~~
962 ~~maintained with the SWPPP. Any deficiencies in the implementation of the SWPPP~~
963 ~~that are found shall be corrected as soon as practicable, but not later than within 60~~
964 ~~days of the inspection, unless permission for a later date is granted in writing by the~~
965 ~~director. The results of the inspections shall be documented in the SWPPP, along with~~
966 ~~the dates and descriptions of any corrective actions that were taken in response to~~
967 ~~any deficiencies or opportunities for improvement that were identified.~~

968 ~~(f) The requirement for routine facility inspections is waived for facilities that have~~
969 ~~maintained an active VEEP E3/E4 status.~~

970 (5) Eliminating and minimizing exposure. To the extent practicable, manufacturing,
971 processing, and material storage areas, including loading and unloading, storage,
972 disposal, cleaning, maintenance, and fueling operations, shall be located inside or
973 protected by a storm-resistant covering to prevent exposure to rain, snow, snowmelt,
974 and runoff. Unless infeasible, facilities shall implement the following:
975 (a) Use grading, berming, or curbing to prevent runoff of contaminated flows and divert
976 run-on away from potential sources of pollutants;
977 (b) Locate materials, equipment, and activities so that potential leaks and spills are
978 contained or able to be contained or diverted before discharge;
979 (c) Clean up spills and leaks immediately upon discovery of the spills or leaks, using
980 dry methods (e.g., adsorbents) to prevent the discharge of pollutants;
981 (d) Store leaking vehicles and equipment indoors, or if leaking vehicles and equipment
982 must be stored outdoors, use drip pans and adsorbents;
983 (e) Utilize appropriate spill or overflow protections equipment;
984 (f) Perform all vehicle maintenance or equipment maintenance or equipment cleaning
985 operations indoors, under cover, or in bermed areas that prevent runoff and run-on
986 and also capture any overspray; and
987 (g) Drain fluids from equipment and vehicles that will be decommissioned, and for any
988 equipment and vehicles that remain unused for extended periods of time, inspect at
989 least monthly for leaks.
990 (6) Employee training. The permittee shall implement a stormwater employee training
991 program for the facility. The SWPPP shall include a schedule for all types of necessary
992 training and shall document all training sessions and the employees who received the
993 training. Training shall be provided at least annually for all employees who work in
994 areas where industrial materials or activities are exposed to stormwater and for
995 employees who are responsible for implementing activities identified in the SWPPP
996 (e.g., inspectors, maintenance personnel, ~~etc.~~). The training shall cover the
997 components and goals of the SWPPP and include such topics as spill response, good
998 housekeeping, material management practices, BMP operation, and maintenance,
999 etc. The SWPPP shall include a summary of any training performed.
1000 (7) Sediment and erosion control. The SWPPP shall identify areas at the facility that,
1001 due to topography, land disturbance (e.g., construction, landscaping, sit grading), or
1002 other factors, have a potential for soil erosion. The permittee shall identify and
1003 implement structural, vegetative, or stabilization BMPs control measures to prevent or
1004 control on-site and off-site erosion and sedimentation. Flow velocity dissipation
1005 devices shall be placed at discharge locations and along the length of any outfall
1006 channel if the flows would otherwise create erosive conditions.
1007 (8) Management of runoff. The SWPPP shall describe the stormwater run-off
1008 management practices (i.e., permanent structural BMPs control measures) for the
1009 facility. These types of [BMPs] are typically control measures shall be used to divert,
1010 infiltrate, reuse, or otherwise reduce pollutants in stormwater discharges from the site.
1011 Appropriate measures may include: vegetative swales and practices, reuse of
1012 collected stormwater (such as for a process or as an irrigation source), inlet controls
1013 (such as oil/water separators), snow management activities, infiltration devices, wet
1014 detention/retention devices; or other equivalent measures. Some structural BMPs
1015 Structural control measures may require a separate permit under § 404 of the Clean
1016 Water Act and the Virginia Water Protection Permit Program Regulation (9VAC25-
1017 210) before installation begins.

1018 7. e. Routine facility inspections. Personnel who possess the knowledge and skills to
1019 assess conditions and activities that could impact stormwater quality at the facility and
1020 who can also evaluate the effectiveness of control measures shall regularly inspect all
1021 areas of the facility where industrial materials or activities are exposed to stormwater.
1022 At least one member of the stormwater pollution prevention team shall participate.
1023 (1) Inspections include areas where industrial materials or activities are exposed to
1024 stormwater, including material handling areas, aboveground storage tanks, hoppers
1025 or silos, dust collection or containment systems, and truck washdown or equipment
1026 cleaning areas, discharge points, and control measures.
1027 (2) Inspections shall be conducted at least quarterly during normal facility operating
1028 hours. At least once each calendar year, the routine facility inspection should be
1029 conducted during a period when a stormwater discharge is occurring.
1030 (3) The inspections shall include at a minimum:
1031 (a) Inspection date;
1032 (b) Names of the inspectors; and
1033 (c) Observations of any discharges; the physical condition of and around all outfalls
1034 (e.g., concrete product in the stream or turbidity); leaks or spills from industrial
1035 equipment, drums, tanks or other containers; off-site tracking of industrial materials or
1036 sediment; any additional best management practices that need to be repaired,
1037 maintained, or added; and any incidents of noncompliance.
1038 (4) A set of tracking or follow-up procedures shall be used to ensure that appropriate
1039 actions are taken in response to the inspections. Records of inspections shall be
1040 maintained with the SWPPP. Any deficiencies in the implementation of the SWPPP
1041 that are found shall be corrected as soon as practicable, but not later than within 60
1042 days of the inspection, unless permission for a later date is granted in writing by the
1043 director. The results of the inspections shall be documented in the SWPPP, along with
1044 the dates and descriptions of any corrective actions that were taken in response to
1045 any deficiencies or opportunities for improvement that were identified.
1046 (5) The requirement for routine facility inspections is waived for facilities that have
1047 maintained an active Virginia Environmental Excellence Program E3 or E4 status.

1048 E. Maintenance of BMPs. All BMPs identified in the SWPPP shall be maintained in effective
1049 operating condition. Stormwater BMPs identified in the SWPPP shall be observed during active
1050 operation where feasible (i.e., during a stormwater runoff event) to ensure that they are
1051 functioning correctly. Where discharge locations are inaccessible, nearby downstream locations
1052 shall be observed. The observations shall be documented in the SWPPP.

1053 1. The SWPPP shall include a description of procedures and a regular schedule for
1054 preventive maintenance of all BMPs control measures and shall include a description of
1055 the back-up practices that are in place should a runoff event occur while a BMP control
1056 measure is off-line off-line. The effectiveness of nonstructural BMPs shall also be
1057 maintained by appropriate means (e.g., spill response supplies available and personnel
1058 trained, etc.).

1059 2. All control measures identified in the SWPPP shall be maintained in effective operating
1060 condition and shall be observed at least annually when a stormwater discharge is
1061 occurring to ensure that they are functioning correctly. Where discharge locations are
1062 inaccessible, nearby downstream locations shall be observed. The observations shall be
1063 documented in the SWPPP.

1064 3. If site routine facility inspections required by Part II F-6 f (5) (Routine facility inspections)
1065 D 2 d identify BMPs control measures that are not operating effectively, repairs or

1066 maintenance shall be performed before the next anticipated storm event. If maintenance
1067 prior to the next anticipated storm event is not possible, maintenance shall be scheduled
1068 and accomplished as soon as practicable. In the interim, back-up measures shall be
1069 employed and documented in the SWPPP until repairs or maintenance is complete.
1070 Documentation shall be kept with the SWPPP of maintenance and repairs of BMPs,
1071 including the dates of regular maintenance, dates of discovery of areas in need of repair
1072 or replacement, and for repairs, dates that the BMPs returned to full function, and the
1073 justification for any extended maintenance or repair schedules.

1074 8. F. Nonstormwater discharges.

1075 ~~a. Except for flows from emergency firefighting activities, the SWPPP must include:~~

1076 ~~(1) Identification of each allowable nonstormwater source;~~

1077 ~~(2) The location where it is likely to be discharged; and~~

1078 ~~(3) Descriptions of appropriate BMPs for each source.~~

1079 ~~b. Documentation that all outfalls have been evaluated annually for the presence of~~
1080 ~~unauthorized discharges (i.e., discharges other than stormwater, the authorized~~
1081 ~~nonstormwater discharges described in Part II D, or discharges covered under a~~
1082 ~~separate VPDES permit or this permit).~~

1083 1. Discharges of certain sources of nonstormwater listed in Part II F 3 are allowable
1084 discharges under this permit. All other nonstormwater discharges are not authorized and
1085 shall be either eliminated or covered under a separate VPDES permit.

1086 2. Annual outfall evaluation for unauthorized discharges. The SWPPP shall include
1087 documentation that all stormwater outfalls associated with industrial activity have been
1088 evaluated annually for the presence of unauthorized discharges. The documentation shall
1089 include:

1090 ~~(1) a.~~ The date of the evaluation;

1091 ~~(2) b.~~ A description of the evaluation criteria used;

1092 ~~(3) c.~~ A list of the outfalls or ~~onsite~~ on-site drainage points that were directly observed
1093 during the evaluation;

1094 ~~(4) d.~~ A description of the results of the evaluation for the presence of unauthorized
1095 discharges; and

1096 ~~(5) e.~~ The actions taken to eliminate identified unauthorized discharges.

1097 3. The following nonstormwater discharges are authorized by this permit:

1098 a. Discharges from emergency firefighting activities;

1099 b. Fire hydrant flushing, managed in a manner to avoid an instream impact;

1100 c. Potable water, including water line flushing, managed in a manner to avoid an
1101 instream impact;

1102 d. Uncontaminated condensate from air conditioners, coolers, and other compressors
1103 and from the outside storage of refrigerated gases or liquids;

1104 e. Irrigation drainage;

1105 f. Landscape watering; provided all pesticides, herbicides, and fertilizers have been
1106 applied in accordance with the approved labeling;

1107 g. Pavement wash waters where no detergents or hazardous cleaning products are
1108 used and no spills or leaks of toxic or hazardous materials have occurred, unless all
1109 spilled material has been removed. Pavement wash waters shall be managed in a
1110 manner to avoid an instream impact;

- 1111 h. Routine external building washdown that does not use detergents or hazardous
- 1112 cleaning products;
- 1113 i. Uncontaminated groundwater or spring water;
- 1114 j. Foundation or footing drains where flows are not contaminated with process
- 1115 materials; and
- 1116 k. Incidental windblown mist from cooling towers that collects on rooftops or adjacent
- 1117 portions of the facility, but not intentional discharges from the cooling tower (e.g.,
- 1118 "piped" cooling tower blowdown or drains).

1119 G. Signature and SWPPP review.

1120 1. Signature and location. The SWPPP, including any revisions to the SWPPP to

1121 document any corrective actions taken as required by Part II A 4, shall be signed in

1122 accordance with Part III K, dated, and retained on site at the facility covered by this permit.

1123 All other changes to the SWPPP, and other permit compliance documentation, must be

1124 signed and dated by the person preparing the change or documentation. For inactive or

1125 unstaffed facilities, the plan may be kept at the nearest office of the permittee.

1126 2. Availability. The permittee shall retain a copy of the current SWPPP required by this

1127 permit at the facility, and it shall be immediately available to the department, EPA, or the

1128 operator of an MS4 receiving discharges from the site at the time of an on-site inspection

1129 or upon request.

1130 3. Required modifications. The permittee shall modify the SWPPP whenever necessary

1131 to address all corrective actions required by Part II A 4. Changes to the SWPPP shall be

1132 made in accordance with the corrective action deadlines in Part II A 4 and shall be signed

1133 and dated in accordance with Part III K. The director may notify the permittee at any time

1134 the SWPPP, control measures, or other components of the facility's stormwater program

1135 do not meet one or more of the requirements of this permit. The notification shall identify

1136 specific provisions of the permit that are not being met and may include required

1137 modifications to the stormwater program, additional monitoring requirements, and special

1138 reporting requirements. The permittee shall make any required changes to the SWPPP

1139 within 60 days of receipt of such notification, unless permission for a later date is granted

1140 in writing by the director, and shall submit a written certification to the director that the

1141 requested changes have been made.

1142 H. Maintaining an updated SWPPP.

1143 1. The permittee shall review and amend the SWPPP as appropriate whenever:

1144 a. There is construction or a change in design, operation, or maintenance at the facility

1145 that has an effect on the discharge, or the potential for the discharge, of pollutants

1146 from the facility;

1147 b. Routine inspections or visual monitoring determine that there are deficiencies in the

1148 control measures, including BMPs;

1149 c. Inspections by local, state, or federal officials determine that modifications to the

1150 SWPPP are necessary;

1151 d. There is a significant spill, leak, or other release at the facility;

1152 e. There is an unauthorized discharge from the facility; or

1153 f. The department notifies the permittee that a TMDL has been developed and applies

1154 to the permitted facility, consistent with Part I B 16.

1155 2. SWPPP modifications shall be made within 60 calendar days after the discovery,

1156 observation, or event requiring an SWPPP modification. Implementation of new or

1157 modified control measures shall be initiated before the next storm event if possible but no

1158 later than 60 days after discovery or as otherwise provided or approved by the director.
1159 The amount of time taken to modify a control measure or implement additional control
1160 measures shall be documented in the SWPPP.

1161 3. If the SWPPP modification is based on a significant spill, leak, release, or unauthorized
1162 discharge, a description and date of the incident, the circumstances leading to the incident,
1163 actions taken in response to the incident, and measures to prevent the recurrence of such
1164 releases must be included. Unauthorized discharges are subject to the reporting
1165 requirements of Part III G of this permit.

1166 Part III

1167 Conditions Applicable to All VPDES Permits.

1168 A. Monitoring.

1169 1. Samples and measurements taken as required by this permit shall be representative of
1170 the monitored activity.

1171 2. Monitoring shall be conducted according to procedures approved under 40 CFR Part
1172 136 or alternative methods approved by the U.S. Environmental Protection Agency unless
1173 other procedures have been specified in this permit.

1174 3. The permittee shall periodically calibrate and perform maintenance procedures on all
1175 monitoring and analytical instrumentation at intervals that will ensure accuracy of
1176 measurements.

1177 4. Samples taken as required by this permit shall be analyzed in accordance with 1VAC30-
1178 45 (Certification for Noncommercial Environmental Laboratories) or 1VAC30-46
1179 (Accreditation for Commercial Environmental Laboratories).

1180 B. Records.

1181 1. Records of monitoring information shall include:

- 1182 a. The date, exact place, and time of sampling or measurements;
- 1183 b. The individuals who performed the sampling or measurements;
- 1184 c. The dates and times analyses were performed;
- 1185 d. The individuals who performed the analyses;
- 1186 e. The analytical techniques or methods used; and
- 1187 f. The results of such analyses.

1188 2. The permittee shall retain (i) records of all monitoring information including all calibration
1189 and maintenance records and all original strip chart recordings for continuous monitoring
1190 instrumentation, (ii) copies of all reports required by this permit, and (iii) records of all data
1191 used to complete the registration statement for this permit for a period of at least three
1192 years from the date that coverage under this permit expires or is terminated. This period
1193 of retention shall be extended automatically during the course of any unresolved litigation
1194 regarding the regulated activity or regarding control standards applicable to the permittee,
1195 or as requested by the ~~board~~ department.

1196 C. Reporting monitoring results.

1197 1. The permittee shall submit the results of the monitoring required by this permit not later
1198 than the 10th day of the month after monitoring takes place, unless another reporting
1199 schedule is specified elsewhere in this permit. Monitoring results shall be submitted to the
1200 department's regional office.

1201 2. Monitoring results shall be reported on a ~~Discharge Monitoring Report (DMR)~~ DMR or
1202 on forms provided, approved, or specified by the department. Following notification from
1203 the department of the start date for the required electronic submission of monitoring

1204 reports, as provided for in 9VAC25-31-1020, such forms and reports submitted after that
1205 date shall be electronically submitted to the department in compliance with 9VAC25-31-
1206 1020 and this section. There shall be at least a three-month notice provided between the
1207 notification from the department and the date after which such forms and reports must be
1208 submitted electronically.

1209 3. If the permittee monitors any pollutant specifically addressed by this permit more
1210 frequently than required by this permit using test procedures approved under 40 CFR Part
1211 136 or using other test procedures approved by the U.S. Environmental Protection Agency
1212 or using procedures specified in this permit, the results of this monitoring shall be included
1213 in the calculation and reporting of the data submitted in the DMR or reporting form
1214 specified by the department.

1215 4. Calculations for all limitations that require averaging of measurements shall utilize an
1216 arithmetic mean unless otherwise specified in this permit.

1217 D. Duty to provide information. The permittee shall furnish to the department, within a
1218 reasonable time, any information that the ~~board~~ department may request to determine whether
1219 cause exists for terminating coverage under this permit or to determine compliance with this
1220 permit. The ~~board~~ department may require the permittee to furnish, upon request, such plans,
1221 specifications, and other pertinent information as may be necessary to determine the effect of the
1222 wastes from ~~its~~ the permittee's discharge on the quality of state waters, or such other information
1223 as may be necessary to accomplish the purposes of the State Water Control Law. The permittee
1224 shall also furnish to the department upon request copies of records required to be kept by this
1225 permit.

1226 E. Compliance schedule reports. Reports of compliance or noncompliance with, or any
1227 progress reports on, interim and final requirements contained in any compliance schedule of this
1228 permit shall be submitted no later than 14 days following each schedule date.

1229 F. Unauthorized discharges. Except in compliance with this permit, or another permit issued
1230 by the ~~board~~ department, it shall be unlawful for any person to:

1231 1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or
1232 deleterious substances; or

1233 2. Otherwise alter the physical, chemical, or biological properties of such state waters and
1234 make them detrimental to the public health, or to animal or aquatic life, or to the use of
1235 such waters for domestic or industrial consumption, for recreation, or for other uses.

1236 G. Reports of unauthorized discharges. Any permittee who discharges or causes or allows a
1237 discharge of sewage, industrial waste, other wastes, or any noxious or deleterious substance into
1238 or upon state waters in violation of Part III F; or who discharges or causes or allows a discharge
1239 that may reasonably be expected to enter state waters in violation of Part III F; shall notify the
1240 department of the discharge immediately upon discovery of the discharge, but in no case later
1241 than 24 hours after said discovery. A written report of the unauthorized discharge shall be
1242 submitted to the department, within five days of discovery of the discharge. The written report
1243 shall contain:

1244 1. A description of the nature and location of the discharge;

1245 2. The cause of the discharge;

1246 3. The date on which the discharge occurred;

1247 4. The length of time that the discharge continued;

1248 5. The volume of the discharge;

1249 6. If the discharge is continuing, how long it is expected to continue;

1250 7. If the discharge is continuing, what the expected total volume of the discharge will be;
1251 and

1252 8. Any steps planned or taken to reduce, eliminate, and prevent a recurrence of the
1253 present discharge or any future discharges not authorized by this permit.

1254 Discharges reportable to the department under the immediate reporting requirements of other
1255 regulations are exempted from this requirement.

1256 H. Reports of unusual or extraordinary discharges. If any unusual or extraordinary discharge
1257 including a bypass or upset should occur from a treatment works and the discharge enters or
1258 could be expected to enter state waters, the permittee shall promptly notify (see Part III I 3), in no
1259 case later than 24 hours, the department ~~by telephone~~ after the discovery of the discharge. This
1260 notification shall provide all available details of the incident, including any adverse effects on
1261 aquatic life and the known number of fish killed. The permittee shall reduce the report to writing
1262 and shall submit it to the department within five days of discovery of the discharge in accordance
1263 with Part III I 1 b. Unusual and extraordinary discharges include any discharge resulting from:

- 1264 1. Unusual spillage of materials resulting directly or indirectly from processing operations;
1265 2. Breakdown of processing or accessory equipment;
1266 3. Failure or taking out of service some or all of the treatment works; and
1267 4. Flooding or other acts of nature.

1268 I. Reports of noncompliance.

1269 1. The permittee shall report any noncompliance that may adversely affect state waters or
1270 may endanger public health.

1271 a. An oral report shall be provided within 24 hours from the time the permittee becomes
1272 aware of the circumstances. The following shall be included as information that shall
1273 be reported within 24 hours under this subdivision:

- 1274 (1) Any unanticipated bypass; and
1275 (2) Any upset that causes a discharge to surface waters.

1276 b. A written report shall be submitted within five days and shall contain:

- 1277 (1) A description of the noncompliance and its cause;
1278 (2) The period of noncompliance, including exact dates and times, and if the
1279 noncompliance has not been corrected, the anticipated time it is expected to continue;
1280 and
1281 (3) Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the
1282 noncompliance.

1283 The ~~board~~ department may waive the written report on a case-by-case basis for reports
1284 of noncompliance under Part III I if the oral report has been received within 24 hours and
1285 no adverse impact on state waters has been reported.

1286 2. The permittee shall report all instances of noncompliance not reported under Part III I 1
1287 a or 1 b, in writing, at the time the next monitoring reports are submitted. The reports shall
1288 contain the information listed in Part III I 1 b.

1289 NOTE: 3. The immediate (within 24 hours) reports required in Part III G, H, and I ~~may shall~~
1290 be made to the department's regional office ~~by telephone, FAX, or online at~~
1291 ~~[http://www.deq.virginia.gov/Programs/PollutionResponsePreparedness/MakingaReport.](http://www.deq.virginia.gov/Programs/PollutionResponsePreparedness/MakingaReport.aspx)~~
1292 ~~aspx. Reports may be made by telephone, FAX, or online at~~
1293 ~~<https://www.deq.virginia.gov/get-involved/pollution-response>~~ (online reporting preferred).

1294 For reports outside normal working hours, ~~leave a message and this shall fulfill the~~
1295 ~~immediate reporting requirement~~ the online portal shall be used. For emergencies, call the

1296 Virginia Department of Emergency Services maintains a 24-hour telephone service
1297 Management's Emergency Operations Center (24-hours) at 1-800-468-8892.

1298 ~~3.~~ 4. Where the permittee becomes aware that it failed to submit any relevant facts in a
1299 permit registration statement; or submitted incorrect information in a permit registration
1300 statement or in any report to the department, it shall promptly submit such facts or
1301 information.

1302 J. Notice of planned changes.

1303 1. The permittee shall give notice to the department as soon as possible of any planned
1304 physical alterations or additions to the permitted facility. Notice is required only when:

1305 a. The permittee plans alteration or addition to any building, structure, facility, or
1306 installation from which there is or may be a discharge of pollutants, the construction of
1307 which commenced:

1308 (1) After promulgation of standards of performance under § 306 of Clean Water Act
1309 that are applicable to such source; or

1310 (2) After proposal of standards of performance in accordance with § 306 of Clean
1311 Water Act that are applicable to such source, but only if the standards are promulgated
1312 in accordance with § 306 within 120 days of their proposal;

1313 b. The alteration or addition could significantly change the nature or increase the
1314 quantity of pollutants discharged. This notification applies to pollutants that are subject
1315 neither to effluent limitations nor to notification requirements specified elsewhere in
1316 this permit; or

1317 c. The alteration or addition results in a significant change in the permittee's sludge
1318 use or disposal practices, and such alteration, addition, or change may justify the
1319 application of permit conditions that are different from or absent in the existing permit,
1320 including notification of additional use or disposal sites not reported during the permit
1321 registration process or not reported pursuant to an approved land application plan.

1322 2. The permittee shall give advance notice to the department of any planned changes in
1323 the permitted facility or activity that may result in noncompliance with permit requirements.

1324 K. Signatory requirements.

1325 1. Registration statements. All registration statements shall be signed as follows:

1326 a. For a corporation: by a responsible corporate officer. For the purpose of this section,
1327 a responsible corporate officer means (i) president, secretary, treasurer, or vice-
1328 president of the corporation in charge of a principal business function, or any other
1329 person who performs similar policy-making or decision-making functions for the
1330 corporation or (ii) the manager of one or more manufacturing, production, or operating
1331 facilities provided the manager is authorized to make management decisions that
1332 govern the operation of the regulated facility including having the explicit or implicit
1333 duty of making major capital investment recommendations and initiating and directing
1334 other comprehensive measures to assure long-term environmental compliance with
1335 environmental laws and regulations; the manager can ensure that the necessary
1336 systems are established or actions taken to gather complete and accurate information
1337 for permit registration requirements; and where authority to sign documents has been
1338 assigned or delegated to the manager in accordance with corporate procedures;

1339 b. For a partnership or sole proprietorship: by a general partner or the proprietor,
1340 respectively; or

1341 c. For a municipality, state, federal, or other public agency: by either a principal
1342 executive officer or ranking elected official. For purposes of this section, a principal

1343 executive officer of a public agency includes (i) the chief executive officer of the agency
1344 or (ii) a senior executive officer having responsibility for the overall operations of a
1345 principal geographic unit of the agency.

1346 2. Reports and other information. All reports required by permits and other information
1347 requested by the ~~board~~ department shall be signed by a person described in Part III K 1,
1348 or by a duly authorized representative of that person. A person is a duly authorized
1349 representative only if:

1350 a. The authorization is made in writing by a person described in Part III K 1;

1351 b. The authorization specifies either an individual or a position having responsibility for
1352 the overall operation of the regulated facility or activity such as the position of plant
1353 manager, operator of a well or a well field, superintendent, position of equivalent
1354 responsibility, or an individual or position having overall responsibility for
1355 environmental matters for the company. A duly authorized representative may thus be
1356 either a named individual or any individual occupying a named position; and

1357 c. The written authorization is submitted to the department.

1358 3. Changes to authorization. If an authorization under Part III K 2 is no longer accurate
1359 because a different individual or position has responsibility for the overall operation of the
1360 facility, a new authorization satisfying the requirements of Part III K 2 shall be submitted
1361 to the department prior to or together with any reports, or information to be signed by an
1362 authorized representative.

1363 4. Certification. Any person signing a document under Part III K 1 or 2 shall make the
1364 following certification:

1365 "I certify under penalty of law that this document and all attachments were prepared under
1366 my direction or supervision in accordance with a system designed to assure that qualified
1367 personnel properly gather and evaluate the information submitted. Based on my inquiry of
1368 the person or persons who manage the system, or those persons directly responsible for
1369 gathering the information, the information submitted is, to the best of my knowledge and
1370 belief, true, accurate, and complete. I am aware that there are significant penalties for
1371 submitting false information, including the possibility of fine and imprisonment for knowing
1372 violations."

1373 L. Duty to comply. The permittee shall comply with all conditions of this permit. Any permit
1374 noncompliance constitutes a violation of the State Water Control Law and the Clean Water Act,
1375 except that noncompliance with certain provisions of this permit may constitute a violation of the
1376 State Water Control Law but not the Clean Water Act. Permit noncompliance is grounds for
1377 enforcement action; for permit coverage termination; or denial of a permit coverage renewal
1378 registration.

1379 The permittee shall comply with effluent standards or prohibitions established under § 307(a)
1380 of the Clean Water Act for toxic pollutants ~~and with standards for sewage sludge use or disposal~~
1381 ~~established under § 405(d) of the Clean Water Act~~ within the time provided in the regulations that
1382 establish these standards or prohibitions ~~or standards for sewage sludge use or disposal~~, even if
1383 this permit has not yet been modified to incorporate the requirement.

1384 M. Duty to reapply. If the permittee wishes to continue an activity regulated by this permit after
1385 the expiration date of this permit, the permittee shall apply for and obtain coverage under a new
1386 permit. All permittees with currently effective permit coverage shall submit a new application at
1387 least 60 days before the expiration date of the existing permit, unless permission for a later date
1388 has been granted by the ~~board~~ department. The ~~board~~ department shall not grant permission for
1389 applications to be submitted later than the expiration date of the existing permit.

1390 N. Effect of a permit. This permit does not convey any property rights in either real or personal
1391 property or any exclusive privileges, nor does it authorize any injury to private property or invasion
1392 of personal rights, or any infringement of federal, state, or local law or regulations.

1393 O. State law. Nothing in this permit shall be construed to preclude the institution of any legal
1394 action under, or relieve the permittee from any responsibilities, liabilities, or penalties established
1395 pursuant to any other state law or regulation or under authority preserved by § 510 of the Clean
1396 Water Act. Except as provided in permit conditions on "bypass" (in Part III U), and "upset" (in
1397 Part III V), nothing in this permit shall be construed to relieve the permittee from civil and criminal
1398 penalties for noncompliance.

1399 P. Oil and hazardous substance liability. Nothing in this permit shall be construed to preclude
1400 the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or
1401 penalties to which the permittee is or may be subject under §§ 62.1-44.34:14 through 62.1-
1402 44.34:23 of the State Water Control Law.

1403 Q. Proper operation and maintenance. The permittee shall at all times properly operate and
1404 maintain all facilities and systems of treatment and control (and related appurtenances) that are
1405 installed or used by the permittee to achieve compliance with the conditions of this permit. Proper
1406 operation and maintenance also includes effective plant performance, adequate funding,
1407 adequate staffing, and adequate laboratory and process controls, including appropriate quality
1408 assurance procedures. This provision requires the operation of back-up or auxiliary facilities or
1409 similar systems that are installed by the permittee only when the operation is necessary to achieve
1410 compliance with the conditions of this permit.

1411 R. Disposal of solids or sludges. Solids, sludges, or other pollutants removed in the course of
1412 treatment or management of pollutants shall be disposed of in a manner so as to prevent any
1413 pollutant from such materials from entering state waters.

1414 S. Duty to mitigate. The permittee shall take all reasonable steps to minimize or prevent any
1415 discharge or sludge use or disposal in violation of this permit that has a reasonable likelihood of
1416 adversely affecting human health or the environment.

1417 T. Need to halt or reduce activity not a defense. It shall not be a defense for a permittee in an
1418 enforcement action that it would have been necessary to halt or reduce the permitted activity in
1419 order to maintain compliance with the conditions of this permit.

1420 U. Bypass.

1421 1. "Bypass" means the intentional diversion of waste streams from any portion of a
1422 treatment facility. The permittee may allow any bypass to occur that does not cause
1423 effluent limitations to be exceeded, but only if it also is for essential maintenance to assure
1424 efficient operation. These bypasses are not subject to the provisions of Part III U 2 and U
1425 3.

1426 2. Notice.

1427 a. Anticipated bypass. If the permittee knows in advance of the need for a bypass,
1428 prior notice shall be submitted, if possible at least 10 days before the date of the
1429 bypass.

1430 b. Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass
1431 as required in Part III I.

1432 3. Prohibition of bypass.

1433 a. Bypass is prohibited, and the ~~board~~ department may take enforcement action
1434 against a permittee for bypass, unless:

1435 (1) Bypass was unavoidable to prevent loss of life, personal injury, or severe property
1436 damage;

- 1437 (2) There were no feasible alternatives to the bypass, such as the use of auxiliary
1438 treatment facilities, retention of untreated wastes, or maintenance during normal
1439 periods of equipment downtime. This condition is not satisfied if adequate back-up
1440 equipment should have been installed in the exercise of reasonable engineering
1441 judgment to prevent a bypass that occurred during normal periods of equipment
1442 downtime or preventive maintenance; and
- 1443 (3) The permittee submitted notices as required under Part III U 2.
- 1444 b. The ~~board~~ department may approve an anticipated bypass, after considering its
1445 adverse effects, if the ~~board~~ department determines that it will meet the three
1446 conditions listed in Part III U 3 a.

1447 V. Upset.

- 1448 1. An upset constitutes an affirmative defense to an action brought for noncompliance with
1449 ~~technology-based~~ technology-based permit effluent limitations if the requirements of Part
1450 III V 2 are met. A determination made during administrative review of claims that
1451 noncompliance was caused by upset, and before an action for noncompliance, is not a
1452 final administrative action subject to judicial review.
- 1453 2. A permittee who wishes to establish the affirmative defense of upset shall demonstrate,
1454 through properly signed, contemporaneous operating logs, or other relevant evidence
1455 that:
- 1456 a. An upset occurred and that the permittee can identify the causes of the upset;
 - 1457 b. The permitted facility was at the time being properly operated;
 - 1458 c. The permittee submitted notice of the upset as required in Part III I; and
 - 1459 d. The permittee complied with any remedial measures required under Part III S.
- 1460 3. In any enforcement proceeding the permittee seeking to establish the occurrence of an
1461 upset has the burden of proof.

1462 W. Inspection and entry. The permittee shall allow the director, or ~~his designee~~ the director's
1463 authorized representative, including an authorized contractor acting as a representative of the
1464 administrator, upon presentation of credentials and other documents as may be required by law,
1465 to:

- 1466 1. Enter upon the permittee's premises where a regulated facility or activity is located or
1467 conducted, or where records must be kept under the conditions of this permit;
- 1468 2. Have access to and copy at reasonable times any records that must be kept under the
1469 conditions of this permit;
- 1470 3. Inspect at reasonable times any facilities, equipment (including monitoring and control
1471 equipment), practices, or operations regulated or required under this permit; and
- 1472 4. Sample or monitor at reasonable times, for the purposes of assuring permit compliance
1473 or as otherwise authorized by the Clean Water Act and the State Water Control Law, any
1474 substances or parameters at any location.

1475 For purposes of this section, the time for inspection shall be deemed reasonable during
1476 regular business hours and whenever the facility is discharging. Nothing contained ~~herein~~ in this
1477 section shall make an inspection unreasonable during an emergency.

1478 X. Permit actions. Permit coverage may be terminated for cause. The filing of a request by
1479 the permittee for a permit termination, or a notification of planned changes or anticipated
1480 noncompliance does not stay any permit condition.

1481 Y. Transfer of permit coverage.

- 1482 1. Permits are not transferable to any person except after notice to the department.

- 1483 2. Coverage under this permit may be automatically transferred to a new permittee if:
- 1484 a. The current permittee notifies the department within 30 days of the transfer of the
- 1485 title to the facility or property unless permission for a later date has been granted by
- 1486 the ~~board~~ department;
- 1487 b. The notice includes a written agreement between the existing and new permittees
- 1488 containing a specific date for transfer of permit responsibility, coverage, and liability
- 1489 between them; and
- 1490 c. The ~~board~~ department does not notify the existing permittee and the proposed new
- 1491 permittee of its intent to deny the new permittee coverage under the permit. If this
- 1492 notice is not received, the transfer is effective on the date specified in the agreement
- 1493 mentioned in Part III Y 2 b.
- 1494 Z. Severability. The provisions of this permit are severable, and if any provision of this permit
- 1495 or the application of any provision of this permit to any circumstance is held invalid, the application
- 1496 of such provision to other circumstances, and the remainder of this permit, shall not be affected
- 1497 thereby.



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Exempt Action: Final Regulation Agency Background Document

Agency name	State Water Control Board
Virginia Administrative Code (VAC) Chapter citation(s)	9VAC25-193
VAC Chapter title(s)	Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Concrete Products Facilities
Action title	Update and amend the regulation that expires on December 31, 2023 in order to continue to offer general permit coverage for this industry.
Final agency action date	
Date this document prepared	March 31, 2023

This information is required for executive branch review pursuant to Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19. In addition, this information is required by the Virginia Registrar of Regulations pursuant to the Virginia Register Act (§ 2.2-4100 et seq. of the Code of Virginia). Regulations must conform to the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Brief Summary

Provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.

The regulation specifies requirements for concrete products facilities to discharge process wastewater and industrial stormwater to protect water quality. The most significant amendments to this regulation are to reissue the permit for the next five-year term and updating the stormwater requirements. This regulatory action is proposed to amend and reissue the existing general permit, which expires on December 31, 2023.

Mandate and Impetus

Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, internal staff review, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, “mandate” has the same meaning as defined in the ORM procedures, “a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part.”

The impetus of the regulatory change is Virginia Code § 62.1-44.15 (5a) which states, "All certificates issued by the Board under this chapter shall have fixed terms. The term of a Virginia Pollutant Discharge Elimination System permit shall not exceed five years." This general permit expires on December 31, 2023 and must be reissued in order to make coverage available for concrete products facilities that discharge to surface waters after that date. If this permit is not re-issued in a timely manner, no new coverage is available to any new facility owner or operator and such owners or operators would be required to obtain individual VPDES permits, which require more time to develop and issue, and impose significantly greater burden and costs on permittees and increased administrative burden on DEQ.

Acronyms and Definitions

Define all acronyms used in this form, and any technical terms that are not also defined in the “Definitions” section of the regulation.

- CEDS: Comprehensive Environmental Data System
- DEQ: Department of Environmental Quality
- DMR: Discharge Monitoring Report
- EPA (U.S. EPA): United States Environmental Protection Agency
- ICIS: Integrated Compliance Information System
- NPDES: National Pollutant Discharge Elimination System
- SCC: State Corporation Commission
- SWCB: State Water Control Board
- SWPPP: Stormwater Pollution Prevention Plan
- TMDL: Total Maximum Daily Load
- TDS: Total Dissolved Solids
- TSS: Total Suspended Solids
- TAC: Technical Advisory Committee
- USC: United States Code
- VAC: Virginia Administrative Code
- VPDES: Virginia Pollutant Discharge Elimination System

Statement of Final Agency Action

Provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) the name of the agency taking the action; and 3) the title of the regulation.

On June 22, 2023, the State Water Control Board adopted the Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Concrete Products Facilities – 9VAC25-193 as a final regulation.

Legal Basis

Identify (1) the agency or other promulgating entity, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia or Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the

promulgating entity to regulate this specific subject or program, as well as a reference to the agency or promulgating entity’s overall regulatory authority.

The promulgating entity is the State Water Control Board. The basis for this regulation is § 62.1-44.2 et seq. of the Code of Virginia (State Water Control Law). Specifically, § 62.1-44.15(5) authorizes the Board to issue permits for the discharge of treated sewage, industrial wastes or other waste into or adjacent to state waters and § 62.1-44.15(7) authorizes the Board to adopt rules governing the procedures of the Board with respect to the issuance of permits. Further, § 62.1-44.15(10) authorizes the Board to adopt such regulations as it deems necessary to enforce the general water quality management program, §62.1-44.15(14) authorizes the Board to establish requirements for the treatment of sewage, industrial wastes and other wastes, § 62.1-44.16 specifies the Board's authority to regulate discharges of industrial wastes, § 62.1-44.20 provides that agents of the Board may have the right of entry to public or private property for the purpose of obtaining information or conducting necessary surveys or investigations, and § 62.1-44.21 authorizes the Board to require owners to furnish information necessary to determine the effect of the wastes from a discharge on the quality of state waters.

Section 402 of the Clean Water Act (33 USC 1251 et seq.) authorizes states to administer the NPDES permit program under state law. The Commonwealth of Virginia received such authorization in 1975 under the terms of a Memorandum of Understanding with the U.S. EPA. This Memorandum of Understanding was modified on May 20, 1991 to authorize the Commonwealth to administer a General VPDES Permit Program.

Changes to this chapter of the Virginia Administrative Code are exempt from Article 2 of the Administrative Process Act (2.2-4006 A 8).

Purpose

Explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it’s intended to solve.

This proposed regulatory action is needed to establish and update permitting requirements for discharges from concrete products facilities in order to protect the health, safety and welfare of citizens. The existing general permit expires on December 31, 2023 and must be reissued to cover existing and new concrete products facilities. The goal is to update the permit and the regulation to be consistent with other VPDES general permits and protect water quality. If this permit is not re-issued in a timely manner, no new coverage is available to any new facility owner or operator and such owners or operators would be required to obtain individual VPDES permits, which require more time to develop and issue, and impose significantly greater burden and costs on permittees and increased administrative burden on DEQ.

Substance

Briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the “Detail of Changes” section below.

Substantive provisions include adding new definitions for “corrective action” in section 10, clarifying that consistency with a TMDL is based on an applicable TMDL that is approved prior to the term of the general permit in section 50, and clarifying registration questions and adding electronic submission registration requirements in section 60. In the permit requirements of section 70, Part I, dust suppression allowances have been clarified and TMDL requirements have been updated and clarified. Many of the stormwater management requirements of section 60, Part II have been updated to reflect the requirements of the VPDES General Permit Regulation for Discharges of Stormwater Associated with Industrial Activity (9VAC25-151) including adding a section on corrective actions. In section 70, Part III (Conditions Applicable to All VPDES Permits), a requirement has been added to submit electronic discharge monitoring reports when these are made available by the department.

Issues

Identify the issues associated with the regulatory change, including: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, include a specific statement to that effect.

The advantages to the public and the agency of reissuing this permit are that a VPDES general permit will continue to be available to facilities with eligible discharges enabling them to discharge to surface waters in a manner that is protective of those waters without the increased cost and more complicated application process associated with issuing an individual permit. There are no known disadvantages to the public, agency or regulated community.

Requirements More Restrictive than Federal

List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding any requirement of the regulatory change which is more restrictive than applicable federal requirements. If there are no changes to previously reported information, include a specific statement to that effect.

There are no changes to previously reported information. There are no requirements that exceed applicable federal requirements.

Agencies, Localities, and Other Entities Particularly Affected

List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding any other state agencies, localities, or other entities that are particularly affected by the regulatory change. If there are no changes to previously reported information, include a specific statement to that effect.

There are no changes to previously reported information.

There is no locality particularly affected under the Board's statutes

Other State Agencies Particularly Affected:
None

Localities Particularly Affected:
None

Other Entities Particularly Affected:
None

Public Comment

Summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. Ensure to include all comments submitted: including any received on Town Hall, in a public hearing, or submitted directly to the agency or board. If no comment was received, enter a specific statement to that effect.

There were no comments received in response to impact to small businesses.

The existing permit regulation is needed because it expires on December 31, 2023 and must be reissued for another term to remain available to new and current permittees. If this permit is not re-issued in a timely manner, no coverage is available to any facility owner or operator and such owners or operators would be required to obtain individual VPDES permits, which require more time to develop and issue, and impose significantly greater burden and costs on permittees and increased administrative burden on DEQ.

Most comments were from the EPA and were recommendations to make the permit more like federal regulations, for clarifications within the permit and explanations in the fact sheet.

The regulation is a technical regulation but written as clearly as possible to convey the requirements to maintain water quality.

The regulation does not overlap, duplicate, or conflict with federal or state law or regulation.

The regulation was evaluated during periodic review in March 2021 and before that at permit reissuance which was effective January 1, 2019.

Commenter	Comment	Agency response
Jennifer Fulton Acting Chief, Clean Water Branch USEPA Mid-Atlantic Region	The draft permit allows for automatic transfer of coverage to a new permittee if the current permittee notifies the department within 30 days of the transfer of the title to the facility or property. This permit condition appears to be inconsistent with 40 CFR 122.61(b)(1) which requires the permittee to notify the Director at least 30 days in advance of the proposed transfer date. EPA recommends VADEQ revisit the automatic transfer of coverage condition and ensure it is consistent with the regulations.	Ownership changes vary from the federal regulation (30 days within transfer vs 30 day prior to transfer) because most real estate transactions are agreed upon only days before transfer. For a permittee to expect a new owner to take full responsibility of permit requirements 30 days prior to an ownership transfer is burdensome on the permittee. It is also problematic for staff because if the 30 days prior to transfer is not met, there is no regulatory alternative to change ownership for general permits except to terminate the original permit and issue new permit coverage for the new owner or process an automatic ownership change that is not in compliance with the due date specified in the regulation. Requiring 30 days within transfer is more likely to occur without raising concerns. No change has been made to the regulation in response to this comment.
Jennifer Fulton Acting Chief, Clean Water Branch USEPA Mid-Atlantic Region	The draft permit requires benchmark monitoring in Part I.A.2 on an annual basis. Type, intervals, and frequency of monitoring must yield sufficient data to be representative of the monitored activity. See 40 C.F.R. § 122.48(b). VADEQ did not include its rationale or any data/information they used to assist in deciding that collecting only one sample per year for stormwater discharges is appropriate. If VADEQ has a rationale explaining how the sampling frequencies in the draft permit will yield representative information, that rationale has not been set forth in the fact sheet as required by 40 C.F.R. §§ 124.8 and	This industry has had annual monitoring since the first concrete products general permit in 1998. DEQ will add a rationale in the fact sheet explaining how the annual sampling is representative given the specific monitoring parameters (within 15 minutes of storm event, 72-hours since the last storm event) and supported by quarterly visual monitoring and site inspections. Furthermore, this monitoring increase is a significant change and was not discussed during the TAC meetings. This could jeopardize a timely reissuance if the agency decides to meet with the TAC again for additional discussion. Also, to offer discontinued monitoring over time and potentially restart in the 4 th year of reissuance is not a practice that VA DEQ has staff resources to track and administer. Staff

	<p>124.56. The fact sheet should be updated to include this information consistent with the regulations. EPA, as documented in the 2021 MSGP, has determined that quarterly benchmark monitoring is representative.</p> <p>EPA's MSGP requires quarterly benchmark monitoring, and permittees with no benchmark exceedances for two years may discontinue monitoring. EPA's fact sheet for the 2021 MSGP explains that quarterly stormwater event samples collected over one year are inadequate to characterize industrial stormwater discharges or describe industrial BMP performance. As a result, the benchmark monitoring in EPA's MSGP was extended to the first and fourth year of permit coverage. This monitoring schedule combined with quarterly inspections under the 2021 MSGP aims to ensure that operators have current data on their industrial stormwater discharges and stormwater control measure effectiveness and will help identify any adverse effects from modifications in facility operations and personnel over time.</p>	<p>would have to track compliance, notify the permit writer if the limits could end because of good compliance, the permit writer would have to adjust CEDS (DEQ's Comprehensive Environmental Data System), notify the ICIS (EPA's Integrated Compliance Information System) liaison that the limits are stopping and then track and restart the limits in the 4th year if needed. With the multitude of permits and limited compliance and permit staff, this is currently not feasible for VA DEQ.</p> <p>No change has been made to the regulation in response to this comment</p>
<p>Jennifer Fulton Acting Chief, Clean Water Branch USEPA Mid-Atlantic Region</p>	<p>The presentation of benchmark monitoring requirements in Part I.A.2 is misleading. The table contains a row for benchmark monitoring but only contains discharge limitations. We recommend clearly defining the benchmark monitoring pollutant levels in the table and not as a footnote.</p>	<p>The benchmark monitoring requirements have been moved to the limits table and the phrase "Discharge Limitations" in the table has been deleted and only the phrase "Benchmark Monitoring" remains.</p>
<p>Jennifer Fulton Acting Chief, Clean Water Branch USEPA Mid-Atlantic Region</p>	<p>We recommend revising Footnote 2 of the Limitations Table in Part I.A.2 to discuss or reference the corrective actions in Part II.A.4.</p>	<p>Corrective actions (Part II.A.4) have been referenced in footnote 2 of the table in Part I.A.2.</p>
<p>Jennifer Fulton Acting Chief, Clean Water</p>	<p>EPA recommends defining the acronym TPH in Part I.B.15 or as part of Part I.A.1.</p>	<p>The TPH acronym has been defined in Part I.A.1.</p>

Branch USEPA Mid-Atlantic Region		
Jennifer Fulton Acting Chief, Clean Water Branch USEPA Mid-Atlantic Region	Part I.B.17. states “The permittee may add new or delete existing outfalls at the facility as necessary and appropriate.” Are there certain conditions that make it not appropriate to add or remove an outfall? EPA recommends clarifying what constitutes “necessary and appropriate” if it does not intend to review and approve changes to outfalls.	Part I.B.17 requires submittal of a new registration statement with an updated SWPPP site map which would normally dictate a response and an update of the comprehensive environmental database (CEDS) from DEQ. The changes are effectively approved even though the regulation doesn’t specifically state that. DEQ can add to staff implementation procedures clarification on what constitutes “necessary and appropriate” (e.g., new construction, expansion or shutting down of an industrial area) or inappropriate (outfall has not been capped or completely removed). No change has been made to the regulation in response to this comment
Cliff Bocchicchio, Titan America LLC	Titan worked cooperatively with DEQ to produce a good permit and appreciates the DEQ support.	DEQ acknowledges the comment.
Oldcastle APG Mid-Atlantic (Michael Deyo)	General permit Part I.B.14 requires that “Water used for dust suppression may be discharged provided that it has been filtered, settled, or similarly treated.” This requirement may imply that physical structures are “required” to filter, settle, or treat the dust suppression water. However, these structures may not be necessary. Natural conditions may exist at the facility that achieve these objectives, and some dust suppression water may not require treatment to achieve discharge standards. Therefore, we request that this condition be revised as follows: “Water used for dust suppression may be discharged provided that it has been filtered, settled, or similarly treated, or if other site conditions exist that ensure that the water discharge meets permit standards.”	DEQ thinks that the condition does require some type of structure or BMP to meet the requirements of the condition. Any “site condition” that is identified in the SWPPP and actively maintained as a control measure or BMP (including a natural condition such as a forested buffer) would constitute a similar treatment as a filter or settling basin or other man-made structure. No change has been made to the regulation in response to this comment. Clarification will be added to implementation procedures.
Oldcastle APG Mid-Atlantic (Michael Deyo)	General Permit Part II.B includes “frequency of discharge” as a criteria for evaluating “representative outfalls.” This criteria does not appear to be necessary for this evaluation. Discharges considered to be “substantially identical” to the representative outfall may	“Frequency of discharge” is just one of the criteria to be evaluated for substantially identical outfalls. Substantially identical outfalls may not discharge at the same rate but they should discharge at similar rates depending on the structure of the industrial site. An outfall that discharges constantly while another rarely discharges is a reason

	<p>discharge at a less frequent basis than the representative outfall, but that does not necessarily mean that the discharge from that outfall would be substantially different than that of the representative outfall. Therefore, we request that the reference to “frequency of discharge” be removed from Part II.B.</p>	<p>for the permit writer to question the similarities of the outfalls.</p> <p>No change has been made to the regulation in response to this comment.</p>
<p>Oldcastle APG Mid-Atlantic (Michael Deyo)</p>	<p>General Permit Part II.D.2.d(2) requires the permittee to “perform the following good housekeeping measures... (a) Include a schedule for regular pickup and disposal of waste materials, along with routine inspections for leaks and conditions of drums, tanks, and containers; (b) Sweep or vacuum as feasible; (c) Store materials in containers constructed of appropriate materials...” It may not be necessary for a “schedule for regular pickup and disposal of waste materials.” Waste generation rates may vary, and the “pick-up” of stored waste may be done “as necessary.” Therefore, we request that this item be removed from this section of the permit.</p> <p>In addition, the requirement to “Store materials in containers constructed of appropriate materials.” The term “materials” could be construed to describe virtually anything. For instance, final cured concrete products (e.g. – concrete blocks) are “materials” but are not required to be stored in “containers.” We believe that the intent of this condition may have been to require that “waste materials” be stored in containers constructed of appropriate materials. Therefore, we request that the term “materials” be revised to be specific to “waste materials.”</p>	<p>Waste materials should have a schedule for regular pickup and disposal. A schedule or a pickup or disposal can be changed if unneeded but then it is being actively managed and inspected for the need of disposal.</p> <p>These housekeeping measures are intended for potential sources of pollutants in stormwater. Final cured concrete could be a source of pollutants if the cured concrete was accumulating in the receiving stream. Then a container or a berm of some sort would be appropriate to prevent that from happening.</p> <p>DEQ also disagrees the intent of “materials” does not just refer to waste materials. Materials includes fuels, oils, acids or other chemicals used on site.</p> <p>No change has been made to the regulation in response to this comment.</p>
<p>Oldcastle APG Mid-Atlantic (Michael Deyo)</p>	<p>General Permit Part II.D.2.d(5) similarity contains the generic term “material” which is overly broad for</p>	<p>Any material that is exposed can potentially contribute to stormwater pollution at any site. This requirement to cover materials is already caveated by “to the extent</p>

	use in this condition. At a minimum, the term should be clarified to include “materials that could substantially contribute to stormwater pollutants.”	practicable” and “unless infeasible, facilities shall implement the following to minimize exposure.... DEQ doesn’t agree the clarifications suggested are needed. No change has been made to the regulation in response to this comment.
Oldcastle APG Mid-Atlantic (Michael Deyo)	General Permit Part II.D.2.e.(3)(c) references the observation of “concrete product in the stream or turbidity.” We believe that the reference to “stream” is incorrect. There may be no “stream” at the site, and the receiving water body may be significantly far from the facility. We believe that this condition should read “concrete product in the “facility’s discharge” ...”	This reference to concrete product in the stream is just an example and is included because of a direct result of staff observations of cured concrete spilled into the stream. If the discharge is not to a stream, then that observation would be made. Streams can include conveyances, ephemeral streams, wetlands and ditches with connections to streams. No change has been made to regulation in response to this comment. Clarification will be added to implementation procedures.
Oldcastle APG Mid-Atlantic (Michael Deyo)	General Permit Part II.D.2.e(4) requires that “the results of the inspections shall be documented in the SWPPP.” Maintaining the “results of the inspections” as part of the actual SWPPP document is unnecessary so long as the records are maintained in a format easily accessible to site personnel and DEQ as requested. We request that the condition be revised to read “the results of the inspections shall be documented in the facility operating record in an easily accessible manner.”	Results of all stormwater requirements must be documented in the SWPPP. An addendum to the SWPPP, a link to facility inspections or a reference to an easily accessible document elsewhere is one way to maintain or document the results of the inspection in the SWPPP. No change has been made to the regulation in response to this comment. Clarification will be added to implementation procedures.
Oldcastle APG Mid-Atlantic (Michael Deyo)	General Permit Part II.F.2 requires that “The SWPPP shall include documentation that all stormwater outfalls associated with industrial activity have been evaluated annually for the presence of unauthorized discharges.” Similar to our comment to General Permit Part II.D.2.e(4), we believe that maintaining this documentation in the SWPPP is unnecessary and therefore, we request be revised to read “The facility shall maintain documentation that all stormwater outfalls associated with....”	Results of all stormwater requirements must be documented in the SWPPP. An addendum to the SWPPP, a link to facility inspections or a reference to an easily accessible document elsewhere is one way to maintain or document the results of the inspection in the SWPPP. No change has been made to the regulation in response to this comment. Clarification will be added to implementation procedures.

Details of Changes Made Since the Previous Stage

List all changes made to the text since the previous stage was published in the Virginia Register of Regulations and the rationale for the changes. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. * Put an asterisk next to any substantive changes.

Current chapter-section number	New chapter-section number, if applicable	New requirement from previous stage	Updated new requirement since previous stage	Change, intent, rationale, and likely impact of updated requirements
9VAC25-193-10		Not a new requirement. It is a clarification.		Deleted the word "Virginia" from the definition of "Department" or "DEQ" to match the 2022 Board bill definition.
9VAC25-193-70 Part I A 1		Not a new requirement. It is a clarification.	Added an acronym for total petroleum hydrocarbons (TPH) in Part I A 1 as the acronym is used later in the regulation in Part I B 15.	This change was made in response to EPA comments. EPA recommended defining the acronym TPH in Part I.B.15 or as part of Part I.A.1. It is a clarification.
9VAC25-193-70 Part I A 2		Not a new requirement. It is a clarification.	The benchmark monitoring requirements have been moved to the limits table and the phrase "Discharge Limitations" in the table has been deleted and only the phrase "Benchmark Monitoring" remains.	This change was made in response to EPA comments. The presentation of benchmark monitoring requirements in Part I.A.2 is misleading. The table contains a row for benchmark monitoring but only contains discharge limitations. We recommend clearly defining the benchmark monitoring pollutant levels in the table and not as a footnote
9VAC25-193-70 Part I A 2 footnote 2		Not a new requirement. It is a clarification.	Added an acronym for total suspended solids (TSS) as the acronym is used later in the regulation in Part I B 15 and Part II A 2.	For clarification.
9VAC25-193-70 Part I A 2 footnote 2 and Part II A 2		Not a new requirement. It is a clarification.	A reference to corrective actions (Part II.A.4) was added to footnote 2 of the limitations table in Part I.A.2. Corrective actions are required per Part II.A.4 when an exceedance of a	This change was made in response to EPA comments. EPA recommended revising Footnote 2 of the limitations Table in Part I.A.2 to discuss or reference the corrective actions in Part II.A.4.

			benchmark monitoring parameter (e.g., TSS) results in a determination that modifications to stormwater control measures are necessary to meet permit requirements.	The change in Part II A 2 here was done to be consistent with the change made in footnote 2 of the table in Part I.A.2.
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Details of All Changes Proposed in this Regulatory Action

List all changes proposed in this action and the rationale for the changes. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. * Put an asterisk next to any substantive changes.

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
9VAC25-193	NA	The term “board” is generally used throughout the regulation when referencing permit requirements.	Throughout the regulation, the term “board” has been replaced with the term “department” resulting from changes to Chapter 356 of the 2022 Acts of Assembly (Senate Bill 657) which address the authority of the SWCB to issue and enforce permits. All references to the “board” in reference to permit requirements has been changed to “department.” No impact.
9VAC25-193-10. Definitions.	NA	No definition for “corrective action.”	Added definition for “corrective action.” This definition was added to clarify this requirement in the regulation.

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
9VAC25-193-15. Applicability of incorporated references based on the dates that they became effective.	NA	Effective date for the Title 40 CFR is July 1, 2018	Effective date for the Title 40 CFR changed to July 1, 2022. No impact.
9VAC25-193-40. Effective date of the permit.	NA	Effective date of permit is January 1, 2019 and expiration is December 31, 2023.	Effective date of permit is changed to January 1, 2024 and expiration to December 31, 2028. Updated to cover a new permit term. If these dates are not changed, no existing or new permittees can obtain coverage under the general permit.
9VAC25-193-50. Authorization to discharge.	NA	Owners are not eligible for coverage if the discharge is not consistent with the assumptions and requirements of an approved TMDL.	Specified that an approved TMDL is one that is approved prior to the term of this general permit. No impact.
9VAC25-193-60 C 2	NA	Requires facility contact if different from owner.	Requires a facility, owner and permit contact. This change is to be consistent with e-reporting electronic registrations. The permittee will need to provide some additional contact information on the registration. The contacts may be the same person in some cases.
9VAC25-193-60 C 11	NA	A schematic drawing of the facility is required.	Clarified that the schematic drawing was for existing facilities and new facilities that had commenced discharge. No impact.
9VAC25-193-60 C 14	NA	Information regarding representative and substantially identical outfalls is required and includes the size of the drainage area in square feet.	Clarified that the size of the drainage area can be in acres or square feet and includes the total pervious and impervious area within the property boundary. Minor impact if the drainage area was calculated differently in previous years then the permittee would have to recalculate the drainage area.
9VAC25-193-60 C 15	NA	An indication of whether a SWPPP has been prepared is required.	Clarified that the date of the plan or the most recent update or review of the plan is required. No impact.

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
9VAC25-193-60 C 18	NA	An SCC entity identification number is required.	Clarified that the SCC entity number is needed if the facility is required to obtain an entity identification number by law. No impact.
9VAC25-193-60 C 19	NA	A certification is required and includes a statement that duly authorized agents of DEQ may enter the property.	A certification signature is still required but the statement that permission is granted to duly authorized agents of the DEQ to enter the property is deleted. No impact since this required is already in Part III W of the permit.
9VAC25-193-60 E	NA	Registration statements shall be delivered to DEQ by either postal or electronic mail.	Following three months prior notification from the department, registration statements shall be electronically submitted to the department.
9VAC25-193-70	NA	Effective and expiration dates of the permit are January 1, 2024 – December 31, 2028.	Effective and expiration dates of the permit are updated to January 1, 2024 – December 31, 2028. The impact is that existing and new concrete products facilities can continue coverage or get new coverage under this permit instead of having to apply for an individual permit. General permits are less expensive to obtain.
9VAC25-193-70 Part I A 1		Total petroleum hydrocarbons are depicted as the acronym “TPH” later in the regulation in Part I B 15 but not defined anywhere in the regulation.	Added an acronym for total petroleum hydrocarbons (TPH) in Part I A 1 as the acronym is used later in the regulation in Part I B 15. This change was made in response to EPA comments. EPA recommended defining the acronym TPH in Part I.B.15 or as part of Part I.A.1. It is a clarification
9VAC25-193-70 Part I A 2		Stormwater monitoring concentration benchmarks for TSS and pH are stated in footnote 2 (and repeated in Part II A 2 under stormwater management monitoring requirements).	The benchmark monitoring requirements have been moved to the limits table and the phrase “Discharge Limitations” in the table has been deleted and only the phrase “Benchmark Monitoring” remains. This change was made in response to EPA comments. EPA stated that the presentation of benchmark monitoring requirements in Part I.A.2 is misleading. The table contains a row for benchmark monitoring but only contains discharge limitations. We recommend clearly defining the benchmark monitoring pollutant levels in the table and not as a footnote. It is a clarification.

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
9VAC25-193-70 Part I A 2 footnote 2		Total suspended solids are depicted as the acronym "TSS" later in the regulation in (Part I B 15 and Part II A 2) but not defined anywhere in the regulation.	<p>Added an acronym for total suspended solids (TSS) as the acronym is used later in the regulation in Part I B 15 and Part II A 2.</p> <p>It is a clarification.</p>
9VAC25-193-70 Part I A 2 footnote 2 and Part II A 2		There is no reference to corrective actions (Part II A 4). A corrective action determination is required when an exceedance of a benchmark occurs.	<p>A reference to corrective actions (Part II.A.4) was added to footnote 2 of the limitations table in Part I.A.2. Corrective actions are required per Part II.A.4 when an exceedance of a benchmark monitoring parameter (e.g., TSS) results in a determination that modifications to stormwater control measures are necessary to meet permit requirements.</p> <p>This change was made in response to EPA comments. EPA recommended revising Footnote 2 of the limitations Table in Part I.A.2 to discuss or reference the corrective actions in Part II.A.4.</p> <p>The change in Part II A 2 here was done to be consistent with the change made in footnote 2 of the table in Part I.A.2.</p> <p>It is a clarification.</p>

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
9VAC25-193-70 B 14	NA	Settled wastewater may be used for dust suppression as a best management practice but run-off or ponding cannot occur.	<p>Specified that dust suppression water may be discharged if it is treated. There is no prohibition to ponding and discharge may occur if the dust suppression water is treated. The TAC discussed how potable water was often used for dust suppression (uncontaminated potable water is an allowable nonstormwater discharge), and wondered whether discharge of water from dust suppression into a stormwater basin would constitute a direct discharge and be in violation of this condition. The construction general permit (9VAC25-880-70) allows treated dust suppression water to be discharged. The condition was amended to recognize that allowance.</p> <p>No impact to permittees although DEQ inspectors will have to be made aware that ponding is no longer prohibited and dust suppression water may be discharged if treated.</p>
9VAC25-193-70 B 16	NA	Discharges to waters with TMDL shall implement measures and controls that are consistent with the assumptions and requirements of the TMDL.	<p>The TMDL requirement is expanded and clarified to mean these are TMDLs that have been approved prior to the term of the permit and that the department will provide written notification that the facility is subject to a TMDL requirement and that if the TMDL establishes a numerical WLA for that facility, the owner shall monitor and implement measures to meet the allocation. Also, at permit reissuance, the permittee shall submit a demonstration that the WLA is met.</p> <p>There will be an impact because now there are specific monitoring requirements for any facilities that have a numeric WLA in a TMDL. Currently all TMDLs applicable to these facilities are for TSS (sediment) and the facilities already monitor for TSS as part of the water quality limitations. There is a TDS TMDL currently under development that may present additional monitoring requirements for some concrete facilities in the future.</p>

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
9VAC25-193-70 Part II	NA	Stormwater management requirements are in Part II. Contains collection, analysis and rainfall data requirements, representative outfall instructions, quarterly visual, monitoring requirements, hazardous substances requirements, SWPPP deadlines and contents including routine facility inspections, maintenance of BMPs, allowable nonstormwater discharge allowances and monitoring requirements, and SWPPP review and signature requirements.	Stormwater management requirements have been updated and re-ordered to match the order and language in the 2019 ISW general permit. For example, monitoring requirements (visual and benchmark) have been moved to the beginning of Part II Corrective actions, control measure “considerations” and eliminating and minimizing exposure requirements have been added. Also, routine facility inspections have been moved out of the “Stormwater Controls” and into its own subdivision of “Contents of the SWPPP.” Other changes are being proposed because of TAC stakeholder suggestions. This includes, deletion of the requirement to report duration of rainfall event on the DMR. Signature and SWPPP review and maintaining and updated SWPPP subsections have been moved to the end of Part II.
9VAC25-193-70 Part III C	NA	No electronic reporting DMR requirement.	<p>Added that once the 9VAC25-31-1020 (Electronic Reporting) date is established for this industry discharge monitoring reports shall be submitted electronically. Three months’ notice shall be given by the department about this requirement.</p> <p>Some impact because once electronic reporting dates are established and technology is developed at the department, the permittees will be required submit discharge monitoring reports electronically. This may be difficult if the registrant has no available internet access (even via a public library) or computer/internet skills. Waivers are available under very limited circumstances.</p>

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
9VAC25-193-70 Part III I 3		Contains immediate notification requirements for noncompliance which may adversely affect state waters or may endanger public health.	This subsection amended to reflect more recent reporting requirements after discussions with DEQs Pollution Response Program (PREP) staff who requested all after hours reporting be done online via the PREP portal. This portal automatically notifies regional offices and logs the report in the database. This may have an impact on concrete industries that have no immediate internet access who will have to find internet access within 24-hours to report a noncompliance event if it occurs outside of normal working hours.
9VAC25-193-70 Part III L		Requires the permittee to comply with standards for sewage sludge use and disposal under § 405(d) of the Clean Water Act.	Removed references to sewage sludge requirements since these industrial permittees do not discharge sewage or create sewage sludge under this permit. No impact.

Regulatory Flexibility Analysis

Pursuant to § 2.2-4007.1B of the Code of Virginia, please describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the regulatory change.

The reissuance of the VPDES general permit accomplishes the objectives of applicable law and minimizes the costs to a small business owner and simplifies the application process. Without the general permit, a small business owner would be required to obtain an individual permit, which would increase the complexity of a permit application and permit costs.

Family Impact

In accordance with § 2.2-606 of the Code of Virginia, please assess the potential impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one’s spouse, and one’s children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

There is no potential impact of the proposed regulatory action on the institution of the family and family stability.

**FACT SHEET DRAFT
REISSUANCE OF A VPDES GENERAL PERMIT
FOR CONCRETE PRODUCTS FACILITIES
2023 Reissuance**

The Virginia State Water Control Board has under consideration the reissuance of a general VPDES permit for point source discharges for process water and stormwater from the concrete products facilities to surface waters.

Permit Number: VAG11
Name of Permittee: Any owner of a qualifying concrete products facility in the Commonwealth of Virginia.
Facility Location: Commonwealth of Virginia
Receiving Stream: Surface waters within the boundaries of the Commonwealth of Virginia, except those specifically named in Board Regulations which prohibit such discharges. Discharge to surface waters may be through a municipal separate storm sewer system.

The Virginia State Water Control Board has under consideration the reissuance of the VPDES general permit from the concrete products industrial category. The category of discharges is appropriately controlled under a general permit. The category of discharges involves facilities with the same or similar types of operations and the facilities discharge the same or similar types of wastes. The draft general permit requires that all covered facilities meet standardized effluent limitations and monitoring requirements. This permit will be effective January 1, 2024 and will expire on December 31, 2028.

This document gives pertinent information concerning the legal basis, scientific rationale and justification for the issuance or reissuance of the VPDES permit listed below. This permit is a minor industrial permit. The discharge results from the operations of a concrete products facilities. The effluent limitations contained in this permit will maintain the Water Quality Standards in 9VAC25-260. This permit action consists of revisions to the permit, as needed, due to changes in applicable laws, regulations, guidance, and available technical information.

All pertinent information is on file and may be inspected, and arrangements made for copying by contacting Allan Brockenbrough at:

Virginia Department of Environmental Quality
P.O. Box 1105
Richmond, Virginia 23218
TEL: (804) (804) 836-2321
FAX: (804) 698-4178
E-mail: allan.brockenbrough@deq.virginia.gov

Activities Covered by this General Permit and Process Descriptions

This general permit will cover point source discharges of process wastewaters and stormwater runoff associated with the operation of concrete products facilities that fall under the industrial classification systems below. Coverage also includes discharges from temporary or portable ready-mixed plants erected on or near construction sites. This general permit does not exclude the coverage for a concrete product facility with a secondary industrial activity co-located on site as long as the secondary activity does not generate any point source discharges or the point source discharge is covered under a separate VPDES permit.

1. North American Industry Classification System (NAICS) Code 327331 – Concrete Block and Brick Manufacturing, (Executive Office of the President, Office of Management and Budget, United States, 2017) and Standard Industrial Classification (SIC) Code 3271 - Concrete Block and Brick (Office of Management and Budget (OMB) SIC Manual, 1987);
2. NAICS Code 327332 Concrete Pipe Manufacturing, NAICS Code 327390 Other Concrete Product Manufacturing, NAICS Code 327999 All Other Miscellaneous Nonmetallic Mineral Product Manufacturing (dry mix concrete manufacturing only) and SIC Code 3272 - Concrete Products, Except Block and Brick; or
3. NAICS Code 327320 Ready-Mix Concrete Manufacturing and SIC Code 3273 - Ready-Mixed Concrete, including both permanent and portable plants.

These facilities are collectively defined as "Concrete Products Facilities." The types of industrial activities are described below.

SIC 3273 - Ready-mix

Ready-mixed concrete is basically produced by two methods: dry batch mixing and central mixing. For dry batch mixing, the mix of cement and aggregate is weighed and transferred in a dry state to the truck along with a proportioned amount of water. The concrete is mixed in the truck on the way to the job. For central mixing, the concrete is prepared in a central mixer then transferred to a truck mixer or agitator for delivery.

In addition to cement, fly ash and aggregate, ready-mixed concrete typically contains admixtures and entrained air. Entrained air improves resistance to freezing and thawing. Admixtures may include calcium chloride, triethanolamine, calcium salt, lignosulfonic acid, vinosol, saponin, keratin, sulfonated hydrocarbon, fatty acid glyceride, vinyl acetate, and styrene copolymer of vinyl acetate as ingredients. These compounds may be added to obtain desired characteristics, such as slower or more rapid curing times.

Generally, there are two types of ready-mixed concrete plants: permanent (also known as stationary) and temporary which are usually portable. A permanent plant usually produces various types of concrete for numerous customers. The permanent plant may operate either as a dry batch mixing plant or central mixing plant. A large facility may even consist of both processes. Portable plants are used on large highway and airport paving jobs. These plants can operate using either dry batch mixing or central mixing. Portable plants have the same significant materials and industrial activities as permanent facilities. Therefore, portable plants are covered under this general permit.

The wastewater discharge from ready-mixed concrete plants includes truck washout, truck wash-off, central mixer washout, water from wet waste concrete, stormwater runoff.

Process wastewater is generated by the cleaning of trucks and equipment that come in contact with cement and "wet" concrete. Trucks are usually washed on the outside after they are loaded with fresh concrete, before leaving the plant. They are also washed inside and out at the end of the day. Washing down of areas where this cleaning takes place also generates process wastewater. Process wastewater can be generated from engine steam cleaning in the vehicle/equipment maintenance shop. Discharges of process wastewater may contain

some stormwater associated with industrial activity which has come in contact with raw material stockpiles, dried waste concrete, or vehicle parking or maintenance areas. The stormwater can be contaminated at the truck loading site and at the truck washing area.

Treatment or control of process wastewater and commingled stormwater usually consists of settling basins to reduce the solids content and acid addition to neutralize the high pH of the wastewater. Solids removal may be accomplished through a series of settling ponds or sloped slab separation basins. Mechanical clarification devices such as screw washers are used by some facilities to recover coarse aggregate and sand for reuse. The clarified wastewater may be completely or partially recycled and reused. When discharge is necessary, pH neutralization often is required prior to discharge. Mode of discharge can be batch or continuous.

Stormwater associated with industrial activity may be discharged from ready-mixed concrete plants. This stormwater may have come in contact with or been exposed to raw material (sand, gravel or stone) stockpiles, dried waste concrete, or vehicle parking or maintenance areas. Fugitive dust is prevalent on the grounds at concrete plants. Shrouds and vacuum recovery units are used to minimize dust releases at concrete mixing and truck loading locations. Cement and aggregate unloading from railroad cars, trucks or barges is another potential source of contamination for stormwater. No treatment is normally employed prior to such discharge. Some facilities store the stormwater in a retention pond and operate the basin in a "no-discharge" mode. The water collected in the retention pond either evaporates, infiltrates, or is used as process water on site.

SIC 3272 - Concrete Products, Except Block and Brick

Concrete Products, Except Block and Brick include concrete pipe, precast concrete products, and prestressed concrete products.

Concrete Pipe. Concrete pipe products include culvert pipe (reinforced and non-reinforced), storm sewer pipe (reinforced and non-reinforced), sanitary sewer pipe (reinforced and non-reinforced), pressure pipe (reinforced, prestressed, pretensioned and other pressure pipe), irrigation pipe and drain (tile), and other concrete pipe (e.g., manholes and conduits).

Concrete pipe is generally produced by three methods: (1) the vertical packerhead (tamping) method; (2) the vertical cast method; and (3) the spin casting production method. The vertical packerhead method uses a machine called a packerhead to compact and vibrate a moist concrete mix into a steel form. The method is used to produce pipe up to five feet in diameter. The vertical cast method is used to produce reinforced pipe. Due to labor cost and time, this method is generally limited to production of reinforced pipe over five feet in diameter. A wet concrete mix from a central mixer is transported by buckets and poured into a vertical steel form containing a reinforcing cage. The steel forms are stripped from the pipe after the concrete sets. The spin casting production method is used to produce reinforced pipe up to four feet in diameter. The form containing a reinforcing cage is placed horizontally and rotated at a high rate, while concrete is added by a reciprocating nozzle. The spinning action densifies the concrete on the inside of the form and dewater it. The inner surface of the pipe is finished by a mechanical roller. Reinforced concrete pressure pipe, produced by spin casting, uses a hydraulically tested sheet steel cylinder form that remains as part of the finished pipe.

All concrete pipe is cured at ambient conditions or spray cured, until it reaches a certain green strength, at which time it is cured by low pressure steam either in a kiln or in a chamber

constructed around the pipe. For pipe produced by the packerhead method, the forms are usually removed before steam curing, while for the vertical cast and spin casting methods the forms usually remain on the pipe during curing. In all cases except reinforced concrete pressure pipe, a form release oil is used. In the production of reinforced concrete pressure pipe additional processes include hydraulic testing of the cylinder, wrapping the cured pipe with high strength steel wire, and coating the steel wire wrap with concrete grout. There is no wastewater from atmospheric curing. Wastewater from steam curing and spray curing contains suspended solids, oil and grease and has a high pH.

Precast Concrete Products. Precast concrete products include roof and floor units (slabs and tile; joints and beams); architectural wall panels; pilings, posts and poles; cast stone (products for architectural purposes); prefabricated building systems; other precast construction prod.; burial vaults and boxes; silo staves; septic tanks; dry-mixed concrete materials (e.g., Sakrete); other precast (e.g., laundry tubs).

Simple precast concrete products are produced by pouring the concrete from a mixer into steel forms, and allowing the product to cure, either at ambient conditions, with low pressure steam, or with a water spray. Curing takes place in two steps, first with the form on then off. The second curing step usually takes place at ambient conditions. Reinforced concrete products contain steel structural members to provide increased strength.

Precast architectural wall panels are generally finished to produce a decorative surface of exposed aggregate. For the most common production method, a retarder is spread in the form bottom, reinforcing steel is placed in the form, and the concrete mix is cast. When the concrete has set and the form is removed, the surface is washed with a weak acid solution, sandblasted, or washed with high pressure water to clean away the unset surface cement and expose the coarse aggregate. The panel is then cured completely in a storage yard.

Prestressed Concrete Products. Prestressed concrete products are chiefly used as structural and architectural components and include single tees, double tees, and channels; piling, bearing piles, and sheet piles; bridge beams; solid and hollow cored slabs and panels; other prestressed products (e.g., arches); joist, girders, and beams (other than bridge beams).

Prestressed concrete products are produced in similar fashion as precast reinforced concrete products with the substitution of steel cables under tension instead of steel rods for reinforcement. Prestressed concrete products may be either pretensioned or post-tensioned. The wastewater discharge from Concrete Products, Except Block and Brick facilities includes transport bucket and central mixer washout, form wash-off, condensate from steam curing, spray curing wastewater, surface finishing water, spin cast wash-water, pre-wetting of imbedded pressure pipe, stormwater, boiler blowdown, and miscellaneous equipment wash-off. Pollutants in the wastewater discharge include suspended solids, oil and grease, and high pH.

SIC 3271 - Concrete Block and Brick

Concrete block and brick are classified into the following products: structural block produced with lightweight aggregate such as cinder, expanded shale, pumice or other materials; structural block produced with heavyweight aggregate such as sand, gravel, crushed stone or other materials; decorative block - such as screen block, split block, slump block and shadowal block; and concrete brick.

The manufacturing process for concrete block and brick consists of mixing, forming, and curing. Typically, the aggregate, cement and water are weighed and mixed in batches of about four cubic yards in a rotary mixer. The concrete mix used for production of block and brick contains less water than ready-mixed concrete. The type of aggregate being used will determine if a lightweight or heavyweight product is produced. Color may be added to the mix to produce decorative block. The mixed concrete is fed into an automatic block molding machine, where the moist mix is rammed, pressed or vibrated into the desired shape. Following forming, the material is stacked onto iron framework cars and allowed to cure. To produce a structural high-strength block within a reasonable time period, the block must be cured under moist conditions. The three basic methods of curing are: (1) atmospheric; (2) low pressure steam; and (3) autoclave or high-pressure steam.

Atmospheric curing produces a lower strength block than the other two methods of curing. Atmospheric curing uses ambient heat and humidity, and heat of hydration to cure the block, and also includes curing within enclosures at ambient conditions. Curing usually takes place for about four hours. There are no additional wastewaters produced from this curing process. In the low-pressure steam method, the loaded curing cars are placed into a chamber or kiln where low pressure steam less than 150 psi is injected from perforated pipes for approximately 8-10 hours, depending on mix conditions, user specifications, and ambient temperature. Wastewater from this curing method consists primarily of steam condensate, which contains some suspended solids, dissolved solids, COD, oil and grease and a high pH. The low-pressure steam is generated by a boiler which requires periodic blowdown.

The autoclave or high-pressure steam curing method produces a higher strength block with less shrinkage in less time than the low-pressure steam curing method. For this method the curing cars are loaded in a large horizontal, cylindrically shaped autoclave where high pressure steam (greater than 150 psi) is injected or convected. After a curing cycle of about 8 hours the steam is released to the atmosphere and the blocks are removed and stored. An alternative method of steam production uses a hot oil convection method, where water is placed in a trough within the autoclave and hot oil heats the water into steam. Following curing, the autoclave is allowed to cool and a portion of the steam condenses back into the trough. Periodically the trough water is discharged because the alkalinity, due to the pickup of calcium oxide, makes the water corrosive to the steel racks of the curing cars. Wastewater discharges from the autoclave curing process can include boiler blowdown, autoclave blowdown condensate, and autoclave purge. Pollutants include suspended solids, COD, oil and grease, and high pH, resulting from autoclave blowdown condensate and in the convection process, autoclave purge.

The primary source of wastewater from concrete block and brick facilities is equipment wash-off, including delivery trucks, conveyor belts, transport buckets, central mixers and forms. Generally, only suspended solids are a problem in this wastewater and can be handled with simple settling. Other potential sources of wastewater include accidental spill wash-down and stormwater runoff. Spill wash-down and stormwater runoff can be handled with other washwaters.

General Permit Coverage and Registration

The general permit has a term of 5 years. Every authorization under this general permit will expire at the same time (December 31, 2028). All existing permittees will receive renewed coverage on

the same date (January 1, 2024), provided a complete registration statement has been filed 60 days prior to the general permit's prior expiration date (December 31, 2023).

The registration asks the question if a stormwater pollution prevention plan (SWPPP) has been prepared. The registration statement instructs the new applicants to have a SWPPP before commencement of discharge and existing permittees to update and implement revisions to the SWPPP within 60 days of coverage. The registration also asks for representative/substantially identical outfall information to be submitted with the registration. One of the questions to support representative outfalls asks for monitoring data, if available. The permittees that discharge to an MS4 are required to submit notification to the MS4. A copy of a letter or email to the MS4 will suffice. The registration also asks for State Corporation Commission entity identification number. Also, portable concrete plants must submit a closure plan with the registration in order to be approved for coverage. The items needed in a closure plan include treatment, removal and final disposition of residual wastewater, contaminated stormwater held at the facility and solids, fate of structures, a removal plan for all exposed industrial materials and description of the stabilization of land in which they were stored or placed.

All persons desiring to be covered by this general permit must register with the Department by filing a registration statement and applicable fees (\$600). The registration statement shall be submitted and a notification of coverage issued prior to any discharges or other activities for which this permit is required.

Concrete Products facilities that are discharging process wastewater or stormwater associated with industrial activity to surface waters on the effective date of this general permit and which have not been issued an individual VPDES permit, are required to submit the registration statement 60 days prior to expiration. Existing operations with individual VPDES permits that wish to seek coverage under the proposed general permit would have to file a registration statement at least 240 days prior to the expiration date of the individual VPDES permit. This gives staff some time to decide whether they can have coverage and if not, the permittee can still meet the 180 day before expiration VPDES application requirement. For all new concrete products facilities that will have discharges of process wastewater or stormwater associated with industrial activity and that will begin activities after the effective date of this permit, the registration statement shall be filed at least 60 days prior to the commencement of operation of the concrete plant unless a different date is approved by the department.

Any permittee conducting an activity covered by an individual permit, which could be covered by this general permit, may request that the individual permit be terminated and register for coverage under this general permit. Antidegradation will be considered prior to granting the coverage under this general permit. Any owner or operator not wishing to be covered or limited by this general permit may make application for an individual VPDES permit, in accordance with VPDES procedures. This general permit will not apply to any new or increased discharge that will result in significant effects to the receiving waters. The determination is made in accordance with the State Water Control Board's Antidegradation Policy contained in the Virginia Water Quality Standards, 9VAC25-260-30.

All facilities that the Department believes are eligible for coverage under this general permit will be authorized to discharge under the terms and conditions of the permit after a complete registration statement is submitted, the applicable permit fee is paid and the Department sends a copy of the general permit to the applicant. If this general permit is inappropriate, the applicant

will be so notified and the requirement that an individual permit or alternate general permit is needed will remain in effect.

Part I A - Effluent Limitations, Monitoring Requirements and Their Basis

The parameters to be limited in process wastewater discharges are pH, total suspended solids (TSS) and total petroleum hydrocarbons (TPH). These parameters were chosen based on the evaluation of 1992-1996 DMR data for the issuance of the first general 'ready-mix' permit in 1998. TPH, is a pollutant of concern when vehicle or equipment degreasing wastewater are commingled with the process wastewater. Specific rationale for all parameters and when they apply is discussed below.

1. Discharge of process wastewater which may contain input from the vehicle/equipment maintenance activities and may be commingled stormwater runoff:

<u>Parameter</u>	<u>Limitation</u>	<u>Frequency⁽³⁾</u>
Flow	No limit, estimate and report average and maximum values	
Total Suspended Solids	30 mg/l avg, 60 mg/l max.	
pH	6.0 minimum, 9.0 maximum ⁽¹⁾	
Total Petroleum Hydrocarbons ⁽²⁾	15 mg/l maximum	

(1) Where the Water Quality Standards (9 VAC 25-260) establish alternate standards for pH in the waters receiving the discharge, those standards shall be the maximum and minimum effluent limitations.

(2) Total Petroleum Hydrocarbons limits are only to be placed in the permit when vehicle degreasing occurs on site. Vehicle degreasing or equipment degreasing has been clearly defined to mean the washing or steam cleaning of engines or other drive components of a vehicle or equipment in which the purpose is to degrease and clean petroleum products. It does not mean washing sediment or concrete off trucks. Total Petroleum Hydrocarbons shall be analyzed using the EPA SW-846 Methods 8015B (1996), 8015C (2000 or 2007), 8015D (2003) for diesel range organics or 40 CFR 136.

A QL of 5.0 mg/L has been established for TPH. The QLs are consistent with the VPDES individual and general permit program QLs.

(3) All grab samples are collected quarterly.

TSS

Although there are no water quality standards or federal effluent guidelines for total suspended solids for the industrial category covered by the general permit, the Department has decided that such limits are necessary for the protection of the receiving waters. The total suspended solids limitations are established at levels which, based on the Department's experience with individual VPDES permits, are achievable with conventional treatment technology and which will prevent the build-up of solids on the bottoms of receiving waters.

The pH limitation is based upon Virginia's Water Quality Standards (9VAC25-260). Where alternate standards for pH are established in the Water Quality Standards, those standards may be used. Because the facility may discharge into the receiving water at zero low flow conditions, the limitation of the water quality standard on the effluent is appropriate.

TPH

Due to the concern that process wastewater generated from engine steam cleaning during vehicle or equipment degreasing will carry petroleum-based pollutants (diesel range organics), this

general permit proposes a TPH limitation of 15 mg/l for a discharge with such input. The TPH maximum limitation is based on the ability of simple oil/water separator equipment. Historically, oil and grease (O&G) limits have been placed in the VPDES permits for many facilities that handle petroleum products or where contamination by petroleum products is of concern. The O&G limits now are expressed as Total Petroleum Hydrocarbons (TPH) instead since there is little reason to expect fatty matter from plant and animal sources. Based on the recommendation provided by Guidance Memo # 96-002, a one to one ratio between O&G and TPH is assumed. The TPH testing protocols were updated during the 2003 general permit issuance, in 2008 and 2013.

All limits should be considered as two significant digits for compliance purposes as per special condition Part I.B.15.b.(4) and in accordance with Guidance Memo No. 06-2016 Significant Figures for Discharge Monitoring Reports.

2. Discharge of stormwater which does not combine with other process:

<u>Parameter</u>	<u>Benchmark Monitoring</u>
Flow	No limit, estimate volume (MG) discharged during entire monitored storm event
Total Suspended Solids	100 mg/l
Total pH	6.0 – 9.0 standard units

The permit states that should the benchmark monitoring for TSS exceed 100 mg/l maximum or the pH fall outside of the range of 6.0-9.0 standard units, the permittee shall evaluate the overall effectiveness of the SWPPP in controlling the discharge of pollutants to receiving waters. Benchmark concentration values are not effluent limitations. Exceedance of a benchmark concentration does not constitute a violation of this permit and does not indicate that violation of a water quality standard has occurred; however, it does signal that modifications to the SWPPP are necessary, unless justification is provided in the routine facility inspection (Part II D e). The SWPPP does not have to be modified if justification is provided. For example, if all appropriate BMPs are in place and maintained correctly, that would be sufficient justification to indicate that the exceedance was an anomaly and additional modification of the SWPP is unnecessary.

Monitoring is required once per calendar year by grab sample, collected during the first thirty minutes of the discharge. If during the first thirty minutes it was impracticable, then a grab sample shall be taken during the first three hours of discharge. This industry has had annual monitoring since the first concrete products general permit in 1998. Annual sampling was determined to be representative given the specific monitoring parameters (within 15 minutes of storm event, 72-hours since the last storm event) and supported by quarterly visual monitoring and site inspections.

Guidance on the conduct of stormwater sampling is provided by the EPA in the document titled [Industrial Stormwater Monitoring and Sampling /Guide](#), EPA832-B-09-003.

Samples taken in compliance with the monitoring requirements specified in Part II A (Stormwater Management) shall be taken at the outfall location(s) identified in the approved registration statement. In the cases where discharges to surface waters are through the municipal separate storm sewer systems, samples should be taken at the point where the discharge enters the municipal separate storm sewer system.

The monitoring requirements for stormwater are consistent with the monitoring requirements of the original stormwater general permits (1994) which were based on EPA's Baseline Industrial Activity Storm Water General Permit (1992). Historically, oil and grease (O&G) limits have been placed in the VPDES permits for many facilities that handle petroleum products or where contamination by petroleum products is of concern. The O&G monitoring requirement from 1998 - 2008 was expressed as Total Petroleum Hydrocarbons (TPH) instead of O&G since there is little reason to expect fatty matter from plant and animal sources. Based on the recommendation provided by Guidance Memo # 96-002, a one-to-one ratio between O&G and TPH was assumed. In 2013, the TPH limit was removed from stormwater monitoring. Total petroleum hydrocarbons are not suggested for monitoring in this type of industrial stormwater by the EPA per the NPDES Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity (MSGP), 2015. Also, levels consistently have remained undetectable or very low over the years. In 2003, in order to maintain consistency with the EPA NPDES MSGP, total recoverable iron was added and chemical oxygen demand deleted from the parameter list for stormwater discharges. In 2013, the total recoverable iron limit was removed from stormwater monitoring primarily because iron is naturally high in soils in Virginia and expected to be high in stormwater. Also, there is no feasible alternative to remove iron in stormwater when it is naturally occurring (except to the amount the existing technology removes solids and solids are limited under the permit). DEQ has collected iron data from stormwater since 1998 and has no reason to continue to monitor. The DEQ does not think that total iron is an appropriate benchmark for Virginia. Other surrounding states (Maryland and North Carolina) do not use iron as a benchmark. The 2021 EPA NPDES MSGP no longer includes iron as a benchmark for this industrial sector (sector E). TSS is a more appropriate benchmark to determine SWPPP success.

Quarterly visual monitoring was added in 2003. Specific storm event data is required to be submitted with the DMR.

Part I B - Special Conditions

1. Restriction of floating solids, visible foam, solids deposition or oil sheen.

This condition is required to implement the Water Quality Standards (9VAC25-260-20). Restriction of oil sheen is to ensure that the petroleum products that are on the site do not appear in the stream. Accidental spills of petroleum products are cleaned up immediately so as not to enter surface waters as per special condition #3. If vehicle degreasing is occurring on the site then those process water discharges have total petroleum hydrocarbon limits. This addition is just an added measure of protection and something the inspector can look for to ensure proper BMPs, clean up measures or treatment is occurring.

Restriction of solids deposition in surface water in the vicinity of the outfall as a result of the industrial activity. This requirement is due to concerns from staff of concrete and raw product residue entering the stream at some operations. Improved housekeeping on site should maintain this requirement.

2. Materials handling/storage

Raw materials and products are to be stored and handled so that any untreated discharge of pollutants to surface waters is prevented. This includes leftover wet concrete that is returned to the site. This wet concrete should be disposed of in an area that will collect any water or stormwater that will be in contact with the wet concrete.

3. Vehicles and equipment maintenance

Vehicles and equipment used in the industrial activity are to be operated and maintained in a manner that prevents pollution of surface or ground waters. This special condition addresses best management practices for activities associated with vehicle maintenance that take place at a typical concrete products facility.

4. Restrictions of washing activities

All washdown and washout of trucks, mixers, transport buckets, forms or other equipment is restricted to the designated washdown and washout areas. Wastewater generated in this area is to be recycled or collected and treated to meet the limits in Part I A prior to discharge. The storage of raw materials and washing of trucks and other equipment are necessary aspects of concrete products facilities. These activities are allowed by the general permit as long as they are handled in a way that provides for treatment of any wastewater prior to discharge. This special condition is consistent with EPA's MSGP for "concrete products facilities" for industrial stormwater and applies to all equipment that is washed out of product (not just trucks).

5. Restrictions of waste concrete reclamation

Waste concrete is wet concrete that returns to the plant is either reclaimed at the truck washing facility or it is unloaded on the plant site for drying and later reclamation for off-site fill or road base. The general permit restricts this practice to a designated area and prohibits any untreated discharge from it to surface waters. Until this concrete is dry, this wet waste concrete should be in a designated area that drains to the settling basins, the wet concrete is completely contained and cannot reach the receiving stream (even during normal (not 25-year-24 hour storm event) rain events) or the facility operates in a 'no-discharge' mode (see special condition 11 below). The same requirement applies to the dredged solids from the settling basins.

6. Recycle and Reuse

Wastewater should be reused or recycled whenever feasible. This is not a requirement and is a general suggestion seen in other general permits. The industry can reuse settled wastewater for dust suppression.

7. Prohibition of sewage discharge

The discharge of sewage is not permitted under the draft general permit. The limits of the permit do not address pollutants of concern in sewage.

8. Operation and maintenance (O&M) manual requirement

The permittee is required to develop and implement an O&M Manual which includes procedures and practices for the mitigation of pollutant discharges and for the protection of state waters from the facility's operations. This will document procedures for plant personnel so that the other special conditions can be met. It specifies operations and maintenance practices for process wastewater treatment units and chemical and material storage areas, methods for estimating process wastewater flow, process wastewater solids management and disposal procedures, temporary and long-term facility closure plans, testing requirements and procedures, recordkeeping and reporting requirements and duties and roles of responsible officials. Facilities shall develop or review and update, as appropriate the O&M manual within 180 days of coverage and review annually thereafter. In 2013, the O&M special condition was reformatted, review periods made annual and specific items required for closure plans were added. These specific items include (i) treatment, removal, and final disposition of residual wastewater, contaminated stormwater held at the facility, and solids; (ii) fate of structures; (iii) a removal plan for all exposed industrial materials; and (iv) description of the stabilization of

land in which they were stored or placed. For the 2019 permit, the O&M manual was amended to allow O&M requirements inapplicable to process wastewater units to be included in the SWPPP. This was in response to public comment for facilities that only have stormwater discharges.

9. Notification of municipal separate storm sewer system

If the facility discharges through a municipal separate storm sewer system (MS4) to surface waters, the permittee must notify the owner of the storm sewer of the presence of the discharge and provide a copy of such notice to DEQ at the time of registration.

10. Freeboard requirement

The purpose of this special condition is to prevent overflow. A minimum freeboard of one foot for the basins and lagoons is required to be maintained except during a 72-hour transition period after a measurable rainfall event. The transition period will provide sufficient flexibility for proper operation and maintenance of the facility. During the transition period, no discharge from the basins and lagoons shall occur unless it is in accordance with this permit. Within 72 hours after a measurable rainfall event, the freeboard must return to the minimum freeboard of one foot. Where basins are operated in a series mode of operation, the one foot freeboard requirement for the upper basins may be waived provided the final basin will maintain the freeboard requirements of this special condition. This reflects existing practice and design of these basins. It is deemed reasonable and protective since the additional treatment provided by series basins is preferred. A description of how the permittee will manage the facility to adhere to one foot of freeboard is included in the O&M manual. The daily inspection requirement is only required if the one-foot freeboard is not restored by the end of the 72-hour transition period. The continuous daily log requirement was removed in 2019 in response to public comment.

11. Requirement for "no discharge" mode operation

In the cases where either the process wastewater which may be commingled with stormwater runoff, or the stormwater associated with industrial activity are retained in a treatment/storage system which operates in a "no-discharge" mode, this general permit prohibits any discharge of pollutants to surface waters from such system except in the case of a storm event which is greater than a 25-year, 24-hour storm event. This special condition only applies to those operations which the permittee had designated as "no-discharge" in the accepted registration statement. If a discharge does occur, the permittee is required to report an unusual or extraordinary discharge per Part III H (Conditions applicable to all permits). This reporting reminder was added in the 2019 reissuance and is the same reporting required in the non-metallic mineral mining general permit (9VAC25-190) for "no-discharge" facilities. The recognition of "no discharge" facilities was included in this permit because prior to the VPDES discharge general permit in 1993, many facilities were covered under a VPA "no discharge" certificate. These facilities often still have stormwater discharges.

12. Notification levels

The permittee is required to report the discharge of any toxic pollutant from any activity that has occurred or will occur when that discharge, either on routine or non-routine basis, will exceed the highest of the listed notification levels. This condition is required by the VPDES Permit Regulation (9VAC25-31-200 A).

13. Liner requirements for the settling basins

In order to comply with the statutory mandate (State Water Control Law §62.1-44.15:5.2), House Bill 972 passed by the 1998 Session of the General Assembly and effective July 1, 1998, all settling basins, used for treatment and control of process wastewater and commingled stormwater that were constructed on or after February 2, 1998, are required to be lined with concrete or any other impermeable materials prior to commencing operation. The law also states that the general permit may include a requirement that settling basins built before February 2, 1998 may include the same requirement. Regardless of date of construction, all settling basins used for treatment and control of process wastewater or process wastewater commingled with stormwater that are expanded or dewatered for major structural repairs shall be lined with concrete or any other impermeable materials. Major structural repairs include e.g. construction activities that disturb the bottom or sides of the basin.

Concrete is the liner material of choice (as opposed to clay, for example) because settling basins are routinely shoveled out with heavy equipment. This requirement is not intended for basins constructed as best management practices for stormwater.

14. Reuse of treated (settled) wastewater for dust control or spraying stockpiles

Reuse of settled wastewater for dust suppression or spraying stockpiles is allowed and must be carried out as a best management practice and not a wastewater disposal method. This condition is to ensure that reuse of treated wastewater on site for these purposes is managed properly so that none of the water enters surface waters without being treated first. Much of the reused wastewater is adsorbed and evaporated but some may enter the treatment system. Dust suppression must not be carried out in a rain event that results in a discharge from the site as that is unnecessary and more likely to result in a discharge of the untreated water.

15. Compliance reporting

In accordance with Guidance Memo#00-2001, Amendment #3 and Guidance Memo 06-2016 (Significant Figures for Discharge Monitoring Reports, this special condition identifies the quantification levels for TPH and prescribes data handling protocols for the purposes of compliance reporting. In accordance with Guidance Memo 06-2016, the condition ensures that the permittee reports discharge monitoring in two significant digits. The QL is defined as the lowest concentration used to calibrate a measurement system in accordance with the procedures published for the test method. This is the definition of QL used in all permits.

16. TMDL Requirements

EPA does not want DEQ to authorize general permits that are not in conformance with any applicable TMDL. This was a requirement added to the regulation in section 50 'Authorization to Discharge.' Staff thought it important to repeat as a special condition in the permit itself as follows:

“Owners of facilities that are a source of the specified pollutant of concern to waters where a TMDL has been approved prior to the term of this permit shall implement measures and controls that are consistent with the assumptions and requirements of the TMDL. The department shall provide written notification to the owner that a facility is subject to the TMDL requirements. If the TMDL establishes a numeric wasteload allocation that applies to discharges from the facility, the owner shall perform monitoring in accordance with Part I A and implement measures necessary to meet that allocation. At permit reissuance, the permittee shall submit a demonstration with the registration statement to show the wasteload allocation is being met.”

For most TMDLs, the general permits are considered in aggregate and are not given individual waste load allocations. Currently, the concrete facilities with wasteload allocations are for sediment and already have TSS monitoring in the permit.

17. Adding and deleting outfalls.

This is a special condition that allows for adding or deleting outfalls. The permittee must update the O&M manual and the SWPPP within 60 days of the change. This happens occasionally due to construction or changing processes at the plant and staff wanted a clear way to allow this in the permit through a permit authorized change. This is based on the DEQ 2019 industrial stormwater general permit in 9VAC25-151-70 B 12.

18. Terminations

This special condition describes how terminations of a general permit will be implemented because permittees need to know this is an option available to them. This is based on termination procedures in the VPDES Permit Regulation 9VAC25-31 Part V.

19. Temporary facility closures

This is a special condition was added that describes how temporary facility closures at inactive and unstaffed sites will be implemented. Inactive site waivers are recognized in EPAs 2021 MSGP. In 2019, this special condition was amended to require an annual routine facility inspection to correspond with requirements in the EPA MSGP. The special condition was also clarified to state the stormwater management requirements that are waived at an inactive stie (effluent, benchmark and visual monitoring and routine facility inspections (except for once per year)).

20. Water Quality Standards

This is a general requirement that *"The discharges authorized by this permit shall be controlled as necessary to meet applicable water quality standards."* This matches similar language in other general permits.

21. Responsibilities Other Laws

This is a special condition that reminds the permittee that they must still comply with other laws. *"Approval for coverage under this general permit does not relieve any owner of the responsibility to comply with any other federal, state or local statute, ordinance or regulation."* This requirement is part of the regulation at section 50 C and staff thought it should be repeated in the permit to remind the permittee of the responsibility.

Part II Stormwater Management

This section is generally based on the 2019 VPDES Industrial Stormwater General Permit (ISW GP) and the 2021 EPA's Multi-Sector General Permit (MSGP). There are a few differences based on TAC consensus.

Part II A Monitoring requirements

This provides instructions for quarterly visual monitoring, benchmark monitoring, monitoring instructions and corrective actions.

Visual examination of these areas will provide a useful and inexpensive means for permittees to evaluate the effectiveness of their stormwater pollution prevention plans and make any necessary modifications in housekeeping to address the results of the visual monitoring.

Benchmark monitoring is a means by which to measure the concentration of a pollutant in a stormwater discharge. Analytical results are quantitative and therefore can be used to compare results from year to year and to quantify the improvement in stormwater quality attributable to the stormwater pollution prevention plan, or to identify a pollutant that is not being successfully controlled by the plan. The results of the benchmark monitoring are not intended to be used to evaluate actual or potential exceedances of instream water quality criteria.

Monitoring Instructions are typical for stormwater sampling. An interval from the previous storm event of 72-hours is required to allow the industrial site to operate normally, have industrial pollutants be deposited on surfaces and give the stormwater controls opportunity to act properly. The 3-hour collection event is in order to capture the “first flush” of pollutants coming off the site in order to identify if the stormwater controls are working properly to capture the industrial pollutants that may have been deposited on impervious surfaces.

Corrective actions is included in the permit for actions the permittee must take if benchmark monitoring concentration values are exceeded, if inspections turn up a deficiency at the facility and modifications to the stormwater control measures are necessary to meet the permit requirements or any other process, observation, or event result in a determination that modifications to the stormwater control measures are necessary to meet the permit requirements or applicable water quality standards. The corrective action section stipulates time limits for implementing actions to remedy deficiencies. These time frames are not grace periods within which an operator is relieved of any liability for a permit violation. If the original inadequacy constitutes a permit violation, then that violation is not deferred by the time frame the permit has allotted for corrective action. The time limits are those that DEQ considers reasonable for making the necessary repairs or modifications and are included specifically so that inadequacies are not allowed to persist indefinitely. Failure to take the necessary corrective action within the stipulated time limit could constitute an additional and independent permit violation.

Part II B Representative Outfalls – substantially identical outfalls

Representative outfalls are decided and approved with the registration statement and will be identified on e-DMR.

Part II C Releases of hazardous substances or oil in excess of reportable quantities

The permit prohibits discharges of oil and-hazardous substances from spills. The discharge of hazardous substances or oil from a facility must be eliminated or minimized in accordance with the stormwater pollution prevention plan developed for the facility. If there is a discharge of a material in excess of a reportable quantity established under 40 CFR Parts 110, 117, or 302 the permittee must make a report to DEQ within 24 hours. The permittee must also notify the MS4 operator if the release enters an MS4. The pollution prevention plan for the facility must be reviewed and revised as necessary to prevent a reoccurrence of the spill. This does not relieve the permittee from any reporting to federal or state authorities required under 40 CFR Part 110, 40 CFR Part 117, or 40 CFR Part 302 or § 62.1-44.34:19 of the Code of Virginia.

Part II D Stormwater Pollution Prevention Plans (SWPPP)

The SWPPP is basically a set of best management practices used to eliminate or reduce pollutants in stormwater from reaching surface waters.

1. Deadlines. For an existing facility, revisions to the SWPPP shall be done within 60 days of

coverage under the permit or ownership change. For a new discharge, the plan shall be prepared 60 days prior to commencing operations and implementing the SWPPP prior to a stormwater discharge. A later date may be established by the department.

2. Contents of the SWPPP. The SWPPP contains the pollution prevention team, site description (including a map), summary of potential pollutants sources (including activities, pollutants, spills and leaks and sampling data), stormwater controls (including control measure considerations, good housekeeping, preventive maintenance, spill prevention and response procedures, eliminating and minimizing exposure implementation, employee training, sediment and erosion control and management of runoff) and routine facility inspections.

Pollution prevention team is the first step in the process of developing and implementing a stormwater pollution prevention plan. A qualified team of individuals needs to be responsible for developing the plan and assisting the facility or plant manager in its implementation.

Site descriptions and a site map assists permittees in identifying issues and setting priorities for the selection, design and implementation of measures taken to control stormwater pollution and in identifying potential changes in materials, materials management practices, or site features over time. It is also important for training and executing proper inspections.

Summary of potential pollutant sources is a good narrative method to see the risk potential that sources of pollution pose to stormwater quality.

Good housekeeping is important because it involves using practical and cost-effective methods to identify ways to maintain a clean and orderly facility and keep contaminants out of surface waters and storm sewers.

Preventative maintenance involves continuous maintenance of stormwater management devices and other equipment and systems to avoid breakdowns so stormwater pollution prevention is likely to be continuous and effective at all times.

Spill prevention and response procedures can be used to eliminate unexpected stormwater pollution when implemented properly and timely. For a spill prevention and response program to be effective, employees should clearly understand the proper procedures and requirements and have the equipment necessary to respond to spills.

Eliminating and minimizing exposure is important in situations where it is feasible to protect industrial materials by a storm resistant shelter to prevent exposure to rain, snow, snowmelt, or run-off. These practices may eliminate stormwater pollution entirely at the site.

Employee training is important because employees should clearly understand the proper procedures and requirements and have the equipment necessary to implement a successful stormwater management program.

Sediment and erosion controls are important for areas that, due to topography, activities, soils, cover materials, or other factors have a high potential for significant soil erosion. The plan must identify measures that will be implemented to limit erosion in these areas. Also flow velocity dissipation devices shall be placed at discharge locations and along the length of any outfall channel if flows create erosive conditions.

Management of runoff is important to direct the flow of stormwater away from areas of exposed industrial materials or pollutant sources. Permittees must divert, infiltrate, reuse, contain, or otherwise reduce stormwater runoff. Such practices can also divert polluted runoff to natural areas or locations where other kinds of treatment occurs. Examples to do this are use of vegetative swales, collection and reuse of stormwater, inlet controls, snow management, infiltration devices, and wet detention/retention basins.

Routine facility inspections are to ensure that control measures (e.g., BMPs) are operating and properly maintained on a regular basis and to actively observe the effectiveness of control measures during rain events.

Part II E Maintenance

The permittee must maintain all control measures identified in the plan in effective operating condition. The maintenance procedures and a schedule for maintenance and back up practices shall be included. If the facility site inspections identify BMPs that are not operating effectively, the permittee must perform maintenance before the next anticipated storm event, or as necessary to maintain the continued effectiveness of stormwater controls.

Part II F Nonstormwater discharges

Discharges of certain sources of non-stormwater are allowable discharges under this permit. All other non-stormwater discharges are not authorized and must be either eliminated or covered under a separate VPDES permit. Discharges from the site must be evaluated for unauthorized discharges annually. The evaluation documentation includes date, description of the evaluation criteria, list of outfalls or onsite drainage points observed, results of any actions taken to eliminate unauthorized discharges. The list of allowable nonstormwater discharges is also in this subsection.

Part II G Signature and SWPPP review and Part II H Maintaining an Updated SWPPP
Signature requirements are a standard permit condition pursuant to 9VAC25-31-110 and 40 CFR 122.22 and to ensure the decision makers are aware of SWPPP modifications. Reviews and a schedule and are necessary to keep the SWPPP updated in a timely fashion.

Part III Conditions Applicable to All Permits

This section contains language from the permit regulation at 9VAC25-31-190 for conditions applicable to all permits. Differences are described below.

Part III B - Records retention is 3 years from permit expiration or termination rather than from the date of sampling. This makes more sense for documents like SWPPPs.

Part III C - Reporting monitoring results is amended to provided discharge monitoring electronic reporting requirements to comply with 9VAC25-31-1020. There shall be at least three months' notice provided between the notification from the department and the date after which such forms and reports must be submitted electronically.

Part III M – Duty to reapply is changed to 60 days before expiration to match the registration statement requirements in 9VAC25-193-60.

Part III Y – Transfer of permits allows for transfer of permits within 30 days of the transfer of the title instead of 30 days prior to the transfer. Permittees are rarely able to notify the department 30 days prior to a transfer and this is a reasonable allowance for general permits.

Throughout Part III, references to “revoke and reissue” and “modification” have been removed because these permit actions do not apply to general permit coverage. Also references to “permit” and “applications” are replaced with “permit coverage” and “registrations.”

Office of Regulatory Management
Economic Review Form

Agency name	State Water Control Board
Virginia Administrative Code (VAC) Chapter citation(s)	9VAC25-193
VAC Chapter title(s)	9VAC25-193- Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Concrete Products Facilities
Action title	Reissuance of a general permit for the discharge of effluent resulting from manufacturing of concrete products and ready-mix concrete.
Date this document prepared	April 18, 2023
Regulatory Stage (including Issuance of Guidance Documents)	Final

Cost Benefit Analysis

Complete Tables 1a and 1b for all regulatory actions. You do not need to complete Table 1c if the regulatory action is required by state statute or federal statute or regulation and leaves no discretion in its implementation.

Table 1a should provide analysis for the regulatory approach you are taking. Table 1b should provide analysis for the approach of leaving the current regulations intact (i.e., no further change is implemented). Table 1c should provide analysis for at least one alternative approach. You should not limit yourself to one alternative, however, and can add additional charts as needed.

Report both direct and indirect costs and benefits that can be monetized in Boxes 1 and 2. Report direct and indirect costs and benefits that cannot be monetized in Box 4. See the ORM Regulatory Economic Analysis Manual for additional guidance.

VPDES general permits expire every 5 years and must be re-issued in order for permit coverage to be available to new permittees and existing covered permittees. If the general permit is not re-issued, the regulated community will need to obtain an individual permit to conduct the regulated activity. For this reason, the costs associated with obtaining an individual permit are compared with the costs associated with general permit coverage. General permits provide the regulated community with a streamlined, less burdensome approach to obtain coverage for conducting a specific regulated activity.

Table 1a: Costs and Benefits of the Proposed Changes (Primary Option)

<p>(1) Direct & Indirect Costs & Benefits (Monetized)</p>	<p>Direct Costs: Describe the direct costs of this proposed change here.</p> <ul style="list-style-type: none"> • Rearranged the stormwater management requirements, added corrective actions, added an additional stormwater control measure to consider and added an additional stormwater control measure to implement (eliminate and minimize exposure of industrial areas). <p>Direct Costs: No direct economic cost to regulated entities expected beyond the additional administrative time permittees may spend to address the new control measures and rearrange the permit citations in their stormwater pollution prevention. It is not expected that permittees will need to install or construct additional control measures due to the new requirements. The new control measures add more tools in their toolbox to control stormwater pollution.</p> <p>Direct Benefits: No direct economic benefit to regulated entities.</p> <p>Indirect Costs: There may be operating procedures that change because of the stormwater amendments.</p> <p>Indirect Benefits: None to the permittee.</p> <ul style="list-style-type: none"> • Added TMDL monitoring where a TMDL has been approved prior to the term of this permit and a numeric wasteload allocation has been assigned to that facility. <p>Direct Costs: There are currently no TMDLs approved prior to the term of this permit where a numeric wasteload allocation has been assigned with the exception of sediment TMDLs. This does not add additional direct costs because total suspended solids are the pollutant of concern in sediment TMDLs and these facilities are already limited for and have controls installed to meet these TMDL requirement total suspended solids for process water and stormwater.</p> <p>Direct Benefits: No direct economic benefit to regulated entities.</p> <p>Indirect Costs: None</p> <p>Indirect Benefits: None to the permittee.</p> <p>There are currently 231 concrete products facilities covered under this permit. Each one would be subject to the changes described herein.</p>
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(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) See above	(b) See above
(3) Net Monetized Benefit	See above	
(4) Other Costs & Benefits (Non-Monetized)		
(5) Information Sources	n/a	

Table 1b: Costs and Benefits under the Status Quo (No change to the regulation)

(1) Direct & Indirect Costs & Benefits (Monetized)	<p>Direct Costs: Maintaining the current requirements would have no direct economic cost to regulated entities.</p> <p>Indirect Costs: Maintaining the current requirements would have no indirect economic cost to regulated entities.</p> <p>Direct Benefits: Maintaining the current requirements would have no direct economic benefits to the regulated entities.</p> <p>Indirect Benefits: Maintaining the current requirements would have no indirect economic cost to regulated entities.</p>	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) n/a	(b) n/a
(3) Net Monetized Benefit	n/a	
(4) Other Costs & Benefits (Non-Monetized)	n/a	
(5) Information Sources	n/a	

Table 1c: Costs and Benefits under Alternative Approach(es)

(1) Direct & Indirect Costs & Benefits (Monetized)	<p>Regulating industrial discharges to state waters through the reissuance of a general permit regulation is an alternative streamlined approach that is used to regulate entities that conduct similar activities. A benefit of this general permit is its lower cost to permittees relative to the cost of obtaining an individual permit. The permit fee for owners to obtain coverage under this general permit is \$600. If this general permit were not available, these owners would be required to obtain an individual VPDES permit, and the initial application fee would be \$3,300 (assumes industrial minor, standard limits). An annual permit maintenance fee of 2,388 would also apply (total of 11,940 per permittee for a 5-year permit term). Additionally, a public notice would need to be published in a local newspaper twice at each reissuance. This is estimated at \$900 each 5 years.</p> <p>These costs do not account for the longer lead time to obtain an individual permit and the increased burden on DEQ staff resources that would result.</p>	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) See above	(b) See above
(3) Net Monetized Benefit	See above	
(4) Other Costs & Benefits (Non-Monetized)	n/a	
(5) Information Sources	9VAC25-20 Fees for Permits and Certificates	

Impact on Local Partners

Use this chart to describe impacts on local partners. See Part 8 of the ORM Cost Impact Analysis Guidance for additional guidance.

Table 2: Impact on Local Partners

(1) Direct & Indirect Costs & Benefits (Monetized)	There are no direct costs and benefits for local partners in terms of real monetary costs and FTEs. This general permit coverage applies to private industries.
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(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) n/a	(b) n/a
(3) Other Costs & Benefits (Non-Monetized)	n/a	
(4) Assistance	n/a	
(5) Information Sources	n/a	

Impacts on Families

Use this chart to describe impacts on families. See Part 8 of the ORM Cost Impact Analysis Guidance for additional guidance.

Table 3: Impact on Families

(1) Direct & Indirect Costs & Benefits (Monetized)	There is no potential impact of the proposed regulatory action on the institution of the family and family stability.	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) n/a	(b) n/a
(3) Other Costs & Benefits (Non-Monetized)	n/a	
(4) Information Sources	n/a	

Impacts on Small Businesses

Use this chart to describe impacts on small businesses. See Part 8 of the ORM Cost Impact Analysis Guidance for additional guidance.

Table 4: Impact on Small Businesses

(1) Direct & Indirect Costs &	Small businesses would have the same impact as described in 1c above.
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Benefits (Monetized)	General permits provide the regulated community with a streamlined, less burdensome approach to obtain coverage for conducting a specific regulated activity. Without this general permit regulation, an individual permit would be required to conduct the regulated activity.	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) n/a	(b) n/a
(3) Other Costs & Benefits (Non- Monetized)	n/a	
(4) Alternatives	n/a	
(5) Information Sources	n/a	

Changes to Number of Regulatory Requirements

Table 5: Regulatory Reduction

For each individual action, please fill out the appropriate chart to reflect any change in regulatory requirements, costs, regulatory stringency, or the overall length of any guidance documents.

Change in Regulatory Requirements

VAC Section(s) Involved	Initial Count	Additions	Subtractions	Net Change
9VAC25-193-60 (Registration)	22	0	0	0
9VAC25-193-70 Part I (Limits and Special Conditions)	28	0	0	0
9VAC25-193-70 Part II Stormwater	22	3	0	+3
9VAC25-193-70 Part III (Conditions for All Permits)	26	0	0	0

Cost Reductions or Increases (if applicable)

VAC Section(s) Involved	Description of Regulatory Requirement	Initial Cost	New Cost	Overall Cost Savings/Increases
n/a				

Other Decreases or Increases in Regulatory Stringency (if applicable)

VAC Section(s) Involved	Description of Regulatory Change	Overview of How It Reduces or Increases Regulatory Burden
n/a	n/a	The regulatory burden of reissuing the general permit is much reduced compared to requiring an individual permit. See 1c above.

Length of Guidance Documents (only applicable if guidance document is being revised)

Title of Guidance Document	Original Length	New Length	Net Change in Length
n/a			

TAB H



Commonwealth of Virginia

VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

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Travis A. Voyles
Secretary of Natural and Historic Resources

Michael S. Rolband, PE, PWD, PWS Emeritus
Director
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MEMORANDUM

TO: State Water Control Board Members
FROM: Rebeccah Rochet, Deputy Director, Division of Water Permitting *Rebeccah Rochet*
DATE: June 2, 2023
SUBJECT: General VPDES Permit for Discharges of Stormwater from Construction Activities (9VAC25-880)

The current General VPDES Permit for Discharges of Stormwater from Construction Activities (9VAC25-880, the CGP) will expire on June 30, 2024, and the regulation establishing this general permit is being amended to reissue it for another five-year term. The staff is bringing this proposed regulation amendment before the Board to request authorization to hold a public comment period and a public hearing. The proposed regulation takes into consideration the recommendations of a technical advisory committee (TAC) formed for this regulatory action.

A Notice of Intended Regulatory Action (NOIRA) for the amendment was issued on March 28, 2022, for 30 days. A summary of the public comments received and the department's responses to those comments are included in the attached Town Hall background document.

Draft amendments showing proposed changes to the current regulation, the Agency Town Hall background document, Fact Sheet, and list of the TAC membership are attached. Substantive changes to the existing regulation are:

- 9VAC25-880-1. Definitions:
 - "Construction dewatering" is a new definition added to provided clarity for a new dewatering discharge section in the CGP.
 - "Construction site"- Added "water area" to be consistent with EPA's 2022 reissued Construction General Permit.
 - "Construction support activity"- Added a new definition to be consistent with EPA's 2022 permit. The definition provides clarity for a previously undefined term that is used throughout the CGP.
 - "Measurable storm event"- Added language for snow melt to be consistent with EPA's 2022 general permit.
 - "Qualified personnel"- Added a new definition to address EPA's new stormwater team requirements. The definition is taken from 9VAC25-870 and revised for the CGP.

- 9VAC25-880-10: Purpose.
 - Revisions improve the clarity and readability.
- 9VAC25-880-15: Applicability of incorporated by references based on the dates that they became effective.
 - Updated reference to the current publication of the Code of Federal Regulation.
- 9VAC25-880-30: Authorization to discharge.
 - *Subsection A 2*- Added requirement to pay all outstanding permit maintenance fees.
 - *Subsection C 4*- Changed when new support activities must be reported in a modified registration statement.
 - *Subsection D*- Revised language relating to calculating total land area of development and estimated area to be disturbed in a registration statement.
 - *Subsection F*- Made the language of this section consistent with other VPDES permits.
 - *Subsection H*- Changed the timeline for submitting a complete registration statement from 60 days to 90 days prior to expiration of the permit and added requirement to pay all outstanding permit maintenance fees.
- 9VAC25-880-50: Registration statement.
 - *Subsection A 2 a (1)*- Changed the timeline for submitting a complete registration statement from 60 days to 90 days prior to expiration of the permit.
 - *Subsection B 2*- Added the requirement to include an entity identification number to be consistent with other VPDES permits.
 - *Subsection B 4*- Changed the format of a site map that is submitted.
 - *Subsection B 17*- Relocated provisions of this subsection to a more relevant subsection.
- 9VAC25-880-60: Termination of general permit coverage.
 - *Subsection B 2*- Changed the timeline for the termination of authorization to discharge from 60 days to 90 days after receipt of notice of termination.
- 9VAC25-880-70: Part I.
 - *Subsection A 2*- Changed when new support activities must be reported in a modified registration statement.
 - *Subsection E*- Changed to be consistent with other VPDES permits.
 - *Subsection F 3*- Changed the timeline for the termination of authorization to discharge from 60 days to 90 days after receipt of notice of termination.
- 9VAC25-880-70: Part II Stormwater Pollution Prevention Plan.
 - *Subsection B 1 e*- Clarified requirements and incorporate new defined terms. Language was added from EPA's general permit that requires documentation of the locations where stormwater treatment chemicals are used and stored.
 - *Subsection B 2 c*- Added language to clarify when certain requirements should be considered infeasible.

- *Subsection B 4 e*- Added requirements to prohibit disposal of concrete wash water through infiltration or on the ground.
- *Subsection B 8*- Added subsection to incorporate EPA's new requirements for controlling construction dewatering discharges.
- *Subsection D*- Added language to clarify coverage letter posting requirements.
- *Subsection F 3*- Added subsection to incorporate new EPA requirements about stormwater controls that must be repeated repaired.
- *Subsection G 2 b (2)*- Added language from EPA's general permit concerning when an inspection must happen after a measurable storm event.
- *Subsections G 3 and 4*- Added language stating that all stormwater discharge locations and all construction dewatering discharge locations must be inspected.
- *Subsection H*- Added subsection to detail corrective actions that must be taken under the new construction dewatering requirements.
- 9VAC25-880-70. Part III Conditions Applicable to All VPDES Permits.
 - *Subsection I*- Changed to ensure language is consistent with other VPDES permits.
 - *Subsection M*- Changed the timeline for submitting a complete registration statement from 60 days to 90 days prior to expiration of the permit.

The Office of the Attorney General will be sent the proposed regulation for certification of statutory authority. The U.S. Environmental Protection Agency will also need to review and approve the CGP prior to final adoption.

Attachments: TAC Membership, Draft General Permit Regulation, Agency Background Document (Town Hall) and Fact Sheet.

TAC COMMITTEE MEMBERSHIP
General VPDES Permit for Discharges of Stormwater from Construction Activities
(9VAC25-880)

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<p>DEQ Staff on TAC:</p>	<p>DEQ Staff Technical Liaisons:</p>

<p>Melanie Davenport, Director, Regulatory Affairs and Outreach Division Scott Morris, Director of Water Meghan Mayfield, Director, Division of Water Permitting Rebecca Rochet, Deputy Director, Division of Water Permitting Scott Van Der Hyde, Guidance & Regulation Coordinator</p>	<p>Matt Stafford, Manager, Office of Water Compliance Kristen Sadler, Water Enforcement Manager, Division of Enforcement Mark Remsberg, Construction Stormwater Compliance Manager, DEQ Northern Regional Office</p>
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townhall.virginia.gov

Exempt Action: Proposed Regulation Agency Background Document

Agency name	State Water Control Board
Virginia Administrative Code (VAC) Chapter citation(s)	9VAC25-880
VAC Chapter title(s)	General VPDES Permit for Discharges of Stormwater from Construction Activities
Action title	CH880- 2024 Amendment and Reissuance of the VPDES Stormwater Construction General Permit Regulation
Date this document prepared	5/11/23

This information is required for executive branch review pursuant to Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19. In addition, this information is required by the Virginia Registrar of Regulations pursuant to the Virginia Register Act (§ 2.2-4100 et seq. of the Code of Virginia). Regulations must conform to the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Brief Summary

Provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.

This regulatory action is proposed to amend and reissue the existing general permit regulation which expires on June 30, 2024. This general permit regulation authorizes the discharge of stormwater from construction activities equal to or greater than 1 acre of land disturbance or less than 1 acre of land disturbance within a larger common plan of development or sale that results in one acre or more of land disturbance. This regulatory action is needed for existing and new construction activities to be covered under this general permit regulation. The revisions to the general permit made through this regulatory action focused on changing citations and references to be consistent with the new Virginia Erosion and Stormwater Management Regulation (9VAC25-875, effective July 1, 2024); improving the clarity and readability of language in the permit; updating provisions to be consistent with other recently reissued VPDES permits; and amending and adding language and new provisions to be consistent with the reissued 2022 EPA Construction General Permit.

Mandate and Impetus

Identify the mandate for this regulatory change, and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, internal staff review, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, “mandate” has the same meaning as defined in the ORM procedures, “a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part.”

The impetus of the regulatory change is Virginia Code § 62.1-44.15:26(a) which states “All state permits issued by the Board under this article shall have fixed terms. The term of a state permit shall be based upon the projected duration of the project, the length of any required monitoring, or other project operations or permit conditions; however, the term shall not exceed five years.” This general permit regulation expires on June 30, 2024 and must be reissued in order to make coverage available for discharges of stormwater from construction activities after June 30, 2024.

Acronyms and Definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the “Definition” section of the regulations.

- DEQ (or Department): Department of Environmental Quality
- EPA (U.S. EPA): United States Environmental Protection Agency
- NPDES: National Pollutant Discharge Elimination System
- USC: United States Code
- VAC: Virginia Administrative Code
- VPDES: Virginia Pollutant Discharge Elimination System
- CGP: General VPDES Permit for Discharges of Stormwater from Construction Activities

Legal Basis

Please identify (1) the agency or other promulgating entity, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia or Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency or promulgating entity’s overall regulatory authority.

The basis of this regulation is Virginia Code § 62.1-44.15.:25 which authorizes the State Water Control Board under the Virginia Stormwater Management Act to issue, deny, revoke, terminate or amend stormwater permits and adopt regulations for the control of stormwater discharges from regulated construction activities to state waters. These discharges are defined as stormwater discharges from large construction activity and stormwater discharges from small construction activity.

Section 402 of the federal Clean Water Act (33 USC 1251 et seq.) authorizes states to administer the NPDES permit program under state law. The Commonwealth of Virginia received such authorization in 1975 under the terms of a Memorandum of Understanding with the U.S. EPA. This Memorandum of Understanding was modified on May 20, 1991 to authorized the Commonwealth to administer a VPDES General Permit Program.

Changes to this chapter of the Virginia Administrative Code are exempt from Article 2 of the Administrative Process Act (2.2-4006 A 8).

Purpose

Please explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it is intended to solve.

The proposed regulatory action protects water quality in the Commonwealth of Virginia which is essential to the health, safety and welfare of Virginia’s citizens and is needed in order to establish appropriate and necessary permitting requirements for discharges of stormwater from large and small construction activities. Under the federal Clean Water Act, these discharges are considered point source discharges and thus are subject to regulation under the VPDES permit program. The programmatic and technical requirements implemented by this general permit regulation are contained within the Virginia Stormwater Management Program Regulation (9VAC25-870-10 et seq.), which is in the process of being re-codified into the new Virginia Erosion and Stormwater Management Regulation (9VAC25-875). The proposed regulatory action authorizes discharges of stormwater from large and small construction activities and establishes the best management practices and control measures necessary to control such discharges. This regulatory action also implements the post-development water quality and water quantity design criteria as required in the Virginia Stormwater Management Program Regulation. The primary issue that needs to be addressed is that the existing general permit regulation expires on June 30, 2024, and must be reissued to continue to authorize stormwater discharges from construction activities through general permit coverage. Failure to reissue this general permit prevent any new construction activities from being covered by under the general permit after June 30, 2024.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the “Detail of Changes” section below.

Changes to the existing general permit regulation include updating the effective dates of the general permit to July 1, 2024, through June 30, 2029, updating requirements to be consistent with EPA’s 2022 Construction General Permit, revisions to provide clarity to permit requirements, and correcting typographical errors.

Issues

Please identify the issues associated with the regulatory change, including: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, include a specific statement to that effect.

The advantages to the public and the agency are that a VPDES general permit will continue to be available to construction site operators to enable them to discharge safely to surface waters without the increased cost and more complicated application process associated with obtaining an individual VPDES permit. Clarifications to permit requirements will assist all stakeholders with understanding permit requirements. There are no known disadvantages to the public or the agency.

Requirements More Restrictive than Federal

Please identify and describe any requirement of the regulatory change that is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements, or no requirements that exceed applicable federal requirements, include a specific statement to that effect.

There are no requirements that exceed applicable federal requirements.

Agencies, Localities, and Other Entities Particularly Affected

Please identify any other state agencies, localities, or other entities particularly affected by the regulatory change. "Particularly affected" are those that are likely to bear any identified disproportionate material impact, which would not be experienced by other agencies, localities, or entities. "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.

Other State Agencies Particularly Affected:

The Virginia Department of Transportation (VDOT) is particularly affected because of the amount of construction activities that they undertake requiring a CGP. This permit provides VDOT with a streamlined permitting approach for construction activities that are covered by this permit. If this permit is not re-issued prior to expiration, VDOT, like other entities would be required to obtain an individual permit for each construction project that disturbs one or more acres.

Localities and Other Entities Particularly Affected:

There are no localities or other entities particularly affected by the proposed regulation. The CGP is applicable statewide to any operator of a construction activity that disturbs one acre or greater or less than one acre and part of a common plan of development that will disturb one of more acres. This general permit provides localities with a streamlined permitting approach for construction activities that are covered by this permit. If this permit is not re-issued prior to expiration, localities, like other entities would be required to obtain an individual permit for each construction project that disturbs one or more acres.

Regulatory Flexibility Analysis

Pursuant to § 2.2-4007.1B of the Code of Virginia, please describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the regulatory change.

The reissuance of the General VPDES Permit for Discharges of Stormwater from Construction Activities accomplishes the objectives of applicable law and minimizes the costs to construction site operators and simplifies the application process. Without the general permit, operators would be required to obtain an individual permit which would increase the complexity of a permit application, time to obtain permit coverage, and permit costs.

Public Comment Received

Please summarize all comments received during the public comment period following the publication of the NOIRA, and provide the agency response. Ensure to include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency or board. If no comment was received, enter a specific statement to that effect.

Commenter	Comment	Agency response
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<p>Jason Williams, Dominion Energy</p>	<p>Electronic Submittals: Dominion Energy would appreciate more detailed language throughout the regulation specifying that permittees may submit and maintain records electronically and sign documents electronically using a valid, legal electronic signature process. For example, the signatory requirement under 9VAC25-220. Part II.A.F.4. Inspection report., could be reworded as follows: <i>j. The date and signature or electronic signature of the qualified personnel and the operator or its duly authorized representative.</i> Similarly, under 9VAC25-880-50. B. and C., DEQ could specify that the registration statement submittal and associated signature may be electronic.</p> <p>Maintenance Fees: Under 9VAC25-880-30. Authorization to discharge., permittees must submit permit fees. Dominion Energy finds that the annual maintenance fees pursuant to the construction stormwater general permit are difficult to track for both the regulated public and the agency. Annual invoicing can be inconsistent, and updates to the billing contact can be difficult to incorporate after the first registration statement is submitted. Dominion Energy finds that it can be challenging to verify with the Department of Environmental Quality (“DEQ”, “Department”) which sites owe fees and also to process the payment. Dominion Energy recommends that the Department offer an online system where permittees can look up their project fees and pay invoices by credit card. We also recommend that DEQ develop an online form which captures all required information and can accompany the annual submittal of online payments.</p> <p>Registration Statement: Under 9VAC25-880-50.B.14, Dominion Energy has identified the need to clarify the terms ‘Total land area of development’ and ‘estimated area to be disturbed’ in regard to erosion and sediment control/stormwater management plans. This language has caused confusion regarding what aspects of the project should be reflected in each of these items, and specifically, how to account for areas of forest and open space. Dominion Energy suggests that DEQ develop or incorporate the relevant definitions by reference, such as: <i>14. Total land area of development and estimated</i></p>	<p>Thank you for your comments on the NOIRA for the reissuance of Virginia Construction General Permit. Below are the department’s responses to each of the comments.</p> <p>Electronic submittals: The department has considered this comment and decided not to make the suggested changes as it believes the suggested changes would not meet requirements of EPA’s Cross-Media Electronic Reporting Rule.</p> <p>Maintenance Fees: The department has decided against making these suggested changes due to the lack of resources that it would take to set up and operate then type of website suggested in the comment.</p> <p>Registration Statement: The department addressed this comment in the proposed CGP by replacing “total land area of development” with “total area of the construction site.” This will reduce confusion because “construction site” is a defined term in the permit.</p> <p>Termination of general permit coverage: The department did not make the suggested change to list additional forest/open space BMP types. Localities have their own requirements for closing out projects, and listing these additional BMPs in the permit would harm that flexibility. The department did not add the additional timeline for notifying permittees of the completeness of their notice of termination package. The permit states the</p>
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<p><i>area to be disturbed by the construction activity during this permit term (to the nearest one-hundredth of an acre). When determining which areas to account for under this requirement, see the definitions of “development” and “land disturbance” under 8VAC870-10.</i></p> <p>We provide additional suggestions for the registration statement form later in this letter.</p> <p>Termination of general permit coverage: Under 9VAC25-880-60, the Notice of Termination (“NOT”) form is included by reference. It would better reflect current practice, if the best management practice (“BMP”) list on page two of the current NOT form could include all forest/open space BMP types. We request that the instructions or the Stormwater Management Facility details table on page 3 clearly indicate which fields are required to be filled out for Conserved Open Space.</p> <p>Additionally, it would improve regulatory certainty and project planning, if the Virginia Stormwater Management Program authority (“VSMP”, which may be either DEQ or a locality) would notify operators within a specified amount of time of NOT package completeness. We recommend 14 days which is consistent with the typical timeline for processing registration statements. Increased transparency in the NOT processes will give the permittee more certainty relative to the expected permit termination date.</p> <p>General Permit: Under 9VAC25-880-70, to ensure reuse opportunities are maximized, Dominion Energy would appreciate specific language instructing the operator how to document the movement of stockpiles or dispose of dirt at locations other than permitted landfills. The current practice is to discuss the option with the assigned inspector and document in the stormwater pollution prevention plan (SWPPP) in cases where acceptable reuse facilities are identified.</p> <p>Further, we note that the registration statement form requires information on any offsite disposal areas. It would be helpful if the DEQ provided clarifying language in 9VAC25-880-70 regarding how to proceed if offsite disposal areas (whether permitted landfills or other) are identified after the registration statement is submitted.</p>	<p>timeline provided in statute for when a notice of termination becomes effective.</p> <p>General Permit:</p> <p>The department did not make the suggested changes for reporting the location of off-site support activities and excavated material disposal areas. After discussions with the TAC and internally, no workable alternative was found to what currently exists in the permit.</p> <p>Reporting requirements:</p> <p>Part II H- Corrective actions:</p> <p>The department separated the referenced subsection into two separate subsections to better highlight the requirements and offer more clarity.</p> <p>Part III G- Reports of unauthorized discharges:</p> <p>The department changed the language to clarify that notification of an unauthorized discharge should be sent to both the department and the VESMP authority.</p> <p>Part III J- Notice of planned changes:</p> <p>The department added new language from EPA’s 2022 Construction General Permit that addresses this issue.</p> <p>Commentor was invited to participate on the TAC.</p>
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	<p>It would also be most efficient if DEQ could clarify that off-site stockpiling, such as in a laydown yard or storage facility, which is covered by a separate authorization does not need to be listed under Section III of the registration statement form. Dominion Energy requests that DEQ reword the instructions in Section III of the form to avoid confusion over the extent of activities that need to be described. We suggest the following language:</p> <p><i>List all off-site support activities and excavated material disposal areas being utilized for this project requiring coverage under this authorization. Include additional areas on a separate page. Do not include areas that are covered by a separate authorization.</i></p> <p>Reporting Requirements: Under 9VAC25-880 Part II.H. Corrective Actions., we recommend that DEQ clarify reporting requirements for sediment discharged beyond the authorized limits of disturbance where there is no sediment entering a waterway. The current permit states as follows: <i>The operator may be required to remove accumulated sediment deposits located outside of the construction activity covered by the general permit as soon as practicable in order to minimize environmental impacts. The operator shall notify the VSMP authority and the department...prior to the removal of sediments accumulated in surface waters including wetlands.</i> This language suggests that notification is required when sediments are accumulated in surface waters, but does not specifically identify whether reporting is required for discharges to upland areas outside the limits of disturbance (“LOD”). Clarifying these requirements will ensure that operators are adhering to permit requirements while also avoiding an unnecessary reporting burden on the agency and permittee where reporting is not required.</p> <p>Under 9VAC25-880 Part III.G. Reports of Unauthorized Discharges., Dominion Energy has identified the need for more clarity regarding who is to be contacted with required notifications where the locality is the VSMP authority. The current permit requires the operator to, “notify the Department of Environmental Quality” when</p>	
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Commenter	Comment	Agency response
	<p>there are unauthorized discharges within 24 hours. However, this section goes on to further require reporting to “the department and the VSMP authority within five days”. We seek clarity on whether it is DEQ’s intent to be notified of unauthorized discharges for instances where the locality is the VSMP and if solely the local VSMP is required to be notified within 24 hours. In instances where both DEQ and the local VSMP are notified, there have been situations where authorities having jurisdiction interpreted the discharge and prescribed corrective actions differently or have suggested that DEQ reporting was not required.</p> <p>Under, 9VAC-25-880 Part III.J. Notice of planned changes., we have identified the need for clarifying language in instances where the permittee has requested a planned change and is awaiting a response from the Department. There may be instances where field conditions necessitate moving forward with the change with the understanding that our construction activities and stormwater management may have to be further modified to accommodate additional changes that DEQ requires to approve the planned modification.</p> <p>Dominion Energy also suggests that the TAC be given the opportunity to discuss establishing thresholds that trigger the notice of planned change requirements. For instance, the West Virginia Department of Environmental Protection’s guidance on this matter provides that no formal modification is required when the LOD is being reduced or expanded by 0.5 acres or less.</p>	

Committer	Comment	Agency response
<p>Patrick Fanning, Chesapeake Bay Foundation</p>	<p>CBF would appreciate being considered for membership on the Technical Advisory Committee (TAC) the Virginia Department of Environmental Quality (DEQ) is convening to consider changes to the next round of the permit. Please include Patrick Fanning on the TAC and Joe Wood as his alternate.</p> <p>The TAC will also need to address important issues such as the adoption of changes made by the U.S. Environmental Protection Agency (EPA) in its 2022 Construction General Permit; the sufficiency of the existing Construction General Permit’s requirements for concrete wash water; considerations of storm intensity, duration, and frequency given the impacts of climate change and how to address such impacts; and how this permit will incorporate forthcoming turbidity water quality standards being developed by DEQ at the request of the State Water Control Board.</p>	<p>Thank you for your comments on the NOIRA for the reissuance of Virginia Construction General Permit.</p> <p>The department has maintained existing language on the need for operators to minimize sediment discharges in a manner that addresses the amount, frequency, and duration of precipitation.</p> <p>The department incorporated changes from EPA’s 2022 Construction General Permit and used suggestions from TAC members to directly address concrete wash water and turbidity.</p> <p>Committer was invited to participate on the TAC.</p>
<p>Matt DiBella, Greensite Concrete Washout, LLC</p>	<p>Careless handling of concrete wash water on construction sites creates a serious pollution risk from construction activities. Currently, the construction, maintenance, and dismantling of concrete wash water pits increases this risk by allowing wash water to be disposed of through infiltration.</p> <p>The committer requested that requirements be considered to better control the disposal of concrete wash water from construction activities.</p>	<p>Thank you for your comments on the NOIRA for the reissuance of Virginia Construction General Permit.</p> <p>The department has included language from EPA’s 2022 Construction General Permit that addresses this issue by clarifying that concrete wash water may not be disposed of through infiltration or otherwise disposed of on the ground.</p> <p>Committer was invited to participate on the TAC.</p>

<p>David Sligh, Wild Virginia</p>	<p>I am submitting these comments on behalf of Wild Virginia. We believe the process for developing the new version of the referenced permit must include analyses that have previously not been conducted, to determine whether there is a reasonable potential that discharges authorized by the permit will result in water quality standards (WQS) violations. Further, we assert that discharges made from sites covered by the conditions in the current general permit have resulted in WQS violations and that changes must be made to prevent these occurrences in the future.</p> <p>Also, Wild Virginia would like to be part of the Technical Advisory Committee (TAC) to work on developing the new permit. We have extensive experience with both the technical and legal/regulatory issues involved and are prepared to contribute to the deliberations of the group. Water Quality Standards Virginia Pollution Discharge Elimination System (VPDES) permits much ensure that all provisions of the water quality standards¹ will be met by discharges authorized under the permit conditions. This is true for general as well as individual VPDES permits. Therefore, the Department of Environmental Quality (DEQ) must conduct a reasonable potential analysis before issuance of this permit.</p> <p>In this regard, our concerns include but are not limited to the following:</p> <ul style="list-style-type: none"> • All pollutants or parameters that are pertinent to the discharges' impacts on state waters must be analyzed and appropriately controlled under the permit. Solids carried in runoff water must, of course, be addressed but examples of other parameters that are affected by the activities involved with construction include temperature and a range of pollutants that may be released to streams when soils are disturbed. <p>Water temperatures may well be increased in runoff from developed sites and could have serious impacts on coldwater streams and aquatic biota. Further, where runoff water is trapped in detention basins or other structures, temperatures may be substantially raised. For trout waters or waters that are habitat for other sensitive coldwater species, these impacts may be of great concern. Pollutants such as phosphorus, heavy</p>	<p>Thank you for your comments on the NOIRA for the reissuance of Virginia Construction General Permit.</p> <p>This permit is limited controlling the discharge of stormwater from construction activities. This permit cycle considers the existing controls from the current Virginia CGP and EPA's reissued 2022 CGP and takes into consideration the comments of TAC members in updating these requirements.</p> <p>Commentor was invited to participate on the TAC.</p>
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	<p>metals like arsenic, and organic chemicals are often bound to soil particles and may be discharged. These materials may reach the streams attached to the soils or detached during treatment of the runoff and discharged separately from solids. We know that soils in some areas of Virginia have significant amounts of arsenic bound to clays due to historic use of pesticides, particularly on orchards. Likewise, applications of sewage sludge and poultry waste have resulted in the deposition of a range of metals and organics that can affect the quality of the discharges. Some of these pollutants may be discharged upon land disturbance.</p> <ul style="list-style-type: none"> • All parts of the WQS regulations must be considered in the permit review and controls must be designed to meet them. If support of any criteria, narrative and numeric, and of the antidegradation policy cannot be assured under the general permit conditions, this permit review should specify such situations and require applicants to seek individual VPDES permits. DEQ has previously refused to analyze possible interference with recreation or other human uses from construction stormwater discharges and this deficiency must be remedied. Sediment-laden discharges that threaten aquatic life have also been allowed without proper acknowledgement or controls. <p>Before DEQ can assess compliance with antidegradation, information about baseline conditions must be collected. This would likely need to be supplied to the agency at the time a registration statement is submitted and the permit must specify the nature and quality of such data to be submitted in every necessary case. Where high quality would be lowered, this can only be allowed after a social or economic necessity is proven.</p> <ul style="list-style-type: none"> • The effectiveness and pollutant removal efficiencies of best management practices (BMPs) for erosion and sediment control can vary greatly and cannot be relied upon to ensure compliance with WQS without additional analysis. For example, where soils are heavy in clay-sized particles settling structures and filtering devices will often be inadequate to remove these pollutants and protect receiving waters. For this and other reasons, it will be necessary to require enhanced treatment methods in some areas. 	
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Commenter	Comment	Agency response
	<ul style="list-style-type: none"> • The requirements of the permit should include measures such as limits to the amount of area to be disturbed at any one time in preference to merely structural measures of pollution control. • DEQ must anticipate that a full analysis of all pollution parameters and all parts of the WQS will make more sites ineligible for coverage under the general permit. Procedures must be developed to enhance the collection and analysis of necessary information to make this screening decision efficient and reliable. We ask that, during this permit review, DEQ provide detailed information about its procedures and practices for reviewing registration statements, any occasions where additional information was required of applicants, and any instances when proposed activities were deemed ineligible for general permit coverage. 	

Public Participation

Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal and the impacts of the regulated community.

In addition to any other comments, the department is seeking comments on the costs and benefits of the proposal, the potential impacts of this regulatory proposal and any impacts of the regulation on farm and forest land preservation. The agency/board is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments for the public comment file may do so by mail, email or fax to Scott Van Der Hyde, DEQ, P.O. Box 1105 Richmond, VA 23218, phone number 804-659-1541 (for questions), fax number 804-698-4178 (please ensure recipient [Scott Van Der Hyde] is on fax or cover page of fax), email: scott.vanderhyde@deq.virginia.gov. Comments may also be submitted through the Public Forum feature of the Virginia Regulatory Town Hall web site at (<http://www.townhall.virginia.gov>). Written comments must include the name and address of the commenter. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

A public hearing will be held following the publication of this stage and notice of the hearing will be posted on the Virginia Regulatory Town Hall website (<http://www.townhall.virginia.gov>) and on the Commonwealth Calendar website (<https://commonwealthcalendar.virginia.gov/>). Both oral and written comments may be submitted at that time.

Detail of Changes

List all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. If the regulatory change will be a new chapter, describe the intent of the language and the expected impact. Please describe the difference

between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory change. Please include citations to the specific section(s) of the regulation that are changing.

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
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<p>9VAC25-880-1</p>		<p>Definitions.</p>	<p>The introductory paragraph was revised to improve readability and incorporate the new title and citation of the Virginia Erosion and Stormwater Management Regulation, which will become effective on July 1, 2024.</p> <p>Minor changes were made to terms throughout this section to ensure consistent use of terminology, improve readability, and correct grammatical errors. These minor changes did not alter, narrow, or expand the meaning of terms.</p> <p>New terms that were added and terms containing more significant changes are as follows:</p> <p>“Construction dewatering” is a new definition added to provided clarity for a new dewatering discharge section in the permit. This new definition incorporates language from EPA’s dewatering definition along with proposed language from the TAC.</p> <p>“Construction site” definition was revised to include water area, which conforms with the EPA’s definition construction site. Language was added to clarify that “construction site” includes construction support activities located on-site or off-site.</p> <p>“Construction support activity” is a new definition was that added based on the definition from EPA’s 2022 Construction General Permit (CGP). This term was previously used in Virginia’s CGP but was not defined.</p> <p>“Measurable storm event” definition was revised to comply with the addition of snow melt in EPA’s 2022 CGP.</p> <p>“Qualified personnel” is a new definition that was added to address the new stormwater team requirements in EPA’s 2022 CGP. The bulk of the definitions is pulled from 9VAC25-870-10. Additional language was developed by the department and added to detail certification options for qualified personnel.</p>
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Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
9VAC25-880-10		Purpose.	Existing language has been removed and replaced with new language to improve the clarity and readability of this section.
9VAC25-880-15		Applicability of incorporated by references based on the dates that they became effective.	A change was made to update the reference to the Code of Federal Regulations to its most current version.
9VAC25-880-20		Effective date of general permit.	Updated the dates that the general permit is effective to reflect the July 1, 2024 to June 30, 2029 permit term.

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
9VAC25-880-30		Authorization to discharge.	<p>Minor changes were made throughout this section to ensure consistent use of terms, improve readability, and correct grammatical errors. These minor changes did not alter the requirements of this section.</p> <p>Subsections containing more significant changes are listed below.</p> <p>Subsection A 2: Language added to clarify that permit fees includes all outstanding permit maintenance fees.</p> <p>Subsection C 2: Language added to allow for reporting new support activities in a modified registration statement once the need for the additional support activity is known.</p> <p>Subsection D: Language added to clarify that off-site construction support activities that are not authorized under the CGP shall not be included in calculating total land area of development and estimated area to be disturbed in the registration statement.</p> <p>Subsection F: This section was revised to be consistent with the authorized nonstormwater discharge sections in other recently issued general permits. These changes were made to ensure consistency across permits.</p> <p>Subsection H: Change in the timeline for submitting a completed registration statement from 60 days to 90 days prior to the expiration date of the permit. This change is meant to grant more time in reviewing registration statements for continuation of general permit coverage.</p> <p>Adds a requirement that all past due general maintenance fees must be paid prior to continuation of a general permit. This is intended to ensure that these fees are paid.</p>

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
9VAC25-880-40		Delegation of authorities to state and local programs.	Minor changes were made throughout this section to ensure consistent use of terms, improve readability, and correct grammatical errors. These minor changes did not alter the requirements of this section.

<p>9VAC25-880-50</p>		<p>Registration statement.</p>	<p>Minor changes were made throughout this section to ensure consistent use of terms, improve readability, and correct grammatical errors. These minor changes did not alter the requirements of this section.</p> <p>Subsections containing more significant changes are listed below.</p> <p>Subsection A 2 a (1): Change in the timeline for submitting a completed registration statement from 60 days to 90 days prior to the expiration date of the permit. This change is meant to grant more time in reviewing registration statements for continuation of general permit coverage.</p> <p>Subsection A 3: Changes were made to the title of this subsection, unnecessary language was removed, and other language was updated. These changes are meant to improve clarity and readability.</p> <p>Subsection B 2: Requirement to include a State Corporation Commission entity identification number was added to ensure consistency with the department’s other general permits.</p> <p>Subsection B 4: Changes requirement for submitting an 8.5-inch by 11-inch format site map to a legible site map. This was done to grant flexibility for submitting site maps while still ensuring the contents are readable.</p> <p>Subsection B 9: “or erosion and sediment control plans” was added account for the consolidation of 9VAC25-840 and 9VAC25-870.</p> <p>Subsection B 10 and 11: Subsections reformatted to improve readability and clarity.</p> <p>Subsection B 13: Subsection reformatted to improve readability and clarity.</p> <p>Subsection B 17: Subsection B 17 was moved to a newly created Subsection C because the contents deal with preparing</p>
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Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
			<p>a stormwater pollution prevention plan (SWPPP) rather than the contents of a registration statement.</p>
9VAC25-880-60		Termination of general permit coverage.	<p>Minor changes were made throughout this section to ensure consistent use of terms, improve readability, and correct grammatical errors. These minor changes did not alter the requirements of this section.</p> <p>Subsections containing more significant changes are listed below.</p> <p>Subsection B 2: Change to the timeline for which the termination of authorization to discharge from 60 days to 90 days after receipt of a notice of termination. This change was made to comply with § 62.1-44.15:26.1 of the Code of Virginia.</p> <p>Language was added to clarify the timeline for the termination of permit coverage does not apply if the operator is notified of an issue by the VESMP authority or the department.</p>
9VAC25-880-70		General permit.	<p>Minor changes were made throughout this section to ensure consistent use of terms, improve readability, and correct grammatical errors. These minor changes did not alter the requirements of this section.</p> <p>Subsections containing more significant changes are listed below.</p> <p><u>Part I</u></p> <p>Subsection A 2: Language added to allow for reporting new support activities in a modified registration statement once the need for the additional support activity is known.</p> <p>Subsection E: This section was revised to be consistent with the authorized nonstormwater discharge sections in other recently issued general permits. These changes were made to ensure consistency across permits.</p>

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
			<p>Subsection F 3: Change to the timeline for which the termination of authorization to discharge from 60 days to 90 days after receipt of a notice of termination. This change was made to comply with § 62.1-44.15:26.1 of the Code of Virginia.</p> <p>Language was added to clarify the timeline for the termination of permit coverage does not apply if the operated is notified of an issue by the VESMP authority or the department.</p> <p>Subsection F 4: Language added to improve clarity about which sections of the permit must be followed when submitting a notice of termination.</p> <p><u>Part II Stormwater Pollution Prevention Plan</u></p> <p>Subsection B 1 e: Revisions were made to existing language to improve readability and to add additional detail and clarity to what must be included in the construction site map.</p> <p>Added new language that requires listing the locations of areas where polymers, flocculants, or other stormwater treatment chemicals are used or stored. This language is from previous EPA permits but is new to Virginia’s permit.</p> <p>Subsection B 2 c: Revisions were made to improve readability and incorporate new defined terms.</p> <p>New language was added to subsections B 2 c (6)-(8). These additions provide additional clarity on where directing stormwater to vegetated areas, minimizing soil compaction, and preserving topsoil would be considered infeasible. The new language in these subsections comes from EPA’s permit.</p> <p>Subsection B 4 e (4)-(5): Revisions were made to incorporate changes in terms from EPA’s 2022 CGP.</p>

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
			<p>New language was added to clarify that concrete wash water cannot be disposed of through infiltration or otherwise disposed of on the ground. This new language is in response to issues raised through NOIRA public comments and during the TAC.</p> <p>Subsection B 8: This is a new subsection that is being added to Virginia’s 2024 CGP. This section is in response to new EPA requirements for controlling construction dewatering discharges. The department followed EPA’s concept of creating a turbidity benchmark that is not an effluent limitation.</p> <p>Subsection B 10: Revisions change “delegation of authority” to “duly authorized representative.” This change creates consistency with other sections of the permit and clarifies whose information needs to be included in the SWPPP.</p> <p>In addition, new language was added directing permittees to the provisions in the permit detailing signature and certification requirements. This was done to make the permit easier to navigate.</p> <p>Subsection B 11: Language was added clarifying that the SWPPP must contain a signature and certification and directing permittees to the provisions in the permit detailing signature and certification requirements. This was done to add clarity around requirements and to make the permit easier to navigate.</p> <p>Subsection C 5: Language was added directing permittees to the provisions in the permit detailing signature and certification requirements.</p> <p>Subsection D: Revisions were made, and new language was added to clarify requirements for where a notice of coverage letter must be posted.</p>

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
			<p>Subsection F 2: “Seven days” replaced with “five business days” to create consistency throughout the permit. Language was revised to add the need for routine maintenance as a trigger for this subsection.</p> <p>Subsection F 3: This is a new subsection incorporating new EPA requirements for what an operator must do in the event that they have to repeatedly repair the same stormwater control at the same location.</p> <p>Subsection G 1: Language was added to clarify that the qualified personnel conducting inspections may be a person on the operator’s staff or a third party hired to conduct inspections.</p> <p>Subsection G 2 b (2): New language was added from EPA’s 2022 CGP that adds more detail around when an inspection must take place in the event of a measurable storm event.</p> <p>Subsection G 3: Revisions made to fix numbering issues that existed in past permits and to account for new defined terms.</p> <p>Subsections d and e were added to incorporate language from EPA’s permit stating that all stormwater discharge locations and all construction dewatering discharge locations must be inspected. This language existed in previous EPA permits but is new to Virginia’s CGP. At the request of the TAC, this language was altered from the EPA requirement to state that documentation of the visual quality and other characteristics of discharges are only required when an inspection indicates that pollutants are being discharged.</p> <p>Subsection G 4: Revisions made to account for new defined terms.</p> <p>Subsections c and d were added to incorporate language from EPA’s permit stating that all stormwater discharge</p>

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
			<p>locations and all construction dewatering discharge locations must be inspected. This language existed in previous EPA permits but is new to Virginia's CGP. At the request of the TAC, this language was altered from the EPA requirement to state that documentation of the visual quality and other characteristics of discharges are only required when an inspection indicates that pollutants are being discharged.</p> <p>New language was added in subsection I to require reporting of incidents of noncompliance or a certification that the construction activity is in compliance with the SWPPP.</p> <p>New language was added directing permittees to the provisions in the permit detailing signature and certification requirements.</p> <p>Subsection H: Revision was made to change "seven days" to "five business days" to create consistency throughout the permit.</p> <p>Subsection 2 was added to detail corrective actions that must be taken if required by the new construction dewatering turbidity benchmark in 9VAC25-880-70 B 8.</p> <p>Part III: Conditions applicable to all VPDES permits.</p> <p>Subsection H: Revision was made to change "five days" to "five calendar days." This was done to create a clear distinction from the use of "five business days" in other parts of the permit.</p> <p>Subsection I: This subsection was updated to ensure consistency with other recently reissued general permits in Virginia. The changes from this section come from the recently reissued General Permit for Vehicle Wash Facilities and Laundry Facilities (9VAC25-194-70). The revisions include changing "surface waters" to "state waters," minor linguistic</p>

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
			<p>and number revisions, and changes to the subsection dealing with making reports to the department or VESMP authority.</p> <p>Subsection K: Revision made to add notices of termination to the types of documents requiring signatures.</p> <p>Subsection M: Change in the timeline for submitting a completed registration statement from 60 days to 90 days prior to the expiration date of the permit. This change makes this subsection consistent with the requirements of 9VAC25-880-50 A 2 a (1).</p>

Changes are made throughout this regulation to update citations and references to the Erosion and Sediment Control Regulations (9VAC25-840), Erosion and Sediment Control and Stormwater Management Certification Regulations (9VAC25-850), and Virginia Stormwater Management Program Regulation (9VAC25-870) to reflect the consolidation of these three chapters into the Virginia Erosion and Stormwater Management Regulation (9VAC25-875). Additionally, the term “board” was changed to “department” throughout the regulation in response to Chapter 356 of the 2022 Acts of Assembly.

Family Impact

In accordance with § 2.2-606 of the Code of Virginia, please assess the potential impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one’s spouse, and one’s children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

This regulation will have no direct impact on the institution of the family or family stability.

1 **Project 7057 - Exempt Proposed for June 22, 2023 State Water Control Board meeting**
2 **25-880 - 2024 Amendment and Reissuance of the Existing General Permit Regulation**

3 Chapter 880

4 General VPDES Permit for Discharges of Stormwater from Construction Activities (~~formerly Part~~
5 ~~XIV, 4VAC50-60~~)

6 **9VAC25-880-1. Definitions.**

7 The words and terms below, when used in this chapter, shall have the following meanings
8 unless the context clearly indicates otherwise. ~~The~~ For the purposes of this chapter, words and
9 terms used in this chapter shall have the meanings that are defined in the Virginia Erosion and
10 Stormwater Management Act (Article 2-3 (§ 62.1-44.15:24 et seq.) of Chapter 3.1 of Title 62.1 of
11 the Code of Virginia), this chapter, and 9VAC25-870 the Virginia Erosion and Stormwater
12 Management Regulation (9VAC25-875), shall have those meanings unless the context clearly
13 indicates otherwise, except as otherwise specified in this section. Terms not defined in the Act,
14 this chapter, or 9VAC25-870 shall have the meaning attributed to them in the federal Clean Water
15 Act (33 USC § 1251 et seq.) (CWA). For the purposes of this chapter:

16 "Board" means the State Water Control Board. When used outside the context of the
17 promulgation of regulations, including regulations to establish general permits, "board" means the
18 Department of Environmental Quality.

19 "Business day" means Monday through Friday excluding state holidays.

20 "Commencement of land disturbance" means the initial disturbance of soils associated with
21 clearing, grading, or excavating activities or other construction activities (e.g., stockpiling of fill
22 material).

23 "Construction dewatering" means the act of draining or pumping stormwater or ground water
24 from building foundations, vaults, and trenches, or other similar points of accumulation, including
25 from sediment basins or similar impoundments for maintenance or decommissioning purposes.
26 Construction dewatering does not include temporary pump arounds associated with instream
27 construction activities.

28 "Construction site" means the land or water area where any ~~land-disturbing~~ construction
29 activity is physically located or conducted, including any adjacent land used or preserved in
30 connection with the land-disturbing activity. The term "construction site" includes construction
31 support activities located on-site or off-site.

32 "Construction support activity" means a construction-related activity that specifically supports
33 construction and involves land disturbance or pollutant-generating activities of its own, and can
34 include activities associated with concrete or asphalt batch plants, equipment staging yards,
35 materials storage areas, excavated material disposal areas, and borrow areas.

36 "Department" means the Department of Environmental Quality.

37 "Final stabilization" means that one of the following situations has occurred:

38 1. All ~~soil-disturbing~~ soil-disturbing activities at the construction site have been completed
39 and a permanent vegetative cover has been established on denuded areas not otherwise
40 permanently stabilized. Permanent vegetation shall not be considered established until a
41 ground cover is achieved that is uniform (e.g., evenly distributed), mature enough to
42 survive, and will inhibit erosion.

43 2. For individual lots in residential construction, final stabilization can occur by either:

44 a. The homebuilder completing ~~final~~ permanent stabilization as specified in subdivision
45 1 of this definition; or

46 b. The homebuilder establishing temporary soil stabilization, including perimeter
47 controls for an individual lot prior to occupation of the home by the homeowner, and
48 providing written notification to the homeowner of the need for, and benefits of, ~~final~~
49 permanent stabilization as specified in subdivision 1 of this definition. The homebuilder
50 shall maintain a copy of the written notification and a signed statement certifying that
51 the information was provided to the homeowner in accordance with the stormwater
52 pollution prevention plan recordkeeping requirements as specified in Part II G 6.

53 3. For construction ~~projects~~ activities on land used for agricultural purposes, ~~final~~
54 permanent stabilization may be accomplished by returning the disturbed ~~land~~ area to its
55 preconstruction agricultural use. ~~Areas disturbed~~ Disturbed areas that were not previously
56 used for agricultural activities, such as buffer strips immediately adjacent to surface
57 waters, and areas that are not being returned to their preconstruction agricultural use shall
58 meet the ~~final~~ permanent stabilization criteria specified in subdivision 1 or 2 of this
59 definition.

60 "Immediately" means as soon as practicable, but no later than the end of the next business
61 day, following the day when the ~~land-disturbing~~ construction activities have temporarily or
62 permanently ceased. In the context of this general permit, "immediately" is used to define the
63 deadline for initiating stabilization measures.

64 "Impaired waters" means surface waters identified as impaired on the ~~2016~~ 2022 §
65 305(b)/303(d) Water Quality Assessment Integrated Report.

66 "Infeasible" means not technologically possible or not economically practicable and
67 achievable in light of best industry practices.

68 "Initiation of stabilization activities" means:

- 69 1. Prepping the soil for vegetative or nonvegetative stabilization;
- 70 2. Applying mulch or other nonvegetative product to the exposed area;
- 71 3. Seeding or planting the exposed area;
- 72 4. Starting any of the above activities on a portion of the area to be stabilized, but not on
73 the entire area; or
- 74 5. Finalizing arrangements to have the stabilization product fully installed in compliance
75 with the applicable deadline for completing stabilization.

76 This list is not exhaustive.

77 "Measurable storm event" means a rainfall event producing 0.25 inches of rain or greater over
78 24 hours or snow melt from a snow event producing 3.25 inches or more of snow within a 24-hour
79 period.

80 "Qualified personnel" means a person knowledgeable in the principles and practices of
81 erosion and sediment and stormwater management controls who possesses the skills to assess
82 conditions at the construction site for the operator that could impact stormwater quality and
83 quantity and to assess the effectiveness of any sediment and erosion control measures or
84 stormwater management facilities selected to control the quality and quantity of stormwater
85 discharges from the construction activity. On or after July 1, 2025, "qualified personnel" shall hold
86 an unexpired certificate of competence for Project Inspector for Erosion and Sediment Control
87 and an unexpired certificate of competence for Project Inspector for Stormwater Management,
88 both issued by the department, a Construction General Permit Qualified Personnel Certificate, or
89 an equivalent certification provided by EPA (currently titled Construction Inspection Training
90 Course).

91 "Stabilized" means land that has been treated to withstand normal exposure to natural forces
 92 without incurring erosion damage.

93 **9VAC25-880-10. Purpose.**

94 This general permit regulation governs stormwater discharges from regulated construction
 95 ~~activities. activity, which includes large construction activity, small construction activity, or~~
 96 ~~construction support activity, through a point source to surface waters, or through a municipal or~~
 97 ~~nonmunicipal separate storm sewer system to surface waters. For the purposes of this chapter,~~
 98 ~~these discharges are defined as stormwater discharges associated with large construction~~
 99 ~~activity, and stormwater discharges associated with small construction activity. Stormwater~~
 100 ~~discharges associated with other types of industrial activity shall not have coverage under this~~
 101 ~~general permit. This general permit covers only discharges through a point source to surface~~
 102 ~~waters or through a municipal or nonmunicipal separate storm sewer system to surface waters.~~
 103 Stormwater discharges associated with regulated industrial activity that originate from a
 104 construction activities site that have been completed and the site has undergone final stabilization
 105 are not authorized by this general permit.

106 **9VAC25-880-15. Applicability of incorporated references based on the dates that they**
 107 **became effective.**

108 Except as noted, when a regulation of the United States set forth in the Code of Federal
 109 Regulations is referenced and incorporated herein, that regulation shall be as it exists and has
 110 been published in the July 1, ~~2018~~ 2022, update.

111 **9VAC25-880-20. Effective date of general permit.**

112 This general permit is effective on July 1, ~~2019~~ 2024. The general permit will expire on June
 113 30, ~~2024~~ 2029. This general permit is effective for any covered operator upon compliance with all
 114 provisions of 9VAC25-880-30.

115 **9VAC25-880-30. Authorization to discharge.**

116 A. Any operator governed by this general permit is authorized to discharge to surface waters
 117 of the Commonwealth of Virginia provided that:

- 118 1. The operator submits a complete and accurate registration statement in accordance
 119 with 9VAC25-880-50, unless not required, and receives acceptance of the registration by
 120 the ~~board~~ department;
- 121 2. The operator submits any all permit fees, unless not required including all outstanding
 122 permit maintenance fees, in accordance with ~~9VAC25-870-700~~ 9VAC25-875-1290 et
 123 seq., unless not required;
- 124 3. The operator complies with the applicable requirements of 9VAC25-880-70;
- 125 4. The operator obtains approval of:
 - 126 a. An erosion and sediment control plan from the appropriate Virginia Erosion and
 127 Sediment Control Program (VESCP) authority ~~as authorized under the Erosion and~~
 128 ~~Sediment Control Regulations (9VAC25-840)~~, unless the operator receives from the
 129 VESCP authority an "agreement in lieu of a plan" as defined in ~~9VAC25-840-10~~
 130 9VAC25-875-20 or prepares the erosion and sediment control plan in accordance with
 131 ~~annual~~ standards and specifications approved by the department.; and
 - 132 b. Except as specified in 9VAC25-880-70 Part II B 3 b, a stormwater management
 133 plan from the appropriate Virginia Erosion and Stormwater Management Program
 134 (VSMP) (VESMP) authority ~~as authorized under the VSMP Regulation (9VAC25-870)~~,
 135 unless the operator receives from the ~~VSMP~~ VESMP authority an "agreement in lieu
 136 of a stormwater management plan" as defined in ~~9VAC25-870-10~~ 9VAC25-875-20 or

137 prepares the stormwater management plan in accordance with ~~annual~~ standards and
 138 specifications approved by the department.; and

139 5. The ~~board~~ department has not notified the operator that the discharge is not eligible for
 140 coverage in accordance with subsection B of this section.

141 B. The ~~board~~ department will notify an operator that the discharge is not eligible for coverage
 142 under this general permit in the event of any of the following:

143 1. The operator is required to obtain an individual permit in accordance with ~~9VAC25-870-~~
 144 ~~440~~ 9VAC25-875-980 B;

145 2. The operator is proposing discharges to surface waters specifically named in other
 146 board regulations that prohibit such discharges;

147 3. The discharge causes, may reasonably be expected to cause, or contributes to a
 148 violation of water quality standards (9VAC25-260);

149 4. The discharge violates or would violate the antidegradation policy in the Water Quality
 150 Standards (9VAC25-260-30); or

151 5. The discharge is not consistent with the assumptions and requirements of an applicable
 152 TMDL approved prior to the term of this general permit.

153 C. This general permit also authorizes stormwater discharges from construction support
 154 activities (~~e.g., concrete or asphalt batch plants, equipment staging yards, material storage areas,~~
 155 ~~excavated material disposal areas, borrow areas~~) located on-site or off-site provided that:

156 1. The support activity is directly related to a construction activity site that is required to
 157 have general permit coverage for stormwater discharges ~~of stormwater from construction~~
 158 ~~activities~~;

159 2. The support activity is not a commercial operation, nor does it serve multiple unrelated
 160 construction ~~activities by different operators~~ sites;

161 3. The support activity does not operate beyond the completion of the last construction
 162 activity it supports;

163 4. The support activity is ~~identified~~ reported in the registration statement at the time of
 164 general permit coverage or reported in a modified registration statement once the need
 165 for the support activity is known;

166 5. Appropriate control measures are identified in a stormwater pollution prevention plan
 167 and implemented to address the discharges from the support activity ~~areas~~; and

168 6. All applicable, state, federal, and local approvals are obtained for the support activity.

169 ~~D. Support activities located off-site are not required to be covered under this general permit.~~
 170 ~~Discharges of stormwater~~ Stormwater discharges from off-site construction support ~~activities~~
 171 activity may be authorized under another state or VPDES permit. ~~Where stormwater discharges~~
 172 ~~from an off-site construction support activities activity~~ are not authorized under this general permit,
 173 the land area of the off-site construction support activity need shall not be included in determining
 174 the total land disturbance acreage of the construction activity seeking general permit coverage
 175 total land area of development and estimated area to be disturbed reported in the registration
 176 statement.

177 E. Discharges authorized by this general permit may be commingled with other sources of
 178 stormwater that are not required to be covered under a state permit, so long as the commingled
 179 discharge is in compliance with this general permit. Discharges authorized by a separate state or
 180 VPDES permit may be commingled with discharges authorized by this general permit so long as
 181 all such discharges comply with all applicable state and VPDES permit requirements.

182 F. Authorized nonstormwater discharges. The following nonstormwater discharges from
 183 construction activities are authorized by this general permit:

- 184 1. Discharges from emergency firefighting activities;
- 185 2. Fire hydrant flushings managed to avoid an instream impact;
- 186 3. Water used to wash vehicles or equipment ~~where~~ provided no soaps, solvents, or
- 187 detergents ~~have not been~~ are used and the wash water ~~has been~~ is filtered, settled, or
- 188 similarly treated prior to discharge;
- 189 4. Water used to control dust that ~~has been~~ is filtered, settled, or similarly treated prior to
- 190 discharge;
- 191 5. Potable water ~~source~~, including uncontaminated waterline flushings, managed in a
- 192 manner to avoid an instream impact;
- 193 6. Routine external building wash down ~~where~~ provided no soaps, solvents, or detergents
- 194 ~~have not been~~ are used, external building surfaces do not contain hazardous substances,
- 195 and the wash water ~~has been~~ is filtered, settled, or similarly treated prior to discharge;
- 196 7. Pavement wash water ~~where~~ provided spills or leaks of toxic or hazardous materials
- 197 have not occurred ~~(or where, unless~~ all spilled or leaked material ~~has been~~ is removed
- 198 prior to washing); ~~where~~ soaps, solvents, or detergents ~~have not been~~ are not used; and
- 199 ~~where~~ the wash water ~~has been~~ is filtered, settled, or similarly treated prior to discharge;
- 200 8. Uncontaminated air conditioning or compressor condensate;
- 201 9. Uncontaminated groundwater or spring water;
- 202 10. Foundation or footing drains ~~where~~ provided flows are not contaminated with process
- 203 materials such as solvents or contaminated groundwater;
- 204 11. Uncontaminated, excavation dewatering, including dewatering of trenches and
- 205 excavations that ~~have been~~ are filtered, settled, or similarly treated prior to discharge; and
- 206 12. Landscape ~~irrigations~~ irrigation.
- 207 G. ~~Approval for coverage~~ Coverage under this general permit does not relieve any operator
- 208 of the responsibility to comply with any other applicable federal, state or local statute, ordinance
- 209 or regulation.
- 210 H. Continuation of general permit coverage.
- 211 1. Permit coverage shall expire at the end of its term. However, expiring permit coverages
- 212 are automatically continued if ~~the owner~~ an operator has submitted a complete registration
- 213 statement at least ~~60~~ 90 days prior to the expiration date of the permit, or a later submittal
- 214 date established by the ~~board, which cannot extend beyond the expiration date of the~~
- 215 ~~permit~~ department and have paid all past due general permit maintenance fees. The
- 216 permittee is authorized to continue to discharge until such time as the ~~board~~ department
- 217 either:
- 218 a. Issues coverage to the operator under this general permit; or
- 219 b. Notifies the operator that the discharge is not eligible for coverage under this general
- 220 permit.
- 221 2. When ~~the~~ an operator that was covered under the expiring or expired general permit
- 222 has violated the conditions of that permit, the ~~board~~ department may choose to do any or
- 223 all of the following:
- 224 a. Initiate enforcement action based upon the general permit coverage that has been
- 225 continued;
- 226 b. Issue a notice of intent to deny coverage under the reissued general permit. If the
- 227 general permit coverage is denied, the operator would then be required to cease
- 228 discharges authorized by the continued general permit coverage or be subject to
- 229 enforcement action for operating without a ~~state~~ permit;

- 230 c. Issue an individual permit with appropriate conditions; or
 231 d. Take other actions authorized by the ~~VSMP~~ Virginia Erosion and Stormwater
 232 Management Regulation (9VAC25-870) (9VAC25-875).

233 **9VAC25-880-40. Delegation of authorities to state and local programs.**

234 A ~~board-approved VSMP~~ department-approved VESMP authority is authorized to administer
 235 requirements of this general permit, including but not limited to: (i) registration statement
 236 acceptance, (ii) general permit fee collection, and (iii) stormwater management plan review and
 237 approval dependent upon conditions established as part of the ~~board~~ approval.

238 **9VAC25-880-50. Registration statement.**

239 A. Deadlines for submitting registration statement. Any operator seeking coverage under this
 240 general permit, and that is required to submit a registration statement, shall submit a complete
 241 and accurate general VPDES permit registration statement in accordance with this section, which
 242 shall serve as a notice of intent for coverage under the general VPDES permit for discharges of
 243 stormwater from construction activities.

244 1. New construction activities.

245 a. Any operator proposing a new stormwater discharge from construction activities
 246 shall submit a complete and accurate registration statement to the ~~VSMP~~ VESMP
 247 authority prior to the commencement of land disturbance.

248 b. Any operator proposing a new stormwater discharge from construction activities in
 249 response to a public emergency where the related work requires immediate
 250 authorization to avoid imminent endangerment to human health or the environment is
 251 authorized to discharge under this general permit, provided that:

252 (1) The operator submits a complete and accurate registration statement to the ~~VSMP~~
 253 VESMP authority no later than 30 days after ~~commencing~~ the commencement of land
 254 disturbance; and

255 (2) Documentation to substantiate the occurrence of the public emergency is provided
 256 with the registration statement.

257 c. Any operator proposing a new stormwater discharge associated with a small
 258 construction activity involving the construction of a single-family detached residential
 259 structure, within or outside a common plan of development or sale, is authorized to
 260 discharge under this general permit and is not required to submit a registration
 261 statement ~~or~~. Any operator proposing a new stormwater discharge associated with the
 262 construction of a single-family detached residential structure, within or outside a
 263 common plan of development or sale is not required to submit the department portion
 264 of the permit fee.

265 2. Existing construction activities.

266 a. Any operator who was authorized to discharge under the expiring or expired 2019
 267 general permit and who intends to continue coverage under this general permit shall:

268 (1) Submit a complete and accurate registration statement to the ~~VSMP~~ VESMP
 269 authority at least ~~60~~ 90 days prior to the expiration date of the existing permit or a later
 270 submittal date established by the ~~board~~ department; and

271 (2) Update its stormwater pollution prevention plan to comply with the requirements of
 272 this general permit no later than 60 days after the date of coverage under this general
 273 permit.

274 b. Any operator with an existing stormwater discharge associated with a small
 275 construction activity involving the construction of a single-family detached residential
 276 structure, within or outside a common plan of development or sale that intends to

277 continue coverage under this general permit, is authorized to discharge under this
 278 general permit and is not required to submit a registration statement or the department
 279 portion of the permit fee, provided that the operator updates its stormwater pollution
 280 prevention plan to comply with the requirements of this general permit no later than 60
 281 days after the date of coverage under this general permit. Any operator with an existing
 282 stormwater discharge associated with the construction of a single-family detached
 283 residential structure, within or outside a common plan of development or sale that
 284 intends to continue coverage under this general permit is not required to submit the
 285 department portion of the permit fee.

286 3. ~~For stormwater discharges from construction activities where the operator changes, the~~
 287 Transfer of ownership. The new operator shall submit a complete and accurate registration
 288 statement or transfer of ownership agreement form, and any other documents deemed
 289 necessary required by the VSMP VESMP authority, to the VSMP VESMP authority to
 290 demonstrate transfer of ownership and long term maintenance responsibilities for
 291 stormwater management facilities, as required, has occurred prior to assuming operational
 292 control over construction site specifications or commencing work on-site the
 293 commencement of land disturbance.

294 4. ~~Late notifications submissions.~~ Operators are not prohibited from submitting registration
 295 statements after commencing the commencement of land disturbance. When a late
 296 registration statement is submitted, authorization for discharges shall not occur until
 297 coverage under the general permit is issued. The VSMP VESMP authority, department,
 298 board, and the EPA reserve the right to take enforcement action for any unpermitted
 299 discharges that occur between the commencement of land disturbance and discharge
 300 authorization.

301 5. Late registration statements. Registration statements for existing facilities covered
 302 under subdivision A 2 a of this section will be accepted after the expiration date of this
 303 permit, but authorization to discharge will not be retroactive. The VSMP VESMP authority,
 304 department, board, and the EPA reserve the right to take enforcement action for any
 305 unpermitted discharges that occur after existing permit coverage expires and prior to
 306 coverage under this permit is approved.

307 B. Registration statement. The operator shall submit a complete and accurate registration
 308 statement to the VSMP VESMP authority that contains the following information:

309 1. Name, contact, mailing address, telephone number, and email address if available of
 310 the construction activity operator. No more than one operator may receive coverage under
 311 each registration statement;

312 NOTE: General permit coverage will be issued to this operator, and the certification in
 313 subdivision 17 of this subsection shall be signed by the appropriate person associated
 314 with this operator as described in Part III K of 9VAC25-880-70.

315 2. State Corporation Commission entity identification number if the operator is required to
 316 obtain an entity identification number;

317 2 3. Name and physical location address of the construction activity, when available, to be
 318 covered under this general permit, including city or county, and latitude and longitude in
 319 decimal degrees (six digits - ten-thousandths place);

320 3 4. A legible site map (in an 8.5 inch by 11 inch format) showing the location of the existing
 321 or proposed land-disturbing activities for which the operator is seeking permit coverage,
 322 the limits of land disturbance, construction entrances, on-site construction support
 323 activities, and all water bodies receiving stormwater discharges from the construction site;

324 4 5. If off-site construction support activities will be used, the name and physical location
325 address, when available, of all off-site construction support activities, including city or
326 county; latitude and longitude in decimal degrees (six digits - ten-thousandths place); and
327 whether or not the off-site construction support activity will be covered under this general
328 permit or a separate VPDES permit;

329 ~~5~~ 6. If excavated material (i.e., fill) will be transported off the construction site for disposal,
330 the name and physical location address, when available, of all off-site excavated material
331 disposal areas, including city or county; latitude and longitude in decimal degrees (six
332 digits – ten-thousandths place); and the contents of the excavated material;

333 ~~6~~ 7. Status of the construction activity: federal, state, public, or private;

334 ~~7~~ 8. Nature of the construction activity (e.g., commercial, industrial, residential,
335 agricultural, oil and gas, etc.);

336 ~~8~~ 9. If stormwater management or erosion and sediment control plans for the construction
337 activity have been approved by an entity with department approved ~~annual~~ standards and
338 specifications, ~~the name of the entity with the department approved annual standards and~~
339 ~~specifications. A copy of the a complete and accurate~~ annual standard and specification
340 entity form shall be submitted with the registration statement;

341 ~~9~~ 10. ~~If the construction activity was previously authorized to discharge under the general~~
342 ~~permit effective July 1, 2014, the~~ The date of erosion and sediment control plan approval
343 for the estimated area to be disturbed by the construction activity during this permit term
344 for construction activities that were authorized to discharge under the expiring or expired
345 2019 general permit;

346 ~~10~~ 11. ~~If the construction activity was previously authorized to discharge under the general~~
347 ~~permit effective July 1, 2014, whether~~ If land disturbance has commenced for construction
348 activities that were authorized to discharge under the expiring or expired 2019 general
349 permit;

350 ~~11~~ 12. Name of the receiving waters and sixth order Hydrologic Unit Code (HUC);

351 ~~12~~ 13. ~~If the discharge is through a municipal separate storm sewer system (MS4), the~~
352 The name of the MS4 municipal separate storm sewer system (MS4) operator if the
353 construction activity discharges to a MS4;

354 ~~13~~ 14. Estimated ~~project~~ construction activity start date and completion date;

355 ~~14~~ 15. Total ~~land~~ area of ~~development~~ the construction site and estimated area to be
356 disturbed by the construction activity during ~~this~~ the 2024 general permit term (to the
357 nearest one-hundredth of an acre);

358 ~~15~~ 16. ~~Whether~~ If the area to be disturbed by the construction activity is part of a larger
359 common plan of development or sale;

360 ~~16~~ 17. If nutrient credits ~~are to be~~ will be used to ~~demonstrate compliance~~ comply with the
361 water quality ~~technical design~~ criteria ~~as allowed in 9VAC25-870-65 F requirements~~
362 (9VAC25-875-590), a letter of availability from an appropriate nutrient bank that nonpoint
363 source nutrient credits are available; and

364 ~~17~~. A stormwater pollution prevention plan (SWPPP) shall be prepared in accordance with
365 the requirements of the General VPDES Permit for Stormwater Discharges from
366 Construction Activities prior to submitting the registration statement. By signing the
367 registration statement, the operator certifies that the SWPPP has been prepared; and

368 18. The following certification: "I certify under penalty of law that I have read and
369 understand this registration statement and that this document and all attachments were
370 prepared in accordance with a system designed to assure that qualified personnel properly

371 gathered and evaluated the information submitted. Based on my inquiry of the person or
 372 persons who manage the system or those persons directly responsible for gathering the
 373 information, the information submitted is to the best of my knowledge and belief true,
 374 accurate, and complete. I am aware that there are significant penalties for submitting false
 375 information including the possibility of fine and imprisonment for knowing violations."

376 C. A stormwater pollution prevention plan (SWPPP) shall be prepared in accordance with this
 377 general permit prior to submitting the registration statement. By signing the registration statement,
 378 the operator certifies that the SWPPP has been prepared.

379 ~~⊖~~ D. The registration statement shall be signed in accordance with 9VAC25-880-70, Part III
 380 K.

381 **9VAC25-880-60. Termination of general permit coverage.**

382 A. Requirements. The operator of the construction activity shall submit a complete and
 383 accurate notice of termination, unless a registration statement was not required to be submitted
 384 in accordance with 9VAC25-880-50 A 1 c or A 2 b for single-family detached residential structures,
 385 to the ~~V~~S~~M~~P V~~E~~S~~M~~P authority after one or more of the following conditions have been met:

386 1. Necessary permanent control measures included in the SWPPP for the construction
 387 site are in place and functioning effectively and final stabilization has been achieved on all
 388 portions of the construction site for which the operator has operational control. When
 389 applicable, long-term responsibility and maintenance requirements for permanent control
 390 measures shall be recorded in the local land records prior to the submission of a complete
 391 and accurate notice of termination, and the construction record drawing prepared;

392 2. Another operator has assumed control over all areas of the construction site that have
 393 not been finally stabilized and obtained coverage for the ongoing discharge;

394 3. Coverage under an alternative VPDES permit or state other applicable permit has been
 395 obtained; or

396 4. For individual lots in residential construction only, final stabilization as defined in
 397 9VAC25-880-1 has been completed, including providing written notification to the
 398 homeowner and incorporating a copy of the notification and signed certification statement
 399 into the SWPPP, and the residence has been transferred to the homeowner.

400 B. Notice of termination due date and effective date.

401 1. The notice of termination shall be submitted no later than 30 days after one of the
 402 conditions in subsection A of this section is met.

403 2. Termination of authorization ~~to discharge for the conditions set forth in subdivision A 1~~
 404 ~~of this section~~ shall become effective upon notification from the department that the
 405 provisions of subdivision A 1 of this section have been met or ~~60~~ 90 days after ~~submittal~~
 406 receipt of a complete and accurate notice of termination, whichever occurs first, unless
 407 otherwise notified by the VESMP authority or the department.

408 3. ~~Authorization to discharge terminates at midnight on the date that the notice of~~
 409 ~~termination is submitted for the conditions set forth in subdivisions A 2 through A 4 of this~~
 410 ~~section unless otherwise notified by the V~~S~~M~~P authority or the department.

411 C. Notice of termination. The complete notice of termination shall contain the following
 412 information:

413 1. Name, contact, mailing address, telephone number, and email address, if available, of
 414 the construction activity operator;

415 2. Name and physical location address of the construction activity, when available,
 416 covered under this general permit, including city or county, and latitude and longitude in
 417 decimal degrees (six digits - ten-thousandths place);

- 418 3. The general permit registration number;
- 419 4. The basis for submission of the notice of termination, pursuant to subsection A of this
- 420 section;
- 421 5. Where applicable, a list of the on-site and off-site permanent control measures (both
- 422 structural and nonstructural) that were installed to comply with the stormwater
- 423 management water quality and water quantity technical criteria. For each permanent
- 424 control measure that was installed, the following information shall be included:
- 425 a. The type of permanent control measure installed and the date that it became
- 426 functional as a permanent control measure;
- 427 b. The location of the permanent control measure, including city or county, and latitude
- 428 and longitude in decimal degrees;
- 429 c. The receiving water to which the permanent control measures discharge; and
- 430 d. The number of total and impervious acres treated by the permanent control
- 431 measures (to the nearest one-hundredth of an acre);
- 432 6. Where applicable, the following information related to participation in a regional
- 433 stormwater management plan. For each regional stormwater management facility, the
- 434 following information shall be included:
- 435 a. The type of regional facility to which the site contributes;
- 436 b. The location of the regional facility, including city or county, and latitude and
- 437 longitude in decimal degrees; and
- 438 c. The number of total and impervious site acres treated by the regional facility (to the
- 439 nearest one-hundredth of an acre);
- 440 7. Where applicable, the following information related to perpetual nutrient credits that
- 441 were acquired in accordance with § 62.1-44.15:35 of the Code of Virginia:
- 442 a. The name of the nonpoint nutrient credit generating entity from which perpetual
- 443 nutrient credits were acquired; and
- 444 b. The number of perpetual nutrient credits acquired (lbs. per acre per year).
- 445 8. A construction record drawing in a format as specified by the ~~VSM~~ VESMP authority
- 446 for ~~permanent long-term~~ stormwater management facilities in accordance with ~~9VAC25-~~
- 447 ~~870-55-D~~ 9VAC25-875-535 appropriately sealed and signed by a professional registered
- 448 in the Commonwealth of Virginia, certifying that the stormwater management facilities
- 449 have been constructed in accordance with the approved plan;
- 450 9. Where applicable, evidence that the signed Stormwater Management Maintenance
- 451 Agreement has been recorded in an instrument within the local land records;
- 452 10. For individual lots in residential construction only when the homebuilder established
- 453 temporary soil stabilization, a signed statement from the permittee that the new owner, if
- 454 not the same as the permittee, has been notified of the final stabilization requirements;
- 455 and
- 456 11. The following certification: "I certify under penalty of law that I have read and
- 457 understand this notice of termination and that this document and all attachments were
- 458 prepared in accordance with a system designed to assure that qualified personnel properly
- 459 gathered and evaluated the information submitted. Based on my inquiry of the person or
- 460 persons who manage the system or those persons directly responsible for gathering the
- 461 information, the information submitted is to the best of my knowledge and belief true,
- 462 accurate, and complete. I am aware that there are significant penalties for submitting false
- 463 information including the possibility of fine and imprisonment for knowing violations."

464 D. The notice of termination shall be signed in accordance with 9VAC25-880-70 Part III K.

465 E. Termination by the ~~board~~ department. The ~~board~~ department may terminate coverage
466 under this general permit during its term and require application for an individual permit or deny
467 a general permit renewal application on its own initiative in accordance with the Act, this chapter,
468 and the ~~VSMR~~ Virginia Erosion and Stormwater Management Regulation, ~~9VAC25-870~~ 9VAC25-
469 875.

470 **9VAC25-880-70. General permit.**

471 Any operator whose registration statement is accepted by the ~~board~~ department will receive
472 the following general permit and shall comply with the requirements contained therein and be
473 subject to all requirements of ~~9VAC25-870~~ 9VAC25-875.

474 General Permit No.: VAR10

475 Effective Date: July 1, ~~2019~~ 2024

476 Expiration Date: June 30, ~~2024~~ 2029

477 GENERAL VPDES PERMIT FOR DISCHARGES OF STORMWATER FROM
478 CONSTRUCTION ACTIVITIES

479 AUTHORIZATION TO DISCHARGE UNDER THE VIRGINIA EROSION AND
480 STORMWATER MANAGEMENT PROGRAM AND THE VIRGINIA EROSION AND
481 STORMWATER MANAGEMENT ACT

482 In compliance with the provisions of the Clean Water Act, as amended, and pursuant to the
483 Virginia Erosion and Stormwater Management Act and regulations adopted pursuant thereto,
484 operators of construction activities are authorized to discharge to surface waters within the
485 boundaries of the Commonwealth of Virginia, except those specifically named in State Water
486 Control Board regulations that prohibit such discharges.

487 The authorized discharge shall be in accordance with the registration statement filed with the
488 Department of Environmental Quality, this cover page, Part I - Discharge Authorization and
489 Special Conditions, Part II - Stormwater Pollution Prevention Plan, and Part III - Conditions
490 Applicable to All VPDES Permits as set forth in this general permit.

491 Part I

492 DISCHARGE AUTHORIZATION AND SPECIAL CONDITIONS

493 A. Coverage under this general permit.

494 1. During the period beginning with the date of coverage under this general permit and
495 lasting until the general permit's expiration date, the operator is authorized to discharge
496 stormwater from construction activities.

497 2. This general permit also authorizes stormwater discharges from construction support
498 activities (~~e.g., concrete or asphalt batch plants, equipment staging yards, material storage~~
499 ~~areas, excavated material disposal areas, borrow areas~~) located on-site or off-site
500 provided that:

501 a. The support activity is directly related to the construction activity site that is required
502 to have general permit coverage for discharges of ~~stormwater from construction~~
503 ~~activities~~;

- 504 b. The support activity is not a commercial operation, nor does it serve multiple
 505 unrelated construction ~~activities by different operators~~ sites;
- 506 c. The support activity does not operate beyond the completion of the last construction
 507 activity it supports;
- 508 d. The support activity is identified in the registration statement at the time of general
 509 permit coverage or reported in a modified registration statement once the need for the
 510 support activity is known;
- 511 e. Appropriate control measures are identified in a stormwater pollution prevention
 512 plan and implemented to address the discharges from the support activity ~~areas~~; and
- 513 f. All applicable state, federal, and local approvals are obtained for the support activity.

514 B. Limitations on coverage.

- 515 1. Post-construction discharges. This general permit does not authorize stormwater
 516 discharges that originate from the construction site after construction activities have been
 517 completed and the construction site, including any construction support activity ~~sites~~
 518 covered under the general permit registration, has undergone final stabilization. Post-
 519 construction industrial stormwater discharges may need to be covered by a separate
 520 VPDES permit.
- 521 2. Discharges mixed with nonstormwater. This general permit does not authorize
 522 discharges that are mixed with sources of nonstormwater, other than those discharges
 523 that are identified in Part I E (Authorized nonstormwater discharges) and are in compliance
 524 with this general permit.
- 525 3. Discharges covered by another ~~state~~ permit. This general permit does not authorize
 526 discharges of stormwater from construction activities that ~~have been~~ are covered under
 527 an individual permit or required to obtain coverage under an alternative general permit.
- 528 4. Impaired waters and total maximum daily load (TMDL) limitation.
- 529 a. Nutrient and sediment impaired waters. Discharges of stormwater from construction
 530 activities to surface waters identified as impaired in the ~~2016~~ 2022 § 305(b)/303(d)
 531 Water Quality Assessment Integrated Report for Benthic Macroinvertebrates
 532 Bioassessments or for which a TMDL wasteload allocation has been established and
 533 approved prior to the term of this general permit for (i) sediment or a sediment-related
 534 parameter (i.e., total suspended solids or turbidity) or (ii) nutrients (i.e., nitrogen or
 535 phosphorus), including all surface waters within the Chesapeake Bay Watershed, are
 536 not eligible for coverage under this general permit unless the operator develops,
 537 implements, and maintains a stormwater pollution prevention plan (SWPPP) in
 538 accordance with Part II B 5 of this permit that minimizes the pollutants of concern and,
 539 when applicable, is consistent with the assumptions and requirements of the approved
 540 TMDL wasteload allocations and implements an inspection frequency consistent with
 541 Part II G 2 a.
- 542 b. Polychlorinated biphenyl (PCB) impaired waters. Discharges of stormwater from
 543 construction activities that include the demolition of any structure with at least 10,000
 544 square feet of floor space built or renovated before January 1, 1980, to surface waters
 545 identified as impaired in the ~~2016~~ 2022 § 305(b)/303(d) Water Quality Assessment
 546 Integrated Report or for which a TMDL wasteload allocation has been established and
 547 approved prior to the term of this general permit for PCB are not eligible for coverage
 548 under this general permit unless the operator develops, implements, and maintains a
 549 SWPPP in accordance with Part II B 6 of this permit that minimizes the pollutants of
 550 concern and, when applicable, is consistent with the assumptions and requirements

551 of the approved TMDL wasteload allocations, and implements an inspection frequency
552 consistent with Part II G 2 a.

553 5. Exceptional waters limitation. Discharges of stormwater from construction activities not
554 previously covered under the general permit effective on July 1, 2014, to exceptional
555 waters identified in 9VAC25-260-30 A 3 c are not eligible for coverage under this general
556 permit unless the operator develops, implements, and maintains a SWPPP in accordance
557 with Part II B 7 of this permit and implements an inspection frequency consistent with Part
558 II G 2 a.

559 6. There shall be no discharge of floating solids or visible foam in other than trace amounts.

560 C. Commingled discharges. Discharges authorized by this general permit may be commingled
561 with other sources of stormwater that are not required to be covered under a state permit, so long
562 as the commingled discharge is in compliance with this general permit. Discharges authorized by
563 a separate state or VPDES permit may be commingled with discharges authorized by this general
564 permit so long as all such discharges comply with all applicable state and VPDES permit
565 requirements.

566 D. Prohibition of nonstormwater discharges. Except as provided in Parts I A 2, I C, and I E, all
567 discharges covered by this general permit shall be composed entirely of stormwater associated
568 with construction activities. All other discharges including the following are prohibited:

- 569 1. Wastewater from washout of concrete;
- 570 2. Wastewater from the washout ~~and~~ or cleanout of stucco, paint, form release oils, curing
571 compounds, and other construction materials;
- 572 3. Fuels, oils, or other pollutants used in vehicle and equipment operation and
573 maintenance;
- 574 4. Oils, toxic substances, or hazardous substances from spills or other releases; and
- 575 5. Soaps, solvents, or detergents used in equipment and vehicle washing.

576 E. Authorized nonstormwater discharges. The following nonstormwater discharges from
577 construction activities are authorized by this general permit ~~when discharged in compliance with~~
578 ~~this general permit:~~

- 579 1. Discharges from emergency firefighting activities;
- 580 2. Fire hydrant flushings, managed to avoid an instream impact;
- 581 3. Waters used to wash vehicles or equipment ~~where~~ provided no soaps, solvents, or
582 detergents ~~have not been~~ are used and the wash water ~~has been~~ is filtered, settled,
583 or similarly treated prior to discharge;
- 584 4. Water used to control dust that ~~has been~~ is filtered, settled, or similarly treated prior
585 to discharge;
- 586 5. Potable water ~~sources~~, including uncontaminated waterline flushings, managed in
587 a manner to avoid an instream impact;
- 588 6. Routine external building wash down ~~where~~ provided no soaps, solvents or
589 detergents ~~have not been~~ are used, external building surfaces do not contain
590 hazardous substances, and the wash water ~~has been~~ is filtered, settled, or similarly
591 treated prior to discharge;
- 592 7. Pavement wash waters ~~where~~ provided spills or leaks of toxic or hazardous
593 materials have not occurred ~~(or where, unless~~ all spilled or leaked material has been
594 removed prior to washing); ~~where~~ soaps, solvents, or detergents ~~have not been~~ are
595 not used; and where the wash water ~~has been~~ is filtered, settled, or similarly treated
596 prior to discharge;

- 597 8. Uncontaminated air conditioning or compressor condensate;
 598 9. Uncontaminated ground water or spring water;
 599 10. Foundation or footing drains ~~where~~ provided flows are not contaminated with
 600 process materials such as solvents or contaminated groundwater;
 601 11. Uncontaminated excavation dewatering, including dewatering of trenches and
 602 excavations that ~~have been~~ are filtered, settled, or similarly treated prior to discharge;
 603 and
 604 12. Landscape irrigation.

605 F. Termination of general permit coverage.

- 606 1. The operator of the construction activity shall submit a notice of termination in
 607 accordance with 9VAC25-880-60, unless a registration statement was not required to be
 608 submitted in accordance with 9VAC25-880-50 A 1 c or A 2 b for single-family detached
 609 residential structures, to the ~~VSMP~~ Virginia Erosion and Stormwater Management
 610 (VESMP) authority after one or more of the following conditions have been met:
 611 a. Necessary permanent control measures included in the SWPPP for the construction
 612 site are in place and functioning effectively and final stabilization has been achieved
 613 on all portions of the construction site for which the operator has operational control.
 614 When applicable, long term responsibility and maintenance requirements for
 615 permanent control measures shall be recorded in the local land records prior to the
 616 submission of a complete and accurate notice of termination and the construction
 617 record drawing prepared;
 618 b. Another operator has assumed control over all areas of the construction site that
 619 have not been finally stabilized and obtained coverage for the ongoing discharge;
 620 c. Coverage under an alternative VPDES permit or ~~state~~ other applicable permit has
 621 been obtained; or
 622 d. For individual lots in residential construction only, final stabilization as defined in
 623 9VAC25-880-1 has been completed, including providing written notification to the
 624 homeowner and incorporating a copy of the notification and signed certification
 625 statement into the SWPPP, and the residence has been transferred to the homeowner.
 626 2. The notice of termination shall be submitted no later than 30 days after one of the above
 627 conditions in subdivision 1 of this subsection is met.
 628 3. Termination of authorization to discharge ~~for the conditions set forth in subdivision 1 a~~
 629 ~~of this subsection~~ shall be effective upon notification from the department that the
 630 provisions of subdivision 1 ~~a~~ of this subsection have been met or ~~60~~ 90 days after submittal
 631 of a complete and accurate notice of termination in accordance with 9VAC25-880-60 C,
 632 whichever occurs first, unless otherwise notified by the VESMP or the department.
 633 4. ~~Authorization to discharge terminates at midnight on the date that the notice of~~
 634 ~~termination is submitted for the conditions set forth in subdivisions 1 b through 1 d of this~~
 635 ~~subsection unless otherwise notified by the VSMP authority or department.~~
 636 ~~5.~~ 4. The notice of termination shall be signed in accordance with Part III K 1 and include
 637 the required certification in accordance with Part III K 4 of this general permit.

638 G. Water quality protection.

- 639 1. The operator shall select, install, implement , and maintain control measures as
 640 identified in the SWPPP at the construction site that minimize pollutants in the discharge
 641 as necessary to ensure that the operator's discharge does not cause or contribute to an
 642 excursion above any applicable water quality standard.

643 2. If it is determined by the department that the operator's discharges are causing, have
 644 reasonable potential to cause, or are contributing to an excursion above any applicable
 645 water quality standard, the department, in consultation with the ~~V~~SM~~P~~ VE~~S~~M~~P~~ authority,
 646 may take appropriate enforcement action and require the operator to:

647 a. Modify or implement additional control measures in accordance with Part II C to
 648 adequately address the identified water quality concerns;

649 b. Submit valid and verifiable data and information that are representative of ambient
 650 conditions and indicate that the receiving water is attaining water quality standards; or

651 c. Submit an individual permit application in accordance with ~~9VAC25-870-410~~
 652 9VAC25-875-980 B 3.

653 H. All written responses required under this ~~chapter~~ general permit shall include a signed
 654 certification consistent with Part III K.

655 Part II

656 STORMWATER POLLUTION PREVENTION PLAN

657 A. Stormwater pollution ~~prevent~~ prevention plan.

658 1. A stormwater pollution prevention plan (SWPPP) shall be developed prior to the
 659 submission of a registration statement and implemented for the construction activity,
 660 including any construction support activity, covered by this general permit. SWPPPs shall
 661 be prepared in accordance with good engineering practices. Construction activities that
 662 are part of a larger common plan of development or sale and disturb less than one acre
 663 may utilize a SWPPP template provided by the department and need not provide a
 664 separate stormwater management plan if one has been prepared and implemented for the
 665 larger common plan of development or sale.

666 2. The SWPPP requirements of this general permit may be fulfilled by incorporating by
 667 reference other plans such as a spill prevention control and countermeasure (SPCC) plan
 668 developed for the construction site under § 311 of the federal Clean Water Act or best
 669 management practices (BMP) programs otherwise required for the facility construction site
 670 provided that the incorporated plan meets or exceeds the SWPPP requirements of Part II

671 B. All plans incorporated by reference into the SWPPP become enforceable under this
 672 general permit. If a plan incorporated by reference does not contain all of the required
 673 elements of the SWPPP, the operator shall develop the missing elements and include
 674 them in the SWPPP.

675 3. Any operator that was authorized to discharge under the general permit effective July
 676 1, 2014, and that intends to continue coverage under this general permit, shall update its
 677 stormwater pollution prevention plan to comply with the requirements of this general permit
 678 no later than 60 days after the date of coverage under this general permit.

679 B. Contents. The SWPPP shall include the following items:

680 1. General information.

681 a. A signed copy of the registration statement, if required, for coverage under ~~the this~~ this
 682 general ~~VPDES permit for discharges of stormwater from construction activities;~~

683 b. Upon receipt, a copy of the notice of coverage under ~~the this~~ this general ~~VPDES permit~~
 684 ~~for discharges of stormwater from construction activities~~ (i.e., notice of coverage
 685 letter);

686 c. Upon receipt, a copy of the general VPDES permit for discharges of stormwater
 687 from construction activities;

688 d. A narrative description of the nature of the construction activity, including the
 689 function of the project (e.g., low density residential, shopping mall, highway, etc.);

- 690 e. A legible map of the construction site plan identifying:
- 691 (1) ~~Directions of stormwater flow~~ Existing and proposed drainage patterns on the
- 692 construction site and approximate slopes ~~anticipated before and~~ after major grading
- 693 activities;
- 694 (2) Limits of clearing and grading (i.e., land disturbance) including steep slopes and
- 695 natural buffers around surface waters that will ~~not be disturbed~~ remain undisturbed;
- 696 (3) Locations of major structural and nonstructural control measures, including
- 697 sediment basins and traps, perimeter dikes and diversions, sediment barriers, and
- 698 other measures intended to filter, settle, or similarly treat sediment, that will be installed
- 699 between disturbed areas and the undisturbed vegetated areas in order to increase
- 700 sediment removal and maximize stormwater infiltration;
- 701 (4) Locations of surface waters;
- 702 (5) Locations where concentrated stormwater is discharged;
- 703 (6) Locations of any construction support activities, including (i) areas where
- 704 equipment and vehicle washing, wheel wash water, and other wash water is to occur;
- 705 (ii) storage areas for chemicals such as acids, fuels, fertilizers, and other lawn care
- 706 chemicals; (iii) concrete wash out areas; (iv) vehicle fueling and maintenance areas;
- 707 (v) sanitary waste facilities, including those temporarily placed on the construction site;
- 708 ~~and~~ (vi) construction waste storage; and (vii) areas where polymers, flocculants, or
- 709 other stormwater treatment chemicals will be used or stored; and
- 710 (7) When applicable, the location of the on-site rain gauge or the methodology
- 711 established in consultation with the ~~VSM~~ VESMP authority used to identify
- 712 measurable storm events for inspection as allowed by Part II G 2 a (1) (ii) or 2 b (2).
- 713 2. Erosion and sediment control plan.
- 714 a. An erosion and sediment control plan designed and approved in accordance with
- 715 the Virginia Erosion and ~~Sediment Control~~ Stormwater Management Regulations
- 716 (~~9VAC25-840~~) (9VAC25-875), an "agreement in lieu of a plan" as defined in ~~9VAC25-~~
- 717 ~~840-10 from the VESCP authority~~ 9VAC25-875-20, or an erosion and sediment control
- 718 plan prepared in accordance with ~~annual~~ department-approved standards and
- 719 specifications ~~approved by the department~~.
- 720 b. All erosion and sediment control plans shall include a statement describing the
- 721 maintenance responsibilities required for the erosion and sediment controls used.
- 722 c. An approved erosion and sediment control plan, "agreement in lieu of a plan," or
- 723 erosion and sediment control plan prepared in accordance with department-approved
- 724 ~~annual~~ standards and specifications, shall be implemented to:
- 725 (1) Control the volume and velocity of stormwater runoff within the construction site to
- 726 minimize soil erosion;
- 727 (2) Control stormwater discharges, including peak flow rates and total stormwater
- 728 volume, to minimize erosion at outlets and to minimize downstream channel and
- 729 stream bank erosion;
- 730 (3) Minimize the amount of soil exposed during the construction activity;
- 731 (4) Minimize the disturbance of steep slopes;
- 732 (5) Minimize sediment discharges from the construction site in a manner that
- 733 addresses (i) the amount, frequency, intensity, and duration of precipitation; (ii) the
- 734 nature of resulting stormwater runoff; and (iii) soil characteristics, including the range
- 735 of soil particle sizes present on the construction site;

736 (6) Provide and maintain natural buffers around surface waters, direct stormwater to
 737 vegetated areas to increase sediment removal, and maximize stormwater infiltration,
 738 unless ~~infeasible~~ infiltration would be inadvisable due to the underlying geology (e.g.,
 739 karst topography) and ground water contamination concerns, or infeasible due to site
 740 conditions;

741 (7) Minimize soil compaction and, ~~unless infeasible, preserve topsoil.~~ Minimizing soil
 742 compaction is not required where the intended function of a specific area of the
 743 construction site dictates that it be compacted;

744 (8) ~~Unless infeasible, preserve topsoil.~~ Preserving topsoil is not required where the
 745 intended function of a specific area of the construction site dictates that the topsoil be
 746 disturbed or removed;

747 ~~(8)~~ (9) Ensure the initiation of stabilization activities, ~~as defined in 9VAC25-880-1,~~ of
 748 disturbed areas occurs immediately whenever any clearing, grading, excavating, or
 749 other land-disturbing activities have permanently ceased on any portion of
 750 construction the site, or temporarily ceased on any portion of the construction site and
 751 will not resume for a period exceeding 14 days; and

752 ~~(9)~~ (10) Utilize outlet structures that withdraw stormwater from the surface (i.e., above
 753 the permanent pool or wet storage water surface elevation), unless infeasible, when
 754 discharging from sediment basins or sediment traps.

755 3. Stormwater management plan.

756 a. Except for those projects identified in Part II B 3 b, a stormwater management plan
 757 approved ~~by the VSMP authority as authorized under~~ in accordance with the Virginia
 758 Erosion and Stormwater Management Program (VSMP) Regulation (9VAC25-870)
 759 (9VAC25-875), or an "agreement in lieu of a stormwater management plan" as defined
 760 in 9VAC25-870-10 from the VSMP authority 9VAC25-875-20, or a stormwater
 761 management plan prepared in accordance with ~~annual~~ department-approved
 762 standards and specifications ~~approved by the department.~~

763 b. For any operator meeting the conditions of ~~9VAC25-870-47~~ 9VAC25-875-480 B of
 764 the ~~VSMP~~ Virginia Erosion and Stormwater Management regulation, an approved
 765 stormwater management plan is not required. In lieu of an approved stormwater
 766 management plan, the SWPPP shall include a description of, and all necessary
 767 calculations supporting, all post-construction stormwater management measures that
 768 will be installed prior to the completion of the construction process to control pollutants
 769 in stormwater discharges after construction operations have been completed.
 770 Structural measures should be placed on upland soils to the degree possible. Such
 771 measures must be designed and installed in accordance with applicable VESCP
 772 authority, ~~VSMP~~ VESMP authority, state, and federal requirements, and any
 773 necessary permits must be obtained.

774 4. Pollution prevention plan. A pollution prevention plan that addresses potential pollutant-

775 generating activities that may reasonably be expected to affect the quality of stormwater
 776 discharges from the construction activity, including any support activity. The pollution
 777 prevention plan shall:

778 a. Identify the potential pollutant-generating activities and the pollutant that is expected
 779 to be exposed to stormwater;

780 b. Describe the location where the potential pollutant-generating activities will occur,
 781 or if identified on the site plan, reference the site plan;

- 782 c. Identify all nonstormwater discharges, as authorized in Part I E of this general
783 permit, that are or will be commingled with stormwater discharges from the
784 construction activity, including any applicable support activity;
- 785 d. Identify the person responsible for implementing the pollution prevention practice or
786 practices for each pollutant-generating activity (if other than the person listed as the
787 qualified personnel);
- 788 e. Describe the pollution prevention practices and procedures that will be implemented
789 to:
- 790 (1) Prevent and respond to leaks, spills, and other releases including (i) procedures
791 for expeditiously stopping, containing, and cleaning up spills, leaks, and other
792 releases; and (ii) procedures for reporting leaks, spills, and other releases in
793 accordance with Part III G;
- 794 (2) Prevent the discharge of spilled and leaked fuels and chemicals from vehicle
795 fueling and maintenance activities (e.g., providing secondary containment such as spill
796 berms, decks, spill containment pallets, providing cover where appropriate, and having
797 spill kits readily available);
- 798 (3) Prevent the discharge of soaps, solvents, detergents, and wash water from
799 construction materials, including the clean-up of stucco, paint, form release oils, and
800 curing compounds (e.g., providing (i) cover (e.g., plastic sheeting or temporary roofs)
801 to prevent contact with stormwater; (ii) collection and proper disposal in a manner to
802 prevent contact with stormwater; and (iii) a similarly effective means designed to
803 prevent discharge of these pollutants);
- 804 (4) Minimize the discharge of pollutants from vehicle and equipment washing, wheel
805 wash water, and other types of washing (e.g., locating activities away from surface
806 waters and ~~stormwater~~ storm drain inlets ~~or conveyance~~, and constructed or natural
807 site drainage features and directing wash waters to sediment basins or traps, using
808 filtration devices such as filter bags or sand filters, or using similarly effective controls);
- 809 (5) Direct concrete wash water into a leak-proof container or leak-proof settling basin.
810 ~~The container or basin shall be~~ designed so that no overflows can occur due to
811 inadequate sizing or precipitation. Hardened concrete wastes shall be removed and
812 disposed of in a manner consistent with the handling of other construction wastes.
813 Liquid concrete wastes shall be removed and disposed of in a manner consistent with
814 the handling of other construction wash waters and shall not be discharged to surface
815 waters, disposed of through infiltration, or otherwise disposed of on the ground;
- 816 (6) Minimize the discharge of pollutants from storage, handling, and disposal of
817 construction products, materials, and wastes including (i) building products such as
818 asphalt sealants, copper flashing, roofing materials, adhesives, and concrete
819 admixtures; (ii) pesticides, herbicides, insecticides, fertilizers, and landscape
820 materials; and (iii) construction and domestic wastes such as packaging materials,
821 scrap construction materials, masonry products, timber, pipe and electrical cuttings,
822 plastics, Styrofoam, concrete, and other trash or building materials;
- 823 (7) Prevent the discharge of fuels, oils, and other petroleum products, hazardous or
824 toxic wastes, waste concrete, and sanitary wastes;
- 825 (8) Address any other discharge from the potential pollutant-generating activities not
826 addressed above; and
- 827 (9) Minimize the exposure of waste materials to precipitation by closing or covering
828 waste containers during precipitation events and at the end of the business day, or
829 implementing other similarly effective practices. Minimization of exposure is not

830 required in cases where the exposure to precipitation will not result in a discharge of
831 pollutants; and

832 f. Describe procedures for providing pollution prevention awareness of all applicable
833 wastes, including any wash water, disposal practices, and applicable disposal
834 locations of such wastes, to personnel in order to comply with the conditions of this
835 general permit. The operator shall implement the procedures described in the SWPPP.

836 5. SWPPP requirements for discharges to nutrient and sediment impaired waters. For
837 discharges to surface waters (i) identified as impaired in the ~~2016~~ 2022 § 305(b)/303(d)
838 Water Quality Assessment Integrated Report for Benthic Macroinvertebrates
839 Bioassessments or (ii) with an applicable TMDL wasteload allocation established and
840 approved prior to the term of this general permit for sediment ~~for~~ or a sediment-related
841 parameter (i.e., total suspended solids or turbidity) or nutrients (i.e., nitrogen or
842 phosphorus), including all surface waters within the Chesapeake Bay Watershed, the
843 operator shall:

844 a. Identify the impaired waters, approved TMDLs, and pollutants of concern in the
845 SWPPP; and

846 b. Provide ~~clear direction~~ documentation in the SWPPP that:

847 (1) Permanent or temporary soil stabilization shall be applied to denuded areas within
848 seven days after final grade is reached on any portion of the construction site;

849 (2) Nutrients shall be applied in accordance with manufacturer's recommendations or
850 an approved nutrient management plan and shall not be applied during rainfall events;
851 and

852 (3) A modified inspection schedule shall be implemented in accordance with Part II G
853 2 a.

854 6. SWPPP requirements for discharges to polychlorinated biphenyl (PCB) impaired
855 waters. For discharges from construction activities that include the demolition of any
856 structure with at least 10,000 square feet of floor space built or renovated before January
857 1, 1980, to surface waters (i) identified as impaired in the ~~2016~~ 2022 § 305(b)/303(d) Water
858 Quality Assessment Integrated Report or (ii) with an applicable TMDL wasteload allocation
859 established and approved prior to the term of this general permit for PCB, the operator
860 shall:

861 a. Identify the impaired waters, approved TMDLs, and pollutant of concern in the
862 SWPPP;

863 b. Implement the approved erosion and sediment control plan in accordance with Part
864 II B 2;

865 c. Dispose of waste materials in compliance with applicable state, federal, and local
866 requirements; and

867 d. Implement a modified inspection schedule in accordance with Part II G 2 a.

868 7. SWPPP requirements for discharges to exceptional waters. For discharges to surface
869 waters identified in 9VAC25-260-30 A 3 c as an exceptional water, the operator shall:

870 a. Identify the exceptional surface waters in the SWPPP; and

871 b. Provide ~~clear direction~~ documentation in the SWPPP that:

872 (1) Permanent or temporary soil stabilization shall be applied to denuded areas within
873 seven days after final grade is reached on any portion of the construction site;

874 (2) Nutrients shall be applied in accordance with manufacturer's recommendations or
875 an approved nutrient management plan and shall not be applied during rainfall events;
876 and

877 (3) A modified inspection schedule shall be implemented in accordance with Part II G
878 2 a.

879 8. SWPPP requirements for construction dewatering discharges to sediment impaired
880 waters or exceptional waters. Dewatering discharges of uncontaminated stormwater or
881 groundwater from footers or foundations of a single-family detached residential structure
882 are exempt from the requirements of this section, provided that such discharges are not
883 discharged directly to surface waters. For construction dewatering discharges to surface
884 waters (i) identified as impaired in the 2022 § 305(b)/303(d) Water Quality Assessment
885 Integrated Report for Benthic Macroinvertebrates Bioassessments; (ii) with an applicable
886 TMDL wasteload allocation established and approved prior to the term of this general
887 permit for sediment or a sediment-related parameter (i.e., total suspended solids or
888 turbidity), including all surface waters within the Chesapeake Bay Watershed; or (iii)
889 identified in 9VAC25-260-30 A 3 c as an exceptional water, the operator shall undertake
890 one of the following methods for controlling and documenting construction dewatering
891 discharges:

892 a. Turbidity benchmark- option 1:

893 (1) Identify the location of all construction dewatering discharges in the SWPPP;

894 (2) Select, install, implement, and maintain control measures at each dewatering
895 location that minimize pollutants, including suspended solids, in construction
896 dewatering discharges prior to discharging into a stormwater conveyance system or
897 surface water; and

898 (3) Provide documentation in the SWPPP that:

899 (a) Sample frequency. At least one grab sample shall be collected from each
900 construction dewatering discharge when the first discharge at that location occurs,
901 daily thereafter until the dewatering discharge stops, and after any installation of new
902 controls or routine maintenance activity of existing controls. An upstream grab sample
903 shall be collected from the receiving stream;

904 (b) Sample timing. Grab samples of the construction dewatering discharge shall be
905 collected during the first 15 minutes of the construction dewatering discharge and daily
906 thereafter until the dewatering discharge stops. Upstream grab samples of the
907 receiving stream shall be collected within 15 minutes of the corresponding construction
908 dewatering discharge sample;

909 (c) Sample location. Grab samples shall be collected after the construction dewatering
910 water has been filtered, settled, or similarly treated and prior to its discharge into a
911 stormwater conveyance system or surface water;

912 (d) Test methods. Grab samples taken as required by this section shall be measured
913 using a turbidity meter that reports results in nephelometric turbidity units (NTUs) or
914 formazin turbidity unit (FTUs), and conduct a turbidity meter calibration verification
915 prior to each day's use, consistent with manufacturer recommendations;

916 (e) Visual monitoring. All dewatering discharges shall be visually monitored for
917 changes in the characterization of effluent discharge;

918 (f) Corrective action. If any turbidity measurement of the construction dewatering
919 discharge exceeds the upstream grab sample of the receiving stream by more than
920 10 NTUs/FTUs, or if visual monitoring indicates a change in the characterization of
921 effluent discharge, corrective action shall be taken in accordance with Part II H 2 of
922 this general permit; and

923 (g) Recordkeeping. Turbidity monitoring information (i.e., location, date, sample
 924 collection time, and turbidity measurement) and any necessary corrective actions
 925 taken shall be recorded in the SWPPP; or

926 b. Turbidity benchmark- option 2:

927 (1) Identify the location of all construction dewatering discharges in the SWPPP;

928 (2) Select, install, implement, and maintain control measures at each dewatering
 929 location that minimize pollutants, including suspended solids, in construction
 930 dewatering discharges prior to discharging into a stormwater conveyance system or
 931 surface water; and

932 (3) Provide documentation in the SWPPP that:

933 (a) Sample frequency. At least one grab sample shall be collected from each
 934 construction dewatering discharge when the first discharge at that location occurs,
 935 daily thereafter until the dewatering discharge stops, and after any installation of new
 936 controls or routine maintenance activity of existing controls. Grab samples shall be
 937 tested to confirm a turbidity measurement of equal to or less than 50 NTUs/FTUs from
 938 the construction dewatering discharge;

939 (b) Sample timing. Grab samples of the construction dewatering discharge shall be
 940 collected during the first 15 minutes of the construction dewatering discharge and daily
 941 thereafter until the dewatering discharge stops;

942 (c) Sample location. Grab samples shall be collected after the construction dewatering
 943 water has been filtered, settled, or similarly treated and prior to its discharge into a
 944 stormwater conveyance system or surface water;

945 (d) Test methods. Grab samples taken as required by this section shall be measured
 946 using a turbidity meter that reports results in nephelometric turbidity units (NTUs) or
 947 formazin turbidity unit (FTUs), and conduct a turbidity meter calibration verification
 948 prior to each day's use, consistent with manufacturer recommendations;

949 (e) Visual monitoring. All dewatering discharges shall be visually monitored for
 950 changes in the characterization of effluent discharge;

951 (f) Corrective action. If any turbidity measurement of the construction dewatering
 952 discharge exceeds 50 NTUs/FTUs, or if visual monitoring indicates a change in the
 953 characterization of effluent discharge, corrective action shall be taken in accordance
 954 with Part II H 2 of this general permit; and

955 (g) Recordkeeping. Turbidity monitoring information (i.e., location, date, sample
 956 collection time, and turbidity measurement) and any necessary corrective actions
 957 taken shall be recorded in the SWPPP.

958 ~~8. 9. Identification of qualified personnel. The name, phone number, and qualifications of~~
 959 ~~the qualified personnel conducting inspections required by this general permit.~~

960 ~~9. 10. Delegation of authority. Duly authorized representatives. The SWPPP shall include~~
 961 ~~the names of individuals or positions with delegated authority, in accordance with Part III~~
 962 ~~K, duly authorized to sign inspection reports or modify the SWPPP on behalf of the~~
 963 ~~operator. Any authorization shall be signed and dated in accordance with Part III K 2 and~~
 964 ~~shall include the required certification in accordance with Part III K 4.~~

965 ~~10. 11. SWPPP signature and certification. The SWPPP shall be signed and dated in~~
 966 ~~accordance with Part III K 2 of this general permit and shall include the required~~
 967 ~~certification in accordance with Part III K 4 of this general permit.~~

968 C. SWPPP amendments, modification, and updates.

969 1. The operator shall amend the SWPPP whenever there is a change in the design,
 970 construction, operation, or maintenance that has a significant effect on the discharge of
 971 pollutants to surface waters and that has not been previously addressed in the SWPPP.

972 2. The SWPPP shall be amended if, during inspections or investigations by the operator's
 973 qualified personnel, or by local, state, or federal officials, it is determined that the existing
 974 control measures are ineffective in minimizing pollutants in discharges from the
 975 construction activity. Revisions to the SWPPP shall include additional or modified control
 976 measures designed and implemented to correct problems identified. If approval by the
 977 VESCP authority, ~~VSM~~ VESMP authority, or department is necessary for the control
 978 measure, revisions to the SWPPP shall be completed no later than ~~seven calendar~~ five
 979 business days following approval. Implementation of these additional or modified control
 980 measures shall be accomplished as described in Part II H.

981 3. The SWPPP shall clearly identify the contractors that will implement and maintain each
 982 control measure identified in the SWPPP. The SWPPP shall be amended to identify any
 983 new contractor that will implement and maintain a control measure.

984 4. The operator shall update the SWPPP as soon as possible but no later than ~~seven~~ five
 985 business days following any modification to its implementation. All modifications or
 986 updates to the SWPPP shall be noted and shall include the following items:

987 a. A record of dates when:

988 (1) Major grading activities occur;

989 (2) Construction activities temporarily or permanently cease on a portion of the
 990 construction site; and

991 (3) Stabilization measures are initiated;

992 b. Documentation of replaced or modified controls where periodic inspections or other
 993 information have indicated that the controls have been used inappropriately or
 994 incorrectly and were modified;

995 c. Areas that have reached final stabilization and where no further SWPPP or
 996 inspection requirements apply;

997 d. All properties that are no longer under the legal control of the operator and the dates
 998 on which the operator no longer had legal control over each property;

999 e. The date of any prohibited discharges, the discharge volume released, and what
 1000 actions were taken to minimize the impact of the release;

1001 f. Measures taken to prevent the reoccurrence of any prohibited discharge; and

1002 g. Measures taken to address any evidence identified as a result of an inspection
 1003 required under Part II G.

1004 5. Amendments, modifications, or updates to the SWPPP shall be signed in accordance
 1005 with Part III K 2 and shall include the required certification in accordance with Part III K 4.

1006 D. Public notification. Upon commencement of ~~land disturbance~~ construction activities, the
 1007 operator shall post ~~conspicuously~~ a copy of the notice of coverage letter at a publicly accessible
 1008 location near the main entrance of the construction activity site. For linear projects, the operator
 1009 shall post a copy of the notice of coverage letter at a publicly accessible location near an active
 1010 part of the construction ~~project~~ site (e.g., where a pipeline crosses a public road). The copy of the
 1011 notice of coverage letter shall be visible such that it can be readily viewed from a public right-of-
 1012 way. The operator shall maintain the posted information until termination of general permit
 1013 coverage as specified in Part I F.

1014 E. SWPPP availability.

1015 1. Operators with day-to-day operational control over SWPPP implementation shall have
 1016 a copy of the SWPPP available at a central location on-site for use by those identified as
 1017 having responsibilities under the SWPPP whenever they are on the construction site.

1018 2. The operator shall make the SWPPP and all amendments, modifications, and updates
 1019 available upon request to the department, the ~~VSMP~~ VESMP authority, the EPA, the
 1020 VESCP authority, local government officials, or the operator of a municipal separate storm
 1021 sewer system receiving discharges from the construction activity. If an on-site location is
 1022 unavailable to store the SWPPP when no personnel are present, notice of the SWPPP's
 1023 location shall be posted near the main entrance of the construction site.

1024 3. The operator shall make the SWPPP available for public review in an electronic format
 1025 or in hard copy. Information for public access to the SWPPP shall be posted and
 1026 maintained in accordance with Part II D. If not provided electronically, public access to the
 1027 SWPPP may be arranged upon request at a time and at a publicly accessible location
 1028 convenient to the operator or his designee but shall be no less than once per month and
 1029 shall be during normal business hours. Information not required to be contained within the
 1030 SWPPP by this general permit is not required to be released.

1031 F. SWPPP implementation. The operator shall implement the SWPPP and subsequent
 1032 amendments, modifications, and updates from commencement of land disturbance until
 1033 termination of general permit coverage as specified in Part I F.

1034 1. All control measures shall be properly maintained in effective operating condition in
 1035 accordance with good engineering practices and, where applicable, manufacturer
 1036 specifications.

1037 2. If a site inspection required by Part II G identifies a control measure that is not operating
 1038 effectively or needs routine maintenance, corrective actions or routine maintenance shall
 1039 be completed as soon as practicable, but no later than ~~seven~~ five business days after
 1040 discovery or a longer period as established by the ~~VSMP~~ VESMP authority, to maintain
 1041 the continued effectiveness of the control measures.

1042 3. If the operator must make the same repairs more than two times to the same control at
 1043 the same location, even if the fix can be completed by the close of the next business day,
 1044 the operator shall either:

1045 a. Complete work to fix any subsequent repeat occurrences of this same problem
 1046 under the corrective action procedures in Part II H, including keeping any records of
 1047 the condition and how it was corrected under Part II C; or

1048 b. Document in the inspection report under Part II G why the specific reoccurrence of
 1049 this same problem should still be addressed as a routine maintenance fix.

1050 2. 4. If site inspections required by Part II G identify an existing control measure that needs
 1051 to be modified or if an additional or alternative control measure is necessary for any
 1052 reason, implementation shall be completed prior to the next anticipated measurable storm
 1053 event. If implementation prior to the next anticipated measurable storm event is
 1054 impracticable, then additional or alternative control measures shall be implemented as
 1055 soon as practicable, but no later than ~~seven~~ five business days after discovery or a longer
 1056 period as established by the ~~VSMP~~ VESMP authority.

1057 G. SWPPP Inspections.

1058 1. Personnel responsible for on-site and off-site inspections. Inspections required by this
 1059 general permit shall be conducted by the qualified personnel identified by the operator in
 1060 the SWPPP. The operator is responsible for ensuring that the qualified personnel conduct
 1061 the inspection. Qualified personnel may be a person on the operator's staff or a third party
 1062 hired to conduct such inspections.

- 1063 2. Inspection schedule.
- 1064 a. For construction activities that discharge to a surface water identified in Part II B 5
- 1065 and B 6 as impaired or having an approved TMDL or Part II B 7 as exceptional, the
- 1066 following inspection schedule requirements apply:
- 1067 (1) Inspections shall be conducted at a frequency of (i) at least once every four
- 1068 business days or (ii) at least once every five business days and no later than 24 hours
- 1069 following a measurable storm event. In the event that a measurable storm event occurs
- 1070 when there are more than 24 hours between business days, the inspection shall be
- 1071 conducted on the next business day; and
- 1072 (2) Representative inspections as authorized in Part II G 2 d shall not be allowed.
- 1073 b. Except as specified in Part II G 2 a, inspections shall be conducted at a frequency
- 1074 of:
- 1075 (1) At least once every five business days; or
- 1076 (2) At least once every 10 business days and no later than 24 hours following a
- 1077 measurable storm event. In the event that a measurable storm event occurs when
- 1078 there are more than 24 hours between business days, the inspection shall be
- 1079 conducted on the next business day.
- 1080 (a) A storm event that produces 0.25 inches or more of rain within a 24-hour period on
- 1081 the first day of the storm and continues to produce 0.25 inches or more of rain on
- 1082 subsequent days. The operator is required to conduct an inspection within 24 hours of
- 1083 the first day of the storm and within 24 hours after the last day of the storm that
- 1084 produces 0.25 inches or more of rain.
- 1085 (b) A discharge caused by snowmelt. The operator is required to conduct one
- 1086 inspection once the discharge of snowmelt occurs. Additional inspections are only
- 1087 required if following the discharge from the first snowmelt, there is a discharge from a
- 1088 separate storm event.
- 1089 c. Where areas have been temporarily stabilized or ~~land-disturbing~~ construction
- 1090 activities will be suspended due to continuous frozen ground conditions and
- 1091 stormwater discharges are unlikely, the inspection frequency described in Part II G 2
- 1092 a and 2 b may be reduced to once per month. If weather conditions (such as above
- 1093 freezing temperatures or rain or snow events) make discharges likely, the operator
- 1094 shall immediately resume the regular inspection frequency.
- 1095 d. Except as prohibited in Part II G 2 a (2), representative inspections may be utilized
- 1096 for utility line installation, pipeline construction, or other similar linear construction
- 1097 activities provided that:
- 1098 (1) Temporary or permanent soil stabilization has been installed and vehicle access
- 1099 may compromise the temporary or permanent soil stabilization and potentially cause
- 1100 additional land disturbance increasing the potential for erosion;
- 1101 (2) Inspections occur on the same frequency as other construction activities;
- 1102 (3) Control measures are inspected along the construction site 0.25 miles above and
- 1103 below each access point (i.e., where a roadway, undisturbed right-of-way, or other
- 1104 similar feature intersects the construction activity and access does not compromise
- 1105 temporary or permanent soil stabilization); and
- 1106 (4) Inspection locations are provided in the inspection report required by Part II G.
- 1107 e. If adverse weather causes the safety of the inspection personnel to be in jeopardy,
- 1108 the inspection may be delayed until the next business day on which it is safe to perform
- 1109 the inspection. Any time inspections are delayed due to adverse weather conditions,

1110 evidence of the adverse weather conditions shall be included in the SWPPP with the
1111 dates of occurrence.

1112 3. Inspection requirements. As part of each inspection, the qualified personnel shall, at a
1113 minimum:

1114 ~~a. As part of the inspection, the qualified personnel shall:~~

1115 ~~(1) a. Record the date and time of the inspection and, when applicable, the date and~~
1116 ~~rainfall or snowfall amount of the last measurable storm event;~~

1117 ~~(2) b. Record the information and a description of any discharges occurring at the time~~
1118 ~~of the inspection or evidence of discharges occurring prior to the inspection;~~

1119 ~~(3) c. Record any land-disturbing construction activities that have occurred outside of~~
1120 ~~the approved erosion and sediment control plan;~~

1121 ~~d. Inspect all stormwater discharge locations at the construction site. If a stormwater~~
1122 ~~discharge is occurring during the inspection, observe and document the visual quality~~
1123 ~~and characteristics of the discharge, including color; odor; floating, settled, or~~
1124 ~~suspended solids; foam; oil sheen; and other indicators of stormwater pollutants.~~

1125 ~~e. Inspect all construction dewatering discharge locations at the construction site, if~~
1126 ~~applicable. If a construction dewatering discharge is occurring during the inspection,~~
1127 ~~observe and document the visual quality and the characteristics of the discharge,~~
1128 ~~including color; odor; floating, settled, or suspended solids; foam; oil sheen; and other~~
1129 ~~indicators of pollutants.~~

1130 ~~(4) f. Inspect the following for installation in accordance with the approved erosion and~~
1131 ~~sediment control plan, identification of any maintenance needs, and evaluation of~~
1132 ~~effectiveness in minimizing sediment discharge, including whether the control has~~
1133 ~~been inappropriately or incorrectly used:~~

1134 ~~(a) (1) All perimeter erosion and sediment controls, such as silt fence;~~

1135 ~~(b) (2) Soil stockpiles, when applicable, and borrow areas for stabilization or sediment~~
1136 ~~trapping measures;~~

1137 ~~(c) (3) Completed earthen structures, such as dams, dikes, ditches, and diversions for~~
1138 ~~stabilization and effective impoundment or flow control;~~

1139 ~~(d) (4) Cut and fill slopes;~~

1140 ~~(e) (5) Sediment basins and traps, sediment barriers, and other measures installed to~~
1141 ~~control sediment discharge from stormwater;~~

1142 ~~(f) (6) Temporary or permanent channels, flumes, or other slope drain structures~~
1143 ~~installed to convey concentrated runoff down cut and fill slopes;~~

1144 ~~(g) (7) Storm inlets that have been made operational to ensure that sediment laden~~
1145 ~~stormwater does not enter without first being filtered or similarly treated; and~~

1146 ~~(h) (8) Construction vehicle access routes that intersect or access paved or public~~
1147 ~~roads for minimizing sediment tracking;~~

1148 ~~(5) g. Inspect areas that have reached final grade or that will remain dormant for more~~
1149 ~~than 14 days to ensure:~~

1150 ~~(a) (1) Initiation of stabilization activities have occurred immediately, as defined in~~
1151 ~~9VAC25-880-1; and~~

1152 ~~(b) (2) Stabilization activities have been completed within seven days of reaching~~
1153 ~~grade or stopping work;~~

1154 ~~(6) h. Inspect for evidence that the approved erosion and sediment control plan,~~
1155 ~~"agreement in lieu of a plan," or erosion and sediment control plan prepared in~~

- 1156 accordance with department-approved ~~annual~~ standards and specifications has not
 1157 been properly implemented. This includes:
- 1158 ~~(a)~~ (1) Concentrated flows of stormwater in conveyances such as rills, rivulets, or
 1159 channels that have not been filtered, settled, or similarly treated prior to discharge, or
 1160 evidence thereof;
- 1161 ~~(b)~~ (2) Sediment laden or turbid flows of stormwater that have not been filtered or
 1162 settled to remove sediments prior to discharge;
- 1163 ~~(c)~~ (3) Sediment deposition in areas that drain to unprotected stormwater inlets or
 1164 catch basins that discharge to surface waters. Inlets and catch basins with failing
 1165 sediment controls due to improper installation, lack of maintenance, or inadequate
 1166 design are considered unprotected;
- 1167 ~~(d)~~ (4) Sediment deposition on any property (including public and private streets)
 1168 outside of the construction activity covered by this general permit;
- 1169 ~~(e)~~ (5) Required stabilization has not been initiated or completed or is not effective on
 1170 portions of the construction site;
- 1171 ~~(f)~~ (6) Sediment basins without adequate wet or dry storage volume or sediment basins
 1172 that allow the discharge of stormwater from below the surface of the wet storage
 1173 portion of the basin;
- 1174 ~~(g)~~ (7) Sediment traps without adequate wet or dry storage or sediment traps that allow
 1175 the discharge of stormwater from below the surface of the wet storage portion of the
 1176 trap; and
- 1177 ~~(h)~~ (8) Land disturbance or sediment deposition outside of the approved area to be
 1178 disturbed;
- 1179 ~~(7)~~ i. Inspect pollutant generating activities identified in the pollution prevention plan
 1180 for the proper implementation, maintenance, and effectiveness of the procedures and
 1181 practices;
- 1182 ~~(8)~~ j. Identify and report any pollutant generating activities not identified in the pollution
 1183 prevention plan; and
- 1184 ~~(9)~~ k. Identify and document the presence of any evidence of the discharge of
 1185 pollutants prohibited by this general permit.
- 1186 4. Inspection report. Each inspection report shall include the following items:
- 1187 a. The date and time of the inspection and, when applicable, the date and rainfall or
 1188 snowfall amount of the last measurable storm event;
- 1189 b. Summarized findings of the inspection;
- 1190 c. The locations, visual quality, and characteristics of all stormwater discharges, when
 1191 occurring;
- 1192 d. The locations, visual quality, and characteristics of all construction dewatering
 1193 discharges, if applicable;
- 1194 ~~e.~~ e. The locations of prohibited discharges;
- 1195 ~~f.~~ f. The locations of control measures that require routine maintenance;
- 1196 ~~e.~~ g. The locations of control measures that failed to operate as designed or proved
 1197 inadequate or inappropriate for a particular location;
- 1198 ~~f.~~ h. The locations where any evidence identified under Part II G 3 a (6) exists;
- 1199 ~~g.~~ i. The locations where any additional control measure is needed;
- 1200 ~~h.~~ j. A list of corrective actions required (including any changes to the SWPPP that are
 1201 necessary) as a result of the inspection or to maintain permit compliance;

1202 i. k. Documentation of any corrective actions required from a previous inspection that
 1203 have not been implemented; ~~and~~

1204 l. Any incidents of noncompliance. If none, the report shall contain a certification that
 1205 the construction activity is in compliance with the SWPPP and this general permit;

1206 m. The required certification in accordance with Part III K 4 of this general permit; and

1207 j. n. The date and signature of the qualified personnel and the operator or its duly
 1208 authorized representative in accordance with Part III K 2 of this general permit.

1209 5. The inspection report shall be included into the SWPPP no later than four business
 1210 days after the inspection is complete.

1211 6. The inspection report and any actions taken in accordance with Part II shall be retained
 1212 by the operator as part of the SWPPP for at least three years from the date that general
 1213 permit coverage expires or is terminated. ~~The inspection report shall identify any incidents~~
 1214 ~~of noncompliance. Where an inspection report does not identify any incidents of~~
 1215 ~~noncompliance, the report shall contain a certification that the construction activity is in~~
 1216 ~~compliance with the SWPPP and this general permit. The report shall be signed in~~
 1217 ~~accordance with Part III K of this general permit.~~

1218 H. Corrective actions.

1219 1. The operator shall implement the corrective actions identified as a result of an inspection
 1220 as soon as practicable but no later than ~~seven~~ five business days after discovery or a
 1221 longer period as approved by the ~~V~~S~~S~~M~~P~~ VESMP authority. If approval of a corrective
 1222 action by a regulatory authority (e.g., ~~V~~S~~S~~M~~P~~ VESMP authority, VESCP authority, or the
 1223 department) is necessary, additional control measures shall be implemented to minimize
 1224 pollutants in stormwater discharges until such approvals can be obtained.

1225 2. When using turbidity benchmark option 1, the operator shall implement corrective
 1226 actions when any construction dewatering discharge turbidity measurement exceeds the
 1227 upstream grab sample of the receiving stream by more than 10 NTUs/FTUs or where
 1228 visual monitoring indicates a change in the characterization of effluent discharge. The
 1229 operator shall:

1230 a. Cease the construction dewatering discharge at the location that exceeds upstream
 1231 grab sample or where visual monitoring indicates a change in the characterization of
 1232 effluent discharge;

1233 b. Determine whether the construction dewatering controls are operating effectively,
 1234 need routine maintenance, or if an additional or alternate control measure is
 1235 necessary; _____ and

1236 c. Make any necessary adjustments, additions, repairs, or replacements to the
 1237 construction _____ dewatering _____ controls.
 1238 Once these corrective action steps are completed and any necessary adjustments,
 1239 additions, repairs, or replacements are made, the operator may resume its
 1240 construction dewatering discharge and shall sample for turbidity within 15 minutes of
 1241 the construction dewatering discharge commencing.

1242 3. When using turbidity benchmark option 2, the operator shall implement corrective
 1243 actions when any construction dewatering discharge turbidity measurement exceeds 50
 1244 NTUs/FTUs, or visual monitoring of any construction dewatering control measure
 1245 indicates a change in the characterization of effluent discharge or a need for
 1246 adjustments, additions, repairs, or replacements to control measures. The operator shall:

1247 a. Cease the construction dewatering discharge at the location where visual
 1248 monitoring indicates a change in the characterization of effluent discharge or a need
 1249 for adjustments, additions, repairs, or replacements to control measures;

1250 b. Determine whether the construction dewatering controls are operating effectively,
 1251 need routine maintenance, need replacement, or if an additional or alternate control
 1252 measure is necessary; and

1253 c. Make any necessary adjustments, additions, repairs, or replacements to the
 1254 construction dewatering controls.

1255 Once these corrective action steps are completed and any necessary adjustments,
 1256 additions, repairs, or replacements are made, the operator may resume its
 1257 construction dewatering discharge and shall sample for turbidity within 15 minutes of
 1258 the construction dewatering discharge commencing.

1259 2. 4. The operator may be required to remove accumulated sediment deposits located
 1260 outside of the construction activity site covered by this general permit as soon as
 1261 practicable in order to minimize environmental impacts.

1262 5. The operator shall notify the ~~VSMP~~ VESMP authority and the department as well as
 1263 obtain all applicable federal, state, and local authorizations, approvals, and permits prior
 1264 to the removal of sediments accumulated in surface waters including wetlands.

Part III

CONDITIONS APPLICABLE TO ALL VPDES PERMITS

1267 NOTE: Discharge monitoring is not required for this general permit. If the operator chooses to
 1268 monitor stormwater discharges or control measures, the operator shall comply with the
 1269 requirements of subsections A, B, and C, as appropriate.

1270 A. Monitoring.

1271 1. Samples and measurements taken for the purpose of monitoring shall be representative
 1272 of the monitoring activity.

1273 2. Monitoring shall be conducted according to procedures approved under 40 CFR Part
 1274 136 or alternative methods approved by the U.S. Environmental Protection Agency, unless
 1275 other procedures have been specified in this general permit. Analyses performed
 1276 according to test procedures approved under 40 CFR Part 136 shall be performed by an
 1277 environmental laboratory certified under regulations adopted by the Department of
 1278 General Services (1VAC30-45 or 1VAC30-46).

1279 3. The operator shall periodically calibrate and perform maintenance procedures on all
 1280 monitoring and analytical instrumentation at intervals that will ensure accuracy of
 1281 measurements.

1282 B. Records.

1283 1. Monitoring records and reports shall include:

1284 a. The date, exact place, and time of sampling or measurements;

1285 b. The individuals who performed the sampling or measurements;

1286 c. The dates and times analyses were performed;

1287 d. The individuals who performed the analyses;

1288 e. The analytical techniques or methods used; and

1289 f. The results of such analyses.

1290 2. The operator shall retain records of all monitoring information, including all calibration
 1291 and maintenance records and all original strip chart recordings for continuous monitoring
 1292 instrumentation, copies of all reports required by this general permit, and records of all
 1293 data used to complete the registration statement for this general permit, for a period of at
 1294 least three years from the date of the sample, measurement, report or request for
 1295 coverage. This period of retention shall be extended automatically during the course of

1296 any unresolved litigation regarding the regulated activity or regarding control standards
 1297 applicable to the operator, or as requested by the ~~board~~ department.

1298 C. Reporting monitoring results.

1299 1. The operator shall update the SWPPP to include the results of the monitoring as may
 1300 be performed in accordance with this general permit, unless another reporting schedule
 1301 is specified elsewhere in this general permit.

1302 2. Monitoring results shall be reported on a discharge monitoring report (DMR); on forms
 1303 provided, approved or specified by the department; or in any format provided that the date,
 1304 location, parameter, method, and result of the monitoring activity are included.

1305 3. If the operator monitors any pollutant specifically addressed by this general permit more
 1306 frequently than required by this general permit using test procedures approved under 40
 1307 CFR Part 136 or using other test procedures approved by the U.S. Environmental
 1308 Protection Agency or using procedures specified in this general permit, the results of this
 1309 monitoring shall be included in the calculation and reporting of the data submitted in the
 1310 DMR or reporting form specified by the department.

1311 4. Calculations for all limitations which require averaging of measurements shall utilize an
 1312 arithmetic mean unless otherwise specified in this general permit.

1313 D. Duty to provide information. The operator shall furnish, within a reasonable time, any
 1314 information which the ~~board~~ department may request to determine whether cause exists for
 1315 terminating this general permit coverage or to determine compliance with this general permit. The
 1316 ~~board~~, department, EPA, or ~~VSMP~~ VESMP authority may require the operator to furnish, upon
 1317 request, such plans, specifications, and other pertinent information as may be necessary to
 1318 determine the effect of the wastes from his discharge on the quality of surface waters, or such
 1319 other information as may be necessary to accomplish the purposes of the CWA and the Virginia
 1320 Erosion and Stormwater Management Act. The operator shall also furnish to the ~~board~~,
 1321 department, EPA, or ~~VSMP~~ VESMP authority, upon request, copies of records required to be kept
 1322 by this general permit.

1323 E. Compliance schedule reports. Reports of compliance or noncompliance with, or any
 1324 progress reports on, interim and final requirements contained in any compliance schedule of this
 1325 general permit shall be submitted no later than 14 days following each schedule date.

1326 F. Unauthorized stormwater discharges. Pursuant to § 62.1-44.5 of the Code of Virginia,
 1327 except in compliance with a ~~state~~ permit issued by the department, it shall be unlawful to cause
 1328 a stormwater discharge from a construction activity.

1329 G. Reports of unauthorized discharges. Any operator who discharges or causes or allows a
 1330 discharge of sewage, industrial waste, other wastes or any noxious or deleterious substance or a
 1331 hazardous substance or oil in an amount equal to or in excess of a reportable quantity established
 1332 under either 40 CFR Part 110, 40 CFR Part 117, 40 CFR Part 302, or § 62.1-44.34:19 of the Code
 1333 of Virginia that occurs during a 24-hour period into or upon surface waters or who discharges or
 1334 causes or allows a discharge that may reasonably be expected to enter surface waters, shall
 1335 notify the ~~Department of Environmental Quality~~ department and the VESMP authority of the
 1336 discharge immediately upon discovery of the discharge, but in no case later than within 24 hours
 1337 after said discovery. A written report of the unauthorized discharge shall be submitted to the
 1338 department and the ~~VSMP~~ VESMP authority within five calendar days of discovery of the
 1339 discharge. The written report shall contain:

1340 1. A description of the nature and location of the discharge;

1341 2. The cause of the discharge;

1342 3. The date on which the discharge occurred;

1343 4. The length of time that the discharge continued;

- 1344 5. The volume of the discharge;
- 1345 6. If the discharge is continuing, how long it is expected to continue;
- 1346 7. If the discharge is continuing, what the expected total volume of the discharge will be;
- 1347 and
- 1348 8. Any steps planned or taken to reduce, eliminate and prevent a recurrence of the present
- 1349 discharge or any future discharges not authorized by this general permit.

1350 Discharges reportable to the department and the ~~VSMP~~ VESMP authority under the

1351 immediate reporting requirements of other regulations are exempted from this requirement.

1352 H. Reports of unusual or extraordinary discharges. If any unusual or extraordinary discharge

1353 including a "bypass" or "upset," as defined in this general permit, should occur from a ~~facility~~

1354 construction site and the discharge enters or could be expected to enter surface waters, the

1355 operator shall promptly notify, in no case later than within 24 hours, the department and the ~~VSMP~~

1356 VESMP authority ~~by telephone~~ after the discovery of the discharge. This notification shall provide

1357 all available details of the incident, including any adverse effects on aquatic life and the known

1358 number of fish killed. The operator shall reduce the report to writing and shall submit it to the

1359 department and the ~~VSMP~~ VESMP authority within five calendar days of discovery of the

1360 discharge in accordance with Part III I 2. Unusual and extraordinary discharges include any

1361 discharge resulting from:

- 1362 1. Unusual spillage of materials resulting directly or indirectly from processing operations;
- 1363 2. Breakdown of processing or accessory equipment;
- 1364 3. Failure or taking out of service of some or all of the facilities; and
- 1365 4. Flooding or other acts of nature.

1366 I. Reports of noncompliance. The operator shall report any noncompliance which may

1367 adversely affect ~~surface~~ state waters or may endanger public health.

1368 1. ~~An oral~~ A report to the department and the ~~VSMP~~ VESMP authority shall be provided

1369 within 24 hours from the time the operator becomes aware of the circumstances. The

1370 following shall be included as information that shall be reported within 24 hours under this

1371 ~~subdivision~~ subsection:

- 1372 a. Any unanticipated bypass; and
- 1373 b. Any upset that causes a discharge to surface waters.
- 1374 2. A written report shall be submitted within five days and shall contain:
- 1375 a. A description of the noncompliance and its cause;
- 1376 b. The period of noncompliance, including exact dates and times, and if the
- 1377 noncompliance has not been corrected, the anticipated time it is expected to continue;
- 1378 and
- 1379 c. Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the
- 1380 noncompliance.

1381 The department may waive the written report on a case-by-case basis for reports of

1382 noncompliance under Part III I if the oral report has been received within 24 hours and no

1383 adverse impact on surface waters has been reported.

1384 3. The operator shall report all instances of noncompliance not reported under Part III I 1

1385 or 2 in writing as part of the SWPPP. The reports shall contain the information listed in

1386 Part III I 2.

1387 NOTE: 4. The immediate (within 24 hours) reports required in Part III G, H and I shall may

1388 be made to the department and the ~~VSMP~~ VESMP authority. Reports may be made by

1389 telephone, email, ~~or~~ by fax, or online at

1390 involved/pollution-response. For reports outside normal working hours, leaving a recorded
 1391 message shall fulfill the immediate reporting requirement. For emergencies, the Virginia
 1392 Department of Emergency Management maintains a 24-hour telephone service at 1-800-
 1393 468-8892.

1394 4. ~~5.~~ Where the operator becomes aware of a failure to submit any relevant facts, or
 1395 submittal of incorrect information in any report, including a registration statement, to the
 1396 department or the ~~VSMP~~ VESMP authority, the operator shall promptly submit such facts
 1397 or correct information.

1398 J. Notice of planned changes.

1399 1. The operator shall give notice to the department and the ~~VSMP~~ VESMP authority as
 1400 soon as possible of any planned physical alterations or additions to the permitted facility
 1401 or activity. Notice is required only when:

1402 a. The operator plans an alteration or addition to any building, structure, facility, or
 1403 installation that may meet one of the criteria for determining whether a facility is a new
 1404 source in ~~9VAC25-870-420~~ 9VAC25-875-990; or

1405 b. The operator plans an alteration or addition that would significantly change the
 1406 nature or increase the quantity of pollutants discharged. This notification applies to
 1407 pollutants that are not subject to effluent limitations in this general permit; ~~or.~~

1408 2. The operator shall give advance notice to the department and ~~VSMP~~ VESMP authority
 1409 of any planned changes in the permitted facility or activity, which may result in
 1410 noncompliance with ~~state~~ permit requirements.

1411 3. The operator may continue construction activities based on the information provided in
 1412 the original registration statement and SWPPP, but must wait until the review period has
 1413 ended before commencing or continuing construction activities on any portion of the
 1414 construction site that would be affected by any of the planned changes or modifications.

1415 K. Signatory requirements.

1416 1. Registration statement and notice of termination. All registration statements and notices
 1417 of termination shall be signed as follows:

1418 a. For a corporation: by a responsible corporate officer. For the purpose of this chapter,
 1419 a responsible corporate officer means: (i) a president, secretary, treasurer, or vice-
 1420 president of the corporation in charge of a principal business function, or any other
 1421 person who performs similar policy-making or decision-making functions for the
 1422 corporation; or (ii) the manager of one or more manufacturing, production, or operating
 1423 facilities, provided the manager is authorized to make management decisions that
 1424 govern the operation of the regulated facility including having the explicit or implicit
 1425 duty of making major capital investment recommendations, and initiating and directing
 1426 other comprehensive measures to assure long-term compliance with environmental
 1427 laws and regulations; the manager can ensure that the necessary systems are
 1428 established or actions taken to gather complete and accurate information for ~~state~~
 1429 permit application requirements; and where authority to sign documents has been
 1430 assigned or delegated to the manager in accordance with corporate procedures;

1431 b. For a partnership or sole proprietorship: by a general partner or the proprietor,
 1432 respectively; or

1433 c. For a municipality, state, federal, or other public agency: by either a principal
 1434 executive officer or ranking elected official. For purposes of this chapter, a principal
 1435 executive officer of a public agency includes (i) the chief executive officer of the agency
 1436 or (ii) a senior executive officer having responsibility for the overall operations of a
 1437 principal geographic unit of the agency.

1438 2. Reports and other information. All reports required by this general permit, including
 1439 SWPPPs, and other information requested by ~~the board~~ or the department shall be signed
 1440 by a person described in Part III K 1 or by a duly authorized representative of that person.
 1441 A person is a duly authorized representative only if:

1442 a. The authorization is made in writing by a person described in Part III K 1;
 1443 b. The authorization specifies either an individual or a position having responsibility for
 1444 the overall operation of the regulated facility or activity such as the position of plant
 1445 manager, operator of a well or a well field, superintendent, position of equivalent
 1446 responsibility, or an individual or position having overall responsibility for
 1447 environmental matters for the operator. (A duly authorized representative may thus be
 1448 either a named individual or any individual occupying a named position); and
 1449 c. The signed and dated written authorization is included in the SWPPP. A copy shall
 1450 be provided to the department and ~~VSMP~~ VESMP authority, if requested.

1451 3. Changes to authorization. If an authorization under Part III K 2 is no longer accurate
 1452 because a different individual or position has responsibility for the overall operation of the
 1453 construction activity, a new authorization satisfying the requirements of Part III K 2 shall
 1454 be submitted to the ~~VSMP~~ VESMP authority as the administering entity for the ~~board~~
 1455 department prior to or together with any reports or information to be signed by an
 1456 authorized representative.

1457 4. Certification. Any person signing a document under Part III K 1 or 2 shall make the
 1458 following certification:

1459 "I certify under penalty of law that I have read and understand this document and that this
 1460 document and all attachments were prepared in accordance with a system designed to
 1461 assure that qualified personnel properly gathered and evaluated the information
 1462 submitted. Based on my inquiry of the person or persons who manage the system, or
 1463 those persons directly responsible for gathering the information, the information submitted
 1464 is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that
 1465 there are significant penalties for submitting false information, including the possibility of
 1466 fine and imprisonment for knowing violations."

1467 L. Duty to comply. The operator shall comply with all conditions of this general permit. Any
 1468 ~~state permit noncompliance with this general permit~~ constitutes a violation of the Virginia Erosion
 1469 and Stormwater Management Act and the Clean Water Act, except that noncompliance with
 1470 certain provisions of this general permit may constitute a violation of the Virginia Erosion and
 1471 Stormwater Management Act but not the Clean Water Act. Permit noncompliance is grounds for
 1472 enforcement action; for ~~state permit coverage~~, termination, revocation and reissuance, or
 1473 modification of permit coverage; or denial of a ~~state permit renewal application~~.

1474 The operator shall comply with effluent standards or prohibitions established under § 307(a)
 1475 of the Clean Water Act for toxic pollutants within the time provided in the regulations that establish
 1476 these standards or prohibitions or standards for sewage sludge use or disposal, even if this
 1477 general permit has not yet been modified to incorporate the requirement.

1478 M. Duty to reapply. If the operator wishes to continue an activity regulated by this general
 1479 permit after the expiration date of this general permit, the operator shall submit a new registration
 1480 statement at least ~~60~~ 90 days before the expiration date of the existing general permit, unless
 1481 permission for a later date has been granted by the ~~board~~ department. The ~~board~~ department
 1482 shall not grant permission for registration statements to be submitted later than the expiration date
 1483 of the existing general permit.

1484 N. Effect of a ~~state permit~~. This general permit does not convey any property rights in either
 1485 real or personal property or any exclusive privileges, nor does it authorize any injury to private

1486 property or invasion of personal rights, or any infringement of federal, state or local law or
1487 regulations.

1488 O. State law. Nothing in this general permit shall be construed to preclude the institution of
1489 any legal action under, or relieve the operator from any responsibilities, liabilities, or penalties
1490 established pursuant to any other state law or regulation or under authority preserved by § 510 of
1491 the Clean Water Act. Except as provided in general permit conditions on "bypassing" (Part III U)
1492 and "upset" (Part III V), nothing in this general permit shall be construed to relieve the operator
1493 from civil and criminal penalties for noncompliance.

1494 P. Oil and hazardous substance liability. Nothing in this general permit shall be construed to
1495 preclude the institution of any legal action or relieve the operator from any responsibilities,
1496 liabilities, or penalties to which the operator is or may be subject under §§ 62.1-44.34:14 through
1497 62.1-44.34:23 of the State Water Control Law or § 311 of the Clean Water Act.

1498 Q. Proper operation and maintenance. The operator shall at all times properly operate and
1499 maintain all facilities and systems of treatment and control (and related appurtenances), which
1500 are installed or used by the operator to achieve compliance with the conditions of this general
1501 permit. Proper operation and maintenance also includes effective plant performance, adequate
1502 funding, adequate staffing, and adequate laboratory and process controls, including appropriate
1503 quality assurance procedures. This provision requires the operation of back-up or auxiliary
1504 facilities or similar systems, which are installed by the operator only when the operation is
1505 necessary to achieve compliance with the conditions of this general permit.

1506 R. Disposal of solids or sludges. Solids, sludges or other pollutants removed in the course of
1507 treatment or management of pollutants shall be disposed of in a manner so as to prevent any
1508 pollutant from such materials from entering surface waters and in compliance with all applicable
1509 state and federal laws and regulations.

1510 S. Duty to mitigate. The operator shall take all steps to minimize or prevent any discharge in
1511 violation of this general permit that has a reasonable likelihood of adversely affecting human
1512 health or the environment.

1513 T. Need to halt or reduce activity not a defense. It shall not be a defense for an operator in an
1514 enforcement action that it would have been necessary to halt or reduce the permitted activity in
1515 order to maintain compliance with the conditions of this general permit.

1516 U. Bypass.

1517 1. "Bypass," as defined in ~~9VAC25-870-10~~ 9VAC25-875-850, means the intentional
1518 diversion of waste streams from any portion of a treatment facility. The operator may allow
1519 any bypass to occur that does not cause effluent limitations to be exceeded, but only if it
1520 also is for essential maintenance to ensure efficient operation. These bypasses are not
1521 subject to the provisions of Part III U 2 and 3.

1522 2. Notice.

1523 a. Anticipated bypass. If the operator knows in advance of the need for a bypass, the
1524 operator shall submit prior notice to the department, if possible at least 10 days before
1525 the date of the bypass.

1526 b. Unanticipated bypass. The operator shall submit notice of an unanticipated bypass
1527 as required in Part III I.

1528 3. Prohibition of bypass.

1529 a. Except as provided in Part III U 1, bypass is prohibited, and the ~~board~~ or department
1530 may take enforcement action against an operator for bypass unless:

1531 (1) Bypass was unavoidable to prevent loss of life, personal injury, or severe property
1532 damage. Severe property damage means substantial physical damage to property,

1533 damage to the treatment facilities that causes them to become inoperable, or
 1534 substantial and permanent loss of natural resources that can reasonably be expected
 1535 to occur in the absence of a bypass. Severe property damage does not mean
 1536 economic loss caused by delays in production;

1537 (2) There were no feasible alternatives to the bypass, such as the use of auxiliary
 1538 treatment facilities, retention of untreated wastes, or maintenance during normal
 1539 periods of equipment downtime. This condition is not satisfied if adequate back-up
 1540 equipment should have been installed in the exercise of reasonable engineering
 1541 judgment to prevent a bypass that occurred during normal periods of equipment
 1542 downtime or preventive maintenance; and

1543 (3) The operator submitted notices as required under Part III U 2.

1544 b. The department may approve an anticipated bypass, after considering its adverse
 1545 effects, if the department determines that it will meet the three conditions listed in Part
 1546 III U 3 a.

1547 V. Upset.

1548 1. An "upset," as defined in ~~9VAC25-870-10~~ 9VAC25-875-850, means an exceptional
 1549 incident in which there is unintentional and temporary noncompliance with technology-
 1550 based ~~state~~ permit effluent limitations because of factors beyond the reasonable control
 1551 of the operator. An upset does not include noncompliance to the extent caused by
 1552 operational error, improperly designed treatment facilities, inadequate treatment facilities,
 1553 lack of preventive maintenance, or careless or improper operation.

1554 2. An upset constitutes an affirmative defense to an action brought for noncompliance with
 1555 technology-based ~~state~~ permit effluent limitations if the requirements of Part III V 4 are
 1556 met. A determination made during administrative review of claims that noncompliance was
 1557 caused by upset, and before an action for noncompliance, is not a final administrative
 1558 action subject to judicial review.

1559 ~~3. An upset does not include noncompliance to the extent caused by operational error,
 1560 improperly designed treatment facilities, inadequate treatment facilities, lack of
 1561 preventative maintenance, or careless or improper operation.~~

1562 4. 3. An operator who wishes to establish the affirmative defense of upset shall
 1563 demonstrate, through properly signed, contemporaneous operating logs or other relevant
 1564 evidence that:

1565 a. An upset occurred and that the operator can identify the cause of the upset;

1566 b. The permitted facility was at the time being properly operated;

1567 c. The operator submitted notice of the upset as required in Part III I; and

1568 d. The operator complied with any remedial measures required under Part III S.

1569 ~~5.~~ 4. In any enforcement proceeding, the operator seeking to establish the occurrence of
 1570 an upset has the burden of proof.

1571 W. Inspection and entry. The operator shall allow the department ~~as the board's designee~~, the
 1572 ~~VSMP~~ VESMP authority, EPA, or an authorized representative of either entity (including an
 1573 authorized contractor), upon presentation of credentials and other documents as may be required
 1574 by law to:

1575 1. Enter upon the operator's premises where a regulated facility or activity is located or
 1576 conducted, or where records shall be kept under the conditions of this general permit;

1577 2. Have access to and copy, at reasonable times, any records that shall be kept under the
 1578 conditions of this general permit;

1579 3. Inspect and photograph at reasonable times any facilities, equipment (including
 1580 monitoring and control equipment), practices, or operations regulated or required under
 1581 this general permit; and

1582 4. Sample or monitor at reasonable times, for the purposes of ensuring ~~state~~ permit
 1583 compliance or as otherwise authorized by the Clean Water Act or the Virginia Erosion and
 1584 Stormwater Management Act, any substances or parameters at any location.

1585 For purposes of this section, the time for inspection shall be deemed reasonable during
 1586 regular business hours, and whenever the facility is discharging. Nothing contained herein shall
 1587 make an inspection unreasonable during an emergency.

1588 X. ~~State permit~~ Permit actions. ~~State permit~~ Permit coverage may be modified, revoked and
 1589 reissued, or terminated for cause. The filing of a request by the operator for a ~~state~~ permit
 1590 modification, revocation and reissuance, or termination, or a notification of planned changes or
 1591 anticipated noncompliance does not stay any ~~state~~ permit condition.

1592 Y. Transfer of ~~state~~ permit coverage.

1593 1. ~~State permits~~ Permits are not transferable to any person except after notice to the
 1594 department. Except as provided in Part III Y 2, a ~~state~~ permit may be transferred by the
 1595 operator to a new operator only if the ~~state~~ permit has been modified or revoked and
 1596 reissued, or a minor modification made, to identify the new operator and incorporate such
 1597 other requirements as may be necessary under the Virginia Erosion and Stormwater
 1598 Management Act and the Clean Water Act.

1599 2. As an alternative to transfers under Part III Y 1, this ~~state~~ permit may be automatically
 1600 transferred to a new operator if:

1601 a. The current operator notifies the department at least 30 days in advance of the
 1602 proposed transfer of the title to the facility or property;

1603 b. The notice includes a written agreement between the existing and new operators
 1604 containing a specific date for transfer of ~~state~~ permit responsibility, coverage, and
 1605 liability between them; and

1606 c. The department does not notify the existing operator and the proposed new operator
 1607 of its intent to modify or revoke and reissue the ~~state~~ permit. If this notice is not
 1608 received, the transfer is effective on the date specified in the agreement mentioned in
 1609 Part III Y 2 b.

1610 3. For ongoing construction activity involving a change of operator, the new operator shall
 1611 accept and maintain the existing SWPPP, or prepare and implement a new SWPPP prior
 1612 to taking over operations at the construction site.

1613 Z. Severability. The provisions of this general permit are severable, and if any provision of this
 1614 general permit or the application of any provision of this ~~state~~ permit to any circumstance, is held
 1615 invalid, the application of such provision to other circumstances and the remainder of this general
 1616 permit shall not be affected thereby.

DRAFT FACT SHEET

REISSUANCE OF THE GENERAL VPDES PERMIT FOR DISCHARGES OF STORMWATER FROM CONSTRUCTION ACTIVITIES

The Virginia State Water Control Board has under consideration the reissuance of the general Virginia Pollutant Discharge Elimination System (VPDES) permit for point source discharges of stormwater from construction activities to surface waters.

Permit Number: VAR10

Name of Permittee: Any operator in the Commonwealth of Virginia agreeing to be regulated under the terms of this general permit.

Facility Location: Commonwealth of Virginia

Receiving Waters: Surface waters within the boundaries of the Commonwealth of Virginia except waters specifically named in Board regulations which prohibit such discharges.

On the basis of preliminary review and application of lawful standards and regulations, the State Water Control Board (Board) proposes to reissue the general permit subject to certain conditions and has prepared a draft permit. The category of discharges to be included involves stormwater discharges from construction activities with the same or similar types of operations, and discharging the same or similar types of wastes. The Board has determined that this category of discharges is appropriately controlled under a general permit. The draft general permit requires that all covered construction activities meet standardized permit conditions including the development and implementation of a stormwater pollution prevention plan (SWPPP). This general permit will maintain the water quality standards adopted by the Board. This general permit will replace the general permit VAR10 which expires on June 30, 2024. Operators covered under the expiring general permit who wish to continue to discharge under a general permit must register for coverage under the new permit.

All pertinent information is on file and may be inspected, and arrangements made for copying by contacting Rebeccah Rochet at:

Virginia Department of Environmental Quality
P.O. Box 1105
Richmond, Virginia 23218
Tel: (804) 801-2950
Fax: (804) 698-4178
E-mail: Rebeccah.Rochet@deq.virginia.gov

Administrative

The general permit will have a fixed term of five (5) years effective, upon Board approval, July 1, 2024. Every authorization to discharge under this general permit will expire at the same time and all authorizations to discharge will be renewed on the same date. Discharges will be covered under the general permit upon approval of the Registration Statement and delivery of a copy of the general permit to the applicant. However, in accordance with § 62.1-44.15:28 9 e of the Code of Virginia, the submission of a registration statement for the construction of single-family detached residential structures within a common plan of development or sale is not required. The submission of a registration statement is required for the overall construction of a residential common plan of development or sale. As single-family detached residential properties are transferred to new owners/operators within a common plan of development or sale, the new owners/operators are authorized to discharge under the general permit provided that they comply with the terms and conditions of the general permit including the development and implementation of a stormwater pollution prevention plan for each new single-family detached residential structure.

This general permit does not apply to any new or increased discharge that will result in significant effects to the receiving waters. That determination is made in accordance with the State Water Control Board's Antidegradation Policy contained in the Virginia Water Quality Standards, 9VAC25-260-30. Anti-backsliding will also be considered prior to granting coverage under this general permit to construction activities currently discharging stormwater under

another applicable or VPDES permit. If a discharge appears to qualify for this general permit, the operator must submit a general permit Registration Statement to apply for general permit coverage. The Department will either send a copy of the general permit to those applicants that qualify, or send a copy of the Virginia Erosion and Stormwater Management Program (VESMP) individual permit application to those that do not qualify.

Summary of Changes from the 2019 Construction General Permit (CGP)

This general permit replaces the 2019 CGP which was issued for a five-year term on July 1, 2019. Revisions were made throughout to update citations and references to the Erosion and Sediment Control Regulations (9VAC25-840), Erosion and Sediment Control and Stormwater Management Certification Regulations (9VAC25-850), and Virginia Stormwater Management Program Regulation (9VAC25-870) to reflect the consolidation of these three chapters into the Virginia Erosion and Stormwater Management Regulation (9VAC25-875). The following is a list of substantial changes included in the general permit as compared to the 2019 CGP:

Section 1 – Definitions

- Revised the introductory paragraph to improve readability and incorporate the correct title and citation of the Virginia Erosion and Stormwater Management Program (VESMP) Regulation.
- Minor changes were made to terms throughout this section to ensure consistent use of terminology, improve readability, and correct grammatical errors. These minor changes did not alter, narrow, or expand the meaning of terms.
- Revised definition of “*impaired waters*” to reflect 2022 § 305(b)/303(d) Water Quality Assessment Integrated Report.
- Added definition of “*construction dewatering*,” based on the definition included in EPA’s 2022 CGP and input from the Technical Advisory Committee, to mean the act of draining or pumping stormwater or ground water from building foundations, vaults, and trenches, or other similar points of accumulation, including from sediment basins or similar impoundments for maintenance or decommissioning purposes. Construction dewatering does not include temporary pump arounds associated with instream construction activities.
- Revised definition of “*construction site*” to include water area, which conforms with the EPA’s definition. In addition, added clarity regarding construction support activities located on-site or off-site.
- Added definition of “*construction support activity*,” based on the definition included in EPA’s 2022 CGP, to mean a construction-related activity that specifically supports construction and involves land disturbance or pollutant-generating activities of its own and can include activities associated with concrete or asphalt batch plants, equipment staging yards, materials storage areas, excavated material disposal areas, and borrow areas.
- Revised definition of “*measurable storm event*” to include snow melt for consistency with EPA’s 2022 CGP.
- Added definition of “*qualified personnel*” to address new stormwater team requirements in EPA’s 2022 CGP. Qualified personnel is defined as a person knowledgeable in the principles and practices of erosion and sediment and stormwater management controls who possesses the skills to assess conditions at the construction site for the operator that could impact stormwater quality and quantity and to assess the effectiveness of any sediment and erosion control measures or stormwater management facilities selected to control the quality and quantity of stormwater discharges from the construction activity. On or after July 1, 2025, “*qualified personnel*” shall hold an unexpired certificate of competence for Project Inspector for Erosion and Sediment Control and an unexpired certificate of competence for Project Inspector for Stormwater Management, both issued by the department, a Construction General Permit Qualified Personnel Certificate, or an equivalent certification provided by EPA (currently titled Construction Inspection Training Course).

Section 10 – Purpose

- Revised language to improve the clarity and readability of this section. These changes did not alter the requirements of this section.

Section 15 – Applicability of incorporated references based on the dates that they became effective

- Updated the applicable date of Code of Federal Regulation (CFR) references used in the general permit; now July 1, 2022 updates.

Section 20 – Effective date of general permit

- Updated the effective date and expiration date of the general permit.

Section 30 – Authorization to discharge

- Minor changes were made to terms throughout this section to ensure consistent use of terminology, improve readability, and correct grammatical errors. These minor changes did not alter the requirements of this section.
- Added language to clarify that permit fees includes all outstanding permit maintenance fees.
- Added language to allow for reporting of new support activities in a modified registration statement once the need for the additional support activity is known.
- Added language to clarify that off-site construction support activities not authorized under the CGP shall not be included in calculating the total land area of development and estimated area to be disturbed in the registration statement.
- Updated the list of nonstormwater authorized discharges for consistency with other recently issued VPDES permits.
- Revised the timeline for submitting a completed registration statement from 60 days to 90 days prior to the expiration date of the permit. This change is meant to grant more time in reviewing registration statements for continuation of general permit coverage.
- Added a requirement that all past due general maintenance fees must be paid prior to continuation of a CGP.

Section 40 – Delegation of authorities to state and local programs

- Minor changes were made to terms throughout this section to ensure consistent use of terminology, improve readability, and correct grammatical errors. These minor changes did not alter the requirements of this section.

Section 50 – General permit application (registration statement)

- Minor changes were made to terms throughout this section to ensure consistent use of terminology, improve readability, and correct grammatical errors. These minor changes did not alter the requirements of this section.
- Updated the registration statement submission deadline for existing construction activities seeking continued coverage under this general permit; now 90 days prior to expiration.
- Updated the title of Subsection A 3 to “*Transfer of ownership*” for clarify and readability.
- Added the requirement to include a State Corporation Commission entity identification number to ensure consistency with other recently issued VPDES permits.
- Revised the requirement for submitting an 8.5-inch by 11-inch format site map to a legible site map to grant flexibility for submitting site maps while still ensuring the contents are readable.
- Included “*erosion and sediment control plans*” for construction activities approved by an entity with approved standards and specifications for consistency with the consolidation of 9VAC25-840 and 9VAC25-870.
- Reformatted Subsections B10, B11, and B13 to improve readability and clarify.
- Moved the requirement for a stormwater pollution prevention plan (SWPPP) from the registration statement specific requirements as the language is more reflective of preparing a SWPPP rather than the contents of a registration statement.

Section 60 – Termination of general permit coverage

- Minor changes were made to terms throughout this section to ensure consistent use of terminology, improve readability, and correct grammatical errors. These minor changes did not alter the requirements of this section.
- Updated the timeline for which the termination of authorization shall become effective; now 90 days after receipt of a complete and accurate notice of termination. This revision was made to comply with § 62.1-44.15:26.1 of the Code of Virginia. In addition, added language to clarify that the timeline for the termination of the permit coverage does not apply if the operator is notified of an issue by the VESMP authority or the department.

Section 70 – General permit

- Minor changes were made to terms throughout this section to ensure consistent use of terminology, improve readability, and correct grammatical errors. These minor changes did not alter the requirements of this section.

- Updated the effective date to July 1, 2024 and the expiration date to June 30, 2029. Updated the regulation language for clarity and consistency with other general VPDES permits adopted by the Board.

Part I – Discharge Authorization and Special Conditions

- Coverage under this Permit: Added language to allow for reporting new support activities in a modified registration statement once the need for the additional support activity is known.
- Limitations on Coverage: Updated the Water Quality Assessment Integrated Report date from 2016 to 2022.
- Authorized nonstormwater discharges: Updated the list of nonstormwater authorized discharges for consistency with other recently issued VPDES permits.
- Termination of general permit coverage: Revised the timeline for the termination of authorization to discharge from 60 days to 90 days after receipt of a notice of termination. This change was made to comply with § 62.1-44.15:26.1 of the Code of Virginia. In addition, added language to clarify the timeline for the termination of permit coverage does not apply if the operator is notified of an issue by the VESMP authority or the department. Finally, language was added to improve clarity about which sections of the permit must be followed when submitted a notice of termination.

Part II – Stormwater Pollution Prevention Plan

- Minor changes were made to terms throughout this section to ensure consistent use of terminology, improve readability, and correct grammatical errors. These minor changes did not alter the requirements of this section.
- Contents, General: Revised existing language to improve readability and add additional detail and clarify as to what must be included in the construction site map. Added new language that requires listing the locations of areas where polymers, flocculants, or other stormwater treatment chemicals are used or stored. This language is from previous EPA permits; however, it is new to Virginia's CGP.
- Contents, Erosion and Sediment Control Plans: Revisions were made to improve readability and incorporate new defined terms. In addition, new language was added to provide additional clarity on when directing stormwater to vegetated areas, minimizing soil compaction, and preserving topsoil would be considered infeasible. The new language in these subsections comes from EPA's CGP.
- Contents, Pollution Prevention Plan: Revised to incorporate changes in terms from EPA's 2022 CGP. Added new language to clarify that concrete wash water cannot be disposed of through infiltration or otherwise disposed of on the ground. This new language is in response to issues raised through NOIRA public comments and during the Technical Advisory Committee meetings.
- Established SWPPP requirements for turbidity benchmark monitoring requirements for construction dewatering discharges to sensitive waters in response to new EPA requirements for controlling construction dewatering discharges. The department followed EPA's concept of creating a turbidity benchmark that is not an effluent limitation.
- Revised "*delegation of authority*" to "*duly authorized representative*" for consistency with other sections of the permit, as well as clarifies whose information needs to be included in the SWPPP. In addition, added language directing permittees to the provisions in the permit detailing signature and certification requirements.
- Added language clarifying that the SWPPP must contain a signature and certification and directing permittees to the provisions in the permit detailing signature and certification requirements. This was done to add clarity around requirements and to make the permit easier to navigate.
- SWPPP amendments, modification, and updates: Added language directing permittees to the provisions in the permit detailing signature and certification requirements.
- Public notification: Revised and added new language to clarify requirements for where a notice of coverage letter must be posted.
- SWPPP implementation: With regards to implementing corrective actions or routine maintenance, "*seven days*" replaced with "*five business days*" to create consistency throughout the permit. In addition, revised to add the need for routine maintenance as a trigger for this subsection. This is a new subsection incorporating new EPA requirements for what an operator must do if they must repeatedly repair the same stormwater control at the same location.
- SWPPP Inspections: Added language to clarify that the qualified personnel conducting inspections may be a person on the operator's staff or a third party hired to conduct inspections. Added new language from EPA's 2022 CGP that adds more detail around when an inspection must take place in the event of a measurable storm event. Revised to fix numbering issues that existed in past permits and to account for

new defined terms. Added subsections to incorporate language from EPA's permit stating that all stormwater discharge locations and all construction dewatering discharge locations must be inspected, and documented when an inspection indicates that pollutants are being discharged. In addition, new language was added to require reporting of incidents of noncompliance or a certification that the construction activity is in compliance with the SWPPP, as well as language directing permittees to the provisions in the permit detailing signature and certification requirements.

- Corrective Actions: Revised the number of days to implement corrective actions from "*seven days*" to "*five business days*" to create consistency throughout the permit. Added requirement to detail corrective actions that must be taken if required by the new construction dewatering turbidity benchmark.

Part III – Conditions Applicable to All VPDES Permits

- Minor changes were made to terms throughout this section to ensure consistent use of terminology, improve readability, and correct grammatical errors. These minor changes did not alter the requirements of this section.
- Reports of unusual or extraordinary discharges: Revised the number of days to report in writing to the department and the VESMP authority from "*five days*" to "*five calendar days*" to create a clear distinction from the use of "*five business days*" in other parts of the permit.
- Reports of noncompliance: Updated to ensure consistency with other recently reissued general VPDES permits in Virginia. The changes from this section come from the recently reissued General Permit for Vehicle Wash Facilities and Laundry Facilities (9VAC25-194-70). The revisions include changing "*surface waters*" to "*state waters*," minor linguistic and number revisions, and changes to the subsection dealing with making reports to the department or VESMP authority.
- Signatory requirements: Revised to add notices of termination to the types of documents requiring signatures.
- Duty to reapply: Revised the timeline for submitting a completed registration statement from 60 days to 90 days prior to the expiration date of the permit for consistency with the requirements outlined in previous sections of the CGP.

Activities Covered under this General Permit

This general permit covers point source discharges of stormwater from construction activities to surface waters of the Commonwealth, including discharges through municipal or non-municipal separate storm sewer systems. The term "*construction activity*" is defined in 9VAC25-875-20 as "...*any clearing, grading or excavation associated with large construction activity or associated with small construction activity.*" The terms "*large construction activity*" and "*small construction activity*" are likewise defined in that section as follows:

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

"*Small construction activity*" means:

1. Construction activities including clearing, grading, and excavating that results in land disturbance of equal to or greater than one acre, and less than five acres. Small construction activity also includes the disturbance of less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one and less than five acres. Small construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility. The department may waive the otherwise applicable requirements in a general permit for a stormwater discharge from construction activities that disturb less than five acres where stormwater controls are not needed based on a "total maximum daily load" (TMDL) that addresses the pollutant(s) of concern or, for nonimpaired waters that do not require TMDLs, an equivalent analysis that determines allocations for small construction sites for the pollutants of concern or that determines that such allocations are not needed to protect water quality based on consideration of existing in-stream concentrations, expected growth in pollutant contributions from all sources, and a margin of safety. For the purpose of this subdivision, the pollutants of concern include sediment or a parameter that addresses sediment (such as total suspended solids, turbidity or siltation) and any other pollutant that has

been identified as a cause of impairment of any water body that will receive a discharge from the construction activity. The operator must certify to the department that the construction activity will take place, and stormwater discharges will occur, within the drainage area addressed by the TMDL or equivalent analysis. As of the start dates in Table 1 of 9VAC25-31-1020, all certifications submitted in support of the waiver shall be submitted electronically by the owner or operator to the department in compliance with this subdivision and 40 CFR Part 3 (including, in all cases, 40 CFR Part 3 Subpart D), 9VAC25-875-940, and Part XI (9VAC25-31-950 et seq.) of the Virginia Pollutant Discharge Elimination (VPDES) Permit Regulation. Part XI of 9VAC25-31 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of Part XI of 9VAC25-31, permittees may be required to report electronically if specified by a particular permit.

2. Any other construction activity designated by the either the department or the EPA regional administrator, based on the potential for contribution to a violation of a water quality standard or for significant contribution of pollutants to surface waters.

Coverage under this general permit applies to the “*Estimated Area To Be Disturbed*” as reported by the operator on the registration statement. For projects that are planned in sections over an extended period of time exceeding the 5-year term of this permit, coverage is only required for those sections of the project where land disturbance will be occurring prior to June 30, 2029. If during the term of this permit the operator determines additional land disturbance is necessary as part of the project, a permit registration modification is required to be submitted.

This general permit also covers point source discharges of stormwater from construction support activities (e.g., concrete or asphalt batch plants, equipment staging yards, material storage areas, excavated material disposal areas, borrow areas) located on-site or off-site provided that:

- (1) the support activity is directly related to a construction activity that is required to have general permit coverage for stormwater discharges;
- (2) the support activity is not a commercial operation, nor does it serve multiple unrelated construction sites;
- (3) the support activity does not operate beyond the completion of the last construction activity it supports;
- (4) the support activity is reported in the registration statement at the time of general permit coverage or reported in a modified registration statement once the need for the support activity is known;
- (5) appropriate control measures are identified in a stormwater pollution prevention plan and implemented to address the discharges from the support activity; and
- (6) all applicable, state, federal, and local approvals are obtained for the support activity.

Operators applying for coverage under this general permit are not required to include on-site or off-site support activities for which they do not have operational control. Any on-site or off-site support activity not included with an operators’ general permit coverage may be required to obtain separate VDPES permit coverage. On-site or off-site support activities that require land disturbance are required to obtain construction general permit coverage regardless of the extent of the land disturbing activity (i.e., even if less than one acre).

This general permit covers stormwater discharges from a wide variety of construction activities. The conditions which affect the presence of pollutants in stormwater at construction sites vary significantly. Therefore, the general permit contains SWPPP requirements that apply to all construction activities and does not specify erosion and sediment controls or stormwater management controls that are appropriate or can be implemented by all operators. The volume and quality of stormwater discharges associated with construction activity will depend on a number of factors, including the land-disturbing activities occurring at the site and the nature of precipitation. Pollutants in stormwater discharges from construction activities may be reduced using the following methods: eliminating pollution sources, implementing Best Management Practices (BMPs) to prevent pollution, and using traditional erosion and sediment controls.

The draft general permit follows the basic framework of the U.S. EPA final 2022 Construction General Permit (CGP) published in the Federal Register (FR) on January 24, 2022 (87 FR 3522). Readers are also referred to EPA’s final 2022 CGP Fact Sheet (available on EPA’s website at <https://www.epa.gov/system/files/documents/2022-01/2022-cgp-final-fact-sheet.pdf> for additional details.

Limitations on Coverage

Because of the broad scope of this general permit, most construction activities currently regulated under the VESMP are eligible to be covered under the general permit. There are, however, several types of stormwater discharges

not covered under this general permit. If an operator has been required to obtain an individual VSMP permit for their stormwater discharges pursuant to 9VAC25-875-980 B (VESMP Regulation), they are not authorized for coverage under this general permit. Discharges to surface waters where a discharge is specifically prohibited by another regulation of the State Water Control Board are not authorized by this general permit. Discharges from VPDES permitted industrial activities are also not eligible for coverage under this general permit.

Other discharges of stormwater that are not authorized under the general permit are:

- (1) discharges that originate from the construction site after construction activities have been completed and the construction site, including any construction support activity covered under the general permit registration, has undergone final stabilization;
- (2) discharges that are mixed with sources of nonstormwater, other than those discharges that are identified in Part I E (Authorized nonstormwater discharges) of the general permit;
- (3) discharges of stormwater from construction activities that are covered under an individual permit or required to obtain coverage under an alternative general permit;
- (4) discharges that cause, or may reasonably be expected to cause, or contribute to a violation of the Virginia Water Quality Standards (9VAC25-260);
- (5) discharges that violate or would violate the antidegradation policy in the Virginia Water Quality Standards (9VAC25-260-30); and
- (6) discharges that are not consistent with the assumptions and requirements of an applicable Total Maximum Daily Load (TMDL) approved prior to the term of this general permit.

In addition, there shall be no discharge of floating solids or visible foam in other than trace amounts.

Impaired Waters and TMDL Limitation

Stormwater discharges from construction activities to surface waters identified as impaired in the 2022 § 305(b)/303(d) Water Quality Assessment Integrated Report for Benthic Macroinvertebrates Bioassessments or for which a TMDL wasteload allocation has been established and approved prior to the term of this general permit, including all surface waters within the Chesapeake Bay Watershed, for the following:

(i) sediment or a sediment related parameter (i.e., total suspended solids or turbidity), (ii) nutrients (i.e., nitrogen or phosphorus), or (iii) polychlorinated biphenyls (PCBs) are not eligible for coverage under this general permit unless the operator develops, implements, and maintains a SWPPP in accordance with Parts II B 5 and II B 6 of the general permit that minimizes the pollutants of concern and, when applicable, is consistent with the assumptions and requirements of the approved TMDL wasteload allocations. In addition, for impairments for (i) sediment or a sediment related parameter (i.e., total suspended solids or turbidity), or (ii) nutrients (i.e., nitrogen or phosphorus), the operator must perform the following:

- (i) identify the impaired water(s), approved TMDL(s), and pollutant(s) of concern, when applicable, in the SWPPP;
- (ii) apply permanent or temporary soil stabilization to denuded areas within seven days after final grade is reached on any portion of the site;
- (iii) apply nutrients in accordance with manufacturer's recommendations or an approved nutrient management plan and not during rainfall events; and
- (iv) implement a more frequent SWPPP inspection schedule.

For PCB impairments, the operator must perform the following:

- (i) identify the impaired water(s), approved TMDL(s), and pollutant(s) of concern, when applicable, in the SWPPP;
- (ii) apply permanent or temporary soil stabilization to denuded areas within seven days after final grade is reached on any portion of the site;
- (iii) implement proper waste disposal in accordance with local, state, and federal requirements; and
- (iv) implement a more frequent SWPPP inspection schedule consistent with Part II G 2 a of the general permit.

Exceptional Waters Limitation

Discharges of stormwater from construction activities to exceptional waters identified in 9VAC25-260-60 A 3 c (Virginia Water Quality Standards) are not eligible for coverage under this general permit unless the operator (i) identifies the exceptional water(s) in the SWPPP, (ii) applies permanent or temporary soil stabilization to denuded areas within seven days after final grade is reached on any portion of the site, (iii) applies nutrients in accordance

with manufacturer's recommendations or an approved nutrient management plan and not during rainfall events, and (iv) implements a more frequent SWPPP inspection schedule consistent with Part II G 2 a of the general permit.

Permit Special Conditions

Commingled Discharges

Discharges covered by this general permit may be commingled with other sources of stormwater that are not required to be covered under a permit, so long as the commingled discharge is in compliance with this general permit. Discharges authorized by a separate VPDES permit may be commingled with discharges authorized by this general permit so long as all such discharges comply with all applicable VPDES permit requirements.

Authorized Nonstormwater Discharges

The following nonstormwater discharges from construction activities are also covered by this general permit:

- (1) discharges from emergency firefighting activities;
- (2) fire hydrant flushings, managed to avoid an instream impact;
- (3) water used to wash vehicles or equipment provided no soaps, solvents, or detergents are used and the wash water is filtered, settled, or similarly treated prior to discharge;
- (4) water used to control dust that is filtered, settled, or similarly treated prior to discharge;
- (5) potable water, including uncontaminated waterline flushings, managed in a manner to avoid an instream impact;
- (6) routine external building wash down provided no soaps, solvents, or detergents are been used and the wash water is filtered, settled, or similarly treated prior to discharge;
- (7) pavement wash water provided spills or leaks of toxic or hazardous materials have not occurred, unless all spilled or leaked material has been removed prior to washing; soaps, solvents, or detergents are not used; and where the wash water is filtered, settled, or similarly treated prior to discharge;
- (8) uncontaminated air conditioning or compressor condensate;
- (9) uncontaminated groundwater or spring water;
- (10) foundation or footing drains provided flows are not contaminated with process materials such as solvents or contaminated groundwater;
- (11) uncontaminated, excavation dewatering, including dewatering of trenches and excavations that are filtered, settled, or similarly treated prior to discharge; and
- (12) landscape irrigations.

Potable water sources may contain chlorine or other chemicals commonly added to disinfect and prepare the water for public use. These chemicals may be toxic to fish and other aquatic life. When discharges of potable water at construction site is necessary, operators should consider the use of dichlorination measures or direct discharges to vegetated areas prior to discharging to surface waters.

Prohibition of Nonstormwater Discharges

All discharges covered by this general permit shall be composed entirely of stormwater associated with construction activities except as noted above. All other nonstormwater discharges including the following, which have been adapted from 40 Code of Federal Regulations (CFR) Part 450, are prohibited:

- (1) wastewater from the washout of concrete;
- (2) wastewater from the washout and cleanout of stucco, paint, form release oils, curing compounds, and other construction materials;
- (3) fuels, oils, or other pollutants used in vehicle and equipment operation and maintenance;
- (4) oils, toxic substances, or hazardous substances from spills or other releases; and
- (5) soaps, solvents, or detergents used in equipment and vehicle washing.

All nonstormwater discharges not covered under this general permit shall either be eliminated or covered under a separate VDPES permit.

Termination of General Permit Coverage

Operators of construction activities are required to submit a notice of termination after one or more of the following conditions have been met:

- (1) necessary permanent control measures identified in the SWPPP for the construction site are in place and functioning effectively and final stabilization as defined in 9VAC25-880-1 has been achieved on all portions of the construction site for which the operator has operational control. When applicable, long term responsibility and maintenance requirements for permanent control measures shall be recorded in the local

land records prior to the submission of a complete and accurate notice of termination and the construction record drawing prepared;

- (2) another operator has assumed control over all areas of the construction site that have not been finally stabilized and obtained coverage for the ongoing discharge;
- (3) coverage under an alternate VPDES permit has been obtained; or
- (4) for individual lots in residential construction only, final stabilization as defined in 9VAC25-880-1 has been completed, including providing written notification to the homeowner and incorporating a copy of the notification and signed statement into the SWPPP, and the residence has been transferred to the homeowner.

The notice of termination should be submitted no later than 30 days after once of the above conditions being met and must be signed in accordance with Part III K of the general permit and include the required certification in accordance with Part III K 4 of the general permit. Notice of termination is not required for single-family residential structures that are not required to submit a registration statement.

For construction activities on land used for agricultural purposes (e.g., pipelines across crop or range land or staging areas for highway construction) construction activity operators may accomplish final stabilization by returning the disturbed land to its preconstruction agricultural use.

Water Quality Protection

Construction activity operators must select, install, implement, and maintain control measures as identified in the SWPPP at the construction site that minimize pollutants in the discharge as necessary to ensure that the operator's discharge does not cause or contribute to an excursion above any applicable water quality standard. If the department determines that the operator's discharges are causing, have reasonable potential to cause, or are contributing to an excursion above any applicable water quality standard, the department, in consultation with the VESMP authority, may take appropriate enforcement action and require the operator to:

- (1) modify or implement additional control measures in accordance with Part IIC of the general permit to adequately address the identified water quality concerns;
- (2) submit valid and verifiable data and information that are representative of ambient conditions and indicate that the receiving water is attaining water quality standards; or
- (3) cease discharges of pollutants from the construction activity and submit an individual permit application according to 9VAC25-875-980 B 3.

Stormwater Pollution Prevention Plan (SWPPP)

EPA established effluent limitation guidelines (ELGs) and new source performance standards (NSPS) to control the discharge of pollutants from construction activities; see 40 CFR Part 450. These requirements, known as the "*Construction and Development Rule*" or "*C&D Rule*", were published in the Federal Register on December 1, 2009 (74 FR 62996) and became effective on February 1, 2010. On November 5, 2010, EPA finalized a stay (75 FR 68215), effective January 4, 2011, for 40 CFR Parts 450.22 (a) and (b). EPA published amendments to the C&D Rule (79 FR 12661) on March 6, 2014, and May 4, 2014 (80 FR 25235) with an effective date of May 5, 2014. The amendments lifted the indefinite stay, withdrew the numeric discharge standards, and changed several of the non-numeric provisions of the original rule.

Effluent limitation guidelines for the Best Practicable Technology Currently Available (BPT), Best Available Technology Economically Achievable (BAT), and Best Conventional Pollutant Control Technology (BCT), which are codified at 40 CFR Parts 450.21 through 450.23, respectively, apply to all existing sources (i.e., construction activities which commenced land disturbance prior to February 1, 2010). The New Source Performance Standards codified in 40 CFR Part 450.24 apply to all new sources (i.e., construction activities which commenced land disturbance on or after February 1, 2010). This general permit establishes BPT/BCT/BAT/NSPS requirements in terms of requirements to develop and implement stormwater pollution prevention plans and thus, is consistent with the requirements of the Clean Water Act (CWA).

This general permit requires operators to develop and implement a site-specific stormwater pollution prevention plan. In doing so, this adequately addresses the variable stormwater management/pollution prevention opportunities available at a construction site. Stormwater pollution prevention plans are required to achieve BPT/BCT/BAT/NSPS requirements, and pollution prevention measures are the most practicable and cost-effective approach to minimizing pollutants in stormwater discharges. They also provide for flexibility in developing tailored plans and strategies. This general permit identifies specific components that the SWPPP must include; all the components of the plan are essential for minimizing pollutants in stormwater discharges. A specific list of erosion

and sediment controls or stormwater management controls are not established in this general permit because the variability in covered construction activities precludes the identification of universal standards or practices that are appropriate or can be implemented by all operators.

Stormwater Pollution Prevention Plan Requirements

The SWPPP is intended to identify potential sources of pollutants which may reasonably be expected to affect the quality of stormwater discharges from the construction activity and describe control measures which will be used to minimize pollutant discharges and comply with the terms and conditions of the general permit. All SWPPPs shall be prepared in accordance with good engineering practices. SWPPP requirements of this general permit may be fulfilled by incorporating by reference other plans such as a spill prevention control and countermeasure plan developed for the construction site under § 311 of the federal Clean Water Act or BMP programs otherwise required for the facility provided that the incorporated plan meets or exceeds the SWPPP requirements of this general permit. All plans incorporated by reference into the SWPPP are enforceable under this general permit. If a plan incorporated by reference does not contain all of the required elements of the SWPPP, the operator must develop the missing elements and include them in the SWPPP.

1. Deadlines for SWPPP Preparation

To be covered under the general permit, the stormwater pollution prevention plan must be developed prior to the submission of a registration statement to the department. This SWPPP preparation requirement does not apply to the submission of a registration statement to a local VESMP authority; operators of private construction activities are required to submit registration statements for initial permit coverage or reissuance of permit coverage, as well as transfer and modification of coverage, to local VESMP authorities for review and acceptance on the department's behalf. It is the department's expectation that all components of the SWPPP, including any necessary approved plans, will be prepared by the operator prior to any local VESMP authority forwarding the complete registration statement to the department for issuance of general permit coverage.

For ongoing construction activities involving a change of operator, the new operator must accept and maintain the existing SWPPP or prepare and implement a new SWPPP prior to taking over operations at the construction activity.

2. Stormwater Pollution Prevention Plan Contents

Stormwater pollution prevention plans must include the following:

- (1) general information;
- (2) erosion and sediment controls;
- (3) stormwater management controls;
- (4) pollution prevention practices for any applicable nonstormwater discharge(s); and
- (5) measures to address stormwater discharges to impaired waters, surface waters with a TMDL approved prior to the term of this general permit, and exceptional waters.

a. General Information

Stormwater pollution prevention plans are based on an understanding of the pollution potential of the construction activity. The SWPPP identifies potential sources of pollution that may reasonably be expected to affect the quality of stormwater discharges. In addition, SWPPPs provide a description of the site and the construction activities. This information is intended to provide a better understanding of construction site runoff and major pollutant sources. The general information section of the SWPPP must include a copy of the signed Registration Statement; a copy of the Notice of Coverage letter upon receipt; a copy of the Construction General Permit upon receipt; a narrative description of the nature of the construction activity, including the function of the project (e.g., low density residential, shopping mall, highway); and a legible map of the construction site identifying the following:

- (1) existing and proposed drainage patterns on the construction site and approximate slopes before and after major grading activities;
- (2) limits of clearing and grading (i.e., land disturbance) including steep slopes and natural buffers around surface waters that will remain undisturbed;
- (3) locations of major structural and nonstructural control measures, including sediment basins and traps, perimeter dikes and diversions, sediment barriers, and other measures intended to filter, settle, or similarly treat sediment, that will be installed between disturbed areas and the undisturbed vegetated areas in order to increase sediment removal and maximize stormwater infiltration;
- (4) locations of surface waters;
- (5) locations where concentrated stormwater is discharged;
- (6) locations of any construction support activities; and

- (7) when applicable, the location of the on-site rain gauge, or methodology established in consultation with the VESMP authority, used to identify measurable storm events for inspection purposes.

b. Erosion and Sediment Control Plan

Stormwater pollution prevention plans must include an approved erosion and sediment control plan, an “*agreement in lieu of a plan*” as defined in 9VAC25-875-20, or an erosion and sediment control plan prepared in accordance with department-approved standards and specifications for the *Estimated Area to be Disturbed* as reported on the registration statement. An erosion and sediment control plan or an “*agreement in lieu of a plan*” ensures the proper design and implementation of erosion and sediment controls to minimize pollutants in stormwater discharges from the construction activity. In addition, all erosion and sediment control plans must include a statement describing the maintenance responsibilities required for all controls employed, which serves to aid operators in maintenance activities. Unless there is evidence to the contrary, a properly implemented approved erosion and sediment control plan, an “*agreement in lieu of a plan*,” or an erosion and sediment control plan prepared in accordance with department-approved standards and specifications, adequately:

- (1) controls the volume and velocity of stormwater runoff within the construction site to minimize erosion;
- (2) controls stormwater discharges, including peak flow rates and total stormwater volume, to minimize erosion at outfalls and to minimize downstream channel and stream bank erosion;
- (3) minimizes the amount of soil exposed during the construction activity;
- (4) minimizes the disturbance of steep slopes;
- (5) minimizes sediment discharges from the construction site in a manner that (i) addresses the amount, frequency, intensity, and duration of precipitation, (ii) the nature of resulting stormwater runoff, and (iii) soil characteristics, including the range of soil particle sizes expected to be present on the construction site;
- (6) provides and maintains natural buffers around surface waters, directs stormwater to vegetated areas to increase sediment removal and maximize stormwater infiltration, unless infiltration would be inadvisable due to the underlying geology (e.g., karst topography) and groundwater contamination concerns, or infeasible due to site conditions;
- (7) minimizes soil compaction (not required where the intended function of a specific area of the construction site dictates that it is to be compacted);
- (8) unless infeasible, preserve topsoil (not required where the intended function of a specific area of the construction site dictates that the topsoil be disturbed or removed);
- (9) ensures the initiation of stabilization activities of disturbed areas occurs immediately whenever any clearing, grading, or excavating, or other land-disturbing activities have permanently ceased on any portion of the construction site, or temporarily ceased on any portion of the construction site and will not resume for a period exceeding 14 days; and
- (10) utilizes outlet structures that withdraw stormwater from the surface (i.e., above the permanent pool or wet storage water surface elevation), unless infeasible, when discharging from sediment basins or sediment traps.

In order to obtain permit coverage under the 2024 general permit, all operators must have obtained approval of an erosion and sediment control plan for the *Estimated Area to be Disturbed* as reported on the registration statement.

c. Stormwater Management Plan

Stormwater management plans ensure the implementation and maintenance of post-development stormwater management controls to minimize pollutants in stormwater discharges from the site after final stabilization and general permit termination has occurred. Stormwater management controls that mitigate changes to pre-development runoff characteristics assist in protecting and maintaining the physical and biological characteristics of receiving streams and wetlands. Therefore, stormwater pollution prevention plans must include an approved stormwater management plan in accordance with the Virginia Erosion and Stormwater Management Regulation (9VAC25-875) for new construction activities, an “*agreement in lieu of a plan*” as defined in 9VAC25-875-20, or a stormwater management plan prepared in accordance with department-approved standards and specifications.

For any operator that obtained an initial permit or commenced land disturbance prior to July 1, 2014, meeting the conditions of 9VAC25-875-480 B of the VESMP Regulation, an approved stormwater management plan is not required. In lieu of an approved stormwater management plan, the SWPPP shall include a description of, and all necessary calculations supporting, all post-construction stormwater management measures that will be installed prior to the completion of the construction process to control pollutants in stormwater discharges after construction operations have been completed. Structural measures should be placed on upland soils to the degree possible.

Such measures must be designed and installed in accordance with applicable VESCP authority, VESMP authority, state, and federal requirements, and any necessary permits must be obtained.

d. Pollution Prevention Plan

Pollution prevention plans identify and address pollutant-generating activities from both on-site and off-site activities, including construction support activities, which may be reasonably expected to affect the quality of discharges. The plan must identify and ensure the implementation of applicable pollution prevention practices for each component of the discharge. The pollution prevention plan shall include:

- (1) the identification of pollutant-generating activities and the pollutants that are expected to be exposed to stormwater;
- (2) the location where the pollutant-generating activities will occur (or if identified on the site plan, reference the site plan);
- (3) the identification of all nonstormwater discharges that are or will be commingled with stormwater discharges from the construction activity, including any support activity;
- (4) the identification of the person responsible for implementing the pollution prevention practice(s) for each pollutant-generating activity (if other than the person listed as the qualified personnel);
- (5) a description of the pollution prevention procedures and practices that will be implemented to:
 - (i) prevent and respond to leaks, spills, and other releases,
 - (ii) prevent the discharge of spilled and leaked fuels and chemicals from vehicle fueling and maintenance activities,
 - (iii) prevent the discharge of soaps, solvents, detergents, and wash water from construction materials, including the clean-up of stucco, paint, form release oils, and curing compounds,
 - (iv) minimize the discharge of pollutants from vehicle and equipment washing, wheel wash water and other types of washing,
 - (v) direct concrete wash water into a leak-proof container or leak-proof settling basin designed so that no overflows can occur due to the inadequate sizing or precipitation,
 - (vi) minimize the discharge of pollutants from storage, handling, and disposal of construction products, materials, and wastes,
 - (vii) prevent the discharge of fuels, oils, and other petroleum products, hazardous or toxic wastes, waste concrete, and sanitary wastes;
 - (viii) addresses any other discharge from the potential pollutant-generating activities not addressed above;
 - (ix) minimizes the exposure of water materials to precipitation by closing or covering waste containers during precipitation events and at the end of the business day or implementing other similarly effective practices; and
- (6) a description of the procedures for providing pollution prevention awareness of all applicable wastes to personnel in order to comply with the conditions of this general permit.

e. Measures to address stormwater discharges to impaired waters, surface waters with a TMDL approved prior to the term of this general permit, and exceptional waters

Operators must develop, implement, and maintain a SWPPP that minimizes the pollutants of concern (i.e., sediment or a sediment-related parameter or nutrients) when discharging to surface waters identified as impaired on the 2022 305(b)/303(d) Water Quality Assessment Integrated Report for Benthic Macroinvertebrates Bioassessments or with an applicable TMDL wasteload allocation established and approved prior to the term of this general permit, including all surface waters within the Chesapeake Bay Watershed. Operators must also:

- (1) identify the impaired water(s), approved TMDL(s), and pollutant(s) of concern, in the SWPPP and
- (2) provide documentation in the SWPPP that:
 - (i) permanent or temporary soil stabilization shall be applied to denuded areas within 7 days after final grade is reached on any portion of the construction site,
 - (ii) nutrients shall be applied in accordance with manufacturer's recommendations or an approved nutrient management plan and shall not be applied during rainfall events, and
 - (iii) perform site inspections at a frequency of at least once every 4 business days or, at least once every 5 business days and no later than 24 hours following a measurable storm event. In addition, operators shall inspect all outfalls discharging to impaired waters when employing representative inspections for utility line installations, pipeline construction, or other similar linear construction activities.

When construction activities discharge to surface waters identified as PCB impaired on the 2022 305(b)/303(d) Water Quality Assessment Integrated Report or with an applicable TMDL wasteload allocation established approved prior to the term of this general permit and the activities include the demolition of a building 10,000 square feet or greater of floor space built or renovated prior to January 1, 1980, operators must develop, implement, and maintain a SWPPP that minimizes the exposure of building materials containing PCBs to precipitation and stormwater. Operators must also perform the following:

- (i) identify the impaired water(s), approved TMDL(s), and pollutant(s) of concern; in the SWPPP;
- (ii) implement the approved erosion and sediment control plan;
- (iii) ensure disposal of waste materials in compliance with applicable state, federal, and local requirements; and
- (iv) perform site inspections at a frequency of at least once every four business days or, at least once every five business days and no later than 24 hours following a measurable storm event.

It is anticipated that the implementation and maintenance of traditional erosion and sediment controls in accordance with an approved Erosion and Sediment Control Plan, an “*agreement in lieu of a plan*”, or an Erosion and Sediment Control Plan prepared in accordance with department-approved standards and specifications will minimize (i.e., reduce or eliminate) the discharge of (i) sediment or a sediment related parameter or (ii) nutrients from construction activities. The implementation and maintenance of traditional erosion and sediment controls is also expected to minimize the discharge of pollutants typically bound to sediment particles such as heavy metals or polychlorinated biphenyl (PCB). Also, more frequent inspection requirements will enhance an operator’s ability to find and correct problems before a discharge of pollutants to impaired waters occurs. In addition, reducing the amount of time that exposed soil is left in an un-stabilized state is important for limiting the sediment or nutrient load to waters already degraded for pollutants associated with construction activities. The faster stabilization requirement for construction activities discharging to sediment or nutrient impaired waters is anticipated to minimize the erosion losses and downstream sedimentation issues that are associated with large, exposed areas. In the absence of information demonstrating otherwise, it is anticipated that compliance with the conditions of this general permit will result in stormwater discharges being controlled as necessary such that an operator’s stormwater discharges will not cause or contribute to a water quality impairment and are consistent with the assumptions and requirements of all applicable TMDLs approved prior to the term of this general permit.

The Chesapeake Bay TMDL established and approved by EPA in December 2010 was developed to address water quality impairments associated with excess sediment and nutrient loadings. Since discharges of stormwater from construction activities are an identified source of sediment and nutrients, all construction activities occurring within the Bay watershed must implement the provisions of Part II B 5 of the general permit as discussed above.

For stormwater discharges to exceptional waters identified in the Virginia Water Quality Standards, operators must:

- (1) identify the exceptional water(s) in the SWPPP and
- (2) provide documentation in the SWWP that:
 - (i) permanent or temporary soil stabilization shall be applied to denuded areas within 7 days after final grade is reached on any portion of the site;
 - (ii) nutrients shall be applied in accordance with manufacturer’s recommendations or an approved nutrient management plan and not during rainfall events, and
 - (iii) perform site inspections at a frequency of at least once every four days or, at least once every seven days and no later than 24 hours following a measurable storm event.

In addition, operators must inspect all outfalls discharging to exceptional waters when employing representative inspections for utility line installations, pipeline construction, or other similar linear construction activities. These general permit requirements serve to implement the Commonwealth’s antidegradation policy for exceptional (i.e., Tier 3) waters.

f. Construction dewatering discharges to sediment impaired waters or exceptional waters

Dewatering discharges from construction site dewatering activities may contain pollutants that exceed applicable water quality standards and contribute to downstream erosion, if not managed by appropriate controls. The turbidity levels in construction dewatering effluent can vary greatly depending upon many site-specific conditions, such as soil condition, type and extent of construction activity, implementation of controls, and location of the activity in relation to receiving waters. Dewatering discharges of uncontaminated stormwater or groundwater from footers or foundations of a single-family detached residential structure is exempt from the requirements of this section, provided that such discharges are not directly discharged to surface waters.

For construction dewatering discharges to surface waters (i) identified as impaired in the 2022 § 305(b)/303(d) Water Quality Assessment Integrated Report for Benthic Macroinvertebrates Bioassessments; (ii) with an applicable TMDL wasteload allocation established and approved prior to the term of this general permit for sediment or a sediment-related parameter (i.e., total suspended solids or turbidity) including all surface waters within the Chesapeake Bay Water; or (iii) identified in 9VAC25-260-30 A 3 c as an exceptional water, the operator shall undertake one of the following methods for controlling and documenting construction dewatering discharges:

A. Turbidity benchmark – Option 1

- (1) identify the location of all construction dewatering discharges in the SWPPP;
- (2) select, install, implement, and maintain control measures at each dewatering location that minimize pollutants, including suspended solids, in construction dewatering discharges prior to discharging into a stormwater conveyance system or surface water; and
- (3) provide documentation in the SWPPP that:
 - (i) one upstream grab sample collected from the receiving stream and at least one grab sample shall be collected from each construction dewatering discharge when the first discharge at that location occurs, daily thereafter, and after any installation of new controls or routine maintenance activity of existing control;
 - (ii) upstream grab samples of the receiving stream shall be collected within 15 minutes of the corresponding construction dewatering discharge sample and grab samples of the construction dewatering discharge shall be collected during the first 15 minutes of the construction dewatering discharge and daily thereafter
 - (iii) grab samples shall be collected after the construction dewatering water has been filtered, settled, or similarly treated and prior to its discharge into a stormwater conveyance system or surface water;
 - (iv) grab samples taken as required by this section shall be measured using a turbidity meter that reports results in nephelometric turbidity units (NTUs) or foramzine turbidity unit (FTUs), and conduct a turbidity meter calibration verification prior to each day's use, consistent with manufacturer recommendations;
 - (v) all dewatering discharges shall be visually monitored for changes in the characterization of effluent discharge;
 - (vi) if any turbidity measurement of the construction dewatering discharge exceeds the upstream grab sample of the receiving stream by more than 10 NTUs/FTUs, or if visual monitoring indicates a change in the characterization of effluent discharge, corrective action shall be taken in accordance with Part II H 2 of this general permit; and
 - (vii) turbidity monitoring information (i.e., location, date, sample collection time, and turbidity measurement) and any necessary corrective actions taken shall be recorded in the SWPPP; or

B. Turbidity benchmark – Option 2

- (1) identify the location of all construction dewatering discharges in the SWPPP;
- (2) select, install, implement, and maintain control measures at each dewatering location that minimize pollutants, including suspended solids, in construction dewatering discharges prior to discharging into a stormwater conveyance system or surface water; and
- (3) provide documentation in the SWPPP that:
 - (i) at least one grab sample shall be collected from each construction dewatering discharge when the first discharge at that location occurs, daily thereafter, and after any installation of new controls or routine maintenance activity of existing controls, and tested to confirm a turbidity measurement of equal to or less than 50 NTUs/FTUs from the construction dewatering discharge;
 - (ii) grab samples of the construction dewatering discharge shall be collected during the first 15 minutes of the construction dewatering discharge and daily thereafter;
 - (iii) grab samples shall be collected after the construction dewatering water has been filtered, settled, or similarly treated and prior to its discharge into a stormwater conveyance system or surface water;
 - (iv) grab samples taken as required by this section shall be measured using a turbidity meter that reports results in nephelometric turbidity units (NTUs) or foramzine turbidity unit (FTUs), and conduct a turbidity meter calibration verification prior to each day's use, consistent with manufacturer recommendations;
 - (v) all dewatering discharges shall be visually monitored for changes in the characterization of effluent discharge;
 - (vi) if any turbidity measurement of the construction dewatering discharge exceeds 50 NTUs/FTUs, or if visual monitoring indicates a change in the characterization of effluent discharge, corrective action shall be taken in accordance with Part II H 2 of this general permit; and
 - (vii) turbidity monitoring information (i.e., location, date, sample collection time, and turbidity measurement) and any necessary corrective actions taken shall be recorded in the SWPPP.

3. SWPPP Amendments, Modification, and Updates

The operator shall amend the stormwater pollution prevention plan whenever there is a change in design, construction, operation or maintenance that has a significant effect on the discharge of pollutants to surface waters. The SWPPP must also be amended if, during inspections or investigations by the operator's qualified personnel, or by local, state, or federal officials, it is determined that the existing control measures are ineffective in minimizing pollutants in discharges from the construction activity. Qualified personnel must be a person knowledgeable in the principles and practices of erosion and sediment and stormwater management controls who possesses the skills to assess conditions at the construction site for the operator that could impact stormwater quality and quantity and to assess the effectiveness of any sediment and erosion control measures or stormwater management facilities selected to control the quality and quantity of stormwater discharges from the construction activity. On or after July 1, 2025, qualified personnel shall hold an unexpired certificate of competence for Project Inspector for Erosion and Sediment Control and an unexpired certificate of competence for Project Inspector for Stormwater Management, both issued by the department, a Construction General Permit Qualified Personnel Certificate, or an equivalent certification provided by EPA (currently titled Construction Inspection Training Course).

Amendments to the SWPPP shall include additional or modified control measures designed and implemented to correct problems identified. In addition, the SWPPP shall be amended to identify any new contractor that will implement and maintain a control measure of the stormwater pollution prevention plan. The SWPPP shall be updated as soon as possible but no later than five business days following any modifications to its implementation, unless approval by a Virginia Erosion and Sediment Control Program (VESCP) authority, VESMP authority, or the department is necessary for the implementation of an additional or modified control measure. If VESCP authority, VESMP authority, or department approval is necessary, the SWPPP shall be updated no later than five business days following approval.

Unless otherwise required above, the operator shall update the SWPPP to include the following:

- (1) a record of dates when major grading activities occur, construction activities temporarily or permanently cause on a portion of the construction site, and stabilization measures are initiated;
- (2) documentation of replaced or modified controls where periodic inspections or other information have indicated that the controls have been used inappropriately or incorrectly and were modified;
- (3) areas that have reached final stabilization and where no further SWPPP or inspection requirements apply;
- (4) all properties that are no longer under the legal control of the operator and the dates on which the operator no longer had legal control over each property;
- (5) the date of any prohibited discharge, the discharge volume released, and actions taken to minimize the impact of the release;
- (6) measures taken to prevent the reoccurrence of an prohibited discharge; and
- (7) measures taken to address any inspection deficiencies.

All amendments, modifications, or updates to the SWPPP shall be signed in accordance with Part III K 2 of the general permit and shall include the required certification in accordance with Part III K 4 of the general permit.

4. Public Notification

Upon commencement of construction activities, the operator shall post a copy of the Notice of Coverage letter at a publicly accessible location near the main entrance of the construction site. For linear projects, the operator shall post a copy of the Notice of Coverage letter at a publicly accessible location near an active portion of the construction site (e.g., where a pipeline project crosses a public road). The copy of the Notice of Coverage letter shall be visible such that it can be readily viewed from a public right-of-way. In addition, the operator must maintain the posted information until termination of general permit coverage.

5. SWPPP Availability

The operator with day-to-day operational control over stormwater pollution prevention plan implementation is required to have a copy of the SWPPP available at a central location on-site for use by those identified as having responsibilities under the SWPPP. In addition, the general permit requires the operator to make the SWPPP and all updates available upon request to the department, the VESMP authority, the EPA, the VESCP authority, local government officials, or the operator of a municipal stormwater sewer system (MS4) receiving discharges from the construction activity. If an on-site location is unavailable to store the SWPPP when no personnel are present, notice of the SWPPP's location must be posted near the main entrance of the construction site.

The general permit also requires the operator to make the SWPPP available for public review in an electronic format or in hard copy. Information for public access to the SWPPP is required to be posted and maintained in accordance with the SWPPP public notification requirements, above. If the operator does not provide the SWPPP electronically, then public access to the SWPPP may be arranged upon request at a time (during normal business hours) and at a publicly accessible location convenient to the operator or his designee. Please note that information not required to be contained within the SWPPP by this general permit is not required to be released by the operator.

6. SWPPP Implementation

The operator is required to implement the stormwater pollution prevention plan and subsequent amendments, modifications, and updates from the commencement of land disturbance until termination of general permit coverage.

All control measures must be properly maintained in effective operating condition in accordance with good engineering practices and, where applicable, manufacturer specifications. If required site inspections identify control measures that are not operating effectively or needs routine maintenance, corrective actions or routine maintenance shall be performed as soon as practicable, but no later than five business days after discovery or a longer period as established by the VESMP authority, to maintain the continued effectiveness of the control measures. If the operator must make the same repairs more than two times to the same control at the same location, even if the fix can be completed by the close of the next business day, the operator shall either (1) complete work to fix any subsequent repeat occurrences of this same problem under the corrective action procedures outlined in Part II H of the general permit, including keeping any records of the condition and how it was corrected, or (2) document in the inspection report under Part II G of the general permit why the specific reoccurrence of this same problems should still be addressed as a routine maintenance fix.

If required site inspections identify existing control measures that need to be modified or if additional or alternative control measures are necessary for any reason, implementation shall be completed prior to the next anticipated measurable storm event. If implementation prior to the next anticipated measurable storm event is impracticable, then alternative control measures shall be implemented as soon as practicable, but no later than five business days after discovery or a longer period as established by the VESMP authority.

7. SWPPP Inspections

Diligent site inspections are necessary to ensure adequate implementation of on-site erosion and sediment controls, particularly in the later stages of construction when the volume of runoff is greatest and the storage capacity of sediment basins or sediment traps have been reduced.

Inspection procedures in the stormwater pollution prevention plan must provide that specified areas on the construction site are inspected by qualified personnel identified by the operator a minimum of once every 10 business days and no later than 24 hours following a measurable storm event, or a minimum of once every five business days. Qualified personnel may be a person on the operator's staff, or a third party hired to conduct such inspections. Construction activities that discharge to impaired waters, surface waters with a TMDL approved prior to the term of this general permit, and exceptional waters shall be inspected a minimum of once every five business days and no later than 24 hours following a measurable storm event, or a minimum of once every four business days. Where areas have been temporarily stabilized or land disturbing activities will be suspended due to continuous frozen ground conditions and stormwater discharges are unlikely, the inspection frequency may be reduced to once per month. If weather conditions (such as above freezing temperatures or rain or snow events) make discharges likely, the operator shall immediately resume the regular inspection frequency.

For this general permit a "*measurable storm event*" is defined as a rainfall event producing 0.25 inches of rain or greater over 24 hours or snow melt from a snow event producing 3.25 inches or more of snow within a 24-hour period. EPA believes that storm events with rainfall totals between 0.25 and 0.5 inches or snow melt from a snow event producing 3.25 inches or more of snow have the potential to produce discharges of stormwater that could lead to discharges of pollutants to surface waters, particularly if stormwater controls are not functioning effectively. Furthermore, EPA also believes that storm events in this size range may compromise stormwater controls on the construction site. Readers are referred to EPA's final 2022 CGP Fact Sheet for additional details.

Representative inspections may be utilized for utility line installation, pipeline construction, or other similar linear construction activities provided that:

- (1) temporary or permanent soil stabilization has been installed and vehicle access may compromise the temporary or permanent soil stabilization and potentially cause additional land disturbance increasing the potential for erosion;
- (2) inspections occur on the same frequency as other construction activities;
- (3) control measures are inspected along the construction site 0.25 miles above and below each access point (i.e., where a roadway, undisturbed right-of-way, or other similar feature intersects the construction activity and access does not compromise temporary or permanent soil stabilization);
- (4) and the inspection locations are identified in the required inspection report.

Areas of the construction site that must be observed during inspections include, but are not limited to: disturbed areas, areas used for the storage of construction materials that are exposed to precipitation, structural control measures, and locations where vehicles enter or exit the construction site. Disturbed areas and areas used for the storage of construction materials that are exposed to precipitation must be inspected for evidence of, or the potential for, pollutants entering stormwater discharges from the construction site. Erosion and sediment controls and pollution prevention measures identified in the SWPPP must be observed to ensure that they are operating correctly and effectively and do not require maintenance; observations can be made during wet or dry weather conditions. Locations where vehicles enter or exit the construction site must be inspected for evidence of off-site sediment tracking.

SWPPP inspection reports must include the following information:

- (1) the date and time of the inspection and when applicable, the date and rainfall or snowfall amount of the last measurable storm event;
- (2) summarized findings of the inspection;
- (3) the locations, visual quality, and characteristics of all stormwater discharges, when occurring;
- (4) the locations, visual quality, and characteristics of all construction dewatering discharges, if applicable;
- (5) the locations of prohibited discharges;
- (6) the locations of control measures that require routine maintenance;
- (7) the locations of control measures that failed to operate as designed or proved inadequate or inappropriate for a particular location;
- (8) the locations where an erosion and sediment control plan or an agreement in lieu of a plan has not been properly implemented;
- (9) the locations where any additional control measures are needed;
- (10) a list of corrective actions required (including any changes to the SWPPP that are necessary) as a result of the inspection or to maintain permit compliance;
- (11) documentation of any corrective action required from a previous inspection that have not been implemented;
- (12) any incidents of noncompliance;
- (13) the required certification in accordance with the general permit; and
- (14) the date and signature of the qualified personnel and operator or the operator's duly authorized representative.

When the report does not identify any incidents of noncompliance, the report shall contain a certification that the construction activity is in compliance with the SWPPP and the general permit. Inspection report must be signed in accordance with Part III K of the general permit and must be retained for at least three years after the date of general permit expiration or termination of general permit coverage.

Based on the results of a site inspection, corrective action(s) must be taken as soon as practicable. The inspection and SWPPP review process must provide for the timely modification of the stormwater pollution prevention plan no later than five business days following the inspection, or a longer period as approved by the VESMP authority, unless regulatory authority approval of a corrective action is necessary.

If adverse weather causes the safety of the inspection personnel to be in jeopardy, the SWPPP inspection may be delayed until the next business day on which it is safe to perform the inspection. Any time inspections are delayed due to adverse weather conditions, evidence of the adverse weather conditions must be included in the SWPPP with the dates of occurrence.

8. Corrective Actions

The general permit requires the operator to implement any corrective action identified as a result of an inspection as soon as practicable but no later than five business days after discovery or a longer period as approved by the VESMP authority. If approval of a corrective action by a regulatory authority (e.g., VESMP authority, VESCP authority, the department) is necessary, the operator is further required to implement additional control measures to minimize pollutants in stormwater discharges until such approvals can be obtained. The operator may be required to remove accumulated sediment deposits located outside of the construction activity covered by this general permit as soon as practicable in order to minimize environmental impacts. The general permit requires that the operator notify the VSMP authority and the department as well as obtain all applicable federal, state, and local authorizations, approvals, and permits prior to the removal of sediments accumulated in surface waters including wetlands.

When using turbidity benchmark option 1, the operator shall implement corrective actions when any construction dewatering discharge turbidity measurement exceeds the upstream grab sample of the receiving stream by more than 10 NTUs/FTUs or where visual monitoring indicates a change in the characterization of effluent discharge. The operator shall:

- (1) cease the construction dewatering discharge at the location that exceeds upstream grab sample or where visual monitoring indicates a change in the characterization of effluent discharge;
- (2) determine whether the construction dewatering controls are operating effectively, need routine maintenance, or if an additional or alternate control measure is necessary; and
- (3) make any necessary adjustments, additions, repairs, or replacements to the construction dewatering controls.

Once these corrective action steps are completed and any necessary adjustments, additions, repairs, or replacements are made, the operator may resume its construction dewatering discharge and shall sample for turbidity within 15 minutes of the construction dewatering discharge commencing.

When using turbidity benchmark option 2, the operator shall implement corrective actions when any construction dewatering discharge turbidity measurement exceeds 50 NTUs/FTUs, or visual monitoring of any construction dewatering control measure indicates a change in the characterization of effluent discharge or a need for adjustments, additions, repairs, or replacements to control measures. The operator shall:

- (1) cease the construction dewatering discharge at the location where visual monitoring indicates a change in the characterization of effluent discharge or a need for adjustments, additions, repairs, or replacements to control measures;
- (2) determine whether the construction dewatering controls are operating effectively, need routine maintenance, need replacement, or if an additional or alternate control measure is necessary; and
- (3) make any necessary adjustments, additions, repairs, or replacements to the construction dewatering controls.

Once these corrective action steps are completed and any necessary adjustments, additions, repairs, or replacements are made, the operator may resume its construction dewatering discharge and shall sample for turbidity within 15 minutes of the construction dewatering discharge commencing.

Numeric Effluent Limitations and Monitoring Requirements

As previously noted, on November 5, 2010, EPA finalized a stay (75 FR 68215), effective January 4, 2011, for 40 CFR Parts 450.22 (a) and (b). EPA published amendments to the C&D Rule (79 CFR 12661) on March 6, 2014, and May 4, 2014 (80 CFR 25235) with an effective date of May 5, 2014, that lifted the indefinite stay and withdrew the numeric effluent limitation. Therefore, the numeric effluent limitations for turbidity have not been incorporated into the general permit for stormwater discharges from construction activities. Requirements in this general permit include the development of a stormwater pollution prevention plan. Discharge sampling information does not provide a direct link to compliance with this permit condition as it does with numeric effluent limitations. Where permits require the implementation of stormwater pollution prevention measures and do not establish numeric effluent limitations, conducting inspections to identify sources of pollution and to evaluate whether the pollution prevention measures required by the permit are being effectively implemented and are in compliance with the terms of the permit will provide a better indication than discharge sampling of whether a construction activity is complying with the general permit. This will also reduce discharge sampling burdens on the operator. Also, due to the changing nature of the activity at a construction site, monitoring stormwater from this type of site would have limited usefulness. The operator is also required to maintain records summarizing the results of an inspection as well as certify that the construction activity is in compliance with the general permit. The requirement for adequate documentation of an inspection is particularly important given the lack of requirements to collect discharge

monitoring data under the general permit and the importance placed on using site inspections to ensure the effective implementation of stormwater pollution prevention plans.

The areas of the construction site that must be observed during operator or qualified personnel inspections include, but are not limited to the following: disturbed areas, areas used for the storage of construction materials that are exposed to precipitation, structural control measures, and locations where vehicles enter or exit the construction site. At a minimum, these inspections shall be conducted at least once every 10 business days and no later than 24 hours following a measurable storm event. Records of these inspections are to be retained as part of the stormwater pollution prevention plan. In establishing the minimum monitoring and reporting requirements for stormwater discharges from construction activities, the Board determined that frequent and thorough inspections would allow for the identification of areas contributing to a stormwater discharge and the evaluation of whether measures to minimize pollutant loadings identified in the stormwater pollution prevention plan are adequate and properly implemented in accordance with the terms of the general permit or whether additional control measures are needed.

Because construction activities can be complex, transient operations, frequent inspections are necessary to ensure that new pollutant sources are identified, control measures are implemented for new activities at the site, and existing control measures are kept operational. Control measures to minimize pollutants in stormwater discharges must be properly maintained in order to be effective. Often, these types of controls may become altered by construction activities or by storm events such that their ability to remove pollutants is limited. Frequent inspections for construction activities are appropriate and necessary for successful program implementation.

Chesapeake Bay Total Maximum Daily Load

The Commonwealth in its Chesapeake Bay TMDL Watershed Implementation Plan (WIP) pledged to incorporate the established effluent limitation guidelines and new source performance standards for construction activities into the general permit. In addition, the Commonwealth committed to including by reference the provisions necessary to offset future growth in Virginia resulting from the development of agricultural and forest lands into residential and commercial urban uses.

As previously noted, this general permit includes the construction and development point source category effluent limitation guidelines and new source performance standards established in 40 CFR Part 450. Readers are referred to 74 FR 62996, 75 FR 68215, 79 FR 12661, and 80 FR 25235 for additional details. In addition, this general permit requires construction activity operators to develop a SWPPP which includes an approved stormwater management plan or a stormwater management plan prepared in accordance with department-approved standards and specifications for new construction activities. As of July 1, 2014, these stormwater management plans must comply with the Commonwealth's new stormwater management technical criteria, including newly revamped water quantity and water quality requirements. These new technical criteria have been developed in order to offset future growth in Virginia resulting from the development of agricultural and forest lands into residential and commercial uses.

Office of Regulatory Management
Economic Review Form

Agency name	State Water Control Board
Virginia Administrative Code (VAC) Chapter citation(s)	9 VAC 25-880
VAC Chapter title(s)	General VPDES Permit for Discharges of Stormwater from Construction Activities
Action title	CH880 - 2024 Amendment and Reissuance of the VPDES Stormwater Construction General Permit Regulation
Date this document prepared	5/16/23
Regulatory Stage (including Issuance of Guidance Documents)	Proposed

Background

This regulatory action is proposed to amend and reissue the existing general permit regulation which expires on June 30, 2024. This general permit regulation authorizes the discharge of stormwater from construction activities equal to or greater than one acre of land disturbance or less than one acre of land disturbance within a larger common plan of development or sale. This regulatory action is needed for existing and new construction activities to be covered under this general permit regulation. The revisions to the permit made through this regulatory action focused on changing citations and references to be consistent with new the Virginia Erosion and Stormwater Management Regulation (9VAC25-875); improving the clarity and readability of language in the permit; updating provisions to be consistent with other recently reissued VDPES permits; and amending and adding language and new provisions to be consistent with the reissued 2022 EPA Construction General Permit.

Cost Benefit Analysis

Complete Tables 1a and 1b for all regulatory actions. You do not need to complete Table 1c if the regulatory action is required by state statute or federal statute or regulation and leaves no discretion in its implementation.

Table 1a should provide analysis for the regulatory approach you are taking. Table 1b should provide analysis for the approach of leaving the current regulations intact (i.e., no further change is implemented). Table 1c should provide analysis for at least one alternative approach. You should not limit yourself to one alternative, however, and can add additional charts as needed.

Report both direct and indirect costs and benefits that can be monetized in Boxes 1 and 2. Report direct and indirect costs and benefits that cannot be monetized in Box 4. See the ORM Regulatory Economic Analysis Manual for additional guidance.

Table 1a: Costs and Benefits of the Proposed Changes (Primary Option)

<p>(1) Direct & Indirect Costs & Benefits (Monetized)</p>	<p>Change #1: Qualified personnel.</p> <p>EPA’s 2022 CGP updates the requirements for operators to assemble a stormwater team that is responsible for carrying out activities that are necessary to comply with the permit. These new requirements include greater detail about training requirements for stormwater team members. The department addressed these requirements in the proposed 2024 CGP added “qualified personnel” as a defined term and carried that term throughout the permit to identify these personnel as those responsible for activities necessary to comply with the permit. In addition, the definition specifies the certificates of competence and trainings that must be used to be considered a “qualified personnel.”</p> <p>Direct Costs: There are no direct costs associated with this change because the department has provided at least one option for obtaining the appropriate certifications that is free.</p> <p>Indirect Costs: The indirect costs associated with this change are the time involved for operators to ensure that there are employees with the necessary certifications.</p> <p>Direct Benefits: The direct benefits associated with this change are improved clarity about who is responsible for stormwater activities at a construction site and clear information for operators about the types of training and certification that those individuals must have.</p> <p>Indirect Benefits: The indirect benefit associated with this change is improved operation of stormwater controls at the construction site that result from having appropriately trained personnel overseeing these controls.</p> <p>Change #2: Construction dewatering discharge.</p> <p>EPA’s 2022 CGP includes a new section for turbidity benchmark monitoring for construction dewatering discharges to sensitive waters. EPA further explains that this benchmark is not intended to be an effluent limitation but is meant to function as an indicator that dewatering controls may not be working to protect water quality.</p>
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The department addresses this new requirement in the proposed 2024 CGP by adding a new section requiring turbidity benchmark monitoring for construction dewatering discharges into sediment impaired or exceptional waters. Like EPA's permit, this benchmark is not intended to be an effluent limitation but is meant to function as an indicator that dewatering controls may not be working to protect water quality.

Direct costs: The direct costs associated with this change are the cost of purchasing a turbidity meter for operators that do not currently have one, and the cost of any maintenance, repairs, or additional controls that may be necessary if the turbidity benchmark is exceeded.

Indirect costs: The indirect costs associated with this change are the time it takes to perform the turbidity test, take any necessary corrective act, and to train personnel on the use of a turbidity meter.

Direct benefits: The primary direct benefit of this change is greater effectiveness of dewatering discharge controls due to increased monitoring.

Indirect benefits: The indirect benefit of this change is improved water quality that may result from ensuring that dewatering discharge controls are installed and functioning properly.

Change #3: Documentation requirements.

Additional documentation requirements were included in the proposed 2024 CGP for documenting areas where stormwater treatment chemicals are used or stored, locations of construction dewatering discharge, locations where stormwater controls have repeatedly failed, etc.

Direct costs: There are no direct costs from these changes because the new language only requires documenting existing parts of the construction site.

Indirect costs: The primary indirect cost of these changes is the additional time it will take for personnel to document these areas.

Direct benefits: The direct benefit of these changes is increased knowledge of the locations and types of activities at a construction site that may result in pollutant discharges.

Indirect benefits: The indirect benefit of these changes is increased effectiveness of controls due to greater knowledge of where controls are needed on the site and situations where they repeatedly fail. Improving

	<p>the effectiveness of controls may have the benefit of improving water quality.</p> <p>Change #4: Inspection requirements.</p> <p>The proposed 2024 CGP includes new requirements for inspecting all stormwater discharge locations, construction dewatering discharge locations, and additional items to be included in the inspection report.</p> <p>Direct costs: There are no direct costs from these changes because the new language only requires inspecting and reporting on existing parts of the construction site. These requirements do not require the purchase of any new equipment or undertake any additional control measures.</p> <p>Indirect costs: The primary indirect cost of these changes is the additional time it will take for personnel to inspect and report on all discharge locations.</p> <p>Direct benefits: The direct benefit of these changes is improved monitoring of all stormwater discharges and construction dewatering discharges associated with the construction site. These changes also ensures that the inspection report provides documentation on locations that indicate the discharge of pollutants.</p> <p>Indirect benefits: The indirect benefit of these changes is increased effectiveness of controls due to greater monitoring of where controls are needed on the site and situations where they repeatedly fail. Improving the effectiveness of controls may have the benefit of improving water quality.</p>	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) Cost of Turbidity Meter: \$970 - \$1,870	(b) Unable to monetize direct and indirect benefits.
(3) Net Monetized Benefit	\$970-\$1,870	
(4) Other Costs & Benefits (Non-Monetized)	N/A	
(5) Information Sources	Turbidity meter cost is from EPA’s Incremental Cost Impact Analysis for the 2022 Construction General Permit	

Table 1b: Costs and Benefits under the Status Quo (No change to the regulation)

(1) Direct & Indirect Costs & Benefits (Monetized)	<p>Direct Costs: The direct costs of maintaining the status quo are that the regulation would fail to incorporate important defined terms, maintain requirements that are unnecessary or less flexible, and keep language that is less readable and less clear about requirements. This would create a regulation that is less user friendly and lacks important details and flexibility, potentially resulting in increased costs for operators.</p> <p>Indirect Costs: The indirect costs of maintaining the status quo are that it would exclude new provisions that may provide greater water quality protection.</p> <p>Direct Benefits: The primary direct benefit of maintaining the status quo is that it would not require operators to purchase specialized equipment needed to perform tests not required under the existing permit.</p> <p>Indirect Benefits: The primary indirect benefits of maintaining the status quo are that it would save operators the time and personnel costs associated with new certifications and new inspection and reporting requirements.</p>	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) No monetized direct or indirect costs associated with the status quo.	(b) Unable to monetize direct and indirect benefits.
(3) Net Monetized Benefit	N/A	
(4) Other Costs & Benefits (Non-Monetized)	N/A	
(5) Information Sources	N/A	

Table 1c: Costs and Benefits under Alternative Approach(es)

(1) Direct & Indirect Costs & Benefits (Monetized)	<p>During the development of the proposed 2024 CGP, alternative approaches were considered for addressing the EPA’s new turbidity benchmark monitoring requirements. The two primary alternatives that were considered are as follows:</p> <p>Alternative approach #1: Secondary controls for construction dewatering.</p>
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During the TAC meetings, an alternative approach to turbidity benchmarking was considered that would not require turbidity testing or create a benchmark. Instead, this approach would operate as a technology-based standard requiring automatic installation of secondary controls for all construction dewatering locations. Under this approach, an operator would be considered compliant if they installed and properly maintained secondary controls. Ultimately, the department decided not to proceed with this approach. The department felt that this approach does not address the EPA's desire for regular monitoring and the use of a benchmark as an indicator that dewatering controls are working to protect water quality.

Direct Costs: The primary direct cost of this approach is the cost of installing and maintaining secondary controls at every dewatering location.

Indirect Costs: The indirect costs of this approach are the time it would take to install secondary controls and the lack of data on the efficacy of the controls that have been installed.

Direct Benefits: The direct benefit of this approach is the protection created by a secondary level of controls that would be installed at every dewatering location.

Indirect Benefits: The indirect benefit of this approach is that it is for operators to understand and does not require additional training.

Approach #2: Total Suspended Solids (TSS) Benchmark.

Another approach that was considered for addressing EPA's turbidity benchmark monitoring requirements was to create a TSS benchmark. This benchmark would function like the turbidity benchmark but, rather than requiring an infield test, grab samples would be sent to a lab for testing. This approach was considered for two reasons: (1) TSS is a metric that is used in other VPDES permits, so there is familiarity with it; and (2) the department believed that TSS could function as an acceptable stand-in for turbidity that would still address the EPA's desire for regular monitoring and the use of a benchmark as an indicator that dewatering controls are working to protect water quality. Ultimately, the department decided not to use this approach because the TAC voiced concerns about the delayed results and logistical difficulties of getting samples to a lab for testing.

	<p>Direct costs: The primary direct costs of this approach would be the transportation and lab fee costs of getting a sample tested and any costs associated with potential corrective actions that had to be taken.</p> <p>Indirect costs: The indirect cost of this approach is the time and personnel to take the sample and get them to a lab for testing.</p> <p>Direct benefits: The primary direct benefit of this approach is greater effectiveness of dewatering discharge controls due to increased monitoring.</p> <p>Indirect benefits: The indirect benefit of this approach is improved water quality that may result from ensuring that dewatering discharge controls are functioning properly.</p>	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	<p>Approach #1: Unable to monetize direct and indirect costs.</p> <p>Approach #2: Cost of lab testing- less than \$50.00</p>	(b) Unable to monetize direct and indirect benefits.
(3) Net Monetized Benefit	N/A	
(4) Other Costs & Benefits (Non-Monetized)	N/A	
(5) Information Sources	<p>Cost estimate for Approach #2 is based on relative cost of a TSS test using EPA-NERL method 160.2. This information comes from that National Environmental Methods Index (NEMI):</p> <p>https://www.nemi.gov/methods/method_summary/5213/</p>	

Impact on Local Partners

Use this chart to describe impacts on local partners. See Part 8 of the ORM Cost Impact Analysis Guidance for additional guidance.

Table 2: Impact on Local Partners

(1) Direct & Indirect Costs & Benefits (Monetized)	<p>Direct Costs: There are no direct costs to local partners because this action does not change the existing responsibilities of local governments under the permit.</p>
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	<p>Indirect Costs: The indirect cost associated with the proposed changes is any impact to local economic development that may result if compliance costs cause a slowdown in construction.</p> <p>Direct Benefits: The direct benefit to local partners from the proposed changes is improved access to information necessary for carrying out inspections.</p> <p>Indirect Benefits: The indirect benefit associated with the proposed changes is the improved local water quality that may result from improved pollutant discharge controls.</p>	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) No monetized direct or indirect costs associated with these regulatory changes.	(b) Unable to monetize direct and indirect benefits.
(3) Other Costs & Benefits (Non-Monetized)	N/A	
(4) Assistance	None.	
(5) Information Sources	N/A	

Impacts on Families

Use this chart to describe impacts on families. See Part 8 of the ORM Cost Impact Analysis Guidance for additional guidance.

Table 3: Impact on Families

(1) Direct & Indirect Costs & Benefits (Monetized)	<p>Direct and Indirect Costs: There are no direct or indirect costs that impact families associated with the proposed changes.</p> <p>Direct Benefits: There are no direct benefits that impact families associated with the proposed changes.</p> <p>Indirect Benefits: The indirect benefits for families associated with the proposed changes is the improved local water quality that may result from improved pollutant discharge controls.</p>
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(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) No monetized direct or indirect costs associated with the regulatory changes.	(b) Unable to monetize direct and indirect benefits.
(3) Other Costs & Benefits (Non-Monetized)	N/A	
(4) Information Sources	N/A	

Impacts on Small Businesses

Use this chart to describe impacts on small businesses. See Part 8 of the ORM Cost Impact Analysis Guidance for additional guidance.

Table 4: Impact on Small Businesses

(1) Direct & Indirect Costs & Benefits (Monetized)	<p>Direct Costs: The proposed changes will have a direct cost on operators by requiring them to purchase a turbidity meter to perform in-field turbidity tests. There is also a direct time cost to getting the required qualified personnel certifications for operators that do not have employees with those certifications.</p> <p>Indirect Costs: The indirect cost of the proposed changes is the time and personnel associated with new documentation, inspection, and corrective action requirements.</p> <p>Direct Benefits: The direct benefits associated with the proposed changes include improving the readability of the regulation, clarifying requirements, and removing redundant or unnecessary reporting requirements.</p> <p>Indirect Benefits: The improved clarity and readability of the regulation should save the end user time, reduce frustration, and make compliance easier.</p>	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) Cost of Turbidity Meter: \$970 - \$1,870	(b) Unable to monetize direct and indirect benefits.

(3) Other Costs & Benefits (Non-Monetized)	N/A
(4) Alternatives	N/A
(5) Information Sources	Turbidity meter cost is from EPA's Incremental Cost Impact Analysis for the 2022 Construction General Permit.

Changes to Number of Regulatory Requirements

Table 5: Regulatory Reduction

For each individual action, please fill out the appropriate chart to reflect any change in regulatory requirements, costs, regulatory stringency, or the overall length of any guidance documents.

Change in Regulatory Requirements

VAC Section(s) Involved	Initial Count	Additions	Subtractions	Net Change
9VAC25-880-30	9	1	0	+1
9VAC25-880-50	3	1	0	+1
9VAC25-880-60	5	0	1	-1
9VAC25-880-70	60	27	0	+27

Cost Reductions or Increases (if applicable)

VAC Section(s) Involved	Description of Regulatory Requirement	Initial Cost	New Cost	Overall Cost Savings/Increases

Other Decreases or Increases in Regulatory Stringency (if applicable)

VAC Section(s) Involved	Description of Regulatory Change	Overview of How It Reduces or Increases Regulatory Burden

Length of Guidance Documents (only applicable if guidance document is being revised)

Title of Guidance Document	Original Length	New Length	Net Change in Length

ORM forms for regulatory actions in Tabs C, D, and E

Office of Regulatory Management
Economic Review Form

Agency name	State Water Control Board
Virginia Administrative Code (VAC) Chapter citation(s)	9VAC25-210
VAC Chapter title(s)	Virginia Water Protection Permit Program Regulation
Action title	Amendment to change the Virginia Water Protection Permit Program Regulation (9VAC25-210 et seq.) in response to Chapters 245, 258, and 259 of the 2023 Virginia Acts of Assembly
Date this document prepared	May 31, 2023
Regulatory Stage (including Issuance of Guidance Documents)	Final Exempt Action

Cost Benefit Analysis

Complete Tables 1a and 1b for all regulatory actions. You do not need to complete Table 1c if the regulatory action is required by state statute or federal statute or regulation and leaves no discretion in its implementation.

Table 1a should provide analysis for the regulatory approach you are taking. Table 1b should provide analysis for the approach of leaving the current regulations intact (i.e., no further change is implemented). Table 1c should provide analysis for at least one alternative approach. You should not limit yourself to one alternative, however, and can add additional charts as needed.

Report both direct and indirect costs and benefits that can be monetized in Boxes 1 and 2. Report direct and indirect costs and benefits that cannot be monetized in Box 4. See the ORM Regulatory Economic Analysis Manual for additional guidance.

Table 1a: Costs and Benefits of the Proposed Changes (Primary Option)

<p>(1) Direct & Indirect Costs & Benefits (Monetized)</p>	<p>Direct Costs: These regulatory changes are required to be consistent with changes to state law made in response to Chapters 245, 258, and 259 of the 2023 Virginia Acts of Assembly. There are no new direct costs to the regulated community associated with these changes. No additional projects or activities are required to obtain a Virginia Water Protection (VWP) permit or purchase compensatory mitigation as a result of these changes.</p> <p>Indirect Costs: The underlying statutory change will eliminate an indeterminate source of revenue for the Virginia Marine Resources Commission (VMRC) due to a decrease in application and permit fees collected.</p> <p>Direct Benefits: Chapters 258 and 259 of the 2023 Virginia Acts of Assembly and this resulting regulation facilitate and promote economic development while ensuring that stream and wetland resources are still protected by eliminating duplicative statutory requirements to obtain permits from both DEQ and VMRC for activities in nontidal waters. Instead of having to obtain permits from two separate state agencies, persons who obtain a VWP permit from DEQ for activities in nontidal waters will no longer have to also obtain a permit from VMRC. As a result, this will save time and money for economic development projects.</p> <p>Chapter 245 of the 2023 Virginia Acts of Assembly and this associated regulatory change also allows DEQ flexibility concerning the use of tidal wetland mitigation banks in specified areas if certain conditions are met.</p> <p>Indirect Benefits: The underlying statutory change will eliminate the need for VMRC to process permits for most activities in nontidal waters, which will save staff time and resources.</p>	
<p>(2) Present Monetized Values</p>	<p>Direct & Indirect Costs</p>	<p>Direct & Indirect Benefits</p>
	<p>(a) There are no new direct costs to the regulated community associated with these changes. As a result of the underlying statutory change there is an</p>	<p>(b) While DEQ cannot quantify the monetary benefit of these changes to the regulated community, Chapters 258 and 259 of the 2023 Virginia Acts of Assembly and this resulting regulation facilitate and promote economic development while</p>

	<p>indeterminate indirect cost to VMRC as a result of a decrease in the amount of application and permit fee revenue collected.</p>	<p>ensuring that stream and wetland resources are still protected by eliminating duplicative statutory requirements to obtain permits from both DEQ and VMRC for activities in nontidal waters. Instead of having to obtain permits from two separate state agencies, persons who obtain a VWP Permit from DEQ for activities in nontidal waters will no longer have to also obtain a permit from VMRC. As a result, this will save time and money for economic development projects. As a result of the underlying statutory change there is an indirect benefit to VMRC because it will eliminate the need for VMRC to process permits for most activities in nontidal waters, which will save staff time and resources.</p> <p>Chapter 245 of the 2023 Virginia Acts of Assembly and this associated regulatory change also allows DEQ flexibility concerning the use of tidal wetland mitigation banks in specified areas if certain conditions are met.</p>
<p>(3) Net Monetized Benefit</p>	<p>No conclusive statement can be made about specific net monetized benefits, however, these changes will facilitate and promote economic development while ensuring that stream and wetland resources are still protected by eliminating duplicative statutory requirements to obtain permits from both DEQ and VMRC for activities in nontidal waters. Instead of having to obtain permits from two separate state agencies, persons who obtain a VWP Permit from DEQ for activities in nontidal waters will no longer have to also obtain a permit from VMRC. As a result, this will save time and money for economic development projects.</p>	
<p>(4) Other Costs & Benefits (Non-Monetized)</p>	<p>There are no new direct costs to the regulated community associated with these changes. No conclusive statement can be made about specific non-monetized benefits, however, eliminating duplicative statutory requirements to obtain permits from both DEQ and VMCR for activities in nontidal waters will save time and money, and facilitate economic development while ensuring that state waters are still protected. As a result of the underlying statutory change, VMRC will collect less revenue from application and permit fees, but VMRC will also realize cost savings by no longer having to process permit applications for most activities in nontidal waters.</p>	

(5) Information Sources	Fiscal Impact Statements for HB 1804 (2023), HB 2181 (2023), and SB 1074 (2023).
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Table 1b: Costs and Benefits under the Status Quo (No change to the regulation)

(1) Direct & Indirect Costs & Benefits (Monetized)	<p>Direct Costs: Under the status quo entities engaged in activities in nontidal waters must obtain duplicative permits from DEQ and VMRC. This includes duplicative application and permit fees, costs to hire consultants, and time delays.</p> <p>There are also costs to VMRC to administer the duplicative permit program, including staff time and travel from VMRC’s offices at Fort Monroe to nontidal waters in the Commonwealth.</p> <p>Indirect Costs: Costs of these duplicative permits may be passed on to consumers (e.g., additional costs related to duplicative permits for residential housing may increase the cost of the homes in that development).</p> <p>Direct Benefits: The duplicative permit requirement does not have any direct environmental benefits. There is an indeterminate benefit to VMRC as a result of application and permit fee revenue collected.</p> <p>Indirect Benefits: N/A</p>	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) There is a direct cost of obtaining duplicative permits, one from DEQ and the other from VMRC.	(b) The duplicative permit requirement does not have any direct environmental benefits. There is an indeterminate benefit to VMRC as a result of application and permit fee revenue collected.
(3) Net Monetized Benefit	No conclusive statement can be made about specific net monetized benefits, however, the cost to the regulated community of having to obtain duplicative permits from two state agencies for the same activity outweighs any benefits.	
(4) Other Costs & Benefits (Non-Monetized)	No conclusive statement can be made about specific non-monetized costs and benefits, however, the costs to the regulated community of having to obtain duplicative permits from two state agencies for the same activity outweighs any benefits.	

(5) Information Sources	Fiscal Impact Statements for HB 1804 (2023), HB 2181 (2023), and SB 1074 (2023).
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Agency Note: This final exempt regulatory action is mandated by state statute effective July 1, 2023. Therefore, Table 1c is not required and has been removed.

Impact on Local Partners

Use this chart to describe impacts on local partners. See Part 8 of the ORM Cost Impact Analysis Guidance for additional guidance.

Table 2: Impact on Local Partners

(1) Direct & Indirect Costs & Benefits (Monetized)	<p>Direct Costs: This law and resulting regulation does not impose any new direct costs on local partners.</p> <p>Indirect Costs: N/A</p> <p>Direct Benefits: This law and resulting regulation facilitates and promotes economic development while ensuring that stream and wetland resources are still protected by eliminating duplicative statutory requirements to obtain permits from both DEQ and VMRC for activities in nontidal waters. As a result, this will save time and money for local partners’ projects and economic development projects in their jurisdictions.</p> <p>Indirect Benefits: N/A</p>	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) This law and resulting regulation does not impose any direct or indirect costs on local partners.	(b) This law and resulting regulation eliminates duplicative statutory requirements to obtain permits from both DEQ and VMRC for activities in nontidal waters. As a result this will save time and money for projects undertaken by local partners and facilitate economic development in their jurisdictions.

(3) Other Costs & Benefits (Non-Monetized)	No conclusive statement can be made about specific non-monetized costs and benefits, however, the Commonwealth and its local partners generally benefit from eliminating unnecessary and duplicative regulatory requirements.
(4) Assistance	N/A
(5) Information Sources	Fiscal Impact Statements for HB 1804 (2023), HB 2181 (2023), and SB 1074 (2023).

Impacts on Families

Use this chart to describe impacts on families. See Part 8 of the ORM Cost Impact Analysis Guidance for additional guidance.

Table 3: Impact on Families

(1) Direct & Indirect Costs & Benefits (Monetized)	Direct Costs: N/A Indirect Costs: N/A Direct Benefits: N/A Indirect Benefits: N/A	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) N/A	(b) N/A
(3) Other Costs & Benefits (Non-Monetized)	N/A	
(4) Information Sources	N/A	

Impacts on Small Businesses

Use this chart to describe impacts on small businesses. See Part 8 of the ORM Cost Impact Analysis Guidance for additional guidance.

Table 4: Impact on Small Businesses

<p>(1) Direct & Indirect Costs & Benefits (Monetized)</p>	<p>Direct Costs: This law and resulting regulation does not impose any new direct costs on small businesses.</p> <p>Indirect Costs: N/A</p> <p>Direct Benefits: This law and resulting regulation facilitates and promotes economic development while ensuring that stream and wetland resources are still protected by eliminating duplicative statutory requirements to obtain permits from both DEQ and VMRC for activities in nontidal waters. As a result, this will save time and money for small businesses and their economic development projects.</p> <p>Indirect Benefits: N/A</p>	
<p>(2) Present Monetized Values</p>	<p>Direct & Indirect Costs</p>	<p>Direct & Indirect Benefits</p>
	<p>(a) This law and resulting regulation does not impose any new direct costs on small businesses.</p>	<p>(b) This law and resulting regulation facilitates and promotes economic development while ensuring that stream and wetland resources are still protected by eliminating duplicative statutory requirements to obtain permits from both DEQ and VMRC for activities in nontidal waters. As a result, this will save time and money for economic development projects.</p>
<p>(3) Other Costs & Benefits (Non-Monetized)</p>	<p>No conclusive statement can be made about specific non-monetized costs and benefits, however, small businesses will generally benefit from eliminating the existing duplicative permit requirements for many activities in nontidal waters.</p>	
<p>(4) Alternatives</p>	<p>N/A</p>	

(5) Information Sources	Fiscal Impact Statements for HB 1804 (2023), HB 2181 (2023), and SB 1074 (2023).
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Changes to Number of Regulatory Requirements

Table 5: Regulatory Reduction

For each individual action, please fill out the appropriate chart to reflect any change in regulatory requirements, costs, regulatory stringency, or the overall length of any guidance documents.

Change in Regulatory Requirements

VAC Section(s) Involved	Initial Count	Additions	Subtractions	Net Change
9VAC25-210-40	2	0	0	0
9VAC25-210-116	22	0	0	0

Other Decreases or Increases in Regulatory Stringency (if applicable)

VAC Section(s) Involved	Description of Regulatory Change	Overview of How It Reduces or Increases Regulatory Burden
9VAC25-210-40	These laws and related regulatory changes eliminate duplicative statutory requirements to obtain permits from both DEQ and VMRC for most activities in nontidal waters and provide certain flexibility to DEQ concerning the use of tidal wetland mitigation banks in specified areas if certain conditions are met.	These changes eliminate the need for both DEQ and VMRC permit for most activities in nontidal waters.

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Agency name	State Water Control Board
Virginia Administrative Code (VAC) Chapter citation(s)	9VAC25-840 (primary) 9VAC25-870 (secondary) 9VAC25-880 (secondary)
VAC Chapter title(s)	Erosion and Sediment Control Regulations (primary) Virginia Stormwater Management Program (VSMP) Regulation (secondary) General VPDES Permit for Discharges of Stormwater from Construction Activities (secondary)
Action title	Amendment in response to Chapters 48 and 49 of the 2023 Virginia Acts of Assembly (HB1848/SB1376)
Date this document prepared	May 31, 2023
Regulatory Stage (including Issuance of Guidance Documents)	Final Exempt Action

Cost Benefit Analysis

Complete Tables 1a and 1b for all regulatory actions. You do not need to complete Table 1c if the regulatory action is required by state statute or federal statute or regulation and leaves no discretion in its implementation.

Table 1a should provide analysis for the regulatory approach you are taking. Table 1b should provide analysis for the approach of leaving the current regulations intact (i.e., no further change is implemented). Table 1c should provide analysis for at least one alternative approach. You should not limit yourself to one alternative, however, and can add additional charts as needed.

Report both direct and indirect costs and benefits that can be monetized in Boxes 1 and 2. Report direct and indirect costs and benefits that cannot be monetized in Box 4. See the ORM Regulatory Economic Analysis Manual for additional guidance.

Table 1a: Costs and Benefits of the Proposed Changes (Primary Option)

<p>(1) Direct & Indirect Costs & Benefits (Monetized)</p>	<p>Direct Costs: These regulatory amendments are necessary to be consistent with changes to state law made in response to Chapters 48 and 49 of the 2023 Virginia Acts of Assembly.</p> <p>Some of the provisions in this statutory change and resulting regulation are necessary to conform state law to federal law regarding which entities must file a registration statement. These provisions mean that entities constructing a single-family detached residential structure within or outside of a common plan of development or sale will have to file a registration statement if the activity does not qualify as small construction. The registration statement is a three-page form (with three additional pages of instructions) and requires information that should be readily available to anyone constructing a single-family residence, therefore the additional cost should be minimal. Currently state law provides that no registration statement is required for the construction of a single-family detached residential structure within or outside of a common plan of develop or sale no matter how large the activity. However, this state law provision is inconsistent with federal law. This underlying statutory change was necessary avoid the risk of a specific objection from the U.S. Environmental Protection Agency (EPA) to the General VPDES Permit for Discharges of Stormwater from Construction Activities, 9VAC25-880 (Stormwater Construction General Permit) when it is reissued in 2024. The Stormwater Construction General Permit is a streamlined permitting process that is used by the regulated community to comply with permit requirements of the federal Clean Water Act and state law.</p> <p>Indirect Costs: The minimal additional costs of completing the three-page registration statement now required for entities constructing a single-family residence that does not qualify as small construction could be passed along to consumers. However, there is no way to avoid this requirement without being inconsistent with federal law.</p> <p>Direct Benefits: This underlying statutory change and resulting regulation reduces regulatory burdens on agriculture by allowing for the use of an agreement in lieu of a plan for the construction of certain farm buildings</p>
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and structures when it is on a parcel of land with a total impervious cover percentage, including the impervious cover from the farm building or structure to be constructed, of less than five percent. The definition of “farm buildings and structures” includes buildings and structures used for agritourism and any related impervious surfaces, including roads, driveways, and parking areas. This will result in cost savings because an agreement in lieu of a plan is a two-page form and does not require preparation of site specific stormwater management plans. The provisions in this law that expand the use of an agreement in lieu of a plan for certain farm buildings and structures will directly reduce regulatory burdens on the agricultural sector, including agritourism, and result in cost and time savings for agriculture due to decreased design and engineering costs and eliminating the need to go through a lengthy stormwater management and/or erosion and sediment control program plan review process.

In addition, the underlying statutory change and resulting amendment to the regulation resolves an inconsistency between state and federal law regarding when a registration statement (Notice of Intent) is required to be submitted to avoid a specific objection from EPA to the 2024 Stormwater Construction General Permit. The regulated community, local governments that administer Virginia Stormwater Management Programs (VSMPs), and the Commonwealth benefit from the Stormwater Construction General Permit because it is a streamlined, faster, and less costly means to satisfy federal and state permit requirements than the alternative of individual permits.

Indirect Benefits:
 This underlying statutory change and resulting regulation eliminates unnecessary regulatory burdens on certain agricultural and agritourism activities. The reduced costs could be passed on to consumers.

In addition, this law and resulting regulation are beneficial to human health and the environment through the protection of Virginia’s waterways. As a result, indirect benefits include recreational uses of Virginia’s waterways such as fishing and economic uses of Virginia’s waterways such as use by the shellfish industry. Tourism also benefits from the protection of state waters.

(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) While not quantifiable, there will be minimal increases in cost because this underlying statutory change and resulting	(b) While not quantifiable, there are benefits to the agriculture sector, local governments that administer VSMPs, and the Commonwealth from the provisions of this underlying statutory change and

	<p>regulation, in order to confirm state law to federal law, requires single-family detached residential structures within or outside of a common plan of development or sale to file a three-page registration statement if the activity does not qualify as small construction. Those minimal increased costs could be passed on to consumers.</p>	<p>resulting regulation that allow for an agreement in lieu of a plan to be used for the construction of certain farm buildings and structures when it is on a parcel of land with a total impervious cover percentage, including the impervious cover from the farm building or structure to be constructed, of less than five percent. This will result in cost savings because an agreement in lieu of a plan is a two-page form and does not require preparation of site specific stormwater management plans. The provisions in this law that expand the use of an agreement in lieu of a plan for certain farm buildings and structures will directly reduce regulatory burdens on the agricultural sector, including agritourism and result in cost and time savings for agriculture due to decreased design and engineering costs and eliminating the need to go through a lengthy stormwater management and/or erosion and sediment control program plan review process.</p> <p>In addition, the underlying statutory change and resulting amendment to the regulation resolves an inconsistency between state and federal law regarding when a registration statement (Notice of Intent) is required to be submitted to avoid a specific objection from EPA to the 2024 Stormwater Construction General Permit. The regulated community, local governments that administer VSMPs, and the Commonwealth benefit from the Stormwater Construction General Permit because it is a streamlined, faster, and less costly means to satisfy federal and state permit requirements than the alternative of individual permits.</p> <p>Finally, this law and resulting regulation are beneficial to human health and the environment through the protection of Virginia’s waterways. As a result, indirect</p>
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		benefits include recreational uses of Virginia’s waterways such as fishing and economic uses of Virginia’s waterways such as use by the shellfish industry. Tourism would also benefit from the protection of state waters.
(3) Net Monetized Benefit	No conclusive statement can be made about specific net monetized benefits, however, the benefits to the regulated community due to the provisions of the underlying statutory change and resulting regulation that allow for an agreement in lieu of a plan to be used for the construction of certain farm buildings and structures when it is on a parcel of land with a total impervious cover percentage, including the impervious cover from the farm building or structure to be constructed, of less than five percent and the benefits to the regulated community, local governments that administer VSMPs, and the Commonwealth outweigh the minimal additional costs associated with certain activities now being required to file a two-page registration statement, which is a change necessary to conform state law to federal law.	
(4) Other Costs & Benefits (Non-Monetized)	No conclusive statement can be made about specific non-monetized costs and benefits; however, the Commonwealth generally benefits from the protection of the Commonwealth’s environment and natural resources from pollution, impairment, or destruction. This underlying law and resulting regulation are beneficial to human health and the environment through the protection of Virginia’s waterways. As a result, benefits include recreational uses of Virginia’s waterways such as fishing and economic uses of Virginia’s waterways such as use by the shellfish industry. Tourism also benefits.	
(5) Information Sources	Chapters 48 and 49 of the 2023 Acts of Assembly.	

Table 1b: Costs and Benefits under the Status Quo (No change to the regulation)

(1) Direct & Indirect Costs & Benefits (Monetized)	<p>Direct Costs:</p> <p>Under the existing statute and resulting regulation, stormwater management and/or erosion and sediment control plans must be submitted for farm buildings or structures. These plans are required, even though farm buildings and structures on large parcels of land with low percentages of impervious cover pose little risk to the environment. This results in design and engineering costs as well as the need to go through a lengthy stormwater management and/or erosion and sediment control program plan review process.</p>
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	<p>Currently registration statements are not required for coverage under the Stormwater Construction General permit for single-family homes, within or outside of a common plan of development or sale, regardless of the amount of land disturbance involved. This registration statement requirement is inconsistent with federal law, which requires a registration statement for any activity that disturbs five acres or more, or that is part of a common plan of development or sale (such as a subdivision) that disturbs five acres or more. Currently these projects in Virginia are permitted using the Stormwater Construction General Permit, and about 1,300 projects a year seek coverage under the Stormwater Construction General Permit. Failure to resolve this inconsistency could lead to a specific objection from EPA to the 2024 Stormwater Construction General Permit. If EPA issues a specific objection to the 2024 Stormwater Construction General Permit all future projects (about 1,300 a year) would have to obtain coverage under an individual VPDES permit, which would be much more costly to obtain and would take significantly longer to obtain due to the procedural requirements for individual VPDES permits. Higher permit application fees would be assessed on the regulated community if an individual permit was issued.</p> <p>Indirect Costs: Any additional costs related to developing and submitting a stormwater management and/or erosion and sediment control plans and more costly permit processes may be passed on to consumers.</p> <p>Direct Benefits: As a result of the existing statute and regulations, which are inconsistent with federal law, persons constructing single-family detached residential structures, no matter the amount of land disturbance involved, are not required to file a three-page registration statement.</p> <p>Indirect Benefits: The minimal reduced costs of not having to file a registration statement may be passed on to consumers.</p>	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) While cost varies and is not quantifiable, agricultural and agritourism projects must currently submit stormwater management and/or erosion and sediment control plans which involve design costs	(b) While cost varies and is not quantifiable, as a result of the existing state law and regulations, which are inconsistent with federal law, persons constructing single-family detached residential structures, no matter the amount of land disturbance involved, are not required to file a three-page registration statement.

	<p>as well as the costs associated with lengthy plan review processes.</p> <p>While not quantifiable, if the inconsistency between state law and federal law is not resolved and EPA issues a specific objection to the 2024 Stormwater Construction General Permit its issuance could be delayed and/or blocked, and all construction projects after July 1, 2024 (about 1,300 a year) would have to obtain coverage under an individual VPDES permit, which would be much more costly to obtain and would take significantly longer to obtain due to the procedural requirements for individual VPDES permits. The fee to apply for an Individual Permit for Discharges of Stormwater from Construction Activities is \$15,000.</p>	
(3) Net Monetized Benefit	<p>No conclusive statement can be made about specific net monetized benefits of the current regulation, however, the costs of the requirements to prepare stormwater management and/or erosion and sediment control plans for farm buildings and the costs associated with a potential EPA specific objection to the 2024 Stormwater Construction General Permit outweigh the minimal benefit to entities that currently do not have to complete registration statements under the existing regulation (which is inconsistent with federal law).</p>	
(4) Other Costs & Benefits (Non-Monetized)	N/A	

(5) Information Sources	Chapters 48 and 49 of the 2023 Acts of Assembly.
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Agency Note: This final exempt regulatory action is mandated by state statute effective July 1, 2023. Therefore, Table 1c is not required and has been removed.

Impact on Local Partners

Use this chart to describe impacts on local partners. See Part 8 of the ORM Cost Impact Analysis Guidance for additional guidance.

Table 2: Impact on Local Partners

<p>(1) Direct & Indirect Costs & Benefits (Monetized)</p>	<p>Direct Costs: There are no direct costs to local partners.</p> <p>Indirect Costs: There are no indirect costs to local partners.</p> <p>Direct Benefits: The underlying statutory change and these resulting regulatory changes benefit local governments that administer VSMPs and/or Virginia Erosion and Sediment Control Programs (VESCPs). VSMPs and VESCPs will have the option to accept an agreement in lieu of a plan for the construction of certain farm buildings and structures when it is on a parcel of land with a total impervious cover percentage, including the impervious cover from the farm building or structure to be constructed, of less than five percent. If VSMPs or VESCPs utilize this option it will save time and money because they will not have to review site specific stormwater management and/or erosion and sediment control plans.</p> <p>Indirect Benefits: Local governments also benefit from the changes necessary to conform state law to federal law concerning the entities that are required to submit registration statements. This conformity avoids the risk of a specific objection from EPA to the 2024 reissuance of the Stormwater Construction General Permit. Local governments benefit from the availability of this general permit, which makes it easier for their land disturbing projects to obtain the necessary permits than the alternative of having to seek more costly and time intensive individual permits.</p>	
<p>(2) Present Monetized Values</p>	<p>Direct & Indirect Costs</p>	<p>Direct & Indirect Benefits</p>
	<p>(a) N/A</p>	<p>(b) While not quantifiable, local governments benefit from the option to accept agreements in lieu</p>

		of plans for certain farm buildings and structures when it is on a parcel of land with a total impervious cover percentage, including the impervious cover from the farm building or structure to be constructed, of less than five percent. Local governments also benefit from the conformity provisions that avoid the risk of a specific objection from EPA to the 2024 reissuance of the Stormwater Construction General Permit. Local governments benefit from the availability of this general permit, which makes it easier for their land disturbing projects to obtain the necessary permits than the alternative of having to seek more costly and time intensive individual permits.
(3) Other Costs & Benefits (Non-Monetized)	No conclusive statement can be made about specific net monetized benefits, however, the Commonwealth and its local partners generally benefit from the protection of the Commonwealth’s environment and natural resources from pollution, impairment, or destruction.	
(4) Assistance	N/A	
(5) Information Sources	Chapters 48 and 49 of the 2023 Acts of Assembly.	

Impacts on Families

Use this chart to describe impacts on families. See Part 8 of the ORM Cost Impact Analysis Guidance for additional guidance.

Table 3: Impact on Families

(1) Direct & Indirect Costs & Benefits (Monetized)	Direct Costs: Some of the provisions in this underlying statutory change and resulting regulation are necessary to conform state law to federal law regarding entities that must file a registration statement. These provisions mean that persons constructing a single-family detached residential structure within or outside of a common plan of development or sale will have to
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file a registration statement if the activity does not qualify as small construction. The registration statement is a three-page form (with three additional pages of instructions) and requires information that should be readily available to anyone constructing a single-family residence, therefore the additional cost should be minimal. Currently state law provides that no registration statement is required for the construction of a single-family detached residential structure within or outside of a common plan of develop or sale no matter how large the activity. However, this state law provision is inconsistent with federal law. This underlying statutory change was necessary avoid the risk of a specific objection from EPA to the General VPDES Permit for Discharges of Stormwater from Construction Activities, 9VAC25-880 (Stormwater Construction General Permit) when it is reissued in 2024. The Stormwater Construction General Permit is a streamlined permitting process that is used by the regulated community to comply with permit requirements of the federal Clean Water Act and state law.

Indirect Costs:

The minimal additional costs of completing the three-page registration statement now required for persons constructing a single-family residence that does not qualify as small construction could be passed along to consumers, including families. However, there is no way to avoid this requirement without being inconsistent with federal law.

Direct Benefits:

This underlying statutory change and resulting regulation reduces regulatory burdens on agriculture, including family farms, by allowing for the use of an agreement in lieu of a plan for the construction of certain farm buildings and structures when it is on a parcel of land with a total impervious cover percentage, including the impervious cover from the farm building or structure to be constructed, of less than five percent. The definition of “farm buildings and structures” includes buildings and structures used for agritourism and any related impervious surfaces, including roads, driveways, and parking areas. This will result in cost savings because an agreement in lieu of a plan is a two-page form and does not require preparation of site specific stormwater management plans. The provisions in this law that expand the use of an agreement in lieu of a plan for certain farm buildings and structures will directly reduce regulatory burdens on the agricultural sector, including agritourism, and result in cost and time savings for agriculture due to decreased design and engineering costs and eliminating the need to go through a lengthy stormwater management and/or erosion and sediment control program plan review process.

The underlying statutory change and resulting amendment to the regulation resolves an inconsistency between state and federal law

	<p>regarding when a registration statement (Notice of Intent) is required to be submitted to avoid a specific objection from EPA to the 2024 Stormwater Construction General Permit. The regulated community, including families engaged in construction projects that require permits, benefits from the Stormwater Construction General Permit because it is a streamlined, faster, and less costly means to satisfy federal and state permit requirements than the alternative of individual permits.</p> <p>Indirect Benefits: This underlying statutory change and resulting regulation eliminates unnecessary regulatory burdens on certain agricultural and agritourism activities. The reduced costs could be passed on to consumers.</p> <p>In addition, this law and resulting regulation are beneficial to human health and the environment through the protection of Virginia’s waterways. As a result, indirect benefits include recreational uses of Virginia’s waterways such as fishing and economic uses of Virginia’s waterways such as use by the shellfish industry. Tourism also benefits from the protection of state waters.</p>
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(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	<p>(a) While not quantifiable, there will be minimal increases in cost because this underlying statutory change and resulting regulation, in order to confirm state law to federal law, requires single-family detached residential structures within or outside of a common plan of development or sale to file a three-page registration statement if the activity does not qualify as small construction. Those minimal increased costs could be passed on to consumers, including families.</p>	<p>(b) While not quantifiable, the provisions of this underlying statutory change and resulting regulation that allow for an agreement in lieu of a plan to be used for the construction of certain farm buildings and structures when it is on a parcel of land with a total impervious cover percentage, including the impervious cover from the farm building or structure to be constructed, of less than five percent. This will result in cost savings because an agreement in lieu of a plan is a two-page form and does not require preparation of site specific stormwater management plans. The provisions in this law that expand the use of an agreement in lieu of a plan for certain farm buildings and structures will directly reduce regulatory burdens on the agricultural sector, including</p>

		<p>agritourism, and result in cost and time savings for agriculture due to decreased design and engineering costs and eliminating the need to go through a lengthy stormwater management and/or erosion and sediment control program plan review process.</p> <p>In addition, the underlying statutory change and resulting amendment to the regulation resolves an inconsistency between state and federal law regarding when a registration statement (Notice of Intent) is required to be submitted to avoid a specific objection from EPA to the 2024 Stormwater Construction General Permit. Families engaged in land disturbing activities that require permits benefit from the Stormwater Construction General Permit because it is a streamlined, faster, and less costly means to satisfy federal and state permit requirements than the alternative of individual permits.</p> <p>Finally, families benefit because this underlying law and resulting regulation are beneficial to human health and the environment through the protection of Virginia’s waterways. As a result, indirect benefits include recreational uses of Virginia’s waterways such as fishing and economic uses of Virginia’s waterways such as use by the shellfish industry. Tourism would also benefit from the protection of state waters.</p>
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(3) Other Costs & Benefits (Non-Monetized)	N/A
(4) Information Sources	Chapters 48 and 49 of the 2023 Acts of Assembly.

Impacts on Small Businesses

Use this chart to describe impacts on small businesses. See Part 8 of the ORM Cost Impact Analysis Guidance for additional guidance.

Table 4: Impact on Small Businesses

(1) Direct & Indirect Costs & Benefits (Monetized)	<p>Direct Costs: Some of the provisions in this underlying statutory change and resulting regulation are necessary to conform state law to federal law regarding who has to file a registration statement. These provisions mean that entities, including small businesses, constructing a single-family detached residential structure within or outside of a common plan of development or sale will have to file a registration statement if the activity does not qualify as small construction. The registration statement is a three-page form (with three additional pages of instructions) and requires information that should be readily available to persons constructing a single-family residence, therefore the additional cost should be minimal. Currently state law provides that no registration statement is required for the construction of a single-family detached residential structure within or outside of a common plan of develop or sale no matter how large the activity. However, this state law provision is inconsistent with federal law. This underlying statutory change was necessary avoid the risk of a specific objection from EPA to the General VPDES Permit for Discharges of Stormwater from Construction Activities, 9VAC25-880 (Stormwater Construction General Permit) when it is reissued in 2024. The Stormwater Construction General Permit is a streamlined permitting process that is used by the regulated community, including small businesses, to comply with permit requirements of the federal Clean Water Act and state law.</p> <p>Indirect Costs: N/A</p> <p>Direct Benefits: This underlying statutory change and resulting regulation reduces regulatory burdens on agriculture, including small businesses engaged in agriculture or agritourism, by allowing for the use of an agreement in lieu of a plan for the construction of certain farm buildings and structures when it is on a parcel of land with a total impervious cover percentage, including the impervious cover from the farm building or structure to be</p>
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	<p>constructed, of less than five percent. The definition of “farm buildings and structures” includes buildings and structures used for agritourism and any related impervious surfaces, including roads, driveways, and parking areas. This will result in cost savings because an agreement in lieu of a plan is a two-page form and does not require preparation of site specific stormwater management plans. The provisions in this law that expand the use of an agreement in lieu of a plan for certain farm buildings and structures will directly reduce regulatory burdens on the agricultural sector, including small businesses engaged in agriculture and agritourism, and result in cost and time savings due to decreased design and engineering costs and eliminating the need to go through a lengthy stormwater management and/or erosion and sediment control program plan review process.</p> <p>In addition, the underlying statutory change and resulting amendment to the regulation resolves an inconsistency between state and federal law regarding when a registration statement (Notice of Intent) is required to be submitted to avoid a specific objection from EPA to the 2024 Stormwater Construction General Permit. The regulated community, including small businesses, benefits from the Stormwater Construction General Permit because it is a streamlined, faster, and less costly means to satisfy federal and state permit requirements than the alternative of individual permits.</p> <p>Indirect Benefits: This underlying statutory change and resulting regulation eliminates unnecessary regulatory burdens on certain agricultural and agritourism activities. The reduced costs could be passed on to consumers, including small businesses.</p> <p>In addition, this law and resulting regulation are beneficial to human health and the environment through the protection of Virginia’s waterways. As a result, indirect benefits include recreational uses of Virginia’s waterways such as fishing and economic uses of Virginia’s waterways such as use by the shellfish industry. Tourism also benefits from the protection of state waters.</p>	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) While not quantifiable, there will be minimal increases in cost because this underlying statutory change and resulting regulation, in order to confirm state law to	(b) While not quantifiable, the provisions of this underlying statutory change and resulting regulation that allow for an agreement in lieu of a plan to be

	<p>federal law, requires single-family detached residential structures within or outside of a common plan of development or sale to file a three page registration statement if the activity does not qualify as small construction.</p>	<p>used for the construction of certain farm buildings and structures when it is on a parcel of land with a total impervious cover percentage, including the impervious cover from the farm building or structure to be constructed, of less than five percent. This will result in cost savings because an agreement in lieu of a plan is a two-page form and does not require preparation of site specific stormwater management plans. The provisions in this law that expand the use of an agreement in lieu of a plan for certain farm buildings and structures will directly reduce regulatory burdens on the agricultural sector, including small businesses engaged in agriculture and agritourism, and result in cost and time savings due to decreased design and engineering costs and eliminating the need to go through a lengthy stormwater management and/or erosion and sediment control program plan review process.</p> <p>In addition, the underlying statutory change and resulting amendment to the regulation resolves an inconsistency between state and federal law regarding when a registration statement (Notice of Intent) is required to be submitted to avoid a specific objection from EPA to the 2024 Stormwater Construction General Permit. The regulated community, including small businesses, benefits from the Stormwater Construction General Permit because it is a streamlined, faster, and less costly means to satisfy federal and state permit</p>
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		<p>requirements than the alternative of individual permits.</p> <p>Finally, this law and resulting regulation are beneficial to human health and the environment through the protection of Virginia’s waterways. As a result, indirect benefits include recreational uses of Virginia’s waterways such as fishing and economic uses of Virginia’s waterways such as use by the shellfish industry. Tourism also benefits from the protection of state waters.</p>
(3) Other Costs & Benefits (Non-Monetized)	N/A	
(4) Alternatives	N/A	
(5) Information Sources	Chapters 48 and 49 of the 2023 Acts of Assembly.	

Changes to Number of Regulatory Requirements

Table 5: Regulatory Reduction

For each individual action, please fill out the appropriate chart to reflect any change in regulatory requirements, costs, regulatory stringency, or the overall length of any guidance documents.

Change in Regulatory Requirements

VAC Section(s) Involved	Initial Count	Additions	Subtractions	Net Change
9VAC25-840-10	0	0	0	0
9VAC25-870-10	0	0	0	0
9VAC25-870-59	2	0	0	0
9VAC25-880-50	2	0	0	0

Office of Regulatory Management
Economic Review Form

Agency name	State Water Control Board
Virginia Administrative Code (VAC) Chapter citation(s)	9VAC25-900
VAC Chapter title(s)	Certification of Nonpoint Source Nutrient Credits
Action title	Amendment to change the Certification of Nonpoint Source Nutrient Credits (9VAC25-900 et seq.) in response to Chapter 723 of the 2023 Virginia Acts of Assembly (SB959)
Date this document prepared	May 31, 2023
Regulatory Stage (including Issuance of Guidance Documents)	Final Exempt Action

Cost Benefit Analysis

Complete Tables 1a and 1b for all regulatory actions. You do not need to complete Table 1c if the regulatory action is required by state statute or federal statute or regulation and leaves no discretion in its implementation.

Table 1a should provide analysis for the regulatory approach you are taking. Table 1b should provide analysis for the approach of leaving the current regulations intact (i.e., no further change is implemented). Table 1c should provide analysis for at least one alternative approach. You should not limit yourself to one alternative, however, and can add additional charts as needed.

Report both direct and indirect costs and benefits that can be monetized in Boxes 1 and 2. Report direct and indirect costs and benefits that cannot be monetized in Box 4. See the ORM Regulatory Economic Analysis Manual for additional guidance.

Table 1a: Costs and Benefits of the Proposed Changes (Primary Option)

<p>(1) Direct & Indirect Costs & Benefits (Monetized)</p>	<p>Direct Costs: This regulatory change is being made in response to Chapter 723 of the 2023 Virginia Acts of Assembly. This statutory change and related regulation concerns the delivery factors used to calculate the number of nonpoint source nutrient credits generated by nutrient banks outside of the Chesapeake Bay watershed. Nonpoint source nutrient credits are reduced by the use of delivery factors (0 to 1) which account for instream attenuation that occurs prior to reaching tidal waters.</p> <p>This regulatory change allows the delivery factors used to reduce the number of nonpoint source nutrient credits generated by a nutrient bank located outside of the Chesapeake Bay watershed to be based on either i) the average of the delivery factors within the Chesapeake Bay watershed (the current practice) or ii) a delivery factor that is deemed by the DEQ Director to be based on the best available scientific and technical information (the new option allowed by the underlying statutory change). Depending on the scientific and technical information presented to DEQ, this regulatory change may result in a larger or smaller delivery factor for nonpoint source nutrient credits generated outside of the Chesapeake Bay watershed. Therefore, the direct costs, if any, are unknown.</p> <p>Indirect Costs: Any change to the delivery factors would be based on scientific and technical information presented to DEQ, and it is unknown whether this scientific and technical information would support larger or smaller delivery factors. Therefore, the indirect costs, if any, are unknown. If there are indirect costs, such as due to delivery factors that reduce the number of credits available it could lead to increases in the price of credits, which would be passed on to regulated entities that choose to purchase credits for compliance purposes.</p> <p>Direct Benefits: This regulatory change allows the delivery factors used to reduce the number of nonpoint source nutrient credits generated by a nutrient bank located outside of the Chesapeake Bay watershed to be based on either i) the average of the delivery factors within the Chesapeake Bay watershed (the current practice) or ii) a delivery factor that is deemed by the DEQ Director to be based on the best available scientific and technical information (the new option allowed by the underlying statutory change). Depending on the scientific and technical information presented to DEQ, this regulatory change may result in a larger or smaller delivery factor for nonpoint source nutrient credits generated outside of the Chesapeake Bay watershed. Therefore the direct benefits, if any, are unknown.</p>
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	<p>Indirect Benefits: Any change to the delivery factors would be based on scientific and technical information presented to DEQ, and it is unknown whether this scientific and technical information would support larger or smaller delivery factors. Therefore, the indirect benefits, if any, are unknown. If there are indirect benefits, such as due to delivery factors that increase the number of credits available, it could lead to decreases in the price of credits, which would benefit regulated entities that choose to purchase credits for compliance purposes.</p>	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	<p>(a) Any change to the delivery factors would be based on scientific and technical information presented to DEQ, and it is unknown whether this scientific and technical information would support larger or smaller delivery factors. Therefore, the indirect costs, if any, are unknown. If there are indirect costs, such as due to delivery factors that reduce the number of credits available it could lead to increases in the price of credits, which would be passed on to regulated entities that choose to purchase credits.</p>	<p>(b) Any change to the delivery factors would be based on scientific and technical information presented to DEQ, and it is unknown whether this scientific and technical information would support larger or smaller delivery factors. Therefore, the indirect benefits, if any, are unknown. If there are indirect benefits, such as due to delivery factors that increase the number of credits available, it could lead to decreases in the price of credits, which would benefit regulated entities that choose to purchase credits.</p>
(3) Net Monetized Benefit	<p>No conclusive statement can be made about specific net monetized benefits. Depending on the scientific and technical information presented to DEQ, this regulatory change may result in a larger or smaller delivery factors for nonpoint source nutrient credits generated outside of the Chesapeake Bay watershed. Therefore, the net benefits are unknown.</p>	
(4) Other Costs & Benefits (Non-Monetized)	<p>No conclusive statement can be made about specific non-monetized costs and benefits, however, the Commonwealth and its local partners generally benefits from the protection of the Commonwealth's</p>	

	environment and natural resources from pollution, impairment, or destruction. This law and resulting regulation are beneficial to human health and the environment through the protection of Virginia’s waterways. As a result, benefits include recreational uses of Virginia’s waterways such as fishing and economic uses of Virginia’s waterways such as use by the shellfish industry and tourism.
(5) Information Sources	N/A

Table 1b: Costs and Benefits under the Status Quo (No change to the regulation)

(1) Direct & Indirect Costs & Benefits (Monetized)	<p>Direct Costs: Nonpoint source nutrient credits are reduced by the use of delivery factors (0 to 1) which account for instream attenuation that occurs prior to reaching tidal waters. Currently the delivery factors used for calculating the number of nonpoint source nutrient credits generated by nutrient banks outside of the Chesapeake Bay watershed are based on an average of the delivery factors for the watersheds in the Chesapeake Bay Program watershed model. Current average delivery factor values for Total Nitrogen, Total Phosphorous, and Sediment are 0.56, 0.51, and 0.29, respectively.</p> <p>It is unknown whether these delivery factors are larger or smaller than alternative delivery factors, therefore direct costs of the status quo are unknown.</p> <p>Indirect Costs: Regulated entities may purchase nonpoint source nutrient credits for compliance purposes. The price of those credits depends on market factors (i.e., supply and demand) and the delivery factors are one factor that influences the supply of nonpoint source nutrient credits available for purchase.</p> <p>It is unknown whether these delivery factors are larger or smaller than alternative delivery factors, therefore indirect costs of the status quo are unknown.</p> <p>Direct Benefits: Nonpoint source nutrient credits are reduced by the use of delivery factors (0 to 1) which account for instream attenuation that occurs prior to reaching tidal waters. Currently the delivery factors used for calculating the number of nonpoint source nutrient credits generated by nutrient banks outside of the Chesapeake Bay watershed are based on an average of the delivery factors for the watersheds in the Chesapeake Bay Program watershed model. Current average delivery factor values for</p>
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	<p>Total Nitrogen, Total Phosphorous, and Sediment are 0.56, 0.51, and 0.29, respectively.</p> <p>It is unknown whether these delivery factors are larger or smaller than alternative delivery factors, therefore direct benefits of the status quo are unknown.</p> <p>Indirect Benefits: Regulated entities may purchase nonpoint source nutrient credits for compliance purposes. The price of those credits depends on market factors (i.e., supply and demand) and the delivery factors are one factor that influences the supply of nonpoint source nutrient credits available for purchase.</p> <p>It is unknown whether these delivery factors are larger or smaller than alternative delivery factors, therefore indirect benefits of the status quo are unknown.</p>	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) The direct and indirect costs are indeterminate.	(b) The direct and indirect benefits are indeterminate.
(3) Net Monetized Benefit	No conclusive statement can be made about specific net monetized benefits.	
(4) Other Costs & Benefits (Non-Monetized)	The regulation is protective of the environment, and the Commonwealth generally benefits from the protection of the Commonwealth's environment and natural resources from pollution, impairment, or destruction.	
(5) Information Sources	N/A	

Agency Note: This final exempt regulatory action is mandated by state statute effective July 1, 2023. Therefore, Table 1c is not required and has been removed.

Impact on Local Partners

Use this chart to describe impacts on local partners. See Part 8 of the ORM Cost Impact Analysis Guidance for additional guidance.

Table 2: Impact on Local Partners

<p>(1) Direct & Indirect Costs & Benefits (Monetized)</p>	<p>Direct Costs: N/A</p> <p>Indirect Costs: Depending on the scientific and technical information presented to DEQ, this regulatory change may result in a delivery factor for nonpoint source nutrient credits generated outside of the Chesapeake Bay watershed that decreases the supply of nonpoint source nutrient credits outside of the Chesapeake Bay watershed, which would increase the price of those nonpoint source nutrient credits for entities, which could include local governments, that choose to purchase nonpoint source nutrient credits as a compliance option. There is uncertainty concerning any resulting changes to the price of nonpoint source nutrient credits associated with the regulatory change.</p> <p>Direct Benefits: N/A</p> <p>Indirect Benefits: Depending on the scientific and technical information presented to DEQ, this regulatory change may result in a delivery factor for nonpoint source nutrient credits generated outside of the Chesapeake Bay watershed that increases the supply of nonpoint source nutrient credits outside of the Chesapeake Bay watershed. If so, this would decrease the price of those nonpoint source nutrient credits for entities, which could include local governments, that choose to purchase nonpoint source nutrient credits as a compliance option. There is uncertainty concerning any resulting changes to the price of nonpoint source nutrient credits associated with the regulatory change.</p>
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<p>(2) Present Monetized Values</p>	<p>Direct & Indirect Costs</p> <p>(a) Any change to the delivery factors would be based on scientific and technical information presented to DEQ, and it is unknown whether this scientific and technical information would support larger or smaller delivery factors. Therefore, the indirect costs, if any, are unknown. If there are indirect costs, such as due to delivery factors that reduce the number of credits available it could lead to increases in the price of</p>	<p>Direct & Indirect Benefits</p> <p>(b) Any change to the delivery factors would be based on scientific and technical information presented to DEQ, and it is unknown whether this scientific and technical information would support larger or smaller delivery factors. Therefore, the indirect benefits, if any, are unknown. If there are indirect benefits, such as due to delivery factors that increase the number of credits available it could lead to decreases in the price</p>
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	credits, which would be passed on to regulated entities, which could include local governments, that choose to purchase credits.	of credits, which would benefit regulated entities, which could include local governments, that choose to purchase credits.
(3) Other Costs & Benefits (Non-Monetized)	No conclusive statement can be made about specific non-monetized costs and benefits, however, the Commonwealth and its local partners generally benefits from the protection of the Commonwealth's environment and natural resources from pollution, impairment, or destruction. This law and resulting regulation are beneficial to human health and the environment through the protection of Virginia's waterways. As a result, benefits include recreational uses of Virginia's waterways such as fishing and economic uses of Virginia's waterways such as use by the shellfish industry and tourism.	
(4) Assistance	N/A	
(5) Information Sources	N/A	

Impacts on Families

Use this chart to describe impacts on families. See Part 8 of the ORM Cost Impact Analysis Guidance for additional guidance.

Table 3: Impact on Families

(1) Direct & Indirect Costs & Benefits (Monetized)	Direct Costs: N/A Indirect Costs: N/A Direct Benefits: N/A Indirect Benefits: N/A	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) N/A	(b) N/A

(3) Other Costs & Benefits (Non-Monetized)	N/A
(4) Information Sources	N/A

Impacts on Small Businesses

Use this chart to describe impacts on small businesses. See Part 8 of the ORM Cost Impact Analysis Guidance for additional guidance.

Table 4: Impact on Small Businesses

(1) Direct & Indirect Costs & Benefits (Monetized)	<p>Direct Costs: N/A</p> <p>Indirect Costs: Depending on the scientific and technical information presented to DEQ, this regulatory change may result in a delivery factor for nonpoint source nutrient credits generated outside of the Chesapeake Bay watershed that decreases the supply of nonpoint source nutrient credits outside of the Chesapeake Bay watershed, which would increase the price of those nonpoint source nutrient credits for entities, which could include small businesses, that choose to purchase nonpoint source nutrient credits as a compliance option. There is uncertainty concerning any resulting changes to the price of nonpoint source nutrient credits associated with the regulatory change.</p> <p>Direct Benefits: N/A</p> <p>Indirect Benefits: Depending on the scientific and technical information presented to DEQ, this regulatory change may result in a delivery factor for nonpoint source nutrient credits generated outside of the Chesapeake Bay watershed that increases the supply of nonpoint source nutrient credits outside of the Chesapeake Bay watershed. If so, this would decrease the price of those nonpoint source nutrient credits for entities, which could include small businesses, that choose to purchase nonpoint source nutrient credits as a compliance option. There is uncertainty concerning any resulting changes to the price of nonpoint source nutrient credits associated with the regulatory change.</p>	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits

	<p>(a) Any change to the delivery factors would be based on scientific and technical information presented to DEQ, and it is unknown whether this scientific and technical information would support larger or smaller delivery factors. Therefore, the indirect costs, if any, are unknown. If there are indirect costs, such as due to delivery factors that reduce the number of credits available it could lead to increases in the price of credits, which would be passed on to regulated entities, which could include small businesses, that choose to purchase credits.</p>	<p>(b) Any change to the delivery factors would be based on scientific and technical information presented to DEQ, and it is unknown whether this scientific and technical information would support larger or smaller delivery factors. Therefore, the indirect benefits, if any, are unknown. If there are indirect benefits, such as due to delivery factors that increase the number of credits available it could lead to decreases in the price of credits, which would benefit regulated entities, which could include local governments, that choose to purchase credits.</p>
<p>(3) Other Costs & Benefits (Non-Monetized)</p>	<p>No conclusive statement can be made about specific non-monetized costs and benefits; however, the Commonwealth generally benefits from the protection of the Commonwealth’s environment and natural resources from pollution, impairment, or destruction. This law and resulting regulation are beneficial to human health and the environment through the protection of Virginia’s waterways. As a result, benefits include recreational uses of Virginia’s waterways such as fishing and economic uses of Virginia’s waterways such as use by the shellfish industry and tourism, which could include small businesses.</p>	
<p>(4) Alternatives</p>	<p>N/A</p>	
<p>(5) Information Sources</p>	<p>N/A</p>	

Changes to Number of Regulatory Requirements

Table 5: Regulatory Reduction

For each individual action, please fill out the appropriate chart to reflect any change in regulatory requirements, costs, regulatory stringency, or the overall length of any guidance documents.

Change in Regulatory Requirements

VAC Section(s) Involved	Initial Count	Additions	Subtractions	Net Change
9VAC25-900-110	2	0	0	0