

ACCOMACK COUNTY STORMWATER MANAGEMENT  
ORDINANCE

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MAY 22, 2014

This Ordinance is mandated by the Commonwealth of Virginia pursuant to Virginia Code §62.1-44.15:27 et seq. and regulations promulgated by the State Water Control Board.

**Accomack County Stormwater Management Ordinance**  
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**ORDINANCE**

Pursuant to Virginia Code §[62.1-44.15:27](#), Accomack County is required to adopt a Stormwater Management Ordinance and establish a Stormwater Management Program (VSMP).

**1-1. PURPOSE AND AUTHORITY. (Section [9VAC25-870-20](#), [9VAC25-870-40](#))**

- (a) The purpose of this Ordinance is to protect the quality and quantity of state waters from the potential harm of unmanaged stormwater, including protection from a land disturbing activity causing unreasonable degradation of properties, water quality, stream channels, and other natural resources, and to establish procedures whereby stormwater requirements related to water quality and quantity shall be administered and enforced.
- (b) This Ordinance is adopted in accordance with Article 2.3 (§[62.1-44.15:24](#) et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia.

**1-2. DEFINITIONS. ([9VAC25-870-10](#))**

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

"*Administrator*" means the Environmental Program Manager or his designee.

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

"*Appeals Board*" means the VSMP appeals authority, which shall be appointed by the Board of Supervisors. The Appeals Board will consist of an engineer, a local developer, and an individual from the local Eastern Shore Soil and Water Conservation District.

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

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

*"Chesapeake Bay Preservation Act land-disturbing activity"* means a land-disturbing activity, including clearing, grading, or excavation that results in a land disturbance equal or greater than 2,500 square feet and less than one acre in the area designated as subject to the Chesapeake Bay Preservation Act and regulations adopted pursuant thereto. (NOTE: The area of Accomack County subject to the Chesapeake Bay Preservation Act and regulations adopted pursuant thereto is designated as the "Chesapeake Bay Watershed" on the official zoning map of Accomack County.)

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

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

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

*"Department"* means the Department of Environmental Quality.

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

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

*"Land disturbance" or "land-disturbing activity"* means a man-made change to the land surface that potentially changes its runoff characteristics, including clearing, grading, or excavation, except that the term shall not include those exemptions specified in Section 1-3 (c) of this Ordinance.

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

*"Minor modification"* means an amendment to an existing general permit before its expiration not requiring extensive review and evaluation, including, but not limited to, changes in EPA promulgated test protocols, increasing monitoring frequency requirements, changes in sampling locations, and changes to compliance dates within the overall compliance schedules. A minor general permit modification or amendment does not substantially alter general 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.

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

*"Permit"* or *"VSMP authority permit"* means an approval to conduct a land-disturbing activity issued by the VSMP authority for the initiation of a land-disturbing activity after evidence of state VSMP general permit coverage has been provided where applicable.

*"Permittee"* means the person to whom the VSMP Authority Permit is issued.

*"Person"* means any individual, corporation, partnership, association, state, municipality, commission, or political subdivision of a state, governmental body, including federal, state, or local entity as applicable, any interstate body or any other legal entity.

*"Regulations"* means the VSMP Permit Regulations ([9VAC25-870](#)) as amended.

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

*"State"* means the Commonwealth of Virginia.

*"State Board"* means the State Water Control Board.

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

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

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

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

*"Stormwater management plan"* means a document(s) containing material describing methods for complying with the requirements of Section 1-6 of this Ordinance.

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

*"Subdivision"* means the same as defined in [Section 78-3](#) of Accomack County's Subdivision Ordinance.

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

*"Virginia Stormwater Management Act" or "Act"* means Article 2.3 ([62.1-44.15:24](#) et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia.

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

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

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

### **1-3. STORMWATER PERMIT REQUIREMENT; EXEMPTIONS.**

- (a) Except as provided herein, no person may engage in any land-disturbing activity until a VSMP authority permit has been issued by the Administrator in accordance with the provisions of this Ordinance.
- (b) A Chesapeake Bay Preservation Act Land-Disturbing Activity shall be subject to an erosion and sediment control plan consistent with the requirements of the Erosion and Sediment Control Ordinance, a stormwater management plan as outlined under Section 1- 6, the technical criteria and administrative requirements for land-disturbing activities outlined in Section 1-9, and the requirements for control measures long-term maintenance outlined under Section 1-10.

Such land-disturbing activities shall not require completion of a registration statement or require coverage under the General Permit for Discharges of Stormwater from construction activities.

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

#### **1-4. STORMWATER MANAGEMENT PROGRAM ESTABLISHED; SUBMISSION**

## **AND APPROVAL OF PLANS; PROHIBITIONS.**

- (a) Pursuant to [§62.1-44.15:27](#) of the Code of Virginia, Accomack County hereby establishes a Virginia stormwater management program for land-disturbing activities and adopts the applicable Regulations that specify standards and specifications for VSMP's promulgated by the State Board for the purposes set out in Section 1-1 of this Ordinance. The Board of Supervisors hereby designates the County Administrator as the Administrator of the Virginia stormwater management program.
- (b) No VSMP authority permit shall be issued by the Administrator until the following items have been submitted to and approved by the Administrator as prescribed herein:
  - (1) A permit application that includes a general permit registration statement;
  - (2) An erosion and sediment control plan approved in accordance with the Accomack County Erosion and Sediment Control Ordinance [Chapter 38, Article III];
  - (3) A stormwater management plan that meets the requirements of Section 1-6 of this Ordinance.
- (c) No VSMP authority permit shall be issued until general permit coverage is obtained.
- (d) No VSMP authority permit shall be issued until the fees required to be paid pursuant to Section 1-15 are received or a reasonable performance bond received pursuant to Section 1-15 of this Ordinance has been submitted.
- (e) No VSMP authority permit shall be issued unless and until the permit application and attendant materials and supporting documentation demonstrate that all land clearing; construction, disturbance, land development and drainage will be done according to the approved permit.
- (f) No grading, building or other local permit shall be issued for a property unless a VSMP authority permit has been issued by the Administrator.

### **1-5. STORMWATER POLLUTION PREVENTION PLAN; CONTENTS OF PLANS.**

- (a) The Stormwater Pollution Prevention Plan (SWPPP) shall include the content specified by Section [9VAC25-870-54](#) and must also comply with the requirements and general information set forth in Section [9VAC25-880-70, Section II](#) [stormwater pollution prevention plan] of the general permit.
- (b) The SWPPP shall be amended by the operator whenever there is a change in design, construction, operation or maintenance that has a significant effect on the discharge of pollutants to state waters which is not addressed by the existing SWPPP.
- (c) The SWPPP must be maintained by the operator at a central location onsite. If an onsite location is unavailable, notice of the SWPPP's location must be posted near the main entrance at the construction site. Operators shall make the SWPPP available for public review in

accordance with Section II of the general permit, either electronically or in hard copy.

**1-6. STORMWATER MANAGEMENT PLAN; CONTENTS OF PLAN.**

- A. A Stormwater Management Plan, or where appropriate, an Agreement In Lieu of a Stormwater Management Plan, shall be developed and submitted to the VSMP authority. The stormwater management plan shall be implemented as approved or modified by the VSMP authority and shall be developed in accordance with the following:
- (1) The Stormwater Management Plan required in Section 1-4 of this Ordinance must apply the stormwater management technical criteria set forth in Section 1-9 of this Ordinance to the entire land disturbing activity. Individual lots in new residential, commercial, or industrial developments shall not be considered separate land-disturbing activities.
  - (2) A Stormwater Management Plan shall consider all sources of surface runoff and all sources of subsurface and groundwater flows converted to surface runoff.
- B. A complete Stormwater Management Plan, or where appropriate, an Agreement In Lieu of a stormwater management plan, shall include the following elements:
- (1) Information on the type and location of stormwater discharges; information on the features to which stormwater is being discharged, including surface waters or karst features if present, and pre-development and post-development drainage areas;
  - (2) Contact information including the name, address, and telephone number of the owner and the tax map reference number(s) and parcel number(s) 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 VSMP authority, the information provided and documented during the review process that addresses the current and final site conditions;
  - (4) A general description of the proposed stormwater facilities and the mechanism through which the facilities will be operated and maintained after construction is complete;
  - (5) Information on the proposed stormwater management facilities, including:
    - (i) The type of facilities;
    - (ii) Location, including geographic coordinates;
    - (iii) Acres treated; and
    - (iv) 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 the VSMP Regulations.

- (8) A map or maps 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) Boring locations and associated data locating the seasonal high water table;
    - (d) Soil types, geologic formations if karst features are present in the area, forest cover, and other vegetative areas;
    - (e) Current land use, including existing structures, roads, and locations of known utilities and easements;
    - (f) Sufficient information on adjoining parcels to assess the impacts of stormwater from the site on these parcels;
    - (g) The limits of clearing and grading and the proposed drainage patterns on the site;
    - (h) Proposed buildings, roads, parking areas, utilities, and stormwater management facilities; and
    - (i) Proposed land use with tabulation of the percentage of surface area to be adapted to various uses, including but not limited to planned locations of utilities, roads, and easements.
  - (9) If an operator intends to meet the requirements established in 9VAC25-870-63 or 9VAC25-870-66 through the use of off-site compliance options, where applicable, then a letter of availability from the off-site provider must be included; and
  - (10) If payment of a fee is required with the stormwater management plan submission by the VSMP authority, the fee and the required fee form in accordance with Part XIII must have been submitted.
- C. Elements of the stormwater management plans that include activities regulated under Chapter 4 (§[54.1-400 et seq.](#)) of Title 54.1 of the Code of Virginia shall be appropriately sealed and signed by a professional registered in the Commonwealth of Virginia pursuant to Article 1 (§[54.1-400 et seq.](#)) of Chapter 4 of Title 54.1 of the Code of Virginia.
- D. A construction record drawing for permanent stormwater management facilities shall be submitted to the VSMP authority with 9VAC25-870-108 and 9VAC25-870-112. The construction record drawing shall be appropriately sealed and signed by a professional registered in the Commonwealth of Virginia, certifying that the stormwater management facilities have been constructed in accordance with the approved plan.

#### **1-7. POLLUTION PREVENTION PLAN; CONTENTS OF PLANS.**

- A. Pollution Prevention Plan required by [9VAC25-870-56](#), shall be developed, implemented, and updated as necessary and must detail the design, installation, implementation, and maintenance

of effective pollution prevention measures to minimize the discharge of pollutants. At a minimum, such measures must be designed, installed, implemented, and maintained to:

- (1) Minimize the discharge of pollutants from equipment and vehicle washing, wheel wash water, and other wash waters. Wash waters must be treated in a sediment basin or alternative control that provides equivalent or better treatment prior to discharge;
- (2) Minimize the exposure of building materials, building products, construction wastes, trash, landscape materials, fertilizers, pesticides, herbicides, detergents, sanitary waste, and other materials present on the site to precipitation and to stormwater; and
- (3) Minimize the discharge of pollutants from spills and leaks and implement chemical spill and leak prevention and response procedures.

B. The pollution prevention plan shall include effective best management practices to prohibit the following discharges:

- (1) Wastewater from washout of concrete, unless managed by an appropriate control;
- (2) Wastewater from washout and cleanout of stucco, paint, form release oils, curing compounds, and other construction materials;

Fuels, oils, or other pollutants used in vehicle and equipment operation and maintenance; and

- (3) 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.

## **1-8. REVIEW OF STORMWATER MANAGEMENT PLAN.**

A. The Administrator shall review stormwater management plans and shall approve or disapprove a stormwater management plan according to the following:

- (1) The Administrator shall determine the completeness of a plan in accordance with Section 1-6 of this Ordinance, and shall notify the applicant, in writing, of such determination, within 15 calendar days of receipt. If the plan is deemed to be incomplete, the above written notification shall contain the reasons the plan is deemed incomplete.
- (2) The Administrator shall have an additional 60 calendar days from the date of the communication of completeness to review the plan, except that if a determination of completeness is not made within the time prescribed in subdivision (1), then the plan shall be deemed complete and the Administrator shall have 60 calendar days from the date of submission to review the plan.

- (3) The Administrator shall review any plan that has been previously disapproved, within 45 calendar days of the date of resubmission.
- (4) During the review period, the plan shall be approved or disapproved and the decision communicated in writing to the person responsible for the land-disturbing activity or his designated agent. If the plan is not approved, the reasons for not approving the plan shall be provided in writing. Approval or denial shall be based on the plan's compliance with the requirements of this Ordinance.
- (5) If a plan meeting all requirements of this Ordinance is submitted and no action is taken within the time provided above in subdivision (2) for review, the plan shall be deemed approved.

B. Approved stormwater plans may be modified as follows:

- (1) Modifications to an approved stormwater management plan shall be allowed only after review and written approval by the Administrator. The Administrator shall have 60 calendar days to respond in writing either approving or disapproving such request.
- (2) The Administrator may require that an approved stormwater management plan be amended, within a time prescribed by the Administrator, to address any deficiencies noted during inspection.

C. The Administrator shall require the submission of a construction record drawing for permanent stormwater management facilities. The Administrator may elect not to require construction record drawings for stormwater management facilities for which recorded maintenance agreements are not required pursuant to Section 1-10 (b).

## **1-9. TECHNICAL CRITERIA FOR REGULATED LAND DISTURBING ACTIVITIES.**

To protect the quality and quantity of state water from the potential harm of unmanaged stormwater runoff resulting from land-disturbing activities, Accomack County hereby adopts the technical criteria for regulated land-disturbing activities set forth in Part II B of the Regulations, as amended, expressly to include [9VAC25-870-63](#) [water quality design criteria requirements]; [9VAC25-870-65](#) [water quality compliance]; [9VAC25-870-66](#) [water quantity]; [9VAC25-870-69](#) [offsite compliance options]; [9VAC25-870-72](#) [design storms and hydrologic methods]; [9VAC25-870-74](#) [stormwater harvesting]; [9VAC25-870-76](#) [linear development project]; and [9VAC25-870-85](#) [stormwater management impoundment structures or facilities], which shall apply to all land-disturbing activities regulated pursuant to this Ordinance, except as expressly set forth in Subsection (b) of this Section.

A. Any land disturbing activity shall be considered grandfathered by the VSMP authority and shall be subject to the Part II C technical criteria of the VSMP Regulation provided:

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

(2) A state permit has not been issued prior to July 1, 2014; and

(3) Land disturbance did not commence prior to July 1, 2014.

B. Locality, state and federal projects shall be considered grandfathered by the VSMP authority and shall be subject to the Part II C technical criteria of the VSMP Regulation provided:

(1) There has been an obligation of 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 grandfathered under subsections A and B of this section shall remain subject to the Part II C technical criteria of the VSMP Regulation for one additional state permit cycle. After such time, portions of the project not under construction shall become subject to any new technical criteria adopted by the board.

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

E. Nothing in this section shall preclude an operator from constructing to a more stringent standard at his discretion.

F. (1) The Administrator may grant exceptions to the provisions of Part II B or Part II C of 9VAC25-850 (Erosion and Sediment Control and Stormwater Management Certification Regulations, Technical Criteria for Regulated Land-Disturbing Activities). . 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 Act 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.

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

(3) Under no circumstance shall the VSMP authority grant an exception to the

requirement that the land-disturbing activity obtain required state permits, nor approve the use of a BMP not found on the Virginia Stormwater BMP Clearinghouse Website, except where allowed under Part II C (9VAC25-870-93 et seq.) of this chapter.

(4) Exceptions to requirements for phosphorus reductions shall not be allowed unless offsite options available through 9VAC25-870-69 have been considered and found not available.

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

#### **1-10. LONG-TERM MAINTENANCE OF PERMANENT STORMWATER FACILITIES.**

- A. The Administrator shall require the provision of long-term responsibility for and maintenance of stormwater management facilities and other techniques specified to manage the quality and quantity of runoff. Such requirements shall be set forth in an instrument recorded in the local land records prior to general permit termination or earlier as required by the Administrator and shall at a minimum:
- (1) Be submitted to the Administrator for review and approval prior to the approval of the stormwater management plan;
  - (2) Be stated to run with the land;
  - (3) Provide for all necessary access to the property for purposes of maintenance and regulatory inspections;
  - (4) Provide for inspections and maintenance and the submission of inspection and maintenance reports to the Administrator; and
  - (5) Be enforceable by all appropriate governmental parties.
- B. At the discretion of the Administrator, such recorded instruments need not be required for stormwater management facilities designed to treat stormwater runoff primarily from an individual residential lot on which they are located, provided it is demonstrated to the satisfaction of the Administrator that future maintenance of such facilities will be addressed through an enforceable mechanism at the discretion of the Administrator.
- C. If a recorded instrument is not required pursuant to Subsection 1-10 (b), the Administrator shall develop a strategy for addressing maintenance of stormwater management facilities designed to treat stormwater runoff primarily from an individual residential lot on which they are located. Such a strategy may include periodic inspections, homeowner outreach and education, or other method targeted at promoting the long-term maintenance of such facilities. Such facilities shall not be subject to the requirement for an inspection to be conducted by the Administrator.

#### **1-11. MONITORING AND INSPECTIONS.**

- A. The Administrator shall inspect the land-disturbing activity during construction for:
  - (1) Compliance with the approved erosion and sediment control plan;
  - (2) Compliance with the approved stormwater management plan;
  - (3) Development, updating, and implementation of a pollution prevention plan; and
  - (4) Development and implementation of any additional control measures necessary to address a TMDL.
- B. The Administrator may, at reasonable times and under reasonable circumstances, enter any establishment or upon any property, public or private, for the purpose of obtaining information or conducting surveys or investigations necessary in the enforcement of the provisions of this Ordinance.
- C. In accordance with a performance bond with surety, cash escrow, letter of credit, any combination thereof, or such other legal arrangement or instrument, the Administrator may also enter any establishment or upon any property, public or private, for the purpose of initiating or maintaining appropriate actions which are required by the permit conditions associated with a land-disturbing activity when a permittee, after proper notice, has failed to take acceptable action within the time specified.
- D. Pursuant to [§62.1-44.15:40](#) of the Code of Virginia, the Administrator may require every VSMP authority permit applicant or permittee, or any such person subject to VSMP authority permit requirements under this Ordinance, to furnish, when requested, such application materials, plans, specifications, and other pertinent information as may be necessary to determine the effect of his discharge on the quality of state waters, or such other information as may be necessary to accomplish the purposes of this Ordinance.
- E. Post-construction inspections of stormwater management facilities required by the provisions of this Ordinance shall be conducted by the Administrator pursuant to the County's adopted and State Board approved inspection program, and shall occur, at minimum, at least once every five (5) years except as may otherwise be provided for in Section 1-10.

## **1-12. HEARINGS.**

- (a) Any permit applicant, permittee, or person subject to permit requirements under this Ordinance aggrieved by any action of the Administrator taken without a formal hearing, or by inaction of the Administrator, may request, in writing, a formal hearing by the Administrator causing such grievance, provided a petition requesting such hearing is filed with the Administrator within 30 days after notice of such action or inaction.
- (b) The hearings held under this Section shall be conducted by the Appeals Board at a scheduled meeting.

- (c) A record of the proceedings of such hearings shall be taken and filed at the County Administrator's office. Depositions may be taken and read as in actions at law.
- (d) The Board shall have power to issue subpoenas and subpoenas duces tecum, and at the request of any party shall issue such subpoenas. The failure of a witness without legal excuse to appear or to testify or to produce documents shall be acted upon by the Board in the manner prescribed in Va. Code §62.1-44.15:44. Witnesses who are subpoenaed shall receive the same fees and mileage as in civil actions.

### **1-13. APPEALS.**

- (a) Appeals of the Appeals Board decision shall be made in the Accomack County Circuit Court pursuant to Va. Code §62.1-44.15:46. Such appeals shall be made to the Court within 30 days of the action by the Appeals Board.

### **1-14. ENFORCEMENT.**

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

- (1) The notice shall specify the measures needed to comply with the permit conditions and shall specify the time within which such measures shall be completed. Upon failure to comply within the time specified, a stop work order may be issued in accordance with Subsection (b) or the permit may be revoked by the Administrator.
- (2) If a permittee fails to comply with a notice issued in accordance with this Section within the time specified, the Administrator may issue an order requiring the owner, permittee, person responsible for carrying out an approved plan, or the person conducting the land-disturbing activities without an approved plan or required permit, to cease all land-disturbing activities until the violation of the permit has ceased, or an approved plan and required permits are obtained, and specified corrective measures have been completed.

Such orders shall become effective upon service on the person by certified mail, return receipt requested, sent to his/her address specified in the land records of the locality, or by personal delivery by an agent of the Administrator. However, if the Administrator finds that any such violation is grossly affecting or presents an imminent and substantial danger of causing harmful erosion of lands or sediment deposition in waters within the watersheds of the Commonwealth or otherwise substantially impacting water quality, it may issue, without advance notice or hearing, an emergency order directing such person to cease immediately all land-disturbing activities on the site and shall provide an opportunity for a hearing, after reasonable notice as to the time and place

thereof, to such person to affirm, modify, amend, or cancel such emergency order. If a person who has been issued an order is not complying with the terms thereof, the Administrator may institute a proceeding for an injunction, mandamus, or other appropriate remedy in accordance with Subsection 1-14 (c).

- B. In addition to any other remedy provided by this Ordinance, if the Administrator determines that there is a failure to comply with the provisions of this Ordinance, they may initiate informal and/or formal administrative enforcement procedures.
- C. Any person violating or failing, neglecting, or refusing to obey any rule, regulation, ordinance, order, approved standard or specification, or any permit condition issued by the Administrator may be compelled in a proceeding instituted in the Accomack County Circuit Court by Accomack County to obey same and to comply therewith by injunction, mandamus or other appropriate remedy.
- D. Any person who violates any provision of this Ordinance or who fails, neglects, or refuses to comply with any order of the Administrator, shall be subject to a civil penalty not to exceed \$32,500 for each violation within the discretion of the Court. Each day of violation of each requirement shall constitute a separate offense.
  - (1) Violations for which a penalty may be imposed under this Subsection shall include but not be limited to the following:
    - (i) No state permit registration;
    - (ii) No SWPPP;
    - (iii) Incomplete SWPPP;
    - (iv) SWPPP not available for review;
    - (v) No approved erosion and sediment control plan;
    - (vi) Failure to install stormwater BMPs or erosion and sediment controls;
    - (vii) Stormwater BMPs or erosion and sediment controls improperly installed or maintained;
    - (viii) Operational deficiencies;
    - (ix) Failure to conduct required inspections;
    - (x) Incomplete, improper, or missed inspections; and
    - (xi) Discharges not in compliance with the requirements of Section [9VAC25-880-70](#) of the general permit.
  - (2) The Administrator may issue a summons for collection of the civil penalty and the action may be prosecuted in the appropriate court.
  - (3) In imposing a civil penalty pursuant to this Subsection, the Court may consider the degree of harm caused by the violation and also the economic benefit to the violator from noncompliance.
  - (4) Any civil penalties assessed by a court as a result of a summons issued by Accomack County shall be paid into the treasury of Accomack County to be used for the purpose of minimizing, preventing, managing, or mitigating pollution of the waters of the locality and abating environmental pollution therein in such manner as the Court



may, by order, direct.

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

**1-15. FEES.**

When a site or sites are purchased for development within a previously permitted common plan of development or sale, the applicant shall be subject to fees (“total fee to be paid by applicant” column) in accordance with the disturbed acreage of their site or sites according to the following table.

Fee type	Total fee to be paid by Applicant (includes both VSMP authority and Department portions where applicable)	Department portion of “total fee to be paid by Applicant” (based on 28% of total fee paid*)
Chesapeake Bay Preservation Act Land-Disturbing Activity (not subject to General Permit coverage; sites within designated areas of Chesapeake Bay Act localities with land-disturbance acreage equal to or greater than 2,500 square feet and less than 1 acre)	\$209	\$0
General / Stormwater Management - Small Construction Activity/Land Clearing (Areas within common plans of development or sale with land disturbance acreage less than 1 acre.)	\$290	\$0
General / Stormwater Management - Small Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 1 acre and less than 5 Acres)	\$2,700	\$756
General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 5 acres and less than 10 acres)	\$3,400	\$952
General / Stormwater Management – Large	\$4,500	\$1,260

Construction Activity/Land Clearing [Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 10 acres and less than 50 acres]		
General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 50 acres and less than 100 acres)	\$6,100	\$1,708
General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 100 acres)	\$9,600	\$2,688
Individual Permit for Discharges of Stormwater from Construction Activities (This will be administered by the department)	\$15,000	\$15,000

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

**9VAC25-870-820. Fees for an individual permit or coverage under the General Permit for Discharges of Stormwater from Construction Activities.**

The following fees apply, until June 30, 2014, to coverage under the General Permit for Discharges of Stormwater from Construction Activities issued by the department prior to a VSMP authority being approved by the board in the area where the applicable land-disturbing activity is located, or where the department has issued an individual permit or coverage under the General Permit for Discharges of Stormwater from Construction Activities for a state or federal agency.

General/Stormwater Management- Phase I Land Clearing (“Large” Construction Activity- Sites or common plans of development equal to or greater than five acres.	\$750
General/Stormwater Management- Phase II Land Clearing (“Small” Construction Activity- Sites or common plans of development equal to or greater than one acre and less than five acres)	\$450
General/Stormwater Management- Small Construction Activity/Land Clearing (Sites within designated areas of Chesapeake Bay Act localities with land disturbance acreage equal to or greater than 2,500 square feet and less than one acre) (Fee valid until July 1, 2014)	\$200
Individual Permit for Discharges of Stormwater from Construction Activities	\$15,000

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

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

General/Stormwater Management- Phase I Land Clearing (“Large” Construction Activity- Sites or common plans of development equal to or greater than five acres.	\$750
General/Stormwater Management- Phase II Land Clearing (“Small” Construction Activity- Sites or common plans of development equal to or greater than one acre and less than five acres)	\$450

**9VAC25-870-825. Fees for the modification or transfer of registration statements for the General Permit for Discharges of Stormwater from Construction Activities.**

The following fees apply to modification or transfer of individual permits or of registration statements for the General Permit for Discharges of Stormwater from Construction Activities issued by the board. If the state permit modifications result in changes to stormwater management plans that require additional review by the VSMP authority, such reviews shall be acreage of the site. In addition to the state permit medication fee, modications resulting in an increase in total disturbed acreage shall pay the difference in the initial state permit fee paid and the state permit fee that would have applied for the total disturbed acreage in 9VAC25-870-820. No modification or transfer fee shall be required until such board-approved programs exist. These fees shall only be effective when assessed by a VSMP authority, including the department when acting in that capacity that has been approved by the board. No modification fee shall be required f or the General Permit for Discharges of Stormwater form Construction Activities for a state or federal agency that is administering a project in accordance with approved annual standards and specifications but apply to all other state or federal agency projects.

Type of Permit	Fee Amount
General / Stormwater Management – Small Construction Activity/Land Clearing (Areas within common plans of development or sale with land	\$20

disturbance acreage less than 1 acre)	
General / Stormwater Management – Small Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 1 and less than 5 acres)	\$200
General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 5 acres and less than 10 acres)	\$250
General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 10 acres and less than 50 acres)	\$300
General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 50 acres and less than 100 acres)	\$450
General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 100 acres)	\$700
Individual Permit for Discharges of Stormwater from Construction Activities	\$5,000