

INTRODUCED: June 24, 2024

AN ORDINANCE No. 2024-176

To repeal ch. 14, art. III of the City Code, consisting of §§ 14-147 through 14-155, concerning the City’s erosion and sediment control program; and to amend 14-83, concerning floodplain districts, 14-120, concerning required permits, 14-263, concerning general performance criteria, 14-295, concerning enforcement of ch. 14, art. IV, and 14-322 through 14-333, 14-335, and 14-336, concerning the City’s stormwater management program, and to amend ch. 14, article V, by adding therein new sections numbered 14-323.1, concerning regulated land-disturbing activities, and 14-329.1, concerning erosion and sediment control plan and contents of plans, all for the purpose of aligning the City Code with state law.

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Patron – Mayor Stoney

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Approved as to form and legality  
by the City Attorney

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PUBLIC HEARING: JUL 22 2024 AT 6 P.M.

THE CITY OF RICHMOND HEREBY ORDAINS:

§ 1. That Chapter 14, Article III of the Code of the City of Richmond (2020), consisting of sections 14-147 through 14-155, be and is hereby **repealed** as follows:

**[ARTICLE III]**

AYES: 9 NOES: 0 ABSTAIN: \_\_\_\_\_

ADOPTED: JULY 22 2024 REJECTED: \_\_\_\_\_ STRICKEN: \_\_\_\_\_

## ~~EROSION AND SEDIMENT CONTROL~~

### ~~Sec. 14-147. Title, purpose, and authority.~~

~~This article shall be known as the "Erosion and Sediment Control Ordinance of the City of Richmond." The purpose of this article is to prevent degradation of properties, stream channels, waters, and other natural resources of the City by establishing requirements for the control of soil erosion, sediment deposition, and non-agricultural runoff and by establishing procedures whereby these requirements shall be administered and enforced.~~

~~(a) This article is authorized by the Erosion and Sedimentation Control Law (Code of Virginia, § 62.1-44.15:51 et seq.).~~

### ~~Sec. 14-148. Definitions.~~

~~Terms defined in Code of Virginia, § 62.1-44.15:51 and the Virginia Erosion and Sediment Control Regulations (9VAC25-840-10 et seq.) have those meanings when used in this article. In addition, the following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:~~

~~*Act* means the State Erosion and Sediment Control Law codified as Code of Virginia, § 62.1-44.15:51 et seq.~~

~~*Administrator* means the Director of Public Utilities or his or her designee. For purposes of this article, the Administrator also is the plan approving authority, with the authority to review and approve or disapprove erosion and sediment control plans in both the combined sewer system service area and the municipal separate storm sewer system service area of the City.~~

~~*Agreement in lieu of a plan* means a contract between the plan approving authority and the owner that specifies conservation measures that must be implemented in the construction of a~~

~~detached, separately built single family residence, which contract may be executed by the plan approving authority in lieu of a formal site plan.~~

~~*Applicant* means any person submitting an erosion and sediment control plan for approval or requesting the issuance of a Richmond Stormwater Management Program Permit under Article V of this chapter, when required, authorizing land disturbing activities to commence.~~

~~*Board* means the Virginia Soil and Water Conservation Board.~~

~~*Certified inspector* means an employee of the program authority who:~~

~~(1) — Holds a certificate of competence from the Board in the area of project inspection;~~

~~or~~

~~(2) — Is enrolled in the Department of Environmental Quality's training program for project inspection and successfully completes such program within one year after enrollment.~~

~~*Certified plan reviewer* means an employee or agent of the program authority who:~~

~~(1) — Holds a certificate of competence from the State Water Control Board in the area of plan review;~~

~~(2) — Is enrolled in the State Water Control Board training program for plan review and successfully completes such program within one year after enrollment; or~~

~~(3) — Is licensed as a professional engineer, architect, landscape architect or land surveyor pursuant to Code of Virginia, Title 54, Ch. 4, Art. 1 (Code of Virginia, § 54.1-400 et seq.), or professional soil scientist as defined in Code of Virginia, § 54.1-2200.~~

~~*Certified program administrator* means an employee of the program authority who:~~

~~(1) — Holds a certificate of competence from the Board in the area of program administration; or~~

~~(2) — Is enrolled in the Department of Environmental Quality training program for program administration and successfully completes such program within one year after enrollment.~~

~~*City* means the City of Richmond.~~

~~*Clearing* means any activity which removes the vegetative ground cover, including, but not limited to, root mat removal or topsoil removal.~~

~~*Department of Environmental Quality* means the Virginia Department of Environmental Quality.~~

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

~~*Director* means the Director of Public Utilities or his or her designee.~~

~~*Erosion and sediment control plan* means a document containing material for the conservation of soil and water resources of a unit or group of units of land. It may include appropriate maps, an appropriate soil and water plan inventory, and management information with needed interpretations and a record of decisions contributing to conservation treatment. The plan shall contain all major conservation decisions and all information deemed necessary by the plan-approving authority to ensure that the entire unit or units of land will be so treated to achieve the conservation objectives.~~

~~*Erosion impact area* means an area of land determined by the Administrator as not being associated with current land disturbing activity, but as being subject to persistent soil erosion resulting in the delivery of sediment onto neighboring properties or into State waters. This definition shall not apply to any lot or parcel of land of 10,000 square feet or less used for~~

~~residential purposes or to shorelines where the erosion results from wave action or other coastal processes.~~

~~*Excavating* means any digging, scooping or other methods of removing earth materials.~~

~~*Filling* means any depositing or stockpiling of earth materials.~~

~~*Grading* means any excavating or filling of earth materials or any combination thereof, including the land in its excavated or filled conditions.~~

~~*Land-disturbing activity* means, for the purpose of this article, any land change which may result in soil erosion from water or wind and the movement of sediments into State waters or onto lands in the Commonwealth, including, but not limited to, by means of clearing, grading, excavating, transporting or filling of land, except that the term shall not include:~~

~~(1) — Minor land-disturbing activities, such as home gardens and individual home landscaping, repairs and maintenance work;~~

~~(2) — Individual service connections;~~

~~(3) — Installation, maintenance, or repair of any underground public utility lines when such activity occurs on an existing hard surfaced road, street or sidewalk, provided the activity is confined to the area of the road, street or sidewalk which is hard surfaced;~~

~~(4) — Septic tank lines or drainage fields, unless included in an overall plan for land-disturbing activity relating to construction of the building to be served by the septic tank system;~~

~~(5) — Permitted surface or deep mining operations and projects, or oil and gas operations and projects conducted pursuant to Code of Virginia, Title 54.1;~~

~~(6) — Tilling, planting, or harvesting of agricultural, horticultural, or forest crops, livestock feedlot operations or as additionally set forth by the Board in regulation, including engineering operations as follows: construction of terraces, terrace outlets, check dams, desilting~~

~~basins, dikes, ponds, ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage, and land irrigation; however, this exception shall not apply to harvesting of forest crops, unless the area on which harvesting occurs is reforested artificially or naturally in accordance with the provisions of Code of Virginia, Title 10.1, Ch. 11 (Code of Virginia, § 10.1-1100 et seq.) or is converted to bona fide agricultural or improved pasture use as described in Code of Virginia, § 10.1-1163(B);~~

~~(7) — Repair or rebuilding of the tracks, rights-of-way, bridges, communication facilities and other related structures and facilities of a railroad company;~~

~~(8) — Disturbed land areas of less than 4,000 square feet in size, or less than 2,500 square feet in all areas of the City designated as Chesapeake Bay Preservation Act Areas pursuant to Article IV of this chapter;~~

~~(9) — Installation of fence and sign posts or telephone and electric poles and other kinds of posts or poles;~~

~~(10) — Shoreline erosion control projects on tidal waters when all of the land-disturbing activities are within the regulatory authority of and approved by local wetlands boards, the Marine Resources Commission or the United States Army Corps of Engineers; however, any associated land that is disturbed outside of this exempted area shall remain subject to this article and regulations adopted thereto; and~~

~~(11) — Emergency work to protect life, limb or property, and emergency repairs; however, if the land-disturbing activity would have required an approved erosion and sediment control plan if the activity were not an emergency, then the land area disturbed shall be shaped and stabilized in accordance with the requirements of the plan-approving authority.~~

~~*Land-disturbing permit* means a permit issued by the City for the clearing, filling, excavating, grading, transporting of land or for any combination thereof or for any purpose set forth herein. Land-disturbing permits will be issued in the areas of the City served by the combined sewer system. In areas served by the municipal separate storm sewer system, any person who wishes to undertake land-disturbing activities, as defined in Article V of this chapter, will be required to obtain a Richmond Stormwater Management Program Permit. Also, in areas served by the municipal separate storm sewer system, any person who wishes to undertake land-disturbing activities that do not require a Richmond Stormwater Management Program Permit, but that do require compliance with this article, will be required to obtain a land-disturbing permit.~~

~~*Local erosion and sediment control program* means the various methods employed by the City to regulate land-disturbing activities and thereby minimize erosion and sedimentation in compliance with the State program, and may include such elements as local ordinances, rules and regulations, policies and guidelines, technical materials, inspection, enforcement, and evaluation.~~

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

~~*Owner* means the owner or owners of the freehold of the premises or lesser estate therein, a mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee or other person, firm or corporation in control of a property.~~

~~*Peak flow rate* means the maximum instantaneous flow from a given storm condition at a particular location.~~

~~*Permittee* means the person to whom the land-disturbing permit is issued under this article, or to whom the Richmond Stormwater Management Program Permit authorizing land-disturbing activities is issued under Article V of this chapter.~~

~~*Person* means any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, county, city, town or other political subdivision of the Commonwealth, any interstate body, or any other legal entity.~~

~~*Program authority* means the City, which has adopted a soil erosion and sediment control program that has been approved by the State Water Control Board.~~

~~*Responsible land disturber* means an individual retained or employed by, or otherwise associated with the person applying for the Richmond Stormwater Management Program Permit or land-disturbing permit, or entering into an agreement in lieu of a plan, and who will be in charge of and responsible for carrying out a land-disturbing activity covered by an approved plan or agreement in lieu of a plan, who:~~

~~(1) — Holds a responsible land disturber certificate of competence from the Department of Environmental Quality;~~

~~(2) — Holds a current certificate of competence from the State Water Control Board in combined administration, program administration, inspection, or plan review; or~~

~~(3) — Is licensed in Virginia as a professional engineer, architect, certified landscape architect or land surveyor pursuant to Code of Virginia, Title 54.1, Ch. 4, Art. 1 (Code of Virginia, § 54.1-400 et seq.).~~

~~*Richmond Stormwater Management Program Permit* means an approval to initiate and conduct a land-disturbing activity under Article V of this chapter.~~



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

~~*Single-family residence* means a detached building completely separated from any other main building and containing only one dwelling unit.~~

~~*Stabilized* means an area that can be expected to withstand normal exposure to atmospheric conditions without incurring erosion damage.~~

~~*State* means the Commonwealth of Virginia.~~

~~*State erosion and sediment control program* means the program administered by the State Water Control Board pursuant to the Act, including administrative regulations designed to minimize erosion and sedimentation.~~

~~*State Water Control Board* means the Virginia State Water Control Board.~~

~~*State waters* means all waters on the surface and under the ground wholly or partially within or bordering the Commonwealth or within its jurisdiction.~~

~~*Subdivision* means a division, subdivision, or resubdivision of a lot, tract, or parcel of land situated wholly or partially within the corporate City limits into three or more lots, tracts, or parcels of land for the purpose, whether immediate or in the future, of transferring ownership of any one or more of such lots, tracts, or parcels of land or for the purpose of the erection of buildings or other structures on any one or more of such lots, tracts, or parcels of land. The term "subdivision" shall not include a division of land for agricultural purposes in parcels of one acre or more, the average width of which is not less than 150 feet, when such division:~~

~~(1) — Does not require the opening of any new street or the use of any new public easement of access;~~

~~(2) — Does not obstruct, or is not likely to obstruct, natural drainage;~~

(3) — Does not adversely affect, and is not likely to adversely affect, the establishment of any expressway, major street, primary highway, or toll road; or

(4) — Does not adversely affect the execution or development of any plat or subdivision approved by the City Planning Commission, or otherwise adversely affect the orderly subdivision of contiguous property.

*Ten-year frequency storm* means a storm that is capable of producing rainfall expected to be equaled or exceeded on the average of once in ten years. It may also be expressed as an exceedence probability with a ten percent chance of being equaled or exceeded in any given year.

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

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

**Sec. 14-149. — Local erosion and sediment control plan.**

(a) — The City hereby adopts by reference the regulations, references, guidelines, standards and specifications promulgated by the State Water Control Board and the City's Chesapeake Bay Public Information Manual for those projects located within a Chesapeake Bay Preservation Area for the effective control of soil erosion and sediment deposition to prevent the unreasonable degradation of properties, stream channels, waters and other natural resources. Such regulations, references, guidelines, standards and specifications for erosion and sediment control and any amendments thereto also shall include, but not be limited to, the Virginia Erosion and Sediment Control Regulations (9VAC25-840-10 et seq.) and the Virginia Erosion and Sediment

~~Control Handbook published by the Virginia Department of Conservation and Recreation, as amended.~~

~~(b) — In accordance with Code of Virginia, § 62.1-44.15:52, for any plan approved prior to July 1, 2014, stream restoration and relocation projects that incorporate natural channel design concepts are not manmade channels and shall be exempt from any flow rate capacity and velocity requirements for natural or manmade channels.~~

~~(c) — In accordance with Code of Virginia, § 62.1-44.15:52, for any plan approved prior to July 1, 2014, any land disturbing activity that provides for stormwater management intended to address any flow rate capacity and velocity requirements for natural or manmade channels shall satisfy the flow rate capacity and velocity requirements for natural or manmade channels if the practices are designed to:~~

~~(1) — Detain the water quality volume and to release it over 48 hours;~~

~~(2) — Detain and release over a 24-hour period the expected rainfall resulting from the one year, 24-hour storm; and~~

~~(3) — Reduce the allowable peak flow rate resulting from the 1½-year, two-year, and ten-year, 24-hour storms to a level that is less than or equal to the peak flow rate from the site, assuming it was in a good forested condition, achieved through multiplication of the forested peak flow rate by a reduction factor that is equal to the runoff volume from the site when it was in a good forested condition divided by the runoff volume from the site in its proposed condition, and shall be exempt from any flow rate capacity and velocity requirements for natural or manmade channels.~~

~~For plans approved on and after July 1, 2014, the flow rate capacity and velocity requirements of this subsection shall be satisfied by compliance with water quantity requirements in the~~

~~Stormwater Management Act (Code of Virginia, § 62.1-44.15:24 et seq.) and attendant regulations, unless such land-disturbing activities are in accordance with 9VAC25-870-48 of the Virginia Stormwater Management Program Permit Regulations.~~

~~(d) — Pursuant to Code of Virginia, § 62.1-44.15:52, for any plan approved prior to July 1, 2014, an erosion and sediment control plan shall not be approved until it is reviewed by a certified plan reviewer. Inspections of land-disturbing activities shall be conducted by a certified inspector. The City's erosion control program shall contain a certified program administrator, a certified plan reviewer, and a certified inspector, who may be the same person.~~

~~(e) — The program and regulations provided for in this article shall be made available for public inspection at the Office of the Department of Public Utilities.~~

**Sec. 14-150. — Submission and approval of plans; content of plans.**

~~(a) — Except as provided herein, no person may engage in any land-disturbing activity until he or she has submitted to the Administrator an erosion and sediment control plan for the land-disturbing activity, and the Administrator has issued one of the following permits:~~

~~(1) — A Richmond Stormwater Program Permit pursuant to Article V of this chapter;~~

~~(2) — A land-disturbing permit if the land-disturbing activity will occur within the City's combined sewer system service area; or~~

~~(3) — A land-disturbing permit if the land-disturbing activity will occur within the City's municipal separate storm sewer system service area and compliance is required under this article, but not under Article V of this chapter.~~

~~No person shall conduct land-disturbing activity unless and until the Administrator has issued a Richmond Stormwater Management Program Permit, or a land-disturbing permit for the land-~~

~~disturbing activity. If the land-disturbing activity results from the construction of a detached, separately built single family residence, an agreement in lieu of a plan may be substituted for an erosion and sediment control plan if executed by the plan approving authority.~~

~~(b) — The applicant shall adhere to the standards contained within the Virginia Erosion and Sediment Control Regulations (9VAC25-840-10 et seq.) and the Virginia Erosion and Sediment Control Handbook when making a submittal under the provisions of this article and in the preparation of an erosion and sediment control plan. The Administrator, in considering the adequacy of a submitted plan, shall be guided by the same standards, regulations, and guidelines. When the standards vary between the publications, the restrictive standards shall take precedence.~~

~~(c) — The Administrator shall review submitted conservation plans and grant written approval within 60 days of the receipt of the erosion and sediment control plan if the Administrator determines that the plan meets the requirements of the State Water Control Board's regulations and if the person responsible for carrying out the plan certifies that he or she will properly perform the conservation measures included in the plan and will conform to the provisions of this article. In addition, as a prerequisite to plan approval, the person responsible for carrying out the plan shall provide the City with the name of an individual who holds a certificate of competence, as provided by Code of Virginia, § 62.1-44.15:55, and who will be in charge of, and responsible for, carrying out the land-disturbing activity. Failure to provide the name of an individual responsible land disturber holding a certificate of competence prior to engaging in land-disturbing activities may result in revocation of the approval of the plan and the person responsible for carrying out the plan shall be subject to the penalties set forth in this article.~~

~~(d) — The Administrator shall act on the erosion and sediment control plan within 60 days from receipt of a complete application by either approving said plan in writing or by disapproving said plan in writing and giving specific reasons for its disapproval.~~

~~(e) — When the erosion and sediment control plan is determined to be inadequate, the Administrator shall specify such modifications, terms, and conditions that will permit approval of the plan. If no action is taken within 45 days, the plan shall be deemed approved, and the person shall be authorized to proceed with the proposed activity.~~

~~(f) — The Administrator may modify an approved erosion and sediment control plan if:~~

~~(1) — An inspection reveals that the plan is inadequate to satisfy applicable regulations; or~~

~~(2) — The person responsible for carrying out the plan finds that because of changed circumstances or for other reasons the approved plan cannot be effectively carried out, and proposed amendments to the plan, consistent with the requirements of this article, are agreed to by the Administrator and the person responsible for carrying out the plans.~~

~~(g) — In order to prevent further erosion, the City may require approval of a plan for any land identified in the local program as an erosion impact area.~~

~~(h) — When land disturbing activity will be required of a contractor performing construction work pursuant to a construction contract, the preparation, submission, and approval of an erosion and sediment control plan shall be the responsibility of the owner.~~

~~(i) — State agency projects are exempt from the provisions of this article, except as provided for in Code of Virginia, § 62.1-44.15:56.~~

~~**Sec. 14-151. Variances.**~~

~~The Administrator may waive or modify any of the requirements that are deemed to be too restrictive for site conditions by granting a variance. A variance may be granted when all of the following conditions are satisfied:~~

~~(1) — At the time of plan submission, an applicant may request a variance to become part of the approved erosion and sediment control plan. The applicant shall explain the reasons for any requested variance in writing. The Administrator shall document any granted variances in the plan.~~

~~(2) — During construction, the person responsible for implementing the approved plan may request a variance in writing from the Administrator. The Administrator shall respond in writing either approving or disapproving such a request. If the Administrator does not approve a variance within ten days of receipt of the request, the request shall be considered to be disapproved. Following disapproval, the applicant may resubmit a variance request with additional documentation.~~

~~**Sec. 14-152. — Permits and fees.**~~

~~(a) — No person may engage in any land-disturbing activity until such person has obtained a Richmond Stormwater Management Program Permit issued under Article V of this chapter, or, for land-disturbing activities that will occur within the City's combined sewer system service area, or for land-disturbing activities that will occur within the City's separate storm sewer system service area that require compliance with this article but not with Article V of this chapter, until such person has obtained a land-disturbing permit from the Administrator.~~

~~(b) — Prior to the issuance of a Richmond Stormwater Management Program Permit issued pursuant to Article V of this chapter or a land-disturbing permit, a building permit or a demolition permit, the Administrator must have approved the erosion and sediment control plan as conforming to this article.~~

~~(c) — An administrative fee shall be paid to the City at the time of submission of the erosion and sediment control application if land disturbing activities will occur within the combined sewer system service area or within the City's separate storm sewer system service area pursuant to this article. If land disturbing activity will occur such that a Richmond Stormwater Management Program Permit must be obtained pursuant to Article V of this chapter, the applicant shall pay the fee for the Richmond Stormwater Management Program Permit approval. The permit fee shall be \$300.00 for the first acre or fraction thereof, and \$100.00 for each additional acre or fractional part of an acre in excess of one acre. The maximum allowable fee shall be \$1,000.00. Any person who has obtained a land disturbing permit issued in accordance with subsection (a) of Section 14-150 and whose erosion and sediment control plans are revised after any such permit is issued shall pay a revised plans fee in the amount of ten percent of the initial permit fee or \$50.00, whichever is greater.~~

~~(d) — No Richmond Stormwater Management Program Permit issued pursuant to Article V of this chapter shall be issued unless and until the applicant submits with his or her application an approved erosion and sediment control plan and certification that the plan will be followed.~~

~~(e) — The Administrator may require any applicant for a land disturbing permit to allow land disturbing activities within the combined sewer system service area or within the City's separate storm sewer system service area to provide the City with a performance bond, a cash escrow, or an irrevocable letter of credit acceptable to the Administrator, to ensure that the City can take measures at the applicant's expense if the applicant fails, after proper notice, and within the time specified to initiate or maintain appropriate conservation measures required of him by the approved plan as a result of his land disturbing activity.~~



~~(f) — The amount of the bond or other security for performance provided by subsection (e) of this section shall not exceed the total of the estimated cost to initiate and maintain appropriate conservation action based on unit price for new public or private sector construction in the City and a reasonable allowance for estimated administrative costs and inflation, which such allowance shall not exceed 25 percent of the cost of the conservation action. Should it be necessary for the City to take such conservation action, the City may collect from the applicant any costs in excess of the amount of the surety held.~~

~~(g) — Within 60 days of adequate stabilization of a project governed by subsection (e) of this section, as determined by the Administrator, in any project or section of a project, the Administrator shall either refund or terminate such bond, cash escrow, or letter of credit, or the unexpended or unobligated portion thereof, based upon the percentage of stabilization accomplished in the project or project section. These requirements are in addition to all other provisions relating to the issuance of permits and are not intended to otherwise affect the requirements for such permits.~~

~~**Sec. 14-153. Monitoring, reports and inspections.**~~

~~(a) — The Administrator shall, as a part of approving an erosion and sediment control plan, require that an individual holding a responsible land disturber certificate, be subject to monitoring and reports by a certified inspector or the Administrator, or both. The person responsible for carrying out the erosion and sediment control plan shall maintain records of the inspections and maintenance, to ensure compliance with the approved plan and to determine whether the measures required in the plan are effective in controlling erosion and sedimentation.~~

~~(b) — The Administrator shall periodically inspect the land-disturbing activity in accordance with section 9VAC25-840-60 of the Virginia Erosion and Sediment Control~~

~~Regulations to ensure compliance with the approved plan and to determine whether the measures required in the plan are effective in controlling erosion and sedimentation. The owner, permittee, or person responsible for carrying out the plan shall be given notice of the inspection.~~

~~(c) — If the Administrator determines that there is a failure to comply with the erosion and sediment control plan, the Administrator is authorized to pursue any and all methods of enforcement set forth in Section 14-154 or Section 14-335, or both. Additionally, if the Administrator determines that there is a failure to comply with the erosion and sediment control plan, a notice to comply shall be served upon the permittee or person responsible for carrying out the plan by registered or certified mail to the address specified in the permit application or in the plan certification, or by delivery at the site of the land disturbing activities to the agent or employee supervising such activities.~~

~~(d) — The notice to comply shall specify the measures needed to comply with the plan and shall specify the time within which such measures shall be completed. Upon failure to comply within the specified time, the permit may be revoked and the permittee or person responsible for carrying out the plan shall be deemed to be in violation of this article, and the City may pursue legal action against the permittee or person responsible.~~

~~(e) — Upon determination of a violation of this article, the Administrator may, in conjunction with or subsequent to a notice to comply as specified in this article, issue an order requiring that all or part of the land disturbing activities permitted on the site be stopped until the specified corrective measures have been taken.~~

~~(f) — If land disturbing activities have commenced without an approved plan, the Administrator may, in conjunction with or subsequent to a notice to comply as specified in this~~

~~article, issue an order requiring that all of the land-disturbing activities be stopped until an approved plan or any required permits are obtained.~~

~~(g) — Where the alleged noncompliance is causing or is in imminent danger of causing harmful erosion of lands or sediment deposition in waters within the watersheds of the Commonwealth, or where the land-disturbing activities have commenced without an approved plan or any required permits, such an order may be issued without regard to whether the permittee has been issued a notice to comply as specified in this article. Otherwise, such an order may be issued only after the permittee has failed to comply with such a notice to comply.~~

~~(h) — The order shall be served in the same manner as a notice to comply, and shall remain in effect until rescinded by the Administrator.~~

~~(i) — If the alleged violator has not obtained an approved plan or any required permits within seven days from the date of service of the order, the plan-approving authority may issue an order to the owner requiring that all construction and other work on the site, other than corrective measures, be stopped until an approved plan and any required permits have been obtained. Such an order shall be served upon the owner by registered or certified mail to the address specified in the permit application or the land records of the Office of the City Assessor.~~

~~(j) — Any person violating or failing, neglecting or refusing to timely obey an order issued by the plan-approving authority may be compelled in a proceeding instituted in the Circuit Court of the City of Richmond to obey same and to comply therewith by injunction, mandamus or other appropriate remedy.~~

~~(k) — Nothing in this section shall prevent the plan-approving authority from taking any other action authorized by this article.~~

**~~Sec. 14-154. — Penalties, injunctions and other legal actions.~~**

~~(a) — Violators of this article shall be guilty of a Class 1 misdemeanor.~~

~~(b) — The City, or the owner of property which has sustained damage or which is in imminent danger of being damaged, may petition the Circuit Court of the City of Richmond to enjoin a violation or threatened violation of this article without the necessity of showing that an adequate remedy at law does not exist. However, an owner of property shall not apply for injunctive relief unless:~~

~~(1) — Such owner has notified, in writing, the person who has violated the local program and the program authority that a violation of the local program has caused, or creates a probability of causing, damage to his property; and~~

~~(2) — Neither the person who has violated the local program nor the program authority has taken corrective action within 15 days to eliminate the conditions which have caused, or create the probability of causing, damage to such owner's property.~~

~~(c) — Without limiting the remedies that may be obtained in this section, any person who violates or fails, neglects, or refuses to obey any injunction, mandamus, or other remedy obtain pursuant to this section shall be subject, in the discretion of the court, to a civil penalty not to exceed \$2,000.00 for each violation. A civil action for such violation or failure may be brought by the City where the land lies. Any civil penalties assessed by a court shall be paid into the City's treasury.~~

~~(d) — Any person who has violated or failed, neglected, or refused to obey any order, notice or requirement of the plan approving authority, the Administrator, or the City, any condition of a permit, or any provision of this article or associated regulation shall, upon the finding of an appropriate court, be assessed a civil penalty. The civil penalty for any one violation shall be not less than \$100.00 nor more than \$1,000.00. Each day during which the violation is found to have~~

~~existing shall constitute a separate offense. In no event shall a series of specified violations arising from the same operative set of facts result in civil penalties which exceed a total of \$10,000.00, except that a series of violations arising from the commencement of land-disturbing activities without an approved plan for any site shall not result in civil penalties which exceed a total of \$10,000.00.~~

~~(e) — If the City pursues a civil penalty, it shall do so by issuing a summons for collection of the civil penalty. In any trial for a scheduled violation, it shall be the City's burden to show the liability of the violator by a preponderance of the evidence. An admission or finding of liability shall not be a criminal conviction for any purpose.~~

~~(f) — With the consent of any person who has violated or failed, neglected, or refused to obey any order, notice or requirement of the City, any condition of a permit, or any provision of this article, the City may provide, in an order issued against such person, for the payment of civil charges for violations in specific sums, not to exceed the limit specified in subsection (e) of this section. Such civil charges shall be instead of any appropriate civil penalty that could be imposed under subsection (e) or (d) of this section.~~

~~(g) — In addition to any criminal penalties provided under this article, any person who violates any provision of this article may be liable to the City in a civil action for damages.~~

~~(h) — The City Attorney shall, upon request of the Administrator, take legal action to enforce the provisions of this article.~~

~~(i) — Compliance with the provisions of this article shall be prima facie evidence in any legal or equitable proceeding for damages caused by erosion, siltation, or sedimentation that all requirements of law have been met, and the complaining party must show negligence in order to recover any damages.~~

~~(j) — Appeals by alleged violators shall be governed by the Act.~~

**~~Sec. 14-155. Appeals of plan denials.~~**

~~(a) — *Right of appeal.* Any applicant who is aggrieved by any action of the plan-approving authority in disapproving plans submitted pursuant to this article shall have the right to file an appeal of such action with the Director. Such appeal shall be filed within 30 days from the date of the action appealed.~~

~~(b) — *Scheduling of hearing.* Within 15 days of the date on which the applicant files the appeal in the Office of the Director, the Director shall schedule a hearing thereon at which both the applicant and the plan-approving authority representative may be heard. Such hearing shall be scheduled no sooner than 30 days after the Director furnishes the applicant and the plan-approving authority representative with written notice of the date, time and location of the hearing.~~

~~(c) — *Review and decision.* The Director shall review the evidence and arguments by both the applicant and the plan-approving authority representative. Such evidence and arguments may be submitted in writing prior to the hearing or presented during the hearing. No later than 15 days after the hearing described in subsection (b) of this section, the Director shall issue to the applicant and the plan-approving authority representative a written decision affirming, reversing or modifying the action of the plan-approving authority.~~

~~(d) — *Judicial review.* The decision of the Director shall be final, unless the applicant appeals such decision to the Circuit Court of the City of Richmond within 30 days of the date on which the Director issues such decision.~~

~~(e) — *Administrative procedures.* The Administrator shall develop procedures not inconsistent with this section for the administration of the appeals process set forth in this section.~~

Enforcement]

§ 2. That sections 14-83, 14-120, 14-263, and 14-295 of the Code of the City of Richmond (2020) be and are hereby **amended** and reordained as follows:

**Sec. 14-83. Floodplain districts generally.**

*Permits required.* No development or land-disturbing activity within a designated floodplain district shall be undertaken until after issuance of a building permit or land-disturbing activity permit as required by [~~Article III~~] Article V of this chapter. For the purpose of issuance of a permit, the 100-year flood elevation shall be the base floodwater surface elevation, with floodway, as shown in Table 2, floodway data of the flood insurance study dated December 15, 1978, and as revised effective July 20, 1998, April 2, 2009, July 16, 2014, and any subsequent revisions or amendments thereto.

**Sec. 14-120. Required permits.**

(a) Permits for land-disturbing activities. Permits for land-disturbing activities shall be obtained as follows:

(1) A permit for any land-disturbing activity within a floodplain district shall be required as set forth in [~~Article III~~] Article V of this chapter which pertains to site control, erosion and drainage, provided that the exceptions contained therein shall not be applicable within floodplain districts.

(2) For land-disturbing activity proposed in conjunction with construction for which a building permit application has been filed, a site grading and drainage plan shall be approved by the Director prior to issuance of the building permit, and a separate land-disturbing activity permit shall be required.

(3) Application for land-disturbing activity permits shall be made to the Director, and no such permit shall be issued nor shall any site grading and drainage plan

be approved until the applicant has furnished satisfactory evidence that all necessary permits have been received from those governmental agencies from which approval is required by State and Federal law, and until the Director is satisfied that the applicable sections of this article and the site control, erosion and drainage regulations are met.

(4) The 100-year floodplain shall be delineated on all plans submitted for approval of land-disturbing activity and site grading and drainage.

**Sec. 14-263. General performance criteria.**

Through its applicable land use ordinances, regulations and enforcement mechanisms, the City shall require that any use, development or redevelopment of land in Chesapeake Bay Preservation Areas meet the following performance criteria:

(1) No more land shall be disturbed than is necessary to provide for the proposed use or development.

(2) Indigenous vegetation shall be preserved to the maximum extent practicable, consistent with the use or development proposed. Indigenous vegetation may be replaced with other vegetation that is equally effective in retarding runoff, preventing erosion and filtering nonpoint source pollution.

(3) Where the best management practices are utilized that require regular or periodic maintenance to continue their functions, such maintenance shall be ensured through a maintenance agreement with the owner or developer or some other mechanism approved by the City that achieves an equivalent objective. Maintenance agreements submitted for best management practices installed or used in areas of the City served by the municipal separate storm sewer system pursuant to Section 14-331 will be accepted if consistent with the requirements above.



(4) All development exceeding 2,500 square feet of land disturbance shall be accomplished through a plan of development review process consistent with Code of Virginia, § 15.2-2286(A)(8) and subdivision (1)(e) of 9VAC25-830-240 of the Virginia Administrative Code.

(5) Land development shall minimize impervious cover consistent with the proposed use or development.

(6) Any land-disturbing activity that exceeds an area of 2,500 square feet (including construction of all single-family houses, septic tanks and drain fields, but otherwise as defined in Code of Virginia, § 62.1-44.15:51) shall comply with the requirements of Article [~~III~~] V of this chapter.

(7) Where applicable, stormwater management criteria consistent with the water quality protection provisions of the Virginia Stormwater Management Program Regulations shall be satisfied.

(a) Subject to the foregoing, the following stormwater management options shall be considered to comply with this subsection:

(1) Incorporation on the site of best management practices that meet the water quality protection requirements set forth in this subsection. For the purposes of this subsection, the site may include multiple projects or properties that are adjacent to one another or lie within the same drainage area where a single best management practice will be utilized by those projects to satisfy water quality protection requirements;

(2) Compliance with a locally adopted Regional Stormwater Management Program, which may include a Virginia Pollution Discharge

Elimination System (VPDES) permit issued by the Commonwealth of Virginia to the City for its municipally-owned separate storm sewer system discharges, that is reviewed and found by the Commonwealth to achieve water quality protection equivalent to that required by this subsection; and

(3) Compliance with a site-specific VPDES permit issued by the Commonwealth of Virginia, provided that the City specifically determines that the permit requires measures that collectively achieve water quality protection equivalent to that required by this subsection.

(b) Any maintenance, alteration, use or improvement to an existing structure that does not degrade the quality of surface water discharge, as determined by the City, may be exempted from the requirements of this subsection.

(c) Stormwater management criteria for redevelopment shall apply to any redevelopment, whether or not it is located within an intensely developed area designated by the City.

(8) Silvicultural activities in Chesapeake Bay Preservation Areas are exempt from this article, provided that silvicultural operations adhere to water quality protection procedures prescribed by the Virginia Department of Forestry in the January 1997 edition of “Forestry Best Management Practices for Water Quality in Virginia Technical Guide.” The Virginia Department of Forestry will oversee and document installation of best management practices and will monitor in-stream impacts of forestry operations in Chesapeake Bay Preservation Areas.

(9) The City shall require evidence of all wetlands permits and delineation approvals required by law prior to authorizing grading or other on-site activities to begin.

(10) A Chesapeake Bay Site Plan shall be required for any land disturbance, development or redevelopment within a designated Chesapeake Bay Preservation Area. No ~~[Richmond Stormwater Management Program Permit]~~ Richmond Erosion and Stormwater Management Program Permit, building permit, or land-disturbing permit issued pursuant to ~~[Article III]~~ Article V of this chapter shall be issued for any activity until the City has approved a Chesapeake Bay Site Plan in accordance with the requirements of this section and Section 14-264.

(11) On-site sewage treatment systems not requiring a Virginia Pollutant Discharge Elimination System permit shall, for new construction, provide a reserve sewage disposal site with a capacity at least equal to that of the primary sewage disposal site. This reserve sewage disposal site requirement shall not apply to any lot or parcel recorded prior to October 1, 1989, if the lot or parcel is not sufficient in capacity to accommodate a reserve sewage disposal site, as determined by the local Health Department. Building shall be prohibited on the area of all sewage disposal sites until the structure is served by public sewer or an on-site sewage treatment system which operates under a permit issued by the State Water Control Board. All sewage disposal site records shall be administered to provide adequate notice and enforcement.

(12) On-site sewage treatment systems not requiring a Virginia Pollutant Discharge Elimination System permit shall be pumped and maintained at least once every five years. Such pumping and maintenance shall be performed in a manner approved by the District Health Department. Immediately upon having the sewage treatment system pumped and maintained, the owner of a sewage treatment system shall certify on a form approved by the District Health Department or an on-site service professional that such

pumping and maintenance was performed. The pumping and maintenance required by this section shall be performed only by an individual or entity approved by the District Health Director or licensed by the Virginia Department of Professional and Occupational Regulation. However, in lieu of the mandatory pump-out, the District Health Department shall, consistent with 9VAC25-830-130(7)(a), allow (i) installation and maintenance of a plastic filter in the sewage treatment system tank outflow pipe or (ii) documentation every five years, certified by an operator or on-site soil evaluator licensed or certified under Code of Virginia, Title 54.1, Ch. 23 (Code of Virginia, § 54.1-2300 et seq.) as being qualified to operate, maintain, or design on-site sewage systems, demonstrating that the sewage treatment system has been inspected and maintained, that the sewage treatment system is functioning properly, and that the tank does not require pumping.

**Sec. 14-295. Enforcement.**

(a) In order to ensure compliance with this article, the City may elect to pursue any and all enforcement actions in accordance with this article, with ~~[Article III and]~~ Article V of this chapter, and with Chapters 5, 25, and 30.

(b) Without limiting the remedies available under this article, any person who violates any provision of this article or who violates or fails, neglects, or refuses to obey any variance or permit condition authorized under this article shall, upon such a finding thereof by the Circuit Court of the City of Richmond, be assessed a civil penalty not to exceed \$5,000.00 for each day of violation. Such penalties may, at the discretion of the court, be directed to be paid into the treasury of the City for the purpose of abating environmental damage to or restoring Chesapeake Bay Preservation Areas within the City, in such a manner as the court may direct by order, except

that, in the event the City or its agent is the violator, the court shall direct the civil penalty to be paid into the treasury of the Commonwealth as provided in Code of Virginia, § 62.1-44.15:74(E).

(c) Without limiting the remedies available under this article, and with the consent of any person who has violated any provision of this article, or who has violated or failed, neglected, or refused to obey any variance or permit condition authorized under this article, the Director may provide for the issuance of an order against such person for the one-time payment of civil charges for each violation in specific sums, not to exceed \$10,000.00 for each violation. Such civil charges shall be paid into the treasury of the City for the purpose of abating environmental damage to or restoring Chesapeake Bay Preservation Areas within the City, except that in the event the City or its agent is the violator, the civil charges shall be paid into the treasury of the Commonwealth as provided in Code of Virginia, § 62.1-44.15:74(E). All civil charges shall be in lieu of any civil penalty that could be imposed under subsection (a) of this section. Civil charges shall be in addition to the cost of any restoration required by the Director.

§ 3. That Chapter 14, Article V, consisting of sections 14-322 through 14-333, 14-335, and 14-336, of the Code of the City of Richmond (2020) be and is hereby **amended** and reordained as follows:

## **ARTICLE V**

### **RICHMOND EROSION AND STORMWATER MANAGEMENT PROGRAM**

#### **Sec. 14-322. Title, purpose, and authority.**

This article shall be known as the “Richmond Erosion and Stormwater Management Program Ordinance.” The purpose of this article is to integrate the City’s stormwater management, floodplain management, erosion and sediment control, and Chesapeake Bay Preservation Area requirements into a unified City program intended to administer, implement and enforce the

Virginia Erosion and Stormwater Management ~~[Act]~~ Regulation. This article provides the procedures for the submission and approval of plans, issuance of permits, payment of fees, and coordination of inspection and enforcement activities with the goals of improving water quality, encouraging innovative solutions to stormwater management, and reducing flooding and erosion. This article is authorized by Code of Virginia, Title 62.1, Ch. 3.1 (Code of Virginia, § ~~[62.1-44.15:24 et seq]~~ 62.1-44.15:27).

**Sec. 14-323. Definitions.**

The following words and terms used in this article have the following meanings, unless the context clearly indicates otherwise. In addition, some terms not defined herein are defined at ~~[9VAC25-870-10]~~ 9VAC25-875-20 of the Virginia Erosion and Stormwater Management Regulations, as amended, and are incorporated herein by reference.

*Administrator* means the Director of Public Utilities or his or her designee.

*Agreement in lieu of a ~~[stormwater management plan]~~ soil erosion control and stormwater management plan* means an executed agreement in lieu of a ~~[stormwater management plan]~~ soil erosion control and stormwater management plan, which shall be a contract between the City and a Richmond Erosion and Stormwater Management Program ~~[Permit applicant]~~ Permittee, that is on a form approved by the Administrator, and that specifies methods that the ~~[applicant]~~ Permittee shall implement to comply with the Richmond Erosion and Stormwater Management Program requirements for the construction of a (i) detached, separately constructed, single-family residence or (ii) farm building or structure on a parcel of land with a total impervious cover percentage, including the impervious cover from the farm building or structure to be constructed, of less than five percent.

*Applicant* means any person submitting an application for a permit under this article.

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

*Board* means the State Water Control Board.

*Channel* means a natural stream or manmade waterway.

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

*Chesapeake Bay Preservation Area* means any land designated by a local government pursuant to Part III (9VAC25-830-70 et seq.) of the Chesapeake Bay Preservation Area Designation and Management Regulations and § 62.1-44.15:74 of the Code of Virginia. A Chesapeake Bay Preservation Area shall consist of a Resource Protection Area and a Resource Management Area as defined in the Chesapeake Bay Preservation Area Designation and Management Regulations (9VAC25-830).

*Chesapeake Bay Preservation Act land-disturbing activity* means a land-disturbing activity including clearing, grading, or excavation that results in a land disturbance equal to or greater than 2,500 square feet and less than one acre in areas of the City designated as subject to the regulations adopted pursuant to the Chesapeake Bay Preservation Act, Code of Virginia, § 62.1-44.15:67 et seq.

*Clean Water Act* means the Federal Clean Water Act (33 USC § 1251 et seq.), formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act

Amendments of 1972, Public Law 92-500, as amended by Public Law 95-217, Public Law 95-576, Public Law 96-483, and Public Law 97-117, or any subsequent revisions thereto.

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

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

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

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

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

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

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

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



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

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

Discharge of a pollutant means (1) any addition of any pollutant or combination of pollutants to state waters from any point source; or (2) any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation. This definition includes additions of pollutants into surface waters from: surface runoff that is collected or channeled by man; discharges through pipes, sewers, or other conveyances owned by a state, municipality, or other person that do not lead to a treatment works; and discharges through pipes, sewers, or other conveyances, leading into privately owned treatment works. This term does not include an addition of pollutants by any indirect discharger.

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

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

Energy dissipator means a non-erodible structure which reduces the velocity of concentrated flow to reduce its erosive effects.

Environmental Protection Agency or EPA means the United States Environmental Protection Agency.

Erosion and sediment control plan means a document containing material for the conservation of soil and water resources of a unit or group of units of land. It may include appropriate maps, an appropriate soil and water plan inventory and management information with

needed interpretations, and a record of decisions contributing to conservation treatment. The plan shall contain all major conservation decisions to ensure that the entire unit or units of land will be so treated to achieve the conservation objectives.

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

*ESC* means erosion and sediment control.

*ESM plan* means a soil erosion control and stormwater management plan, commonly referred to as the erosion control and stormwater management plan.

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

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

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

Floodplain means the area adjacent to a channel, river, stream, or other water body that is susceptible to being inundated by water normally associated with the 100-year flood or storm event. This includes the floodplain designated by the Federal Emergency Management Agency.

Flood-prone area means the component of a natural or restored stormwater conveyance system that is outside the main channel. Flood-prone areas may include the floodplain, the floodway, the flood fringe, wetlands, riparian buffers, or other areas adjacent to the main channel.

Floodway means the channel of a river or other watercourse and the adjacent land areas, usually associated with flowing water, that must be reserved in order to discharge the 100-year flood or storm event without cumulatively increasing the water surface elevation more than one foot. This includes the floodway designated by the Federal Emergency Management Agency.

General permit means [~~the State permit titled General Permit for Discharges of Stormwater from Construction Activities found at 9VAC25-880-1 et seq~~] a permit authorizing a category of discharges under the Clean Water Act and the VESMA within a geographical area.

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

Inspection means an on-site review of the project's compliance with any applicable design criteria, or an on-site review to obtain information or conduct surveys or investigations necessary in the implementation or enforcement of the VESMA and applicable regulations.

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

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

*Land disturbance or land-disturbing activity* means, for the purpose of this article, a manmade change to the land surface that [~~potentially changes~~] may result in soil erosion or has the potential to change its runoff characteristics, including clearing, grading, or excavation, except that the term shall not include the exemptions included in Section 14-324.

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

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

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

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

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

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

Minor modification means an amendment ~~an~~ modifications and amendments to an existing permit before its expiration, not requiring extensive review and evaluation and including, but not limited to, changes in test protocols promulgated by the U.S. Environmental Protection Agency, increased monitoring frequency requirements, changes in sampling locations, and changes to compliance dates within compliance schedules. A minor permit modification or amendment does not substantially alter permit conditions, substantially increase or decrease the amount of surface water impacts, increase the size of an operation, or reduce the capacity of a facility to protect human health or the environment.

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

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

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

*Operator* means the owner or operator of any facility or activity subject to regulation pursuant to this article. In the context of stormwater associated with a large or small construction activity, operator means any person associated with a construction project that meets either of the following two criteria: (i) the person has direct operational control over construction plans and specifications, including the ability to make modifications to those plans and specifications or (ii) the person has day-to-day operational control of those activities at a project that are necessary to ensure compliance with a stormwater pollution prevention plan for the site or other permit or Richmond Erosion and Stormwater Management Program Permit authority permit conditions(i.e., they are authorized to direct workers at a site to carry out activities required by the stormwater pollution prevention plan or comply with other permit conditions).

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

*Permit or Richmond Erosion and Stormwater Management Program Permit* means an approval to conduct a land-disturbing activity, issued by the Administrator after the Administrator has confirmed, if applicable, general permit coverage with the Department of Environmental Quality.

*Permittee* means the person to whom a Richmond Erosion and Stormwater Management Program Permit is issued.

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

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

*Point source* means any discernible, confined, and discrete conveyance including any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel, or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural stormwater runoff.

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

*Pollution* means such alteration of the physical, chemical, or biological properties of any state waters as will or is likely to create a nuisance or render such waters (a) harmful or detrimental or injurious to the public health, safety, or welfare, or to the health of animals, fish or aquatic life; (b) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that (i) an alteration of the physical, chemical, or biological property of state waters, or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution, but which, in combination with such alteration of or discharge or deposit to state waters by other owners, is sufficient to cause pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii)

contributing to the contravention of standards of water quality duly established by the State Water Control Board, are *pollution* for the terms and purposes of this ordinance.

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

*Predevelopment* refers to the conditions that exist at the time that plans for the land-disturbing activity are submitted to the City. Where phased development or plan approval occurs (preliminary grading, demolition of existing structures, roads, and utilities, etc.), the existing conditions at the time prior to the commencement of land-disturbing activity shall establish *predevelopment conditions*.

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

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

*Regulations* means the Virginia Stormwater Management Program Permit Regulations, [9VAC25-870-10 et seq.] 9VAC25-875-10 et seq., as amended.

*Responsible land disturber or RLD* means an individual holding a certificate issued by the department who is responsible for carrying out the land-disturbing activity in accordance with the



approved erosion and sediment control plan or ESM plan. The RLD may be the owner, applicant, permittee, designer, superintendent, project manager, contractor, or any other project or development team member. The RLD must be designated on the erosion and sediment control plan, ESM plan, or permit as defined in this ordinance as a prerequisite for engaging in land disturbance.

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

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

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

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

*Sheet flow* (also called overland flow) means shallow, unconcentrated and irregular flow down a slope. The length of strip for overland flow usually does not exceed 100 feet under natural conditions.

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

*Small construction activity* means:

(1) Construction activities including clearing, grading, and excavating that results in land disturbance of equal to or greater than one acre and less than five acres.

Small construction activity also includes the disturbance of less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one and less than five acres. Small construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility. The department may waive the otherwise applicable requirements in a general permit for a stormwater discharge from construction activities that disturb less than five acres where stormwater controls are not needed based on an approved “total maximum daily load” (TMDL) that addresses the pollutants of concern or, for nonimpaired waters that do not require TMDLs, an equivalent analysis that determines allocations for small construction sites for the pollutants of concern or that determines that such allocations are not needed to protect water quality based on consideration of existing in-stream concentrations, expected growth in pollutant contributions from all sources, and a margin of safety. For the purpose of this subdivision, the pollutants of concern include sediment or a parameter that addresses sediment (such as total suspended solids, turbidity, or siltation) and any other pollutant that has been identified as a cause of impairment of any water body that will receive a discharge from the construction activity. The operator shall certify to the department that the construction activity will take place, and stormwater discharges will occur, within the drainage area addressed by the TMDL or provide an equivalent analysis. As of the start date in Table 1 of 9VAC25-31-1020, all certifications submitted in support of the waiver shall be submitted electronically by the owner or operator to the department in compliance with this subdivision and 40 CFR Part 3 (including, in all cases, 40 CFR Part 3 Subpart D), 9VAC25-875-940, and Part XI (9VAC25-31-950 et seq.) of the Virginia Pollutant

Discharge Elimination System (VPDES) Permit Regulation. Part XI of 9VAC25-31 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of Part XI of 9VAC25-31, permittees may be required to report electronically if specified by a particular permit.

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

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

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

*State* means the Commonwealth of Virginia.

*State permit* means an approval to conduct a land-disturbing activity issued by the State Water Control Board in the form of a State stormwater individual permit or coverage issued under a State general permit, or an approval issued by the State Water Control Board for stormwater discharges from a municipal separate storm sewer system. The State imposes and enforces requirements pursuant to the Clean Water Act and regulations, the Virginia Stormwater Management Act, and the Regulations through the use of State permits.

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

*State Water Control Law* means Code of Virginia, Title 62.1, Ch. 3.1 (Code of Virginia, § 62.1-44.2 et seq.).

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

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

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

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

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

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

(3) *Restored stormwater conveyance system* means a stormwater conveyance system that has been designed and constructed using natural channel design concepts.

Restored stormwater conveyance systems include the main channel and the flood-prone area adjacent to the main channel.

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

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

*Stormwater management plan* means a document containing material that describes methods for complying with the requirements of this article.

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

*Subdivision* means a division, subdivision, or resubdivision of a lot, tract, or parcel of land situated wholly or partly within the corporate City limits into three or more lots, tracts, or parcels of land for the purpose, whether immediate or in the future, of transferring ownership of any one or more of such lots, tracts, or parcels of land or for the purpose of the erection of buildings or other structures on any one or more of such lots, tracts, or parcels of land. The term “subdivision” shall not include a division of land for agricultural purposes in parcels of one acre or more, the average width of which is not less than 150 feet, when such division:

- (1) Does not require the opening of any new street or the use of any new public easement of access;
- (2) Does not obstruct, and is not likely to obstruct, natural drainage;

(3) Does not adversely affect, and is not likely to adversely affect, the establishment of any expressway, major street, primary highway, or toll road; and

(4) Does not adversely affect the execution or development of any plat or subdivision approved by the City Planning Commission or otherwise adversely affect the orderly subdivision of contiguous property.

Surface waters means:

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

(2) All interstate waters, including interstate wetlands;

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

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

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

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

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

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

(6) The territorial sea; and

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

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

*SWM* means stormwater management.

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

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

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

*Virginia Erosion and Stormwater Management Program or (VESMP)* means a program established by the City for the effective control of soil erosion and sediment deposition and the

management of the quality and quantity of runoff resulting from land-disturbing activities to prevent the unreasonable degradation of properties, stream channels, waters, and other natural resources. The program shall include such items as local ordinances, rules, requirements for permits and land-disturbance approvals, policies and guidelines, technical materials, and requirements for plan review, inspection, and enforcement consistent with the requirements of the VESMA.

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

*Virginia Stormwater Best Management Practice Clearinghouse Website* means a website that contains detailed design standards and specifications for control measures that may be used in Virginia to comply with the requirements of the Virginia Stormwater Management Act (Code of Virginia, § 62.1-44.15:24 et seq.) and associated regulations.

~~[Virginia Stormwater Management Act or Act means Code of Virginia, Title 62, Ch. 3-1, Art. 23 (Code of Virginia, § 62.1-44.15:24 et seq.).~~

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



~~Virginia Stormwater Management Program Authority means an authority approved by the State Water Control Board after September 13, 2011, to operate a Virginia Stormwater Management Program. For purposes of this article, the City is the Virginia Stormwater Management Program Authority.]~~

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

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

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

**Sec. 14-324. Permit requirement; exemptions.**

(a) Except as provided herein, no person may engage in any land-disturbing activity in the City until the Administrator has issued a Richmond Erosion and Stormwater Management Program Permit in accordance with this article.

(b) A Chesapeake Bay Preservation Act land-disturbing activity does not require completion of a registration statement or require coverage under the general permit, but shall be subject to the following technical criteria and program and administrative requirements: an erosion and sediment control plan consistent with the requirements of Article III of this chapter; a

stormwater management plan consistent with the requirements of Section 14-327; exceptions which may be requested pursuant to 9VAC25-870-57; the technical and administrative requirements of Section 14-330; the long-term maintenance requirements for permanent stormwater facilities in Section 14-331, and the requirements for channel protection and flood protection, the availability of off-site compliance options, and requirements for design storm and hydrologic methods, linear development controls, and criteria associated with stormwater impoundment structures or facilities found at 9VAC25-870-51.

(c) The following exemptions apply to the Richmond Erosion and Stormwater Management Program Permit requirements set forth in subsection (a) of this section:

(1) Permitted surface or deep mining operations and projects, or oil and gas operations and projects conducted under the provisions Code of Virginia, Title 45.1 (Code of Virginia, § 45.1-161.1 et seq.);

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

(3) Single-family residences separately built, and additions or modifications to such existing single-family residential structures, disturbing less than one acre, or less than 2,500 square

feet if located in an area delineated by the City as a Chesapeake Bay Preservation Area pursuant to Article IV of this chapter, and not part of a larger common plan of development or sale;

(4) Land-disturbing activities that disturb less than one acre, or less than 2,500 square feet if located in an area delineated by the City as a Chesapeake Bay Preservation Area pursuant to Article IV of this chapter, and not part of a larger common plan of development or sale;

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

~~[(6) Activities under a State or Federal reclamation program to return an abandoned property to agricultural or open land use;~~

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

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

(d) Notwithstanding this ordinance and in accordance with the Virginia Erosion and Stormwater Management Act, Article 2.3 (§ 62.1-44.15:24 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia, the following activities are required to comply with the soil erosion control

requirements but are not required to comply with the water quantity and water quality technical criteria, unless otherwise required by federal law:

(1) Activities under a State or Federal reclamation program to return an abandoned property to agricultural or open land use;

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

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

**Sec. 14-325. Plan submission and approval; prohibitions.**

Pursuant to Code of Virginia, § 62.1-44.15:27, the City hereby establishes a Richmond Erosion and Stormwater Management Program for land-disturbing activities and adopts the applicable standards and specifications for Virginia Erosion and Stormwater Management Programs promulgated by the State Water Control Board for the purposes set out in Section 14-322. The Director of Public Utilities is hereby designated as the Administrator of the Richmond Stormwater Management Program.

(1) Any person who plans to conduct a land-disturbing activity in the City shall first submit the following to the Administrator:

(a) An application for a permit on the most current City-approved form, including a general permit registration if required;

(b) An erosion and sediment control plan to be reviewed for approval in accordance with [~~Article III of this chapter~~] Section 13-329.1, with certification by the applicant that the plan will be followed;

(c) A stormwater management plan that meets the requirements of Section 14-327, or, if authorized by State law, an agreement in lieu of a stormwater management plan; and

(d) All applicable fees and a performance bond as required by Sections 14-336 and 14-337.

(2) a. No person shall begin to conduct any land-disturbing activity in the City until the City has received all of the items listed in subsection (1) of this section and has issued a Richmond Erosion and Stormwater Management Program Permit to the applicant. Additionally, no person shall begin to conduct any land-disturbing activity in the City without first having obtained a General Virginia Pollution Discharge Elimination System Permit for Discharges of Stormwater from Construction Activities as set forth in 9VAC25-880-70, as amended from time to time, for the proposed activity. The Administrator shall not issue a Richmond Erosion and Stormwater Management Program Permit until after the Administrator has received evidence of such general permit authority from the Virginia Department of Environmental Quality. All land clearing, construction, disturbance, land development and drainage must be performed in accordance with the terms of the Richmond Stormwater Management Program Permit. Failure to comply may result in enforcement by the City pursuant to Section 14-3356.

b. Every permit applicant shall furnish, when requested by the Administrator, such application materials, plans, specifications, and other pertinent information as the

Administrator may determine necessary to determine the effect of the discharge from the land-disturbing activity on the quality of State waters, or such other information as the Administrator may determine necessary to accomplish the purposes of this chapter.

(3) Issuance of a Richmond Erosion and Stormwater Management Program Permit does not relieve the applicant of having to obtain any other permits, including any City-issued permits that are required prior to beginning a land-disturbing activity. The City will not issue any other grading, building, or other local permit until the Administrator has approved a Richmond Erosion and Stormwater Management Program Permit for the property.

**Sec. 14-326. Stormwater pollution prevention plan; contents of plans.**

(a) The operator shall maintain a stormwater pollution prevention plan throughout the period of permit coverage that is consistent with the requirements of [~~9VAC25-870-54~~] 9VAC875-500 and 9VAC25-880-70. The stormwater pollution prevention plan shall include, but not be limited to, an approved erosion and sediment control plan, an approved stormwater management plan (as approved by the City, or by the State pursuant to the general permit issued July 1, 2009) or an agreement in lieu of a stormwater management plan as provided in Section 14-325, a pollution prevention plan, and a description of any additional control measures necessary to address a total maximum daily load if a specific wasteload allocation for a pollutant has been established in a total maximum daily load and is assigned to stormwater discharges from construction. In addition, the stormwater pollution prevention plan shall include any information required by Section II (stormwater pollution prevention plan) of the general permit.

(b) The stormwater pollution prevention plan shall meet the following requirements:

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

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

(3) Minimize the amount of soil exposed during construction;

(4) Minimize the disturbance of steep slopes;

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

(6) Provide and maintain natural buffers around surface waters, direct stormwater to vegetated areas to increase sediment removal and maximize stormwater infiltration, unless infeasible;

(7) Minimize soil compaction and, unless infeasible, preserve topsoil;

(8) ~~[Immediately initiate stabilization of disturbed areas, at a minimum,]~~  
Stabilization of disturbed areas must, at a minimum, be initiated immediately whenever any clearing, grading, excavating, or other earth disturbing activities have ceased permanently on any portion of the site, or have ceased temporarily on any portion of the site and will not resume for a period exceeding 14 calendar days. The stormwater pollution prevention plan shall require that stabilization be completed within a period of time determined by the City. In arid, semi-arid, and drought-stricken areas where immediately initiating vegetative stabilization measures is infeasible, the stormwater pollution

prevention plan shall require that alternative stabilization measures be employed as specified by the; and

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

(c) The permittee shall maintain the stormwater pollution prevention plan at a central location on the site of the land-disturbing activity for as long as land-disturbing activities are occurring on the site. If an on-site location is unavailable, the operator shall post notice of the stormwater pollution prevention plan's location near the main entrance to the site. The permittee shall make the stormwater pollution prevention plan available for public review in accordance with the terms of the general permit, either electronically or in hard copy.

(d) The permittee's stormwater pollution prevention plan shall be written in compliance with the Regulations, the terms of the general permit, and this article. The permittee shall amend the stormwater pollution prevention plan in a timely fashion to incorporate any change in design, construction, operation, or maintenance that has a significant effect on the discharge of pollutants to State waters.

**Sec. 14-327. Stormwater management plan; contents of plans.**

(a) The permittee's stormwater management plan, referenced at Section 14-325, shall be written in compliance with the stormwater management technical criteria set forth in Section 14-330 for the entire common plan of development or sale, where applicable, and shall consider all sources of surface and subsurface runoff and groundwater flows converted to surface flows. Individual lots in new residential, commercial, or industrial developments shall not be considered separate land-disturbing activities.



(b) The permittee shall include the following items in the stormwater management plan:

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

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

(3) A narrative that includes a description of current (pre-land disturbance) site conditions and final (post-land disturbance) site conditions;

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

(5) Information on the proposed stormwater management facilities, including:

a. A detailed narrative on the conversion to a long-term stormwater management facility if the facility was used as a temporary ESC measure;

b. The types of facilities;

~~[b.]~~ (c.) The location of the facilities, including geographic coordinates;

~~[e.]~~ d. The acreage treated; and

~~[d.]~~ e. The surface water or karst features, if present, into which the facilities will discharge;

(6) Hydrologic and hydraulic computations, including runoff characteristics;

(7) Documentation and calculations verifying compliance with the water quality and water quantity requirements of Section 14-330;

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

a. All existing contributing drainage areas;

b. Existing streams, ponds, culverts, ditches, wetlands, other water bodies, and floodplains;

c. Soil types, geologic formations if karst features are present in the area, forest cover, and other vegetative areas;

d. Current land use, including existing structures, roads, and locations of known utilities and easements;

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

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

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

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

(c) If a permittee or operator intends to meet the water quality and quantity requirements set forth in this article through the use of off-site compliance options, where applicable and available, then a letter of availability from the off-site provider must be included in the stormwater management plan. Approved off-site options must achieve the

necessary nutrient reductions prior to the commencement of land-disturbing activities except as allowed by State law.

(d) Elements of the stormwater management plan that include activities regulated under Code of Virginia, Title 54.1, Ch. 4 (Code of Virginia, § 54.1-400 et seq.) or 22 (§ 54.1-2200 et seq.) shall be appropriately sealed and signed by a professional registered in the Commonwealth of Virginia pursuant to Code of Virginia, Title 54.1, Ch. 4, Art. 1 (Code of Virginia, § 54.1-400 et seq.).

(e) A construction record drawing for permanent stormwater management facilities shall be submitted to the Administrator. The construction record drawing shall be appropriately sealed and signed by a professional registered in the Commonwealth of Virginia, certifying that the stormwater management facilities have been constructed in accordance with the approved plan.

**Sec. 14-328. Pollution prevention plan; contents of plans.**

(a) The permittee shall develop, implement and update, as necessary, a pollution prevention plan detailing the design, installation, implementation, and maintenance of effective pollution prevention measures to minimize the discharge of pollutants. At a minimum, these measures shall be designed, installed, implemented, and maintained to:

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

(2) Minimize the exposure of building materials, building products, construction wastes, trash, landscape materials, fertilizers, pesticides, herbicides,

detergents, sanitary waste, and other materials present on the site to precipitation and to stormwater; and

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

(b) The pollution prevention plan shall include effective BMPs to prohibit the following discharges:

(1) Wastewater from washout of concrete, unless managed by an appropriate control;

(2) Wastewater from washout and cleanout of stucco, paint, form release oils, curing compounds, and other construction materials;

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

(4) Soaps or solvents used in vehicle and equipment washing.

(c) The pollution prevention plan shall prohibit discharges from dewatering activities, including discharges from dewatering of trenches and excavations, unless managed by appropriate controls in accordance with 40 CFR 450.21(c).

**Sec. 14-329. Review of soil erosion control and stormwater management plan.**

(a) The applicant shall submit the soil erosion control and stormwater management plan referenced in [~~Section 14-327~~] this article a minimum of 75 days prior to the anticipated commencement of a land-disturbing activity to allow for timely review by the Administrator. The following timeframes for review and approval or disapproval shall apply:

(1) The Administrator shall determine the completeness of the [~~stormwater management plan in accordance with Section 14-327~~] application, and shall notify the

applicant in writing of the determination within 15 calendar days of receipt. If deemed incomplete, the written notification shall explain the reasons the Administrator has deemed the plan incomplete. Where available to the applicant, electronic communication shall be considered communication in writing;

(2) The Administrator shall have an additional 60 calendar days from the date of communicating to the applicant that the plan is complete to review the [~~stormwater management~~] ESM plan, except that if a determination of completeness is not made within the time prescribed in subsection (a)(1) of this section, then the [~~stormwater management~~] ESM plan shall be deemed complete and the Administrator shall have 60 calendar days from the date of submission to review the [~~stormwater management~~] ESM plan.

(b) During the review period, the plan shall be approved or disapproved and the decision communicated in writing to the applicant or his designated agent. If the plan is not approved, the reasons for not approving the plan shall be provided in writing. Approval or denial shall be based on the plan's compliance with the requirements of this article. If a plan meeting all requirements of this article is submitted and no action is taken within the timeframe above, the plan shall be deemed approved.

(c) If the [~~stormwater management~~] ESM plan is disapproved, the Administrator shall review a revised plan within [~~45~~] 15 calendar days of the resubmission and shall act on the resubmitted application within 45 days after receipt.

(d) Once the Administrator has approved a plan, the permittee shall modify the plan only under the following terms:

(1) After review and written approval by the Administrator. The Administrator shall have 60 calendar days to respond in writing either approving or disapproving such request.

(2) When required by the Administrator, and within a time prescribed by the Administrator, to address any deficiencies noted during inspection.

(e) The permittee shall submit a construction record drawing for permanent stormwater management facilities, unless waived by the Administrator pursuant to law.

**Sec. 14-330. - Technical criteria for land-disturbing activities.**

(a) To protect the quality and quantity of State water from the potential harm of unmanaged stormwater runoff resulting from land-disturbing activities, the City hereby adopts the technical criteria for regulated land-disturbing activities set forth in Part ~~[HB]~~ V of ~~[the Regulations, as amended,]~~ 9VAC25-875 expressly to include ~~[9VAC25-870-62]~~ 9VAC25-875-570 (applicability); ~~[9VAC25-870-63]~~ 9VAC25-875-580 (water quality design criteria requirements); ~~[9VAC25-870-65]~~ 9VAC25-875-590 (water quality compliance); ~~[9VAC25-870-66]~~ 9VAC25-875-600 (water quantity); ~~[9VAC25-870-69]~~ 9VAC25-875-610 (off-site compliance options); ~~[9VAC25-870-72]~~ 9VAC25-875-620 (design storms and hydrologic methods); ~~[9VAC25-870-74]~~ 9VAC25-875-630 (stormwater harvesting); ~~[9VAC25-870-76]~~ 9VAC25-875-640 (linear development project); ~~[9VAC25-870-85]~~ 9VAC25-875-650 (stormwater management impoundment structures or facilities) and ~~[9VAC25-870-92]~~ 9VAC25-875-660 (comprehensive stormwater management plans), which shall apply to all land-disturbing activities, including all Chesapeake Bay Preservation Act land-disturbing activities, regulated pursuant to this chapter, except as expressly set forth in subsection (b) of this section.

(b) Land-disturbing activities, including all Chesapeake Bay Preservation Act land-disturbing activities, that have obtained initial general permit coverage, or that commence land disturbance, prior to July 1, 2014, shall be conducted in accordance with the technical criteria for regulated land-disturbing activities set forth in ~~[Part HC of the Regulations, as amended,]~~ Article 4 (9VAC25-875-670 et seq) of Part V of the Regulation expressly to include ~~[9VAC25-870-93]~~ 9VAC25-875-670 (definitions); ~~[9VAC25-870-94]~~ 9VAC25-875-680 (applicability); ~~[9VAC25-870-95]~~ 9VAC25-875-690 (general); ~~[9VAC25-870-96]~~ 9VAC25-875-700 (water quality); ~~[9VAC25-870-97]~~ 9VAC25-875-710 (stream channel erosion); ~~[9VAC25-870-98]~~ 9VAC25-875-720 (flooding); and ~~[9VAC25-870-99]~~ 9VAC25-875-730 (regional (watershed-wide) stormwater management plans). Such projects shall remain subject to the Part ~~[HC]~~ V technical criteria for an additional two general permit cycles. After such time, portions of the project that come under construction shall become subject to any new technical criteria adopted by the Department of Environmental Quality.

(c) Land-disturbing activities that obtain general permit coverage on or after July 1, 2014, shall be conducted in accordance with the Part ~~[HB]~~ V technical criteria of the Regulations. Such projects shall remain subject to the Part ~~[HB]~~ V technical criteria for an additional ~~[two]~~ one general permit cycles, except as provided for in subsection D of ~~[9VAC25-870-48]~~ 9VAC25-875-490. After such time, portions of the project that come under construction shall become subject to any new technical criteria adopted by the Department of Environmental Quality.

(d) Any land-disturbing activity shall be considered grandfathered and shall be subject to the Part ~~[HB]~~ V technical criteria of the Regulations, provided that:

(1) A proffered or conditional zoning plan, zoning with a plan of development, preliminary or final subdivision plat, preliminary or final site plan, or any document determined by the City to be equivalent thereto:

- a. Was approved by the City prior to July 1, 2012;
- b. Provided a layout as defined in [~~9VAC25-870-10~~] 9VAC25-875-10;
- c. Will comply with the Part [~~HB~~] V technical criteria of the

Regulations; and

- d. Has not been subsequently modified or amended in a manner resulting in an increase in the amount of phosphorus leaving each point of discharge, and such that there is no increase in the volume or rate of runoff;

(2) State permit coverage has not been obtained prior to July 1, 2014; and

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

(e) Local, State, and Federal projects shall be considered grandfathered by the City and shall be subject to Part [~~HB~~] V technical criteria of the Regulations, provided that:

- (1) There has been an obligation of local, State, or Federal funding, in whole or in part, prior to July 1, 2012, or the Department of Environmental Quality has approved a stormwater management plan prior to July 1, 2012;

- (2) State permit coverage has not been obtained prior to July 1, 2014;

and

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

(f) Land-disturbing activities grandfathered under subsections (d) and (e) of this section shall remain subject to the Part [~~HB~~] V technical criteria of the Regulations for one additional State permit cycle. After such time, portions of the project coming under construction



shall become subject to any new technical criteria adopted by the Department of Environmental Quality.

(g) In cases where governmental bonding or public debt financing has been issued for a project prior to July 1, 2012, such project shall be subject to the technical criteria of Part ~~[HC]~~ V of the Regulations.

(h) Nothing in this section shall preclude an operator from constructing to a more stringent standard at the operator's discretion.

(i) (1) The Administrator may grant exceptions to the technical requirements of ~~[Part HB or Part HC]~~ Part V of the Regulations, provided that:

- a. The exception is the minimum necessary to afford relief;
- b. Reasonable and appropriate conditions are imposed so that the intent of the Act, the Regulations, and this article are preserved;
- c. Granting the exception will not confer any special privileges that are denied in other similar circumstances; and
- d. Exception requests are not based upon conditions or circumstances that are self-imposed or self-created.

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

- a. Exceptions to the requirement that the land-disturbing activity obtain a required permit shall not be given by the Administrator, nor shall the Administrator approve the use of a BMP not found on the Virginia Stormwater BMP Clearinghouse Website, except where allowed under Part ~~[HB]~~ V of the Regulations, or otherwise by State law.

b. Exceptions to requirements for phosphorus reductions shall not be allowed unless off-site options otherwise permitted pursuant to [~~9VAC25-870-69~~] 9VAC25-875-610-69 have been considered and found not available.

**Sec. 14-331. Long-term maintenance of permanent stormwater facilities.**

(a) All stormwater management facilities, including BMPs and other techniques specified to manage the quality and quantity of runoff, shall be maintained for their full lifespan. In order to ensure this result, the permittee shall sign and record in the local land records an instrument obligating the permittee to maintain all stormwater management facilities for their full lifespan. The instrument shall be on the most recent form approved by the Administrator. If the permittee will not be the owner of the stormwater management facilities once they are fully constructed, the permittee shall obtain the document from the future owner. The Administrator shall not issue a final approval of a stormwater management plan until the recorded document is received and is deemed acceptable to the City. At a minimum, the instrument shall:

- (1) Be submitted to the Administrator for review and approval during the review period for the stormwater management plan;
- (2) Run with the land;
- (3) Provide access to the property for maintenance and regulatory inspection purposes;
- (4) Provide for inspections and maintenance and the submission of inspection and maintenance reports to the Administrator; and
- (5) Be enforceable by all appropriate governmental parties.

(b) At the Administrator's discretion, such recorded instruments need not be provided for stormwater management facilities, including BMPs and other techniques specified to manage

the quality and quantity of runoff, designed to treat stormwater runoff primarily from an individual residential lot, provided future maintenance of such facilities will be addressed through an enforceable mechanism acceptable to the Administrator. Facilities that are exempted from subsection (a) of this section pursuant to this subsection shall not be subject to the requirement for an inspection conducted by the Administrator.

(c) If a recorded instrument is not required pursuant to subsection (b) of this section, the Administrator shall develop a strategy for addressing maintenance of stormwater management facilities designed to treat stormwater runoff primarily from an individual residential lot on which they are located. Such a strategy may include periodic inspections, homeowner outreach and education, or other methods targeted at promoting the long-term maintenance of such facilities. Facilities that are exempted pursuant to subsection (b) of this section must comply with any requirements as required by the Administrator as a part of this overall strategy.

**Sec. 14-332. Monitoring and inspections.**

(a) The Administrator is authorized to inspect any land-disturbing activity in the City for:

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

The permittee or operator of a land-disturbing activity shall permit the Administrator to conduct such an inspection at reasonable times and under reasonable circumstances.

(b) The Administrator is authorized to enter any establishment or upon any property, public or private, in order to conduct surveys or investigations necessary to ensure that stormwater management facilities are being adequately maintained as designed after completion of land-disturbing activities, to enforce this article or, when permitted by appropriate legal arrangement, including, but not limited to, a performance bond with surety, cash escrow, or letter of credit, for the purpose of taking appropriate corrective actions required by permit when a permittee, after proper notice, has failed to take acceptable action within the time specified. The operator of any such property shall permit the Administrator to conduct such an inspection, survey or investigation at reasonable times and under reasonable circumstances. The terms of the legal documentation referenced above will govern the terms of the Administrator's actions with regard to taking corrective actions.

(c) The Administrator is authorized to require, and a permittee shall furnish, when requested, any application materials, plans, specifications, and other pertinent information as may be necessary to determine the effect of the discharge on the quality of State waters, or such other information as may be necessary to accomplish the purposes of this chapter.

(d) The Administrator is authorized to conduct post-construction inspections of stormwater management facilities pursuant to the City's approved inspection program. The Administrator shall conduct an inspection of each facility, at a minimum, at least once every five years, except as may otherwise be provided for in Section 14-331.

**Sec. 14-333. Hearings.**

To the extent a hearing is required by law, hearings held under this section shall be conducted by the Administrator in accordance with such procedures established by the Administrator by regulation pursuant to Section 28-26, which shall include, at a minimum, an opportunity for the applicant or permittee to be heard on pertinent matters and based upon procedures required by [~~Code of Virginia, §§ 62.1-44.15:44 and 62.1-44.15:45~~] State law, as applicable.

**Sec. 14-335. Enforcement.**

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

(1) The notice shall specify the measures needed to comply with the permit conditions and shall specify the time within which such measures shall be completed. If the person served with such notice fails to comply or ensure that a responsible party complies within the time specified, the Administrator is authorized to issue a stop work order or to revoke the permit. The Administrator is also authorized to pursue additional enforcement measures listed below.

(2) If the Administrator issues a stop work order, the person to which such order has been issued shall cease or ensure that all land-disturbing activities cease until the Administrator confirms in writing that the permit violation has ceased, and/or that an

approved plan and required permits have been obtained, or that specified corrective measures have been completed.

(3) Stop work orders shall be issued in accordance with City-issued procedures, and shall become effective upon service on the permittee or other appropriate person by certified mail, return receipt requested, sent to such person's address specified in the land records of the locality, or by personal delivery by an agent of the Administrator.

(4) The Administrator is authorized if, in the Administrator's discretion, any violation is adversely affecting, or presents an imminent and substantial danger of causing harmful erosion of lands or sediment deposition in waters within, the watersheds of the Commonwealth, or otherwise is causing a substantial adverse impact to water quality, to issue the permittee or other appropriate person, without advance notice or hearing, an emergency order directing such person to cease immediately all land-disturbing activities on the site. The Administrator shall provide an opportunity for a hearing, after reasonable notice, as to the time and place thereof, to a permittee, in order to determine whether to affirm, modify, amend, or cancel such emergency order.

(b) In addition to any other remedy provided by this chapter, if the Administrator determines that there is a failure to comply with the provisions of this chapter, the Administrator may initiate such informal or formal administrative enforcement procedures in a manner authorized by this chapter and any applicable City requirements. Such measures include, but are not limited to:

(1) With the consent of any person subject to a Richmond Erosion and Stormwater Management Program Permit who has violated the Richmond Erosion and Stormwater Management Program Permit; who has failed to comply with any decision of

the Administrator or City; or who has violated the terms of any order issued by the Administrator or the City, a consent special order issued pursuant to Code of Virginia, § 62.1-44.15:48. A consent special order shall order the person to comply with the terms of the order, as well as any provision of this article or decision by the Administrator or the City. Such special orders shall be issued in accordance with City-issued requirements, including requirements for public notice and comment, unless issued as an emergency order consistent with subsection (a)(4) of this section. Special orders may include a civil charge for violations of the requirements listed above, instead of civil penalties that could be imposed pursuant to this section. The provisions of this subsection notwithstanding, the City, in its discretion, may proceed directly with other enforcement measures authorized by this article.

(2) Any person violating or failing, neglecting, or refusing to obey any rule, regulation, ordinance, order, or any permit condition issued by the Administrator or any provisions of this chapter may be compelled in a proceeding instituted by the City in any appropriate court to obey such rule, regulation, ordinance, order, or permit condition and to comply therewith, by injunction, mandamus or other appropriate remedy.

(3) Any person who violates any provision of this chapter or who fails, neglects or refuses to comply with any order of the Administrator or City, shall be subject to a civil penalty not to exceed \$32,500.00 for each violation within the discretion of the court. Each day of violation of each requirement shall constitute a separate offense. The City may issue a summons for the collection of the civil penalty and the action may be prosecuted in the appropriate court. Violations for which a penalty may be imposed shall include, but not be limited to:

- a. No State permit registration;
- b. No stormwater pollution prevention plan;
- c. Incomplete stormwater pollution prevention plan;
- d. Stormwater pollution prevention plan not available for review;
- e. No approved erosion and sediment control plan;
- f. Failure to install best management practices or erosion and sediment controls;
- g. Best management practices or erosion and sediment controls improperly installed or maintained;
- h. Operational deficiencies;
- i. Failure to conduct required inspections;
- j. Incomplete, improper, or missed inspections; and
- k. Discharges not in compliance with the requirements of the general permit.

(4) Notwithstanding any other civil or equitable remedy provided by this section or otherwise by law, any person who willfully or negligently violates any provision of this article, any order of the Administrator, any condition of a permit, or any order of a court pertaining to this article, shall be guilty of a misdemeanor punishable by confinement in jail for not more than 12 months or a fine of not ~~[more]~~ less than \$2,500.00 nor more than \$32,500.00, [either] or both.

**Sec. 14-336. Fees.**

Fees to cover costs associated with implementation of the Richmond Erosion and Stormwater Management Program in this article shall be imposed in accordance with this section.

- (1) The fees provided in this subsection apply:



a. To any operator seeking coverage under the July 1, 2014, General Permit for Discharges of Stormwater from Construction Activities; or

b. On or after July 1, 2014, to any operator seeking coverage under a General Permit for Discharges of Stormwater from Construction Activities, a State or Federal agency that does not file annual standards and specifications or an individual permit issued by the Board.

c. The fees described in this subsection (1) shall be as follows:

Fee to cover cost associated with [ <del>VSMP</del> ] <u>VESMP</u> implementation. Fee for any operator seeking coverage under a [ <del>RSMP</del> ] <u>RESMP</u> Authority permit	
Chesapeake Bay Preservation Act Land-Disturbing Activity (Not subject to general permit coverage; sites within the City with land disturbance acreage equal to or greater than 2,500 square feet and less than one acre) (\$0.00 paid to the Virginia Department of Environmental Quality)	\$290.00
General/Stormwater Management - Small Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance equal to or greater than one acre and less than five acres) (\$756.00 paid to the Virginia Department of Environmental Quality, based upon 28 percent of total fee paid)	\$2,700.00
Stormwater Management - Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than five acres and less than ten acres) (\$952.00 paid to the Virginia Department of Environmental Quality, based upon 28 percent of total fee paid)	\$3,400.00
General/Stormwater Management - Small Construction Activity/Land Clearing (For single-family detached residential structures within or outside of a common plan of development of sale with land disturbance acreage less than five acres) (\$0.00 paid to the Virginia Department of Environmental Quality)	\$209.00
General/Stormwater Management - Small Construction Activity/Land Clearing (Areas within common plans of development or sale with land disturbance acreage less than one acre, except for single-family detached residential structures) (\$81.00 paid to the Virginia Department of Environmental Quality based upon 28 percent of total fee paid)	\$290.00
General/Stormwater Management - Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than ten acres and less than 50 acres) (\$1,260.00 paid to the Virginia Department of Environmental Quality, based upon 28 percent of total fee paid)	\$4,500.00
General/Stormwater Management - Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance	\$6,100.00

acreage equal to or greater than 50 acres and less than 100 acres) (\$1,708.00 paid to the Virginia Department of Environmental Quality, based upon 28 percent of total fee paid)	
General/Stormwater Management - Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 100 acres) (\$2,688.00 paid to the Virginia Department of Environmental Quality, based upon 28 percent of total fee paid)	\$9,600.00

d. An applicant shall pay the fees provided in this subsection (1) for initial issuance of general permit coverage and for a Richmond Erosion and Stormwater Management Program Permit. No more than 50 percent of the total fee to be paid by the applicant shall be due at the time that a stormwater management plan or an initial stormwater management plan is submitted to the City for review. The applicant shall pay the balance of the fee prior to the issuance of coverage under the general permit. When a site or sites are purchased for development within a previously permitted common plan of development or sale, the applicant shall be subject to fees in accordance with the disturbed acreage of their site or sites as set forth in this subsection.

(2) A permittee who wishes to modify or transfer registration under the general permit shall pay the fees provided in this subsection under the terms included therein.

Fee for modification or transfer of individual permits or of registration statements for the General Permit for Discharges of Stormwater from Construction Activities issued by the State Water Control Board. If the State permit modifications result in changes to stormwater management plans that require additional review by the City, such reviews shall be subject to the fees set out in this section. The fee assessed shall be based on the total disturbed acreage of the site. In addition to the State permit modification fee, modifications resulting in an increase in total disturbed acreage shall pay the difference in the initial State permit fee paid and the State permit fee that would have applied for the total disturbed acreage as stated above for initial coverage	
General/Stormwater Management - Small Construction Activity/Land Clearing (Areas within common plans of development or sale with land disturbance acreage less than one acre)	\$20.00

General/Stormwater Management - Small Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than one acre and less than five acres)	\$200.00
General/Stormwater Management - Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than five acres and less than ten acres)	\$250.00
General/Stormwater Management - Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than ten acres and less than 50 acres)	\$300.00
General/Stormwater Management - Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 50 acres and less than 100 acres)	\$450.00
General/Stormwater Management - Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 100 acres)	\$700.00
Individual Permit for Discharges of Stormwater from Construction Activities	\$5,000.00

(3) Each permittee shall pay the fees provided in this subsection for annual permit maintenance, including fees imposed on expired permits that have been administratively continued. With respect to the general permit, the fees shall apply until the permit coverage is terminated. The permittee shall pay the applicable annual maintenance fees to the City by the anniversary date of the general permit coverage. No permit will be reissued or automatically continued without payment of the required fee.

Annual Fee For Permit Maintenance	
Chesapeake Bay Preservation Act Land-Disturbing Activity (Not subject to General Permit coverage; sites within designated areas of Chesapeake Bay Preservation Act localities with land disturbance acreage equal to or greater than 2,500 square feet and less than one acre)	\$50.00
General/Stormwater Management - Small Construction Activity/Land Clearing (Areas within common plans of development or sale with land disturbance acreage less than one acre)	\$50.00
General/Stormwater Management - Small Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance equal to or greater than one acre and less than five acres)	\$400.00
General/Stormwater Management - Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than five acres and less than ten acres)	\$500.00

General/Stormwater Management - Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than ten acres and less than 50 acres)	\$650.00
General/Stormwater Management - Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 50 acres and less than 100 acres)	\$900.00
General/Stormwater Management - Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 100 acres)	\$1,400.00

(4) Permit and permit coverage maintenance fees provided in this section may apply to each permittee with general permit coverage. No general permit application fees will be assessed to:

a. Permittees who request minor modifications, as defined in this article, to general permit coverage. Permit modifications at the request of the permittee resulting in changes to stormwater management plans that require additional review by the Administrator shall not be exempt.

b. Permittees whose general permit coverage requirements are modified or amended at the initiative of the Department of Environmental Quality, excluding errors in the registration statement identified by the Administrator or errors related to the acreage of the site.

c. All incomplete payments will be deemed as nonpayments, and the Administrator shall notify the applicant of any incomplete payments. Interest may be charged for late payments at the rate and in the manner set forth in this Code. A ten percent late payment fee shall be charged to any delinquent account (over 90 days past due). The City shall be entitled to all remedies available under the Code of Virginia or other applicable law in collecting any past due amount.

(5) Each applicant whose application for a permit is withdrawn or rejected and each permittee whose permit is withdrawn after issuance shall pay an administrative fee and, if a plans review has been undertaken, a plans review fee. The administrative fee and plans review fee shall each be five percent of the initial permit fee or \$25.00, whichever is greater.

(6) Each permittee whose plans are revised after the permit is issued shall pay a revised plans fee of ten percent of the initial permit fee or \$50.00, whichever is greater.

(7) Any excess fee greater than \$2.00 shall be returned to the permit holder upon written request.

§ 4. That Chapter 14, Article V of the Code of the City of Richmond (2020) be and is hereby amended and reordained by **adding therein new sections** numbered 14-323.1 and 14-329.1 as follows:

**Sec. 14-323.1. Regulated land-disturbing activities.**

(a) Land-disturbing activity that meetings one of the criteria below are regulated as follows:

(1) Land-disturbing activity that disturbs 4,000 square feet or more, is less than one acre, not in an area of a locality designated as a Chesapeake Bay Preservation Area, and not part of a common plan of development or sale, is subject to criteria defined in Article 2 (9VAC25-875-540 et seq.) of Part V of the Virginia Erosion and Stormwater Management Regulation (Regulation).

(2) Land-disturbing activity that disturbs 2,500 square feet or more, is less than one acre, and in an area of a locality designated as a Chesapeake Bay Preservation Area is subject to criteria defined in Article 2 (9VAC25-875-540 et seq.) and Article 3 (9VAC25-

875-570 et seq.) of Part V unless Article 4 (9VAC25-875-670 et seq.) of Part V of the Regulation is applicable, as determined in accordance with 9VAC25-875-480 and 9VAC25-875-490.

(3) Land-disturbing activity that disturbs less than one acre, but is part of a larger common plan of development or sale that disturbs one acre or more, is subject to criteria defined in Article 2 (9VAC25-875-540 et seq.) and Article 3 (9VAC25-875-570 et seq.) of Part V unless Article 4 (9VAC25-874-670 et seq.) of Part V of the Regulation is applicable, as determined in accordance with 9VAC25-875-490.

(4) Land-disturbing activity that disturbs one acre or more is subject to criteria defined in Article 2 (9VAC25-875-540 et seq.) and Article 3 (9VAC25-875-570 et seq.) of Part V unless Article 4 (9VAC25-875-670 et seq.) of Part V is applicable, as determined in accordance with 9VAC25-875-480 and 9VAC25-875-490.

(b) Land-disturbing activities exempt per 9VAC25-875-90 are not required to comply with the requirements of the VESMA unless otherwise required by federal law.

**Sec. 14-329.1. Erosion and sediment control plan; contents of plans.**

(a) An erosion and sediment control plan, which is a component of the ESM plan, shall be filed for a development and the buildings constructed within, regardless of the phasing of construction. The erosion and sediment control plan shall contain all major conservation decisions to ensure that the entire unit or units of land will be so treated to achieve the conservation objects in 9VAC25-875-560. The erosion and sediment control plan may include:

- (1) Appropriate maps;
- (2) An appropriate soil and water plan inventory and management information with needed interpretations; and





# City of Richmond

900 East Broad Street  
2nd Floor of City Hall  
Richmond, VA 23219  
www.rva.gov

## Master

**File Number: Admin-2024-0665**

**File ID:** Admin-2024-0665

**Type:** Request for Ordinance or Resolution

**Status:** Regular Agenda

**Version:** 2

**Reference:**

**In Control:** City Clerk Waiting Room

**Department:**

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**Indexes:**

**Agenda Number:**

**Patron(s):**

**Enactment Date:**

**Attachments:** Admin-2024-0665 2024.05.09 O&R Transmittal VESMP, Admin-2024-0665 WD - Repeal and Amend ch. 14, art. III Ordinance (VESMP) AATF

**Enactment Number:**

**Contact:**

**Introduction Date:**

**Drafter:** John.Vaughan@rva.gov

**Effective Date:**

**Related Files:**

### Approval History

Version	Seq #	Action Date	Approver	Action	Due Date
2	1	6/20/2024	April Bingham	Approve	6/19/2024
2	2	6/21/2024	Robert Steidel	Approve	6/21/2024
2	3	6/21/2024	Jeff Gray	Approve	6/24/2024
2	4	6/21/2024	Lincoln Saunders	Approve	6/25/2024
2	5	6/21/2024	Mayor Stoney	Approve	6/25/2024

### History of Legislative File

Ver- sion:	Acting Body:	Date:	Action:	Sent To:	Due Date:	Return Date:	Result:



Text of Legislative File Admin-2024-0665

**City of Richmond**  
Intracity Correspondence

**O&R Transmittal**

**DATE:** June 18, 2024

**TO:** The Honorable Members of City Council

**THROUGH:** The Honorable Levar M. Stoney, Mayor

**THROUGH:** J.E. Lincoln Saunders, Chief Administrative Officer

**THROUGH:** Robert Steidel, Deputy Chief Administrative Officer

**FROM:** April N. Bingham, Director of Public Utilities

**RE:** Virginia Erosion and Stormwater Management Program, City Code revisions

**ORD. OR RES. No.**

**PURPOSE:** To repeal ch. 14, art. III of the City Code concerning the City's erosion and sediment control program, and to amend ch. 14, art. V of the City Code concerning the City's stormwater management program to comply with recent changes to state law.

**BACKGROUND:** The State Water Control Board adopted the Virginia Erosion and Stormwater Management Regulation and approved the repeal of the Erosion and Sediment Control Regulations, the Erosion and Sediment Control and Stormwater Management Certification Regulations, and the Virginia Stormwater Management Program Regulation. Also, the General Assembly combined stormwater management and erosion and sediment control requirements under the Virginia Erosion and Stormwater Management Act. With these, City Code will need to be updated to reflect both the new law and regulations. Pursuant to §62.1-44.15:27 of the Code of Virginia, this ordinance is part of an initiative to integrate the City's stormwater management requirements with the City's erosion and sediment control, flood insurance, flood plain management, and Chesapeake Bay Preservation Act requirements into a consolidated erosion and stormwater management program. The erosion and stormwater management program is intended to facilitate the submission and approval of plans, issuance of permits, payment of

fees, and coordination of inspection and enforcement activities for land-disturbing activities into a more convenient and efficient manner for both the City of Richmond and those responsible for compliance with these programs.

**COMMUNITY ENGAGEMENT:** While specific community engagement has not been conducted regarding the potential repeal of ch. 14, art. III and amendment of ch. 14, art. V, the intent of this ordinance is to bring the City’s erosion and sediment control and stormwater management programs into compliance with state law and regulations. DPU, as the agency responsible for these programs, commits to engaging the public in integrating these changes to existing programs.

**STRATEGIC INITIATIVES AND OTHER GOVERNMENTAL:**

**FISCAL IMPACT:** None.

**DESIRED EFFECTIVE DATE:** July 22, 2024

**REQUESTED INTRODUCTION DATE:** June 24, 2024

**CITY COUNCIL PUBLIC HEARING DATE:** July 22, 2024

**REQUESTED AGENDA:** Consent

**RECOMMENDED COUNCIL COMMITTEE:** Land Use, Housing and Transportation (July 16, 2024)

**AFFECTED AGENCIES:** Department of Public Utilities

**RELATIONSHIP TO EXISTING ORD. OR RES.:** N/A

**ATTACHMENTS:**

**STAFF:** Eric Whitehurst, DPU (804) 240-8725