

AT A REGULAR MEETING OF THE BOARD OF SUPERVISORS OF ROANOKE COUNTY, VIRGINIA, HELD AT THE ROANOKE COUNTY ADMINISTRATION CENTER ON TUESDAY, FEBRUARY 23, 2016

**ORDINANCE 022316-6 AMENDING CHAPTER 23. STORMWATER MANAGEMENT**

WHEREAS, on April 22, 2014, the Board of Supervisors of Roanoke County adopted Ordinance 042214-12 which adopted a new Chapter 23. – Stormwater Management Ordinance for Roanoke County; and

WHEREAS, the Department of Environmental Quality (DEQ) has reviewed this Ordinance, and in consideration of recent legislative and regulatory changes, and is recommending that the Board consider adopting minor modifications to this Ordinance; and

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

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

WHEREAS, Roanoke County through the state-mandated programs is required to lessen the adverse impacts from stormwater runoff from land disturbing activities and from previous development through the local erosion and sediment control ordinance, the Virginia Stormwater Management Program (VSMP), Municipal Separate Storm Sewer System (MS4) Permit, and Total Maximum Daily Load (TMDL) Program; and

WHEREAS, the Commonwealth of Virginia has determined that to increase the effectiveness of these programs, the administration of the VSMP stormwater management requirements are being transferred to the localities; and

WHEREAS, Roanoke County is the local VSMP authority, which will result in additional plan reviews, field inspections, educational activities, enforcement actions, and coordination with DEQ; and

WHEREAS, this ordinance satisfies the DEQ current requirements effective July 1, 2015; and

WHEREAS, staff presented proposed changes to the Board of Supervisors on September 22, 2015; and

WHEREAS, the Board and public requested staff to review and explore additional information regarding the proposed changes which results are included herein;

WHEREAS, the first reading of this ordinance was held on February 9, 2016, and the second reading and public hearing was held on February 23, 2016.

NOW THEREFORE BE IT ORDAINED by the Board of Supervisors of Roanoke County, Virginia, as follows:

1. That Chapter 23. Stormwater Management be, and hereby is, amended and readopted to read and provide as attached.
2. That the effective date of this ordinance is February 23, 2016.

On motion of Supervisor McNamara to adopt the ordinance, seconded by Supervisor Peters and carried by the following recorded vote:

AYES: Supervisors Assaid, Bedrosian, Hooker, McNamara, Peters

NAYS: None

A COPY TESTE:

A handwritten signature in black ink, appearing to read "Deborah C. Jacks", written over a horizontal line.

Deborah C. Jacks  
Chief Deputy Clerk to the Board of Supervisors

cc: Arnold Covey, Director of Community Development  
Tarek Moneir, Deputy Director of Development  
David Henderson, County Engineer

**Stormwater Management Ordinance from Chapter 23 of the  
County of Roanoke Code**

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**Chapter 23**  
**Stormwater Management Ordinance**  
**County of Roanoke, Virginia**

**INTRODUCTION**

The County of Roanoke is home to a vast array of scenic natural resources, from the mountains that span our landscape to the streams that flow through our valleys. This picturesque environment has embraced generations of citizens while drawing in more newcomers every year. The continual increase in population aids in the growth and development of this area, improving jobs and enhancing economic stability. Yet, intensive development can degrade the beautiful natural resources that make the County so special.

Inadequate management of stormwater runoff from land-disturbing activities and development in watersheds increases flood flows and velocities, erodes and/or silts stream channels, pollutes water, overloads existing drainage facilities, undermines floodplain management in downstream communities, reduces groundwater recharge, and threatens public safety. More specifically, surface water runoff can carry pollutants into receiving waters.

The Roanoke River and many of its tributaries inside the County are listed as impaired waters by the Virginia Department of Environmental Quality (DEQ).

Many future problems can be avoided through proper stormwater management, and the County is dedicated to preventing the damaging effects that uncontrolled stormwater may present. The lands and waters of Roanoke County are valuable natural resources that need to be protected. The County finds that it is in the public interest to establish a stormwater management program.

Pursuant to Code § 62.1-44.15:27, this ordinance is part of an initiative to integrate the County of Roanoke's stormwater management requirements with the County of Roanoke's erosion and sediment control (Chapter 8.1) and floodplain management (Section 30-74) requirements into a unified stormwater program. The unified stormwater program is intended to facilitate the submission and approval of plans, issuance of permits, payment of fees, and coordination of inspection and enforcement activities into a more convenient and efficient manner for both the County of Roanoke and those responsible for compliance with these programs.

**SECTION 23-1**  
**GENERAL PROVISIONS**

**Section 23-1.1 TITLE AND AUTHORITY**

- A. This ordinance shall be known as the “Stormwater Management Ordinance of the County of Roanoke, Virginia.”
- B. Pursuant to § 62.1-44.15:27 of the Code of Virginia, the County of Roanoke hereby establishes a Virginia Stormwater Management Program (VSMP) for land-disturbing activities within Roanoke County and within the Town of Vinton, and adopts the applicable Regulations that specify standards and specifications for VSMPs promulgated by the State Water Control Board (State Board) for the purposes set out in Section 23-1.2 of this ordinance. The County of Roanoke hereby designates the Director of Community Development as the Administrator of its Virginia Stormwater Management Program.

**Commented [DMH1]:** Extending applicability of Ordinance to include the Town of Vinton.

**Section 23-1.2 PURPOSE**

The purpose of this ordinance is to promote and protect the general health, safety, and welfare of the citizens of the County and to protect property, state waters, stream channels, and other natural resources from the potential harm of unmanaged stormwater, and to establish requirements whereby stormwater is managed to protect water quality and downstream property owners.

This ordinance provides the framework for the administration, implementation, and enforcement of the provisions of the Virginia Stormwater Management Act (VSMA) and delineates the procedures and requirements to be followed in connection with the permits issued by the Administrator.

**Section 23-1.3 APPLICABILITY**

- A. Except as provided herein, no person may engage in any land-disturbing activity until a permit has been issued by the Administrator in accordance with the provisions of this ordinance.
- B. A stormwater management plan, or an agreement in lieu of a stormwater management plan, shall be reviewed and approved by the Administrator prior to permit issuance.
- C. Notwithstanding any other provisions of this ordinance, the following activities are exempt, unless otherwise required by federal law:

1. Permitted surface or deep mining operations and projects, or oil and gas operations and projects conducted under the provisions of Title 45.1;
2. Clearing of lands specifically for agricultural purposes and the management, tilling, planting, or harvesting of agricultural, horticultural, or forest crops, livestock feedlot operations, or as additionally set forth by the State Water Control Board in regulations, including engineering operations as follows: construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds, ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage, and land irrigation; however, this exception shall not apply to harvesting of forest crops unless the area on which harvesting occurs is reforested artificially or naturally in accordance with the provisions of Chapter 11 (§ 10.1-1100 et seq.) or is converted to bona fide agricultural or improved pasture use, as described in subsection B of § 10.1-1163 of Article 9 of Chapter 11 of Title 10.1 of the Code of Virginia;
3. Single-family residences separately built and disturbing less than one acre and not part of a larger common plan of development or sale, including additions or modifications to existing single-family residential structures;
4. Other land disturbing activities that disturb less than one acre of land area, except land disturbing activities that are part of a larger common plan of development or sale that is one acre or greater of disturbance;
5. Discharges to a sanitary sewer or a combined sewer system;
6. Activities under a state or federal reclamation program to return an abandoned property to an agricultural or open land use;
7. Routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original construction of the project. The paving of an existing road with a compacted or impervious surface and reestablishment of existing associated ditches and shoulders shall be deemed routine maintenance performed in accordance with this subsection; and
8. Conducting land-disturbing activities in response to a public emergency where the related work requires immediate authorization to avoid imminent endangerment to human health or the environment. In such situations, the Administrator shall be advised of the disturbance within seven days of commencing the land-disturbing activity and compliance with the administrative requirements of subsection A is required within 30 days of commencing the land-disturbing activity.



**Section 23-1.4 COMPATABILITY WITH OTHER REQUIREMENTS**

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

**Section 23-1.5 SEVERABILITY**

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

**Section 23-1.6 STORMWATER MANAGEMENT TECHNICAL CRITERIA FOR REGULATED LAND DISTURBING ACTIVITIES**

The County hereby adopts the technical criteria for regulated land-disturbing activities set forth in Part II B of the Regulations, as amended, expressly to include 9VAC25-870-62 [applicability]; 9VAC25-870-63 [water quality design criteria requirements]; 9VAC25-870-65 [water quality compliance]; 9VAC25-870-66 [water quantity]; 9VAC25-870-69 [offsite compliance options]; 9VAC25-870-72 [design storms and hydrologic methods]; 9VAC25-870-74 [stormwater harvesting]; 9VAC25-870-76 [linear development projects]; 9VAC25-870-85 [stormwater management impoundment structures or facilities]; and 9VAC25-870-92 [comprehensive stormwater management plans], which shall apply to all land disturbing activities regulated pursuant to this ordinance, except as expressly set forth in section 23-1.7 of this ordinance.

**Section 23-1.7 STORMWATER MANAGEMENT TECHNICAL CRITERIA FOR REGULATED LAND DISTURBING ACTIVITIES: GRANDFATHERED PROJECTS AND PROJECTS SUBJECT TO THE PROVISIONS OF 9VAC25-870-47B**

- A. The County hereby adopts the technical criteria for regulated land-disturbing activities set forth in Part II C of the Regulations, as amended, expressly to include 9VAC25-870-93 [definitions]; 9VAC25-870-94 [applicability]; 9VAC25-870-95 [general]; 9VAC25-870-96 [water quality]; 9VAC25-870-97 [stream channel erosion]; 9VAC25-870-98 [flooding]; and 9VAC25-870-99 [regional (watershed-wide) stormwater management plans], which shall only apply to all land disturbing activities regulated pursuant to this section.

- B. Any land-disturbing activity shall be considered grandfathered and shall be subject to the Part II C technical criteria of the Regulations, provided:
1. A proffered or conditional zoning plan, zoning with a plan of development, preliminary or final subdivision plat, preliminary or final site plan, or any document determined by Roanoke County to be equivalent thereto (i) was approved by Roanoke County prior to July 1, 2012, (ii) provided a layout as defined in 9VAC25-870-10 and section 23-2, (iii) will comply with the Part II C technical criteria of the VSMP Regulation, and (iv) has not been subsequently modified or amended in a manner resulting in an increase in the amount of phosphorus leaving each point of discharge, and such that there is no increase in the volume or rate of runoff;
  2. A state permit has not been issued prior to July 1, 2014; and
  3. Land disturbance did not commence prior to July 1, 2014.
- C. County, state, and federal projects shall be considered grandfathered and shall be subject to the Part II C technical requirements of the Regulations, provided:
1. There has been an obligation of county, 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;
  2. A state permit has not been issued prior to July 1, 2014; and
  3. Land disturbance did not commence prior to July 1, 2014.
- D. Land disturbing activities grandfathered under subsections B and C of this section shall remain subject to the Part II C technical criteria of the Regulations for one additional state permit cycle. After such time, portions of the project not under construction shall become subject to the technical criteria in effect at that time.
- E. 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 requirements of the Part II C technical criteria of the Regulations.
- F. Land disturbing activities that obtain general permit coverage or commence land disturbance prior to July 1, 2014, shall be conducted in accordance with the Part II C technical criteria of the Regulations and Roanoke County's local stormwater management requirements that were in effect at the time of receiving general permit coverage or commencing land disturbance. Such projects shall remain subject to these requirements for an additional two general permit cycles, if general permit coverage is maintained. After that time, portions of the project,

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not under construction, shall become subject to the technical criteria in effect at that time.

- G. An operator may choose to decline grandfather status and to instead comply with the technical requirements of section 23-1.6 of this ordinance. Nothing in this section shall preclude an operator from constructing to a more stringent standard at his discretion.

**Section 23-1.8 STORMWATER MANAGEMENT DESIGN MANUAL**

- A. The County will utilize the policies, criteria, and information contained within the County Stormwater Management Design Manual for proper implementation of the requirements of this ordinance.
- B. The County Stormwater Management Design Manual may be updated and revised from time to time. The Administrator shall recommend any updates, supplements, or modifications of the County Stormwater Management Design Manual subject to the authorization and approval by the Board of Supervisors by resolution.

**Section 23-1.9 COUNTY RIGHT OF ENTRY**

- A. The Administrator and/or duly authorized employees, agents, or representatives of the County, bearing proper credentials and identification, may, at any reasonable times and under reasonable circumstance, enter any establishment or upon any property, public or private, which has a VSMP permit or a maintenance agreement, for the purpose of enforcing this ordinance, including, but not limited to:
  - 1. Obtaining information or conducting surveys or investigations;
  - 2. Taking samples of discharges;
  - 3. Inspecting monitoring equipment;
  - 4. Inspecting and copying documents relevant to the enforcement of this ordinance;
  - 5. Initiating or maintaining appropriate actions which are required by the permit conditions associated with a land-disturbing activity when a permittee, after proper notice, has failed to take acceptable action within the time specified;
  - 6. Inspecting stormwater management facilities or other Best Management Practices (BMPs) or to initiate or maintain appropriate actions which are required to restore proper functioning of a stormwater management facility or other BMP operation when a land

owner, after proper notice, has failed to take acceptable action within the time specified;

7. And such other items as may be deemed necessary for the enforcement of this ordinance.
  
- B. If the Administrator has cause to believe an activity regulated under this ordinance is occurring without a VSMP permit, or if the person in charge of the property refuses to allow the Administrator to enter in accordance with subsection A, then the Administrator may present sworn testimony to a magistrate or court of competent jurisdiction and request the issuance of an inspection warrant to enter the property for the purpose of making such inspection and investigation. The Administrator shall make a reasonable effort to obtain consent from the owner or person in charge of the property prior to seeking the issuance of an inspection warrant under this section.

## SECTION 23-2

### DEFINITIONS

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

**“Administrator”** means the VSMP authority responsible for administering the VSMP on behalf of the County of Roanoke. The Administrator shall be the Director of Community Development and any duly authorized agent of the Director of Community Development, or the person designated by the County Administrator to administer this ordinance on behalf of the County.

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

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

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

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

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

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

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**“County”** means the County of Roanoke, Virginia.

**“Department”** means the Department of Environmental Quality.

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

**“Executed Development Agreements”** means documents that are executed by the applicant and County that implements the various sureties.

**“Fee in lieu”** means a payment of money to the County for the use of a regional stormwater management facility in place of meeting all or part of the stormwater performance standards required by this Ordinance on the site.

**“General permit”** means the state permit titled GENERAL PERMIT FOR DISCHARGES OF STORMWATER FROM CONSTRUCTION ACTIVITIES found in Part XIV (9VAC25-880-1 et seq.) of the Regulations authorizing a category of discharges under the CWA and the Act within a geographical area of the Commonwealth of Virginia.

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

**“Land disturbance”** or **“Land-disturbing activity”** means a manmade change to the land surface that potentially changes its runoff characteristics including any clearing, grading, or excavation, except that the term shall not include those exemptions specified in Section 23-1.3 of this Ordinance.

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

**“Minor modification”** means an amendment to an existing general permit before its expiration not requiring extensive review and evaluation including, but not limited to, 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 general 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.

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

1. Owned or operated by Roanoke County;
2. Designed or used for collecting or conveying stormwater;
3. That is not a combined sewer; and
4. That is not part of a publicly owned treatment works.

**“Municipal separate storm sewer system”** or **“MS4”** means all municipal separate storm sewers that are located within the portion of the County that is identified as “urbanized” by the U.S. Bureau of the Census in the latest Decennial Census.

**“Municipal Separate Storm Sewer System Management Program”** or **“MS4 Program”** means a management program covering the duration of a permit for a municipal separate storm sewer system that includes a comprehensive planning process that involves public participation and intergovernmental coordination, to reduce the discharge of pollutants to the maximum extent practicable, to protect water quality, and to satisfy the appropriate water quality requirements of the CWA and regulations and the Act and attendant regulations, using management practices, control techniques, and system design and engineering methods, and such other provisions that are appropriate.

**“Off-site facility”** means a stormwater management measure located outside the subject property boundary described in the permit application for land-disturbing activity.

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

**“Permit or VSMP Authority Permit”** means an approval to conduct a land disturbing activity issued by the Administrator for the initiation of a land-disturbing activity, in accordance with this Ordinance, which may only be issued after evidence of general permit coverage has been provided by the Department.

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

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

“**Regional stormwater management facility**” or “**Regional facility**” means a facility or series of facilities designed to control some or all of the adverse impacts from stormwater runoff from two or more parcels or lots, located in the same watershed, although only portions of the area may experience development.

“**Regulations**” means the Virginia Stormwater Management Program (VSMP) Regulations, 9VAC25-870-10 et seq., as amended.

“**Site**” means the land or water area where any facility or land-disturbing activity is physically located or conducted, including adjacent land used or preserved in connection with the facility or land-disturbing activity.

“**State**” means the Commonwealth of Virginia.

“**State Board**” means the State Water Control Board.

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

“**State Water Control Law**” means Chapter 3.1 (§62.1-44.2 et seq.) of Title 62.1 of the Code of Virginia (1950), as amended.

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

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

“**Stormwater facility maintenance agreement**” means a legally binding agreement between the owner of a property and the County regarding long-term maintenance of stormwater management facilities.

REVISED FEBRUARY 12, 2016; APPROVED FEBRUARY 23, 2016

**“Stormwater Management Facility” or “SWMF”** means a device that controls stormwater runoff and changes the characteristics of that runoff including, but not limited to, the volume, rate of flow, quality, the period of release, or the velocity of flow.

**“Stormwater management plan”** means a document(s) containing material describing methods for complying with the requirements of Section 23-3.5 of this Ordinance.

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

**“Subdivision”** means the division of a parcel of land into two (2) or more parcels of any size by the establishment of new boundary lines or by the adjustment, relocation, or vacation of existing boundary lines, for the purpose, whether immediate or future, of transfer of ownership or building development. A subdivision includes all changes in street or lot lines, and any portion of any such subdivision previously recorded in which building development or street creation occurs, or is required, subsequent to such recordation. The transfer of ownership of land to the Commonwealth of Virginia or a political subdivision thereof and the division of lands by court order or decree shall not be deemed a subdivision as otherwise herein defined.

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

**“Town”** means the incorporated Town of Vinton.

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

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

**“Virginia Stormwater Management Program” or “VSMP”** means the program approved by the State Board after September 13, 2011, that has been established by Roanoke County to manage the quality and quantity of runoff resulting from land-disturbing activities and shall include such items as County ordinances, rules, permit



requirements, annual standards and specifications, policies and guidelines, technical materials, and requirements for plan review, inspection, and enforcement, where authorized in this Ordinance, and evaluation consistent with the requirements of this Ordinance and associated regulations.

**“Virginia Stormwater Management Program authority” or VSMP authority**” means an authority approved by the State Board after September 13, 2011, to operate a Virginia Stormwater Management Program. For the purpose of this Ordinance, Roanoke County is the VSMP Authority for Roanoke County, including the Town of Vinton.

### SECTION 23-3

#### PROGRAM PERMIT PROCEDURES AND REQUIREMENTS

##### Section 23-3.1 PERMIT REQUIRED

- A. No grading, building, or other local permit will be issued for a property until a VSMP authority permit has been issued by the Administrator, unless the activity is specifically exempted from VSMP permitting by this Ordinance.
- B. No VSMP authority permit will be issued unless and until the permit application and attendant materials and supporting documentation demonstrate that all land clearing, construction, disturbance, land development and drainage will be done according to the requirements of this Ordinance, including an approved erosion and sediment control plan; and an approved stormwater management plan or an executed agreement in lieu of a stormwater management plan.
- C. No VSMP authority permit will be issued without the general permit registration statement except that construction activity involving a single-family detached residential structure, within or outside of a common plan of development or sale does not require a permit registration statement. Construction activities involving a single-family detached residential structure, within or outside of a common plan of development or sale, shall comply with the requirements of the General Permit.

##### Section 23-3.2 PERMIT APPLICATION CONTENTS

- A. Unless specifically exempted by this Ordinance, any landowner or operator desiring a permit for a land disturbance activity shall submit to the County a permit application on a form provided by the County for that purpose. Permit applications shall comply with the requirements contained within the County Stormwater Management Design Manual that is available from the Department of Community Development.
- B. No VSMP authority permit shall be issued by the Administrator, until the following items have been submitted to and approved by the Administrator as prescribed herein.

1. A permit application that includes a fully-executed general permit registration statement, except that construction activity involving a single-family detached residential structure, within or outside of a common plan of development or sale does not require a permit registration statement;
  2. An erosion and sediment control plan approved in accordance with the County Erosion and Sediment Control Ordinance [Chapter 8.1];
  3. A stormwater management plan, or agreement in lieu of a stormwater management plan, that meets the requirements of Section 23-3.5;
  4. Maintenance agreement in accordance with Section 23-3.7;
  5. Performance bonds in accordance with Section 23-3.8;
  6. Fees in accordance with Section 23-3.9; and,
  7. Executed Development Agreements.
- C. Pursuant to § 62.1-44.15:40 of the Code of Virginia, the Administrator may require every VSMP authority permit applicant or permittee, or any such person subject to VSMP authority permit requirements under this Ordinance, to furnish, when requested, such application materials, plans, specifications, and other pertinent information as may be necessary to determine the effect of the permittee's discharge on the quality of state waters, or such other information as may be necessary to accomplish the purposes of this Ordinance.

**Section 23-3.3 STORMWATER POLLUTION PREVENTION PLANS**

- A. The Stormwater Pollution Prevention Plan (SWPPP) required by the general permit, shall comply with the requirements set forth in 9VAC25-870-54 and shall also comply with the requirements and general information set forth in Section 9VAC25-880-70, Section II [stormwater pollution prevention plan] of the general permit.

The SWPPP shall include:

1. An approved erosion and sediment control plan;
2. An approved stormwater management plan, or agreement in lieu of a stormwater management plan;
3. A pollution prevention plan for regulated land disturbing activities; and
4. Description of any additional control measures necessary to address a TMDL.

- B. The SWPPP shall be amended, by the operator, whenever there is a change in design, construction, operation, or maintenance that has a significant effect on the discharge of pollutants to state waters, which is not addressed by the existing SWPPP.
- C. The SWPPP shall 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. Operators shall make the SWPPP available for public and County review in accordance with Section II of the general permit, either electronically or in hard copy.

**Section 23-3.4 POLLUTION PREVENTION PLANS**

- A. A Pollution Prevention Plan, required by 9VAC25-870-56, shall be developed, implemented, and updated as necessary and must detail the design, installation, implementation, and maintenance of effective pollution prevention measures to minimize the discharge of pollutants.
- B. 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 all materials, including, but not limited to 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.
- C. The pollution prevention plan shall include effective best management practices to prohibit the following discharges:
  - 1. Wastewater from washout of concrete, unless managed by an appropriate control;
  - 2. Wastewater from washout and cleanout of stucco, paint, form release oils, curing compounds, and other construction materials;
  - 3. Fuels, oils, or other pollutants used in vehicle and equipment operation and maintenance; and
  - 4. Soaps or solvents used in vehicle and equipment washing.

The pollution prevention plan shall prohibit discharges from dewatering activities, including discharges from dewatering of trenches and excavations, unless managed by appropriate controls.

**Section 23-3.5 STORMWATER MANAGEMENT PLANS**

- A. No application for land-disturbing activity will be approved unless it includes a stormwater management plan or agreement in lieu of a stormwater management plan, as required by this Ordinance, detailing how runoff and associated water quality impacts resulting from the activity will be controlled or managed.
- B. Submittal, review, approval, and resubmittal of stormwater management plans, and agreements in lieu of stormwater management plans shall comply with the requirements set forth in this Ordinance and the County Stormwater Management Design Manual.
- C. The stormwater management plan shall apply the stormwater management technical criteria set forth in Section 23-1.6 of this Ordinance to the entire common plan of development or sale. Individual lots in new residential, commercial, or industrial developments, including those developed by subsequent owners, shall not be considered to be separate land-disturbing activities.
- D. A stormwater management plan that is approved for a residential, commercial, or industrial subdivision shall govern the development of the individual parcels, including those parcels developed under subsequent owners
- E. The stormwater management plan must consider all sources of surface runoff and all sources of subsurface and groundwater flows converted to surface runoff.
- F. If an operator intends to meet the water quality and/or quantity requirements set forth in 9VAC25-870-63 or 9VAC25-870-66 through the use of off-site compliance options, where applicable, then a letter of availability from the off-site provider must be included. Approved off-site options must achieve the necessary nutrient reductions prior to the commencement of the applicant's land-disturbing activity except as otherwise allowed by §62.1-44.15:35 of the Code of Virginia.
- G. Elements of the stormwater management plans that include activities regulated under Chapter 4 (§54.1-400 et seq.) of Title 54.1 of the Code of Virginia shall be appropriately sealed and signed by a professional registered in the Commonwealth of Virginia pursuant to Article 1 (§ 54.1-400 et seq.) of Chapter 4 of Title 54.1 of the Code of Virginia.

Commented [DMH4]: Revisions requested by DEQ.

Where a stormwater management plan is required, a construction record drawing for permanent stormwater management facilities shall be submitted to the Administrator and approved prior to the release of bonds. The construction

record drawing shall be appropriately sealed and signed by a professional registered in the Commonwealth, certifying that the stormwater management facilities have been constructed in compliance with the approved plan.

Stormwater management facilities include all storm drain structures, storm drain pipes, culverts, open channels, BMPs, and all other facilities used to convey, control, or treat stormwater runoff.

H. The stormwater management plan shall include the following information:

1. Information on the type and location of stormwater discharges; information on the features to which stormwater is being discharged including surface waters or karst features, if present, and the pre-development and post-development drainage areas;
2. Contact information including the name, address, and telephone number of the owner and the tax reference number and parcel number of the property or properties affected;
3. A narrative that includes a description of current site conditions and final site conditions or if allowed by Roanoke County, 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) The type of facilities;
  - (ii) Location, including geographic coordinates;
  - (iii) Acres treated; and
  - (iv) Surface area, volume, depth, and width of facilities, if applicable;
  - (v) The surface waters or karst features, if present, into which the facility will discharge ;and
  - (vi) The Hydrologic Unit Code (HUC) into which the facilities drain.
6. Hydrologic and hydraulic computations, including runoff characteristics;
7. Documentation and calculations verifying compliance with the water quality and quantity requirements of the regulations.
8. A map or maps of the site that depicts the topography of the site and includes:
  - (i) All contributing drainage areas;

Commented [DMH5]: Revisions requested by DEQ.

Commented [DMH6]: Revision requested by DEQ.

- (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 existing structures, roads, and locations of known utilities and easements;
- (v) Sufficient information (such as grades, structures and pavements, and other appropriate information) on adjoining parcels to assess the impacts of stormwater from the site on these parcels;
- (vi) The limits of clearing and grading, and the proposed drainage patterns on the site;
- (vii) Proposed buildings, roads, parking areas, utilities, and stormwater management facilities; and
- (viii) Proposed land use with tabulation of the percentage of surface area to be adapted to various uses, including but not limited to planned locations of utilities, roads, and easements.

- I. An agreement in lieu of stormwater management plan shall conform to the Regulations and the County Stormwater Management Design Manual.

**Section 23-3.6 COMPREHENSIVE STORMWATER MANAGEMENT PLANS AND REGIONAL STORMWATER MANAGEMENT FACILITIES**

- A. The County may develop comprehensive stormwater management plans in accordance with 9VAC25-870-92 as a means to more effectively and efficiently address water quality objectives, quantity objectives, or both; through the implementation of regional stormwater management facilities.
- B. Once a comprehensive stormwater management plan is adopted by the County and approved by the Director of the Virginia Department of Environmental Quality, it is enforceable under this Ordinance.
- C. Stormwater management plans for land disturbing activities located in areas that have a comprehensive stormwater management plan, adopted by the County, and approved by the Director of the Virginia Department of Environmental Quality, shall comply with the requirements of the comprehensive stormwater management plan.

If a proposed regulated land-disturbing activity is located in a watershed that has a regional stormwater management facility currently constructed, and if the regional stormwater management facility is in accordance with a comprehensive stormwater management plan, the County shall have the option to require the payment of a fee-in-lieu of providing a portion or all of the proposed regulated land-disturbing activities stormwater management requirements. The fee-in-lieu shall be based on the reasonable proportion of stormwater impacts from the proposed regulated land-disturbing activity compared to the total stormwater impacts that the regional stormwater management facility is designed to mitigate,

multiplied by the total estimated project costs. The reasonable proportion of project costs shall be solely determined by the County. Project costs include, but are not limited to, the costs of land, professional services for investigations, studies, design, environmental permitting, surveying, construction phase services, legal services, and construction. Project costs may also include County staff costs for project development, design, construction, permitting, oversight, or other project activities; and other direct costs. Project costs shall also include the present value of the estimated operation and maintenance costs for the next 20 years, if the County is responsible for the regional stormwater management facility's operation and maintenance.

- D. The County and any other party (ies) may mutually agree to share the costs of a regional stormwater management facility, in the absence of a comprehensive stormwater management plan. The fee-in-lieu shall be based on project costs apportioned to each party in reasonable proportion of each party's contribution to the total stormwater impacts that the regional stormwater management facility is designed to mitigate, as mutually negotiated.

**Section 23-3.7 STORMWATER MANAGEMENT FACILITY MAINTENANCE AGREEMENTS**

- A. Maintenance of stormwater management facilities shall be ensured through the creation of a formal maintenance agreement that is executed by the property owner and submitted prior to plan approval and recorded by the County in the County land records prior to permit termination. The maintenance agreement shall be binding on all subsequent property owners.
- B. The property owner of the site shall execute an access easement agreement, prior to plan approval, to provide for access to stormwater management facilities at reasonable times for periodic inspection by the County, or their contractor or agent, to ensure that the facility is maintained in proper working condition to meet design standards and any other provisions established by this Ordinance. The easement agreement shall be recorded in the County land records by the County and it shall be binding on all subsequent property owners.
- C. A stormwater management facility that serves more than one parcel shall be located on its own, separate parcel. The land owners of each parcel served by the stormwater management facility shall be jointly and severally responsible for the maintenance of the stormwater management facility through a formal maintenance agreement with the County.
- D. Responsibility for the operation and maintenance of stormwater management facilities, unless assumed by a governmental agency, shall remain with the property owner and shall pass to any successor or owner. If portions of the land are to be sold, legally binding arrangements, acceptable to the County, shall be made to pass the responsibility to successors in title. These arrangements shall designate for each land owner, governmental agency, or other legally established

entity to be permanently responsible for maintenance.

- E. As part of the maintenance agreement, a schedule shall be developed identifying anticipated routine maintenance, to be performed by the property owner, needed for proper function of the stormwater management facility. The maintenance agreement shall also include a schedule for periodic inspections, to be performed by the property owner, to ensure proper performance of the facility between scheduled routine maintenance activities, and it shall require repairs when needed for proper function of the SWMF. The maintenance agreement shall require that the property owner document routine maintenance, repair, and periodic inspection activities, maintain said documentation for five (5) years, and submit said documentation to the County, if requested.
- F. The maintenance agreement shall also include "failure to maintain" provisions. In the event that maintenance or repair is neglected, or the stormwater management facility becomes a danger to public health, safety, or the environment, the County reserves the authority to perform the necessary maintenance or repair work and to recover the costs from the property owner. Nothing in this Ordinance shall be construed to mean that the County has the responsibility to maintain privately-owned SWMFs.
- G. Prior to the release of the performance security or bond, the developer shall either (1) transfer the maintenance responsibilities of the stormwater management facilities to a Home Owners Association or (2) provide the County with a maintenance security.
  - 1. Requirements for Transfer of Maintenance Responsibilities to the Home Owners Association (HOA)
    - i. Submission of acceptable record drawings.
    - ii. Acceptable final inspection of the stormwater management facility by the County.
    - iii. Transfer of the necessary property to the HOA.
    - iv. Organize and hold a meeting attended by the developer, the County and members of the HOA. Provide evidence to the County that each member of the HOA was provided prior notice of the meeting. The meeting shall be held at a place and time convenient for members of the HOA.
    - v. Provide a copy of the recorded documents establishing the Home Owners Association to the County.
    - vi. Provide the County with evidence that the Home Owners Association is funded. Minimum funding shall be based on the following schedule:
      - 1-20 lots = \$1,000
      - 21-50 lots = \$1,500
      - 51 and over = \$1500 + \$30 per lot over 50



2. Requirements for Posting Maintenance Security.

- i. The County shall require a maintenance guaranty in the amount of twenty (20%) percent of the construction costs of the stormwater management facility.
- ii. The maintenance security shall contain forfeiture provisions for failure, after proper notice, to complete work within the time specified, or to initiate or maintain appropriate actions which may be required of the permittee in accordance with the approved stormwater management plan.
- iii. If the County takes such action upon such failure by the permittee, the County may collect from the permittee the difference should the amount of the reasonable cost of such action exceed the amount of the security held.
- iv. The maintenance agreement and security will be the responsibility of the permittee or owner until such time as the permittee or owner provides the County with the necessary requirements for Transfer of Maintenance Responsibilities to the Home Owners Association as outlined above in (1).

H. At the discretion of the Administrator, a formal maintenance agreement and access easement agreement may not be required for stormwater management facilities designed to treat stormwater runoff primarily from an individual single-family residential lot on which they are located, provided it is demonstrated to the satisfaction of the Administrator that future maintenance of such facilities will be addressed through an enforceable mechanism at the discretion of the Administrator.

**Commented [DMH7]:** Required to address use of agreements in lieu of SWM Plans for single family residential construction.

I. If a formal maintenance agreement and access easement agreement is not required as described in paragraph H above, the Administrator shall develop a strategy for addressing maintenance of stormwater management facilities designed to treat stormwater runoff primarily from an individual single-family residential lot on which they are located. Such a strategy may include periodic inspections, homeowner outreach and education, or other method targeted at promoting the long-term maintenance of such facilities. Such facilities shall not be subject to the requirement for an inspection to be conducted by the Administrator.

**Section 23-3.8 PERFORMANCE SECURITIES**

A. The County may, at its discretion, require the submittal of a performance security or bond with surety, cash escrow, letter of credit, or other acceptable legal arrangement, all of which shall be in a form approved by the County, prior to plan approval, in order to ensure that the stormwater practices are installed by the permittee, as required by the approved stormwater management plan.

B. The amount of the performance security shall be the total estimated

**Commented [DMH8]:** Revised to match bond contingency amount in ESC Ordinance.

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construction cost of the storm drainage systems and stormwater management facilities approved under the permit, plus 10% contingency.

- C. The performance security shall contain forfeiture provisions for failure, after proper notice, to complete work within the time specified, or to initiate or maintain appropriate actions which may be required of the permittee in accordance with the approved stormwater management plan.
- D. If the County takes such action upon such failure by the permittee, the County may collect from the permittee the difference should the amount of the reasonable cost of such action exceed the amount of the security held.
- E. Within 60 days of the completion of the requirements of the permit conditions, including request for permit termination by the operator, such bond, cash escrow, letter of credit, or other legal arrangement, or the unexpended or unobligated portion thereof, will be refunded to the permittee or terminated.

**Section 23-3.9 FEES**

- A. Fees to cover costs associated with implementation of a VSMP related to land disturbing activities and issuance of general permit coverage and VSMP authority permits shall be imposed in accordance with the appropriate fee schedule established, updated and revised from time to time by the County Board of Supervisors by resolution. VSMP costs include County costs associated with stormwater management plan review, VSMP registration statement review, permit issuance, state-coverage verification, inspections, reporting, and compliance activities associated with land-disturbing activities, as well as state program oversight costs.
- B. Fees for providing coverage under the General Permit for Discharges of Stormwater from Construction Activities shall be imposed in accordance with the appropriate fee schedule established, updated and revised from time to time by the County Board of Supervisors by resolution. Fifty percent (50%) of the total fee shall be paid by the applicant at the time that a stormwater management plan, or agreement in lieu of a stormwater management plan, is submitted for review. The remaining total fee is to be paid by the applicant prior to issuance of coverage under the General Permit for Discharges of Stormwater from Construction Activities.
- C. When a site or sites has been purchased for development within a previously permitted common plan of development or sale, the applicant shall be subject to fees in accordance with the disturbed acreage of their site or sites according to the fee schedule established, revised and updated from time to time by the County Board of Supervisors by resolution.
- D. Fees for the modification or transfer of registration statements from the general permit issued by the State Board shall be imposed in accordance with the fee

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schedule established, revised and updated from time to time by the County Board of Supervisors by resolution. If the permit modifications result in changes to stormwater management plans that require additional review by the County, such reviews shall be subject to the fee schedule established by the County Board of Supervisors, as amended. 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 accordance with the fee schedule established, revised and updated from time to time by the County Board of Supervisors by resolution.

- E. General permit maintenance fees: Annual permit maintenance fees required by 9VAC25-870-830 shall be imposed in accordance with the fee schedule established, revised and updated from time to time by the County Board of Supervisors by resolution, including fees imposed on expired general permits that have been administratively continued. With respect to the general permit, these fees shall apply until the permit coverage is terminated. General permit coverage maintenance fees, for permits issued in a previous calendar year, shall be paid by April 1st of each year that it is in effect. No permit will be reissued or automatically continued without payment of the required fee. General permit coverage maintenance fees shall be applied until a Notice of Termination is effective.
- F. Persons whose coverage under the general permit has been revoked shall apply to the Virginia Department of Environmental Quality for an Individual Permit for Discharges of Stormwater from Construction Activities.
- G. No permit application fees will be assessed to:
  - 1) Permittees who request minor modifications to permits as defined in Section 23-2 of this Ordinance. Permit modifications at the request of the permittee resulting in changes to stormwater management plans that require additional review by the Administrator shall not be exempt pursuant to this section.
  - 2) Permittees whose permits are modified or amended at the initiative of the Department or Administrator, excluding errors in the registration statement identified by the Administrator or errors related to the acreage of the site.
- H. 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 shall be entitled to all remedies available under the Code of Virginia in collecting any past due amount.
- I. In addition to the fees contained on the fee schedule established, revised and

updated by the County Board of Supervisors by resolution the County may collect convenience fees associated with processing credit card payments.

**Section 23-3.10 PERMIT APPLICATION PROCEDURE**

- A. Permit applications and the stormwater management plan, or agreement in lieu of a stormwater management plan, shall include all of the information required by this Ordinance and the County Stormwater Management Design Manual.
- B. No VSMP authority permit shall be issued until the maintenance agreement required in section 23-3.7 is approved, performance securities required in section 23-3.8 have been submitted and accepted, and fees required to be paid, pursuant to section 23-3.9, are received.
- C. All applications will be processed in accordance with procedures set forth below and in the County Stormwater Management Design Manual.
  - 1. The Administrator shall determine the completeness of a plan in accordance with section 23-3.2 of this Ordinance and shall notify the applicant, in writing, of such determination, within 15 calendar days of receipt. If the plan is deemed to be incomplete, the above written notification will contain the reasons the plan is deemed incomplete.
  - 2. The Administrator shall have an additional 60 calendar days from the date of the communication of completeness to review the plan, except that if a determination of completeness is not made within the time prescribed above, then plan shall be deemed complete and the Administrator shall have 60 calendar days from the date of submission to review the plan.
  - 3. The Administrator shall review any plan that has been previously disapproved, within 45 calendar days of the date of resubmission.
  - 4. During the review period, the plan shall be approved or disapproved and the decision communicated in writing to the applicant or his/her designated agent. If the plan is not approved, the reasons for not approving the plan shall be provided in writing. Approval or denial shall be based on the plan's compliance with the requirements of this Ordinance.
  - 5. If a plan meeting all requirements of this Ordinance is submitted and no action is taken within the time provided above, the plan shall be deemed approved.
- D. Approved stormwater management plans may be modified, as follows:
  - 1. Modification to an approved stormwater management plan shall be allowed only after review and written approval by the Administrator. The Administrator shall have 60 calendar days to respond in writing either approving or

disapproving such request.

2. The Administrator may require that an approved stormwater management plan be amended, within a time prescribed by the Administrator, to address any deficiencies noted during inspection.
- E. The Administrator shall require the submission of a construction record drawing for permanent stormwater management facilities.

#### SECTION 23-4

##### EXCEPTIONS TO STORMWATER MANAGEMENT REQUIREMENTS

- A. The Administrator may grant exceptions to the technical requirements of Part II B or Part II C of the Regulations, provided that (i) the exception is the minimum necessary to afford relief, (ii) reasonable and appropriate conditions are imposed so that the intent of the Act and this Ordinance are preserved, (iii) granting the exception will not confer any special privileges that are denied in other similar circumstances, and (iv) exception requests are not based upon conditions or circumstances that are self-imposed or self-created. Economic hardship alone is not sufficient reason to grant an exception from the requirements of this Ordinance.
1. Exceptions to the requirement that the land-disturbing activity obtain the required VSMP authority permit shall not be given by the Administrator, nor shall the Administrator approve the use of a BMP not found on the Virginia Stormwater BMP Clearinghouse Website, unless it is duly approved by the Department of Environmental Quality.
  2. Exceptions to requirements for phosphorus reductions shall not be allowed unless offsite options otherwise permitted pursuant to 9VAC25-870-69 have been considered and found not available.
  3. Nothing in this section shall preclude an operator from constructing to a more stringent standard at their discretion.
- B. The Administrator may grant an exception from provisions contained in the County Stormwater Management Design Manual when not reasonably achievable, provided that acceptable mitigation measures are provided.
- C. Requests for an exception to the stormwater technical requirements shall be submitted in writing to the Administrator.

Commented [DMH9]: Correction per DEQ request.

#### SECTION 23-5

##### PROPERTY OWNER RESPONSIBILITIES FOR DRAINAGE WAYS

- A. Drainage ways consist of natural watercourses, storm sewers, gutters, manmade

channels, and other natural or manmade drainage paths.

- B. Every person owning property through which a drainage way passes, or such person's lessee, shall keep and maintain that part of the drainage way within the property free of trash, debris, yard wastes, and other obstacles that could pollute, contaminate, or significantly retard the flow of water.
- C. No person shall sweep, wash, or otherwise place dirt, trash, debris, yard wastes, or other materials in drainage ways where they could be picked up and carried off the person's property by stormwater runoff.
- D. The property owner or such person's lessee shall maintain healthy vegetation to protect the drainage way from excessive erosion during storm events. Particular care shall be taken to maintain healthy bank vegetation along watercourses.

### **SECTION 23-6**

#### **CONSTRUCTION INSPECTION**

##### **Section 23-6.1 NOTICE OF CONSTRUCTION COMMENCEMENT**

The permittee shall notify the County in advance before the commencement of land disturbing activities. In addition, the permittee shall notify the County in advance of construction of critical components of a stormwater management facility.

##### **Section 23-6.2 PERIODIC CONSTRUCTION INSPECTION**

- A. The Administrator shall periodically 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, or executed agreement in lieu of a stormwater management plan;
  - 3. Development, updating, implementation with the pollution prevention plan;
  - 4. Development and implementation of any additional control measures necessary to address a TMDL.
- B. If the County inspections find any violations, the permittee shall be notified in writing of the nature of the violation and the required corrective actions. No additional construction or land-disturbing activity in the area of the violation shall proceed until any violations are corrected and all work previously completed has received approval from the County. The permittee is responsible for maintenance and repair for all stormwater management facilities during construction.

- C. The person responsible for implementing the approved plan is required to provide adequate inspection monitoring and reports to ensure compliance with the approved plan, to determine whether the measures required in the plan provide effective stormwater management and to allow the registered professional to certify the record documents in accordance with Section 23-3.5. All permittee inspections shall be documented and written reports prepared that contain the following information:
1. The date and location of the permittee inspection;
  2. Whether construction is in compliance with the approved stormwater management plan;
  3. Variations from the approved construction specifications;
  4. Corrective actions that have been taken to correct previous violations;
  5. Any violations that exist; and
  6. The name and signature of the person who performed the inspection.

Permittee inspection documentation shall be organized chronologically and be stored with the SWPPP.

- D. If the County determines that there is a failure to comply with the plan, notice shall be served upon the permittee or person responsible for carrying out the plan in accordance with Section 23-9 of this Ordinance.

**Section 23-6.3 FINAL INSPECTION AND RECORD DOCUMENTATION**

- A. The permittee shall submit record drawings and supporting documentation for all stormwater management facilities and storm drainage systems associated with the project before final County inspection. Record drawings and supporting documents shall comply with the requirements contained in the County Stormwater Management Design Manual. Record drawings shall not be required where the Administrator does not require a formal maintenance agreement and access easement agreement for stormwater management facilities designed to treat stormwater runoff primarily from an individual single-family residential lot on which they are located.
- B. Receipt of record drawings and supporting documentation, final inspection and approval by the County, execution and recordation of maintenance agreement, and permit termination is required before the final release of performance securities.
- C. If it is determined from the record drawings, or inspections, that the storm drainage systems and the stormwater management facilities have not been

**Commented [DMH10]:** Coordinated with special requirements for individual residential lot conditions.

constructed in accordance with the approved stormwater management plan, then corrective action will be taken to comply with the approved Plan or the permittee shall provide studies and information required by the County to demonstrate that the constructed system will function equivalent to the approved Stormwater Management Plan, and that all regulatory requirements are met.

- D. A supplemental digital file of the record drawings shall be submitted to the County for its use in maintaining public records. The supplemental digital file shall comply with the requirements contained in the Roanoke County Stormwater Management Design Manual.

**Commented [DMH11]:** We need this information to aid in staff efficiency with maintaining GIS system.

### SECTION 23-7

#### POST CONSTRUCTION INSPECTION, MAINTENANCE AND REPAIR OF STORMWATER MANAGEMENT FACILITIES

##### Section 23-7.1 MAINTENANCE INSPECTIONS OF STORMWATER MANAGEMENT FACILITIES

- A. Following the completion and acceptance of construction, the property owner is responsible for the maintenance and repair of stormwater structures and stormwater management facilities. The property owner shall ensure that proper maintenance and repair of stormwater structures and stormwater management facilities occur and that periodic inspection, maintenance, and repair are performed so that the structures and facilities operate properly. All inspection, maintenance, and repair activities, performed by the property owner shall be documented. Documentation shall be submitted to the County, if requested.
- B. Stormwater structures and stormwater management facilities that have recorded stormwater facility maintenance agreements shall be operated, inspected, maintained and repaired, by the property owner, in conformance with the applicable performance requirements contained in the approved stormwater facility maintenance agreement.
- C. Stormwater structures and stormwater management facilities were required as a condition for parcel development. Therefore, they shall be operated, inspected, maintained and repaired, by the property owner, as necessary for proper operation of the structures and facilities even if there is no recorded stormwater facility maintenance agreement. Following are the minimum maintenance requirements for stormwater structures and stormwater management facilities that do not have a recorded stormwater facility maintenance agreement:
  - 1. Stormwater structures and stormwater management facilities shall be inspected and maintained or repaired as needed, by the property owner, after significant rainfall events that cause localized flooding, and at least annually.

**Commented [DMH12]:** Added language to make clear that SWM facilities without agreements still require maintenance under this ordinance.



2. All structures and slopes shall be kept in a safe condition. Stormwater sheet flow shall not be converted to concentrated flow by extending downspouts or other drains toward streets or property lines. Rain gardens, pervious pavement, and other stormwater management facilities shall not be removed or rendered inoperable.
  3. Stormwater management facilities and stormwater conveyance systems shall be kept clear of grass clippings, cut brush, and other debris.
  4. All pipes and structures shall be kept clean and clear of debris that could decrease flow capacity.
  5. Sediment and silt that washes into stormwater management facilities shall be removed and properly disposed of when the sediment and silt builds up to the point that they adversely impact the facility's proper operation.
  6. Trees and other woody plants shall be cut and removed from embankment slopes annually.
  7. Trees and woody plants shall be cut and removed from non-embankment areas of a stormwater management facility as needed to avoid buildup of debris in the facility and to avoid a nuisance. Periodic cutting and brush removal shall occur at a frequency of at least once in three years.
  8. Landscaping and grass cover shall be maintained for proper operation and erosion control. Replace landscaping as required. Repair erosion and replace grass cover as required.
  9. Manufactured stormwater management facilities shall be maintained as recommended by the manufacturer.
  10. Additional maintenance activities shall be performed, as needed, to maintain proper operation.
- D. In addition to the inspections performed by the property owner, the County will periodically inspect stormwater management facilities. In the event that the stormwater management facility has not been maintained and/or becomes a danger to public safety, public health, or the environment, the County shall notify the property owner by registered or certified mail. The notice shall specify the measures needed to comply and shall specify the time within which such measures shall be completed. If the responsible party fails or refuses to correct the violation, the County, after reasonable notice, may correct a violation of the design standards or maintenance needs by performing all necessary work to place the facility in proper working condition, and recover the costs from the property owner.
- E. If stormwater management facility inspection requires entry into a confined

space, or special equipment or training, then the County may hire licensed professionals to perform the inspection, or it may require the property owner to hire a licensed professional to perform the inspection. The cost for any licensed professionals to perform the required inspection shall be paid by or recovered from the owner.

- F. The County will conduct post-construction inspections of stormwater management facilities pursuant to the County's developed, and State Board's approved inspection program and will inspect each stormwater management facility at least once every five (5) years; except that periodic post-construction inspection, by the County, is not required where a formal maintenance agreement and access easement agreement is not required by the Administrator for stormwater management facilities designed to treat stormwater runoff primarily from an individual single-family residential lot on which they are located.

**Commented [DMH13]:** Coordinated special requirement for individual single family development.

**Section 23-7.2 RECORDS OF INSPECTION, MAINTENANCE AND REPAIR**

- A. Property owners responsible for the operation and maintenance of stormwater management facilities shall make records of all inspections, maintenance, and repairs, and shall retain the records for at least five (5) years.
- B. Upon request from the County, property owners shall provide copies of records documenting property owner inspections, maintenance, and repairs.

**SECTION 23-8**

**HEARINGS AND APPEALS**

**Section 23-8.1 HEARINGS**

- A. Any permit applicant or permittee, or person subject to the requirements of this Ordinance, who is aggrieved by any action, of the County in approving or disapproving any plans required by this Ordinance, or by any enforcement action taken pursuant to Sec. 23-9, shall have the right to request, in writing, a hearing; provided, that a petition requesting such hearing is filed with the Administrator within 30 days after notice of such action is given by the Administrator.
- B. The hearing shall be heard by the County Administrator, or his/her designee.
- C. The hearing shall be held provided that the County Administrator and the aggrieved party has at least thirty (30) days prior notice.
- D. A verbatim record of the proceedings of such hearings shall be taken and filed with the Board of Supervisors. Depositions may be taken and read as in actions at law.
- E. The County Administrator, shall have power to issue subpoenas and subpoenas duces tecum, and at the request of any party shall issue such subpoenas. The

failure of any witness without legal excuse to appear or to testify or to produce documents shall be acted upon by the County Administrator whose actions 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.

- F. During its review, the County Administrator shall consider evidence presented by all parties. After considering the evidence, the County Administrator's decision shall be final.

**Section 23-8.2 APPEALS**

Final decisions of the County Administrator, under this Ordinance, shall be subject to judicial review by the Roanoke County Circuit Court, provided an appeal is filed within thirty (30) days from the date of any written decision adversely affecting the rights, duties, or privileges of any permit applicant, permittee, or person subject to any enforcement action under this Ordinance.

**SECTION 23-9**

**ENFORCEMENT AND PENALTIES**

**Section 23-9.1 VIOLATIONS**

Any land-disturbance activity that is commenced or is conducted contrary to this Ordinance or the approved plans or agreements and permit, may be subject to the enforcement actions outlined in this section and the Virginia Stormwater Management Act.

**Section 23-9.2 NOTICE TO COMPLY**

- A. If the Administrator determines that there is a failure to comply with the VSMP authority permit conditions, 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.
- B. Written notices shall be served by registered or certified mail to the address specified in the permit application or by delivery at the site of the development activities to the agent or employee supervising such activities.
- C. If there is no permittee, the notices shall be issued to the property owner.
- D. The Notice to Comply shall contain:
  - 1. The name and address of the permittee, or if there is no permittee, the property owner;

**Commented [DMH14]:** Revised terminology to better coordinate with E&SC Ordinance

2. The address when available or a description of the building, structure, or land upon which the violation is occurring;
  3. A statement specifying the nature of the violation;
  4. A description of the remedial measures necessary to bring the land-disturbing activity into compliance with this Ordinance and a time schedule for the completion of such remedial action.
- E. Upon failure to comply within the specified time, the permit may be revoked and the permittee shall be deemed to be in violation of this chapter and, upon conviction, shall be subject to the penalties provided by this chapter.

#### **Section 23-9.3 STOP WORK ORDERS**

- A. If a permittee fails to comply with a notice issued in accordance with Section 23-9.2 within the time specified, the Administrator may issue an order requiring the owner, permittee, person responsible for carrying out an approved plan, or the person conducting the land-disturbing activities without an approved plan or required permit to cease all construction 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 Stop Work Orders shall become effective upon service on the person by certified mail, return receipt requested, sent to the address specified in the land records of the locality, or by personal delivery by an agent of the Administrator.
- B. However, if the Administrator finds that any such violation presents an imminent and substantial danger of causing harmful stormwater runoff impacts to its MS4 system or waters within the watersheds of the Commonwealth, it may issue, without advance notice or hearing, an emergency order directing such person to cease immediately all land-disturbing activities on the site and shall provide an opportunity for a hearing, after reasonable notice as to the time and place thereof, to such person, to affirm, modify, amend, or cancel such emergency order. If a person who has been issued an order is not complying with the terms thereof, the Administrator may request the County Attorney to institute a proceeding for an injunction, mandamus, or other appropriate remedy.
- C. This "Stop Work Order" shall be in effect until the County confirms that the land-disturbing activity is in compliance with the requirements of this Ordinance and the violation has been satisfactorily addressed. Upon failure to comply within the time specified, the permit may be revoked and the applicant shall be deemed to be in violation of this article and upon conviction shall be subject to the penalties provided by this Ordinance.

#### **Section 23-9.4 CIVIL AND CRIMINAL PENALTIES**

- A. Any person violating or failing, neglecting, or refusing to obey any rule,

regulation, ordinance, order, approved standard or specification, or any permit condition issued by the Administrator may be compelled in a proceeding instituted in the Roanoke County Circuit Court to obey same and to comply therewith by injunction, mandamus, or other appropriate remedy.

- B. Any person who violates any provision of this Ordinance or who fails, neglects, or refuses to comply with any order of the Administrator, shall be subject to a civil penalty not to exceed \$32,500 for each violation within the discretion of the court. Each day of violation of each requirement shall constitute a separate offense.
- C. Violations for which a penalty may be imposed under this Subsection include, but are not 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 BMPs 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 Section 9VAC25-880-70 of the general permit.
- D. The 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 shall be paid into the County treasury to be used for the purpose of minimizing, preventing, managing, or mitigating pollution of the waters of the County and abating environmental pollution therein in such manner as the court

may, by order, direct.

G. With the consent of any person who has violated or failed, neglected or refused to obey this Ordinance or any condition of a permit, the County may provide, in an order issued by the Administrator against such person, for the payment of civil charges for violations in specific sums, as indicated in the following schedule:

1. Commencement of land disturbing activity without receiving coverage under the General Permit from the Department shall be one thousand dollars (\$1,000.00) per day.
2. Commencement of land disturbing activity without preparation of a SWPPP shall be five hundred dollars (\$500.00) per day.
3. Commencement of land disturbing activity with an incomplete SWPPP, or failure to properly amend a SWPPP to reflect changes in design, construction, operation, or maintenance that has a significant effect on the discharge of pollutants to surface waters and has not been previously addressed in the SWPPP shall be three hundred dollars (\$300.00) per day;
4. State permit registration statement not posted, or SWPPP not available for review shall be three hundred dollars (\$300.00) per day.
5. Failure to comply with SWPPP requirements shall be three hundred dollars (\$300.00) per day;
6. Failure to conduct and document required inspections shall be three hundred dollars (\$300.00) per day.
7. Incomplete, improper, or missed inspections, including lack of proper signature shall be three hundred dollars (\$300.00) per day.
8. Discharges not in compliance with the requirements of Section 9VAC25-880-70 of the general permit shall be three hundred dollars (\$300.00) per day.
9. Failure to obey a stop work order shall be one thousand dollars (\$1,000.00) per day.
10. Failure to stop work when a permit is revoked shall be one thousand dollars (\$1,000.00) per day.

H. The total civil charges are not to exceed the limit specified in subdivision B of this section. Such civil charges shall be instead of any appropriate civil penalty which could be imposed under subdivision B.

I. Any civil charge shall be paid into the County treasury to be used for the purpose

**Commented [DMH15]:** Change provided to allow assessment of civil charges. Amounts coordinate with those in E&SC Ordinance.

of minimizing, preventing, managing, or mitigating pollution of the waters of the County and abating environmental pollution.

- J. Notwithstanding any other civil or equitable remedy provided by this Section or by law, any person who willfully or negligently violates any provision of the Ordinance, any order of the 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 more than \$2,500, or both.

**Section 23-9.5 RESTORATION OF LANDS**

- A. Any violator may be required to restore land to its undisturbed condition or in accordance with a notice of violation, stop work order, or permit requirements.
- B. In the event that restoration is not undertaken within a reasonable time after notice, the County may take necessary corrective action, the cost of which shall be covered by the performance security, or become a lien upon the property until paid, or both.

**Section 23-9.6 HOLDS ON CERTIFICATE OF OCCUPANCY**

Final certificates of occupancy may not be granted, at the discretion of the Administrator, until corrections have been made in accordance with the approved plans, notices of violation, stop work order, or permit requirements, and accepted by the County.

**Commented [DMH16]:** Added language to make sure that it was clear that this was discretionary.

~END~