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HOUSE BILL NO. 1224

Offered January 19, 2022

A BILL to amend and reenact § 62.1-44.15:28, as it is currently effective and as it shall become effective, of the Code of Virginia, relating to stormwater management; proprietary best management practices.

 Patron—Bulova

Committee Referral Pending

Be it enacted by the General Assembly of Virginia:

1. That § 62.1-44.15:28, as it is currently effective and as it shall become effective, of the Code of Virginia is amended and reenacted as follows:

§ 62.1-44.15:28. (For expiration date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345) Development of regulations.

A. The Board is authorized to adopt regulations that specify minimum technical criteria and administrative procedures for Virginia Stormwater Management Programs. The regulations shall:

1. Establish standards and procedures for administering a VSMP;

2. Establish minimum design criteria for measures to control nonpoint source pollution and localized flooding, and incorporate the stormwater management regulations adopted pursuant to the Erosion and Sediment Control Law (§ 62.1-44.15:51 et seq.), as they relate to the prevention of stream channel erosion. These criteria shall be periodically modified as required in order to reflect current engineering methods;

3. Require the provision of long-term responsibility for and maintenance of stormwater management control devices and other techniques specified to manage the quality and quantity of runoff;

4. Require as a minimum the inclusion in VSMPs of certain administrative procedures that include, but are not limited to, specifying the time period within which a VSMP authority shall grant land-disturbing activity approval, the conditions and processes under which approval shall be granted, the procedures for communicating disapproval, the conditions under which an approval may be changed, and requirements for inspection of approved projects;

5. Establish by regulations a statewide permit fee schedule to cover all costs associated with the implementation of a VSMP related to land-disturbing activities of one acre or greater. Such fee attributes include the costs associated with plan review, VSMP registration statement review, permit issuance, state-coverage verification, inspections, reporting, and compliance activities associated with the land-disturbing activities as well as program oversight costs. The fee schedule shall also include a provision for a reduced fee for land-disturbing activities between 2,500 square feet and up to one acre in Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq.) localities. The fee schedule shall be governed by the following:

a. The revenue generated from the statewide stormwater permit fee shall be collected utilizing, where practicable, an online payment system, and the Department's portion shall be remitted to the State Treasurer for deposit in the Virginia Stormwater Management Fund established pursuant to § 62.1-44.15:29. However, whenever the Board has approved a VSMP, no more than 30 percent of the total revenue generated by the statewide stormwater permit fees collected shall be remitted to the State Treasurer for deposit in the Virginia Stormwater Management Fund, with the balance going to the VSMP authority.

b. Fees collected pursuant to this section shall be in addition to any general fund appropriation made to the Department or other supporting revenue from a VSMP; however, the fees shall be set at a level sufficient for the Department and the VSMP to fully carry out their responsibilities under this article and its attendant regulations and local ordinances or standards and specifications where applicable. When establishing a VSMP, the VSMP authority shall assess the statewide fee schedule and shall have the authority to reduce or increase such fees, and to consolidate such fees with other program-related charges, but in no case shall such fee changes affect the amount established in the regulations as available to the Department for program oversight responsibilities pursuant to subdivision 5 a. A VSMP's portion of the fees shall be used solely to carry out the VSMP's responsibilities under this article and its attendant regulations, ordinances, or annual standards and specifications.

c. Until July 1, 2014, the fee for coverage under the General Permit for Discharges of Stormwater from Construction Activities issued by the Board, or where the Board has issued an individual permit or coverage under the General Permit for Discharges of Stormwater from Construction Activities for an entity for which it has approved annual standards and specifications, shall be \$750 for each large

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59 construction activity with sites or common plans of development equal to or greater than five acres and
60 \$450 for each small construction activity with sites or common plans of development equal to or greater
61 than one acre and less than five acres. On and after July 1, 2014, such fees shall only apply where
62 coverage has been issued under the Board's General Permit for Discharges of Stormwater from
63 Construction Activities to a state agency or federal entity for which it has approved annual standards
64 and specifications. After establishment, such fees may be modified in the future through regulatory
65 actions.

66 d. Until July 1, 2014, the Department is authorized to assess a \$125 reinspection fee for each visit to
67 a project site that was necessary to check on the status of project site items noted to be in
68 noncompliance and documented as such on a prior project inspection.

69 e. In establishing the fee schedule under this subdivision, the Department shall ensure that the VSMP
70 authority portion of the statewide permit fee for coverage under the General Permit for Discharges of
71 Stormwater from Construction Activities for small construction activity involving a single family
72 detached residential structure with a site or area, within or outside a common plan of development or
73 sale, that is equal to or greater than one acre but less than five acres shall be no greater than the VSMP
74 authority portion of the fee for coverage of sites or areas with a land-disturbance acreage of less than
75 one acre within a common plan of development or sale.

76 f. When any fees are collected pursuant to this section by credit cards, business transaction costs
77 associated with processing such payments may be additionally assessed;

78 6. Establish statewide standards for stormwater management from land-disturbing activities of one
79 acre or greater, except as specified otherwise within this article, and allow for the consolidation in the
80 permit of a comprehensive approach to addressing stormwater management and erosion and sediment
81 control, consistent with the provisions of the Erosion and Sediment Control Law (§ 62.1-44.15:51 et
82 seq.) and this article. However, such standards shall also apply to land-disturbing activity exceeding an
83 area of 2,500 square feet in all areas of the jurisdictions designated as subject to the Chesapeake Bay
84 Preservation Area Designation and Management Regulations;

85 7. Establish a procedure by which a stormwater management plan that is approved for a residential,
86 commercial, or industrial subdivision shall govern the development of the individual parcels, including
87 those parcels developed under subsequent owners;

88 8. Notwithstanding the provisions of subdivision 5, establish a procedure by which neither a
89 registration statement nor payment of the Department's portion of the statewide permit fee established
90 pursuant to that subdivision shall be required for coverage under the General Permit for Discharges of
91 Stormwater from Construction Activities for construction activity involving a single-family detached
92 residential structure, within or outside a common plan of development or sale;

93 9. Provide for the use of a proprietary best management practice only if another state, regional, or
94 national certification program has verified ~~and~~ or certified its nutrient or sediment removal effectiveness;

95 10. Require that VSMPs maintain after-development runoff rate of flow and characteristics that
96 replicate, as nearly as practicable, the existing predevelopment runoff characteristics and site hydrology,
97 or improve upon the contributing share of the existing predevelopment runoff characteristics and site
98 hydrology if stream channel erosion or localized flooding is an existing predevelopment condition.
99 Except where more stringent requirements are necessary to address total maximum daily load
100 requirements or to protect exceptional state waters, any land-disturbing activity that provides for
101 stormwater management shall satisfy the conditions of this subsection if the practices are designed to (i)
102 detain the water quality volume and to release it over 48 hours; (ii) detain and release over a 24-hour
103 period the expected rainfall resulting from the one year, 24-hour storm; and (iii) reduce the allowable
104 peak flow rate resulting from the 1.5-year, two-year, and 10-year, 24-hour storms to a level that is less
105 than or equal to the peak flow rate from the site assuming it was in a good forested condition, achieved
106 through multiplication of the forested peak flow rate by a reduction factor that is equal to the runoff
107 volume from the site when it was in a good forested condition divided by the runoff volume from the
108 site in its proposed condition, and shall be exempt from any flow rate capacity and velocity
109 requirements for natural or man-made channels as defined in any regulations promulgated pursuant to
110 this section or any ordinances adopted pursuant to § 62.1-44.15:27 or 62.1-44.15:33;

111 11. Encourage low-impact development designs, regional and watershed approaches, and
112 nonstructural means for controlling stormwater;

113 12. Promote the reclamation and reuse of stormwater for uses other than potable water in order to
114 protect state waters and the public health and to minimize the direct discharge of pollutants into state
115 waters;

116 13. Establish procedures to be followed when a locality that operates a VSMP wishes to transfer
117 administration of the VSMP to the Department;

118 14. Establish a statewide permit fee schedule for stormwater management related to municipal
119 separate storm sewer system permits;

120 15. Provide for the evaluation and potential inclusion of emerging or innovative nonproprietary

stormwater control technologies that may prove effective in reducing nonpoint source pollution;

16. Require the owner of property that is zoned for residential use and on which is located a privately owned stormwater management facility serving one or more residential properties to record the long-term maintenance and inspection requirements for such facility with the deed for the owner's property; and

17. Require that all final plan elements, specifications, or calculations whose preparation requires a license under Chapter 4 (§ 54.1-400 et seq.) or 22 (§ 54.1-2200 et seq.) of Title 54.1 be appropriately signed and sealed by a professional who is licensed to engage in practice in the Commonwealth. Nothing in this subdivision shall authorize any person to engage in practice outside his area of professional competence.

B. The Board may integrate and consolidate components of the regulations implementing the Erosion and Sediment Control program and the Chesapeake Bay Preservation Area Designation and Management program with the regulations governing the Virginia Stormwater Management Program (VSMP) Permit program or repeal components so that these programs may be implemented in a consolidated manner that provides greater consistency, understanding, and efficiency for those regulated by and administering a VSMP.

§ 62.1-44.15:28. (For effective date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345) Development of regulations.

The Board is authorized to adopt regulations that establish requirements for the effective control of soil erosion, sediment deposition, and stormwater, including nonagricultural runoff, that shall be met in any VESMP to prevent the unreasonable degradation of properties, stream channels, waters, and other natural resources, and that specify minimum technical criteria and administrative procedures for VESMPs. The regulations shall:

1. Establish standards and procedures for administering a VESMP;

2. Establish minimum standards of effectiveness of the VESMP and criteria and procedures for reviewing and evaluating its effectiveness. The minimum standards of program effectiveness established by the Board shall provide that (i) no soil erosion control and stormwater management plan shall be approved until it is reviewed by a plan reviewer certified pursuant to § 62.1-44.15:30, (ii) each inspection of a land-disturbing activity shall be conducted by an inspector certified pursuant to § 62.1-44.15:30, and (iii) each VESMP shall contain a program administrator, a plan reviewer, and an inspector, each of whom is certified pursuant to § 62.1-44.15:30 and all of whom may be the same person;

3. Be based upon relevant physical and developmental information concerning the watersheds and drainage basins of the Commonwealth, including data relating to land use, soils, hydrology, geology, size of land area being disturbed, proximate water bodies and their characteristics, transportation, and public facilities and services;

4. Include any survey of lands and waters as the Board deems appropriate or as any applicable law requires to identify areas, including multijurisdictional and watershed areas, with critical soil erosion and sediment problems;

5. Contain conservation standards for various types of soils and land uses, which shall include criteria, techniques, and methods for the control of soil erosion and sediment resulting from land-disturbing activities;

6. Establish water quality and water quantity technical criteria. These criteria shall be periodically modified as required in order to reflect current engineering methods;

7. Require the provision of long-term responsibility for and maintenance of stormwater management control devices and other techniques specified to manage the quality and quantity of runoff;

8. Require as a minimum the inclusion in VESMPs of certain administrative procedures that include, but are not limited to, specifying the time period within which a VESMP authority shall grant land-disturbance approval, the conditions and processes under which such approval shall be granted, the procedures for communicating disapproval, the conditions under which an approval may be changed, and requirements for inspection of approved projects;

9. Establish a statewide fee schedule to cover all costs associated with the implementation of a VESMP related to land-disturbing activities where permit coverage is required, and for land-disturbing activities where the Board serves as a VESMP authority or VSMP authority. Such fee attributes include the costs associated with plan review, permit registration statement review, permit issuance, permit coverage verification, inspections, reporting, and compliance activities associated with the land-disturbing activities as well as program oversight costs. The fee schedule shall also include a provision for a reduced fee for a land-disturbing activity that disturbs 2,500 square feet or more but less than one acre in an area of a locality designated as a Chesapeake Bay Preservation Area pursuant to the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq.). The fee schedule shall be governed by the following:

a. The revenue generated from the statewide fee shall be collected utilizing, where practicable, an

182 online payment system, and the Department's portion shall be remitted to the State Treasurer for deposit
183 in the Virginia Stormwater Management Fund established pursuant to § 62.1-44.15:29. However,
184 whenever the Board has approved a VESMP, no more than 30 percent of the total revenue generated by
185 the statewide fees collected shall be remitted to the State Treasurer for deposit in the Virginia
186 Stormwater Management Fund, with the balance going to the VESMP authority;

187 b. Fees collected pursuant to this section shall be in addition to any general fund appropriation made
188 to the Department or other supporting revenue from a VESMP; however, the fees shall be set at a level
189 sufficient for the Department, the Board, and the VESMP to fully carry out their responsibilities under
190 this article and local ordinances or standards and specifications where applicable. When establishing a
191 VESMP, the VESMP authority shall assess the statewide fees pursuant to the schedule and shall have
192 the authority to reduce or increase such fees, and to consolidate such fees with other program-related
193 charges, but in no case shall such fee changes affect the amount established in the regulations as
194 available to the Department for program oversight responsibilities pursuant to subdivision a. A VESMP's
195 portion of the fees shall be used solely to carry out the VESMP's responsibilities under this article and
196 associated ordinances;

197 c. In establishing the fee schedule under this subdivision, the Department shall ensure that the
198 VESMP authority portion of the statewide fee for coverage under the General Permit for Discharges of
199 Stormwater from Construction Activities for small construction activity involving a single-family
200 detached residential structure with a site or area, within or outside a common plan of development or
201 sale, that is equal to or greater than one acre but less than five acres shall be no greater than the
202 VESMP authority portion of the fee for coverage of sites or areas with a land-disturbance acreage of
203 less than one acre within a common plan of development or sale;

204 d. When any fees are collected pursuant to this section by credit cards, business transaction costs
205 associated with processing such payments may be additionally assessed;

206 e. Notwithstanding the other provisions of this subdivision 9, establish a procedure by which neither
207 a registration statement nor payment of the Department's portion of the statewide fee established
208 pursuant to this subdivision 9 shall be required for coverage under the General Permit for Discharges of
209 Stormwater from Construction Activities for construction activity involving a single-family detached
210 residential structure, within or outside a common plan of development or sale;

211 10. Establish statewide standards for soil erosion control and stormwater management from
212 land-disturbing activities;

213 11. Establish a procedure by which a soil erosion control and stormwater management plan or
214 stormwater management plan that is approved for a residential, commercial, or industrial subdivision
215 shall govern the development of the individual parcels, including those parcels developed under
216 subsequent owners;

217 12. Provide for the use of a proprietary best management practice only if another state, regional, or
218 national certification program has verified ~~and~~ or certified its nutrient or sediment removal effectiveness;

219 13. Require that VESMPs maintain after-development runoff rate of flow and characteristics that
220 replicate, as nearly as practicable, the existing predevelopment runoff characteristics and site hydrology,
221 or improve upon the contributing share of the existing predevelopment runoff characteristics and site
222 hydrology if stream channel erosion or localized flooding is an existing predevelopment condition.

223 a. Except where more stringent requirements are necessary to address total maximum daily load
224 requirements or to protect exceptional state waters, any land-disturbing activity that was subject to the
225 water quantity requirements that were in effect pursuant to this article prior to July 1, 2014, shall be
226 deemed to satisfy the conditions of this subsection if the practices are designed to (i) detain the water
227 volume equal to the first one-half inch of runoff multiplied by the impervious surface of the land
228 development project and to release it over 48 hours; (ii) detain and release over a 24-hour period the
229 expected rainfall resulting from the one year, 24-hour storm; and (iii) reduce the allowable peak flow
230 rate resulting from the 1.5-year, two-year, and 10-year, 24-hour storms to a level that is less than or
231 equal to the peak flow rate from the site assuming it was in a good forested condition, achieved through
232 multiplication of the forested peak flow rate by a reduction factor that is equal to the runoff volume
233 from the site when it was in a good forested condition divided by the runoff volume from the site in its
234 proposed condition. Any land-disturbing activity that complies with these requirements shall be exempt
235 from any flow rate capacity and velocity requirements for natural or man-made channels as defined in
236 any regulations promulgated pursuant to this section or any ordinances adopted pursuant to §
237 62.1-44.15:27 or 62.1-44.15:33;

238 b. Any stream restoration or relocation project that incorporates natural channel design concepts is
239 not a man-made channel and shall be exempt from any flow rate capacity and velocity requirements for
240 natural or man-made channels as defined in any regulations promulgated pursuant to this article;

241 14. Encourage low-impact development designs, regional and watershed approaches, and
242 nonstructural means for controlling stormwater;

243 15. Promote the reclamation and reuse of stormwater for uses other than potable water in order to

protect state waters and the public health and to minimize the direct discharge of pollutants into state waters;

16. Establish procedures to be followed when a locality chooses to change the type of program it administers pursuant to subsection D of § 62.1-44.15:27;

17. Establish a statewide permit fee schedule for stormwater management related to MS4 permits;

18. Provide for the evaluation and potential inclusion of emerging or innovative nonproprietary stormwater control technologies that may prove effective in reducing nonpoint source pollution;

19. Require the owner of property that is zoned for residential use and on which is located a privately owned stormwater management facility serving one or more residential properties to record the long-term maintenance and inspection requirements for such facility with the deed for the owner's property; and

20. Require that all final plan elements, specifications, or calculations whose preparation requires a license under Chapter 4 (§ 54.1-400 et seq.) or 22 (§ 54.1-2200 et seq.) of Title 54.1 be appropriately signed and sealed by a professional who is licensed to engage in practice in the Commonwealth. Nothing in this subdivision shall authorize any person to engage in practice outside his area of professional competence.

2. That any proprietary best management practice (BMP) that was included by the Department of Environmental Quality (the Department) on the Virginia Stormwater BMP Clearinghouse (the Clearinghouse) website prior to December 31, 2021, but that is no longer included on the Clearinghouse, may provide documentation to the Department showing that another state, regional, or national certification program has verified or certified its nutrient or sediment removal effectiveness. Any BMP providing such documentation to the Department shall be listed on the Clearinghouse website as quickly as is reasonably possible after submission of the documentation and shall thereafter be approved for use in any stormwater management plan.