

BOARD OF SUPERVISORS  
COUNTY OF YORK  
YORKTOWN, VIRGINIA

Ordinance

At a regular meeting of the York County Board of Supervisors held in York Hall, Yorktown, Virginia, on the 18th day of June, 2024:

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<u>Present</u>	<u>Vote</u>
G. Stephen Roane, Jr., Chairman	Yea
Sheila S. Noll, Vice Chairman	Yea
Douglas R. Holroyd	Yea
M. Wayne Drewry	Yea
Thomas G. Shepperd, Jr.	Yea

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On motion of Mr. Holroyd, which carried 5:0, the following ordinance was adopted:

AN ORDINANCE TO INTEGRATE THE STORMWATER MANAGEMENT REQUIREMENTS OF THE COUNTY OF YORK AND THE EROSION AND SEDIMENT CONTROL REQUIREMENTS OF THE COUNTY OF YORK INTO A CONSOLIDATED EROSION AND STORMWATER MANAGEMENT PROGRAM, IN CONFORMANCE WITH SECTION 62.1-44.15:27 OF THE CODE OF VIRGINIA, 1950, AS AMENDED

BE IT ORDAINED by the York County Board of Supervisors this 16th day of June, 2024, that Chapter 23.3 of the York County Code, Stormwater Management, be repealed and that Chapter 10, Erosion and Sediment Control, of the York County Code be renamed "Erosion and Stormwater Management", and is hereby amended and re-enacted, as follows:

Chapter 10 EROSION AND STORMWATER MANAGEMENT

*ARTICLE I. IN GENERAL*

Sec. 10-1. Title, Purpose and Authority

Pursuant to §62.1-44.15:27 of the Code of Virginia, 1950, as amended, this ordinance is adopted as part of an initiative to integrate the County of York stormwater management requirements with the County of York erosion and sediment control requirements into a consolidated erosion and stormwater management program. The erosion and stormwater management program is intended to facilitate the approval of plans, issuance of permits, payment of fees, and coordination of inspection and enforcement activities for land-disturbing activities into a more convenient and efficient manner for both the County of York and those responsible for compliance with these programs.

- A. This ordinance shall be known as “the Erosion and Stormwater Management Program” of the County of York.”
- B. The purpose of this ordinance is to ensure the general health, safety, and welfare of the citizens of the County of York, protect the quality and quantity of state waters from the potential harm of unmanaged stormwater and soil erosion, including protection from a land disturbing activity causing unreasonable degradation of properties, water quality, stream channels, and other natural resources, and to establish procedures whereby stormwater requirements related to water quality and quantity shall be administered and enforced.
- C. This ordinance is authorized by §62.1-44.15:27

#### Sec. 10-2. Definitions.

For the purpose of this ordinance, the following words and terms shall have the meanings ascribed to them in this section:

*Adequate channel.* A channel that will convey the designated frequency storm even without overtopping the channel bank nor causing erosive damage to the channel bed or banks.

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

*Applicant.* Any person submitting an erosion and sediment control plan to a VESMP authority for approval in order to obtain authorization to commence a land disturbing activity.

*Best management practice (BMP).* Schedules of activities, prohibitions of practices, maintenance procedures, and other management practices, including both structural and nonstructural practices, to prevent or reduce the pollution of surface waters and groundwater systems.

1. *Nonproprietary best management practice* means both structural and nonstructural practices to prevent or reduce the pollution of surface waters and

groundwater systems that are in the public domain and are not protected by trademark or patent or copyright.

2. *Proprietary best management practice* means both structural and nonstructural practices to prevent or reduce the pollution of surface waters and groundwater systems that are privately owned and controlled and may be protected by trademark or patent or copyright.

*Board.* The State Water Control Board.

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

*Channel.* A natural stream or manmade waterway.

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

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

*Clean Water Act.* The federal Clean Water Act (33 USC § 1251 et seq.), formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972, Public Law 92-500, as amended by Public Law 95-217, Public Law 95-576, Public Law 96-486, and Public Law 97-117, or any subsequent revisions thereto.

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

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

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

*Construction activity.* Any clearing, grading, or excavation associated with large construction activity or associated with small construction activity.

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

*CWA and regulations.* The Clean Water Act and applicable regulations published in the Code of Federal Regulations promulgated thereunder. For the purposes of this ordinance, it includes state program requirements.

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

*Denuded.* A term applied to land that has been physically disturbed and no longer supports vegetative cover.

*Department.* The Virginia Department of Environmental Quality.

*Development.* Land disturbance and the resulting landform associated with the construction of residential, commercial, industrial, institutional, recreation, transportation or utility facilities or structures or the clearing of land for nonagricultural or nonsilvicultural purposes.

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

*Discharge.* Where used without qualification, means the discharge of a pollutant.

*Discharge of a pollutant.*

1. Any addition of any pollutant or combination of pollutants to state waters from any point source; or
2. Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.
3. This definition includes additions of pollutants into surface waters from: surface runoff that is collected or channeled by man; discharges through pipes, sewers, or other conveyances owned by a state, municipality, or other person that do not lead to a treatment works; and discharges through pipes, sewers, or other conveyances, leading into privately owned treatment works. This term does not include an addition of pollutants by any indirect discharger.

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

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

*Dormant.* Denuded land that is not actively being brought to a desired grade or condition.

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

*Energy dissipator.* A nonerodible structure which reduces the velocity of concentrated flow to reduce its erosive effects.

*Environmental Protection Agency (or EPA).* The United States Environmental Protection Agency.

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

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

*ESC.* Erosion and sediment control.

*ESM plan.* A soil erosion control and stormwater management plan, commonly referred to as the erosion control and stormwater control plan.

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

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

*Flume.* A constructed device lined with erosion-resistant materials intended to convey water on steep grades.

*General permit.* A permit authorizing a category of discharges under the CWA and the VESMA within a geographical area.

*Hydrologic Unit Code (or HUC).* A watershed unit established in the most recent version of Virginia's 6<sup>th</sup> Order National Watershed Boundary Dataset unless specifically identified as another order

*Impervious cover.* A surface composed of material that significantly impedes or prevents natural infiltration of water into soil.

*Incorporated place.* A city, town, township or village that is incorporated under the Code of Virginia.

*Inspection.* An on-site review of the project's compliance with any applicable design criteria, or an on-site review to obtain information or conduct surveys or investigations necessary in the implementation or enforcement of the VESMA and applicable regulations.

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

*Karst features.* Sinkholes, sinking and losing streams, caves, large flow springs, and other such landscape features found in karst areas.

*Land disturbance (or land-disturbing activity).* A manmade change to the land surface that may result in soil erosion or has the potential to change its runoff characteristics, including construction activity such as the clearing, grading, excavating or filling of land.

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

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

*Live watercourse.* A definite channel with bed and banks within which concentrated water flows continuously.

*Locality.* The County of York; York County.

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

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

*Manmade.* Constructed by man.

*Minimize.* To reduce or eliminate the discharge of pollutants to the extent achievable using stormwater controls that are technologically available and economically practical.

*Minor modification.* Modifications and amendments not requiring extensive review and evaluation including changes in EPA promulgated test protocols, increasing monitoring frequency requirements, changes in sampling locations, and changes to compliance dates within the overall compliance schedules. A minor permit modification or amendment 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.

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

*Natural stream.* A tidal or nontidal watercourse that is part of the natural topography. It usually maintains a continuous course 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.

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

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

*Operator.* The owner or operator of any facility or activity subject to the VESMA and this ordinance. In the context of stormwater associated with a large or small construction activity, operator means any person associated with a construction project that meets either of the following two criteria: (i) the person has direct operational control over construction plans and specifications, including the ability to make modifications to those plans and specifications or (ii) the person has day-to-day operational control of those activities at a project that are necessary to ensure compliance with a stormwater pollution prevention plan for the site or other permit or VESMAP authority permit conditions (i.e., they are authorized to direct workers at a site to carry out activities required by the stormwater pollution prevention plan or comply with other permit conditions).

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

*Peak flow rate.* The maximum instantaneous flow from a prescribed design storm at a particular location.

*Percent impervious.* The impervious area within the site divided by the area of the site multiplied by 100.

*Permit.* A VPDES permit issued by the department pursuant to § 62.1-44.15 of the Code of Virginia for stormwater discharges from a land-disturbing activity.

*Permittee.* The person to whom the permit is issued.

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

*Point of discharge.* A location at which concentrated stormwater runoff is released.

*Point source.* Any discernible, confined and discrete conveyance including any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock,

concentrated animal feeding operation, landfill leachate collection system, vessel, or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural stormwater runoff.

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

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

*Post-development.* The conditions that reasonably may be expected or anticipated to exist after completion of the land development activity on a specific site or tract of land. “Pre-development refers to the conditions that exist at the time that plans for the land disturbing activity are submitted to the VESMP authority. Where phased development or plan approval occurs (preliminary grading, demolition of existing structures, roads and utilities, etc.), the existing conditions at the time prior to the commencement of land-disturbing activity shall establish pre-development conditions.

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

*Program administrator.* An individual who has been duly certified by the Virginia DEQ as a program administrator in both Erosion and Sediment Control, as well as Stormwater Management. This individual has also been designated by the County Administrator to operate on their behalf in accordance with this ordinance.

*Qualified personnel.* A person knowledgeable in the principles and practices of erosion and sediment and stormwater management controls who possesses the skills to assess conditions at the construction site for the operator that could impact stormwater quality and quantity and to assess the effectiveness of any sediment and erosion control measures or stormwater management facilities selected to control the quality and quantity of stormwater discharges from the construction activity.

*Record drawings.* Engineering plans prepared after the completion of work described in the site plans showing how the stormwater structures and facilities installed differ in location and elevation from the initial plan approved by the County of York.

*Responsible land disturber (or RLD).* An individual holding a certificate issued by the department who is responsible for carrying out the land disturbing activity in accordance with the approved erosion and sediment control plan or ESM plan. The RLD may be the owner, applicant, permittee, designer, superintendent, project manager, contractor, or any other project or development team member. The RLD must be designated on the erosion and sediment control plan, ESM plan, or permit as defined in this ordinance as a prerequisite for engaging in land disturbance.

*Runoff (or stormwater runoff).* That portion of precipitation that is discharged across the land surface or through conveyances to one or more waterways.

*Runoff characteristics.* These include maximum velocity, peak flow rate, volume, and flow duration.

*Runoff volume.* The volume of water that runs off the land-development project from a prescribed storm event.

*Sediment basin.* A temporary impoundment built to retain sediment and debris with a controlled release structure

*Sediment trap.* A temporary impoundment built to retain sediment and debris which is formed by constructing an earthen embankment with a stone outlet.

*Sheet flow (or overland flow).* Shallow, unconcentrated and irregular flow down a slope. The length of strip for overland flow usually does not exceed 200 feet under natural conditions.

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

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

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

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

*Small construction activity.*

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

or original purpose of the facility. The department may waive the otherwise applicable requirements in a general permit for a stormwater discharge from construction activities that disturb less than five acres where stormwater controls are not needed based on an approved “total maximum daily load” (TMDL) that addresses the pollutants of concern, or for nonimpaired waters that do not require TMDLs, an equivalent analysis that determines allocations for small construction sites for the pollutants of concern or determines that such allocations are not needed to protect water quality based on consideration of existing in-stream concentrations, expected growth in pollutant contributions from all sources, and a margin of safety. For the purpose of this ordinance, the pollutants of concern include sediment or a parameter that addresses sediment (such as total suspended solids, turbidity, or siltation) and any other pollutant that has been identified as a cause of impairment of any water body that will receive a discharge from the construction activity. The operator shall certify to the department that the construction activity will take place, and stormwater discharges will occur, within the drainage area addressed by the TMDL or provide an equivalent analysis. As of the start date in Table 1 of 9VAC25-31-1020, all certifications submitted in support of the waiver shall be submitted electronically by the owner or the operator to the department in compliance with this subdivision and 40 CFR Part 3 (including, in all cases, 40 CFR Part 3 Subpart D), 9VAC25-875-940, and Part XI (9VAC25-31-950 et seq.) of the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation. Part XI of 9VAC25-31 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of Part XI of 9VAC25-31, permittees may be required to report electronically if specified by a particular permit.

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

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

*Soil erosion control and stormwater management plan (commonly known as the erosion control and stormwater management plan or ESM plan).* A document describing methods for controlling soil erosion and managing stormwater in accordance with the requirements adopted pursuant to the VESMA. The ESM plan may consist of aspects of the erosion and sediment control plan and the stormwater management plan as each is described in this ordinance.

*Stabilized.* Land that has been treated to withstand normal exposure to natural forces without incurring erosion damage.

*State.* The Commonwealth of Virginia.

*State application (or application).* The standard form or forms, including any additions, revisions, or modifications to the forms, approved by the administrator and the department for applying for a permit.

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

*State waters.* 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 inlet.* A structure through which stormwater is introduced into an underground conveyance system.

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

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

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

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

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

*Stormwater management plan.* A document containing material describing methods for complying with the requirements of the VESMP.

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

*Subdivision.* The same as defined in § 15.2-2201 of the Code of Virginia.

*Surface waters.* This term means:

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

Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of the CWA and the law, are not surface waters. Surface waters do not include prior converted cropland. Notwithstanding the determination of an area's status as prior converted cropland by any other agency, for the purposes of the CWA, the final authority regarding CWA jurisdiction remains with the EPA.

*SWM.* Stormwater management.

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

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

*Total maximum daily load (or TMDL).* The sum of the individual wasteload allocations for point sources, load allocations (LAs) for nonpoint sources, natural background loading, and a margin of safety. TMDLs can be expressed in terms of either mass

per time, toxicity, or other appropriate measure. The TMDL process provides for point versus nonpoint source trade-offs.

*Town.* An incorporated town.

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

*Virginia Erosion and Stormwater Management Act (or VESMA).* Article 2.3 (§ 62.1-44.15:24 et seq.) of Chapter 3.1 State Water Control Law of Title 62.1 of the Code of Virginia.

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

*Virginia Erosion and Stormwater Management Program authority (or VESMP authority).* The County of York approved by the department to operate the VESMP

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

*Virginia Stormwater BMP Clearinghouse.* A collection of pertinent information that provides general guidance for compliance with the VESMA and associated regulations and is developed by the department with advice from a stakeholder advisory committee.

*Wasteload allocation (or wasteload).* The portion of a receiving surface water's loading or assimilative capacity allocated to one of its existing or future point sources of pollution. Wasteload allocations are a type of water quality based effluent limitation.

*Water quality technical criteria.* Standards set forth in regulations adopted pursuant to the VESMA that establish minimum design criteria for measures to control nonpoint source pollution.

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

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

### Sec. 10-3. Virginia Erosion and Stormwater Management Program Established

Pursuant to § 62.1-44.15:27 of the Code of Virginia, the County of York hereby establishes a Virginia Erosion and Stormwater Management Program for land disturbing activities and adopts the Virginia Erosion and Stormwater Regulation that specify standards and specifications for VESMPs promulgated by the State Water Control Board for the purposes set out in Section 1.1 of this Ordinance. The County of York hereby designates the Chief of Stormwater Programs or his designee as the Administrator of the Virginia Erosion and Stormwater Management Program established by this Ordinance.

### Sec. 10-4. Regulated Land Disturbing Activities

A. Land disturbing activities that meet one of the criteria below are regulated as follows:

1. Land disturbing activity that disturbs 500 square feet or more and is less than one acre is subject to criteria defined in Article 2 (9VAC25-875-540 et seq.) and Article 3 (9VAC25-875-570 et seq.) of Part V unless Article 4 (9VAC25-875-670 et seq.) of Part V of the Regulation is applicable, as determined in accordance with 9VAC25-875-480 and 9VAC25-875-490.
2. Land disturbing activity that disturbs less than one acre, but is part of a larger common plan of development or sale that disturbs one acre or more, is subject to criteria defined in Article 2 (9VAC25-875-840 et seq.) and Article 3 (9VAC25-875-570 et seq.) of Part V unless Article 4 (9VAC25-875-670 et seq.) of Part V of the Regulation is applicable, as determined in accordance with 9VAC25-875-480 and 9VAC25-875-490.
3. Land disturbing activity that disturbs one acre or more and is subject to criteria defined in Article 2 (9VAC25-875-540 et seq.) and Article # (9VAC25-875-570 et seq.) of Part V unless Article 4 (9VAC25-875-670 et seq.) of Part V is applicable, as determined, in accordance with 9VAC25-875-480 and 9VAC25-875-490.

B. Land disturbing activities exempt per 9VAC25-875-90 are not required to comply with the requirements of the VESMA unless otherwise required by federal law.

Secs. 10-5—10-10. Reserved.

### Sec. 10-11. Review and Approval of Plans; Prohibitions

A. The County of York shall review and approve soil erosion control and stormwater management (ESM) plans, except for activities not required to comply with the requirements of the Virginia Erosion and Stormwater Management Act (VESMA), pursuant to § 62.1-44.15:34 of the Code of Virginia. Activities not required to comply with VESMA are defined in 9VAC25-875-90.

B. A person shall not conduct any land disturbing activity in the County of York until:

1. An application that includes a permit registration statement, if required, a soil erosion control and stormwater management plan or an executed agreement in lieu of a plan, if required, has been submitted to the County of York.
  2. The name of the individual who will be assisting the owner in carrying out the activity and who holds a Responsible Land Disturber certificate pursuant to §62.1-44.15:30 of the Code of Virginia shall be submitted to the County of York. The County of York may waive the Responsible Land Disturber certificate requirement for an agreement in lieu of a plan for construction of a single family detached residential structure; however, if a violation occurs during the land disturbing activity for the single family detached residential structure, then the owner shall correct the violation and provide the name of the individual holding a Responsible Land Disturber certificate as provided by §62.1-44.15:30 of the Code of Virginia. Failure to provide the name of an individual holding a Responsible Land Disturber certificate prior to engaging in land disturbing activities may result in revocation of the land disturbance approval and shall subject the owner to the penalties provided by the VESMA.
- C. The County of York may require changes to an approved ESM plan in the following cases:
1. Where inspection has revealed that the plan is inadequate to satisfy applicable regulations or ordinances; or
  2. Where the owner finds that because of changed circumstances or for other reasons the plan cannot be effectively carried out, and proposed amendments to the plan, consistent with the requirements of the Act, are agreed to by the VESMP authority and the owner.
- D. In order to prevent further erosion, the County of York may require approval of an erosion and sediment control plan and a stormwater management plan for any land it identifies as an erosion impact area.
- E. Prior to issuance of any land disturbance approval, the County of York may also require an applicant, excluding state agencies and federal entities, to submit a reasonable performance bond with surety, cash escrow, letter of credit, any combination thereof, or such other legal arrangement it finds acceptable, to ensure that it can take measures at the applicant's expense should he fail, after proper notice, within the time specified to comply with the conditions it imposes as a result of his land disturbing activity. If the County of York takes such action upon such failure by the applicant, it may collect from the applicant the difference should the amount of the reasonable cost of such action exceed the amount of the security held. Within 60 days of the completion of the County of York's conditions, such bond, cash, escrow, letter of credit, or other legal arrangement, or the unexpended or unobligated portion thereof, shall be refunded to the applicant or terminated.
- F. The County of York may enter into an agreement with an adjacent VESMP authority regarding the administration of multijurisdictional projects, specifying

who shall be responsible for all or part of the administrative procedures. Should adjacent VESMP authorities fail to reach such an agreement, each shall be responsible for administering the area of the multijurisdictional project that lies within its own jurisdiction.

- G. No exception to, or waiver of, post-development nonpoint nutrient runoff compliance requirements shall be granted unless offsite options have been considered and found available in accordance with subsection D of § 62.1-44.15:35 of the Code of Virginia.
- H. The County of York is authorized to cooperate and enter into agreements with any federal or state agency in connection with the requirements for land disturbing activities in accordance with § 62.1-44.15:50 of the Code of Virginia.

#### Sec. 10-12. Review of a Soil Erosion Control and Stormwater Management Plan (ESM Plan)

- A. The County of York shall approve or disapprove an ESM plan according to the following:
  - 1. The County of York shall determine the completeness of any application within 15 days after receipt and shall act on any application within 60 days after it has been determined by the County to be complete.
  - 2. The County of York shall issue either land disturbance approval or denial and provide written rationale for any denial.
  - 3. Prior to issuing a land disturbance approval, the County of York shall be required to obtain evidence of permit coverage when such coverage is required.
  - 4. The County of York shall also determine whether any resubmittal of a previously disapproved application is complete within 15 days after receipt and shall act of the resubmitted application within 45 days after receipt.

#### Sec. 10-13. Stormwater Permit Requirement; Exemptions

- A. Except as provided herein, no person may engage in any land disturbing activity until a permit has been issued by the County of York in accordance with the provisions of this Ordinance and the Regulation. A permit issued under this ordinance shall be valid for a period of two (2) years; provided, however, it may be extended for an additional two-year period, by written approval of the program administrator, upon receipt of evidence of reasonable progress toward completion of the approved project and compliance with all conditions of approval. Should permitted land disturbing activities cease for more than one hundred eighty (180) days, or if the permittee fails to initiate land disturbing activities within one hundred eighty (180) days, of the date of

issuance of a land disturbing activity permit, then the land disturbing activity permit and its associated plan shall become void.

- B. Where a site in excess of 5 acres is proposed to be developed to accommodate multiple lots and/or buildings under separate ownership or control, the County Administrator or his designee may authorize a land disturbing activity in advance of approval of site plans for the individual commercial or industrial establishments upon demonstration by the property owner, to the satisfaction of the County Administrator, or his designee, that the topographic relief of the property will require extensive cut, fill and grading to prepare the site for multiple lot or building development and that such site preparation prior to plan approval is necessary and consistent with the objectives and policies of the County. The following conditions shall be required by the County Administrator, or his designee, in conjunction with such an authorization and shall be satisfied prior to issuance of any land disturbing activity permits:
1. A plan of development for the roads, drainage facilities and main-line utilities that will serve the proposed development and its multiple building sites shall be prepared submitted and approved in accordance with all applicable site plan or subdivision development plan requirements.
  2. All work shall be performed in strict accordance with an approved erosion and sediment control plan that has been prepared and approved in accordance with all applicable standards.
  3. The construction of all streets, main-line utilities, drainage improvements and similar infrastructure, both public and private, as shown on the approved plan, shall be guaranteed for construction by an agreement and secured by a letter of credit, cash, escrow, or performance bond with surety in an amount and form approved by the County Administrator and the County Attorney. The agreement shall require that said construction shall commence within one year of the initial date of authorization of the land disturbing activity and shall be in accordance with properly submitted and approved plans.
  4. Reforestation of the property, or portions thereof as deemed appropriate by the County Administrator, or his designee, with approximately the same numbers and species of trees as were located on the property prior to clearing shall be guaranteed by an agreement and secured by a letter of credit, cash escrow, or performance bond with surety in an amount and form approved by the County Administrator and the County Attorney. Said reforestation shall be required unless a certificate of occupancy for at least one establishment is issued within 3 years of the initial date of authorization of the land disturbing activity.
  5. No clearing shall be permitted within 50 feet of any property line, except to permit the construction of approved infrastructure improvements, not within any other portion of the site determined by the County Administrator, or his designee, to be nonessential to preparation of the site for development.

6. The County Administrator or his designee shall require the submission of any additional plans, plats, certifications or supporting materials deemed to be necessary and appropriate to apply and enforce this subsection.
- C. Notwithstanding any other provisions of this ordinance, the following activities are not required to comply with the requirements of this ordinance unless required by federal law:
1. Minor land disturbing activities, including home gardens and individual home landscaping, repairs, and maintenance work;
  2. Installation, maintenance, or repair of any individual service connection;
  3. Installation, maintenance, or repair of any underground utility line when such activity occurs on an existing hard surfaced road, street or sidewalk that is hard surfaced;
  4. Installation, maintenance or repair of any septic tank line or drainage field unless included in an overall plan for land disturbing activity relating to construction of the building to be served by the septic tank system;
  5. Permitted surface of deep mining operations and projects, or oil and gas operations and projects conducted pursuant to Title 45.2 of the Code of Virginia;
  6. Clearing of lands specifically for bona fide agricultural purposes; the management, tilling, planting or harvesting of agricultural, or forest crops; livestock feedlot operations; agricultural engineering operations, including construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds, ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage and land irrigation; or as additionally set forth by the Board in regulations. However, this exception shall not apply to harvesting of forest crops unless the area on which harvesting occurs is reforested artificially or naturally in accordance with the provisions of Chapter 11 (§ 10.1-1100 et seq.) of the Code of Virginia or is converted to bona fide agricultural or improved pasture use as described in subsection B of § 10.1-1163 of the Code of Virginia;
  7. Installation of fence and sign posts or telephone and electric poles and other kinds of posts or poles;
  8. Shoreline erosion control projects on tidal waters when all of the land disturbing activities are within the regulatory authority of and approval by local wetlands boards, the Marine Resources Commission, or the United States Army Corp of Engineers; however, any associated land that is disturbed outside of this exempted area shall remain subject to the VESMA and the regulations adopted pursuant thereto;

9. Repair or rebuilding of the tracks, rights-of-way, bridges, communication facilities, and other related structures and facilities of a railroad company;
  10. Land disturbing activities in response to a public emergency where the related work requires immediate authorization to avoid imminent endangerment to human health or the environment. In such situations, the County of York shall be advised of the disturbance within seven days of commencing the land disturbing activity, and compliance with the administrative requirements of subsection A is required within 30 days of commencing the land disturbing activity; and
  11. Discharges to a sanitary sewer or a combined sewer system that are not from a land disturbing activity.
- D. Notwithstanding this ordinance and in accordance with the Virginia Erosion and Stormwater Management Act, Article 2.3 (§62.1-44.15:24 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia, the following activities are required to comply with the soil erosion control requirements but are not required to comply with the water quantity and water quality technical criteria, unless otherwise required by federal law:
1. Activities under a state or federal reclamation program to return an abandoned property to an agricultural or open land use;
  2. Routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original construction of the project. The paving of an existing road with a compacted or impervious surface and reestablishment of existing associated ditches and shoulders shall be deemed routine maintenance if performed in accordance with this subsection; and
  3. Discharges from a land disturbing activity to a sanitary sewer or a combined sewer system.

#### Sec. 10-14. 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 pursuant to subsection D of this section.
- B. A soil erosion control and stormwater management (ESM) plan consistent with the requirements of the Virginia Erosion and Stormwater Management Act (VESMA) and regulations must be designed and implemented during construction activities. Prior to land disturbance, this plan must be approved by the County of York in accordance with the VESMA, this ordinance, and attendant regulations.
- C. 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.

- D. In addition to the requirements of subsections A through C of this section, if a specific wasteload allocation for a pollutant has been established in approved 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 wasteload allocation.
- E. The stormwater pollution prevention plan must address the following requirements as specified in 40 CFR 450.21, to the extent otherwise required by state law or regulations and any applicable requirements of a state 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 must address factor 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, direct stormwater to vegetated areas to increase sediment removal and maximize stormwater infiltration, unless infeasible;
  7. Minimize soil compaction, and unless infeasible, preserve topsoil;
  8. Stabilization of disturbed areas must, at a minimum, be initiated immediately whenever any clearing, grading, excavating or other earth disturbing activities have permanently ceased on any portion of the site, or temporarily ceased on any portion of the site and will not resume for a period exceeding 14 calendar days. Stabilization must be completed within a period of time determined by the VESMP authority. In arid, semiarid, and drought-stricken areas where initiating a vegetative stabilization measures immediately is infeasible, alternative stabilization measures must be employed as specified by the VESMP authority; and
  9. Utilize outlet structures that withdraw water from the surfaces, unless infeasible, when discharging from basins and impoundments.

- F. 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 and that has not been previously addressed within the SWPPP. 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.

Sec. 10-15. Stormwater Management Plan; Contents of Plan

- A. A stormwater management plan shall be developed and submitted to the County of York/ The stormwater management plan shall be implemented as approved or modified by the County of York 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 ordinance and Article 4 (9VAC25-875-670 et seq.) of Part V of the Regulation to the entire land disturbing activity. Individual lots in new residential, commercial, or industrial developments, including those developed under subsequent owners, shall not be considered separate land disturbing activities.
  2. A stormwater management plan shall consider all sources of surface runoff and all sources of subsurface and groundwater flows converted to surface runoff.
- B. A complete stormwater management plan shall include the following elements:
1. Information on the type and location of stormwater discharges, information on the features to which stormwater is being discharged, including surface waters or karst features, if present, and pre-development and post-development drainage areas;
  2. Contact information including the name, address, telephone number, and email address of the owner and the tax reference number and parcel number of the property or properties affected;
  3. A narrative that includes a description of current site conditions and final site conditions or if allowed by the VESMP authority, the information provided and documented during the review process that addresses the current and final site conditions;
  4. A general description of the proposed stormwater management facilities and the mechanism through which the facilities will be operated and maintained after construction is complete;
  5. Information on the proposed stormwater management facilities, including (i) detailed narrative on the conversion to a long term stormwater management facility, if the facility was used as a temporary ESC measure; (ii) the type of facilities; (iii) location, including geographic coordinates; (iv) acres treated; and (v) the surface waters or karst features into which the facility will discharge;

6. Hydrologic and hydraulic computations, including runoff characteristics;
7. Documentation and calculations verifying compliance with the water quality and quantity requirements of these regulations;
8. A map of the site that depicts the topography of the site and includes:
  - i. All contributing drainage areas;
  - ii. Existing streams, ponds, culverts, ditches, wetlands, other water bodies, and floodplains;
  - iii. Soil types, geologic formations if karst features are present in the area, forest cover, and other vegetative areas;
  - iv. Current land use, including parcels to assess the impacts of stormwater from the site on these parcels;
  - 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 surface area to be adapted to various uses, including planned locations of utilities, roads, and easements.
9. If an operator intends to meet the requirements established in 9VAC25-875-600 through the use of off-site compliance options where applicable, then a letter of availability from the off-site provider must be included; and
10. If the County of York requires payment of a fee with the stormwater management plan submission, the fee and the required fee form in accordance with this ordinance must have been submitted.

C. All final plan elements, specifications, or calculations of the stormwater management plans the preparation of which require a license under Chapter 4 (§ 54.1-400 et seq.) or 22 (§ 54.1-2200 et seq.) of Title 54.1 of the Code of Virginia shall be appropriately signed and sealed by a professional who is licensed to engage in practice in the Commonwealth of Virginia. Nothing in this subsection shall authorize any person to engage in practice outside his area of professional competence.

#### Sec. 10-16. Pollution Prevention Plan; Contents of Plans

- A. A plan for implementing pollution prevention measures during construction activities shall be developed, implemented, and updated as necessary. The

pollution prevention plan shall detail the design, installation, implementation, and maintenance of effective pollution prevention measures as specified in 40 CFR 450.21(d) to minimize the discharge of pollutants. At a minimum, such measures must be designed installed, implemented, and maintained to:

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 in accordance with 40 CFR 450.21(e):
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 in accordance with 40 CFR 450.21(c).

#### Sec. 10-17. Erosion and Sediment Control Plan; Contents of Plans

- A. An erosion and sediment control plan, which is a component of the ESM plan, shall be filed for a development and the buildings constructed within, regardless of the phasing of construction. The erosion and sediment control plan shall contain all major conservation decisions to ensure that the entire unit or units of land will be so treated to achieve the conservation objectives in 9VAC25-875-560. The erosion and sediment control plan may include:
1. Appropriate maps;
  2. An appropriate soil and water plan inventory and management information with needed interpretations; and
  3. A record of decisions contributing to conservation treatment.

- B. The person responsible for carrying out the plan shall provide the name of an individual holding a certificate who will be in charge of and responsible for carrying out the land disturbing activity to The County of York. The County of York may waive the Responsible Land Disturber certificate requirement for an agreement in lieu of a plan in accordance with § 62.1-44.15:34 or § 62.1-44.15:55 of the Code of Virginia.
- C. If individual lots or sections in a residential development are being developed by different property owners, all land disturbing activities related to the building construction shall be covered by an erosion and sediment control plan or an agreement in lieu of plan signed by the property owner(s).
- D. Land disturbing activity of less than 2,500 square feet on individual lots in a residential development shall not be considered exempt from the provisions of the VESMA if the total land disturbing activity in the development is equal to or greater than 2,500 square feet.

#### Secs. 10-18. Technical Criterial for Regulated land Disturbing Activities

- A. To protect the quality and quantity of state water from the potential harm of unmanaged stormwater runoff resulting from land disturbing activities, the County of York hereby adopts the technical criterial for regulated land disturbing activities set forth in Part V of 9VAC25-875 expressly to include 9VAC25-875-580, water quality design criteria requirements; 9VAC25-875-590, water quality compliance, 9VAC25-875-600, water quantity; 9VAC25-875-610, offsite compliance options; 9VAC25-875-620, design storms and hydrologic methods; 9VAC25-875-630, stormwater harvesting; 9VAC25-55875-640, linear development project; and 9VAC25-875-650, stormwater management impoundment structures or facilities, all of which shall apply to all land disturbing activities regulated pursuant to this ordinance, except as expressly set forth in subsection B of this section. In addition, all regulated land disturbing activities will need to detain the post-development ten year discharge to pre-development levels.
- B. The expected average percent impervious cover per lot for subdivisions shall be determined by the applicant based upon such factors as: the size and style of the homes; length, width, and configuration of driveways; number and size of decks, pools, sheds, and other accessory structures, and other development that can be reasonably expected to occur on the lots. In no case shall the expected average impervious cover per lot be less than is defined by the curve containing the following data points in the form of (average lot size in square feet: minimum expected percent impervious cover): (87120:12), (43560:20),(14505:30), (10890:38) and (5445:65). BMPs shall be sized based upon total impervious cover which is the summation of the actual impervious cover of the streets and other improvements being proposed as part of the subdivision and the expected average percent impervious cover per lot.
- C. Any land disturbing activity shall be deemed grandfathered and shall be subject to Article 4 (9VAC25-875-670 et seq.) of Part V of the Regulation provided:

1. A proffered or conditional zoning plan, zoning with a plan of development, preliminary or final subdivision plat, preliminary or final site plan, or any document determined by the County of York to be equivalent thereto (i) was approved by the County of York prior to July 1, 2012, (ii) provided a layout as defined in 9VAC25-875-670, (iii) will comply with the technical criteria of Article 4 of Part V of 9VAC25-875, and (iv) has not been subsequently modified or amended in a manner resulting in an increase in the amount of phosphorous leaving each point of discharge; and such that there is no increase in the volume or rate of runoff; and
  2. A permit has not been issued prior to July 1, 2014; and
  3. Land disturbance did not commence prior to July 1, 2014.
- D. Locality, state and federal projects shall be deemed grandfathered by the County of York and shall be subject to the technical criteria of Article 4 of Part V of 9VAC25-875 provided:
1. There has been an obligation of locality, state or federal funding in whole or in part, prior to July 1, 2012, or the department has approved a stormwater management plan prior to July 1, 2012; and
  2. A permit has not been issued prior to July 1, 2014; and
  3. Land disturbance did not commence prior to July 1, 2014.
- E. Land disturbing activities grandfathered under subsections A and B of this section shall remain subject to the technical criteria of Article 4 of Part V of 9VAC25-875 for one additional permit cycle. After such time, portions of the project not under construction shall become subject to any new technical criteria adopted by the Board.
- F. In cases where governmental bonding or public debt financing has been issued for a project prior to July 1, 2012, such project shall be subject to the technical criteria of Article 4 of Part B of 9VAC215-875.
- G. Nothing in this section shall preclude an operator from constructing to a more stringent standard at his discretion.

#### Sec. 10-19 Long-Term Maintenance of Permanent Stormwater Facilities

- A. Prior to the completion of the project and prior to the issuance of the Certificate of Occupancy for any structure, final record drawings shall be submitted and approved, together with any required and associated closed circuit television (CCTV) footage of the installed storm system.
- B. The operator shall submit a construction record drawing for permanent stormwater management facilities to the County of York in accordance with 9VAC25-875-535. The record drawing shall be appropriately sealed and signed by an appropriate licensed professional in adherence to all minimum standards and requirements pertaining to the practice of that profession. The record drawings shall:

1. Be of the same sheet size, format, scale, etc. as the approved stormwater management plan;
  2. Show the as-built condition of the stormwater system calling attention to any changes from the approved drawings;
  3. Give the actual dimensions of components such as length of pipe, ditch, etc.;
  4. Provide elevations for all rims, inverts, channel bottoms, outfalls, pond cross-sections, structures and all other elevation sensitive components of the system; and
  5. Contain a certification stating that the stormwater system has been constructed in accordance with the plan and that the system is functioning as designed;
- C. The County of York 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 local land records prior to general permit termination or earlier as required by the County of York and shall at a minimum:
1. Be submitted to the County of York for review and approval prior to the approval of the stormwater management plan.
  2. Be stated to run with the land;
  3. Provide for all necessary access to the property for purposes of maintenance and regulatory inspections;
  4. Provide for inspection and maintenance and the submission of inspection and maintenance reports to the County of York; and
  5. Be enforceable by all appropriate governmental parties.
- D. At the discretion of the County of York, 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 County of York that future maintenance for those facilities will be addressed through an enforceable mechanism at the discretion of the County of York.
- E. If a recorded instrument is not required pursuant to Subsection C, the County of York shall develop a strategy for addressing the 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 promoting 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 County of York or its duly authorized agent.

- A. The County of York 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;
  4. Development and implementation of any additional control measures necessary to address a TMDL.
- B. The County of York shall conduct periodic inspections on all projects during construction. The County of York shall either:
1. Provide for an inspection during or immediately following the installation of erosion and sediment controls, at least once in every two-week period, within 48 hours following any runoff producing storm event, and at the completion of the project prior to the release of any performance bonds; or
  2. Establish an alternative inspection program which ensures compliance with the approved erosion and sediment control plan. Any alternative inspection program shall be:
    - i. Approved by the department prior to implementation;
    - ii. Established in writing;
    - iii. Based on a system of priorities that, at a minimum, address the amount of disturbed project area, site conditions and stage of construction; and
    - iv. Documented by inspection records.
- C. The County of York shall establish an inspection program that ensures that permanent stormwater management facilities are being adequately maintained as designed after completion of land disturbing activities. Inspection programs shall:
1. Be approved by the department;
  2. Ensure that each stormwater management facility is inspected by the County of York or its designee, not to include the owner, except as provided in subsections D and E of this section, at least once every five years; and
  3. Be documented by records.
- D. The County of York may utilize the inspection reports of the owner of a stormwater management facility as part of an inspection program established in subsection B of this section if the inspection is conducted by a person who is licensed as a professional engineer, architect, landscape architect, or land surveyor; or a person who holds an appropriate certificate of competence from the department.

- E. If a recorded instrument is not required pursuant to 9VAC25-875-130, the County of York 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 County of York.

#### Sec. 10-21 Hearings

- A. Any permit applicant or permittee, or person subject to the requirements of this ordinance aggrieved by any action of the County of York taken without a formal hearing, or by inaction of the County of York, may demand in writing a formal hearing by the York County Board of Supervisors provided a petition requesting such hearing is filed with the program administrator within 30 days after notice of such action is given by the program administrator.
- B. The hearings held under this section shall be conducted by the York County Board of Supervisors at a regular or special meeting of the York County Board of Supervisors or by at least one member of the York County Board of Supervisors designated by the York County Board of Supervisors to conduct such hearings on behalf of the York County Board of Supervisors at any other time and place authorized by the York County Board of Supervisors.
- C. A verbatim record of the proceedings of such hearings shall be taken and filed with the York County Board of Supervisors. Depositions may be taken and read as in actions at law.
- D. The York County Board of Supervisors or its designated member, as the case may be, shall have power to issue subpoenas and subpoenas *duces tecum*, and at the request of any party shall issue such subpoenas. The failure of a witness without legal excuse to appear or to testify or to produce documents shall be acted upon by the York County Board of Supervisors, or its designated member, whose action may include the procurement of an order of enforcement from the circuit court. Witnesses who are subpoenaed shall receive the same fees and reimbursement for mileage as in civil actions.

#### Sec. 10-22 Appeals

Final decisions of the County under this ordinance are subject to review by the Circuit Court for the County of York, provided an appeal is filed within 30 days from the date of any written decision adversely affecting the rights, duties or privileges of the person engaging in or proposing to engage in land disturbance activities.

#### Sec. 10-23- Right of Entry

- A. The County of York or any duly authorized agent thereof may, at reasonable times and under reasonable circumstances, enter any establishment or enter upon any property public or private, for the purpose of obtaining information or conducting surveys or investigations necessary in the enforcement of the provisions of this ordinance.
- B. In accordance with a performance bond with surety, cash escrow, letter of credit, any combination thereof, or such other legal arrangement, the County of York may also enter any establishment or enter upon any property, public or private, for the purpose of initiating or maintaining appropriate actions that are required by conditions imposed by the County of York on a land disturbing activity when an owner, after proper notice, has failed to take acceptable action within the time specified.

#### Sec. 10-24- Enforcement

- A. If the program administrator determines that there is a failure to comply with the 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 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 2 or the permit may be revoked by the program administrator.
  - 2. If a permittee fails to comply with a notice issued in accordance with this section within the time specified, the program 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. Such orders shall be issued in accordance with other directives issued by compliance officers in the County of York. Such orders shall become effective upon service on the person by certified mail, return receipt request, sent to his address specified in the land records of the locality, or by personal delivery by an agent of the program administrator. However, if the program 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 program administrator may initiate a proceeding for an injunction, mandamus, or other appropriate remedy in accordance with the terms of this ordinance.

- B. 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 program administrator may be compelled in a proceeding instituted in the Circuit Court for County of York to obey same and to comply therewith by injunction, mandamus or other appropriate remedy.
- C. Violations for which a penalty may be imposed under this subsection shall include but not be limited to the following:
  - 1. No state permit registration;
  - 2. No SWPPP;
  - 3. Incomplete SWPPP;
  - 4. SWPPP not available for review;
  - 5. No approved erosion and sediment control plan;
  - 6. Failure to install stormwater BMP's or erosion and sediment controls
  - 7. Stormwater BMPs or erosion and sediment controls improperly installed or maintained;
  - 8. Operational deficiencies;
  - 9. Failure to conduct required inspections
  - 10. Incomplete, improper, or missed inspections; and
  - 11. Discharges not in compliance with the requirements of 9VAC23-875-70.
- D. The program administrator may issue a summons for collection of the civil penalty, and the action may be prosecuted in the appropriate court.
- E. 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.
- F. Any civil penalties assessed by a court as a result of a summons issued by the County of York shall be paid into the treasury of the County of York to be used for the purpose of minimizing, preventing, managing or mitigating pollution of the waters of the locality and abating environmental pollution therein in such manner as the court may, by order, direct.

G. Notwithstanding any other civil or equitable remedy provided by this ordinance or by law, any person who willfully or negligently violates any provision of this ordinance, any order of the program administrator, any condition of a permit, or any order of a court shall be guilty of a misdemeanor punishable by confinement in jail for not more than 12 months or a fine of not less than \$2,500 nor more than \$32,500, or both.

#### Sec. 10-25 Fees

A. Fees to cover costs associated with implementation of a VESMP related to land disturbing activities and issuance of general permit coverage and VESMP authority permits shall be imposed in accordance with Table 1. When a site or sites has / have been purchased for a 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) in accordance with the disturbed acreage of their site or sites 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)	Department portion of "total fee to be paid by Applicant" (based on 28% of total fee paid*)
Chesapeake Bay Preservation Act Land-Disturbing Activity (not subject to General Permit coverage; sites within designated areas of Chesapeake Bay Act localities with land-disturbance acreage equal to or greater than 2,500 square feet and less than 1 acre) and single family lots with disturbance up to 5 Acres	\$290	\$0
General/Stormwater Management—Small Construction Activity/Land Clearing non-residential (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

excludes single family lot.		
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

- B. Fees for the modification or transfer of registration statements from the general permit issued by the department shall be imposed in accordance with 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.

**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 (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

C. The following annual permit maintenance fee 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.

**Table 3: Permit Maintenance Fees**

Type of Permit	Fee Amount
Chesapeake Bay Preservation Act Land-Disturbing Activity (not subject to General Permit coverage; sites within designated areas of Chesapeake Bay Act localities with land-disturbance acreage equal to or greater than 2,500 square feet and less than 1 acre)	\$50
General/Stormwater Management—Small Construction Activity/Land Clearing (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	\$650

development or sale with land disturbance acreage equal to or greater than 10 acres and less than 50 acres)	
General/Stormwater Management—Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 50 acres and less than 100 acres)	\$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

- D. The fees set forth in subsections A through C of this section 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.
- E. Permit and permit coverage maintenance fees outlined herein may apply to each general permit holder.
- F. In addition to the fees set forth in Tables 1 through 3, the Land Disturbing Application Fee will be calculated according to a formula in which LOD stands for Limits of Disturbance in square feet for the relevant project: The fee in dollars, is equal to  $(LOD-2,550)*0.005 + 50$ .
- G. The same fee, described in subsection F, will be charged every 2 years after the permit is issued as a renewal fee for as long as the permit remains open.
- H. Fees associated with inspection may be imposed and will be subject to the same terms and conditions as other fees related to land disturbing activity.
- I. No general permit application fees will be assessed to:
1. Permittees who request minor modifications to general permits as defined in section 1.2 of this ordinance. Permit modifications at the request of the permittee resulting in changes to stormwater

management plans that require additional review by the program 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 program administrator, or errors related to the acreage of the site.
- J. All incomplete payments will be deemed as nonpayments, and the applicant shall be notified of any incomplete payments. Interest may be charged for late payments at the underpayment rate set forth in § 58.1-15 Of the Code of Virginia 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 County of York shall be entitled to all remedies available under the Code of Virginia in collecting any past due amount.

#### Section 10-26 Performance Bond

- A. Prior to issuance of any permit, the applicant shall be required to submit a reasonable performance bond with surety, cash escrow, letter of credit, any combination thereof, or such other legal arrangement acceptable to the County Administrator and the County Attorney, to ensure that measures could be taken by the County of York at the applicant's expense, should the applicant fail, after proper notice, within the time specified to initiate or maintain appropriate actions which may be required of him by the permit conditions as a result of his land disturbing activity. If the County of York takes such action upon such failure by the applicant, the County of York may collect from the applicant for the difference should the amount of the reasonable cost of such action exceed the amount of the security held, if any. Within 60 days of the completion of the requirements of the permit conditions such bond, cash escrow, letter of credit or other legal arrangement, or the expended or unobligated portion thereof, shall be refunded to the applicant or terminated.

A Copy Teste:

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Mark L. Bellamy, Jr.  
County Clerk