



Commonwealth of Virginia

VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

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MEMORANDUM

To: All Local Virginia Erosion and Sediment Control Program Administrators
All Local Virginia Stormwater Management Program Administrators

From: Megan Mayfield, Director, Division of Water Permitting

Date: December 27, 2023

Subject: Virginia Erosion and Stormwater Management Program and Virginia Erosion and Sediment Control Program Model Ordinances

At the June 22, 2023 State Water Control Board (Board) meeting, the Board approved and adopted the Virginia Erosion and Stormwater Management (VESM) Regulation (9VAC25-875) and approved the repeal of the Erosion and Sediment Control Regulations (9VAC25-840), Erosion and Sediment Control and Stormwater Management Certification Regulations (9VAC25-850), and Virginia Stormwater Management Program Regulation (9VAC25-870). The VESM Regulation and repeal of the other regulations, will be effective July 1, 2024. The Final VESM Regulation was published on December 4, 2023 in the *Virginia Register of Regulations*, Volume 40 Issue 8. Below is a link to the final regulation:

[Vol. 40 Iss. 8 \(Final\) 9VAC25-840, Erosion And Sediment Control Regulations December 04, 2023 \(virginia.gov\)](#)

Also on July 1, 2024, Chapters 68 and 758 of the 2016 Acts of Assembly become effective. Those Acts, referred to as the “Consolidation Bill,” combine stormwater management and erosion and sediment control requirements under the Virginia Erosion and Stormwater Management Act (VESMA), §§ 62.1-44.15:24 through 62.1-44.15:50 of the Code of Virginia. Requirements for a Virginia Erosion and Sediment Control Program (VESCP) are in the Erosion and Sediment Control Law (ESCL) for Localities Not Administering a Virginia Erosion and Stormwater Management Program, §§ 62.1-44.15:51 through 62.1-44.15:66 of the Code of Virginia. With the Consolidation Bill and VESM Regulation becoming effective on July 1, 2024, local ordinances for the administration of a Virginia Erosion and Sediment Control Program

(VESCP) or Virginia Stormwater Management Program (VSMP) will need to be updated to reflect both the new law and regulations.

Consistent with § 62.1-44.15:27 of the Code of Virginia, the Virginia Department of Environmental Quality (DEQ) has prepared a Virginia Erosion and Stormwater Management Program (VESMP) Model Ordinance and a Virginia Erosion and Sediment Control Program (VESCP) Model Ordinance to assist in the development of the appropriate local ordinance for your locality. The model ordinances incorporate requirements in the VESMA, ESCL for Localities Not Administering a Virginia Erosion and Stormwater Management Program, and VESM Regulation. Copies of each are attached for your use.

The DEQ is not required to review and/or approve the local ordinances, or associated documents, manuals, etc., prior to adoption. Please note that a locality may, by local ordinance adopted pursuant to § 62.1-44.15:33 or 62.1-44.15:65 of the Code of Virginia, establish more stringent local requirements. If a VESMP authority elects to adopt more stringent ordinances, the authority shall submit a letter report to the DEQ when more stringent stormwater management ordinances or more stringent requirements are authorized by such stormwater management ordinances. If a VESCP authority elects to adopt more stringent ordinances, the authority shall report to the DEQ when more stringent erosion and sediment control ordinances are determined to be necessary.

Please feel free to contact Rebeccah Rochet if you have any questions or need additional assistance (Rebeccah.Rochet@deq.virginia.gov or 804-801-2950).

ATTACHMENT A

VIRGINIA EROSION AND STORMWATER MANAGEMENT PROGRAM

MODEL ORDINANCE

Pursuant to §62.1-44.15:27 of the Code of Virginia, this ordinance is adopted as part of an initiative to integrate the Town of Vienna stormwater management requirements with the Town of Vienna erosion and sediment control 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 Town of Vienna and those responsible for compliance with these programs.

Section 23.1. TITLE, PURPOSE, AND AUTHORITY.

- A. This ordinance shall be known as the "Erosion and Stormwater Management Ordinance of the Town of Vienna.
- B. The purpose of this ordinance is to ensure the general health, safety, and welfare of the citizens of the Town of Vienna, protect the quality and quantity of state waters from the potential harm of unmanaged stormwater and soil erosion, including protection from a land disturbing activity causing unreasonable degradation of properties, water quality, stream channels, and other natural resources, and to establish procedures whereby stormwater requirements related to water quality and quantity shall be administered and enforced.
- C. The Director of Public Works is hereby delegated authority to administer this chapter and to issue supplementary rules and regulations that are in support of, and not in conflict with, the provisions of this chapter. Said supplemental rules and regulations shall have the same force and effect as if fully set forth herein.
- D. This ordinance is authorized by § 62.1-44.15:27 of the Code of Virginia.

Section 23.2. DEFINITIONS.

The following words and terms, when used in this ordinance, shall have the following meanings, unless the context clearly indicates otherwise.

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

"Agreement in lieu of a plan" means a contract between the Town of Vienna and the owner or permittee that specifies methods that shall be implemented to comply with the requirements of the VESMA and this ordinance for the construction of a (i) single-family detached residential

structure 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; such contract may be executed by the Director in lieu of a soil erosion control and stormwater management plan.

"Applicant" means person submitting a soil erosion control and stormwater management plan to a VESMP authority for approval in order to obtain authorization to commence a land-disturbing activity.

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

1. "Nonproprietary best management practice" means both structural and nonstructural practices to prevent or reduce the pollution of surface waters and groundwater systems that are in the public domain and are not protected by trademark or patent or copyright.
2. "Proprietary best management practice" means both structural and nonstructural practices to prevent or reduce the pollution of surface waters and groundwater systems that are privately owned and controlled and may be protected by trademark or patent or copyright.

"Board" means the State Water Control Board.

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

"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 or greater than 2,500 square feet and less than one acre in all areas of the Town designated as Chesapeake Bay Preservation Areas by the Town Council under Chapter 18 and subject to the Chesapeake Bay Preservation Act, Code of Virginia § 62.1-44.15:74, et seq.

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

“Clearing” means any activity that removes vegetative ground cover

"Cofferdam" means a watertight temporary structure in a river, lake, etc., for keeping the water from an enclosed area that has been pumped dry so that bridge foundations, dams, etc., may be constructed.

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

"CWA and regulations" mean the Clean Water Act and applicable regulations published in the Code of Federal Regulations promulgated thereunder. For the purposes of this ordinance, it includes state program requirements.

"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" means the Virginia Department of Environmental Quality.

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

“Director” means the Director of Public Works.

"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.

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

"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.

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

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

"Energy dissipator" means a nonerodable 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.

“Excavating” means any digging, scooping or other methods of removing earth materials.

“Filling” means any depositing or stockpiling of earth materials.

"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.

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

"General permit" means the state permit authorizing a category of discharges under the CWA and the Virginia Stormwater Management Act within a geographical area of the Commonwealth of Virginia.

“Grading” means any excavating or filling of earth materials or any combination thereof, including the land in its excavated or filled condition.

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

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

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

"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 a manmade change to the land surface that may result in soil erosion or has the potential to change its runoff characteristics, including construction activity such as the clearing, grading, excavating, or filling of land.

"Land-disturbance permit" means a permit issued by the Town of Vienna allowing a land-disturbing activity to commence after the requirements of § 62.1-44.15:34 of the Code of Virginia have been met.

"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.

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

"Local erosion and sediment control program" means an outline of the various methods employed by a district or locality to regulate land disturbing activities and thereby minimize erosion and sedimentation in compliance with the state program and may include such items as local ordinances, policies and guidelines, technical materials, inspection, enforcement, and evaluation.

"Locality" means the Town of Vienna

"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.

"Manmade" means constructed by man.

"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 modifications and amendments not requiring extensive review and evaluation including changes in EPA promulgated test protocols, increasing monitoring frequency requirements, changes in sampling locations, and changes to compliance dates within the overall compliance schedules. A minor permit modification or amendment does not substantially alter permit conditions, substantially increase or decrease the amount of surface water impacts, increase the size of the operation, or reduce the capacity of the facility to protect human health or the environment.

"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.

"Nonerodible" means a material, e.g., riprap, concrete, plastic, etc., that will not experience surface wear due to natural forces.

"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 the VESMA and this ordinance. 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 VESMP 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.

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

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

"Permit" means a VPDES permit issued by the department pursuant to § 62.1-44.15 of the Code of Virginia for stormwater discharges from a land-disturbing activity.

"Permittee" means the person to whom the permit is issued.

"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, governmental body, including a federal or state entity as applicable, any interstate body, or any other legal entity.

"Plan approving authority" means the Town Council or the department of public works, responsible for determining the adequacy of plans submitted for land disturbing activities on a unit or units of land and for approving plans.

"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 VESMP authority. 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.

"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.

"Sediment trap" means a temporary impoundment built to retain sediment and debris which is formed by constructing an earthen embankment with a stone outlet.

"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 200 feet under natural conditions.

"Shoreline erosion control project" means an erosion control project approved by local wetlands boards, the Virginia Marine Resources Commission, the department, or the United States Army Corps of Engineers and located on tidal waters and within nonvegetated or vegetated wetlands as defined in Title 28.2 of the Code of Virginia.

"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.

"Site hydrology" means the movement of water on, across, through, and off the site as determined by parameters including soil types, soil permeability, vegetative cover, seasonal water tables, slopes, land cover, and impervious cover.

"Slope drain" means tubing or conduit made of nonerosive material extending from the top to the bottom of a cut or fill slope with an energy dissipator at the outlet end.

"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.

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

"State" means the Commonwealth of Virginia.

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

"State application" or "application" means the standard form or forms, including any additions, revisions, or modifications to the forms, approved by the administrator and the department for applying for a permit.

"State permit" means an approval to conduct a land disturbing activity issued by the state 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 board for stormwater discharges from an MS4. Under these state permits, the state imposes and enforces requirements pursuant to the federal Clean Water Act and regulations and the Virginia Stormwater Management Act and regulations.

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

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

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

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

"Stormwater conveyance system" means a combination of drainage components that are used

to convey stormwater discharge, either within or downstream of the land-disturbing activity. This includes:

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 describing methods for complying with the requirements of the VESMP.

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

"Subdivision" means the same as defined in Section 17-1 of the Vienna Subdivision Ordinance.

"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.

"Temporary vehicular stream crossing" means a temporary nonerodible structural span installed across a flowing watercourse for use by construction traffic. Structures may include bridges, round pipes or pipe arches constructed on or through nonerodible material.

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

"Town" means Town of Vienna.

"Two-year 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 exceedance probability with a 50% chance of being equaled or exceeded in any given year.

"Virginia Erosion and Stormwater Management Act" or "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 VESMP authority 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 Erosion and Stormwater Management Program authority" or "VESMP authority" means the Town of Vienna approved by the department to operate the VESMP.

"Virginia Pollutant Discharge Elimination System (VPDES) permit" or "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 BMP Clearinghouse" means a collection that contains detailed design standards and specifications for control measures that may be used in Virginia to comply with the requirements of the VESMA and associated regulations.

"Virginia Stormwater Management Handbook" means a collection of pertinent information that provides general guidance for compliance with the VESMA and associated regulations and is developed by the department with advice from a stakeholder advisory committee.

"Wasteload allocation" or "wasteload" 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.

"Water quality technical criteria" means standards set forth in regulations adopted pursuant to the VESMA that establish minimum design criteria for measures to control nonpoint source pollution.

"Water quantity technical criteria" means standards set forth in regulations adopted pursuant to the VESMA that establish minimum design criteria for measures to control localized flooding and stream channel erosion.

"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.

Section 23.3. VIRGINIA EROSION AND STORMWATER MANAGEMENT PROGRAM ESTABLISHED

Pursuant to § 62.1-44.15:27 of the Code of Virginia, the Town of Vienna hereby establishes a Virginia Erosion and Stormwater Management Program for land-disturbing activities and adopts the Virginia Erosion and Stormwater Management Regulation that specify standards and specifications for VESMPs promulgated by the State Water Control Board for the purposes set out in Section 1.1 of this Ordinance. The Town of Vienna hereby designates the Director of Public Works as the Administrator of the Virginia Erosion and Stormwater Management Program established by this Ordinance.

Section 23.4. REGULATED LAND DISTURBING ACTIVITIES

A. Land-disturbing activities that meet one of the criteria below are regulated as follows:

1. 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.]
2. 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 (9VAC25-875-670 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 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. The following land disturbances activities shall not be regulated under this article:

1. Such minor land disturbing activities 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 such land disturbing 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;
5. Disturbed land areas for commercial or noncommercial uses less than 2,500 square feet in size;
6. Installation of fence and sign posts or telephone and electric poles and other kinds of posts and poles;
7. Emergency work to protect life, limb or property;

8. Exploration or drilling for oil and gas including the well site, roads and off-site disposal areas and feeder lines;
 9. Tilling, planting or harvesting of agricultural, horticultural, or forest crops or livestock feedlot operation, 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, § 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);
 10. Repair or rebuilding of the tracks, right-of-way, bridges, communication facilities and other related structures and facilities of a railroad company;
 11. Agricultural engineering operations including, but not limited to, the construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds not required to comply with the Virginia Dam Safety Act (Code of Virginia, § 10.1-604 et seq.), ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage and land irrigation; and,
 12. Surface or deep mining.
- C. Any person who owns, occupies or operates private agriculture or forest lands shall not be deemed to be in violation of this article for land disturbing activities which result from the normal functioning of these lands.
 - D. Any state agency that undertakes a project involving a land disturbing activity shall comply with the provisions of Code of Virginia § 62.1-44.15:56 and all other provisions applicable to state agencies.
 - E. Whenever a land disturbing activity is proposed to be conducted by a contractor performing construction work pursuant to a construction contract, the preparation, submission and approval of the required erosion and sediment control plan shall be the responsibility of the owner of the land.
 - F. To prevent further erosion, the Director may require approval of an erosion and sediment control plan for any land identified in the Town as an erosion impact area.
 - G. Where land disturbing activities involve lands under the jurisdiction of more than one local control program an ESM plan may, at the option of the applicant, be submitted to the state board for review and approval rather than to each jurisdiction concerned. Where the land disturbing activity results from the construction of a single-family residence, an agreement in lieu an ESM plan may be substituted for an ESM plan if executed by the director.

Section 23.5. REVIEW AND APPROVAL OF PLANS (§ 62.1-44.15:34 of the Code of Virginia); PROHIBITIONS.

- A. The Director shall review and approve soil erosion control and stormwater management (ESM) plans, except for activities not required to comply with the requirements of the Virginia Erosion and Stormwater Management Act (VESMA), pursuant to § 62.1-44.15:34 of the Code of Virginia. Activities not required to comply with VESMA are defined in 9VAC25-875-90.
- B. A person shall not conduct any land-disturbing activity in the Town of Vienna until:
1. An application that includes a permit registration statement, if required, a soil erosion control and stormwater management plan or an executed agreement in lieu of a plan, if required, has been submitted to the Director;
 2. The name of the individual who will be assisting the owner in carrying out the activity and holds a Responsible Land Disturber certificate pursuant to § 62.1-44.15:30 of the Code of Virginia is submitted to the Town of Vienna, except that such certificate shall not be required where an agreement in lieu of a plan for construction of a single-family detached residential structure is provided; however, if a violation occurs during the land-disturbing activity for the single-family detached residential structure, then the owner shall correct the violation and provide the name of the individual holding a Responsible Land Disturber certificate as provided by § 62.1-14:30 of the Code of Virginia. Failure to provide the name of an individual holding a Responsible Land Disturber certificate prior to engaging in land-disturbing activities may result in revocation of the land-disturbance approval and shall subject the owner to the penalties provided by the VESMA; and
 3. The Director has issued its land-disturbance approval. In addition, as a prerequisite to engaging in an approved land-disturbing activity, the name of the individual who will be assisting the owner in carrying out the activity and holds a Responsible Land Disturber certificate pursuant to § 62.1-44.15:30 of the Code of Virginia shall be submitted to the Director. The Director may waive the Responsible Land Disturber certificate requirement for an agreement in lieu of a plan for construction of a single-family detached residential structure; however, if a violation occurs during the land-disturbing activity for the single-family detached residential structure, then the owner shall correct the violation and provide the name of the individual holding a Responsible Land Disturber certificate as provided by § 62.1-14:30 of the Code of Virginia. Failure to provide the name of an individual holding a Responsible Land Disturber certificate prior to engaging in land-disturbing activities may result in revocation of the land-disturbance approval and shall subject the owner to the penalties provided the Act.
- C. The Town of Vienna may require changes to an approved ESM plan in the following cases:
1. Where inspection has revealed that the plan is inadequate to satisfy applicable regulations or ordinances; or
 2. Where the owner finds that because of changed circumstances or for other reasons the plan cannot be effectively carried out, and proposed amendments to the plan, consistent with the requirements of the Act, are agreed to by the VESMP authority and the owner.

- D. In order to prevent further erosion, the Director may require approval of an erosion and sediment control plan and a stormwater management plan for any land it identifies as an erosion impact area. (*§ 62.1-44.15:34*)
- E. Prior to issuance of any land-disturbance approval, the Director may also require an applicant, excluding state agencies and federal entities, to submit a reasonable performance bond with surety, cash escrow, letter of credit, any combination thereof, or such other legal arrangement it finds acceptable, to ensure that it can take measures at the applicant's expense should he fail, after proper notice, within the time specified to comply with the conditions it imposes as a result of his land-disturbing activity. If the Director takes such action upon such failure by the applicant, it may collect from the applicant the difference should the amount of the reasonable cost of such action exceed the amount of the security held. Within 60 days of the completion of the Director conditions, such bond, cash escrow, letter of credit, or other legal arrangement, or the unexpended or unobligated portion thereof, shall be refunded to the applicant or terminated.
- F. Any person engaging, in more than one jurisdiction, in the creation and operation of wetland mitigation or stream restoration banks, which have been approved and are operated in accordance with applicable federal and state guidance, laws, or regulations for the establishment, use, and operation of wetlands mitigation or stream restoration banks, pursuant to a mitigation banking instrument signed by the department of environmental quality, the marine resources commission, or the U.S. Army Corps of Engineers, may, at the option of that person, file general erosion and sediment control specifications for wetland mitigation or stream restoration banks annually with the state board for review and approval consistent with guidelines established by the state board.
- G. The Director may enter into an agreement with an adjacent VESMP authority regarding the administration of multijurisdictional projects, specifying who shall be responsible for all or part of the administrative procedures. Should adjacent VESMP authorities fail to reach such an agreement, each shall be responsible for administering the area of the multijurisdictional project that lies within its jurisdiction.
- H. No exception to, or waiver of, post-development nonpoint nutrient runoff compliance requirements shall be granted unless offsite options have been considered and found not available in accordance with subsection D of *§ 62.1-44.15:35* of the Code of Virginia.
- I. The Director is authorized to cooperate and enter into agreements with any federal or state agency in connection with the requirements for land-disturbing activities in accordance with *§ 62.1-44.15:50* of the Code of Virginia.

Section 23.6. REVIEW OF A SOIL EROSION CONTROL AND STORMWATER MANAGEMENT PLAN (ESM Plan).

- A. The Director shall approve or disapprove an ESM plan according to the following:
1. The Director shall determine the completeness of any application within 15 calendar days after receipt, and shall act on any application within 60 calendar days after it has been determined by the to be complete.

2. The Director shall issue either land-disturbance approval or denial and provide written rationale for any denial.
 3. Prior to issuing a land-disturbance approval, the Director shall be required to obtain evidence of permit coverage when such coverage is required.
 4. The Director also shall determine whether any resubmittal of a previously disapproved application is complete within 15 days after receipt and shall act on the resubmitted application within 45 days after receipt. When a plan is determined to be inadequate, written notice of disapproval stating the specific reasons for disapproval shall be communicated to the applicant within 45 days. If no action is taken within the time specified above, the plan is deemed to be approved.
- B. During the review period, the plan shall be approved or disapproved, and the decision communicated in writing to the person responsible for the land disturbing activity or his designated agent. If the plan is not approved, the reasons for not approving the plan shall be provided in writing. Approval or denial shall be based on the plan's compliance with the requirements of this article.
- C. Approved stormwater plans may be modified as follows:
1. Modifications to an approved stormwater management plan shall be allowed only after review and written approval by the director. The director shall have 60 calendar days to respond in writing either approving or disapproving such request.
 2. The Director may require that an approved stormwater management plan be amended, within a time prescribed by the Director, to address any deficiencies noted during inspection.

Section 23.7. STORMWATER PERMIT REQUIREMENT; EXEMPTIONS.

- A. Except as provided herein, no person may engage in any land-disturbing activity until a permit has been issued by the Director in accordance with the provisions of this ordinance. These requirements include:
1. An application that includes a general permit registration statement if such statement is required under Code of Virginia § 62.1-44.15:34;
 2. An erosion and sediment control plan approved in accordance with Section 23.6 of this chapter;
 3. An approved stormwater management plan that meets the requirements of Section 23.9;
 4. Evidence that general permit coverage has been obtained, if such general permit is required;
 5. All fees must be paid pursuant to Section 1.13 and Section 23.19;
 6. A performance bond, if required, must be posted pursuant to Section 23-20;
 7. Approval of all plans and performance criteria required in Article 21.1 of Chapter 18 (Chesapeake Bay Preservation Areas); and
 8. The application demonstrates that all land clearing, construction, disturbance, land development and drainage will be done according to this article.

- B. The permittee must develop prior to the land disturbing activity, implement, and keep at the site for inspection a stormwater pollution prevention plan that meets the requirements set forth in section 23.8 and a pollution prevention plan that meets the requirements set forth in section 23.10.
- C. A land disturbing activity that results in a land disturbance equal or greater than 2,500 square feet and less than one acre that is not part of a larger common plan of development or sale shall be exempt from section 23.8 (stormwater pollution prevention plan), section 23.10 (pollution prevention plan), and the requirement to obtain a general permit unless otherwise required by this Code or state or federal law.
- D. Notwithstanding any other provisions of this ordinance, the following activities are not required to comply with the requirements of this ordinance unless otherwise required by federal law:
 - 1. Minor land-disturbing activities, including home gardens and individual home landscaping, repairs, and maintenance work;
 - 2. Land disturbance, resulting in less than 2,500 square feet of land disturbance that are not part of a common plan of development or sale.
 - 3. Installation, maintenance, or repair of any individual service connection;
 - 4. Installation, maintenance, or repair of any underground utility line when such activity occurs on an existing hard surfaced road, street, or sidewalk, provided the land-disturbing activity is confined to the area of the road, street, or sidewalk that is hard surfaced;
 - 5. Installation, maintenance, or repair of any septic tank line or drainage field unless included in an overall plan for land-disturbing activity relating to construction of the building to be served by the septic tank system;
 - 6. Permitted surface or deep mining operations and projects, or oil and gas operations and projects conducted pursuant to Title 45.2 of the Code of Virginia;
 - 7. Clearing of lands specifically for bona fide agricultural purposes; the management, tilling, planting, or harvesting of agricultural, horticultural, or forest crops; livestock feedlot operations; agricultural engineering operations, including 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; or as additionally set forth by the Board in regulations. However, this exception shall not apply to harvesting of forest crops unless the area on which harvesting occurs is reforested artificially or naturally in accordance with the provisions of Chapter 11 (§ 10.1-1100 et seq. of the Code of Virginia) or is converted to bona fide agricultural or improved pasture use as described in subsection B of § 10.1-1163 of the Code of Virginia;
 - 8. Installation of fence and sign posts or telephone and electric poles and other kinds of posts or poles;
 - 9. 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 the VESMA and the regulations adopted pursuant thereto;
10. Repair or rebuilding of the tracks, rights-of-way, bridges, communication facilities, and other related structures and facilities of a railroad company;
 11. 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 Director shall be advised of the disturbance within seven days of commencing the land-disturbing activity, and compliance with the administrative requirements of subsection A is required within 30 days of commencing the land-disturbing activity; and
 12. Discharges to a sanitary sewer or a combined sewer system; that are not from a land-disturbing activity.
- E. 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 an 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.

Section 23.8. STORMWATER POLLUTION PREVENTION PLAN; CONTENTS OF PLANS. (9VAC25-875-500)

- A. A stormwater pollution prevention plan shall include, but not be limited to, an approved erosion and sediment control plan, an approved stormwater management plan, a pollution prevention plan for regulated land-disturbing activities, and a description of any additional control measures necessary to address a TMDL pursuant to subsection D of this section.
- B. A soil erosion control and stormwater management (ESM) plan consistent with the requirements of the Virginia Erosion and Stormwater Management Act (VESMA) and regulations must be designed and implemented during construction activities. Prior to land disturbance, this plan must be approved by the Director in accordance with the VESMA, this ordinance, and attendant regulations.
- C. A pollution prevention plan that identifies potential sources of pollutants that may reasonably be expected to affect the quality of stormwater discharges from the construction site and describe control measures that will be used to minimize pollutants in stormwater discharges from the construction site must be developed before land disturbance commences.

- D. In addition to the requirements of subsections A through C of this section, if a specific wasteload allocation for a pollutant has been established in an approved TMDL and is assigned to stormwater discharges from a construction activity, additional control measures must be identified and implemented by the operator so that discharges are consistent with the assumptions and requirements of the wasteload allocation.
- E. The stormwater pollution prevention plan must address the following requirements as specified in 40 CFR 450.21, to the extent otherwise required by state law or regulations and any applicable requirements of a state permit:
1. Control stormwater volume and velocity within the site to minimize soil erosion;
 2. Control stormwater discharges, including both peak flow rates and total stormwater volume, to minimize erosion at outlets and to minimize downstream channel and stream bank erosion;
 3. Minimize the amount of soil exposed during construction activity;
 4. Minimize the disturbance of steep slopes;
 5. Minimize sediment discharges from the site. The design, installation and maintenance of erosion and sediment controls must address factors such as the amount, frequency, intensity and duration of precipitation, the nature of resulting stormwater runoff, and soil characteristics, including the range of soil particle sizes expected to be present on the site;
 6. Provide and maintain natural buffers around surface waters, direct stormwater to vegetated areas to increase sediment removal and maximize stormwater infiltration, unless infeasible;
 7. Minimize soil compaction and, unless infeasible, preserve topsoil;
 8. Stabilization of disturbed areas must, at a minimum, be initiated immediately whenever any clearing, grading, excavating, or other earth disturbing activities have permanently ceased on any portion of the site, or temporarily ceased on any portion of the site and will not resume for a period exceeding 14 calendar days. Stabilization must be completed within a period of time determined by the VESMP authority. In arid, semiarid, and drought-stricken areas where initiating vegetative stabilization measures immediately is infeasible, alternative stabilization measures must be employed as specified by the VESMP authority; and
 9. Utilize outlet structures that withdraw water from the surface, unless infeasible, when discharging from basins and impoundments.
- F. The SWPPP shall be amended whenever there is a change in design, construction, operation, or maintenance that has a significant effect on the discharge of pollutants to state waters and that has not been previously addressed in the SWPPP. The SWPPP must be maintained at a central location onsite. If an onsite location is unavailable, notice of the SWPPP's location must be posted near the main entrance at the construction site.

Section 23.9. STORMWATER MANAGEMENT PLAN; CONTENTS OF PLAN.

(9VAC25- 875-510)

- A. A stormwater management plan shall be developed and submitted to the Town of Vienna. The stormwater management plan shall be implemented as approved or modified by the Director and shall be developed in accordance with the following:
1. A stormwater management plan for a land-disturbing activity shall apply the stormwater management technical criteria set forth in this ordinance and Article 4 (9VAC25-875-670 et seq) of Part V of the Regulation to the entire land-disturbing activity. Individual lots in new residential, commercial, or industrial developments, including those developed under subsequent owners, shall not be considered separate land-disturbing activities.
 2. A stormwater management plan shall consider all sources of surface runoff and all sources of subsurface and groundwater flows converted to surface runoff.
- B. A complete stormwater management plan shall include the following elements:
1. Information on the type of and location of stormwater discharges, information on the features to which stormwater is being discharged including surface waters or karst features if present, and predevelopment and post-development drainage areas;
 2. Contact information including the name, address, 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 site conditions and final site conditions or if allowed by the VESMP authority, the information provided and documented during the review process that addresses the current and final 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 (i) detailed narrative on the conversion to a long-term stormwater management facility if the facility was used as a temporary ESC measure; (ii) the type of facilities; (iii) location, including geographic coordinates; (iv) acres treated; and (v) the surface waters or karst features into which the facility will discharge;
 6. A stormwater management facility maintenance agreement as required by Section 23.13.
 7. Hydrologic and hydraulic computations, including runoff characteristics;
 8. Documentation and calculations verifying compliance with the water quality and quantity requirements of these regulations;
 9. A map of the site that depicts the topography of the site and includes:
 - i. All contributing drainage areas;

- ii. Existing streams, ponds, culverts, ditches, wetlands, other water bodies, and floodplains;
 - iii. Soil types, geologic formations if karst features are present in the area, forest cover, and other vegetative areas;
 - iv. Current land use including existing structures, roads, and locations of known utilities and easements;
 - v. Sufficient information on adjoining parcels to assess the impacts of stormwater from the site on these parcels;
 - vi. The limits of clearing and grading, and the proposed drainage patterns on the site;
 - vii. Proposed buildings, roads, parking areas, utilities, and stormwater management facilities; and
 - viii. Proposed land use with tabulation of the percentage of surface area to be adapted to various uses, including planned locations of utilities, roads, and easements;
10. If an operator intends to meet the requirements established in 9VAC25-875-580 or 9VAC25-875-600 through the use of off-site compliance options, where applicable, then a letter of availability from the off-site provider must be included; and
11. If the Director requires payment of a fee with the stormwater management plan submission, the fee and the required fee form in accordance with Section 5-8 of this ordinance must have been submitted.
- C. All final plan elements, specifications, or calculations of the stormwater management plans whose preparation requires a license under Chapter 4 (§ 54.1-400 et seq.) or 22 (§ 54.1-2200 et seq.) of Title 54.1 of the Code of Virginia shall be appropriately signed and sealed by a professional who is licensed to engage in practice in the Commonwealth of Virginia. Nothing in this subsection shall authorize any person to engage in practice outside his area of professional competence.
- D. If an operator intends to meet the water quality and/or quantity requirements through the use of off-site compliance options as set forth in subsection C or D of section 23.12, then a letter of availability from the off-site provider must be included. Approved off-site options must achieve the necessary nutrient reductions prior to the commencement of the applicant's land disturbing activity except as otherwise allowed by Code of Virginia § 62.1-44.15:35.
- E. Elements of the stormwater management plan that include activities regulated under Chapter 4 (§ 54.1-400 et seq.) of Title 54.1 of the Code of Virginia shall be appropriately sealed and signed by a professional registered in the Commonwealth of Virginia pursuant to Article 1 (§ 54.1-400 et seq.) of Chapter 4 of Title 54.1 of the Code of Virginia.
- F. A construction record drawing for permanent stormwater management facilities shall be submitted to the Director. 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.

- G. The Director may execute an agreement in lieu of a stormwater management plan with the owner to comply with the requirements of this section for the construction of a single-family residence. Any such agreement in lieu of a stormwater management plan shall be considered a stormwater management plan for the purpose of implementing and enforcing this article.

Section 23.10. POLLUTION PREVENTION PLAN; CONTENTS OF PLANS. (9VAC25-875- 520)

- A. A plan for implementing pollution prevention measures during construction activities shall be developed, implemented, and updated as necessary. The pollution prevention plan shall detail the design, installation, implementation, and maintenance of effective pollution prevention measures as specified in 40 CFR 450.21(d) to minimize the discharge of pollutants. At a minimum, such measures must be designed, installed, implemented, and maintained to:
1. Minimize the discharge of pollutants from equipment and vehicle washing, wheel wash water, and other wash waters. Wash waters must be treated in a sediment basin or alternative control that provides equivalent or better treatment prior to discharge;
 2. Minimize the exposure of building materials, building products, construction wastes, trash, landscape materials, fertilizers, pesticides, herbicides, detergents, sanitary waste, and other materials present on the site to precipitation and to stormwater; and
 3. Minimize the discharge of pollutants from spills and leaks and implement chemical spill and leak prevention and response procedures.
- B. The pollution prevention plan shall include effective best management practices to prohibit the following discharges in accordance with 40 CFR 450.21(e):
1. Wastewater from washout of concrete, unless managed by an appropriate control;
 2. Wastewater from washout and cleanout of stucco, paint, form release oils, curing compounds, and other construction materials;
 3. Fuels, oils, or other pollutants used in vehicle and equipment operation and maintenance; and
 4. Soaps or solvents used in vehicle and equipment washing.
- C. Discharges from dewatering activities, including discharges from dewatering of trenches and excavations, are prohibited unless managed by appropriate controls in accordance with 40 CFR 450.21(c).

Section 23.11. EROSION AND SEDIMENT CONTROL PLAN; CONTENTS OF PLANS (9VAC25-875-550)

- 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 objectives 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
 3. A record of decisions contributing to conservation treatment.
- B. The person responsible for carrying out the plan shall provide the name of an individual holding a certificate who will be in charge of and responsible for carrying out the land-disturbing activity to the Director. The Director may waive the Responsible Land Disturber certificate requirement for an agreement in lieu of a plan in accordance with § 62.1-44.15:34 or § 62.1-44.15:55 of the Code of Virginia.
- C. If individual lots or sections in a residential development are being developed by different property owners, all land-disturbing activities related to the building construction shall be covered by an erosion and sediment control plan or an "Agreement in Lieu of a Plan" signed by the property owner.
- D. Land-disturbing activity of less than 10,000 square feet on individual lots in a residential development shall not be considered exempt from the provisions of the VESMA if the total land-disturbing activity in the development is equal to or greater than 10,000 square feet.

Section 23.12. TECHNICAL CRITERIA FOR REGULATED 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, Town of Vienna hereby adopts the technical criteria for regulated land-disturbing activities set forth in Part V of 9VAC25-875 expressly to include 9VAC25-875-580 [water quality design criteria requirements]; 9VAC25-875-590 [water quality compliance]; 9VAC25-875-600 [water quantity]; 9VAC25-875-610 [offsite compliance options]; 9VAC25-875-620 [design storms and hydrologic methods]; 9VAC25-875-630 [stormwater harvesting]; 9VAC25-875-640 [linear development project]; and, 9VAC25-875-650 [stormwater management impoundment structures or facilities], which shall apply to all land-disturbing activities regulated pursuant to this ordinance, except as expressly set forth in Subsection B of this Section.
- B. Any land-disturbing activity shall be considered grandfathered and shall be subject to Article 4 (9VAC25-875-670 et seq) of Part V of the Regulation provided:
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 Town of Vienna to be equivalent thereto (i) was approved by the Town of Vienna prior to July 1, 2012, (ii) provided a layout as defined in 9VAC25-875-670, (iii) will comply with the technical criteria of Article 4 of Part V of 9VAC25-875, and (iv) 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. A permit has not been issued prior to July 1, 2014; and
 3. Land disturbance did not commence prior to July 1, 2014.
- C. Locality, state, and federal projects shall be considered grandfathered by the Town of Vienna and shall be subject to the technical criteria of Article 4 of Part V of 9VAC25-875 provided:
1. There has been an obligation of locality, state, or federal funding, in whole or in part, prior to July 1, 2012, or the department has approved a stormwater management plan prior to July 1, 2012;
 2. A permit has not been issued prior to July 1, 2014; and
 3. Land disturbance did not commence prior to July 1, 2014.
- D. Land disturbing activities grandfathered under subsections A and B of this section shall remain subject to the technical criteria of Article 4 of Part V of 9VAC25-875 for one additional permit cycle. After such time, portions of the project not under construction shall become subject to any new technical criteria adopted by the board.
- E. In cases where governmental bonding or public debt financing has been issued for a project prior to July 1, 2012, such project shall be subject to the technical criteria of Article 4 of Part V of 9VAC25-875.
- F. Limitations applied to stormwater management facilities in the most recent edition of the Fairfax County Public Facilities Manual and subsequently approved by the Department of Environmental Quality shall also apply in the Town unless waived by the Director.
- G. The director may establish criteria in addition to those this section to allow an operator to use nutrient credits in accordance with Code of Virginia § 62.1-44.15:35 to meet required phosphorus reductions.
- H. The Director shall allow operators to utilize off-site compliance options in accordance with Section 9VAC25-870-69 under the following conditions
1. Less than five acres of land will be disturbed;
 2. The post construction phosphorus control requirement is less than 10 pounds per year; or
 3. At least 75 percent of the required phosphorus nutrient reductions are achieved on-site. If at least 75 percent of the required phosphorus nutrient reductions cannot be met on-site, and the operator can demonstrate to the satisfaction of the director that:
 - a. Alternative site designs have been considered that may accommodate on-site best management practices;
 - b. On-site best management practices have been considered in alternative site designs to the maximum extent practicable;

- c. Appropriate on-site best management practices will be implemented; and
 - d. Full compliance with post development nonpoint nutrient runoff compliance requirements cannot practicably be met on-site, then the required phosphorus nutrient reductions may be achieved, in whole or in part, through the use of off-site compliance options.
- I. Offsite options shall not be allowed unless:
- 1. Unless the selected offsite option achieves the necessary nutrient reductions prior to the commencement of the operator's land disturbing activity. In the case of a phased project, the operator may acquire or achieve offsite nutrient reductions prior to the commencement of each phase of land disturbing activity in an amount sufficient for each phase.
 - 2. In contravention of local water quality-based limitations at the point of discharge that are consistent with the determinations made pursuant to subsection B of Code of Virginia § 62.1-44.19:7, contained in the Town's MS4 program plan accepted by the department of environmental quality, or as otherwise may be established or approved by the state board.
- J. The Director may grant exceptions to the technical requirements of this section provided that the exception is the minimum necessary to afford relief, reasonable and appropriate conditions are imposed so that the intent of this article are preserved, granting the exception will not confer any special privileges that are denied in other similar circumstances, and exception requests are not based upon conditions or circumstances that are self-imposed or self-created. Economic hardship alone is not sufficient reason to grant an exception from the requirements of this article.
- 1. Exceptions to the requirement that the land disturbing activity obtain required general permit shall not be given by the director, nor shall the director approve the use of a BMP not found on the Virginia Stormwater BMP Clearinghouse website, or any other control measure duly approved by the Department of Environmental Quality.
 - 2. Exceptions to requirements for phosphorus reductions shall not be allowed unless offsite options otherwise permitted pursuant to Section 9VAC25-870-69 have been considered and found not available.
- K. Nothing in this section shall preclude an operator from constructing to a more stringent standard at his discretion.**

Section 23.13. LONG-TERM MAINTENANCE OF PERMANENT STORMWATER FACILITIES

- A. The operator shall submit a construction record drawing for permanent stormwater management facilities to the Director in accordance with 9VAC25-875-535. The record drawing shall contain a statement signed by a professional registered in the Commonwealth of Virginia pursuant to Chapter 4 of Title 54.1 of the Code of Virginia, stating that to the best of their knowledge, the construction record drawing shows all adjustments and revisions to the Stormwater Management Plan made during

construction and serve as a permanent record of the actual location of all constructed elements.

- B. All landowners required to maintain a stormwater management facility shall sign, deliver, and record in the Fairfax County Land Records an agreement with the Town that sets forth maintenance and inspection responsibilities and permits the Town to inspect and maintain these facilities at the landowners' expense, if they do not maintain them according to recognized engineering standards found at the Virginia Stormwater BMP Clearinghouse website. Such maintenance agreement shall be recorded prior to general permit termination or earlier as required by the director and shall at a minimum:
1. Be submitted to the Director for review and approval prior to the approval of the stormwater management plan;
 2. Be stated to run with the land;
 3. Provide for all necessary access to the property for purposes of maintenance and regulatory inspections;
 4. Provide for inspections and maintenance and require the owner or his designee to submit an inspection and maintenance report. The frequency of the reports and the qualifications for the individual completing the reports shall be appropriate for the stormwater management facility and be included in the agreement except that the report schedule shall be no less than once every five years; and,
 5. Be enforceable by all appropriate governmental parties.
- C. A developer or landowner who installs stormwater facilities shall be responsible for facility maintenance until the time of conveyance and shall provide the successor landowner, the builder if different from the developer (if applicable), and the Town with maintenance schedules and maintenance procedures, known as a maintenance manual, for all facilities used in the development

Section 23.14. MONITORING AND INSPECTIONS.

- A. The Director shall inspect the land-disturbing activity during construction for:
1. Compliance with the approved erosion and sediment control plan;
 2. Compliance with the approved stormwater management plan;
 3. Development, updating, and implementation of a pollution prevention plan; and
 4. Development and implementation of any additional control measures necessary to address a TMDL.
- B. The Director may, at reasonable times and under reasonable circumstances, enter any establishment or upon any property, public or private, for the purpose of obtaining information or conducting surveys or investigations necessary in the enforcement of the provisions of this article.

- C. In accordance with a performance bond with surety, cash escrow, letter of credit, any combination thereof, or such other legal arrangement or instrument, the Town of Vienna may also enter any establishment or upon any property, public or private, for the purpose of initiating or maintaining appropriate actions which are required by the permit conditions associated with a land disturbing activity when a permittee, after proper notice, has failed to take acceptable action within the time specified.
- D. Pursuant to Code of Virginia § 62.1-44.15:40 the Director may require any person subject to the requirements under this article, to furnish when requested such application materials, plans, specifications, and other pertinent information as may be necessary to determine the effect of his discharge on the quality of state waters, or such other information as may be necessary to accomplish the purposes of this article.
- E. The Director shall conduct periodic inspections on all projects during construction. The Director shall either:
1. Provide for an inspection during or immediately following initial installation of erosion and sediment controls, at least once in every two-week period, within 48 hours following any runoff producing storm event, and at the completion of the project prior to the release of any performance bonds; or
 2. Establish an alternative inspection program which ensures compliance with the approved erosion and sediment control plan. Any alternative inspection program shall be:
 - i. Approved by the department prior to implementation;
 - ii. Established in writing;
 - iii. Based on a system of priorities that, at a minimum, address the amount of disturbed project area, site conditions and stage of construction; and
 - iv. Documented by inspection records.
- F. The Director shall establish an inspection program that ensures that permanent stormwater management facilities are being adequately maintained as designed after completion of land-disturbing activities. Inspection programs shall:
1. Be approved by the department;
 2. Ensure that each stormwater management facility is inspected by the Director, or its designee, not to include the owner, except as provided in subsections D and E of this section, at least once every five years; and
 3. Be documented by records.
- G. The Director may utilize the inspection reports of the owner of a stormwater management facility as part of an inspection program established in subsection F of this section if the inspection is conducted by a person who is licensed as a professional engineer, architect, landscape architect, or land surveyor pursuant to Article 1 (§ 54.1-400 et seq.) of Chapter

4 of Title 54.1; a person who works under the direction and oversight of the licensed professional engineer, architect, landscape architect, or land surveyor; or a person who holds an appropriate certificate of competence from the department.

Section 23.15. HEARINGS

- A. Any permit applicant or permittee, or person subject to the requirements of this ordinance, aggrieved by any action of the Town of Vienna taken without a formal hearing, or by inaction of the Town of Vienna, may demand in writing a formal hearing by the Town Council causing such grievance, provided a petition requesting such hearing is filed with the Town Manager within 30 days after notice of such action is given by the Administrator.
- B. The hearings held under this Section shall be conducted by the Town Council at a regular or special meeting of the Town Council, or by at least one member of the Town Council designated by the Town Council to conduct such hearings on behalf of the Town Council at any other time and place authorized by the Town Council.
- C. A verbatim record of the proceedings of such hearings shall be taken and filed with the Town Council. Depositions may be taken and read as in actions at law.
- D. The Town Council or its designated member, as the case may be, shall have power to issue subpoenas and subpoenas duces tecum, and at the request of any party shall issue such subpoenas. The failure of a witness without legal excuse to appear or to testify or to produce documents shall be acted upon by the local governing body, or its designated member, whose action may include the procurement of an order of enforcement from the circuit court. Witnesses who are subpoenaed shall receive the same fees and reimbursement for mileage as in civil actions.

Section 23.16. APPEALS.

- A. Final decisions of the Director under this article shall be subject to review by the Town Council, provided an appeal is filed with the Town Manager within 30 days from the date of any written decision by the director which adversely affects the rights, duties or privileges of the persons engaging in or proposing to engage in land disturbing activities.
- B. All appeals must be in writing and must contain sufficient information to acquaint the Town Council with the facts involved.
- C. Final decisions of the Town Council shall be subject to judicial review in the Circuit Court of Fairfax County, provided that an appeal is filed within 30 days from the date of any written decision adversely affecting the rights, duties, or privileges of the person engaging in or proposing to engage in land disturbing activities.

Section 23.17. RIGHT OF ENTRY.

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

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

Section 23.18. ENFORCEMENT

- A. If the Director 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 or person responsible for carrying out the permit conditions by any of the following: verbal warnings and inspection reports, notices of corrective action, consent 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. Upon failure to comply within the time specified, a stop work order may be issued in accordance with Subsection 2 or the permit may be revoked by the Director.
 2. If a permittee fails to comply with a notice issued in accordance with this Section within the time specified, the Director may issue an order requiring the owner, permittee, person responsible for carrying out an approved plan, or the person conducting the land-disturbing activities without an approved plan or required permit to cease all land-disturbing activities until the violation of the permit has ceased, or an approved plan and required permits are obtained, and specified corrective measures have been completed.

Such orders shall be issued in accordance with this Section. Such orders shall become effective upon service on the person by certified mail, return receipt requested, sent to his address specified in the land records of the locality, or by personal delivery by an agent of the Administrator. However, if the Director finds that any such violation is grossly affecting or presents an imminent and substantial danger of causing harmful erosion of lands or sediment deposition in waters within the watersheds of the Commonwealth or otherwise substantially impacting water quality, it may issue, without advance notice or hearing, an emergency order directing such person to cease immediately all land- disturbing activities on the site and shall provide an opportunity for a hearing, after reasonable notice as to the time and place thereof, to such person, to affirm, modify, amend, or cancel such emergency order. If a person who has been issued an order is not complying with the terms thereof, the Director may institute a proceeding for an injunction, mandamus, or other appropriate remedy in accordance with Subsection 23.18C.

- B. In addition to any other remedy provided by this Ordinance, if the Director or his designee determines that there is a failure to comply with the provisions of this Ordinance, they may initiate such informal and/or formal administrative enforcement procedures in a manner that is consistent with this subsection.
- C. Any person violating or failing, neglecting, or refusing to obey any rule, regulation, ordinance, order, approved standard or specification, or any permit condition issued by

the Director may be compelled in a proceeding instituted in court by the Town to obey same and to comply therewith by injunction, mandamus or other appropriate remedy.

- D. The director may issue a summons for collection of the civil penalty and the action may be prosecuted by the Town. In any trial for a scheduled violation, it shall be the burden of the Town 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. Any civil penalties assessed by a court shall be paid into the treasury of the Town.
- E. The director may apply to the circuit court of the county for injunctive relief to enjoin a violation or a threatened violation of this article without the necessity of showing that there does not exist an adequate remedy at law.
- F. In addition to any criminal or civil penalties provided under this chapter article, any person who violates any provisions of this article may be liable to the Town, or the state board, as appropriate in a civil action for damages.
- G. Any person violating or failing, neglecting, or refusing to obey any rule, regulation, ordinance, order, approved standard or specification, or any permit condition issued by the Director may be compelled in a proceeding instituted in Fairfax County Circuit Court by the Town of Vienna to obey same and to comply therewith by injunction, mandamus or other appropriate remedy.
 - 1. Violations for which a penalty may be imposed under this Subsection shall include but not be limited to the following:
 - i. No state permit registration;
 - ii. No SWPPP;
 - iii. Incomplete SWPPP;
 - iv. SWPPP not available for review;
 - v. No approved erosion and sediment control plan;
 - vi. Failure to install stormwater BMPs or erosion and sediment controls;
 - vii. Stormwater BMPs or erosion and sediment controls improperly installed or maintained;
 - viii. Operational deficiencies;
 - ix. Failure to conduct required inspections;
 - x. Incomplete, improper, or missed inspections; and
 - xi. Discharges not in compliance with the requirements of 9VAC25-880-70.
 - 2. The Director may issue a summons for collection of the civil penalty and the action may be prosecuted in the appropriate court.
 - 3. In imposing a civil penalty pursuant to this Subsection, the court may consider the

degree of harm caused by the violation and also the economic benefit to the violator from noncompliance.

4. Any civil penalties assessed by a court as a result of a summons issued by the Town of Vienna shall be paid into the treasury of the Town of Vienna to be used for the purpose of minimizing, preventing, managing, or mitigating pollution of the waters of the locality and abating environmental pollution therein in such manner as the court may, by order, direct.
- H. Violations of any regulations or order of the state board, any provision of this program, any condition of a permit, or any provision of this article shall be subject to a civil penalty. The civil penalty for any one violation shall be \$100.00, except that the civil penalty for commencement of land disturbing activities without an approved plan as provided in section 23.4 shall be \$1,000.00. Each day during which the violation is found to have existed 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 \$3,000.00, 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.
- I. Without limiting the remedies which may be obtained in this section, any person violating or failing, neglecting or refusing to obey any injunction, mandamus or other remedy obtained pursuant to this section shall be subject, in the discretion of the court, to a civil action not to exceed \$2,000.00 for each violation. A civil penalty for such violation or failure may be brought by the Town. Any civil penalties assessed by the court shall be paid to the treasury of the Town.
- J. With the consent of any person who has violated or failed, neglected or refused to obey any regulation or order of the state board, or any condition of a permit or any provision of this article, the state board, the Director, or the Town may provide, in an order issued by the state board or the Town against such person, for the payment of civil charges for violations in specific sums, not to exceed the limit specified in subsection I of this section. Such civil charges shall be instead of any appropriate civil penalty which could be imposed under subsection G or I of this section.
- K. Acceptance of performance upon completion of adequate stabilization of an approved erosion and sedimentation control plan, the permittee shall notify the director of such completion. The director shall then inspect the work and planting and, upon his determination that they are in compliance with the approved plan, he shall issue a letter of preliminary acceptance. A condition of any such preliminary acceptance shall be that the permittee guarantee all erosion and sedimentation control work for a period of one year from the date of its preliminary acceptance, or for a period of one year from any repair or replanting ordered by the director, or until such time that all control structures and a minimum of 90 percent of all plantings shall have survived for a year without need of further replanting or repair. During the one-year period of the guarantee, the director may order in writing such replanting or repair work as shall be deemed necessary to enforce compliance with the approved plan or the guarantee. Such an order shall serve to revoke the preliminary acceptance and shall cause the permittee to renew the guarantee for an additional one year from the date of replanting or repair. Final acceptance shall occur when preliminary acceptance has remained unrevoked for a period of one year, or when all control structures and a minimum of 90 percent of all plants have survived for a period of one year without need for further replanting or repair. For purposes of this

section, normal cleaning of silt basins alone shall not be construed to be repair work.

- L. Notwithstanding any other civil or equitable remedy provided by this section or by law, any person who willfully or negligently violates any provision of this article, any order of the director, any condition of a permit, or any order of a court shall, be guilty of a misdemeanor punishable by confinement in jail for not more than 12 months or a fine of not less than \$2,500.00 nor more than \$32,500.00, or both.

Section 23.19. FEES

- A. No land disturbing or building permit shall be issued until applicable fees have been submitted to the Town in accordance with this section and section 1-13 concerning stormwater management.
- B. Fees associated with an initial land disturbing permit issuance shall be in accordance with the table in section 1-13 titled "Stormwater Management Fees — Initial Permit Issuance." When a site or sites has been 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 in the aforementioned table section.
- C. Fees for the modification or transfer of general permit registration statements issued by the state board shall be imposed in accordance with the table in section 1-13 titled "Stormwater Management Fees — Modifications or Transfers." If the general permit modifications result in changes to stormwater management plans that require additional review by the Town, such reviews shall be subject to the fees set out in the aforementioned table section. The fee assessed shall be based on the total disturbed acreage of the site. In addition to the modification fee, modifications resulting in an increase in total disturbed acreage shall pay the difference in the initial permit fee paid and the permit fee that would have been applied for the total disturbed acreage in accordance with subsection B.
- D. General permit coverage maintenance fees shall be paid annually to the Town by April 1 of each year, in accordance with the table in section 1-13 titled "Stormwater Management Fees — Permit Maintenance." No permit will be reissued or automatically continued without payment of the required fee. General permit coverage maintenance fees shall be applied until the permit coverage is terminated. Permit maintenance fees shall apply to expired permits that have been administratively continued.
- E. Persons whose coverage under the general permit has been revoked shall apply to the department of environmental quality for an individual permit for discharges of stormwater from construction activities.
- F. Fees shall not be assessed to the following:
 1. Permittees who request minor modifications to general permits as defined in section 23-3. Permit modifications at the request of the permittee resulting in changes to the stormwater management plan that require additional review by the director shall not be exempt pursuant to this subsection.
 2. Permittees whose general permits are modified or amended at the initiative of the department of environmental quality, excluding errors in the registration statement

identified by the director or errors related to the acreage of the site.

- G. All incomplete payments will be deemed as nonpayments, and the applicant shall be notified of any incomplete payments. Interest shall be charged for late payments at the underpayment rate set forth in Code of Virginia § 58.1-15 and is calculated on a monthly basis at the applicable periodic rate. A ten percent late payment fee shall be charged to any delinquent account, defined as over 90 days past due. The Town of Vienna is entitled to all remedies under the Code of Virginia in collecting any past due amount.

Section 23.20. PERFORMANCE BOND (4VAC50-60-104.D and Code § 603.8(A))

- A. Prior to issuance of any permit, the applicant shall be required to submit a reasonable performance bond with surety, cash escrow, letter of credit, any combination thereof, or such other legal arrangement acceptable to the Town Attorney, to ensure that measures could be taken by the Town of Vienna at the applicant's expense should he fail, after proper notice, within the time specified to initiate or maintain appropriate actions which may be required of him by the permit conditions as a result of his land disturbing activity. If the Town of Vienna takes such action upon such failure by the applicant, the Town of Vienna may collect from the applicant for the difference should the amount of the reasonable cost of such action exceed the amount of the security held, if any. Within 60 days of the completion of the requirements of the permit conditions, such bond, cash escrow, letter of credit or other legal arrangement, or the unexpended or unobligated portion thereof, shall be refunded to the applicant or terminated.