

PART II - CODE OF ORDINANCES

Chapter 23 - ENVIRONMENTAL CONTROLS

Chapter 23 - ENVIRONMENTAL CONTROLS ¹¹

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ARTICLE 2. - EROSION AND SEDIMENT CONTROL

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FOOTNOTE(S):

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State Law reference— Virginia Erosion and Sediment Control Law, Code of Virginia, § 62.1-44.15:51 et seq.; local erosion and sediment control programs, Code of Virginia, § 62.1-44.15:54; erosion and sediment control regulations, 9VAC25-840-10 et seq.; minimum standards, 9VAC25-840-40; Virginia Stormwater Management Act, Code of Virginia § 62.1-44.15:24 et seq.; establishment of stormwater management programs, Code of Virginia § 62.1-44.15:27; stormwater management regulations, 9VAC25-870-10 et seq.

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ARTICLE 1. - IN GENERAL

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Sec. 23-1. - Purpose.

The purpose of this chapter is to conserve the land, water and other natural resources of the Town and promote the public health and welfare of the people by establishing requirements for the control of erosion and sedimentation, the management of stormwater, and by establishing procedures whereby these requirements shall be administered and enforced.

(Code 1969, § 23-1; Ord. of 2-23-1976)

Sec. 23-2. – Authority and administration.

- A. This chapter is authorized under Code of Virginia 62.1-44.15:27 et seq. (Virginia Stormwater Management Act), Code of Virginia 62.1-44.15:51 et seq. (Virginia Erosion and Sediment Control Law), and their attendant regulations.
- B. 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.

Sec. 23-3. - Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Agreement in lieu of an erosion and sediment control plan means a contract between the Town and the owner that specifies conservation measures that must be implemented to comply with article 2 for the construction of a single-family residence; this contract may be executed by the Town in lieu of an erosion and sediment control plan.

Agreement in lieu of a stormwater management plan means a contract between the Town and the owner that specifies methods that must be implemented to comply with article 3 for the construction of a single-family residence; this contract may be executed by the Town in lieu of a stormwater management plan.

Applicant means any person requesting approval for a land disturbing activity that is subject to the provisions of this chapter.

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 from the impacts of land disturbing activities.

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.

Clearing means any activity that removes the vegetative ground cover.

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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.

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

Clean Water Act or CWA means the federal Clean Water Act (33 U.S.C §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.

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

Director means the director of public works.

Erosion impact area means an area of land not associated with current land disturbing activity but 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.

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.

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

Filling means any depositing or stockpiling of earth materials.

General permit means the state permit titled GENERAL PERMIT FOR DISCHARGES OF STORMWATER FROM CONSTRUCTION ACTIVITIES found in Part XIV (9VAC25-880-1 et seq.) 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.

Land disturbing activity means a man-made change to the land surface that potentially changes its runoff characteristics or may result in soil erosion from water or wind and the movement of sediments into state waters, including, but not limited to, clearing, grading, excavating, transporting, and filling of land, except that the term shall not include those exemptions in section 23-5 as applied in article 2 and those exemptions in section 23-12 as applied in article 3.

Land disturbing permit means a permit issued by the Town for clearing, filling, excavating, grading or transporting, or any combination thereof.

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

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

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compliance with the state program and may include such items as local ordinances, policies and guidelines, technical materials, inspection, enforcement, and evaluation.

Minor modification means an amendment to an existing general permit before its expiration not requiring extensive review and evaluation including, but not limited to, changes in EPA promulgated test protocols, increasing monitoring frequency requirements, changes in sampling locations, and changes to compliance dates within the overall compliance schedules. A minor general permit modification or amendment does not substantially alter general 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.

Operator means the owner or operator of any facility or activity subject to regulation under this chapter.

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

Permittee means the person to whom the permit authorizing land disturbing activities is issued or the person who certifies that the approved plans will be followed.

Person means any individual, corporation, partnership, association, state, municipality, commission, or political subdivision of a state, governmental body, including federal, state, or local 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.

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.

Stabilization is defined as 90 percent permanent ground cover established to a height of two inches and having survived for 12 months without need of replanting or repair. The 90 percent shall be equally distributed over the entire project area with no evident bare spots.

State means the Commonwealth of Virginia.

State board or SWCB means the State Water Control Board.

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

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

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

Stormwater management plan means a document containing material describing methods for complying with the requirements of section 23-14.

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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 from the land disturbing activity, and otherwise meets the requirements of this chapter. In addition the document shall identify and require the implementation of control measures, and shall include, but not be limited to the inclusion of, or the incorporation by reference of, an approved erosion and sediment control plan, an approved stormwater management plan, and a pollution prevention plan.

Subdivision has the meaning as defined in [section 17-1](#).

Total maximum daily load or TMDL means the sum of the individual wasteload allocations for point sources, load allocations for nonpoint sources, natural background loading, and a margin of safety. 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 tradeoffs. *Transportation* means any moving of earth materials from one place to another other than such movement incidental to grading when such movement results in destroying the vegetative cover either by tracking or the buildup of earth materials to the extent that erosion and sedimentation will result.

Virginia Erosion and Sediment Control Law means Article 2.4 (§62.1-44.15:51 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia.

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

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

Virginia Stormwater Management Program or VSMP means a program approved by the SWCB after September 13, 2011, that has been established by a locality to manage the quality and quantity of runoff resulting from land disturbing activities. In the Town of Vienna, this program shall include this chapter and any rules, permit requirements, annual standards and specifications, policies and guidelines, technical materials, and requirements for plan review, inspection, enforcement adopted pursuant to this chapter.

(Code 1969, § 23-2; Ord. of 2-23-1976; Ord. of 10-1980; Ord. of 6-1989; Ord. of 6-1990; Ord. of 6-1991; Ord. of 11-1993; Ord. of 12-1996; Ord. of 10-2009)

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Sec. 23-4. - Erosion and sediment control program.

- A. There is hereby adopted for the purpose of establishing standards and specifications on a variety of erosion and sedimentation control practices for use on construction sites, and similarly disturbed areas, chapter 3 of the Virginia Erosion and Sediment Control Handbook, most recent edition, as adopted by the state board, and Virginia Erosion and Sediment Control Regulations adopted by the state board, which shall be filed and available in the office of the Town clerk and may be viewed during the hours between 8:00 a.m. and 4:30 p.m., Monday through Friday, inclusive except holidays, and the same is hereby adopted and incorporated as fully as if set out in length herein.
- B. 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 23-5](#) 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.

(Code 1969, § 23-4; Ord. of 2-23-1976; Ord. of 12-1977; Ord. of 8-1981; Ord. of 6-1989; Ord. of 9-1990; Ord. of 9-1991; Ord. of 11-1993; Ord. of 12-1996; Ord. of 10-2009)

Sec. 23-5. - Regulated land disturbing activities.

- A. Except as provided in subsections [23-5.B](#), [23-5.C](#) and [23-5.D](#), no person shall engage in any land disturbing activity until he has submitted to the department of public works an erosion and sediment control plan for such land disturbing activity and until that plan has been reviewed, approved and all fees are paid. Where land disturbing activities involve lands under the jurisdiction of more than one local control program an erosion and sediment control 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 of an erosion and sediment control plan may be substituted for an erosion and sediment control plan if executed by the director.
- B. The following land disturbing 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;

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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, in accordance with Code of Virginia § 62.1-44.15:55.F the director may require approval of an erosion and sediment control plan for any land identified in the Town as an erosion impact area.

(Code 1969, § 23-5; Ord. of 2-23-1976; Ord. of 12-1996; Ord. of 10-26-2009, § 1)

Sec. 23-6. - Action on erosion and sediment control plans.

- A. Timeframe for approval; certificate of competence required.
1. The director shall, within 45 days, approve any erosion and sediment control plan submitted to him if he determines that the plan meets the standards of the Town's erosion and sediment control program, if the person responsible for carrying out the plan certifies that he will properly perform the measures included in the plan and will comply with the provisions of this article and all fees are paid. 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. In addition, as a prerequisite to engaging in the land disturbing activities shown on the approved plan, the person responsible for carrying out the plan shall provide the name of an individual holding a certificate of competence to the director, as provided by the Code of Virginia, § 62.1-

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44.15:52, who will be in charge of and responsible for carrying out the land disturbing activity as required by the Town's land disturbance permit. However, the director may waive the certificate of competence requirement for an agreement in lieu of an erosion and sediment control plan for construction of a single-family residence. If a violation occurs during the land disturbing activity, then the person responsible for carrying out the agreement in lieu of an erosion and sediment control plan shall correct the violation and provide the name of an individual holding a certificate of competence, as provided by the Code of Virginia, § 62.1-44.15:52.

2. Failure to provide the name of an individual holding a certificate of competence prior to engaging in land disturbing activities may result in revocation of the approval of the plan and the person responsible for carrying out the plan shall be subject to the penalties provided in this article.
 3. 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.
 4. The state board shall have 60 days in which to approve the specifications. If no action is taken by the state board within 60 days, the specifications shall be deemed approved. Individual approval of separate projects under this subsection A is not necessary when approved specifications are implemented through a project-specific erosion and sediment control plan. Projects not included in this subsection A shall comply with the requirements of the appropriate local erosion and sediment control program. The state board shall have the authority to enforce approved specifications. Approval of general erosion and sediment control specifications by the state board does not relieve the owner or operator from compliance with any other local ordinances and regulations including requirements to submit plans and obtain permits as may be required by such ordinances and regulations.
- B. The approved plan may be changed in the following cases:
1. When inspection has revealed the inadequacy of the plan to accomplish the erosion and sediment control objectives of the plan, and appropriate modifications to correct the deficiencies shall be made on the erosion and sediment control plan.
 2. Where the person responsible for carrying out the approved plan finds that, because of a change in circumstances, the approved plan cannot be carried out effectively and the proposed amendments to the plan are approved by the director.

(Code 1969, § 23-6; Ord. of 2-23-1976; Ord. of 6-1989; Ord. of 6-3-1991; Ord. of 10-2009; Ord. of 10-26-2009, § 1)

Sec. 23-7. - Issuance of land disturbing permit.

- A. Except as provided in subsection [23-7.B](#), no person shall engage in any land disturbing activity until he has acquired a land disturbing permit from the director.
- B. Any person grading, filling or excavating on privately owned, occupied or operated agriculture or forest lands is not required to secure a land disturbing permit.

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- C. The director shall not issue any land disturbing or building permit for activities which involve land disturbing activities unless the applicant therefor submits with its application the approved erosion and sediment control plan, certification that such plan will be followed and all fees are paid. Prior to issuance of any permit, the Town may also require an applicant 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, to ensure that measures could be taken by the Town at the applicant's expense should he fail, after proper notice, within the time specified to initiate or maintain appropriate conservation action which may be required of him by the approved plan as a result of his land disturbing activity. The amount of the bond or other surety for performance shall not exceed the total of the estimated cost to initiate and maintain appropriate conservation action based on the unit price for new public or private sector construction in the Town and a reasonable allowance for estimated administrative costs and inflation which shall not exceed 25 percent of the estimated cost of the conservation action. If the Town of Vienna takes such conservation action upon such as failure by the permittee, the Town of Vienna may collect from the permittee for the difference should the amount of the reasonable cost of such action exceed the amount of the security held. Within 60 days of the achievement of adequate stabilization of the land disturbing activity in any project or section thereof, the 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 based upon the percentage of stabilization accomplished in the project or section thereof. These requirements are in addition to all other provisions of law relating to the issuance of such permits and are not intended to otherwise affect the requirements of such permit.

(Code 1969, § 23-7; Ord. of 2-23-1976; Ord. of 10-1980; Ord. of 6-1989; Ord. of 12-1996; Ord. of 10-26-2009, § 1)

Sec. 23-8. - Monitoring; reports; inspections.

- A. The director shall cause, 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, the inspection of land disturbing activities to ensure compliance with the approved plan, and to determine that the measures required in that plan are effective in controlling erosion. The right of entry to conduct such inspections shall be expressly reserved in the permit. The owner, permittee or person responsible for carrying out the plan shall be given notice of the inspection.
- B. If the director determines that the permit holder has failed to comply with the plan, the director shall immediately serve upon the permit holder, by registered or certified mail to the address specified in the permit application or in the plan certification, or by delivery at the site of the permitted activities to the agent or employee of the permittee supervising such activities, a notice to comply. Such notice shall set forth specifically the measures needed to comply and shall specify the time within which such measures shall be completed. If the permit holder fails to comply within the time specified, he may be subject to the revocation of his permit; furthermore, he shall be deemed to be in violation of this article and upon conviction shall be subject to the penalties provided by this article.
- C. Provisions for revoking permit.
1. Upon receipt of a sworn complaint of a substantial violation from the director, the Town Manager may, in conjunction with or subsequent to a notice to comply as specified in subsection B of this section, issue a stop work order requiring that all or part of the land disturbing activities permitted on the site be stopped until the specified corrective measures have been taken. Whenever the director determines there has been a failure to comply with a notice to comply or stop work order, the director may order or recommend that any other permit associated with the land disturbing permit, or license issued to the permittee, and any associated activity, be revoked and suspended until such time as the permittee is once again determined by the director to be in compliance with the approved plan. Additionally, this

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provision shall be deemed authority for any appropriate official of the county to revoke other permits or licenses. Such other permits or licenses shall include, but are not limited to, building permits, zoning permits and clearances, health permits and other land disturbing activity permits. In the event of the revocation of a land disturbing permit, the owner or applicant shall be required to re-apply for the permit and submit the required permit fees based on fee schedule at the time of revocation for the permit, or as amended, and successfully pass a site compliance inspection.

2. Where the alleged noncompliance is causing or is in imminent danger of causing harmful erosion of lands or sediment deposition in waters within the watersheds of the commonwealth, such an order may be issued without regard to whether the permittee has been issued a notice to comply as specified in subsection B of this section. Otherwise, such an order may be issued only after the permittee has failed to comply with such a notice to comply. The order shall be served in the same manner as a notice to comply, and shall remain in effect for a period of seven days from the date of service pending application by the Town or permit holder for appropriate relief to the circuit court of the county. If the alleged violator has not obtained an approved plan or any required permits within seven days from the date of service of the order, the director may issue an order to the owner requiring that all construction and other work on the site, other than corrective measures, be stopped until an approved plan and any required permits have been obtained. Such an order shall be served upon the owner by registered or certified mail to the address specified in the permit application or the land records of the county. The owner may appeal the issuance of an order to the circuit court of the county. Any person violating or failing, neglecting or refusing to obey an order issued by the director may be compelled in a proceeding instituted in the circuit court of the county to obey same and to comply therewith by injunction, mandamus or other appropriate remedy. Upon completion of corrective action, the order shall be immediately lifted. Nothing in this section shall prevent the Town Manager from taking any other action permitted by law.
- D. 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.

(Code 1969, § 23-8; Ord. of 2-23-1976; Ord. of 4-20-1987; Ord. of 6-3-1991; Ord. of 11-15-1993; Ord. of 12-1996; Ord. of 10-2009)

Sec. 23-9. - Administrative appeal.

- 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

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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.

(Code 1969, § 23-9; Ord. of 2-23-1976)

Sec. 23-9.1. - Charges.

The cost of the engineering services rendered by the department of public works including studies, approval of plans, permit issuance, supervision and inspection of construction, are described in the fee schedule in [section 1-13](#) of this Code.

(Ord. of 10-26-2009, § 1)

Sec. 23-10. - Penalties; injunctions.

- A. A violation of this article shall be deemed a Class 1 misdemeanor.
- B. Any person who violates any regulations or order of the state board, any condition of a permit, any provisions of its program, or any provisions of this article, shall, upon finding of an appropriate general district court, be assessed a civil penalty in accordance with section 23-4.B. 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.
- C. 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.
- D. In addition to any criminal or civil penalties provided under this 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.
- E. 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.
- F. 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 E of this section. Such civil charges shall be instead of any appropriate civil penalty which could be imposed under subsection B or E of this section.

(Code 1969, § 23-10; Ord. of 2-23-1976; Ord. of 11-1993; Ord. of 12-1996)

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ARTICLE 3. - STORMWATER MANAGEMENT

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Sec. 23-11. – Stormwater management program.

- A. There is hereby adopted a stormwater management program to ensure the general health, safety, and welfare of the residents of the Town of Vienna, to protect the quality and quantity of state waters from the potential harm of unmanaged stormwater, 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.
- B. This article is intended to integrate the Town's stormwater management requirements into a unified stormwater program that also includes applicable elements of article 2 of this chapter (Erosion and Sediment Control) and article 21.1 of chapter 18 (Chesapeake Bay Preservation Areas).

Sec. 23-12. – Stormwater management requirements; exemptions.

- A. Except as provided herein, no person may engage in any land disturbing activity, and no land disturbing or building permit shall be issued until the director has reviewed and approved all requirements in accordance with this article. These requirements include:
 - 1. An application that includes a general permit registration statement;
 - 2. An erosion and sediment control plan approved in accordance with article 2 of this chapter (Erosion and Sediment Control);
 - 3. A stormwater management plan that meets the requirements of section 23-14;
 - 4. Evidence that general permit coverage has been obtained;
 - 5. All fees must be paid pursuant to section 1-13 and section 23-24;
 - 6. A performance bond, if required, must be posted pursuant to section 23-23;
 - 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, grading, excavating, transporting, and filling of land 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 23-13 and a pollution prevention plan that meets the requirements set forth in section 23-16.
- 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 23-13 (stormwater pollution prevention plan), section 23-16 (pollution prevention plan), and the requirement to obtain a general permit unless otherwise required by this Code or state or federal law.
- D. The following shall be exempt from the requirements of this article unless otherwise required by this Code or state or federal law:

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1. Activities resulting in less than 2,500 square feet of land disturbance that are not part of a common plan of development or sale except as may be required under the provisions of article 21.1 of chapter 18.
2. Discharges to a sanitary sewer.
3. Routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original construction of a project. The paving of existing road with a compacted or impervious surface and re-establishment of existing ditches and shoulders is deemed routine maintenance if performed in accordance with this subsection.
4. Conducting land disturbing activities in response to a public emergency where the related work requires immediate authorization to avoid imminent endangerment to human health or the environment. In such situations, the director shall be advised of the disturbance within seven days of commencing the land disturbing activity and compliance with this article shall be required within 30 days of commencing the land disturbing activity.
5. Land disturbances associated with permitted or deep mining operations and projects, or oil and gas operations and projects conducted under the provisions of Title 45.1 of the Code of Virginia.
6. Land clearing for agricultural or silvicultural purposes, and related activities, in accordance with Code of Virginia § 10.1-603.8.C.2.
7. Activities under a state or federal reclamation program to return an abandoned property to an agricultural or open land use.

Sec. 23-13. – Stormwater pollution prevention plan contents.

- A. The SWPPP shall include the content specified by Section 9VAC25-870-54 and must also comply with the requirements and general information set forth in Section 9VAC25-880-70, Section II of the general permit.
- B. The SWPPP shall be amended by the operator whenever there is a change in design, construction, operation, or maintenance that has a significant effect on the discharge of pollutants to state waters which is not addressed by the existing SWPPP.
- C. The SWPPP must be maintained by the operator 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. Operators shall make the SWPPP available for public review in accordance with Section II of the general permit, either electronically or in hard copy.

Sec. 23-14. – Stormwater management plan contents.

- A. The stormwater management plan must apply the stormwater management technical criteria set forth in section 23-17 to the entire common plan of development or sale where applicable. Individual lots or parcels in a residential, commercial, or industrial common plan of development or sale shall not be considered to be separate land disturbing activities. Instead, the common plan, as a whole, shall be considered to be a single land disturbing activity. The plan must also consider all sources of surface runoff and all sources of subsurface and groundwater flows converted to subsurface runoff, and include the following information:

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1. Information on the type and location of stormwater discharges; information on the features to which stormwater is being discharged including surface waters, and the predevelopment and postdevelopment drainage areas;
 2. Contact information including the name, address, and telephone number of the owner and the tax reference number and parcel number of the property or properties affected;
 3. A narrative that includes a description of current site conditions and final site conditions;
 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. A stormwater management facility maintenance agreement as required in section 23-18;
 6. Information on the proposed stormwater management facilities including:
 - a. The type of facilities;
 - b. Location, including geographic coordinates;
 - c. Acres treated; and,
 - d. The surface waters into which the facility will discharge.
 7. Hydrologic and hydraulic computations, including runoff characteristics;
 8. Documentation and calculations verifying compliance with the water quality and quantity requirements of section 23-17;
 9. A map or maps of the site that depicts the topography of the site and includes:
 - a. All contributing drainage areas;
 - b. Existing streams, ponds, culverts, ditches, wetlands, other water bodies, and floodplains;
 - c. Soil types, forest cover, and other vegetative areas;
 - d. Current land use including existing structures, roads, and locations of known utilities and easements;
 - e. Sufficient information on adjoining parcels to assess the impacts of stormwater from the site on these parcels;
 - f. The limits of clearing and grading, and the proposed drainage patterns on the site;
 - g. Proposed buildings, roads, parking areas, utilities, and stormwater management facilities; and,
 - h. Proposed land use with tabulation of the percentage of surface area to be adapted to various uses, including but not limited to planned locations of utilities, roads, and easements.
- B. 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 subsections C or D of section 23-17, then a letter of availability from the off-site provider must be included. Approved off-site options must achieve the

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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.

- C. 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.
- D. 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.
- E. 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.

Sec. 23-15. – Stormwater management plan review.

- A. The director shall review stormwater management plans and shall approve or disapprove a stormwater management plan according to the following:
 - 1. The director shall determine the completeness of a plan in accordance with section 23-14 and shall notify the applicant, in writing, of such determination, within 15 calendar days of receipt. If the plan is deemed to be incomplete, the above written notification shall contain the reasons the plan is deemed incomplete.
 - 2. The director shall have an additional 60 calendar days from the date of the communication of completeness to review the plan, except that if a determination of completeness is not made within the time prescribed in subdivision 1, then the plan shall be deemed complete and the director shall have 60 calendar days from the date of submission to review the plan.
 - 3. The director shall review any plan that has been previously disapproved, within 45 calendar days of the date of resubmission.
 - 4. 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.
 - 5. If a plan meeting all requirements of this article is submitted and no action is taken within the time provided above in subdivision 2 for review, the plan shall be deemed approved.
- B. 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.

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Sec. 23-16. – Pollution prevention plan contents.

- A. The pollution prevention plan shall include the content specified by 9VAC25-870-56, shall be developed, implemented, and updated as necessary, and must detail the design, installation, implementation, and maintenance of effective pollution prevention measures to minimize the discharge of pollutants. At a minimum, such measures must be designed, installed, implemented, and maintained to:
 - 1. Minimize the discharge of pollutants from equipment and vehicle washing, wheel wash water, and other wash waters. Wash waters must be treated in a sediment basin or alternative control that provides equivalent or better treatment prior to discharge;
 - 2. Minimize the exposure of building materials, building products, construction wastes, trash, landscape materials, fertilizers, pesticides, herbicides, detergents, sanitary waste, and other materials present on the site to precipitation and to stormwater; and,
 - 3. Minimize the discharge of pollutants from spills and leaks and implement chemical spill and leak prevention and response procedures.
- B. The pollution prevention plan shall include effective best management practices to prohibit the following discharges:
 - 1. Wastewater from washout of concrete, unless managed by an appropriate control;
 - 2. Wastewater from washout and cleanout of stucco, paint, form release oils, curing compounds, and other construction materials;
 - 3. Fuels, oils, or other pollutants used in vehicle and equipment operation and maintenance; and,
 - 4. Soaps or solvents used in vehicle and equipment washing.
- C. Discharges from dewatering activities, including discharges from dewatering of trenches and excavations, are prohibited unless managed by appropriate controls.

Sec. 23-17. – Technical criteria for regulated land disturbing activities.

- A. All land disturbing activities regulated pursuant to this article shall comply with the technical criteria for land disturbing activities set forth in 9VAC25-870-63 (water quality design criteria requirements), 9VAC25-870-65 (water quality compliance), 9VAC25-870-66 (water quantity), 9VAC-25-870-72 (design storms and hydrologic methods), 9VAC25-870-74 (stormwater harvesting), 9VAC25-870-76 (linear development), 9VAC25-870-85 (stormwater management impoundment structures or facilities), and 9VAC25-870-92 (comprehensive stormwater management plans). In addition, the following shall apply:
 - 1. 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.
- B. Notwithstanding subsection A above, a land disturbing activity as defined in 9VAC25-870-48 shall be grandfathered and meet the technical criteria in 9VAC25-870-93 through 9VAC25-870-99 except that the more stringent of the technical criteria in 9VAC25-870-93 through 9VAC25-870-99 or the Town Code in effect prior to July 1, 2014 shall apply to the land disturbing activity.

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- C. The director shall allow operators to utilize off-site compliance options in accordance with 9VAC25-870-69 under the following conditions:
1. Less than five acres of land will be disturbed;
 2. The postconstruction phosphorus control requirement is less than 10 pounds per year; or,
 3. At least 75% of the required phosphorus nutrient reductions are achieved on-site. If at least 75% of the required phosphorus nutrient reductions 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 postdevelopment nonpoint nutrient runoff compliance requirements cannot practicably be met on-site, then the required phosphorus nutrient reductions may be achieved, in whole or in part, through the use of off-site compliance options.
- D. The director may establish criteria in addition to those established in subsection C of 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.
- E. Notwithstanding subsections C and D this section, offsite options shall not be allowed:
1. Unless the selected offsite option achieves the necessary nutrient reductions prior to the commencement of the operator's land disturbing activity. In the case of a phased project, the operator may acquire or achieve offsite nutrient reductions prior to the commencement of each phase of land disturbing activity in an amount sufficient for each phase.
 2. In contravention of local water quality-based limitations at the point of discharge that are 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 conservation and recreation, or as otherwise may be established or approved by the state board.
- F. The director may grant exceptions to the technical requirements of subsection A 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

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the Virginia Stormwater BMP Clearinghouse website, or any other control measure duly approved by the department of conservation and recreation.

2. Exceptions to requirements for phosphorus reductions shall not be allowed unless offsite options otherwise permitted pursuant to 9VAC25-870-69 have been considered and found not available.

Sec. 23-18. – Maintenance of permanent stormwater management facilities.

- A. The director shall require the provision of long-term responsibility for and maintenance of stormwater management facilities and other techniques specified to manage the quality and quantity of runoff.
- B. All land owners 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.

Sec. 23-19. – 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.

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- 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 director 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. Post-construction inspections of stormwater management facilities required by the provisions of this article shall be conducted by the director pursuant to procedures developed by the director and shall occur, at minimum, at least once every five years.

Sec. 23-20. – Hearings.

- A. Any person subject to this article aggrieved by any action of the Town taken without a formal hearing, or by inaction of the Town, may demand in writing a formal hearing by the Town Council, provided a petition requesting such hearing is filed with the Town Manager within 30 days after notice of such action is given by the director.
- 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 Town Council, 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.

Sec. 23-21. – Appeals.

Appeals to this article shall be conducted in the same manner as prescribed in section 23-9.

Sec. 23-22. – Enforcement and penalties.

- A. If the director determines that there is a failure to comply with the conditions of this article, notice shall be served upon the person responsible for carrying out the conditions of this article by any of

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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 stormwater management plan 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 B or land disturbing permits may be revoked by the director.
2. If a person 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 or person responsible for carrying out an approved plan, or the person conducting the land disturbing activities without an approved plan or required permit to cease all land disturbing activities until the violation of the permit has ceased, or an approved plan and required permits are obtained, and specified corrective measures have been completed.

Such orders shall become effective upon service on the person by certified mail, return receipt requested, sent to his address specified in the land records of the Town, or by personal delivery by an agent of the director. 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 C.

- B. In addition to any other remedy provided by this article, if the director determines that there is a failure to comply with the provisions of this article, he may initiate such informal and/or formal administrative enforcement procedures in a manner that is consistent with policies adopted by the Town.
- 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. Any person who violates any provision of this article or who fails, neglects, or refuses to comply with any order of the director, shall be subject to a civil penalty not to exceed \$32,500 for each violation within the discretion of the court. Each day of violation of each requirement shall constitute a separate offense.
 1. Violations for which a penalty may be imposed under this subsection shall include but not be limited to the following:
 - a. No general permit registration;
 - b. No SWPPP;
 - c. Incomplete SWPPP;

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- d. SWPPP not available for review;
 - e. No approved erosion and sediment control plan;
 - f. Failure to install stormwater BMPs or erosion and sediment controls;
 - g. Stormwater BMPs or erosion and sediment controls improperly installed or maintained;
 - h. Operational deficiencies;
 - i. Failure to conduct required inspections;
 - j. Incomplete, improper, or missed inspections; and,
 - k. Discharges not in compliance with the requirements of 4VAC 50-60-1170 of the general permit.
- 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 shall be paid into the treasury of the Town to be used for the purpose of minimizing, preventing, managing, or mitigating pollution of the waters of the Town and abating environmental pollution therein in such manner as the court may, by order, direct.
- E. 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 nor more than \$32,500, or both.

Sec. 23-23. – Performance bonds.

Prior to any land disturbing activity the applicant may be required by the director to submit a performance bond in the amount of \$2,500 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 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 conditions as a result of his land disturbing activity. If the Town takes such action upon such failure by the applicant, the Town 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, including but not limited to the submittal of a construction record drawing in accordance with section 23-14.D, 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.

Sec. 23-24. – 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.

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- 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 the anniversary date of general permit coverage, 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 conservation and recreation 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 conservation and recreation, 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 10% late payment fee shall be charged to any delinquent account, defined as over 90 days past due. The Town is entitled to all remedies under the Code of Virginia in collecting any past due amount.