

06-15-124

*(Also see Subdivision Ordinance Amendment 07-15-101 and
Land Development Services Fee Schedule Amendment 08-15-Q,
adopted simultaneously on March 3, 2015.)*

***ADOPTION OF AN AMENDMENT TO
CHAPTER 124 (STORMWATER MANAGEMENT ORDINANCE)
OF 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, March 3, 2015, 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 (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 Chapter 124 (Stormwater Management Ordinance), is amended, as follows:

Amend Article 1, General Provisions, Section 124-1-5, Definitions, by revising the following definitions, to read as follows:

"General ~~p~~ermit" means ~~the a~~ state permit titled ~~General (VPDES) Permit for Discharges from Construction Activities found in Part XIV of the Regulations (9VAC25-880-1 et seq.)~~ authorizing a category of discharges under the CWA and the Act within a geographical area ~~of the Commonwealth of Virginia.~~

"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.

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

1. Owned or operated by a federal, state, city, town, county, district, association, or other public body, created by or pursuant to state law, having jurisdiction or delegated authority for erosion and sediment control and stormwater management, 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. That is not a combined sewer; and
4. That is not part of a publicly owned treatment works.

"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. ~~Natural streams may include sections of braided channels or wetlands as determined by the Director.~~ Constructed channels such as drainage ditches or swales shall not be considered natural streams; however, channels designed utilizing natural channel design concepts may be considered natural streams.

"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 VSMP authority permit conditions (i.e., they are authorized to direct workers at a site to carry out activities required by the stormwater pollution prevention plan or comply with other permit conditions). In the context of stormwater discharges from Municipal Separate Storm Sewer Systems (MS4s), operator means the operator of the regulated MS4 system.

"Site" means the land or water area where any facility or land-disturbing activity is physically located or conducted, ~~a parcel of land being developed, or a designated area of a parcel of land being developed,~~ including adjacent land used or preserved in connection with the facility or land-disturbing activity. Areas channelward of mean low water in tidal Virginia shall

not be considered part of a site.

"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:

(i) "Manmade stormwater conveyance system" means a pipe, ditch, vegetated swale, or other stormwater conveyance system constructed by man except for restored stormwater conveyance systems;

(ii) "Natural stormwater conveyance system" means the main channel of a natural stream and the flood-prone area adjacent to the main channel. ~~Natural stormwater conveyance systems may include sections of braided channels or wetlands as determined by the Director; or~~

(iii) "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.

Amend Article 1, General Provisions, Section 124-1-5, Definitions, by adding the following definitions, to read as follows:

"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.

"Municipal separate storm sewer system" or "MS4" means all separate storm sewers that are defined as "large" or "medium" or "small" municipal separate storm sewer systems or designated under 9VAC25-870-380.A.1.

"Virginia Stormwater Management Program authority" or "VSMP authority" means the County of Fairfax, Virginia.

Amend Article 1, General Provisions, Section 124-1-7, Exemptions, by revising the introductory paragraph, to read as follows:

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

Amend Article 1, General Provisions, Section 124-1-7, Exemptions, by revising exemption #4, to read as follows:

4. Land-disturbing activities that disturb less than or equal to 2,500 square feet except for land-disturbing activities that are part of a larger common plan of development or sale that disturbs one (1) acre or greater;

Amend Article 1, General Provisions, Section 124-1-10, Applicability of and Conflicts with Other Laws and Regulations, by revising subsection B, to read as follows:

B. Nothing in ~~the Regulations~~ this Chapter shall be construed as limiting the rights of other federal agencies, state agencies, or the County to impose more stringent technical criteria or other requirements as allowed by law.

Amend Article 1, General Provisions, Section 124-1-13, Chesapeake Bay Preservation Act Land-Disturbing Activity, by revising the last paragraph, to read as follows:

Single-family residences ~~separately built~~ detached residential structures, disturbing less than one acre and part of a larger common plan of development or sale that ultimately will disturb equal to or greater than one acre of land are authorized to discharge under the General Permit for Discharges of Stormwater from Construction Activities and are not required to submit a registration statement or the state portion of the permit fee, ~~provided that the stormwater management plan for the larger common plan of development or sale provides permanent control measures (i.e. stormwater management facilities) encompassing the single-family residence.~~

Amend Article 2, General Administrative Criteria for Regulated Land-Disturbing Activities., Section 124-2-2, Permit Required, by revising it, to read as follows:

Section 124-2-2. Permit Required.

A. A person shall not conduct any land-disturbing activity without a stormwater permit. Permits will not be issued until the following items have been submitted to the County and approved by the Director as prescribed herein:

1. A permit application that includes a ~~s~~State ~~V~~SMP ~~s~~Permit registration statement if such statement is required except for Chesapeake Bay Preservation Act land-disturbing activities;
2. Evidence of ~~V~~SMP ~~S~~tate ~~p~~Permit coverage if State Permit coverage is required except for Chesapeake Bay Preservation Act land-disturbing activities;
3. An erosion and sediment control plan in accordance with Chapter 104 of the Code; and
4. A stormwater management plan meeting the requirements of § 124-2-7.

B. No ~~p~~Permit shall be issued until the fees required to be paid pursuant to Article 3 of this Chapter are received, and the Applicant has provided surety for performance as required pursuant to § 124-2-4.

C. Permit applications shall be acted on within 60 days after submission of a complete application, as determined by the Director ~~it has been determined by the Director to be a complete application.~~ The Director may either issue the ~~p~~Permit or deny the ~~p~~Permit and shall provide the applicant with a written rationale explanation for the denial. ~~Any~~ ~~p~~Permit application that has been previously disapproved shall be acted on within 45 days after a revised and complete application, as determined by the Director, is ~~has been revised, resubmitted for approval, and deemed complete.~~

D. Coverage under the General VPDES Permit for Discharges of Stormwater from Construction Activities is required for construction activities disturbing equal to or greater than one (1) acre of land including land-disturbing activities disturbing less than one (1) acre of land that are part of a larger common plan of development or sale that ultimately will disturb one (1) acre or more of land.

E. State Permit registration statements are required for land-disturbing activities that require coverage under the General VPDES Permit for Discharges of Stormwater from Construction Activities except for single-family detached residential structures that are within or outside a common plan of development or sale, even though such land-disturbing activities are subject to the General VPDES Permit for Discharges of Stormwater from Construction Activities.

Amend Article 2, General Administrative Criteria for Regulated Land-Disturbing Activities, Section 124-2-5, Monitoring, Reports, Investigations, and Inspections, by revising subsection A, to read as follows:

A. The Director (i) shall provide for periodic inspections of the installation of stormwater management measures, (ii) may require monitoring and reports from the person responsible for meeting the pPermit conditions to ensure compliance with the pPermit and to determine whether the measures required in the pPermit provide effective stormwater management, and (iii) conduct such investigations and perform such other actions as are necessary to carry out the provisions of this Chapter.

Amend Article 2, General Administrative Criteria for Regulated Land-Disturbing Activities, Section 124-2-6, Stormwater Pollution Prevention Plan Requirements, by revising subsections A and F, to read as follows:

A. A stormwater pollution prevention plan shall include, but not be limited to, an approved erosion and sediment control plan, an approved stormwater management plan, a pollution prevention plan for regulated land-disturbing activities, and a description of any additional control measures necessary to address a TMDL pursuant to subsection E. The stormwater pollution prevention plan shall meet all requirements of 9VAC25-870-54 and 9VAC25-880-70.

F. The stormwater pollution prevention plan must address the following requirements as specified in 40 CFR 450.21, to the extent otherwise required by state law or regulations and any applicable requirements of a sPtate pPermit ~~in 9VAC25-880-1:~~

1. Control stormwater volume and velocity within the site to minimize soil erosion;
2. Control stormwater discharges, including both peak flow rates and total stormwater volume, to minimize erosion at outlets and to minimize downstream channel and stream bank erosion;
3. Minimize the amount of soil exposed during construction activity;
4. Minimize the disturbance of steep slopes;
5. Minimize sediment discharges from the site. The design, installation and maintenance of erosion and sediment 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. Provide and maintain natural buffers around surface waters, direct stormwater to vegetated areas to increase sediment removal and maximize stormwater infiltration, unless

infeasible;

7. Minimize soil compaction and, unless infeasible, preserve topsoil;
8. Stabilization of disturbed areas must, at a minimum, be initiated immediately whenever any clearing, grading, excavating or other earth disturbing activities have permanently ceased on any portion of the site, or temporarily ceased on any portion of the site and will not resume for a period exceeding 14 calendar days. Stabilization must be completed within a period of time determined by the County. In drought stricken areas where initiating vegetative stabilization measures immediately is infeasible, alternative stabilization measures must be employed as specified by the County; and
9. Utilize outlet structures that withdraw water from the surface, unless infeasible, when discharging from basins and impoundments.

Amend Article 2, General Administrative Criteria for Regulated Land-Disturbing Activities, Section 124-2-7, Stormwater Management Plans, by revising subsection A, to read as follows:

A. A stormwater management plan shall be developed and submitted to the County. The stormwater management plan shall be implemented as approved or modified by the Director and shall be developed in accordance with the following:

1. A stormwater management plan for a land-disturbing activity shall apply the stormwater management technical criteria set forth in Article 4 or Article 5 as applicable to the entire land disturbing activity. Individual lots in new residential, commercial, or industrial developments, including those developed under subsequent owners, shall not be considered separate land-disturbing activities.
2. A stormwater management plan shall consider all sources of surface runoff and all sources of subsurface and groundwater flows converted to surface runoff.
3. Stormwater management plans shall meet all requirements of the PFM.

Amend Article 2, General Administrative Criteria for Regulated Land-Disturbing Activities, Section 124-2-7, Stormwater Management Plans, by adding subsection D, to read as follows:

D. A stormwater management plan approved for a residential, commercial, or industrial subdivision shall govern the development of the individual parcels, including those parcels developed under subsequent owners. A note shall be placed on the subdivision plat stating that individual parcels shall be developed in accordance with the approved stormwater management plan for the subdivision.

Amend Article 3, Fees, Section 124-3-5, Permit Maintenance Fees, by revising it, to read as follows:

Section 124-3-5. 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 shall be paid to the County by April 1st of each year at such times and amounts as provided for in Appendix Q of the Code. With respect to the General Permit for Discharges of Stormwater from Construction Activities, these

fees shall apply until the permit coverage is terminated

Amend Article 4, Technical Criteria for Regulated Land-Disturbing Activities, Section 124-4-4, Water Quantity, by revising subsection C, Flood Protection, criteria #4, to read as follows:

4. As an alternative to criteria 1 or 2 above, detention of stormwater may be provided that releases the postdevelopment 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 § 124-4-4.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 ~~natural~~ 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 § 124-4-4.C.6.

Amend Article 4, Technical Criteria for Regulated Land-Disturbing Activities, Section 124-4-5, Offsite Compliance Options, by revising subsection F, to read as follows:

F. In accordance with § 62.1-44.15:35F of the Code of Virginia, nutrient credits used pursuant to subsection A shall be generated in the same or adjacent eight-digit hydrologic unit code as defined by the United States Geological Survey as the permitted site ~~except as otherwise limited in subsection C~~. 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. In no case shall credits from another tributary be used.

Amend Article 4, Technical Criteria for Regulated Land-Disturbing Activities, Section 124-4-6, Design Storms and Hydrologic Methods, by revising subsection E, to read as follows:

E. For drainage areas of 200 acres or less, the modified Rational Method may be used for evaluating volumetric flows to stormwater conveyances.

Amend Article 4, Technical Criteria for Regulated Land-Disturbing Activities, by adding Section 124-4-10, Stormwater Management Impoundment Structures or Facilities, to read as follows:

Section 124-4-10. Stormwater Management Impoundment Structures or Facilities.

Stormwater management wet ponds and extended detention ponds that are not covered by the Impounding Structure Regulations (4VAC50-20) shall, 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.

Amend Article 5, Technical Criteria for Regulated Land-Disturbing Activities: Grandfathered Projects and Projects Subject to Time Limits on Applicability of Approved Design Criteria, Section 124-5-3, General, by revising subsection M, to read as follows:

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 Stormwater Management 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 must be consistent with a comprehensive stormwater management plan developed and approved in accordance with § 124-4-9 or with a VSMP 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 must be 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. ~~stormwater management program that has been approved by the State Water Control Board, Soil and Water Conservation Board, the Chesapeake Bay Local Assistance Board, or the Board of Conservation and Recreation.~~

Amend Article 5, Technical Criteria for Regulated Land-Disturbing Activities: Grandfathered Projects and Projects Subject to Time Limits on Applicability of Approved Design Criteria, Section 124-5-4, Water Quality, by revising subsection A, paragraph #5, to read as follows:

5. BMPs shall be reviewed, modified, ~~waived~~ 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.

Amend Article 5, Technical Criteria for Regulated Land-Disturbing Activities: Grandfathered Projects and Projects Subject to Time Limits on Applicability of Approved Design Criteria, Section 124-5-6, Flooding, by revising subsection C, to read as follows:

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

Amend Article 7, Appeals, by revising it, to read as follows:

ARTICLE 7.

Appeals.

Section 124-7-1. Right to Administrative Review.

A. ~~The Director shall appoint a hearing officer or officers for the purpose of hearing appeals of actions or the failure to take action by the Director under this Chapter.~~

BA. Any permit applicant, permittee, person subject to state permit requirements under this Chapter, or person subject to an enforcement action under this Chapter who is aggrieved by an action or inaction by the Director pursuant to this Chapter ~~without a formal hearing may demand in writing a formal hearing by the hearing officer, provided that a petition requesting a hearing is filed with the Director within 30 days after notice of the Director's action is received by the aggrieved party has a right to an administrative appeal of the Director's decision. The appeal shall take the form of a written request for reconsideration and, upon request, an informal hearing.~~ As provided for in this Chapter, the Director may seek an injunction in the absence of an administrative hearing.

B. The aggrieved party seeking to appeal a decision by the Director shall submit to the Director, within 10 days after the date of the challenged decision, a written Notice of Intent to Appeal. The Notice of Intent to Appeal shall state whether the appellant requests an informal hearing.

C. Within 21 days after the Notice of Intent to Appeal is submitted to the Director, the appellant shall submit a written Request for Reconsideration to the Director setting forth the factual, legal, or other bases for the appeal. Failure to timely submit the Request for Reconsideration shall constitute a waiver of the right to appeal.

D. An appellant that timely files a Notice of Intent to Appeal with the Director that includes a request for an informal hearing shall submit a Request for Reconsideration in accordance with subsection C. The informal hearing shall be held no more than 60 days after the Notice of Intent to Appeal is submitted, unless an extension is agreed upon by the parties. The informal hearing shall be conducted by the Director or his designee, and the scope of the appeal shall be limited to the bases set forth in the Request. The appellant may appear in person or be represented by counsel, and may present any information in support of the appeal.

E. The Director shall make a final decision in writing within 14 days after either the submission of the request for reconsideration or an informal hearing, whichever is later. The final decision shall state the facts upon which the decision is based.

Section 124-7-2. Hearings

A. Any hearing for administrative review of an action or inaction by the Director held pursuant to § 124-7-1 shall be conducted by the hearing officer.

B. After a petition requesting a hearing is filed with the Director, the Director or hearing officer shall issue a notice of hearing to the aggrieved party providing the date, time, and location of the hearing, and shall include the facts and legal requirements related to the challenged action. The notice of hearing shall be issued in accordance with the notice requirements of § 124-8-1(F).

C. The County and the aggrieved party may present evidence including witnesses regarding the facts and occurrences giving rise to the action subject to review. The aggrieved party may examine any of the County's witnesses.

D. A verbatim record of the proceedings of any hearing for administrative review under this Chapter shall be made.

~~E. The hearing officer shall have the 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 Director, whose action may include the procurement of an order of enforcement from the circuit court. Witnesses who are subpoenaed shall receive the same fees and reimbursement for mileage as in civil actions.~~

~~F. The hearing officer shall issue a final order within 30 days after the conclusion of the hearing, which shall be served upon the parties, become part of the record, and briefly state the findings, conclusions, reasons, or basis therefor upon the evidence presented by the record and relevant to the basic law under which the agency is operating and, as appropriate, an order imposing civil charges under Va. Code Ann. § 62.1-44.15:48(D)(2).~~

Section 124-7-23. Appeals of Final Orders.

~~Final decisions of the Director under this Chapter shall be subject to review by appeal to the Circuit Court of Fairfax County, Virginia, provided that the permit applicant, permittee, or person to whom a final order decision is issued files by the hearing officer may seek judicial review of the final order issued by the hearing officer by appeal to the Circuit Court of Fairfax County on the record of the proceedings before the hearing officer. To commence an appeal, a party shall file a petition in the Circuit Court of Fairfax County within 30 days of the date of the final order issued by the hearing officer decision. Failure to do so shall constitute a waiver of the right to appeal the final decision. The circuit court shall conduct its review in accordance with the standards established in Va. Code Ann. § 2.2-4027, and the decisions of the circuit court shall be subject to review by the Court of Appeals.~~

This amendment shall become effective on March 4, 2015, at 12:01 a.m.

GIVEN under my hand this 3rd day of March, 2015.



CATHERINE A. CHIANESE
Clerk to the Board of Supervisors