

Ordinance 1728

AN ORDINANCE TO REPEAL TOWN CODE CHAPTER 18, ARTICLE VI, REGARDING  
STORMWATER, AND TO ADOPT A NEW ARTICLE VI TO INCORPORATE STATE  
MANDATED STORMWATER REGULATION CHANGES

WHEREAS, the Federal Clean Water Act requires the U. S. Environmental Protection Agency (“EPA”) to enact regulations to permit and eliminate pollutants discharged into the nation’s waterways;

WHEREAS, the EPA has required the states, and in the Commonwealth of Virginia, the Department of Environmental Quality (“DEQ”), to enforce these regulations;

WHEREAS, the Town of Blacksburg (“Town”) is required to lessen the adverse impacts from stormwater runoff from land-disturbing activities and from previous development through the local erosion and sediment control ordinance, the Virginia Stormwater Management Program (“VSMP”), and the Town’s MS4 permit;

WHEREAS, the administration of the VSMP is being transferred to the localities and the stormwater management requirements are being completely revised effective July 1, 2014; therefore, the Town’s stormwater ordinance must be repealed and a new ordinance adopted based on DEQ requirements.

NOW, THEREFORE, BE IT ORDAINED by the Council of the Town of Blacksburg:

1. That Article VI, of Chapter 18, Town Code is repealed and a new Article VI is hereby adopted, as follows:

## Chapter 18

### SEWERS AND STORMWATER MANAGEMENT ARTICLE VI: STORMWATER MANAGEMENT

#### **Section 18-600. Authority and purpose.**

(a) The purpose of this article is to (1) ensure the general health, safety and welfare of the citizens of Blacksburg; (2) protect the quality and quantity of state waters from the potential harm of unmanaged stormwater, including protection from land-disturbing activity causing unreasonable degradation of properties, water quality, stream channels, and other natural resources; and (3) establish procedures whereby stormwater requirements related to water quality and quantity shall be administered and enforced.

(b) The authority for this article is provided by the Virginia Stormwater Management Act, contained at Virginia Code § 62.1-44.15:27, *et seq.*

#### **Section 18-601. Definitions.**

In addition to the definitions set forth in 9VAC25-870-10 of the Virginia Stormwater Management Regulations, as amended, which are expressly adopted and incorporated herein by reference, the following words and terms used in this article have the following meanings unless otherwise specified herein. Where definitions differ, those incorporated herein shall have precedence.

“Administrator” means the director of Engineering and GIS of the town and/or the director’s duly authorized designee.

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

“Applicant” means any person submitting an application for a permit or requesting issuance of a permit under this article.

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

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

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

“Control measure” means any best management practice or other method used to prevent or reduce the discharge of pollutants to surface waters.

“Department” means the Department of Environmental Quality.

“Detention” means the temporary storage of storm runoff in a stormwater management practice with the goals of controlling peak discharge rates and providing gravity settling of pollutants.

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

“Discharge” when used without qualification, means the direct discharge of a pollutant.

“General permit” means the state permit titled “General Permit For Discharges Of Stormwater From Construction Activities” found in Part XIV (9VAC25-880-1, *et seq.*) of the Regulations authorizing a category of discharges under the CWA and the Act within a geographical area of the Commonwealth of Virginia.

"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 connection” means any connections to the town's storm sewer system that are not authorized by the town, by a valid NPDES or VPDES permit, or as may otherwise be authorized by law.

“Illicit discharge” means any discharge to the storm sewer system or to the waters of the United States that is not composed entirely of stormwater, except discharges which are exempt pursuant to section 18-626 (b) of this article. Any discharge in violation of a National Pollutant Discharge Elimination System or Virginia Pollutant Discharge Elimination System or other stormwater discharge permit shall constitute an illicit discharge.

“Land disturbance” or “Land-disturbing activity” means any 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 § 18-602 (c).

“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 development project 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 and streets shall not be considered linear development projects.

“Maintenance agreement” means a legally recorded document that acts as a restriction on property and provides for long-term maintenance of stormwater management practices.

“Minor modification” means an amendment to an existing permit before its expiration not requiring extensive review and evaluation including, but not limited to, changes to EPA promulgated test protocols, increasing monitoring frequency requirements, changes in minor permit modification or amendment that does not substantially alter permit conditions, substantially increase or decrease the amount of surface water impacts, increase the size of the operation, or reduce the capacity of the facility to protect human health or the environment.

"Municipal separate storm sewer system" or "MS4" 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.

“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 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 non-tidal 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.

“Nonpoint source pollution” means pollution such as sediment, nitrogen and 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.

“Nonpoint source pollutant runoff load” or “pollutant discharge” means the average amount of a particular pollutant measured in pounds per year, delivered in a diffuse manner by stormwater runoff.

“Operator” means the owner or operator of any facility or activity subject to regulation under this article.

“Permit” or “VSMP authority permit” means an approval to conduct a land-disturbing activity issued by the Administrator for the initiation of a land-disturbing activity, in accordance with this

article, and which may only be issued after evidence of general permit coverage has been provided by the Department, if required.

“Permittee” means the person to whom the VSMP Authority Permit is issued.

“Person” means any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, county, city, town or other political subdivision of the commonwealth, any interstate body or any other legal entity.

“Redevelopment” means the process of developing land that is or has been previously developed.

“Regulations” means the Virginia Stormwater Management Program Permit Regulations, 9VAC25-870-10, as amended.

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

“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.

"State" means the Commonwealth of Virginia.

“State Board” or “Board” means the Virginia State Water Control Board.

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

“State Water Control Law” means Virginia Code Title 62.1, Chapter 3.1 (§ 62.1-44.2, *et seq.*).

“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.

“Storm sewer system” means all facilities, conveyances, structures, and other items located within the town and owned and/or operated by the town that are designed or used for collecting, storing, treating, or conveying stormwater or through which stormwater is collected, stored, treated, or conveyed, including, but not limited to, roads, streets, catch basins, drop inlets, curbs, gutters, ditches, pipes, lakes, ponds, man-made channels, storm drains, outfalls, retention, detention and infiltration basins and other facilities.

“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” means the use of structural or non-structural practices that are designed to reduce stormwater runoff pollutant loads, discharge volumes, and/or peak flow discharge rates.

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

“Stormwater management plan” or “plan” means a document containing material for describing how existing runoff characteristics will be affected by a land development project and methods for complying with the requirements of §§ 18-606 and 18-607.

"Stormwater runoff" means flow on the surface of the ground, resulting from precipitation.

“Stormwater pollution prevention plan” or “SWPPP” means a document that is prepared in accordance with good engineering practices and that identifies potential sources of pollutants that may reasonably be expected to affect the quality of stormwater discharges from the construction site, and otherwise meets the requirements of this article. In addition, the document shall identify and require the implementation of control measures, and shall include, but not be limited to, the inclusion of, or the incorporation by reference of, an approved erosion and sediment control plan, an approved stormwater management plan, and a pollution prevention plan.

“Subdivision” shall have the meaning contained in § 3-100 of the Subdivision Ordinance.

"Town" or “town” means the Town of Blacksburg.

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

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

“Virginia Stormwater Management Program” or “VSMP” means a program approved by the State Board after September 13, 2011, that has been established by a locality to manage the quality and quantity of runoff resulting from land-disturbing activities and shall include such items as local ordinances, rules, permit requirements, annual standards and specifications, policies and guidelines,

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

“Virginia Stormwater Management Program Authority” or “VSMP Authority” means an authority approved by the State Board after September 13, 2011, to operate a Virginia Stormwater Management Program.

“Watercourse” means a permanent or intermittent stream or other body of water, either natural or man-made, that gathers or carries surface water.

“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.

### **Section 18-602. Stormwater permit requirement; exemptions.**

(a) Pursuant to Virginia Code § 62.1-44.15:27, the town hereby establishes a Virginia stormwater management program for land-disturbing activities and adopts the applicable regulations that specify standards and specifications for VSMPs promulgated by the State Board for the purposes set out in § 18-600 of this article. The Director of Engineering and GIS is hereby designated as the Administrator of the Virginia stormwater management program. All subdivision, site plan, or land use conversion applications in the town shall comply with the requirements of this article, except for those activities exempt as listed in this section.

(b) Unless exempt pursuant to Virginia Code § 62.1-44.15:34, linear development projects shall control postdevelopment stormwater runoff in accordance with a site-specific stormwater management plan or a comprehensive watershed management plan developed in accordance with these regulations.

(c) The following activities shall be exempt from this article:

- (1) Permitted surface or deep mining operations and projects, or oil and gas operations and projects conducted under the provisions of Virginia Code Title 45.1.
- (2) Clearing of lands specifically for agricultural purposes and the management, tilling, planting or harvesting of agricultural, horticultural, or forest crops; or livestock feedlot operations including engineering operations as follows: construction of terraces, terrace outlets, check dams, de-silting 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.*) or is converted to bona fide agricultural or improved pasture use as described in subsection B of Virginia Code § 10.1-1163.
- (3) Single-family residences separately built and disturbing less than one (1) acre and not part of a larger common plan of development or sale that is one acre or greater,

including additions or modifications to existing single-family detached residential structures.

- (4) Land-disturbing activities that disturb less than 5,000 square feet.
- (5) Discharges to a sanitary sewer or combined sewer system.
- (6) Activities under a state or federal reclamation program to return an abandoned property to an agricultural or open land use.
- (7) 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 article.
- (8) Conducting land-disturbing activities in response to a public emergency where the related work required immediate authorization to avoid imminent endangerment to human health or the environment. In such situations, the Administrator shall be advised of the disturbance within seven days of the commencement of the land-disturbing activity, and compliance with the administrative requirements of subsection 18-603 of this article must be obtained within 30 days of commencing the land-disturbing activity.
- (9) Linear development projects disturbing less than one (1) acre.

**Section 18-603. Permit requirements; prohibitions.**

(a) Except as otherwise provided in this article, no person shall engage in any land-disturbing activity until a VSMP authority permit has been issued by the Administrator in accordance with the provisions of this article or an executed agreement in lieu of a stormwater management plan has been approved.

(b) The operator must submit a complete and accurate registration statement on the official Department form to the town in order to apply for VSMP permit coverage. The registration statement must be signed by the operator in accordance with 9VAC25-870-370.

(c) No permit shall be issued by the Administrator, until the following plans and submittals have been submitted to and approved by the Administrator as prescribed herein:

- (1) A permit application that includes a state VSMP permit registration statement, if such statement is required (a registration statement is not required for detached single-family home construction within or outside of a common plan of development or sale, but must adhere to the requirements of the general permit);
- (2) A Stormwater Pollution Prevention Plan that meets the requirements of § 18-608 of this article and includes the following:



- i. An erosion and sediment control plan, approved by the town in accordance with the town's erosion and sediment control ordinance, chapter 10 of the Town Code;
- ii. A stormwater management plan that meets the requirements of § 18-607 of this article;
- iii. A pollution prevention plan that meets the requirements of § 18-609 of this article;
- iv. Identified control measures to be implemented to ensure discharges are consistent with the assumptions and requirements of any specific Waste Load Allocation for any pollutant established in a TMDL and assigned to stormwater discharges from a construction activity; and
- v. Any other information deemed necessary by the Administrator.

(d) No VSMP permit shall be issued until required fees are paid and the surety required by this article has been posted.

(e) No VSMP permit shall be issued until evidence of VSMP coverage has been provided, where required.

(f) No grading, building or other permit shall be issued for a property unless a stormwater permit has been issued by the Administrator.

**Section 18-604. Time limits on applicability and grandfathering.**

(a) Land-disturbing activities that obtain general permit coverage or commence land disturbance prior to July 1, 2014 shall be conducted in accordance with the Part II C technical criteria of 9VAC25-870. Such projects shall remain subject to the Part II C technical criteria for an additional two general permit cycles. After such time, portions of the project not under construction shall become subject to any new technical criteria adopted by the Department.

(b) Land-disturbing activities that obtain general permit coverage on or after July 1, 2014 shall be conducted in accordance with the Part II B technical criteria of this chapter. Such projects shall remain subject to the Part II B technical criteria for an additional two general permit cycles except as provided for in subsection D of 9VAC25-870-48. After such time, portions of the project not under construction shall become subject to any new technical criteria adopted by the Department.

(c) Nothing in this section shall preclude an operator from constructing to a more stringent standard at his or her discretion.

(d) Any land-disturbing activity shall be considered grandfathered and shall be subject to the Part II C technical criteria of the VSMP Regulation, provided that:

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

(e) Town, state and federal projects shall be considered grandfathered by the VSMP Authority and shall be subject to the Part II C technical criteria of the VSMP Regulation provided:

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

(f) Land-disturbing activities grandfathered under this article shall remain subject to Part II C technical criteria of the VSMP Regulation for one additional state permit cycle. After such time, portions of the project not under construction shall become subject to any new technical criteria adopted by the Board.

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

(h) Nothing in this article shall preclude an operator from constructing to a more stringent standard at his or her discretion.

#### **Section 18-605. Stormwater management plan requirement.**

(a) No subdivision, site plan, or land use conversion application shall be approved unless the application includes a stormwater management plan, as required by this article, detailing how runoff and associated water quality impacts resulting from the activity will be controlled or managed. The stormwater plan shall consist of a concept plan, to ensure adequate planning for the management of stormwater runoff, and a final plan. Both plans must comply with the criteria established in this article.

(b) A stormwater management plan shall be developed and submitted to the town. The stormwater management plan shall be implemented as approved or modified by the stormwater program administrative authority and shall be developed in accordance with the following:

- (1) A stormwater management plan for a land-disturbing activity shall apply the stormwater management technical criteria set forth in this article to the entire common plan of development or sale where applicable. Individual lots or parcels in new residential, commercial, or industrial developments shall not be considered to be separate land-disturbing activities.
- (2) A stormwater management plan shall consider all sources of surface runoff and all sources of subsurface and groundwater flows converted to surface runoff.

**Section 18-606. Stormwater management concept plan.**

A concept plan should be prepared at the time of the preliminary plan of subdivision, rezoning application, or special use permit application or other early step in the development process to identify the type of stormwater management measures necessary for the proposed project. The stormwater management concept plan must be approved prior to submission of a stormwater management design plan (as part of the construction or final site plan) for the entire development, or portions thereof. The following information must be included in the concept plan:

- (1) A narrative that includes the description of current site conditions and final site conditions.
- (2) A map (or maps) indicating the location of existing and proposed buildings, roads, parking areas, utilities, structural stormwater management and sediment control facilities. The map(s) will also clearly show proposed land use with tabulation of the percentage of surface area to be adapted to various uses; drainage patterns; locations of utilities, roads and easements; the limits of clearing and grading; a written description of the site plan and justification of proposed changes in natural conditions may also be required.
- (3) Sufficient engineering analysis to show that the proposed stormwater management measures are capable of controlling runoff from the site in compliance with this article and the specifications of the Virginia BMP Clearinghouse website.
- (4) A written or graphic inventory of the natural resources at the site and surrounding area as it exists prior to the commencement of the project and a description of the watershed and its relation to the project site. This description should include a discussion of soil conditions, forest cover, topography, wetlands, and other native vegetative areas on the site. Particular attention should be paid to environmentally sensitive features that provide particular opportunities or constraints for development.
- (5) Information on the type and location of stormwater discharges; information on the features to which stormwater is being discharged including surface waters or karst features if present, and the predevelopment and postdevelopment drainage areas.
- (6) A general description of the proposed stormwater management facilities and the mechanism through which the facilities will be operated and maintained after

construction is complete. This description shall include a written description of the required maintenance responsibilities and responsible party for any proposed stormwater management facility.

- (7) The town may also require a concept plan to consider the maximum development potential of a site under existing zoning, regardless of whether the applicant presently intends to develop the site to its maximum potential.
- (8) The applicant may be required to include within the stormwater concept plan measures for controlling existing stormwater runoff discharges from development or redevelopment occurring on a previously developed site in accordance with the standards of this article to the maximum extent practicable.

### **Section 18-607. Stormwater management final plan.**

After review of the stormwater management concept plan and modifications to that plan as deemed necessary by the town, a final stormwater management plan must be submitted for approval. All stormwater management plans shall be appropriately sealed and signed by a professional in adherence to all minimum standards and requirements pertaining to the practice of that profession in accordance with Virginia Code Title 54.1, Chapter 4 (§ 54.1-400, *et seq.*) and attendant regulations certifying that the plan meets all submittal requirements outlined in this article and is consistent with good engineering practice. The final stormwater management plan, in addition to the information from the concept plan, shall include the following:

- (1) Contact Information. The name, address, and telephone number of all persons having a legal interest in the property and the tax reference number and parcel number of the property or properties affected.
- (2) A narrative that includes the description of current site conditions and final site conditions.
- (3) Topographic Base Map. A minimum 1" = 20' to maximum 1" = 50' topographic base map of the site which extends a minimum of 25 feet beyond the limits of the proposed development and includes:
  - i. All contributing drainage areas;
  - ii. Existing surface water drainage including streams, ponds, culverts, ditches, wetlands, floodplains or other significant natural or manmade features not otherwise shown;
  - iii. Soil types, geologic formations if karst features are present in the area, forest cover, and other vegetative areas;
  - iv. Current land use including all existing structures, locations of utilities, roads, and easements;

- v. Sufficient information on adjoining parcels to assess the impacts of stormwater from the site on these parcels;
  - vi. The limits of clearing and grading, and the proposed drainage patterns on the site;
  - vii. Proposed buildings roads, parking areas, utilities, and stormwater management facilities; and
  - viii. Proposed land use with tabulation of the percentage of surface area to be adapted to various uses, including but not limited to planned locations of utilities, roads and easements.
- (4) A general description of the proposed stormwater management facilities and the mechanism through which the facilities will be operated and maintained after construction is complete including a schedule of detailed maintenance procedures to ensure their continued function described in § 18-619.
- (5) Calculations. Hydrologic and hydraulic design calculations documenting runoff characteristics and verifying compliance with the water quality and quantity requirements of this article.
- (6) Information about the proposed stormwater management facilities, including:
- i. the type of facilities;
  - ii. location, including geographical coordinates;
  - iii. acres treated (pervious and impervious); and
  - iv. the surface waters or karst features into which the facility will discharge.
- (7) Soils Information. Geotechnical properties for the hydrologic and structural properties of soils, especially for dam embankments, shall be described in a soils report. The submitted report shall include boring depth, sampling frequency and types and associated laboratory testing with results and conclusions and follow the criteria in the Virginia Stormwater Management Handbook. Soil properties for infiltration facilities shall also conform to the guidance and specification outlined in the Virginia Best Management Practice Clearinghouse. Site-specific soil borings are required to support the use of infiltration practices.
- (8) If an operator intends to meet the stormwater requirements set forth this article through the use of off-site compliance options, where applicable, then a letter of availability from the off-site provider must be included.

- (9) Elements of the stormwater management plans that include activities regulated under Virginia Code Title 54.1, Chapter 4 (§ 54.1-400, *et seq.*) shall be appropriately sealed and signed by a professional registered in the Commonwealth of Virginia.
- (10) A construction record drawing for permanent stormwater management facilities shall be submitted to the Administrator. The construction record drawing shall be appropriately sealed and signed by a professional registered in the Commonwealth of Virginia, certifying that the stormwater management facilities have been constructed in accordance with the approved plan.

**Section 18-608. Stormwater pollution prevention plan; contents of plans.**

(a) A stormwater pollution prevention plan shall include, but not be limited to, an approved erosion and sediment control plan, an approved stormwater management plan, a pollution prevention plan for regulated land-disturbing activities, and a description of any additional control measures necessary to address a TMDL WLA assigned to stormwater discharges as described below.

(b) An erosion and sediment control plan consistent with the requirements of the Virginia Erosion and Sediment Control Law and regulations must be designed and implemented during construction activities. Prior to land disturbance, this plan must be approved by either the local erosion and sediment control program or the Department in accordance with the Virginia Erosion and Sediment Control Law and attendant regulations.

(c) A stormwater management plan consistent with the requirements of the Virginia Stormwater Management Act and regulations must be designed and implemented during construction activities. Prior to land disturbance, this plan must be approved by the stormwater program administrative authority, except for land-disturbing activities previously covered under the General Permit for Discharges of Stormwater from Construction Activities issued July 1, 2009.

(d) A pollution prevention plan that identifies potential sources of pollutants that may reasonably be expected to affect the quality of stormwater discharges from the construction site and describe control measures that will be used to minimize pollutants in stormwater discharges from the construction site must be developed before land disturbance commences.

(e) In addition to the above requirements, if a specific WLA for a pollutant has been established in a TMDL and is assigned to stormwater discharges from a construction activity, additional control measures must be identified and implemented by the operator so that discharges are consistent with the assumptions and requirements of the WLA in a State Water Control Board approved TMDL.

(f) The Stormwater Pollution Prevention Plan (SWPPP) required by this article must address the following requirements, to the extent otherwise required by local or state law or regulations and any applicable requirements of a VSMP permit:

- (1) Control stormwater volume and velocity within the site to minimize soil erosion;

- (2) Control stormwater discharges, including both peak flow rates and total stormwater volume, to minimize erosion at outlets and to minimize downstream channel and stream bank erosion;
  - (3) Minimize the amount of soil exposed during construction activity;
  - (4) Minimize the disturbance of steep slopes;
  - (5) Minimize sediment discharges from the site. The design, installation and maintenance of erosion and sediment controls must address factors such as the amount, frequency, intensity, and duration of precipitation, the nature of resulting stormwater runoff, and soil characteristics, including the range of soil particle sizes expected to be present on the site;
  - (6) Provide and maintain natural buffers around surface waters, and direct stormwater to vegetated areas to increase sediment removal and maximize stormwater infiltration, unless infeasible;
  - (7) Minimize soil compaction and, unless infeasible, preserve topsoil; and
  - (8) Stabilization of disturbed areas must, at a minimum, be initiated immediately whenever any clearing, grading, excavating, or other land-disturbing activities have permanently ceased on any portion of the site, or temporarily cease on any portion of the site and will not resume for a period exceeding 14 calendar days. Where drought, arid, or semi-arid exists such that initiating vegetative stabilization measures immediately is infeasible, alternative stabilization measures shall be specified by the Administrator.
- (g) The SWPPP shall be amended whenever there is a change in design, construction, operation, or maintenance that has a significant effect on the discharge of pollutants to state waters which is not addressed by the existing SWPPP.
- (h) The SWPPP must be maintained at a central location onsite. If an onsite location is unavailable, notice of the SWPPP's location must be posted near the main entrance at the construction site.

**Section 18-609. Pollution prevention plan; contents of plan.**

- (a) The required Pollution Prevention Plan shall be developed, implemented, and updated as necessary and must detail the design, installation, implementation, and maintenance of effective pollution prevention measures to minimize the discharge of pollutants. At a minimum, such measures must be designed, installed, implemented, and maintained to achieve the following:
- (1) Minimize the discharge of pollutants from equipment and vehicle washing, wheel wash water, and other wash waters. Wash waters must be treated in a sediment basin or alternative control that provides equivalent or better treatment prior to discharge;

- (2) Minimize the exposure of building materials, building products, construction wastes, trash, landscape materials, fertilizers, pesticides, herbicides, detergents, sanitary waste, and other materials present on the site to precipitation and to stormwater; and
  - (3) Minimize the discharge of pollutants from spills and leaks and implement chemical spill and leak prevention and response procedures.
- (b) The pollution prevention plan shall include effective best management practices to prohibit the following discharges:
- (1) Wastewater from washout of concrete, unless managed by an appropriate control;
  - (2) Wastewater from washout and cleanout of stucco, paint, form release oils, curing compounds, and other construction materials;
  - (3) Fuels, oils, or other pollutants used in vehicle and equipment operation and maintenance; and
  - (4) Soaps or solvents used in vehicle and equipment washing.
- (c) Discharges from dewatering activities, including discharges from dewatering of trenches and excavations, are prohibited unless managed by appropriate controls.

**Section 18-610. Review of stormwater management plan.**

- (a) The Administrator, or any duly authorized agent of the Administrator, shall review stormwater management plans and shall approve or disapprove a stormwater management plan according to the following:
- (1) The Administrator shall determine the completeness of a plan in accordance with this article, and shall notify the applicant in writing of such determination within 15 calendar days of receipt. If the plan is deemed to be incomplete, the applicant shall be notified in writing of the reasons the plan is deemed incomplete.
  - (2) The Administrator shall have an additional 60 calendar days from the date of the communication of completeness to review the plan, except that if a determination of completeness is not made within the time prescribed in subsection (a), then the plan shall be deemed complete and the Administrator shall have 60 calendar days from the date of submission to review the plan.
  - (3) The Administrator shall review any plan that has been previously disapproved within 45 calendar days of the date of resubmission.
  - (4) During the review period, the plan shall be approved or disapproved and the decision communicated in writing to the person responsible for the land-disturbing activity or his or her designated agent. If the plan is not approved, the reason for not approving



shall be provided in writing. Approval or denial shall be based on the plan's compliance with the requirements of this article.

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

(b) Approved stormwater plans may be modified as follows:

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

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

(c) The Administrator shall require the submission of a construction record drawing or "as-built" plans for permanent stormwater management facilities. The Administrator may elect not to require construction record drawings for stormwater management facilities for which recorded maintenance agreements are not required pursuant to this article.

(d) "As-built" plans are required for any stormwater management conveyance and facilities upon completion of construction. The plan must show the final design specifications for all stormwater management facilities and must be certified by a professional engineer in the Commonwealth of Virginia. Acceptance of the as-built and a final inspection by the town are required before the release of any performance securities can occur. A professional engineer shall certify all aspects of the BMP construction, including as-built surveys, as well as geotechnical inspections during subsurface or backfilling, riser and principal spillway installation, bioretention soil placement and compaction activities. If the inspection certification is not performed by the professional engineer who certified the final design specifications, the inspection certification must include certification of the final design specifications.

#### **Section 18-611. General criteria for stormwater management.**

(a) Unless otherwise specified, the prescribed design storms are the one-year, two-year, and ten-year 24-hour storms using the site-specific rainfall precipitation frequency data recommended by the U.S. National Oceanic and Atmospheric Administration (NOAA) Atlas 14. Partial duration time series shall be used for the precipitation data.

(b) Unless otherwise specified, all hydrologic analyses shall be based on the existing watershed characteristics and how the ultimate development condition of the subject project will be addressed.

(c) The U.S. Department of Agriculture's Natural Resources Conservation Service (NRCS) synthetic 24-hour rainfall distribution and models, including, but not limited to TR-55 and TR-20;

hydrologic and hydraulic methods developed by the U.S. Army Corps of Engineers; or other standard hydrologic and hydraulic methods, shall be used to conduct the analyses described in this part.

(d) For drainage areas of 200 acres or less, the town may allow for the use of the Rational Method for evaluating peak discharges and the use of the Modified Rational Method for evaluating volumetric flows to stormwater conveyances.

(e) In accordance with Virginia Code § 62.1-44.15:28, stormwater harvesting is encouraged for the purposes of landscape irrigation systems, fire protection systems, flushing water closets and urinals, and other water handling systems to the extent such systems are consistent with federal, state, and local regulations.

(f) Stormwater management wet ponds and extended detention ponds that are not covered by the Impounding Structure Regulations (4VAC50-20) shall, at a minimum, be engineered for structural integrity for the 100-year storm event.

(g) Construction of stormwater management impoundment structures or facilities may occur in karst areas only after a study of the geology and hydrology of the area has been conducted to determine the presence or absence of karst features that may be impacted by stormwater runoff and BMP placement.

(h) Discharge of stormwater runoff to a karst feature shall meet the water quality criteria set out in 9VAC25-870-63 and the water quantity criteria set out in 9VAC25-870-66. Permanent stormwater management impoundment structures or facilities shall only be constructed in karst features after completion of a geotechnical investigation that identifies any necessary modifications to the BMP to ensure its structural integrity and maintain its water quality and quantity efficiencies. The person responsible for the land-disturbing activity is encouraged to screen for known existence of heritage resources in the karst features. Any Class V Underground Injection Control Well registration statements for stormwater discharges to improved sinkholes shall be included in the SWPPP. 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 which also contributes to that point of discharge.

(i) Construction of stormwater management facilities or modifications to channels shall comply with all applicable laws and regulations. Evidence of approval of all necessary permits, such as US Army Corps of Engineers and VA DEQ Wetland Permits, VA DEQ VPDES Permits, etc., shall be presented.

(j) Pre-development and post-development runoff rates shall be verified by calculations that are consistent with good engineering practices.

(k) Land-disturbing activities shall apply the stormwater management technical criteria set forth in this part to the entire common plan of development or sale where applicable. Individual lots or parcels in a residential, commercial, or industrial common plan of development or sale shall not be considered to be separate land-disturbing activities. Instead, the common plan, as a whole, shall be

considered to be a single land-disturbing activity. Hydrologic parameters that reflect the ultimate land disturbance shall be used in all engineering calculations.

(l) All stormwater management facilities shall have a maintenance plan and agreement, which identifies the owner and responsible party for carrying out the maintenance plan in accordance with this article.

(m) Construction of stormwater management impoundment structures within a Federal Emergency Management Agency (FEMA) designated 100-year floodplain shall be avoided to the extent 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.

(n) Natural channel characteristics shall be preserved to the maximum extent practicable.

(o) Land-disturbing activities shall comply with the Virginia Erosion and Sediment Control Law (Virginia Code § 62.1-44:15:51, *et seq.*) and attendant regulations.

(p) Residential, commercial or industrial developments shall apply these stormwater management criteria to land development as a whole. Individual residential lots in new subdivisions shall not be considered separate land development projects, but rather the entire subdivision shall be considered a single land development project. Hydrologic parameters shall reflect the ultimate land development and shall be used in all engineering calculations.

(q) The design criteria, methodologies and construction specifications for all stormwater management facilities, and structural and nonstructural BMPs shall be those of the BMP Clearinghouse Website. The design shall be certified by a professional licensed in Virginia to perform such work.

(r) Storm drainage easements shall be required on lots or parcels where the conveyance, storage or treatment of stormwater is proposed or can reasonably be expected to occur. Easements may be public or private as established in the maintenance easement agreements and covenants.

(s) Safety measures shall be incorporated into the design of all stormwater management facilities in accordance with the stormwater management design manuals.

(t) Stormwater management facilities shall be designed to minimize the propagation of insects, particularly mosquitoes, provided that design features proposed will not negatively impact the functions of the facility.

(u) Notwithstanding any other provisions of this article or waivers or exemptions thereto, land development projects shall comply with chapter 10 of this code.

#### **Section 18-612. Installation/Extension of stormwater conveyance and facilities.**

(a) All developments referred to in § 18-603 (b) shall install all stormwater conveyances, stormwater management facilities, storm drains, inlets, manholes and appurtenances thereto on all

streets within the subdivision or development in accordance with the standards established by the town.

(b) All stormwater management related infrastructure installed in subdivisions shall be constructed at the expense of the developer and in accordance with plans approved by the Administrator.

(c) Flows released from runoff conveyances that discharge water onto lots within a subdivision shall be properly managed by the developer, at the developer's expense, to the boundary line of the subdivision or to a natural watercourse in accordance with provisions described in this article. If, in the opinion of the Administrator, it is necessary to cross intervening property to reach a natural watercourse, the developer may be required to secure drainage easements and install drainage structures across the intervening property to assure discharge into the natural watercourse.

(d) After reasonable notice to the property owner, the town shall have the right to inspect any storm drainage conveyance and/or facility constructed on private property under the policies set forth in this article for the purpose of determining whether or not such provision are working properly. The property owner shall be notified in writing by registered or certified mail if maintenance is necessary. If after such notice has been provided, the property owner fails to perform necessary maintenance within a reasonable time, the town shall have the right to perform necessary maintenance as needed and bill the property owner for all costs incurred.

(e) Eligibility for town participation with property owners in the design and installation of stormwater conveyance or facility improvements on private property is dependent on the need to manage stormwater runoff if the failure to do so may cause a threat to public health, public safety or public welfare. Projects that qualify for town participation include properties that exist in part or whole on private property, are in a drainage area of less than 100 acres and have a problem that consists of stormwater from a drainage area containing impervious public land uses or a public stormwater conveyance system.

(f) The town may participate with property owners, in accordance with the preceding subsection, in the design and installation of stormwater conveyance/management on private property provided that the property owner must furnish all pipe and other materials to meet the town's specifications and bear the expense of all associated materials. Town may participate in installation under the following conditions:

- (1) The storm drainage system to be installed will carry water discharged from existing town streets.
- (2) The installation of a storm conveyance and/or facility will extend or release to a natural watercourse or across the entire lot in the event there is no natural watercourse on the property.
- (3) The location of the proposed stormwater management facility/conveyance is accessible to any equipment required for the construction of the project.

- (4) The property owner grants to the town in advance a public drainage easement in which the improvements are installed.
- (g) Projects will be prioritized as follows:
  - (1) Existence of potentially life threatening circumstances;
  - (2) Existence of potential damage to habitable structures;
  - (3) Existence of potential damage to property (erosion, flooding, deposition of debris, loss of access);
  - (4) Potential for harm to downstream waterway (erosion, aquatic habitat).

(h) The town's agreement to install, and the town's installation thereof, a storm drainage conveyance or facility under these policies shall not constitute a guarantee by the town that the conveyance and/or facility is adequate to accommodate all storm drainage that may flow into the conveyance or facility, nor shall it relieve the property owner of the duty to provide stormwater management measures to accommodate larger flows, if so required.

### **Section 18-613. Water quantity, channel and flood protection.**

Compliance with water quantity requirements of this article are as outlined below:

- (a) Channel protection and flood protection shall be addressed in accordance with the minimum standards set out in this subsection. Compliance with the minimum standards set out in this section shall be deemed to satisfy the requirements of Minimum Standard 19 of the Virginia Erosion and Sediment Control Regulations (9VAC25-870-40) and the town's erosion and sediment control ordinance.
- (b) Channel Protection. Concentrated stormwater flow shall be released into a stormwater conveyance system and shall meet the criteria in subdivision (1), (2) or (3) of this subsection, where applicable, from the point of discharge to a point to the limits of analysis in subdivision (4) of this subsection.
  - (1) Manmade stormwater conveyance systems. When stormwater from a development is discharged to a manmade stormwater conveyance system, following the land-disturbing activity, either:
    - i. The manmade stormwater conveyance system shall convey the post-development peak flow rate from the two-year 24-hour storm event without causing erosion of the system. Detention of stormwater or downstream improvements may be incorporated into the approved land-disturbing activity to meet this criterion, at the discretion of the Administrator; or
    - ii. The peak discharge requirements for concentrated stormwater flow to natural stormwater conveyance systems in subdivision (c) of this subsection shall be met.

- (2) Restored stormwater conveyance systems. When stormwater from a development is discharged to a restored stormwater conveyance system that has been restored using natural design concepts, following the land-disturbing activity, either:
- i. The development shall be consistent, in combination with other stormwater runoff, with the design parameters of the restored stormwater conveyance system that is functioning in accordance with the design objectives; or
  - ii. The peak discharge requirements for concentrated stormwater flow to natural stormwater conveyance systems in subdivision (c) of this subsection shall be met.
- (3) Natural stormwater conveyance systems. When stormwater from a development is discharged to a natural stormwater conveyance system, the maximum peak flow rate from the one-year 24-hour storm following the land-disturbing activity shall be calculated either:
- i. In accordance with the following methodology:
 

$Q_{\text{Developed}} \leq \text{I.F.} * (Q_{\text{Pre-Developed}} * RV_{\text{Pre-Developed}}) / RV_{\text{Developed}}$

Under no condition shall  $Q_{\text{Developed}} > Q_{\text{Pre-Developed}}$ ,  
 nor shall  $Q_{\text{Developed}}$  be required to be less than that calculated in the equation  $(Q_{\text{Forest}} * RV_{\text{Forest}}) / RV_{\text{Developed}}$   
 Where I.F. (Improvement Factor) = 0.8 for sites > 1 acre or 0.9 for sites ≤ 1 acre.  
 $Q_{\text{Developed}}$  = the allowable peak flow rate of runoff in the developed condition.  
 $RV_{\text{Developed}}$  = the volume of runoff from the site in the developed condition.  
 $Q_{\text{Pre-Developed}}$  = the peak flow rate of runoff in the pre-developed condition.  
 $RV_{\text{Pre-Developed}}$  = the volume of runoff from the site in the pre-developed condition  
 $Q_{\text{Forest}}$  = the peak flow rate of runoff in a forested condition.  
 $RV_{\text{Forest}}$  = the volume of runoff from the site in a forested condition; or
  - ii. In accordance with another methodology that is demonstrated by the Administrator to achieve equivalent results and is approved by the Board.
- (4) Limits of analysis. Unless subdivision (3) of this subsection is utilized to show compliance with the channel protection criteria, stormwater conveyance systems shall be analyzed for compliance with channel protection criteria to a point where either:
- i. Based on land area, the site's contributing drainage area is less than or equal to 1% of the total watershed area; or
  - ii. Based on peak flow rate, the site's peak flow rate from the one-year 24-hour storm is less than or equal to 1% of the existing peak flow rate from the one-year 24-hour storm prior to the implementation of any stormwater quantity control systems.

(c) Flood protection. Concentrated stormwater flow shall be released into a stormwater conveyance system and shall meet one of the following criteria as demonstrated by use of acceptable hydrologic and hydraulic methodologies:

- (1) Concentrated stormwater flow to stormwater conveyance systems that currently do not experience localized flooding during the 10-year 24-hour storm event: The point of discharge releases stormwater into a stormwater conveyance system that, following the land-disturbing activity, confines the postdevelopment peak flow rate from the 10-year 24-hour storm event within the stormwater conveyance system. Detention of stormwater or downstream improvements may be incorporated into the approved land-disturbing activity to meet this criterion, at the discretion of the Administrator.
- (2) Concentrated stormwater flow to stormwater conveyance systems that currently experience localized flooding during the 10-year 24-hour storm event: The point of discharge either:
  - i. Confines the post-development peak flow rate from the 10-year 24-hour storm event within the stormwater conveyance system to avoid the localized flooding. Detention of stormwater or downstream improvements may be incorporated into the approved land-disturbing activity to meet this criterion, at the discretion of the Administrator; or
  - ii. Releases a postdevelopment peak flow rate for the 10-year 24-hour storm event that is less than the predevelopment peak flow rate from the 10-year 24-hour storm event. Downstream stormwater conveyance systems do not require any additional analysis to show compliance with flood protection criteria if this option is utilized.
- (3) Limits of analysis. Unless subdivision (2)(ii) of this section is utilized to comply with the flood protection criteria, stormwater conveyance systems shall be analyzed for compliance with flood protection criteria to a point where:
  - i. The site's contributing drainage area is less than or equal to 1% of the total watershed area draining to a point of analysis in the downstream stormwater conveyance system;
  - ii. Based on peak flow rate, the site's peak flow rate from the 10-year 24 hour storm event is less than or equal to 1% of the existing peak flow rate from the 10-year 24-hour storm event prior to the implementation of any stormwater quantity control measures; or
  - iii. The stormwater conveyance system enters a mapped floodplain or other flood prone area, as adopted by town ordinance.

(d) Increased volumes of sheet flow resulting from pervious or disconnected impervious areas, or from physical spreading of concentrated flow through level spreaders, must be identified and evaluated for potential impacts on down-gradient properties or resources. Increased volumes of sheet

flow that will cause or contribute to erosion, sedimentation, or flooding of down gradient properties or resources shall be diverted to a stormwater management facility or a stormwater conveyance system that conveys the runoff without causing down-gradient erosion, sedimentation, or flooding. If all runoff from the site is sheet flow and the conditions of this subsection are met, no further water quantity controls are required.

(e) For purposes of computing predevelopment runoff, all pervious lands on the site shall be assumed to be in good hydrologic condition in accordance with the U.S. Department of Agriculture's Natural Resources Conservation Service (NRCS) standards, regardless of conditions existing at the time of computation. Predevelopment runoff calculations utilizing other hydrologic conditions may be utilized, provided that it is demonstrated to and approved by the Administrator that actual site conditions warrant such considerations.

(f) Predevelopment and postdevelopment runoff characteristics and site hydrology shall be verified by site inspections, topographic surveys, available soil mapping or studies, and calculations consistent with good engineering practices. Guidance provided in the Virginia Stormwater Management Handbook and by the Virginia Stormwater BMP Clearinghouse website shall be considered appropriate practices.

#### **Section 18-614. Water quality design criteria requirements.**

(a) The following minimum design criteria and standards for stormwater management shall be applied to the site. Compliance with the following requirements shall be determined in accordance with the Virginia Runoff Reduction Method or other equivalent methodology approved by the Board.

- (1) New Development. The total phosphorus load of new development projects shall not exceed 0.41 pounds per acre per year, as calculated pursuant to this article.
- (2) Development on prior developed lands:
  - i. For land-disturbing activities disturbing greater than or equal to 5000 square feet that result in no net increase in impervious cover from the predevelopment condition, the total phosphorus load shall be reduced at least 20% below the predevelopment total phosphorus load.
  - ii. For regulated land-disturbing activities disturbing less than 5000 square feet that result in no net increase in impervious cover from the predevelopment condition, the total phosphorus load shall be reduced at least 10% below the predevelopment total phosphorus load.
  - iii. For land-disturbing activities that result in a net increase in impervious cover over the predevelopment condition, the design criteria for new development shall be applied to the increased impervious area. Depending on the area of disturbance, the criteria of subdivisions (i) or (ii) above, shall be applied to the remainder of the site.



- iv. In lieu of subdivision (iii), the total phosphorus load of a linear development project occurring on prior developed lands shall be reduced 20% below the predevelopment total phosphorus load.
- v. The total phosphorus load shall not be required to be reduced to below the applicable standard for new development unless a more stringent standard has been established by the town.

(b) Water quality compliance requirements. Compliance with the water quality design criteria set out in subsection (a) above shall be determined by using the Virginia Runoff Reduction Method or another equivalent methodology that is approved by the Board.

- (1) BMPs to be used to reduce phosphorus load and runoff volume in accordance with the Virginia Runoff Reduction Method shall be limited to those listed on the Virginia Stormwater BMP Clearinghouse Website at <http://www.vwrrc.vt.edu/swc>. These approved BMPs include the following:
  - i. Vegetated Roof (Version 2.3, March 1, 2011);
  - ii. Rooftop Disconnection (Version 1.9, March 1, 2011);
  - iii. Rainwater Harvesting (Version 1.9.5, March 1, 2011);
  - iv. Soil Amendments (Version 1.8, March 1, 2011);
  - v. Permeable Pavement (Version 1.8, March 1, 2011);
  - vi. Grass Channel (Version 1.9, March 1, 2011);
  - vii. Bioretention (Version 1.9, March 1, 2011);
  - viii. Infiltration (Version 1.9, March 1, 2011);
  - ix. Dry Swale (Version 1.9, March 1, 2011);
  - x. Wet Swale (Version 1.9, March 1, 2011);
  - xi. Sheet Flow to Filter/Open Space (Version 1.9, March 1, 2011);
  - xii. Extended Detention Pond (Version 1.9, March 1, 2011);
  - xiii. Filtering Practice (Version 1.8, March 1, 2011);
  - xiv. Constructed\_Wetland (Version 1.9, March 1, 2011); and
  - xv. Wet Pond (Version 1.9, March 1, 2011).

- (2) Offsite alternatives where allowed in accordance with § 18-616 may be utilized to meet the design criteria of § 18-614 (a).
- (3) BMPs differing from those listed above shall be reviewed and approved by the Administrator in accordance with procedures established by the BMP Clearinghouse Committee and approved by the town.
- (4) The Administrator may establish limitations on the use of specific BMPs following the submission of the proposed limitation and written justification.
- (5) The Administrator shall have the discretion to allow for application of the design criteria to each drainage area of the site. However, where a site drains to more than one HUC, the pollutant load reduction requirements shall be applied independently within each HUC unless reductions are achieved in accordance with a comprehensive watershed stormwater management plan in accordance with 9VAC25-870-92.

**Section 18-615. Stormwater management handbook and best management practice clearinghouse website; incorporation of VAC provisions.**

(a) The town will utilize the policy, criteria and information (including specifications and standards) of the Virginia Stormwater Management Handbook (“Handbook”) and the Virginia Best Management Practice Clearinghouse Website (“Clearinghouse”) for the proper implementation of the requirements of this article. All references to the Handbook shall mean the most current edition. The Handbook includes additional guidance to accompany the stormwater regulations. The Clearinghouse includes a list of acceptable stormwater treatment practices, including the specific design criteria for each stormwater practice. Stormwater treatment practices that are designed and constructed in accordance with these design and sizing criteria will be presumed to meet the minimum water quality performance standards. Stormwater practices not included on the Clearinghouse website are not suitable for use in meeting the requirements of this article.

(b) The provisions of 9VAC25-870-93, 9VAC25-870-94, 9VAC25-870-95, 9VAC25-870-96, 9VAC25-870-97, 9VAC25-870-98 and 9VAC25-870-99 are hereby incorporated by reference.

**Section 18-616. Offsite compliance options.**

(a) Offsite compliance options that the town may allow an operator to use to meet required phosphorus nutrient reductions include the following:

- (1) Offsite controls utilized in accordance with the town’s comprehensive stormwater management plan for the watershed within which a project is located;
- (2) A local pollutant loading pro rata share program established pursuant to Virginia Code § 15.2- 2243 or similar local funding mechanism;
- (3) The nonpoint nutrient offset program established pursuant to Virginia Code § 62.1-44.15:35;

- (4) Any other offsite options approved by an applicable state agency or state board; and
  - (5) When an operator has additional properties available within the same HUC or upstream HUC that the land-disturbing activity directly discharges to or within the same watershed as determined by the VSMP authority, offsite stormwater management facilities on those properties may be utilized to meet the required phosphorus nutrient reductions from the land-disturbing activity.
- (b) Notwithstanding subsection (a) of this subsection, and pursuant to Virginia Code § 62.1-44.15:35, operators shall be allowed to utilize offsite options identified in subsection 1 of this subsection under any of the following conditions:
- (1) Less than five acres of land will be disturbed;
  - (2) The post-construction phosphorus control requirement is less than 10 pounds per year; or
  - (3) At least 75% of the required phosphorus nutrient reductions are achieved on-site. If at least 75% of the required phosphorus nutrient reductions cannot be met onsite, and the operator can demonstrate to the satisfaction of the town that (i) alternative site designs have been considered that may accommodate on-site best management practices, (ii) on-site best management practices have been considered in alternative site designs to the maximum extent practicable, (iii) appropriate on-site best management practices will be implemented, and (iv) full compliance with postdevelopment nonpoint nutrient runoff compliance requirements cannot practicably be met on-site, then the required phosphorus nutrient reductions may be achieved, in whole or in part, through the use of off-site compliance options.
- (c) Notwithstanding subsections (a) and (b) of this section, offsite options shall not be allowed:
- (1) Unless the selected offsite option achieves the necessary nutrient reductions prior to the commencement of the operator's land-disturbing activity. In the case of a phased project, the operator may acquire or achieve offsite nutrient reductions prior to the commencement of each phase of land-disturbing activity in an amount sufficient for each phase.
  - (2) In contravention of town water quality-based limitations at the point of discharge that are (i) consistent with the determinations made pursuant to subsection B of Virginia Code § 62.1-44.19:7, (ii) contained in a municipal separate storm sewer system (MS4) program plan approved by the Department, or (iii) as otherwise may be established or approved by the town.
- (d) In order to meet the requirements of this article, offsite options described in subdivisions (1) and (2) of subsection (a) of this section may be utilized.

**Section 18-617. Maintenance of permanent stormwater facilities.**

(a) The Administrator shall require the provision of long-term responsibility for and maintenance of stormwater management facilities and other techniques specified to manage the quality and quantity of runoff. Such requirements shall be set forth in an instrument recorded in the Montgomery County land records prior to plan approval and shall at a minimum:

- (1) Be submitted to the Administrator for review and approval prior to the approval of the stormwater management plan;
- (2) Be stated to run in perpetuity with the land;
- (3) Provide for all necessary access to the property for purposes of maintenance and regulatory inspections;
- (4) Provide for inspections and maintenance and the submission of inspection and maintenance reports to the Administrator; and
- (5) Be enforceable by all appropriate governmental parties.

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

(c) The design and planning of all stormwater management facilities shall include detailed maintenance procedures to ensure their continued function. These plans will identify the parts or components of a stormwater management facility that need to be maintained, as well as the equipment and skills or training necessary. Provisions for the periodic review and evaluation of the effectiveness of the maintenance program and the need for revisions or additional maintenance procedures shall be included in the plan.

(d) As provided by Virginia Code § 62.1-44.15:28 (7), a stormwater management plan approved for a residential, commercial or industrial subdivision shall govern the development of individual parcels, including parcels developed under subsequent owners, and shall be subject to the requirements of this section.

**Section 18-618. Inspections.**

(a) Stormwater management construction inspection shall utilize the final approved plans and specifications for compliance. In addition, the inspection shall comply with latest version of the Erosion and Sediment Control Regulations, promulgated pursuant to Virginia Code Title 10.1, Chapter 5, Article 4.

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

- (1) Compliance with the approved erosion and sediment control plan;
- (2) Compliance with the approved stormwater management plan;
- (3) Development, updating, and implementation of a pollution prevention plan; and
- (4) Development and implementation of any additional control measures necessary to address a TMDL.

(c) The Administrator, or any duly authorized agent of the Administrator, may at reasonable times and under reasonable circumstances, enter any establishment or upon any property, public or private, for the purpose of obtaining information or conducting surveys or investigations necessary in the enforcement of the provisions of this article.

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

(e) Pursuant to Virginia Code § 62.1-44.15:40, the Administrator may require every VSMP authority permit applicant or permittee, or any such person subject to VSMP authority permit requirements under this article, to furnish when requested such application materials, plans, specifications, and other pertinent information as may be necessary to determine the effect of his or her discharge on the quality of state waters, or such other information as may be necessary to accomplish the purposes of this article. Post-construction inspections of stormwater management facilities required by the provisions of this article shall be conducted by the Administrator, or any duly authorized agent of the Administrator, pursuant to the town's inspection program, and shall occur, at minimum, at least once every five (5) years except as may otherwise be provided for in this section.

(f) The Administrator, or any duly authorized agent of the Administrator, shall have authority to make such lawful inspections and conduct monitoring of stormwater outfalls or other components of the storm sewer system as may be necessary or appropriate in the administration and enforcement of this article.

(g) The Administrator may utilize the inspection reports of the owner of a stormwater management facility as part of an inspection program if the inspection is conducted by a person who is licensed as a professional engineer, architect, landscape architect, or land surveyor pursuant to Virginia Code § 54.1-400, *et seq.*, a person who works under the direction and oversight of the licensed professional engineer, architect, landscape architect, or land surveyor, or who holds an appropriate certificate of competence from the Board.

(h) If a recorded instrument is not required pursuant to 9VAC25-870-112, the town shall develop a strategy for addressing maintenance of stormwater management facilities designed to treat stormwater runoff primarily from an individual residential lot on which they are located. Such a

strategy may include periodic inspections, homeowner outreach and education, or other method targeted at promoting the long-term maintenance of such facilities. Such facilities shall not be subject to the requirement for an inspection to be conducted by the Administrator.

(h) In the event that the stormwater management facility has not been maintained and/or becomes a danger to public safety or public health, the town shall notify (i) the person responsible for carrying out the maintenance plan by registered or certified mail to the address specified in the maintenance covenant or, (ii) the property owner(s) by registered or certified mail to the address contained in current land records. The notice shall specify the measures needed to comply with the plan and shall specify the time within which such measures shall be completed. If the responsible party fails or refuses to meet the requirements of the maintenance covenant, the town, after reasonable notice, may correct a violation of the design standards or maintenance needs by performing all necessary work to place the facility in proper working condition and recover the costs from the owner.

(i) Parties responsible for the operation and maintenance of a stormwater management facility shall make records of the installation and of all maintenance and repairs, and shall retain the records for at least 5 years. These records shall be made available to the town during inspection of the facility and at other reasonable times upon request.

#### **Section 18-619. Landscaping plan.**

The applicant must present a detailed landscaping plan describing the woody and herbaceous vegetative stabilization and management techniques to be used within and adjacent to the stormwater facility. The landscaping plan must also identify by name or official title the person(s) responsible for the maintenance of vegetation at the site and what practices will be employed to ensure that adequate vegetative cover is preserved. This plan must be prepared by a qualified individual familiar with the selection of emergent and upland vegetation appropriate for the selected BMP.

#### **Section 18-620. Comprehensive stormwater management plans.**

The town may develop comprehensive stormwater management plans to be approved by the Department that meet the water quality objectives, quantity objectives, or both and comply with 9VAC25-870-92.

#### **Section 18-621. Performance security.**

(a) The town shall require the submittal of a performance security or bond with surety, cash escrow, letter of credit or such other acceptable legal arrangement prior to issuance of a permit in order to insure that the stormwater practices are installed by the permit holder as required by the approved stormwater management plan.

(b) The amount of the installation performance security shall be the total estimated construction cost of the stormwater management practices approved under the permit, plus 10%.

(c) The performance security shall contain forfeiture provisions for failure, after proper notice, to complete work within the time specified, or to initiate or maintain appropriate actions which may be required of the applicant in accordance with the approved stormwater management plan.

(d) If the town takes such action upon such failure by the applicant, the town may collect from the applicant the difference should the amount of the reasonable cost of such action exceed the amount of the security held.

(e) Within sixty (60) days of the completion of the requirements of the approved stormwater management plan in the form of certified as-built report and survey, such bond, cash escrow, letter of credit or other legal arrangement, except for the landscaping survivability, shall be refunded to the applicant or terminated.

(f) These requirements are in addition to all other provisions relating to the issuance of such plans and are not intended to otherwise affect the requirements for such plans.

(g) Within sixty (60) days of the completion of the requirements of the permit conditions, such bond, cash escrow, letter of credit or other legal arrangement, or the unexpended or unobligated portion thereof, shall be refunded to the applicant or terminated.

#### **Section 18-622. Fees.**

(a) The following total fees to be paid by an applicant apply to (i) any operator seeking coverage under a July 1, 2014 General Permit for Discharges of Stormwater from Construction Activities or (ii) on or after July 1, 2014 to any operator seeking coverage under a General Permit for Discharges of Stormwater from Construction Activities, a state or federal agency that does not file annual standards and specifications or an individual permit issued by the Board. After approval by the town council under the General Permit for Discharges of Stormwater from Construction Activities, no more than 50% of the total fee to be paid by an applicant set out in this part shall be due at the time that a stormwater management plan or an initial stormwater management plan is submitted for review in accordance with 9VAC25-870-108. The remaining total fee balance to be paid by an applicant shall be due prior to the issuance of coverage under the General Permit for Discharges of Stormwater from Construction Activities.

(b) Fees to cover costs associated with implementation of a VSMP related to land-disturbing activities and issuance of general permit coverage and VSMP authority permits shall be imposed in accordance with Table 1. 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 land-disturbing activities as well as state program oversight costs. When a site(s) has been purchased for development within a previously permitted common plan of development or sale, the applicant shall be subject to fees (“total fee to be paid by applicant” column) in accordance with the disturbed acreage of the site(s) according to Table 1.

Table 1: Fees for permit issuance

| Fee type  | Total fee to be paid by Applicant (includes both VSMP authority and Department portions where applicable) | Portion paid to Commonwealth (based on 28% of total fee paid*) |
|---|---|--|
| General / Stormwater Management - Small Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage less than 1 acre)  | \$290   | \$81   |
| 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 1 acre and less than 5 Acres)     | \$2,700   | \$756  |
| 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 5 acres and less than 10 acres)   | \$3,400   | \$952  |
| 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   | \$1,260  |
| 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   | \$1,708  |
| 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   | \$2,688  |
| *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.        |   |  |



(c) The following fees apply, on or after July 1, 2014 to coverage under the General Permit for Discharges of Stormwater from Construction Activities issued by the Board for a state or federal agency that has annual standards and specifications approved by the Board.

|  |       |
|--|-------|
| General / Stormwater Management - Phase I Land Clearing ("Large" Construction Activity - Sites or common plans of development equal to or greater than five acres)                         | \$750 |
| 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) | \$450 |

(d) Fees for the modification or transfer of registration statements from the general permit issued by the State Board shall be imposed in accordance with Table 2. If the general permit modifications result in changes to stormwater management plans that require additional review by the Town such reviews shall be subject to the fees set out in Table 2. The fee assessed shall be based on the total disturbed acreage of the site. In addition to the general permit modification fee, modifications resulting in an increase in total disturbed acreage shall pay the difference in the initial permit fee paid and the permit fee that would have applied for the total disturbed acreage in Table 1. Fees specified in this Subsection go to the town.

Table 2: Fees for the modification or transfer of registration statements for the General Permit for Discharges of Stormwater from Construction Activities

| Type of Permit  | Fee Amount |
|---|------------|
| General / Stormwater Management – Small Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage less than 1 acre)  | \$20       |
| 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 1 and less than 5 acres)          | \$200      |
| 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 5 acres and less than 10 acres)   | \$250      |
| 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)  | \$300      |
| 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) | \$450      |
| 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)                        | \$700      |

(e) The following annual permit maintenance shall be imposed in accordance with Table 3, including fees imposed on expired permits that have been administratively continued. With respect to the general permit, these fees shall apply until the permit coverage is terminated. Fees specified in this Subsection go to the town.

Table 3: Permit Maintenance Fees

| Type of Permit  | Fee Amount |
|---|------------|
| General / Stormwater Management – Small Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage less than 1 acre)  | \$50       |
| 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 1 acre and less than 5 acres)             | \$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 5 acres and less than 10 acres)   | \$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 10 acres and less than 50 acres)  | \$650      |
| 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) | \$900      |
| 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)                             | \$1,400    |

(f) General permit coverage maintenance fees shall be paid annually to the town by the anniversary date of general permit coverage. No permit will be re-issued or automatically continued without payment of the required fee. General permit coverage maintenance fees shall be applied until a notice of termination is effective.

(g) The fees set forth in subsections (a) through (c) above, shall apply to:

- (1) All persons seeking coverage under the general permit.
- (2) All permittees who request modifications to or transfers of their existing registration statement for coverage under a general permit.
- (3) Persons whose coverage under the general permit has been revoked shall apply to the Department for an Individual Permit for Discharges of Stormwater from Construction Activities.

- (4) Permit and permit coverage maintenance fees outlined under § 18-622 (c) may apply to each general permit holder.
- (i) No general permit application fee will be assessed to:
  - (1) Permittees who request minor modifications to general permits as defined in § 18-610. Permit modifications at the request of the permittee resulting in changes to stormwater management plans that require additional review by the Administrator shall not be exempt pursuant to this Section.
  - (2) Permittees whose general permits are modified or amended at the initiative of the Department, excluding errors in the registration statement identified by the administrator or errors related to the acreage of the site.

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

#### **Section 18-623. Exceptions to stormwater management.**

(a) The Administrator may grant exceptions to the technical requirements of Part II B or Part II C of the Regulations, provided that (i) the exception is the minimum necessary to afford relief, (ii) reasonable and appropriate conditions are imposed so that the intent of the Act, the Regulations, and this article are preserved, (iii) granting the exception will not confer any special privileges that are denied in other similar circumstances, and (iv) exception requests are not based upon conditions or circumstances that are self-imposed or self-created. Economic hardship alone is not sufficient reason to grant an exception from the requirements of this article.

- (1) Exceptions to the requirement that the land-disturbing activity obtain required VSMP authority permit shall not be given by the Administrator, nor shall the Administrator approve the use of a BMP not found on the Virginia Stormwater BMP Clearinghouse Website, or any other control measure duly approved by the Administrator.
- (2) Exceptions to requirements for phosphorus reductions shall not be allowed unless offsite options otherwise permitted pursuant to 9VAC25-870-69 have been considered and found not available.

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

(c) A request for an exception, including the reasons for making the request, may be submitted in writing to the town. Economic hardship alone is not a sufficient reason to request an exception from the requirements of this article. The request for an exception will be reviewed pursuant to this section.

(d) A record of all exceptions granted shall be maintained by the town in accordance with 9VAC25-870-126.

**Section 18-624. Illicit discharges.**

(a) Except as provided in subsection (b) below, it shall be unlawful and a violation of this article to do any of the following:

- (1) Cause or allow any illicit discharges, including but not limited to the discharge of sewage, industrial wastes or other wastes, into the storm sewer system, or any component thereof, or onto driveways, sidewalks, parking lots, or any other areas draining to the storm sewer system.
- (2) Connect, or allow to be connected, any sanitary sewer to the storm sewer system, including any unauthorized sanitary sewer connection to the storm sewer system as of the date of the adoption of this article.
- (3) Discharge any materials or item other than stormwater to the storm sewer system by spill, dumping, or disposal of any type without a valid federal and/or state permit or unless otherwise authorized by law.
- (4) Throw, place, or deposit or cause to be thrown, placed, or deposited in the storm sewer system anything that impedes or interferes with the free flow of stormwater therein.

(b) Subject to the provisions of subsection (c), the following activities shall not be unlawful or a violation of this article:

- (1) De-chlorinated water line flushing;
- (2) Landscape irrigation;
- (3) Diverted stream flows or rising groundwater;
- (4) Infiltration of uncontaminated groundwater;
- (5) Pumping of uncontaminated groundwater;
- (6) Discharges from potable water sources, foundation drains, irrigation water, springs, water from crawl spaces, or footing drains;
- (7) Air conditioning condensation;
- (8) Lawn watering;
- (9) Residential car washing;
- (10) De-chlorinated swimming pool discharge;

- (11) Street, right-of-way, and storm system construction/maintenance activities employing BMPs.
- (12) Discharges or flows from emergency firefighting activities; or
- (13) Any activity authorized by a valid Virginia Stormwater Management Program permit (VSMP), a valid VPDES or NPDES permit or a valid Virginia Pollution Abatement (VPA) permit, or as may otherwise be permitted by law.

(c) In the event any of the activities listed in subsection (b) above are found to cause pollutants to be discharged into the storm sewer system, the Administrator shall so notify the person performing such activities, and shall order that such activities cease or be conducted in such a manner as to avoid the discharge of pollutants into the storm sewer system. The failure to comply with any such order shall constitute a violation of the provisions of this article.

#### **Section 18-625. Enforcement and penalties.**

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

- (1) The notice shall specify the measures needed to comply with the permit conditions and shall specify the time within which such measures shall be completed. Upon failure to comply within the time specified, a stop work order may be issued in accordance with subsection (b) or the permit may be revoked by the Administrator.
- (2) If a permittee fails to comply with a notice issued in accordance with this section within the time specified, the Administrator may issue an order requiring the owner, permittee, person responsible for carrying out an approved plan, or the person conducting the land-disturbing activities without an approved plan or required permit to cease all land-disturbing activities until the violation of the permit has ceased, or an approved plan and required permits are obtained, and specified corrective measures have been completed.
- (3) Such orders shall be issued in accordance with this article. Such orders shall become effective upon service on the person by certified mail, return receipt requested, sent to his or her address specified in the land records of Montgomery County, or by personal delivery by an agent of the Administrator. However, if the Administrator finds that any such violation is grossly affecting or presents an imminent and substantial danger of causing harmful erosion of lands or sediment deposition in waters within the watersheds of the Commonwealth or otherwise substantially impacting water quality, it may issue, without advance notice or hearing, an emergency order directing such person to cease immediately all land-disturbing activities on the site and shall provide

an opportunity for a hearing, after reasonable notice as to the time and place thereof, to such person, to affirm, modify, amend, or cancel such emergency order. If a person who has been issued an order is not complying with the terms thereof, the Administrator may institute a proceeding for an injunction, mandamus, or other appropriate remedy.

(b) In addition to any other remedy provided by this article, if the Administrator or the Administrator's designee determines that there is a failure to comply with the provisions of this article, the Administrator may initiate a stop work order requiring the owner, permittee, person responsible for carrying out an approved plan, or the person conducting the land-disturbing activities to cease all land-disturbing activities until the violation of the permit has ceased, or an approved plan and permits are obtained, or corrective measures have been completed. Such orders shall be effective upon service.

(c) Any person violating or failing, neglecting, or refusing to obey any rule, regulation, ordinance, order, approved standard or specification, or any permit condition issued by the Administrator may be compelled in a proceeding instituted in Montgomery County Circuit Court to obey same and to comply therewith by injunction, mandamus or other appropriate remedy.

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

- (1) Violations for which a penalty may be imposed under this subsection shall include, but not be limited to, the following:
- i. No state permit registration;
  - ii. No SWPPP;
  - iii. Incomplete SWPPP;
  - iv. SWPPP not available for review;
  - v. No approved erosion and sediment control plan;
  - vi. Failure to install stormwater BMPs or erosion and sediment controls;
  - vii. Stormwater BMPs or erosion and sediment controls improperly installed or maintained;
  - viii. Operational deficiencies;
  - ix. Failure to conduct required inspections;
  - x. Incomplete, improper, or missed inspections; and

xi. Discharges not in compliance with the requirements of Section 9VAC25-880-70 of the general permit.

- (2) The Administrator may issue a summons for collection of the civil penalty and the action may be prosecuted in the appropriate court.
- (3) In imposing a civil penalty pursuant to this subsection, the court may consider the degree of harm caused by the violation and also the economic benefit to the violator from noncompliance.
- (4) Any civil penalties assessed by a court as a result of a summons issued by the town shall be paid into the treasury of the town to be used for the purpose of minimizing, preventing, managing, or mitigating pollution of the waters of the town and abating environmental pollution therein in such manner as the court may, by order, direct.

(e) Any person who makes any false statements, representations, or certifications in any record, report, or other document, either filed or requested pursuant to this article, or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required or used by the Administrator under this article in monitoring discharges, shall be guilty of a violation of this article.

(f) Any person who willfully or negligently violates any provision of this article, any order of the Administrator, any condition of a permit or any order of a court shall be guilty of a Class 1 misdemeanor.

#### **Section 18-626. Hearings and appeals.**

(a) Any permit applicant, permittee or person subject to the requirements of this article aggrieved by any action of the town taken without a formal hearing, or by inaction of the town, may demand in writing a formal hearing by the town, provided a petition requesting such hearing is filed with the Administrator within thirty (30) days after the Administrator gives notice of such action.

(b) The hearings held under this section shall be conducted by the town manager or the manager's designee.

(c) A verbatim record of the proceedings of such hearings may be taken, at the requester's expense, and filed with the Administrator by the permit applicant or permittee.

(d) Decisions under this section may be appealed to the Circuit Court of Montgomery County. Decisions of the Circuit Court shall be subject to review by the Virginia Court of Appeals.

#### **Section 18-627. Reports and recordkeeping.**

(a) On a fiscal year basis (July 1 to June 30), the town shall report to the Department by October 1 of each year in a format provided by the Department the following information:

- (1) Each permanent stormwater management facility completed during the fiscal year including type of stormwater management facility, geographic coordinates, acres treated, and the surface waters or karst features into which the stormwater management facility will discharge;
  - (2) Number and type of enforcement actions taken during the fiscal year; and
  - (3) Number of exceptions granted during the fiscal year.
- (b) The Administrator shall keep records in accordance with the following:
- (1) Project records, including approved stormwater management plans, shall be kept for three years after permit termination or project completion.
  - (2) Stormwater management facility inspection records shall be documented and retained for at least five years from the date of inspection.
  - (3) Construction record drawings shall be maintained in perpetuity or until a stormwater management facility is removed.
  - (4) All registration statements submitted in accordance with 9VAC25-870-59 shall be documented and retained for at least three years from the date of project completion or permit termination.

**Section 18-628. Compatibility with other permit and ordinance requirements.**

This article is not intended to interfere with, abrogate, or annul any other article, rule or regulation, statute, or other provision of law. The requirements of this article should be considered minimum requirements, and where any provision of this article imposes restrictions different from those imposed by any other article, rule or regulation, or other provision of law, whichever provisions are more restrictive or impose higher protective standards for human health or the environment shall be considered to take precedence.

**Section 18-629. Severability.**

If the provisions of any section, subsection, paragraph, subdivision or clause of this article shall be judged invalid by a court of competent jurisdiction, such finding shall not affect or invalidate the remainder of any section, subsection, paragraph, subdivision or clause of this article.



2. This ordinance shall be effective on July 1, 2014.

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Mayor

ATTEST:

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Town Clerk

1<sup>st</sup> Reading: \_\_\_\_\_

2<sup>nd</sup> Reading & Adoption: June 10, 2014

APPROVED AS TO CONTENT:

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Director, Engineering and GIS

APPROVED AS TO LEGAL SUFFICIENCY:

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Town Attorney