

LAND DEVELOPMENT SERVICES
May 21, 2024

STAFF REPORT

PREPARED BY SITE DEVELOPMENT AND INSPECTIONS DIVISION

- PROPOSED COUNTY CODE AMENDMENT
- PROPOSED PFM AMENDMENT
- PROPOSED ZONING ORDINANCE AMENDMENT
- APPEAL OF DECISION
- WAIVER REQUEST

Adoption of Chapter 124.1 (Erosion and Stormwater Management Ordinance) and Repeal of Chapters 104 (Erosion and Sedimentation Control) and 124 (Stormwater Management Ordinance) of The Code of the County of Fairfax, Virginia

PUBLIC HEARING DATES

Authorization to Advertise:	May 21, 2024
Planning Commission Hearing:	June 12, 2024 at 7:30 p.m.
Board of Supervisors Hearing:	June 25, 2024 at 4:00 p.m.

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Staff Report

STAFF RECOMMENDATION

Staff recommends that the Board of Supervisors (Board) adopt the proposed new ordinance Chapter 124.1 (Erosion and Stormwater Management Ordinance) to repeal Chapters 104 (Erosion and Sedimentation Control) and 124 (Stormwater Management Ordinance) to implement the Virginia Erosion and Stormwater Management Act (Va. Code Ann. § 62.1-44.15:24, et seq.) and Virginia Erosion and Stormwater Management Regulation (9 VAC25-875 et seq.).

Coordination

The proposed amendments have been prepared by the Department of Land Development Services (LDS) and the Office of the County Attorney and in coordination with the Department of Public Works and Environmental Services (DPWES).

BACKGROUND

During the 2016 legislative session, the General Assembly adopted the Virginia Erosion and Stormwater Management Act (the Act) to consolidate the existing Virginia Erosion and Sediment Control and Stormwater Management Programs. The enactment required the State Water Control Board (SWCB) to adopt regulations to implement the requirements of the Act and exempted the consolidated regulations from the requirements of Article 2 (§ 2.2-4006 et seq.) of the Administrative Process Act (§ 2.2-4000 et seq.) of the Code of Virginia (VA Code). The rationale for the exemption was that the new regulation would only be implementing the Act and consolidating the existing regulations without adding or revising any requirements from the existing regulations except for those changes required by the Act. As a result of the exemption, the SWCB was not required to hold a public hearing to adopt the consolidated regulations. However, the Virginia Department of Environmental Quality (DEQ), the administrative agency for the SWCB, was required to form a stakeholders' advisory group, which included county staff, and provided for a 60-day public comment period prior to the SWCB's adoption of the regulations.

Overview of the Virginia Erosion and Stormwater Management Regulations (VESMR)

The SWCB adopted the Virginia Erosion and Stormwater Management Regulation (VESMR) on June 22, 2023, with an effective date of July 1, 2024. The VESMR combined the existing Virginia Erosion and Sediment Control Regulations (9VAC25-940), the Virginia Erosion and Sediment Control and Stormwater Management Certification Requirements (9VAC 25-850), and the Virginia Stormwater Management Program (VSMP) Regulation (9VAC 25-870). The VESMR clarifies program requirements, eliminates redundancies, and corrects inconsistencies among the various regulations. No substantive changes to existing erosion and sediment control minimum standards or to the post-construction stormwater management technical criteria, except

for one provision discussed below, are included in the new regulation. The certification requirements in VESMR are for certification of individuals that perform program administration, plan review, and inspection duties under the combined erosion and stormwater management program. Current certifications remain valid until they need to be renewed.

Proposed Consolidation of County's Erosion and Sedimentation Control and Stormwater Management Ordinances (Chapters 104 and 124)

Because VESMR only consolidated existing erosion and sediment control and stormwater management requirements, staff was originally proposing to update the County's existing Erosion and Sedimentation Control and Stormwater Management Ordinances. However, the DEQ staff strongly recommended that to meet the intent of the Act and the VESMR the County should consolidate our Erosion and Sedimentation Control and Stormwater Management Ordinances into a single ordinance, which is what is currently proposed.

Although it is a complete rewrite, there is only one provision in the new ordinance that staff considers to be a substantive change from current requirements, and that change is required by the Act. Specifically, the Act and VESMR now require water quantity controls for development and redevelopment of residential lots in existing subdivisions that disturbs equal to or greater than 2,500 square feet while retaining the local option to require water quality controls. The elimination of the exemption from having to meet water quantity control requirements has minimal impact because existing requirements under the Erosion and Sedimentation Control Ordinance for protection of downstream properties and waterways from increases in stormwater runoff generally necessitated the installation of water quantity controls.

Option to Retain Exemption for Water Quality Control Requirements

The County's current Stormwater Management Ordinance includes a limited exemption from both storm water quantity and quality control requirements for single-family dwellings separately built and disturbing greater than 2,500 square feet and less than one acre for construction that is not part of a larger common plan of development or sale. The limitations under this exemption are discussed in detail below. Under the Act and the VESMR, water quantity control is now required for land disturbance equal to or greater than 2,500 square feet on such lots and the County may only exempt them from providing water quality controls. Approximately 15 percent of the 527 new infill lot grading plans submitted in 2023 qualified for the existing exemption. The proposed amendments include an option for the Board to retain the exemption for water quality control requirements. The optional language can be found at shaded lines 700 through 724 in the proposed ordinance (Attachment A).

Discussion of Optional Provision

The proposed optional provision is the same as the existing exemption except that it would only exempt projects from having to meet water quality control requirements. The proposed exemption would apply to development of single-family dwellings separately built and disturbing equal to or greater than 2,500 square feet and less than one acre,

including additions, accessory structures, and demolitions, that meet at least one of the following conditions:

- 1) Total imperviousness on the lot will be less than 2,500 square feet or 18% of the lot area, whichever is greater; or
- 2) The total lot area is one-half acre or less and no more than 500 square feet of new impervious area will be added; or
- 3) Water quality controls meeting requirements in effect at the time were provided with the original subdivision construction and are currently in place; or
- 4) The property is served by an existing regional stormwater management facility providing water quality control.

The first condition is intended to replicate the requirement in the original Chesapeake Bay Preservation Ordinance that required water quality controls on infill lots when the total impervious area on the lot was greater than 18%. The second condition is intended to address additions to existing homes on smaller lots that do not meet the first criterion. The third and fourth conditions are intended to relieve lots that are already served by water quality controls from having to determine if the existing controls met current design requirements.

To assess the impact of the proposed exemption, staff reviewed infill lot grading plans submitted in 2023. Of the 527 infill lot grading plans submitted, 15 percent were exempt. Based on the above categories, the projects qualified for the exemption as follows:

- 47% - Total imperviousness less than 2,500 square feet or 18% of the lot area.
- 43% - Lot area 1/2 acre or less and no more than 500 sq. ft. of new impervious area.
- 10% - Water quality controls provided with original subdivision.
- 0% - Water quality controls provided by an existing regional facility

The profile of the construction types qualifying for the exemption is as follows:

- 13% - Addition or accessory structure
- 63% - Demolish existing SFD home and build new SFD home
- 9% - New SFD home on vacant lot
- 15% - Pool

The first take-away from this data is that the current exemption is being used primarily to build new homes. Although the data is not included herein, the infill lots that didn't qualify for the exemption have a similar profile of construction types. The only difference is the scale of the projects. The second take-away is that the second exemption category is being used mostly for tear-downs and rebuilds rather than the small additions it was originally intended for.

The above primarily addresses the scope of the optional provision. The considerations for adopting or not adopting the optional provision are listed below:

- 1) Cost to homeowners to provide on-site BMPs or purchase nutrient credits or a combination of the two.
 - The cost of meeting the water quality control requirement by purchasing nutrient credits only is estimated to be \$1,800 - \$4,375 per project.
 - Facilities installed for water quantity control also may provide a measure of water quality control which may reduce costs.
 - Future costs and the availability of nutrient credits may change the calculus of on-site facilities vs. purchasing credits.
- 2) Water quality.
 - Purchase of nutrient credits does not improve water quality in county streams.
 - There are no nutrient banks in Fairfax County.
 - We cannot prohibit the purchase of nutrient credits.
 - If water quality control is required, it is estimated, based on the non-exempt projects, that about half of the impacted projects would meet their water quality control requirements through construction of on-site facilities.
- 3) Consistency.
 - The profile of the activities that qualify for the exemption and those that don't is virtually identical and consists of around 70 percent of new homes.
 - Elimination of the exemption would assure that all projects are treated the same.

Outreach

Issues related to the consolidation were discussed with the Board at the October 17, 2023, Land Use Policy Committee meeting and with the Planning Commission's Environment Committee on May 25, 2024. Staff also made presentations to the Environmental Quality Advisory Council, the Chesapeake Bay Exception Review Committee, the NVBIA/NAIOP Fairfax Committee, the Engineering Standards Review Committee, and the Professional Remodeling Organization (PRO Mid Atlantic).

PROPOSED AMENDMENTS

- 1) With the consolidation of the existing ordinances, there will be a common set of definitions, administrative provisions, violations and penalties, and appeals procedures applicable to both erosion and sediment control and stormwater management requirements.
- 2) The technical requirements from each ordinance will be retained and included as separate sections of the combined ordinance.
- 3) The existing provisions in the Erosion and Sedimentation Control Ordinance relating to the Erosion and Sediment Control Review Board are not included in the new ordinance. This Board Appointed Committee expired in 1990.

- 4) Plan content, review, and approval requirements have been updated to match the requirements in the VESMA. This creates a new combined Erosion and Stormwater Management (ESM) plan instead of separate plans for erosion and sediment control and stormwater management. There are no substantive changes to plan requirements or content.
- 5) The allowance for variances of erosion and sediment control requirements for land-disturbing activity less than one acre in size has been eliminated in accordance with the VESMR. Such variances have not been granted in the past and this change should have no impact.
- 6) An allowance for the County to enter into agreements with adjacent jurisdictions for administration of multijurisdictional projects and with state and federal agencies for review of their projects has been added. The County has been doing this occasionally on an ad hoc basis without a specific allowance for it in our ordinances.
- 7) The proposed ordinance includes an option, for Board consideration, to require land-disturbing activities equal to or greater than 2,500 square feet for construction of single-family homes to meet water quality control requirements. Under VESMR, such land-disturbing activities must meet erosion and sediment control and water quantity control requirements. This option is discussed in detail above. The optional language can be found at shaded lines 700 through 724 in the proposed ordinance (Attachment A).

The proposed amendments are included as Attachment A. A cross-reference table of provisions in the old ordinances corresponding to provisions in the new ordinance is included as Attachment B.

REGULATORY IMPACT

The proposed amendment eliminates the exemption for construction of single-family homes, not part of a common plan of development, from providing water quantity controls. This change is mandatory under the Act and VESMR. The elimination of this exemption has limited impact because most of these projects were already providing quantity controls to meet adequate outfall requirements. Should the Board also choose to eliminate the exemption for water quality control for such projects, there will be additional costs impacting 15 percent of infill lot grading plans, approximately 80 plans per year. It is staff's opinion that there are no other substantive changes from current requirements included in the new ordinance. Land-disturbing activity less than 2,500 square feet, typical for most additions to single-family homes, continues to be exempt from water quantity and quality control requirements and erosion and sediment control requirements.

ATTACHED DOCUMENT

Attachment A – Proposed Chapter 124.1 (Erosion and Stormwater Management Ordinance)

Attachment B – Cross-reference Table of Provisions in Existing Chapters 104 and 124 to Corresponding Provisions in Proposed Chapter 124.1

1 **AN ORDINANCE REPEALING CHAPTERS 104 and 124 OF THE**
2 **FAIRFAX COUNTY CODE AND ADOPTING A NEW CHAPTER 124.1, RELATING**
3 **TO EROSION AND STORMWATER MANAGEMENT**
4

5 **AN ORDINANCE to amend the Fairfax County Code by repealing Chapter**
6 **104 and Chapter 124, and by adopting a new Chapter 124.1, all relating to**
7 **erosion and stormwater management.**
8

9 **Draft of May 8, 2024**

10
11 **Be it ordained by the Board of Supervisors of Fairfax County:**
12

- 13 **1. That Chapters 104 and 124 of the Fairfax County Code are repealed, and a new**
14 **Chapter 124.1 is adopted, as follows:**
15

16 **CHAPTER 124.1 Erosion and Stormwater Management Ordinance.**
17

18 **ARTICLE 1. – General Provisions.**
19

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

21 This Chapter will hereafter be known, cited, and referred to as the "Erosion and Stormwater
22 Management Ordinance" of Fairfax County.
23

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

25 This ordinance is enacted pursuant to the authority and mandates of the Virginia Erosion and
26 Stormwater Management Act, Article 2.3 (§ 62.1-44.15:24 et seq.) of Chapter 3.1 of Title 62.1 of
27 the Virginia Code, the Virginia and Erosion Stormwater Management Regulation, Chapter 875 of
28 Title 9 of the Virginia Administrative Code, and Title 15.2 of the Virginia Code.
29

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

31 This Chapter shall be effective at 12:01 A.M. on July 1, 2024.
32

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

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

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

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

47

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

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

51 *Act* or *VESMA* means the Virginia Erosion and Stormwater Management Act, Article 2.3 (§
52 62.1-44.15:24 et seq.) of Chapter 3.1 of Title 62.1 of the Virginia Code.

53 *10-year storm* means a storm that is capable of producing rainfall expected to be equaled or
54 exceeded on the average of once in 10 years. It may also be expressed as an exceedance
55 probability with a 10% chance of being equaled or exceeded in any given year.

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

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

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

65 (1) *Nonproprietary best management practice* means both structural and nonstructural
66 practices to prevent or reduce the pollution of surface waters and groundwater systems
67 that are in the public domain and are not protected by trademark or patent or copyright.

68 (2) *Proprietary best management practice* means both structural and nonstructural
69 practices to prevent or reduce the pollution of surface waters and groundwater systems
70 that are privately owned and controlled and may be protected by trademark or patent
71 or copyright.

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

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

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

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

81 knowledge and experience in accordance with the eligibility requirements of 9VAC25-875-
82 410 related to the specified classifications (9VAC25-875-400) within the separate subject
83 areas of ESC or SWM or both.

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

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

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

98 *Channel* means a natural or manmade waterway.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

157 *Discharge of a pollutant* means:

158 (1) Any addition of any pollutant or combination of pollutants to state waters from any
159 point source; or

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

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

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

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

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

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

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

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

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

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

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

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

197 *ESC* means erosion and sediment control.

198 *Farm building or structure* means the same as that term is defined in Va. Code § 36-97 and
199 also includes any building or structure used for agritourism activity, as defined in Va. Code
200 § 3.2-6400, and any related impervious services, including roads, driveways, and parking
201 areas.

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

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

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

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

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

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

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

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

229 *Illicit discharge* means any discharge to a municipal separate storm sewer that is not composed
230 entirely of stormwater, except discharges pursuant to a separate VPDES or state permit (other
231 than the state permit for discharges from the municipal separate storm sewer), discharges
232 resulting from fire-fighting activities, and discharges identified by and in compliance with
233 9VAC25-875-970 D 2 c (3).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

285 *Manmade* means constructed by man.

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

288 *Minor modification* means, for the purposes of this Chapter, minor modification or amendment
289 of an existing state permit before its expiration for the reasons listed at 40 CFR 122.63 and as
290 specified in 9VAC25-875-1240. *Minor modification* for the purposes of this Chapter also
291 means other modifications and amendments not requiring extensive review and evaluation
292 including, but not limited to, changes in EPA promulgated test protocols, increasing
293 monitoring frequency requirements, changes in sampling locations, and changes to compliance
294 dates within the overall compliance schedules. A minor state permit modification or
295 amendment does not substantially alter state permit conditions, substantially increase or
296 decrease the amount of surface water impacts, increase the size of the operation, or reduce the
297 capacity of the facility to protect human health or the environment.

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

302 (1) Owned or operated by a federal entity, state, city, town, county, district, association, or
303 other public body, created by or pursuant to state law, having jurisdiction over disposal
304 of sewage, industrial wastes, stormwater, or other wastes, including a special district
305 under state law such as a sewer district, flood control district, drainage district or similar
306 entity, or a designated and approved management agency under § 208 of the CWA that
307 discharges to surface waters;

308 (2) Designed or used for collecting or conveying stormwater;

309 (3) Not a combined sewer; and

310 (4) Not part of a publicly owned treatment works.

311 *Municipal Separate Storm Sewer System Management Program* or *MS4 Program* means a
312 management program covering the duration of a state permit for a sMS4 that includes a
313 comprehensive planning process that involves public participation and intergovernmental
314 coordination to reduce the discharge of pollutants to the maximum extent practicable, to protect
315 water quality, and to satisfy the appropriate water quality requirements of the CWA and
316 regulations and the Act and its attendant regulations, using management practices, control
317 techniques, and system, design and engineering methods, and such other provisions that are
318 appropriate.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

370 *Pollutant* means dredged spoil, solid waste, incinerator residue, filter backwash, sewage,
371 garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive
372 materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 USC
373 § 2011 et seq.)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial,
374 municipal, and agricultural waste discharged into water. It does not mean:

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

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

394 *Post-development* refers to conditions that reasonably may be expected or anticipated to exist
395 after completion of the land development activity on a specific site or tract of land.

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

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

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

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

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

414 *Regulations* means the Virginia Erosion and Stormwater Management Regulation (VESMR)
415 (9VAC25-875-10 et seq., as amended).

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

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

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

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

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

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

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

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

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

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

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

445 *Small construction activity* means:

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

448 *construction activity* also includes the disturbance of less than one acre of total land
449 area that is part of a larger common plan of development or sale if the larger common
450 plan will ultimately disturb equal to or greater than one and less than five acres. *Small*
451 *construction activity* does not include routine maintenance that is performed to
452 maintain the original line and grade, hydraulic capacity, or original purpose of the
453 facility. The Department may waive the otherwise applicable requirements in a general
454 permit for a stormwater discharge from construction activities that disturb less than five
455 acres where stormwater controls are not needed based on an approved total maximum
456 daily load (TMDL) that addresses the pollutants of concern or, for nonimpaired waters
457 that do not require TMDLs, an equivalent analysis that determines allocations for small
458 construction sites for the pollutants of concern or that determines that such allocations
459 are not needed to protect water quality based on consideration of existing in-stream
460 concentrations, expected growth in pollutant contributions from all sources, and a
461 margin of safety. For the purpose of this subdivision, the pollutants of concern include
462 sediment or a parameter that addresses sediment (such as total suspended solids,
463 turbidity, or siltation) and any other pollutant that has been identified as a cause of
464 impairment of any water body that will receive a discharge from the construction
465 activity. The operator will certify to the Department that the construction activity will
466 take place, and stormwater discharges will occur, within the drainage area addressed
467 by the TMDL or provide an equivalent analysis. As of the start date in Table 1 of
468 9VAC25-31-1020, all certifications submitted in support of the waiver will be
469 submitted electronically by the owner or operator to the Department in compliance with
470 this subdivision and 40 CFR Part 3 (including, in all cases, 40 CFR Part 3 Subpart D),
471 9VAC25-875-940, and Part XI (9VAC25-31-950 et seq.) of the Virginia Pollutant
472 Discharge Elimination System (VPDES) Permit Regulation. Part XI of 9VAC25-31 is
473 not intended to undo existing requirements for electronic reporting. Prior to this date,
474 and independent of Part XI of 9VAC25-31, permittees may be required to report
475 electronically if specified by a particular permit.

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

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

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

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

488 *State* means the Commonwealth of Virginia.

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

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

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

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

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

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

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

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

509 (1) *Manmade stormwater conveyance system* means a pipe, ditch, vegetated swale, or other
510 stormwater conveyance system constructed by man except for restored stormwater
511 conveyance systems;

512 (2) *Natural stormwater conveyance system* means the main channel of a natural stream and
513 the flood-prone area adjacent to the main channel; or

514 (3) *Restored stormwater conveyance system* means a stormwater conveyance system that
515 has been designed and constructed using natural channel design concepts. Restored
516 stormwater conveyance systems include the main channel and the flood-prone area
517 adjacent to the main channel.

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

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

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

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

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

533 *Surface waters* means:

534 (1) All waters that are currently used, were used in the past, or may be susceptible to use
535 in interstate or foreign commerce, including all waters that are subject to the ebb and
536 flow of the tide;

537 (2) All interstate waters, including interstate wetlands;

538 (3) All other waters such as intrastate lakes, rivers, streams (including intermittent streams),
539 mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or
540 natural ponds the use, degradation, or destruction of which would affect or could affect
541 interstate or foreign commerce including any such waters:

542 (a) That are or could be used by interstate or foreign travelers for recreational or other
543 purposes;

544 (b) From which fish or shellfish are or could be taken and sold in interstate or foreign
545 commerce; or

546 (c) That are used or could be used for industrial purposes by industries in interstate
547 commerce;

548 (4) All impoundments of waters otherwise defined as surface waters under this definition;

549 (5) Tributaries of waters identified in subdivisions 1 through 4 of this definition;

550 (6) The territorial sea; and

551 (7) Wetlands adjacent to waters (other than waters that are themselves wetlands) identified
552 in subdivisions 1 through 6 of this definition.

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

558 *SWM* means stormwater management.

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

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

570 *Town* means an incorporated town.

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

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

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

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

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

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

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

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

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

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

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

616 *Virginia Stormwater Management Program* or *VSMP Virginia Stormwater Management*
617 *Program* or *VSMP* means a program established by the Department pursuant to Va. Code §
618 62.1-44.15:27.1 on behalf of a locality on or after July 1, 2014, to manage the quality and
619 quantity of runoff resulting from any land-disturbing activity that (i) disturbs one acre or more
620 of land or (ii) disturbs less than one acre of land and is part of a larger common plan of
621 development or sale that results in one acre or more of land disturbance.

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

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

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

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

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

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

641

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

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

644

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

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

648 (1) Minor land-disturbing activities, including home gardens and individual home
649 landscaping, repairs, and maintenance work;

650 (2) Installation, maintenance, or repair of any individual service connection;

651 (3) Installation, maintenance, or repair of any underground utility line when such activity
652 occurs on an existing hard surfaced road, street, or sidewalk, provided the land-

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

655 (4) Installation, maintenance, or repair of any septic tank line or drainage field unless
656 included in an overall plan for land-disturbing activity relating to construction of the
657 building to be served by the septic tank system;

658 (5) Permitted surface or deep mining operations and projects, or oil and gas operations and
659 projects conducted under the provisions of Title 45.1 of the Virginia Code;

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

670 (7) Installation of fence and sign posts or telephone and electric poles and other kinds of
671 posts or poles;

672 (8) Shoreline erosion control projects on tidal waters when all of the land-disturbing
673 activities are within the regulatory authority of and approved by local wetlands boards,
674 the Virginia Marine Resources Commission, or the U.S. Army Corps of Engineers;
675 however, any associated land that is disturbed outside of this exempted area is subject
676 to the requirements of the Act and this Chapter;

677 (9) Repair or rebuilding of the tracks, rights-of-way, bridges, communication facilities, and
678 other related structures and facilities of a railroad company;

679 (10) Land-disturbing activities in response to a public emergency where the related work
680 requires immediate authorization to avoid imminent endangerment to human health or
681 the environment. In such situations, the County must be advised of the disturbance
682 within seven days of commencing the land-disturbing activity, and compliance with
683 the administrative requirements of 9 VAC 25-875-530 and this Chapter is required
684 within 30 days of commencing the land-disturbing activity; and

685 (11) Discharges to a sanitary sewer or a combined sewer system that are not from a land-
686 disturbing activity;

687 (B) Notwithstanding any other provision of the Act, the following activities are required to comply
688 with the soil erosion control requirements set forth in Article 6 of this Chapter but are not
689 required to comply with the water quantity and water quality technical criteria set forth in
690 Article 4 or 5 of this Chapter, unless otherwise required by federal law:

691 (1) Activities under a state or federal reclamation program to return an abandoned property
692 to an agricultural or open land use;

693 (2) Routine maintenance that is performed to maintain the original line and grade, hydraulic
694 capacity, or original construction of the project. The paving of an existing road with a

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

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

700 (C) Soil erosion control and water quantity technical criteria apply to land-disturbing activities for
701 single-family detached residential structures that disturb 2,500 square feet or more of land.
702 Such land-disturbing activity are also required to comply with the water quality technical
703 criteria, except as follows:

704 Single-family dwellings separately built and disturbing less than 1 acre and not part of a larger
705 common plan of development or sale, including: additions to existing single-family detached
706 dwellings; accessory structures to single-family detached dwellings; and demolitions of single-
707 family detached dwellings or accessory structures where the proposed construction meets one
708 of the following conditions unless control measures are required to address a specific WLA for
709 a pollutant that has been established in a TMDL and assigned to stormwater discharges from
710 construction activities within the watershed:

711 (1) Total imperviousness on the lot will be less than 2,500 square feet or 18% of the lot
712 area, whichever is greater; or

713 (2) The total lot area is one-half acre or less and no more than 500 square feet of new
714 impervious area will be added; or

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

717 (4) The property is served by an existing regional stormwater management facility
718 providing water quality control.

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

723 A plan addressing these requirements must be submitted to the VESMP authority in accordance
724 with Section 124.1-2-5.

725

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

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

732

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

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

738

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

740

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

742 (A) Unless otherwise set forth in subsection (B), the following land-disturbing activities are subject
743 to the criteria set forth in Article 4 and Article 6 of this Chapter:

744 (1) land-disturbing activity that disturbs 2,500 square feet or more, and

745 (2) land-disturbing activity that is part of a larger common plan of development or sale that
746 disturbs one acre or more.

747 (B) Land-disturbing activities exempt per Section 124.1-1-7 are not required to comply with the
748 requirements of the VESMA and this Chapter unless otherwise required by federal law.

749 (C) Land-disturbing activities determined to be in accordance with Sections 124.1-2-2 or
750 124.1-2-3 are subject to the technical criteria set forth in Article 5 of this Chapter.

751

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

753 (A) Any land-disturbing activity is considered legacy by the County and subject to the technical
754 criteria of Article 5 of this Chapter provided:

755 (1) A currently valid proffered rezoning or P district rezoning or other rezoning with a plan
756 of development, special exception, special permit, variance, preliminary or final
757 subdivision plat, subdivision construction plan, preliminary or final site plan, or
758 grading plan, was approved by the County prior to July 1, 2012; and

759 (2) The proffered rezoning or P district rezoning or other rezoning with a plan of
760 development, special exception, special permit, variance, preliminary or final
761 subdivision plat, subdivision construction plan, preliminary or final site plan, or
762 grading plan provides sufficient information to demonstrate that the resulting land-
763 disturbing activity will comply with the technical requirements of Article 5 and include,
764 as a minimum, the following: (i) a conceptual drawing that identifies the location of
765 the proposed stormwater facilities; (ii) pre- and post-development calculations that
766 detail the required pollutant reduction necessary to comply with the water quality
767 design criteria; and (iii) calculations necessary to determine compliance with the water
768 quantity design criteria; and

769 (3) The proffered rezoning or P district rezoning or other rezoning with a plan of
770 development, special exception, special permit, variance, preliminary or final
771 subdivision plat, subdivision construction plan, preliminary or final site plan, or
772 grading plan has not been subsequently modified or amended in a manner resulting in

773 an increase over the previously approved plat or plan in the amount of phosphorus
774 leaving each point of discharge or the volume or rate of runoff; and,

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

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

777 (B) Local, state, and federal projects are considered legacy by the County and are subject to the
778 technical criteria Article 5 of this Chapter provided:

779 (1) There has been an obligation of locality, state, or federal funding, in whole or in part,
780 prior to July 1, 2012, or the Department has approved a stormwater management plan
781 prior to July 1, 2012;

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

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

784 (C) Land disturbing activities that meet the conditions under subsections A and B of this Section
785 remain subject to the technical criteria of Article 5 of this Chapter for one additional permit
786 cycle. After such time, portions of the project not under construction are subject to any new
787 technical criteria adopted by the board.

788 (D) In cases where governmental bonding or public debt financing has been issued for a project
789 prior to July 1, 2012, such project is subject to the technical criteria of Article 5 of this Chapter.

790 (E) Nothing in this Section precludes an operator from constructing to a more stringent standard
791 at the operator's discretion.

792

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

794 (A) Land-disturbing activities that obtained an initial state permit or commence land disturbance
795 prior to July 1, 2014, must be conducted in accordance with the technical criteria of Article 5
796 of this Chapter, unless more stringent standards are used. Such projects remain subject to the
797 technical criteria of Article 5 for two additional permit cycles. After such time, portions of the
798 project not under construction become subject to any new technical criteria adopted by the
799 board.

800 (B) Land-disturbing activities that obtain or obtained an initial state permit on or after July 1, 2014,
801 must be conducted in accordance with the technical criteria of Article 4 of this Chapter, except
802 as provided for in Section 124.1-2-2. Land-disturbing activities conducted in accordance with
803 the technical criteria of Article 4 of this Chapter remain subject to the technical criteria of
804 Article 4 of this Chapter for two additional permit cycles. After such time, portions of the
805 project not under construction become subject to any new technical criteria adopted by the
806 board.

807 (C) Nothing in this section precludes an operator from constructing to a more stringent standard at
808 the operator's discretion.

809

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

- 811 (A) In order to protect the quality of state waters and to control the discharge of stormwater
812 pollutants from land-disturbing activities, runoff associated with land-disturbing activities in
813 Chesapeake Bay Preservation Areas that are equal to or greater than 2,500 square feet but less
814 than one acre are subject to the Chesapeake Bay Preservation Act or, in the case of state and
815 federal agency projects, DEQ.
- 816 (B) Unless excluded by Section 124.1-1-7, land disturbing activities with state permits issued after
817 June 30, 2014, do not require completion of a registration statement or require coverage under
818 the General VPDES Permit for Discharges of Stormwater from Construction Activities but are
819 subject to the following technical criteria and program and administrative requirements:
- 820 (1) An erosion and sediment control plan consistent with the requirements of Section
821 124.1-6-2 must be designed, submitted and pre-approved by the County, and
822 implemented during all land-disturbing activities.;
 - 823 (2) A stormwater management plan must be designed, developed and submitted to and pre-
824 approved by the County consistent with the requirements of Sections 124.1-3-2 and
825 124-2-5 and must be implemented during all the land-disturbing activity.
 - 826 (3) Long-term maintenance of stormwater management facilities in accordance with
827 Section 124-2-6;
 - 828 (4) Water quality design criteria in accordance with Article 4;
 - 829 (5) Water quality compliance in accordance with Section 124.1-4-3;
 - 830 (6) Channel protection and flood protection in accordance with Article 4;
 - 831 (7) Offsite compliance options in accordance with Section 124.1-4-5; and
 - 832 (8) Design storm and hydrologic methods in accordance with Sections 124.1-4-6,
833 124.1-4-8, and 124.1-4-10.
 - 834 (9) Exceptions may be requested to the County in accordance with Article 7 of this Chapter.

835

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

- 838 (A) Except for activities set forth in Section 124.1-1-7 of this Chapter, prior to any land-disturbing
839 activity, a person seeking to conduct such activity must file an application to LDS that includes
840 a state permit registration statement, if required, and a soil erosion control and stormwater
841 management plan, if required.
- 842
- 843 (B) The County will review and approve or disapprove an ESM plan in accordance with the
844 requirements set forth in Sections 124.1-3-2 and 124.1-6-2.
- 845
- 846 (C) The County must determine the completeness of any application within 15 days after receipt
847 and must act on any application within 60 days after it has been determined by the County to
848 be complete.
- 849

- 850 (D) Applicants may resubmit a previously disapproved application and the County will determine
851 whether any resubmission is complete within 15 days after receipt and must act on the
852 resubmitted application within 45 days after receipt.
853
- 854 (E) An applicant seeking land-disturbance approval must submit to the County the name of the
855 individual who will be assisting the owner in carrying out the activity and holds a Responsible
856 Land Disturber certificate pursuant to Va. Code § 62.144.15:30. Failure to provide the name
857 of an individual holding a Responsible Land Disturber certificate prior to engaging in land-
858 disturbing activities may result in revocation of the land-disturbance approval and is a violation
859 of this Chapter.
860
- 861 (F) Excluding state agencies and federal entities, an applicant seeking land-disturbance approval
862 must submit to the County a reasonable performance bond with surety, cash escrow, letter of
863 credit, any combination thereof, or such other legal arrangement acceptable to the County, to
864 ensure that measures could be taken by the County at the applicant's expense should the
865 applicant fail, after proper notice, within the time specified to comply with conditions imposed
866 by imposed by the County as a result of the applicant's land-disturbing activity. If the County
867 takes such action upon such failure by the applicant, the County may collect from the applicant
868 for the difference should the amount of the reasonable cost of such action exceed the amount
869 of the security held. Within 60 days of the completion of the County's conditions, such bond,
870 cash escrow, letter of credit or other legal arrangement, or the unexpended or unobligated
871 portion thereof, will be refunded to the applicant or terminated. These requirements are in
872 addition to all other provisions of law relating to the issuance of state permits and are not
873 intended to otherwise affect the requirements for such state permits including performance
874 guarantees for items unrelated to the County land-disturbance permit.
875
- 876 (G) Prior to issuing a land-disturbance approval, the County is required to obtain evidence of state
877 permit coverage when such coverage is required.
878
- 879 (H) The County must issue either land-disturbance approval in the form of a County land-
880 disturbance permit or denial and provide written rationale for any denial.
881
- 882 (I) The County may require changes to an approved soil erosion control and stormwater
883 management plan in the following cases:
- 884 (1) An inspection has revealed that the plan is inadequate to satisfy applicable regulations
885 or ordinances; or
- 886 (2) The owner finds that because of changed circumstances or for other reasons the plan
887 cannot be effectively carried out, and proposed amendments to the plan consistent with
888 the requirements of this Chapter are agreed to by the County and the owner.
- 889 (J) In order to prevent further erosion, the County may require approval of an erosion and sediment
890 control and a stormwater management plan for any land it identifies as an erosion impact area.
891
- 892 (K) The County may enter into an agreement with an adjacent VESMP authority regarding the
893 administration of multijurisdictional projects, specifying who will be responsible for all or part
894 of the administrative procedures. If the County and the adjacent VESMP authority fail to reach

895 such an agreement, each will be responsible for administering the area of the
896 multijurisdictional project that lies within its jurisdiction.

897
898 (L) The County may cooperate with and enter into agreements with any federal or state agency in
899 connection with the requirements for land-disturbing activities in accordance with Va. Code
900 §62.1-44.15:50.

901
902 (M) No exception to, or waiver of, post-development nonpoint nutrient runoff compliance
903 requirements will be granted unless offsite options have been considered and found not
904 available in accordance with Va. Code § 62.1-44.15:35(D).

905

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

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

918 (1) Be submitted to the County for review and approval prior to the approval of the
919 stormwater management plan;

920 (2) Be stated to run with the land;

921 (3) Provide for all necessary access to the property for purposes of maintenance and
922 regulatory inspections;

923 (4) Provide for inspections and maintenance and the submission of inspection and
924 maintenance reports to the County; and

925 (5) Be enforceable by all appropriate governmental parties.

926 (6) Ensure that measures could be taken by the County to maintain the stormwater
927 management facilities or perform inspections at the owner's expense should the owner
928 fail to maintain the stormwater management facilities in good working order in
929 accordance with the maintenance specifications in the agreement or perform the
930 periodic inspections required by the agreement;

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

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

937

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

939 (A) The County will periodically inspect land-disturbing activities during construction, in
940 accordance with the County's Inspection Program as set forth in the Public Facilities Manual,
941 for:

942 (1) Compliance with the approved erosion and sediment control plan;

943 (2) Compliance with the approved stormwater management plan;

944 (3) Development, updating, and implementation of a pollution prevention plan; and

945 (4) Development and implementation of any additional control measures necessary to address
946 a TMDL.

947 (B) The County will conduct periodic inspections in accordance with the County's Inspection
948 Program as set forth in the Public Facilities Manual to ensure that permanent stormwater
949 management facilities are being adequately maintained as designed after completion of land-
950 disturbing activities. Such inspections will be made by the County or the County's designee,
951 not to include the owner, except as provided in subsections D of this section, at least once every
952 five years.

953 (C) The County may utilize the inspection reports of the owner of a stormwater management
954 facility as part of an inspection program established in subsection B of this Section if the
955 inspection is conducted by a person who is licensed as a professional engineer, architect,
956 landscape architect, or land surveyor pursuant to Article 1 (§ 54.1-400 et seq.) of Chapter 4 of
957 Title 54.1 of the Code of Virginia; a person who works under the direction and oversight of
958 the licensed professional engineer, architect, landscape architect, or land surveyor; or a person
959 who holds an appropriate certificate of competence from the DEQ.

960 (D) Subject to the limitations and conditions set forth in 9 VAC 25-875-900, every owner, applicant
961 or state permittee must furnish when requested such application materials, plans,
962 specifications, and other pertinent information as may be necessary to determine the effect of
963 permit applicant's or permittee's discharge on the quality of state waters, or such other
964 information as may be necessary to accomplish the purposes of the State Water Control Law
965 and this Chapter. Any personal information will not be disclosed except to an appropriate
966 official of the Department or the County or as may be authorized pursuant to the Virginia
967 Freedom of Information Act (§ 2.2-3700 et seq. of the Code of Virginia).

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

969

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

971 (A) The County or any duly authorized agent thereof, may, at reasonable times and under
972 reasonable circumstances, enter any establishment or upon any property, public or private, for
973 the purpose of obtaining information or conducting surveys or investigations necessary in the
974 enforcement of the provisions of this Chapter. This authority applies only to those properties
975 from which a discharge enters the County's municipal separate storm sewer system.

976 (B) In accordance with a performance bond with surety, cash escrow, letter of credit, any
977 combination thereof, or such other legal arrangement, the County may also enter any
978 establishment or upon any property, public or private, for the purpose of initiating or
979 maintaining appropriate actions that are required by conditions imposed by the County on a
980 land-disturbing activity when an owner, after proper notice, has failed to take acceptable action
981 within the time specified.

982 (C) A warrant may be obtained in accordance with applicable local, state, and federal law when
983 necessary to carry out the provisions of this Chapter.

984
985 **Section 124.1-2-9. - Annual Standards and Specifications for State Agencies, Federal**
986 **Entities, and Other Specified Entities.**

987 (A) As an alternative to submitting erosion and sediment control plans for its land-disturbing
988 activities, the Virginia Department of Transportation must, and any other state agency or
989 federal entity may, submit standards and specifications for its conduct of land-disturbing
990 activities to the Virginia Department of Environmental Quality for approval. Approved
991 standards and specifications must be consistent with the VESMA and Article 2 of Part V of
992 the Virginia Erosion and Stormwater Management Regulations.

993 (B) As an alternative to submitting erosion and sediment control plans, electric, natural gas, and
994 telephone utility companies, interstate and intrastate natural gas pipeline companies, railroad
995 companies and authorities created pursuant to Va. Code § 15.2-5102 may submit standards and
996 specifications to Virginia Department of Environmental Quality for approval that describe how
997 land-disturbing activities must be conducted. Such standards and specifications may be
998 submitted for the following types of projects:

999 (1) Construction, installation, or maintenance of electric transmission and distribution lines,
1000 oil or gas transmission and distribution pipelines, communication utility lines, and water
1001 and sewer lines; and

1002 (2) Construction of the tracks, rights-of-way, bridges, communication facilities, and other
1003 related structures and facilities of a railroad company.

1004 (C) As an alternative to submitting erosion and sediment control plans, any person engaging in
1005 more than one jurisdiction in the creation and operation of a wetland mitigation or stream
1006 restoration bank that has been approved and is operated in accordance with applicable federal
1007 and state guidance, laws, or regulations for the establishment, use, and operation of a wetlands
1008 mitigation or stream restoration bank, pursuant to a mitigation banking instrument signed by
1009 the department, the Virginia Marine Resources Commission, or the U.S. Army Corps of
1010 Engineers, may submit standards and specifications to the Department of Environmental
1011 Quality for approval that describe how land-disturbing activities must be conducted.

1012 (D) Approval of standards and specifications by the Virginia Department of Environmental
1013 Quality does not relieve the owner or operator of the duty to comply with any other applicable
1014 county ordinances or regulations.

1015
1016 **ARTICLE 3. – Stormwater Management: Plan Requirements**

1017

1018 **Section 124.1-3-1. - Stormwater Pollution Prevention Plan Requirements.**

1019 (A) Stormwater pollution prevention plans must include an approved erosion and sediment control
1020 plan, an approved stormwater management plan, a pollution prevention plan for regulated land-
1021 disturbing activities, and a description of any additional control measures necessary to address
1022 a TMDL pursuant to subsection E of this section.

1023 (B) Erosion and sediment control plans must be designed and implemented throughout
1024 construction activities consistent with the requirements of Section 124.1-6-2 and must be
1025 approved by the County prior to any land disturbance.

1026 (C) Stormwater management plans must be designed and implemented consistent with the
1027 requirements of Section 124.1-3-2 throughout all construction activities and must be approved
1028 by the County prior to any land disturbance.

1029 (D) Pollution prevention plans identifying potential sources of pollutants that may reasonably be
1030 expected to affect the quality of stormwater discharges from the construction site and describe
1031 control measures that will be used to minimize pollutants in stormwater discharges from the
1032 construction site must be developed before land disturbance commences.

1033 (E) In addition to the requirements of subsections A through D of this section, if a specific
1034 wasteload allocation for a pollutant has been established in an approved TMDL and is assigned
1035 to stormwater discharges from a construction activity, additional control measures must be
1036 identified and implemented by the operator so that discharges are consistent with the
1037 assumptions and requirements of the wasteload allocation.

1038 (F) The stormwater pollution prevention plan (SWPPP) must address the following requirements
1039 as specified in 40 CFR 450.21, to the extent otherwise required by state law or regulations and
1040 any applicable requirements of a permit:

1041 (1) Control of stormwater volume and velocity within the site to minimize soil erosion;

1042 (2) Control of stormwater discharges, including both peak flow rates and total stormwater
1043 volume, to minimize erosion at outlets and to minimize downstream channel and stream
1044 bank erosion;

1045 (3) Minimization of the amount of soil exposed during construction activity;

1046 (4) Minimization of the disturbance of steep slopes;

1047 (5) Minimization of sediment discharges from the site. The design, installation, and
1048 maintenance of erosion and sediment controls must address factors such as the amount,
1049 frequency, intensity, and duration of precipitation, the nature of resulting stormwater
1050 runoff, and soil characteristics, including the range of soil particle sizes expected to be
1051 present on the site;

1052 (6) Provisions for and maintenance of natural buffers around surface waters, direct stormwater
1053 to vegetated areas to increase sediment removal, and maximize stormwater infiltration,
1054 unless infeasible;

1055 (7) Minimization of soil compaction and, unless infeasible, preserve topsoil;

1056 (8) Stabilization of disturbed areas must, at a minimum, be initiated immediately whenever
1057 any clearing, grading, excavating, or other earth disturbing activities have permanently
1058 ceased on any portion of the site, or temporarily ceased on any portion of the site and will
1059 not resume for a period exceeding 14 calendar days. Stabilization must be completed within
1060 a period of time determined by the County. In arid, semi-arid, and drought-stricken areas
1061 where initiating vegetative stabilization measures immediately is infeasible, alternative
1062 stabilization measures must be employed as specified by the County; and

1063 (9) Utilization of outlet structures that withdraw water from the surface, unless infeasible, when
1064 discharging from basins and impoundments.

1065 (G) The SWPPP must be timely amended whenever there is a change in design, construction,
1066 operation, or maintenance that has a significant effect on the discharge of pollutants to state
1067 waters and that has not been previously addressed in the SWPPP. The SWPPP must be
1068 maintained at a central location onsite. If an onsite location is unavailable, notice of the
1069 SWPPP's location must be posted near the main entrance at the construction site.

1070

1071 **Section 124.1-3-2. - Stormwater Management Plan Requirements.**

1072 (A) Stormwater management plans must be developed and submitted to the County and must be
1073 implemented as approved or modified by the County in accordance with the applicable
1074 technical criteria set forth in Article 4 or Article 5 of this Chapter, as applicable, to the entire
1075 land-disturbing activity. Individual lots in new residential, commercial, or industrial
1076 developments, including those developed under subsequent owners, are not considered
1077 separate land-disturbing activities.

1078 (B) Stormwater management plans must consider all sources of surface runoff and all sources of
1079 subsurface and groundwater flows converted to surface runoff.

1080 (C) A complete stormwater management plan must include the following elements:

1081 (1) Information on the type of and location of stormwater discharges, information on the
1082 features to which stormwater is being discharged including surface waters or karst features
1083 if present, and predevelopment and post-development drainage areas;

1084 (2) Contact information including the name, address, telephone number, and email address of
1085 the owner and the tax reference number and parcel number of the property or properties
1086 affected;

1087 (3) A narrative that includes a description of current site conditions and final site conditions or
1088 if allowed by the County, the information provided and documented during the review
1089 process that addresses the current and final site conditions;

1090 (4) A general description of the proposed stormwater management facilities and the
1091 mechanism through which the facilities will be operated and maintained after construction
1092 is complete;

1093 (5) Information on the proposed stormwater management facilities, including (i) detailed
1094 narrative on the conversion to a long-term stormwater management facility if the facility
1095 was used as a temporary ESC measure; (ii) the type of facilities; (iii) location, including

- 1096 geographic coordinates; (iv) acres treated; and (v) the surface waters or karst features into
1097 which the facility will discharge;
- 1098 (6) Hydrologic and hydraulic computations, including runoff characteristics;
- 1099 (7) Documentation and calculations verifying compliance with the water quality and quantity
1100 requirements of this chapter;
- 1101 (8) A map of the site that depicts the topography of the site and includes:
- 1102 (a) All contributing drainage areas;
- 1103 (b) Existing streams, ponds, culverts, ditches, wetlands, other water bodies, and
1104 floodplains;
- 1105 (c) Soil types, geologic formations if karst features are present in the area, forest cover,
1106 and other vegetative areas;
- 1107 (d) Current land use including existing structures, roads, and locations of known utilities
1108 and easements;
- 1109 (e) Sufficient information on adjoining parcels to assess the impacts of stormwater from
1110 the site on these parcels;
- 1111 (f) The limits of clearing and grading, and the proposed drainage patterns on the site;
- 1112 (g) Proposed buildings, roads, parking areas, utilities, and stormwater management
1113 facilities; and
- 1114 (h) Proposed land use with tabulation of the percentage of surface area to be adapted to
1115 various uses, including planned locations of utilities, roads, and easements;
- 1116 (9) If an operator intends to meet the requirements established in Sections 124.1-4-2 and 124.1-
1117 4-4 through the use of offsite compliance options, where applicable, then a letter of
1118 availability from the offsite provider must be included; and
- 1119 (10) If payment of a fee is required with the stormwater management plan submission to the
1120 County, the fee in accordance with Appendix Q of the Code must have been submitted.
- 1121 (D) All final plan elements, specifications, or calculations of the stormwater management plans
1122 whose preparation requires a license under Chapter 4 (§ 54.1-400 et seq.) or 22 (§ 54.1-2200
1123 et seq.) of Title 54.1 of the Code of Virginia must be appropriately signed and sealed by a
1124 professional who is licensed to engage in practice in the Commonwealth of Virginia. Nothing
1125 in this subsection authorizes any person to engage in practice outside that person's area of
1126 professional competence.

1127

1128 **Section 124.1-3-3. Pollution Prevention Plans.**

- 1129 (A) A plan for implementing pollution prevention measures during construction activities must be
1130 developed, implemented, and updated as necessary. The pollution prevention plan must detail
1131 the design, installation, implementation, and maintenance of effective pollution prevention
1132 measures as specified in 40 CFR 450.21(d) to minimize the discharge of pollutants. At a
1133 minimum, such measures must be designed, installed, implemented, and maintained to:

- 1134 (1) Minimize the discharge of pollutants from equipment and vehicle washing, wheel wash
 1135 water, and other wash waters. Wash waters must be treated in a sediment basin or
 1136 alternative control that provides equivalent or better treatment prior to discharge;
- 1137 (2) Minimize the exposure of building materials, building products, construction wastes, trash,
 1138 landscape materials, fertilizers, pesticides, herbicides, detergents, sanitary waste, and other
 1139 materials present on the site to precipitation and to stormwater; and
- 1140 (3) Minimize the discharge of pollutants from spills and leaks and implement chemical spill
 1141 and leak prevention and response procedures.
- 1142 (B) The pollution prevention plan shall include effective best management practices to prohibit the
 1143 following discharges in accordance with 40 CFR 450.21(e):
- 1144 (1) Wastewater from washout of concrete, unless managed by an appropriate control;
- 1145 (2) Wastewater from washout and cleanout of stucco, paint, form release oils, curing
 1146 compounds, and other construction materials;
- 1147 (3) Fuels, oils, or other pollutants used in vehicle and equipment operation and maintenance;
 1148 and
- 1149 (4) Soaps or solvents used in vehicle and equipment washing.
- 1150 (C) Discharges from dewatering activities, including discharges from dewatering of trenches and
 1151 excavations, are prohibited unless managed by appropriate controls in accordance with 40 CFR
 1152 450.21(c).

1154 **ARTICLE 4. - Water Quantity and Water Quality Technical Criteria for Regulated Land-**
 1155 **Disturbing Activity**

1156

1157 **Section 124.1-4-1. - Applicability.**

1158 Except as provided for in Section 124.1-2-2, this Article establishes the minimum technical criteria
 1159 that must be employed to protect the quality and quantity of state waters from the potential harm
 1160 of unmanaged stormwater runoff resulting from land-disturbing activities.

1161

1162 **Section 124.1-4-2. - Water Quality Design Criteria Requirements.**

- 1163 (A) In order to protect the quality of state waters and to control the discharge of stormwater
 1164 pollutants from regulated activities, the following minimum design criteria and standards for
 1165 stormwater management must be applied to the site:
- 1166 (1) New development. The total phosphorus load of new development projects must not
 1167 exceed 0.41 pounds per acre per year, as calculated pursuant to Section 124.1-4-3.
- 1168 (2) Development on prior developed lands.

1169 (a) For land-disturbing activities disturbing greater than or equal to one acre that result in
1170 no net increase in impervious cover from the predevelopment condition, the total
1171 phosphorus load must be reduced at least 20% below the predevelopment total
1172 phosphorus load.

1173 (b) For regulated land-disturbing activities disturbing less than one acre that result in no
1174 net increase in impervious cover from the predevelopment condition, the total
1175 phosphorus load must be reduced at least 10% below the predevelopment total
1176 phosphorus load.

1177 (c) For land-disturbing activities that result in a net increase in impervious cover over the
1178 predevelopment condition, the design criteria for new development must be applied to
1179 the increased impervious area. Depending on the area of disturbance, the criteria of
1180 subdivisions a or b above, must be applied to the remainder of the site.

1181 (d) In lieu of subdivision c, the total phosphorus load of a linear development project
1182 occurring on prior developed lands shall be reduced 20% below the predevelopment
1183 total phosphorus load.

1184 (e) The total phosphorus load shall not be required to be reduced to below the applicable
1185 standard for new development unless a more stringent standard has been established by
1186 the County.

1187 (B) The Board has established a Water Supply Protection Overlay District (WSPOD) in the
1188 Occoquan Watershed to prevent water quality degradation of the Occoquan Reservoir due to
1189 pollutant loadings within the watershed. WSPOD boundaries have been established on the
1190 Official Zoning Map. Any subdivision that is subject to the provisions of Chapter 101 of the
1191 County Code or any use requiring the approval of a site plan in accordance with the provisions
1192 of subsection 8100.7 must provide water quality control measures designed to reduce the
1193 projected phosphorus runoff pollution by one-half for the proposed use. Such water quality
1194 control measures or Best Management Practices (BMPs) will be reviewed, modified, waived,
1195 or approved by the LDS Director in accordance with the Public Facilities Manual. The
1196 requirement for BMPs may be modified or waived only where existing site characteristics
1197 make the provision impractical or unreasonable on-site, an alternative provision is not or
1198 cannot be accommodated off-site, and where it can be established that the modification or
1199 waiver will not affect the achievement of the water quality goals for the public water supply
1200 watershed as set forth in the Comprehensive Plan.

1201 (C) Compliance with subsections A and B above must be determined in accordance with Section
1202 124.1-4-3.

1203 (D) Requirements of all applicable TMDL action plans developed by the County in accordance
1204 with the County's MS4 permit must be met.

1205

1206 **Section 124.1-4-3. - Water Quality Compliance.**

- 1207 (A) Compliance with the water quality design criteria set out in subsections A and B of Section
1208 124.1-4-2 will be determined by utilizing the Virginia Runoff Reduction Method (Instructions
1209 and Documentation, March 28, 2011) or another equivalent methodology that is approved by
1210 the DEQ.
- 1211 (B) The BMPs listed in 9 VAC 25-875-590.B are approved for use, subject to the restrictions and
1212 conditions in the PFM, as necessary to effectively reduce the phosphorus load and runoff
1213 volume in accordance with the Virginia Runoff Reduction Method. Other approved BMPs
1214 found through the Virginia Stormwater BMP Clearinghouse may also be utilized, subject to
1215 review and approval by the Director. Design specifications and the pollutant removal
1216 efficiencies for all approved BMPs are found through the Virginia Stormwater BMP
1217 Clearinghouse. Modifications to the design specifications, to address local requirements, are
1218 included in the PFM.
- 1219 (C) Nonproprietary BMPs differing from those listed in 9 VAC 25-875-590.B may be reviewed
1220 and approved for use by the director of the DEQ in accordance with procedures established by
1221 the DEQ.
- 1222 (D) Proprietary BMPs listed through the Virginia Stormwater BMP Clearinghouse are approved
1223 for use in accordance with the Virginia Runoff Reduction Method. Any proprietary BMP
1224 approved for use after July 1, 2020, must meet the requirements of Va. Code § 62.1-
1225 44.15:28(A)(9).
- 1226 (E) The Director may establish limitations on the use of specific BMPs in accordance with Va.
1227 Code § 62.1-44.15:33.
- 1228 (F) Where a site drains to more than one HUC, the pollutant load reduction requirements must be
1229 applied independently within each HUC unless reductions are achieved in accordance with a
1230 comprehensive watershed stormwater management plan in accordance with Section 124.1-4-
1231 9. Pollutant load reduction requirements to meet TMDL action plans developed by the County
1232 in accordance with the County's MS4 permit must be applied independently to the areas of the
1233 site subject to the TMDL.
- 1234 (G) Offsite alternatives where allowed in accordance with Section 124.1-4-5 may be utilized to
1235 meet the design criteria of subsection A of Section 124.1-4-2.
- 1236 (H) Any publicly owned treatment works that is permitted under the watershed general VPDES
1237 permit pursuant to Va. Code § 62.1-44.19:14 and is constructing or expanding the treatment
1238 works, wastewater collection system, or other facility used for public wastewater utility
1239 operations may, in accordance with Va. Code § 62.1-44.19:21.2 C, permanently retire a portion
1240 of the publicly owned treatment works' wasteload allocation to meet the design criteria of
1241 subsection A of Section 124.1-4-2. Notice must be given by such applicant to the County and
1242 to the DEQ.

1243

1244 **Section 124.1-4-4. - Water Quantity.**

1245 (A) Channel protection and flood protection must be addressed in accordance with the minimum
1246 standards set out in this section. Compliance with the minimum standards set out in this section
1247 will be deemed to satisfy the requirements of subdivision 19 of 9 VAC 25-875-560.

1248 (B) Channel protection. Concentrated stormwater flow must be released into a stormwater
1249 conveyance system and must meet criteria 1, 2, or 3 of this subsection, where applicable, from
1250 the point of discharge to a point to the limits of analysis in Section 124.1-4-4.B.5 as
1251 demonstrated by use of acceptable hydrologic and hydraulic methodologies.

1252 (1) Manmade stormwater conveyance systems. When stormwater from a development is
1253 discharged to a manmade stormwater conveyance system, following the land-disturbing
1254 activity, either:

1255 (a) The manmade stormwater conveyance system must convey the post-development peak
1256 flow rate from the two-year 24-hour storm event without causing erosion of the system.
1257 Detention of stormwater or downstream improvements may be incorporated into the
1258 approved land-disturbing activity to meet this criterion, at the discretion of the Director;
1259 or

1260 (b) The peak discharge requirements for concentrated stormwater flow to natural
1261 stormwater conveyance systems in Section 124.1-4-4.B.3(a) or 3(b) must be met.

1262 (2) Restored stormwater conveyance systems. When stormwater from a development is
1263 discharged to a restored stormwater conveyance system that has been restored using natural
1264 channel design concepts, following the land-disturbing activity, either:

1265 (a) The development must be consistent, in combination with other stormwater runoff,
1266 with the design parameters of the restored stormwater conveyance system that is
1267 functioning in accordance with the design objectives; or

1268 (b) The peak discharge requirements for concentrated stormwater flow to natural
1269 stormwater conveyance systems in Section 124.1-4-4.B.3(a) or 3(b) must be met.

1270 (3) Natural stormwater conveyance systems. When stormwater from a development is
1271 discharged to a natural stormwater conveyance system, the maximum peak flow rate from
1272 the one-year 24-hour storm following the land-disturbing activity must be calculated by
1273 one of the following:

1274 (a) In accordance with the following methodology:

1275
$$Q_{\text{Developed}} < (Q_{\text{Forest}} * RV_{\text{Forest}}) / RV_{\text{Developed}}$$

1276 Where:

1277 $Q_{\text{Developed}}$ = The allowable peak flow rate of runoff from the developed site.

1278 $RV_{\text{Developed}}$ = The volume of runoff from the site in the developed condition.

1279 Q_{Forest} = The peak flow rate of runoff from the site in a forested condition.

1280 RV_{Forest} = The volume of runoff from the site in a forested condition.

1281 (b) In accordance with another methodology that is determined by the Director to achieve
 1282 equivalent results and is approved by the DEQ.

1283 (c) If the maximum peak flow rate for the 2-year 24-hour storm can be conveyed within
 1284 the system from the point of discharge to the limit of analysis in Section 124.1-4-4.B.6
 1285 without causing erosion, the maximum peak flow rate from the one-year 24-hour storm
 1286 following the land-disturbing activity may be calculated in accordance with the
 1287 following methodology:

1288 $Q_{\text{Developed}} \leq \text{I.F.} * (Q_{\text{Pre-Developed}} * RV_{\text{Pre-Developed}}) / RV_{\text{Developed}}$

1289 Under no condition shall $Q_{\text{Developed}}$ be greater than $Q_{\text{Pre-Developed}}$

1290 Where:

1291 I.F. (Improvement Factor) = 0.8 for sites > 1 acre or 0.9 for sites < 1 acre.

1292 $Q_{\text{Developed}}$ = The allowable peak flow rate of runoff from the developed site.

1293 $RV_{\text{Developed}}$ = The volume of runoff from the site in the developed condition.

1294 $Q_{\text{Pre-Developed}}$ = The peak flow rate of runoff from the site in a pre-developed condition.

1295 $RV_{\text{Pre-Developed}}$ = The volume of runoff from the site in a pre-developed condition.

1296 (4) If Section 124.1-4-4.B.3(a) or 3(b) is used to show compliance with the channel protection
 1297 criteria, the downstream review is limited to providing cross-sections to show a defined
 1298 channel, which may include sections of natural streams with braided channels or wetlands
 1299 as determined by the Director, or man-made drainage facility for the extent of review
 1300 described in Section 124.1-4-4.B.6.

1301 (5) Limits of analysis. Unless Section 124.1-4-4.B.3 is utilized to show compliance with the
 1302 channel protection criteria, stormwater conveyance systems must be analyzed for
 1303 compliance with channel protection criteria to a point where either:

- 1304 (a) Based on land area, the site's contributing drainage area is less than or equal to 1.0%
1305 of the total watershed area; or
- 1306 (b) Based on peak flow rate, the site's peak flow rate from the one-year 24-hour storm is
1307 less than or equal to 1.0% of the existing peak flow rate from the one-year 24-hour
1308 storm prior to the implementation of any stormwater quantity control measures.
- 1309 (6) Alternative limits of analysis. If Section 124.1-4-4.B.3 is used to show compliance with
1310 the channel protection criteria above, the downstream limit of analysis may extend to a
1311 point where:
- 1312 (a) Based on land area, the site's contributing drainage area is less than or equal to 1.0%
1313 of the total watershed area; or
- 1314 (b) Based on peak flow rate, the site's peak flow rate from the one-year 24-hour storm is
1315 less than or equal to 1.0% of the existing peak flow rate from the one-year 24-hour
1316 storm prior to the implementation of any stormwater quantity control measures; or
- 1317 (c) To a point that is at least 150 feet downstream of a point where the receiving pipe or
1318 channel is joined by another that has a drainage area that is at least 90 percent of the
1319 size of the first drainage area at the point of confluence; or
- 1320 (d) To a point that is at least 150 feet downstream of a point where the drainage area is 360
1321 acres or greater.
- 1322 (C) Flood protection. Concentrated stormwater flow must be released into a stormwater
1323 conveyance system and must meet criteria 1, 2, or 3 below, where applicable, from the point
1324 of discharge to a point to the limits of analysis in Section 124.1-4-4.C.5 as demonstrated by
1325 use of acceptable hydrologic and hydraulic methodologies:
- 1326 (1) Concentrated stormwater flow to stormwater conveyance systems that currently do not
1327 experience localized flooding during the 10-year 24-hour storm event. The point of
1328 discharge releases stormwater into a stormwater conveyance system that, following the
1329 land-disturbing activity, confines the post-development peak flow rate from the 10-year
1330 24-hour storm event within the stormwater conveyance system. Detention of stormwater
1331 or downstream improvements may be incorporated into the approved land-disturbing
1332 activity to meet this criterion, at the discretion of the Director.
- 1333 (2) Concentrated stormwater flow to stormwater conveyance systems that currently experience
1334 localized flooding during the 10-year 24-hour storm event. The point of discharge releases
1335 stormwater into a stormwater conveyance system that, following the land-disturbing
1336 activity, confines the post-development peak flow rate from the 10-year 24-hour storm
1337 event within the stormwater conveyance system to avoid the localized flooding. Detention
1338 of stormwater or downstream improvements may be incorporated into the approved land-
1339 disturbing activity to meet this criterion, at the discretion of the Director.

- 1340 (3) Localized flooding is defined as follows:
- 1341 (a) For manmade stormwater conveyance systems, localized flooding occurs when: the
1342 capacity of the channel, pipe system, or culvert is exceeded for the 10-year 24-hour
1343 storm event or the design storm, whichever is greater; or existing dwellings or buildings
1344 constructed under an approved building permit are flooded by the 100-year storm event.
- 1345 (b) For natural stormwater conveyance systems, localized flooding occurs when: the
1346 capacity of the channel, or a system of braided channels or wetlands as determined by
1347 the Director, is exceeded for the 2-year 24-hour storm event; or existing dwellings or
1348 buildings constructed under an approved building permit are flooded by the 100-year
1349 storm event.
- 1350 (c) For a restored stormwater conveyance system that has been designed using natural
1351 channel design concepts, localized flooding occurs when: the capacity of the channel
1352 and overbanks are exceeded for the stated design storm; or existing dwellings or
1353 buildings constructed under an approved building permit are flooded by the 100-year
1354 storm event.
- 1355 (4) As an alternative to criteria 1 or 2 above, detention of stormwater may be provided that
1356 releases the post-development peak flows for the 2-year 24-hour storm event and the 10-
1357 year 24-hour storm event at rates that are determined utilizing the method in Section 124.1-
1358 4-4.B.3(a) or 3(b). If this method is used, the downstream review analysis shall be limited
1359 to providing cross-sections to show a defined channel, which may include sections of
1360 streams with braided channels or wetlands as determined by the Director, or man-made
1361 drainage facility, and checking for flooding of existing dwellings or buildings constructed
1362 under an approved building permit from the 100-year storm event for the extent of review
1363 described in Section 124.1-4-4.C.6.
- 1364 (5) Limits of analysis. Unless Section 124.1-4-4.C.4 is utilized to comply with the flood
1365 protection criteria, stormwater conveyance systems must be analyzed for compliance with
1366 flood protection criteria to a point where:
- 1367 (a) The site's contributing drainage area is less than or equal to 1.0% of the total watershed
1368 area draining to a point of analysis in the downstream stormwater conveyance system;
1369 or
- 1370 (b) Based on peak flow rate, the site's peak flow rate from the 10-year 24-hour storm event
1371 is less than or equal to 1.0% of the existing peak flow rate from the 10-year 24- hour
1372 storm event prior to the implementation of any stormwater quantity control measures;
1373 or
- 1374 (c) The stormwater conveyance system enters a mapped floodplain or other flood prone
1375 area, adopted by ordinance, which includes any Special Flood Hazard Area depicted
1376 on the County's Flood Insurance Rate Map or any floodplain included in Appendix A
1377 of the Code.

1378 (6) Alternative limits of analysis. If Section 124.1-4-4.C.4 is utilized to comply with the flood
1379 protection criteria, or the detention requirements of Section 124.1-4-4.D are met and the
1380 receiving conveyance system complies with the flood protection criteria from the point of
1381 discharge to the limits of analysis in this subdivision, the downstream limit of analysis may
1382 extend to a point where:

1383 (a) The site's contributing drainage area is less than or equal to 1.0% of the total watershed
1384 area draining to a point of analysis in the downstream stormwater conveyance system;
1385 or

1386 (b) Based on peak flow rate, the site's peak flow rate from the 10-year 24-hour storm event
1387 is less than or equal to 1.0% of the existing peak flow rate from the 10-year 24-hour
1388 storm event prior to the implementation of any stormwater quantity control measures;
1389 or

1390 (c) The stormwater conveyance system enters a mapped floodplain or other flood prone
1391 area, adopted by ordinance; or

1392 (d) To a point that is at least 150 feet downstream of a point where the receiving pipe or
1393 channel is joined by another that has a drainage area that is at least 90 percent of the
1394 size of the first drainage area at the point of confluence; or

1395 (e) To a point that is at least 150 feet downstream of a point where the drainage area is 360
1396 acres or greater.

1397 (7) If an existing dwelling or a building constructed under an approved building permit, which
1398 is located within the extent of review described in Section 124.1-4-4.C.6, is flooded by the
1399 100-year storm, the peak flow of the 100-year storm at the development site must be
1400 reduced to a level below the pre-development based on the methodology in Section 124.1-
1401 4-4.B.3(a) or 3(b).

1402 (D) Detention. Unless waived by the Director, the post-development peak flow for the 2-year 24-
1403 hour storm event must be released at a rate that is equal to or less than the pre-development
1404 peak flow rate from the 2-year 24-hour storm event and the post-development peak flow for
1405 the 10-year 24-hour storm event must be released at a rate that is less than or equal to the pre-
1406 development peak flow rate from the 10-year 24-hour storm event. In the Four Mile Run
1407 watershed, the post-development peak flow for the 100-year storm event must be released at a
1408 rate that is equal to or less than the predevelopment peak flow rate from the 100-year storm
1409 unless it is contraindicated by the watershed model developed for the Four Mile Run
1410 Watershed Management Program.

1411 (E) Increased volumes of sheet flow resulting from pervious or disconnected impervious areas, or
1412 from physical spreading of concentrated flow through level spreaders, must be identified and
1413 evaluated for potential impacts on down-gradient properties or resources. Increased volumes
1414 of sheet flow that will cause or contribute to erosion, sedimentation, or flooding of down
1415 gradient properties or resources must be diverted to a stormwater management facility or a

1416 stormwater conveyance system that conveys the runoff without causing down-gradient
1417 erosion, sedimentation, or flooding. If all runoff from the site is sheet flow and the conditions
1418 of this subsection are met, no further water quantity controls are required.

1419 (F) For purposes of computing pre-development runoff, all pervious lands on the site will be
1420 assumed to be in good hydrologic condition in accordance with the U.S. Department of
1421 Agriculture's Natural Resources Conservation Service (NRCS) standards, regardless of
1422 conditions existing at the time of computation. Predevelopment runoff calculations utilizing
1423 other hydrologic conditions may be utilized provided that it is demonstrated to and approved
1424 by the Director that actual site conditions warrant such considerations.

1425 (G) Pre-development and post-development runoff characteristics and site hydrology must be
1426 verified by site inspections, topographic surveys, available soil mapping or studies, and
1427 calculations consistent with good engineering practices. Guidance provided in the Virginia
1428 Stormwater Management Handbook and by the Virginia Stormwater BMP Clearinghouse are
1429 considered appropriate practices as modified and supplemented by the Public Facilities
1430 Manual.

1431

1432 **Section 124.1-4-5. - Offsite Compliance Options.**

1433 (A) The Director, at his discretion, may allow an operator to use the following offsite compliance
1434 options to meet required phosphorus nutrient reductions:

1435 (1) Offsite controls utilized in accordance with a comprehensive stormwater management plan
1436 adopted pursuant to Section 124.1-4-9 for the local watershed within which a project is
1437 located;

1438 (2) A locality pollutant loading pro rata share program established pursuant to Va. Code §
1439 15.2-2243 or similar local funding mechanism;

1440 (3) The nonpoint nutrient offset program established pursuant to Va. Code § 62.1-44.15:35;

1441 (4) Any other offsite options approved by an applicable state agency or state board; and

1442 (5) When an operator has additional properties available within the same HUC or upstream
1443 HUC that the land-disturbing activity directly discharges to or within the same watershed
1444 as determined by the Director, offsite stormwater management facilities on those properties
1445 may be utilized to meet the required phosphorus nutrient reductions from the land-
1446 disturbing activity.

1447 (B) Notwithstanding subsection A, and pursuant to Va. Code § 62.1-44.15:35, operators will be
1448 allowed to utilize offsite options identified in subsection A under any of the following
1449 conditions:

1450 (1) Less than five acres of land will be disturbed;

1451 (2) The postconstruction phosphorus control requirement is less than 10 pounds per year; or

1452 (3) At least 75% of the required phosphorus nutrient reductions are achieved on-site. If at least
1453 75% of the required phosphorus nutrient reductions cannot be met on-site, and the operator
1454 can demonstrate to the satisfaction of the Director that (i) alternative site designs have been
1455 considered that may accommodate on-site best management practices, (ii) on-site best
1456 management practices have been considered in alternative site designs to the maximum
1457 extent practicable, (iii) appropriate on-site best management practices will be implemented,
1458 and (iv) full compliance with post-development nonpoint nutrient runoff compliance
1459 requirements cannot practicably be met on-site, then the required phosphorus nutrient
1460 reductions may be achieved, in whole or in part, through the use of off-site compliance
1461 options.

1462 (C) Notwithstanding subsections A and B, offsite options are not allowed:

1463 (1) Unless the selected offsite option achieves the necessary nutrient reductions prior to the
1464 commencement of the operator's land-disturbing activity. In the case of a phased project,
1465 the operator may acquire or achieve offsite nutrient reductions prior to the commencement
1466 of each phase of land-disturbing activity in an amount sufficient for each phase.

1467 (2) In contravention of local water quality-based limitations at the point of discharge that are
1468 (i) consistent with the determinations made pursuant to Va. Code § 62.1-44.19:7(B) of the
1469 Virginia Code, (ii) contained in a municipal separate storm sewer system (MS4) program
1470 plan accepted by the Department of Environmental Quality, or (iii) as otherwise may be
1471 established or approved by the State Water Control Board. Such limitations include but are
1472 not limited to the phosphorous reduction requirement in the Water Supply Protection
1473 Overlay District and any applicable nutrient-based TMDL in Fairfax County.

1474 (D) In order to meet the requirements of Section 124.1-4-4, offsite options 1 and 2 of subsection A
1475 above may be utilized.

1476 (E) Failure to generate nutrient credits used pursuant to subsection A in the same or adjacent eight-
1477 digit hydrologic unit code as defined by the United States Geological Survey as the permitted
1478 site in accordance with Va. Code § 62.1-44.15. Nutrient credits outside the same or adjacent
1479 eight-digit hydrologic unit code may only be used if it is determined by the Director that no
1480 credits are available within the same or adjacent eight-digit hydrologic unit code when the
1481 Director accepts the final site design. In such cases, and subject to other limitations imposed
1482 in this section, credits available within the same tributary may be used. Credits from another
1483 tributary cannot be used.

1484

1485 **Section 124.1-4-6. – Design Storms and Hydrologic Methods.**

1486 (A) Unless otherwise specified, the prescribed design storms are the one-year, two-year, and 10-
1487 year 24-hour storms using the site-specific rainfall precipitation frequency data recommended
1488 by the U.S. National Oceanic and Atmospheric Administration (NOAA) Atlas 14. Partial
1489 duration time series must be used for the precipitation data.

1490 (B) Unless otherwise specified, all hydrologic analyses must be based on the existing watershed
1491 characteristics and how the ultimate development condition of the subject project will be
1492 addressed.

1493 (C) The U.S. Department of Agriculture's Natural Resources Conservation Service (NRCS)
1494 synthetic 24-hour rainfall distribution and models, including, but not limited to TR-55 and TR-
1495 20; hydrologic and hydraulic methods developed by the U.S. Army Corps of Engineers; or
1496 other standard hydrologic and hydraulic methods, must be used to conduct the analyses
1497 described in this part.

1498 (D) For drainage areas of 200 acres or less, the Rational Method may be used for evaluating peak
1499 discharges.

1500 (E) For drainage areas of 200 acres or less, the modified Rational Method may be used for
1501 evaluating volumetric flows to stormwater conveyances.

1502

1503 **Section 124.1-4-7. - Stormwater Harvesting.**

1504 In accordance with Va. Code § 62.1-44.15:28, stormwater harvesting is encouraged for the
1505 purposes of landscape irrigation systems, fire protection systems, flushing water closets and
1506 urinals, and other water handling systems to the extent such systems are consistent with federal,
1507 state, and County regulations.

1508

1509 **Section 124.1-4-8. - Linear Development Projects.**

1510 Linear development projects, not subject to annual standards and specifications administered and
1511 enforced by the Department of Environmental Quality, must control post-development stormwater
1512 runoff in accordance with a site-specific stormwater management plan or a comprehensive
1513 watershed stormwater management plan developed in accordance with this Chapter.

1514

1515 **Section 124.1-4-9. - Comprehensive Stormwater Management Plans.**

1516 The County may develop comprehensive stormwater management plans, to be approved by the
1517 Department of Environmental Quality, that meet the water quality objectives, quantity objectives,
1518 in accordance with Virginia law.

1519

1520 **Section 124.1-4-10. - Stormwater Management Impoundment Structures or Facilities.**

1521 Stormwater management wet ponds and extended detention ponds that are not covered by the
1522 Impounding Structure Regulations (4 VAC 50-20) must, at a minimum, be engineered for
1523 structural integrity for the 100-year storm event and shall comply with the requirements of § 6-
1524 1600 of the PFM.

1525

1526 **ARTICLE 5 - Technical Criteria for Legacy Projects and Projects Subject to Time Limits**
1527 **on Applicability of Approved Design Criteria**

1528

1529 **Section 124.1-5-1. - Definitions.**

1530 For the purposes of Article 5 only, the following words and terms have the following meanings
1531 unless the context clearly indicates otherwise:

1532 *Aquatic bench* means a 10- to 15-foot wide bench around the inside perimeter of a permanent
1533 pool that ranges in depth from zero to 12 inches. Vegetated with emergent plants, the bench
1534 augments pollutant removal, provides habitats, conceals trash and water level fluctuations,
1535 and enhances safety.

1536 *Average land cover condition* means a measure of the average amount of impervious surfaces
1537 within a watershed, assumed to be 16% or a calculated watershed-specific value for the
1538 average land cover condition as approved by the Chesapeake Bay Local Assistance Board
1539 prior to September 13, 2011.

1540 *Bioretention basin* means a water quality BMP engineered to filter the water quality volume
1541 through an engineered planting bed, consisting of a vegetated surface layer (vegetation,
1542 mulch, ground cover), planting soil, and sand bed, and into the in-situ material.

1543 *Bioretention filter* means a bioretention basin with the addition of a sand filter collector pipe
1544 system beneath the planting bed.

1545 *Constructed wetlands* means areas intentionally designed and created to emulate the water
1546 quality improvement function of wetlands for the primary purpose of removing pollutants
1547 from stormwater.

1548 *Development* means a tract of land developed or to be developed as a unit under single
1549 ownership or unified control that is to be used for any business or industrial purpose or is to
1550 contain three or more residential dwelling units.

1551 *Grassed swale* means an earthen conveyance system which is broad and shallow with erosion
1552 resistant grasses and check dams, engineered to remove pollutants from stormwater runoff by
1553 filtration through grass and infiltration into the soil.

1554 *Infiltration facility* means a stormwater management facility that temporarily impounds runoff
1555 and discharges it via infiltration through the surrounding soil. While an infiltration facility
1556 may also be equipped with an outlet structure to discharge impounded runoff, such discharge
1557 is normally reserved for overflow and other emergency conditions. Since an infiltration
1558 facility impounds runoff only temporarily, it is normally dry during nonrainfall periods.
1559 Infiltration basin, infiltration trench, infiltration dry well, and porous pavement shall be
1560 considered infiltration facilities.

1561 *Intensely Developed Area* or *IDA* means an area of existing development and infill sites where
1562 development is concentrated and little of the natural environment remains as of July 1, 1993
1563 and which is so designated on the map of Chesapeake Bay Preservation Areas adopted by the
1564 Board of Supervisors pursuant to Fairfax County Code Section 118-1-9. An IDA must satisfy
1565 at least one of the following conditions as of July 1, 1993: development has severely altered
1566 the natural state of the area such that it has more than 50 percent impervious surface; public
1567 sewer and water systems, or a constructed stormwater drainage system, or both, have been
1568 constructed and serve the area as of the date of adoption of this Chapter; or housing density
1569 is equal to or greater than four dwelling units per acre.

1570 *Nonpoint source pollutant runoff load* or *pollutant discharge* means the average amount of a
1571 particular pollutant measured in pounds per year, delivered in a diffuse manner by stormwater
1572 runoff.

1573 *Planning area* means a designated portion of the parcel on which the land development project
1574 is located. Planning areas shall be established by delineation on a master plan. Once
1575 established, planning areas shall be applied consistently for all future projects.

1576 *Redevelopment* means the substantial alteration, rehabilitation, or rebuilding of a property for
1577 residential, commercial, industrial, or other purposes where there is no net increase in
1578 impervious area by the proposed redevelopment within an RPA and no more than a net
1579 increase in impervious area within an RMA of 20% relative to conditions prior to
1580 redevelopment, or any construction, rehabilitation, rebuilding, or substantial alteration of
1581 residential, commercial, industrial, institutional, recreational, transportation, or utility uses,
1582 facilities or structures within an IDA.

1583 *Resource Management Area* or *RMA* means that component of the Chesapeake Bay
1584 Preservation Area comprised of lands that, if improperly used or developed, have a potential
1585 for causing significant water quality degradation or for diminishing the functional value of
1586 the Resource Protection Area.

1587 *Resource Protection Area* or *RPA* means that component of the Chesapeake Bay Preservation
1588 Area comprised of lands adjacent to water bodies with perennial flow that have an intrinsic
1589 water quality value due to the ecological and biological processes they perform or are sensitive
1590 to impacts which may result in significant degradation of the quality of state waters. In their
1591 natural condition, these lands provide for the removal, reduction, or assimilation of sediments,
1592 nutrients, and potentially harmful or toxic substances from runoff entering the Bay and its

1593 tributaries and minimize the adverse effects of human activities on state waters and aquatic
1594 resources.

1595 *Sand filter* means a contained bed of sand that acts to filter the first flush of runoff. The runoff
1596 is then collected beneath the sand bed and conveyed to an adequate discharge point or
1597 infiltrated into the in-situ soils.

1598 *Shallow marsh* means a zone within a stormwater extended detention basin that exists from
1599 the surface of the normal pool to a depth of six to 18 inches, and has a large surface area and,
1600 therefore, requires a reliable source of baseflow, groundwater supply, or a sizeable drainage
1601 area, to maintain the desired water surface elevations to support emergent vegetation.

1602 *Stormwater detention basin* or *detention basin* means a stormwater management facility that
1603 temporarily impounds runoff and discharges it through a hydraulic outlet structure to a
1604 downstream conveyance system. While a certain amount of outflow may also occur via
1605 infiltration through the surrounding soil, such amounts are negligible when compared to the
1606 outlet structure discharge rates and are, therefore, not considered in the facility's design. Since
1607 a detention facility impounds runoff only temporarily, it is normally dry during nonrainfall
1608 periods.

1609 *Stormwater extended detention basin* or *extended detention basin* means a stormwater
1610 management facility that temporarily impounds runoff and discharges it through a hydraulic
1611 outlet structure over a specified period of time to a downstream conveyance system for the
1612 purpose of water quality enhancement or stream channel erosion control. While a certain
1613 amount of outflow may also occur via infiltration through the surrounding soil, such amounts
1614 are negligible when compared to the outlet structure discharge rates and, therefore, are not
1615 considered in the facility's design. Since an extended detention basin impounds runoff only
1616 temporarily, it is normally dry during nonrainfall periods.

1617 *Stormwater extended detention basin-enhanced* or *extended detention basin-enhanced* means
1618 an extended detention basin modified to increase pollutant removal by providing a shallow
1619 marsh in the lower stage of the basin.

1620 *Stormwater retention basin* or *retention basin* means a stormwater management facility that
1621 includes a permanent impoundment, or normal pool of water, for the purpose of enhancing
1622 water quality and, therefore, is normally wet, even during nonrainfall periods. Storm runoff
1623 inflows may be temporarily stored above this permanent impoundment for the purpose of
1624 reducing flooding, or stream channel erosion.

1625 *Stormwater retention basin I* or *retention basin I* means a retention basin with the volume of
1626 the permanent pool equal to three times the water quality volume.

1627 *Stormwater retention basin II* or *retention basin II* means a retention basin with the volume
1628 of the permanent pool equal to four times the water quality volume.

1629 *Stormwater retention basin III* or *retention basin III* means a retention basin with the volume
1630 of the permanent pool equal to four times the water quality volume with the addition of an
1631 aquatic bench.

1632 *Vegetated filter strip* means a densely vegetated section of land engineered to accept runoff
1633 as overland sheet flow from upstream development. It shall adopt any natural vegetated form,
1634 from grassy meadow to small forest. The vegetative cover facilitates pollutant removal
1635 through filtration, sediment deposition, infiltration and absorption, and is dedicated for that
1636 purpose.

1637 *Water quality volume* means the volume equal to the first one-half inch of runoff multiplied
1638 by the impervious surface of the land development project.

1639 **Section 124.1-5-2. Applicability.**

1640 This Article specifies the technical criteria for regulated land-disturbing activities that are not
1641 subject to the technical criteria of Article 4 in accordance with Sections 124.1-2-2 and 124.1-2-3.
1642 Regulated land-disturbing activities may comply with the technical criteria of Article 4 in lieu of
1643 the technical requirements of this Article in accordance with Section 124.1-2-2(E).

1644

1645 **Section 124.1-5-3. - General.**

1646 (A) Determination of flooding and channel erosion impacts to receiving streams due to land-
1647 disturbing activities must be measured at each point of discharge from the land disturbance
1648 and such determination must include any runoff from the balance of the watershed that also
1649 contributes to that point of discharge.

1650 (B) The specified design storms must be defined as either a 24-hour storm using the rainfall
1651 distribution recommended by the U.S. Department of Agriculture's Natural Resources
1652 Conservation Service (NRCS) when using NRCS methods or as the storm of critical duration
1653 that produces the greatest required storage volume at the site when using a design method such
1654 as the Modified Rational Method.

1655 (C) For purposes of computing runoff, all pervious lands in the site must be assumed prior to
1656 development to be in good condition (if the lands are pastures, lawns, or parks), with good
1657 cover (if the lands are woods), or with conservation treatment (if the lands are cultivated);
1658 regardless of conditions existing at the time of computation.

1659 (D) Construction of stormwater management facilities or modifications to channels must comply
1660 with all applicable laws, regulations, and ordinances. Evidence of approval of all necessary
1661 permits must be presented.

- 1662 (E) Impounding structures that are not covered by the Impounding Structure Regulations
1663 (4VAC50-20 must, at a minimum, be engineered for structural integrity during the 100-year
1664 storm event and shall comply with the requirements of § 6-1600 of the PFM.
- 1665 (F) Pre-development and post-development runoff rates must be verified by calculations that are
1666 consistent with good engineering practices and the PFM.
- 1667 (G) Outflows from a stormwater management facility or stormwater conveyance system must be
1668 discharged to an adequate channel.
- 1669 (H) Proposed residential, commercial, or industrial subdivisions must apply these stormwater
1670 management criteria to the land disturbance as a whole. Individual lots in new subdivisions
1671 must not be considered separate land-disturbing activities, but rather the entire subdivision
1672 shall be considered a single land development project. Hydrologic parameters must reflect the
1673 ultimate land disturbance and must be used in all engineering calculations.
- 1674 (I) All stormwater management facilities must have an inspection and maintenance plan that
1675 identifies the owner and the responsible party for carrying out the inspection and maintenance
1676 plan.
- 1677 (J) Construction of stormwater management impoundment structures within a Federal Emergency
1678 Management Agency (FEMA) designated 100-year floodplain must be avoided whenever
1679 possible. When this is unavoidable, all stormwater management facility construction must be
1680 in compliance with all applicable regulations under the National Flood Insurance Program, 44
1681 CFR Part 59.
- 1682 (K) Natural channel characteristics must be preserved to the maximum extent practicable.
- 1683 (L) Land-disturbing activities must comply with the VESMA and attendant regulations, as
1684 applicable.
- 1685 (M) Flood control and stormwater management facilities that drain or treat water from multiple
1686 development projects or from a significant portion of a watershed may be allowed in resource
1687 protection areas defined in the Chesapeake Bay Preservation Act provided such facilities are
1688 designed and constructed in accordance with the Act and this ordinance, and provided that (i)
1689 the County has conclusively established that the location of the facility within the resource
1690 protection area is the optimum location; (ii) the size of the facility is the minimum necessary
1691 to provide necessary flood control, stormwater treatment, or both; and (iii) the facility is
1692 consistent with a comprehensive stormwater management plan developed and approved in
1693 accordance with this ordinance and 9VAC25-875-660 or with a stormwater management plan
1694 that has been approved prior to July 1, 2012, by the State Water Control Board, the Chesapeake
1695 Bay Local Assistance Board prior to its abolishment on July 1, 2012, or the Board of
1696 Conservation and Recreation; (iv) all applicable permits for construction in state or federal
1697 waters must be obtained from the appropriate state and federal agencies, such as the U.S. Army
1698 Corps of Engineers, the department, and the Virginia Marine Resources Commission; (v)
1699 approval was received from the local government prior to construction; and (vi) routine

1700 maintenance is allowed to be performed on such facilities to assure that they continue to
1701 function as designed. It is not the intent of this subdivision to allow a best management practice
1702 that collects and treats runoff from only an individual lot or some portion of the lot to be located
1703 within a resource protection area.

1704

1705 **Section 124.1-5-4. Water Quality.**

1706 (A) For any development or redevelopment, stormwater runoff must be controlled by the use of
1707 BMPs as follows:

1708 (1) For development, the projected total phosphorus runoff pollution load for the proposed
1709 development must be reduced by no less than forty percent compared to phosphorus loads
1710 projected for the development without BMPs. This requirement will not apply to any
1711 development that does not require a site plan under subsection 8100.7 of the Zoning
1712 Ordinance, that does not require subdivision approval under Chapter 101 of the Fairfax
1713 County Code, and that does not result in an impervious area of 18% or greater on the lot or
1714 parcel on which the development will occur.

1715 (2) For development and redevelopment within the Water Supply Protection Overlay District,
1716 the phosphorus removal requirements for the overlay district will apply if such
1717 requirements impose a higher standard than the requirements of this Chapter.

1718 (3) For redevelopment of any property not currently served by one or more BMPs, the total
1719 phosphorus runoff pollution load from the property must be reduced by at least ten (10)
1720 percent from the phosphorus runoff pollution load prior to redevelopment.

1721 (4) For redevelopment of any property that is currently and adequately served by one or more
1722 BMPs, the projected phosphorus runoff pollution load after redevelopment must not exceed
1723 the existing phosphorus runoff pollution load.

1724 (5) BMPs will be reviewed, modified, and/or approved by the Director in accordance with
1725 Article 6 of the Public Facilities Manual in effect on June 30, 2014, except that BMPs must
1726 meet testing and inspection requirements, plan submission requirements, and dam
1727 standards in effect at the time of plan submission.

1728 (B) The following options will be considered to comply with this Section:

1729 (1) Incorporation on the site of BMPs that achieve the required control as set forth in
1730 paragraphs (1) through (5) above. For the purposes of this subsection, the "site" may
1731 include multiple projects or properties that are adjacent to one another or lie within the
1732 same drainage area where a single BMP or a system of BMPs will be utilized by those
1733 projects in common to satisfy water quality protection requirements;

1734 (2) Compliance with a locally adopted regional stormwater management program, which may
1735 include a Virginia Pollution Discharge Elimination System (VPDES) permit issued by the
1736 DEQ or the Virginia Department of Conservation and Recreation to a local government for
1737 its municipally owned separate storm sewer system discharges, that is reviewed and found
1738 by the State Water Control Board or was reviewed and approved by the Soil and Water
1739 Conservation Board to achieve water quality protection equivalent to that required by this
1740 subsection; or

1741 (3) Compliance with a site-specific VPDES permit issued by the DEQ, provided that the local
1742 government specifically determines that the permit requires measures that collectively
1743 achieve water quality protection equivalent to that required by this subsection.

1744 (C) Any maintenance, alteration, use or improvement to an existing structure or use that does not
1745 degrade the quality of surface water discharge, as determined by the LDS Director, may be
1746 exempted from the requirements of subsection A.

1747

1748 **Section 124.1-5-5. - Stream Channel Erosion.**

1749 (A) Properties and receiving waterways downstream of any land-disturbing activity must be
1750 protected from erosion and damage due to changes in runoff rate of flow and hydrologic
1751 characteristics, including, but not limited to, changes in volume, velocity, frequency, duration,
1752 and peak flow rate of stormwater runoff in accordance with the minimum design standards set
1753 out in this section.

1754 (B) Land-disturbing activity must comply with subdivision 19 of 9VAC25-875-560 of the Erosion
1755 and Stormwater Management Regulation, promulgated pursuant to Article 2.3
1756 (§ 62.1-44.15:24 et seq.) of Chapter 3.1 of Title 62.1 of the Virginia Code.

1757 (C) Land-disturbing activity must comply with the requirements of Chapter 6 of the Fairfax County
1758 Public Facilities Manual in effect on June 30, 2014.

1759 (D) In addition to subsections B and C of this section, the County, by local ordinance may, or the
1760 State Water Control Board by state regulation may, adopt more stringent channel analysis
1761 criteria or design standards to ensure that the natural level of channel erosion, to the maximum
1762 extent practicable, will not increase due to the land-disturbing activities. These criteria may
1763 include, but are not limited to, the following:

1764 (1) Criteria and procedures for channel analysis and classification.

1765 (2) Procedures for channel data collection.

1766 (3) Criteria and procedures for the determination of the magnitude and frequency of natural
1767 sediment transport loads.

1768 (4) Criteria for the selection of proposed natural or manmade channel linings.

1769

1770 **Section 124.1-5-6. - Flooding.**

1771 (A) Downstream properties and waterways must be protected from damages from localized
1772 flooding due to changes in runoff rate of flow and hydrologic characteristics, including, but
1773 not limited to, changes in volume, velocity, frequency, duration, and peak flow rate of
1774 stormwater runoff in accordance with the minimum design standards set out in this section.

1775 (B) The ten-year post-developed peak rate of runoff from the development site may not exceed the
1776 ten-year predeveloped peak rate of runoff.

1777 (C) Land-disturbing activity must comply with the requirements of Chapter 6 of the Fairfax County
1778 Public Facilities Manual in effect on June 30, 2014.

1779 (D) Linear development projects will not be required to control post-developed stormwater runoff
1780 for flooding, except in accordance with a watershed or regional stormwater management plan.

1781 **Section 124.1-5-7. - Regional (watershed-wide) Stormwater Management Plans.**

1782 Water quality requirements and where allowed, water quantity requirements, may be achieved in
1783 accordance with Sections 124.1-4-5 and 124.1-4-9.

1784

1785 **ARTICLE 6. – EROSION AND SEDIMENT CONTROL: PLAN REQUIREMENTS AND**
1786 **MINIMUM STANDARDS FOR TECHNICAL CRITERIA**

1787

1788 **Section 124.1-6-1. Applicability.**

1789 This Article sets forth minimum standards for the effective control of soil erosion, sediment
1790 deposition, and nonagricultural runoff.

1791

1792 **Section 124.1-6-2. - Erosion and Sediment Control Plans.**

1793 (A) An erosion and sediment control plan must be filed for any development and the buildings
1794 constructed within, regardless of the phasing of construction. The erosion and sediment control
1795 plan must include all major conservation decisions to ensure that the entire unit of land will be
1796 treated to achieve the conservation objectives in Section 124.1-6-3. In addition to the
1797 mandatory elements, the erosion and sediment control plan may include:

- 1798 (1) Appropriate maps;
- 1799 (2) An appropriate soil and water plan inventory and management information with needed
1800 interpretations; and
- 1801 (3) A record of decisions contributing to conservation treatment.
- 1802 (B) The person responsible for carrying out the plan must provide the name of an individual
1803 holding a certificate who will be in charge of and responsible for carrying out the land-
1804 disturbing activity to the County.
- 1805 (C) If individual lots or sections in a residential development are being developed by different
1806 property owners, all land-disturbing activities related to the building construction must be
1807 covered by an erosion and sediment control plan.
- 1808 (D) Land-disturbing activity of less than 2,500 square feet on individual lots in a residential
1809 development is not exempt from the provisions of the VESMA, ESCL, or this chapter if the
1810 total land-disturbing activity in the development is equal to or greater than 2,500 square feet.

1811

1812 **Section 124.1-6-3. - Erosion and sediment control criteria, techniques, and methods:**
1813 **minimum standards.**

1814 An erosion and sediment control plan consistent with the criteria, techniques, and methods
1815 contained in 9VAC25-875-560 of the VESM Regulation, the Standards & Specifications as
1816 contained in the current Virginia Stormwater Management Handbook and the Public Facilities
1817 Manual except that the minimum standard for design and construction of sediment traps and
1818 sediment basins (9VAC25-875-560(6)) is modified as follows:

- 1819 (a) Temporary Sediment Trap — For land areas designated as Resource Protection Areas
1820 (RPAs), the minimum storage volume is 202 cubic yards per acre of disturbed area. Pipe
1821 outlet sediment traps are required for drainage areas of one to three acres. For land areas
1822 designated as RPAs, pipe outlet sediment traps may also be required for areas of less than
1823 one acre where topographical and drainage conditions are favorable for field
1824 implementation (see Plate 2-11 of the current Public Facilities Manual for details). Stone
1825 outlets for temporary sediment traps under one acre of drainage area outside of RPAs must
1826 be constructed according to current Virginia Stormwater Management Handbook
1827 specifications.
- 1828 (b) Temporary Sediment Basin — For land areas designated as RPAs, the minimum storage
1829 volume is 202 cubic yards per acre of disturbed area.

1830 When the standards vary between the publications, the most stringent standard will apply.

1831

1832 **ARTICLE 7 - Exceptions.**

1833

1834 **Section 124.1-7-1. - Exceptions.**

1835 (A) Upon request by an applicant, the County may waive or modify any of the erosion and
1836 sediment control requirements of Article 6 that are deemed inappropriate or too restrictive for
1837 site conditions if any of the following conditions are met:

1838 (1) At the time of plan submission, an applicant requests a variance to become part of the
1839 approved erosion and sediment control plan. The applicant must explain the reasons for
1840 requesting variances in writing. Specific variances which are allowed by the authority must
1841 be documented in the plan.

1842 (2) During construction, the person responsible for implementing the approved plan may
1843 request a waiver or modification of the requirements in writing from the County. The
1844 County must respond in writing either approving or disapproving the request. If the
1845 Director does not approve the requested waiver or modification within 10 days of receipt
1846 of the request, the request is disapproved. Following disapproval, the applicant may
1847 resubmit the request with additional documentation.

1848 (B) The County may grant exceptions to the provisions of Article 4 of this Chapter. An exception
1849 may be granted provided that (i) the exception is the minimum necessary to afford relief, (ii)
1850 reasonable and appropriate conditions shall be imposed as necessary upon any exception
1851 granted so that the intent of the VESMA and this chapter are preserved, (iii) granting the
1852 exception will not confer any special privileges that are denied in other similar circumstances,
1853 and (iv) exception requests are not based upon conditions or circumstances that are self-
1854 imposed or self-created.

1855 (C) Economic hardship alone is not a sufficient reason to grant an exception from the requirements
1856 of this Chapter.

1857 (D) Under no circumstance can the LDS Director (i) grant an exception to the requirement that the
1858 land-disturbing activity obtain required permits, or (ii) approve the use of a BMP not found
1859 through the Virginia Stormwater BMP Clearinghouse, except where allowed under Article 5
1860 of this Chapter.

1861 (E) Exceptions to requirements for phosphorus reductions are prohibited unless offsite options
1862 available through Section 124.1-4-5 have been considered and found not available.

1863 (F) A record of all exceptions granted must be maintained by the County in accordance with
1864 9VAC25-875-180.

1865

1866 **ARTICLE 8. Enforcement; Penalties.**

1867

1868 **Section 124.1-8-1. - Administrative Enforcement Procedures**

1869 (A) Any person, whether owner, lessee, principal, agent, employee or otherwise, who violates any
1870 of the provisions of this Chapter, or permits any such violations, or fails to comply with any of
1871 the requirements hereof, or who fails to comply with any provision of this Chapter is subject
1872 to these enforcement provisions of this Chapter. The County may pursue enforcement in
1873 accordance with any of the remedies provided herein.

1874 (B) Verbal Warning. Upon becoming aware of any violation of any provisions of this Chapter, the
1875 County may issue a verbal warning.

1876 (C) Notice to Comply. When the County determines that there is a failure to comply with the
1877 permit conditions or conditions of land-disturbance approval, or to obtain an approved plan,
1878 permit, or land-disturbance approval prior to commencing land-disturbing activities the
1879 County may serve a notice to comply, set forth in such notice as a Notice of Violation, on the
1880 owner, permittee, or person conducting land-disturbing activities without an approved plan,
1881 permit, or approval. The Notice of Violation will (i) specify the measures needed to comply
1882 with the permit or land-disturbance approval conditions or shall identify the plan approval or
1883 permit or land-disturbance approval needed to comply with this the Act, and, (ii) specify a
1884 reasonable time within which such measures must be completed. In any instance in which a
1885 required permit or land-disturbance approval has not been obtained, the County may require
1886 immediate compliance. In such instance, the County may simultaneously issue a Notice of
1887 Violation and Stop Work Order as set forth in subsection (E) while the person conducting land-
1888 disturbing activities applies for land-disturbance approval. In any other case, the County may
1889 establish the time for compliance by accounting for the risk of damage to natural resources and
1890 other relevant factors. Notwithstanding any other provision in this subsection, the County may
1891 count any days of noncompliance as days of violation should the County take an enforcement
1892 action.

1893 (D) Service. A Notice of Violation must be served by delivery by facsimile, email, or other
1894 technology; by mailing with confirmation of delivery to the address specified in the permit or
1895 land-disturbance application, if available, or in the land records of the locality; or by delivery
1896 at the site to a person previously identified to the County by the permittee or owner.

1897 (E) Stop Work Order. If a person receiving a Notice of Violation fails to comply within the time
1898 specified therein or a person is conducting land-disturbing activities without an approved plan
1899 or required permit or land-disturbance approval, the County may issue a Stop Work Order
1900 requiring the owner or permittee, or person responsible for carrying out an approved plan, or
1901 the person conducting the land-disturbing activities without an approved plan or required
1902 permit or land-disturbance approval to cease all land-disturbing activities until the violation
1903 has ceased, or an approved plan and required permits and approvals are obtained, and specified
1904 corrective measures have been completed. Such orders become effective upon service on the
1905 person in the manner set forth in subsection (D). The County must lift the order immediately
1906 upon completion and approval of corrective action or upon obtaining an approved plan or any
1907 required permits or approvals.

1908 (F) Emergency Order. Where the alleged noncompliance is causing or presents an imminent and
1909 substantial danger of causing harmful erosion of lands or sediment deposition in waters within
1910 the watersheds of the Commonwealth or otherwise substantially impacting water quality, the
1911 County may issue, without advance notice or procedures, an emergency order directing such
1912 person to cease immediately all land-disturbing activities on the site and must provide an
1913 opportunity for a hearing, after reasonable notice as to the time and place thereof, to such
1914 person, to affirm, modify, amend, or cancel such emergency order.

1915 (G) Consent Order. The County may, with the consent of any person who has violated or failed,
1916 neglected, or refused to obey this Chapter, any condition of the County’s land-disturbance
1917 approval, or any order of the County issued pursuant to this Chapter, issue a consent order.
1918 Such consent order may provide for the payment of civil charges in accordance with Section
1919 124.1-8-3 of this Chapter, not to exceed the limits specified in that section. Such civil charges
1920 are in lieu of any appropriate civil penalty that could be imposed under the Act and this
1921 Chapter. Any civil charges collected must be paid to the treasury of Fairfax County in
1922 accordance with subdivision A 2 of § 62.1-44.15:48 of the Virginia Code.

1923 (H) Appeal of Order. The owner, permittee, or person conducting a land-disturbing activity may
1924 submit a local appeal in accordance with the local appeal procedures described in Section
1925 124.1-8-2, or such person may appeal the issuance of any order directly to the circuit court of
1926 the jurisdiction wherein the violation was alleged to occur or other appropriate court as
1927 provided for in Virginia Code § 62.1-44.15:46 and Section 124.1-8-2(F) of this Chapter.

1928 (I) Notice of Violation by Aggrieved Property Owner.

1929 (1) An aggrieved owner of property sustaining pecuniary damage from soil erosion or
1930 sediment deposition resulting from a violation of an approved plan or required land-
1931 disturbance approval, or from the conduct of a land-disturbing activity commenced without
1932 an approved plan or required land-disturbance approval, may give written notice of an
1933 alleged violation to the County and to the State Water Control Board.

1934 (2) If the County has not responded to the alleged violation in a manner that causes the
1935 violation to cease and abates the damage to the aggrieved owner's property within 30 days
1936 following receipt of the notice from the aggrieved owner, the aggrieved owner may request
1937 that the State Water Control Board conduct an investigation and, if necessary, require the
1938 violator to stop the alleged violation and abate the damage to the property of the aggrieved
1939 owner.

1940 **Section 124.1-8-2. - Local Appeal; Hearings.**

1941 Any person engaging in or proposing to engage in a land-disturbing activity may seek
1942 administrative review of the County’s decision by filing Notice of Intent to Appeal in accordance
1943 with the local appeal procedure set forth below.

1944 (A) The Notice of Intent to Appeal must be submitted to the Director of LDS or the Director of
1945 DPWES as applicable, in writing within ten days after the date of the County’s decision. The
1946 Notice must:

- 1947 (1) be titled "Notice of Intent to Appeal;" and
 1948 (2) state whether the appellant requests a local hearing.
- 1949 (B) Within 21 days after the Notice of Intent to Appeal is submitted to the LDS Director or the
 1950 DPWES Director, the appellant must submit a written appeal to the LDS Director or the
 1951 DPWES Director setting forth the factual, legal, or other bases for the appeal.
- 1952 (C) If the appellant requests a hearing in the Notice of Intent to Appeal, the hearing must be held
 1953 no more than 60 days after the Notice of Intent to Appeal is submitted, unless an extension is
 1954 agreed upon by the appellant and the County. The hearing will be conducted by the LDS
 1955 Director or the DPWES Director and the scope of the appeal is limited to the bases set forth in
 1956 the written appeal. The appellant may appear in person or be represented by counsel and may
 1957 present any information and call any witnesses in support of the appeal.
- 1958 (D) The hearing must be recorded.
- 1959 (E) The LDS Director or the DPWES Director will make a final decision in writing within 14 days
 1960 after either the submission of the written appeal, or if a hearing was held, within 14 days of
 1961 that hearing. The final decision will state the facts upon which the decision is based.
- 1962 (F) If a person fails to file a Notice of Intent to Appeal the County's decision or fails to file a
 1963 written appeal after noticing and intent to appeal, the County's decision becomes a final
 1964 decision. Such final decision is subject to judicial review, provided that an appeal is filed in
 1965 the appropriate court within 30 days from the date of a final written decision adversely
 1966 affecting the rights, duties, or privileges of the person engaging in or proposing to engage in a
 1967 land-disturbing activity.

1968

1969 **Section 124.1-8-3. - Civil penalties.**

- 1970 (A) Any person who violates any applicable provision of the Act, or this Chapter, including those
 1971 adopted pursuant to the conditions of an MS4 permit, or any condition of a local land-
 1972 disturbance approval, or who fails, neglects, or refuses to comply with any order of the County
 1973 or a court, issued as herein provided, will be subject to a civil penalty not to exceed \$32,500
 1974 for each violation within the discretion of the court. Each day of violation of each requirement
 1975 constitutes a separate offense. Such civil penalties must be paid into the treasury of the County
 1976 in which the violation occurred and are to be used solely for stormwater management capital
 1977 projects, including (i) new stormwater best management practices; (ii) stormwater best
 1978 management practice maintenance, inspection, or retrofitting; (iii) stream restoration; (iv) low-
 1979 impact development projects; (v) buffer restoration; (vi) pond retrofitting; and (vii) wetlands
 1980 restoration.
- 1981 (B) Any summons for collection of a civil penalty for any violation of this Chapter will be filed in
 1982 the appropriate Court pursuant to Virginia Code.

1983

1984 **Section 124.1-8-4. - Criminal Penalties.**

1985 (A) Except as otherwise provided in this Chapter or Chapter 3.1 of the Code of Virginia, any
1986 person who willfully or negligently violates (1) any provision of Chapter 3.1 of the Code of
1987 Virginia, any regulation or order of the Board, or any condition of a certificate or land-
1988 disturbance approval of the Board, (2) any land-disturbance approval, ordinance, or order of
1989 the County, or (3) any order of a court shall be guilty of a misdemeanor punishable by
1990 confinement in jail for not more than 12 months and a fine of not less than \$2,500 nor more
1991 than \$32,500, either or both.

1992 (B) Except as otherwise provided in this Chapter or Chapter 3.1 of the Code of Virginia, any person
1993 who knowingly violates (1) any provision of Chapter 3.1 of the Code of Virginia, any
1994 regulation or order of the Board, or any condition of a certificate or land-disturbance approval
1995 of the Board, (2) any land-disturbance approval, ordinance, or order of the County, or (3) any
1996 order of a court issued as herein provided, or who knowingly makes any false statement in any
1997 form required to be submitted under this chapter or knowingly renders inaccurate any
1998 monitoring device or method required to be maintained under this chapter, shall be guilty of a
1999 felony punishable by a term of imprisonment of not less than one year nor more than three
2000 years, or in the discretion of the jury or the court trying the case without a jury, confinement
2001 in jail for not more than 12 months and a fine of not less than \$5,000 nor more than \$50,000
2002 for each violation. Any defendant that is not an individual shall, upon conviction of a violation
2003 under this subsection, be sentenced to pay a fine of not less than \$10,000. Each day of violation
2004 of each requirement shall constitute a separate offense.

2005 (C) Except as otherwise provided in this Chapter or Chapter 3.1 of the Code of Virginia, any person
2006 who knowingly violates any provision of Chapter 3.1 of the Code of Virginia, and who knows
2007 at that time that he thereby places another person in imminent danger of death or serious bodily
2008 harm, shall, upon conviction, be guilty of a felony punishable by a term of imprisonment of
2009 not less than two years nor more than 15 years and a fine of not more than \$250,000, either or
2010 both. A defendant that is not an individual shall, upon conviction of a violation under this
2011 subsection, be sentenced to pay a fine not exceeding the greater of \$1 million or an amount
2012 that is three times the economic benefit realized by the defendant as a result of the offense. The
2013 maximum penalty shall be doubled with respect to both fine and imprisonment for any
2014 subsequent conviction of the same person under this subsection.

2015 (D) Criminal prosecution under this section shall be commenced within three years of discovery
2016 of the offense, notwithstanding the limitations provided in any other statute.

2017

2018 **Section 124.1-8-5. - Injunction.**

2019 The County may apply to the appropriate court in any jurisdiction wherein the land lies to enjoin
2020 a violation or a threatened violation of the provisions of this Chapter or order or the conditions of
2021 a local land-disturbance approval. Any person violating or failing, neglecting, or refusing to obey
2022 any injunction, mandamus, or other remedy obtained pursuant to this Article will be subject, in the
2023 discretion of the court, to a civil penalty that shall be assessed and used in accordance with the
2024 provisions of Section 124.1-8-3.

2025 **ARTICLE 9– Fees.**

2026

2027 **Section 124.1-9-1. - General.**

2028 This Article establishes the fees to cover costs associated with implementation of the County’s
2029 VESMP related to land disturbing activities and issuance of general permit coverage and County
2030 permits. Such fee attributes include the costs associated with plan review, registration statement
2031 review, permit issuance, state-coverage verification, inspections, reporting, database management,
2032 and compliance activities associated with the land-disturbing activities and for program oversight
2033 costs. Fees may also be established for permit maintenance, modification, and transfer.

2034 (A) The fees for individual permits and general permit coverage, permits or registration statements,
2035 and permit transfers are considered separate actions and must be assessed as a separate fee, as
2036 applicable.

2037 (B) Persons whose coverage under the General VPDES Permit for Discharges of Stormwater from
2038 Construction Activities has been revoked must reapply for an Individual Permit for Discharges
2039 of Stormwater from Construction Activities. The fee due shall be as specified under 9VAC25-
2040 875-1400.

2041 (C) Requests for a state permit, state permit modification, or general permit coverage will not be
2042 processed until the fees required pursuant to this Article are paid.

2043 (D) Individual permit or general permit coverage maintenance fees must be paid annually to DEQ
2044 or the County, as applicable. No permit will be reissued or automatically continued without
2045 payment of the required fee. Individual permit or general permit coverage maintenance fees
2046 apply until a notice of termination is effective.

2047 (E) All incomplete payments will be deemed as nonpayments. The DEQ or the County, as
2048 applicable, must notify the applicant of any incomplete payments. Interest may be charged for
2049 late payments at the underpayment rate set forth in Va. Code § 58.1-15 and is calculated on a
2050 monthly basis at the applicable periodic rate. A 10% late payment fee will be charged to any
2051 delinquent (over 90 days past due) account. The DEQ and the County are entitled to all
2052 remedies available under the Virginia Code in collecting any past due amount.

2053

2054 **Section 124.1-9-2. - Exemptions.**

2055 (A) No state permit application fees will be assessed to:

2056 (1) State permittees who request minor modifications to permits as defined in 9VAC25-875-20
2057 or other minor amendments at the discretion of the County.

2058 (2) State permittees whose permits are modified or amended at the request of the County or
2059 the DEQ. This does not include errors in the registration statement identified by the County,
2060 or the DEQ, or errors related to the acreage of the site.

2061 (B) State permit modifications at the request of the state permittee resulting in changes to
2062 stormwater management or ESM plans that require additional review by the County are not
2063 exempt pursuant to this section and shall be subject to fees specified under 9VAC25-875-1410.

2064

2065 **Section 124.1-9-3. - Fees for Coverage Under the General Permit for Discharges of**
2066 **Stormwater from Construction Activities and Permits for Chesapeake Bay Preservation**
2067 **Area Land-Disturbing Activities.**

2068 Fees for permits for Chesapeake Bay Preservation Act land-disturbing activities and the County's
2069 portion of the fees for coverage under the General Permit for Discharges of Stormwater for
2070 Construction Activities must be paid to the County at such times and amounts as provided for in
2071 Appendix Q of the Code. The state's portion of the fee for coverage under the General Permit for
2072 Discharges of Stormwater for Construction Activities must be paid to the state at such times and
2073 amounts as provided for 9VAC25-875-1330 and 9VAC25-875-1400.

2074

2075 **Section 124.1-9-4. - Fees for the Modification or Transfer of Registration Statements for the**
2076 **General Permit for Discharges of Stormwater from Construction Activities.**

2077 Fees that apply to modification or transfer of individual permits or of registration statements for
2078 the General VPDES Permit for Discharges of Stormwater from Construction Activities issued by
2079 the Department will be paid to the County at such times and amounts as provided for in Appendix
2080 Q of the Code. If the permit modifications result in changes to stormwater management plans that
2081 require additional review by the County, such reviews are subject to the fees set out in this section.
2082 The fees assessed are based on the total disturbed acreage of the site. The permit modification fee
2083 includes any cost difference between the initial permit fee paid and the permit fee that would have
2084 applied for the total disturbed acreage. No modification or transfer fee is required until such
2085 department-approved programs exist. These fees become effective when assessed by the County.

2086 **Section 124.1-9-5. - Permit Maintenance Fees.**

2087 Annual permit maintenance fees for General Permits for Discharges of Stormwater from
2088 Construction Sites including expired permits that have been administratively continued and
2089 Chesapeake Bay Preservation Act land-disturbing activities must be paid to the County by April
2090 1st of each year in the amounts specified in Appendix Q of the Code. With respect to the General
2091 VPDES Permit for Discharges of Stormwater from Construction Activities, these fees apply until
2092 the permit coverage is terminated and are effective when assessed by a VESMP authority.

2093

2094 **ARTICLE 10. - Illicit Discharges to the Storm Sewer System and State Waters.**

2095

2096 **Section 124.1-10-1. - Purpose.**

2097 The purpose of this Article is to enable the County to comply with state and federal laws and
2098 regulations, including the Clean Water Act (33 U.S.C. § 1251 et seq.), and the County's MS4
2099 permit by preventing the discharge of non-stormwater substances into the Fairfax County

2100 Municipal Separate Storm Sewer System ("County MS4") and to prevent discharges of prohibited
2101 substances into waters of the Commonwealth of Virginia that are located within the jurisdictional
2102 boundaries of the County and five miles beyond such jurisdictional boundary. The objective of
2103 this Article is to:

2104 (A) Prevent the discharge of non-stormwater and/or prohibited substances into the County MS4
2105 and state waters;

2106 (B) Prevent illicit connections to the County MS4;

2107 (C) Facilitate compliance with the state-issued Fairfax County Municipal Separate Stormwater
2108 Sewer System permit; and

2109 (D) Authorize the Director of DPWES to investigate and enforce violations of this Article.

2110

2111 **Section 124.1-10-2. - Responsibilities of the Director of the Fairfax County Department of**
2112 **Public Works and Environmental Services ("DPWES").**

2113 The DPWES Director has direct charge over the County MS4, including responsibility for the
2114 operation, maintenance, and administration thereof, and responsibility for the enforcement of
2115 violations of this Article. In the investigation and enforcement of violations of this Article, the
2116 DPWES Director may exercise any and all authority granted to the LDS Director under Article 8
2117 and may exercise the right of entry set forth in Chapter 124.1-2-8 for obtaining information or
2118 conducting surveys or investigations necessary in the enforcement of the provisions of this Article.

2119

2120 **Section 124.1-10-3. - Illicit Discharges to the Storm Sewer System and State Waters.**

2121 (A) It is a violation of this Article for any Person to discharge or deposit, or to cause or allow to
2122 be discharged or deposited any trash, leaves, grass clippings, soil, oil, petroleum products,
2123 noxious or flammable substances, other wastes, or any matter causing or adding pollution in
2124 any state waters of this County or on any property in this County in any manner so as to allow
2125 any such substance to be washed into state waters by storm or flood water. The discharge or
2126 deposit of any substance to state waters in accordance with a state-issued permit is authorized
2127 but any exceedance of permit limits is a violation of this subsection.

2128 (B) It is a violation of this Article for any Person to discharge or deposit, or to cause or allow to
2129 be discharged or deposited in the County MS4, trash, leaves, grass clippings, soil, oil,
2130 petroleum products, noxious or flammable substances, other wastes, or any matter causing or
2131 adding pollution; provided however, that leaves may be piled at curbs during such seasons and
2132 in such areas as may now or in the future be furnished mechanical leaf collection service. It is
2133 the intent of this provision to prohibit the entry into the County MS4 of any substance, whether
2134 solid or liquid, other than naturally occurring surface or subsurface waters. The discharge or
2135 deposit of any substance to the County MS4 in accordance with a state-issued permit is
2136 authorized but any exceedance of permit limits is a violation of this subsection.

2137 (C) It is a violation of this Article to connect any plumbing fixtures, drains, appurtenances, or
2138 appliances that discharge any substance other than stormwater into the County MS4.

2139 (D) The DPWES Director is authorized to enforce violations of this Article by issuing a Notice of
2140 Violation that describes the violation and identifies a reasonable time within which measures
2141 must be taken to abate the violation and to mitigate the impact of the violation, as necessary.
2142 The Notice of Violation must be served on the owner of the property upon which the violation
2143 occurred or the person responsible for causing the violation. Any recipient of a Notice of
2144 Violation issued under this Article may file an appeal under the procedures in Article 8. The
2145 Notice of Violation becomes a final decision upon the failure of the recipient to file a timely
2146 local appeal under Article 8. The DPWES Director may use the legal remedies and civil
2147 penalties available under Article 8 of this Chapter. A final decision is subject to judicial review,
2148 provided that an appeal is filed in the appropriate court within 30 days from the date of a final
2149 written decision adversely affecting the rights, duties, or privileges of the recipient of the
2150 Notice of Violation.

2151

2152 **Section 124.1-10-4. - Standards for Inspection of Industrial and Commercial Property**
2153 **Discharging to the County MS4.**

2154 Properties on which there are industrial or commercial uses that may, in the opinion of the DPWES
2155 Director, present a high risk of discharging a significant pollutant load of non-stormwater
2156 substances to the County MS4 are subject to inspection by the DPWES Director and his designees.
2157 The inspection program establishing the basis for selecting a particular property for inspection
2158 under this program will be made and is available through DPWES.

2159

2160 **ARTICLE 11. - Debris Landfill.**

2161

2162 **Section 124.1-11-1. - Landfill operation.**

2163 No person may operate a debris landfill in Fairfax County until the proposed debris landfill site
2164 has been approved by the Board of Supervisors following a public hearing and required permits
2165 have been issued by the Director and the DEQ. Any person who has already been issued a permit
2166 to operate a debris landfill by the DEQ or has received zoning or other land use approval for the
2167 siting of the facility, prior to July 1, 1989, is not required to obtain siting approval for such debris
2168 landfill pursuant to the provisions of this Article.

2169

2170 **Section 124.1-11-2. - Purpose and intent.**

2171 It is the purpose of this Article to protect and to provide for the public health, safety, and general
2172 welfare of the citizens of Fairfax County; to protect against the unregulated dumping of garbage
2173 or debris, to prevent the hazards of fire, to protect the County's and State's waters from pollution
2174 and from erosion and sedimentation; to protect against undue noise, against undue truck traffic,

2175 against uncontrolled dust and debris; to ensure conformance with permits which have been issued
2176 for land use and design; to ensure that the ultimate master-planned use of the property may be
2177 accomplished upon completion of operations.

2178

2179 **Section 124.1-11-3. - Definitions.**

2180 For the purposes of Article 11 only, the following words and terms have the following meanings
2181 unless the context clearly indicates otherwise:

2182 *Debris landfill or landfill* means a *facility* used to dispose of only the following materials expressly
2183 permitted by the Board of Supervisors. Tree stumps, brush, logs, limbs, and root material;
2184 construction and/or demolition rubble; excavation material; major household appliances; ash
2185 (thoroughly quenched); machinery; metals, and properly cut-up tires (i.e. radially split, shredded
2186 or chipped) such that, when buried, there is no potential for trapping air or water in voids. In
2187 addition, compost may be used as normal landfill cover only in accordance with the DEQ
2188 regulations, and when the landfill operator has received written authorization from the DEQ to
2189 dispose of same on such a landfill. Semi-liquid excavation material and paper wastes (unless part
2190 of construction/demolition rubble) may be included only where expressly approved by the
2191 Director.

2192 *Design Plan* means a plan meeting the requirements of § 5-0100 et seq. of the Public Facilities
2193 Manual.

2194 *Director* means the Director of Land Development Services or their agent.

2195 *Operator* means the owner of the property where the landfill activities are to take place, or their
2196 authorized agent.

2197

2198 **Section 124.1-11-4. - Debris landfill permit.**

2199 (A) After receiving siting approval from the Board of Supervisors, any person desiring to obtain a
2200 debris landfill permit must file an application with the Director on forms provided by Land
2201 Development Services. No debris landfill permit may be issued by the Director until they are
2202 satisfied that the applicant has met the Land Use requirements and the Design requirements of
2203 the Code, the Code of Virginia, and the regulations contained in Title 9, Agency 20, Chapter
2204 81 of the Virginia Administrative Code, or that the applicant had a legally established landfill
2205 operation in existence on July 1, 1989.

2206 (B) A debris landfill permit must be granted within 60 days, where the application conforms to the
2207 requirements of this ordinance and the provisions of the Fairfax County Zoning Ordinance and
2208 be effective for a period of time not in excess of that required to attain the maximum engineered
2209 capacity of the said landfill as specified in the Design Plan. The permit, by its terms, must be

2210 subject to annual review and renewal by the Director. An application for renewal must be
2211 submitted to the Director no later than 60 days prior to the annual expiration date.

2212 (C) The applicant is entitled to appeal the denial of any permit application to the Fairfax County
2213 Circuit Court.

2214 (D) Any person seeking approval for the operation of a debris landfill under this Article must
2215 submit a Design Plan to the Director, in conformance with the standards defined in this Chapter
2216 and the Public Facilities Manual. The Director, after receiving the recommendations of the
2217 Health Department and the Department of Public Works and Environmental Services must
2218 approve or disapprove, with reasons therefore, the Design Plan within 60 days of the date of
2219 submission.

2220

2221 **Section 124.1-11-5. - Debris landfill permit requirements.**

2222 (A) A detailed operating plan for the proposed debris landfill must accompany the permit
2223 application and must include the following information:

2224 (1) The proposed rate of utilization of the landfill capacity along with the projected life of the
2225 landfill.

2226 (2) The projected traffic count for vehicles hauling to the landfill on all neighboring highways
2227 or as deemed necessary by the Director.

2228 (3) The planned hours of operation; the number of personnel assigned to the landfill; and the
2229 types and number of pieces of equipment to be used during these hours.

2230 (4) The procedures for the control of dust on-site.

2231 (5) The provisions for minimizing and controlling the carrying of dirt, dust, and/or mud onto
2232 off-site roadways; and for minimizing and controlling odor.

2233 (6) The procedures and plan for the control of fire.

2234 (7) The provisions for screening and limiting access including vegetation, hills, embankments,
2235 fencing, trees, etc.

2236 (8). The procedures for providing temporary erosion control including but not limited to
2237 division ditches, embankments, channels, vegetation growth, straw bales, grade
2238 stabilization, etc.

2239 (9) The procedure for the placing of intermediate and final cover including the type of cover
2240 material to be used.

2241 (B) The operating plan must demonstrate compliance with the following minimum requirements
2242 and guidelines:

- 2243 (1) Adequate personnel and equipment to operate the landfill must be present during all
2244 working hours.
- 2245 (2) A well-compacted cover, which must be a minimum of four to ten inches in depth for
2246 surface and side slopes, must be placed as intermediate cover over all material. No material
2247 may remain uncovered for more than 14 days.
- 2248 (3) A well-compacted clean earth cover, which must be a minimum of 30 inches in depth for
2249 surface and side slopes, must be placed as a final cover over the completed areas of the
2250 landfill.
- 2251 (4) A firebreak of a minimum of 50 feet must be maintained between the landfill and adjoining
2252 wooded areas in addition to availability of cover material maintained in close proximity to
2253 the working face of the fill.
- 2254 (5) Upon completion of a debris fill cell, the entire surface of intermediate cover must be
2255 maintained free of cracks, erosion or uneven cover.
- 2256 (6) A vegetative or other appropriate cover for erosion control must be established and
2257 maintained on all intermediate and final landfill areas designated to remain inactive for a
2258 period of more than 90 days.
- 2259 (7) All debris landfill cover must be composed of earth or other approved material of such
2260 character that it can be compacted to provide a tight seal, will not crack excessively, and is
2261 free of putrescible substances.
- 2262 (8) No salvaging is permitted at the debris landfill unless it is part of the operating plan.
- 2263 (9) The application must indicate the degree of compaction of materials necessary to allow
2264 eventual construction upon the site commensurate with that envisioned by master plan use.
- 2265 (C) As a condition for the issuance of a debris landfill permit, the applicant must agree to permit
2266 access to the site for inspection by the Director and other officials at any time as may be deemed
2267 necessary by the Director.
- 2268 (D) Such inspection must be for the purpose of determining that the limitations and conditions of
2269 the debris landfill permit are being met, including but not limited to the following:
- 2270 (1) Limitations on vehicle traffic, maintenance of the access road for vehicles;
- 2271 (2) Provision for prevention from fire;
- 2272 (3) Provisions for odor control;
- 2273 (4) Protection of water quality;
- 2274 (5) Establishment and preservation of grades as shown on the Design Plan.

2275

2276 **Section 124.1-11-6. - Revocation.**

2277 (A) A debris landfill permit is subject to revocation at any time by the LDS Director if the landfill
2278 is being operated in violation of the provision of this Chapter; in violation of the limitations
2279 and conditions of the permit; or that the landfill is not in accordance with the Design Plan as
2280 required herein.

2281 (B) Before revoking such permit, however, the Director must give the holder thereof at least ten
2282 working days written notice to correct any such violation. In the event that the violation has
2283 not been corrected within the ten-day period, the Director will revoke the permit.

2284 (C) Any operator whose permit is revoked may appeal in writing such revocation to the County
2285 Executive, for their decision within ten days of his receipt of such appeal.

2286 **Section 124.1-11-7. - Fee.**

2287 The applicant for a debris landfill permit under these provisions must pay to the County such fees
2288 as prescribed by Appendix Q of the Code. This fee includes the cost of processing the debris
2289 landfill permit application and the inspections which are deemed necessary by the LDS Director
2290 and will be assessed at the time of initial application and subsequently at the time of annual review.

2291 **That the provisions of this ordinance shall take effect on July 1, 2024.**

2292

2293 GIVEN under my hand this _____ day of _____, 2024.

2294

2295

2296

2297

2298

2299

Jill G. Cooper
Clerk for the Board of Supervisors

**Cross-reference Table
of
Provisions in Existing Chapters 104 and 124 Corresponding to Provisions in Proposed Chapter 124.1**

Chapter 124.1 Erosion and Stormwater Management Ordinanceable	Chapter 124 Stormwater Management Ordinance	Chapter 104 Erosion and Sedimentation Control Ordinance
ARTICLE 1. – General Provisions.		
124.1-1-1. Title.	124-1-1. Title.	
124.1-1-2. Authority.	124-1-2. Authority.	
124.1-1-3. Enactment.	124-1-3. Enactment	
124.1-1-4. Purpose and Administration.	124-1-4. Purpose and Administration.	104-1-1. Purpose and administration.
124.1-1-5. Definitions.	124-1-5. Definitions.	104-1-7. Definitions.
124.1-1-6. Areas of Applicability.	124-1-6. Areas of Applicability	
124.1-1-7. Activities Exempt from this Chapter.	124-1-7. Exemptions.	104-1-7. Definitions.
124.1-1-8. Applicability of and Conflicts with Other Laws and Regulations.	124-1-10. Applicability of and Conflicts with Other Laws and Regulations.	104-1-9. Interpretation and conflict.
124.1-1-9. Severability.	124-1-9. Severability	
ARTICLE 2. - Requirements for Land Disturbing Activity.		
124.1-2-1. Regulated Land-Disturbing Activity.	124-2-1. Applicability.	104-1-2. Applicability; regulated land-disturbing activities; submission and approval of a conservation plan.
124.1-2-2. Legacy Land-Disturbing Activity.	124-1-12. Grandfathering.	
124.1-2-3. Time Limits on Applicability of Approved Design Criteria.	124-1-11. Time Limits on Applicability of Approved Design Criteria.	
124.1-2-4. Chesapeake Bay Preservation Act Land-Disturbing Activity.	124-1-13. Chesapeake Bay Preservation Act Land-Disturbing Activity.	

**Cross-reference Table
of
Provisions in Existing Chapters 104 and 124 Corresponding to Provisions in Proposed Chapter 124.1**

Chapter 124.1 Erosion and Stormwater Management Ordinanceable	Chapter 124 Stormwater Management Ordinance	Chapter 104 Erosion and Sedimentation Control Ordinance
124.1-2-5. Review and Approval of Plans; Issuance of County Land-Disturbance Permit for Land-Disturbing Activity.	124-2-2. Permit Required 124-2-4. Security for Performance 124-2-9. Stormwater Management Plan Review	104-1-3. Plan review and approval. 104-1-4. Approved plan required for issuance of grading, building or other permit; security for performance.
124.1-2-6. Long-term maintenance of stormwater management facilities.	124-2-10. Long-term Maintenance of Permanent Stormwater Management Facilities. 124-2-11. Construction Record Drawings	
124.1-2-7. Inspections; Records and Reports	124-2-5. Monitoring, Reports, Investigations, and Inspections.	104-1-5. Monitoring and inspections.
124.1-2-8. Right of Entry.	124-1-8. Right of Entry	104-1-13. Right of entry.
124.1-2-9. Annual Standards and Specifications for State Agencies, Federal Entities, and Other Specified Entities.	124-2-3. Annual Standards and Specifications for State Agencies, Federal Entities, and Other Specified Entities.	104-1-2. Applicability; regulated land-disturbing activities; submission and approval of a conservation plan.
ARTICLE 3. – Stormwater Management: Plan Requirements		
124.1-3-1. Stormwater Pollution Prevention Plan Requirements.	124-2-6. Stormwater Pollution Prevention Plan Requirements.	
124.1-3-2. Stormwater Management Plan Requirements.	124-2-7. Stormwater Management Plans.	
124.1-3-3. Pollution Prevention Plans.	124-2-8. Pollution Prevention Plans.	
ARTICLE 4. - Water Quantity and Water Quality Technical Criteria for Regulated Land-Disturbing Activity		
124.1-4-1. Applicability.	124-4-1 Applicability.	

**Cross-reference Table
of
Provisions in Existing Chapters 104 and 124 Corresponding to Provisions in Proposed Chapter 124.1**

Chapter 124.1 Erosion and Stormwater Management Ordinanceable	Chapter 124 Stormwater Management Ordinance	Chapter 104 Erosion and Sedimentation Control Ordinance
124.1-4-2. Water Quality Design Criteria Requirements.	124-4-2. Water Quality Design Criteria Requirements.	
124.1-4-3. Water Quality Compliance.	124-4-3. Water Quality Compliance.	
124.1-4-4. Water Quantity.	124-4-4. Water Quantity.	
124.1-4-5. Offsite Compliance Options.	124-4-5. Offsite Compliance Options.	
124.1-4-6. Design Storms and Hydrologic Methods.	124-4-6. Design Storms and Hydrologic Methods.	
124.1-4-7. Stormwater Harvesting.	124-4-7. Stormwater Harvesting.	
124.1-4-8. Linear Development Projects.	124-4-8. Linear Development Projects.	
124.1-4-9. Comprehensive Stormwater Management Plans.	124-4-9. Comprehensive Stormwater Management Plans.	
124.1-4-10. Stormwater Management Impoundment Structures or Facilities.	124-4-10. Stormwater Management Impoundment Structures or Facilities.	
ARTICLE 5 - Technical Criteria for Legacy Projects and Projects Subject to Time Limits on Applicability of Approved Design Criteria		
124.1-5-1. Definitions.	124-5-1. Definitions.	
124.1-5-2. Applicability.	124-5-2. Applicability.	
124.1-5-3. General.	124-5-3. General.	
124.1-5-4. Water Quality.	124-5-4. Water Quality.	
124.1-5-5. Stream Channel Erosion.	124-5-5. Stream Channel Erosion.	
124.1-5-6. Flooding.	124-5-6. Flooding.	
124.1-5-7. Regional (watershed-wide) Stormwater Management Plans.	124-5-7. Regional (watershed-wide) Stormwater Management Plans.	

**Cross-reference Table
of
Provisions in Existing Chapters 104 and 124 Corresponding to Provisions in Proposed Chapter 124.1**

Chapter 124.1 Erosion and Stormwater Management Ordinanceable	Chapter 124 Stormwater Management Ordinance	Chapter 104 Erosion and Sedimentation Control Ordinance
ARTICLE 6. – Erosion and Sediment Control: Plan Requirements and Minimum Standards for Technical Criteria		
124.1-6-1. Applicability.		104-1-2. Applicability; regulated land-disturbing activities; submission and approval of a conservation plan.
124.1-6-2. Erosion and Sediment Control Plans.		104-1-2. Applicability; regulated land-disturbing activities; submission and approval of a conservation plan.
124.1-6-3. Erosion and sediment control criteria, techniques, and methods: minimum standards.		104-1-8. Conservation standards.
ARTICLE 7 - Exceptions.		
124.1-7-1. Exceptions.	124-6-1. Exceptions.	104-1-3. Plan review and approval
ARTICLE 8. Enforcement; Penalties.		
124.1-8-1. Administrative Enforcement Procedures.	124-8-1. General Provisions.	104-1-6. Reconsideration; judicial review. 104-1-12. Enforcement, penalties, injunctions, and other legal actions.
124.1-8-2. Local Appeal; Hearings.	124-7-1. Right to Administrative Review. 124-7-2. Appeals of Final Orders.	104-1-6. Reconsideration; judicial review. 104-1-12. Enforcement, penalties, injunctions, and other legal actions.
124.1-8-3. Civil penalties.	124-8-3. Civil Penalties.	104-1-12. Enforcement, penalties, injunctions, and other legal actions.
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**Cross-reference Table
of
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ARTICLE 9 – Fees.		
124.1-9-1. General.	124-3-1. General.	104-1-3. Plan review and approval.
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124.1-9-3. Fees for Coverage Under the General Permit for Discharges of Stormwater from Construction Activities and Permits for Chesapeake Bay Preservation Area Land-Disturbing Activities.	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.	
124.1-9-4. Fees for the Modification or Transfer of Registration Statements for the General Permit for Discharges of Stormwater from Construction Activities.	124-3-4. Fees for the Modification or Transfer of Registration Statements for the General Permit for Discharges of Stormwater from Construction Activities.	
124.1-9-5. Permit Maintenance Fees.	124-3-5. Permit Maintenance Fees.	
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124.1-10-1. Purpose.	124-9-1. Purpose.	
124.1-10-2. Responsibilities of the Director of the Fairfax County Department of Public Works and Environmental Services (“DPWES”).	124-9-2. Responsibilities of the Director of the Fairfax County Department of Public Works and Environmental Services (“DPWES”).	
124.1-10-3. Illicit Discharges to the Storm Sewer System and State Waters.	124-9-3. Illicit Discharges to the Storm Sewer System and State Waters.	

**Cross-reference Table
of
Provisions in Existing Chapters 104 and 124 Corresponding to Provisions in Proposed Chapter 124.1**

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124.1-10-4. Standards for Inspection of Industrial and Commercial Property Discharging to the County MS4.	124-9-4. Standards for Inspection of Industrial and Commercial Property Discharging to the County MS4.	
ARTICLE 11. - Debris Landfill.		
124.1-11-1. Landfill operation.		104-2-1. Landfill operation.
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