

LYNCHBURG CITY COUNCIL

Agenda Item Summary

MEETING DATE: **June 10, 2014**

AGENDA ITEM NO.: 9

CONSENT: REGULAR: **X**

WORK SESSION:

CLOSED SESSION:

ACTION: **X**

INFORMATION:

(Confidential)

ITEM TITLE: **Stormwater Management Ordinance Amendments**

RECOMMENDATION: After a public hearing to adopt the proposed amendments to City Code Chapter 16.2 Stormwater Management.

SUMMARY: In 2011, the General Assembly adopted revisions to the Virginia Stormwater Management Program [VSMP] that become effective July 1, 2014. As part of the revisions to the VSMP, the City is required to amend the definitions, scope, permit requirements, technical criteria, plan requirements, plan approvals, facility maintenance, enforcement and appeals provisions of the Stormwater Management Ordinance (Chapter 16.2. The proposed amendments also establish a five thousand (5,000) square foot threshold for managing stormwater runoff, fees for stormwater general permits and a provision for maintenance of existing stormwater management facilities.

In order to be in compliance with the Virginia Stormwater Management Act, the mandatory provisions of the ordinance must be adopted locally and submitted to DEQ on or before June 13, 2014.

PRIOR ACTION(S):

May 14, 2014: The Planning Commission conducted an informational session on the proposed Stormwater Management ordinance revisions.

May 27, 2014: City Council conducted a work session on the proposed Stormwater Management ordinance amendments.

FISCAL IMPACT: An additional staff person will likely be required to assist with the plan review, inspection and reporting requirements of this program at a projected cost of sixty thousand dollars (\$60,000). Adoption of the state fee schedule for stormwater general permits would allocate seventy-two percent (72%) of those permit fees to the City of Lynchburg. Based upon the state's proposed fee schedule, the last five year's eligible projects would generate approximately fifty thousand (\$50,000) in program revenue each year, resulting in a net impact of ten thousand dollars (\$10,000) to the City's stormwater management fund.

CONTACT(S): Rob Fowler, Zoning Administrator/Program Administrator - 455-3900
 Kent White, Director of Community Development – 455-3900

ATTACHMENT:
DRAFT City Code Chapter 16.2 – Stormwater Management

REVIEWED BY: lkp

ORDINANCE

AN ORDINANCE TO AMEND AND REENACT THE CODE OF THE CITY OF LYNCHBURG BY AMENDING SECTIONS 16.2-1, 16.2-2, 16.2-3, 16.2-4, 16.2-5, 16.2-8, 16.2-20, 16.2-21, 16.2-22, 16.2-23, 16.2-36, 16.2-38, 16.2-40, 16.2-41, 16.2-43, 16.2-55, 16.2-56, 16.2-57, 16.2-58, 16.2-59, 16.2-60, 16.2-62, 16.2-71, 16.2-75 AND 16.2-76 OF THE CODE OF THE CITY OF LYNCHBURG, 1981, AS AMENDED; TO AMEND AND REENACT THE CODE OF THE CITY OF LYNCHBURG, 1981, AS AMENDED, BY ADDING THERETO SECTIONS 16.2-9 THROUGH 16.2-10, ARTICLE IV, STORMWATER POLLUTION PREVENTION PLAN REQUIREMENTS CONTAINING SECTIONS 16.2-53 through 16.2-54, AND SECTIONS 16.2-58, 16.2-59 AND 16.2-61; AND TO AMEND AND REENACT THE CODE OF THE CITY OF LYNCHBURG, 1981, BY REPEALING SECTIONS 16.2-21 COMPUTATION METHODOLOGIES AND 16.2-24 NONSTRUCTURAL MEASURES; THE AMENDED, NEW AND REPEALED SECTIONS RELATING TO THE REGULATION OF STORMWATER WITHIN THE CITY.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF LYNCHBURG:

1. That Sections 16.2-1, 16.2-2, 16.2-3, 16.2-4, 16.2-5, 16.2-8, 16.2-20, 16.2-21, 16.2-22, 16.2-23, 16.2-36, 16.2-38, 16.2-40, 16.2-41, 16.2-43, 16.2-55, 16.2-56, 16.2-57, 16.2-58, 16.2-59, 16.2-60, 16.2-62, 16.2-71, 16.2-75 and 16.2-76 of the Code of the City of Lynchburg be and the same are hereby amended and reenacted; that sections 16.2-9 through 16.2-10, Article IV, Stormwater Pollution Prevention Plan Requirements containing Sections 16.2-53 through 16.2-54, and sections 16.2-58, 16.2-59 and 16.2-61 are added; and that sections 16.2-21 Computation Methodologies and 16.2-24 Nonstructural Measures are repealed, and that the amended, new and repealed sections be further amended and reenacted as follows:

Sec. 16.2-1. Purpose.

The purpose of this chapter is to reduce the adverse impacts of stormwater runoff from development sites in the City of Lynchburg to the greatest extent possible, by establishing minimum requirements and procedures to control the quantity and quality of stormwater runoff associated with land development. By converting more or less natural landscapes to sites with impervious surfaces, development can cause increases in the quantity and velocity of stormwater runoff and decreases in the water quality of stormwater runoff. Adverse impacts from development shall not be allowed to affect adjacent or downstream property owners. The Lynchburg City Council has determined that the lands and waters comprising the watersheds of the city are valuable and important natural resources, which provide subsistence for life. Therefore, it is in the public interest to establish requirements to regulate the discharge of stormwater runoff from land development projects as provided for in this chapter. The waters and waterways within the city are at times subjected to flooding. Such flooding is a danger to the lives and property of the public and is also a danger to the natural resources of the city. Land development tends to accentuate such flooding by increasing stormwater runoff, due to alteration of the hydrologic response of the watershed in changing from the undeveloped to the developed condition. The flooding produced by the development of real property contributes increased quantities of water-borne pollutants, and tends to increase channel erosion. Such flooding, erosion, and pollution constitute deterioration of the water resources of the City of Lynchburg and downstream communities. The adverse environmental effects of development can be limited by the regulation of stormwater runoff from such land development. Proper management of stormwater runoff will minimize damage to public and private property, reduce the effects of development on land and stream channel erosion, assist in the attainment and maintenance of water quality standards, reduce local flooding, and maintain as nearly as possible, the pre-development runoff characteristics of the area. Procedures provided in this document to reduce stormwater runoff will apply to any land-disturbing activity, as done by public and private entities in the City of Lynchburg.

Sec. 16.2-2. Title.

The provisions of this chapter shall constitute and be known as the “Lynchburg Stormwater Management Ordinance,” as authorized by the Virginia Stormwater Management Act Title ~~40.4~~ 62.1 Chapter ~~6~~ 3.1 Article ~~4.4~~ 2.3 of the Code of Virginia as amended through ~~1998~~ 2014.

Sec. 16.2-3. Authority.

(a) The provisions of this chapter are adopted pursuant to The Virginia Stormwater Management Act, Article ~~4.4 (Section 10.1-603.1 et seq.)~~ 2.3 (~~§62.1-44.15:27 et seq.~~) of Chapter ~~6~~ 3.1 of Title ~~40.4~~ 62.1, of the Code of Virginia, which enables counties, cities and towns to prepare and adopt a stormwater management program and implement the ordinance. The application of this chapter and the provisions expressed herein shall be the minimum stormwater management requirements and shall not be deemed a limitation or repeal of any other powers granted by the state statute.

(b) Except as specifically provided here in the stormwater management standards contained in this ordinance are based on the stormwater regulations adopted by the Commonwealth of Virginia and the Federal government.

Sec. 16.2-4. Program administration.

The City of Lynchburg ~~program~~ administrator or his/her designee shall be responsible for the coordination, administration and enforcement of the provisions of this chapter.

Sec. 16.2-5. Scope of chapter.

~~(a) For land development projects that disturb five thousand (5,000) square feet or more of land area, no person shall develop any land for residential, commercial, industrial or institutional use without having provided for appropriate stormwater management measures that control or manage stormwater runoff quality, quantity, and velocity as provided within this article, except those development activities exempted in accordance with Sec. 16.2-9(c)2, 16.2-9(c)3, 16.2-9(c)4, 16.2-9(c)5, 16.2-9(c)6, 16.2-9(c)7 and 16.2-9(c)8. A VSMP authority permit is only required for projects that disturb one acre or more of land or are part of a common plan of development, except as provided in Sec. 16.2-9(b).~~

~~(b) Notwithstanding any other provisions of this chapter, the following development activities are exempt from the requirements of providing stormwater management.~~

~~(1) Agricultural land management activities such as tilling, planting or harvesting of agricultural, horticultural, or forest crops.~~

~~(2) Land development projects that disturb less than one thousand (1,000) five thousand (5,000) square feet of land area.~~

~~(3) Single family residences and residential subdivisions of less than five (5) lots and containing no new street construction; however, an agreement in lieu of plan is required.~~

~~(4) Additions or modification to existing single family detached residential structures.~~

~~(5) Permitted surface or deep mining operations and projects, or oil and gas operations and projects conducted under the provisions of Title 45.1 of the Code of Virginia.~~

~~(6) Linear development projects, provided that (i) less than five thousand (5,000) square feet of land will be disturbed per outfall or watershed, (ii) there will be insignificant increases in peak flow rates, and (iii) there are no existing or anticipated flooding or erosion problems downstream of any discharge point.~~

Sec. 16.2-8. Definitions.

Unless specifically defined below, words or phrases used in this chapter shall be interpreted so as to give them the meaning they have in common usage and to give this chapter its most reasonable application.

~~(1) "Adequate channel" means a channel that will convey the designated storm event without overtopping the channel banks nor causing erosive damage to the channel bed or banks.~~

(1) "Administrator" means the VSMP authority including the City of Lynchburg department or staff person responsible for administering the VSMP on behalf of the locality.

(2) "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.

(3) "Applicant" means any person submitting an stormwater management plan for approval. application for a permit or requesting issuance of a permit under this Ordinance.

~~(4) "Best management practice (BMP)" means schedules of activities, prohibitions of practices, including both structural and nonstructural practices, maintenance procedures, and other management practices to prevent or reduce the pollution of surface waters and groundwater systems from the impacts of land-disturbing activities. a structural or nonstructural practice, which is designed to reduce the impacts of development on surface and groundwater systems.~~

~~(5) "Board" means the Virginia Soil and Water Conservation Board State Water Control Board, created under Sec. 10.1-502, Code of Virginia.~~

(6) "Channel" means a natural or manmade waterway.

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

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

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

(10) "Control measure" means any best management practice or stormwater facility, or other method used to minimize the discharge of pollutants to state waters.

~~(6) "Critical hydraulic location" means a location with an extreme in one or more physical parameters such that if a design condition is met at that location then that same design condition will also be met at other nearby locations. For example, some critical hydraulic locations could be steepest slope, flattest slope, narrowest constriction, greatest flow rate, highest velocity, etc. Critical hydraulic locations can extend downstream until the total drainage area is greater than one hundred (100) times the project drainage area.~~

(11) "Department" means the Department of Environmental Quality.

~~(712)~~ “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. a tract of land developed or to be developed as a unit under single ownership or unified control, which is to be used for any business or industrial purpose or is to contain five (5) or more residential dwelling units.

(813) “Disturbed area” means all ground surface area which will be physically impacted by construction activities, including material storage areas and adequate vehicular access routes to all construction activities. No construction activity including material storage and vehicle access will be permitted outside the area designated as ‘disturbed area’ on the approved plan. If use of such area is desired, a plan revision must be submitted for review and approval prior to such use.

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

~~(4015)~~ “Floodplain” means ~~those areas adjoining a river, stream, those areas adjacent to a channel, river stream, channel or lake which will be inundated by flooding~~ other water body that is susceptible to being inundated by water normally associated with the 100-year flood or storm event. This includes, but is not limited to, the floodplain designated by the Federal Emergency Management Agency.

(16) “General permit” means the state permit titled general permit for discharges of stormwater from construction activities found in Part XIV (4VAC50-60-1100 et seq.) at 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.

~~(4417)~~ “Illicit discharge” means ~~a discharge coming from any land use that is not composed entirely of stormwater~~ any discharge to a municipal separate storm sewer system that is not composed entirely of stormwater and entering the stormwater management system, except discharges pursuant to a Virginia Pollutant Discharge Elimination System (VPDES) permit. This definition shall not include the discharges listed in Sec. 16.2-71(b) unless the city identifies such discharges as sources of pollutants to state waters.

(4218) “Impervious cover” means a surface composed of ~~any~~ material that significantly impedes or prevents natural infiltration of water into soil. For the purposes of billing stormwater utility fees as provided in chapter 16.3 of city code, impervious surfaces include, but are not limited to, roofs, buildings, streets, parking areas, and any concrete, asphalt, or compacted gravel surface.

(4319) “Infiltration facility” means a stormwater management facility, which temporarily impounds runoff and discharges it via infiltration through the surrounding soil. While an infiltration facility may also be equipped with an outlet structure to discharge impounded runoff, such discharge is normally reserved for overflow and other emergency conditions. Since an infiltration facility impounds runoff only temporarily, it is normally dry during non-rainfall periods. Infiltration basin, infiltration trench, infiltration dry well, and porous pavement shall be considered infiltration facilities.

(4420) “Inspection” means an on-site review of the project's compliance with the ~~approved plan~~ permit or state permit, the local stormwater management program, and any applicable design criteria, or an on-site review to obtain information or conduct surveys or investigations necessary in the implementation of this chapter.

(4521) “~~Land development disturbance~~” or “~~land development project land-disturbing activity~~” means a manmade change to ~~or construction on~~, the land surface that potentially changes its runoff characteristics including clearing, grading, or excavation except that the term shall not include those exemptions specified in Section 16.2-9 of this chapter.

(4922) “Layout” means a conceptual drawing sufficient to provide for the specified stormwater management facilities required at the time of approval.

~~(4623)~~ “Linear development project” means a land-development project -disturbing activity that is linear in nature such as, but not limited to the construction of (i) electric and telephone utility lines and natural gas pipelines, water, sewer, storm sewer, natural gas or other utility transmission lines; (ii) tracks, rights-of-way, bridges, communication facilities or other related structures of a railroad company; or (iii) streets, roads, or highways reconstruction projects; (iv) construction of stormwater channels and stream restoration activities; and water and sewer lines. Private subdivision roads or streets shall not be considered linear development.

(4724) “Local stormwater management program” or “local program” means a statement of the various methods adopted by this chapter and implemented by the city of Lynchburg to manage the runoff from land development projects with provisions to require the control of post-development stormwater runoff rate of flow and may include such items as local ordinances, policies and guidelines, technical materials, inspections, enforcement and evaluation.

~~(18)~~ “New impervious area” means ~~any man-made change which creates an impervious surface from a previously pervious surface or from a previously impervious surface during which bare earth or permeable base is exposed. This does not include repaving of a parking lot, but does include a parking lot expansion, or removal of a parking lot and its replacement with some other impervious cover.~~

(25) “Minor modification” means, for the purposes of this chapter, minor modification or amendment of an existing state permit before its expiration for the reasons listed at 40 CFR 122.63 and as specified in 9VAC25-870-640. Minor modification for the purposes of this chapter also means other modifications and amendments not requiring extensive review and evaluation including, 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 state permit modification or amendment does not substantially alter state permit conditions, substantially increase or decrease the amount of surface water impacts, increase the size of the operation, or reduce the capacity of the facility to protect human health or the environment.

(4926) “Onsite stormwater management facilities” means facilities, which are designed to control stormwater runoff emanating from a specific site, at the specific site.

(27) "Operator" means the owner or operator of any facility or activity subject to regulation under this ordinance.

~~(2028)~~ “Percent impervious” means the impervious area within the site divided by the total area of the site multiplied by one hundred (100).

(29) "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, and which may only be issued after evidence of general permit coverage has been provided by the Department.

(30) "Permittee" means the person to whom the VSMP Authority Permit is issued.

~~(2431)~~ “Person” means any individual, partnership, firm, association, ~~joint venture~~, public or private corporation, ~~trust, estate, commission, board, public or private institution, utility, cooperative~~, city, town or other political subdivision of the Commonwealth, state or political subdivision of a state, governmental body, including federal, state or local entity as applicable, any interstate body or any other legal entity.

~~(2232)~~ “Planning area” means a designated portion of the parcel on which the land development project is located. Planning areas shall be established by delineation on a master plan. Once established, planning areas shall be applied consistently for all future projects.

~~(2333)~~ “Plan approving authority” refers to the administrative person or body responsible for the review and approval of land development and stormwater management in the jurisdiction in which the project is located.

(2434) "Pollution prevention plan" means a stand-alone management document that provides information on the facility operations that directly or indirectly produce waste or use toxic substances. This written plan will record the toxic substance use, emissions, and waste from current work practices, outline potential pollution prevention opportunities and provide specific performance goals including a schedule for implementing these pollution prevention activities.

(2535) "Post-development" refers to 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.

(2636) "Pre-development" refers to the land use conditions that exist at the time that plans for the land development are submitted for approval. Where phased development or plan approval occurs (preliminary grading, roads and utilities, etc.); the existing land use conditions at the time the first item/phase is submitted shall establish pre-development conditions.

~~(27) "Program administrator" means the person or persons responsible for administering and enforcing this stormwater management.~~

(2837) "Regional stormwater management facility" or "regional facility" means a facility or series of facilities designed to control stormwater runoff from a specific contributing watershed area, although only portions of the watershed may experience land development.

(2938) "Regional stormwater management plan" or "regional plan" means a document containing material describing how runoff from open space, existing development and future planned development areas within a watershed will be controlled by coordinated design and implementation of regional stormwater management facilities.

(3039) "Runoff" means stormwater runoff.

(40) "Regulations" means the Virginia Stormwater Management Program Regulations (9VAC25-870 et seq.) as amended.

(3441) "Sanitary sewer system" means the pipelines, conduits, pumping stations, force mains, and other structures, devices, appurtenances, and facilities for collecting and conveying domestic, commercial and industrial sanitary wastewater.

(3242) "Site" means the parcel of land or water area where any facility or land-disturbing activity is physically being developed, or a planning area in which the land development project is 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.

(43) "State" means the Commonwealth of Virginia.

(44) "State Board" means the Virginia State Water Control Board.

(45) "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 a municipal separate storm sewer system (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.

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

~~(3347) "State waters" means all waters, on the surface or under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands.~~

(3448) "Storm sewer system" means stormwater management system.

(3549) "Stormwater" or "~~stormwater runoff~~" means that portion of precipitation that flows is discharged across the land surface or through conveyances due to gravity as a direct result of a rainfall event or series of events to one or more waterways and that may include stormwater runoff, snow melt runoff, surface runoff and drainage.

(3650) "Stormwater management" is the design and use of structural or nonstructural practices to achieve the responsible discharge of stormwater runoff as defined by the requirements of this ordinance.

(3751) "Stormwater management facility" or "stormwater facility" means a device that controls or conveys stormwater runoff or changes the characteristics of that runoff including, but not limited to, the quantity, quality, period of release or velocity of flow.

(3852) "Stormwater management plan" or "plan" means a document describing how a land development project shall comply with the requirements of this chapter.

(3953) "Stormwater management system" means one of or a series of structural and non-structural stormwater management facilities and best management practices.

(54) "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.

(4055) "Subdivision" means the division of a parcel of land into five (5) or more lots or parcels of less than five (5) acres each for the purpose of transfer of ownership or building development, or, if a new street is involved in such division, any division of a parcel of land. The term includes resubdivision and, when appropriate to the context, shall relate to the process of subdividing or to the land subdivided.

(5256) "Virginia Stormwater Management Act means Article 2.3 (§ 62.1-44.15:24 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia.

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

(58) "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.

(59) "Virginia stormwater management program" or "VSMP" means a program approved by the State Board after September 13, 2011, that has been established by a locality to manage the quality and quantity of runoff resulting from land-disturbing activities and shall include such items as local ordinances, rules, permit requirements, annual standards and specifications, policies and guidelines, technical materials, and requirements for plan review, inspection, enforcement, where authorized in this article, and evaluation consistent with the requirements of this article and associated regulations.

(60) "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.

(4161) "Watershed" means the total drainage area contributing runoff to a single point a defined land area drained by a river or stream, karst system, or system of connecting rivers or streams such that all surface water within the area flows through a single outlet. In karst areas, the karst feature to which the water drains may be considered the single outlet for the watershed.

16.2-9 Stormwater Permit Requirement; Exemptions.

- (a) Except as provided herein, no person may engage in any land-disturbing activity until a stormwater management plan or an executed agreement in lieu of a stormwater management plan and a VSMP authority permit, if such permit is required, has been issued by the administrator, in accordance with the provisions of this ordinance.
- (b) For construction activity involving a single-family detached residential structure, within or outside a common plan of development or sale, projects must adhere to the requirements of General Permit for Discharges of Stormwater from Construction Activities but neither a registration statement nor payment of the Department's portion of the statewide permit fee shall be required for coverage under the permit.
- (c) Notwithstanding any other provisions of this ordinance, the following activities are exempt, unless otherwise required by federal law:
 - (1) Land disturbing activities that disturb less than one acre of land that are not part of a larger common plan of development or sale that is one acre or greater of disturbance;
 - (2) Permitted surface or deep mining operations and projects, or oil and gas operations and projects conducted under the provisions of Title 45.1 of the Code of Virginia;
 - (3) 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 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.) of Title 10.1 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 Article 9 of Chapter 11 of Title 10.1 of the Code of Virginia;
 - (4) 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 detached residential structures;
 - (5) Discharges to a sanitary sewer or combined sewer system;
 - (6) Activities under a state or federal reclamation program to return an abandoned property to an agricultural or open land use;
 - (7) Routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original construction of the project. The paving of an existing road with a compacted

or impervious surface and reestablishment of existing associated ditches and shoulders shall be deemed routine maintenance if performed in accordance with this 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 thirty (30) days of commencing the land-disturbing activity.

16.2-10 Establishment of a stormwater management program

(a) Pursuant to § 62.1-44.15:27 of the Code of Virginia, the City of Lynchburg hereby establishes a Virginia stormwater management program for land-disturbing activities and adopts the applicable regulations that specify standards and specifications for VSMPs promulgated by the State Board for the purposes set out in Section 16.2-1 of this Ordinance. The City of Lynchburg hereby designates the ESC Program Administrator or designee as the Administrator of the Virginia stormwater management program.

(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 general permit registration statement;

(2) An erosion and sediment control plan approved in accordance with the City of Lynchburg's erosion and sediment control ordinance as found in City Code Chapter 16.1; and

(3) A stormwater management plan approved in accordance with section 16.2-20 of this ordinance.

(c) No VSMP authority permit shall be issued until evidence of general permit coverage is obtained.

(d) No VSMP authority permit shall be issued until the fees required to be paid pursuant to section 16.2-56, are received, and a reasonable performance bond required pursuant to section 16.2-42 of this ordinance has been submitted.

(e) No VSMP authority permit shall 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 approved permit.

(f) No grading, building or other local permit shall be issued for a property unless a VSMP authority permit has been issued by the administrator.

Secs. 16.2-11—16.2-19. Reserved.

ARTICLE II. DESIGN CRITERIA

Sec 16.2-20 Technical criteria

~~(a) An evaluation shall be performed for each proposed land development project not exempted from this chapter as provided in 16.2-5(b) to assure compliance with state law and the city ordinance concerning stormwater management. To protect the quality and quantity of state water from the potential harm of unmanaged stormwater runoff resulting from land-disturbing activities, the City of Lynchburg hereby adopts the technical criteria for regulated land-disturbing activities set forth in Part II B of the regulations, as amended, expressly to include 9VAC25-870-63 [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 project]; and, 9VAC25-870-85 [stormwater management impoundment structures or facilities], which shall apply to all land-disturbing activities regulated pursuant to this ordinance, except as provided for in 9VAC25-870-48 or as expressly set forth in subsection (b) of this section.~~

(b) Ordinance applicability thresholds

~~(i) Neither stormwater quality nor quantity control shall be required for projects with new impervious cover of less than one thousand (1,000) square feet.~~

~~(ii) For projects with new impervious cover between one thousand (1,000) and five thousand (5,000) square feet, stormwater management shall be achieved through new landscaping at the rate of one (1) large shrub for every three and one half (3.5) feet of new building exterior perimeter and one (1) ornamental tree for every twenty (20) feet of new building exterior perimeter.~~

~~(iii) Both water quality and quantity control shall be required for projects with new impervious cover greater than or equal to five thousand (5,000) square feet.~~

	<u>Residential</u>	<u>Commercial/Industrial</u>
<u>Stormwater plan not required if ...</u>	Single-family dwelling OR Residential subdivisions containing less than 5 lots and no new street construction	< 1,000 ft ² of new impervious area OR < 5,000 ft ² of new impervious area if landscaping is planted and the site has an adequate receiving channel
<u>Stormwater plan required if ...</u>	Single-family subdivision with 5 or more lots OR Single-family subdivision with new street construction OR Construction of multi-family units or amenities exceed 5,000 ft ² of new impervious area	Construction of commercial or industrial building or amenities exceeds 5,000 ft ² of new impervious area

Until June 30, 2019, any land-disturbing activity for which a currently valid proffered or conditional zoning plan, preliminary or final subdivision plat, preliminary or final site plan or zoning with a plan of development, or any document determined by the locality as being equivalent thereto, was approved by a locality prior to July 1, 2012, and for which no coverage under the General Permit for Discharges of Stormwater from Construction Activities has been issued prior to July 1, 2014, shall be considered grandfathered by the VSMP authority and

shall not be subject to the technical criteria of Part II B, but shall be subject to the technical criteria of Part II C [9VAC25-870-93 through VAC25-870-99] for those areas that were included in the approval, provided that the VSMP authority finds that such proffered or conditional zoning plan, preliminary or final subdivision plat, preliminary or final site plan or zoning with a plan of development, or any document determined by the locality as being equivalent thereto, (i) provides for a layout and (ii) the resulting land-disturbing activity will be compliant with the requirements of Part II C [9VAC25-870-93 through VAC25-870-99]. In the event that the locality-approved document is subsequently modified or amended in a manner such that there is no increase over the previously approved plat or plan in the amount of phosphorus leaving each point of discharge of the land-disturbing activity through stormwater runoff, and such that there is no increase over the previously approved plat or plan in the volume or rate of runoff, the grandfathering shall continue as before.

(c) All stormwater facility design, including hydrologic, hydraulic, water quality, and velocity components, must be verified with submitted engineering calculations, in accordance with the procedures outlined in the latest editions of the Virginia stormwater management handbook, the Virginia erosion and sediment control handbook, and the City of Lynchburg manual of specifications and standard details, including all appendices, or other methods approved by the city's plan approving authority. Until June 30, 2019, for locality, state, and federal projects for which there has been an obligation of locality, state, or federal funding, in whole or in part, prior to July 1, 2012, or for which the department has approved a stormwater management plan prior to July 1, 2012, such projects shall be considered grandfathered by the VSMP authority and shall not be subject to the technical criteria of Part II B, but shall be subject to the technical criteria of Part II C [9VAC25-870-93 through VAC25-870-99] for those areas that were included in the approval.

(d) All design calculations must be submitted in formats as specified in the City of Lynchburg manual of specifications and standard details, and by the central Virginia erosion and sediment control committee. For land-disturbing activities grandfathered under subsections A and B of this section, construction must be completed by June 30, 2019, or portions of the project not under construction shall become subject to the technical criteria of Part II B.

(e) For proposed residential, commercial, and/or industrial subdivisions, these stormwater management criteria shall be applied to the land development as a whole, excluding any previously developed parcel(s) which have no new impervious area; individual lots in new subdivisions shall not be considered separate land development projects, but rather the entire subdivision shall be considered a single land development project. Hydrologic parameters which reflect the ultimate land development shall be used in all engineering calculations. In cases where governmental bonding or public debt financing has been issued for a project prior to July 1, 2012, such project shall be subject to the technical criteria of Part II C [9VAC25-870-93 through VAC25-870-99].

(f) Stormwater management facilities implemented prior to the date of the adoption of this ordinance shall be maintained in accordance with the stormwater management regulations that were in effect at the time the property on which the facilities are located was developed. Except where specifically required by federal, state or local laws or regulations, it is not the intent of this ordinance to require existing stormwater management facilities that were constructed under prior regulations to be upgraded until the property for which such facilities were constructed is developed or redeveloped to such an extent that it triggers the applicability thresholds set forth in section 16.2-20(b). Both water quality and quantity control shall be required for projects with new impervious cover greater than or equal to five thousand (5,000) square feet;

(g) Construction of stormwater management facilities or modifications to channels shall comply with all applicable laws and regulations. Evidence of approval of all necessary permits shall be presented. Nothing in this section shall preclude an operator from constructing to a more stringent standard at their discretion.

(h) The design of impounding structures shall be checked by a design professional certified to practice in the Commonwealth of Virginia for structural integrity and floodplain impacts for the one hundred (100)-year storm event.

~~(i) Outflows from storm water management facilities shall be discharged to an adequate channel or an adequate stormwater conveyance system. Complete calculations and a narrative shall be included on the plan. Verification of channel adequacy should include the following:~~

~~(1) Channel adequacy shall be checked at all critical locations, as determined by the plan approving authority, downstream of the discharge as far as the point where the disturbed area represents less than one percent of the contributing watershed.~~

~~(2) The channel lining material shall be evaluated to determine its ability to withstand the design velocity as found in Table 5-22 of the Virginia erosion and sediment control handbook, 1992 edition and other published materials as approved by the plan approving authority.~~

~~(3) For natural channels, relative elevations should be taken along the channel length at the channel cross-sections in order to determine the average longitudinal slope of the channel.~~

~~(4) For enclosed conduits, a submitted hydraulic grade line calculation should verify that the flow is contained within the system during the design event.~~

~~(5) The necessary construction easements to accomplish the proposed design shall be required.~~

~~(6) Permanent drainage easements shall be dedicated to the city to permit reasonable access for maintenance of all stormwater facilities which are to become public property. A stormwater maintenance agreement shall be required for all stormwater management facilities which shall remain private property. Private drainage easements shall be provided for maintenance access to all stormwater facilities that will be located on private property but will not be owned by the entity directly responsible for maintenance.~~

~~(7) Determination of the size and capacity of the drainage system shall be based on the planned development and existing development within the watershed.~~

~~(8) The drainage system shall be adequate for both off-site and on-site surface waters and properties over which the surface waters are conveyed shall not be adversely affected.~~

~~(9) Concentrated surface waters shall not be discharged on adjoining property, unless an easement expressly authorizing such discharge has been granted by the owner of the affected land or unless the discharge is into a natural watercourse or other appropriate discharge point as set forth above.~~

~~(i) Velocity dissipaters shall be placed at the outfall of all stormwater discharge points as necessary to provide a non-erosive velocity of flow from the outfall into an adequate channel. Conveyance channels shall be designed to provide a non-erosive surface for designed flows. Riprap shall only be used when protection of the channel geometry and lining cannot otherwise be achieved.~~

~~(j) Suitable safety measures should be incorporated into the design of all stormwater management facilities. These may include but are not limited to, safety ledges, fencing, warning signs, anti-vortex devices, stadia rod indicating depth at the lowest point, and outlet structures designed to limit public access. The plan approving authority reserves the right to require safety measures consistent with local policies for public safety.~~

~~(k) If stormwater management facilities are provided through which water passes at times other than following rainfall, documented provisions shall be made to pass existing flows. It is necessary for detention requirements to be met, despite the necessity of passing certain low flows. This applies to all onstream or online stormwater management facilities.~~

~~(l) All stormwater management facilities shall be designed to function without manual, electrical or mechanical controls, unless authorized in advance in writing by the plan approving authority.~~

~~(m) Detention facilities shall be designed to minimize propagation of insects, particularly mosquitoes.~~

~~(n) Outlets for all stormwater management facilities shall be designed to impede the downstream migration of trash and debris into natural and man-made channels.~~

~~Sec. 16.2-21. Computation methodologies.~~

~~(a) Stormwater quality: All stormwater quality control facilities shall meet the requirements of either a) technology-based water quality criteria as documented in the Virginia stormwater management handbook, b) performance-based water quality criteria as documented in the Virginia stormwater management handbook, or c) other criteria developed and published by the city department of community development.~~

~~(b) Stormwater quantity:~~

~~(1) Stormwater design events~~

~~(i) For stormwater detention, the post-development peak runoff rate from a two (2)-year storm and a ten (10)-year storm, considered individually, shall not exceed their respective pre-development rates.~~

~~(ii) All components of stormwater conveyance systems, including pipes, inlets, gutters, and open channels or swales shall be designed to convey a ten (10)-year rainfall event.~~

~~(iii) All structures conveying a perennial flow shall be designed to convey a twenty five (25)-year rainfall event.~~

~~(iv) All structures conveying the flow of a designated floodplain shall be designed to convey a one hundred (100)-year rainfall event.~~

~~(v) All impoundments, including detention and retention ponds, shall be designed to withstand a one hundred (100)-year rainfall event and shall meet all other applicable Virginia dam safety requirements.~~

~~(vi) Design storms shall be based on either a) type II, a twenty-four (24)-hour storm using the rainfall distribution recommended by the U.S. Soil Conservation Service and U.S. Soil Conservation Service calculation methods (TR-55 or TR-20), b) the rational method, or c) another calculation method, only with prior approval by the plan approving authority.~~

~~(2) For purposes of computing runoff, all lands in the site shall be assumed prior to development to be in good condition if the lands are pastures, lawns, or parks, with good cover if the lands are woods, or with conservation treatment if the lands are cultivated; regardless of conditions existing at the time of computation. Runoff coefficient values should be assigned according to Table 5-2 of the Virginia erosion and sediment control handbook.~~

~~(3) All stormwater management facilities which incorporate storage shall be verified by submitted routing calculations.~~

~~Sec. 16.2-22¹. Regional stormwater management.~~

~~Where possible all subdivisions, especially those for commercial and industrial use, shall employ a regional detention facility for all lots within the development. If regional detention is not a viable option, as determined by the plan approving authority, a combination of non-structural, structural practices and/or on-site detention shall be designed to reduce the runoff peak on a lot-by-lot basis. If a regional stormwater management plan has been adopted by the City of Lynchburg for the watershed in which the proposed land development is located, the applicant shall comply with the requirements of the regional watershed plan.~~

~~Sec. 16.2-23². Floodplain management.~~

(a) A study will be required for all new construction that provides a net increase in impervious area of the site and/or filling within the floodplain [as determined by the most recent floodplain study adopted by the City of Lynchburg]. This study shall meet the requirements as specified in Sec. 35.1-45, Flood Hazard Districts.

(b) In addition, such construction shall be in compliance with all applicable regulations under the national flood insurance program and code of the City of Lynchburg.

~~Sec. 16.2-24. Nonstructural measures.~~

~~It is not necessary that basic requirements for water quality and quantity control be satisfied solely by means of structural methods. Non-structural practices including, but not limited to, cluster land use development, low impact development, minimization of impervious surfaces, open space acquisition, floodplain management, and protection of wetlands, steep slopes, riparian buffers, and vegetation should be coordinated with structural requirements. Approval of non-structural practices can be granted at the discretion of the plan approving authority as an alternative to individual structural practices. The option of non-structural practices shall be justified by documentation.~~

~~Secs. 16.2-25~~3~~—16.2-35. Reserved.~~

ARTICLE III. STORMWATER MANAGEMENT PLAN REQUIREMENTS

Sec. 16.2-36. Plan required.

(a) Except as provided for in section 16.2-5(b) of this chapter, no grading land-disturbing, building, or other permit shall be issued for land development unless a stormwater management plan has been submitted to and approved by the ~~City of Lynchburg~~ administrator or his designee.

(b) The applicant shall demonstrate that the project meets the criteria set forth in this chapter including the technical criteria in Article II of this chapter which shall apply to the entire land-disturbing activity. Individual lots in new residential, commercial, or industrial developments shall not be considered separate land-disturbing activities.

(c) A stormwater management plan shall consider all sources of surface runoff and all sources of subsurface and groundwater flows converted to surface runoff.

(ed) Failure of the applicant to demonstrate that the project meets the criteria set forth in this chapter shall be reason to deny the applicant's underlying application for approval.

(de) Planning, design, and approach to storm water management in the City of Lynchburg shall be in substantial conformance with this chapter. (Ord. No. O-01-079, 4-24-01, eff. 5-1-01)

Sec. 16.2-37. Plan submission.

(1) The applicant shall submit, to the plan approving authority, the material required in a stormwater management plan in accordance with Section 16.2-38 of this chapter.

(2) Five (5) copies of the stormwater management plan shall be submitted.

(3) The fee specified in Section 16.2-56 of this chapter shall accompany the stormwater management plan. (Ord. No. O-01-079, 4-24-01, eff. 5-1-01; Ord. No. O-07-047, 4-10-07)

Sec. 16.2-38. Plan contents.

The following information, where applicable, shall be required for each proposed project subject to review under this ordinance. Stormwater management plans (maps, plans, designs and calculations) shall be appropriately sealed and signed by a professional in adherence to all minimum standards and requirements pertaining to the practice of that profession in accordance with Chapter 4 (54.1-400 et seq.) of Title 54.1 of the Code of Virginia and attendant regulations.

(a) General:

(1) General description of the project.

(2) General description of the erosion and sediment controls.

(3) Information on type/location of stormwater discharges, information on features to which stormwater is being discharged, including surface waters or karst features if present, and predevelopment/postdevelopment drainage areas.

(34) General description of temporary and permanent stormwater management facilities and the mechanism through which the facilities will be operated and maintained after construction is complete.

(5) Information on proposed stormwater management facilities, including (i) type of facilities; (ii) location, including geographic coordinates; (iii) acres treated; and (iv) surface waters or karst features into which the facility will discharge

(46) Project schedule and narrative, including a sequence of construction.

(57) Names and contact information, including email addresses of the project owner, and the submitting agent.

(68) The acreage of the disturbed area of the project.

(79) An estimate of the amount of security for a bond or other instrument based on current construction costs; however, the city may use an average cost to determine this amount. The city shall not be required to use this estimated amount as its bond requirement.

(b) Technical:

(1) Map or maps of the project area showing:

a. The watershed in which the project site is located using hydrologic unit maps (as found in the design protocol manual) and the boundary of the drainage area tributary to the project site using U.S.G.S. United States Geological Survey quadrangle map or City of Lynchburg topography for offsite areas.

b. Contributing drainage areas:

bc. The location of the project relative to significant features in the general surroundings such as roads, adjacent land uses, property lines, existing manmade structures and public facilities.

ed. Existing contours at two (2)-foot intervals for the on-site area.

de. Existing streams, lakes, ponds, culverts, ditches, existing drainage swales, wetlands, other water bodies, floodplains, forested areas and other physical features within or adjacent to the project area.

ef. Unique, unusual, or environmentally sensitive features that provide particular opportunities or constraints for development.

g. Soil types, geologic formations if karst features are present in the area, forest cover and other vegetative areas.

h. Sufficient information on adjoining parcels to assess impacts of stormwater from the site on these parcels;

fi. Current land use including existing structures, roads, locations of existing and proposed known utilities, sewers and water lines and easements.

gj. General alterations in the natural terrain, cover, and grade including lawns and other landscaping.

hk. The location of proposed buildings, roads, parking areas, utilities and other permanent structures.

il. Proposed contours at two (2)-foot intervals.

jm. All stormwater management facilities including details, plan, profile, and cross-sections.

kn. If any infiltration facilities are proposed, the locations of existing and proposed wells and septic system drain fields must be shown.

lo. Limits of construction, clearing and grading and proposed drainage patterns on site.

p. Proposed land use with tabulation of percentage of surface area to be adapted to various uses, including but not limited to planned locations of utilities, roads and easements

Sec. 16.2-39. Reports.

(a) Comprehensive hydrologic, hydraulic and water quality design calculations, including all assumptions and criteria, for the pre-development and post-development conditions for the design storms specified in Article II of this chapter.

(b) A soils report/geotechnical analysis and boring logs, for infiltration facilities.

Sec. 16.2-40. Plan approval.

~~(a) A maximum of thirty (30) calendar days from the receipt of an application will be allowed for preliminary review of the application for completeness. During this period, the application will be accepted for review, which will begin the thirty (30) day review period, or rejected for incompleteness. The applicant will be informed in writing of the information necessary to complete the application. The VSMP authority shall~~ determine the completeness of a plan in accordance with 9VAC25-870-55, and shall notify the applicant of any determination, within 15 calendar days of receipt. Where available to the applicant, electronic communication may be considered communication in writing.

1. If within those 15 calendar days the plan is deemed to be incomplete, the applicant shall be notified in writing of the reasons the plan is deemed incomplete.

2. If a determination of completeness is made and communicated to the applicant within the 15 calendar days, an additional 60 calendar days from the date of the communication will be allowed for the review of the plan.

3. If a determination of completeness is not made and communicated to the applicant within the 15 calendar days, the plan shall be deemed complete as of the date of submission and a total of 60 calendar days from the date of submission will be allowed for the review of the plan.

4. The VSMP authority shall review, within 45 calendar days of the date of resubmission, any plan that has been previously disapproved.

~~(b) The thirty (30) sixty (60) day review period begins on the day the complete stormwater management plan is accepted for review. At this time, an acknowledgment letter will be sent to the applicant. During the thirty (30) sixty (60) day review period, the plan approving authority shall either approve or disapprove the plan and communicate the decision to the applicant in writing. Approval or denial shall be based on the plan's compliance with this chapter.~~

~~(c) A disapproval of a plan shall contain the reasons for disapproval.~~

~~(db) The applicant or any aggrieved party authorized by law may appeal the plan approving authority's decision of approval or disapproval of a stormwater management plan application within thirty (30) days after the rendering of such a decision, to the City of Lynchburg Circuit Court.~~

~~(ec) Judicial review shall be on the record previously established and shall otherwise be in accordance with the provisions of the administrative process act (Sec. 9-6.14:1 et seq. of the Code of Virginia).~~

Sec. 16.2-41. Conditions of plan approval.

Each approved stormwater management plan shall be subject to the following conditions:

(a) A stormwater management plan approved for a residential, commercial, or industrial subdivision shall govern the development of the individual parcels, including those parcels developed under subsequent owners.

(ab) The applicant shall comply with all applicable requirements of the approved plan and the local program and shall certify that all land clearing, construction, land development and drainage will be done according to the approved plan.

(bc) The land development project shall be conducted only within the limits of construction, clearing and grading specified in the approved plan.

(ed) The City of Lynchburg or its designee shall be allowed, after giving notice to the owner, occupier or operator of the land development project, to conduct periodic inspections of the project. The owner, occupier or operator shall be given the opportunity to accompany the inspector.

(de) No transfer, assignment or sale of the rights granted by virtue of an approved plan shall be made unless the transferee certifies agreement to comply with all obligations and conditions of the approved plan.

(ef) A set of certified as-built plans for the stormwater management facilities ~~or~~ and cover a letter from the design professional with the appropriate seal stating that the objectives of the design have been achieved by the facility as constructed shall be submitted to the City of Lynchburg upon completion of the project. Said as-builts shall include volume confirmation with supporting computations and include structural elevations and dimensions.

(fg) While the project is under bond, the person responsible for implementing the approved plan shall conduct monitoring and submit reports to ensure compliance with the approved plan and to determine whether the plan provides effective stormwater management.

Sec. 16.2-42. Performance bond required.

(a) All applicants shall submit to the City of Lynchburg a performance bond with surety, cash escrow, letter of credit, or such other legal arrangement acceptable to the city attorney, to ensure that measures could be taken by the city 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 the applicant by the approved stormwater management plan.

(b) If the City of Lynchburg takes such action upon such failure by the applicant, the city may collect from the applicant the costs of such action in excess of the amount of the security held.

(c) Within sixty (60) days of the completion of the requirements of the approved stormwater management plan, including necessary stabilization, the 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.

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

Sec. 16.2-43. Changes to an approved plan.

No changes may be made to an approved plan without review and written approval by the City of Lynchburg. Modifications to an approved stormwater management plan shall be allowed only after review and written approval by the administrator. The administrator shall have 60 calendar days to respond in writing either approving or disapproving such request. The administrator may also require amendments to an approved stormwater management plan, within a time prescribed by the administrator, to address any deficiencies noted during inspection. Upon the release of the land disturbance bond, any proposed changes to the site layout, increases in impervious area or alterations of stormwater conveyance systems, easements or facilities must be submitted to the plan approving authority of the City of Lynchburg for review and approval.

Article IV. Stormwater Pollution Prevention Plan Requirements

16.2-53. Plan Contents

- (a) The Stormwater Pollution Prevention Plan (SWPPP) 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 as specified by Section 9VAC25-870-54 and must also comply with the requirements and general information set forth in Section 9VAC25-880-70 of the general permit.
- (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 must be maintained by the operator 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 review in accordance with Section II of the general permit, either electronically or in hard copy.

16.2-54 Pollution Prevention Plan

(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. 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:

(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.

ARTICLE ~~IV~~ V. ENFORCEMENT AND FEES

Sec. 16.2-55. Exceptions.

(a) A request for an exception shall be submitted, in writing, to the ~~program~~ administrator. An exception from this chapter may be granted, provided that: (i) exceptions to the criteria are the minimum necessary to afford relief, and (ii) reasonable and appropriate conditions shall be imposed as necessary upon any exception granted so that the purpose and intent of this chapter is preserved.

(b) Economic hardship is not sufficient reason to grant an exception from the requirements of this chapter.

Sec. 16.2-56. Fees.

~~The fee structure for stormwater management plan review within the City of Lynchburg will be incorporated into the erosion and sediment control review fee as part of the department of community development's technical review committee process.~~

(a) An applicant shall pay the fees provided in Table 1 for initial issuance of general permit coverage and VSMP authority permit coverage. No more than 50% of the total fee to be paid by the applicant set out in Table 1 shall be due at the time a stormwater management plan or an initial stormwater management plan is submitted to the City of Lynchburg for review. The balance shall be paid prior to the issuance of coverage under the general permit. When a site or sites are 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 the their site or sites according to the following table.

Table 1: Fees for permit issuance

<u>Fee type</u>	<u>Total fee to be paid by Applicant (includes both VSMP authority and Department portions where applicable)</u>	<u>Department portion of "total fee to be paid by Applicant" (based on 28% of total fee paid*)</u>
<u>General / Stormwater Management - Small Construction Activity/Land Clearing (Areas within common plans of development or sale with land disturbance acreage less than 1 acre.)</u>	<u>\$290</u>	<u>\$81</u>
<u>General / Stormwater Management - Small Construction Activity/Land Clearing (Single family detached residential structure, within or outside a common plan of development or sale, with land disturbance acreage greater than one acre but less than five acres or areas with a land-disturbance acreage of less than one acre within a common plan of development or sale.</u>	<u>\$209</u>	<u>N/A</u>
<u>General / Stormwater Management - Small Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 1 acre and less than 5 Acres)</u>	<u>\$2,700</u>	<u>\$756</u>

<u>General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 5 acres and less than 10 acres)</u>	<u>\$3,400</u>	<u>\$952</u>
<u>General / Stormwater Management – Large Construction Activity/Land Clearing [Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 10 acres and less than 50 acres]</u>	<u>\$4,500</u>	<u>\$1,260</u>
<u>General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 50 acres and less than 100 acres)</u>	<u>\$6,100</u>	<u>\$1,708</u>
<u>General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 100 acres)</u>	<u>\$9,600</u>	<u>\$2,688</u>

* If the project is completely administered by the Department such as may be the case for a state or federal project or projects covered by individual permits, the entire applicant fee shall be paid to the Department.

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

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

<u>Type of Permit</u>	<u>Fee Amount</u>
<u>General / Stormwater Management – Small Construction Activity/Land Clearing (Areas within common plans of development or sale with land disturbance acreage less than 1 acre)</u>	<u>\$20</u>
<u>General / Stormwater Management – Small Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 1 and less than 5 acres)</u>	<u>\$200</u>
<u>General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 5 acres and less than 10 acres)</u>	<u>\$250</u>
<u>General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 10 acres and less than 50 acres)</u>	<u>\$300</u>
<u>General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 50 acres and less than 100 acres)</u>	<u>\$450</u>
<u>General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 100 acres)</u>	<u>\$700</u>

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

Table 3: Permit Maintenance Fees

<u>Type of Permit</u>	<u>Fee Amount</u>
<u>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 2.5 acres)</u>	<u>\$50</u>
<u>General / Stormwater Management – Small Construction Activity/Land Clearing (Areas within common plans of development or sale with land disturbance acreage less than 1 acre)</u>	<u>\$50</u>
<u>General / Stormwater Management – Small Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance equal to or greater than 1 acre and less than 5 acres)</u>	<u>\$400</u>
<u>General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 5 acres and less than 10 acres)</u>	<u>\$500</u>
<u>General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 10 acres and less than 50 acres)</u>	<u>\$650</u>
<u>General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 50 acres and less than 100 acres)</u>	<u>\$900</u>
<u>General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater 100 acres)</u>	<u>\$1,400</u>

General permit coverage maintenance fees shall be paid annually to the City of Lynchburg by the anniversary date of general permit coverage. 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.

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

(1) All persons seeking coverage under the general permit.

(2) All permittees who request modifications to or transfers of their existing registration statement for coverage under a general permit.

(3) Persons whose coverage under the general permit has been revoked shall apply to the department for an individual permit for discharges of stormwater from construction activities.

(4) Permit and permit coverage maintenance fees outlined in this section may apply to each general permit holder.

(e) No general permit application fees will be assessed to:

(1) Permittees who request minor modifications to general permits as defined in section 16.2-8.(25) 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 general permits are modified or amended at the initiative of the department, excluding errors in the registration statement identified by the administrator or errors related to the acreage of the site.

(f) 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 City of Lynchburg shall be entitled to all remedies available under the Code of Virginia in collecting any past due amount.

Sec. 16.2-57. Inspections and monitoring.

(a) The ~~program~~ administrator or designee shall ~~make regular inspections during all phases of construction of the stormwater management facilities.~~ inspect the land-disturbing activity during construction for:

(1) Compliance with the approved erosion and sediment control plan;

(2) Compliance with the approved stormwater management plan;

(3) Development, updating, and implementation of a pollution prevention plan; and

(4) Development and implementation of any additional control measures necessary to address a TMDL.

(b) The applicant shall notify the city forty-eight (48) hours prior to the commencement of any activity covered by this ordinance so that appropriate inspections can be made to insure compliance with this chapter.

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

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

(e) 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 his discharge on the quality of state waters, or such other information as may be necessary to accomplish the purposes of this ordinance.

(f) Post-construction inspections of stormwater management facilities required by the provisions of this ordinance shall be conducted by the administrator or any duly authorized agent of the Administrator pursuant to the City of Lynchburg's adopted and State Board approved inspection program, and shall occur, at minimum, at least once every five (5) years.

(eg) Inspection reports shall be maintained as part of the land development project file.

(h) In order to assure compliance with the provisions of this chapter, and all applicable city ordinances, state and federal laws, orders or regulations, the stormwater administrator or his agent shall have the right to inspect any property on which a stormwater maintenance facility is located, public or private, within the city at any reasonable time. In the event the stormwater administrator or his agent shall be denied access to property, the stormwater administrator or his agent may present sworn testimony to a magistrate or court of competent jurisdiction and if such sworn testimony establishes (i) probable cause that a violation of this ordinance has occurred, or (ii) that the stormwater administrator or his agent has been denied access to property as part of a routine inspection program, request that the magistrate or court grant the stormwater administrator or his agent an inspection warrant to enable the stormwater administrator or his agent to enter the property for the purpose of determining whether a violation of this ordinance exists. The stormwater administrator or his agent shall make a reasonable effort to obtain consent from the owner or occupant of the subject property prior to seeking the issuance of an inspection warrant under this section. It shall be a violation of this section for any person to deny the stormwater administrator or his agent access to any property after the stormwater administrator or his agent has obtained an inspection warrant from a magistrate or a court of competent jurisdiction for the inspection of such property. Nothing herein shall be construed to authorize the stormwater administrator or his agent to enter or inspect the interior portions of any structure situated on such property unless the inspection is reasonably necessary to verify the presence and character of a stormwater maintenance facility or control measure that the owner of the property claims to be installed therein.

Sec. 16.2-58. – Hearings by the city manager, or his designee.

(a) Any permit applicant or permittee, or person subject to the requirements of this chapter, who is aggrieved by a permit of enforcement decision of the city, may request in writing a hearing by the city manager, or his designee, provided a written request of a hearing is filed with the city manager, or his designee, within fifteen days of the incident giving rise to the request for a hearing.

(b) Within thirty calendar days after receiving a written request for a hearing, the city manager, or his designee, will meet with the person filing the request for a hearing.

(c) A record of the hearing shall be taken and retained by the city manager, or his designee, pending an appeal to the circuit court as provided in section 16.2-60. The record shall contain documentation of the date the hearing took place, the decision made, and the date the decision was provided to the person requesting the hearing.

(d) Within fifteen calendar days after the hearing takes place, the city manager, or his designee, shall issue a written decision in the matter and shall provide a copy of the decision to the person requesting the hearing. The written decision will be retained as part of the record.

(e) All hearings shall be in accordance with the process adopted by the city manager. The hearing before the city manager, or his designee, is not intended to be conducted like a court proceeding, and the rules of evidence do not apply to such hearing. The city manager, or his designee, shall have the discretion to determine the propriety of attendance of persons at the hearing, and the admissibility of evidence, so long as a fair and full opportunity is afforded to all parties for the presentation of their evidence.

(f) The time frames in these procedures, may be extended by the mutual agreement of the city manager, or his designee, and the person requesting the hearing.

(g) The decision of the city manager, or his designee, may be appealed to the circuit court as provided in section 16.2-60.

Sec. 16.2-59. – Appeals to circuit court.

(a) Any permit applicant or permittee, or person subject to the requirements of this chapter, who is aggrieved by a permit or enforcement decision of the city manager, or his designee, may file with the clerk of the circuit court a petition for the review of such decision. An appeal must be filed in writing with the clerk of the circuit court within thirty (30) days after a final decision is rendered by the city manager, or his designee, and must specify the grounds on which the appeal is based. The filing of the said petition shall stay the decision of the city manager, or his designee, pending the outcome of the appeal.

(b) Upon the presentation of such petition, the court shall allow a writ of certiorari to review the decision of the city manager, or his designee, and shall prescribe therein the time within which a return thereto must be made to the petition. A copy of the writ of certiorari shall be served upon the city manager. Within fifteen calendar days after the writ of certiorari is served upon the city manager, the city manager shall transmit to the clerk of the court: a copy of the city manager's, or his designee's, decision, a copy of the record, and the exhibits. The court, sitting without a jury, shall hear the appeal on the record transmitted by the city manager and such additional evidence as the court determines may be necessary to resolve any controversy as to the correctness of the record. The court, in its discretion, may receive such other evidence as the ends of justice require.

(c) The burden of proof shall be upon the party filing the appeal to designate and demonstrate that the decision of the city manager or his designee, was arbitrary and capricious, or contrary to the law. When the decision on review is to be made on the record, the duty of the court with respect to issues of fact shall be to determine whether there was substantial evidence in the record to support the city manager's, or his designee's, decision. The duty of the court with respect to the issues of law shall be to review the city manager's, or his designee's, decision de novo to determine if there was an error of law. Whether the fact issues are reviewed on the record submitted by the city manager, or a record made during a review action, the court shall take due account of the presumption of the validity of the city's ordinances, the experience and specialized competence of city staff, and the purposes of the basic laws, regulations, and ordinances under which the city has acted.

(d) A party shall be deemed to be an aggrieved party for the purpose of filing an appeal if (i) such party has suffered an actual or imminent injury which is an invasion of a legally protected interest and which is concrete and particularized, (ii) such injury is fairly traceable to the decision of the city and not the result of the independent action of some third party not before the court, and (iii) such injury will likely be redressed by a favorable decision by the court.

Sec. 16.2-~~5860~~. Maintenance agreement.

(a) A maintenance agreement, on a form prescribed by the City of Lynchburg, between the city and the owner of any permanent stormwater control facility shall be submitted and recorded prior to approval of the stormwater management plan required by this chapter. implemented prior to the release of any performance bond that may be required by the city for this facility.

(b) Responsibility for the operation and maintenance of stormwater management facilities, unless assumed by the city or other governmental agency, shall run with the land and 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 shall be made to pass the basic responsibility to successors in title. These arrangements shall designate for each parcel the property owner, governmental agency, or other legally established entity to be permanently responsible for maintenance.

(c) In the event that the stormwater management facilities are in need of maintenance or become a danger to public safety or public health, the responsible person shall be notified in writing, ~~advised of the corrective measures required,~~ and given a reasonable period of time to take necessary action. If the responsible person fails or refuses to perform such maintenance and repair, the city has the authority to perform the work and to recover the costs from the responsible person. Any costs, including interest, which remain unpaid, may be collected in the same manner as unpaid taxes are collected, and shall constitute a lien against the property, ranking on a parity with liens for unpaid taxes.

(d) To ensure proper performance of the stormwater management facility, the owner is responsible for inspecting the stormwater management facility on ~~a semi-~~ an annual basis and after any storm, which causes the capacity of the facility to be exceeded. More frequent inspections may be required if deemed necessary by the ~~program~~ administrator. The owner must file written record of inspections to the ~~program administrator~~ department of water resources within five (5) working days of the inspection. ~~Utilize the operation and maintenance checklist (appendix 3B) contained in the Virginia stormwater management handbook.~~

(e) The maintenance agreement submitted to the City of Lynchburg shall allow for the City to enter the property. Right of entry agreements or easements for the city shall be required from the applicant for purposes of inspection by the program administrator or designee shall. Said agreements or easements may also permit the city or designee to enter the property for the purpose of maintenance and repair should the responsible party not fulfill these duties-, shall provide for the submission of inspection and maintenance reports as required by the city, and shall be enforceable by all appropriate governmental parties.

Sec. 16.2-61. Maintenance of stormwater management facilities.

(a) Any property owner that has a stormwater management facility on his property, shall maintain such facility in a good operating condition. The maintenance of the stormwater management facility shall be in accordance with all applicable city and state requirements and regulations, and shall include but shall not be limited to the following:

(1) The filing of an annual inspection of the facility by a qualified inspector and the filing of an annual written inspection report with the City's stormwater administrator, describing the condition of the stormwater management facility. The annual inspection report shall be due by the end of each calendar year, and the inspection shall have been performed within two months prior to the date of the report. The report shall state the property's address, the owner's name, the inspection date, the inspector's name and qualifications, and shall describe any deficiencies and any required maintenance that is needed to bring the stormwater management facility into compliance with city and state requirements and regulations.

(2) The filing of a supplementary report on the remediation of any deficiencies identified in the annual inspection report; such supplementary report on remediation efforts shall be due within three months of the date of the inspection report.

(3) The removal and proper disposal of sediment when the flow or storage of the stormwater has been significantly restricted or reduced by sediment;

(4) The removal and proper disposal of trash, debris, loose brush and other growth from the stormwater management facility, as needed;

(5) The removal and proper disposal of any oil or grease which has accumulated within the stormwater management facility;

(6) The replacement and proper disposal of any chemical treatment media and any filter media which have ceased to function at design levels;

(7) The annual cutting of any brush and other woody growth on and around any embankment fill, and the stabilization of the banks of the stormwater management facility, as needed;

(8) The inspection, maintenance and repair of any fence installed around the stormwater management facility;

(9) Any necessary repairs to the dam, emergency spillway and any low spots in any stormwater retention pond; and

(10) All other repairs and improvements which are reasonably necessary to keep the stormwater management facility operating in an efficient, safe and sanitary manner.

(b) In the event that the stormwater management facilities are in need of maintenance or become a danger to public safety or public health, the property owner shall be notified in writing, and given a reasonable period of time to take necessary action. If the property owner fails or refuses to perform such maintenance and repair, the city has the authority to perform the work and to recover the costs from the property owner. Any costs, including interest, which remain unpaid, may be collected in the same manner as unpaid taxes are collected, and shall constitute a lien against the property, ranking on a parity with liens for unpaid taxes.

(c) For purposes of this chapter, "property owner" means the owner or owners of the freehold of the property or lesser estate therein, a mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, or lessee in control of the property.

Sec. 16.2-~~5962~~. Enforcement.

(a) ~~If it is the administrator determined~~s that there is a failure to comply with the VSMP authority permit conditions or determines there is an unauthorized discharge approved plan, notice shall be served upon the ~~applicant~~ permittee or person responsible for implementing the plan by registered or certified mail to the address specified in the application or plan certification, or by delivery at the land development site to the agent or employee supervising such activities.

(b) The notice shall specify the measures needed to comply with the ~~plan~~ permit conditions and shall specify the time within which such measures shall be completed.

(c) Upon failure to comply within the time specified, a stop work order may be issued or the permit or approval may be revoked and the applicant or person responsible for implementing the plan shall be deemed to be in violation of this ordinance.

(d) Any person who violates any provision of this ordinance shall be guilty of a misdemeanor and shall be subject to a fine or imprisonment for each violation, or both, as provided for in Section ~~40.1-603.14~~ 62.1-44.15:48 of the Code of Virginia.

(e) The ~~program~~ administrator may apply to the circuit court to enjoin a violation or a threatened violation of this chapter as provided for in Section ~~40.1-603.14~~ 62.1-44.15.48 of the Code of Virginia without the necessity of showing that an adequate remedy at law does not exist.

(f) Without limiting the remedies, which may be obtained in this section, the ~~program~~ administrator may bring a civil action against any person for violation of this chapter, or any condition of the permit or approval, or any provision of the local program. The action may seek to impose of a civil penalty of not more than thirty-two thousand, five hundred dollars (\$32,500) ~~two thousand dollars (\$2,000)~~ for each violation as provided for in Section ~~40.1-604.14~~ 62.1-44.15.48 of the Code of Virginia.

(g) In addition to any other remedy provided by this chapter, if the administrator determines there is a failure to comply with the provisions of this chapter, the administrator may initiate such ~~information~~ informal and/or formal administrative enforcement procedures in a manner authorized by this chapter and any applicable City-issued policies. Such procedures may include, but are not limited to:

- (i) Verbal Warning;
- (ii) Notices of corrective actions;
- (iii) Consent special orders and civil charges pursuant to subsection (h) below;
- (iv) Notices to comply;
- (v) Special and emergency special orders;

~~(g)~~ (h) With the consent of any person who has violated or failed, neglected or refused to obey this ordinance or any condition of the permit or approval or any provision of the local program, the ~~program~~ administrator may issue an order against or to such person, for the payment of civil charges for violations in specific sums, not to exceed the limit specified in subsection (f) of this section. Such civil charges shall be instead of any appropriate civil penalty, which could be imposed under subsection (f).

(i) Violations for which a penalty may be imposed under this Subsection shall include but not be limited to the following:

- (i) No state permit registration;
- (ii) No SWPPP;
- (iii) Incomplete SWPPP;
- (iv) SWPPP not available for review;
- (v) No approved erosion and sediment control plan;
- (vi) Failure to install stormwater BMPs or erosion and sediment controls;
- (vii) Stormwater BMPs or erosion and sediment controls improperly installed or maintained;
- (viii) Operational deficiencies;
- (ix) Failure to conduct required inspections;
- (x) Incomplete, improper, or missed inspections; and
- (xi) Discharges not in compliance with the requirements of Section 9VAC25-880-1170 of the general permit.

Secs. 16.2-603—16.2-69. Reserved.

ARTICLE V VI. STORMWATER POLLUTION CONTROL

Sec. 16.2-70. Purpose.

- (a) The 1987 amendments to the federal clean water act (CWA) required the United States environmental protection agency to establish national pollutant discharge elimination system (NPDES) requirements for municipal separate storm sewer systems (MS4). NPDES regulations require the city to reduce the flow of pollutants into waters of the United States through ordinance, permit, contract or other available means.
- (b) Pollutants discharged from the city's municipal separate storm sewer system (MS4) have an adverse impact upon the quality of receiving waters. Stormwater, and any other materials which enter the city's MS4, travel through the system and are discharged into receiving waters with minimal or no treatment. Since pollutants entering this system come from many sources and are to date largely uncontrolled, reduction of pollutant discharges can only be achieved by a broad restriction on a variety of activities occurring throughout the city. This ordinance is intended to prevent pollutants from being discharged by the city's stormwater collection system by requiring all citizens to prevent such pollutants from initially entering the system.
- (c) This article is adopted as an integral part of the city's stormwater management program. (Ord. No. O-07-032, 3-13-07)

Sec. 16.2-71. Discharges to the city's storm sewer system.

- (a) It shall be unlawful and a violation of this article to:

- (1) Connect, cause, or allow to be connected, any sanitary sewer to the separate storm sewer system;
- (2) Discharge the following in any amount to the city's storm sewer system, to any private stormwater conveyance system, or to any stormwater management system whether intended for water quality or water quantity control, unless the system conveys the fluids to an appropriate water treatment facility or the discharge is permitted by a Virginia pollution discharge elimination system [VPDES] permit or by a national pollution discharge elimination system [NPDES] permit:
 - (i) Sewage;
 - (ii) Greases;
 - (iii) Fuels;
 - (iv) Oil or oil waste;
 - (v) Antifreeze;
 - (vi) Other automotive, motor or equipment fluids;
 - (vii) Paints and/or organic solvents;
 - (viii) PCBs;
 - (ix) Pesticides;
 - (x) Herbicides;
 - (xi) Toxic materials;
 - (xii) Waste disposal site leachate;
 - (xiii) Radioactive materials;
 - (xiv) Fertilizers
 - (xv) Organic matter;
 - (xvi) Any fluid at a temperature greater than 65° celsius;
 - (xvii) Any fluid having a pH less than 5.0 or greater than 9.0;
 - (xviii) Any fluid containing more than fifteen (15) milligrams per liter of total suspended solids;
 - (xix) Any fluid containing dyes or coloring material which discolor the water no more than fifty (50) American dye manufacturers institute [ADMI] units;
 - (xx) Any fluid containing material which causes a visible film, sheen or discoloration on the water surface;
 - (xxi) Any substance which may cause or do any injury to, interfere with the proper operation of, obstruct the flow into or through, or pollute a stormwater management facility;
 - (xxii) Any commercial, industrial, or manufacturing process water, wash water, or unpermitted discharge;
 - (xxiii) Boiler blowdown;

- (xxiv) Any substance of non-stormwater origin unless specifically exempted from this article;
- (xxv) Matter of any type which may:
 - a. Result in a hazard to any person, animal, property, or vegetation; or,
 - b. Impair the quality of the water in any well, lake, river, pond, spring, stream, reservoir or other water or watercourse.

(b) Subject to the provisions of subsection (c) of this section, the following activities shall be allowed:

- (1) Potable water line flushing;
- (2) Lawn watering;
- (3) Landscape irrigation;
- (4) Diverting stream flows or uncontaminated groundwater flows;
- (5) Water from public safety activities, including, but not limited to, law enforcement and fire suppression;
- (6) Pumping or drainage of uncontaminated groundwater from potable water sources, foundation drains, basements, springs, or water from crawl spaces, or footing drains;
- (7) Non-commercial car washing;
- (8) Swimming pool discharges with less than one (1) parts per million [PPM] chlorine;
- (9) Street washing;
- (10) Any activity authorized by a valid national pollutant discharge elimination system (NPDES) permit, waiver, or discharge order; a Virginia pollutant discharge elimination system (VPDES) permit, waiver, or discharge order; or a Virginia pollution abatement (VPA) permit;
- (11) Any activity by a governmental entity or its employees and agents in accordance with federal, state, and local regulations and standards for the maintenance or repair of drinking water reservoirs or water treatment or distribution systems;
- (12) Any activity by a governmental entity or its employees and agents in accordance with federal, state, and local regulations and standards, for the maintenance of any component of its stormwater management system.
- (13) Discharges specified in writing by the program administrator and/or his or her designee as being necessary to protect public health and safety.
- (14) Dye testing, following notification to the program administrator.
- (15) Residential yard maintenance, including seasonal leaf pick-up and brush removal.

(c) If any of the activities listed in subsection (b), above, of this section are found to be sources of pollutants to public waters, the program administrator shall so notify the person performing such activities and shall order that such activities be stopped or performed in such a manner as to avoid discharge of pollutants into such waters. The failure to comply with any such order shall be unlawful and a violation of this article. (Ord. No. O-07-032, 3-13-07)

Sec. 16.2-72. Pesticides, herbicides, and fertilizers.

(a) Pesticides, herbicides, and fertilizers are common household products that have beneficial uses in the homes, lawns and gardens of many city residents. When used properly and in accordance with manufacturer's recommendations they provide significant enhancement of our quality of life. When used inappropriately, however, these products can have unintended negative impacts on the quality of public waters. These consequences frequently are not readily apparent to the individual responsible for the improper usage. Therefore to reduce the incidences of negative environmental impacts to water quality, the city enacts the following restrictions on the uses of pesticides, herbicides, and fertilizers.

(b) Pesticides and herbicides.

It shall be unlawful:

- (1) To use any pesticide or herbicide not approved by the U.S. environmental protection agency (EPA).
- (2) To use any pesticide or herbicide in a fashion not in accordance with manufacturer's recommendations or label directions as approved by the Virginia department of agriculture and consumer services [VDACS] and the U.S. environmental protection agency (EPA).

(c) Fertilizers.

To avoid contamination of water bodies and aquifers :

(1) Fertilizers should be applied in a manner which does not exceed manufacturer's recommendations for frequency and rates approved by the Virginia department of agriculture and consumer services [VDACS] and the U.S. environmental protection agency (EPA).

(2) Fertilizers should not be directly applied to impervious areas subject to runoff.

Sec. 16.2-73. Construction activities.

Stormwater management at all construction activities shall be governed by the city's erosion and sediment control and stormwater ordinance

Sec. 16.2-74. Good housekeeping requirements.

The following good housekeeping requirements shall be adhered to by all persons within the City of Lynchburg:

(a) The uncovered outdoor storage of unsealed containers containing hazardous substances or waste material is prohibited.

(b) Unless otherwise approved, objects such as vehicle motor parts containing grease, oil, or other hazardous materials, shall not be stored in such a manner as to cause leaks, spills, or discharges into stormwater management facilities.

(c) Unless otherwise approved, work on any machine that is to be repaired or maintained in an uncovered outdoor area shall be performed in such a manner as to prevent leaks, spills, or discharges into any stormwater management facilities and/or any municipal separate storm sewer system.

(d) Fuel and chemical residue or other types of potentially harmful material, garbage, or batteries, which are located in an area susceptible to runoff, shall be removed immediately and disposed at a hazardous waste collection site.

Sec. 16.2-75. Inspections and monitoring.

(a) The ~~program~~ administrator and/or his or her designee(s) shall have authority to carry out all inspection, surveillance and monitoring procedures necessary to determine compliance and noncompliance with the provisions of this article, including the prohibition of illicit discharges to the storm sewer system. The program administrator and/or his or her designee(s) may monitor stormwater outfalls or other components of the municipal storm sewer system as may be appropriate in the administration and enforcement of this article.

(b) The ~~program~~ administrator and/or his or her designee(s) shall have the authority to require pollution prevention plans from any person whose discharges cause or may cause a violation of any VPDES permit, including the one held by the city.

(c) The ~~program~~ administrator and/or his designee(s) shall have the authority to enter into private property to conduct investigations relative to this article. No inspection shall be conducted without the consent of the tenant, occupant, property owner or the owner's representative or pursuant to a duly issued administrative inspection warrant or as authorized by other lawful means.

Sec. 16.2-76. Violations and penalties.

(a) A willful violation of the provisions of this article shall constitute a Class 1 misdemeanor. Each day that a continuing violation of this article is maintained or permitted to remain shall constitute a separate offense.

(b) Any person who commits any act prohibited by this article shall be liable to the city for all costs of detecting, tracing, testing, containment, cleanup, abatement, removal, and disposal of any substance unlawfully discharged into the storm sewer system.

(c) Any person who commits any act prohibited by this article shall be subject to a civil penalty in an amount not to exceed one thousand dollars (\$1,000.00) for each day that a violation exists. The city may issue a summons for the collection of the civil penalty and the action may be prosecuted in the local courts. Any civil penalties assessed by a court as a result of a summons issued by the city shall be paid into the treasury of the city for the purpose of abating, preventing or mitigating environmental pollution.

(d) The city may bring legal action to enjoin the continuing violation of and to insure compliance with the provisions of this chapter, including injunction, abatement or other appropriate action or proceeding. The existence of any other remedy, at law or in equity, shall be no defense to any such action.

(e) The ~~program~~ administrator and/or his or her designee(s) shall have authority to order that any activity found to be in violation of this article be stopped or conducted in such a manner as to avoid the discharge of any illicit materials into the storm sewer system.

(f) Any discharge caused or permitted to exist in violation of any provisions of this article constitutes a threat to the public health, safety and welfare, and is hereby declared and deemed a public nuisance. Following receipt of written notice of such nuisance from the ~~program~~ administrator and/or his or her designee(s), if the responsible person fails to abate or obviate such nuisance, then the city may do so and charge and collect the cost thereof from the responsible person, in any manner provided by law (including, without limitation, any manner provided by law for the collection of state or local taxes).

(g) The remedies set forth in this section shall be cumulative, not exclusive, and it shall not be a defense to any action, civil or criminal, that one or more of the remedies set forth herein has been sought or granted.

2. That this ordinance shall become effective July 1, 2014.

Adopted:

Certified:

Clerk of Council

079K