

**21-24-124.1**

*ADOPTION TO AMEND THE CODE OF THE COUNTY OF  
FAIRFAX, VIRGINIA BY ADDING NEW CHAPTER 124.1  
(EROSION AND STORMWATER MANAGEMENT ORDINANCE)*

*TO THE  
1976 CODE OF THE COUNTY OF FAIRFAX, VIRGINIA*

*At a regular meeting of the Board of Supervisors of Fairfax, County, Virginia, held in the Board Auditorium of the Government Center at Fairfax, Virginia, on Tuesday, June 25, 2024, the Board after having first given notice of its intention so to do, in the manner prescribed by law, adopted an amendment regarding Chapter 124.1 (Erosion and Stormwater Management Ordinance) of the 1976 Code of the County of Fairfax, Virginia, said amendment so adopted being in the words and figures following, to wit:*

*BE IT ORDAINED BY THE BOARD OF SUPERVISORS OF FAIRFAX  
COUNTY, VIRGINIA:*

*That the Code of the County of Fairfax, Virginia is amended by  
adding Chapter 124.1 (Erosion and Stormwater Management Ordinance) as  
follows:*

**AN ORDINANCE REPEALING CHAPTERS 104 and 124 OF THE  
FAIRFAX COUNTY CODE AND ADOPTING A NEW CHAPTER 124.1, RELATING  
TO EROSION AND STORMWATER MANAGEMENT**

**AN ORDINANCE to amend the Fairfax County Code by repealing Chapter  
104 and Chapter 124, and by adopting a new Chapter 124.1, all relating to  
erosion and stormwater management.**

**As Adopted**

**Be it ordained by the Board of Supervisors of Fairfax County:**

**1. That Chapters 104 and 124 of the Fairfax County Code are repealed, and a new Chapter 124.1 is adopted, as follows:**

**CHAPTER 124.1 Erosion and Stormwater Management Ordinance.**

**ARTICLE 1. – General Provisions.**

**Section 124.1-1-1. - Title.**

This Chapter will hereafter be known, cited, and referred to as the "Erosion and Stormwater Management Ordinance" of Fairfax County.

**Section 124.1-1-2. - Authority.**

This ordinance is enacted pursuant to the authority and mandates of the Virginia Erosion and Stormwater Management Act, Article 2.3 (§ 62.1-44.15:24 et seq.) of Chapter 3.1 of Title 62.1 of the Virginia Code, the Virginia and Erosion Stormwater Management Regulation, Chapter 875 of Title 9 of the Virginia Administrative Code, and Title 15.2 of the Virginia Code.

**Section 124.1-1-3. - Enactment.**

This Chapter shall be effective at 12:01 A.M. on July 1, 2024.

**Section 124.1-1-4. - Purpose and Administration.**

This Chapter establishes a local erosion and stormwater management program administered in conjunction with the County's MS4 program as implemented herein. The purpose and intent of this Chapter is to ensure the general health, safety, and welfare of the citizens of Fairfax County and to protect the quality and quantity of state waters from the potential harm of unmanaged stormwater and soil erosion, including protection from a land disturbing activity causing unreasonable degradation of properties, water quality, stream channels, and other natural resources, and to establish procedures whereby stormwater requirements related to water quality,

water quantity, soil erosion, sediment deposition, and non-agricultural runoff shall be administered and enforced.

The County will be the Virginia Erosion and Stormwater Management Program (VESMP) Authority. The Director of Land Development Services is responsible for the administration and enforcement of this Chapter except for Article 10, which is administered and enforced by the Director of the Department of Public Works and Environmental Services.

#### **Section 124.1-1-5. - Definitions.**

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

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

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

*Adequate channel* means a channel that will convey the designated frequency storm event, neither overtopping the channel bank nor causing erosive damage to the channel bed or banks.

*Applicant* means a person submitting a soil erosion control and stormwater management plan to the County for approval in order to obtain authorization to commence a land-disturbing activity.

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

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

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

*Board of Supervisors* means the Fairfax County Board of Supervisors.

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

*Certification* means the designation issued by the Department on behalf of the Commonwealth, to individuals who have completed Department approved training programs and met any additional eligibility requirements or in other ways demonstrated adequate

knowledge and experience in accordance with the eligibility requirements of 9VAC25-875-410 related to the specified classifications (9VAC25-875-400) within the separate subject areas of ESC or SWM or both.

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

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

*Certified program administrator* means an employee or agent of a VESCP, VESMP, or VSMP authority who holds a certification from the Department in the classification of program administrator.

*Channel* means a natural or manmade waterway.

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

*Chesapeake Bay Preservation Area* means any land designated by a local government pursuant to Part III (9VAC25-830-70 et seq.) of the Chesapeake Bay Preservation Area Designation and Management Regulations and Va. Code § 62.1-44.15:74. A Chesapeake Bay Preservation Area shall consist of a Resource Protection Area and a Resource Management Area as defined in the Chesapeake Bay Preservation Area Designation and Management Regulations (9VAC25-830). All land in Fairfax County has been designated by the County as a Chesapeake Bay Preservation Area, pursuant Chapter 118 of the Fairfax County Code.

*Classification* means the four specific certification designations assigned to the roles of program administrator, plan reviewer, inspector, and combined administrator within the areas of ESC, SWM, or both ESC and SWM for a dual classification.

*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.

*Code* or *the Code* means the Code of the County of Fairfax, Virginia.

*Cofferdam* means a watertight temporary structure in a river, lake, or other body of water for keeping the water from an enclosed area that has been pumped dry so that bridge foundations, dams, or other submerged structural pieces may be constructed.

*Combined administrator for ESC* means anyone who is responsible for performing the combined duties of a program administrator, plan reviewer, and inspector of a VESCP authority or the ESC component of a VESMP authority.

*Combined administrator for SWM* means anyone who is responsible for performing the combined duties of a program administrator, plan reviewer, and inspector of a VSMP authority or the SWM component of a VESMP authority.

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

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

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

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

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

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

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

*Department or Department of Environmental Quality or DEQ* means the Virginia Department of Environmental Quality.

*Development* means land disturbance and the resulting landform associated with the construction of residential, commercial, industrial, institutional, recreation, transportation, or utility facilities or structures or the clearing of land for nonagricultural or nonsilvicultural purposes. The regulation of discharges from development, for purposes of stormwater management, does not include the exclusions found in 9VAC25-875-860.

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

*Director of LDS or LDS Director* means the Director of the Department of Land Development Services or their designee. *Director of DEQ or Director* means the Director of the Department of Environmental Quality or the director's designee.

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

*Discharge of a pollutant* means:

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

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

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

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

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

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

*Dual combined administrator for ESC and SWM* means anyone who is responsible for performing the combined duties of a program administrator, plan reviewer, and inspector of a VESMP authority.

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

*Environmental Protection Agency or EPA* means the U.S. Environmental Protection Agency.

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

*Erosion and Sediment Control Law for Localities Not Administering a Virginia Erosion and Stormwater Management Program or ESCL* means Article 2.4 (§ 62.1-44.15:51 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia.

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

*ESC* means erosion and sediment control.

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

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

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

*Floodplain* means the area adjacent to a channel, river, stream, or other water body that is susceptible to being inundated by water normally associated with the 100-year flood or storm event. This includes, but is not limited to, any floodplain designated by the Federal Emergency Management Agency or meets the definition of floodplain in Chapter 112.1 (Zoning Ordinance) of the Code.

*Flood-prone area* means the component of a natural or restored stormwater conveyance system that is outside the main channel. Flood-prone areas may include, but are not limited to, the floodplain, the floodway, the flood fringe, wetlands, riparian buffers or other areas adjacent to the main channel.

*Floodway* means the channel of a river or other watercourse and the adjacent land areas, usually associated with flowing water, that must be reserved in order to discharge the 100-year flood or storm event without cumulatively increasing the water surface elevation more than one foot. This includes, but is not limited to, any floodway designated by the Federal Emergency Management Agency.

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

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

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

*Illicit discharge* means any discharge to a municipal separate storm sewer that is not composed entirely of stormwater, except discharges pursuant to a separate VPDES or state permit (other than the state permit for discharges from the municipal separate storm sewer), discharges resulting from fire-fighting activities, and discharges identified by and in compliance with 9VAC25-875-970 D 2 c (3).

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

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

*Inspection* means an on-site review of the project's compliance with any applicable design criteria; or an on-site review to obtain information or conduct surveys or investigations necessary in the implementation or enforcement of the Act, the Regulations, and this Chapter.

*Inspector* means the individual who, as a representative of a VESCP authority, a VESMP authority, or a VSMP authority, is responsible for periodically examining the ESC, SWM, or

both ESC and SWM activities and premises of a land-disturbing activity for compliance with the ESCL VESMA, and associated regulations as may be applicable.

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

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

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

*Land-disturbance approval* means an approval allowing a land-disturbing activity to commence issued by the County after the requirements of Section 124.1-2-5 have been met. The County may issue land-disturbance approval in the form of a "County land-disturbance permit."

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

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

*LDS Department* or *LDS* means the Fairfax County Department of Land Development Services.

*Legacy Land-Disturbing Activity* means land-disturbing activity set forth in 9VAC25-875-490.

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

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

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

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

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



*Major modification* means the modification or amendment of an existing MS4 individual permit before its expiration that is not a minor modification as defined in this chapter.

*Manmade* means constructed by man.

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

*Minor modification* means, for the purposes of this Chapter, minor modification or amendment of an existing state permit before its expiration for the reasons listed at 40 CFR 122.63 and as specified in 9VAC25-875-1240. *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.

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

- (1) Owned or operated by a federal entity, state, city, town, county, district, association, or other public body, created by or pursuant to state law, having jurisdiction over disposal of sewage, industrial wastes, stormwater, or other wastes, including a special district under state law such as a sewer district, flood control district, drainage district or similar entity, or a designated and approved management agency under § 208 of the CWA that discharges to surface waters;
- (2) Designed or used for collecting or conveying stormwater;
- (3) Not a combined sewer; and
- (4) Not part of a publicly owned treatment works.

*Municipal Separate Storm Sewer System Management Program* or *MS4 Program* means a management program covering the duration of a state permit for a SMS4 that includes a comprehensive planning process that involves public participation and intergovernmental coordination to reduce the discharge of pollutants to the maximum extent practicable, to protect water quality, and to satisfy the appropriate water quality requirements of the CWA and regulations and the Act and its attendant regulations, using management practices, control techniques, and system, design and engineering methods, and such other provisions that are appropriate.

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

*Natural stream* means a tidal or nontidal watercourse that is part of the natural topography. It usually maintains a continuous or seasonal flow during the year and is characterized as being

irregular in cross-section with a meandering course. Constructed channels such as drainage ditches or swales will not be considered natural streams; however, channels designed utilizing natural channel design concepts may be considered natural streams.

*Nonerodible* means a material, for example, riprap, concrete, or plastic, that will not experience surface wear due to natural forces.

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

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

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

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

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

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

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

*Plan reviewer* means anyone who is responsible for reviewing and evaluating ESC, SWM, or ESM plans and supporting documents for approval by a VESCP authority in the area of ESC, a VSMP authority in the area of SWM, or a VESMP authority in the areas of both ESC and SWM.

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

*Point source* means any discernible, confined, and discrete conveyance including any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel, or other floating craft

from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural stormwater runoff.

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

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

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

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

*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.

Predevelopment refers to the conditions that exist at the time that plans for the land-disturbing activity are submitted to the County. Where phased development or plan approval occurs (e.g., preliminary grading, demolition of existing structures, or roads and utilities), the existing conditions at the time prior to the commencement of land-disturbing activity will establish predevelopment conditions.

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

*Program administrator* means the individual responsible for administering and enforcing the County's VESMP program in the areas of both ESC and SWM.

*Public Facilities Manual* or *PFM* means the Fairfax County Public Facilities Manual which contains design and construction standards adopted by the Board of Supervisors.

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

*Regulations* means the Virginia Erosion and Stormwater Management Regulation (VESMR) (9VAC25-875-10 et seq., as amended).

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

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

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

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

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

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

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

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

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

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

*Site hydrology* means the movement of water on, across, through and off the site as determined by parameters including, but not limited to, soil types, soil permeability, vegetative cover, seasonal water tables, slopes, land cover, and impervious cover.

*Small construction activity* means:

- (1) Construction activities including clearing, grading, and excavating that result in land disturbance of equal to or greater than one acre and less than five acres. *Small*

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

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

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

*Soil erosion control and stormwater management plan, erosion control and stormwater management plan, or ESM plan* means a document describing methods for controlling soil erosion and managing stormwater in accordance with the requirements adopted pursuant to the VESMA. The ESM plan may consist of aspects of the erosion and sediment control plan and the stormwater management plan as each is described in this Chapter.

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

*State* means the Commonwealth of Virginia.

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

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

*State permit* means a VPDES permit issued by the DEQ pursuant to Va. Code § 62.1-44.15 of the Code of Virginia for stormwater discharges from a land-disturbing activity or MS4.

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

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

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

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

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

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

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

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

*Stormwater management plan* means a document(s) containing material for describing methods for complying with the requirements of this Chapter.

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

*Subdivision* means the same as defined in Chapter 101 of the Code.

*Surface waters* means:

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

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

*SWM* means stormwater management.

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

*Total maximum daily load* or *TMDL* means the sum of the individual wasteload allocations (WLAs) for point sources, load allocations (LAs) for nonpoint sources, natural background loading and a margin of safety. TMDLs can be expressed in terms of either mass per time, toxicity, or other appropriate measure. The TMDL process provides for point versus nonpoint source trade-offs. *TMDL Action Plan* means the scheduled steps of activities that the MS4 operator will take to address the assumptions and requirements of the TMDL wasteload allocation. TMDL action plans may be implemented in multiple phases over more than one permit cycle.

*Town* means an incorporated town.

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

*Unincorporated areas* means any area that is not an incorporated city, town, township, or village under the Code of Virginia.

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

*Virginia Erosion and Sediment Control Program authority* or *VESCP authority* means a locality that is approved by the Department to operate a Virginia Erosion and Sediment Control Program in accordance with Article 2.4 (§ 62.1-44.15:51 et seq.) of Chapter 3.1 of Title 62.1 of the Virginia Code.. Only a locality for which the Department administered a Virginia Stormwater Management Program as of July 1, 2017, is authorized to choose to operate a VESCP pursuant to Article 2.4 (§ 62.1-44.15:51 et seq. of the Code of Virginia). A locality that has chosen not to establish a VESMP pursuant to subdivision B 3 of § 62.1-44.15:27 of the Code of Virginia is required to become a VESCP authority in accordance with the ESCL.

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

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

*Virginia Erosion and Stormwater Management Program authority* or *VESMP authority* means, for purposes of this Chapter, Fairfax County, Virginia or “the County.” For state agency or federal entity land-disturbing activities and land-disturbing activities subject to approved standards and specifications, the Department will serve as the VESMP authority.

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

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

*Virginia Stormwater Management Handbook* means a collection of pertinent information that provides general guidance for compliance with the Act and associated regulations and is



developed by the Department of Environmental Quality with advice from a stakeholder advisory committee.

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

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

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

*Water quality technical criteria* means standards set forth in this Chapter that establish minimum design criteria for measures to control nonpoint source pollution.

*Water quantity technical criteria* means standards set forth in this Chapter that establish minimum design criteria for measures to control localized flooding and stream channel erosion.

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

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

#### **Section 124.1-1-6. - Areas of Applicability.**

This Chapter applies to all land located within the unincorporated areas of Fairfax County.

#### **Section 124.1-1-7. - Activities Exempt from this Chapter.**

(A) Notwithstanding any other provisions of this Chapter, the following activities are exempt from the provisions of this Chapter, unless otherwise required by federal law:

- (1) Minor land-disturbing activities, including home gardens and individual home landscaping, repairs, and maintenance work;
- (2) Installation, maintenance, or repair of any individual service connection;
- (3) Installation, maintenance, or repair of any underground utility line when such activity occurs on an existing hard surfaced road, street, or sidewalk, provided the land-

disturbing activity is confined to the area of the road, street, or sidewalk that is hard surfaced;

- (4) Installation, maintenance, or repair of any septic tank line or drainage field unless included in an overall plan for land-disturbing activity relating to construction of the building to be served by the septic tank system;
  - (5) Permitted surface or deep mining operations and projects, or oil and gas operations and projects conducted under the provisions of Title 45.1 of the Virginia Code;
  - (6) 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 Virginia State Water Control Board in regulations, including engineering operations as follows: construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds, ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage, and land irrigation; however, this exception will 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 of the Virginia Code (§ 10.1-1100 et seq.) or is converted to bona fide agricultural or improved pasture use as described in Va. Code §10.1-1163(B).
  - (7) Installation of fence and sign posts or telephone and electric poles and other kinds of posts or poles;
  - (8) Shoreline erosion control projects on tidal waters when all of the land-disturbing activities are within the regulatory authority of and approved by local wetlands boards, the Virginia Marine Resources Commission, or the U.S. Army Corps of Engineers; however, any associated land that is disturbed outside of this exempted area is subject to the requirements of the Act and this Chapter;
  - (9) Repair or rebuilding of the tracks, rights-of-way, bridges, communication facilities, and other related structures and facilities of a railroad company;
  - (10) Land-disturbing activities in response to a public emergency where the related work requires immediate authorization to avoid imminent endangerment to human health or the environment. In such situations, the County must be advised of the disturbance within seven days of commencing the land-disturbing activity, and compliance with the administrative requirements of 9 VAC 25-875-530 and this Chapter is required within 30 days of commencing the land-disturbing activity; and
  - (11) Discharges to a sanitary sewer or a combined sewer system that are not from a land-disturbing activity;
- (B) Notwithstanding any other provision of the Act, the following activities are required to comply with the soil erosion control requirements set forth in Article 6 of this Chapter but are not required to comply with the water quantity and water quality technical criteria set forth in Article 4 or 5 of this Chapter, unless otherwise required by federal law:
- (1) Activities under a state or federal reclamation program to return an abandoned property to an agricultural or open land use;
  - (2) Routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original construction of the project. The paving of an existing road with a

compacted or impervious surface and reestablishment of existing associated ditches and shoulders will be deemed routine maintenance if performed in accordance with this subsection; and

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

#### **Section 124.1-1-8. - Applicability of and Conflicts with Other Laws and Regulations.**

Nothing in this chapter limits the applicability of other laws and regulations, including, the Clean Water Act, VESMA, ESCL, and the Chesapeake Bay Preservation Act, and all applicable regulations adopted in accordance with those laws, or the rights of other federal agencies, state agencies, or local governments to impose more stringent technical criteria or other requirements as allowed by law.

#### **Section 124.1-1-9. - Severability.**

If any of the articles, sections, paragraphs, sentences, clauses, or phrases of this Chapter are declared unconstitutional or invalid by a valid judgment or decree of a court of competent jurisdiction, such unconstitutionality or invalidity will not affect the validity of the Chapter in its entirety or any of the remaining articles, sections, paragraphs, sentences, clauses, and phrases.

### **ARTICLE 2. - Requirements for Land Disturbing Activity.**

#### **Section 124.1-2-1. - Regulated Land-Disturbing Activity.**

- (A) Unless otherwise set forth in subsection (B), the following land-disturbing activities are subject to the criteria set forth in Article 4 and Article 6 of this Chapter:
  - (1) land-disturbing activity that disturbs 2,500 square feet or more, and
  - (2) land-disturbing activity that is part of a larger common plan of development or sale that disturbs one acre or more.
- (B) Land-disturbing activities exempt per Section 124.1-1-7 are not required to comply with the requirements of the VESMA and this Chapter unless otherwise required by federal law.
- (C) Land-disturbing activities determined to be in accordance with Sections 124.1-2-2 or 124.1-2-3 are subject to the technical criteria set forth in Article 5 of this Chapter.

#### **Section 124.1-2-2. - Legacy Land-Disturbing Activity.**

- (A) Any land-disturbing activity is considered legacy by the County and subject to the technical criteria of Article 5 of this Chapter provided:
  - (1) A currently valid proffered rezoning or P district rezoning or other rezoning with a plan of development, special exception, special permit, variance, preliminary or final

subdivision plat, subdivision construction plan, preliminary or final site plan, or grading plan, was approved by the County prior to July 1, 2012; and

- (2) The proffered rezoning or P district rezoning or other rezoning with a plan of development, special exception, special permit, variance, preliminary or final subdivision plat, subdivision construction plan, preliminary or final site plan, or grading plan provides sufficient information to demonstrate that the resulting land-disturbing activity will comply with the technical requirements of Article 5 and include, as a minimum, the following: (i) a conceptual drawing that identifies the location of the proposed stormwater facilities; (ii) pre- and post-development calculations that detail the required pollutant reduction necessary to comply with the water quality design criteria; and (iii) calculations necessary to determine compliance with the water quantity design criteria; and
  - (3) The proffered rezoning or P district rezoning or other rezoning with a plan of development, special exception, special permit, variance, preliminary or final subdivision plat, subdivision construction plan, preliminary or final site plan, or grading plan has not been subsequently modified or amended in a manner resulting in an increase over the previously approved plat or plan in the amount of phosphorus leaving each point of discharge or the volume or rate of runoff; and,
  - (4) A state permit has not been issued prior to July 1, 2014; and
  - (5) Land disturbance did not commence prior to July 1, 2014.
- (B) Local, state, and federal projects are considered legacy by the County and are subject to the technical criteria Article 5 of this Chapter provided:
- (1) There has been an obligation of locality, state, or federal funding, in whole or in part, prior to July 1, 2012, or the Department has approved a stormwater management plan prior to July 1, 2012;
  - (2) A state permit has not been issued prior to July 1, 2014; and
  - (3) Land disturbance did not commence prior to July 1, 2014.
- (C) Land disturbing activities that meet the conditions under subsections A and B of this Section remain subject to the technical criteria of Article 5 of this Chapter for one additional permit cycle. After such time, portions of the project not under construction are subject to any new technical criteria adopted by the board.
- (D) In cases where governmental bonding or public debt financing has been issued for a project prior to July 1, 2012, such project is subject to the technical criteria of Article 5 of this Chapter.
- (E) Nothing in this Section precludes an operator from constructing to a more stringent standard at the operator's discretion.

#### **Section 124.1-2-3. - Time Limits on Applicability of Approved Design Criteria.**

- (A) Land-disturbing activities that obtained an initial state permit or commence land disturbance prior to July 1, 2014, must be conducted in accordance with the technical criteria of Article 5 of this Chapter, unless more stringent standards are used. Such projects remain subject to the

technical criteria of Article 5 for two additional permit cycles. After such time, portions of the project not under construction become subject to any new technical criteria adopted by the board.

- (B) Land-disturbing activities that obtain or obtained an initial state permit on or after July 1, 2014, must be conducted in accordance with the technical criteria of Article 4 of this Chapter, except as provided for in Section 124.1-2-2. Land-disturbing activities conducted in accordance with the technical criteria of Article 4 of this Chapter remain subject to the technical criteria of Article 4 of this Chapter for two additional permit cycles. After such time, portions of the project not under construction become subject to any new technical criteria adopted by the board.
- (C) Nothing in this section precludes an operator from constructing to a more stringent standard at the operator's discretion.

#### **Section 124.1-2-4. - Chesapeake Bay Preservation Act Land-Disturbing Activity.**

- (A) In order to protect the quality of state waters and to control the discharge of stormwater pollutants from land-disturbing activities, runoff associated with land-disturbing activities in Chesapeake Bay Preservation Areas that are equal to or greater than 2,500 square feet but less than one acre are subject to the Chesapeake Bay Preservation Act or, in the case of state and federal agency projects, DEQ.
- (B) Unless excluded by Section 124.1-1-7, land disturbing activities with state permits issued after June 30, 2014, do not require completion of a registration statement or require coverage under the General VPDES Permit for Discharges of Stormwater from Construction Activities but are subject to the following technical criteria and program and administrative requirements:
  - (1) An erosion and sediment control plan consistent with the requirements of Section 124.1-6-2 must be designed, submitted and pre-approved by the County, and implemented during all land-disturbing activities.;
  - (2) A stormwater management plan must be designed, developed and submitted to and pre-approved by the County consistent with the requirements of Sections 124.1-3-2 and 124-2-5 and must be implemented during all the land-disturbing activity.
  - (3) Long-term maintenance of stormwater management facilities in accordance with Section 124-2-6;
  - (4) Water quality design criteria in accordance with Article 4;
  - (5) Water quality compliance in accordance with Section 124.1-4-3;
  - (6) Channel protection and flood protection in accordance with Article 4;
  - (7) Offsite compliance options in accordance with Section 124.1-4-5; and
  - (8) Design storm and hydrologic methods in accordance with Sections 124.1-4-6, 124.1-4-8, and 124.1-4-10.
  - (9) Exceptions may be requested to the County in accordance with Article 7 of this Chapter.

**Section 124.1-2-5. - Review and Approval of Plans; Issuance of County Land-Disturbance Permit for Land-Disturbing Activity.**

- (A) Except for activities set forth in Section 124.1-1-7 of this Chapter, prior to any land-disturbing activity, a person seeking to conduct such activity must file an application to LDS that includes a state permit registration statement, if required, and a soil erosion control and stormwater management plan, if required.
- (B) The County will review and approve or disapprove an ESM plan in accordance with the requirements set forth in Sections 124.1-3-2 and 124.1-6-2.
- (C) The County must determine the completeness of any application within 15 days after receipt and must act on any application within 60 days after it has been determined by the County to be complete.
- (D) Applicants may resubmit a previously disapproved application and the County will determine whether any resubmission is complete within 15 days after receipt and must act on the resubmitted application within 45 days after receipt.
- (E) An applicant seeking land-disturbance approval must submit to the County the name of the individual who will be assisting the owner in carrying out the activity and holds a Responsible Land Disturber certificate pursuant to Va. Code § 62.144.15:30. Failure to provide the name of an individual holding a Responsible Land Disturber certificate prior to engaging in land-disturbing activities may result in revocation of the land-disturbance approval and is a violation of this Chapter.
- (F) Excluding state agencies and federal entities, an applicant seeking land-disturbance approval must submit to the County a reasonable performance bond with surety, cash escrow, letter of credit, any combination thereof, or such other legal arrangement acceptable to the County, to ensure that measures could be taken by the County at the applicant's expense should the applicant fail, after proper notice, within the time specified to comply with conditions imposed by the County as a result of the applicant's land-disturbing activity. If the County takes such action upon such failure by the applicant, the County may collect from the applicant for the difference should the amount of the reasonable cost of such action exceed the amount of the security held. Within 60 days of the completion of the County's conditions, such bond, cash escrow, letter of credit or other legal arrangement, or the unexpended or unobligated portion thereof, will be refunded to the applicant or terminated. These requirements are in addition to all other provisions of law relating to the issuance of state permits and are not intended to otherwise affect the requirements for such state permits including performance guarantees for items unrelated to the County land-disturbance permit.
- (G) Prior to issuing a land-disturbance approval, the County is required to obtain evidence of state permit coverage when such coverage is required.
- (H) The County must issue either land-disturbance approval in the form of a County land-disturbance permit or denial and provide written rationale for any denial.

- (I) The County may require changes to an approved soil erosion control and stormwater management plan in the following cases:
  - (1) An inspection has revealed that the plan is inadequate to satisfy applicable regulations or ordinances; or
  - (2) The owner finds that because of changed circumstances or for other reasons the plan cannot be effectively carried out, and proposed amendments to the plan consistent with the requirements of this Chapter are agreed to by the County and the owner.
- (J) In order to prevent further erosion, the County may require approval of an erosion and sediment control and a stormwater management plan for any land it identifies as an erosion impact area.
- (K) The County may enter into an agreement with an adjacent VESMP authority regarding the administration of multijurisdictional projects, specifying who will be responsible for all or part of the administrative procedures. If the County and the adjacent VESMP authority fail to reach such an agreement, each will be responsible for administering the area of the multijurisdictional project that lies within its jurisdiction.
- (L) The County may cooperate with and enter into agreements with any federal or state agency in connection with the requirements for land-disturbing activities in accordance with Va. Code §62.1-44.15:50.
- (M) No exception to, or waiver of, post-development nonpoint nutrient runoff compliance requirements will be granted unless offsite options have been considered and found not available in accordance with Va. Code § 62.1-44.15:35(D).

**Section 124.1-2-6. - Long-term maintenance of stormwater management facilities.**

- (A) The operator of any permanent stormwater management facility in the County must submit a construction record drawing in accordance with the Public Facilities Manual including a statement signed by a professional registered in the Commonwealth of Virginia pursuant to Chapter 4 (§ 54.1-400 et seq.) of Title 54.1 of the Code of Virginia, stating that to the best of the professional's knowledge, the construction record drawing shows all adjustments and revisions to the stormwater management plan made during construction and serves as a permanent record of the actual location of all constructed elements. The property owner is required to provide for long-term responsibility and maintenance of stormwater management facilities and other techniques specified to manage the quality or quantity of runoff. Such requirements must be delineated in an instrument recorded in the Fairfax County land records prior to approval to begin land-disturbing activities and must at a minimum:
  - (1) Be submitted to the County for review and approval prior to the approval of the stormwater management plan;
  - (2) Be stated to run with the land;
  - (3) Provide for all necessary access to the property for purposes of maintenance and regulatory inspections;

- (4) Provide for inspections and maintenance and the submission of inspection and maintenance reports to the County; and
- (5) Be enforceable by all appropriate governmental parties.
- (6) Ensure that measures could be taken by the County to maintain the stormwater management facilities or perform inspections at the owner's expense should the owner fail to maintain the stormwater management facilities in good working order in accordance with the maintenance specifications in the agreement or perform the periodic inspections required by the agreement;
- (7) Provide that in the event the County, pursuant to the agreement, performs work of any nature or expends any funds in performance of said work for labor, use of equipment, supplies, materials, and the like, the owner will reimburse the County for all costs incurred by the County; and
- (8) Provide for liens to be placed on the property should the owner fail to reimburse the County for costs incurred by the County.

#### **Section 124.1-2-7. - Inspections; Records and Reports**

- (A) The County will periodically inspect land-disturbing activities during construction, in accordance with the County's Inspection Program as set forth in the Public Facilities Manual, 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 County will conduct periodic inspections in accordance with the County's Inspection Program as set forth in the Public Facilities Manual to ensure that permanent stormwater management facilities are being adequately maintained as designed after completion of land-disturbing activities. Such inspections will be made by the County or the County's designee, not to include the owner, except as provided in subsections D of this section, at least once every five years.
- (C) The County may utilize the inspection reports of the owner of a stormwater management facility as part of an inspection program established in subsection B of this Section if the inspection is conducted by a person who is licensed as a professional engineer, architect, landscape architect, or land surveyor pursuant to Article 1 (§ 54.1-400 et seq.) of Chapter 4 of Title 54.1 of the Code of Virginia; a person who works under the direction and oversight of the licensed professional engineer, architect, landscape architect, or land surveyor; or a person who holds an appropriate certificate of competence from the DEQ.
- (D) Subject to the limitations and conditions set forth in 9 VAC 25-875-900, every owner, applicant or state permittee must furnish when requested such application materials, plans, specifications, and other pertinent information as may be necessary to determine the effect of



permit applicant's or permittee's discharge on the quality of state waters, or such other information as may be necessary to accomplish the purposes of the State Water Control Law and this Chapter. Any personal information will not be disclosed except to an appropriate official of the Department or the County or as may be authorized pursuant to the Virginia Freedom of Information Act (§ 2.2-3700 et seq. of the Code of Virginia).

(E) The County will perform inspections to ensure compliance with Article 10.

**Section 124.1-2-8. - Right of Entry.**

- (A) The County or any duly authorized agent thereof, 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. This authority applies only to those properties from which a discharge enters the County's municipal separate storm sewer system.
- (B) In accordance with a performance bond with surety, cash escrow, letter of credit, any combination thereof, or such other legal arrangement, the County may also enter any establishment or upon any property, public or private, for the purpose of initiating or maintaining appropriate actions that are required by conditions imposed by the County on a land-disturbing activity when an owner, after proper notice, has failed to take acceptable action within the time specified.
- (C) A warrant may be obtained in accordance with applicable local, state, and federal law when necessary to carry out the provisions of this Chapter.

**Section 124.1-2-9. - Annual Standards and Specifications for State Agencies, Federal Entities, and Other Specified Entities.**

- (A) As an alternative to submitting erosion and sediment control plans for its land-disturbing activities, the Virginia Department of Transportation must, and any other state agency or federal entity may, submit standards and specifications for its conduct of land-disturbing activities to the Virginia Department of Environmental Quality for approval. Approved standards and specifications must be consistent with the VESMA and Article 2 of Part V of the Virginia Erosion and Stormwater Management Regulations.
- (B) As an alternative to submitting erosion and sediment control plans, electric, natural gas, and telephone utility companies, interstate and intrastate natural gas pipeline companies, railroad companies and authorities created pursuant to Va. Code § 15.2-5102 may submit standards and specifications to Virginia Department of Environmental Quality for approval that describe how land-disturbing activities must be conducted. Such standards and specifications may be submitted for the following types of projects:
  - (1) Construction, installation, or maintenance of electric transmission and distribution lines, oil or gas transmission and distribution pipelines, communication utility lines, and water and sewer lines; and
  - (2) Construction of the tracks, rights-of-way, bridges, communication facilities, and other related structures and facilities of a railroad company.

- (C) As an alternative to submitting erosion and sediment control plans, any person engaging in more than one jurisdiction in the creation and operation of a wetland mitigation or stream restoration bank that has been approved and is operated in accordance with applicable federal and state guidance, laws, or regulations for the establishment, use, and operation of a wetlands mitigation or stream restoration bank, pursuant to a mitigation banking instrument signed by the department, the Virginia Marine Resources Commission, or the U.S. Army Corps of Engineers, may submit standards and specifications to the Department of Environmental Quality for approval that describe how land-disturbing activities must be conducted.
- (D) Approval of standards and specifications by the Virginia Department of Environmental Quality does not relieve the owner or operator of the duty to comply with any other applicable county ordinances or regulations.

### **ARTICLE 3. – Stormwater Management: Plan Requirements**

#### **Section 124.1-3-1. - Stormwater Pollution Prevention Plan Requirements.**

- (A) Stormwater pollution prevention plans must include an approved erosion and sediment control plan, an approved stormwater management plan, a pollution prevention plan for regulated land-disturbing activities, and a description of any additional control measures necessary to address a TMDL pursuant to subsection E of this section.
- (B) Erosion and sediment control plans must be designed and implemented throughout construction activities consistent with the requirements of Section 124.1-6-2 and must be approved by the County prior to any land disturbance.
- (C) Stormwater management plans must be designed and implemented consistent with the requirements of Section 124.1-3-2 throughout all construction activities and must be approved by the County prior to any land disturbance.
- (D) Pollution prevention plans identifying potential sources of pollutants that may reasonably be expected to affect the quality of stormwater discharges from the construction site and describe control measures that will be used to minimize pollutants in stormwater discharges from the construction site must be developed before land disturbance commences.
- (E) In addition to the requirements of subsections A through D of this section, if a specific wasteload allocation for a pollutant has been established in an approved TMDL and is assigned to stormwater discharges from a construction activity, additional control measures must be identified and implemented by the operator so that discharges are consistent with the assumptions and requirements of the wasteload allocation.
- (F) The stormwater pollution prevention plan (SWPPP) must address the following requirements as specified in 40 CFR 450.21, to the extent otherwise required by state law or regulations and any applicable requirements of a permit:
  - (1) Control of stormwater volume and velocity within the site to minimize soil erosion;
  - (2) Control of stormwater discharges, including both peak flow rates and total stormwater volume, to minimize erosion at outlets and to minimize downstream channel and stream bank erosion;

- (3) Minimization of the amount of soil exposed during construction activity;
  - (4) Minimization of the disturbance of steep slopes;
  - (5) Minimization of sediment discharges from the site. The design, installation, and maintenance of erosion and sediment controls must address factors such as the amount, frequency, intensity, and duration of precipitation, the nature of resulting stormwater runoff, and soil characteristics, including the range of soil particle sizes expected to be present on the site;
  - (6) Provisions for and maintenance of natural buffers around surface waters, direct stormwater to vegetated areas to increase sediment removal, and maximize stormwater infiltration, unless infeasible;
  - (7) Minimization of soil compaction and, unless infeasible, preserve topsoil;
  - (8) Stabilization of disturbed areas must, at a minimum, be initiated immediately whenever any clearing, grading, excavating, or other earth disturbing activities have permanently ceased on any portion of the site, or temporarily ceased on any portion of the site and will not resume for a period exceeding 14 calendar days. Stabilization must be completed within a period of time determined by the County. In arid, semi-arid, and drought-stricken areas where initiating vegetative stabilization measures immediately is infeasible, alternative stabilization measures must be employed as specified by the County; and
  - (9) Utilization of outlet structures that withdraw water from the surface, unless infeasible, when discharging from basins and impoundments.
- (G) The SWPPP must be timely amended whenever there is a change in design, construction, operation, or maintenance that has a significant effect on the discharge of pollutants to state waters and that has not been previously addressed in the SWPPP. The SWPPP must be maintained at a central location onsite. If an onsite location is unavailable, notice of the SWPPP's location must be posted near the main entrance at the construction site.

#### **Section 124.1-3-2. - Stormwater Management Plan Requirements.**

- (A) Stormwater management plans must be developed and submitted to the County and must be implemented as approved or modified by the County in accordance with the applicable technical criteria set forth in Article 4 or Article 5 of this Chapter, as applicable, to the entire land-disturbing activity. Individual lots in new residential, commercial, or industrial developments, including those developed under subsequent owners, are not considered separate land-disturbing activities.
- (B) Stormwater management plans must consider all sources of surface runoff and all sources of subsurface and groundwater flows converted to surface runoff.
- (C) A complete stormwater management plan must include the following elements:
  - (1) Information on the type of and location of stormwater discharges, information on the features to which stormwater is being discharged including surface waters or karst features if present, and predevelopment and post-development drainage areas;

- (2) Contact information including the name, address, telephone number, and email address of the owner and the tax reference number and parcel number of the property or properties affected;
  - (3) A narrative that includes a description of current site conditions and final site conditions or if allowed by the County, the information provided and documented during the review process that addresses the current and final site conditions;
  - (4) A general description of the proposed stormwater management facilities and the mechanism through which the facilities will be operated and maintained after construction is complete;
  - (5) Information on the proposed stormwater management facilities, including (i) detailed narrative on the conversion to a long-term stormwater management facility if the facility was used as a temporary ESC measure; (ii) the type of facilities; (iii) location, including geographic coordinates; (iv) acres treated; and (v) the surface waters or karst features into which the facility will discharge;
  - (6) Hydrologic and hydraulic computations, including runoff characteristics;
  - (7) Documentation and calculations verifying compliance with the water quality and quantity requirements of this chapter;
  - (8) A map of the site that depicts the topography of the site and includes:
    - (a) All contributing drainage areas;
    - (b) Existing streams, ponds, culverts, ditches, wetlands, other water bodies, and floodplains;
    - (c) Soil types, geologic formations if karst features are present in the area, forest cover, and other vegetative areas;
    - (d) Current land use including existing structures, roads, and locations of known utilities and easements;
    - (e) Sufficient information on adjoining parcels to assess the impacts of stormwater from the site on these parcels;
    - (f) The limits of clearing and grading, and the proposed drainage patterns on the site;
    - (g) Proposed buildings, roads, parking areas, utilities, and stormwater management facilities; and
    - (h) Proposed land use with tabulation of the percentage of surface area to be adapted to various uses, including planned locations of utilities, roads, and easements;
  - (9) If an operator intends to meet the requirements established in Sections 124.1-4-2 and 124.1-4-4 through the use of offsite compliance options, where applicable, then a letter of availability from the offsite provider must be included; and
  - (10) If payment of a fee is required with the stormwater management plan submission to the County, the fee in accordance with Appendix Q of the Code must have been submitted.
- (D) All final plan elements, specifications, or calculations of the stormwater management plans whose preparation requires a license under Chapter 4 (§ 54.1-400 et seq.) or 22 (§ 54.1-2200

et seq.) of Title 54.1 of the Code of Virginia must be appropriately signed and sealed by a professional who is licensed to engage in practice in the Commonwealth of Virginia. Nothing in this subsection authorizes any person to engage in practice outside that person's area of professional competence.

### **Section 124.1-3-3. Pollution Prevention Plans.**

- (A) A plan for implementing pollution prevention measures during construction activities must be developed, implemented, and updated as necessary. The pollution prevention plan must detail the design, installation, implementation, and maintenance of effective pollution prevention measures as specified in 40 CFR 450.21(d) to minimize the discharge of pollutants. At a minimum, such measures must be designed, installed, implemented, and maintained to:
- (1) Minimize the discharge of pollutants from equipment and vehicle washing, wheel wash water, and other wash waters. Wash waters must be treated in a sediment basin or alternative control that provides equivalent or better treatment prior to discharge;
  - (2) Minimize the exposure of building materials, building products, construction wastes, trash, landscape materials, fertilizers, pesticides, herbicides, detergents, sanitary waste, and other materials present on the site to precipitation and to stormwater; and
  - (3) Minimize the discharge of pollutants from spills and leaks and implement chemical spill and leak prevention and response procedures.
- (B) The pollution prevention plan shall include effective best management practices to prohibit the following discharges in accordance with 40 CFR 450.21(e):
- (1) Wastewater from washout of concrete, unless managed by an appropriate control;
  - (2) Wastewater from washout and cleanout of stucco, paint, form release oils, curing compounds, and other construction materials;
  - (3) Fuels, oils, or other pollutants used in vehicle and equipment operation and maintenance; and
  - (4) Soaps or solvents used in vehicle and equipment washing.
- (C) Discharges from dewatering activities, including discharges from dewatering of trenches and excavations, are prohibited unless managed by appropriate controls in accordance with 40 CFR 450.21(c).

## **ARTICLE 4. - Water Quantity and Water Quality Technical Criteria for Regulated Land-Disturbing Activity**

### **Section 124.1-4-1. - Applicability.**

Except as provided for in Section 124.1-2-2, this Article establishes the minimum technical criteria that must be employed to protect the quality and quantity of state waters from the potential harm of unmanaged stormwater runoff resulting from land-disturbing activities.

#### **Section 124.1-4-2. - Water Quality Design Criteria Requirements.**

- (A) In order to protect the quality of state waters and to control the discharge of stormwater pollutants from regulated activities, the following minimum design criteria and standards for stormwater management must be applied to the site:
- (1) New development. The total phosphorus load of new development projects must not exceed 0.41 pounds per acre per year, as calculated pursuant to Section 124.1-4-3.
  - (2) Development on prior developed lands.
    - (a) For land-disturbing activities disturbing greater than or equal to one acre that result in no net increase in impervious cover from the predevelopment condition, the total phosphorus load must be reduced at least 20% below the predevelopment total phosphorus load.
    - (b) For regulated land-disturbing activities disturbing less than one acre that result in no net increase in impervious cover from the predevelopment condition, the total phosphorus load must be reduced at least 10% below the predevelopment total phosphorus load.
    - (c) For land-disturbing activities that result in a net increase in impervious cover over the predevelopment condition, the design criteria for new development must be applied to the increased impervious area. Depending on the area of disturbance, the criteria of subdivisions a or b above, must be applied to the remainder of the site.
    - (d) In lieu of subdivision c, the total phosphorus load of a linear development project occurring on prior developed lands shall be reduced 20% below the predevelopment total phosphorus load.
    - (e) The total phosphorus load shall not be required to be reduced to below the applicable standard for new development unless a more stringent standard has been established by the County.
- (B) The Board has established a Water Supply Protection Overlay District (WSPOD) in the Occoquan Watershed to prevent water quality degradation of the Occoquan Reservoir due to pollutant loadings within the watershed. WSPOD boundaries have been established on the Official Zoning Map. Any subdivision that is subject to the provisions of Chapter 101 of the County Code or any use requiring the approval of a site plan in accordance with the provisions of subsection 8100.7 must provide water quality control measures designed to reduce the projected phosphorus runoff pollution by one-half for the proposed use. Such water quality control measures or Best Management Practices (BMPs) will be reviewed, modified, waived, or approved by the LDS Director in accordance with the Public Facilities Manual. The requirement for BMPs may be modified or waived only where existing site characteristics

make the provision impractical or unreasonable on-site, an alternative provision is not or cannot be accommodated off-site, and where it can be established that the modification or waiver will not affect the achievement of the water quality goals for the public water supply watershed as set forth in the Comprehensive Plan.

- (C) Compliance with subsections A and B above must be determined in accordance with Section 124.1-4-3.
- (D) Requirements of all applicable TMDL action plans developed by the County in accordance with the County's MS4 permit must be met.

#### **Section 124.1-4-3. - Water Quality Compliance.**

- (A) Compliance with the water quality design criteria set out in subsections A and B of Section 124.1-4-2 will be determined by utilizing the Virginia Runoff Reduction Method (Instructions and Documentation, March 28, 2011) or another equivalent methodology that is approved by the DEQ.
- (B) The BMPs listed in 9 VAC 25-875-590.B are approved for use, subject to the restrictions and conditions in the PFM, as necessary to effectively reduce the phosphorus load and runoff volume in accordance with the Virginia Runoff Reduction Method. Other approved BMPs found through the Virginia Stormwater BMP Clearinghouse may also be utilized, subject to review and approval by the Director. Design specifications and the pollutant removal efficiencies for all approved BMPs are found through the Virginia Stormwater BMP Clearinghouse. Modifications to the design specifications, to address local requirements, are included in the PFM.
- (C) Nonproprietary BMPs differing from those listed in 9 VAC 25-875-590.B may be reviewed and approved for use by the director of the DEQ in accordance with procedures established by the DEQ.
- (D) Proprietary BMPs listed through the Virginia Stormwater BMP Clearinghouse are approved for use in accordance with the Virginia Runoff Reduction Method. Any proprietary BMP approved for use after July 1, 2020, must meet the requirements of Va. Code § 62.1-44.15:28(A)(9).
- (E) The Director may establish limitations on the use of specific BMPs in accordance with Va. Code § 62.1-44.15:33.
- (F) Where a site drains to more than one HUC, the pollutant load reduction requirements must be applied independently within each HUC unless reductions are achieved in accordance with a comprehensive watershed stormwater management plan in accordance with Section 124.1-4-9. Pollutant load reduction requirements to meet TMDL action plans developed by the County

in accordance with the County's MS4 permit must be applied independently to the areas of the site subject to the TMDL.

- (G) Offsite alternatives where allowed in accordance with Section 124.1-4-5 may be utilized to meet the design criteria of subsection A of Section 124.1-4-2.
- (H) Any publicly owned treatment works that is permitted under the watershed general VPDES permit pursuant to Va. Code § 62.1-44.19:14 and is constructing or expanding the treatment works, wastewater collection system, or other facility used for public wastewater utility operations may, in accordance with Va. Code § 62.1-44.19:21.2 C, permanently retire a portion of the publicly owned treatment works' wasteload allocation to meet the design criteria of subsection A of Section 124.1-4-2. Notice must be given by such applicant to the County and to the DEQ.

#### **Section 124.1-4-4. - Water Quantity.**

- (A) Channel protection and flood protection must be addressed in accordance with the minimum standards set out in this section. Compliance with the minimum standards set out in this section will be deemed to satisfy the requirements of subdivision 19 of 9 VAC 25-875-560.
- (B) Channel protection. Concentrated stormwater flow must be released into a stormwater conveyance system and must meet criteria 1, 2, or 3 of this subsection, where applicable, from the point of discharge to a point to the limits of analysis in Section 124.1-4-4.B.5 as demonstrated by use of acceptable hydrologic and hydraulic methodologies.
  - (1) Manmade stormwater conveyance systems. When stormwater from a development is discharged to a manmade stormwater conveyance system, following the land-disturbing activity, either:
    - (a) The manmade stormwater conveyance system must convey the post-development peak flow rate from the two-year 24-hour storm event without causing erosion of the system. Detention of stormwater or downstream improvements may be incorporated into the approved land-disturbing activity to meet this criterion, at the discretion of the Director; or
    - (b) The peak discharge requirements for concentrated stormwater flow to natural stormwater conveyance systems in Section 124.1-4-4.B.3(a) or 3(b) must be met.
  - (2) Restored stormwater conveyance systems. When stormwater from a development is discharged to a restored stormwater conveyance system that has been restored using natural channel design concepts, following the land-disturbing activity, either:



- (a) The development must be consistent, in combination with other stormwater runoff, with the design parameters of the restored stormwater conveyance system that is functioning in accordance with the design objectives; or
  - (b) The peak discharge requirements for concentrated stormwater flow to natural stormwater conveyance systems in Section 124.1-4-4.B.3(a) or 3(b) must be met.
- (3) Natural stormwater conveyance systems. When stormwater from a development is discharged to a natural stormwater conveyance system, the maximum peak flow rate from the one-year 24-hour storm following the land-disturbing activity must be calculated by one of the following:

- (a) In accordance with the following methodology:

$$Q_{\text{Developed}} < (Q_{\text{Forest}} * RV_{\text{Forest}}) / RV_{\text{Developed}}$$

Where:

$Q_{\text{Developed}}$  = The allowable peak flow rate of runoff from the developed site.

$RV_{\text{Developed}}$  = The volume of runoff from the site in the developed condition.

$Q_{\text{Forest}}$  = The peak flow rate of runoff from the site in a forested condition.

$RV_{\text{Forest}}$  = The volume of runoff from the site in a forested condition.

- (b) In accordance with another methodology that is determined by the Director to achieve equivalent results and is approved by the DEQ.
- (c) If the maximum peak flow rate for the 2-year 24-hour storm can be conveyed within the system from the point of discharge to the limit of analysis in Section 124.1-4-4.B.6 without causing erosion, the maximum peak flow rate from the one-year 24-hour storm following the land-disturbing activity may be calculated in accordance with the following methodology:

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

Under no condition shall  $Q_{\text{Developed}}$  be greater than  $Q_{\text{Pre-Developed}}$

Where:

I.F. (Improvement Factor) = 0.8 for sites > 1 acre or 0.9 for sites < 1 acre.

$Q_{\text{Developed}}$  = The allowable peak flow rate of runoff from the developed site.

$RV_{\text{Developed}}$  = The volume of runoff from the site in the developed condition.

$Q_{\text{Pre-Developed}}$  = The peak flow rate of runoff from the site in a pre-developed condition.

$RV_{\text{Pre-Developed}}$  = The volume of runoff from the site in a pre-developed condition.

- (4) If Section 124.1-4-4.B.3(a) or 3(b) is used to show compliance with the channel protection criteria, the downstream review is limited to providing cross-sections to show a defined channel, which may include sections of natural streams with braided channels or wetlands as determined by the Director, or man-made drainage facility for the extent of review described in Section 124.1-4-4.B.6.
- (5) Limits of analysis. Unless Section 124.1-4-4.B.3 is utilized to show compliance with the channel protection criteria, stormwater conveyance systems must be analyzed for compliance with channel protection criteria to a point where either:
  - (a) Based on land area, the site's contributing drainage area is less than or equal to 1.0% of the total watershed area; or
  - (b) Based on peak flow rate, the site's peak flow rate from the one-year 24-hour storm is less than or equal to 1.0% of the existing peak flow rate from the one-year 24-hour storm prior to the implementation of any stormwater quantity control measures.
- (6) Alternative limits of analysis. If Section 124.1-4-4.B.3 is used to show compliance with the channel protection criteria above, the downstream limit of analysis may extend to a point where:
  - (a) Based on land area, the site's contributing drainage area is less than or equal to 1.0% of the total watershed area; or
  - (b) Based on peak flow rate, the site's peak flow rate from the one-year 24-hour storm is less than or equal to 1.0% of the existing peak flow rate from the one-year 24-hour storm prior to the implementation of any stormwater quantity control measures; or
  - (c) To a point that is at least 150 feet downstream of a point where the receiving pipe or channel is joined by another that has a drainage area that is at least 90 percent of the size of the first drainage area at the point of confluence; or
  - (d) To a point that is at least 150 feet downstream of a point where the drainage area is 360 acres or greater.
- (C) Flood protection. Concentrated stormwater flow must be released into a stormwater conveyance system and must meet criteria 1, 2, or 3 below, where applicable, from the point of discharge to a point to the limits of analysis in Section 124.1-4-4.C.5 as demonstrated by use of acceptable hydrologic and hydraulic methodologies:
  - (1) Concentrated stormwater flow to stormwater conveyance systems that currently do not experience localized flooding during the 10-year 24-hour storm event. The point of

discharge releases stormwater into a stormwater conveyance system that, following the land-disturbing activity, confines the post-development peak flow rate from the 10-year 24-hour storm event within the stormwater conveyance system. Detention of stormwater or downstream improvements may be incorporated into the approved land-disturbing activity to meet this criterion, at the discretion of the Director.

- (2) Concentrated stormwater flow to stormwater conveyance systems that currently experience localized flooding during the 10-year 24-hour storm event. The point of discharge releases stormwater into a stormwater conveyance system that, following the land-disturbing activity, confines the post-development peak flow rate from the 10-year 24-hour storm event within the stormwater conveyance system to avoid the localized flooding. Detention of stormwater or downstream improvements may be incorporated into the approved land-disturbing activity to meet this criterion, at the discretion of the Director.
- (3) Localized flooding is defined as follows:
  - (a) For manmade stormwater conveyance systems, localized flooding occurs when: the capacity of the channel, pipe system, or culvert is exceeded for the 10-year 24-hour storm event or the design storm, whichever is greater; or existing dwellings or buildings constructed under an approved building permit are flooded by the 100-year storm event.
  - (b) For natural stormwater conveyance systems, localized flooding occurs when: the capacity of the channel, or a system of braided channels or wetlands as determined by the Director, is exceeded for the 2-year 24-hour storm event; or existing dwellings or buildings constructed under an approved building permit are flooded by the 100-year storm event.
  - (c) For a restored stormwater conveyance system that has been designed using natural channel design concepts, localized flooding occurs when: the capacity of the channel and overbanks are exceeded for the stated design storm; or existing dwellings or buildings constructed under an approved building permit are flooded by the 100-year storm event.
- (4) As an alternative to criteria 1 or 2 above, detention of stormwater may be provided that releases the post-development peak flows for the 2-year 24-hour storm event and the 10-year 24-hour storm event at rates that are determined utilizing the method in Section 124.1-4-4.B.3(a) or 3(b). If this method is used, the downstream review analysis shall be limited to providing cross-sections to show a defined channel, which may include sections of streams with braided channels or wetlands as determined by the Director, or man-made drainage facility, and checking for flooding of existing dwellings or buildings constructed under an approved building permit from the 100-year storm event for the extent of review described in Section 124.1-4-4.C.6.
- (5) Limits of analysis. Unless Section 124.1-4-4.C.4 is utilized to comply with the flood protection criteria, stormwater conveyance systems must be analyzed for compliance with flood protection criteria to a point where:

- (a) The site's contributing drainage area is less than or equal to 1.0% of the total watershed area draining to a point of analysis in the downstream stormwater conveyance system; or
  - (b) Based on peak flow rate, the site's peak flow rate from the 10-year 24-hour storm event is less than or equal to 1.0% of the existing peak flow rate from the 10-year 24-hour storm event prior to the implementation of any stormwater quantity control measures; or
  - (c) The stormwater conveyance system enters a mapped floodplain or other flood prone area, adopted by ordinance, which includes any Special Flood Hazard Area depicted on the County's Flood Insurance Rate Map or any floodplain included in Appendix A of the Code.
- (6) Alternative limits of analysis. If Section 124.1-4-4.C.4 is utilized to comply with the flood protection criteria, or the detention requirements of Section 124.1-4-4.D are met and the receiving conveyance system complies with the flood protection criteria from the point of discharge to the limits of analysis in this subdivision, the downstream limit of analysis may extend to a point where:
- (a) The site's contributing drainage area is less than or equal to 1.0% of the total watershed area draining to a point of analysis in the downstream stormwater conveyance system; or
  - (b) Based on peak flow rate, the site's peak flow rate from the 10-year 24-hour storm event is less than or equal to 1.0% of the existing peak flow rate from the 10-year 24-hour storm event prior to the implementation of any stormwater quantity control measures; or
  - (c) The stormwater conveyance system enters a mapped floodplain or other flood prone area, adopted by ordinance; or
  - (d) To a point that is at least 150 feet downstream of a point where the receiving pipe or channel is joined by another that has a drainage area that is at least 90 percent of the size of the first drainage area at the point of confluence; or
  - (e) To a point that is at least 150 feet downstream of a point where the drainage area is 360 acres or greater.
- (7) If an existing dwelling or a building constructed under an approved building permit, which is located within the extent of review described in Section 124.1-4-4.C.6, is flooded by the 100-year storm, the peak flow of the 100-year storm at the development site must be reduced to a level below the pre-development based on the methodology in Section 124.1-4-4.B.3(a) or 3(b).

- (D) Detention. Unless waived by the Director, the post-development peak flow for the 2-year 24-hour storm event must be released at a rate that is equal to or less than the pre-development peak flow rate from the 2-year 24-hour storm event and the post-development peak flow for the 10-year 24-hour storm event must be released at a rate that is less than or equal to the pre-development peak flow rate from the 10-year 24-hour storm event. In the Four Mile Run watershed, the post-development peak flow for the 100-year storm event must be released at a rate that is equal to or less than the predevelopment peak flow rate from the 100-year storm unless it is contraindicated by the watershed model developed for the Four Mile Run Watershed Management Program.
- (E) Increased volumes of sheet flow resulting from pervious or disconnected impervious areas, or from physical spreading of concentrated flow through level spreaders, must be identified and evaluated for potential impacts on down-gradient properties or resources. Increased volumes of sheet flow that will cause or contribute to erosion, sedimentation, or flooding of down gradient properties or resources must be diverted to a stormwater management facility or a stormwater conveyance system that conveys the runoff without causing down-gradient erosion, sedimentation, or flooding. If all runoff from the site is sheet flow and the conditions of this subsection are met, no further water quantity controls are required.
- (F) For purposes of computing pre-development runoff, all pervious lands on the site will be assumed to be in good hydrologic condition in accordance with the U.S. Department of Agriculture's Natural Resources Conservation Service (NRCS) standards, regardless of conditions existing at the time of computation. Predevelopment runoff calculations utilizing other hydrologic conditions may be utilized provided that it is demonstrated to and approved by the Director that actual site conditions warrant such considerations.
- (G) Pre-development and post-development runoff characteristics and site hydrology must be verified by site inspections, topographic surveys, available soil mapping or studies, and calculations consistent with good engineering practices. Guidance provided in the Virginia Stormwater Management Handbook and by the Virginia Stormwater BMP Clearinghouse are considered appropriate practices as modified and supplemented by the Public Facilities Manual.

#### **Section 124.1-4-5. - Offsite Compliance Options.**

- (A) The Director, at his discretion, may allow an operator to use the following offsite compliance options to meet required phosphorus nutrient reductions:
- (1) Offsite controls utilized in accordance with a comprehensive stormwater management plan adopted pursuant to Section 124.1-4-9 for the local watershed within which a project is located;
  - (2) A locality pollutant loading pro rata share program established pursuant to Va. Code § 15.2-2243 or similar local funding mechanism;
  - (3) The nonpoint nutrient offset program established pursuant to Va. Code § 62.1-44.15:35;

- (4) Any other offsite options approved by an applicable state agency or state board; and
  - (5) When an operator has additional properties available within the same HUC or upstream HUC that the land-disturbing activity directly discharges to or within the same watershed as determined by the Director, offsite stormwater management facilities on those properties may be utilized to meet the required phosphorus nutrient reductions from the land-disturbing activity.
- (B) Notwithstanding subsection A, and pursuant to Va. Code § 62.1-44.15:35, operators will be allowed to utilize offsite options identified in subsection A under any of the following conditions:
- (1) Less than five acres of land will be disturbed;
  - (2) The postconstruction phosphorus control requirement is less than 10 pounds per year; or
  - (3) At least 75% of the required phosphorus nutrient reductions are achieved on-site. If at least 75% of the required phosphorus nutrient reductions cannot be met on-site, and the operator can demonstrate to the satisfaction of the Director that (i) alternative site designs have been considered that may accommodate on-site best management practices, (ii) on-site best management practices have been considered in alternative site designs to the maximum extent practicable, (iii) appropriate on-site best management practices will be implemented, and (iv) full compliance with post-development nonpoint nutrient runoff compliance requirements cannot practicably be met on-site, then the required phosphorus nutrient reductions may be achieved, in whole or in part, through the use of off-site compliance options.
- (C) Notwithstanding subsections A and B, offsite options are not allowed:
- (1) Unless the selected offsite option achieves the necessary nutrient reductions prior to the commencement of the operator's land-disturbing activity. In the case of a phased project, the operator may acquire or achieve offsite nutrient reductions prior to the commencement of each phase of land-disturbing activity in an amount sufficient for each phase.
  - (2) In contravention of local water quality-based limitations at the point of discharge that are (i) consistent with the determinations made pursuant to Va. Code § 62.1-44.19:7(B) of the Virginia Code, (ii) contained in a municipal separate storm sewer system (MS4) program plan accepted by the Department of Environmental Quality, or (iii) as otherwise may be established or approved by the State Water Control Board. Such limitations include but are not limited to the phosphorous reduction requirement in the Water Supply Protection Overlay District and any applicable nutrient-based TMDL in Fairfax County.
- (D) In order to meet the requirements of Section 124.1-4-4, offsite options 1 and 2 of subsection A above may be utilized.

- (E) Failure to generate nutrient credits used pursuant to subsection A in the same or adjacent eight-digit hydrologic unit code as defined by the United States Geological Survey as the permitted site in accordance with Va. Code § 62.1-44.15. Nutrient credits outside the same or adjacent eight-digit hydrologic unit code may only be used if it is determined by the Director that no credits are available within the same or adjacent eight-digit hydrologic unit code when the Director accepts the final site design. In such cases, and subject to other limitations imposed in this section, credits available within the same tributary may be used. Credits from another tributary cannot be used.

#### **Section 124.1-4-6. – Design Storms and Hydrologic Methods.**

- (A) Unless otherwise specified, the prescribed design storms are the one-year, two-year, and 10-year 24-hour storms using the site-specific rainfall precipitation frequency data recommended by the U.S. National Oceanic and Atmospheric Administration (NOAA) Atlas 14. Partial duration time series must be used for the precipitation data.
- (B) Unless otherwise specified, all hydrologic analyses must be based on the existing watershed characteristics and how the ultimate development condition of the subject project will be addressed.
- (C) The U.S. Department of Agriculture's Natural Resources Conservation Service (NRCS) synthetic 24-hour rainfall distribution and models, including, but not limited to TR-55 and TR-20; hydrologic and hydraulic methods developed by the U.S. Army Corps of Engineers; or other standard hydrologic and hydraulic methods, must be used to conduct the analyses described in this part.
- (D) For drainage areas of 200 acres or less, the Rational Method may be used for evaluating peak discharges.
- (E) For drainage areas of 200 acres or less, the modified Rational Method may be used for evaluating volumetric flows to stormwater conveyances.

#### **Section 124.1-4-7. - Stormwater Harvesting.**

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

#### **Section 124.1-4-8. - Linear Development Projects.**

Linear development projects, not subject to annual standards and specifications administered and enforced by the Department of Environmental Quality, must control post-development stormwater runoff in accordance with a site-specific stormwater management plan or a comprehensive watershed stormwater management plan developed in accordance with this Chapter.

#### **Section 124.1-4-9. - Comprehensive Stormwater Management Plans.**

The County may develop comprehensive stormwater management plans, to be approved by the Department of Environmental Quality, that meet the water quality objectives, quantity objectives, in accordance with Virginia law.

#### **Section 124.1-4-10. - Stormwater Management Impoundment Structures or Facilities.**

Stormwater management wet ponds and extended detention ponds that are not covered by the Impounding Structure Regulations (4 VAC 50-20) must, at a minimum, be engineered for structural integrity for the 100-year storm event and shall comply with the requirements of § 6-1600 of the PFM.

### **ARTICLE 5 - Technical Criteria for Legacy Projects and Projects Subject to Time Limits on Applicability of Approved Design Criteria**

#### **Section 124.1-5-1. - Definitions.**

For the purposes of Article 5 only, the following words and terms have the following meanings unless the context clearly indicates otherwise:

*Aquatic bench* means a 10- to 15-foot wide bench around the inside perimeter of a permanent pool that ranges in depth from zero to 12 inches. Vegetated with emergent plants, the bench augments pollutant removal, provides habitats, conceals trash and water level fluctuations, and enhances safety.

*Average land cover condition* means a measure of the average amount of impervious surfaces within a watershed, assumed to be 16% or a calculated watershed-specific value for the average land cover condition as approved by the Chesapeake Bay Local Assistance Board prior to September 13, 2011.



*Bioretention basin* means a water quality BMP engineered to filter the water quality volume through an engineered planting bed, consisting of a vegetated surface layer (vegetation, mulch, ground cover), planting soil, and sand bed, and into the in-situ material.

*Bioretention filter* means a bioretention basin with the addition of a sand filter collector pipe system beneath the planting bed.

*Constructed wetlands* means areas intentionally designed and created to emulate the water quality improvement function of wetlands for the primary purpose of removing pollutants from stormwater.

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

*Grassed swale* means an earthen conveyance system which is broad and shallow with erosion resistant grasses and check dams, engineered to remove pollutants from stormwater runoff by filtration through grass and infiltration into the soil.

*Infiltration facility* means a stormwater management facility that 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 nonrainfall periods. Infiltration basin, infiltration trench, infiltration dry well, and porous pavement shall be considered infiltration facilities.

*Intensely Developed Area or IDA* means an area of existing development and infill sites where development is concentrated and little of the natural environment remains as of July 1, 1993 and which is so designated on the map of Chesapeake Bay Preservation Areas adopted by the Board of Supervisors pursuant to Fairfax County Code Section 118-1-9. An IDA must satisfy at least one of the following conditions as of July 1, 1993: development has severely altered the natural state of the area such that it has more than 50 percent impervious surface; public sewer and water systems, or a constructed stormwater drainage system, or both, have been constructed and serve the area as of the date of adoption of this Chapter; or housing density is equal to or greater than four dwelling units per acre.

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

*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.

*Redevelopment* means the substantial alteration, rehabilitation, or rebuilding of a property for residential, commercial, industrial, or other purposes where there is no net increase in impervious area by the proposed redevelopment within an RPA and no more than a net increase in impervious area within an RMA of 20% relative to conditions prior to redevelopment, or any construction, rehabilitation, rebuilding, or substantial alteration of residential, commercial, industrial, institutional, recreational, transportation, or utility uses, facilities or structures within an IDA.

*Resource Management Area* or *RMA* means that component of the Chesapeake Bay Preservation Area comprised of lands that, if improperly used or developed, have a potential for causing significant water quality degradation or for diminishing the functional value of the Resource Protection Area.

*Resource Protection Area* or *RPA* means that component of the Chesapeake Bay Preservation Area comprised of lands adjacent to water bodies with perennial flow that have an intrinsic water quality value due to the ecological and biological processes they perform or are sensitive to impacts which may result in significant degradation of the quality of state waters. In their natural condition, these lands provide for the removal, reduction, or assimilation of sediments, nutrients, and potentially harmful or toxic substances from runoff entering the Bay and its tributaries and minimize the adverse effects of human activities on state waters and aquatic resources.

*Sand filter* means a contained bed of sand that acts to filter the first flush of runoff. The runoff is then collected beneath the sand bed and conveyed to an adequate discharge point or infiltrated into the in-situ soils.

*Shallow marsh* means a zone within a stormwater extended detention basin that exists from the surface of the normal pool to a depth of six to 18 inches, and has a large surface area and, therefore, requires a reliable source of baseflow, groundwater supply, or a sizeable drainage area, to maintain the desired water surface elevations to support emergent vegetation.

*Stormwater detention basin* or *detention basin* means a stormwater management facility that temporarily impounds runoff and discharges it through a hydraulic outlet structure to a downstream conveyance system. While a certain amount of outflow may also occur via infiltration through the surrounding soil, such amounts are negligible when compared to the outlet structure discharge rates and are, therefore, not considered in the facility's design. Since a detention facility impounds runoff only temporarily, it is normally dry during nonrainfall periods.

*Stormwater extended detention basin* or *extended detention basin* means a stormwater management facility that temporarily impounds runoff and discharges it through a hydraulic outlet structure over a specified period of time to a downstream conveyance system for the purpose of water quality enhancement or stream channel erosion control. While a certain amount of outflow may also occur via infiltration through the surrounding soil, such amounts are negligible when compared to the outlet structure discharge rates and, therefore, are not

considered in the facility's design. Since an extended detention basin impounds runoff only temporarily, it is normally dry during nonrainfall periods.

*Stormwater extended detention basin-enhanced* or *extended detention basin-enhanced* means an extended detention basin modified to increase pollutant removal by providing a shallow marsh in the lower stage of the basin.

*Stormwater retention basin* or *retention basin* means a stormwater management facility that includes a permanent impoundment, or normal pool of water, for the purpose of enhancing water quality and, therefore, is normally wet, even during nonrainfall periods. Storm runoff inflows may be temporarily stored above this permanent impoundment for the purpose of reducing flooding, or stream channel erosion.

*Stormwater retention basin I* or *retention basin I* means a retention basin with the volume of the permanent pool equal to three times the water quality volume.

*Stormwater retention basin II* or *retention basin II* means a retention basin with the volume of the permanent pool equal to four times the water quality volume.

*Stormwater retention basin III* or *retention basin III* means a retention basin with the volume of the permanent pool equal to four times the water quality volume with the addition of an aquatic bench.

*Vegetated filter strip* means a densely vegetated section of land engineered to accept runoff as overland sheet flow from upstream development. It shall adopt any natural vegetated form, from grassy meadow to small forest. The vegetative cover facilitates pollutant removal through filtration, sediment deposition, infiltration and absorption, and is dedicated for that purpose.

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

#### **Section 124.1-5-2. Applicability.**

This Article specifies the technical criteria for regulated land-disturbing activities that are not subject to the technical criteria of Article 4 in accordance with Sections 124.1-2-2 and 124.1-2-3. Regulated land-disturbing activities may comply with the technical criteria of Article 4 in lieu of the technical requirements of this Article in accordance with Section 124.1-2-2(E).

#### **Section 124.1-5-3. - General.**

(A) Determination of flooding and channel erosion impacts to receiving streams due to land-disturbing activities must be measured at each point of discharge from the land disturbance

and such determination must include any runoff from the balance of the watershed that also contributes to that point of discharge.

- (B) The specified design storms must be defined as either a 24-hour storm using the rainfall distribution recommended by the U.S. Department of Agriculture's Natural Resources Conservation Service (NRCS) when using NRCS methods or as the storm of critical duration that produces the greatest required storage volume at the site when using a design method such as the Modified Rational Method.
- (C) For purposes of computing runoff, all pervious lands in the site must 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.
- (D) Construction of stormwater management facilities or modifications to channels must comply with all applicable laws, regulations, and ordinances. Evidence of approval of all necessary permits must be presented.
- (E) Impounding structures that are not covered by the Impounding Structure Regulations (4VAC50-20 must, at a minimum, be engineered for structural integrity during the 100-year storm event and shall comply with the requirements of § 6-1600 of the PFM.
- (F) Pre-development and post-development runoff rates must be verified by calculations that are consistent with good engineering practices and the PFM.
- (G) Outflows from a stormwater management facility or stormwater conveyance system must be discharged to an adequate channel.
- (H) Proposed residential, commercial, or industrial subdivisions must apply these stormwater management criteria to the land disturbance as a whole. Individual lots in new subdivisions must not be considered separate land-disturbing activities, but rather the entire subdivision shall be considered a single land development project. Hydrologic parameters must reflect the ultimate land disturbance and must be used in all engineering calculations.
- (I) All stormwater management facilities must have an inspection and maintenance plan that identifies the owner and the responsible party for carrying out the inspection and maintenance plan.
- (J) Construction of stormwater management impoundment structures within a Federal Emergency Management Agency (FEMA) designated 100-year floodplain must be avoided whenever possible. When this is unavoidable, all stormwater management facility construction must be in compliance with all applicable regulations under the National Flood Insurance Program, 44 CFR Part 59.
- (K) Natural channel characteristics must be preserved to the maximum extent practicable.

- (L) Land-disturbing activities must comply with the VESMA and attendant regulations, as applicable.
- (M) Flood control and stormwater management facilities that drain or treat water from multiple development projects or from a significant portion of a watershed may be allowed in resource protection areas defined in the Chesapeake Bay Preservation Act provided such facilities are designed and constructed in accordance with the Act and this ordinance, and provided that (i) the County has conclusively established that the location of the facility within the resource protection area is the optimum location; (ii) the size of the facility is the minimum necessary to provide necessary flood control, stormwater treatment, or both; and (iii) the facility is consistent with a comprehensive stormwater management plan developed and approved in accordance with this ordinance and 9VAC25-875-660 or with a stormwater management plan that has been approved prior to July 1, 2012, by the State Water Control Board, the Chesapeake Bay Local Assistance Board prior to its abolishment on July 1, 2012, or the Board of Conservation and Recreation; (iv) all applicable permits for construction in state or federal waters must be obtained from the appropriate state and federal agencies, such as the U.S. Army Corps of Engineers, the department, and the Virginia Marine Resources Commission; (v) approval was received from the local government prior to construction; and (vi) routine maintenance is allowed to be performed on such facilities to assure that they continue to function as designed. It is not the intent of this subdivision to allow a best management practice that collects and treats runoff from only an individual lot or some portion of the lot to be located within a resource protection area.

#### Section 124.1-5-4. Water Quality.

- (A) For any development or redevelopment, stormwater runoff must be controlled by the use of BMPs as follows:
- (1) For development, the projected total phosphorus runoff pollution load for the proposed development must be reduced by no less than forty percent compared to phosphorus loads projected for the development without BMPs. This requirement will not apply to any development that does not require a site plan under subsection 8100.7 of the Zoning Ordinance, that does not require subdivision approval under Chapter 101 of the Fairfax County Code, and that does not result in an impervious area of 18% or greater on the lot or parcel on which the development will occur.
  - (2) For development and redevelopment within the Water Supply Protection Overlay District, the phosphorus removal requirements for the overlay district will apply if such requirements impose a higher standard than the requirements of this Chapter.
  - (3) For redevelopment of any property not currently served by one or more BMPs, the total phosphorus runoff pollution load from the property must be reduced by at least ten (10) percent from the phosphorus runoff pollution load prior to redevelopment.

- (4) For redevelopment of any property that is currently and adequately served by one or more BMPs, the projected phosphorus runoff pollution load after redevelopment must not exceed the existing phosphorus runoff pollution load.
- (5) BMPs will be reviewed, modified, and/or approved by the Director in accordance with Article 6 of the Public Facilities Manual in effect on June 30, 2014, except that BMPs must meet testing and inspection requirements, plan submission requirements, and dam standards in effect at the time of plan submission.

(B) The following options will be considered to comply with this Section:

- (1) Incorporation on the site of BMPs that achieve the required control as set forth in paragraphs (1) through (5) above. For the purposes of this subsection, the "site" may include multiple projects or properties that are adjacent to one another or lie within the same drainage area where a single BMP or a system of BMPs will be utilized by those projects in common to satisfy water quality protection requirements;
- (2) Compliance with a locally adopted regional stormwater management program, which may include a Virginia Pollution Discharge Elimination System (VPDES) permit issued by the DEQ or the Virginia Department of Conservation and Recreation to a local government for its municipally owned separate storm sewer system discharges, that is reviewed and found by the State Water Control Board or was reviewed and approved by the Soil and Water Conservation Board to achieve water quality protection equivalent to that required by this subsection; or
- (3) Compliance with a site-specific VPDES permit issued by the DEQ, provided that the local government specifically determines that the permit requires measures that collectively achieve water quality protection equivalent to that required by this subsection.

(C) Any maintenance, alteration, use or improvement to an existing structure or use that does not degrade the quality of surface water discharge, as determined by the LDS Director, may be exempted from the requirements of subsection A.

#### **Section 124.1-5-5. - Stream Channel Erosion.**

- (A) Properties and receiving waterways downstream of any land-disturbing activity must be protected from erosion and damage due to changes in runoff rate of flow and hydrologic characteristics, including, but not limited to, changes in volume, velocity, frequency, duration, and peak flow rate of stormwater runoff in accordance with the minimum design standards set out in this section.
- (B) Land-disturbing activity must comply with subdivision 19 of 9VAC25-875-560 of the Erosion and Stormwater Management Regulation, promulgated pursuant to Article 2.3 (§ 62.1-44.15:24 et seq.) of Chapter 3.1 of Title 62.1 of the Virginia Code.

(C) Land-disturbing activity must comply with the requirements of Chapter 6 of the Fairfax County Public Facilities Manual in effect on June 30, 2014.

(D) In addition to subsections B and C of this section, the County, by local ordinance may, or the State Water Control Board by state regulation may, adopt more stringent channel analysis criteria or design standards to ensure that the natural level of channel erosion, to the maximum extent practicable, will not increase due to the land-disturbing activities. These criteria may include, but are not limited to, the following:

(1) Criteria and procedures for channel analysis and classification.

(2) Procedures for channel data collection.

(3) Criteria and procedures for the determination of the magnitude and frequency of natural sediment transport loads.

(4) Criteria for the selection of proposed natural or manmade channel linings.

#### **Section 124.1-5-6. - Flooding.**

(A) Downstream properties and waterways must be protected from damages from localized flooding due to changes in runoff rate of flow and hydrologic characteristics, including, but not limited to, changes in volume, velocity, frequency, duration, and peak flow rate of stormwater runoff in accordance with the minimum design standards set out in this section.

(B) The ten-year post-developed peak rate of runoff from the development site may not exceed the ten-year predeveloped peak rate of runoff.

(C) Land-disturbing activity must comply with the requirements of Chapter 6 of the Fairfax County Public Facilities Manual in effect on June 30, 2014.

(D) Linear development projects will not be required to control post-developed stormwater runoff for flooding, except in accordance with a watershed or regional stormwater management plan.

#### **Section 124.1-5-7. - Regional (watershed-wide) Stormwater Management Plans.**

Water quality requirements and where allowed, water quantity requirements, may be achieved in accordance with Sections 124.1-4-5 and 124.1-4-9.

### **ARTICLE 6. – EROSION AND SEDIMENT CONTROL: PLAN REQUIREMENTS AND MINIMUM STANDARDS FOR TECHNICAL CRITERIA**

### **Section 124.1-6-1. Applicability.**

This Article sets forth minimum standards for the effective control of soil erosion, sediment deposition, and nonagricultural runoff.

### **Section 124.1-6-2. - Erosion and Sediment Control Plans.**

- (A) An erosion and sediment control plan must be filed for any development and the buildings constructed within, regardless of the phasing of construction. The erosion and sediment control plan must include all major conservation decisions to ensure that the entire unit of land will be treated to achieve the conservation objectives in Section 124.1-6-3. In addition to the mandatory elements, the erosion and sediment control plan may include:
- (1) Appropriate maps;
  - (2) An appropriate soil and water plan inventory and management information with needed interpretations; and
  - (3) A record of decisions contributing to conservation treatment.
- (B) The person responsible for carrying out the plan must provide the name of an individual holding a certificate who will be in charge of and responsible for carrying out the land-disturbing activity to the County.
- (C) If individual lots or sections in a residential development are being developed by different property owners, all land-disturbing activities related to the building construction must be covered by an erosion and sediment control plan.
- (D) Land-disturbing activity of less than 2,500 square feet on individual lots in a residential development is not exempt from the provisions of the VESMA, ESCL, or this chapter if the total land-disturbing activity in the development is equal to or greater than 2,500 square feet.

### **Section 124.1-6-3. - Erosion and sediment control criteria, techniques, and methods: minimum standards.**

An erosion and sediment control plan consistent with the criteria, techniques, and methods contained in 9VAC25-875-560 of the VESM Regulation, the Standards & Specifications as contained in the current Virginia Stormwater Management Handbook and the Public Facilities Manual except that the minimum standard for design and construction of sediment traps and sediment basins (9VAC25-875-560(6)) is modified as follows:



- (a) Temporary Sediment Trap — For land areas designated as Resource Protection Areas (RPAs), the minimum storage volume is 202 cubic yards per acre of disturbed area. Pipe outlet sediment traps are required for drainage areas of one to three acres. For land areas designated as RPAs, pipe outlet sediment traps may also be required for areas of less than one acre where topographical and drainage conditions are favorable for field implementation (see Plate 2-11 of the current Public Facilities Manual for details). Stone outlets for temporary sediment traps under one acre of drainage area outside of RPAs must be constructed according to current Virginia Stormwater Management Handbook specifications.
- (b) Temporary Sediment Basin — For land areas designated as RPAs, the minimum storage volume is 202 cubic yards per acre of disturbed area.

When the standards vary between the publications, the most stringent standard will apply.

## ARTICLE 7 - Exceptions.

### Section 124.1-7-1. - Exceptions.

- (A) Upon request by an applicant, the County may waive or modify any of the erosion and sediment control requirements of Article 6 that are deemed inappropriate or too restrictive for site conditions if any of the following conditions are met:
  - (1) At the time of plan submission, an applicant requests a variance to become part of the approved erosion and sediment control plan. The applicant must explain the reasons for requesting variances in writing. Specific variances which are allowed by the authority must be documented in the plan.
  - (2) During construction, the person responsible for implementing the approved plan may request a waiver or modification of the requirements in writing from the County. The County must respond in writing either approving or disapproving the request. If the Director does not approve the requested waiver or modification within 10 days of receipt of the request, the request is disapproved. Following disapproval, the applicant may resubmit the request with additional documentation.
- (B) The County may grant exceptions to the provisions of Article 4 of this Chapter. An exception may be granted provided that (i) the exception is the minimum necessary to afford relief, (ii) reasonable and appropriate conditions shall be imposed as necessary upon any exception granted so that the intent of the VESMA and this chapter are preserved, (iii) granting the exception will not confer any special privileges that are denied in other similar circumstances, and (iv) exception requests are not based upon conditions or circumstances that are self-imposed or self-created.

- (C) Economic hardship alone is not a sufficient reason to grant an exception from the requirements of this Chapter.
- (D) Under no circumstance can the LDS Director (i) grant an exception to the requirement that the land-disturbing activity obtain required permits, or (ii) approve the use of a BMP not found through the Virginia Stormwater BMP Clearinghouse, except where allowed under Article 5 of this Chapter.
- (E) Exceptions to requirements for phosphorus reductions are prohibited unless offsite options available through Section 124.1-4-5 have been considered and found not available.
- (F) A record of all exceptions granted must be maintained by the County in accordance with 9VAC25-875-180.

## **ARTICLE 8. Enforcement; Penalties.**

### **Section 124.1-8-1. - Administrative Enforcement Procedures**

- (A) Any person, whether owner, lessee, principal, agent, employee or otherwise, who violates any of the provisions of this Chapter, or permits any such violations, or fails to comply with any of the requirements hereof, or who fails to comply with any provision of this Chapter is subject to these enforcement provisions of this Chapter. The County may pursue enforcement in accordance with any of the remedies provided herein.
- (B) Verbal Warning. Upon becoming aware of any violation of any provisions of this Chapter, the County may issue a verbal warning.
- (C) Notice to Comply. When the County determines that there is a failure to comply with the permit conditions or conditions of land-disturbance approval, or to obtain an approved plan, permit, or land-disturbance approval prior to commencing land-disturbing activities the County may serve a notice to comply, set forth in such notice as a Notice of Violation, on the owner, permittee, or person conducting land-disturbing activities without an approved plan, permit, or approval. The Notice of Violation will (i) specify the measures needed to comply with the permit or land-disturbance approval conditions or shall identify the plan approval or permit or land-disturbance approval needed to comply with this the Act, and, (ii) specify a reasonable time within which such measures must be completed. In any instance in which a required permit or land-disturbance approval has not been obtained, the County may require immediate compliance. In such instance, the County may simultaneously issue a Notice of Violation and Stop Work Order as set forth in subsection (E) while the person conducting land-disturbing activities applies for land-disturbance approval. In any other case, the County may establish the time for compliance by accounting for the risk of damage to natural resources and other relevant factors. Notwithstanding any other provision in this subsection, the County may count any days of noncompliance as days of violation should the County take an enforcement action.

- (D) Service. A Notice of Violation must be served by delivery by facsimile, email, or other technology; by mailing with confirmation of delivery to the address specified in the permit or land-disturbance application, if available, or in the land records of the locality; or by delivery at the site to a person previously identified to the County by the permittee or owner.
- (E) Stop Work Order. If a person receiving a Notice of Violation fails to comply within the time specified therein or a person is conducting land-disturbing activities without an approved plan or required permit or land-disturbance approval, the County may issue a Stop Work Order requiring the owner or permittee, or person responsible for carrying out an approved plan, or the person conducting the land-disturbing activities without an approved plan or required permit or land-disturbance approval to cease all land-disturbing activities until the violation has ceased, or an approved plan and required permits and approvals are obtained, and specified corrective measures have been completed. Such orders become effective upon service on the person in the manner set forth in subsection (D). The County must lift the order immediately upon completion and approval of corrective action or upon obtaining an approved plan or any required permits or approvals.
- (F) Emergency Order. Where the alleged noncompliance is causing or presents an imminent and substantial danger of causing harmful erosion of lands or sediment deposition in waters within the watersheds of the Commonwealth or otherwise substantially impacting water quality, the County may issue, without advance notice or procedures, an emergency order directing such person to cease immediately all land-disturbing activities on the site and must provide an opportunity for a hearing, after reasonable notice as to the time and place thereof, to such person, to affirm, modify, amend, or cancel such emergency order.
- (G) Consent Order. The County may, with the consent of any person who has violated or failed, neglected, or refused to obey this Chapter, any condition of the County's land-disturbance approval, or any order of the County issued pursuant to this Chapter, issue a consent order. Such consent order may provide for the payment of civil charges in accordance with Section 124.1-8-3 of this Chapter, not to exceed the limits specified in that section. Such civil charges are in lieu of any appropriate civil penalty that could be imposed under the Act and this Chapter. Any civil charges collected must be paid to the treasury of Fairfax County in accordance with subdivision A 2 of § 62.1-44.15:48 of the Virginia Code.
- (H) Appeal of Order. The owner, permittee, or person conducting a land-disturbing activity may submit a local appeal in accordance with the local appeal procedures described in Section 124.1-8-2, or such person may appeal the issuance of any order directly to the circuit court of the jurisdiction wherein the violation was alleged to occur or other appropriate court as provided for in Virginia Code § 62.1-44.15:46 and Section 124.1-8-2(F) of this Chapter.
- (I) Notice of Violation by Aggrieved Property Owner.
- (1) An aggrieved owner of property sustaining pecuniary damage from soil erosion or sediment deposition resulting from a violation of an approved plan or required land-disturbance approval, or from the conduct of a land-disturbing activity commenced without

an approved plan or required land-disturbance approval, may give written notice of an alleged violation to the County and to the State Water Control Board.

- (2) If the County has not responded to the alleged violation in a manner that causes the violation to cease and abates the damage to the aggrieved owner's property within 30 days following receipt of the notice from the aggrieved owner, the aggrieved owner may request that the State Water Control Board conduct an investigation and, if necessary, require the violator to stop the alleged violation and abate the damage to the property of the aggrieved owner.

#### **Section 124.1-8-2. - Local Appeal; Hearings.**

Any person engaging in or proposing to engage in a land-disturbing activity may seek administrative review of the County's decision by filing Notice of Intent to Appeal in accordance with the local appeal procedure set forth below.

- (A) The Notice of Intent to Appeal must be submitted to the Director of LDS or the Director of DPWES as applicable, in writing within ten days after the date of the County's decision. The Notice must:
  - (1) be titled "Notice of Intent to Appeal;" and
  - (2) state whether the appellant requests a local hearing.
- (B) Within 21 days after the Notice of Intent to Appeal is submitted to the LDS Director or the DPWES Director, the appellant must submit a written appeal to the LDS Director or the DPWES Director setting forth the factual, legal, or other bases for the appeal.
- (C) If the appellant requests a hearing in the Notice of Intent to Appeal, the hearing must be held no more than 60 days after the Notice of Intent to Appeal is submitted, unless an extension is agreed upon by the appellant and the County. The hearing will be conducted by the LDS Director or the DPWES Director and the scope of the appeal is limited to the bases set forth in the written appeal. The appellant may appear in person or be represented by counsel and may present any information and call any witnesses in support of the appeal.
- (D) The hearing must be recorded.
- (E) The LDS Director or the DPWES Director will make a final decision in writing within 14 days after either the submission of the written appeal, or if a hearing was held, within 14 days of that hearing. The final decision will state the facts upon which the decision is based.
- (F) If a person fails to file a Notice of Intent to Appeal the County's decision or fails to file a written appeal after noticing and intent to appeal, the County's decision becomes a final decision. Such final decision is subject to judicial review, provided that an appeal is filed in the appropriate court within 30 days from the date of a final written decision adversely affecting the rights, duties, or privileges of the person engaging in or proposing to engage in a land-disturbing activity.

### **Section 124.1-8-3. - Civil penalties.**

- (A) Any person who violates any applicable provision of the Act, or this Chapter, including those adopted pursuant to the conditions of an MS4 permit, or any condition of a local land-disturbance approval, or who fails, neglects, or refuses to comply with any order of the County or a court, issued as herein provided, will be subject to a civil penalty not to exceed \$32,500 for each violation within the discretion of the court. Each day of violation of each requirement constitutes a separate offense. Such civil penalties must be paid into the treasury of the County in which the violation occurred and are to be used solely for stormwater management capital projects, including (i) new stormwater best management practices; (ii) stormwater best management practice maintenance, inspection, or retrofitting; (iii) stream restoration; (iv) low-impact development projects; (v) buffer restoration; (vi) pond retrofitting; and (vii) wetlands restoration.
- (B) Any summons for collection of a civil penalty for any violation of this Chapter will be filed in the appropriate Court pursuant to Virginia Code.

### **Section 124.1-8-4. - Criminal Penalties.**

- (A) Except as otherwise provided in this Chapter or Chapter 3.1 of the Code of Virginia, any person who willfully or negligently violates (1) any provision of Chapter 3.1 of the Code of Virginia, any regulation or order of the Board, or any condition of a certificate or land-disturbance approval of the Board, (2) any land-disturbance approval, ordinance, or order of the County, or (3) any order of a court shall be guilty of a misdemeanor punishable by confinement in jail for not more than 12 months and a fine of not less than \$2,500 nor more than \$32,500, either or both.
- (B) Except as otherwise provided in this Chapter or Chapter 3.1 of the Code of Virginia, any person who knowingly violates (1) any provision of Chapter 3.1 of the Code of Virginia, any regulation or order of the Board, or any condition of a certificate or land-disturbance approval of the Board, (2) any land-disturbance approval, ordinance, or order of the County, or (3) any order of a court issued as herein provided, or who knowingly makes any false statement in any form required to be submitted under this chapter or knowingly renders inaccurate any monitoring device or method required to be maintained under this chapter, shall be guilty of a felony punishable by a term of imprisonment of not less than one year nor more than three years, or in the discretion of the jury or the court trying the case without a jury, confinement in jail for not more than 12 months and a fine of not less than \$5,000 nor more than \$50,000 for each violation. Any defendant that is not an individual shall, upon conviction of a violation under this subsection, be sentenced to pay a fine of not less than \$10,000. Each day of violation of each requirement shall constitute a separate offense.
- (C) Except as otherwise provided in this Chapter or Chapter 3.1 of the Code of Virginia, any person who knowingly violates any provision of Chapter 3.1 of the Code of Virginia, and who knows at that time that he thereby places another person in imminent danger of death or serious bodily harm, shall, upon conviction, be guilty of a felony punishable by a term of imprisonment of not less than two years nor more than 15 years and a fine of not more than \$250,000, either or both. A defendant that is not an individual shall, upon conviction of a violation under this subsection, be sentenced to pay a fine not exceeding the greater of \$1 million or an amount

that is three times the economic benefit realized by the defendant as a result of the offense. The maximum penalty shall be doubled with respect to both fine and imprisonment for any subsequent conviction of the same person under this subsection.

- (D) Criminal prosecution under this section shall be commenced within three years of discovery of the offense, notwithstanding the limitations provided in any other statute.

#### **Section 124.1-8-5. - Injunction.**

The County may apply to the appropriate court in any jurisdiction wherein the land lies to enjoin a violation or a threatened violation of the provisions of this Chapter or order or the conditions of a local land-disturbance approval. Any person violating or failing, neglecting, or refusing to obey any injunction, mandamus, or other remedy obtained pursuant to this Article will be subject, in the discretion of the court, to a civil penalty that shall be assessed and used in accordance with the provisions of Section 124.1-8-3.

### **ARTICLE 9– Fees.**

#### **Section 124.1-9-1. - General.**

This Article establishes the fees to cover costs associated with implementation of the County's VESMP related to land disturbing activities and issuance of general permit coverage and County permits. Such fee attributes include the costs associated with plan review, registration statement review, permit issuance, state-coverage verification, inspections, reporting, database management, and compliance activities associated with the land-disturbing activities and for program oversight costs. Fees may also be established for permit maintenance, modification, and transfer.

- (A) The fees for individual permits and general permit coverage, permits or registration statements, and permit transfers are considered separate actions and must be assessed as a separate fee, as applicable.
- (B) Persons whose coverage under the General VPDES Permit for Discharges of Stormwater from Construction Activities has been revoked must reapply for an Individual Permit for Discharges of Stormwater from Construction Activities. The fee due shall be as specified under 9VAC25-875-1400.
- (C) Requests for a state permit, state permit modification, or general permit coverage will not be processed until the fees required pursuant to this Article are paid.
- (D) Individual permit or general permit coverage maintenance fees must be paid annually to DEQ or the County, as applicable. No permit will be reissued or automatically continued without payment of the required fee. Individual permit or general permit coverage maintenance fees apply until a notice of termination is effective.
- (E) All incomplete payments will be deemed as nonpayments. The DEQ or the County, as applicable, must notify the applicant of any incomplete payments. Interest may be charged for late payments at the underpayment rate set forth in Va. Code § 58.1-15 and is calculated on a

monthly basis at the applicable periodic rate. A 10% late payment fee will be charged to any delinquent (over 90 days past due) account. The DEQ and the County are entitled to all remedies available under the Virginia Code in collecting any past due amount.

**Section 124.1-9-2. - Exemptions.**

(A) No state permit application fees will be assessed to:

- (1) State permittees who request minor modifications to permits as defined in 9VAC25-875-20 or other minor amendments at the discretion of the County.
- (2) State permittees whose permits are modified or amended at the request of the County or the DEQ. This does not include errors in the registration statement identified by the County, or the DEQ, or errors related to the acreage of the site.

(B) State permit modifications at the request of the state permittee resulting in changes to stormwater management or ESM plans that require additional review by the County are not exempt pursuant to this section and shall be subject to fees specified under 9VAC25-875-1410.

**Section 124.1-9-3. - Fees for Coverage Under the General Permit for Discharges of Stormwater from Construction Activities and Permits for Chesapeake Bay Preservation Area Land-Disturbing Activities.**

Fees for permits for Chesapeake Bay Preservation Act land-disturbing activities and the County's portion of the fees for coverage under the General Permit for Discharges of Stormwater for Construction Activities must be paid to the County at such times and amounts as provided for in Appendix Q of the Code. The state's portion of the fee for coverage under the General Permit for Discharges of Stormwater for Construction Activities must be paid to the state at such times and amounts as provided for 9VAC25-875-1330 and 9VAC25-875-1400.

**Section 124.1-9-4. - Fees for the Modification or Transfer of Registration Statements for the General Permit for Discharges of Stormwater from Construction Activities.**

Fees that apply to modification or transfer of individual permits or of registration statements for the General VPDES Permit for Discharges of Stormwater from Construction Activities issued by the Department will be paid to the County at such times and amounts as provided for in Appendix Q of the Code. If the permit modifications result in changes to stormwater management plans that require additional review by the County, such reviews are subject to the fees set out in this section. The fees assessed are based on the total disturbed acreage of the site. The permit modification fee includes any cost difference between the initial permit fee paid and the permit fee that would have applied for the total disturbed acreage. No modification or transfer fee is required until such department-approved programs exist. These fees become effective when assessed by the County.

#### **Section 124.1-9-5. - Permit Maintenance Fees.**

Annual permit maintenance fees for General Permits for Discharges of Stormwater from Construction Sites including expired permits that have been administratively continued and Chesapeake Bay Preservation Act land-disturbing activities must be paid to the County by April 1st of each year in the amounts specified in Appendix Q of the Code. With respect to the General VPDES Permit for Discharges of Stormwater from Construction Activities, these fees apply until the permit coverage is terminated and are effective when assessed by a VESMP authority.

### **ARTICLE 10. - Illicit Discharges to the Storm Sewer System and State Waters.**

#### **Section 124.1-10-1. - Purpose.**

The purpose of this Article is to enable the County to comply with state and federal laws and regulations, including the Clean Water Act (33 U.S.C. § 1251 et seq.), and the County's MS4 permit by preventing the discharge of non-stormwater substances into the Fairfax County Municipal Separate Storm Sewer System ("County MS4") and to prevent discharges of prohibited substances into waters of the Commonwealth of Virginia that are located within the jurisdictional boundaries of the County and five miles beyond such jurisdictional boundary. The objective of this Article is to:

- (A) Prevent the discharge of non-stormwater and/or prohibited substances into the County MS4 and state waters;
- (B) Prevent illicit connections to the County MS4;
- (C) Facilitate compliance with the state-issued Fairfax County Municipal Separate Stormwater Sewer System permit; and
- (D) Authorize the Director of DPWES to investigate and enforce violations of this Article.

#### **Section 124.1-10-2. - Responsibilities of the Director of the Fairfax County Department of Public Works and Environmental Services ("DPWES").**

The DPWES Director has direct charge over the County MS4, including responsibility for the operation, maintenance, and administration thereof, and responsibility for the enforcement of violations of this Article. In the investigation and enforcement of violations of this Article, the DPWES Director may exercise any and all authority granted to the LDS Director under Article 8 and may exercise the right of entry set forth in Chapter 124.1-2-8 for obtaining information or conducting surveys or investigations necessary in the enforcement of the provisions of this Article.



**Section 124.1-10-3. - Illicit Discharges to the Storm Sewer System and State Waters.**

- (A) It is a violation of this Article for any Person to discharge or deposit, or to cause or allow to be discharged or deposited any trash, leaves, grass clippings, soil, oil, petroleum products, noxious or flammable substances, other wastes, or any matter causing or adding pollution in any state waters of this County or on any property in this County in any manner so as to allow any such substance to be washed into state waters by storm or flood water. The discharge or deposit of any substance to state waters in accordance with a state-issued permit is authorized but any exceedance of permit limits is a violation of this subsection.
- (B) It is a violation of this Article for any Person to discharge or deposit, or to cause or allow to be discharged or deposited in the County MS4, trash, leaves, grass clippings, soil, oil, petroleum products, noxious or flammable substances, other wastes, or any matter causing or adding pollution; provided however, that leaves may be piled at curbs during such seasons and in such areas as may now or in the future be furnished mechanical leaf collection service. It is the intent of this provision to prohibit the entry into the County MS4 of any substance, whether solid or liquid, other than naturally occurring surface or subsurface waters. The discharge or deposit of any substance to the County MS4 in accordance with a state-issued permit is authorized but any exceedance of permit limits is a violation of this subsection.
- (C) It is a violation of this Article to connect any plumbing fixtures, drains, appurtenances, or appliances that discharge any substance other than stormwater into the County MS4.
- (D) The DPWES Director is authorized to enforce violations of this Article by issuing a Notice of Violation that describes the violation and identifies a reasonable time within which measures must be taken to abate the violation and to mitigate the impact of the violation, as necessary. The Notice of Violation must be served on the owner of the property upon which the violation occurred or the person responsible for causing the violation. Any recipient of a Notice of Violation issued under this Article may file an appeal under the procedures in Article 8. The Notice of Violation becomes a final decision upon the failure of the recipient to file a timely local appeal under Article 8. The DPWES Director may use the legal remedies and civil penalties available under Article 8 of this Chapter. A final decision is subject to judicial review, provided that an appeal is filed in the appropriate court within 30 days from the date of a final written decision adversely affecting the rights, duties, or privileges of the recipient of the Notice of Violation.

**Section 124.1-10-4. - Standards for Inspection of Industrial and Commercial Property Discharging to the County MS4.**

Properties on which there are industrial or commercial uses that may, in the opinion of the DPWES Director, present a high risk of discharging a significant pollutant load of non-stormwater substances to the County MS4 are subject to inspection by the DPWES Director and his designees. The inspection program establishing the basis for selecting a particular property for inspection under this program will be made and is available through DPWES.

## **ARTICLE 11. - Debris Landfill.**

### **Section 124.1-11-1. - Landfill operation.**

No person may operate a debris landfill in Fairfax County until the proposed debris landfill site has been approved by the Board of Supervisors following a public hearing and required permits have been issued by the Director and the DEQ. Any person who has already been issued a permit to operate a debris landfill by the DEQ or has received zoning or other land use approval for the siting of the facility, prior to July 1, 1989, is not required to obtain siting approval for such debris landfill pursuant to the provisions of this Article.

### **Section 124.1-11-2. - Purpose and intent.**

It is the purpose of this Article to protect and to provide for the public health, safety, and general welfare of the citizens of Fairfax County; to protect against the unregulated dumping of garbage or debris, to prevent the hazards of fire, to protect the County's and State's waters from pollution and from erosion and sedimentation; to protect against undue noise, against undue truck traffic, against uncontrolled dust and debris; to ensure conformance with permits which have been issued for land use and design; to ensure that the ultimate master-planned use of the property may be accomplished upon completion of operations.

### **Section 124.1-11-3. - Definitions.**

For the purposes of Article 11 only, the following words and terms have the following meanings unless the context clearly indicates otherwise:

*Debris landfill or landfill* means a *facility* used to dispose of only the following materials expressly permitted by the Board of Supervisors. Tree stumps, brush, logs, limbs, and root material; construction and/or demolition rubble; excavation material; major household appliances; ash (thoroughly quenched); machinery; metals, and properly cut-up tires (i.e. radially split, shredded or chipped) such that, when buried, there is no potential for trapping air or water in voids. In addition, compost may be used as normal landfill cover only in accordance with the DEQ regulations, and when the landfill operator has received written authorization from the DEQ to dispose of same on such a landfill. Semi-liquid excavation material and paper wastes (unless part of construction/demolition rubble) may be included only where expressly approved by the Director.

*Design Plan* means a plan meeting the requirements of § 5-0100 et seq. of the Public Facilities Manual.

*Director* means the Director of Land Development Services or their agent.

*Operator* means the owner of the property where the landfill activities are to take place, or their authorized agent.

**Section 124.1-11-4. - Debris landfill permit.**

- (A) After receiving siting approval from the Board of Supervisors, any person desiring to obtain a debris landfill permit must file an application with the Director on forms provided by Land Development Services. No debris landfill permit may be issued by the Director until they are satisfied that the applicant has met the Land Use requirements and the Design requirements of the Code, the Code of Virginia, and the regulations contained in Title 9, Agency 20, Chapter 81 of the Virginia Administrative Code, or that the applicant had a legally established landfill operation in existence on July 1, 1989.
- (B) A debris landfill permit must be granted within 60 days, where the application conforms to the requirements of this ordinance and the provisions of the Fairfax County Zoning Ordinance and be effective for a period of time not in excess of that required to attain the maximum engineered capacity of the said landfill as specified in the Design Plan. The permit, by its terms, must be subject to annual review and renewal by the Director. An application for renewal must be submitted to the Director no later than 60 days prior to the annual expiration date.
- (C) The applicant is entitled to appeal the denial of any permit application to the Fairfax County Circuit Court.
- (D) Any person seeking approval for the operation of a debris landfill under this Article must submit a Design Plan to the Director, in conformance with the standards defined in this Chapter and the Public Facilities Manual. The Director, after receiving the recommendations of the Health Department and the Department of Public Works and Environmental Services must approve or disapprove, with reasons therefore, the Design Plan within 60 days of the date of submission.

**Section 124.1-11-5. - Debris landfill permit requirements.**

- (A) A detailed operating plan for the proposed debris landfill must accompany the permit application and must include the following information:
  - (1) The proposed rate of utilization of the landfill capacity along with the projected life of the landfill.
  - (2) The projected traffic count for vehicles hauling to the landfill on all neighboring highways or as deemed necessary by the Director.
  - (3) The planned hours of operation; the number of personnel assigned to the landfill; and the types and number of pieces of equipment to be used during these hours.

- (4) The procedures for the control of dust on-site.
  - (5) The provisions for minimizing and controlling the carrying of dirt, dust, and/or mud onto off-site roadways; and for minimizing and controlling odor.
  - (6) The procedures and plan for the control of fire.
  - (7) The provisions for screening and limiting access including vegetation, hills, embankments, fencing, trees, etc.
  - (8) The procedures for providing temporary erosion control including but not limited to division ditches, embankments, channels, vegetation growth, straw bales, grade stabilization, etc.
  - (9) The procedure for the placing of intermediate and final cover including the type of cover material to be used.
- (B) The operating plan must demonstrate compliance with the following minimum requirements and guidelines:
- (1) Adequate personnel and equipment to operate the landfill must be present during all working hours.
  - (2) A well-compacted cover, which must be a minimum of four to ten inches in depth for surface and side slopes, must be placed as intermediate cover over all material. No material may remain uncovered for more than 14 days.
  - (3) A well-compacted clean earth cover, which must be a minimum of 30 inches in depth for surface and side slopes, must be placed as a final cover over the completed areas of the landfill.
  - (4) A firebreak of a minimum of 50 feet must be maintained between the landfill and adjoining wooded areas in addition to availability of cover material maintained in close proximity to the working face of the fill.
  - (5) Upon completion of a debris fill cell, the entire surface of intermediate cover must be maintained free of cracks, erosion or uneven cover.
  - (6) A vegetative or other appropriate cover for erosion control must be established and maintained on all intermediate and final landfill areas designated to remain inactive for a period of more than 90 days.
  - (7) All debris landfill cover must be composed of earth or other approved material of such character that it can be compacted to provide a tight seal, will not crack excessively, and is free of putrescible substances.
  - (8) No salvaging is permitted at the debris landfill unless it is part of the operating plan.

- (9) The application must indicate the degree of compaction of materials necessary to allow eventual construction upon the site commensurate with that envisioned by master plan use.
- (C) As a condition for the issuance of a debris landfill permit, the applicant must agree to permit access to the site for inspection by the Director and other officials at any time as may be deemed necessary by the Director.
- (D) Such inspection must be for the purpose of determining that the limitations and conditions of the debris landfill permit are being met, including but not limited to the following:
  - (1) Limitations on vehicle traffic, maintenance of the access road for vehicles;
  - (2) Provision for prevention from fire;
  - (3) Provisions for odor control;
  - (4) Protection of water quality;
  - (5) Establishment and preservation of grades as shown on the Design Plan.

#### **Section 124.1-11-6. - Revocation.**

- (A) A debris landfill permit is subject to revocation at any time by the LDS Director if the landfill is being operated in violation of the provision of this Chapter; in violation of the limitations and conditions of the permit; or that the landfill is not in accordance with the Design Plan as required herein.
- (B) Before revoking such permit, however, the Director must give the holder thereof at least ten working days written notice to correct any such violation. In the event that the violation has not been corrected within the ten-day period, the Director will revoke the permit.
- (C) Any operator whose permit is revoked may appeal in writing such revocation to the County Executive, for their decision within ten days of his receipt of such appeal.

#### **Section 124.1-11-7. - Fee.**

The applicant for a debris landfill permit under these provisions must pay to the County such fees as prescribed by Appendix Q of the Code. This fee includes the cost of processing the debris landfill permit application and the inspections which are deemed necessary by the LDS Director and will be assessed at the time of initial application and subsequently at the time of annual review.

**2. That the repeal of Chapters 104 and 124 and the adoption of this ordinance shall take effect on July 1, 2024, except that for land-disturbing activity that would have been eligible for the exemption under Section 124-1-7(3) of the Stormwater Management Ordinance and for which lot grading plans were accepted for review prior to July 1, 2024, the effective date of the water quality technical criteria set forth in the Erosion and Stormwater Management Ordinance is January 1, 2025.**

*GIVEN under my hand this 25th day of June, 2024.*

A handwritten signature in blue ink, appearing to read "Jill G. Cooper", is written over a horizontal line.

Jill G. Cooper  
Clerk for the Board of Supervisors