

**Enclosure A**

**County of Fairfax, Virginia**

**Draft**

**Stormwater Management Ordinance**

**February 5, 2013  
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## **CHAPTER 124.**

### **Stormwater Management Ordinance**

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## **ARTICLE 1.**

### **General Provisions**

#### **Section 124-1-1. Title.**

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

#### **Section 124-1-2. Authority.**

This ordinance is enacted pursuant to the authority and mandates of the Virginia Stormwater Management Act, Article 2.3 (§ 62.1-44.15:24 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia, the Virginia Stormwater Management Program (VSMP) Permit Regulations (4VAC50-60 et seq.), and § 15.2-2122 of Chapter 21 of Title 15.2 of the Code of Virginia.

#### **Section 124-1-3. Enactment.**

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

#### **Section 124-1-4. Purpose and Administration.**

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

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

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

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

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

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

"Board" means the Fairfax County Board of Supervisors.

"Channel" means a natural or manmade waterway.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"General permit" means the state permit titled General Permit for Discharges from Construction Activities found in Part XIV of the Regulations (4 VAC 50-60-1100 et seq.) authorizing a category of discharges under the CWA and the Act within a geographical area of the Commonwealth of Virginia.

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

"Illicit discharge" means any discharge to a municipal separate storm sewer that is not composed entirely of stormwater, except discharges pursuant to a VPDES or state permit (other than the state permit for discharges from the municipal separate storm sewer), discharges resulting from fire-fighting activities, and discharges identified by and in compliance with 4VAC50-60-1220.C.2.

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

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

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

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

"Linear development project" means a land-disturbing activity that is linear in nature such as,

but not limited to, (i) the construction of electric and telephone utility lines, and natural gas pipelines; (ii) construction of tracks, rights-of-way, bridges, communication facilities and other related structures of a railroad company; (iii) highway construction projects; (iv) construction of stormwater channels and stream restoration activities; and (v) water and sewer lines. Private subdivision roads or streets shall not be considered linear development projects.

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

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

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

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

1. Owned or operated by a federal, state, city, town, county, district, association, or other public body, created by or pursuant to state law, having jurisdiction or delegated authority for erosion and sediment control and stormwater management, or a designated and approved management agency under § 208 of the CWA that discharges to surface waters;
2. Designed or used for collecting or conveying stormwater;
3. That is not a combined sewer; and
4. That is not part of a publicly owned treatment works.

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

"Natural channel design concepts" means the utilization of engineering analysis based on

fluvial geomorphic processes to create, rehabilitate, restore, or stabilize an open conveyance system for the purpose of creating or recreating a stream that conveys its bankfull storm event within its banks and allows larger flows to access its floodplain.

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

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

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

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

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

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

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

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

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

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

"Pollution" means such alteration of the physical, chemical or biological properties of any

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

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

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

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

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

"Regulations" means the Virginia Stormwater Management Program (VSMP) Permit Regulations (4VAC50-60-10 *et seq.*, as amended).

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

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

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

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

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

not be considered part of a site.

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

"Soil and Water Conservation Board" means the Virginia Soil and Water Conservation Board.

"State" means the Commonwealth of Virginia.

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

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

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

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

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

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

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

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

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

"Stormwater management facility" means a control measure that controls stormwater runoff and changes the characteristics of that runoff including, but not limited to, the quantity and

quality, the period of release or the velocity of flow.

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

"Stormwater Pollution Prevention Plan" or "SWPPP" means a document, prepared in accordance with good engineering practices, that identifies potential sources of pollutants that may reasonably be expected to affect the quality of stormwater discharges from the construction site and meets the requirements of the Chapter.

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

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

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

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

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

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

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

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

### **Section 124-1-6. Areas of Applicability.**

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

### **Section 124-1-7. Exemptions.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### **Section 124-1-9. Severability.**

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

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

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

B. Nothing in the Regulations shall be construed as limiting the rights of other federal

agencies, state agencies, or the County to impose more stringent technical criteria or other requirements as allowed by law. Whenever any provision of this Chapter imposes a greater requirement or a higher standard than is required in any State or Federal statute or other County ordinance or regulation, the provision of this Chapter shall govern. Whenever any provision of any State or Federal statute or other County ordinance or regulation imposes a greater requirement or a higher standard than is required by this Chapter, the provision of such State or Federal statute or other County ordinance or regulation shall govern.

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

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

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

Beginning with the General Permit for Discharges of Stormwater from Construction Activities issued July 1, 2009, all land-disturbing activities that receive general permit coverage shall be conducted in accordance with Article 4 or Article 5 technical criteria in place at the time of initial state permit coverage and shall remain subject to those criteria for an additional two state permit cycles, except as provided for in subsection D of § 124-1-12. After the two additional state permit cycles have passed, or should permit coverage not be maintained, portions of the project not under construction shall be subject to technical criteria adopted after the original state permit coverage was issued. For land-disturbing projects issued coverage under the July 1, 2009, permit and for which coverage was maintained, such projects shall remain subject to the technical criteria of Article 5 for an additional two state permits.

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

A. Until June 30, 2019, any land-disturbing activity for which a currently valid proffered rezoning or P district rezoning or other rezoning with a plan of development, special exception, special permit, variance, preliminary or final subdivision plat, subdivision construction plan, preliminary or final site plan, or grading plan, was approved by the County prior to July 1, 2012, and for which no coverage under the VSMP General Permit for Discharges of Stormwater from Construction Activities has been issued prior to July 1, 2014, shall be considered grandfathered and shall not be subject to the technical criteria of Article 4, but shall be subject to the technical criteria of Article 5 for those areas that were included in the approval, provided that the Director finds that such proffered rezoning or P district rezoning or other rezoning with a plan of development, special exception, special permit, variance, preliminary or final subdivision plat, subdivision construction plan, preliminary or final site plan, or grading plan provides sufficient information to demonstrate that the resulting land-disturbing activity will be compliant with the requirements of Article 5 and include, as a minimum, the following: (i) a conceptual drawing that identifies the location of the proposed stormwater facilities; (ii) pre- and post-development calculations that detail the required pollutant reduction necessary to comply with the water quality design criteria; and (iii) calculations necessary to determine compliance with the water quantity design criteria. In the event that the County-approved document is subsequently

modified or amended in a manner such that there is no increase over the previously approved plat or plan in the amount of phosphorus leaving each point of discharge of the land-disturbing activity through stormwater runoff, and such that there is no increase over the previously approved plat or plan in the volume or rate of runoff, the grandfathering shall continue as before.

B. Until June 30, 2019, for locality, state, and federal projects for which there has been an obligation of locality, state, or federal funding, in whole or in part, prior to July 1, 2012, or for which the Department of Conservation and Recreation has approved a stormwater management plan prior to July 1, 2012, such projects shall be considered grandfathered and shall not be subject to the technical criteria of Article 4, but shall be subject to the technical criteria of Article 5 for those areas that were included in the approval.

C. For land-disturbing activities grandfathered under subsections A and B above, construction must be completed by June 30, 2019 or portions of the project not under construction shall become subject to the technical criteria of Article 4. For the purpose of administering the grandfathering requirements only, construction is considered complete when requirements for termination of state permit coverage have been met.

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

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

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

In order to protect the quality of state waters and to control the discharge of stormwater pollutants from land-disturbing activities, runoff associated with Chesapeake Bay Preservation Act land-disturbing activities shall be controlled unless otherwise exempt under § 124-1-7. Such land-disturbing activities shall not require completion of a registration statement or require coverage under the General Permit for Discharges of Stormwater from Construction Activities but shall be subject to the following technical criteria and program and administrative requirements:

A. An erosion and sediment control plan consistent with the requirements of Chapter 104 (Erosion and Sedimentation Control) of the Code and the Virginia Erosion and Sediment Control Law and regulations must be designed and implemented during land disturbing activities. Prior to land disturbance, this plan must be approved by the Director in accordance with Chapter 104 and the Virginia Erosion and Sediment Control Law and attendant regulations.

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

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

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

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

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

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

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

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

## **ARTICLE 2.**

### **General Administrative Criteria for Regulated Land-Disturbing Activities.**

#### **Section 124-2-1. Applicability.**

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

#### **Section 124-2-2. Permit Required.**

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

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

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

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

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

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

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

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

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

### **Section 124-2-4. Security for Performance.**

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

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

A. The Director (i) shall provide for periodic inspections of the installation of stormwater management measures (ii) may require monitoring and reports from the person responsible for meeting the permit conditions to ensure compliance with the permit and to determine whether the measures required in the permit provide effective stormwater management, and (iii) conduct

such investigations and perform such other actions as are necessary to carry out the provisions of this Chapter.

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

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

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

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

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

B. An erosion and sediment control plan consistent with the requirements of the Virginia Erosion and Sediment Control Law and regulations, Chapter 104, and the PFM must be designed and implemented during construction activities. Prior to land disturbance, this plan must be approved by the Director in accordance with the Virginia Erosion and Sediment Control Law and attendant regulations, Chapter 104, and the PFM.

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

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

E. In addition to the above requirements, if a specific WLA for a pollutant has been established in a TMDL and is assigned to stormwater discharges from a construction activity, additional control measures must be identified and implemented by the operator so that discharges are consistent with the assumptions and requirements of the WLA in a State Water Control Board approved TMDL.

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

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

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

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

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

1. A stormwater management plan for a land-disturbing activity shall apply the stormwater management technical criteria set forth in Article 4 or Article 5 as applicable to the entire land disturbing activity.
2. A stormwater management plan shall consider all sources of surface runoff and all sources of subsurface and groundwater flows converted to surface runoff.
3. Stormwater management plans shall meet all requirements of the PFM.

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

1. Information on the type of and location of stormwater discharges, information on the

features to which stormwater is being discharged including surface waters, and predevelopment and postdevelopment drainage areas;

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

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

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

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

6. Hydrologic and hydraulic computations, including runoff characteristics;

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

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

- a. All contributing drainage areas;
- b. Existing streams, ponds, culverts, ditches, wetlands, other water bodies, and floodplains;
- c. Soil types, forest cover, and other vegetative areas;
- d. Current land use including existing structures, roads, and locations of known utilities and easements;
- e. Sufficient information on adjoining parcels to assess the impacts of stormwater from the site on these parcels;
- f. The limits of clearing and grading, and the proposed drainage patterns on the site;
- g. Proposed buildings, roads, parking areas, utilities, and stormwater management facilities; and
- h. Proposed land use with tabulation of the percentage of surface area to be adapted to various uses, including but not limited to planned locations of utilities, roads, and easements.

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

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

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

### **Section 124-2-8. Pollution Prevention Plans.**

A. A plan for implementing pollution prevention measures during construction activities shall be developed, implemented and updated as necessary. The pollution prevention plan shall detail the design, installation, implementation and maintenance of effective pollution prevention

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

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

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

1. Wastewater from washout of concrete, unless managed by an appropriate control;
2. Wastewater from washout and cleanout of stucco, paint, form release oils, curing compounds and other construction materials;
3. Fuels, oils, or other pollutants used in vehicle and equipment operation and maintenance; and
4. Soaps or solvents used in vehicle and equipment washing

C. Discharges from dewatering activities, including discharges from dewatering of trenches and excavations, are prohibited unless managed by appropriate controls.

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

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

1. The completeness of a plan shall be determined in accordance with § 124-2-7.B. The applicant shall be notified of any determination, within 15 calendar days of receipt of the plan. Where available to the applicant, electronic communication may be considered communication in writing.
  - a. If within those 15 calendar days the plan is deemed to be incomplete, the applicant shall be notified in writing of the reasons the plan is deemed incomplete.
  - b. If a determination of completeness is made and communicated to the applicant within the 15 calendar days, an additional 60 calendar days from the date of the communication will be allowed for the review of the plan.
  - c. If a determination of completeness is not made and communicated to the applicant within the 15 calendar days, the plan shall be deemed complete as of the date of submission and a total of 60 calendar days from the date of submission will be allowed for the review of the plan.
  - d. Any plan that has been previously disapproved shall be reviewed within 45 calendar days of the date of resubmission.

2. During the review period, the plan shall be approved or disapproved and the decision

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

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

B. Each approved plan may be modified as follows:

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

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

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

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

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

1. Be submitted in a form acceptable to the Director for review and approval and executed prior to the approval of the stormwater management plan;
2. Be stated to run with the land;
3. Provide for all necessary access to the property for purposes of maintenance and regulatory inspections;
4. Provide for inspections and maintenance and the submission of inspection and maintenance reports to the County on an annual basis; and
5. Be enforceable by all appropriate governmental parties.
6. Ensure that measures could be taken by the County to maintain the stormwater management facilities or perform inspections at the owner's expense should the owner fail to maintain the stormwater management facilities in good working order in accordance with the maintenance specifications in the agreement or perform the periodic inspections required by the

agreement.

7. Provide that in the event the County, pursuant to the agreement, performs work of any nature or expends any funds in performance of said work for labor, use of equipment, supplies, materials, and the like, the owner will reimburse the County for all costs incurred by the County.

8. Provide for liens to be placed on the property should the owner fail to reimburse the County for costs incurred by the County.

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

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

1. Be approved by the SWCB;
2. Ensure that each stormwater management facility is inspected by the Director, or his designee, not to include the owner, except as provided in subsections B and E of this section, at least once every five years; and
3. Be documented by records.

### **Section 124-2-11. Construction Record Drawings.**

Upon satisfactory completion, inspection and approval of the installation of all required permanent stormwater management facilities, a construction record drawing (a.k.a. as-built) for permanent stormwater management facilities shall be submitted to the Director for review and approval for conformance with the approved stormwater management plan. Construction record drawings shall be prepared in accordance with the provisions set forth in the Public Facilities Manual. The construction record drawing shall be appropriately sealed and signed by a professional registered in the Commonwealth of Virginia, pursuant to Article 1 (§ 54.1-400 et seq.) of Chapter 4 of Title 54.1 of the Code of Virginia, certifying that the stormwater management facilities have been constructed in accordance with the approved plan. The Director may elect not to require construction record drawings for stormwater management facilities for which maintenance agreements are not required pursuant to § 124-2-10.B.

## **ARTICLE 3.**

### **Fees.**

#### **Section 124-3-1 General.**

This Article establishes the fees associated with coverage under the General Permit for Discharges of Stormwater from Construction Activities (permits for stormwater management for land-disturbing activities) permit maintenance, modification, and transfer, and permits for Chesapeake Bay Preservation Act land-disturbing activities.

A. The fees for general permit coverage, permit or registration statement modification, or permit transfers are considered separate actions and shall be assessed a separate fee, as applicable.

B. Persons whose coverage under the General Permit for Discharges of Stormwater from Construction Activities has been revoked shall reapply to DEQ for an Individual Permit for Discharges of Stormwater from Construction Activities.

C. Requests for a state permit, state permit modification, or general permit coverage shall not be processed until the fees required pursuant to this Article are paid.

D. General permit coverage maintenance fees shall be paid annually to the County by the anniversary date of general permit coverage. No state permit will be reissued or automatically continued without payment of the required fee. General permit coverage maintenance fees shall be applied until a Notice of Termination is effective.

E. All incomplete payments will be deemed as nonpayments. The Department of Environmental Quality or the County, as applicable, shall provide notification to the applicant of any incomplete payments. Interest may be charged for late payments at the underpayment rate set forth in § 58.1-15 of the Code of Virginia and is calculated on a monthly basis at the applicable periodic rate. A 10% late payment fee shall be charged to any delinquent (over 90 days past due) account. The Department of Environmental Quality and the County are entitled to all remedies available under the Code of Virginia in collecting any past due amount.

### **Section 124-3-2 Exemptions.**

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

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

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

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

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

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

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

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

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

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

**ARTICLE 4.**

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

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

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

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

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

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

2. Development on prior developed lands.

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

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

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

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

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

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

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

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

### **Section 124-4-3. Water Quality Compliance.**

A. Compliance with the water quality design criteria set out in subsections A and B of §124-

4-2 shall be determined by utilizing the Virginia Runoff Reduction Method or another equivalent methodology that is approved by the State Water Control Board.

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

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

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

#### **Section 124-4-4. Water Quantity.**

A. Channel protection and flood protection shall be addressed in accordance with the minimum standards set out in this section.

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

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

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

b. The peak discharge requirements for concentrated stormwater flow to natural stormwater conveyance systems in criteria 3 of this subsection shall be met.

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

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

b. The peak discharge requirements for concentrated stormwater flow to natural stormwater conveyance systems in criteria 3 of this subsection shall be met.

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

a. In accordance with the following methodology:

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

Where:

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

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

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

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

b. In accordance with another methodology that is determined by the Director to achieve equivalent results and is approved by the State Water Control Board.

4. Limits of analysis. Unless criteria 3 of this subsection is utilized to show compliance with the channel protection criteria, stormwater conveyance systems shall be analyzed for compliance with channel protection criteria to a point where either:

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

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

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

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

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

3. Localized flooding is defined as follows:

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

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

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

4. As an alternative to criteria 1 or 2 above, detention of stormwater may be provided that releases the postdevelopment peak flows for the 2-year 24-hour storm event and the 10-year 24-hour storm event at rates that are determined utilizing the method in § 124-4-4.B.3. If this method is used, the downstream review analysis shall be limited to providing cross-sections to show a defined channel or man-made drainage facility, and checking for flooding of existing dwellings or buildings constructed under an approved building permit from the 100-year storm event for the extent of review described in 5 below.

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

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

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

c. The stormwater conveyance system enters a mapped floodplain or other flood prone area, adopted by ordinance.<sup>1</sup>

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<sup>1</sup> 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.

6. If an existing dwelling or a building constructed under an approved building permit, which is located within the extent of review described in § 124-4-4.C.5, is flooded by the 100-year storm, the peak flow of the 100-year storm at the development site shall be reduced to a level below the pre-development based on the methodology in § 124-4-4.B.3.

D. Detention. Unless waived by the Director, the postdevelopment peak flow for the 2-year 24-hour storm event shall be released at a rate that is equal to or less than the predevelopment peak flow rate from the 2-year 24-hour storm event and the postdevelopment peak flow for the 10-year 24-hour storm event shall be released at a rate that is less than or equal to the predevelopment peak flow rate from the 10-year 24-hour storm event. In the Four Mile Run watershed, the postdevelopment peak flow for the 100-year storm event shall be released at a rate that is equal to or less than the predevelopment peak flow rate from the 100-year storm unless it is contraindicated by the watershed model developed for the Four Mile Run Watershed Management Program.

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

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

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

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

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

1. Offsite controls utilized in accordance with a comprehensive stormwater management plan adopted pursuant to § 124-4-9 for the local watershed within which a project is located;

2. A locality pollutant loading pro rata share program established pursuant to § 15.2-2243 of the Code of Virginia or similar local funding mechanism;

3. The nonpoint nutrient offset program established pursuant to § 62.1-44.15:35 of the Code of Virginia;

4. Any other offsite options approved by an applicable state agency or state board; and

5. When an operator has additional properties available within the same HUC or upstream HUC that the land-disturbing activity directly discharges to or within the same watershed as determined by the Director, offsite stormwater management facilities on those properties may be utilized to meet the required phosphorus nutrient reductions from the land-disturbing activity.

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

1. Less than five acres of land will be disturbed;

2. The postconstruction phosphorus control requirement is less than 10 pounds per year;

or

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

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

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

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

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

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

A. Unless otherwise specified, the prescribed design storms are the one-year, two-year, and 10-year 24-hour storms using the site-specific rainfall precipitation frequency data recommended by the U.S. National Oceanic and Atmospheric Administration (NOAA) Atlas 14. Partial duration time series shall be used for the precipitation data.

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

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

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

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

#### **Section 124-4-7. Stormwater Harvesting.**

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

#### **Section 124-4-8. Linear Development Projects.**

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

#### **Section 124-4-9. Comprehensive Stormwater Management Plans.**

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

1. Such plans shall ensure that offsite reductions equal to or greater than those that would be required on each contributing site are achieved within the same HUC or within another locally

designated watershed. Pertaining to water quantity objectives, the plan may provide for implementation of a combination of channel improvement, stormwater detention, or other measures that are satisfactory to the local stormwater management program to prevent downstream erosion and flooding.

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

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

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

## **ARTICLE 5.**

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

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

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

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

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

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

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

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

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

stormwater.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

E. Impounding structures that are not covered by the Impounding Structure Regulations

(4VAC50-20) shall, at a minimum, be engineered for structural integrity during the 100-year storm event and shall comply with the requirements of § 6-1600 of the PFM.

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

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

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

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

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

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

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

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

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

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

A. For any development or redevelopment, stormwater runoff shall be controlled by the use of BMPs as follows:

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

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

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

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

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

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

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

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

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

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

#### **Section 124-5-5. Stream Channel Erosion.**

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

B. Land-disturbing activity shall comply with subdivision 19 of 4VAC50-30-40 of the Erosion and Sediment Control Regulations, promulgated pursuant to Article 2.4 (§ 62.1-44.15:51 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia.

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

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

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

#### **Section 124-5-6. Flooding.**

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

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

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

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

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

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

### **ARTICLE 6.**

#### **Exceptions.**

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

A. Exceptions to the provisions of Articles 4 or 5 of this Chapter may be granted by the Director. An exception may be granted provided that:

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

B. Economic hardship alone is not sufficient reason to grant an exception from the requirements of this Chapter.

C. Under no circumstance will an exception to the requirement that the land-disturbing activity obtain required state permits be granted nor will the use of a BMP not found on the Virginia Stormwater BMP Clearinghouse Website be approved except where allowed under Article 5.

D. Exceptions to requirements for phosphorus reductions shall not be allowed unless offsite options available through § 124-4-5 have been considered and found not available.

E. In no instance shall the requirement for BMPs meeting the provisions of the Water Supply Protection Overlay District be modified or waived except where existing site characteristics make the provision impractical or unreasonable on-site and an alternative provision is not or cannot be accommodated off-site, and where it can be established that the modification or waiver will not affect the achievement of the water quality goals for the public water supply watershed as set forth in the adopted comprehensive plan.

F. Exceptions to requirements for channel protection may only be granted if peak flow in the conveyance system for the 2-year storm is shown to be nonerosive from the point of discharge to the limit of analysis.

**ARTICLE 7.****Appeals.****Section 124-7-1. Right to Administrative Review.**

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

B. Any permit applicant, permittee, person subject to state permit requirements under this Chapter, or person subject to an enforcement action under this Chapter who is aggrieved by an action or inaction by the Director pursuant to this Chapter without a formal hearing may demand

in writing a formal hearing by the hearing officer, provided that a petition requesting a hearing is filed with the Director within 30 days after notice of the Director's action is received by the aggrieved party, except appeals of orders under Article 9 of this Chapter shall be made within ten days after notice of such order. As provided for in this Chapter, the Director may seek an injunction in the absence of an administrative hearing.

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

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

B. After a petition requesting a hearing is filed with the Director, the Director or hearing officer shall issue a notice of hearing to the aggrieved party providing the date, time, and location of the hearing, and shall include the facts and legal requirements related to the challenged action and, if applicable, the amount of any proposed civil penalty issued under Article 9 of this Chapter. The notice of hearing shall be issued in accordance with the notice requirements of § 124-8-1(F).

C. The County and the aggrieved party may present evidence including witnesses regarding the facts and occurrences giving rise to the action subject to review, and the amount of the civil penalty issued pursuant to Article 9 of this Chapter. The aggrieved party may examine any of the County's witnesses.

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

E. Except for hearings related to violations of Article 9, the hearing officer shall have the power to issue subpoenas and subpoenas duces tecum, and at the request of any party shall issue such subpoenas. The failure of a witness without legal excuse to appear or to testify or to produce documents shall be acted upon by the Director, whose action may include the procurement of an order of enforcement from the circuit court. Witnesses who are subpoenaed shall receive the same fees and reimbursement for mileage as in civil actions.

F. The hearing officer shall make findings of fact and conclusions of law and issue a final order within 30 days after the conclusion of the hearing.

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

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

## ARTICLE 8.

### Violations and Penalties.

#### Section 124-8-1. General Provisions.

A. Any person, whether owner, lessee, principal, agent, employee or otherwise, who violates any of the provisions of this Chapter, excluding provisions of Article 9, or permits any such violations, or fails to comply with any of the requirements hereof, or who fails to comply with the conditions of any permit issued in connection with the requirements of the Act or this Chapter shall be subject to the enforcement provisions of this Article. The County may pursue enforcement in accordance with any of the remedies provided herein.

B. Upon becoming aware of any violation of any provisions of this Chapter, excluding Article 9, the Director, or his designee, may issue a verbal warning and request to take corrective action for any such violation to the property owner or the person committing or permitting the same, and may serve a notice of violation on the property owner or the person committing or permitting the violation of this Chapter. The notice of violation shall (i) specify the provisions of this Chapter which have been violated, (ii) identify the remedial measures necessary to cure the violation, (iii) provide a reasonable time in which to remedy the violations, and (iv) advise of the right to an administrative appeal. Failure to take steps to comply with such notice within the time provided for therein shall constitute a separate violation of this Chapter.

C. If a permittee or a person receiving a notice of violation fails to comply with a notice issued in accordance within the time specified, the County may issue a stop work order requiring the owner, permittee, person responsible for carrying out an approved plan, or the person conducting the land-disturbing activities without an approved plan or required permit to cease all land-disturbing activities until the violation of the permit has ceased, or an approved plan and required permits are obtained, and specified corrective measures have been completed. Such orders shall become effective upon service. Failure to comply with a stop work order shall constitute a separate violation of this Chapter.

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

E. It is unlawful and constitutes a separate violation of this Chapter for any person to fail to comply with any stop work order, emergency order, or a special order issued in accordance with this Article. Any person violating or failing, neglecting, or refusing to obey any rule, regulation, ordinance, approved standard and specification, order, or any permit condition issued by the

County, or any provisions of this Article may be compelled in a proceeding instituted in any appropriate court by the Director, on behalf of the Board of Supervisors, to obey same and to comply therewith by injunction, mandamus, or other appropriate remedy.

F. The notice requirement under this Chapter shall be satisfied if any notice of violation or order is delivered by registered or certified mail, return receipt requested or in person to the property owner or his authorized representative, the permittee, or the person committing or permitting a violation of this Chapter.

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

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

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

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

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

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

A. Any person who violates any provision of this Chapter, excluding provisions of Article 9, or standards and specifications adopted or approved thereunder, neglects or refuses to comply with any order issued hereunder by the Director or the court, shall be subject to a civil penalty not to exceed \$32,500 for each violation within the discretion of the court. Each day of violation of each requirement shall constitute a separate offense.

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

- (i) No state permit registration;
- (ii) No SWPPP;
- (iii) Incomplete SWPPP;
- (iv) SWPPP not available for review;
- (v) No approved erosion and sediment control plan;
- (vi) Failure to install stormwater BMPs or erosion and sediment controls;
- (vii) Stormwater BMPs or erosion and sediment controls improperly installed or maintained;
- (viii) Operational deficiencies;
- (ix) Failure to conduct required inspections;
- (x) Incomplete, improper, or missed inspections; and
- (xi) Discharges not in compliance with the requirements of Section 4VAC 50-60-1170 of the general permit.

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

## **ARTICLE 9**

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

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

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

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

B. Prevent illicit connections to the County MS4;

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

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

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

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

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

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

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

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

### **Section 124-9-4. Director's Right of Entry.**

The Director and his agents shall have the authority to enter on any lands or premises for the purpose of making investigations related to the prevention of illicit discharges into state waters or the County MS4.

### **Section 124-9-5. Standards for Inspection of Industrial and Commercial Property Discharging to the County MS4.**

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

#### **Section 124-9-6. Search Warrants.**

If the Director has been refused access to a property for the purpose of conducting an investigation under this Article, he may obtain a search warrant upon demonstrating, to the satisfaction of any judge or magistrate or other person having the authority to issue warrants, that (i) reasonable and probable cause exists to believe that there has been a violation of this Article, or (ii) pursuant to the general administrative plan established under § 124-9-5, a particular property is identified for a routine inspection and is a property upon which a commercial or industrial use meets the criteria for inclusion in the inspection program established pursuant to § 124-9-5. Any such search warrant shall be based upon a complaint under oath supported by an affidavit.

#### **Section 124-9-7. Enforcement**

##### **A. Cease and Desist Orders.**

When the Director finds that a Person has violated or is violating this Article, the Director may issue an order directing the Person to cease and desist all such violations. Issuance of a Cease and Desist Order by the Director does not limit the authority of the Director to seek Civil Penalties or other remedies available under this Article. The Cease and Desist Order shall include, at a minimum, the following:

1. The nature and location of the violation;
2. The time period within which the Person must comply with specified ordinance requirements;
3. The remedial or preventive action that the Person shall take to properly remediate any harm caused by an illicit discharge and any action necessary to address a continuing violation of this Article, including, but not limited to, halting operations and/or terminating the discharge;
4. Such action as might be reasonably necessary and appropriate to prevent future violations of this Article;
5. Notice that failure to comply with the Cease and Desist Order may result in further legal action pursuant to Chapter 124 of the County Code; and
6. Notice of the right to administratively appeal the order.

##### **B. Civil Penalties**

1. Any Person who violates any provision of this Article may be liable to the County for a civil penalty. Each day during which a violation is found to have existed shall constitute a separate violation, and any civil penalties imposed under this Section shall be applied to the

purpose of abating, preventing, or mitigating environmental pollution, but the actual amount of any assessed civil penalty may be based upon the severity of the violations, the extent of any potential or actual environmental harm or damage to the storm sewer system, the compliance history of the Person, any economic benefit realized from the noncompliance, and the ability of the Person to pay the penalty.

2. No administrative order assessing a civil penalty for a violation shall be issued until after the Person has been provided an opportunity for a hearing before the Director under Article 7 of this Chapter, except with the consent of the Person. The notice of the hearing shall be issued in accordance with § 124-8-1(F)

3. No administrative order shall assess civil penalties in excess of \$32,500 per violation, or \$100,000 per order, except with the consent of the Person. In addition to civil penalties, the order may include a monetary assessment for actual damages to the storm sewer system and for costs, attorney fees and other expenses resulting from the violation. Civil penalties in excess of the maximum amounts established in this subsection may be imposed only by a court in amounts determined in its discretion but not to exceed \$32,500 for each violation.

4. This Section shall neither preclude the County from proceeding directly in Circuit Court to compel compliance with this Article nor be interpreted as limiting any other applicable legal remedies or sanctions.

#### C. Injunctive Relief

When the Director determines that a Person has violated or continues to violate the provisions of this Article, the County may, in addition to, or instead of any other remedies provided herein, petition the Circuit Court for the issuance of injunctive or other appropriate equitable relief, including a requirement for the Person to conduct environmental remediation.