

**PROPOSED AMENDMENT
TO
THE CODE OF THE COUNTY OF FAIRFAX VIRGINIA
ADDING
CHAPTER 124 (STORMWATER MANAGEMENT ORDINANCE)**

**Revisions to advertised amendments recommend by staff
November 14, 2013 & January 28, 2014**

The proposed Stormwater Management Ordinance (9/10/13) was advertised without underlining for readability. The revisions (11/14/13) to the proposed ordinance recommended by staff are indicated by single underlines for additions and single strikethroughs for deletions. The revisions (1/28/14) to the proposed ordinance recommended by staff are indicated by double underlines for additions and double strikethroughs for deletions.

**Amend the Code of the County of Fairfax Virginia by adding new Chapter 124
(Stormwater Management Ordinance to read as follows:**

CHAPTER 124.

Stormwater Management Ordinance

Article 1. General Provisions.

- § 124-1-1. Title.
- § 124-1-2. Authority.
- § 124-1-3. Enactment.
- § 124-1-4. Purpose and Administration.
- § 124-1-5. Definitions.
- § 124-1-6. Areas of Applicability.
- § 124-1-7. Exemptions.
- § 124-1-8. Right of Entry.
- § 124-1-9. Severability.
- § 124-1-10. Applicability of and Conflicts with Other Laws and Regulations.
- § 124-1-11. Time Limits on Applicability of Approved Design Criteria.
- § 124-1-12. Grandfathering.
- § 124-1-13. Chesapeake Bay Preservation Act Land-Disturbing Activity.

Article 2. General Administrative Criteria for Regulated Land-Disturbing Activities.

- § 124-2-1. Applicability
- § 124-2-2. Permit Required.
- § 124-2-3. Annual Standards and Specifications for State Agencies, Federal Entities, and Other Specified Entities.
- § 124-2-4. Security for Performance.
- § 124-2-5. Monitoring, Reports, Investigations, and Inspections.
- § 124-2-6. Stormwater Pollution Prevention Plan Requirements.
- § 124-2-7. Stormwater Management Plans.
- § 124-2-8. Pollution Prevention Plans.
- § 124-2-9. Stormwater Management Plan Review.

- 1 § 124-2-10. Long-term Maintenance of Permanent Stormwater Management Facilities.
 2 § 124-2-11. Construction Record Drawings.

3
 4 **Article 3. Fees.**

- 5
 6 § 124-3-1. General.
 7 § 124-3-2. Exemptions.
 8 § 124-3-3. Fees for Coverage Under the General Permit for Discharges of Stormwater
 9 from Construction Activities and Permits for Chesapeake Bay Preservation
 10 Act Land-Disturbing Activities.
 11 § 124-3-4. Fees for the Modification or Transfer of Registration Statements for the
 12 General Permit for Discharges of Stormwater from Construction Activities.
 13 § 124-3-5. Permit Maintenance Fees.

14
 15 **Article 4. Technical Criteria for Regulated Land-Disturbing Activities.**

- 16
 17 § 124-4-1. Applicability.
 18 § 124-4-2. Water Quality Design Criteria Requirements.
 19 § 124-4-3. Water Quality Compliance.
 20 § 124-4-4. Water Quantity.
 21 § 124-4-5. Offsite Compliance Options.
 22 § 124-4-6. Design Storms and Hydrologic Methods.
 23 § 124-4-7. Stormwater Harvesting.
 24 § 124-4-8. Linear Development Projects.
 25 § 124-4-9. Comprehensive Stormwater Management Plans.

26
 27 **Article 5. Technical Criteria for Regulated Land-Disturbing Activities: Grandfathered**
 28 **Projects and Projects Subject to Time Limits on Applicability of Approved Design**
 29 **Criteria.**

- 30
 31 § 124-5-1. Definitions.
 32 § 124-5-2. Applicability.
 33 § 124-5-3. General.
 34 § 124-5-4. Water Quality.
 35 § 124-5-5. Stream Channel Erosion.
 36 § 124-5-6. Flooding.
 37 § 124-5-7. Regional (watershed-wide) Stormwater Management Plans.

38
 39 **Article 6. Exceptions.**

- 40
 41 § 124-6-1. Exceptions.

42
 43 **Article 7. Appeals.**

- 44
 45 § 124-7-1. Right to Administrative Review.
 46 § 124-7-2. Hearings.
 47 § 124-7-3. Appeals of Final Orders.

48
 49 **Article 8. Violations and Penalties.**

- 50
 51 § 124-8-1. General Provisions .
 52 § 124-8-2. Criminal Violations and Penalties.
 53 § 124-8-3. Civil Penalties.

1
2
3
4
5
6
7
8
9

Article 9. Illicit Discharges to the Storm Sewer System and State Waters

- § 124-9-1. Purpose.
- § 124-9-2. Responsibilities of the Director.
- § 124-9-3. Illicit Discharges to the Storm Sewer System and State Waters.
- § 124-9-4. Standards for Inspection of Industrial and Commercial Property Discharging to the County’s Storm Sewer System.

1 **ARTICLE 1.**

2 **General Provisions**

3 **Section 124-1-1. Title.**

4
5
6
7 This Chapter shall hereafter be known, cited, and referred to as the "Stormwater Management
8 Ordinance" of Fairfax County.

9
10 **Section 124-1-2. Authority.**

11
12 This ordinance is enacted pursuant to the authority and mandates of the Virginia Stormwater
13 Management Act, Article 2.3 (§ 62.1-44.15:24 et seq.) of Chapter 3.1 of Title 62.1 of the Code of
14 Virginia, the Virginia Stormwater Management Program (VSMP) ~~Permit~~ Regulations (4VAC50-
15 ~~60 et seq.~~ 9VAC25-870 et seq.), and §§ 15.2-1200, 15.2-2109, and 15.2-2122 of Chapter 21 of
16 Title 15.2 of the Code of Virginia.

17
18 **Section 124-1-3. Enactment.**

19
20 This Chapter shall be effective at 12:01 A.M. on July 1, 2014.

21
22 **Section 124-1-4. Purpose and Administration.**

23
24 The purpose and intent of this Chapter is to ensure the general health, safety, and welfare of
25 the citizens of Fairfax County and to protect property, state waters, stream channels, and other
26 natural resources from the potential harm of illicit discharges of pollutants and unmanaged
27 stormwater by establishing requirements for managing stormwater and procedures whereby those
28 requirements shall be administered and enforced. The Director shall be responsible for the
29 administration of this Chapter. This Chapter establishes a local stormwater management program
30 that shall be administered in conjunction with the County's MS4 program and erosion and
31 sediment control program.

32
33 **Section 124-1-5. Definitions.**

34
35 The following words and terms used in this Chapter have the following meanings unless the
36 context clearly indicates otherwise.

37
38 "Act" means the Virginia Stormwater Management Act, Article 2.3 (§ 62.1-44.15:24 et seq.)
39 of Chapter 3.1 of Title 62.1 of the Code of Virginia.

40
41 "Applicant" means any person submitting an application for a permit or requesting issuance of
42 a permit under this Chapter.

43
44 "Best management practice" or "BMP" means schedules of activities, prohibitions of
45 practices, including both structural and nonstructural practices, maintenance procedures, and
46 other management practices to prevent or reduce the pollution of surface waters and groundwater
47 systems from the impacts of land-disturbing activities.

48
49 "Board" means the Fairfax County Board of Supervisors.

1
2 "Channel" means a natural or manmade waterway.

3
4 "Chesapeake Bay Preservation Act land-disturbing activity" means a land-disturbing activity
5 including clearing, grading, or excavation that results in a land disturbance equal to or greater
6 than 2,500 square feet and less than one acre.

7
8 "Code" or "the Code" means the Code of the County of Fairfax, Virginia.

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

12
13 "Comprehensive stormwater management plan" means a plan, which may be integrated with
14 other land use plans or regulations, that specifies how the water quality components, quantity
15 components, or both of stormwater are to be managed on the basis of an entire watershed or a
16 portion thereof. The plan may also provide for the remediation of erosion, flooding, and water
17 quality and quantity problems caused by prior development.

18
19 "Control measure" means any BMP, stormwater facility, or other method used to minimize
20 the discharge of pollutants to state waters.

21
22 "Clean Water Act" or "CWA" means the federal Clean Water Act (33 USC § 1251 et seq.),
23 formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution
24 Control Act Amendments of 1972, Public Law 92-500, as amended by Public Law 95-217, Public
25 Law 95-576, Public Law 96-483, and Public Law 97-117, or any subsequent revisions thereto.

26
27 "Department" means the Department of Public Works and Environmental Services.

28
29 "Department of Conservation and Recreation" or "DCR" means the Virginia Department of
30 Conservation and Recreation.

31
32 "Department of Environmental Quality" or "DEQ" means the Virginia Department of
33 Environmental Quality.

34
35 "Development" means land disturbance and the resulting landform associated with the
36 construction of residential, commercial, industrial, institutional, recreation, transportation, or
37 utility facilities or structures or the clearing of land for nonagricultural or nonsilvicultural
38 purposes.

39
40 "Director" means the Director of the Department of Public Works and Environmental
41 Services or his designee.

42
43 "Flood fringe" means the portion of the floodplain outside the floodway that is usually
44 covered with water from the 100-year flood or storm event. This includes, but is not limited to,
45 the flood or floodway fringe designated by the Federal Emergency Management Agency.
46

1 "Flooding" means a volume of water that is too great to be confined within the banks or walls
2 of the stream, water body or conveyance system and that overflows onto adjacent lands, thereby
3 causing or threatening damage.
4

5 "Floodplain" means the area adjacent to a channel, river, stream, or other water body that is
6 susceptible to being inundated by water normally associated with the 100-year flood or storm
7 event. This includes, but is not limited to any floodplain designated by the Federal Emergency
8 Management Agency or meets the definition of floodplain in Chapter 112 (Zoning Ordinance) of
9 the Code.
10

11 "Flood-prone area" means the component of a natural or restored stormwater conveyance
12 system that is outside the main channel. Flood-prone areas may include, but are not limited to,
13 the floodplain, the floodway, the flood fringe, wetlands, riparian buffers or other areas adjacent to
14 the main channel.
15

16 "Floodway" means the channel of a river or other watercourse and the adjacent land areas,
17 usually associated with flowing water, that must be reserved in order to discharge the 100-year
18 flood or storm event without cumulatively increasing the water surface elevation more than one
19 foot . This includes, but is not limited to, any floodway designated by the Federal Emergency
20 Management Agency.
21

22 "General permit" means the state permit titled General (VPDES) Permit for Discharges from
23 Construction Activities found in Part XIV of the Regulations (~~4 VAC 50-60-1100 et seq.~~
24 9VAC25-880-1 et seq.) authorizing a category of discharges under the CWA and the Act within a
25 geographical area of the Commonwealth of Virginia.
26

27 "Hydrologic Unit Code" or "HUC" means a watershed unit established in the most recent
28 version of Virginia's 6th Order National Watershed Boundary Dataset.
29

30 "Illicit discharge" means any discharge to a municipal separate storm sewer that is not
31 composed entirely of stormwater, except discharges pursuant to a separate VPDES or state
32 permit (other than the state permit for discharges from the municipal separate storm sewer),
33 discharges resulting from fire-fighting activities, and discharges identified by and in compliance
34 with ~~4VAC50-60-1220.C.2~~ 9VAC25-870-400.D.2.c(3).
35

36 "Impervious cover" means a surface composed of material that significantly impedes or
37 prevents natural infiltration of water into soil.
38

39 "Inspection" means an on-site review of the project's compliance with the permit or the state
40 permit, the Fairfax County stormwater management program, and any applicable design criteria;
41 or an on-site review to obtain information or conduct surveys or investigations necessary in the
42 implementation or enforcement of the Act, the Regulations, and this Chapter.
43

44 "Land disturbance" or "land-disturbing activity" means a man-made change to the land surface
45 that potentially changes its runoff characteristics including clearing, grading, or excavation, except
46 that the term shall not include those exemptions specified in § 124-1-7 of this Chapter.

1
2 "Layout" means a conceptual drawing sufficient to provide for the specified stormwater
3 management facilities required at the time of approval.
4

5 "Linear development project" means a land-disturbing activity that is linear in nature such as,
6 but not limited to, (i) the construction of electric and telephone utility lines, and natural gas
7 pipelines; (ii) construction of tracks, rights-of-way, bridges, communication facilities and other
8 related structures of a railroad company; (iii) highway construction projects; (iv) construction of
9 stormwater channels and stream restoration activities; and (v) water and sewer lines. Private
10 subdivision roads or streets shall not be considered linear development projects.
11

12 "Localized flooding" refers to smaller scale flooding that may occur outside of a stormwater
13 conveyance system. This may include high water, ponding or standing water from stormwater
14 runoff, which is likely to cause property damage or unsafe conditions.
15

16 "Main channel" means the portion of the stormwater conveyance system that contains the base
17 flow and small frequent storm events.
18

19 "Minor modification" means, for the purposes of this Chapter, minor modification or
20 amendment of an existing state permit before its expiration for the reasons listed at 40 CFR
21 122.63 and as specified in ~~4VAC50-60-640~~ 9VAC25-870-640. Minor modification for the
22 purposes of this Chapter also means other modifications and amendments not requiring extensive
23 review and evaluation including, but not limited to, changes in EPA promulgated test protocols,
24 increasing monitoring frequency requirements, changes in sampling locations, and changes to
25 compliance dates within the overall compliance schedules. A minor state permit modification or
26 amendment does not substantially alter state permit conditions, substantially increase or decrease
27 the amount of surface water impacts, increase the size of the operation, or reduce the capacity of
28 the facility to protect human health or the environment.
29

30 "Municipal separate storm sewer system" or "MS4" means a conveyance or system of
31 conveyances otherwise known as a municipal separate storm sewer system, including roads with
32 drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or
33 storm drains:
34

35 1. Owned or operated by a federal, state, city, town, county, district, association, or other
36 public body, created by or pursuant to state law, having jurisdiction or delegated authority for
37 erosion and sediment control and stormwater management, or a designated and approved
38 management agency under § 208 of the CWA that discharges to surface waters;

39 2. Designed or used for collecting or conveying stormwater;

40 3. That is not a combined sewer; and

41 4. That is not part of a publicly owned treatment works.
42

43 "Municipal Separate Storm Sewer System Management Program" or "MS4 Program" means a
44 management program covering the duration of a state permit for a municipal separate storm sewer
45 system that includes a comprehensive planning process that involves public participation and
46 intergovernmental coordination, to reduce the discharge of pollutants to the maximum extent

1 practicable, to protect water quality, and to satisfy the appropriate water quality requirements of
2 the CWA and regulations and the Act and attendant regulations, using management practices,
3 control techniques, and system, design and engineering methods, and such other provisions that
4 are appropriate.

5
6 "Natural channel design concepts" means the utilization of engineering analysis based on
7 fluvial geomorphic processes to create, rehabilitate, restore, or stabilize an open conveyance
8 system for the purpose of creating or recreating a stream that conveys its bankfull storm event
9 within its banks and allows larger flows to access its floodplain.

10
11 "Natural stream" means a tidal or nontidal watercourse that is part of the natural topography.
12 It usually maintains a continuous or seasonal flow during the year and is characterized as being
13 irregular in cross-section with a meandering course. Natural streams may include sections of
14 braided channels or wetlands as determined by the Director. Constructed channels such as
15 drainage ditches or swales shall not be considered natural streams; however, channels designed
16 utilizing natural channel design concepts may be considered natural streams.

17
18 "Operator" means the owner or operator of any facility or activity subject to the Act, the
19 Regulations, and this Chapter.

20
21 "Peak flow rate" means the maximum instantaneous flow from a prescribed design storm at a
22 particular location.

23
24 "Percent impervious" means the impervious area within the site divided by the area of the site
25 multiplied by 100.

26
27 "Permit" or "VSMP authority permit" means an approval to conduct a land-disturbing activity
28 issued by the Director for the initiation of a land-disturbing activity, in accordance with this
29 Chapter, and which may only be issued after evidence of general permit coverage has been
30 provided, where applicable.

31
32 "Permittee" means the person to whom the state or County permit is issued, including any
33 owner or operator whose construction site is covered under a state construction general permit.

34
35 "Person" means any individual, corporation, partnership, association, state, municipality,
36 commission, or political subdivision of a state, governmental body, including a federal, state, or
37 local entity as applicable, any interstate body or any other legal entity.

38
39 "Point of discharge" means a location at which concentrated stormwater runoff is released.

40
41 "Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage,
42 garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials
43 (except those regulated under the Atomic Energy Act of 1954, as amended (42 USC § 2011 et
44 seq.)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and
45 agricultural waste discharged into water. It does not mean:
46

1 1. Sewage from vessels; or

2 2. Water, gas, or other material that is injected into a well to facilitate production of oil or
3 gas, or water derived in association with oil and gas production and disposed of in a well if the
4 well is used either to facilitate production or for disposal purposes is approved by the State Water
5 Control Board and if the State Water Control Board determines that the injection or disposal will
6 not result in the degradation of groundwater or surface water resources.

7
8 "Pollution" means such alteration of the physical, chemical or biological properties of any
9 state waters as will or is likely to create a nuisance or render such waters (a) harmful or
10 detrimental or injurious to the public health, safety or welfare, or to the health of animals, fish or
11 aquatic life; (b) unsuitable with reasonable treatment for use as present or possible future sources
12 of public water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or
13 other reasonable uses, provided that (i) an alteration of the physical, chemical, or biological
14 property of state waters, or a discharge or deposit of sewage, industrial wastes or other wastes to
15 state waters by any owner which by itself is not sufficient to cause pollution, but which, in
16 combination with such alteration of or discharge or deposit to state waters by other owners, is
17 sufficient to cause pollution; (ii) the discharge of untreated sewage by any owner into state
18 waters; and (iii) contributing to the contravention of standards of water quality duly established by
19 the State Water Control Board, are "pollution" for the terms and purposes of this Chapter.

20
21 "Postdevelopment" refers to conditions that reasonably may be expected or anticipated to
22 exist after completion of the land development activity on a specific site.

23
24 "Predevelopment" refers to the conditions that exist at the time that plans for the land
25 development of a tract of land are submitted to Fairfax County. Where phased development or
26 plan approval occurs (preliminary grading, demolition of existing structures, roads and utilities,
27 etc.), the existing conditions at the time prior to the first item being submitted shall establish
28 predevelopment conditions.

29
30 "Prior developed lands" means land that has been previously utilized for residential,
31 commercial, industrial, institutional, recreation, transportation or utility facilities or structures, and
32 that will have the impervious areas associated with those uses altered during a land-disturbing
33 activity.

34
35 "Public Facilities Manual" or "PFM" means the Fairfax County Public Facilities Manual which
36 contains design and construction standards adopted by the Board.

37
38 "Regulations" means the Virginia Stormwater Management Program (VSMP) ~~Permit~~
39 Regulations (4VAC50-60-10 ~~et seq~~ 9VAC25-870-10 et seq., as amended).

40
41 "Runoff coefficient" means the fraction of total rainfall that will appear at a conveyance as
42 runoff.

43
44 "Runoff" or "stormwater runoff" means that portion of precipitation that is discharged across
45 the land surface or through conveyances to one or more waterways.

46

1 "Runoff characteristics" include maximum velocity, peak flow rate, volume, and flow
2 duration.

3
4 "Runoff volume" means the volume of water that runs off the site from a prescribed design
5 storm.

6
7 "Site" means the land or water area where any facility or land-disturbing activity is physically
8 located or conducted, a parcel of land being developed, or a designated area of a parcel of land
9 being developed, including adjacent land used or preserved in connection with the facility or land-
10 disturbing activity. Areas channelward of mean low water in tidal Virginia shall not be considered
11 part of a site.

12
13 "Site hydrology" means the movement of water on, across, through and off the site as
14 determined by parameters including, but not limited to, soil types, soil permeability, vegetative
15 cover, seasonal water tables, slopes, land cover, and impervious cover.

16
17 "Soil and Water Conservation Board" means the Virginia Soil and Water Conservation
18 Board.

19
20 "State" means the Commonwealth of Virginia.

21
22 "State Permit" means an approval to conduct a land-disturbing activity issued by the SWCB in
23 the form of a state stormwater individual permit or coverage issued under a state general permit
24 or an approval issued by the SWCB for stormwater discharges from an MS4. Under these state
25 permits, the Commonwealth imposes and enforces requirements pursuant to the federal Clean
26 Water Act and regulations, the Act, and the Regulations.

27
28 "State Water Control Board" or "SWCB" means the Virginia State Water Control Board.

29
30 "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 et seq.) of Title 62.1 of the Code
31 of Virginia.

32
33 "State waters" means all water, on the surface and under the ground, wholly or partially within
34 or bordering the Commonwealth or within its jurisdiction, including wetlands.

35
36 "Stormwater" means precipitation that is discharged across the land surface or through
37 conveyances to one or more waterways and that may include stormwater runoff, snow melt
38 runoff, and surface runoff and drainage.

39
40 "Stormwater conveyance system" means a combination of drainage components that are used
41 to convey stormwater discharge, either within or downstream of the land-disturbing activity. This
42 includes:

43
44 (i) "Manmade stormwater conveyance system" means a pipe, ditch, vegetated swale, or
45 other stormwater conveyance system constructed by man except for restored stormwater
46 conveyance systems;

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

4 (iii) "Restored stormwater conveyance system" means a stormwater conveyance system
5 that has been designed and constructed using natural channel design concepts. Restored
6 stormwater conveyance systems include the main channel and the flood-prone area adjacent to the
7 main channel.

8
9 "Stormwater management facility" means a control measure that controls stormwater runoff
10 and changes the characteristics of that runoff including, but not limited to, the quantity and
11 quality, the period of release or the velocity of flow.

12
13 "Stormwater management plan" means a document(s) containing material for describing
14 methods for complying with the requirements of this Chapter.

15
16 "Stormwater Pollution Prevention Plan" or "SWPPP" means a document, prepared in
17 accordance with good engineering practices, that identifies potential sources of pollutants that
18 may reasonably be expected to affect the quality of stormwater discharges from the construction
19 site and meets the requirements of ~~the~~ this Chapter. A SWPPP required under a VSMP for
20 construction activities shall identify and require the implementation of control measures, and shall
21 include, but not be limited to the inclusion of, or the incorporation by reference of an approved
22 erosion and sediment control plan, an approved stormwater management plan, and a pollution
23 prevention plan.

24
25 "Subdivision" means the same as defined in Chapter 101 (Subdivision) of the Code.

26
27 "Total maximum daily load" or "TMDL" means the sum of the individual wasteload
28 allocations (WLAs) for point sources, load allocations (LAs) for nonpoint sources, natural
29 background loading and a margin of safety. TMDLs can be expressed in terms of either mass per
30 time, toxicity, or other appropriate measure. The TMDL process provides for point versus
31 nonpoint source trade-offs.

32
33 "Virginia Stormwater Management Act" means Article 2.3 (§ 62.1-44.15:24 et seq.) of
34 Chapter 3.1 of Title 62.1 of the Code of Virginia.

35
36 "Virginia Stormwater BMP Clearinghouse website" means a state sponsored website that
37 contains detailed design standards and specifications for control measures that may be used in
38 Virginia to comply with the requirements of the Virginia Stormwater Management Act and
39 associated regulations.

40
41 "Virginia Stormwater Management Handbook" means a collection of pertinent information
42 that provides general guidance for compliance with the Act and associated regulations developed
43 by the Department of Environmental Quality.

44
45 "Virginia Stormwater Management Program " or "VSMP" means a program approved by the
46 ~~VS~~SWCB after September 13, 2011, that has been established by a locality to manage the quality

1 and quantity of runoff resulting from land-disturbing activities and shall include such items as local
 2 ordinances, rules, permit requirements, annual standards and specifications, policies and
 3 guidelines, technical materials, and requirements for plan review, inspection, enforcement, where
 4 authorized in the Act and associated regulations, and evaluation consistent with the requirements
 5 of the Act and associated regulations.

6
 7 "Wasteload allocation" or "wasteload" or "WLA" means the portion of a receiving surface
 8 water's loading or assimilative capacity allocated to one of its existing or future point sources of
 9 pollution. WLAs are a type of water quality-based effluent limitation.

10
 11 "Wetlands" means those areas that are inundated or saturated by surface or groundwater at a
 12 frequency and duration sufficient to support, and that under normal circumstances do support, a
 13 prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally
 14 include swamps, marshes, bogs, and similar areas.

15
 16 **Section 124-1-6. Areas of Applicability.**

17
 18 This Chapter and all regulations adopted hereunder shall apply to all land located within the
 19 unincorporated areas of Fairfax County.

20
 21 **Section 124-1-7. Exemptions.**

22
 23 Notwithstanding any other provisions of this Chapter, the following activities are exempt,
 24 unless otherwise required by federal law:

25
 26 1. Permitted surface or deep mining operations and projects, or oil and gas operations and
 27 projects conducted under the provisions of Title 45.1 of the Code of Virginia;

28 2. Clearing of lands specifically for agricultural purposes and the management, tilling,
 29 planting or harvesting of agricultural, horticultural, or forest crops; livestock feedlot operations,
 30 or as additionally set forth by the State Water Control Board in regulations, including engineering
 31 operations as follows: construction of terraces, terrace outlets, check dams, desilting basins,
 32 dikes, ponds, ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing,
 33 land drainage, and land irrigation; however, this exception shall not apply to harvesting of forest
 34 crops unless the area on which harvesting occurs is reforested artificially or naturally in
 35 accordance with the provisions of Chapter 11 of the Code of Virginia (§ 10.1-1100 et seq.) or is
 36 converted to bona fide agricultural or improved pasture use as described in subsection B of §
 37 10.1-1163, Code of Virginia;

38 3. Single-family dwellings separately built and disturbing less than 1 acre (*The Board to*
 39 *select a value within an advertised range of range of 2,500 sq. ft. to 1 acre.*) and not part of a
 40 larger common plan of development or sale, including: additions to existing single-family detached
 41 dwellings; accessory structures to single-family detached dwellings; and demolitions of single-
 42 family detached dwellings or accessory structures all subject to the following (*The Board may*
 43 *select any or all or none of the advertised conditions below.*):

44 a) Control measures are not required to address a specific WLA for a pollutant that
 45 has been established in a TMDL and assigned to stormwater discharges from construction
 46 activities within the watershed; and

47 b) The proposed construction meets one of the following conditions:

1 i) Total imperviousness on the lot will be less than 2,500 square feet (*The Board to*
 2 *select a value within the advertised range of range of 1,000 sq. ft. to 5,000 sq. ft. or delete this*
 3 *half of the condition.*) or 18% of the lot area (*The Board to select a value within the advertised*
 4 *range of range of 10 – 50% or delete this half of the condition.*), whichever is greater; or

5 ii) Water quality controls meeting requirements in effect at the time were provided
 6 with the original subdivision construction and are currently in place; or

7 iii) The property is served by an existing regional stormwater management facility
 8 providing water quality control.

9 In order to demonstrate compliance with conditions (ii) or (iii) above, an applicant
 10 for a land-disturbing permit need only certify that water quality controls were included as part of
 11 the approved subdivision plans and have not been removed or that the site drains to an existing
 12 regional stormwater management facility providing water quality control.

13 4. Land-disturbing activities that disturb less than or equal to 2,500 square feet except for
 14 land-disturbing activities that are part of a larger common plan of development or sale;

15 5. Discharges to a sanitary sewer or a combined sewer system;

16 6. Activities under a State or federal reclamation program to return an abandoned
 17 property to an agricultural or open land use;

18 7. Routine maintenance that is performed to maintain the original line and grade, hydraulic
 19 capacity, or original construction of the project. The paving of an existing road with a compacted
 20 or impervious surface and reestablishment of existing associated ditches and shoulders shall be
 21 deemed routine maintenance if performed in accordance with this subsection; and

22 8. Conducting land-disturbing activities in response to a public emergency where the
 23 related work requires immediate authorization to avoid imminent endangerment to human health
 24 or the environment. In such situations, the County shall be advised of the disturbance within
 25 seven days of commencing the land-disturbing activity and compliance with the administrative
 26 requirements of this Chapter is required within 30 days of commencing the land-disturbing
 27 activity.

28 **Section 124-1-8. Right of Entry.**

29 A. The Director, or any duly authorized agent of the Director, may, at reasonable times and
 30 under reasonable circumstances, enter any establishment or upon any property, public or private,
 31 for the purpose of obtaining information or conducting surveys or investigations necessary in the
 32 enforcement of the provisions of the Act and this Chapter.
 33
 34
 35

36 B. In accordance with a performance bond with surety, cash escrow, letter of credit, any
 37 combination thereof, or such other legal arrangement, the Director, or any duly authorized agent
 38 of the Director also may enter any establishment or upon any property, public or private, for the
 39 purpose of initiating or maintaining appropriate actions that are required by the permit conditions
 40 associated with a land-disturbing activity when a permittee, after proper notice, has failed to take
 41 acceptable action within the time specified.
 42

43 C. If the Director, or any duly authorized agent of the Director, has been refused access to a
 44 property for the purpose of conducting an investigation under this Article, he may obtain a search
 45 warrant upon demonstrating, to the satisfaction of any judge or magistrate or other person having
 46 the authority to issue warrants, that probable cause exists to support issuance of a search or
 47 administrative warrant to conduct an inspection or investigation necessary to carry out the

1 provisions of this Chapter.
2

3 **Section 124-1-9. Severability.**
4

5 If any of the articles, sections, paragraphs, sentences, clauses, or phrases of this Chapter shall
6 be declared unconstitutional or invalid by a valid judgment or decree of a court of competent
7 jurisdiction, such unconstitutionality or invalidity shall not affect the validity of the Chapter in its
8 entirety or any of the remaining articles, sections, paragraphs, sentences, clauses, and phrases.
9

10 **Section 124-1-10. Applicability of and Conflicts with Other Laws and Regulations.**
11

12 A. Nothing in this Chapter shall be construed as limiting the applicability of other laws and
13 regulations, including, but not limited to, the CWA, the Virginia Stormwater Management Act,
14 the Virginia Erosion and Sediment Control Law, and the Chesapeake Bay Preservation Act and
15 all applicable regulations adopted in accordance with those laws with the following exceptions:
16 compliance with the requirements of this Chapter shall be considered to meet the stormwater
17 management requirements under the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq.)
18 and attendant regulations and Chapter 118 of the Code; and compliance with the minimum
19 standards set out in §124-4-4 shall be deemed to satisfy the requirements of ~~4VAC50-30-40.19~~
20 4VAC25-840-40.19 (Minimum Standard 19 of the Virginia Erosion and Sediment Control
21 Regulations) and Chapter 104 of the Code.
22

23 B. Nothing in the Regulations shall be construed as limiting the rights of other federal
24 agencies, state agencies, or the County to impose more stringent technical criteria or other
25 requirements as allowed by law.
26

27 C. The Department of Environmental Quality shall consider any requirements imposed by this
28 Chapter that are more stringent than those imposed by the Regulations and any requirements of a
29 comprehensive stormwater management plan in its review of state agency projects.
30

31 D. Nothing in this Chapter shall be construed as authorizing the County to regulate, or to
32 require prior approval by the County for, a state or federal project, unless authorized by separate
33 statute.
34

35 E. Whenever any provision of this Chapter imposes a greater requirement or a higher standard
36 than is required in any State or Federal statute or other County ordinance or regulation, the
37 provision of this Chapter shall govern. Whenever any provision of any State or Federal statute or
38 other County ordinance or regulation imposes a greater requirement or a higher standard than is
39 required by this Chapter, the provision of such State or Federal statute or other County ordinance
40 or regulation shall govern.
41

42 **Section 124-1-11. Time Limits on Applicability of Approved Design Criteria.**
43

44 ~~Beginning with the General Permit for Discharges of Stormwater from Construction Activities~~
45 ~~issued July 1, 2009, all land disturbing activities that receive general permit coverage shall be~~
46 ~~conducted in accordance with Article 4 or Article 5 technical criteria in place at the time of initial~~
47 ~~state permit coverage and shall remain subject to those criteria for an additional two state permit~~
48 ~~cycles, except as provided for in subsection D of § 124-1-12. After the two additional state~~

1 ~~permit cycles have passed, or should permit coverage not be maintained, portions of the project~~
 2 ~~not under construction shall be subject to technical criteria adopted after the original state permit~~
 3 ~~coverage was issued. For land disturbing projects issued coverage under the July 1, 2009, permit~~
 4 ~~and for which coverage was maintained, such projects shall remain subject to the technical criteria~~
 5 ~~of Article 5 for an additional two state permits. A. Land-disturbing activities that obtain an initial~~
 6 ~~state permit or commence land disturbance prior to July 1, 2014, shall be conducted in accordance~~
 7 ~~with the technical criteria in Article 5. Such projects shall remain subject to the technical criteria~~
 8 ~~in Article 5 for two additional state permit cycles. After such time, portions of the project not~~
 9 ~~under construction shall become subject to any new technical criteria adopted by the State Water~~
 10 ~~Control Board.~~

11 B. Land-disturbing activities that obtain an initial state permit on or after July 1, 2014, shall be
 12 conducted in accordance with the technical criteria in Article 4, except as provided for in § 124-1-
 13 12. Land-disturbing activities conducted in accordance with the technical criteria in Article 4 shall
 14 remain subject to the technical criteria in Article 4 for two additional state permit cycles. After
 15 such time, portions of the project not under construction shall become subject to any new
 16 technical criteria adopted by the State Water Control Board.

17 C Nothing in this section shall preclude an operator from constructing to a more stringent
 18 standard at their discretion.

20 **Section 124-1-12. Grandfathering.**

21
 22 A. ~~Until June 30, 2019,~~ Any land-disturbing activity ~~for which~~ shall be considered
 23 grandfathered by the Director and shall be subject to the technical criteria in Article 5 provided:

24
 25 1. ~~A~~ currently valid proffered rezoning or P district rezoning or other rezoning with a
 26 plan of development, special exception, special permit, variance, preliminary or final subdivision
 27 plat, subdivision construction plan, preliminary or final site plan, or grading plan, was approved by
 28 the County prior to July 1, 2012; ~~and for which no coverage under the VSMP General Permit for~~
 29 ~~Discharges of Stormwater from Construction Activities has been issued prior to July 1, 2014,~~
 30 ~~shall be considered grandfathered and shall not be subject to the technical criteria of Article 4, but~~
 31 ~~shall be subject to the technical criteria of Article 5 for those areas that were included in the~~
 32 ~~approval, provided that~~

33 2. ~~the Director finds that such~~ The proffered rezoning or P district rezoning or other
 34 rezoning with a plan of development, special exception, special permit, variance, preliminary or
 35 final subdivision plat, subdivision construction plan, preliminary or final site plan, or grading plan
 36 provides sufficient information to demonstrate that the resulting land-disturbing activity will ~~be~~
 37 ~~compliant~~ comply with the technical requirements of Article 5 and include, as a minimum, the
 38 following: (i) a conceptual drawing that identifies the location of the proposed stormwater
 39 facilities; (ii) pre- and post-development calculations that detail the required pollutant reduction
 40 necessary to comply with the water quality design criteria; and (iii) calculations necessary to
 41 determine compliance with the water quantity design criteria; ~~and~~

42 3. ~~In the event that the County approved document is~~ The proffered rezoning or P district
 43 rezoning or other rezoning with a plan of development, special exception, special permit,
 44 variance, preliminary or final subdivision plat, subdivision construction plan, preliminary or final
 45 site plan, or grading plan has not been subsequently modified or amended in a manner ~~such that~~
 46 ~~there is no~~ resulting in an increase over the previously approved plat or plan in the amount of

1 phosphorus leaving each point of discharge ~~of the land-disturbing activity through stormwater~~
2 ~~runoff, and such that there is no increase over the previously approved plat or plan in or the~~
3 ~~volume or rate of runoff, the grandfathering shall continue as before; and,~~

- 4 4. A state permit has not been issued prior to July 1, 2014; and
- 5 5. Land disturbance did not commence prior to July 1, 2014.

6
7 B. ~~Until June 30, 2019, for~~ Locality, state, and federal projects shall be considered
8 grandfathered and shall be subject to the technical criteria in Article 5 provided: for which

- 9 1. There has been an obligation of locality, state, or federal funding, in whole or in part,
10 prior to July 1, 2012, or
- 11 ~~2. for which~~ the Department of Conservation and Recreation has approved a stormwater
12 management plan prior to July 1, 2012; such projects shall be considered grandfathered and shall
13 not be subject to the technical criteria of Article 4, but shall be subject to the technical criteria of
14 Article 5 for those areas that were included in the approval; and
- 15 2. A state permit has not been issued prior to July 1, 2014; and
- 16 3. Land disturbance did not commence prior to July 1, 2014.

17
18 C. ~~For~~ Land-disturbing activities grandfathered under subsections A and B above;
19 ~~construction must be completed by June 30, 2019, or~~ shall remain subject to the technical criteria
20 of Article 5 for one additional state permit cycle. After such time, portions of the project not
21 under construction shall become subject to the technical criteria of Article 4 any new technical
22 criteria adopted by the State water Control Board. For the purpose of administering the
23 ~~grandfathering requirements only, construction is considered complete when requirements for~~
24 ~~termination of state permit coverage have been met.~~

25
26 D. In cases where governmental bonding or public debt financing has been issued for a project
27 prior to July 1, 2012, such project shall be subject to the technical criteria of Article 5.

28
29 E. Nothing in this section shall preclude an operator from constructing to a more stringent
30 standard at their discretion.

31
32 **Section 124-1-13. Chesapeake Bay Preservation Act Land-Disturbing Activity.**

33
34 In order to protect the quality of state waters and to control the discharge of stormwater
35 pollutants from land-disturbing activities, runoff associated with Chesapeake Bay Preservation
36 Act land-disturbing activities shall be controlled unless otherwise exempt under § 124-1-7. Such
37 land-disturbing activities shall not require completion of a registration statement or require
38 coverage under the General Permit for Discharges of Stormwater from Construction Activities
39 ~~unless they are part of a larger common plan of development or sale that ultimately will disturb~~
40 ~~equal to or greater than one acre of land~~ unless they are part of a larger common plan of
41 development or sale that ultimately will disturb equal to or greater than one acre of land but shall
42 be subject to the following technical criteria and program and administrative requirements:

43
44 A. An erosion and sediment control plan consistent with the requirements of Chapter 104
45 (Erosion and Sedimentation Control) of the Code and the Virginia Erosion and Sediment Control
46 Law and regulations must be designed and implemented during land disturbing activities. Prior to

1 land disturbance, this plan must be approved by the Director in accordance with Chapter 104 and
2 the Virginia Erosion and Sediment Control Law and attendant regulations.

3
4 B. A stormwater management plan consistent with the requirements of this Chapter and the
5 Virginia Stormwater Management Act and regulations must be designed and implemented during
6 the land disturbing activity. The stormwater management plan shall be developed and submitted
7 in accordance with § 124-2-7. Prior to land disturbance, this plan must be approved by the
8 Director.

9
10 C. Exceptions may be requested in accordance with Article 6.

11
12 D. Long-term maintenance of stormwater management facilities shall be provided for and
13 conducted in accordance with § 124-2-10.

14
15 E. Water quality design criteria in § 124-4-2 shall be applied to the site.

16
17 F. Water quality compliance shall be achieved in accordance with § 124-4-3.

18
19 G. Channel protection and flood protection shall be achieved in accordance with § 124-4-4.

20
21 H. Offsite compliance options in accordance with § 124-4-5 shall be available to Chesapeake
22 Bay Preservation Act land-disturbing activities.

23
24 I. Such land-disturbing activities shall be subject to the design storm and hydrologic methods
25 set out in § 124-4-6, linear development controls in § 124-4-8, and criteria associated with
26 stormwater impoundment structures or facilities in the PFM.

27
28 Single-family residences separately built, disturbing less than one acre and part of a larger
29 common plan of development that ultimately will disturb equal to or greater than one acre of land
30 are authorized to discharge under the General Permit for Discharges of Stormwater from
31 Construction Activities and are not required to submit a registration statement or the state portion
32 of the permit fee, provided that the stormwater management plan for the larger common plan of
33 development or sale provides permanent control measures (i.e. stormwater management facilities)
34 encompassing the single-family residence.

35 36 **ARTICLE 2.**

37 38 **General Administrative Criteria for Regulated Land-Disturbing Activities.**

39 40 **Section 124-2-1. Applicability.**

41
42 This Part applies to all regulated land-disturbing activities unless exempt under § 124-1-7.

43 44 **Section 124-2-2. Permit Required.**

45

1 A. A person shall not conduct any land-disturbing activity without a stormwater permit.
 2 Permits will not be issued until the following items have been submitted to the County and
 3 approved by the Director as prescribed herein:
 4

- 5 1. A permit application that includes a state VSMP permit registration statement except
- 6 for Chesapeake Bay Preservation Act land-disturbing activities;
- 7 2. Evidence of VSMP permit coverage except for Chesapeake Bay Preservation Act land-
- 8 disturbing activities;
- 9 3. An erosion and sediment control plan in accordance with Chapter 104 of the Code; and
- 10 4. A stormwater management plan meeting the requirements of § 124-2-7.

11
 12 B. No permit shall be issued until the fees required to be paid pursuant to Article 3 of this
 13 Chapter are received, and the Applicant has provided surety for performance as required pursuant
 14 to § 124-2-4.
 15

16 C. Permit applications shall be acted on within 60 days after it has been determined by the
 17 Director to be a complete application. The Director may either issue the permit or deny the permit
 18 and shall provide written rationale for the denial. Any permit application that has been previously
 19 disapproved shall be acted on within 45 days after the application has been revised, resubmitted
 20 for approval, and deemed complete.
 21

22 **Section 124-2-3. Annual Standards and Specifications for State Agencies, Federal Entities,**
 23 **and Other Specified Entities.**
 24

25 A. State entities, including the Department of Transportation, and for linear projects set out in
 26 subsection B, electric, natural gas, and telephone utility companies, interstate and intrastate
 27 natural gas pipeline companies shall, and federal entities and authorities created pursuant to §
 28 15.2-5102 of the Code of Virginia may, annually submit a single set of standards and
 29 specifications for Department of Environmental Quality approval that describes how land-
 30 disturbing activities shall be conducted. Such standards and specifications shall be consistent with
 31 the requirements of the Act and associated regulations, including regulations governing the
 32 General Virginia Stormwater Management Program (VSMP) Permit for Discharges of
 33 Stormwater from Construction Activities (~~4 VAC 50-60-1100 et seq.~~ 9VAC25-880 et seq.), and
 34 the Erosion and Sediment Control Law (§ 62.1-44.15.51 et seq.) and associated regulations.
 35 Each project constructed in accordance with the requirements of the Act, its attendant
 36 regulations, and where required standards and specifications shall obtain coverage issued under
 37 the state general permit prior to land disturbance.
 38

39 B. Linear projects subject to annual standards and specifications include:
 40

- 41 1. Construction, installation, or maintenance of electric transmission, natural gas, and
- 42 telephone utility lines and pipelines, and water and sewer lines; and
- 43 2. Construction of the tracks, rights-of-way, bridges, communication facilities, and other
- 44 related structures and facilities of a railroad company.

45
 46 Linear projects not included in subdivisions 1 and 2 shall comply with the requirements of this
 47 Chapter.
 48

49 **Section 124-2-4. Security for Performance.**
 50

1 Prior to approval to begin land-disturbing activity, the applicant shall submit a performance
2 bond with surety, cash escrow, letter of credit, any combination thereof, or such other legal
3 arrangement acceptable to the County, to ensure that measures could be taken by the County at
4 the applicant's expense should the applicant fail, after proper notice, within the time specified to
5 take or complete all appropriate actions which may be required of him by the permit conditions as
6 a result of the applicant's land-disturbing activity. If the County takes such action upon such
7 failure by the applicant, the County may collect from the applicant for the difference should the
8 amount of the reasonable cost of such action exceed the amount of the security held. Within 60
9 days of the completion of the requirements of the permit conditions, such bond, cash escrow,
10 letter of credit or other legal arrangement, or the unexpended or unobligated portion thereof, shall
11 be refunded to the applicant or terminated. These requirements are in addition to all other
12 provisions of law relating to the issuance of permits and are not intended to otherwise affect the
13 requirements for such permits including performance guarantees for items unrelated to the
14 stormwater permit.
15

16 **Section 124-2-5. Monitoring, Reports, Investigations, and Inspections.**

17

18 A. The Director (i) shall provide for periodic inspections of the installation of stormwater
19 management measures, (ii) may require monitoring and reports from the person responsible for
20 meeting the permit conditions to ensure compliance with the permit and to determine whether the
21 measures required in the permit provide effective stormwater management, and (iii) conduct such
22 investigations and perform such other actions as are necessary to carry out the provisions of this
23 Chapter.
24

25 B. Land-disturbing activity shall be inspected during construction for:

- 26 1. Compliance with the approved erosion and sediment control plan;
- 27 2. Compliance with the approved stormwater management plan;
- 28 3. Development, updating, and implementation of a pollution prevention plan; and
- 29 4. Development and implementation of any additional control measures necessary to
30 address a TMDL.
31

32
33 C. Every permit applicant, permittee, or any person subject to state permit requirements under
34 this Chapter shall furnish, when requested by the County, such application materials, plans,
35 specifications, and other pertinent information as may be necessary to determine the effect of his
36 discharge on the quality of state waters, or such other information as may be necessary to
37 accomplish the purposes of this Chapter.
38

39 **Section 124-2-6. Stormwater Pollution Prevention Plan Requirements.**

40

41 A. A stormwater pollution prevention plan shall include, but not be limited to, an approved
42 erosion and sediment control plan, an approved stormwater management plan, a pollution
43 prevention plan for regulated land-disturbing activities, and a description of any additional control
44 measures necessary to address a TMDL pursuant to subsection E.
45

46 B. An erosion and sediment control plan consistent with the requirements of the Virginia

1 Erosion and Sediment Control Law and regulations, Chapter 104, and the PFM must be designed
2 and implemented during construction activities. Prior to land disturbance, this plan must be
3 approved by the Director in accordance with the Virginia Erosion and Sediment Control Law and
4 attendant regulations, Chapter 104, and the PFM.

5
6 C. A stormwater management plan consistent with the requirements of § 124-2-7 must be
7 designed and implemented during construction activities. Prior to land disturbance, this plan must
8 be approved by the Director.

9
10 D. A pollution prevention plan consistent with the requirements § 124-2-8 must be developed
11 before land disturbance commences.

12
13 E. In addition to the above requirements, if a specific WLA for a pollutant has been
14 established in ~~a~~ an approved TMDL and is assigned to stormwater discharges from a construction
15 activity, additional control measures must be identified and implemented by the operator so that
16 discharges are consistent with the assumptions and requirements of the WLA ~~in a State Water~~
17 ~~Control Board approved TMDL~~ as specified in 40 CFR 450.21.

18
19 F. The stormwater pollution prevention plan must address the following requirements, to the
20 extent otherwise required by state law or regulations and any applicable requirements of a state
21 permit in ~~4 VAC 50-60-1170~~ 9VAC25-880-1:

- 22
23 1. Control stormwater volume and velocity within the site to minimize soil erosion;
24 2. Control stormwater discharges, including both peak flow rates and total stormwater
25 volume, to minimize erosion at outlets and to minimize downstream channel and stream bank
26 erosion;
27 3. Minimize the amount of soil exposed during construction activity;
28 4. Minimize the disturbance of steep slopes;
29 5. Minimize sediment discharges from the site. The design, installation and maintenance
30 of erosion and sediment controls must address factors such as the amount, frequency, intensity
31 and duration of precipitation, the nature of resulting stormwater runoff, and soil characteristics,
32 including the range of soil particle sizes expected to be present on the site;
33 6. Provide and maintain natural buffers around surface waters, direct stormwater to
34 vegetated areas to increase sediment removal and maximize stormwater infiltration, unless
35 infeasible;
36 7. Minimize soil compaction and, unless infeasible, preserve topsoil;
37 8. Stabilization of disturbed areas must, at a minimum, be initiated immediately whenever
38 any clearing, grading, excavating or other earth disturbing activities have permanently ceased on
39 any portion of the site, or temporarily ceased on any portion of the site and will not resume for a
40 period exceeding 14 calendar days. Stabilization must be completed within a period of time
41 determined by the County. In drought stricken areas where initiating vegetative stabilization
42 measures immediately is infeasible, alternative stabilization measures must be employed as
43 specified by the County; and
44 9. Utilize outlet structures that withdraw water from the surface, unless infeasible, when
45 discharging from basins and impoundments.
46

1 G. The SWPPP shall be amended whenever there is a change in design, construction,
2 operation, or maintenance that has a significant effect on the discharge of pollutants to state
3 waters and that has not been previously addressed in the SWPPP. The SWPPP must be
4 maintained at a central location onsite. If an onsite location is unavailable, notice of the SWPPP's
5 location must be posted near the main entrance at the construction site.

7 **Section 124-2-7. Stormwater Management Plans.**

8
9 A. A stormwater management plan shall be developed and submitted to the County. The
10 stormwater management plan shall be implemented as approved or modified by the Director and
11 shall be developed in accordance with the following:

12
13 1. A stormwater management plan for a land-disturbing activity shall apply the
14 stormwater management technical criteria set forth in Article 4 or Article 5 as applicable to the
15 entire land disturbing activity. Individual lots in new residential, commercial, or industrial
16 developments shall not be considered separate land-disturbing activities.

17 2. A stormwater management plan shall consider all sources of surface runoff and all
18 sources of subsurface and groundwater flows converted to surface runoff.

19 3. Stormwater management plans shall meet all requirements of the PFM.

20
21 B. A complete stormwater management plan shall include the following elements:

22
23 1. Information on the type of and location of stormwater discharges, information on the
24 features to which stormwater is being discharged including surface waters, and predevelopment
25 and postdevelopment drainage areas;

26 2. Contact information including the name, address, ~~and~~ telephone number, and email
27 address of the owner and the tax reference number and parcel number of the property or
28 properties affected;

29 3. A narrative that includes a description of current site conditions and final site
30 conditions and any proffers or conditions relating to stormwater management;

31 4. A general description of the proposed stormwater management facilities and the
32 mechanism through which the facilities will be operated and maintained after construction is
33 complete;

34 5. Information on the proposed stormwater management facilities, including the type of
35 facilities, location, including geographic coordinates, acres treated, and the surface waters into
36 which the facility will discharge;

37 6. Hydrologic and hydraulic computations, including runoff characteristics;

38 7. Documentation and calculations verifying compliance with the water quality and
39 quantity requirements of this Chapter;

40 8. A map or maps of the site that depicts the topography of the site and includes:

- 41
42 a. All contributing drainage areas;
43 b. Existing streams, ponds, culverts, ditches, wetlands, other water bodies, and
44 floodplains;
45 c. Soil types, forest cover, and other vegetative areas;
46 d. Current land use including existing structures, roads, and locations of known

1 utilities and easements;

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

4 f. The limits of clearing and grading, and the proposed drainage patterns on the site;

5 g. Proposed buildings, roads, parking areas, utilities, and stormwater management
6 facilities; and

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

9
10 9. If an operator intends to meet the requirements established in § 124-4-2 or § 124-4-4
11 through the use of off-site compliance options, where applicable, then a letter of availability from
12 the off-site provider must be included.

13 10. Any other information deemed necessary by the Director to evaluate potential impacts
14 of the proposed land-disturbing activity.

15
16 C. Stormwater management plans shall be appropriately sealed and signed by a professional
17 registered in the Commonwealth of Virginia pursuant to Article 1 (§ 54.1-400 et seq.) of Chapter
18 4 of Title 54.1.

19
20 **Section 124-2-8. Pollution Prevention Plans.**

21
22 A. A plan for implementing pollution prevention measures during construction activities shall
23 be developed, implemented and updated as necessary. The pollution prevention plan shall detail
24 the design, installation, implementation and maintenance of effective pollution prevention
25 measures as specified in 40 CFR 450.21(d) to minimize the discharge of pollutants. At a
26 minimum, such measures must be designed, installed, implemented and maintained to:

27
28 1. Minimize the discharge of pollutants from equipment and vehicle washing, wheel wash
29 water, and other wash waters. Wash waters must be treated in a sediment basin or alternative
30 control that provides equivalent or better treatment prior to discharge;

31 2. Minimize the exposure of building materials, building products, construction wastes,
32 trash, landscape materials, fertilizers, pesticides, herbicides, detergents, sanitary waste and other
33 materials present on the site to precipitation and to stormwater; and

34 3. Minimize the discharge of pollutants from spills and leaks and implement chemical spill
35 and leak prevention and response procedures.

36
37 B. The pollution prevention plan shall include effective best management practices to prohibit
38 the following discharges in accordance with 40 CFR 450.21(e):

39
40 1. Wastewater from washout of concrete, unless managed by an appropriate control;

41 2. Wastewater from washout and cleanout of stucco, paint, form release oils, curing
42 compounds and other construction materials;

43 3. Fuels, oils, or other pollutants used in vehicle and equipment operation and
44 maintenance; and

45 4. Soaps or solvents used in vehicle and equipment washing
46

1 C. Discharges from dewatering activities, including discharges from dewatering of trenches
2 and excavations, are prohibited unless managed by appropriate controls in accordance with 40
3 CFR 450.21(c).
4

5 **Section 124-2-9. Stormwater Management Plan Review.**

6
7 A. A stormwater management plan shall be approved or disapproved by the Director in
8 accordance with the following:
9

10 1. The completeness of a plan shall be determined in accordance with § 124-2-7.B. The
11 applicant shall be notified of any determination within 15 calendar days of receipt of the plan.
12 Where available to the applicant, electronic communication may be considered communication in
13 writing.
14

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

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

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

23 d. Any plan that has been previously disapproved shall be reviewed within 45 calendar
24 days of the date of resubmission.
25

26 2. During the review period, the plan shall be approved or disapproved and the decision
27 communicated in writing to the person responsible for the land-disturbing activity or his
28 designated agent. If the plan is not approved, the reasons for not approving the plan shall be
29 provided in writing. Approval or denial shall be based on the plan's compliance with the
30 requirements of this Chapter and all applicable codes, regulations, and policies, as determined by
31 the Director. Where available to the applicant, electronic communication may be considered
32 communication in writing.
33

34 3. If a plan meeting all requirements of this Chapter and all applicable codes, regulations,
35 and policies, as determined by the Director, is submitted and no action is taken within the time
36 specified above, the plan shall be deemed approved.
37

38 B. Each approved plan may be modified as follows:
39

40 1. Modifications to an approved stormwater management plan shall be allowed only after
41 review and written approval by the Director. Requests for modifications containing all required
42 information shall be approved or disapproved in writing within 60 calendar days of receipt of such
43 requests.
44

45 2. Based on an inspection, the Director may require amendments to the approved
46 stormwater management plan to address any deficiencies within a time frame set by the Director.

1
2 C. The Director will not provide authorization to begin land disturbance until provided
3 evidence of state permit coverage, where it is required, in accordance with § 124-2-2.
4

5 **Section 124-2-10. Long-term Maintenance of Permanent Stormwater Management**
6 **Facilities.**
7

8 A. Provisions for long-term responsibility for and maintenance of stormwater management
9 facilities and other techniques specified to manage the quality and quantity of runoff are required.
10 For all facilities and techniques intended to be privately maintained, such requirements shall be set
11 forth in a Private Maintenance Agreement recorded in the Fairfax County land records prior to
12 approval to begin land-disturbing activity. Private Maintenance Agreements shall, at a minimum:
13

- 14 1. Be submitted in a form acceptable to the Director for review and approval and executed
15 prior to the approval of the stormwater management plan;
- 16 2. Be stated to run with the land;
- 17 3. Provide for all necessary access to the property for purposes of maintenance and
18 regulatory inspections;
- 19 4. Provide for inspections and maintenance and the submission of inspection and
20 maintenance reports to the County on an annual basis;
- 21 5. Be enforceable by all appropriate governmental parties;
- 22 6. Ensure that measures could be taken by the County to maintain the stormwater
23 management facilities or perform inspections at the owner's expense should the owner fail to
24 maintain the stormwater management facilities in good working order in accordance with the
25 maintenance specifications in the agreement or perform the periodic inspections required by the
26 agreement;
- 27 7. Provide that in the event the County, pursuant to the agreement, performs work of any
28 nature or expends any funds in performance of said work for labor, use of equipment, supplies,
29 materials, and the like, the owner will reimburse the County for all costs incurred by the County;
30 and
- 31 8. Provide for liens to be placed on the property should the owner fail to reimburse the
32 County for costs incurred by the County.
33

34 B. The Director may utilize the inspection reports of the owner of a stormwater management
35 facility as part of an inspection program established in subsection C of this section if the
36 inspection is conducted by a person who is licensed as a professional engineer, architect,
37 landscape architect, or land surveyor pursuant to Article 1 (§ 54.1-400 et seq.) of Chapter 4 of
38 Title 54.1; a person who works under the direction and oversight of the licensed professional
39 engineer, architect, landscape architect, or land surveyor; or a person who holds an appropriate
40 certificate of competence from the SWCB.
41

42 C. The Director shall establish an inspection program that ensures that stormwater
43 management facilities are being adequately maintained as designed after completion of land-
44 disturbing activities. The inspection programs shall:
45

- 46 1. Be approved by the SWCB;

1 any incomplete payments. Interest may be charged for late payments at the underpayment rate set
 2 forth in § 58.1-15 of the Code of Virginia and is calculated on a monthly basis at the applicable
 3 periodic rate. A 10% late payment fee shall be charged to any delinquent (over 90 days past due)
 4 account. The Department of Environmental Quality and the County are entitled to all remedies
 5 available under the Code of Virginia in collecting any past due amount.

6 7 **Section 124-3-2 Exemptions.**

8
9 A. No state permit application fees will be assessed to:

10
11 1. State permittees who request minor modifications to permits as defined in § 124-1-5 or
 12 other minor amendments at the discretion of the County.

13
14 2. State permittees whose permits are modified or amended at the request of the County
 15 or DEQ by the State Water Control Board. This does not include errors in the registration
 16 statement identified by the County, DEQ, or State Water Control Board or errors related to the
 17 acreage of the site.

18
19 B. State permit modifications at the request of the state permittee resulting in changes to
 20 stormwater management plans that require additional review by the County shall not be exempt
 21 pursuant to this section and shall be subject to fees specified under §124-3-4.

22 23 **Section 124-3-3 Fees for Coverage Under the General Permit for Discharges of Stormwater** 24 **from Construction Activities and Permits for Chesapeake Bay Preservation Area Land-** 25 **Disturbing Activities.**

26
27 The state's portion of the fees for coverage under the General Permit for Discharges of
 28 Stormwater from Construction Activities shall be paid directly to the state in accordance with
 29 ~~4VAC50-60-700 et seq~~ 9VAC25-870-700 et seq. The fee due to the state shall be the
 30 Department of Environmental Quality portion of the total fee to be paid by the applicant listed in
 31 ~~4VAC50-60-820~~ 9VAC25-870-820. Fees for permits for Chesapeake Bay Preservation Act land-
 32 disturbing activities and the County's portion of the fees for coverage under the General Permit
 33 for Discharges of Stormwater for Construction Activities shall be paid to the County at such times
 34 and amounts as provided for in Appendix Q of the Code.

35 36 **Section 124-3-4. Fees for the Modification or Transfer of Registration Statements for the** 37 **General Permit for Discharges of Stormwater from Construction Activities.**

38
39 Fees for the modification or transfer of registration statements for the General Permit for
 40 Discharges of Stormwater from Construction Activities shall be paid to the County at such times
 41 and amounts as provided for in Appendix Q of the Code. If the permit modifications result in
 42 changes to stormwater management plans that require additional review by the County, such
 43 reviews shall be subject to the fees set out in this section. The fee assessed shall be based on the
 44 total disturbed acreage of the site. In addition to the permit modification fee, modifications
 45 resulting in an increase in total disturbed acreage shall pay the difference in the initial permit fee
 46 paid and the permit fee that would have applied for the total disturbed acreage in § 124-3-3

1
2 **Section 124-3-5. Permit Maintenance Fees.**
3

4 Annual permit maintenance fees for General Permits for Discharges of Stormwater from
5 Construction Sites including expired permits that have been administratively continued and
6 Chesapeake Bay Preservation Act land-disturbing activities shall be paid to the County at such
7 times and amounts as provided for in Appendix Q of the Code. With respect to the General
8 Permit for Discharges of Stormwater from Construction Activities, these fees shall apply until the
9 permit coverage is terminated

10
11 **ARTICLE 4.**
12

13 **Technical Criteria for Regulated Land-Disturbing Activities.**
14

15 **Section 124-4-1. Applicability.**
16

17 Except as grandfathered in §124-1-12, this Article establishes the minimum technical criteria that
18 shall be employed to protect the quality and quantity of state waters from the potential harm of
19 unmanaged stormwater runoff resulting from land-disturbing activities.
20

21 **Section 124-4-2. Water Quality Design Criteria Requirements.**
22

23 A. In order to protect the quality of state waters and to control the discharge of stormwater
24 pollutants from regulated activities, the following minimum design criteria and standards for
25 stormwater management shall be applied to the site.
26

27 1. New development. The total phosphorus load of new development projects shall not
28 exceed 0.41 pounds per acre per year, as calculated pursuant to §124-4-3.
29

30 2. Development on prior developed lands.

31 a. For land-disturbing activities disturbing greater than or equal to one (1) acre that
32 result in no net increase in impervious cover from the predevelopment condition, the total
33 phosphorus load shall be reduced at least 20% below the predevelopment total phosphorus load.

34 b. For regulated land-disturbing activities disturbing less than one (1) acre that result in
35 no net increase in impervious cover from the predevelopment condition, the total phosphorus load
36 shall be reduced at least 10% below the predevelopment total phosphorus load.

37 c. For land-disturbing activities that result in a net increase in impervious cover over
38 the predevelopment condition, the design criteria for new development shall be applied to the
39 increased impervious area. Depending on the area of disturbance, the criteria of subdivisions (a)
40 or (b) above, shall be applied to the remainder of the site.

41 d. In lieu of subdivision (c), the total phosphorus load of a linear development project
42 occurring on prior developed lands shall be reduced 20% below the predevelopment total
43 phosphorus load.

44 e. The total phosphorus load shall not be required to be reduced to below the
45 applicable standard for new development unless a more stringent standard has been established by
46 the County.
47

1 B. The Board has established a Water Supply Protection Overlay District (WSPOD) in the
2 Occoquan Watershed to prevent water quality degradation of the Occoquan Reservoir due to
3 pollutant loadings within the watershed. WSPOD boundaries have been established on the
4 Official Zoning Map. Use limitations are established which require that there shall be water
5 quality control measures designed to reduce the projected phosphorus runoff by at least one-half
6 for any subdivision which is subject to the provisions of Chapter 101 of the Code or any use
7 requiring the approval of a site plan in accordance with the provisions of Article 17 of Chapter
8 112 of the Code, unless a modification or waiver is approved by the Director. In no instance shall
9 the requirement for water quality control measures be modified or waived except where existing
10 site characteristics make the provision impractical or unreasonable on-site and an alternative
11 provision is not or cannot be accommodated off-site, and where it can be established that the
12 modification or waiver will not affect the achievement of the water quality goals for the public
13 water supply watershed as set forth in the adopted comprehensive plan.

14
15 C. Compliance with subsections A and B above shall be determined in accordance with §124-
16 4-3.

17
18 D. Requirements of all applicable TMDL action plans developed by the County in accordance
19 with the County's MS4 permit shall be met.

20 21 **Section 124-4-3. Water Quality Compliance.**

22
23 A. Compliance with the water quality design criteria set out in subsections A and B of §124-4-
24 2 shall be determined by utilizing the Virginia Runoff Reduction Method or another equivalent
25 methodology that is approved by the State Water Control Board.

26
27 B. The BMPs listed in ~~4VAC50-60-65.B~~ 9VAC25-870-65.B are approved for use, subject to
28 the restrictions and conditions in the PFM, as necessary to effectively reduce the phosphorus load
29 and runoff volume in accordance with the Virginia Runoff Reduction Method. Other approved
30 BMPs found on the Virginia Stormwater BMP Clearinghouse Website may also be utilized,
31 subject to review and approval by the Director. Design specifications and the pollutant removal
32 efficiencies for all approved BMPs are found on the Virginia Stormwater BMP Clearinghouse
33 Website. Modifications to the design specifications, to address local requirements, are included in
34 the PFM.

35
36 C. Where a site drains to more than one HUC, the pollutant load reduction requirements shall
37 be applied independently within each HUC unless reductions are achieved in accordance with a
38 comprehensive watershed stormwater management plan in accordance with § 124-4-9. Pollutant
39 load reduction requirements to meet TMDL action plans developed by the County in accordance
40 with the County's MS4 permit shall be applied independently to the areas of the site subject to the
41 TMDL.

42
43 D. Offsite alternatives where allowed in accordance with § 124-4-5 may be utilized to meet
44 the design criteria of subsection A of § 124-4-2.

45 46 **Section 124-4-4. Water Quantity.**

47
48 A. Channel protection and flood protection shall be addressed in accordance with the

1 minimum standards set out in this section.

2
3 B. Channel protection. Concentrated stormwater flow shall be released into a stormwater
4 conveyance system and shall meet criteria 1, 2 or 3 of this subsection, where applicable, from the
5 point of discharge to a point to the limits of analysis in ~~subsection 4 § 124-4-4.B.5~~ as
6 demonstrated by use of acceptable hydrologic and hydraulic methodologies.

7
8 1. Manmade stormwater conveyance systems. When stormwater from a development is
9 discharged to a manmade stormwater conveyance system, following the land-disturbing activity,
10 either:

11
12 a. The manmade stormwater conveyance system shall convey the postdevelopment
13 peak flow rate from the two-year 24-hour storm event without causing erosion of the system.
14 Detention of stormwater or downstream improvements may be incorporated into the approved
15 land-disturbing activity to meet this criterion, at the discretion of the Director; or

16 b. The peak discharge requirements for concentrated stormwater flow to natural
17 stormwater conveyance systems in ~~criteria 3a or 3b of this subsection~~ § 124-4-4.B.3(a) or 3(b)
18 shall be met.

19
20 2. Restored stormwater conveyance systems. When stormwater from a development is
21 discharged to a restored stormwater conveyance system that has been restored using natural
22 channel design concepts, following the land-disturbing activity, either:

23
24 a. The development shall be consistent, in combination with other stormwater runoff,
25 with the design parameters of the restored stormwater conveyance system that is functioning in
26 accordance with the design objectives; or

27 b. The peak discharge requirements for concentrated stormwater flow to natural
28 stormwater conveyance systems in ~~criteria 3a or 3b of this subsection~~ § 124-4-4.B.3(a) or 3(b)
29 shall be met.

30
31 3. Natural stormwater conveyance systems. When stormwater from a development is
32 discharged to a natural stormwater conveyance system, the maximum peak flow rate from the
33 one-year 24-hour storm following the land-disturbing activity shall be calculated by one of the
34 following:

35
36 a. In accordance with the following methodology:

$$37 \quad Q_{\text{Developed}} \leq (Q_{\text{Forest}} * RV_{\text{Forest}}) / RV_{\text{Developed}}$$

38
39 Where:

40 $Q_{\text{Developed}}$ = The allowable peak flow rate of runoff from the developed site.

41 $RV_{\text{Developed}}$ = The volume of runoff from the site in the developed condition.

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

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

44
45 b. In accordance with another methodology that is determined by the Director to
46

1 achieve equivalent results and is approved by the State Water Control Board.

2
3 c. If the maximum peak flow rate for the 2-year 24-hour storm can be conveyed within
4 the system from the point of discharge to the limit of analysis in § 124-4-4.B.6 without causing
5 erosion, the maximum peak flow rate from the one-year 24-hour storm following the land-
6 disturbing activity may be calculated in accordance with the following methodology:

$$7 \quad Q_{\text{Developed}} \leq \text{I.F.} * (Q_{\text{Pre-Developed}} * \text{RV}_{\text{Pre-Developed}}) / \text{RV}_{\text{Developed}}$$

8
9 Under no condition shall $Q_{\text{Developed}}$ be greater than $Q_{\text{Pre-Developed}}$

10
11 Where:

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

13 $Q_{\text{Developed}}$ = The allowable peak flow rate of runoff from the developed site.

14 $\text{RV}_{\text{Developed}}$ = The volume of runoff from the site in the developed condition.

15 $Q_{\text{Pre-Developed}}$ = The peak flow rate of runoff from the site in a pre-developed condition.

16 $\text{RV}_{\text{Pre-Developed}}$ = The volume of runoff from the site in a pre-developed condition.

17
18
19 4. If § 124-4-4.B.3(a) or 3(b) is used to show compliance with the channel protection
20 criteria, the downstream review shall be limited to providing cross-sections to show a defined
21 channel, which may include sections of natural streams with braided channels or wetlands as
22 determined by the Director, or man-made drainage facility for the extent of review described in §
23 124-4-4.B.6.

24
25 ~~45. Limits of analysis. Unless criteria 3a or 3b of this subsection~~ § 124-4-4.B.3 is utilized
26 to show compliance with the channel protection criteria, stormwater conveyance systems shall be
27 analyzed for compliance with channel protection criteria to a point where either:

28
29 a. Based on land area, the site's contributing drainage area is less than or equal to 1.0%
30 of the total watershed area; or

31 b. Based on peak flow rate, the site's peak flow rate from the one-year 24-hour storm
32 is less than or equal to 1.0% of the existing peak flow rate from the one-year 24-hour storm prior
33 to the implementation of any stormwater quantity control measures.

34
35 6. Alternative limits of analysis. If § 124-4-4.B.3 is used to show compliance with the
36 channel protection criteria above the downstream limit of analysis may extend to a point where:

37
38 a. Based on land area, the site's contributing drainage area is less than or equal to
39 1.0% of the total watershed area; or

40 b. Based on peak flow rate, the site's peak flow rate from the one-year 24-hour storm
41 is less than or equal to 1.0% of the existing peak flow rate from the one-year 24-hour storm prior
42 to the implementation of any stormwater quantity control measures; or

43 c. To a point that is at least 150 feet downstream of a point where the receiving pipe
44 or channel is joined by another that has a drainage area that is at least 90 percent of the size of the
45 first drainage area at the point of confluence; or

1 d. To a point that is at least 150 feet downstream of a point where the drainage area
2 is 360 acres or greater.

3
4 C. Flood protection. Concentrated stormwater flow shall be released into a stormwater
5 conveyance system and shall meet criteria 1, 2, or 3 below, where applicable, from the point of
6 discharge to a point to the limits of analysis in ~~subsection 5~~ § 124-4-4.C.5 as demonstrated by use
7 of acceptable hydrologic and hydraulic methodologies:

8
9 1. Concentrated stormwater flow to stormwater conveyance systems that currently do not
10 experience localized flooding during the 10-year 24-hour storm event. The point of discharge
11 releases stormwater into a stormwater conveyance system that, following the land-disturbing
12 activity, confines the postdevelopment peak flow rate from the 10-year 24-hour storm event
13 within the stormwater conveyance system. Detention of stormwater or downstream
14 improvements may be incorporated into the approved land-disturbing activity to meet this
15 criterion, at the discretion of the Director.

16
17 2. Concentrated stormwater flow to stormwater conveyance systems that currently
18 experience localized flooding during the 10-year 24-hour storm event. The point of discharge
19 releases stormwater into a stormwater conveyance system that, following the land-disturbing
20 activity, confines the postdevelopment peak flow rate from the 10-year 24-hour storm event
21 within the stormwater conveyance system to avoid the localized flooding. Detention of
22 stormwater or downstream improvements may be incorporated into the approved land-disturbing
23 activity to meet this criterion, at the discretion of the Director.

24
25 3. Localized flooding is defined as follows:

26
27 a. For manmade stormwater conveyance systems, localized flooding occurs when: the
28 capacity of the channel, pipe system, or culvert is exceeded for the 10-year 24-hour storm event
29 or the design storm, whichever is greater; or existing dwellings or buildings constructed under an
30 approved building permit are flooded by the 100-year storm event.

31 b. For natural stormwater conveyance systems, localized flooding occurs when: the
32 capacity of the channel, or a system of braided channels or wetlands as determined by the
33 Director, is exceeded for the 2-year 24-hour storm event; or existing dwellings or buildings
34 constructed under an approved building permit are flooded by the 100-year storm event.

35 c. For a restored stormwater conveyance system that has been designed using natural
36 channel design concepts, localized flooding occurs when: the capacity of the channel and
37 overbanks are exceeded for the stated design storm; or existing dwellings or buildings constructed
38 under an approved building permit are flooded by the 100-year storm event.

39
40 4. As an alternative to criteria 1 or 2 above, detention of stormwater may be provided that
41 releases the postdevelopment peak flows for the 2-year 24-hour storm event and the 10-year 24-
42 hour storm event at rates that are determined utilizing the method in § 124-4-4.B.3(a) or 3(b). If
43 this method is used, the downstream review analysis shall be limited to providing cross-sections to
44 show a defined channel, which may include sections of natural streams with braided channels or
45 wetlands as determined by the Director, or man-made drainage facility, and checking for flooding

1 of existing dwellings or buildings constructed under an approved building permit from the 100-
 2 year storm event for the extent of review described in ~~5 below~~ § 124-4-4.C.6.

3
 4 5. Limits of analysis. Unless § 124-4-4.C.4 is utilized to comply with the flood protection
 5 criteria, stormwater conveyance systems shall be analyzed for compliance with flood protection
 6 criteria to a point where:

7
 8 a. The site's contributing drainage area is less than or equal to 1.0% of the total
 9 watershed area draining to a point of analysis in the downstream stormwater conveyance system;
 10 or

11 b. Based on peak flow rate, the site's peak flow rate from the 10-year 24-hour storm
 12 event is less than or equal to 1.0% of the existing peak flow rate from the 10-year 24- hour storm
 13 event prior to the implementation of any stormwater quantity control measures; or

14 c. The stormwater conveyance system enters a mapped floodplain or other flood prone
 15 area, adopted by ordinance.¹

16
 17 6. Alternative limits of analysis. If § 124-4-4.C.4 is utilized to comply with the flood
 18 protection criteria, or the detention requirements of § 124-4-4.D are met and the receiving
 19 conveyance system complies with the flood protection criteria from the point of discharge to the
 20 limits of analysis in this subdivision, the downstream limit of analysis may extend to a point where:

21
 22 a. The site's contributing drainage area is less than or equal to 1.0% of the total
 23 watershed area draining to a point of analysis in the downstream stormwater conveyance system;
 24 or

25 b. Based on peak flow rate, the site's peak flow rate from the 10-year 24-hour storm
 26 event is less than or equal to 1.0% of the existing peak flow rate from the 10-year 24- hour storm
 27 event prior to the implementation of any stormwater quantity control measures; or

28 c. The stormwater conveyance system enters a mapped floodplain or other flood prone
 29 area, adopted by ordinance; or

30 d. To a point that is at least 150 feet downstream of a point where the receiving pipe
 31 or channel is joined by another that has a drainage area that is at least 90 percent of the size of the
 32 first drainage area at the point of confluence; or

33 e. To a point that is at least 150 feet downstream of a point where the drainage area is
 34 360 acres or greater.

35
 36 67. If an existing dwelling or a building constructed under an approved building permit,
 37 which is located within the extent of review described in § 124-4-4.C.56, is flooded by the 100-
 38 year storm, the peak flow of the 100-year storm at the development site shall be reduced to a level
 39 below the pre-development based on the methodology in § 124-4-4.B.3(a) or 3(b).

40
 41 D. Detention. Unless waived by the Director, the postdevelopment peak flow for the 2-year
 42 24-hour storm event shall be released at a rate that is equal to or less than the predevelopment
 43 peak flow rate from the 2-year 24-hour storm event and the postdevelopment peak flow for the

¹ Floodplains adopted by ordinance include any Special Flood Hazard Area depicted on the County's Flood Insurance Rate Map or any floodplain included in Appendix A of the Code.

1 10-year 24-hour storm event shall be released at a rate that is less than or equal to the
2 predevelopment peak flow rate from the 10-year 24-hour storm event. In the Four Mile Run
3 watershed, the postdevelopment peak flow for the 100-year storm event shall be released at a rate
4 that is equal to or less than the predevelopment peak flow rate from the 100-year storm unless it
5 is contraindicated by the watershed model developed for the Four Mile Run Watershed
6 Management Program.
7

8 E. Increased volumes of sheet flow resulting from pervious or disconnected impervious areas,
9 or from physical spreading of concentrated flow through level spreaders, must be identified and
10 evaluated for potential impacts on down-gradient properties or resources. Increased volumes of
11 sheet flow that will cause or contribute to erosion, sedimentation, or flooding of down gradient
12 properties or resources shall be diverted to a stormwater management facility or a stormwater
13 conveyance system that conveys the runoff without causing down-gradient erosion,
14 sedimentation, or flooding. If all runoff from the site is sheet flow and the conditions of this
15 subsection are met, no further water quantity controls are required.
16

17 F. For purposes of computing predevelopment runoff, all pervious lands on the site shall be
18 assumed to be in good hydrologic condition in accordance with the U.S. Department of
19 Agriculture's Natural Resources Conservation Service (NRCS) standards, regardless of conditions
20 existing at the time of computation. Predevelopment runoff calculations utilizing other hydrologic
21 conditions may be utilized provided that it is demonstrated to and approved by the Director that
22 actual site conditions warrant such considerations.
23

24 G. Predevelopment and postdevelopment runoff characteristics and site hydrology shall be
25 verified by site inspections, topographic surveys, available soil mapping or studies, and
26 calculations consistent with good engineering practices. Guidance provided in the Virginia
27 Stormwater Management Handbook and by the Virginia Stormwater BMP Clearinghouse shall be
28 considered appropriate practices as modified and supplemented by the Public Facilities Manual.
29

30 **Section 124-4-5. Offsite Compliance Options.**

31
32 A. The Director, at his discretion, may allow an operator to use the following offsite
33 compliance options to meet required phosphorus nutrient reductions:
34

- 35 1. Offsite controls utilized in accordance with a comprehensive stormwater management
36 plan adopted pursuant to § 124-4-9 for the local watershed within which a project is located;
- 37 2. A locality pollutant loading pro rata share program established pursuant to § 15.2-2243
38 of the Code of Virginia or similar local funding mechanism;
- 39 3. The nonpoint nutrient offset program established pursuant to § 62.1-44.15:35 of the
40 Code of Virginia;
- 41 4. Any other offsite options approved by an applicable state agency or state board; and
- 42 5. When an operator has additional properties available within the same HUC or upstream
43 HUC that the land-disturbing activity directly discharges to or within the same watershed as
44 determined by the Director, offsite stormwater management facilities on those properties may be
45 utilized to meet the required phosphorus nutrient reductions from the land-disturbing activity.
46

1 B. Notwithstanding subsection A, and pursuant to § 62.1-44.15:35, operators shall be allowed
2 to utilize offsite options identified in subsection A under any of the following conditions:

- 3
4 1. Less than five acres of land will be disturbed;
5 2. The postconstruction phosphorus control requirement is less than 10 pounds per year;

6 or

7 3. At least 75% of the required phosphorus nutrient reductions are achieved on-site. If at
8 least 75% of the required phosphorus nutrient reductions can not be met on-site, and the operator
9 can demonstrate to the satisfaction of the Director that (i) alternative site designs have been
10 considered that may accommodate on-site best management practices, (ii) on-site best
11 management practices have been considered in alternative site designs to the maximum extent
12 practicable, (iii) appropriate on-site best management practices will be implemented, and (iv) full
13 compliance with postdevelopment nonpoint nutrient runoff compliance requirements cannot
14 practicably be met on-site, then the required phosphorus nutrient reductions may be achieved, in
15 whole or in part, through the use of off-site compliance options.

16
17 C. Notwithstanding subsections A and B, offsite options shall not be allowed:

18
19 1. Unless the selected offsite option achieves the necessary nutrient reductions prior to the
20 commencement of the operator's land-disturbing activity. In the case of a phased project, the
21 operator may acquire or achieve offsite nutrient reductions prior to the commencement of each
22 phase of land-disturbing activity in an amount sufficient for each phase.

23 2. In contravention of local water quality-based limitations at the point of discharge that
24 are (i) consistent with the determinations made pursuant to subsection B of § 62.1-44.19:7 of the
25 Code of Virginia, (ii) contained in a municipal separate storm sewer system (MS4) program plan
26 accepted by the Department of Environmental Quality, or (iii) as otherwise may be established or
27 approved by the State Water Control Board. Such limitations include but are not limited to the
28 phosphorous reduction requirement in the Water Supply Protection Overlay District and any
29 applicable nutrient-based TMDL in Fairfax County.

30
31 D. In order to meet the requirements of § 124-4-4, offsite options 1 and 2 of subsection A
32 above may be utilized.

33
34 F. In accordance with § 62.1-44.15:35F of the Code of Virginia, nutrient credits used
35 pursuant to subsection A shall be generated in the same or adjacent eight-digit hydrologic unit
36 code as defined by the United States Geological Survey as the permitted site except as otherwise
37 limited in subsection C. Nutrient credits outside the same or adjacent eight-digit hydrologic unit
38 code may only be used if it is determined by the Director that no credits are available within the
39 same or adjacent eight-digit hydrologic unit code when the Director accepts the final site design.
40 In such cases, and subject to other limitations imposed in this section, credits available within the
41 same tributary may be used. In no case shall credits from another tributary be used.

42 43 **Section 124-4-6. Design Storms and Hydrologic Methods.**

44
45 A. Unless otherwise specified, the prescribed design storms are the one-year, two-year, and
46 10-year 24-hour storms using the site-specific rainfall precipitation frequency data recommended

1 by the U.S. National Oceanic and Atmospheric Administration (NOAA) Atlas 14. Partial
2 duration time series shall be used for the precipitation data.

3
4 B. Unless otherwise specified, all hydrologic analyses shall be based on the existing watershed
5 characteristics and how the ultimate development condition of the subject project will be
6 addressed.

7
8 C. The U.S. Department of Agriculture's Natural Resources Conservation Service (NRCS)
9 synthetic 24-hour rainfall distribution and models, including, but not limited to TR-55 and TR-20;
10 hydrologic and hydraulic methods developed by the U.S. Army Corps of Engineers; or other
11 standard hydrologic and hydraulic methods, shall be used to conduct the analyses described in this
12 part.

13
14 D. For drainage areas of 200 acres or less, the Rational Method may be used for evaluating
15 peak discharges.

16
17 E. For drainage areas of 200 acres or less, the Rational Method may be used for evaluating
18 volumetric flows to stormwater conveyances.

19 20 21 **Section 124-4-7. Stormwater Harvesting.**

22
23 In accordance with § 62.1-44.15:28 of the Code of Virginia, stormwater harvesting is
24 encouraged for the purposes of landscape irrigation systems, fire protection systems, flushing
25 water closets and urinals, and other water handling systems to the extent such systems are
26 consistent with federal, state, and County regulations.

27 28 **Section 124-4-8. Linear Development Projects.**

29
30 Linear development projects, not subject to annual standards and specifications administered
31 and enforced by the Department of Environmental Quality, shall control postdevelopment
32 stormwater runoff in accordance with a site-specific stormwater management plan or a
33 comprehensive watershed stormwater management plan developed in accordance with this
34 Chapter.

35 36 **Section 124-4-9. Comprehensive Stormwater Management Plans.**

37
38 The County may develop comprehensive stormwater management plans to be approved by
39 the Department of Environmental Quality that meet the water quality objectives, quantity
40 objectives, or both of this Chapter:

41
42 1. Such plans shall ensure that offsite reductions equal to or greater than those that would be
43 required on each contributing site are achieved within the same HUC or within another locally
44 designated watershed. Pertaining to water quantity objectives, the plan may provide for
45 implementation of a combination of channel improvement, stormwater detention, or other
46 measures that are satisfactory to the local stormwater management program to prevent

1 downstream erosion and flooding.

2
3 2. If the land use assumptions upon which the plan was based change or if any other
4 amendments are deemed necessary by the local stormwater management program, such program
5 shall provide plan amendments to the Department of Environmental Quality for review and
6 approval.

7
8 3. During the plan's implementation, the local stormwater management program shall
9 document nutrient reductions accredited to the BMPs specified in the plan.

10
11 4. State and federal agencies may develop comprehensive stormwater management plans, and
12 may participate in locality-developed comprehensive stormwater management plans where
13 practicable and permitted by the local stormwater management program.

14 **ARTICLE 5.**

15 **Technical Criteria for Regulated Land-Disturbing Activities: Grandfathered Projects and** 16 **Projects Subject to Time Limits on Applicability of Approved Design Criteria.**

17 **Section 124-5-1. Definitions.**

18
19
20 For the purposes of Article 5 only, the following words and terms have the following
21 meanings unless the context clearly indicates otherwise:

22
23 "Adequate channel" means a channel that will convey the designated frequency storm event
24 without overtopping the channel bank nor causing erosive damage to the channel bed or banks.

25
26 "Aquatic bench" means a 10- to 15-foot wide bench around the inside perimeter of a
27 permanent pool that ranges in depth from zero to 12 inches. Vegetated with emergent plants, the
28 bench augments pollutant removal, provides habitats, conceals trash and water level fluctuations,
29 and enhances safety.

30
31 "Average land cover condition" means a measure of the average amount of impervious
32 surfaces within a watershed, assumed to be 18%.

33
34 "Bioretention basin" means a water quality BMP engineered to filter the water quality volume
35 through an engineered planting bed, consisting of a vegetated surface layer (vegetation, mulch,
36 ground cover), planting soil, and sand bed, and into the in-situ material.

37
38 "Bioretention filter" means a bioretention basin with the addition of a sand filter collector pipe
39 system beneath the planting bed.

40
41 "Constructed wetlands" means areas intentionally designed and created to emulate the water
42 quality improvement function of wetlands for the primary purpose of removing pollutants from
43 stormwater.

44
45
46

1 "Development" means the construction, rehabilitation, rebuilding or substantial alteration of
2 residential, commercial, industrial, institutional, recreational, transportation, or utility uses,
3 facilities or structures which results in a net increase in impervious area within an RPA and/or a
4 net increase in impervious area within an RMA of greater than 20%, relative to conditions prior to
5 development.

6
7 "Grassed swale" means an earthen conveyance system which is broad and shallow with
8 erosion resistant grasses and check dams, engineered to remove pollutants from stormwater
9 runoff by filtration through grass and infiltration into the soil.

10
11 "Infiltration facility" means a stormwater management facility that temporarily impounds
12 runoff and discharges it via infiltration through the surrounding soil. While an infiltration facility
13 may also be equipped with an outlet structure to discharge impounded runoff, such discharge is
14 normally reserved for overflow and other emergency conditions. Since an infiltration facility
15 impounds runoff only temporarily, it is normally dry during nonrainfall periods. Infiltration basin,
16 infiltration trench, infiltration dry well, and porous pavement shall be considered infiltration
17 facilities.

18
19 "Intensely Developed Area" or "IDA" means an area of existing development and infill sites
20 where development is concentrated and little of the natural environment remains as of July 1,
21 1993 and which is so designated on the map of Chesapeake Bay Preservation Areas adopted by
22 the Board of Supervisors pursuant to § 118-1-9. An IDA must satisfy at least one of the
23 following conditions as of July 1, 1993: development has severely altered the natural state of the
24 area such that it has more than fifty percent (50%) impervious surface; public sewer and water
25 systems, or a constructed stormwater drainage system, or both, have been constructed and serve
26 the area as of the date of adoption of this Chapter; or housing density is equal to or greater than
27 four dwelling units per acre.

28
29 "Nonpoint source pollutant runoff load" or "pollutant discharge" means the average amount of
30 a particular pollutant measured in pounds per year, delivered in a diffuse manner by stormwater
31 runoff.

32
33 "Planning area" means a designated portion of the parcel on which the land development
34 project is located. Planning areas shall be established by delineation on a master plan. Once
35 established, planning areas shall be applied consistently for all future projects.

36
37 "Redevelopment" means the substantial alteration, rehabilitation, or rebuilding of a property
38 for residential, commercial, industrial, or other purposes where there is no net increase in
39 impervious area by the proposed redevelopment within an RPA and no more than a net increase in
40 impervious area within an RMA of 20% relative to conditions prior to redevelopment, or any
41 construction, rehabilitation, rebuilding, or substantial alteration of residential, commercial,
42 industrial, institutional, recreational, transportation, or utility uses, facilities or structures within an
43 IDA.

44
45 "Resource Management Area" or "RMA" means that component of the Chesapeake Bay
46 Preservation Area comprised of lands that, if improperly used or developed, have a potential for
47 causing significant water quality degradation or for diminishing the functional value of the
48 Resource Protection Area.

49
50 "Resource Protection Area" or "RPA" means that component of the Chesapeake Bay

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

8
9 "Sand filter" means a contained bed of sand that acts to filter the first flush of runoff. The
10 runoff is then collected beneath the sand bed and conveyed to an adequate discharge point or
11 infiltrated into the in-situ soils.

12
13 "Shallow marsh" means a zone within a stormwater extended detention basin that exists from
14 the surface of the normal pool to a depth of six to 18 inches, and has a large surface area and,
15 therefore, requires a reliable source of baseflow, groundwater supply, or a sizeable drainage area,
16 to maintain the desired water surface elevations to support emergent vegetation.

17
18 "Stormwater detention basin" or "detention basin" means a stormwater management facility
19 that temporarily impounds runoff and discharges it through a hydraulic outlet structure to a
20 downstream conveyance system. While a certain amount of outflow may also occur via infiltration
21 through the surrounding soil, such amounts are negligible when compared to the outlet structure
22 discharge rates and are, therefore, not considered in the facility's design. Since a detention facility
23 impounds runoff only temporarily, it is normally dry during nonrainfall periods.

24
25 "Stormwater extended detention basin" or "extended detention basin" means a stormwater
26 management facility that temporarily impounds runoff and discharges it through a hydraulic outlet
27 structure over a specified period of time to a downstream conveyance system for the purpose of
28 water quality enhancement or stream channel erosion control. While a certain amount of outflow
29 may also occur via infiltration through the surrounding soil, such amounts are negligible when
30 compared to the outlet structure discharge rates and, therefore, are not considered in the facility's
31 design. Since an extended detention basin impounds runoff only temporarily, it is normally dry
32 during nonrainfall periods.

33
34 "Stormwater extended detention basin-enhanced" or "extended detention basin-enhanced"
35 means an extended detention basin modified to increase pollutant removal by providing a shallow
36 marsh in the lower stage of the basin.

37
38 "Stormwater retention basin" or "retention basin" means a stormwater management facility
39 that includes a permanent impoundment, or normal pool of water, for the purpose of enhancing
40 water quality and, therefore, is normally wet, even during nonrainfall periods. Storm runoff
41 inflows may be temporarily stored above this permanent impoundment for the purpose of
42 reducing flooding, or stream channel erosion.

43
44 "Stormwater retention basin I" or "retention basin I" means a retention basin with the volume
45 of the permanent pool equal to three times the water quality volume.

46
47 "Stormwater retention basin II" or "retention basin II" means a retention basin with the

1 volume of the permanent pool equal to four times the water quality volume.
2

3 "Stormwater retention basin III" or "retention basin III" means a retention basin with the
4 volume of the permanent pool equal to four times the water quality volume with the addition of an
5 aquatic bench.
6

7 "Vegetated filter strip" means a densely vegetated section of land engineered to accept runoff
8 as overland sheet flow from upstream development. It shall adopt any natural vegetated form,
9 from grassy meadow to small forest. The vegetative cover facilitates pollutant removal through
10 filtration, sediment deposition, infiltration and absorption, and is dedicated for that purpose.
11

12 "Water quality volume" means the volume equal to the first 1/2 inch of runoff multiplied by
13 the impervious surface of the land development project.
14

15 **Section 124-5-2. Applicability.**

16
17 This part specifies the technical criteria for regulated land-disturbing activities that are not
18 subject to the technical criteria of Article 4 in accordance with § 124-1-12. Regulated land-
19 disturbing activities may comply with the technical criteria of Article 4 in lieu of the technical
20 requirements of this article in accordance with § 124-1-12 paragraph E.
21

22 **Section 124-5-3. General.**

23
24 A. Determination of flooding and channel erosion impacts to receiving streams due to land-
25 disturbing activities shall be measured at each point of discharge from the land disturbance and
26 such determination shall include any runoff from the balance of the watershed that also
27 contributes to that point of discharge.
28

29 B. The specified design storms shall be defined as either a 24-hour storm using the rainfall
30 distribution recommended by the U.S. Department of Agriculture's Natural Resources
31 Conservation Service (NRCS) when using NRCS methods or as the storm of critical duration that
32 produces the greatest required storage volume at the site when using a design method such as the
33 Modified Rational Method.
34

35 C. For purposes of computing runoff, all pervious lands in the site shall be assumed prior to
36 development to be in good condition (if the lands are pastures, lawns, or parks), with good cover
37 (if the lands are woods), or with conservation treatment (if the lands are cultivated); regardless of
38 conditions existing at the time of computation.
39

40 D. Construction of stormwater management facilities or modifications to channels shall
41 comply with all applicable laws regulations, and ordinances. Evidence of approval of all necessary
42 permits shall be presented.
43

44 E. Impounding structures that are not covered by the Impounding Structure Regulations
45 (4VAC50-20) shall, at a minimum, be engineered for structural integrity during the 100-year
46 storm event and shall comply with the requirements of § 6-1600 of the PFM.

1
2 F. Predevelopment and postdevelopment runoff rates shall be verified by calculations that are
3 consistent with good engineering practices and the PFM.
4

5 G. Outflows from a stormwater management facility or stormwater conveyance system shall
6 be discharged to an adequate channel.
7

8 H. Proposed residential, commercial, or industrial subdivisions shall apply these stormwater
9 management criteria to the land disturbance as a whole. Individual lots in new subdivisions shall
10 not be considered separate land-disturbing activities, but rather the entire subdivision shall be
11 considered a single land development project. Hydrologic parameters shall reflect the ultimate
12 land disturbance and shall be used in all engineering calculations.
13

14 I. All stormwater management facilities shall have an inspection and maintenance plan that
15 identifies the owner and the responsible party for carrying out the inspection and maintenance
16 plan.
17

18 J. Construction of stormwater management impoundment structures within a Federal
19 Emergency Management Agency (FEMA) designated 100-year floodplain shall be avoided ~~to the~~
20 ~~extent~~ whenever possible. When this is unavoidable, all stormwater management facility
21 construction shall be in compliance with all applicable regulations under the National Flood
22 Insurance Program, 44 CFR Part 59.
23

24 K. Natural channel characteristics shall be preserved to the maximum extent practicable.
25

26 L. Land-disturbing activities shall comply with Chapter 104 (Erosion and Sedimentation
27 Control) of the County Code and the Virginia Erosion and Sediment Control Law (§ 62.1-
28 44.15:51 et seq. of the Code of Virginia) and attendant regulations.
29

30 M. Flood control and stormwater management facilities that drain or treat water from multiple
31 development projects or from a significant portion of a watershed may be allowed in resource
32 protection areas defined in the Chesapeake Bay Preservation Act , provided that (i) the County
33 has conclusively established that the location of the facility within the resource protection area is
34 the optimum location; (ii) the size of the facility is the minimum necessary to provide necessary
35 flood control, stormwater treatment, or both; and (iii) the facility must be consistent with a
36 stormwater management program that has been approved by the State Water Control Board, Soil
37 and Water Conservation Board, the Chesapeake Bay Local Assistance Board, or the Board of
38 Conservation and Recreation.
39

40 **Section 124-5-4. Water Quality.**

41

42 *The requirements set forth below are what is currently in the PFM and were approved by the*
43 *Chesapeake Bay Local Assistance Board as an acceptable alternative to the State's*
44 *requirements and methodology.*
45

46 A. For any development or redevelopment, stormwater runoff shall be controlled by the use

1 of BMPs as follows:
2

3 1. For development, the projected total phosphorus runoff pollution load for the proposed
4 development shall be reduced by no less than forty (40) percent compared to phosphorus loads
5 projected for the development without BMPs. This requirement shall not apply to any
6 development that does not require a site plan pursuant to Article 17 of the Zoning Ordinance, that
7 does not require subdivision approval pursuant to Chapter 101 of the Fairfax County Code, and
8 that does not result in an impervious area of 18% or greater on the lot or parcel on which the
9 development will occur.

10 2. For development and redevelopment within the Water Supply Protection Overlay
11 District, the phosphorus removal requirements for the overlay district shall apply if such
12 requirements impose a higher standard than the requirements of this Chapter.

13 3. For redevelopment of any property not currently served by one or more BMPs, the
14 total phosphorus runoff pollution load from the property shall be reduced by at least ten (10)
15 percent from the phosphorus runoff pollution load prior to redevelopment.

16 4. For redevelopment of any property that is currently and adequately served by one or
17 more BMPs, the projected phosphorus runoff pollution load after redevelopment shall not exceed
18 the existing phosphorus runoff pollution load.

19 5. BMPs shall be reviewed, modified, waived and/or approved by the Director in
20 accordance with Article 6 of the Public Facilities Manual in effect on June 30, 2014.

21
22 B. The following options shall be considered to comply with this Section:
23

24 1. Incorporation on the site of BMPs that achieve the required control as set forth in
25 paragraphs (1) through (5) above. For the purposes of this subsection, the “site” may include
26 multiple projects or properties that are adjacent to one another or lie within the same drainage
27 area where a single BMP or a system of BMPs will be utilized by those projects in common to
28 satisfy water quality protection requirements;

29 2. Compliance with a locally adopted regional stormwater management program, which
30 may include a Virginia Pollution Discharge Elimination System (VPDES) permit issued by the
31 Department of Environmental Quality or the Department of Conservation and Recreation to a
32 local government for its municipally owned separate storm sewer system discharges, that is
33 reviewed and found by the State Water Control Board or the Soil and Water Conservation Board
34 to achieve water quality protection equivalent to that required by this subsection; or

35 3. Compliance with a site-specific VPDES permit issued by the Department of
36 Environmental Quality, provided that the local government specifically determines that the permit
37 requires measures that collectively achieve water quality protection equivalent to that required by
38 this subsection.
39

40 C. Any maintenance, alteration, use or improvement to an existing structure or use that does
41 not degrade the quality of surface water discharge, as determined by the Director, may be
42 exempted from the requirements of subsection A.
43

44 **Section 124-5-5. Stream Channel Erosion.** 45

46 A. Properties and receiving waterways downstream of any land-disturbing activity shall be
47 protected from erosion and damage due to changes in runoff rate of flow and hydrologic
48 characteristics, including, but not limited to, changes in volume, velocity, frequency, duration, and
49 peak flow rate of stormwater runoff in accordance with the minimum design standards set out in
50 this section.
51

52 B. Land-disturbing activity shall comply with subdivision 19 of ~~4VAC50-30-40~~ 9VAC25-

1 840-40 of the Erosion and Sediment Control Regulations, promulgated pursuant to Article 2.4 (§
2 62.1-44.15:51 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia.

3
4 C. Land-disturbing activity shall comply with the requirements of Chapter 6 of the Fairfax
5 County Public Facilities Manual in effect on June 30, 2014.

6
7 D. In addition to subsections B and C of this section, the County, by local ordinance may, or
8 the State Water Control Board by state regulation may, adopt more stringent channel analysis
9 criteria or design standards to ensure that the natural level of channel erosion, to the maximum
10 extent practicable, will not increase due to the land-disturbing activities. These criteria may
11 include, but are not limited to, the following:

- 12
13 1. Criteria and procedures for channel analysis and classification.
14 2. Procedures for channel data collection.
15 3. Criteria and procedures for the determination of the magnitude and frequency of natural
16 sediment transport loads.
17 4. Criteria for the selection of proposed natural or manmade channel linings.

18
19 **Section 124-5-6. Flooding.**

20
21 A. Downstream properties and waterways shall be protected from damages from localized
22 flooding due to changes in runoff rate of flow and hydrologic characteristics, including, but not
23 limited to, changes in volume, velocity, frequency, duration, and peak flow rate of stormwater
24 runoff in accordance with the minimum design standards set out in this section.

25
26 B. The 10-year postdeveloped peak rate of runoff from the development site shall not
27 exceed the 10-year predeveloped peak rate of runoff.

28
29 C. Land-disturbing activity shall comply with the requirements of Chapter 6 of the Fairfax
30 County Public Facilities Manual in effect on July 30, 2014.

31
32 D. Linear development projects shall not be required to control postdeveloped stormwater
33 runoff for flooding, except in accordance with a watershed or regional stormwater management
34 plan.

35
36 **Section 124-5-7. Regional (watershed-wide) Stormwater Management Plans.**

37
38 Water quality requirements and where allowed, water quantity requirements, may be
39 achieved in accordance with §§ 124-4-5 and 124-4-9.

40
41 **ARTICLE 6.**

42
43 **Exceptions.**

44
45 **Section 124-6-1. Exceptions.**

46
47 A. Exceptions to the provisions of Articles 4 or 5 of this Chapter may be granted by the

1 Director. An exception may be granted provided that:

- 2
- 3 1. The exception is the minimum necessary to afford relief;
- 4 2. Reasonable and appropriate conditions shall be imposed as necessary upon any
- 5 exception granted so that the intent of the Act and this Chapter are preserved;
- 6 3. Granting the exception will not confer any special privileges that are denied in other
- 7 similar circumstances; and
- 8 4. Exception requests are not based upon conditions or circumstances that are self-
- 9 imposed or self-created.

10

11 B. Economic hardship alone is not sufficient reason to grant an exception from the

12 requirements of this Chapter.

13

14 C. Under no circumstance will an exception to the requirement that the land-disturbing

15 activity obtain required state permits be granted nor will the use of a BMP not found on the

16 Virginia Stormwater BMP Clearinghouse Website be approved except where allowed under

17 Article 5.

18

19 D. Exceptions to requirements for phosphorus reductions shall not be allowed unless offsite

20 options available through § 124-4-5 have been considered and found not available.

21

22 E. In no instance shall the requirement for BMPs meeting the provisions of the Water Supply

23 Protection Overlay District be modified or waived except where existing site characteristics make

24 the provision impractical or unreasonable on-site and an alternative provision is not or cannot be

25 accommodated off-site, and where it can be established that the modification or waiver will not

26 affect the achievement of the water quality goals for the public water supply watershed as set

27 forth in the adopted comprehensive plan.

28

29 **ARTICLE 7.**

30 **Appeals.**

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

32

33 A. The Director shall appoint a hearing officer or officers for the purpose of hearing appeals

34 of actions or the failure to take action by the Director under this Chapter.

35

36

37 B. Any permit applicant, permittee, person subject to state permit requirements under this

38 Chapter, or person subject to an enforcement action under this Chapter who is aggrieved by an

39 action or inaction by the Director pursuant to this Chapter without a formal hearing may demand

40 in writing a formal hearing by the hearing officer, provided that a petition requesting a hearing is

41 filed with the Director within 30 days after notice of the Director's action is received by the

42 aggrieved party. As provided for in this Chapter, the Director may seek an injunction in the

43 absence of an administrative hearing.

44

45

46 **Section 124-7-2. Hearings**

47

1 A. Any hearing for administrative review of an action or inaction by the Director held
2 pursuant to § 124-7-1 shall be conducted by the hearing officer.
3

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

9 C. The County and the aggrieved party may present evidence including witnesses regarding
10 the facts and occurrences giving rise to the action subject to review. The aggrieved party may
11 examine any of the County's witnesses.
12

13 D. A verbatim record of the proceedings of any hearing for administrative review under this
14 Chapter shall be made.
15

16 E. The hearing officer shall have the power to issue subpoenas and subpoenas duces tecum,
17 and at the request of any party shall issue such subpoenas. The failure of a witness without legal
18 excuse to appear or to testify or to produce documents shall be acted upon by the Director,
19 whose action may include the procurement of an order of enforcement from the circuit court.
20 Witnesses who are subpoenaed shall receive the same fees and reimbursement for mileage as in
21 civil actions.
22

23 F. The hearing officer shall issue a final order within 30 days after the conclusion of the
24 hearing, which shall be served upon the parties, become part of the record, and briefly state the
25 findings, conclusions, reasons, or basis therefor upon the evidence presented by the record and
26 relevant to the basic law under which the agency is operating and, as appropriate, an order
27 imposing civil charges under Va. Code Ann. § 62.1-44.15:48(D)(2).
28

29 **Section 124-7-3. Appeals of Final Orders.**

30

31 The permit applicant, permittee, or person to whom a final order is issued by the hearing
32 officer may seek judicial review of the final order issued by the hearing officer by appeal to the
33 Circuit Court of Fairfax County on the record of the proceedings before the hearing officer. To
34 commence an appeal, a party shall file a petition in the Circuit Court of Fairfax County within 30
35 days of the date of the final order issued by the hearing officer. Failure to do so shall constitute a
36 waiver of the right to appeal.
37

38 **ARTICLE 8.**

39 **Violations and Penalties.**

40

41 **Section 124-8-1. General Provisions.**

42

43 A. Any person, whether owner, lessee, principal, agent, employee or otherwise, who violates
44 any of the provisions of this Chapter, or permits any such violations, or fails to comply with any
45 of the requirements hereof, or who fails to comply with the conditions of any permit issued in
46

1 connection with the requirements of the Act or this Chapter shall be subject to the enforcement
2 provisions of this Chapter. The County may pursue enforcement in accordance with any of the
3 remedies provided herein.
4

5 B. Upon becoming aware of any violation of any provisions of this Chapter, the Director, or
6 his designee, may issue a verbal warning and request to take corrective action for any such
7 violation to the property owner or the person committing or permitting the same, and may serve a
8 Notice of Violation on the property owner or the person committing or permitting the violation of
9 this Chapter. The notice of violation shall (i) specify the provisions of this Chapter which have
10 been violated, (ii) identify the remedial measures necessary to cure the violation, and (iii) provide
11 a reasonable time in which to remedy the violations. Failure to take steps to comply with notice
12 Notice of Violation within the time provided for therein shall constitute a separate violation of this
13 Chapter.
14

15 C. If a permittee or a person receiving a Notice of Violation fails to comply within the time
16 specified therein, the County may issue a Stop Work Order requiring the owner, permittee, person
17 responsible for carrying out an approved plan, or the person conducting the land-disturbing
18 activities without an approved plan or required permit to cease all land-disturbing activities until
19 the violation of the permit has ceased, or an approved plan and required permits are obtained, and
20 specified corrective measures have been completed. Such orders shall become effective upon
21 service. Failure to comply with a Stop Work Order shall constitute a separate violation of this
22 Chapter.
23

24 D. If the County finds that any such violation is grossly affecting or presents an imminent and
25 substantial danger of causing harmful erosion of lands or sediment deposition in waters within the
26 watersheds of the Commonwealth or otherwise substantially impacting water quality, it may issue,
27 without advance notice or hearing, an Emergency Order directing such person to cease
28 immediately all land-disturbing activities on the site and shall provide an opportunity for a hearing,
29 after reasonable notice as to the time and place thereof, to such person, to affirm, modify, amend,
30 or cancel such Emergency Order. If a person who has been issued such order is not complying
31 with the terms thereof, the County may institute a proceeding in accordance with subsection H.
32 Failure to comply with an Emergency Order shall constitute a separate violation of this Chapter.
33

34 E. It is unlawful and constitutes a separate violation of this Chapter for any person to fail to
35 comply with any Stop Work Order or Emergency Order issued in accordance with this Article.
36 Any person violating or failing, neglecting, or refusing to obey any rule, regulation, ordinance,
37 approved standard and specification, order, or any permit condition issued by the County, or any
38 provisions of this Article may be compelled in a proceeding instituted in any appropriate court by
39 the Director, on behalf of the Board of Supervisors, to obey same and to comply therewith by
40 injunction, mandamus, or other appropriate remedy.
41

42 F. The service requirement under this Chapter shall be satisfied if any Notice of Violation or
43 other order is delivered by registered or certified mail, return receipt requested or in person to the
44 property owner or his authorized representative, the permittee, or the person committing or
45 permitting a violation of this Chapter.
46

1 G. Any person violating or failing, neglecting, or refusing to obey any injunction, mandamus,
2 or other remedy obtained pursuant to this section shall be subject, in the discretion of the court, to
3 a civil penalty in accordance with the provisions of the Article.
4

5 H. The Director may apply to the Fairfax County Circuit Court for injunctive relief to enjoin a
6 violation or a threatened violation of any provision of this Chapter without the necessity of
7 showing that an adequate remedy at law does not exist.
8

9 **Section 124-8-2. Criminal Violations and Penalties.**

10
11 A. Any person who willfully or negligently violates any provision of this Chapter, excluding
12 Article 9, any condition of a permit or state permit, or any order of a court shall be guilty of a
13 misdemeanor punishable by confinement in jail for not more than 12 months and a fine of not less
14 than \$2,500 nor more than \$32,500, either or both. Any person who knowingly violates any
15 provision this Chapter, excluding provisions of Article 9, any condition of a permit or state permit
16 or any order of a court issued as herein provided, or who knowingly makes any false statement in
17 any form required to be submitted under this Chapter or knowingly renders inaccurate any
18 monitoring device or method required to be maintained under this Chapter, shall be guilty of a
19 felony punishable by a term of imprisonment of not less than one year nor more than three years,
20 or in the discretion of the jury or the court trying the case without a jury, confinement in jail for
21 not more than 12 months and a fine of not less than \$5,000 nor more than \$50,000 for each
22 violation. Any defendant that is not an individual shall, upon conviction of a violation under this
23 subsection, be sentenced to pay a fine of not less than \$10,000. Each day of violation of each
24 requirement shall constitute a separate offense.
25

26 B. Any person who knowingly violates any provision of this Chapter, excluding Article 9, and
27 who knows at that time that he thereby places another person in imminent danger of death or
28 serious bodily harm, shall, upon conviction, be guilty of a felony punishable by a term of
29 imprisonment of not less than two years nor more than 15 years and a fine of not more than
30 \$250,000, either or both. A defendant that is not an individual shall, upon conviction of a
31 violation under this subsection, be sentenced to pay a fine not exceeding the greater of \$1 million
32 or an amount that is three times the economic benefit realized by the defendant as a result of the
33 offense. The maximum penalty shall be doubled with respect to both fine and imprisonment for
34 any subsequent conviction of the same person under this subsection.
35

36 **Section 124-8-3. Civil Penalties.**

37
38 A. Any person who violates any provision of this Chapter or standards and specifications
39 adopted or approved thereunder, neglects or refuses to comply with any order issued hereunder
40 by the Director or a court, shall be subject to a civil penalty not to exceed \$32,500 for each
41 violation within the discretion of the court. Each day of violation of each requirement shall
42 constitute a separate offense.
43

44 B. Violations for which a civil penalty may be imposed under this subsection shall include
45 but are not limited to the following:
46

- 1 (i) No state permit registration;
- 2 (ii) No SWPPP;
- 3 (iii) Incomplete SWPPP;
- 4 (iv) SWPPP not available for review;
- 5 (v) No approved erosion and sediment control plan;
- 6 (vi) Failure to install stormwater BMPs or erosion and sediment controls;
- 7 (vii) Stormwater BMPs or erosion and sediment controls improperly installed or
- 8 maintained;
- 9 (viii) Operational deficiencies;
- 10 (ix) Failure to conduct required inspections;
- 11 (x) Incomplete, improper, or missed inspections;
- 12 (xi) Discharges not in compliance with the requirements of Section ~~4VAC 50-60-1170~~
- 13 9VAC25-880-70 of the general permit; and
- 14 (xii) Illicit discharges into the Storm Sewer System and State Waters, and illicit
- 15 connections to the County MS4 under Article 9 of this Chapter.
- 16

17 C. The Director may issue a summons for collection of the civil penalty and the action may be
 18 prosecuted in the appropriate circuit court. Any civil penalties assessed by a court as a result of a
 19 summons issued by Fairfax County shall be paid into the treasury of Fairfax County, except where
 20 the violator is Fairfax County, or its agent. Such civil penalties paid into the treasury of Fairfax
 21 County are to be used for the purpose of minimizing, preventing, managing, or mitigating
 22 pollution of the waters of the locality and abating environmental pollution therein in such manner
 23 as the court may, by order, direct.

24
 25 D. With the consent of any person who has violated or failed, neglected, or refused to obey
 26 this Chapter, any condition of a permit or state permit, or any order of the VSMP authority, the
 27 Director may provide, in an order issued against such person, for the payment of civil charges or
 28 violations in specific sums, not to exceed the limit specified in this section. Any civil charges
 29 collected shall be paid into the treasury of Fairfax County.

30 **ARTICLE 9**

31 **Illicit Discharges to the Storm Sewer System and State Waters**

32 **Section 124-9-1. Purpose.**

33
 34
 35 The purpose of this Article is to enable the County to comply with state and federal laws and
 36 regulations, including the Clean Water Act (33 U.S.C. §§ 1251 et seq.), and the County's MS4
 37 permit by preventing the discharge of non-stormwater substances into the Fairfax County
 38 Municipal Separate Storm Sewer System ("County MS4") and to prevent discharges of prohibited
 39 substances into waters of the Commonwealth of Virginia that are located within the jurisdictional
 40 boundaries of the County and five miles beyond such jurisdictional boundary. The objective of
 41 this Article is to:
 42
 43
 44

45 A. Prevent the discharge of non-stormwater and/or prohibited substances into the County
 46 MS4 and state waters;

1
2 B. Prevent illicit connections to the County MS4;

3
4 C. Facilitate compliance with the state-issued Fairfax County Municipal Separate Stormwater
5 Sewer System permit; and

6
7 D. Authorize the Director to investigate and enforce violations of this Article.
8

9 **Section 124-9-2. Responsibilities of the Director.**

10
11 The Director shall have direct charge over the County MS4, including responsibility for the
12 operation, maintenance, and administration thereof, and responsibility for the enforcement of
13 violations of this Article.
14

15 **Section 124-9-3. Illicit Discharges to the Storm Sewer System and State Waters.**

16
17 A. It shall be unlawful for any Person to discharge or deposit, or to cause or allow to be
18 discharged or deposited any wastes, trash, leaves, grass clippings, soil, oil, petroleum products,
19 noxious or flammable substances, or any matter causing or adding pollution in any state waters of
20 this County or on any property in this County in any manner so as to allow any such substance to
21 be washed into state waters by storm or flood water. Nothing in this section shall prohibit the
22 discharge or deposit of waste in state waters when such discharging has been approved by a state
23 agency.
24

25 B. It shall be unlawful for any Person to discharge or deposit, or to cause or allow to be
26 discharged or deposited in the County MS4, any wastes, trash, leaves, grass clippings, oil,
27 petroleum products, noxious or flammable substances, or any matter causing or adding pollution;
28 provided however, that leaves may be piled at curbs during such seasons and in such areas as may
29 now or in the future be furnished mechanical leaf collection service. It is the intent of this
30 provision to prohibit the entry into the County MS4 of any substance, whether solid or liquid,
31 other than naturally occurring surface or subsurface waters.
32

33 C. It shall be unlawful to connect any plumbing fixtures, drains, appurtenances, or appliances
34 that discharge any substance other than stormwater into the County MS4.
35

36 **Section 124-9-4. Standards for Inspection of Industrial and Commercial Property**
37 **Discharging to the County MS4.**
38

39 The Director shall develop a program for the routine inspection of properties, which because
40 of the nature of the industrial or commercial use thereon, present a high risk of discharging non-
41 stormwater substances to the County MS4 that may, in the opinion of the Director, result in a
42 significant pollutant load. The Director shall make publicly available the methodology and criteria
43 for including properties in the inspection program and the basis for selecting a particular property
44 for inspection under this program.