

General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common disturbance acreage equal to or greater 100 acres)

Individual Permit for Discharges from Construction Activities

11514 ~~FORMS (9VAC25-870)(Repealed)</u~~

11515 [Application Form 1 – General Information, Consolidated Permits Program, EPA Form 3510-1](#)
11516 [\(rev. 8/90\)](#)

11517 [Construction Activity Operator Permit Fee Form \(rev. 9/14\)](#)

11518 ~~FORMS (9VAC25-870)(Repealed)</u~~

11519 [Application Form 1 – General Information, Consolidated Permits Program, EPA Form 3510-1](#)
11520 [\(rev. 8/90\)](#)

11521 [Construction Activity Operator Permit Fee Form \(rev. 9/14\)](#)

11522 ~~Documents Incorporated by Reference (9VAC25-870)(Repealed)</u~~

11523 [Virginia Runoff Reduction Method: Instructions & Documentation, March 28, 2011](#)

11524 [Virginia Erosion and Sediment Control Regulation Minimum Standard 19 in effect prior to July](#)
11525 [1, 2014](#)

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11527 [Virginia Runoff Reduction Method: Instructions & Documentation, March 28, 2011](#)

11528 [Virginia Erosion and Sediment Control Regulation Minimum Standard 19 in effect prior to July](#)
11529 [1, 2014](#)

11530 Chapter 875

11531 Virginia Erosion and Stormwater Management Regulation

11532 Part I

11533 Definitions and applicability for Virginia Erosion and Stormwater Management Programs and
11534 Virginia Erosion and Sediment Control Programs

11535 **9VAC25-875-10. General.**

11536 For the purpose of applying the Virginia Erosion and Stormwater Management Regulation,
11537 the words and terms shall have the meanings given to them in 9VAC25-875-20. The words and
11538 terms defined in Part II, Part III, Article 4 (9VAC25-875-670 et seq) of Part V, and Part VII of this
11539 chapter are applicable only to the Part in which they are defined.

11540 **9VAC25-875-20. Definitions.**

11541 The following words and terms, when used in this chapter, shall have the following meanings,
11542 unless the context clearly indicates otherwise.

11543 "Adequate channel" means a channel that will convey the designated frequency storm event
11544 without overtopping the channel bank nor causing erosive damage to the channel bed or banks.

11545 "Agreement in lieu of a plan" means a contract between the VESMP authority or the
11546 department acting as a VSMP authority and the owner or permittee that specifies methods that
11547 shall be implemented to comply with the requirements of VESMA for the construction of (i) a
11548 single-family detached residential structure or (ii) a farm building or structure on a parcel of land
11549 with a total impervious cover percentage, including the impervious cover from the farm building
11550 or structure to be constructed, of less than five percent; such contract may be executed by the
11551 VESMP authority in lieu of a soil erosion control and stormwater management plan or by the
11552 department acting as a VSMP authority in lieu of a stormwater management plan.

11553 "Applicant" means person submitting a soil erosion control and stormwater management plan
11554 to a VESMP authority, or a stormwater management plan to the department when it is serving as
11555 a VSMP authority, for approval in order to obtain authorization to commence a land-disturbing
11556 activity.

11557 "Approval authority" means the department or its designee.

11558 "Best management practice" or "BMP" means schedules of activities, prohibitions of practices,
11559 maintenance procedures, and other management practices, including both structural and
11560 nonstructural practices, to prevent or reduce the pollution of surface waters and groundwater
11561 systems.

11562 1. "Nonproprietary best management practice" means both structural and nonstructural
11563 practices to prevent or reduce the pollution of surface waters and groundwater systems
11564 that are in the public domain and are not protected by trademark or patent or copyright.

11565 2. "Proprietary best management practice" means both structural and nonstructural
11566 practices to prevent or reduce the pollution of surface waters and groundwater systems
11567 that are privately owned and controlled and may be protected by trademark or patent or
11568 copyright.

11569 "Board" means the State Water Control Board. When used outside the context of the
11570 promulgation of regulations, including regulations to establish general permits, "board" means the
11571 Department of Environmental Quality.

11572 "Causeway" means a temporary structural span constructed across a flowing watercourse or
11573 wetland to allow construction traffic to access the area without causing erosion damage.

11574 "Certification" means the designation issued by the department, on behalf of the
11575 Commonwealth, to individuals who have completed department-approved training programs and
11576 met any additional eligibility requirements or in other ways demonstrated adequate knowledge
11577 and experience in accordance with the eligibility requirements of 9VAC25-875-410 related to the
11578 specified classifications (9VAC25-875-400) within the separate subject areas of ESC or SWM or
11579 both.

11580 "Certified inspector for ESC" means an employee or agent of a VESCP authority or VESMP
11581 authority who (i) holds a certification from the department in the area of project inspection or (ii)
11582 is enrolled in the department's training program for project inspection and successfully completes
11583 such program within one year after enrollment.

11584 "Certified inspector for SWM" means an employee or agent of a VESMP authority or VSMP
11585 authority who holds a certification from the department in the classification of inspector for project
11586 inspection in the area of SWM.

11587 "Certified plan reviewer for ESC" means an employee or agent of a VESCP authority or
11588 VESMP authority who (i) holds a certification from the department in the area of plan review, (ii)
11589 is enrolled in the department's training program for plan review and successfully completes such
11590 program within one year after enrollment, or (iii) is licensed as a professional engineer, architect,
11591 landscape architect, land surveyor pursuant to Article 1 (§ 54.1-400 et seq.) of Chapter 4 of Title
11592 54.1, or professional soil scientist as defined in § 54.1-2200.

- 11593 "Certified plan reviewer for SWM" means an employee or agent of a VESMP authority or
11594 VSMP authority who (i) holds a certification from the department in the area of plan review or (ii)
11595 is enrolled in the department's training program for plan review and successfully completes such
11596 program within one year after enrollment.
- 11597 "Certified program administrator for ESC" means an employee or agent of a VESCP authority
11598 or VESMP authority who holds a certification from the department in the classification of program
11599 administrator in the area of ESC.
- 11600 "Certified program administrator for SWM" means an employee or agent of a VESMP authority
11601 or VSMP authority who holds a certification from the department in the classification of program
11602 administrator in the area of SWM.
- 11603 "Channel" means a natural stream or manmade waterway.
- 11604 "Chesapeake Bay Preservation Act" means Article 2.5 (§ 62.1-44.15:67 et seq.) of Chapter
11605 3.1 of Title 62.1 of the Code of Virginia.
- 11606 "Chesapeake Bay Preservation Area" means any land designated by a local government
11607 pursuant to Part III (9VAC25-830-70 et seq.) of the Chesapeake Bay Preservation Area
11608 Designation and Management Regulations and § 62.1-44.15:74 of the Code of Virginia. A
11609 Chesapeake Bay Preservation Area shall consist of a Resource Protection Area and a Resource
11610 Management Area as defined in the Chesapeake Bay Preservation Area Designation and
11611 Management Regulations (9VAC25-830).
- 11612 "Chesapeake Bay watershed" means all land areas draining to the following Virginia river
11613 basins: Potomac River Basin, James River Basin, Rappahannock River Basin, Chesapeake Bay
11614 and its small coastal basins, and York River Basin.
- 11615 "Classification" means the four specific certification designations assigned to the roles of
11616 program administrator, plan reviewer, inspector, and combined administrator within the areas of
11617 ESC, SWM or both ESC and SWM for a dual classification.
- 11618 "Clean Water Act" or "CWA" means the federal Clean Water Act (33 USC § 1251 et seq.),
11619 formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control
11620 Act Amendments of 1972, Public Law 92-500, as amended by Public Law 95-217, Public Law 95-
11621 576, Public Law 96-483, and Public Law 97-117, or any subsequent revisions thereto.
- 11622 "Cofferdam" means a watertight temporary structure in a river, lake, etc., for keeping the water
11623 from an enclosed area that has been pumped dry so that bridge foundations, dams, etc., may be
11624 constructed.
- 11625 "Combined administrator for ESC" means anyone who is responsible for performing the
11626 combined duties of a program administrator, plan reviewer and inspector of a VESCP authority
11627 or the ESC component of a VESMP authority.
- 11628 "Combined administrator for SWM" means anyone who is responsible for performing the
11629 combined duties of a program administrator, plan reviewer and inspector of a VSMP authority or
11630 the SWM component of a VESMP authority.
- 11631 "Common plan of development or sale" means a contiguous area where separate and distinct
11632 construction activities may be taking place at different times on different schedules.
- 11633 "Comprehensive stormwater management plan" means a plan, which may be integrated with
11634 other land use plans or regulations that specifies how the water quality components, quantity
11635 components, or both of stormwater are to be managed on the basis of an entire watershed or a
11636 portion thereof. The plan may also provide for the remediation of erosion, flooding, and water
11637 quality and quantity problems caused by prior development.
- 11638 "Construction activity" means any clearing, grading, or excavation associated with large
11639 construction activity or associated with small construction activity.

11640 "Control measure" means any BMP, stormwater facility, or other method used to minimize the
11641 discharge of pollutants to state waters.

11642 "Controversial permit" means a water permitting action for which a public hearing has been
11643 granted pursuant to 9VAC25-875-1120 and 9VAC25-875-1130.

11644 "CWA and regulations" means the Clean Water Act and applicable regulations published in
11645 the Code of Federal Regulations promulgated thereunder. For the purposes of this chapter, it
11646 includes state program requirements.

11647 "Dam" means a barrier to confine or raise water for storage or diversion, to create a hydraulic
11648 head, to prevent gully erosion, or to retain soil, rock or other debris.

11649 "Denuded" means a term applied to land that has been physically disturbed and no longer
11650 supports vegetative cover.

11651 "Department" means the Department of Environmental Quality.

11652 "Dike" means an earthen embankment constructed to confine or control water, especially one
11653 built along the banks of a river to prevent overflow of lowlands; levee.

11654 "Director" means the Director of the Department of Environmental Quality or his designee.

11655 "Discharge" when used without qualification, means the discharge of a pollutant.

11656 "Discharge of a pollutant" means:

11657 1. Any addition of any pollutant or combination of pollutants to state waters from any point
11658 source; or

11659 2. Any addition of any pollutant or combination of pollutants to the waters of the contiguous
11660 zone or the ocean from any point source other than a vessel or other floating craft which
11661 is being used as a means of transportation.

11662 This definition includes additions of pollutants into surface waters from: surface runoff that
11663 is collected or channeled by man; discharges through pipes, sewers, or other
11664 conveyances owned by a state, municipality, or other person that do not lead to a
11665 treatment works; and discharges through pipes, sewers, or other conveyances, leading
11666 into privately owned treatment works. This term does not include an addition of pollutants
11667 by any indirect discharger.

11668 "District" or "soil and water conservation district" means a political subdivision of the
11669 Commonwealth organized in accordance with the provisions of Article 3 (§ 10.1-506 et seq.) of
11670 Chapter 5 of Title 10.1 of the Code of Virginia.

11671 "Diversion" means a channel with a supporting ridge on the lower side constructed across or
11672 at the bottom of a slope for the purpose of intercepting surface runoff.

11673 "Dormant" means denuded land that is not actively being brought to a desired grade or
11674 condition.

11675 "Drainage area" means a land area, water area, or both from which runoff flows to a common
11676 point.

11677 "Dual combined administrator for ESC and SWM" means anyone who is responsible for
11678 performing the combined duties of a program administrator, plan reviewer and inspector of a
11679 VESMP authority.

11680 "Energy dissipator" means a nonerodible structure which reduces the velocity of concentrated
11681 flow to reduce its erosive effects.

11682 "Environmental Protection Agency" or "EPA" means the United States Environmental
11683 Protection Agency.

11684 "Erosion and sediment control plan" means a document containing material for the
11685 conservation of soil and water resources of a unit or group of units of land. It may include

11686 appropriate maps, an appropriate soil and water plan inventory and management information with
11687 needed interpretations, and a record of decisions contributing to conservation treatment. The plan
11688 shall contain all major conservation decisions to ensure that the entire unit or units of land will be
11689 so treated to achieve the conservation objectives.

11690 "Erosion and Sediment Control Law for Localities Not Administering a Virginia Erosion and
11691 Stormwater Management Program" or "ESCL" means Article 2.4 (§ 62.1-44.15:51 et seq.) of
11692 Chapter 3.1 of Title 62.1 of the Code of Virginia.

11693 "Erosion impact area" means an area of land that is not associated with a current land-
11694 disturbing activity but is subject to persistent soil erosion resulting in the delivery of sediment onto
11695 neighboring properties or into state waters. This definition shall not apply to any lot or parcel of
11696 land of 10,000 square feet or less used for residential purposes or to shorelines where the erosion
11697 results from wave action or other coastal processes.

11698 "ESC" means erosion and sediment control.

11699 "Farm building or structure" means the same as that term is defined in § 36-97 of the Code of
11700 Virginia and also includes any building or structure used for agritourism activity, as defined in §
11701 3.2-6400 of the Code of Virginia, and any related impervious services including roads, driveways,
11702 and parking areas.

11703 "Flood fringe" means the portion of the floodplain outside the floodway that is usually covered
11704 with water from the 100-year flood or storm event. This includes the flood or floodway fringe
11705 designated by the Federal Emergency Management Agency.

11706 "Flooding" means a volume of water that is too great to be confined within the banks or walls
11707 of the stream, water body, or conveyance system and that overflows onto adjacent lands, thereby
11708 causing or threatening damage.

11709 "Floodplain" means the area adjacent to a channel, river, stream, or other water body that is
11710 susceptible to being inundated by water normally associated with the 100-year flood or storm
11711 event. This includes the floodplain designated by the Federal Emergency Management Agency.

11712 "Flood-prone area" means the component of a natural or restored stormwater conveyance
11713 system that is outside the main channel. Flood-prone areas may include the floodplain, the
11714 floodway, the flood fringe, wetlands, riparian buffers, or other areas adjacent to the main channel.

11715 "Floodway" means the channel of a river or other watercourse and the adjacent land areas,
11716 usually associated with flowing water, that must be reserved in order to discharge the 100-year
11717 flood or storm event without cumulatively increasing the water surface elevation more than one
11718 foot. This includes the floodway designated by the Federal Emergency Management Agency.

11719 "Flume" means a constructed device lined with erosion-resistant materials intended to convey
11720 water on steep grades.

11721 "General permit" means a permit authorizing a category of discharges under the CWA and
11722 the VESMA within a geographical area.

11723 "Hydrologic Unit Code" or "HUC" means a watershed unit established in the most recent
11724 version of Virginia's 6th Order National Watershed Boundary Dataset unless specifically identified
11725 as another order.

11726 "Impervious cover" means a surface composed of material that significantly impedes or
11727 prevents natural infiltration of water into soil.

11728 "Incorporated place" means a city, town, township, or village that is incorporated under the
11729 Code of Virginia.

11730 "Inspection" means an on-site review of the project's compliance with any applicable design
11731 criteria, or an on-site review to obtain information or conduct surveys or investigations necessary
11732 in the implementation or enforcement of the VESMA, ESCL, and applicable regulations.

11733 "Inspector" means the individual who, as a representative of a VESCP authority, a VESMP
11734 authority, or a VSMP authority, is responsible for periodically examining the ESC, SWM, or both
11735 ESC and SWM activities and premises of a land-disturbing activity for compliance with the ESCL
11736 VESMA, and associated regulations as may be applicable.

11737 "Karst area" means any land area predominantly underlain at the surface or shallow
11738 subsurface by limestone, dolomite, or other soluble bedrock regardless of any obvious surface
11739 karst features.

11740 "Karst features" means sinkholes, sinking and losing streams, caves, large flow springs, and
11741 other such landscape features found in karst areas.

11742 "Land disturbance" or "land-disturbing activity" means a man-made change to the land surface
11743 that may result in soil erosion or has the potential to change its runoff characteristics, including
11744 construction activity such as the clearing, grading, excavating, or filling of land.

11745 "Land-disturbance approval" means an approval allowing a land-disturbing activity to
11746 commence issued by (i) a VESMP or VSMP authority after the requirements of § 62.1-44.15:34
11747 of the Code of Virginia have been met or (ii) a VESCP authority after the requirements of § 62.1-
11748 44.15:55 of the Code of Virginia have been met.

11749 "Large construction activity" means construction activity including clearing, grading, and
11750 excavation, except operations that result in the disturbance of less than five acres of total land
11751 area. Large construction activity also includes the disturbance of less than five acres of total land
11752 area that is a part of a larger common plan of development or sale if the larger common plan will
11753 ultimately disturb five acres or more. Large construction activity does not include routine
11754 maintenance that is performed to maintain the original line and grade, hydraulic capacity, or
11755 original purpose of the facility.

11756 "Linear development project" means a land-disturbing activity that is linear in nature such as,
11757 but not limited to, (i) the construction of electric and telephone utility lines, and natural gas
11758 pipelines; (ii) construction of tracks, rights-of-way, bridges, communication facilities and other
11759 related structures of a railroad company; (iii) highway construction projects; (iv) construction of
11760 stormwater channels and stream restoration activities; and (v) water and sewer lines. Private
11761 subdivision roads or streets shall not be considered linear development projects.

11762 "Live watercourse" means a definite channel with bed and banks within which concentrated
11763 water flows continuously.

11764 "Locality" means a county, city, or town.

11765 "Localized flooding" means smaller scale flooding that may occur outside of a stormwater
11766 conveyance system. This may include high water, ponding, or standing water from stormwater
11767 runoff, which is likely to cause property damage or unsafe conditions.

11768 "Main channel" means the portion of the stormwater conveyance system that contains the
11769 base flow and small frequent storm events.

11770 "Major modification" means the modification or amendment of an existing MS4 individual
11771 permit before its expiration that is not a minor modification as defined in this chapter.

11772 "Manmade" means constructed by man.

11773 "Minimize" means to reduce or eliminate the discharge of pollutants to the extent achievable
11774 using stormwater controls that are technologically available and economically practicable.

11775 "Minor modification" means, for the purposes of this chapter, minor modification or
11776 amendment of an existing permit before its expiration for the reasons listed at 40 CFR 122.63 and
11777 as specified in 9VAC25-875-1240. Minor modification for the purposes of this chapter also means
11778 other modifications and amendments not requiring extensive review and evaluation including
11779 changes in EPA promulgated test protocols, increasing monitoring frequency requirements,

11780 changes in sampling locations, and changes to compliance dates within the overall compliance
11781 schedules. A minor permit modification or amendment does not substantially alter permit
11782 conditions, substantially increase or decrease the amount of surface water impacts, increase the
11783 size of the operation, or reduce the capacity of the facility to protect human health or the
11784 environment.

11785 "Municipal separate storm sewer system" or "MS4" means the same as the term "municipal
11786 separate storm sewer" is defined in § 62.1-44.3 of the Code of Virginia.

11787 "Municipal Separate Storm Sewer System Management Program" or "MS4 Program" means
11788 a management program covering the duration of a permit for a MS4 that includes a
11789 comprehensive planning process that involves public participation and intergovernmental
11790 coordination, to reduce the discharge of pollutants to the maximum extent practicable, to protect
11791 water quality, and to satisfy the appropriate water quality requirements of the CWA and
11792 regulations, and the VESMA and its attendant regulations, using management practices, control
11793 techniques, and system, design, and engineering methods, and such other provisions that are
11794 appropriate.

11795 "Natural channel design concepts" means the utilization of engineering analysis and fluvial
11796 geomorphic processes to create, rehabilitate, restore, or stabilize an open conveyance system
11797 for the purpose of creating or recreating a stream that conveys its bankfull storm event within its
11798 banks and allows larger flows to access its bankfull bench and its floodplain.

11799 "Natural stream" means a tidal or nontidal watercourse that is part of the natural topography.
11800 It usually maintains a continuous or seasonal flow during the year and is characterized as being
11801 irregular in cross-section with a meandering course. Constructed channels such as drainage
11802 ditches or swales shall not be considered natural streams; however, channels designed utilizing
11803 natural channel design concepts may be considered natural streams.

11804 "Nonerodible" means a material, e.g., riprap, concrete, plastic, etc., that will not experience
11805 surface wear due to natural forces.

11806 "Nonpoint source pollution" means pollution such as sediment, nitrogen, phosphorous,
11807 hydrocarbons, heavy metals, and toxics whose sources cannot be pinpointed but rather are
11808 washed from the land surface in a diffuse manner by stormwater.

11809 "Operator" means the owner or operator of any facility or activity subject to the VESMA and
11810 this chapter. In the context of stormwater associated with a large or small construction activity,
11811 operator means any person associated with a construction project that meets either of the
11812 following two criteria: (i) the person has direct operational control over construction plans and
11813 specifications, including the ability to make modifications to those plans and specifications or (ii)
11814 the person has day-to-day operational control of those activities at a project that are necessary to
11815 ensure compliance with a stormwater pollution prevention plan for the site or other permit or
11816 VESMP authority permit conditions (i.e., they are authorized to direct workers at a site to carry
11817 out activities required by the stormwater pollution prevention plan or comply with other permit
11818 conditions). In the context of stormwater discharges from an MS4, operator means the operator
11819 of the regulated MS4 system.

11820 "Owner" means the same as that term is defined in § 62.1-44.3 of the Code of Virginia. For a
11821 regulated land-disturbing activity that does not require a permit, "owner" also means the owner or
11822 owners of the freehold of the premises or lesser estate therein, mortgagee or vendee in
11823 possession, assignee of rents, receiver, executor, trustee, lessee, or other person, firm, or
11824 corporation in control of a property.

11825 "Peak flow rate" means the maximum instantaneous flow from a prescribed design storm at a
11826 particular location.

- 11827 "Percent impervious" means the impervious area within the site divided by the area of the site
11828 multiplied by 100.
- 11829 "Permit" means a VPDES permit issued by the department pursuant to § 62.1-44.15 of the
11830 Code of Virginia for stormwater discharges from a land-disturbing activity or MS4.
- 11831 "Permittee" means the person to whom the permit is issued.
- 11832 "Person" means any individual, partnership, firm, association, joint venture, public or private
11833 corporation, trust, estate, commission, board, public or private institution, utility, cooperative,
11834 county, city, town, or other political subdivision of the Commonwealth, governmental body,
11835 including a federal or state entity as applicable, any interstate body, or any other legal entity.
- 11836 "Plan reviewer" means anyone who is responsible for reviewing and evaluating ESC, SWM,
11837 or ESM plans and supporting documents for approval by a VESCP authority in the area of ESC,
11838 a VSMP authority in the area of SWM, or a VESMP authority in the areas of both ESC and SWM.
- 11839 "Point of discharge" means a location at which concentrated stormwater runoff is released.
- 11840 "Point source" means any discernible, confined, and discrete conveyance including any pipe,
11841 ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal
11842 feeding operation, landfill leachate collection system, vessel, or other floating craft from which
11843 pollutants are or may be discharged. This term does not include return flows from irrigated
11844 agriculture or agricultural stormwater runoff.
- 11845 "Pollutant discharge" means the average amount of a particular pollutant measured in pounds
11846 per year or other standard reportable unit as appropriate, delivered by stormwater runoff.
- 11847 "Pollution" means such alteration of the physical, chemical, or biological properties of any
11848 state waters as will or is likely to create a nuisance or render such waters (a) harmful or detrimental
11849 or injurious to the public health, safety, or welfare, or to the health of animals, fish or aquatic life;
11850 (b) unsuitable with reasonable treatment for use as present or possible future sources of public
11851 water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other
11852 reasonable uses, provided that (i) an alteration of the physical, chemical, or biological property of
11853 state waters, or a discharge or deposit of sewage, industrial wastes or other wastes to state waters
11854 by any owner which by itself is not sufficient to cause pollution, but which, in combination with
11855 such alteration of or discharge or deposit to state waters by other owners, is sufficient to cause
11856 pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii)
11857 contributing to the contravention of standards of water quality duly established by the State Water
11858 Control Board, are "pollution" for the terms and purposes of this chapter.
- 11859 "Post-development" refers to conditions that reasonably may be expected or anticipated to
11860 exist after completion of the land development activity on a specific site or tract of land.
- 11861 "Predevelopment" refers to the conditions that exist at the time that plans for the land-
11862 disturbing activity are submitted to the VESCP, VESMP, or VSMP authority. Where phased
11863 development or plan approval occurs (preliminary grading, demolition of existing structures, roads
11864 and utilities, etc.), the existing conditions at the time prior to the commencement of land-disturbing
11865 activity shall establish predevelopment conditions.
- 11866 "Prior developed lands" means land that has been previously utilized for residential,
11867 commercial, industrial, institutional, recreation, transportation, or utility facilities or structures, and
11868 that will have the impervious areas associated with those uses altered during a land-disturbing
11869 activity.
- 11870 "Program administrator" means the individual responsible for administering and enforcing the
11871 program of a VESCP authority in the area of ESC, the program of a VSMP authority in the area
11872 of SWM, or the program of a VESMP authority in the areas of both ESC and SWM.
- 11873 "Qualified personnel" means a person knowledgeable in the principles and practices of
11874 erosion and sediment and stormwater management controls who possesses the skills to assess

11875 conditions at the construction site for the operator that could impact stormwater quality and
11876 quantity and to assess the effectiveness of any sediment and erosion control measures or
11877 stormwater management facilities selected to control the quality and quantity of stormwater
11878 discharges from the construction activity.

11879 "Responsible land disturber" or "RLD" means an individual holding a certificate issued by the
11880 department who is responsible for carrying out the land-disturbing activity in accordance with the
11881 approved erosion and sediment control plan. The RLD may be the owner, applicant, permittee,
11882 designer, superintendent, project manager, contractor, or any other project or development team
11883 member. The RLD must be designated on the erosion and sediment control plan or permit as
11884 defined in this chapter as a prerequisite for engaging in land disturbance.

11885 "Runoff" or "stormwater runoff" means that portion of precipitation that is discharged across
11886 the land surface or through conveyances to one or more waterways.

11887 "Runoff characteristics" includes maximum velocity, peak flow rate, volume, and flow duration.

11888 "Runoff volume" means the volume of water that runs off the land development project from
11889 a prescribed storm event.

11890 "Rural Tidewater locality" means any locality that is (i) subject to the provisions of the
11891 Chesapeake Bay Preservation Act and (ii) eligible to join the Rural Coastal Virginia Community
11892 Enhancement Authority established by Chapter 76 (§ 15.2-7600 et seq.) of Title 15.2 of the Code
11893 of Virginia.

11894 "Sediment basin" means a temporary impoundment built to retain sediment and debris with a
11895 controlled stormwater release structure.

11896 "Sediment trap" means a temporary impoundment built to retain sediment and debris which
11897 is formed by constructing an earthen embankment with a stone outlet.

11898 "Sheet flow" (also called overland flow) means shallow, unconcentrated and irregular flow
11899 down a slope. The length of strip for overland flow usually does not exceed 200 feet under natural
11900 conditions.

11901 "Shoreline erosion control project" means an erosion control project approved by local
11902 wetlands boards, the Virginia Marine Resources Commission, the department, or the United
11903 States Army Corps of Engineers and located on tidal waters and within nonvegetated or vegetated
11904 wetlands as defined in Title 28.2 of the Code of Virginia.

11905 "Site" means the land or water area where any facility or land-disturbing activity is physically
11906 located or conducted, including adjacent land used or preserved in connection with the facility or
11907 land-disturbing activity. Areas channelward of mean low water in tidal Virginia shall not be
11908 considered part of a site.

11909 "Site hydrology" means the movement of water on, across, through, and off the site as
11910 determined by parameters including soil types, soil permeability, vegetative cover, seasonal water
11911 tables, slopes, land cover, and impervious cover.

11912 "Slope drain" means tubing or conduit made of nonerosive material extending from the top to
11913 the bottom of a cut or fill slope with an energy dissipator at the outlet end.

11914 "Small construction activity" means:

11915 1. Construction activities including clearing, grading, and excavating that results in land
11916 disturbance of equal to or greater than one acre and less than five acres. Small
11917 construction activity also includes the disturbance of less than one acre of total land area
11918 that is part of a larger common plan of development or sale if the larger common plan will
11919 ultimately disturb equal to or greater than one and less than five acres. Small construction
11920 activity does not include routine maintenance that is performed to maintain the original line
11921 and grade, hydraulic capacity, or original purpose of the facility. The department may

- 11922 waive the otherwise applicable requirements in a general permit for a stormwater
 11923 discharge from construction activities that disturb less than five acres where stormwater
 11924 controls are not needed based on an approved "total maximum daily load" (TMDL) that
 11925 addresses the pollutants of concern or, for nonimpaired waters that do not require TMDLs,
 11926 an equivalent analysis that determines allocations for small construction sites for the
 11927 pollutants of concern or that determines that such allocations are not needed to protect
 11928 water quality based on consideration of existing in-stream concentrations, expected
 11929 growth in pollutant contributions from all sources, and a margin of safety. For the purpose
 11930 of this subdivision, the pollutants of concern include sediment or a parameter that
 11931 addresses sediment (such as total suspended solids, turbidity, or siltation) and any other
 11932 pollutant that has been identified as a cause of impairment of any water body that will
 11933 receive a discharge from the construction activity. The operator shall certify to the
 11934 department that the construction activity will take place, and stormwater discharges will
 11935 occur, within the drainage area addressed by the TMDL or provide an equivalent analysis.
 11936 As of the start date in Table 1 of [9VAC25-31-1020](#), all certifications submitted in support
 11937 of the waiver shall be submitted electronically by the owner or operator to the department
 11938 in compliance with this subdivision and 40 CFR Part 3 (including, in all cases, 40 CFR
 11939 Part 3 Subpart D), [9VAC25-875-940](#), and Part XI ([9VAC25-31-950](#) et seq.) of the Virginia
 11940 Pollutant Discharge Elimination System (VPDES) Permit Regulation. Part XI of [9VAC25-](#)
 11941 [31](#) is not intended to undo existing requirements for electronic reporting. Prior to this date,
 11942 and independent of Part XI of [9VAC25-31](#), permittees may be required to report
 11943 electronically if specified by a particular permit.
- 11944 2. Any other construction activity designated by either the department or the EPA regional
 11945 administrator, based on the potential for contribution to a violation of a water quality
 11946 standard or for significant contribution of pollutants to surface waters.
- 11947 "Soil erosion" means the movement of soil by wind or water into state waters or onto lands in
 11948 the Commonwealth.
- 11949 "Soil erosion control and stormwater management plan," commonly referred to as the erosion
 11950 control and stormwater management plan, or "ESM plan" means a document describing methods
 11951 for controlling soil erosion and managing stormwater in accordance with the requirements
 11952 adopted pursuant to the VESMA. The ESM plan may consist of aspects of the erosion and
 11953 sediment control plan and the stormwater management plan as each is described in this chapter.
- 11954 "Stabilized" means land that has been treated to withstand normal exposure to natural forces
 11955 without incurring erosion damage.
- 11956 "State" means the Commonwealth of Virginia.
- 11957 "State application" or "application" means the standard form or forms, including any additions,
 11958 revisions, or modifications to the forms, approved by the administrator and the department for
 11959 applying for a permit.
- 11960 "State/EPA agreement" means an agreement between the EPA regional administrator and
 11961 the state that coordinates EPA and state activities, responsibilities, and programs including those
 11962 under the CWA and the VESMA.
- 11963 "State project" means any land development project that is undertaken by any state agency,
 11964 board, commission, authority, or any branch of state government, including state-supported
 11965 institutions of higher learning.
- 11966 "State Water Control Law" means Chapter 3.1 (§ [62.1-44.2](#) et seq.) of Title 62.1 of the Code
 11967 of Virginia.
- 11968 "State waters" means all water, on the surface and under the ground, wholly or partially within
 11969 or bordering the Commonwealth or within its jurisdiction, including wetlands.

11970 "Storm sewer inlet" means a structure through which stormwater is introduced into an
 11971 underground conveyance system.

11972 "Stormwater," for the purposes of the VESMA, means precipitation that is discharged across
 11973 the land surface or through conveyances to one or more waterways and that may include
 11974 stormwater runoff, snow melt runoff, and surface runoff and drainage.

11975 "Stormwater conveyance system" means a combination of drainage components that are
 11976 used to convey stormwater discharge, either within or downstream of the land-disturbing activity.
 11977 This includes:

11978 1. "Manmade stormwater conveyance system" means a pipe, ditch, vegetated swale, or
 11979 other stormwater conveyance system constructed by man except for restored stormwater
 11980 conveyance systems;

11981 2. "Natural stormwater conveyance system" means the main channel of a natural stream
 11982 and the flood-prone area adjacent to the main channel; or

11983 3. "Restored stormwater conveyance system" means a stormwater conveyance system
 11984 that has been designed and constructed using natural channel design concepts. Restored
 11985 stormwater conveyance systems include the main channel and the flood-prone area
 11986 adjacent to the main channel.

11987 "Stormwater detention" means the process of temporarily impounding runoff and discharging
 11988 it through a hydraulic outlet structure to a downstream conveyance system.

11989 "Stormwater management facility" means a control measure that controls stormwater runoff
 11990 and changes the characteristics of that runoff including the quantity and quality, the period of
 11991 release or the velocity of flow.

11992 "Stormwater management plan" means a document containing material describing methods
 11993 for complying with the requirements of a VESMP or VSMP.

11994 "Stormwater Pollution Prevention Plan" or "SWPPP" means a document that is prepared in
 11995 accordance with good engineering practices and that identifies potential sources of pollutants that
 11996 may reasonably be expected to affect the quality of stormwater discharges. A SWPPP required
 11997 under a VESMP or VSMP for construction activities shall identify and require the implementation
 11998 of control measures and shall include or incorporate by reference an approved erosion and
 11999 sediment control plan, an approved stormwater management plan, and a pollution prevention
 12000 plan.

12001 "Subdivision" means the same as defined in § 15.2-2201 of the Code of Virginia.

12002 "Surface waters" means:

12003 1. All waters that are currently used, were used in the past, or may be susceptible to use
 12004 in interstate or foreign commerce, including all waters that are subject to the ebb and flow
 12005 of the tide;

12006 2. All interstate waters, including interstate wetlands;

12007 3. All other waters such as intrastate lakes, rivers, streams (including intermittent streams),
 12008 mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or
 12009 natural ponds the use, degradation, or destruction of which would affect or could affect
 12010 interstate or foreign commerce including any such waters;

12011 a. That are or could be used by interstate or foreign travelers for recreational or other
 12012 purposes;

12013 b. From which fish or shellfish are or could be taken and sold in interstate or foreign
 12014 commerce; or

12015 c. That are used or could be used for industrial purposes by industries in interstate
 12016 commerce;

- 12017 4. All impoundments of waters otherwise defined as surface waters under this definition;
- 12018 5. Tributaries of waters identified in subdivisions 1 through 4 of this definition;
- 12019 6. The territorial sea; and
- 12020 7. Wetlands adjacent to waters (other than waters that are themselves wetlands) identified
- 12021 in subdivisions 1 through 6 of this definition.
- 12022 Waste treatment systems, including treatment ponds or lagoons designed to meet the
- 12023 requirements of the CWA and the law, are not surface waters. Surface waters do not include prior
- 12024 converted cropland. Notwithstanding the determination of an area's status as prior converted
- 12025 cropland by any other agency, for the purposes of the CWA, the final authority regarding the CWA
- 12026 jurisdiction remains with the EPA.
- 12027 "SWM" means stormwater management.
- 12028 "Temporary vehicular stream crossing" means a temporary nonerodible structural span
- 12029 installed across a flowing watercourse for use by construction traffic. Structures may include
- 12030 bridges, round pipes or pipe arches constructed on or through nonerodible material.
- 12031 "Ten-year storm" means a storm that is capable of producing rainfall expected to be equaled
- 12032 or exceeded on the average of once in 10 years. It may also be expressed as an exceedance
- 12033 probability with a 10% chance of being equaled or exceeded in any given year.
- 12034 "Total maximum daily load" or "TMDL" means the sum of the individual wasteload allocations
- 12035 for point sources, load allocations (LAs) for nonpoint sources, natural background loading, and a
- 12036 margin of safety. TMDLs can be expressed in terms of either mass per time, toxicity, or other
- 12037 appropriate measure. The TMDL process provides for point versus nonpoint source trade-offs.
- 12038 "TMDL Action Plan" means the scheduled steps of activities that the MS4 operator will take
- 12039 to address the assumptions and requirements of the TMDL wasteload allocation. TMDL action
- 12040 plans may be implemented in multiple phases over more than one permit cycle.
- 12041 "Town" means an incorporated town.
- 12042 "Two-year storm" means a storm that is capable of producing rainfall expected to be equaled
- 12043 or exceeded on the average of once in two years. It may also be expressed as an exceedance
- 12044 probability with a 50% chance of being equaled or exceeded in any given year.
- 12045 "Virginia Erosion and Sediment Control Program" or "VESCP" means a program approved by
- 12046 the department that is established by a VESCP authority for the effective control of soil erosion,
- 12047 sediment deposition, and nonagricultural runoff associated with a land-disturbing activity to
- 12048 prevent the unreasonable degradation of properties, stream channels, waters, and other natural
- 12049 resources and shall include such items where applicable as local ordinances, rules, policies and
- 12050 guidelines, technical materials, and requirements for plan review, inspection, and evaluation
- 12051 consistent with the requirements of the ESCL.
- 12052 "Virginia Erosion and Sediment Control Program authority" or "VESCP authority" means a
- 12053 locality that is approved by the department to operate a Virginia Erosion and Sediment Control
- 12054 Program in accordance with Article 2.4 (§ 62.1-44.15:51 et seq.) of the State Water Control Law.
- 12055 Only a locality for which the Department administered a Virginia Stormwater Management
- 12056 Program as of July 1, 2017, is authorized to choose to operate a VESCP pursuant to Article 2.4
- 12057 (§ 62.1-44.15:51 et seq.). A locality that has chosen not to establish a VESMP pursuant to
- 12058 subdivision B 3 of § 62.1-44.15:27 of the Code of Virginia is required to become a VESCP
- 12059 authority in accordance with the ESCL.
- 12060 "Virginia Erosion and Stormwater Management Act" or "VESMA" means Article 2.3 (§ 62.1-
- 12061 44.15:24 et seq.) of Chapter 3.1, State Water Control Law, of Title 62.1 of the Code of Virginia.
- 12062 "Virginia Erosion and Stormwater Management Program" or "VESMP" means a program
- 12063 established by a VESMP authority for the effective control of soil erosion and sediment deposition

12064 and the management of the quality and quantity of runoff resulting from land-disturbing activities
12065 to prevent the unreasonable degradation of properties, stream channels, waters, and other natural
12066 resources. The program shall include such items as local ordinances, rules, requirements for
12067 permits and land-disturbance approvals, policies and guidelines, technical materials, and
12068 requirements for plan review, inspection, and enforcement consistent with the requirements of the
12069 VESMA.

12070 "Virginia Erosion and Stormwater Management Program authority" or "VESMP authority"
12071 means the department or a locality approved by the department to operate a VESMP. For state
12072 agency or federal entity land-disturbing activities and land-disturbing activities subject to approved
12073 standards and specifications, the department shall serve as the VESMP authority.

12074 "Virginia Pollutant Discharge Elimination System permit" or "VPDES permit" means a
12075 document issued by the department pursuant to the State Water Control Law authorizing, under
12076 prescribed conditions, the potential or actual discharge of pollutants from a point source to surface
12077 waters.

12078 "Virginia Stormwater BMP Clearinghouse" means a collection that contains detailed design
12079 standards and specifications for control measures that may be used in Virginia to comply with the
12080 requirements of the VESMA and associated regulations.

12081 "Virginia Stormwater Management Handbook" means a collection of pertinent information that
12082 provides general guidance for compliance with the VESMA and associated regulations and is
12083 developed by the department with advice from a stakeholder advisory committee.

12084 "Virginia Stormwater Management Program" or "VSMP" means a program established by the
12085 department pursuant to § 62.1-44.15:27.1 of the Code of Virginia on behalf of a locality on or after
12086 July 1, 2014, to manage the quality and quantity of runoff resulting from any land-disturbing activity
12087 that (i) disturbs one acre or more of land or (ii) disturbs less than one acre of land and is part of a
12088 larger common plan of development or sale that results in one acre or more of land disturbance.

12089 "Virginia Stormwater Management Program authority" or "VSMP authority" means the
12090 department when administering a VSMP on behalf of a locality that, pursuant to subdivision B 3
12091 of § 62.1-44.15:27 of the Code of Virginia, has chosen not to adopt and administer a VESMP.

12092 "Wasteload allocation" or "wasteload" means the portion of a receiving surface water's loading
12093 or assimilative capacity allocated to one of its existing or future point sources of pollution.
12094 Wasteload allocations are a type of water quality-based effluent limitation.

12095 "Water quality technical criteria" means standards set forth in regulations adopted pursuant to
12096 the VESMA that establish minimum design criteria for measures to control nonpoint source
12097 pollution.

12098 "Water quantity technical criteria" means standards set forth in regulations adopted pursuant
12099 to the VESMA that establish minimum design criteria for measures to control localized flooding
12100 and stream channel erosion.

12101 "Watershed" means a defined land area drained by a river or stream, karst system, or system
12102 of connecting rivers or streams such that all surface water within the area flows through a single
12103 outlet. In karst areas, the karst feature to which water drains may be considered the single outlet
12104 for the watershed.

12105 "Wetlands" means those areas that are inundated or saturated by surface water or
12106 groundwater at a frequency and duration sufficient to support, and that under normal
12107 circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil
12108 conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

12109 **9VAC25-875-30. Applicability of incorporated by references based on the dates that they**
 12110 **became effective.**

12111 Except as noted, when a regulation of the United States set forth in the Code of Federal
 12112 Regulations is referenced and incorporated in this chapter, that regulation shall be as it exists and
 12113 has been published in the July 1, 2022, update.

12114 Part II

12115 Virginia Erosion and Stormwater Management Program

12116 Article 1

12117 Definitions, purpose, and applicability

12118 **9VAC25-875-40. Definitions.**

12119 For the purposes of Part II only, the following words and terms have the following meanings
 12120 unless the context clearly indicates otherwise:

12121 "Act" means the Virginia Erosion and Stormwater Management Act (VESMA), Article 2.3 (§
 12122 62.1-44.15:24 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia.

12123 "Development" means land disturbance and the resulting landform associated with the
 12124 construction of residential, commercial, industrial, institutional, recreation, transportation, or utility
 12125 facilities or structures or the clearing of land for nonagricultural or nonsilvicultural purposes. The
 12126 regulation of discharges from development, for purposes of stormwater management, does not
 12127 include the exclusions found in 9VAC25-875-860.

12128 **9VAC25-875-50. Purpose.**

12129 The purpose of this part is to provide the framework for the administration, implementation,
 12130 and enforcement of the VESMA. This part delineates the roles and responsibilities associated
 12131 with a locality's VESMP and the department's VSMP. This part also establishes the department's
 12132 procedures for approving the administration of a VESMP authority and includes the department's
 12133 oversight authority over a VESMP.

12134 **9VAC25-875-60. Applicability.**

12135 This part is applicable to:

- 12136 1. Any local government that administers a VESMP;
- 12137 2. The department that administers a VESMP and VSMP; and
- 12138 3. The department in its administrative oversight of VESMPs.

12139 Article 2

12140 Land-disturbing activities

12141 **9VAC25-875-70. Regulated land-disturbing activities.**

12142 A. Land-disturbing activities that meet one of the criteria below are regulated as follows:

12143 1. Land-disturbing activity that disturbs 10,000 square feet or more, although the locality
 12144 may reduce this regulatory threshold to a smaller area of disturbed land, is less than one
 12145 acre, not in an area of a locality designated as a Chesapeake Bay Preservation Area, and
 12146 not part of a common plan of development or sale, is subject to criteria defined in Article
 12147 2 (9VAC25-874-540 et seq.) of Part V of this chapter.

12148 2. Land-disturbing activity that disturbs 2,500 square feet or more, although the locality
 12149 may reduce this regulatory threshold to a smaller area of disturbed land, is less than one
 12150 acre, and in an area of a locality designated as a Chesapeake Bay Preservation Area is
 12151 subject to criteria defined in Article 2 (9VAC25-874-540 et seq.) and Article 3 (9VAC25-

12152 875-570 et seq.) of Part V unless Article 4 (9VAC25-875-670 et seq) of Part V of this
 12153 chapter is applicable, as determined in accordance with 9VAC25-875-480 and 9VAC25-
 12154 875-490. For land-disturbing activities for single-family detached residential structures,
 12155 Article 2 of Part V and water quantity technical criteria, 9VAC25-875-600, shall apply to
 12156 any land-disturbing activity that disturbs 2,500 square feet or more of land, and the locality
 12157 also may require compliance with the water quality technical criteria, 9VAC25-875-580
 12158 and 9VAC25-875-590.

12159 3. Land-disturbing activity that disturbs less than one acre, but is part of a larger common
 12160 plan of development or sale that disturbs one acre or more, is subject to criteria defined in
 12161 Article 2 (9VAC25-874-540 et seq.) and Article 3 (9VAC25-875-570 et seq.) of Part V
 12162 unless Article 4 (9VAC25-875-670 et seq) of Part V of this chapter is applicable, as
 12163 determined in accordance with 9VAC25-875-480 and 9VAC25-875-490.

12164 4. Land-disturbing activity that disturbs one acre or more is subject to criteria defined in
 12165 Article 2 (9VAC25-874-540 et seq.) and Article 3 (9VAC25-875-570 et seq.) of Part V
 12166 unless Article 4 (9VAC25-875-670 et seq.) of Part V is applicable, as determined in
 12167 accordance with 9VAC25-875-480 and 9VAC25-875-490.

12168 B. A locality may, by local ordinance adopted pursuant to §§ 62.1-44.15:33 or 62.1-44.15:65
 12169 of the Code of Virginia, adopt more stringent local requirements.

12170 **9VAC25-875-80. Land-disturbing activities in a Chesapeake Bay Preservation Area.**

12171 A. Localities subject to the Chesapeake Bay Preservation Act shall regulate runoff associated
 12172 with land-disturbing activities in a Chesapeake Bay Preservation Area that are equal to or greater
 12173 than 2,500 square feet but less than one acre in accordance with the following:

12174 1. After June 30, 2014, such land-disturbing activities shall not require completion of a
 12175 registration statement or require coverage under the General VPDES Permit for
 12176 Discharges of Stormwater from Construction Activities but shall be subject to the technical
 12177 criteria and program and administrative requirements set out in 9VAC25-875-740.

12178 2. A local land disturbance approval, as applicable, shall be provided for the land-
 12179 disturbing activity.

12180 3. The locality shall regulate such land-disturbing activities in compliance with the:

12181 a. Program requirements in 9VAC25-875-100;

12182 b. Plan review requirements in 9VAC25-875-110 with the exception of subsection D of
 12183 9VAC25-875-110 or as allowed in subsection A of 9VAC25-875-750;

12184 c. Long-term stormwater management facility requirements of 9VAC25-875-130;

12185 d. Inspection requirements of 9VAC25-875-140 with the exception of subdivisions A 3
 12186 and A 4 of 9VAC25-875-140;

12187 e. Enforcement components of 9VAC25-875-150;

12188 f. Hearing procedures in effect in the locality;

12189 g. Exception conditions of 9VAC25-875-170 excluding subsection A of 9VAC25-875-
 12190 170 which is not applicable; and

12191 h. Reporting and recordkeeping requirements of 9VAC25-875-180 with the exception
 12192 of subdivision B 3 of 9VAC25-875-180.

12193 B. A locality subject to the Chesapeake Bay Preservation Act shall adopt an ordinance that
 12194 incorporates the components of this section.

12195 C. As authorized by § 62.1-44.15:28 of the Code of Virginia, a locality may collect a fee as
 12196 specified in 9VAC25-875-1400.

12197 **9VAC25-875-90. Activities not required to comply with the VESMA.**

12198 A. Notwithstanding any other provisions of the VESMA, the following activities are not required
 12199 to comply with the requirements of the VESMA unless otherwise required by federal law:

12200 1. Minor land-disturbing activities, including home gardens and individual home
 12201 landscaping, repairs, and maintenance work;

12202 2. Installation, maintenance, or repair of any individual service connection;

12203 3. Installation, maintenance, or repair of any underground utility line when such activity
 12204 occurs on an existing hard surfaced road, street, or sidewalk, provided the land-disturbing
 12205 activity is confined to the area of the road, street, or sidewalk that is hard surfaced;

12206 4. Installation, maintenance, or repair of any septic tank line or drainage field unless
 12207 included in an overall plan for land-disturbing activity relating to construction of the building
 12208 to be served by the septic tank system;

12209 5. Permitted surface or deep mining operations and projects, or oil and gas operations
 12210 and projects conducted pursuant to Title 45.2 of the Code of Virginia;

12211 6. Clearing of lands specifically for bona fide agricultural purposes; the management,
 12212 tilling, planting, or harvesting of agricultural, horticultural, or forest crops; livestock feedlot
 12213 operations; agricultural engineering operations, including construction of terraces, terrace
 12214 outlets, check dams, desilting basins, dikes, ponds, ditches, strip cropping, lister furrowing,
 12215 contour cultivating, contour furrowing, land drainage, and land irrigation; or as additionally
 12216 set forth by the board in regulations. However, this exception shall not apply to harvesting
 12217 of forest crops unless the area on which harvesting occurs is reforested artificially or
 12218 naturally in accordance with the provisions of Chapter 11 (§ 10.1-1100 et seq.) of Title
 12219 10.1 of the Code of Virginia or is converted to bona fide agricultural or improved pasture
 12220 use as described in subsection B of § 10.1-1163 of the Code of Virginia;

12221 7. Installation of fence and sign posts or telephone and electric poles and other kinds of
 12222 posts or poles;

12223 8. Shoreline erosion control projects on tidal waters when all of the land-disturbing
 12224 activities are within the regulatory authority of and approved by local wetlands boards, the
 12225 Virginia Marine Resources Commission, or the United States Army Corps of Engineers;
 12226 however, any associated land that is disturbed outside of this exempted area shall remain
 12227 subject to the VESMA and the regulations adopted pursuant thereto;

12228 9. Repair or rebuilding of the tracks, rights-of-way, bridges, communication facilities, and
 12229 other related structures and facilities of a railroad company;

12230 10. Land-disturbing activities in response to a public emergency where the related work
 12231 requires immediate authorization to avoid imminent endangerment to human health or the
 12232 environment. In such situations, the VESMP or VSMP authority shall be advised of the
 12233 disturbance within seven days of commencing the land-disturbing activity, and compliance
 12234 with the administrative requirements of subsection A is required within 30 days of
 12235 commencing the land-disturbing activity; and

12236 11. Discharges to a sanitary sewer or a combined sewer system; that are not from a land-
 12237 disturbing activity.

12238 B. Notwithstanding any other provision of the VESMA, the following activities are required to
 12239 comply with the soil erosion control requirements but are not required to comply with the water
 12240 quantity and water quality technical criteria, unless otherwise required by federal law:

12241 1. Activities under a state or federal reclamation program to return an abandoned property
 12242 to an agricultural or open land use;

12243 2. Routine maintenance that is performed to maintain the original line and grade, hydraulic
 12244 capacity, or original construction of the project. The paving of an existing road with a
 12245 compacted or impervious surface and reestablishment of existing associated ditches and
 12246 shoulders shall be deemed routine maintenance if performed in accordance with this
 12247 subsection; and

12248 3. Discharges from a land-disturbing activity to a sanitary sewer or a combined sewer
 12249 system.

12250 Article 3

12251 Programs operated by a VESMP authority

12252 **9VAC25-875-100. Criteria for programs operated by a VESMP authority.**

12253 A. Each locality that operates a regulated MS4 or that chooses to administer a VESMP shall,
 12254 by ordinance, establish a VESMP that shall be administered in conjunction with a local MS4
 12255 management program, if applicable, and which shall include the following:

12256 1. Ordinances, policies, and technical materials consistent with regulations adopted in
 12257 accordance with the VESMA;

12258 2. Requirements for land-disturbance approvals;

12259 3. Requirements for plan review, inspection, and enforcement consistent with the
 12260 requirements of the VESMA, including provisions requiring periodic inspections of the
 12261 installation of stormwater management measures. A VESMP authority may require
 12262 monitoring and reports from the person responsible for meeting the permit conditions to
 12263 ensure compliance with the permit and to determine whether the measures required in the
 12264 permit provide effective stormwater management;

12265 4. Provisions charging each applicant a reasonable fee to defray the cost of program
 12266 administration for a regulated land-disturbing activity that does not require permit
 12267 coverage. Such fee may be in addition to any fee charged pursuant to the statewide fee
 12268 schedule established in accordance with subdivision 9 of § 62.1-44.15:28 of the Code of
 12269 Virginia, although payment of fees may be consolidated in order to provide greater
 12270 convenience and efficiency for those responsible for compliance with the program. A
 12271 VESMP authority shall hold a public hearing prior to establishing such fees. The fee shall
 12272 not exceed an amount commensurate with the services rendered, taking into
 12273 consideration the time, skill, and the VESMP authority's expense involved;

12274 5. Provisions for long-term responsibility for and maintenance of stormwater management
 12275 control devices and other techniques specified to manage the quality and quantity of
 12276 runoff; and

12277 6. Provisions for the coordination of the VESMP with flood insurance, flood plain
 12278 management, and other programs requiring compliance prior to authorizing land
 12279 disturbance in order to make the submission and approval of plans, issuance of land-
 12280 disturbance approvals, payment of fees, and coordination of inspection and enforcement
 12281 activities more convenient and efficient both for the local governments and those
 12282 responsible for compliance with the programs.

12283 B. A VESMP authority may enter into agreements or contracts with the department, soil and
 12284 water conservation districts, adjacent localities, planning district commissions, or other public or
 12285 private entities to carry out or assist with plan review and inspections.

12286 C. A VESMP authority shall obtain evidence of permit coverage from the department's online
 12287 reporting system, where such coverage is required, prior to providing land-disturbance approval.

12288 D. The VESMP authority responsible for regulating the land-disturbing activity shall require
 12289 compliance with its applicable ordinances and the conditions of its land-disturbance approval and
 12290 plan specifications.

12291 E. A locality serving as a VESMP authority is authorized to adopt more stringent soil erosion
 12292 control or stormwater management ordinances than those necessary to ensure compliance with
 12293 the board's minimum regulations when adopted in accordance with § 62.1-44.15:33 of the Code
 12294 of Virginia.

12295 F. Nothing in this part shall be construed as authorizing a locality to regulate, or to require
 12296 prior approval by the locality for, a state or federal project, unless authorized by separate statute.

12297 G. A VESMP authority may require, excluding state agencies and federal entities, the
 12298 submission of a reasonable performance bond or other financial surety and provide for the release
 12299 of such sureties in accordance with the criteria set forth in § 62.1-44.15:34 of the Code of Virginia.

12300 H. A VESMP authority shall have provisions for collection, distribution to the state if required,
 12301 and expenditure of permit fees.

12302 I. Notice of termination of general permit coverage.

12303 1. A VESMP authority shall recommend that the department terminate coverage under a
 12304 General VPDES Permit for Discharges of Stormwater from Construction Activities
 12305 (Construction General Permit) within 60 days of receiving a complete notice of termination
 12306 from the operator of the construction activity.

12307 2. Coverage under a Construction General Permit shall be deemed to be terminated 90
 12308 days after the receipt by the VESMP authority of a complete notice of termination from the
 12309 operator of the construction activity.

12310 3. If a VESMP authority receives a notice of termination of a Construction General Permit
 12311 that it determines to be incomplete, the VESMP authority shall, within a reasonable time,
 12312 inform the operator of the construction activity of such incompleteness and provide the
 12313 operator with a detailed list itemizing the elements of information that are missing from the
 12314 notice.

12315 **9VAC25-875-110. Plan review requirements.**

12316 A. A VESMP authority shall review and approve soil erosion control and stormwater
 12317 management (ESM) plans, except for activities not required to comply with the requirements of
 12318 the VESMA, pursuant to § 62.1-44.15:34 of the Code of Virginia. Activities not required to comply
 12319 with VESMA are defined in 9VAC25-875-90.

12320 B. Section 62.1-44.15:34 of the Code of Virginia and 9VAC25-875-530 state that a person
 12321 shall not conduct any land-disturbing activity until (i) he has submitted to the appropriate VESMP
 12322 authority an application that includes a permit registration statement, if required, a soil erosion
 12323 control and stormwater management plan or an executed agreement in lieu of a plan, if required,
 12324 and (ii) the VESMP authority has issued its land-disturbance approval. In addition, as a
 12325 prerequisite to engaging in an approved land-disturbing activity, the name of the individual who
 12326 will be assisting the owner in carrying out the activity and holds a Responsible Land Disturber
 12327 certificate pursuant to § 62.1-44.15:30 of the Code of Virginia shall be submitted to the VESMP
 12328 authority. Any VESMP authority may waive the Responsible Land Disturber certificate
 12329 requirement for an agreement in lieu of a plan; however, if a violation occurs during the land-
 12330 disturbing activity, then the owner shall correct the violation and provide the name of the individual
 12331 holding a Responsible Land Disturber certificate as provided by § 62.1-14:30 of the Code of
 12332 Virginia. Failure to provide the name of an individual holding a Responsible Land Disturber
 12333 certificate prior to engaging in land-disturbing activities may result in revocation of the land-
 12334 disturbance approval and shall subject the owner to the penalties provided by the VESMA.

12335 C. A VESMP authority shall approve or disapprove an ESM plan according to the following:

12336 1. A VESMP authority shall determine the completeness of any application within 15 days
 12337 after receipt, and shall act on any application within 60 days after it has been determined
 12338 to be complete.

12339 2. The VESMP authority shall issue either land-disturbance approval or denial and provide
 12340 written rationale for any denial.

12341 3. Prior to issuing a land-disturbance approval, a VESMP authority shall be required to
 12342 obtain evidence of permit coverage when such coverage is required.

12343 4. The VESMP authority shall act on the resubmitted application within 45 days after
 12344 receipt including determination of completeness within the first 15 days.

12345 D. Prior to issuance of any land-disturbance approval, the VESMP authority may also require
 12346 an applicant, excluding state agencies and federal entities, to submit a reasonable performance
 12347 bond with surety, cash escrow, letter of credit, any combination thereof, or such other legal
 12348 arrangement acceptable to the VESMP authority, to ensure that measures could be taken by the
 12349 VESMP authority at the applicant's expense should he fail, after proper notice, within the time
 12350 specified to comply with the conditions imposed by the VESMP authority as a result of his land-
 12351 disturbing activity. If the VESMP authority takes such action upon such failure by the applicant,
 12352 the VESMP authority may collect from the applicant the difference should the amount of the
 12353 reasonable cost of such action exceed the amount of the security held. Within 60 days of the
 12354 completion of the VESMP authority's conditions, such bond, cash escrow, letter of credit, or other
 12355 legal arrangement, or the unexpended or unobligated portion thereof, shall be refunded to the
 12356 applicant or terminated.

12357 E. The VESMP authority may require changes to an approved ESM plan in the following
 12358 cases:

12359 1. Where inspection has revealed that the plan is inadequate to satisfy applicable
 12360 regulations or ordinances; or

12361 2. Where the owner finds that because of changed circumstances or for other reasons the
 12362 plan cannot be effectively carried out, and proposed amendments to the plan, consistent
 12363 with the requirements of the Act, are agreed to by the VESMP authority and the owner.

12364 F. In order to prevent further erosion, a VESMP authority may require approval of an erosion
 12365 and sediment control plan and a stormwater management plan for any land identified as an
 12366 erosion impact area by the VESMP authority.

12367 G. A VESMP authority may enter into an agreement with an adjacent VESMP authority
 12368 regarding the administration of multijurisdictional projects, specifying who shall be responsible for
 12369 all or part of the administrative procedures. Should adjacent VESMP authorities fail to reach such
 12370 an agreement, each shall be responsible for administering the area of the multijurisdictional
 12371 project that lies within its jurisdiction.

12372 H. No VESMP authority may grant an exception to, or waiver of, post-development nonpoint
 12373 nutrient runoff compliance requirements unless offsite options have been considered and found
 12374 not available in accordance with subsection D of § 62.1-44.15:35 of the Code of Virginia.

12375 I. A VESMP authority is authorized to cooperate and enter into agreements with any federal
 12376 or state agency in connection with the requirements for land-disturbing activities in accordance
 12377 with § 62.1-44.15:50 of the Code of Virginia.

12378 **9VAC25-875-120. Plan review coordination with the department.**

12379 A. A VESCP authority that chooses to become a VESMP authority may opt to coordinate the
 12380 plan review component of its program with the department through an executed agreement
 12381 pursuant to § 62.1-44.15:27 B 2 of the Code of Virginia. The department may recover the cost of
 12382 the plan review service from the VESMP authority.

12383 B. A VESMP authority implementing its program in coordination with the department pursuant
 12384 to § 62.1-44.15:27 B 2 of the Code of Virginia shall determine the completeness of any application
 12385 within 15 days after receipt, and shall:

12386 1. Act on any application within 60 days after it has been determined by the VESMP
 12387 authority to be complete;

12388 2. Forward a soil erosion control and stormwater management plan to the department for
 12389 review within five days of receipt. If the plan is incomplete, the department shall return the
 12390 plan to the locality immediately and the application process shall start over. If the plan is
 12391 complete, the department shall review it for compliance with the water quality and water
 12392 quantity technical criteria and provide its recommendation to the VESMP authority; and

12393 3. Either (i) issue the land-disturbance approval or (ii) issue a denial and provide a written
 12394 rationale for the denial. In no case shall a locality have more than 60 days for its decision
 12395 on an application after it has been determined to be complete. Prior to issuing a land-
 12396 disturbance approval, a VESMP authority shall be required to obtain evidence of permit
 12397 coverage when such coverage is required.

12398 C. The VESMP authority also shall forward to the department any resubmittal of a previously
 12399 disapproved application within five days after receipt, and the VESMP authority shall determine
 12400 whether the plan is complete within 15 days of its receipt of the plan. The department shall review
 12401 the plan for compliance with the water quality and water quantity technical criteria and provide its
 12402 recommendation to the VESMP authority, and the VESMP authority shall act on the resubmitted
 12403 application within 45 days after receipt.

12404 **9VAC25-875-130. Long-term maintenance of stormwater management facilities.**

12405 A. As required in 9VAC25-875-535, the operator shall submit a construction record drawing
 12406 for permanent stormwater management facilities to the VESMP authority. The record drawing
 12407 shall contain a statement signed by a professional registered in the Commonwealth of Virginia
 12408 pursuant to Chapter 4 of Title 54.1 of the Code of Virginia, stating that to the best of their
 12409 knowledge, the construction record drawing shows all adjustments and revisions to the
 12410 stormwater management plan made during construction and serve as a permanent record of the
 12411 actual location of all constructed elements.

12412 B. The provision of long-term responsibility for and maintenance of stormwater management
 12413 facilities and other techniques specified to manage the quality or quantity of runoff is required.
 12414 Such requirements shall be set forth in an instrument recorded in the local land records prior to
 12415 permit termination or earlier as required by the authority and shall at a minimum:

12416 1. Be submitted to the authority for review and approval prior to the approval of the
 12417 stormwater management plan;

12418 2. Be stated to run with the land;

12419 3. Provide for all necessary access to the property for purposes of maintenance and
 12420 regulatory inspections;

12421 4. Provide for inspections and maintenance and the submission of inspection and
 12422 maintenance reports to the VESCP, VESMP, or VSMP authority; and

12423 5. Be enforceable by all appropriate governmental parties.

12424 C. At the discretion of the VESMP authority, such recorded instruments need not be required
 12425 for stormwater management facilities designed to treat stormwater runoff primarily from an
 12426 individual residential lot on which they are located, provided it is demonstrated to the satisfaction
 12427 of the authority that future maintenance of such facilities will be addressed through an enforceable
 12428 mechanism at the discretion of the authority.

12429 **9VAC25-875-140. Inspections.**

12430 A. The VESMP authority shall inspect the land-disturbing activity during construction for:

12431 1. Compliance with the approved erosion and sediment control plan;

12432 2. Compliance with the approved stormwater management plan;

12433 3. Development, updating, and implementation of a pollution prevention plan; and

12434 4. Development and implementation of any additional control measures necessary to
12435 address a TMDL.

12436 B. The VESMP authority shall conduct periodic inspections on all projects during construction.

12437 The VESMP authority shall either:

12438 1. Provide for an inspection during or immediately following initial installation of erosion
12439 and sediment controls, at least once in every two-week period, within 48 hours following
12440 any runoff producing storm event, and at the completion of the project prior to the release
12441 of any performance bonds; or

12442 2. Establish an alternative inspection program which ensures compliance with the
12443 approved erosion and sediment control plan. Any alternative inspection program shall be:

12444 a. Approved by the department prior to implementation;

12445 b. Established in writing;

12446 c. Based on a system of priorities that, at a minimum, address the amount of disturbed
12447 project area, site conditions and stage of construction; and

12448 d. Documented by inspection records.

12449 C. The VESMP authority shall establish an inspection program that ensures that permanent
12450 stormwater management facilities are being adequately maintained as designed after completion
12451 of land-disturbing activities. Inspection programs shall:

12452 1. Be approved by the department;

12453 2. Ensure that each stormwater management facility is inspected by the VESMP authority,
12454 or its designee, not to include the owner, except as provided in subsections D and E of
12455 this section, at least once every five years; and

12456 3. Be documented by records.

12457 D. The VESMP authority may utilize the inspection reports of the owner of a stormwater
12458 management facility as part of an inspection program established in subsection B of this section
12459 if the inspection is conducted by a person who is licensed as a professional engineer, architect,
12460 landscape architect, or land surveyor pursuant to Article 1 (§ 54.1-400 et seq.) of Chapter 4 of
12461 Title 54.1; a person who works under the direction and oversight of the licensed professional
12462 engineer, architect, landscape architect, or land surveyor; or a person who holds an appropriate
12463 certificate of competence from the department.

12464 E. If a recorded instrument is not required pursuant to 9VAC25-875-130, a VESMP authority
12465 shall develop a strategy for addressing maintenance of stormwater management facilities
12466 designed to treat stormwater runoff primarily from an individual residential lot on which they are
12467 located. Such a strategy may include periodic inspections, homeowner outreach and education,
12468 or other method targeted at promoting the long-term maintenance of such facilities. Such facilities
12469 shall not be subject to the requirement for an inspection to be conducted by the VESMP authority.

12470 **9VAC25-875-150. Enforcement.**

12471 A. A locality's VESMP authority shall incorporate components from subdivisions 1 and 2 of
12472 this subsection into its ordinance.

12473 1. Informal and formal administrative enforcement procedures may include:

12474 a. Right of entry in accordance with § 62.1-44.15:39 of the Code of Virginia.

- 12475 b. Verbal warnings and inspection reports;
- 12476 c. Notices of corrective action;
- 12477 d. Notices to comply in accordance with § 62.1-44.15:37 of the Code of Virginia;
- 12478 e. Stop work orders in accordance with § 62.1-44.15:37 of the Code of Virginia;
- 12479 f. Special orders in accordance with §§ 62.1-44.15:25.1 and 62.1-44.15:48 of the Code
- 12480 of Virginia;
- 12481 g. Consent orders in accordance with §§ 62.1-44.15:25.1 and 62.1-44.15:48 of the
- 12482 Code of Virginia;
- 12483 h. Public notice and comment periods.
- 12484 2. Civil and criminal judicial enforcement procedures may include:
- 12485 a. Schedule of civil penalties in accordance with §§ 62.1-44.15:25.1 and 62.1-44.15:48
- 12486 of the Code of Virginia;
- 12487 b. Criminal penalties in accordance with § 62.1-44.15:48 of the Code of Virginia; and
- 12488 c. Injunctions in accordance with § 62.1-44.15:48 of the Code of Virginia.
- 12489 B. A locality's VESMP authority shall develop policies and procedures that outline the steps
- 12490 to be taken regarding enforcement actions under the VESMA and attendant regulations and local
- 12491 ordinances.
- 12492 C. Each locality subject to an MS4 permit shall adopt an ordinance to implement a municipal
- 12493 separate storm sewer system management program that is consistent with this chapter and that
- 12494 contains provisions as required to comply with an MS4 permit. Such locality may utilize the civil
- 12495 penalty provisions in subdivision A 2 of § 62.1-44.15:48 of the Code of Virginia, the injunctive
- 12496 authority as provided for in subsection C of § 62.1-44.15:48, the civil charges as authorized in §
- 12497 62.1-44.15:25.1, and the criminal provisions in § 62.1-44.32, to enforce the ordinance. At the
- 12498 request of another MS4, the locality may apply the penalties provided for in this section to direct
- 12499 or indirect discharges to any MS4 located within its jurisdiction in accordance with § 62.1-44.15:49
- 12500 of the Code of Virginia.
- 12501 D. Penalties imposed in accordance with § 62.1-44.15:48 of the Code of Virginia may reflect
- 12502 the degree of harm caused by the violation and take into account the economic benefit to the
- 12503 violation from noncompliance.
- 12504 E. Pursuant to subsection L of § 62.1-44.15:27 of the Code of Virginia, authorization to
- 12505 administer a VESMP program shall not remove from the department the authority to enforce the
- 12506 provisions of the VESMA and attendant regulations.
- 12507 F. The department may terminate permit coverage during its term and require application for
- 12508 an individual permit or deny a permit renewal application for failure to comply with permit
- 12509 conditions or on its own initiative in accordance with the VESMA and this chapter.
- 12510 G. Pursuant to § 62.1-44.15:48 of the Code of Virginia, civil penalties recovered by a locality's
- 12511 VESMP authority shall be paid into the treasury of the locality in which the violation occurred and
- 12512 are to be used solely for stormwater management capital projects.
- 12513 **9VAC25-875-160. Hearings.**
- 12514 Any permit applicant, permittee, or person subject to permit requirements under the VESMA
- 12515 aggrieved by any action of the department taken without a formal hearing may demand in writing
- 12516 a formal hearing pursuant to § 62.1-44.25 of the Code of Virginia and shall ensure that all hearings
- 12517 held under this chapter shall be conducted in a manner consistent with § 62.1-44.26 of the Code
- 12518 of Virginia or as otherwise provided by law. A locality holding hearings under this chapter shall do
- 12519 so in a manner consistent with local hearing procedures. The provisions of the Administrative
- 12520 Process Act (§ 2.2-4000 et seq. of the Code of Virginia) shall not apply to decisions rendered by

12521 localities. Appeals of decisions rendered by localities shall be conducted in accordance with local
 12522 appeal procedures and shall include an opportunity for judicial review in the circuit court of the
 12523 locality in which the land disturbance occurs or is proposed to occur. Unless otherwise provided
 12524 by law, the circuit court shall conduct such review in accordance with the standards established
 12525 in § 2.2-4027 of the Code of Virginia, and the decisions of the circuit court shall be subject to
 12526 review by the Court of Appeals, as in other cases under this chapter.

12527 **9VAC25-875-170. Variances and exceptions.**

12528 A. A VESMP authority may grant variances to waive or modify any of the erosion and sediment
 12529 control requirements of Article 2 of Part V of this chapter that are deemed inappropriate or too
 12530 restrictive for site conditions may be requested from the VESMP authority under these conditions:

12531 1. At the time of plan submission, an applicant may request a variance to become part of
 12532 the approved erosion and sediment control plan. The applicant shall explain the reasons
 12533 for requesting variances in writing. Specific variances which are allowed by the authority
 12534 shall be documented in the plan.

12535 2. During construction, the person responsible for implementing the approved plan may
 12536 request a variance in writing from the authority. The authority shall respond in writing either
 12537 approving or disapproving such a request. If the authority does not approve a variance
 12538 within 10 days of receipt of the request, the request shall be considered to be disapproved.
 12539 Following disapproval, the applicant may resubmit a variance request with additional
 12540 documentation.

12541 B. A VESMP authority may grant exceptions to the provisions of Article 3 of Part V of this
 12542 chapter. An exception may be granted provided that (i) the exception is the minimum necessary
 12543 to afford relief, (ii) reasonable and appropriate conditions shall be imposed as necessary upon
 12544 any exception granted so that the intent of the VESMA and this chapter are preserved, (iii)
 12545 granting the exception will not confer any special privileges that are denied in other similar
 12546 circumstances, and (iv) exception requests are not based upon conditions or circumstances that
 12547 are self-imposed or self-created.

12548 C. Economic hardship alone is not a sufficient reason to grant an exception from the
 12549 requirements of this chapter.

12550 D. Under no circumstance shall the authority grant an exception to the requirement that the
 12551 land-disturbing activity obtain permits, nor approve the use of a BMP not found through
 12552 the Virginia Stormwater BMP Clearinghouse, except where allowed under Article 4 (9VAC25-875-
 12553 670 et seq.) of Part V of this chapter.

12554 E. Exceptions to requirements for phosphorus reductions shall not be allowed unless offsite
 12555 options available through 9VAC25-875-610 have been considered and found not available.

12556 F. A record of all exceptions granted shall be maintained by the authority in accordance with
 12557 9VAC25-875-180.

12558 **9VAC25-875-180. Reports and recordkeeping.**

12559 A. On a fiscal year basis (July 1 to June 30), a VESMP authority shall report to the department
 12560 by October 1 of each year in a format provided by the department. The information to be provided
 12561 shall include the following:

12562 1. Information, not previously reported to the department through other reporting
 12563 requirements, on each permanent stormwater management facility completed during the
 12564 fiscal year to include type of stormwater management facility, geographic coordinates,
 12565 acres treated, and the surface waters or karst features into which the stormwater
 12566 management facility will discharge;

12567 2. A listing of each land-disturbing activity for which a plan has been approved by the
 12568 VESMP authority;

- 12569 3. Number and type of enforcement actions during the fiscal year; and
 12570 4. Number of exceptions granted during the fiscal year.
 12571 B. A VESMP authority shall keep records in accordance with the following:
 12572 1. Project records, including approved soil erosion control and stormwater management
 12573 plans, shall be kept for three years after permit termination or project completion;
 12574 2. Stormwater management facility inspection records shall be documented and retained
 12575 for at least five years from the date of inspection;
 12576 3. Construction record drawings shall be maintained in perpetuity or until a stormwater
 12577 management facility is removed; and
 12578 4. All registration statements submitted in accordance with 9VAC25-875-530 shall be
 12579 documented and retained for at least three years from the date of project completion or
 12580 permit termination.

12581 Article 4

12582 Authorization and review procedures for VESMPs

12583 **9VAC25-875-190. Review and evaluation of VESMPs.**

12584 A. The department shall review each approved VESMP at least once every five years on a
 12585 review schedule approved by the department. The department may review a VESMP on a more
 12586 frequent basis if deemed necessary and shall notify the VESMP authority if such review is
 12587 scheduled.

12588 B. The review of an approved VESMP shall consist of the following:

- 12589 1. Consultation with the VESMP administrator or designee;
 12590 2. A review of the local ordinance(s) and other applicable documents;
 12591 3. A review of a subset of the plans approved by the VESMP authority for consistency of
 12592 application including exceptions granted and calculations or other documentation that
 12593 demonstrates that all erosion and sediment control minimum standards are met and
 12594 required nutrient reductions are achieved using appropriate on-site and off-site
 12595 compliance options;
 12596 4. Inspections of regulated activities; and
 12597 5. A review of enforcement actions and an accounting of amounts recovered through
 12598 enforcement actions where applicable.

12599 C. The department shall coordinate the once per five year review with its other program
 12600 reviews for the same entity to avoid redundancy.

12601 D. The department shall determine if the VESMP and ordinances where applicable are
 12602 consistent with the VESMA and the Virginia Erosion and Stormwater Management Regulation
 12603 and notify the VESMP authority of its findings. The Administrative Process Act (§ 2.2-4000 et seq.
 12604 of the Code of Virginia) shall govern the review activities and proceedings of the department and
 12605 the judicial review thereof.

12606 E. If the department determines that the deficiencies noted in the review will cause the VESMP
 12607 to be out of compliance with the VESMA and attendant regulations, the department shall notify
 12608 the VESMP authority concerning the deficiencies and provide a reasonable period of time in
 12609 accordance with § 62.1-44.15 (19) of the Code of Virginia for corrective action to be taken. If the
 12610 VESMP authority agrees to the corrective action approved by the department, the VESMP will be
 12611 considered to be conditionally compliant with the VESMA and attendant regulations until a
 12612 subsequent finding of compliance is issued by the department. If the VESMP authority fails to

12613 implement the necessary compliance actions identified by the department within the specified
 12614 time, the department may take action pursuant to § 62.1-44.15 (19) of the Code of Virginia.

12615 Article 5

12616 VSMP operated by the department

12617 **9VAC25-875-200. Criteria for a VSMP.**

12618 A. The department shall administer a VSMP on behalf of any locality that notifies the
 12619 department that it has chosen to not administer a VESMP as provided by subdivision B 3 of §
 12620 62.1-44.15:27 of the Code of Virginia.

12621 B. Per § 62.1-44.15:27.1 B of the Code of Virginia, the department shall administer a VSMP
 12622 consistent with the stormwater management requirements defined for a VESMP.

12623 C. The department shall review and approve stormwater management plans by the schedule
 12624 defined in 9VAC25-875-110, except for activities not required to comply with the requirements of
 12625 the VESMA, pursuant to § 62.1-44.15:34 of the Code of Virginia and 9VAC25-875-90.

12626 D. The director, or his designee, may perform any act of the department provided under the
 12627 VESMA and this chapter, except as limited by § 62.1-44.14 of the Code of Virginia.

12628 Part III

12629 Virginia Erosion and Sediment Control Program

12630 Article 1

12631 Definitions, purpose, and applicability

12632 **9VAC25-875-210. Definitions.**

12633 For the purposes of Part III only, the following words and terms have the following meanings
 12634 unless the context clearly indicates otherwise:

12635 "Act" means the Erosion and Sediment Control Law for Localities Not Administering a Virginia
 12636 Erosion and Stormwater Management Program (ESCL), Article 2.4 (§ 62.1-44.15:51 et seq.) of
 12637 Chapter 3.1 of Title 62.1 of the Code of Virginia.

12638 "Agreement in lieu of a plan" means a contract between the VESCP authority and the owner
 12639 that specifies conservation measures that must be implemented in the construction of (i) a single-
 12640 family detached residential structure or (ii) a farm building or structure on a parcel of land with a
 12641 total impervious cover percentage, including the impervious cover from the farm building or
 12642 structure to be constructed, of less than five percent; this contract may be executed by the VESCP
 12643 authority in lieu of a formal site plan.

12644 "Applicant" means any person submitting an erosion and sediment control plan for approval
 12645 in order to obtain authorization for land-disturbing activities to commence.

12646 "Development" means a tract or parcel of land developed or to be developed as a single unit
 12647 under single ownership or unified control which is to be used for any business or industrial purpose
 12648 or is to contain three or more residential dwelling units.

12649 "Land disturbance" or "land-disturbing activity" means any man-made change to the land
 12650 surface that may result in soil erosion or has the potential to change its runoff characteristics,
 12651 including the clearing, grading, excavating, transporting, and filling of land.

12652 "Owner" means the same as provided in § 62.1-44.3 of the Code of Virginia. For a land-
 12653 disturbing activity that is regulated under the ESCL, "owner" also includes the owner or owners
 12654 of the freehold of the premises or lesser estate therein, mortgagee or vendee in possession,
 12655 assignee of rents, receiver, executor, trustee, lessee, or other person, firm, or corporation in
 12656 control of a property.

12657 **9VAC25-875-220. Purpose.**

12658 The purpose of this part is to provide the framework for the administration, implementation,
 12659 and enforcement of the Virginia Erosion and Sediment Control Law for Localities Not
 12660 Administering a Virginia Erosion and Stormwater Management Program (ESCL). This part
 12661 delineates the roles associated with a VESCP. This part also establishes the department's
 12662 procedures for approving the administration of a VESCP authority and includes the department's
 12663 oversight authority over a VESCP.

12664 **9VAC25-875-230. Applicability.**

12665 This part is applicable to:

- 12666 1. Any local government that administers a VESCP;
 12667 2. The department that administers a VESCP; and
 12668 3. The department in its administrative oversight of VESCPs.

12669 Article 2

12670 Land-disturbing activities

12671 **9VAC25-875-240. Criteria for determining status of land-disturbing activity.**

12672 A. The program administrator shall determine the validity of a claim of exempt status by a
 12673 property owner who disturbs 10,000 square feet or more or 2,500 square feet or more in all areas
 12674 of jurisdictions designated as subject to the Chesapeake Bay Preservation Area Designation and
 12675 Management Regulations (9VAC25-830 et seq.). As soon as a nonexempt status is determined,
 12676 the requirements of the ESCL shall be immediately enforced.

12677 B. Should a land-disturbing activity not begin during the 180-day period following approval of
 12678 the erosion and sediment control plan or cease for more than 180 days, the VESCP authority may
 12679 evaluate the existing approved erosion and sediment control plan to determine whether the plan
 12680 still satisfies local and state erosion and sediment control criteria and to verify that all design
 12681 factors are still valid. If the VESCP authority finds the previously filed plan to be inadequate, a
 12682 modified plan shall be submitted and approved prior to the resumption of land-disturbing activity.

12683 C. Shoreline erosion control projects are not subject to Part V of this chapter. However, land-
 12684 disturbing activity immediately outside the limits of the shoreline erosion project is subject to the
 12685 ESCL and Part V of this chapter.

12686 D. Whenever land-disturbing activity involves activity at a separate location (including but not
 12687 limited to borrow and disposal areas), the VESCP authority may either:

- 12688 1. Consider the off-site activity as being part of the proposed land-disturbing activity; or
 12689 2. If the off-site activity is already covered by an approved erosion and sediment control
 12690 plan, the VESCP authority may require the applicant to provide proof of the approval and
 12691 to certify that the plan will be implemented in accordance with the ESCL and Part V of this
 12692 chapter.

12693 **9VAC25-875-250. Regulated land-disturbing activities.**

12694 A. Land-disturbing activities that meet one of the criteria below are regulated as follows:

- 12695 1. Land-disturbing activity that disturbs 10,000 square feet or more, although the locality
 12696 may reduce this regulatory threshold to a smaller area of disturbed land, is less than one
 12697 acre, not in an area of a locality designated as a Chesapeake Bay Preservation Area is
 12698 subject to criteria defined in Article 2 (9VAC25-875-540 et seq.) of Part V of this chapter.
 12699 2. Land-disturbing activity that disturbs 2,500 square feet or more, although the locality
 12700 may reduce this regulatory threshold to a smaller area of disturbed land, is less than one

12701 acre, and in an area of a locality designated as a Chesapeake Bay Preservation Area is
 12702 subject to criteria defined in Article 2 (9VAC25-875-540 et seq.) of Part V of this chapter.

12703 B. A locality may, by local ordinance adopted pursuant to §62.1-44.15:65 of the Code of
 12704 Virginia, adopt more stringent local requirements.

12705 **9VAC25-875-260. Land-disturbing activities in Chesapeake Bay Preservation Areas.**

12706 A. Localities subject to the Chesapeake Bay Preservation Act shall regulate runoff associated
 12707 with land-disturbing activities in a Chesapeake Bay Preservation Area equal to or greater than
 12708 2,500 square feet but less than one acre in accordance with the following:

12709 1. The technical criteria and program and administrative requirements set out in 9VAC25-
 12710 875-740;

12711 2. A local land disturbance approval, as applicable, shall be provided for the land-
 12712 disturbing activity;

12713 3. The locality shall regulate such land-disturbing activities in compliance with the:

12714 a. Program requirements in 9VAC25-875-100;

12715 b. Plan review requirements in 9VAC25-875-110 with the exception of subsection D of
 12716 9VAC25-875-110 or as allowed in subsection A of 9VAC25-875-750;

12717 c. Long-term stormwater management facility requirements of 9VAC25-875-130;

12718 d. Inspection requirements of 9VAC25-875-140 with the exception of subdivisions A 3
 12719 and A 4 of 9VAC25-875-140;

12720 e. Enforcement components of 9VAC25-875-150;

12721 f. Hearing procedures in effect in the locality;

12722 g. Exception conditions of 9VAC25-875-170 excluding subsection A of 9VAC25-875-
 12723 170 which is not applicable; and

12724 h. Reporting and recordkeeping requirements of 9VAC25-875-180 with the exception
 12725 of subdivision B 3 of 9VAC25-875-180.

12726 B. A locality subject to the Chesapeake Bay Preservation Act shall adopt an ordinance that
 12727 incorporates the components of this section.

12728 C. As authorized by § 62.1-44.15:28 of the Code of Virginia, a locality may collect a fee as
 12729 specified in 9VAC25-875-1400.

12730 **9VAC25-875-270. State agency land-disturbing activities.**

12731 A. All state agency land-disturbing activities that are not exempt and that have commenced
 12732 without an approved erosion and sediment control plan shall immediately cease until the state
 12733 agency has either (i) submitted standards and specifications for its conduct of land-disturbing
 12734 activities which has been reviewed and approved by the department as being consistent with the
 12735 ESCL and attendant regulations, or (ii) an erosion and sediment control plan has been submitted
 12736 to and approved by the department. A formal "Notice of Plan Requirement" will be sent to the
 12737 state agency under whose purview the project lies since that agency is responsible for compliance
 12738 with the ESCL and this chapter.

12739 B. Where inspections by department personnel reveal deficiencies in carrying out an approved
 12740 plan, the person responsible for carrying out the plan, as well as the state agency responsible,
 12741 will be issued a notice to comply with specific actions and the deadlines that shall be met. Failure
 12742 to meet the prescribed deadlines can result in the issuance of a stop work order for all land-
 12743 disturbing activities on the project at the discretion of the department. The stop work order will be
 12744 lifted once the required erosion and sediment control measures are in place and inspected by
 12745 department staff.

12746 C. Whenever the Commonwealth or any of its agencies fails to comply within the time provided
 12747 in an appropriate final order, the director of the department may petition for compliance as follows:
 12748 For violations in the Natural and Historic Resources Secretariat, to the Secretary of Natural and
 12749 Historic Resources; for violations in other secretariats, to the appropriate Secretary; for violations
 12750 in other state agencies, to the head of such agency. Where the petition does not achieve timely
 12751 compliance, the director shall bring the matter to the Governor for resolution. The department may
 12752 also pursue enforcement as provided by § 62.1-44.15:63 of the Act.

12753 D. Where compliance will require the appropriation of funds, the director shall cooperate with
 12754 the appropriate agency head in seeking such an appropriation; where the director determines that
 12755 an emergency exists, he shall petition the Governor for funds from the Civil Contingency Fund or
 12756 other appropriate source.

12757 **9VAC25-875-280. Activities not required to comply with the ESCL.**

12758 Notwithstanding any other provisions of the Erosion and Sediment Control Law for Localities
 12759 Not Administering a Virginia Erosion and Stormwater Management Program (ESCL), the following
 12760 activities are not required to comply with the ESCL unless otherwise required by federal law:

12761 1. Disturbance of a land area of less than 10,000 square feet in size or less than 2,500
 12762 square feet in an area designated as a Chesapeake Bay Preservation Area pursuant to
 12763 the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq. of the Code of Virginia).
 12764 However, the governing body of the program authority may reduce this exception to a
 12765 smaller area of disturbed land or qualify the conditions under which this exception shall
 12766 apply;

12767 2. Minor land-disturbing activities such as home gardens and individual home landscaping,
 12768 repairs, and maintenance work;

12769 3. Installation, maintenance, or repair of any individual service connection;

12770 4. Installation, maintenance, or repair of any underground utility line when such activity
 12771 occurs on an existing hard surfaced road, street, or sidewalk, provided the land-disturbing
 12772 activity is confined to the area of the road, street, or sidewalk that is hard surfaced;

12773 5. Installation, maintenance, or repair of any septic tank line or drainage field unless
 12774 included in an overall plan for land-disturbing activity relating to construction of the building
 12775 to be served by the septic tank system;

12776 6. Permitted surface or deep mining operations and projects, or oil and gas operations
 12777 and projects conducted pursuant to Title 45.2;

12778 7. Clearing of lands specifically for bona fide agricultural purposes; the management,
 12779 tilling, planting, or harvesting of agricultural, horticultural, or forest crops; livestock feedlot
 12780 operations; agricultural engineering operations, including construction of terraces, terrace
 12781 outlets, check dams, desilting basins, dikes, ponds, ditches, strip cropping, lister furrowing,
 12782 contour cultivating, contour furrowing, land drainage, and land irrigation; or as additionally
 12783 set forth by the board in regulations. However, this exception shall not apply to harvesting
 12784 of forest crops unless the area on which harvesting occurs is reforested artificially or
 12785 naturally in accordance with the provisions of Chapter 11 (§ 10.1-1100 et seq.) of Title
 12786 10.1 of the Code of Virginia or is converted to bona fide agricultural or improved pasture
 12787 use as described in subsection B of § 10.1-1163 of the Code of Virginia;

12788 8. Installation of fence and sign posts or telephone and electric poles and other kinds of
 12789 posts or poles;

12790 9. Shoreline erosion control projects on tidal waters when all of the land-disturbing
 12791 activities are within the regulatory authority of and approved by local wetlands boards, the
 12792 Virginia Marine Resources Commission, or the United States Army Corps of Engineers;

12793 however, any associated land that is disturbed outside of this exempted area shall remain
 12794 subject to the ESCL and the regulations adopted pursuant thereto;

12795 10. Land-disturbing activities in response to a public emergency where the related work
 12796 requires immediate authorization to avoid imminent endangerment to human health or the
 12797 environment. In such situations, the VESCP authority shall be advised of the disturbance
 12798 within seven days of commencing the land-disturbing activity, and compliance with the
 12799 administrative requirements of subsection A is required within 30 days of commencing the
 12800 land-disturbing activity;

12801 11. Discharges to a sanitary sewer or a combined sewer system that are not from a land-
 12802 disturbing activity; and

12803 12. Repair or rebuilding of the tracks, rights-of-way, bridges, communication facilities, and
 12804 other related structures and facilities of a railroad company.

12805 Article 3

12806 Programs operated by a VESCP authority

12807 **9VAC25-875-290. Criteria for programs operated by a VESCP authority.**

12808 A. At a minimum, a VESCP shall provide that (i) an erosion and sediment control plan shall
 12809 be reviewed and approved by a certified plan reviewer; (ii) inspections of land-disturbing activities
 12810 shall be conducted by a certified inspector; and (iii) a VESCP shall contain a certified program
 12811 administrator, a certified plan reviewer, and a certified project inspector, who may be the same
 12812 person pursuant to § 62.1-44.15:53 of the Code of Virginia. The requirements for each position
 12813 identified in this subsection are specified in Part IV of this chapter (9VAC25-875-380 et seq.).

12814 B. A VESCP authority may enter into agreements or contracts with soil and water conservation
 12815 districts, adjacent localities, or other public or private entities to assist with carrying out the
 12816 provisions of this chapter, including the review and determination of adequacy of erosion and
 12817 sediment control plans submitted for land-disturbing activities on a unit or units of land as well as
 12818 for monitoring, reports, inspections, and enforcement of such land-disturbing activities.

12819 C. The VESCP operated by a county, city, or town shall include provisions for the coordination
 12820 of the VESCP with flood insurance, flood plain management, and other programs requiring
 12821 compliance prior to authorizing a land-disturbing activity in order to make the submission and
 12822 approval of plans, payment of fees, and coordination of inspection and enforcement activities
 12823 more convenient and efficient both for the local governments and those responsible for
 12824 compliance with the programs pursuant to § 62-1.44-15:54 of the Code of Virginia.

12825 D. A VESCP authority may enter into an agreement with an adjacent VESCP or VESMP
 12826 authority regarding the administration of multijurisdictional projects specifying who shall be
 12827 responsible for all or part of the administrative procedures. Should adjacent authorities fail to
 12828 come to such an agreement, each shall be responsible for administering the area of the
 12829 multijurisdictional project that lies within its jurisdiction.

12830 E. Where the land-disturbing activity results from the construction of a (i single-family
 12831 detached residential structure or (ii) a farm building or structure on a parcel of land with a total
 12832 impervious cover percentage, including the impervious cover from the farm building or structure
 12833 to be constructed, of less than five percent, an agreement in lieu of a plan may be substituted for
 12834 an erosion and sediment control plan if executed by the VESCP authority pursuant to § 62-1.44-
 12835 15:55 A of the Code of Virginia. For a single-family detached residential structure with less than
 12836 one acre of land disturbance, an agreement in lieu of a plan may be used when either 1) it is
 12837 located within a common plan of development or sale with an approved stormwater pollution
 12838 prevention plan consistent with 9VAC25-875-500 and a permit, if required; or 2) the single-family
 12839 detached residential is located outside of a common plan of development or sale.

12840 F. A VESCP authority may adopt more stringent soil erosion and sediment control ordinances
12841 pursuant to § 62.1-44.15:65.

12842 G. Any VESCP authority that administers a VESCP may charge applicants a reasonable fee
12843 to defray the costs of program administration. A VESCP authority shall hold a public hearing prior
12844 to establishing a schedule of fees. The fee shall not exceed an amount commensurate with the
12845 services rendered, taking into consideration the time, skill, and the VESCP authority's expense
12846 involved.

12847 **9VAC25-875-300. Plan review requirements.**

12848 A. The VESCP authority shall review erosion and sediment control plans that detail the criteria,
12849 techniques, and methods as defined in 9VAC25-875-550 for land disturbing activities described
12850 in 9VAC25-875-560. Activities not required to comply with VESCL are defined in 9VAC25-875-
12851 280.

12852 B. When determined that the plan meets the minimum criteria, techniques, and methods as
12853 defined in 9VAC25-875-550, the VESCP authority shall review erosion and sediment control plans
12854 submitted and grant written approval within 60 days of the receipt of the plan.

12855 C. When the VESCP authority determines a plan is inadequate, written notice stating the
12856 specific reasons for disapproval shall be communicated to the applicant within 45 days. The notice
12857 shall specify the modifications, terms, and conditions that are necessary for approval of the plan.
12858 If no action is taken by the VESCP authority within 45 days, the plan shall be deemed approved
12859 and the proposed activity authorized. The VESCP authority shall act on any erosion and sediment
12860 control plan that has been previously deemed inadequate within 45 days after receipt of a revised
12861 plan if deemed adequate.

12862 D. For sites requiring coverage under the General VPDES Permit for Discharges of
12863 Stormwater from Construction Activities, the VESCP authority shall obtain evidence of such
12864 coverage prior to approving the erosion and sediment control plan.

12865 E. The person responsible for carrying out the plan shall provide the name of an individual
12866 holding a certificate to the VESCP authority who will be in charge of and responsible for carrying
12867 out the land-disturbing activity. However, the VESCP authority may waive the Responsible Land
12868 Disturber certificate requirement for an agreement in lieu of a plan in accordance with § 62.1-
12869 44.15:55 of the Code of Virginia.

12870 F. The VESCP authority may require approval of an erosion and sediment control plan for any
12871 land identified as an erosion impact area in accordance with § 62.1-44.15:55 of the Code of
12872 Virginia.

12873 G. All erosion and sediment control structures and systems shall be maintained, inspected
12874 and repaired as needed to ensure continued performance of their intended function. A statement
12875 describing the maintenance responsibilities of the individual responsible for carrying out the land-
12876 disturbing activity shall be included in the approved erosion and sediment control plan.

12877 **9VAC25-875-310. Plan review coordination with the department for solar projects.**

12878 A. Any VESCP authority that does not operate a regulated municipal separate storm sewer
12879 system and for which the department did not administer a Virginia Stormwater Management
12880 Program as of July 1, 2020, shall notify the department if it decides to have the department provide
12881 the VESCP authority with (i) review of the erosion and sediment control plan required by § 62.1-
12882 44.15:55 A of the Code of Virginia and (ii) a recommendation on the plan's compliance with the
12883 requirements of Part V of this chapter for any solar project and its associated infrastructure with
12884 a rated electrical generation capacity exceeding five megawatts.

12885 B. Any VESCP authority that notifies the department pursuant to this section shall within five
12886 days of receiving the erosion and sediment control plan forward the plan to the department for
12887 review. If the plan forwarded to the department is incomplete, the department shall return the plan

12888 to the VESCP authority immediately, and the application process shall start over. If the plan
 12889 forwarded to the department is complete, the department shall review the plan for compliance
 12890 with the requirements of Part V of this chapter and provide a recommendation to the VESCP
 12891 authority. The VESCP authority shall then (i) grant written approval of the plan or (ii) provide
 12892 written notice of disapproval of the plan in accordance with § 62.1-44.15:55 B of the Code of
 12893 Virginia.

12894 C. Any VESCP authority that notifies the department pursuant to this section shall within five
 12895 days of receiving the resubmittal of a previously disapproved erosion and sediment control plan
 12896 forward the resubmitted plan to the department for review. The department shall review the
 12897 resubmitted plan for compliance with the requirements of Part V this chapter and provide a
 12898 recommendation to the VESCP authority. The VESCP authority shall then (i) grant written
 12899 approval of the plan or (ii) provide written notice of disapproval of the plan in accordance with §
 12900 62.1-44.15:55 B of the Code of Virginia.

12901 **9VAC25-875-320. Long-term maintenance of stormwater management facilities.**

12902 A. A recorded instrument shall be submitted to the VESCP authority in accordance with
 12903 9VAC25-875-535.

12904 B. The department shall enforce permits and require compliance with its applicable
 12905 regulations, including when serving as a VSMP authority in a locality that chose not to adopt a
 12906 VESMP in accordance with § 62.1-44.15:27 of the Code of Virginia.

12907 **9VAC25-875-330. Inspections.**

12908 A. The VESCP authority (i) shall provide for periodic inspections of the land-disturbing activity
 12909 and require that an individual holding a certificate, as provided by § 62.1-44.15:52 of the Code of
 12910 Virginia, will be in charge of and responsible for carrying out the land-disturbing activity and (ii)
 12911 may require monitoring and reporting from the person responsible for carrying out the erosion and
 12912 sediment control plan, to ensure compliance with the approved plan and to determine whether
 12913 the measures required in the plan are effective in controlling erosion and sediment. However, any
 12914 VESCP authority may waive the certificate requirement for an agreement in lieu of a plan.

12915 B. Periodic inspections by the VESCP authority are required on all projects. The VESCP
 12916 authority shall either:

12917 1. Provide for an inspection during or immediately following initial installation of erosion
 12918 and sediment controls, at least once in every two-week period, within 48 hours following
 12919 any runoff producing storm event, and at the completion of the project prior to the release
 12920 of any performance bonds; or

12921 2. Establish an alternative inspection program which ensures compliance with the
 12922 approved erosion and sediment control plan. Any alternative inspection program shall be:

12923 a. Approved by the department prior to implementation;

12924 b. Established in writing;

12925 c. Based on a system of priorities that, at a minimum, address the amount of disturbed
 12926 project area, site conditions and stage of construction; and

12927 d. Documented by inspection records.

12928 **9VAC25-875-340. Enforcement.**

12929 A. Each VESCP authority shall incorporate components from subdivisions 1 and 2 of this
 12930 subsection.

12931 1. Informal and formal administrative enforcement procedures may include:

12932 a. Right of entry in accordance § 62.1-44.15:60 of the Code of Virginia.

12933 b. Verbal warnings and inspection reports;

- 12934 c. Notices of corrective action;
- 12935 d. Notices to comply in accordance with § 62.1-44.15:58 of the Code of Virginia;
- 12936 e. Consent special orders and civil charges in accordance § 62.1-44.15:63 of the Code
- 12937 of Virginia;
- 12938 f. Stop work orders in accordance with of § 62.1-44.15:58 of the Code of Virginia; and
- 12939 g. Public notice and comment periods for proposed settlements and consent special
- 12940 orders.
- 12941 2. Civil and judicial enforcement procedures may include:
- 12942 a. Schedule of civil penalties in accordance with § 62.1-44.15:54 and § 62.1-44.15:63
- 12943 of the Code of Virginia; and
- 12944 b. Injunctions in accordance § 62.1-44.15:58 and § 62.1-44.15:63 of the Code of
- 12945 Virginia.
- 12946 B. Each VESCP authority shall develop policies and procedures that outline the steps to be
- 12947 taken regarding enforcement actions under the ESCL and attendant regulations and local
- 12948 ordinances.
- 12949 C. Penalties imposed in accordance with §§ 62.1-44.15:54 and 62.1-44.15:63 of the Code of
- 12950 Virginia may reflect the degree of harm caused by the violation and take into account the
- 12951 economic benefit to the violator from noncompliance.
- 12952 D. Pursuant to § 62.1-44.15:25 of the Code of Virginia, authorization to administer a VESCP
- 12953 program shall not remove from the department the authority to enforce the provisions of the ESCL
- 12954 and attendant regulations.
- 12955 E. The department may terminate permit coverage during its term and require application for
- 12956 an individual permit or deny a permit renewal application for failure to comply with permit
- 12957 conditions or on its own initiative in accordance with the ESCL and this chapter.
- 12958 F. Pursuant to § 62.1-44.15:63 A of the Code of Virginia, civil penalties recovered by a VESCP
- 12959 authority shall be paid into the treasury of the locality in which the violation occurred and are to
- 12960 be used solely for stormwater management capital projects.
- 12961 **9VAC25-875-350. Variances.**
- 12962 A variance to waive or modify any of the erosion and sediment control requirements of Article
- 12963 2 of Part V of this chapter that are deemed inappropriate or too restrictive for site conditions may
- 12964 be requested from the VESCP authority under these conditions:
- 12965 1. At the time of plan submission, an applicant may request a variance to become part of
- 12966 the approved erosion and sediment control plan. The applicant shall explain the reasons
- 12967 for requesting variances in writing. Specific variances which are allowed by the authority
- 12968 shall be documented in the plan; or
- 12969 2. During construction, the person responsible for implementing the approved plan may
- 12970 request a variance in writing from the authority. The authority shall respond in writing either
- 12971 approving or disapproving such a request. If the authority does not approve a variance
- 12972 within 10 days of receipt of the request, the request shall be considered to be disapproved.
- 12973 Following disapproval, the applicant may resubmit a variance request with additional
- 12974 documentation.
- 12975 **9VAC25-875-360. VESCP reporting and record keeping requirements.**
- 12976 Each VESCP authority shall report to the department, at least monthly, in a method such as
- 12977 an online reporting system and on a time schedule established by the department, a listing of
- 12978 each land-disturbing activity for which a plan has been approved by the VESCP authority under
- 12979 the ESCL and Part III this chapter.

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Article 4

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Review procedures for VESCPs

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9VAC25-875-370. Review and evaluation of VESCPs.

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A. This section sets forth the criteria that will be used by the department to determine whether a locality operating a VESCP under authority of the ESCL, a "VESCP authority," satisfies minimum standards of effectiveness, as follows.

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Each VESCP must contain an ordinance or other appropriate document or documents adopted by the VESCP authority. Such document or documents must be consistent with the ESCL and Part III of this chapter, including the following criteria:

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1. The document or documents shall include or reference the definition of land-disturbing activity including exemptions, as well as any other significant terms, as necessary to produce an effective VESCP;

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2. The document or documents shall identify the VESCP authority and any soil and water conservation district, adjacent locality, or other public or private entities that the VESCP authority entered into agreements or contracts with to assist with carrying out the provisions of the ESCL and Part III of this chapter, and must include the requirements and design standards to be used in the program;

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3. The document or documents shall include procedures for submission and approval of plans, issuance of permits, monitoring and inspections of land-disturbing activities. The position, agency, department, or other party responsible for conducting inspections shall be identified. The VESCP authority shall maintain, either on-site or in VESCP files, a copy of the approved plan and a record of inspections for each active land-disturbing activity;

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4. Each VESCP operated by a county, city, or town shall include provisions for the integration of the VESCP with flood insurance, flood plain management, and other programs requiring compliance prior to authorizing a land-disturbing activity in order to make the submission and approval of plans, payment of fees, and coordination of inspection and enforcement activities more convenient and efficient both for the local governments and those responsible for compliance with the programs; and

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5. The VESCP authority must take appropriate enforcement actions, where authorized to do so, to achieve compliance with the program and maintain a record of enforcement actions for all active land-disturbing activities.

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B. The department shall periodically conduct a comprehensive review and evaluation of each VESCP authority pursuant to subdivision (19) of § 62.1-44.15. The department will coordinate the review with its other program reviews for the same entity to avoid redundancy. The review and evaluation of a VESCP authority shall consist of the following: (i) consultation with the local program administrator or designee or designees; (ii) review of the local ordinance and other applicable documents; (iii) review of plans approved by the VESCP authority; (iv) inspection of regulated activities; and (v) review of enforcement actions where authorized to do so. The department is also authorized to conduct a partial VESCP compliance review.

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C. Each VESCP authority shall be reviewed and evaluated by the department for effectiveness in carrying out the ESCL and Part III of this chapter using the criteria in this section.

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D. If deficiencies noted in the review will cause the VESCP to be inconsistent with the ESCL or this chapter, the department shall provide the VESCP authority with a copy of its decision that specifies the deficiencies, action needed to be taken, and an approved corrective action plan and schedule required to attain the minimum standard of effectiveness. If the VESCP authority has not implemented the necessary compliance actions identified by the department within the corrective action schedule, or such additional period as is granted to complete the implementation

13027 of the corrective action, then the department shall have the authority to (i) issue a special order
 13028 to any VESCP authority imposing a civil penalty set out in § 62.1-44.15 of the Code of Virginia or
 13029 (ii) revoke its approval of the VESCP. The Administrative Process Act (§ 2.2-4000 et seq. of the
 13030 Code of Virginia) and Article 5 of Chapter 3.1 of Title 62.1 if the Code of Virginia (§ 62.1-44.20 et
 13031 seq.) shall govern the review activities and proceedings of the department and the judicial review
 13032 thereof. In lieu of issuing a special order or revoking the program, the department is authorized to
 13033 take legal action against a VESCP authority to ensure compliance.

13034 E. Review and evaluation of VESCPs shall be conducted according to a schedule adopted by
 13035 the department in accordance with subdivision (19) of § 62.1-44.15 of the Code of Virginia.

13036 Part IV

13037 Certification of VESCP, VSMP, and VESMP personnel

13038 **9VAC25-875-380. Purpose.**

13039 The purpose of this part is to guide the issuance of certifications required by §§ 62.1-44.15:52
 13040 E and 62.1-44.15:53 of the ESCL and § 62.1-44.15:30 of the VESMA.

13041 **9VAC25-875-390. Applicability.**

13042 This part is applicable to:

13043 1. Every VESCP authority, VESMP authority, or VSMP authority that administers a
 13044 VESCP, VESMP, or VSMP as may be applicable. Staff of a VESCP authority must be
 13045 certified in accordance with §§ 62.1-44.15:52 E and 62.1-44.15:53 of the ESCL. Staff of a
 13046 VESMP authority or VSMP authority must be certified in accordance with § 62.1-44.15:30
 13047 of the VESMA.

13048 2. Anyone who is contracted by a VESCP authority, a VESMP authority, or a VSMP
 13049 authority to perform any or all of the functions of that authority as may be applicable. This
 13050 person will be subject to the same certification requirements as the authority.

13051 3. Any state agency, federal entity, or public or private entity authorized under § 62.1-
 13052 44.15:31 of the Code of Virginia to implement approved standards and specifications.
 13053 Personnel implementing approved standards and specifications pursuant to subsection
 13054 D.5 of § 62.1-44.15:31 of the Code of Virginia must obtain certifications or qualifications
 13055 comparable to those required for VESMP personnel pursuant to subsection C of § 62.1-
 13056 44.15:30 of the Code of Virginia.

13057 4. Anyone voluntarily seeking certifications or certificates from the department for
 13058 classifications described in 9VAC25-875-400.

13059 **9VAC25-875-400. Certificates and certifications.**

13060 A. Certifications shall be issued by the department to individuals who successfully complete
 13061 the department-approved training program, which includes obtaining a passing score on the
 13062 applicable certification examination, or otherwise fulfilling the requirements of 9VAC25-875-410
 13063 for the following classifications:

13064 1. Program administrator for ESC. This classification applies to individuals who administer
 13065 the program in the area of ESC pursuant to this chapter. This certification is a requirement
 13066 for any individual employed to perform the duties of a program administrator for ESC by a
 13067 VESCP or VESMP authority, or an agent of a VESCP or VESMP authority. This
 13068 certification also serves as the ESC component required for the dual program
 13069 administrator certification.

- 13070 2. Inspector for ESC. This classification applies to individuals who perform inspections of
13071 land-disturbing activities in the area of ESC pursuant to this chapter. This certification is a
13072 requirement for any individual employed as an inspector for ESC by a VESCP or VESMP
13073 authority, or an agent of a VESCP or VESMP authority. This certification also serves as
13074 the ESC component required for the dual inspector certification.
- 13075 3. Plan reviewer for ESC. This classification applies to individuals who review plans in the
13076 area of ESC for approval by a VESCP or VESMP authority pursuant to this chapter. This
13077 certification is a requirement for any individual employed as a plan reviewer for ESC by a
13078 VESCP or VESMP authority, or an agent of a VESCP or VESMP authority. This
13079 certification also serves as the ESC component required for the dual plan reviewer
13080 certification.
- 13081 4. Combined administrator for ESC. This classification applies to individuals who perform
13082 the combined duties of Program Administrator, Inspector, and Plan Reviewer in the area
13083 of ESC pursuant to this chapter. This certification is a requirement for any individual
13084 employed as a combined administrator for ESC by a VESCP or VESMP authority, or an
13085 agent of a VESCP or VESMP authority. This certification also serves as the ESC
13086 component required for the dual combined administrator certification.
- 13087 5. Program administrator for SWM. This classification applies to individuals who
13088 administer the program in the area of SWM pursuant to this chapter. This certification is a
13089 requirement for any individual employed to perform the duties of a program administrator
13090 for SWM by a VSMP or VESMP authority, or an agent of a VSMP or VESMP authority.
13091 This certification also serves as the SWM component required for the dual program
13092 certification.
- 13093 6. Inspector for SWM. This classification applies to individuals who conduct inspections in
13094 the area of SWM pursuant to this chapter. This certification is a requirement for any
13095 individual employed to perform the duties of an inspector for SWM by a VSMP or VESMP
13096 authority, or an agent of a VSMP or VESMP authority. This certification also serves as the
13097 SWM component required for the dual inspector certification.
- 13098 7. Plan reviewer for SWM. This classification applies to individuals who review plans in
13099 the area of SWM pursuant to this chapter. This certification is a requirement for any
13100 individual employed to perform the duties of a plan reviewer for SWM by a VSMP or
13101 VESMP authority, or an agent of a VSMP or VESMP authority. This certification also
13102 serves as the SWM component required for the dual plan reviewer certification.
- 13103 8. Combined administrator for SWM. This classification applies to individuals who perform
13104 the combined duties of Program Administrator, Inspector, and Plan Reviewer in the area
13105 of SWM pursuant to this chapter. This certification is a requirement for any individual
13106 employed to perform the duties of a combined administrator for SWM by a VSMP or
13107 VESMP authority, or an agent of a VSMP or VESMP authority. This certification also
13108 serves as the SWM component required for the dual combined administrator certification.
- 13109 9. Dual program administrator. This classification applies to individuals who administer the
13110 program in the areas of ESC and SWM pursuant to this chapter. This certification satisfies
13111 the requirement for any individual employed as a dual program administrator for ESC and
13112 SWM by a VESMP authority, an agent of a VESMP authority, or for personnel
13113 implementing department-approved standards and specifications pursuant to § 62.1-
13114 44.15:31 of the Code of Virginia and attendant regulations.
- 13115 10. Dual inspector. This classification applies to individuals who conduct inspections in the
13116 areas of ESC and SWM pursuant to this chapter. This certification satisfies the
13117 requirement for any individual employed as a dual inspector for ESC and SWM by a
13118 VESMP authority, an agent of a VESMP authority, or for personnel implementing

13119 department-approved standards and specifications pursuant to § 62.1-44.15:31 of the
 13120 Code of Virginia and attendant regulations.

13121 11. Dual plan reviewer. This classification applies to individuals who review plans in the
 13122 areas of ESC and SWM for approval by a VESMP authority pursuant to this chapter. This
 13123 certification satisfies the requirement for any individual employed as a dual plan reviewer
 13124 for ESC and SWM by a VESMP authority, an agent of a VESMP authority, or for personnel
 13125 implementing department-approved standards and specifications pursuant to § 62.1-
 13126 44.15:31 of the Code of Virginia and attendant regulations.

13127 12. Dual combined administrator. This classification applies to individuals who perform the
 13128 combined duties of program administrator, inspector, and plan reviewer in the areas of
 13129 ESC and SWM pursuant to this chapter. This certification satisfies the requirement for any
 13130 individual employed as a dual combined administrator for ESC and SWM by a VESMP
 13131 authority, an agent of a VESMP authority, or for personnel implementing department-
 13132 approved standards and specifications pursuant to § 62.1-44.15:31 of the Code of Virginia
 13133 and attendant regulations.

13134 B. The classifications in subdivisions A 1 through 8 of this section may be used to serve as
 13135 the ESC or SWM components required for personnel implementing department-approved
 13136 standards and specifications pursuant to § 62.1-44.15:31 of the Code of Virginia and attendant
 13137 regulations.

13138 C. A certificate shall be issued by the department for the responsible land disturber.

13139 D. Any individual employed as a plan reviewer who is licensed as a professional engineer,
 13140 architect, landscape architect, land surveyor pursuant to Article 1 (§ 54.1-400 et seq.) of Chapter
 13141 4 of Title 54.1 of the Code of Virginia, or professional soil scientist as defined in Chapter 22 (§
 13142 54.1-2200 et seq.) of Title 54.1 of the Code of Virginia shall qualify as a certified plan reviewer for
 13143 ESC and will not require a certification from the department. In lieu of an individual holding this
 13144 department certification, such individual shall produce a current professional license or
 13145 certification upon request of the department.

13146 E. Any individual who holds a valid and unexpired certification issued by the department in
 13147 the classification of ESC or SWM, or who obtains such certification, and who later successfully
 13148 obtains an additional certification from the department in the parallel ESC or SWM classification
 13149 may surrender both certifications to the department for issuance of a dual certification in both ESC
 13150 and SWM. Such a request must be made while both of the ESC and SWM certifications obtained
 13151 are valid and unexpired. The expiration date of the dual certification shall be three years from the
 13152 date of expiration of the additional certification acquired.

13153 **9VAC25-875-410. Eligibility requirements.**

13154 A. Certification may be achieved by:

13155 1. Obtaining a total of 800 hours of experience as an ESC, SWM, or dual program
 13156 administrator, plan reviewer, inspector, or combined administrator and obtaining a passing
 13157 score on the certification examination administered by the department in the applicable
 13158 ESC or SWM area; or both ESC and SWM for the dual certification; or

13159 2. Completing a department-approved training program in the classifications of program
 13160 administrator, plan reviewer, inspector, or combined administrator and, within one year of
 13161 completing the training program, obtain a passing score on the certification examination
 13162 administered by the department in the applicable ESC or SWM area, or both ESC and
 13163 SWM for the dual certification.

13164 a. Combined administrators must complete the training program for program
 13165 administrator, inspector, and plan reviewer within the applicable area of ESC or SWM.

13166 b. Dual combined administrators must complete the training program for program
 13167 administrator, inspector, and plan reviewer within both areas of ESC and SWM.

13168 B. Certification and recertification shall be valid for three years except as otherwise set out in
 13169 9VAC25-875-400 D or 9VAC25-875-460.

13170 C. Recertification may be obtained for classifications outlined in 9VAC25-875-400 of this part
 13171 prior to the expiration date of a certification by:

13172 1. Completing continuing education contact hours in accordance with department
 13173 guidance and paying the required fee for recertification;

13174 2. Being a professional registered in the Commonwealth pursuant to Article 1 (§ 54.1-400
 13175 et seq.) of Chapter 4 of Title 54.1 of the Code of Virginia or a professional soil scientist as
 13176 defined in Chapter 22 (§ 54.1-2200 et seq.) of Title 54.1 of the Code of Virginia, and paying
 13177 the required fee for recertification. Such professionals shall be deemed to satisfy the
 13178 provisions of this subsection for ESC classifications in subdivisions A 1 through 4 and of
 13179 9VAC25-875-400. However, such professionals when in the classification of plan reviewer
 13180 for ESC shall be exempt from the recertification requirements and fees of this part provided
 13181 they maintain their professional license;

13182 3. Being a professional registered in the Commonwealth pursuant to Article 1 (§ 54.1-400
 13183 et seq.) of Chapter 4 of Title 54.1 of the Code of Virginia and paying the required fee for
 13184 recertification. Such professionals shall be deemed to satisfy the provisions of this
 13185 subsection for SWM and dual classifications in subdivisions A 5 through 12 of 9VAC25-
 13186 875-400;

13187 4. Successfully completing a department-approved training program and paying the
 13188 required fee for recertification; or

13189 5. Obtaining a passing score on the recertification examination.

13190 D. Responsible land disturber (RLD) certificate may be obtained by completing a department-
 13191 approved training program for RLDs for ESC.

13192 1. The RLD certificate and any renewal thereof shall be valid for three years.

13193 2. Renewal of the RLD certificate may be obtained by completing a department-approved
 13194 training program for RLDs.

13195 3. Being a professional registered in the Commonwealth pursuant to Article 1 (§ 54.1-400
 13196 et seq.) of Chapter 4 of Title 54.1 of the Code of Virginia or a professional soil scientist as
 13197 defined in Chapter 22 (§ 54.1-2200 et seq.) of Title 54.1 of the Code of Virginia shall be
 13198 deemed to satisfy the provisions of this subsection for an RLD certificate in subsection C
 13199 of 9VAC25-875-400 or any renewal thereof.

13200 **9VAC25-875-420. Classification acknowledgment for the purposes of program compliance**
 13201 **reviews.**

13202 For the purposes of VESCP or VESMP compliance reviews and evaluations, the certification
 13203 requirements of §§ 62.1-44.15:53 and 62.1-44.15:30 of the Code of Virginia shall be deemed to
 13204 have been met if the VESCP or VESMP authority has an individual or individuals enrolled in the
 13205 department's ESC or SWM training programs set forth in 9VAC25-875-410 A 2 a and b for the
 13206 necessary classifications and such individual or individuals obtains certification within one year of
 13207 completing the necessary training programs.

13208 **9VAC25-875-430. Certification program fees.**

13209 A. Certification, recertification, dual certification, and RLD certificate issuance and reissuance
 13210 fees shall be collected to cover the administrative cost for the certification program.

13211 B. A fee will also be charged to present education and training programs that support the
 13212 certification program.

13213 C. Fees are nonrefundable, except as authorized by the department, and shall not be
 13214 prorated.

13215 **9VAC25-875-440. Examination.**

13216 A. A department-approved examination shall be administered by the department.

13217 B. An applicant may take the certification examination for the desired certification after fulfilling
 13218 the prerequisite experience requirement or completing a department-approved training program.

13219 C. An applicant who is unsuccessful in passing an examination will be allowed to pay the
 13220 appropriate fee and retake the appropriate examination.

13221 D. A minimum passing score of 70% will be required on the appropriate certification
 13222 examination(s).

13223 E. All applicants will be notified of the results within 60 days of the examination.

13224 **9VAC25-875-460. Discipline for certified personnel.**

13225 The department may suspend, revoke or refuse to grant or renew the certification or certificate
 13226 of any individual if the department, in an informal fact finding under § 2.2-4019 of the Code of
 13227 Virginia, finds that:

13228 1. The certification or certificate was obtained or renewed through fraud or
 13229 misrepresentation;

13230 2. The individual who holds a certification or certificate has violated or cooperated with
 13231 others in violating any provision of Part IV of this chapter;

13232 3. The individual who holds a certification or certificate has not demonstrated reasonable
 13233 care, judgment, or application of knowledge and ability in the performance of duties; or

13234 4. The individual who holds a certification or certificate has made any material
 13235 misrepresentation in the course of performing duties.

13236 Part V

13237 Criteria and Requirements for Regulated Land-Disturbing Activities

13238 Article 1

13239 Administrative criteria

13240 **9VAC25-875-470. Applicability.**

13241 A. Land-disturbing activities that meet one of the criteria below are regulated as follows:

13242 1. Land-disturbing activity that disturbs 10,000 square feet or more, although a locality
 13243 may reduce this regulatory threshold to a smaller area of disturbed land, is less than one
 13244 acre, not in an area of a locality designated as a Chesapeake Bay Preservation Area, and
 13245 not part of a common plan of development or sale, is subject to criteria defined in Article
 13246 2 (9VAC25-874-540 et seq.) of Part V of this chapter.

13247 2. Land-disturbing activity that disturbs 2,500 square feet or more, although a locality may
 13248 reduce this regulatory threshold to a smaller area of disturbed land, is less than one acre,
 13249 and in an area of a locality designated as a Chesapeake Bay Preservation Area is subject
 13250 to criteria defined in Article 2 (9VAC25-874-540 et seq.) and Article 3 (9VAC25-875-570
 13251 et seq.) of Part V unless Article 4 (9VAC25-875-670 et seq) of Part V of this chapter is
 13252 applicable, as determined in accordance with 9VAC25-875-480 and 9VAC25-875-490.

13253 3. Land-disturbing activity that disturbs less than one acre, but is part of a larger common
 13254 plan of development or sale that disturbs one acre or more, is subject to criteria defined in
 13255 Article 2 (9VAC25-874-540 et seq.) and Article 3 (9VAC25-875-570 et seq.) of Part V

13256 unless Article 4 (9VAC25-875-670 et seq) of Part V of this chapter is applicable, as
 13257 determined in accordance with 9VAC25-875-480 and 9VAC25-875-490.

13258 4. Land-disturbing activity that disturbs one acre or more is subject to criteria defined in
 13259 Article 2 (9VAC25-874-540 et seq.) and Article 3 (9VAC25-875-570 et seq.) of Part V
 13260 unless Article 4 (9VAC25-875-670 et seq) of Part V of this chapter is applicable, as
 13261 determined in accordance with 9VAC25-875-480 and 9VAC25-875-490.

13262 B. A locality may, by local ordinance adopted pursuant to §§ 62.1-44.15:33 or 62.1-44.15:65
 13263 of the Code of Virginia, adopt more stringent local requirements.

13264 **9VAC25-875-480. Applicability of other laws and regulations; time limits on applicability of**
 13265 **approved design criteria.**

13266 A. Nothing in this chapter shall be construed as limiting the applicability of other laws and
 13267 regulations, including, the Clean Water Act, VESMA, ESCL, and the Chesapeake Bay
 13268 Preservation Act, and all applicable regulations adopted in accordance with those laws, or the
 13269 rights of other federal agencies, state agencies, or local governments to impose more stringent
 13270 technical criteria or other requirements as allowed by law.

13271 B. Land-disturbing activities that obtain an initial permit or commence land disturbance prior
 13272 to July 1, 2014, shall be conducted in accordance with the technical criteria of Article 4 (9VAC25-
 13273 875-670 et seq) of Part V of this chapter. Such projects shall remain subject to the technical
 13274 criteria of Article 4 (9VAC25-875-670 et seq) of Part V of this chapter for two additional permit
 13275 cycles. After such time, portions of the project not under construction shall become subject to any
 13276 new technical criteria adopted by the board.

13277 C. Land-disturbing activities that obtain an initial permit on or after July 1, 2014, shall be
 13278 conducted in accordance with the technical criteria of Article 3 (9VAC25-875-570 et seq.) of Part
 13279 V this chapter, except as provided for in 9VAC25-875-490. Land-disturbing activities conducted
 13280 in accordance with the technical criteria of Article 3 (9VAC25-875-570 et seq.) of Part V shall
 13281 remain subject to the technical criteria of Article 3 (9VAC25-875-570 et seq.) of Part V of this
 13282 chapter for two additional permit cycles. After such time, portions of the project not under
 13283 construction shall become subject to any new technical criteria adopted by the board.

13284 D. Nothing in this section shall preclude an operator from constructing to a more stringent
 13285 standard at his discretion.

13286 **9VAC25-875-490. Grandfathering.**

13287 A. Any land-disturbing activity shall be considered grandfathered by the VESMP authority and
 13288 shall be subject to the technical criteria of Article 4 (9VAC25-875-670 et seq) of Part V of this
 13289 chapter provided:

13290 1. A proffered or conditional zoning plan, zoning with a plan of development, preliminary
 13291 or final subdivision plat, preliminary or final site plan, or any document determined by the
 13292 locality to be equivalent thereto (i) was approved by the locality prior to July 1, 2012, (ii)
 13293 provided a layout as defined in 9VAC25-875-670, (iii) will comply with the technical criteria
 13294 of Article 4 (9VAC25-875-670 et seq) of Part V of this chapter, and (iv) has not been
 13295 subsequently modified or amended in a manner resulting in an increase in the amount of
 13296 phosphorus leaving each point of discharge, and such that there is no increase in the
 13297 volume or rate of runoff;

13298 2. A permit has not been issued prior to July 1, 2014; and

13299 3. Land disturbance did not commence prior to July 1, 2014.

13300 B. Locality, state, and federal projects shall be considered grandfathered by the VESMP
 13301 authority and shall be subject to the technical criteria of Article 4 (9VAC25-875-670 et seq) of Part
 13302 V of this chapter provided:

13303 1. There has been an obligation of locality, state, or federal funding, in whole or in part,
 13304 prior to July 1, 2012, or the department has approved a stormwater management plan
 13305 prior to July 1, 2012;

13306 2. A permit has not been issued prior to July 1, 2014; and

13307 3. Land disturbance did not commence prior to July 1, 2014.

13308 C. Land disturbing activities grandfathered under subsections A and B of this section shall
 13309 remain subject to the technical criteria of Article 4 (9VAC25-875-670 et seq) of Part V of this
 13310 chapter for one additional permit cycle. After such time, portions of the project not under
 13311 construction shall become subject to any new technical criteria adopted by the board.

13312 D. In cases where governmental bonding or public debt financing has been issued for a project
 13313 prior to July 1, 2012, such project shall be subject to the technical criteria of Article 4 (9VAC25-
 13314 875-670 et seq) of Part V of this chapter.

13315 E. Nothing in this section shall preclude an operator from constructing to a more stringent
 13316 standard at his discretion.

13317 **9VAC25-875-500. Stormwater pollution prevention plan requirements.**

13318 A. A stormwater pollution prevention plan shall include, but not be limited to, an approved
 13319 erosion and sediment control plan, an approved stormwater management plan, a pollution
 13320 prevention plan for regulated land-disturbing activities, and a description of any additional control
 13321 measures necessary to address a TMDL pursuant to subsection E of this section.

13322 B. An erosion and sediment control plan consistent with the requirements of 9VAC25-875-
 13323 550 must be designed and implemented during construction activities. Prior to land disturbance,
 13324 this plan must be approved by the VESCP authority, VESMP authority, or the department.

13325 C. A stormwater management plan consistent with the requirements of 9VAC25-875-510 must
 13326 be designed and implemented during construction activities. Prior to land disturbance, this plan
 13327 must be approved by the VESMP authority or the department.

13328 D. A pollution prevention plan that identifies potential sources of pollutants that may
 13329 reasonably be expected to affect the quality of stormwater discharges from the construction site
 13330 and describe control measures that will be used to minimize pollutants in stormwater discharges
 13331 from the construction site must be developed before land disturbance commences.

13332 E. In addition to the requirements of subsections A through D of this section, if a specific
 13333 wasteload allocation for a pollutant has been established in an approved TMDL and is assigned
 13334 to stormwater discharges from a construction activity, additional control measures must be
 13335 identified and implemented by the operator so that discharges are consistent with the
 13336 assumptions and requirements of the wasteload allocation.

13337 F. The stormwater pollution prevention plan must address the following requirements as
 13338 specified in 40 CFR 450.21, to the extent otherwise required by state law or regulations and any
 13339 applicable requirements of a permit:

13340 1. Control stormwater volume and velocity within the site to minimize soil erosion;

13341 2. Control stormwater discharges, including both peak flow rates and total stormwater
 13342 volume, to minimize erosion at outlets and to minimize downstream channel and stream
 13343 bank erosion;

13344 3. Minimize the amount of soil exposed during construction activity;

13345 4. Minimize the disturbance of steep slopes;

13346 5. Minimize sediment discharges from the site. The design, installation and maintenance
 13347 of erosion and sediment controls must address factors such as the amount, frequency,
 13348 intensity and duration of precipitation, the nature of resulting stormwater runoff, and soil
 13349 characteristics, including the range of soil particle sizes expected to be present on the site;

13350 6. Provide and maintain natural buffers around surface waters, direct stormwater to
 13351 vegetated areas to increase sediment removal and maximize stormwater infiltration,
 13352 unless infeasible;

13353 7. Minimize soil compaction and, unless infeasible, preserve topsoil;

13354 8. Stabilization of disturbed areas must, at a minimum, be initiated immediately whenever
 13355 any clearing, grading, excavating, or other earth disturbing activities have permanently
 13356 ceased on any portion of the site, or temporarily ceased on any portion of the site and will
 13357 not resume for a period exceeding 14 calendar days. Stabilization must be completed
 13358 within a period of time determined by the VESMP authority or the department as the VSMP
 13359 authority. In arid, semiarid, and drought-stricken areas where initiating vegetative
 13360 stabilization measures immediately is infeasible, alternative stabilization measures must
 13361 be employed as specified by the VESMP authority or department; and

13362 9. Utilize outlet structures that withdraw water from the surface, unless infeasible, when
 13363 discharging from basins and impoundments.

13364 G. The SWPPP shall be amended whenever there is a change in design, construction,
 13365 operation, or maintenance that has a significant effect on the discharge of pollutants to state
 13366 waters and that has not been previously addressed in the SWPPP. The SWPPP must be
 13367 maintained at a central location onsite. If an onsite location is unavailable, notice of the SWPPP's
 13368 location must be posted near the main entrance at the construction site.

13369 **9VAC25-875-510. Stormwater management plan requirements.**

13370 A. A stormwater management plan shall be developed and submitted to the VESMP authority
 13371 or the department as the VSMP authority. The stormwater management plan shall be
 13372 implemented as approved or modified by the VESMP authority or department and shall be
 13373 developed in accordance with the following:

13374 1. A stormwater management plan for a land-disturbing activity shall apply the stormwater
 13375 management technical criteria set forth in this part to the entire land-disturbing activity.
 13376 Individual lots in new residential, commercial, or industrial developments, including those
 13377 developed under subsequent owners, shall not be considered separate land-disturbing
 13378 activities.

13379 2. A stormwater management plan shall consider all sources of surface runoff and all
 13380 sources of subsurface and groundwater flows converted to surface runoff.

13381 B. A complete stormwater management plan shall include the following elements:

13382 1. Information on the type of and location of stormwater discharges, information on the
 13383 features to which stormwater is being discharged including surface waters or karst
 13384 features if present, and predevelopment and post-development drainage areas;

13385 2. Contact information including the name, address, telephone number, and email address
 13386 of the owner and the tax reference number and parcel number of the property or properties
 13387 affected;

13388 3. A narrative that includes a description of current site conditions and final site conditions
 13389 or if allowed by the VESMP authority or department, the information provided and
 13390 documented during the review process that addresses the current and final site conditions;

13391 4. A general description of the proposed stormwater management facilities and the
 13392 mechanism through which the facilities will be operated and maintained after construction
 13393 is complete;

13394 5. Information on the proposed stormwater management facilities, including (i) detailed
 13395 narrative on the conversion to a long-term stormwater management facility if the facility
 13396 was used as a temporary ESC measure; (ii) the type of facilities; (iii) location, including

- 13397 geographic coordinates; (iv) acres treated; and (v) the surface waters or karst features
 13398 into which the facility will discharge;
- 13399 6. Hydrologic and hydraulic computations, including runoff characteristics;
 13400 7. Documentation and calculations verifying compliance with the water quality and quantity
 13401 requirements of this chapter;
- 13402 8. A map of the site that depicts the topography of the site and includes:
- 13403 a. All contributing drainage areas;
 13404 b. Existing streams, ponds, culverts, ditches, wetlands, other water bodies, and
 13405 floodplains;
 13406 c. Soil types, geologic formations if karst features are present in the area, forest cover,
 13407 and other vegetative areas;
 13408 d. Current land use including existing structures, roads, and locations of known utilities
 13409 and easements;
 13410 e. Sufficient information on adjoining parcels to assess the impacts of stormwater from
 13411 the site on these parcels;
 13412 f. The limits of clearing and grading, and the proposed drainage patterns on the site;
 13413 g. Proposed buildings, roads, parking areas, utilities, and stormwater management
 13414 facilities; and
 13415 h. Proposed land use with tabulation of the percentage of surface area to be adapted
 13416 to various uses, including planned locations of utilities, roads, and easements;
- 13417 9. If an operator intends to meet the requirements established in 9VAC25-875-580 or
 13418 9VAC25-875-600 through the use of off-site compliance options, where applicable, then
 13419 a letter of availability from the off-site provider must be included; and
- 13420 10. If payment of a fee is required with the stormwater management plan submission to
 13421 the VESMP authority or the department, the fee and the required fee form in accordance
 13422 with Part VIII (9VAC25-875-1290 et seq.) must have been submitted.
- 13423 C. All final plan elements, specifications, or calculations of the stormwater management plans
 13424 whose preparation requires a license under Chapter 4 (§ 54.1-400 et seq.) or 22 (§ 54.1- 2200 et
 13425 seq.) of Title 54.1 of the Code of Virginia shall be appropriately signed and sealed by a
 13426 professional who is licensed to engage in practice in the Commonwealth of Virginia. Nothing in
 13427 this subsection shall authorize any person to engage in practice outside his area of professional
 13428 competence.
- 13429 **9VAC25-875-520. Pollution prevention plans.**
- 13430 A. A plan for implementing pollution prevention measures during construction activities shall
 13431 be developed, implemented, and updated as necessary. The pollution prevention plan shall detail
 13432 the design, installation, implementation, and maintenance of effective pollution prevention
 13433 measures as specified in 40 CFR 450.21(d) to minimize the discharge of pollutants. At a minimum,
 13434 such measures must be designed, installed, implemented, and maintained to:
- 13435 1. Minimize the discharge of pollutants from equipment and vehicle washing, wheel wash
 13436 water, and other wash waters. Wash waters must be treated in a sediment basin or
 13437 alternative control that provides equivalent or better treatment prior to discharge;
- 13438 2. Minimize the exposure of building materials, building products, construction wastes,
 13439 trash, landscape materials, fertilizers, pesticides, herbicides, detergents, sanitary waste,
 13440 and other materials present on the site to precipitation and to stormwater; and
- 13441 3. Minimize the discharge of pollutants from spills and leaks and implement chemical spill
 13442 and leak prevention and response procedures.

13443 B. The pollution prevention plan shall include effective best management practices to prohibit
13444 the following discharges in accordance with 40 CFR 450.21(e):

13445 1. Wastewater from washout of concrete, unless managed by an appropriate control;

13446 2. Wastewater from washout and cleanout of stucco, paint, form release oils, curing
13447 compounds, and other construction materials;

13448 3. Fuels, oils, or other pollutants used in vehicle and equipment operation and
13449 maintenance; and

13450 4. Soaps or solvents used in vehicle and equipment washing.

13451 C. Discharges from dewatering activities, including discharges from dewatering of trenches
13452 and excavations, are prohibited unless managed by appropriate controls in accordance with 40
13453 CFR 450.21(c).

13454 **9VAC25-875-530. Applying for permit coverage.**

13455 A. The operator must submit a complete and accurate registration statement in accordance
13456 with 9VAC25-880 et seq., if such statement is required, on the official department form to the
13457 VESMP or department as the VSMP authority in order to apply for permit coverage. The
13458 registration statement must be signed by the operator in accordance with 9VAC25-875-940. In
13459 accordance with § 62.1-44.15:28 of the Code of Virginia, no registration statement is required for
13460 coverage under the General VPDES Permit for Discharges of Stormwater from Construction
13461 Activities (Construction General Permit) for a small construction activity involving a single-family
13462 detached residential structure within or outside a common plan of development or sale.

13463 B. A person shall not conduct any land-disturbing activity until (i) he has submitted to the
13464 appropriate VESMP authority or the department as the VSMP authority an application that
13465 includes: a permit registration statement, if required, an ESM plan or an executed agreement in
13466 lieu of a plan, if required, and (ii) the VESMP authority or department has issued its land-
13467 disturbance approval. For a single family detached residential structure with less than one acre
13468 of land disturbance, an agreement in lieu of a plan may be used when either 1) it is located within
13469 a common plan of development or sale with an approved stormwater pollution prevention plan
13470 consistent with 9VAC25-875-500 and a permit, if required; or 2) the single-family detached
13471 residential is located outside of a common plan of development or sale.

13472 C. In addition, as a prerequisite to engaging in an approved land-disturbing activity, the name
13473 of the individual who will be assisting the owner in carrying out the activity and holds a
13474 Responsible Land Disturber certificate pursuant to § 62.1-44.15:30 of the Code of Virginia shall
13475 be submitted to the VESMP authority or department.

13476 D. Any VESMP authority or the department as the VSMP authority may waive the Responsible
13477 Land Disturber certificate requirement for an agreement in lieu of a plan; however, if a violation
13478 occurs during the land-disturbing activity, then the owner shall correct the violation and provide
13479 the name of the individual holding a Responsible Land Disturber certificate as provided by § 62.1-
13480 14:30 of the Code of Virginia. Failure to provide the name of an individual holding a Responsible
13481 Land Disturber certificate prior to engaging in land-disturbing activities may result in revocation of
13482 the land-disturbance approval and shall subject the owner to the penalties provided in the
13483 VESMA.

13484 **9VAC25-875-535. Long-term maintenance of stormwater management facilities.**

13485 A. The operator shall submit a construction record drawing for permanent stormwater
13486 management facilities to the VESMP or VSMP authority based on the locality where the land-
13487 disturbing activity will occur. The record drawing shall contain a statement signed by a
13488 professional registered in the Commonwealth of Virginia pursuant to Chapter 4 of Title 54.1 of the
13489 Code of Virginia, stating that to the best of their knowledge, the construction record drawing shows

13490 all adjustments and revisions to the stormwater management plan made during construction and
 13491 serve as a permanent record of the actual location of all constructed elements.

13492 B. The provision of long-term responsibility for and maintenance of stormwater management
 13493 facilities and other techniques specified to manage the quality or quantity of runoff is required.
 13494 Such requirements shall be set forth in an instrument recorded in the local land records prior to
 13495 permit termination or earlier as required by the authority and shall at a minimum:

13496 1. Be submitted to the authority for review and approval prior to the approval of the
 13497 stormwater management plan;

13498 2. Be stated to run with the land;

13499 3. Provide for all necessary access to the property for purposes of maintenance and
 13500 regulatory inspections;

13501 4. Provide for inspections and maintenance and the submission of inspection and
 13502 maintenance reports to the VESCP, VSMP, or VESMP authority; and

13503 5. Be enforceable by all appropriate governmental parties.

13504 C. At the discretion of the VESMP authority, such recorded instruments need not be
 13505 required for stormwater management facilities designed to treat stormwater runoff primarily from
 13506 an individual residential lot on which they are located, provided it is demonstrated to the
 13507 satisfaction of the authority that future maintenance of such facilities will be addressed through
 13508 an enforceable mechanism at the discretion of the authority.

13509 Article 2

13510 Soil erosion requirements

13511 **9VAC25-875-540. Applicability.**

13512 A. This article sets forth minimum standards for the effective control of soil erosion, sediment
 13513 deposition, and nonagricultural runoff.

13514 B. In accordance with Item 360 I1 of Chapter 3 of the 2012 Virginia Acts of Assembly, Special
 13515 Session 1, public institutions of higher education, including community colleges, colleges, and
 13516 universities, shall be subject to project review and compliance for state erosion and sediment
 13517 control requirements by the VESCP or VESMP authority of the locality within which the land-
 13518 disturbing activity is located, unless such institution submits standards and specifications to the
 13519 department in accordance with § 62.1-44.15:31 of the Code of Virginia.

13520 **9VAC25-875-550. Erosion and sediment control plan requirements.**

13521 A. An erosion and sediment control plan shall be filed for a development and the buildings
 13522 constructed within, regardless of the phasing of construction. The erosion and sediment control
 13523 plan shall contain all major conservation decisions to ensure that the entire unit or units of land
 13524 will be so treated to achieve the conservation objectives in 9VAC25-875-560. The erosion and
 13525 sediment control plan may include:

13526 1. Appropriate maps;

13527 2. An appropriate soil and water plan inventory and management information with needed
 13528 interpretations; and

13529 3. A record of decisions contributing to conservation treatment.

13530 B. The person responsible for carrying out the plan shall provide the name of an individual
 13531 holding a certificate who will be in charge of and responsible for carrying out the land-disturbing
 13532 activity to the VESCP or VESMP authority. However, the VESCP or VESMP authority may waive
 13533 the Responsible Land Disturber certificate requirement for an agreement in lieu of a plan in
 13534 accordance with § 62.1-44.15:34 or § 62.1-44.15:55 of the Code of Virginia.

13535 C. If individual lots or sections in a residential development are being developed by different
 13536 property owners, all land-disturbing activities related to the building construction shall be covered
 13537 by an erosion and sediment control plan or an "Agreement in Lieu of a Plan" signed by the property
 13538 owner.

13539 D. Land-disturbing activity of less than 10,000 square feet on individual lots in a residential
 13540 development shall not be considered exempt from the provisions of the VESMA, ESCL, or this
 13541 chapter if the total land-disturbing activity in the development is equal to or greater than 10,000
 13542 square feet.

13543 **9VAC25-875-560. Erosion and sediment control criteria, techniques, and methods:**
 13544 **minimum standards.**

13545 An erosion and sediment control plan consistent with the following criteria, techniques, and
 13546 methods shall be submitted to the VESMP authority or VESCP authority for review and approval:

13547 1. Permanent or temporary soil stabilization shall be applied to denuded areas within
 13548 seven days after final grade is reached on any portion of the site. Temporary soil
 13549 stabilization shall be applied within seven days to denuded areas that may not be at final
 13550 grade but will remain dormant for longer than 14 days. Permanent stabilization shall be
 13551 applied to areas that are to be left dormant for more than one year.

13552 2. During construction of the project, soil stockpiles and borrow areas shall be stabilized
 13553 or protected with sediment trapping measures. The applicant is responsible for the
 13554 temporary protection and permanent stabilization of all soil stockpiles on site as well as
 13555 borrow areas and soil intentionally transported from the project site.

13556 3. A permanent vegetative cover shall be established on denuded areas not otherwise
 13557 permanently stabilized. Permanent vegetation shall not be considered established until a
 13558 ground cover is achieved that is uniform, mature enough to survive and will inhibit erosion.

13559 4. Sediment basins and traps, perimeter dikes, sediment barriers and other measures
 13560 intended to trap sediment shall be constructed as a first step in any land-disturbing activity
 13561 and shall be made functional before upslope land disturbance takes place.

13562 5. Stabilization measures shall be applied to earthen structures such as dams, dikes and
 13563 diversions immediately after installation.

13564 6. Sediment traps and sediment basins shall be designed and constructed based upon
 13565 the total drainage area to be served by the trap or basin.

13566 a. The minimum storage capacity of a sediment trap shall be 134 cubic yards per acre
 13567 of drainage area and the trap shall only control drainage areas less than three acres.

13568 b. Surface runoff from disturbed areas that is comprised of flow from drainage areas
 13569 greater than or equal to three acres shall be controlled by a sediment basin. The
 13570 minimum storage capacity of a sediment basin shall be 134 cubic yards per acre of
 13571 drainage area. The outfall system shall, at a minimum, maintain the structural integrity
 13572 of the basin during a 25-year storm of 24-hour duration. Runoff coefficients used in
 13573 runoff calculations shall correspond to a bare earth condition or those conditions
 13574 expected to exist while the sediment basin is utilized.

13575 7. Cut and fill slopes shall be designed and constructed in a manner that will minimize
 13576 erosion. Slopes that are found to be eroding excessively within one year of permanent
 13577 stabilization shall be provided with additional slope stabilizing measures until the problem
 13578 is corrected.

13579 8. Concentrated runoff shall not flow down cut or fill slopes unless contained within an
 13580 adequate temporary or permanent channel, flume or slope drain structure.

- 13581 9. Whenever water seeps from a slope face, adequate drainage or other protection shall
13582 be provided.
- 13583 10. All storm sewer inlets that are made operable during construction shall be protected
13584 so that sediment-laden water cannot enter the conveyance system without first being
13585 filtered or otherwise treated to remove sediment.
- 13586 11. Before newly constructed stormwater conveyance channels or pipes are made
13587 operational, adequate outlet protection and any required temporary or permanent channel
13588 lining shall be installed in both the conveyance channel and receiving channel.
- 13589 12. When work in a live watercourse is performed, precautions shall be taken to minimize
13590 encroachment, control sediment transport and stabilize the work area to the greatest
13591 extent possible during construction. Nonerodible material shall be used for the
13592 construction of causeways and cofferdams. Earthen fill may be used for these structures
13593 if armored by nonerodible cover materials.
- 13594 13. When a live watercourse must be crossed by construction vehicles more than twice in
13595 any six-month period, a temporary vehicular stream crossing constructed of nonerodible
13596 material shall be provided.
- 13597 14. All applicable federal, state and local requirements pertaining to working in or crossing
13598 live watercourses shall be met.
- 13599 15. The bed and banks of a watercourse shall be stabilized immediately after work in the
13600 watercourse is completed.
- 13601 16. Underground utility lines shall be installed in accordance with the following standards
13602 in addition to other applicable criteria:
- 13603 a. No more than 500 linear feet of trench may be opened at one time.
- 13604 b. Excavated material shall be placed on the uphill side of trenches.
- 13605 c. Effluent from dewatering operations shall be filtered or passed through an approved
13606 sediment trapping device, or both, and discharged in a manner that does not adversely
13607 affect flowing streams or off-site property.
- 13608 d. Material used for backfilling trenches shall be properly compacted in order to
13609 minimize erosion and promote stabilization.
- 13610 e. Restabilization shall be accomplished in accordance with this chapter.
- 13611 f. Applicable safety requirements shall be complied with.
- 13612 17. Where construction vehicle access routes intersect paved or public roads, provisions
13613 shall be made to minimize the transport of sediment by vehicular tracking onto the paved
13614 surface. Where sediment is transported onto a paved or public road surface, the road
13615 surface shall be cleaned thoroughly at the end of each day. Sediment shall be removed
13616 from the roads by shoveling or sweeping and transported to a sediment control disposal
13617 area. Street washing shall be allowed only after sediment is removed in this manner. This
13618 provision shall apply to individual development lots as well as to larger land-disturbing
13619 activities.
- 13620 18. All temporary erosion and sediment control measures shall be removed within 30 days
13621 after final site stabilization or after the temporary measures are no longer needed, unless
13622 otherwise authorized by the VESCP or VESMP authority. Trapped sediment and the
13623 disturbed soil areas resulting from the disposition of temporary measures shall be
13624 permanently stabilized to prevent further erosion and sedimentation.
- 13625 19. Properties and waterways downstream from development sites shall be protected from
13626 sediment deposition, erosion and damage due to increases in volume, velocity and peak
13627 flow rate of stormwater runoff for the stated frequency storm of 24-hour duration in

- 13628 accordance with the following standards and criteria. Stream restoration and relocation
13629 projects that incorporate natural channel design concepts are not man-made channels
13630 and shall be exempt from any flow rate capacity and velocity requirements for natural or
13631 manmade channels:
- 13632 a. Concentrated stormwater runoff leaving a development site shall be discharged
13633 directly into an adequate natural or man-made receiving channel, pipe or storm sewer
13634 system. For those sites where runoff is discharged into a pipe or pipe system,
13635 downstream stability analyses at the outfall of the pipe or pipe system shall be
13636 performed.
- 13637 b. Adequacy of all channels and pipes shall be verified in the following manner:
- 13638 (1) The applicant shall demonstrate that the total drainage area to the point of analysis
13639 within the channel is 100 times greater than the contributing drainage area of the
13640 project in question; or
- 13641 (2) (a) Natural channels shall be analyzed by the use of a two-year storm to verify that
13642 stormwater will not overtop channel banks nor cause erosion of channel bed or banks.
- 13643 (b) All previously constructed man-made channels shall be analyzed by the use of a
13644 10- year storm to verify that stormwater will not overtop its banks and by the use of a
13645 two-year storm to demonstrate that stormwater will not cause erosion of channel bed
13646 or banks; and
- 13647 (c) Pipes and storm sewer systems shall be analyzed by the use of a 10-year storm to
13648 verify that stormwater will be contained within the pipe or system.
- 13649 c. If existing natural receiving channels or previously constructed man-made channels
13650 or pipes are not adequate, the applicant shall:
- 13651 (1) Improve the channels to a condition where a 10-year storm will not overtop the
13652 banks and a two-year storm will not cause erosion to the channel, the bed, or the
13653 banks;
- 13654 (2) Improve the pipe or pipe system to a condition where the 10-year storm is
13655 contained within the appurtenances;
- 13656 (3) Develop a site design that will not cause the pre-development peak runoff rate from
13657 a two-year storm to increase when runoff outfalls into a natural channel or will not
13658 cause the pre-development peak runoff rate from a 10-year storm to increase when
13659 runoff outfalls into a man-made channel; or
- 13660 (4) Provide a combination of channel improvement, stormwater detention or other
13661 measures which is satisfactory to the VESCP or VESMP authority to prevent
13662 downstream erosion.
- 13663 d. The applicant shall provide evidence of permission to make the improvements.
- 13664 e. All hydrologic analyses shall be based on the existing watershed characteristics and
13665 the ultimate development condition of the subject project.
- 13666 f. If the applicant chooses an option that includes stormwater detention, he shall obtain
13667 approval from the VESCP or VESMP authority for a plan for maintenance of the
13668 detention facilities. The plan shall set forth the maintenance requirements of the facility
13669 and the person responsible for performing the maintenance.
- 13670 g. Outfall from a detention facility shall be discharged to a receiving channel, and
13671 energy dissipators shall be placed at the outfall of all detention facilities as necessary
13672 to provide a stabilized transition from the facility to the receiving channel.
- 13673 h. All on-site channels must be verified to be adequate.

13674 i. Increased volumes of sheet flows that may cause erosion or sedimentation on
 13675 adjacent property shall be diverted to a stable outlet, adequate channel, pipe or pipe
 13676 system, or to a detention facility.

13677 j. In applying these stormwater management criteria, individual lots or parcels in a
 13678 residential, commercial or industrial development shall not be considered to be
 13679 separate development projects. Instead, the development, as a whole, shall be
 13680 considered to be a single development project. Hydrologic parameters that reflect the
 13681 ultimate development condition shall be used in all engineering calculations.

13682 k. All measures used to protect properties and waterways shall be employed in a
 13683 manner which minimizes impacts on the physical, chemical and biological integrity of
 13684 rivers, streams and other waters of the state.

13685 l. Any plan approved prior to July 1, 2014, that provides for stormwater management
 13686 that addresses any flow rate capacity and velocity requirements for natural or
 13687 manmade channels shall satisfy the flow rate capacity and velocity requirements for
 13688 natural or man-made channels if the practices are designed to (i) detain the water
 13689 quality volume and to release it over 48 hours; (ii) detain and release over a 24-hour
 13690 period the expected rainfall resulting from the one year, 24-hour storm; and (iii) reduce
 13691 the allowable peak flow rate resulting from the 1.5, 2, and 10-year, 24-hour storms to
 13692 a level that is less than or equal to the peak flow rate from the site assuming it was in
 13693 a good forested condition, achieved through multiplication of the forested peak flow
 13694 rate by a reduction factor that is equal to the runoff volume from the site when it was
 13695 in a good forested condition divided by the runoff volume from the site in its proposed
 13696 condition, and shall be exempt from any flow rate capacity and velocity requirements
 13697 for natural or man-made channels as defined in any regulations promulgated pursuant
 13698 to § 62.1-44.15:28 of the VESMA or § 62.1-44.15:54 or § 62.1-44.15:65 of the ESCL.

13699 m. For plans approved on and after July 1, 2014, the flow rate capacity and velocity
 13700 requirements of § 62.1-44.15:52 A of the ESCL and this subsection shall be satisfied
 13701 by compliance with water quantity requirements in the VESMA and attendant
 13702 regulations, unless such land-disturbing activities (i) are in accordance with provisions
 13703 for time limits on applicability of approved design criteria in 9VAC25-875-480 or
 13704 grandfathering in 9VAC25-875-490, in which case the flow rate capacity and velocity
 13705 requirements of § 62.1-44.15:52 A of the ESCL shall apply, or (ii) are exempt pursuant
 13706 to § 62.1-44.15:34 G 2 of the VESMA.

13707 n. Compliance with the water quantity minimum standards set out in 9VAC25-875-600
 13708 shall be deemed to satisfy the requirements of this subdivision 19.

13709 Article 3

13710 Water quantity and water quality technical criteria

13711 **9VAC25-875-570. Applicability.**

13712 In accordance with the board's authority and except as provided in 9VAC25-875-490, Article
 13713 3 of Part V of this chapter establishes the minimum technical criteria that shall be employed to
 13714 protect the quality and quantity of state waters from the potential harm of unmanaged stormwater
 13715 runoff resulting from land-disturbing activities.

13716 **9VAC25-875-580. Water quality design criteria requirements.**

13717 A. In order to protect the quality of state waters and to control the discharge of stormwater
 13718 pollutants from regulated activities, the following minimum design criteria and statewide standards
 13719 for stormwater management shall be applied to the site.

- 13720 1. New development. The total phosphorus load of new development projects shall not
 13721 exceed 0.41 pounds per acre per year, as calculated pursuant to 9VAC25-875-590.
- 13722 2. Development on prior developed lands.
- 13723 a. For land-disturbing activities disturbing greater than or equal to one acre that result
 13724 in no net increase in impervious cover from the predevelopment condition, the total
 13725 phosphorus load shall be reduced at least 20% below the predevelopment total
 13726 phosphorus load.
- 13727 b. For regulated land-disturbing activities disturbing less than one acre that result in
 13728 no net increase in impervious cover from the predevelopment condition, the total
 13729 phosphorus load shall be reduced at least 10% below the predevelopment total
 13730 phosphorus load.
- 13731 c. For land-disturbing activities that result in a net increase in impervious cover over
 13732 the predevelopment condition, the design criteria for new development shall be applied
 13733 to the increased impervious area. Depending on the area of disturbance, the criteria
 13734 of subdivisions a or b above, shall be applied to the remainder of the site.
- 13735 d. In lieu of subdivision c of this subsection, the total phosphorus load of a linear
 13736 development project occurring on prior developed lands shall be reduced 20% below
 13737 the predevelopment total phosphorus load.
- 13738 e. The total phosphorus load shall not be required to be reduced to below the
 13739 applicable standard for new development unless a more stringent standard has been
 13740 established by a locality.
- 13741 B. Compliance with subsection A of this section shall be determined in accordance with
 13742 9VAC25-875-590.
- 13743 C. Nothing in this section shall prohibit a VESMP authority from establishing more stringent
 13744 water quality design criteria requirements in accordance with § 62.1-44.15:33 of the Code of
 13745 Virginia.
- 13746 **9VAC25-875-590. Water quality compliance.**
- 13747 A. Compliance with the water quality design criteria set out in subdivisions A 1 and A 2 of
 13748 9VAC25-875-580 shall be determined by utilizing the Virginia Runoff Reduction Method or
 13749 another equivalent methodology that is approved by the department.
- 13750 B. The BMPs listed in this subsection are approved for use as necessary to effectively reduce
 13751 the phosphorus load and runoff volume in accordance with the Virginia Runoff Reduction Method.
 13752 Other approved BMPs found through the Virginia Stormwater BMP Clearinghouse may also be
 13753 utilized. Design specifications and the pollutant removal efficiencies for all approved BMPs are
 13754 found through the Virginia Stormwater BMP Clearinghouse.
- 13755 1. Vegetated Roof (Version 2.3, March 1, 2011);
- 13756 2. Rooftop Disconnection (Version 1.9, March 1, 2011);
- 13757 3. Rainwater Harvesting (Version 1.9.5, March 1, 2011);
- 13758 4. Soil Amendments (Version 1.8, March 1, 2011);
- 13759 5. Permeable Pavement (Version 1.8, March 1, 2011);
- 13760 6. Grass Channel (Version 1.9, March 1, 2011);
- 13761 7. Bioretention (Version 1.9, March 1, 2011);
- 13762 8. Infiltration (Version 1.9, March 1, 2011);
- 13763 9. Dry Swale (Version 1.9, March 1, 2011);
- 13764 10. Wet Swale (Version 1.9, March 1, 2011);
- 13765 11. Sheet Flow to Filter/Open Space (Version 1.9, March 1, 2011);

13766 12. Extended Detention Pond (Version 1.9, March 1, 2011);

13767 13. Filtering Practice (Version 1.8, March 1, 2011);

13768 14. Constructed Wetland (Version 1.9, March 1, 2011); and

13769 15. Wet Pond (Version 1.9, March 1, 2011).

13770 C. Nonproprietary BMPs differing from those listed in subsection B of this section or
 13771 proprietary BMPs certified in other states shall be reviewed and approved by the director in
 13772 accordance with procedures established by the department.

13773 D. Proprietary BMPs listed through the Virginia Stormwater BMP Clearinghouse are approved
 13774 for use in accordance with the Virginia Runoff Reduction Method. Any proprietary BMP approved
 13775 for use after July 1, 2020, must meet the requirements of § 62.1-44.15:28 A 9 of the Code of
 13776 Virginia.

13777 E. A VESMP authority may establish limitations on the use of specific BMPs in accordance
 13778 with § 62.1-44.15:33 of the Code of Virginia.

13779 F. The VESMP authority or department as the VSMP authority shall have the discretion to
 13780 allow for application of the design criteria to each drainage area of the site. However, where a site
 13781 drains to more than one HUC, the pollutant load reduction requirements shall be applied
 13782 independently within each HUC unless reductions are achieved in accordance with a
 13783 comprehensive watershed stormwater management plan in accordance with 9VAC25-875-660.

13784 G. Offsite alternatives where allowed in accordance with 9VAC25-875-610 may be utilized to
 13785 meet the design criteria of subsection A of 9VAC25-875-580.

13786 H. Any publicly owned treatment works that is permitted under the watershed general VPDES
 13787 permit pursuant to § 62.1-44.19:14 of the Code of Virginia and is constructing or expanding the
 13788 treatment works, wastewater collection system, or other facility used for public wastewater utility
 13789 operations may, in accordance with § 62.1-44.19:21.2 C of the Code of Virginia, permanently
 13790 retire a portion of its wasteload allocation to meet the design criteria of subsection A of 9VAC25-
 13791 875-580. Notice shall be given by such applicant to the VESMP authority and to the department.

13792 **9VAC25-875-600. Water quantity.**

13793 A. Channel protection and flood protection shall be addressed in accordance with the
 13794 minimum standards set out in this section, which are established pursuant to the requirements of
 13795 § 62.1-44.15:28 of the Code of Virginia or as permitted in accordance with § 62.1-44.15:27.2 of
 13796 the Code of Virginia. Nothing in this section shall prohibit a locality's VESMP authority from
 13797 establishing a more stringent standard in accordance with § 62.1- 44.15:33 of the Code of Virginia
 13798 especially where more stringent requirements are necessary to address total maximum daily load
 13799 requirements or to protect exceptional state waters. Compliance with the minimum standards set
 13800 out in this section shall be deemed to satisfy the requirements of subdivision 19 of 9VAC25-875-
 13801 560.

13802 B. Channel protection. Concentrated stormwater flow shall be released into a stormwater
 13803 conveyance system and shall meet the criteria in subdivision 1, 2, or 3 of this subsection, where
 13804 applicable, from the point of discharge to a point to the limits of analysis in subdivision 4 of this
 13805 subsection.

13806 1. Manmade stormwater conveyance systems. When stormwater from a development is
 13807 discharged to a manmade stormwater conveyance system, following the land-disturbing
 13808 activity, either:

13809 a. The manmade stormwater conveyance system shall convey the post-development
 13810 peak flow rate from the two-year 24-hour storm event without causing erosion of the
 13811 system. Detention of stormwater or downstream improvements may be incorporated

- 13812 into the approved land-disturbing activity to meet this criterion, at the discretion of the
 13813 VESMP authority or department as the VSMP authority; or
- 13814 b. The peak discharge requirements for concentrated stormwater flow to natural
 13815 stormwater conveyance systems in subdivision 3 of this subsection shall be met.
- 13816 2. Restored stormwater conveyance systems. When stormwater from a development is
 13817 discharged to a restored stormwater conveyance system that has been restored using
 13818 natural design concepts, following the land-disturbing activity, either:
- 13819 a. The development shall be consistent, in combination with other stormwater runoff,
 13820 with the design parameters of the restored stormwater conveyance system that is
 13821 functioning in accordance with the design objectives; or
- 13822 b. The peak discharge requirements for concentrated stormwater flow to natural
 13823 stormwater conveyance systems in subdivision 3 of this subsection shall be met.
- 13824 3. Natural stormwater conveyance systems. When stormwater from a development is
 13825 discharged to a natural stormwater conveyance system, the maximum peak flow rate from
 13826 the one-year 24-hour storm following the land-disturbing activity shall be calculated either:
- 13827 a. In accordance with the following methodology:
- 13828 $Q_{\text{Developed}} \leq \text{I.F.} * (Q_{\text{Pre-developed}} * RV_{\text{Pre-Developed}}) / RV_{\text{Developed}}$
- 13829 Under no condition shall $Q_{\text{Developed}}$ be greater than $Q_{\text{Pre-Developed}}$ nor shall $Q_{\text{Developed}}$ be
 13830 required to be less than that calculated in the equation $(Q_{\text{Forest}} * RV_{\text{Forest}}) / RV_{\text{Developed}}$;
 13831 where
- 13832 I.F. (Improvement Factor) equals 0.8 for sites > 1 acre or 0.9 for sites ≤ 1 acre.
- 13833 $Q_{\text{Developed}}$ = The allowable peak flow rate of runoff from the developed site.
- 13834 $RV_{\text{Developed}}$ = The volume of runoff from the site in the developed condition.
- 13835 $Q_{\text{Pre-Developed}}$ = The peak flow rate of runoff from the site in the pre-developed condition.
- 13836 $RV_{\text{Pre-Developed}}$ = The volume of runoff from the site in pre-developed condition.
- 13837 Q_{Forest} = The peak flow rate of runoff from the site in a forested condition.
- 13838 RV_{Forest} = The volume of runoff from the site in a forested condition; or
- 13839 b. In accordance with another methodology that is demonstrated by the VESMP
 13840 authority to achieve equivalent results and is approved by the department.
- 13841 4. Limits of analysis. Unless subdivision 3 of this subsection is utilized to show compliance
 13842 with the channel protection criteria, stormwater conveyance systems shall be analyzed for
 13843 compliance with channel protection criteria to a point where either:
- 13844 a. Based on land area, the site's contributing drainage area is less than or equal to
 13845 1.0% of the total watershed area; or
- 13846 b. Based on peak flow rate, the site's peak flow rate from the one-year 24-hour storm
 13847 is less than or equal to 1.0% of the existing peak flow rate from the one-year 24-hour
 13848 storm prior to the implementation of any stormwater quantity control measures.
- 13849 C. Flood protection. Concentrated stormwater flow shall be released into a stormwater
 13850 conveyance system and shall meet one of the following criteria as demonstrated by use of
 13851 acceptable hydrologic and hydraulic methodologies:
- 13852 1. Concentrated stormwater flow to stormwater conveyance systems that currently do not
 13853 experience localized flooding during the 10-year 24-hour storm event: The point of
 13854 discharge releases stormwater into a stormwater conveyance system that, following the
 13855 land-disturbing activity, confines the post-development peak flow rate from the 10-year
 13856 24- hour storm event within the stormwater conveyance system. Detention of stormwater

13857 or downstream improvements may be incorporated into the approved land-disturbing
 13858 activity to meet this criterion, at the discretion of the VESMP authority.

13859 2. Concentrated stormwater flow to stormwater conveyance systems that currently
 13860 experience localized flooding during the 10-year 24-hour storm event: The point of
 13861 discharge either:

13862 a. Confines the post-development peak flow rate from the 10-year 24-hour storm event
 13863 within the stormwater conveyance system to avoid the localized flooding. Detention of
 13864 stormwater or downstream improvements may be incorporated into the approved land-
 13865 disturbing activity to meet this criterion, at the discretion of the VESMP authority or
 13866 department as the VSMP authority; or

13867 b. Releases a post-development peak flow rate for the 10-year 24-hour storm event
 13868 that is less than the predevelopment peak flow rate from the 10-year 24-hour storm
 13869 event. Downstream stormwater conveyance systems do not require any additional
 13870 analysis to show compliance with flood protection criteria if this option is utilized.

13871 3. Limits of analysis. Unless subdivision 2 b of this subsection is utilized to comply with
 13872 the flood protection criteria, stormwater conveyance systems shall be analyzed for
 13873 compliance with flood protection criteria to a point where:

13874 a. The site's contributing drainage area is less than or equal to 1.0% of the total
 13875 watershed area draining to a point of analysis in the downstream stormwater
 13876 conveyance system;

13877 b. Based on peak flow rate, the site's peak flow rate from the 10-year 24-hour storm
 13878 event is less than or equal to 1.0% of the existing peak flow rate from the 10-year 24-
 13879 hour storm event prior to the implementation of any stormwater quantity control
 13880 measures; or

13881 c. The stormwater conveyance system enters a mapped floodplain or other flood-
 13882 prone area, adopted by ordinance, of any locality.

13883 D. Increased volumes of sheet flow resulting from pervious or disconnected impervious areas,
 13884 or from physical spreading of concentrated flow through level spreaders, shall be identified and
 13885 evaluated for potential impacts on down-gradient properties or resources. Increased volumes of
 13886 sheet flow that will cause or contribute to erosion, sedimentation, or flooding of down gradient
 13887 properties or resources shall be diverted to a stormwater management facility or a stormwater
 13888 conveyance system that conveys the runoff without causing down-gradient erosion,
 13889 sedimentation, or flooding. If all runoff from the site is sheet flow and the conditions of this
 13890 subsection are met, no further water quantity controls are required.

13891 E. For purposes of computing predevelopment runoff, all pervious lands on the site shall be
 13892 assumed to be in good hydrologic condition in accordance with the U.S. Department of
 13893 Agriculture's Natural Resources Conservation Service (NRCS) standards, regardless of
 13894 conditions existing at the time of computation. Predevelopment runoff calculations utilizing other
 13895 hydrologic conditions may be utilized provided that it is demonstrated to and approved by the
 13896 VESMP authority that actual site conditions warrant such considerations.

13897 F. Predevelopment and post-development runoff characteristics and site hydrology shall be
 13898 verified by site inspections, topographic surveys, available soil mapping or studies, and
 13899 calculations consistent with good engineering practices. Guidance provided in the Virginia
 13900 Stormwater Management Handbook and the Virginia Stormwater BMP Clearinghouse shall be
 13901 considered appropriate practices.

13902 **9VAC25-875-610. Offsite compliance options.**

13903 A. No offsite option shall be used in contravention of local water quality-based limitations (i)
 13904 determined pursuant to subsection B of § 62.1-44.19:14 of the Code of Virginia, (ii) adopted

13905 pursuant to § 62.1-44.15:33 of the Code of Virginia or other applicable authority, (iii) deemed
 13906 necessary to protect public water supplies from demonstrated adverse nutrient impacts, or (iv) as
 13907 otherwise may be established or approved by the department. Where such a limitation exists,
 13908 offsite options may be used provided that such options do not preclude or impair compliance with
 13909 the local limitation.

13910 B. Unless prohibited by subsection A, a VESMP authority or the department as the VSMP
 13911 authority:

13912 1. May allow the use of offsite options for compliance with water quality and water quantity
 13913 technical criteria established pursuant to § 62.1-44.15:28 of the Code of Virginia, in whole
 13914 or in part; and

13915 2. Shall allow the use of nutrient credits for compliance with the water quality technical
 13916 criteria when:

13917 a. Less than five acres of land will be disturbed;

13918 b. The phosphorous water quality reduction requirement is less than 10 pounds per
 13919 year; or

13920 c. It is demonstrated to the satisfaction of the VESMP authority or department as the
 13921 VSMP authority that (i) alternative site designs have been considered that may
 13922 accommodate onsite best management practices, (ii) onsite best management
 13923 practices have been considered in alternative site designs to the maximum extent
 13924 practicable, (iii) appropriate onsite best management practices will be implemented,
 13925 and (iv) compliance with quality technical criteria cannot practicably be met onsite. The
 13926 requirements of clauses (i) through (iv) shall be deemed to have been met if it is
 13927 demonstrated that onsite control of at least 75 percent of the required phosphorous
 13928 water quality reduction will be achieved.

13929 C. The VESMP authority or department as the VSMP authority shall require that offsite options
 13930 approved by the department or applicable state board achieve the necessary phosphorous water
 13931 quality reductions prior to the commencement of the land-disturbing activity. In the case of a
 13932 phased project, the land disturber may acquire or achieve the offsite nutrient reductions prior to
 13933 the commencement of each phase of the land-disturbing activity in an amount sufficient for each
 13934 such phase.

13935 D. Nutrient credits shall not be used to address water quantity technical criteria.

13936 E. Nutrient credits shall be generated in the same or adjacent fourth order subbasin, as
 13937 defined by the hydrologic unit boundaries of the National Watershed Boundary Dataset, as the
 13938 land-disturbing activity. If no credits are available within these subbasins when the VESMP or
 13939 department as the VSMP authority accepts the final site design, credits available within the same
 13940 tributary may be used. The following requirements apply to the use of nutrient credits:

13941 1. Documentation of the acquisition of nutrient credits shall be provided to the VESMP
 13942 authority and the department or the department as the VSMP authority in a certification
 13943 from the credit provider documenting the number of phosphorus nutrient credits acquired
 13944 and the associated ratio of nitrogen nutrient credits at the credit-generating entity.

13945 2. Application fees are provided in 9VAC25-900 et seq. Fees shall be deposited into the
 13946 Virginia Stormwater Management Fund established by § 62.1-44.15:29 of the Code of
 13947 Virginia.

13948 3. For that portion of a site's compliance with water quality technical criteria being obtained
 13949 through nutrient credits, the land disturber shall (i) comply with a 1:1 ratio of the nutrient
 13950 credits to the site's remaining post-development nonpoint nutrient runoff compliance
 13951 requirement being met by credit use and (ii) use credits certified as perpetual credits

13952 pursuant to Article 4.02 (§ 62.1-44.19:12 et seq.) of Chapter 3.1 of Title 62.1 of the Code
 13953 of Virginia.

13954 4. A VESMP or department as the VSMP authority shall allow the full or partial substitution
 13955 of perpetual nutrient credits for existing onsite nutrient controls when (i) the nutrient credits
 13956 will compensate for 10 or fewer pounds of the annual phosphorous requirement
 13957 associated with the original land-disturbing activity or (ii) existing onsite controls are not
 13958 functioning as anticipated after reasonable attempts to comply with applicable
 13959 maintenance agreements or requirements and the use of nutrient credits will account for
 13960 the deficiency. Upon determination by the VESMP or department that the conditions
 13961 established by clause (i) or (ii) have been met, the party responsible for maintenance shall
 13962 be released from maintenance obligations related to the onsite phosphorous controls for
 13963 which the nutrient credits are substituted.

13964 F. Exchange of a credit released by the department is subject to the provisions of § 62.1-
 13965 44.15:35, 62.1-44.19:15, or 62.1-44.19:21 of the Code of Virginia. Where necessary to ensure
 13966 compliance with local water quality requirements, the exchange of a credit released by the
 13967 department is conditioned by 9VAC25-900-91 B and C.

13968 **9VAC25-875-620. Design storms and hydrologic methods.**

13969 A. Unless otherwise specified, the prescribed design storms are the one-year, two-year, and
 13970 10-year 24-hour storms using the site-specific rainfall precipitation frequency data recommended
 13971 by the U.S. National Oceanic and Atmospheric Administration (NOAA) Atlas 14. Partial duration
 13972 time series shall be used for the precipitation data.

13973 B. Unless otherwise specified, all hydrologic analyses shall be based on the existing
 13974 watershed characteristics and how the ultimate development condition of the subject project will
 13975 be addressed.

13976 C. The U.S. Department of Agriculture's Natural Resources Conservation Service (NRCS)
 13977 synthetic 24-hour rainfall distribution and models, including, but not limited to TR-55 and TR-20;
 13978 hydrologic and hydraulic methods developed by the U.S. Army Corps of Engineers; or other
 13979 standard hydrologic and hydraulic methods, shall be used to conduct the analyses described in
 13980 this part.

13981 D. For drainage areas of 200 acres or less, the VESMP authority or department as the VSMP
 13982 authority may allow for the use of the Rational Method for evaluating peak discharges.

13983 E. For drainage areas of 200 acres or less, the VESMP authority or department as the VSMP
 13984 authority may allow for the use of the Modified Rational Method for evaluating volumetric flows to
 13985 stormwater conveyances.

13986 **9VAC25-875-630. Stormwater harvesting.**

13987 In accordance with § 62.1-44.15:28 of the Code of Virginia, stormwater harvesting is
 13988 encouraged for the purposes of landscape irrigation systems, fire protection systems, flushing
 13989 water closets and urinals, and other water handling systems to the extent such systems are
 13990 consistent with federal, state, and local regulations.

13991 **9VAC25-875-640. Linear development projects.**

13992 Linear development projects shall control post-development stormwater runoff in accordance
 13993 with a site-specific stormwater management plan or a comprehensive watershed stormwater
 13994 management plan developed in accordance with these regulations.

13995 **9VAC25-875-650. Stormwater management impoundment structures or facilities.**

13996 A. Stormwater management wet ponds and extended detention ponds that are not covered
 13997 by the Impounding Structure Regulations (4VAC50-20) shall, at a minimum, be engineered for
 13998 structural integrity for the 100-year storm event.

13999 B. Construction of stormwater management impoundment structures or facilities may occur in
 14000 karst areas only after a study of the geology and hydrology of the area has been conducted to
 14001 determine the presence or absence of karst features that may be impacted by stormwater runoff
 14002 and BMP placement.

14003 C. Discharge of stormwater runoff to a karst feature shall meet the water quality criteria set
 14004 out in 9VAC25-875-580 and the water quantity criteria set out in 9VAC25-875-600. Permanent
 14005 stormwater management impoundment structures or facilities shall only be constructed in karst
 14006 features after completion of a geotechnical investigation that identifies any necessary
 14007 modifications to the BMP to ensure its structural integrity and maintain its water quality and
 14008 quantity efficiencies. The person responsible for the land-disturbing activity is encouraged to
 14009 screen for known existence of heritage resources in the karst features.

14010 **9VAC25-875-660. Comprehensive stormwater management plans.**

14011 A VESMP authority may develop comprehensive stormwater management plans to be
 14012 approved by the department that meet the water quality objectives, quantity objectives, or both of
 14013 Part V of this chapter:

14014 1. Such plans shall ensure that offsite reductions equal to or greater than those that would
 14015 be required on each contributing site are achieved within the same HUC or within another
 14016 locally designated watershed. Pertaining to water quantity objectives, the plan may
 14017 provide for implementation of a combination of channel improvement, stormwater
 14018 detention, or other measures that are satisfactory to the locality's VESMP authority to
 14019 prevent downstream erosion and flooding.

14020 2. If the land use assumptions upon which the plan was based change or if any other
 14021 amendments are deemed necessary by the locality's VESMP authority, such authority
 14022 shall provide plan amendments to the department for review and approval.

14023 3. During the plan's implementation, the locality's VESMP authority shall document
 14024 nutrient reductions credited to the BMPs specified in the plan.

14025 4. State agencies and federal entities may develop comprehensive stormwater
 14026 management plans, and may participate in locality-developed comprehensive stormwater
 14027 management plans where practicable and permitted by the locality's VESMP authority.

14028 Article 4

14029 Water quantity and water quality technical criteria for grandfathered projects and time limits of
 14030 applicability projects

14031 **9VAC25-875-670. Definitions.**

14032 For the purposes of Article 4 (9VAC25-875-670 et seq) of Part V of this chapter only, the
 14033 following words and terms have the following meanings unless the context clearly indicates
 14034 otherwise:

14035 "Aquatic bench" means a 10-foot to 15-foot wide bench around the inside perimeter of a
 14036 permanent pool that ranges in depth from zero to 12 inches. Vegetated with emergent plants, the
 14037 bench augments pollutant removal, provides habitats, conceals trash and water level fluctuations,
 14038 and enhances safety.

14039 "Average land cover condition" means a measure of the average amount of impervious
 14040 surfaces within a watershed, assumed to be 16% or a calculated watershed-specific value for the
 14041 average land cover condition as approved by the Chesapeake Bay Local Assistance Board prior
 14042 to September 13, 2011.

14043 "Bioretention basin" means a water quality BMP engineered to filter the water quality volume
 14044 (i) through an engineered planting bed consisting of a vegetated surface layer (vegetation, mulch,
 14045 ground cover), planting soil, and sand bed and (ii) into the in-situ material.

14046 "Bioretention filter" means a bioretention basin with the addition of a sand filter collector pipe
14047 system beneath the planting bed.

14048 "Constructed wetlands" means areas intentionally designed and created to emulate the water
14049 quality improvement function of wetlands for the primary purpose of removing pollutants from
14050 stormwater.

14051 "Development" means a tract of land developed or to be developed as a unit under single
14052 ownership or unified control which is to be used for any business or industrial purpose or is to
14053 contain three or more residential dwelling units.

14054 "Grassed swale" means an earthen conveyance system which is broad and shallow with
14055 erosion resistant grasses and check dams, engineered to remove pollutants from stormwater
14056 runoff by filtration through grass and infiltration into the soil.

14057 "Infiltration facility" means a stormwater management facility that temporarily impounds runoff
14058 and discharges it via infiltration through the surrounding soil. While an infiltration facility may also
14059 be equipped with an outlet structure to discharge impounded runoff, such discharge is normally
14060 reserved for overflow and other emergency conditions. Since an infiltration facility impounds runoff
14061 only temporarily, it is normally dry during nonrainfall periods. Infiltration basin, infiltration trench,
14062 infiltration dry well, and porous pavement shall be considered infiltration facilities.

14063 "Layout" means a conceptual drawing sufficient to provide for the specified stormwater
14064 management facilities required at the time of approval.

14065 "Nonpoint source pollutant runoff load" or "pollutant discharge" means the average amount of
14066 a particular pollutant measured in pounds per year, delivered in a diffuse manner by stormwater
14067 runoff.

14068 "Planning area" means a designated portion of the parcel on which the land development
14069 project is located. Planning areas shall be established by delineation on a master plan. Once
14070 established, planning areas shall be applied consistently for all future projects.

14071 "Sand filter" means a contained bed of sand that acts to filter the first flush of runoff. The runoff
14072 is then collected beneath the sand bed and conveyed to an adequate discharge point or infiltrated
14073 into the in-situ soils.

14074 "Shallow marsh" means a zone within a stormwater extended detention basin that exists from
14075 the surface of the normal pool to a depth of six to 18 inches, and has a large surface area and,
14076 therefore, requires a reliable source of baseflow, groundwater supply, or a sizeable drainage area
14077 to maintain the desired water surface elevations to support emergent vegetation.

14078 "Stormwater detention basin" or "detention basin" means a stormwater management facility
14079 that temporarily impounds runoff and discharges it through a hydraulic outlet structure to a
14080 downstream conveyance system. While a certain amount of outflow may also occur via infiltration
14081 through the surrounding soil, such amounts are negligible when compared to the outlet structure
14082 discharge rates and are, therefore, not considered in the facility's design. Since a detention facility
14083 impounds runoff only temporarily, it is normally dry during nonrainfall periods.

14084 "Stormwater extended detention basin" or "extended detention basin" means a stormwater
14085 management facility that temporarily impounds runoff and discharges it through a hydraulic outlet
14086 structure over a specified period of time to a downstream conveyance system for the purpose of
14087 water quality enhancement or stream channel erosion control. While a certain amount of outflow
14088 may also occur via infiltration through the surrounding soil, such amounts are negligible when
14089 compared to the outlet structure discharge rates and, therefore, are not considered in the facility's
14090 design. Since an extended detention basin impounds runoff only temporarily, it is normally dry
14091 during nonrainfall periods.

14092 "Stormwater extended detention basin-enhanced" or "extended detention basin-enhanced"
14093 means an extended detention basin modified to increase pollutant removal by providing a shallow
14094 marsh in the lower stage of the basin.

14095 "Stormwater retention basin" or "retention basin" means a stormwater management facility
14096 that includes a permanent impoundment, or normal pool of water, for the purpose of enhancing
14097 water quality and, therefore, is normally wet even during nonrainfall periods. Storm runoff inflows
14098 may be temporarily stored above this permanent impoundment for the purpose of reducing
14099 flooding or stream channel erosion.

14100 "Stormwater retention basin I" or "retention basin I" means a retention basin with the volume
14101 of the permanent pool equal to three times the water quality volume.

14102 "Stormwater retention basin II" or "retention basin II" means a retention basin with the volume
14103 of the permanent pool equal to four times the water quality volume.

14104 "Stormwater retention basin III" or "retention basin III" means a retention basin with the volume
14105 of the permanent pool equal to four times the water quality volume with the addition of an aquatic
14106 bench.

14107 "Vegetated filter strip" means a densely vegetated section of land engineered to accept runoff
14108 as overland sheet flow from upstream development. It shall adopt any natural vegetated form,
14109 from grassy meadow to small forest. The vegetative cover facilitates pollutant removal through
14110 filtration, sediment deposition, infiltration, and absorption, and is dedicated for that purpose.

14111 "Water quality volume" means the volume equal to the first 1/2 inch of runoff multiplied by the
14112 impervious surface of the land development project.

14113 **9VAC25-875-680. Applicability.**

14114 This part specifies the technical criteria for regulated land-disturbing activities that are not
14115 subject to the technical criteria of Article 3 (9VAC25-875-570 et seq.) of Part V of this chapter in
14116 accordance with 9VAC25-875-490.

14117 **9VAC25-875-690. General.**

14118 A. Determination of flooding and channel erosion impacts to receiving streams due to land-
14119 disturbing activities shall be measured at each point of discharge from the land disturbance and
14120 such determination shall include any runoff from the balance of the watershed that also
14121 contributes to that point of discharge.

14122 B. The specified design storms shall be defined as either a 24-hour storm using the rainfall
14123 distribution recommended by the U.S. Department of Agriculture's Natural Resources
14124 Conservation Service (NRCS) when using NRCS methods or as the storm of critical duration that
14125 produces the greatest required storage volume at the site when using a design method such as
14126 the Modified Rational Method.

14127 C. For purposes of computing runoff, all pervious lands in the site shall be assumed prior to
14128 development to be in good condition (if the lands are pastures, lawns, or parks), with good cover
14129 (if the lands are woods), or with conservation treatment (if the lands are cultivated); regardless of
14130 conditions existing at the time of computation.

14131 D. Construction of stormwater management facilities or modifications to channels shall comply
14132 with all applicable laws, regulations, and ordinances. Evidence of approval of all necessary
14133 permits shall be presented.

14134 E. Impounding structures that are not covered by the Impounding Structure Regulations
14135 (4VAC50-20) shall be engineered for structural integrity during the 100-year storm event.

14136 F. Predevelopment and post-development runoff rates shall be verified by calculations that
14137 are consistent with good engineering practices.

14138 G. Outflows from a stormwater management facility or stormwater conveyance system shall
 14139 be discharged to an adequate channel.

14140 H. Proposed residential, commercial, or industrial subdivisions shall apply these stormwater
 14141 management criteria to the land disturbance as a whole. Individual lots in new subdivisions shall
 14142 not be considered separate land-disturbing activities, but rather the entire subdivision shall be
 14143 considered a single land development project. Hydrologic parameters shall reflect the ultimate
 14144 land disturbance and shall be used in all engineering calculations.

14145 I. All stormwater management facilities shall have an inspection and maintenance plan that
 14146 identifies the owner and the responsible party for carrying out the inspection and maintenance
 14147 plan.

14148 J. Construction of stormwater management impoundment structures within a Federal
 14149 Emergency Management Agency (FEMA) designated 100-year floodplain shall be avoided
 14150 whenever possible. When this is unavoidable, all stormwater management facility construction
 14151 shall be in compliance with all applicable regulations under the National Flood Insurance Program,
 14152 44 CFR Part 59.

14153 K. Natural channel characteristics shall be preserved to the maximum extent practicable.

14154 L. Land-disturbing activities shall comply with the ESCL or VESMA, as applicable, and
 14155 attendant regulations.

14156 M. Flood control and stormwater management facilities that drain or treat water from multiple
 14157 development projects or from a significant portion of a watershed may be allowed in Resource
 14158 Protection Areas defined in the Chesapeake Bay Preservation Act provided such facilities are
 14159 allowed and constructed in accordance with the VESMA and this chapter, and provided that (i)
 14160 the local government has conclusively established that the location of the facility within the
 14161 Resource Protection Area is the optimum location; (ii) the size of the facility is the minimum
 14162 necessary to provide necessary flood control, stormwater treatment, or both; (iii) the facility must
 14163 be consistent with a comprehensive stormwater management plan developed and approved in
 14164 accordance with 9VAC25-875-660 or with a stormwater management plan that has been
 14165 approved prior to July 1, 2012, by the department, the Chesapeake Bay Local Assistance Board
 14166 prior to its abolishment on July 1, 2012, or the Board of Conservation and Recreation; (iv) all
 14167 applicable permits for construction in state or federal waters must be obtained from the
 14168 appropriate state and federal agencies; (v) approval must be received from the local government
 14169 prior to construction; and (vi) routine maintenance is allowed to be performed on such facilities to
 14170 assure that they continue to function as designed. It is not the intent of this subdivision to allow a
 14171 best management practice that collects and treats runoff from only an individual lot or some
 14172 portion of the lot to be located within a Resource Protection Area.

14173 **9VAC25-875-700. Water quality.**

14174 A. Compliance with the water quality criteria may be achieved by applying the performance-
 14175 based criteria or the technology-based criteria to either the site or a planning area.

14176 B. Performance-based criteria. For land-disturbing activities, the calculated post-development
 14177 nonpoint source pollutant runoff load shall be compared to the calculated predevelopment load
 14178 based upon the average land cover condition or the existing site condition. A BMP shall be
 14179 located, designed, and maintained to achieve the target pollutant removal efficiencies specified
 14180 in Table 1 of this section to effectively reduce the pollutant load to the required level based upon
 14181 the following four applicable land development situations for which the performance criteria apply:

14182 1. Situation 1 consists of land-disturbing activities where the existing percent impervious
 14183 cover is less than or equal to the average land cover condition and the proposed
 14184 improvements will create a total percent impervious cover that is less than the average
 14185 land cover condition.

14186 Requirement: No reduction in the after disturbance pollutant discharge is required.

14187 2. Situation 2 consists of land-disturbing activities where the existing percent impervious
 14188 cover is less than or equal to the average land cover condition and the proposed
 14189 improvements will create a total percent impervious cover that is greater than the average
 14190 land cover condition.

14191 Requirement: The pollutant discharge after disturbance shall not exceed the existing
 14192 pollutant discharge based on the average land cover condition.

14193 3. Situation 3 consists of land-disturbing activities where the existing percent impervious
 14194 cover is greater than the average land cover condition.

14195 Requirement: The pollutant discharge after disturbance shall not exceed (i) the pollutant
 14196 discharge based on existing conditions less 10% or (ii) the pollutant discharge based on
 14197 the average land cover condition, whichever is greater.

14198 4. Situation 4 consists of land-disturbing activities where the existing percent impervious
 14199 cover is served by an existing stormwater management BMP that addresses water quality.

14200 Requirement: The pollutant discharge after disturbance shall not exceed the existing
 14201 pollutant discharge based on the existing percent impervious cover while served by the
 14202 existing BMP. The existing BMP shall be shown to have been designed and constructed
 14203 in accordance with proper design standards and specifications, and to be in proper
 14204 functioning condition.

14205 C. Technology-based criteria. For land-disturbing activities, the post-developed stormwater
 14206 runoff from the impervious cover shall be treated by an appropriate BMP as required by the post-
 14207 developed condition percent impervious cover as specified in Table 1 of this section. The selected
 14208 BMP shall be located, designed, and maintained to perform at the target pollutant removal
 14209 efficiency specified in Table 1 or those found in 9VAC25-875-590.

14210 D. Design standards and specifications for the BMPs in Table 1 that meet the required target
 14211 pollutant removal efficiency are available in the Virginia Stormwater Management Handbook.
 14212 Other approved BMPs available through the Virginia Stormwater BMP Clearinghouse may also
 14213 be utilized.

14214 Table 1

<u>Water Quality BMP*</u>	<u>Target Phosphorus Removal Efficiency</u>	<u>Percent Impervious Cover</u>
<u>Vegetated filter strip</u>	<u>10%</u>	<u>16-21%</u>
<u>Grassed swale</u>	<u>15%</u>	
<u>Constructed wetlands</u>	<u>20%</u>	<u>22-37%</u>
<u>Extended detention (2 x WQ Vol)</u>	<u>35%</u>	
<u>Retention basin I (3 x WQ Vol)</u>	<u>40%</u>	

<u>Bioretention basin</u>	<u>50%</u>	<u>38-66%</u>
<u>Bioretention filter</u>	<u>50%</u>	
<u>Extended detention-enhanced</u>	<u>50%</u>	
<u>Retention basin II (4 x WQ Vol)</u>	<u>50%</u>	
<u>Infiltration (1 x WQ Vol)</u>	<u>50%</u>	
<u>Sand filter</u>	<u>65%</u>	<u>67-100%</u>
<u>Infiltration (2 x WQ Vol)</u>	<u>65%</u>	
<u>Retention basin III (4 x WQ Vol with aquatic bench)</u>	<u>65%</u>	
<u>*Innovative or alternate BMPs not included in this table may be allowed at the discretion of the local program administrator or the department. Innovative or alternate BMPs not included in this table that target appropriate nonpoint source pollution other than phosphorous may be allowed at the discretion of the local program administrator or the department</u>		

14215 E. The VESMP authority or department as the VSMP authority may allow the use of offsite
 14216 nutrient credits under Article 4 (9VAC25-875-670 et seq.) of Part V of this chapter in accordance
 14217 with 9VAC25-875-610.

14218 **9VAC25-875-710. Stream channel erosion.**

14219 A. Properties and receiving waterways downstream of any land-disturbing activity shall be
 14220 protected from erosion and damage due to changes in runoff rate of flow and hydrologic
 14221 characteristics, including, but not limited to, changes in volume, velocity, frequency, duration, and
 14222 peak flow rate of stormwater runoff in accordance with the minimum design standards set out in
 14223 this section.

14224 B. The VESMP authority or department as the VSMP authority shall require compliance with
 14225 subdivision 19 of 9VAC25-875-560.

14226 C. The locality's VESMP authority may determine that some watersheds or receiving stream
 14227 systems require enhanced criteria in order to address the increased frequency of bankfull flow
 14228 conditions (top of bank) brought on by land-disturbing activities or where more stringent
 14229 requirements are necessary to address total maximum daily load requirements or to protect
 14230 exceptional waters. Therefore, in lieu of the reduction of the two-year post-developed peak rate
 14231 of runoff as required in subsection B of this section, the land development project being
 14232 considered shall provide 24-hour extended detention of the runoff generated by the one-year, 24-
 14233 hour duration storm.

14234 D. In addition to subsections B and C of this section, a locality's VESMP authority by local
 14235 ordinance may in accordance with § 62.1-44.15:33 of the Code of Virginia, or the board by state
 14236 regulation may, adopt more stringent channel analysis criteria or design standards to ensure that
 14237 the natural level of channel erosion, to the maximum extent practicable, will not increase due to
 14238 the land-disturbing activities. These criteria may include, but are not limited to, the following:

14239 1. Criteria and procedures for channel analysis and classification.

14240 2. Procedures for channel data collection.

14241 3. Criteria and procedures for the determination of the magnitude and frequency of natural
 14242 sediment transport loads.

14243 4. Criteria for the selection of proposed natural or manmade channel linings.

14244 **9VAC25-875-720. Flooding.**

14245 A. Downstream properties and waterways shall be protected from damages from localized
 14246 flooding due to changes in runoff rate of flow and hydrologic characteristics, including, but not
 14247 limited to, changes in volume, velocity, frequency, duration, and peak flow rate of stormwater
 14248 runoff in accordance with the minimum design standards set out in this section.

14249 B. The 10-year post-developed peak rate of runoff from the development site shall not exceed
 14250 the 10-year pre-developed peak rate of runoff.

14251 C. In lieu of subsection B of this section, localities may, by ordinance in accordance with §
 14252 62.1-44.15:33 of the Code of Virginia, adopt alternate design criteria based upon geographic, land
 14253 use, topographic, geologic factors, or other downstream conveyance factors as appropriate.

14254 D. Linear development projects shall not be required to control post-developed stormwater
 14255 runoff for flooding, except in accordance with a watershed or regional stormwater management
 14256 plan.

14257 **9VAC25-875-730. Regional (watershed-wide) stormwater management plans.**

14258 Water quality requirements and where allowed, water quantity requirements, may be achieved
 14259 in accordance with sections 9VAC25-875-610 and 9VAC25-875-660.

14260 Article 5

14261 Criteria for land-disturbing activities in Chesapeake Bay Preservation Areas

14262 **9VAC25-875-740. Land-disturbing activities in Chesapeake Bay Preservation Areas.**

14263 A. In order to protect the quality of state waters and to control the discharge of stormwater
 14264 pollutants from land-disturbing activities, runoff associated with land-disturbing activities in
 14265 Chesapeake Bay Preservation Areas that are equal to or greater than 2,500 square feet but less
 14266 than one acre shall be regulated by localities subject to the Chesapeake Bay Preservation Act or,
 14267 in the case of state and federal agency projects, the department. In regulating such land-
 14268 disturbing activities in accordance with subsection B of this section, localities shall have the same
 14269 authority and responsibilities as set forth for VESCP and VESMP authorities.

14270 B. After June 30, 2014, such land-disturbing activities shall not require completion of a
 14271 registration statement or require coverage under the General VPDES Permit for Discharges of
 14272 Stormwater from Construction Activities but shall be subject to the following technical criteria and
 14273 program and administrative requirements unless excluded under 9VAC25-875-90 and 9VAC25-
 14274 875-280:

14275 1. An erosion and sediment control plan consistent with the requirements of 9VAC25-875-
 14276 550 must be designed and implemented during land-disturbing activities. Prior to land
 14277 disturbance, this plan must be approved by either the VESCP or VESMP authority in
 14278 accordance with this chapter;

14279 2. A stormwater management plan consistent with the requirements of 9VAC25-875-510
 14280 must be designed and implemented during the land-disturbing activity. The stormwater
 14281 management plan shall be developed and submitted in accordance with 9VAC25-875-
 14282 510. Prior to land disturbance, this plan must be approved by the VESCP or VESMP
 14283 authority;

14284 3. Exceptions may be requested in accordance with 9VAC25-875-170;

14285 4. Long-term maintenance of stormwater management facilities shall be provided for and
 14286 conducted in accordance with 9VAC25-875-535;

14287 5. Water quality design criteria in 9VAC25-875-580 shall be applied to the site;

14288 6. Water quality compliance shall be achieved in accordance with 9VAC25-875-590;

14289 7. Channel protection and flood protection shall be achieved in accordance with 9VAC25-
 14290 875-600 or as permitted by subsection B of 9VAC25-875-750;

14291 8. Offsite compliance options in accordance with 9VAC25-875-610 shall be available to
 14292 land-disturbing activities in Chesapeake Bay Preservation Areas that are equal to or
 14293 greater than 2,500 square feet but less than one acre; and

14294 9. Such land-disturbing activities shall be subject to the design storm and hydrologic
 14295 methods set out in 9VAC25-875-620, linear development controls in 9VAC25-875-640,
 14296 and criteria associated with stormwater impoundment structures or facilities in 9VAC25-
 14297 875-650.

14298 **9VAC25-875-750. Land-disturbing activities in Chesapeake Bay Preservation Areas in rural**
 14299 **Tidewater localities.**

14300 A. Acceptance of signed and sealed plans in lieu of local plan review. In lieu of a local plan
 14301 review or retaining a local certified plan reviewer, a rural Tidewater locality may accept plans and
 14302 supporting calculations for erosion and sediment control and stormwater management for any
 14303 land-disturbing activity equal to or greater than 2,500 square feet but less than one acre if the
 14304 following criteria are met:

14305 1. The plans are prepared and submitted by a professional licensed to engage in practice
 14306 in the Commonwealth under Chapter 4 (§ 54.1-400 et seq.) or 22 (§ 54.1-2200 et seq.) of
 14307 Title 54.1 of the Code of Virginia and who shall hold a certificate of competence in the
 14308 appropriate subject area, as provided in § 62.1-44.15:30 of the Code of Virginia; and

14309 2. The plan and supporting calculations are appropriately signed and sealed by the
 14310 professional with a certification that states: "This plan is designed in accordance with
 14311 applicable state law and regulations.

14312 B. For determining the water quantity technical criteria applicable to a land disturbance equal
 14313 to or greater than 2,500 square feet, but less than one acre, any rural Tidewater locality may elect
 14314 to use certain tiered water quantity control standards based on the percentage of impervious
 14315 cover in the watershed as provided in § 62.1-44.15:27.2 of the Code of Virginia.

14316 C. Tiered approach to water quantity technical criteria compliance.

14317 1. A rural Tidewater locality may adopt the following tiered approach to water quantity
 14318 management based on the percent impervious cover of the watershed in accordance with
 14319 this subsection for land-disturbing activities that disturb an area of 2,500 square feet or
 14320 more but less than one acre:

14321 a. For less than 5.0% impervious cover, apply the Virginia Erosion and Sediment
 14322 Control Minimum Standard 19 in effect prior to July 1, 2014, for the protection of
 14323 downstream properties and waterways from sediment deposition, erosion, and
 14324 damage due to increases in volume, velocity, and peak flow rate of stormwater runoff
 14325 for the stated frequency storm of 24-hour duration.

14326 b. For 5.0% or more impervious cover but less than 7.5%, detain and release over a
 14327 24-hour period the expected rainfall resulting from the one year, 24-hour storm, which
 14328 practices shall be exempt from any flow rate capacity and velocity requirements for
 14329 natural or man-made channels.

14330 c. For 7.5% impervious cover or more, apply the water quantity technical criteria in
 14331 accordance with 9VAC25-875-600.

14332 2. The establishment and conduct of the tiered approach by the locality pursuant to this
 14333 section shall be subject to review by the department.

14334 3. Prior to the adoption and implementation of the tiered approach to water quantity
 14335 management, the local governing body shall:

- 14336 a. Develop a watershed map that includes the following:
- 14337 1) The boundaries of the locality and each watershed located partially or wholly within
- 14338 the locality based on the most recent version of Virginia's 6th order National
- 14339 Watershed Boundary Dataset;
- 14340 2) The percentage of impervious cover within each watershed. Data provided by the
- 14341 Virginia Geographic Information Network (VGIN) shall be sufficient for the initial
- 14342 determination of impervious cover percentage at the time of the initial adoption of the
- 14343 map; and
- 14344 3) The locations at which the governing body expects or proposes that development
- 14345 should occur and may indicate the projected future percentage of impervious cover
- 14346 based on proposed development. The governing body may designate certain areas
- 14347 within a watershed in which it proposes that denser-than-average development shall
- 14348 occur and may designate environmentally sensitive areas in which the water quantity
- 14349 technical criteria in 9VAC25-875-600 shall apply.
- 14350 b. After the watershed map has been developed, the governing body may then
- 14351 approve and adopt the map by a majority vote of its membership and publish it as the
- 14352 official watershed map of the locality. No official watershed map shall be adopted by
- 14353 the governing body or have any effect until it is approved by an ordinance duly passed
- 14354 by the governing body of the locality after a public hearing, preceded by public notice
- 14355 as required by § 15.2-2204 of the Code of Virginia. Within 30 days after adoption of
- 14356 the official watershed map, the governing body shall file the watershed map in the
- 14357 office of the clerk of the circuit court.
- 14358 4. At least once per year, the governing body shall by majority vote make additions to or
- 14359 modifications of the official watershed map to reflect actual development projects. The
- 14360 governing body shall change the indication on the map of the impervious cover percentage
- 14361 within a watershed where the percentage has changed and shall update the map and
- 14362 supporting datasets with actual development project information, including single-family
- 14363 housing projects and any projects covered by the General VPDES Permit for Discharges
- 14364 of Stormwater from Construction Activities and administered by the department for opt-
- 14365 out localities pursuant to § 62.1-44.15:27 of the Code of Virginia. The governing body may
- 14366 incorporate into the official watershed map the most recent VGIN data, including data on
- 14367 state and federal projects that are not reviewed or approved by the locality. The governing
- 14368 body shall keep current its impervious cover percentage for each watershed located within
- 14369 the locality, as reflected in the official watershed map, and shall make the map and such
- 14370 percentages available to the public.
- 14371 5. The locality shall notify the department and update the official watershed map within 12
- 14372 months of the approval of the development plan for any project that exceeds the percent
- 14373 impervious cover percentage of the watershed in which it is located and causes the
- 14374 impervious cover percentage for the watershed to increase such that the watershed
- 14375 percent impervious cover is categorized by the next higher tier pursuant to subdivision B
- 14376 1 of this section.
- 14377 6. No official watershed map or its adopting or amending ordinance shall take precedence
- 14378 over any duly adopted zoning ordinance, comprehensive plan, or other local land-use
- 14379 ordinance, and in the case of a conflict, the official watershed map or ordinance shall yield
- 14380 to such land-use ordinance.

14381

Article 6

14382 Additional criteria and requirements for land-disturbing activities by state agencies and federal
 14383 entities

14384 **9VAC25-875-760. Soil erosion control and stormwater management for land-disturbing**
 14385 **activities.**

14386 The department shall act as a VESMP where state agencies and federal entities have not
 14387 submitted standards and specifications to the department for approval. When a state agency or
 14388 federal entity submits a soil erosion control and stormwater management plan (ESM plan) for a
 14389 project, land disturbance shall not commence until the department has reviewed and approved
 14390 the plan and has issued permit coverage when it is required in accordance with § 62.1-44.15:34
 14391 of the Code of Virginia.

14392 1. The department shall not approve an ESM plan submitted by a state agency or federal
 14393 entity for a project involving a land-disturbing activity (i) in any locality that has not adopted
 14394 a local program with more stringent ordinances than those of the state program or (ii) in
 14395 multiple jurisdictions with separate local programs, unless the plan is consistent with the
 14396 requirements of the state program.

14397 2. The department shall not approve an ESM plan submitted by a state agency or federal
 14398 entity for a project involving a land-disturbing activity in one locality with a local program
 14399 with more stringent ordinances than those of the state program, unless the plan is
 14400 consistent with the requirements of the local program.

14401 3. If onsite changes occur, the state agency or federal entity shall submit an amended
 14402 ESM plan to the department.

14403 4. The state agency or federal entity responsible for the land-disturbing activity shall
 14404 ensure compliance with the approved ESM plan. As necessary, the department shall
 14405 provide project oversight and enforcement.

14406 **9VAC25-875-770. State agency land-disturbing activities.**

14407 A. All state agency land-disturbing activities that are not exempt and that have commenced
 14408 without an approved erosion and sediment control plan shall immediately cease until the state
 14409 agency has either submitted standards and specifications for its conduct of land-disturbing
 14410 activities which has been reviewed and approved by the department as being consistent with the
 14411 VESMA and attendant regulations, or an erosion and sediment control plan has been submitted
 14412 to and approved by the department. A formal "Notice of Plan Requirement" will be sent to the
 14413 state agency under whose purview the project lies since that agency is responsible for compliance
 14414 with the State Water Control Law and this chapter.

14415 B. Where inspections by department personnel reveal deficiencies in carrying out an approved
 14416 plan, the person responsible for carrying out the plan, as well as the state agency responsible,
 14417 will be issued a notice to comply with specific actions and the deadlines that shall be met. Failure
 14418 to meet the prescribed deadlines can result in the issuance of a stop work order for all land-
 14419 disturbing activities on the project at the discretion of the department. The stop work order will be
 14420 lifted once the required erosion and sediment control measures are in place and inspected by
 14421 department staff.

14422 C. Whenever the Commonwealth or any of its agencies fails to comply within the time provided
 14423 in an appropriate final order, the director of the department may petition for compliance as follows:
 14424 For violations in the Natural and Historic Resources Secretariat, to the Secretary of Natural and
 14425 Historic Resources; for violations in other secretariats, to the appropriate Secretary; for violations
 14426 in other state agencies, to the head of such agency. Where the petition does not achieve timely
 14427 compliance, the director shall bring the matter to the Governor for resolution. The department may

14428 also pursue enforcement as provided by § 62.1-44.15:48 and Article 5 of the State Water Control
 14429 Law.

14430 D. Where compliance will require the appropriation of funds, the director shall cooperate with
 14431 the appropriate agency head in seeking such an appropriation; where the director determines that
 14432 an emergency exists, he shall petition the Governor for funds from the Civil Contingency Fund or
 14433 other appropriate source.

14434 **9VAC25-875-780. Stormwater management permit applications.**

14435 A. Approval of a permit application (registration statement) for a land-disturbing activity by a
 14436 state agency or federal entity shall be subject to the following conditions:

14437 1. The state agency or federal entity shall comply with all applicable requirements of the
 14438 permit (9VAC25-880 et seq) and shall certify that all land clearing, construction, land
 14439 development, and drainage will be done according to the permit.

14440 2. The land development shall be conducted only within the area specified in the approved
 14441 plan and covered by the permit.

14442 3. No changes may be made to a plan for which a permit has been issued without review
 14443 and written approval by the department.

14444 4. The department shall be notified at least one week prior to the pre-construction meeting
 14445 and at least one week prior to the commencement of land-disturbing activity.

14446 5. The department shall conduct random inspections of the project to ensure compliance
 14447 with the permit.

14448 6. The department shall require inspections and reports from the state agency or federal
 14449 entity responsible for compliance with the permit and to determine if the measures
 14450 required in the permit provide effective stormwater management.

14451 B. Compliance with the permit shall be subject to the following conditions:

14452 1. Where inspection by the responsible state agency or federal entity reveals deficiencies
 14453 in carrying out a permitted activity, the responsible state agency or federal entity shall
 14454 ensure compliance with the issued permit, permit conditions, and plan specifications.

14455 2. Where inspections by department personnel reveal deficiencies in carrying out the
 14456 permit, the responsible state agency or federal entity shall be issued a notice to comply,
 14457 with corrective actions specified and the deadline within which the work shall be
 14458 performed.

14459 3. Whenever the Commonwealth or any of its state agencies fail to comply within the time
 14460 provided in a notice to comply, the director may petition the secretary of a given secretariat
 14461 or an agency head for a given state agency for compliance. Where the petition does not
 14462 achieve timely compliance, the director shall bring the matter to the Governor for
 14463 resolution.

14464 4. Where compliance for a state agency will require the appropriation of funds, the director
 14465 shall cooperate with the appropriate agency head in seeking such an appropriation; where
 14466 the director determines that an emergency exists, he shall petition the Governor for funds
 14467 from the Civil Contingency Fund or other appropriate source.

14468 5. The department may also seek compliance through other means specified in the State
 14469 Water Control Law.

14470 **9VAC25-875-790. Maintenance and inspections.**

14471 A. Responsibility for the operation and maintenance of stormwater management facilities shall
 14472 remain with the state agency or federal entity and shall pass to any successor or owner. If portions
 14473 of the land are to be sold, legally binding arrangements shall be made to pass the basic
 14474 responsibility to successors in title. These arrangements shall designate for each project the

14475 property owner, governmental agency, or other legally established entity to be permanently
 14476 responsible for maintenance.

14477 B. At a minimum, a stormwater management facility shall be inspected by the responsible
 14478 state agency or federal entity on an annual basis and after any storm which causes the capacity
 14479 of the facility principal spillway to be exceeded.

14480 C. During construction of the stormwater management facilities, the department shall make
 14481 inspections on a random basis.

14482 D. The department shall require inspections and reports from the state agency or federal entity
 14483 responsible for ensuring compliance with the permit and to determine if the measures required in
 14484 the permit provide effective stormwater management.

14485 E. Inspection reports shall be maintained as part of the land disturbance project file.

14486 **9VAC25-875-800. Reporting on stormwater management.**

14487 State agencies shall report annually, on a schedule to be specified, to the department on the
 14488 extent to which stormwater management programs have reduced nonpoint source pollution to the
 14489 Commonwealth's waters and mitigated the effects of localized flooding. The report shall provide
 14490 the following: data on the number and types of stormwater management facilities installed in the
 14491 preceding year, the drainage area or watershed size served, the receiving stream or hydrologic
 14492 unit, a summary of monitoring data, if any, and other data useful in determining the effectiveness
 14493 of the programs and BMP technologies in current use.

14494 **9VAC25-875-810. Technical criteria and requirements for state or federal projects.**

14495 A. Erosion and sediment control and stormwater management plans prepared for state
 14496 projects shall comply with the technical criteria outlined in Part V of this chapter and any locality's
 14497 VESCP or VESMP authority's technical requirements adopted pursuant to §§ 62.1-44.15:28 and
 14498 62.1-44.15:52 of the Code of Virginia.

14499 B. The department may establish criteria for selecting either the site or a planning area on
 14500 which to apply the water quality criteria.

14501 Part VI

14502 Standards and specifications program

14503 **9VAC25-875-820. Applicability.**

14504 This part is applicable to any state agency, federal entity, or public or private entity that is
 14505 authorized to submit standards and specifications to the department in accordance with § 62.1-
 14506 44.15:31 of the Code of Virginia.

14507 **9VAC25-875-830. Standards and specifications for state agencies, federal entities, and**
 14508 **other specified entities.**

14509 The program requirements in Part V shall be implemented by a state agency or federal entity,
 14510 and other specified entities with department-approved standards and specifications.

14511 A. As an alternative to submitting soil erosion control and stormwater management plans
 14512 for its land-disturbing activities, the Virginia Department of Transportation shall, and any
 14513 other state agency or federal entity may, submit standards and specifications for its
 14514 conduct of land-disturbing activities for department approval. Approved standards and
 14515 specifications shall be consistent with the VESMA. The department shall have 60 days
 14516 after receipt in which to act on any standards and specifications submitted or resubmitted
 14517 to it for approval.

14518 B. As an alternative to submitting soil erosion control and stormwater management plans,
 14519 electric, natural gas, and telephone utility companies, interstate and intrastate natural gas
 14520 pipeline companies, railroad companies and authorities created pursuant to § 15.2-5102

14521 of the Code of Virginia may submit standards and specifications for department approval
14522 that describe how land-disturbing activities shall be conducted. Such standards and
14523 specifications may be submitted for the following types of projects:

14524 1. Construction, installation, or maintenance of electric transmission and distribution
14525 lines, oil or gas transmission and distribution pipelines, communication utility lines, and
14526 water and sewer lines; and

14527 2. Construction of the tracks, rights-of-way, bridges, communication facilities, and
14528 other related structures and facilities of a railroad company.

14529 The department shall have 60 days after receipt in which to act on any standards and
14530 specifications submitted or resubmitted to it for approval. A linear project not included
14531 in subdivision 1 or 2, or for which the owner chooses not to submit standards and
14532 specifications, shall comply with the requirements of the VESMP or the VESCP and
14533 VSMP, as appropriate, in any locality within which the project is located.

14534 C. As an alternative to submitting soil erosion control and stormwater management plans,
14535 any person engaging in more than one jurisdiction in the creation and operation of a
14536 wetland mitigation or stream restoration bank that has been approved and is operated in
14537 accordance with applicable federal and state guidance, laws, or regulations for the
14538 establishment, use, and operation of a wetlands mitigation or stream restoration bank,
14539 pursuant to a mitigation banking instrument signed by the department, the Virginia Marine
14540 Resources Commission, or the U.S. Army Corps of Engineers, may submit standards and
14541 specifications for department approval that describe how land-disturbing activities shall be
14542 conducted. The department shall have 60 days after receipt in which to act on standards
14543 and specifications submitted to it or resubmitted to it for approval.

14544 D. All standards and specifications submitted to the department shall be periodically
14545 updated according to a schedule to be established by the department and shall be
14546 consistent with the requirements of the VESMA. Approval of standards and specifications
14547 by the department does not relieve the owner or operator of the duty to comply with any
14548 other applicable local ordinances or regulations. Standards and specifications shall
14549 include:

14550 1. Technical criteria to meet the requirements of the VESMA and regulations
14551 developed under it;

14552 2. Provisions for the long-term responsibility and maintenance of any stormwater
14553 management control devices and other techniques specified to manage the quantity
14554 and quality of runoff;

14555 3. Provisions for administration of the standards and specifications program, project-
14556 specific plan design, plan review and plan approval, and construction inspection and
14557 compliance;

14558 4. Provisions for ensuring that personnel and contractors assisting the owner in
14559 carrying out the land-disturbing activity obtain training or qualifications for soil erosion
14560 control and stormwater management as set forth in Part IV (9VAC25-875-380 et seq.)
14561 of this chapter;

14562 5. Provisions for ensuring that personnel implementing approved standards and
14563 specifications pursuant to this section obtain certifications or qualifications comparable
14564 to those required for VESMP personnel pursuant to subsection C of § 62.1-44.15:30
14565 of the Code of Virginia;

14566 6. Implementation of a project tracking system that ensures notification to the
14567 department of all land-disturbing activities covered under the VESMA; and

14568 7. Requirements for documenting onsite changes as they occur to ensure compliance
 14569 with the requirements of the VESMA.

14570 E. The department shall perform random site inspections or inspections in response to a
 14571 complaint to ensure compliance with the VESMA and this chapter.

14572 F. The department shall assess an administrative charge to cover the costs of services
 14573 rendered associated with its responsibilities pursuant to this section, including standards
 14574 and specifications review and approval, project inspections, and compliance. The
 14575 department may take enforcement actions in accordance with the VESMA and related
 14576 regulations.

14577 Part VII

14578 Virginia Pollutant Discharge Elimination System (VPDES) Permits

14579 Article 1

14580 Definitions

14581 **9VAC25-875-850. Definitions.**

14582 "Administrator" means the Administrator of the United States Environmental Protection
 14583 Agency or an authorized representative.

14584 "Applicable standards and limitations" means all state, interstate, and federal standards and
 14585 limitations to which a discharge or a related activity is subject under the Clean Water Act (CWA)
 14586 (33 USC § 1251 et seq.) and VESMA, including effluent limitations, water quality standards,
 14587 standards of performance, toxic effluent standards or prohibitions, best management practices,
 14588 and standards for sewage sludge use or disposal under §§ 301, 302, 303, 304, 306, 307, 308,
 14589 403, and 405 of the CWA.

14590 "Approved program" or "approved state" means a state or interstate program that has been
 14591 approved or authorized by EPA under 40 CFR Part 123.

14592 "Average monthly discharge limitation" means the highest allowable average of daily
 14593 discharges over a calendar month, calculated as the sum of all daily discharges measured during
 14594 a calendar month divided by the number of daily discharges measured during that month.

14595 "Average weekly discharge limitation" means the highest allowable average of daily
 14596 discharges over a calendar week, calculated as the sum of all daily discharges measured during
 14597 a calendar week divided by the number of daily discharges measured during that week.

14598 "Bypass" means the intentional diversion of waste streams from any portion of a treatment
 14599 facility.

14600 "Contiguous zone" means the entire zone established by the United States under Article 24
 14601 of the Convention on the Territorial Sea and the Contiguous Zone (37 FR 11906 June 15, 1972).

14602 "Continuous discharge" means a discharge which occurs without interruption throughout the
 14603 operating hours of the facility, except for infrequent shutdowns for maintenance, process changes,
 14604 or other similar activities.

14605 "Co-operator" means an operator of a permit that is only responsible for permit conditions
 14606 relating to the discharge for which it is the operator.

14607 "Daily discharge" means the discharge of a pollutant measured during a calendar day or any
 14608 24-hour period that reasonably represents the calendar day for purposes of sampling. For
 14609 pollutants with limitations expressed in units of mass, the daily discharge is calculated as the total
 14610 mass of the pollutant discharged over the day. For pollutants with limitations expressed in other
 14611 units of measurement, the daily discharge is calculated as the average measurement of the
 14612 pollutant over the day.

- 14613 "Discharge" when used without qualification, means the discharge of a pollutant.
- 14614 "Discharge of a pollutant" means:
- 14615 1. Any addition of any pollutant or combination of pollutants to state waters from any point
- 14616 source; or
- 14617 2. Any addition of any pollutant or combination of pollutants to the waters of the contiguous
- 14618 zone or the ocean from any point source other than a vessel or other floating craft which
- 14619 is being used as a means of transportation.
- 14620 This definition includes additions of pollutants into surface waters from: surface runoff that
- 14621 is collected or channeled by man; discharges through pipes, sewers, or other
- 14622 conveyances owned by a state, municipality, or other person that do not lead to a
- 14623 treatment works; and discharges through pipes, sewers, or other conveyances, leading
- 14624 into privately owned treatment works. This term does not include an addition of pollutants
- 14625 by any indirect discharger.
- 14626 "Discharge Monitoring Report" or "DMR" means the form supplied by the department, or an
- 14627 equivalent form developed by the operator and approved by the department, for the reporting of
- 14628 self-monitoring results by operators.
- 14629 "Draft permit" means a document indicating the department's tentative decision to issue or
- 14630 deny, modify, revoke and reissue, terminate, or reissue an individual or general permit. A notice
- 14631 of intent to deny a individual or general permit is a type of draft permit. A denial of a request for
- 14632 modification, revocation and reissuance, or termination is not a draft permit.
- 14633 "Effluent limitation" means any restriction imposed by the board on quantities, discharge rates,
- 14634 and concentrations of pollutants which are discharged from point sources into surface waters, the
- 14635 waters of the contiguous zone, or the ocean.
- 14636 "Effluent limitations guidelines" means a regulation published by the administrator under §
- 14637 304(b) of the CWA to adopt or revise effluent limitations.
- 14638 "Existing permit" means for the purposes of this chapter a permit issued by the department
- 14639 and currently held by a permit applicant.
- 14640 "Existing source" means any source that is not a new source or a new discharger.
- 14641 "Facilities or equipment" means buildings, structures, process or production equipment or
- 14642 machinery that form a permanent part of a new source and that will be used in its operation, if
- 14643 these facilities or equipment are of such value as to represent a substantial commitment to
- 14644 construct. It excludes facilities or equipment used in connection with feasibility, engineering, and
- 14645 design studies regarding the new source or water pollution treatment for the new source.
- 14646 "Facility or activity" means any VPDES point source or treatment works treating domestic
- 14647 sewage or any other facility or activity (including land or appurtenances thereto) that is subject to
- 14648 regulation under the VPDES program.
- 14649 "Hazardous substance" means any substance designated under the Code of Virginia or 40
- 14650 CFR Part 116 pursuant to § 311 of the CWA.
- 14651 "Illicit discharge" means any discharge to a municipal separate storm sewer that is not
- 14652 composed entirely of stormwater, except discharges pursuant to a separate VPDES or permit
- 14653 (other than the permit for discharges from the municipal separate storm sewer), discharges
- 14654 resulting from firefighting activities, and discharges identified by and in compliance with 9VAC25-
- 14655 875-970 D 2 c (3).
- 14656 "Indian country" means (i) all land within the limits of any Indian reservation under the
- 14657 jurisdiction of the United States government, notwithstanding the issuance of any patent, and
- 14658 including rights-of-way running through the reservation; (ii) all dependent Indian communities
- 14659 within the borders of the United States whether within the originally or subsequently acquired

14660 territory thereof, and whether within or without the limits of a state; and (iii) all Indian allotments,
14661 the Indian titles to which have not been extinguished, including rights-of-way running through the
14662 same.

14663 "Indirect discharger" means a nondomestic discharger introducing "pollutants" to a "publicly
14664 owned treatment works (POTW)."

14665 "Interstate agency" means an agency of two or more states established by or under an
14666 agreement or compact approved by Congress, or any other agency of two or more states having
14667 substantial powers or duties pertaining to the control of pollution as determined and approved by
14668 the administrator under the CWA and regulations.

14669 "Large municipal separate storm sewer system" means all municipal separate storm sewers
14670 that are either:

14671 1. Located in an incorporated place with a population of 250,000 or more as determined
14672 by the 1990 decennial census by the Bureau of Census (40 CFR Part 122 Appendix F);

14673 2. Located in the counties listed in 40 CFR Part 122 Appendix H, except municipal
14674 separate storm sewers that are located in the incorporated places, townships or towns
14675 within such counties;

14676 3. Owned or operated by a municipality other than those described in subdivision 1 or 2
14677 of this definition and that are designated by the department as part of the large or medium
14678 municipal separate storm sewer system due to the interrelationship between the
14679 discharges of the designated storm sewer and the discharges from municipal separate
14680 storm sewers described under subdivision 1 or 2 of this definition. In making this
14681 determination the department may consider the following factors:

14682 a. Physical interconnections between the municipal separate storm sewers;

14683 b. The location of discharges from the designated municipal separate storm sewer
14684 relative to

14685 discharges from municipal separate storm sewers described in subdivision 1 of this
14686 definition;

14687 c. The quantity and nature of pollutants discharged to surface waters;

14688 d. The nature of the receiving surface waters; and

14689 e. Other relevant factors;

14690 4. The department may, upon petition, designate as a large municipal separate storm
14691 sewer system, municipal separate storm sewers located within the boundaries of a region
14692 defined by a stormwater management regional authority based on a jurisdictional,
14693 watershed, or other appropriate basis that includes one or more of the systems described
14694 in this definition.

14695 "Major facility" means any facility or activity classified as such by the regional administrator in
14696 conjunction with the board.

14697 "Major municipal separate storm sewer outfall" or "major outfall" means a municipal separate
14698 storm sewer outfall that discharges from a single pipe with an inside diameter of 36 inches or
14699 more or its equivalent (discharge from a single conveyance other than circular pipe which is
14700 associated with a drainage area of more than 50 acres); or for municipal separate storm sewers
14701 that receive stormwater from lands zoned for industrial activity (based on comprehensive zoning
14702 plans or the equivalent), with an outfall that discharges from a single pipe with an inside diameter
14703 of 12 inches or more or from its equivalent (discharge from other than a circular pipe associated
14704 with a drainage area of two acres or more).

14705 "Maximum daily discharge limitation" means the highest allowable daily discharge.

14706 "Maximum extent practicable" or "MEP" means the technology-based discharge standard for
 14707 municipal separate storm sewer systems established by CWA § 402(p). MEP is achieved, in part,
 14708 by selecting and implementing effective structural and nonstructural best management practices
 14709 (BMPs) and rejecting ineffective BMPs and replacing them with effective best management
 14710 practices (BMPs). MEP is an iterative standard, which evolves over time as urban runoff
 14711 management knowledge increases. As such, the operator's MS4 program must continually be
 14712 assessed and modified to incorporate improved programs, control measures, BMPs, etc., to attain
 14713 compliance with water quality standards.

14714 "Medium municipal separate storm sewer system" means all municipal separate storm sewers
 14715 that are either:

14716 1. Located in an incorporated place with a population of 100,000 or more but less than
 14717 250,000 as determined by the 1990 decennial census by the Bureau of Census (40 CFR
 14718 Part 122 Appendix G);

14719 2. Located in the counties listed in 40 CFR Part 122 Appendix I, except municipal separate
 14720 storm sewers that are located in the incorporated places, townships or towns within such
 14721 counties;

14722 3. Owned or operated by a municipality other than those described in subdivision 1 or 2
 14723 of this definition and that are designated by the department as part of the large or medium
 14724 municipal separate storm sewer system due to the interrelationship between the
 14725 discharges of the designated storm sewer and the discharges from municipal separate
 14726 storm sewers described under subdivision 1 or 2 of this definition. In making this
 14727 determination the department may consider the following factors:

14728 a. Physical interconnections between the municipal separate storm sewers;

14729 b. The location of discharges from the designated municipal separate storm sewer
 14730 relative to discharges from municipal separate storm sewers described in subdivision
 14731 1 of this definition;

14732 c. The quantity and nature of pollutants discharged to surface waters;

14733 d. The nature of the receiving surface waters; or

14734 e. Other relevant factors;

14735 4. The department may, upon petition, designate as a medium municipal separate storm
 14736 sewer system, municipal separate storm sewers located within the boundaries of a region
 14737 defined by a stormwater management regional authority based on a jurisdictional,
 14738 watershed, or other appropriate basis that includes one or more of the systems described
 14739 in subdivisions 1, 2, and 3 of this definition.

14740 "Municipality" means a city, town, county, district, association, or other public body created by
 14741 or under state law and having jurisdiction over disposal of sewage, industrial wastes, or other
 14742 wastes, or an Indian tribe or an authorized Indian tribal organization, or a designated and
 14743 approved management agency under § 208 of the CWA.

14744 "New discharger" means any building, structure, facility, or installation:

14745 1. From which there is or may be a discharge of pollutants;

14746 2. That did not commence the discharge of pollutants at a particular site prior to August
 14747 13, 1979;

14748 3. Which is not a new source; and

14749 4. Which has never received a finally effective separate VPDES or permit for discharges
 14750 at that site.

14751 This definition includes an indirect discharger that commences discharging into surface
 14752 waters after August 13, 1979. It also includes any existing mobile point source (other than

14753 an offshore or coastal oil and gas exploratory drilling rig or a coastal oil and gas
 14754 developmental drilling rig) such as a seafood processing rig, seafood processing vessel,
 14755 or aggregate plant, that begins discharging at a site for which it does not have a separate
 14756 VPDES or permit; and any offshore or coastal mobile oil and gas exploratory drilling rig or
 14757 coastal mobile oil and gas developmental drilling rig that commences the discharge of
 14758 pollutants after August 13, 1979.

14759 "New source" means any building, structure, facility, or installation from which there is or may
 14760 be a discharge of pollutants, the construction of which commenced:

14761 1. After promulgation of standards of performance under § 306 of the CWA that are
 14762 applicable to such source; or

14763 2. After proposal of standards of performance in accordance with § 306 of the CWA that
 14764 are applicable to such source, but only if the standards are promulgated in accordance
 14765 with § 306 of the CWA within 120 days of their proposal.

14766 "Oil and gas exploration, production, processing, or treatment operations or transmission
 14767 facilities" means all field activities or operations associated with exploration, production, or
 14768 treatment operations, or transmission facilities, including activities necessary to prepare a site for
 14769 drilling and for the movement and placement of drilling equipment, whether or not such field
 14770 activities or operations may be considered to be construction activity. (33 USC § 1362(24))

14771 "Outfall" means, when used in reference to municipal separate storm sewers, a point source
 14772 at the point where a municipal separate storm sewer discharges to surface waters and does not
 14773 include open conveyances connecting two municipal separate storm sewers, or pipes, tunnels or
 14774 other conveyances which connect segments of the same stream or other surface waters and are
 14775 used to convey surface waters.

14776 "Overburden" means any material of any nature, consolidated or unconsolidated, that overlies
 14777 a mineral deposit, excluding topsoil or similar naturally occurring surface materials that are not
 14778 disturbed by mining operations.

14779 "Permit" means a VPDES permit issued by the department pursuant to § 62.1-44.15 for
 14780 stormwater discharges from a land-disturbing activity or MS4.

14781 "Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage,
 14782 garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials
 14783 (except those regulated under the Atomic Energy Act of 1954, as amended (42 USC § 2011 et
 14784 seq.)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and
 14785 agricultural waste discharged into water. It does not mean:

14786 1. Sewage from vessels; or

14787 2. Water, gas, or other material that is injected into a well to facilitate production of oil or
 14788 gas, or water derived in association with oil and gas production and disposed of in a well
 14789 if the well used either to facilitate production or for disposal purposes is approved by the
 14790 department and if the department determines that the injection or disposal will not result
 14791 in the degradation of groundwater or surface water resources.

14792 "Privately owned treatment works" or "PVOTW" means any device or system that is (i) used
 14793 to treat wastes from any facility whose operator is not the operator of the treatment works and (ii)
 14794 not a POTW.

14795 "Publicly owned treatment works" or "POTW" means a treatment works as defined by § 212
 14796 of the CWA that is owned by a state or municipality (as defined by § 502(4) of the CWA). This
 14797 definition includes any devices and systems used in the storage, treatment, recycling, and
 14798 reclamation of municipal sewage or industrial wastes of a liquid nature. It also includes sewers,
 14799 pipes, and other conveyances only if they convey wastewater to a POTW treatment plant. The

14800 term also means the municipality as defined in § 502(4) of the CWA, that has jurisdiction over the
14801 indirect discharges to and the discharges from such a treatment works.

14802 "Recommencing discharger" means a source that recommences discharge after terminating
14803 operations.

14804 "Regional administrator" means the Regional Administrator of Region III of the Environmental
14805 Protection Agency or the authorized representative of the regional administrator.

14806 "Revoked permit" means, an existing VPDES permit that is terminated by the department
14807 before its expiration.

14808 "Runoff coefficient" means the fraction of total rainfall that will appear at a conveyance as
14809 runoff.

14810 "Schedule of compliance" means a schedule of remedial measures included in a permit,
14811 including an enforceable sequence of interim requirements (for example, actions, operations, or
14812 milestone events) leading to compliance with the VESMA, the CWA, and regulations.

14813 "Secretary" means the Secretary of the Army, acting through the Chief of Engineers.

14814 "Severe property damage" means substantial physical damage to property, damage to the
14815 treatment facilities that causes them to become inoperable, or substantial and permanent loss of
14816 natural resources that can reasonably be expected to occur in the absence of a bypass. Severe
14817 property damage does not mean economic loss caused by delays in production.

14818 "Significant materials" means, but is not limited to: raw materials; fuels; materials such as
14819 solvents, detergents, and plastic pellets; finished materials such as metallic products; raw
14820 materials used in food processing or production; hazardous substances designated under §
14821 101(14) of CERCLA (42 USC § 9601(14)); any chemical the facility is required to report pursuant
14822 to § 313 of Title III of SARA (42 USC § 11023); fertilizers; pesticides; and waste products such as
14823 ashes, slag, and sludge that have the potential to be released with stormwater discharges.

14824 "Small municipal separate storm sewer system" or "small MS4" means all separate storm
14825 sewers that are (i) owned or operated by the United States, a state, city, town, borough, county,
14826 parish, district, association, or other public body (created by or pursuant to state law) having
14827 jurisdiction over disposal of sewage, industrial wastes, stormwater, or other wastes, including
14828 special districts under state law such as a sewer district, flood control district or drainage district,
14829 or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and
14830 approved management agency under § 208 of the CWA that discharges to surface waters and
14831 (ii) not defined as "large" or "medium" municipal separate storm sewer systems or designated
14832 under 9VAC25-875-950 A 1. This term includes systems similar to separate storm sewer systems
14833 in municipalities, such as systems at military bases, large hospital or prison complexes, and
14834 highway and other thoroughfares. The term does not include separate storm sewers in very
14835 discrete areas, such as individual buildings.

14836 "Source" means any building, structure, facility, or installation from which there is or may be
14837 a discharge of pollutants.

14838 "Stormwater discharge associated with construction activity" means a discharge of
14839 stormwater runoff from areas where land-disturbing activities (e.g., clearing, grading, or
14840 excavation); construction materials or equipment storage or maintenance (e.g., fill piles, borrow
14841 area, concrete truck washout, fueling); or other industrial stormwater directly related to the
14842 construction process (e.g., concrete or asphalt batch plants) are located.

14843 "Stormwater discharge associated with large construction activity" means the discharge of
14844 stormwater from large construction activities.

14845 "Stormwater discharge associated with small construction activity" means the discharge of
14846 stormwater from small construction activities.

14847 "Total dissolved solids" means the total dissolved (filterable) solids as determined by use of
 14848 the method specified in 40 CFR Part 136.

14849 "Toxic pollutant" means any pollutant listed as toxic under § 307(a)(1) of the CWA or, in the
 14850 case of sludge use or disposal practices, any pollutant identified in regulations implementing §
 14851 405(d) of the CWA.

14852 "Upset" means an exceptional incident in which there is unintentional and temporary
 14853 noncompliance with technology based permit effluent limitations because of factors beyond the
 14854 reasonable control of the operator. An upset does not include noncompliance to the extent caused
 14855 by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack
 14856 of preventive maintenance, or careless or improper operation.

14857 "Variance" means any mechanism or provision under § 301 or § 316 of the CWA or under 40
 14858 CFR Part 125, or in the applicable federal effluent limitations guidelines that allows modification
 14859 to or waiver of the generally applicable effluent limitation requirements or time deadlines of the
 14860 CWA. This includes provisions that allow the establishment of alternative limitations based on
 14861 fundamentally different factors or on § 301(c), § 301(g), § 301(h), § 301(i), or § 316(a) of the CWA.

14862 "Virginia Pollutant Discharge Elimination System permit" or "VPDES permit" means a
 14863 document issued by the department pursuant to the State Water Control Law authorizing, under
 14864 prescribed conditions, the potential or actual discharge of pollutants from a point source to surface
 14865 waters.

14866 "Water quality standards" or "WQS" means provisions of state or federal law that consist of a
 14867 designated use or uses for the waters of the Commonwealth and water quality criteria for such
 14868 waters based on such uses. Water quality standards are to protect the public health or welfare,
 14869 enhance the quality of water, and serve the purposes of the State Water Control Law (§ 62.1-44.2
 14870 et seq. of the Code of Virginia), the VESMA (§ 62.1-44.15:24 et seq. of the Code of Virginia), and
 14871 the CWA (33 USC § 1251 et seq.).

14872 "Whole effluent toxicity" means the aggregate toxic effect of an effluent measured directly by
 14873 a toxicity test.

14874 Article 2

14875 General program requirements related to MS4s and land-disturbing activities

14876 **9VAC25-875-860. Exclusions.**

14877 The following discharges do not require permits:

14878 1. Any discharge of sewage from vessels, effluent from properly functioning marine
 14879 engines, laundry, shower, and galley sink wastes, or any other discharge incidental to the
 14880 normal operation of a vessel. This exclusion does not apply to rubbish, trash, garbage, or
 14881 other such materials discharged overboard; nor to other discharges when the vessel is
 14882 operating in a capacity other than as a means of transportation such as when used as an
 14883 energy or mining facility, a storage facility or a seafood processing facility, or when secured
 14884 to a storage facility or a seafood processing facility, or when secured to the bed of the
 14885 ocean, contiguous zone or surface waters for the purpose of mineral or oil exploration or
 14886 development.

14887 2. Discharges of dredged or fill material into surface waters that are regulated under § 404
 14888 of the CWA.

14889 3. The introduction of sewage, industrial wastes or other pollutants into publicly owned
 14890 treatment works by indirect dischargers. Plans or agreements to switch to this method of
 14891 disposal in the future do not relieve dischargers of the obligation to have and comply with
 14892 permits until all discharges of pollutants to surface waters are eliminated. This exclusion
 14893 does not apply to the introduction of pollutants to privately owned treatment works or to

14894 other discharges through pipes, sewers, or other conveyances owned by a state,
 14895 municipality, or other party not leading to treatment works.

14896 4. Any discharge in compliance with the instructions of an on-scene coordinator pursuant
 14897 to 40 CFR Part 300 (The National Oil and Hazardous Substances Pollution Contingency
 14898 Plan) or 33 CFR 153.10(e) (Pollution by Oil and Hazardous Substances).

14899 5. Any introduction of pollutants from nonpoint source agricultural and silvicultural
 14900 activities, including stormwater runoff from orchards, cultivated crops, pastures, range
 14901 lands, and forest lands, but not discharges from concentrated animal feeding operations,
 14902 discharges from concentrated aquatic animal production facilities, discharges to
 14903 aquaculture projects, and discharges from silvicultural point sources.

14904 6. Return flows from irrigated agriculture.

14905 7. Discharges into a privately owned treatment works, except as the department may
 14906 otherwise require.

14907 **9VAC25-875-870. Prohibitions.**

14908 A. Except in compliance with a permit issued by the department pursuant to the Virginia
 14909 Erosion and Stormwater Management Act, it shall be unlawful for any person to discharge
 14910 stormwater into state waters from Municipal Separate Storm Sewer Systems or land-disturbing
 14911 activities.

14912 B. Any person in violation of subsection A of this section, who discharges or causes or allows
 14913 a discharge of stormwater into or upon state waters from Municipal Separate Storm Sewer
 14914 Systems or land-disturbing activities, or who discharges or causes or allows a discharge that may
 14915 reasonably be expected to enter state waters in violation of subsection A of this section, shall
 14916 notify the department of the discharge immediately upon discovery of the discharge but in no case
 14917 later than 24 hours after said discovery. A written report of the unauthorized discharge shall be
 14918 submitted by the owner, to the department, within five days of discovery of the discharge. The
 14919 written report shall contain:

14920 1. A description of the nature and location of the discharge;

14921 2. The cause of the discharge;

14922 3. The date on which the discharge occurred;

14923 4. The length of time that the discharge continued;

14924 5. The volume of the discharge;

14925 6. If the discharge is continuing, how long it is expected to continue;

14926 7. If the discharge is continuing, what the expected total volume of the discharge will be;
 14927 and

14928 8. Any steps planned or taken to reduce, eliminate, and prevent a recurrence of the
 14929 present discharge or any future discharges not authorized by the permit.

14930 C. No permit may be issued:

14931 1. When the conditions of the permit do not provide for compliance with the applicable
 14932 requirements of the CWA or the State Water Control Law, or regulations promulgated
 14933 under the CWA or the State Water Control Law;

14934 2. When the permit applicant is required to obtain a state or other appropriate certification
 14935 under § 401 of the CWA and that certification has not been obtained or waived;

14936 3. When the regional administrator has objected to issuance of the permit;

14937 4. When the imposition of conditions cannot ensure compliance with the applicable water
 14938 quality requirements of all affected states;

- 14939 5. When, in the judgment of the Secretary of the Army, anchorage and navigation in or on
 14940 any of the waters of the United States would be substantially impaired by the discharge;
- 14941 6. For the discharge of any radiological, chemical, or biological warfare agent or high-level
 14942 radioactive waste;
- 14943 7. For any discharge inconsistent with a plan or plan amendment approved under § 208(b)
 14944 of the CWA;
- 14945 8. For any discharge to the territorial sea, the waters of the contiguous zone, or the oceans
 14946 in the following circumstances:
- 14947 a. Before the promulgation of guidelines under § 403(c) of the CWA (for determining
 14948 degradation of the waters of the territorial seas, the contiguous zone, and the oceans)
 14949 unless the department determines permit issuance to be in the public interest; or
- 14950 b. After promulgation of guidelines under § 403(c) of the CWA, when insufficient
 14951 information exists to make a reasonable judgment whether the discharge complies
 14952 with them.
- 14953 9. To a new source or a new discharger, if the discharge from its construction or operation
 14954 will cause or contribute to the violation of water quality standards. The owner or operator
 14955 of a new source or new discharger proposing to discharge into a water segment which
 14956 does not meet applicable water quality standards or is not expected to meet those
 14957 standards even after the application of the effluent limitations required by the State Water
 14958 Control Law and §§ 301(b)(1)(A) and 301(b)(1)(B) of the CWA, and for which the
 14959 department has performed a pollutants load allocation for the pollutant to be discharged,
 14960 must demonstrate, before the close of the public comment period, that:
- 14961 a. There are sufficient remaining pollutant load allocations to allow for the discharge;
 14962 and
- 14963 b. The existing dischargers into that segment are subject to compliance schedules
 14964 designed to bring the segment into compliance with applicable water quality standards.
 14965 The department may waive the submission of information by the new source or new
 14966 discharger required by this subdivision if the department determines that it already has
 14967 adequate information to evaluate the request. An explanation of the development of
 14968 limitations to meet the criteria of this paragraph is to be included in the fact sheet to
 14969 the permit under [9VAC25-875-1090](#).
- 14970 **9VAC25-875-880. Effect of a permit.**
- 14971 A. Except for any toxic effluent standards and prohibitions imposed under § 307 of the CWA
 14972 and standards for sewage sludge use or disposal under § 405(d) of the CWA, compliance with a
 14973 permit during its term constitutes compliance, for purposes of enforcement, with the State Water
 14974 Control Law and with §§ 301, 302, 306, 307, 318, 403, and 405 (a) through (b) of the CWA.
 14975 However, a permit may be modified, revoked and reissued, or terminated during its term for cause
 14976 as set forth in this chapter.
- 14977 B. The issuance of a permit does not convey any property rights of any sort, or any exclusive
 14978 privilege.
- 14979 C. The issuance of a permit does not authorize any injury to persons or property or invasion
 14980 of other private rights, or any infringement of state or local law or regulations.
- 14981 **9VAC25-875-890. Continuation of expiring permits.**
- 14982 A. The permit shall expire at the end of its term, except that the conditions of an expired permit
 14983 continue in force until the effective date of a new permit if:
- 14984 1. The permittee has submitted a timely application as required by this chapter, which is
 14985 a complete application for a new permit; and

14986 2. The department, through no fault of the permittee, does not issue a new permit with an
 14987 effective date on or before the expiration date of the previous permit.

14988 B. Permits continued under this section remain fully effective and enforceable.

14989 C. When the permittee is not in compliance with the conditions of the expiring or expired permit
 14990 the department may choose to do any or all of the following:

14991 1. Initiate enforcement action based upon the permit which has been continued;

14992 2. Issue a notice of intent to deny the new permit. If the permit is denied, the owner or
 14993 operator would then be required to cease the activities authorized by the continued permit
 14994 or be subject to enforcement action for operating without a permit;

14995 3. Issue a new permit with appropriate conditions; or

14996 4. Take other actions authorized by this chapter.

14997 **9VAC25-875-900. Confidentiality of information.**

14998 A. The department or the VESMP authority may require every permit applicant or permittee
 14999 to furnish when requested such application materials, plans, specifications, and other pertinent
 15000 information as may be necessary to determine the effect of his discharge on the quality of state
 15001 waters, or such other information as may be necessary to accomplish the purposes of the State
 15002 Water Control Law and this chapter. Any personal information shall not be disclosed except to an
 15003 appropriate official of the department or VESMP authority or as may be authorized pursuant to
 15004 the Virginia Freedom of Information Act (§ 2.2-3700 et seq. of the Code of Virginia). However:

15005 1. Disclosure of records of the department or the VESMP authority relating to (i) active
 15006 federal environmental enforcement actions that are considered confidential under federal
 15007 law and (ii) enforcement strategies, including proposed sanctions for enforcement actions
 15008 is prohibited. Upon request, such records shall be disclosed after a proposed sanction
 15009 resulting from the investigation has been determined by the department or the VESMP
 15010 authority.

15011 2. Any secret formula, secret processes, or secret methods other than effluent data
 15012 submitted to the department pursuant to this chapter may be claimed as confidential by
 15013 the submitter in accordance with 40 CFR 122.7. Any such claim must be asserted at the
 15014 time of submission in the manner prescribed on the application form or instructions or, in
 15015 the case of other submissions, by stamping the words "secret formulae," "secret
 15016 processes" "secret methods" on each page containing such information. If no claim is
 15017 made at the time of submission, the department may make the information available to
 15018 the public without further notice. If a claim is asserted, the information will be treated in
 15019 accordance with the procedures in the Virginia Freedom of Information Act (§ 2.2-3700 et
 15020 seq. of the Code of Virginia).

15021 3. This section shall not be construed to prohibit the disclosure of records related to
 15022 inspection reports, notices of violation, and documents detailing the nature of any land-
 15023 disturbing activity that may have occurred, or similar documents.

15024 B. Claims of confidentiality for the following information will be denied:

15025 1. The name and address of any permit applicant or permittee;

15026 2. Permit applications, permits, and effluent data.

15027 C. Information required by permit application forms provided by the department may not be
 15028 claimed confidential. This includes information submitted on the forms themselves and any
 15029 attachments used to supply information required by the forms.

15030 **9VAC25-875-910. Guidance documents.**

15031 The department may develop and use guidance, as appropriate, to implement technical and
 15032 regulatory details of the VPDES permit program. Such guidance is distinguished from regulation

15033 by the fact that it is not binding on either the department or permittees. If a more appropriate
 15034 methodology than that called for in guidance is available in a given situation, the more appropriate
 15035 methodology shall be used to the extent it is consistent with applicable regulations and the Virginia
 15036 Erosion and Stormwater Management Act.

15037 Article 3

15038 Permit applications

15039 **9VAC25-875-920. Application for a permit.**

15040 A. Duty to apply. Any person who discharges or proposes to discharge stormwater into or
 15041 upon state waters from municipal separate storm sewer systems or land-disturbing activities and
 15042 who does not have an effective permit, except persons covered by general permits, excluded
 15043 from the requirement for a permit by this chapter, shall submit a complete application in
 15044 accordance with this section.

15045 B. Who applies. When a facility or activity is owned by one person but is operated by another
 15046 person, it is the operator's duty to obtain a permit.

15047 C. Time to apply. Any person proposing a new discharge shall submit an application at least
 15048 180 days before the date on which the discharge is to commence, unless permission for a later
 15049 date has been granted by the department. Stormwater discharges from large construction
 15050 activities and stormwater discharges associated with small construction activities shall submit
 15051 applications at least 90 days before the date on which construction is to commence. Different
 15052 submittal dates may be required under the terms of applicable general permits. Persons
 15053 proposing a new discharge are encouraged to submit their applications well in advance of the 90-
 15054 day or 180-day requirements to avoid delay.

15055 D. Duty to reapply. All permittees with a currently effective permit shall submit a new
 15056 application at least 180 days before the expiration date of the existing permit unless permission
 15057 for a later date has been granted by the department. The department shall not grant permission
 15058 for applications to be submitted later than the expiration date of the existing permit.

15059 E. Completeness. The department shall not issue a permit before receiving a complete
 15060 application for a permit except for general permits. An application for a permit is complete when
 15061 the department receives an application form and any supplemental information which are
 15062 completed to its satisfaction. The completeness of any application for a permit shall be judged
 15063 independently of the status of any other permit application or permit for the same facility or activity.

15064 F. Information requirements. All applicants for permits shall provide the following information
 15065 using the application form provided by the department:

- 15066 1. The activities conducted by the permit applicant which require it to obtain a permit;
- 15067 2. Name, mailing address, and location of the facility for which the application is submitted;
- 15068 3. Up to four SIC codes which best reflect the principal products or services provided by
 15069 the facility;
- 15070 4. The operator's name, address, telephone number, email address, ownership status,
 15071 and status as federal, state, private, public, or other entity;
- 15072 5. Whether the facility is located on Indian lands;
- 15073 6. A listing of all permits or construction approvals received, applied for, or to be applied
 15074 for under any of the following programs:
 - 15075 a. Hazardous Waste Management program under the Resource Conservation and
 15076 Recovery Act (RCRA) (42 USC § 6921);
 - 15077 b. Underground Injection Control (UIC) program under the Safe Drinking Water Act
 15078 (SDWA) (42 USC § 300h);

- 15079 c. VPDES program under the CWA and the State Water Control Law;
- 15080 d. Prevention of Significant Deterioration (PSD) program under the Clean Air Act (42
- 15081 USC § 4701 et seq.);
- 15082 e. Nonattainment program under the Clean Air Act (42 USC § 4701 et seq.);
- 15083 f. National Emission Standards for Hazardous Pollutants (NESHAPS) preconstruction
- 15084 approval under the Clean Air Act (42 USC § 4701 et seq.);
- 15085 g. Ocean dumping permits under the Marine Protection Research and Sanctuaries Act
- 15086 (33 USC § 14 et seq.);
- 15087 h. Dredge or fill permits under § 404 of the CWA;
- 15088 i. A permit under the CWA and the Virginia Erosion and Stormwater Management Act;
- 15089 and
- 15090 j. Other relevant environmental permits;
- 15091 7. A topographic map (or other map if a topographic map is unavailable) extending one
- 15092 mile beyond the property boundaries of the source, which depicts: the facility and (i) each
- 15093 of its intake and discharge structures; (ii) each of its hazardous waste treatment, storage,
- 15094 or disposal facilities; (iii) each well where fluids from the facility are injected underground;
- 15095 and (iv) those wells, springs, other surface water bodies, and drinking water wells listed in
- 15096 public records or otherwise known to the permit applicant in the map area; and
- 15097 8. A brief description of the nature of the business.
- 15098 G. Variance requests. A discharger which is not a publicly owned treatment works (POTW)
- 15099 may request a variance from otherwise applicable effluent limitations under any of the following
- 15100 statutory or regulatory provisions within the times specified in this subsection:
- 15101 1. Fundamentally different factors.
- 15102 a. A request for a variance based on the presence of fundamentally different factors
- 15103 from those on which the effluent limitations guideline was based shall be filed as
- 15104 follows:
- 15105 (1) For a request from best practicable control technology currently available (BPT),
- 15106 by the close of the public comment period for the draft permit; or
- 15107 (2) For a request from best available technology economically achievable (BAT) and/or
- 15108 best conventional pollutant control technology (BCT), by no later than 180 days after
- 15109 the date on which an effluent limitation guideline is published in the Federal Register
- 15110 for a request based on an effluent limitation guideline promulgated on or after February
- 15111 4, 1987.
- 15112 b. The request shall explain how the requirements of the applicable regulatory or
- 15113 statutory criteria have been met.
- 15114 2. A request for a variance from the BAT requirements for CWA § 301(b)(2)(F) pollutants
- 15115 (commonly called nonconventional pollutants) pursuant to § 301(c) of the CWA because
- 15116 of the economic capability of the owner or operator, or pursuant to § 301(g) of the CWA
- 15117 (provided, however, that a § 301(g) variance may only be requested for ammonia,
- 15118 chlorine, color, iron, total phenols (when determined by the administrator to be a pollutant
- 15119 covered by § 301(b)(2)(F) of the CWA) and any other pollutant that the administrator lists
- 15120 under § 301(g)(4) of the CWA) must be made as follows:
- 15121 a. For those requests for a variance from an effluent limitation based upon an effluent
- 15122 limitation guideline by:
- 15123 (1) Submitting an initial request to the regional administrator, as well as to the
- 15124 department, stating the name of the discharger, the permit number, the outfall

15125 number(s), the applicable effluent guideline, and whether the discharger is requesting
 15126 a § 301(c) or § 301(g) of the CWA modification, or both. This request must have been
 15127 filed not later than 270 days after promulgation of an applicable effluent limitation
 15128 guideline; and

15129 (2) Submitting a completed request no later than the close of the public comment
 15130 period for the draft permit demonstrating that: (i) all reasonable ascertainable issues
 15131 have been raised and all reasonably available arguments and materials supporting
 15132 their position have been submitted; and (ii) that the applicable requirements of 40 CFR
 15133 Part 125 have been met. Notwithstanding this provision, the complete application for
 15134 a request under § 301(g) of the CWA shall be filed 180 days before EPA must make
 15135 a decision (unless the Regional Administrator establishes a shorter or longer period);
 15136 or

15137 b. For those requests for a variance from effluent limitations not based on effluent
 15138 limitation guidelines, the request need only comply with subdivision 2 a (2) of this
 15139 subsection and need not be preceded by an initial request under subdivision 2 a (1) of
 15140 this subsection.

15141 3. A modification under § 302(b)(2) of the CWA of requirements under § 302(a) of the
 15142 CWA for achieving water quality related effluent limitations may be requested no later than
 15143 the close of the public comment period for the draft permit on the permit from which the
 15144 modification is sought.

15145 4. A variance for alternate effluent limitations for the thermal component of any discharge
 15146 must be filed with a timely application for a permit under this section, except that if thermal
 15147 effluent limitations are established on a case-by-case basis or are based on water quality
 15148 standards the request for a variance may be filed by the close of the public comment
 15149 period for the draft permit. A copy of the request shall be sent simultaneously to the
 15150 department.

15151 H. Expedited variance procedures and time extensions.

15152 1. Notwithstanding the time requirements in subsection G of this section, the department
 15153 may notify a permit applicant before a draft permit is issued that the draft permit will likely
 15154 contain limitations which are eligible for variances. In the notice the department may
 15155 require the permit applicant as a condition of consideration of any potential variance
 15156 request to submit a request explaining how the requirements of 40 CFR Part 125
 15157 applicable to the variance have been met and may require its submission within a specified
 15158 reasonable time after receipt of the notice. The notice may be sent before the permit
 15159 application has been submitted. The draft or final permit may contain the alternative
 15160 limitations which may become effective upon final grant of the variance.

15161 2. A discharger who cannot file a timely complete request required under subdivisions G
 15162 2 a (2) or G 2 b of this section may request an extension. The extension may be granted
 15163 or denied at the discretion of the department. Extensions shall be no more than six months
 15164 in duration.

15165 I. Recordkeeping. Permit applicants shall keep records of all data used to complete permit
 15166 applications and any supplemental information submitted under this section for a period of at least
 15167 three years from the date the application is signed.

15168 **9VAC25-875-930. Permit rationale.**

15169 In granting a permit pursuant to this chapter, the department shall provide in writing a clear
 15170 and concise statement of the legal basis, scientific rationale, and justification for the decision
 15171 reached. When the decision of the department is to deny a permit, the department shall, in
 15172 consultation with legal counsel, provide a clear and concise statement explaining the reason for

15173 the denial, the scientific justification for the same, and how the department's decision is in
 15174 compliance with applicable laws and regulations. Copies of the decision, certified by the director,
 15175 shall be mailed by certified mail to the permittee or applicant.

15176 **9VAC25-875-940. Signatories to permit applications and reports.**

15177 A. All permit applications shall be signed as follows:

15178 1. For a corporation: by a responsible corporate officer. For the purpose of this section, a
 15179 responsible corporate officer means: (i) a president, secretary, treasurer, or vice-president
 15180 of the corporation in charge of a principal business function, or any other person who
 15181 performs similar policy-making or decision-making functions for the corporation, or (ii) the
 15182 manager of one or more manufacturing, production, or operating facilities, provided the
 15183 manager is authorized to make management decisions that govern the operation of the
 15184 regulated facility, including having the explicit or implicit duty of making major capital
 15185 investment recommendations, and initiating and directing other comprehensive measures
 15186 to assure long-term environmental compliance with environmental laws and regulations;
 15187 the manager can ensure that the necessary systems are established or actions taken to
 15188 gather complete and accurate information for permit application requirements; and where
 15189 authority to sign documents has been assigned or delegated to the manager in
 15190 accordance with corporate procedures;

15191 2. For a partnership or sole proprietorship: by a general partner or the proprietor,
 15192 respectively; or

15193 3. For a municipality, state, federal, or other public agency: by either a principal executive
 15194 officer or ranking elected official. For purposes of this section, a principal executive officer
 15195 of a federal agency includes (i) the chief executive officer of the agency, or (ii) a senior
 15196 executive officer having responsibility for the overall operations of a principal geographic
 15197 unit of the agency.

15198 B. All reports required by permits, and other information requested by the department shall be
 15199 signed by a person described in subsection A of this section, or by a duly authorized
 15200 representative of that person. A person is a duly authorized representative only if:

15201 1. The authorization is made in writing by a person described in subsection A of this
 15202 section;

15203 2. The authorization specifies either an individual or a position having responsibility for the
 15204 overall operation of the regulated facility or activity such as the position of plant manager,
 15205 operator of a well or a well field, superintendent, position of equivalent responsibility, or
 15206 an individual or position having overall responsibility for environmental matters for the
 15207 company. A duly authorized representative may thus be either a named individual or any
 15208 individual occupying a named position; and

15209 3. The written authorization is submitted to the department.

15210 C. If an authorization under subsection B of this section is no longer accurate because a
 15211 different individual or position has responsibility for the overall operation of the facility, a new
 15212 authorization satisfying the requirements of subsection B of this section must be submitted to the
 15213 department prior to or together with any reports, or information to be signed by an authorized
 15214 representative.

15215 D. Any person signing a document under subsection A or B of this section shall make the
 15216 following certification:

15217 "I certify under penalty of law that this document and all attachments were prepared under
 15218 my direction or supervision in accordance with a system designed to assure that qualified
 15219 personnel properly gather and evaluate the information submitted. Based on my inquiry of
 15220 the person or persons who manage the system, or those persons directly responsible for

15221 gathering the information, the information submitted is, to the best of my knowledge and
 15222 belief, true, accurate, and complete. I am aware that there are significant penalties for
 15223 submitting false information, including the possibility of fine and imprisonment for knowing
 15224 violations."

15225 E. Electronic reporting. If documents described in subsection A or B of this section are
 15226 submitted electronically by or on behalf of a VPDES-regulated facility, any person providing the
 15227 electronic signature for such documents shall meet all relevant requirements of this section and
 15228 shall ensure that all of the relevant requirements of Part XI (9VAC25-31-950 et seq.) of the Virginia
 15229 Pollutant Discharge Elimination System (VPDES) Permit Regulation and 40 CFR Part 3
 15230 (including, in all cases, 40 CFR Part 3 Subpart D) are met for that submission.

15231 **9VAC25-875-950. Stormwater discharges.**

15232 A. Permit requirements.

15233 1. Prior to October 1, 1994, discharges composed entirely of stormwater shall not be
 15234 required to obtain a permit except:

15235 a. A discharge with respect to which a permit has been issued prior to February 4,
 15236 1987;

15237 b. A stormwater discharge associated with large construction activity;

15238 c. A discharge from a large municipal separate storm sewer system;

15239 d. A discharge from a medium municipal separate storm sewer system; or

15240 e. A discharge that either the department or the regional administrator determines to
 15241 contribute to a violation of a water quality standard or is a significant contributor of
 15242 pollutants to surface waters. This designation may include a discharge from any
 15243 conveyance or system of conveyances used for collecting and conveying stormwater
 15244 runoff or a system of discharges from municipal separate storm sewers, except for
 15245 those discharges from conveyances that do not require a permit under subdivision 2
 15246 of this subsection or agricultural stormwater runoff that is exempted from the definition
 15247 of point source.

15248 The department may designate discharges from municipal separate storm sewers on
 15249 a system-wide or jurisdiction-wide basis. In making this determination the department
 15250 may consider the following factors:

15251 (1) The location of the discharge with respect to surface waters;

15252 (2) The size of the discharge;

15253 (3) The quantity and nature of the pollutants discharged to surface waters; and

15254 (4) Other relevant factors.

15255 2. The department may not require a permit for discharges of stormwater runoff from
 15256 mining operations or oil and gas exploration, production, processing or treatment
 15257 operations, or transmission facilities, composed entirely of flows that are from
 15258 conveyances or systems of conveyances (including but not limited to pipes, conduits,
 15259 ditches, and channels) used for collecting and conveying precipitation runoff and that are
 15260 not contaminated by contact with or that has not come into contact with, any overburden,
 15261 raw material, intermediate products, finished product, by-product or waste products
 15262 located on the site of such operations.

15263 3. a. Permits must be obtained for all discharges from large and medium municipal
 15264 separate storm sewer systems.

15265 b. The department may either issue one system-wide permit covering all discharges
 15266 from municipal separate storm sewers within a large or medium municipal storm sewer
 15267 system or issue distinct permits for appropriate categories of discharges within a large

15268 or medium municipal separate storm sewer system including, but not limited to: all
 15269 discharges owned or operated by the same municipality; located within the same
 15270 jurisdiction; all discharges within a system that discharge to the same watershed;
 15271 discharges within a system that are similar in nature; or for individual discharges from
 15272 municipal separate storm sewers within the system.

15273 c. The operator of a discharge from a municipal separate storm sewer that is part of a
 15274 large or medium municipal separate storm sewer system must either:

15275 (1) Participate in a permit application (to be a permittee or a state co-permittee) with
 15276 one or more other operators of discharges from the large or medium municipal storm
 15277 sewer system that covers all, or a portion of all, discharges from the municipal separate
 15278 storm sewer system;

15279 (2) Submit a distinct permit application that only covers discharges from the municipal
 15280 separate storm sewers for which the operator is responsible; or

15281 (3) A regional authority may be responsible for submitting a permit application under
 15282 the following guidelines:

15283 (a) The regional authority together with permit co-applicants shall have authority over
 15284 a stormwater management program that is in existence, or shall be in existence at the
 15285 time Part 1 of the application is due;

15286 (b) The permit applicant or co-applicants shall establish their ability to make a timely
 15287 submission of Part 1 and Part 2 of the municipal application;

15288 (c) Each of the operators of municipal separate storm sewers within large or medium
 15289 municipal separate storm sewer systems, that are under the purview of the designated
 15290 regional authority, shall comply with the application requirements of subsection C of
 15291 this section.

15292 d. One permit application may be submitted for all or a portion of all municipal separate
 15293 storm sewers within adjacent or interconnected large or medium municipal separate
 15294 storm sewer systems. The department may issue one system-wide permit covering
 15295 all, or a portion of all municipal separate storm sewers in adjacent or interconnected
 15296 large or medium municipal separate storm sewer systems.

15297 e. Permits for all or a portion of all discharges from large or medium municipal separate
 15298 storm sewer systems that are issued on a system-wide, jurisdiction-wide, watershed
 15299 or other basis may specify different conditions relating to different discharges covered
 15300 by the permit, including different management programs for different drainage areas
 15301 that contribute stormwater to the system.

15302 f. State co-permittees need only comply with permit conditions relating to discharges
 15303 from the municipal separate storm sewers for which they are operators.

15304 4. In addition to meeting the requirements of subsection B of this section, an operator of
 15305 a stormwater discharge associated with a large construction activity that discharges
 15306 through a large or medium municipal separate storm sewer system shall submit to the
 15307 operator of the municipal separate storm sewer system receiving the discharge no later
 15308 than May 15, 1991, or 180 days prior to commencing such discharge: the name of the
 15309 facility; a contact person and phone number; the location of the discharge; a description,
 15310 including Standard Industrial Classification, that best reflects the principal products or
 15311 services provided by each facility; and any existing permit number.

15312 5. The department may issue permits for municipal separate storm sewers that are
 15313 designated under subdivision A 1 e of this section on a system-wide basis, jurisdiction-
 15314 wide basis, watershed basis or other appropriate basis, or may issue permits for individual
 15315 discharges.

15316 6. Conveyances that discharge stormwater runoff combined with municipal sewage are
 15317 point sources that must obtain separate VPDES permits in accordance with the
 15318 procedures of 9VAC25-31 and are not subject to the provisions of this section.

15319 7. Whether a discharge from a municipal separate storm sewer is or is not subject to
 15320 regulation under this subsection shall have no bearing on whether the owner or operator
 15321 of the discharge is eligible for funding under Title II, Title III or Title VI of the CWA.

15322 8. a. On and after October 1, 1994, for discharges composed entirely of stormwater, that
 15323 are not required by subdivision 1 of this subsection to obtain a permit, operators shall be
 15324 required to obtain a permit only if:

15325 (1) The discharge is from a small MS4 required to be regulated pursuant to 9VAC25-
 15326 875-970 B;

15327 (2) The discharge is a stormwater discharge associated with small construction activity
 15328 as defined in 9VAC25-875-850;

15329 (3) The department or the EPA regional administrator determines that stormwater
 15330 controls are needed for the discharge based on wasteload allocations that are part of
 15331 "total maximum daily loads" (TMDLs) that address the pollutant(s) of concern; or

15332 (4) The department or the EPA regional administrator determines that the discharge,
 15333 or category of discharges within a geographic area, contributes to a violation of a water
 15334 quality standard or is a significant contributor of pollutants to surface waters.

15335 b. Operators of small MS4s designated pursuant to subdivisions 8 a (1), (3), and (4)
 15336 of this subsection shall seek coverage under a permit in accordance with 9VAC25-
 15337 875-970 C through E. Operators of nonmunicipal sources designated pursuant to
 15338 subdivisions 8 a (2), (3), and (4) of this subsection shall seek coverage under a permit
 15339 in accordance with subdivision B 1 of this section.

15340 c. Operators of stormwater discharges designated pursuant to subdivisions 8 a (3) and
 15341 (4) of this subsection shall apply to the department for a permit within 180 days of
 15342 receipt of notice, unless permission for a later date is granted by the department.

15343 B. Application requirements for stormwater discharges associated with large and small
 15344 construction activity.

15345 1. Dischargers of stormwater associated with large and small construction activity are
 15346 required to apply for an individual permit or seek coverage under a promulgated
 15347 stormwater general permit. Facilities that are required to obtain an individual permit, or
 15348 any discharge of stormwater that the department is evaluating for designation under
 15349 subdivision A 1 e of this section and is not a municipal separate storm sewer, shall submit
 15350 a state application in accordance with the requirements of 9VAC25-875-920 as modified
 15351 and supplemented by the provisions of this subsection.

15352 a. The operator of an existing or new stormwater discharge that is associated with a
 15353 large or small construction activity shall provide a narrative description of:

15354 (1) The location (including a map) and the nature of the construction activity;

15355 (2) The total area of the site and the area of the site that is expected to undergo
 15356 excavation during the life of the permit;

15357 (3) Proposed measures, including best management practices, to control pollutants in
 15358 stormwater discharges during construction, including a brief description of applicable
 15359 state and VESCP requirements;

15360 (4) Proposed measures to control pollutants in stormwater discharges that will occur
 15361 after construction operations have been completed, including a brief description of
 15362 applicable state or local VESCP requirements;

- 15363 (5) An estimate of the runoff coefficient of the site and the increase in impervious area
 15364 after the construction addressed in the permit application is completed, the nature of
 15365 fill material and existing data describing the soil or the quality of the discharge;
- 15366 (6) The name of the receiving water; and
- 15367 (7) The location of Chesapeake Bay Preservation Areas.
- 15368 b. Permit applicants shall provide such other information the department may
 15369 reasonably require to determine whether to issue a permit.
- 15370 C. Application requirements for large and medium municipal separate storm sewer
 15371 discharges. The operator of a discharge from a large or medium municipal separate storm sewer
 15372 or a municipal separate storm sewer that is designated by the department under subdivision A 1
 15373 e of this section may submit a jurisdiction-wide or system-wide permit application. Where more
 15374 than one public entity owns or operates a municipal separate storm sewer within a geographic
 15375 area (including adjacent or interconnected municipal separate storm sewer systems), such
 15376 operators may be a permit coapplicant to the same application. Permit applications for discharges
 15377 from large and medium municipal storm sewers or municipal storm sewers designated under
 15378 subdivision A 1 e of this section shall include;
- 15379 1. Part 1 of the application shall consist of:
- 15380 a. The permit applicants' name, address, telephone number, and email address;
 15381 ownership status; status as a state or local government entity; and the name, address,
 15382 telephone number, and email address of a contact person;
- 15383 b. A description of existing legal authority to control discharges to the municipal
 15384 separate storm sewer system. When existing legal authority is not sufficient to meet
 15385 the criteria provided in subdivision 2 a of this subsection, the description shall list
 15386 additional authorities as will be necessary to meet the criteria and shall include a
 15387 schedule and commitment to seek such additional authority that will be needed to meet
 15388 the criteria;
- 15389 c. Source identification.
- 15390 (1) A description of the historic use of ordinances, guidance or other controls that
 15391 limited the discharge of nonstormwater discharges to any publicly owned treatment
 15392 works serving the same area as the municipal separate storm sewer system.
- 15393 (2) A USGS 7.5 minute topographic map (or equivalent topographic map with a scale
 15394 between 1:10,000 and 1:24,000, if cost effective) extending one mile beyond the
 15395 service boundaries of the municipal storm sewer system covered by the permit
 15396 application. The following information shall be provided:
- 15397 (a) The location of known municipal storm sewer system outfalls discharging to surface
 15398 waters;
- 15399 (b) A description of the land use activities (e.g., divisions indicating undeveloped,
 15400 residential, commercial, agricultural, and industrial uses) accompanied with estimates
 15401 of population densities and projected growth for a 10-year period within the drainage
 15402 area served by the separate storm sewer. For each land use type, an estimate of an
 15403 average runoff coefficient shall be provided;
- 15404 (c) The location and a description of the activities of the facility of each currently
 15405 operating or closed municipal landfill or other treatment, storage or disposal facility for
 15406 municipal waste;
- 15407 (d) The location and the permit number of any known discharge to the municipal storm
 15408 sewer that has been issued a permit;

- 15409 (e) The location of major structural controls for stormwater discharge (retention basins,
15410 detention basins, major infiltration devices, etc.); and
- 15411 (f) The identification of publicly owned parks, recreational areas, and other open lands;
15412 d. Discharge characterization.
- 15413 (1) Monthly mean rain and snow fall estimates (or summary of weather bureau data)
15414 and the monthly average number of storm events.
- 15415 (2) Existing quantitative data describing the volume and quality of discharges from the
15416 municipal storm sewer, including a description of the outfalls sampled, sampling
15417 procedures and analytical methods used.
- 15418 (3) A list of water bodies that receive discharges from the municipal separate storm
15419 sewer system, including downstream segments, lakes and estuaries, where pollutants
15420 from the system discharges may accumulate and cause water degradation and a brief
15421 description of known water quality impacts. At a minimum, the description of impacts
15422 shall include a description of whether the water bodies receiving such discharges have
15423 been:
- 15424 (a) Assessed and reported in § 305(b) of the CWA reports submitted by the state, the
15425 basis for the assessment (evaluated or monitored), a summary of designated use
15426 support and attainment of the State Water Control Law and the CWA goals (fishable
15427 and swimmable waters), and causes of nonsupport of designated uses;
- 15428 (b) Listed under § 304(l)(1)(A)(i), 304(l)(1)(A)(ii), or 304(l)(1)(B) of the CWA that is not
15429 expected to meet water quality standards or water quality goals;
- 15430 (c) Listed in State Nonpoint Source Assessments required by § 319(a) of the CWA
15431 that, without additional action to control nonpoint sources of pollution, cannot
15432 reasonably be expected to attain or maintain water quality standards due to storm
15433 sewers, construction, highway maintenance and runoff from municipal landfills and
15434 municipal sludge adding significant pollution (or contributing to a violation of water
15435 quality standards);
- 15436 (d) Identified and classified according to eutrophic condition of publicly owned lakes
15437 listed in state reports required under § 314(a) of the CWA (include the following: a
15438 description of those publicly owned lakes for which uses are known to be impaired; a
15439 description of procedures, processes, and methods to control the discharge of
15440 pollutants from municipal separate storm sewers into such lakes; and a description of
15441 methods and procedures to restore the quality of such lakes);
- 15442 (e) Areas of concern of the Great Lakes identified by the International Joint
15443 Commission;
- 15444 (f) Designated estuaries under the National Estuary Program under § 320 of the CWA;
- 15445 (g) Recognized by the permit applicant as highly valued or sensitive waters;
- 15446 (h) Defined by the state or U.S. Fish and Wildlife Service's National Wetlands Inventory
15447 as wetlands; and
- 15448 (i) Found to have pollutants in bottom sediments, fish tissue or biosurvey data.
- 15449 (4) Results of a field screening analysis for illicit connections and illegal dumping for
15450 either selected field screening points or major outfalls covered in the permit
15451 application. At a minimum, a screening analysis shall include a narrative description,
15452 for either each field screening point or major outfall, of visual observations made during
15453 dry weather periods. If any flow is observed, two grab samples shall be collected
15454 during a 24-hour period with a minimum period of four hours between samples. For all
15455 such samples, a narrative description of the color, odor, turbidity, the presence of an

15456 oil sheen or surface scum as well as any other relevant observations regarding the
15457 potential presence of nonstormwater discharges or illegal dumping shall be provided.
15458 In addition, a narrative description of the results of a field analysis using suitable
15459 methods to estimate pH, total chlorine, total copper, total phenol, and detergents (or
15460 surfactants) shall be provided along with a description of the flow rate. Where the field
15461 analysis does not involve analytical methods approved under 40 CFR Part 136, the
15462 permit applicant shall provide a description of the method used including the name of
15463 the manufacturer of the test method along with the range and accuracy of the test.
15464 Field screening points shall be either major outfalls or other outfall points (or any other
15465 point of access such as manholes) randomly located throughout the storm sewer
15466 system by placing a grid over a drainage system map and identifying those cells of the
15467 grid which contain a segment of the storm sewer system or major outfall. The field
15468 screening points shall be established using the following guidelines and criteria:

15469 (a) A grid system consisting of perpendicular north-south and east-west lines spaced
15470 1/4 mile apart shall be overlaid on a map of the municipal storm sewer system, creating
15471 a series of cells;

15472 (b) All cells that contain a segment of the storm sewer system shall be identified; one
15473 field screening point shall be selected in each cell; major outfalls may be used as field
15474 screening points;

15475 (c) Field screening points should be located downstream of any sources of suspected
15476 illegal or illicit activity;

15477 (d) Field screening points shall be located to the degree practicable at the farthest
15478 manhole or other accessible location downstream in the system, within each cell;
15479 however, safety of personnel and accessibility of the location should be considered in
15480 making this determination;

15481 (e) Hydrological conditions; total drainage area of the site; population density of the
15482 site; traffic density; age of the structures or buildings in the area; history of the area;
15483 and land use types;

15484 (f) For medium municipal separate storm sewer systems, no more than 250 cells need
15485 to have identified field screening points; in large municipal separate storm sewer
15486 systems, no more than 500 cells need to have identified field screening points; cells
15487 established by the grid that contain no storm sewer segments will be eliminated from
15488 consideration; if fewer than 250 cells in medium municipal sewers are created, and
15489 fewer than 500 in large systems are created by the overlay on the municipal sewer
15490 map, then all those cells which contain a segment of the sewer system shall be subject
15491 to field screening (unless access to the separate storm sewer system is impossible);
15492 and

15493 (g) Large or medium municipal separate storm sewer systems which are unable to
15494 utilize the procedures described in subdivisions 1 d (4) (a) through (f) of this
15495 subsection, because a sufficiently detailed map of the separate storm sewer systems
15496 is unavailable, shall field screen no more than 500 or 250 major outfalls respectively
15497 (or all major outfalls in the system, if less); in such circumstances, the permit applicant
15498 shall establish a grid system consisting of north-south and east-west lines spaced 1/4
15499 mile apart as an overlay to the boundaries of the municipal storm sewer system,
15500 thereby creating a series of cells; the permit applicant will then select major outfalls in
15501 as many cells as possible until at least 500 major outfalls (large municipalities) or 250
15502 major outfalls (medium municipalities) are selected; a field screening analysis shall be
15503 undertaken at these major outfalls.

15504 (5) Information and a proposed program to meet the requirements of subdivision 2 c
15505 of this subsection. Such description shall include: the location of outfalls or field
15506 screening points appropriate for representative data collection under subdivision 2 c
15507 (1) of this subsection, a description of why the outfall or field screening point is
15508 representative, the seasons during which sampling is intended, and a description of
15509 the sampling equipment. The proposed location of outfalls or field screening points for
15510 such sampling should reflect water quality concerns (see subdivision 1 d (3) of this
15511 subsection) to the extent practicable;

15512 e. Management programs.

15513 (1) A description of the existing management programs to control pollutants from the
15514 municipal separate storm sewer system. The description shall provide information on
15515 existing structural and source controls, including operation and maintenance
15516 measures for structural controls, that are currently being implemented. Such controls
15517 may include, but are not limited to, procedures to control pollution resulting from
15518 construction activities, floodplain management controls, wetland protection measures,
15519 best management practices for new subdivisions; and emergency spill response
15520 programs. The description may address controls established under state law as well
15521 as local requirements.

15522 (2) A description of the existing program to identify illicit connections to the municipal
15523 storm sewer system. The description should include inspection procedures and
15524 methods for detecting and preventing illicit discharges, and describe areas where this
15525 program has been implemented; and

15526 f. Fiscal resources. A description of the financial resources currently available to the
15527 municipality to complete Part 2 of the permit application. A description of the
15528 municipality's budget for existing stormwater programs, including an overview of the
15529 municipality's financial resources and budget, including overall indebtedness and
15530 assets, and sources of funds for stormwater programs.

15531 2. Part 2 of the application shall consist of:

15532 a. A demonstration that the permit applicant can operate pursuant to legal authority
15533 established by statute, ordinance or series of contracts that authorizes or enables the
15534 permit applicant at a minimum to:

15535 (1) Control through ordinance, permit, contract, order or similar means, the
15536 contribution of pollutants to the municipal storm sewer by stormwater discharges
15537 associated with industrial activity and the quality of stormwater discharged from sites
15538 of industrial activity;

15539 (2) Prohibit through ordinance, order or similar means, illicit discharges to the
15540 municipal separate storm sewer;

15541 (3) Control through ordinance, order or similar means the discharge to a municipal
15542 separate storm sewer of spills, dumping or disposal of materials other than stormwater;

15543 (4) Control through interagency agreements among permit coapplicants the
15544 contribution of pollutants from one portion of the municipal system to another portion
15545 of the municipal system;

15546 (5) Require compliance with conditions in ordinances, permits, contracts or orders;
15547 and

15548 (6) Carry out all inspection, surveillance and monitoring procedures necessary to
15549 determine compliance and noncompliance with permit conditions including the
15550 prohibition on illicit discharges to the municipal separate storm sewer;

15551 b. The location of any major outfall that discharges to surface waters that was not
15552 reported under subdivision 1 c (2) (a) of this subsection. Provide an inventory,
15553 organized by watershed of the name and address, and a description (such as SIC
15554 codes) that best reflects the principal products or services provided by each facility
15555 that may discharge, to the municipal separate storm sewer, stormwater associated
15556 with industrial activity;

15557 c. When quantitative data for a pollutant are required under subdivision 2 c (1) (c) of
15558 this subsection, the permit applicant must collect a sample of effluent in accordance
15559 with 9VAC25-875-960 and analyze it for the pollutant in accordance with analytical
15560 methods approved under 40 CFR Part 136. When no analytical method is approved
15561 the permit applicant may use any suitable method but must provide a description of
15562 the method. The permit applicant must provide information characterizing the quality
15563 and quantity of discharges covered in the permit application, including:

15564 (1) Quantitative data from representative outfalls designated by the department (based
15565 on information received in Part 1 of the application, the department shall designate
15566 between five and 10 outfalls or field screening points as representative of the
15567 commercial, residential and industrial land use activities of the drainage area
15568 contributing to the system or, where there are less than five outfalls) covered in the
15569 application, the department shall designate all outfalls developed as follows:

15570 (a) For each outfall or field screening point designated under this subsection, samples
15571 shall be collected of stormwater discharges from three storm events occurring at least
15572 one month apart in accordance with the requirements at 9VAC25-875-960 (the
15573 department may allow exemptions to sampling three storm events when climatic
15574 conditions create good cause for such exemptions);

15575 (b) A narrative description shall be provided of the date and duration of the storm event
15576 or events sampled, rainfall estimates of the storm event which generated the sampled
15577 discharge and the duration between the storm event sampled and the end of the
15578 previous measurable (greater than 0.1 inch rainfall) storm event;

15579 (c) For samples collected and described under subdivisions 2 c (1) (a) and (1) (b) of
15580 this subsection, quantitative data shall be provided for: the organic pollutants listed in
15581 Table II; the pollutants listed in Table III (toxic metals, cyanide, and total phenols) of
15582 40 CFR Part 122 Appendix D, and for the following pollutants:

15583 Total suspended solids (TSS)

15584 Total dissolved solids (TDS)

15585 Chemical oxygen demand (COD)

15586 Biochemical oxygen demand (BOD₅)

15587 Oil and grease

15588 Fecal coliform

15589 Fecal streptococcus

15590 pH

15591 Total Kjeldahl nitrogen

15592 Nitrate plus nitrite

15593 Dissolved phosphorus

15594 Total ammonia plus organic nitrogen

15595 Total phosphorus

15596 (d) Additional limited quantitative data required by the department for determining
15597 permit conditions (the department may require that quantitative data shall be provided
15598 for additional parameters, and may establish sampling conditions such as the location,
15599 season of sample collection, form of precipitation (snow melt, rainfall) and other
15600 parameters necessary to ensure representativeness):

15601 (2) Estimates of the annual pollutant load of the cumulative discharges to surface
15602 waters from all identified municipal outfalls and the event mean concentration of the
15603 cumulative discharges to surface waters from all identified municipal outfalls during a
15604 storm event (as described under 9VAC25-875-960) for BOD₅, COD, TSS, dissolved
15605 solids, total nitrogen, total ammonia plus organic nitrogen, total phosphorus, dissolved
15606 phosphorus, cadmium, copper, lead, and zinc. Estimates shall be accompanied by a
15607 description of the procedures for estimating constituent loads and concentrations,
15608 including any modeling, data analysis, and calculation methods:

15609 (3) A proposed schedule to provide estimates for each major outfall identified in either
15610 subdivision 2 b or 1 c (2) (a) of this subsection of the seasonal pollutant load and of
15611 the event mean concentration of a representative storm for any constituent detected
15612 in any sample required under subdivision 2 c (1) of this subsection; and

15613 (4) A proposed monitoring program for representative data collection for the term of
15614 the permit that describes the location of outfalls or field screening points to be sampled
15615 (or the location of instream stations), why the location is representative, the frequency
15616 of sampling, parameters to be sampled, and a description of sampling equipment;

15617 d. A proposed management program that covers the duration of the permit. It shall
15618 include a comprehensive planning process that involves public participation and,
15619 where necessary, intergovernmental coordination to reduce the discharge of pollutants
15620 to the maximum extent practicable using management practices, control techniques
15621 and system, design and engineering methods, and such other provisions that are
15622 appropriate. The program shall also include a description of staff and equipment
15623 available to implement the program. Separate proposed programs may be submitted
15624 by each permit coapplicant. Proposed programs may impose controls on a system
15625 wide basis, a watershed basis, a jurisdiction basis, or on individual outfalls. Proposed
15626 programs will be considered by the department when developing permit conditions to
15627 reduce pollutants in discharges to the maximum extent practicable. Proposed
15628 management programs shall describe priorities for implementing controls. Such
15629 programs shall be based on:

15630 (1) A description of structural and source control measures to reduce pollutants from
15631 runoff from commercial and residential areas that are discharged from the municipal
15632 storm sewer system that are to be implemented during the life of the permit,
15633 accompanied with an estimate of the expected reduction of pollutant loads and a
15634 proposed schedule for implementing such controls. At a minimum, the description shall
15635 include:

15636 (a) A description of maintenance activities and a maintenance schedule for structural
15637 controls to reduce pollutants (including floatables) in discharges from municipal
15638 separate storm sewers;

15639 (b) A description of planning procedures including a comprehensive master plan to
15640 develop, implement and enforce controls to reduce the discharge of pollutants from
15641 municipal separate storm sewers which receive discharges from areas of new
15642 development and significant redevelopment. Such plan shall address controls to
15643 reduce pollutants in discharges from municipal separate storm sewers after
15644 construction is completed. Controls to reduce pollutants in discharges from municipal

- 15645 separate storm sewers containing construction site runoff are addressed in subdivision
15646 2 d (4) of this subsection;
- 15647 (c) A description of practices for operating and maintaining public streets, roads and
15648 highways and procedures for reducing the impact on receiving waters of discharges
15649 from municipal storm sewer systems, including pollutants discharged as a result of
15650 deicing activities;
- 15651 (d) A description of procedures to assure that flood management projects assess the
15652 impacts on the water quality of receiving water bodies and that existing structural flood
15653 control devices have been evaluated to determine if retrofitting the device to provide
15654 additional pollutant removal from stormwater is feasible;
- 15655 (e) A description of a program to monitor pollutants in runoff from operating or closed
15656 municipal landfills or other treatment, storage or disposal facilities for municipal waste,
15657 which shall identify priorities and procedures for inspections and establishing and
15658 implementing control measures for such discharges (this program can be coordinated
15659 with the program developed under subdivision 2 d (3) of this subsection); and
- 15660 (f) A description of a program to reduce to the maximum extent practicable, pollutants
15661 in discharges from municipal separate storm sewers associated with the application of
15662 pesticides, herbicides and fertilizer that will include, as appropriate, controls such as
15663 educational activities, permits, certifications and other measures for commercial
15664 applicators and distributors, and controls for application in public right-of-ways and at
15665 municipal facilities;
- 15666 (2) A description of a program, including a schedule, to detect and remove (or require
15667 the discharger to the municipal separate storm sewer to obtain a separate permit for)
15668 illicit discharges and improper disposal into the storm sewer. The proposed program
15669 shall include:
- 15670 (a) A description of a program, including inspections, to implement and enforce an
15671 ordinance, orders or similar means to prevent illicit discharges to the municipal
15672 separate storm sewer system; this program description shall address all types of illicit
15673 discharges, however the following category of nonstormwater discharges or flows shall
15674 be addressed where such discharges are identified by the municipality as sources of
15675 pollutants to surface waters: water line flushing, landscape irrigation, diverted stream
15676 flows, rising groundwaters, uncontaminated groundwater infiltration to separate storm
15677 sewers, uncontaminated pumped groundwater, discharges from potable water
15678 sources, foundation drains, air conditioning condensation, irrigation water, springs,
15679 water from crawl space pumps, footing drains, lawn watering, individual residential car
15680 washing, flows from riparian habitats and wetlands, dechlorinated swimming pool
15681 discharges, and street wash water (program descriptions shall address discharges or
15682 flows from firefighting only where such discharges or flows are identified as significant
15683 sources of pollutants to surface waters);
- 15684 (b) A description of procedures to conduct on-going field screening activities during
15685 the life of the permit, including areas or locations that will be evaluated by such field
15686 screens;
- 15687 (c) A description of procedures to be followed to investigate portions of the separate
15688 storm sewer system that, based on the results of the field screen, or other appropriate
15689 information, indicate a reasonable potential of containing illicit discharges or other
15690 sources of nonstormwater (such procedures may include: sampling procedures for
15691 constituents such as fecal coliform, fecal streptococcus, surfactants (Methylene Blue
15692 Active Substances—MBAS), residual chlorine, fluorides and potassium; testing with
15693 fluorometric dyes; or conducting in storm sewer inspections where safety and other

15694 considerations allow. Such description shall include the location of storm sewers that
15695 have been identified for such evaluation);

15696 (d) A description of procedures to prevent, contain, and respond to spills that may
15697 discharge into the municipal separate storm sewer;

15698 (e) A description of a program to promote, publicize, and facilitate public reporting of
15699 the presence of illicit discharges or water quality impacts associated with discharges
15700 from municipal separate storm sewers;

15701 (f) A description of educational activities, public information activities, and other
15702 appropriate activities to facilitate the proper management and disposal of used oil and
15703 toxic materials; and

15704 (g) A description of controls to limit infiltration of seepage from municipal sanitary
15705 sewers to municipal separate storm sewer systems where necessary.

15706 (3) A description of a program to monitor and control pollutants in stormwater
15707 discharges to municipal systems from municipal landfills, hazardous waste treatment,
15708 disposal and recovery facilities, industrial facilities that are subject to § 313 of Title III
15709 of the Superfund Amendments and Reauthorization Act of 1986 (SARA, 42 USC §
15710 11023), and industrial facilities that the municipal permit applicant determines are
15711 contributing a substantial pollutant loading to the municipal storm sewer system. The
15712 program shall:

15713 (a) Identify priorities and procedures for inspections and establishing and
15714 implementing control measures for such discharges;

15715 (b) Describe a monitoring program for stormwater discharges associated with the
15716 industrial facilities identified in subdivision 2 d (3) of this subsection, to be implemented
15717 during the term of the permit, including the submission of quantitative data on the
15718 following constituents: any pollutants limited in effluent guidelines subcategories,
15719 where applicable; any pollutant listed in an existing separate VPDES permit for a
15720 facility; oil and grease, COD, pH, BOD₅, TSS, total phosphorus, total Kjeldahl nitrogen,
15721 nitrate plus nitrite nitrogen, and any information on discharges required under
15722 9VAC25-875-960 F and G; and

15723 (4) A description of a program to implement and maintain structural and nonstructural
15724 best management practices to reduce pollutants in stormwater runoff from
15725 construction sites to the municipal storm sewer system, which shall include:

15726 (a) A description of procedures for site planning that incorporate consideration of
15727 potential water quality impacts;

15728 (b) A description of requirements for nonstructural and structural best management
15729 practices;

15730 (c) A description of procedures for identifying priorities for inspecting sites and
15731 enforcing control measures that consider the nature of the construction activity,
15732 topography, and the characteristics of soils and receiving water quality; and

15733 (d) A description of appropriate educational and training measures for construction site
15734 operators;

15735 e. Estimated reductions in loadings of pollutants from discharges of municipal storm
15736 sewer constituents from municipal storm sewer systems expected as the result of the
15737 municipal stormwater quality management program. The assessment shall also
15738 identify known impacts of stormwater controls on groundwater;

15739 f. For each fiscal year to be covered by the permit, a fiscal analysis of the necessary
15740 capital and operation and maintenance expenditures necessary to accomplish the

15741 activities of the programs under subdivisions 2 c and d of this subsection. Such
 15742 analysis shall include a description of the source of funds that are proposed to meet
 15743 the necessary expenditures, including legal restrictions on the use of such funds;

15744 g. Where more than one legal entity submits an application, the application shall
 15745 contain a description of the roles and responsibilities of each legal entity and
 15746 procedures to ensure effective coordination; and

15747 h. Where requirements under subdivisions 1 d (5), 2 b, 2 c (2), and 2 d of this
 15748 subsection are not practicable or are not applicable, the department may exclude any
 15749 operator of a discharge from a municipal separate storm sewer that is designated
 15750 under subdivision A 1 e of this section, or that is located in the counties listed in 40
 15751 CFR Part 122 Appendix H or Appendix I (except municipal separate storm sewers that
 15752 are located in the incorporated places, townships or towns within such counties) from
 15753 such requirements. The department shall not exclude the operator of a discharge from
 15754 a municipal separate storm sewer identified in 40 CFR Part 122 Appendix F, G, H or I
 15755 from any of the permit application requirements under this subdivision except where
 15756 authorized under this subsection.

15757 D. Petitions.

15758 1. Any operator of a municipal separate storm sewer system may petition the appropriate
 15759 authority or the department to require a separate permit for any discharge into the
 15760 municipal separate storm sewer system.

15761 2. Any person may petition the department to require a permit for a discharge which is
 15762 composed entirely of stormwater which contributes to a violation of a water quality
 15763 standard or is a significant contributor of pollutants to surface waters.

15764 3. Any person may petition the department for the designation of a large, medium, or small
 15765 municipal separate storm sewer system as defined by this chapter.

15766 4. The department shall make a final determination on any petition received under this
 15767 section within 90 days after receiving the petition with the exception of petitions to
 15768 designate a small MS4, in which case the department shall make a final determination on
 15769 the petition within 180 days after its receipt.

15770 **9VAC25-875-960. Effluent sampling procedures.**

15771 Permit applicants for discharges from large and small municipal storm sewers or municipal
 15772 storm sewers designated under 9VAC25-875-950 A 1 e shall provide the following information to
 15773 the department, using application forms provided by the department.

15774 A. Information on stormwater discharges that is to be provided as specified in 9VAC25-
 15775 875-950. When quantitative data for a pollutant are required, the permit applicant must
 15776 collect a sample of effluent and analyze it for the pollutant in accordance with analytical
 15777 methods approved under 40 CFR Part 136. When no analytical method is approved the
 15778 permit applicant may use any suitable method but must provide a description of the
 15779 method. When a permit applicant has two or more outfalls with substantially identical
 15780 effluents, the department may allow the permit applicant to test only one outfall and report
 15781 that the quantitative data also apply to the substantially identical outfalls. The requirements
 15782 in subsections E and F of this section that a permit applicant must provide quantitative
 15783 data for certain pollutants known or believed to be present do not apply to pollutants
 15784 present in a discharge solely as the result of their presence in intake water; however, an
 15785 applicant must report such pollutants as present. Grab samples must be used for pH,
 15786 temperature, cyanide, total phenols, residual chlorine, oil and grease, fecal coliform, and
 15787 fecal streptococcus. For all other pollutants, 24-hour composite samples must be used.
 15788 However, a minimum of one grab sample may be taken for effluents from holding ponds

15789 or other impoundments with a retention period greater than 24 hours. In addition, for
 15790 discharges other than stormwater discharges, the department may waive composite
 15791 sampling for any outfall for which the permit applicant demonstrates that the use of an
 15792 automatic sampler is infeasible and that the minimum of four grab samples will be a
 15793 representative sample of the effluent being discharged.

15794 B. For stormwater discharges, all samples shall be collected from the discharge resulting
 15795 from a storm event that is greater than 0.1 inch and at least 72 hours from the previously
 15796 measurable (greater than 0.1 inch rainfall) storm event. Where feasible, the variance in
 15797 the duration of the event and the total rainfall of the event should not exceed 50% from
 15798 the average or median rainfall event in that area. For all permit applicants, a flow-weighted
 15799 composite shall be taken for either the entire discharge or for the first three hours of the
 15800 discharge. The flow-weighted composite sample for a stormwater discharge may be taken
 15801 with a continuous sampler or as a combination of a minimum of three sample aliquots
 15802 taken in each hour of discharge for the entire discharge or for the first three hours of the
 15803 discharge, with each aliquot being separated by a minimum period of 15 minutes.
 15804 However, a minimum of one grab sample may be taken for stormwater discharges from
 15805 holding ponds or other impoundments with a retention period greater than 24 hours. For
 15806 a flow-weighted composite sample, only one analysis of the composite of aliquots is
 15807 required. For stormwater discharge samples taken from discharges associated with
 15808 industrial activities, quantitative data must be reported for the grab sample taken during
 15809 the first 30 minutes (or as soon thereafter as practicable) of the discharge for all pollutants
 15810 specified in 9VAC25-875-950 C 1. For all stormwater permit applicants taking flow-
 15811 weighted composites, quantitative data must be reported for all pollutants specified in
 15812 9VAC25-875-950 except pH, temperature, cyanide, total phenols, residual chlorine, oil
 15813 and grease, fecal coliform, and fecal streptococcus. The department may allow or
 15814 establish appropriate site-specific sampling procedures or requirements, including
 15815 sampling locations, the season in which the sampling takes place, the minimum duration
 15816 between the previous measurable storm event and the storm event sampled, the minimum
 15817 or maximum level of precipitation required for an appropriate storm event, the form of
 15818 precipitation sampled (snow melt or rain fall), protocols for collecting samples under 40
 15819 CFR Part 136, and additional time for submitting data on a case-by-case basis. A permit
 15820 applicant is expected to know or have reason to believe that a pollutant is present in an
 15821 effluent based on an evaluation of the expected use, production, or storage of the
 15822 pollutant, or on any previous analyses for the pollutant. (For example, any pesticide
 15823 manufactured by a facility may be expected to be present in contaminated stormwater
 15824 runoff from the facility.)

15825 C. Every permit applicant must report quantitative data for every outfall for the following
 15826 pollutants:

15827 Biochemical oxygen demand (BOD₅)

15828 Chemical oxygen demand

15829 Total organic carbon

15830 Total suspended solids

15831 Ammonia (as N)

15832 Temperature (both winter and summer)

15833 pH

15834 D. The department may waive the reporting requirements for individual point sources or
 15835 for a particular industry category for one or more of the pollutants listed in subsection C of
 15836 this section if the permit applicant has demonstrated that such a waiver is appropriate

15837 because information adequate to support issuance of a permit can be obtained with less
15838 stringent requirements.

15839 E. Each permit applicant with processes in one or more primary industry category (see 40
15840 CFR Part 122 Appendix A) contributing to a discharge must report quantitative data for
15841 the following pollutants in each outfall containing process wastewater:

15842 1. The organic toxic pollutants in the fractions designated in Table I of 40 CFR Part
15843 122 Appendix D for the permit applicant's industrial category or categories unless the
15844 permit applicant qualifies as a small business. Table II of 40 CFR Part 122 Appendix
15845 D lists the organic toxic pollutants in each fraction. The fractions result from the sample
15846 preparation required by the analytical procedure that uses gas chromatography/mass
15847 spectrometry. A determination that a permit applicant falls within a particular industrial
15848 category for the purposes of selecting fractions for testing is not conclusive as to the
15849 permit applicant's inclusion in that category for any other purposes; and

15850 2. The pollutants listed in Table III of 40 CFR Part 122 Appendix D (the toxic metals,
15851 cyanide, and total phenols).

15852 F. 1. Each permit applicant must indicate whether it knows or has reason to believe that
15853 any of the pollutants in Table IV of 40 CFR Part 122 Appendix D (certain conventional and
15854 nonconventional pollutants) is discharged from each outfall. If an applicable effluent
15855 limitations guideline either directly limits the pollutant or, by its express terms, indirectly
15856 limits the pollutant through limitations on an indicator, the permit applicant must report
15857 quantitative data. For every pollutant discharged that is not so limited in an effluent
15858 limitations guideline, the permit applicant must either report quantitative data or briefly
15859 describe the reasons the pollutant is expected to be discharged.

15860 2. Each applicant must indicate whether it knows or has reason to believe that any of
15861 the pollutants listed in Table II or Table III of 40 CFR Part 122 Appendix D (the toxic
15862 pollutants and total phenols) for which quantitative data are not otherwise required
15863 under subsection E of this section, is discharged from each outfall. For every pollutant
15864 expected to be discharged in concentrations of 10 ppb or greater the permit applicant
15865 must report quantitative data. For acrolein, acrylonitrile, 2,4 dinitrophenol, and 2-
15866 methyl-4,6 dinitrophenol, where any of these four pollutants are expected to be
15867 discharged in concentrations of 100 ppb or greater the permit applicant must report
15868 quantitative data. For every pollutant expected to be discharged in concentrations less
15869 than 10 ppb, or in the case of acrolein, acrylonitrile, 2,4 dinitrophenol, and 2-methyl-
15870 4,6 dinitrophenol, in concentrations less than 100 ppb, the permit applicant must either
15871 submit quantitative data or briefly describe the reasons the pollutant is expected to be
15872 discharged. A permit applicant qualifying as a small business is not required to analyze
15873 for pollutants listed in Table II of 40 CFR Part 122 Appendix D (the organic toxic
15874 pollutants).

15875 G. Each permit applicant must indicate whether it knows or has reason to believe that any
15876 of the pollutants in Table V of 40 CFR Part 122 Appendix D (certain hazardous substances
15877 and asbestos) are discharged from each outfall. For every pollutant expected to be
15878 discharged, the permit applicant must briefly describe the reasons the pollutant is
15879 expected to be discharged, and report any quantitative data it has for any pollutant.

15880 H. Each permit applicant must report qualitative data, generated using a screening
15881 procedure not calibrated with analytical standards, for 2,3,7,8-tetrachlorodibenzo-p-dioxin
15882 (TCDD) if it:

15883 1. Uses or manufactures 2,4,5-trichlorophenoxy acetic acid (2,4,5,-T); 2-(2,4,5-
15884 trichlorophenoxy) propanoic acid (Silvex, 2,4,5,-TP); 2-(2,4,5-trichlorophenoxy) ethyl,
15885 2,2-dichloropropionate (Erbon); O,O-dimethyl O-(2,4,5-trichlorophenyl)

15886 phosphorothioate (Ronnel); 2,4,5-trichlorophenol (TCP); or hexachlorophene (HCP);
 15887 or

15888 2. Knows or has reason to believe that TCDD is or may be present in an effluent.

15889 **9VAC25-875-970. Small municipal separate storm sewer systems.**

15890 A. Objectives of the stormwater regulations for small MS4s.

15891 1. Subsections A through G of this section are written in a "readable regulation" format
 15892 that includes both rule requirements and guidance. The recommended guidance is
 15893 distinguished from the regulatory requirements by putting the guidance in a separate
 15894 subdivision headed by the word "Note."

15895 2. Under the statutory mandate in § 402(p)(6) of the Clean Water Act, the purpose of this
 15896 portion of the stormwater program is to designate additional sources that need to be
 15897 regulated to protect water quality and to establish a comprehensive stormwater program
 15898 to regulate these sources.

15899 3. Stormwater runoff continues to harm the nation's waters. Runoff from lands modified by
 15900 human activities can harm surface water resources in several ways including by changing
 15901 natural hydrologic patterns and by elevating pollutant concentrations and loadings.
 15902 Stormwater runoff may contain or mobilize high levels of contaminants, such as sediment,
 15903 suspended solids, nutrients, heavy metals, pathogens, toxins, oxygen-demanding
 15904 substances, and floatables.

15905 4. The department strongly encourages partnerships and the watershed approach as the
 15906 management framework for efficiently, effectively, and consistently protecting and
 15907 restoring aquatic ecosystems and protecting public health.

15908 B. As an operator of a small MS4, am I regulated under the state's stormwater program?

15909 1. Unless you qualify for a waiver under subdivision 3 of this subsection, you are regulated
 15910 if you operate a small MS4, including but not limited to systems operated by federal, state,
 15911 tribal, and local governments, including the Virginia Department of Transportation; and

15912 a. Your small MS4 is located in an urbanized area as determined by the latest
 15913 decennial census by the Bureau of the Census (If your small MS4 is not located
 15914 entirely within an urbanized area, only the portion that is within the urbanized area is
 15915 regulated); or

15916 b. You are designated by the department, including where the designation is pursuant
 15917 to subdivisions C 3 a and b of this section or is based upon a petition under 9VAC25-
 15918 875-950 D.

15919 2. You may be the subject of a petition to the department to require a permit for your
 15920 discharge of stormwater. If the department determines that you need a permit, you are
 15921 required to comply with subsections C through E of this section.

15922 3. The department may waive the requirements otherwise applicable to you if you meet
 15923 the criteria of subdivision 4 or 5 of this subsection. If you receive a waiver under this
 15924 section, you may subsequently be required to seek coverage under a permit in accordance
 15925 with subdivision C 1 of this section if circumstances change. (See also subdivision E 2 of
 15926 this section).

15927 4. The department may waive permit coverage if your MS4 serves a population of less
 15928 than 1,000 within the urbanized area and you meet the following criteria:

15929 a. Your system is not contributing substantially to the pollutant loadings of a physically
 15930 interconnected MS4 that is regulated by the department; and

15931 b. If you discharge any pollutants that have been identified as a cause of impairment
 15932 of any water body to which you discharge, stormwater controls are not needed based

15933 on wasteload allocations that are part of an approved "total maximum daily load"
 15934 (TMDL) that addresses the pollutants of concern.

15935 5. The department may waive permit coverage if your MS4 serves a population under
 15936 10,000 and you meet the following criteria:

15937 a. The department has evaluated all surface waters, including small streams,
 15938 tributaries, lakes, and ponds, that receive a discharge from your MS4;

15939 b. For all such waters, the department has determined that stormwater controls are
 15940 not needed based on wasteload allocations that are part of an approved TMDL that
 15941 addresses the pollutants of concern or, if a TMDL has not been developed or
 15942 approved, an equivalent analysis that determines sources and allocations for the
 15943 pollutants of concern;

15944 c. For the purpose of subdivision 5 of this subsection, the pollutants of concern include
 15945 biochemical oxygen demand (BOD), sediment or a parameter that addresses
 15946 sediment (such as total suspended solids, turbidity or siltation), pathogens, oil and
 15947 grease, and any pollutant that has been identified as a cause of impairment of any
 15948 water body that will receive a discharge from your MS4; and

15949 d. The department has determined that future discharges from your MS4 do not have
 15950 the potential to result in exceedances of water quality standards, including impairment
 15951 of designated uses, or other significant water quality impacts, including habitat and
 15952 biological impacts.

15953 C. If I am an operator of a regulated small MS4, how do I apply for a permit and when do I
 15954 have to apply?

15955 1. If you operate a regulated small MS4 under subsection B of this section, you must seek
 15956 coverage under a permit issued by the department.

15957 2. You must seek authorization to discharge under a general or individual permit, as
 15958 follows:

15959 a. If the department has issued a general permit applicable to your discharge and you
 15960 are seeking coverage under the general permit, you must submit a registration
 15961 statement that includes the information on your best management practices and
 15962 measurable goals required by subdivision D 4 of this section. You may file your own
 15963 registration statement, or you and other municipalities or governmental entities may
 15964 jointly submit a registration statement. If you want to share responsibilities for meeting
 15965 the minimum measures with other municipalities or governmental entities, you must
 15966 submit a registration statement that describes which minimum measures you will
 15967 implement and identify the entities that will implement the other minimum measures
 15968 within the area served by your MS4. The general permit will explain any other steps
 15969 necessary to obtain permit authorization.

15970 b. (1) If you are seeking authorization to discharge under an individual permit and wish
 15971 to implement a program under subsection D of this section, you must submit an
 15972 application to the department that includes the information required under 9VAC25-
 15973 875-920 F and subdivision D 4 of this section, an estimate of square mileage served
 15974 by your small MS4, and any additional information that the department requests. A
 15975 storm sewer map that satisfies the requirement of subdivision D 2 c (1) of this section
 15976 will satisfy the map requirement in 9VAC25-875-920 F 7.

15977 (2) If you are seeking authorization to discharge under an individual permit and wish
 15978 to implement a program that is different from the program under subsection D of this
 15979 section, you will need to comply with the permit application requirements of 9VAC25-
 15980 875-950 C. You must submit both parts of the application requirements in 9VAC25-

15981 875-950 C 1 and 2 by March 10, 2003. You do not need to submit the information
 15982 required by 9VAC25-875-950 C 1 b and C 2 regarding your legal authority, unless you
 15983 intend for the permit writer to take such information into account when developing your
 15984 other permit conditions.

15985 (3) If allowed by the department, you and another regulated entity may jointly apply
 15986 under either subdivision 2 b (1) or (2) of this subsection to be state co-permittees under
 15987 an individual permit.

15988 c. If your small MS4 is in the same urbanized area as a medium or large MS4 with a
 15989 permit and that other MS4 is willing to have you participate in its stormwater program,
 15990 you and the other MS4 may jointly seek a modification of the other MS4 permit to
 15991 include you as a limited state co-permittee. As a limited state co-permittee, you will be
 15992 responsible for compliance with the permit's conditions applicable to your jurisdiction.
 15993 If you choose this option you will need to comply with the permit application
 15994 requirements of 9VAC25-875-950, rather than the requirements of subsection D of this
 15995 section. You do not need to comply with the specific application requirements of
 15996 9VAC25-875-950 C 1 c and d and 9VAC25-875-950 C 2 c (discharge
 15997 characterization). You may satisfy the requirements in 9VAC25-875-950 C 1 e and 2
 15998 d (identification of a management program) by referring to the other MS4's stormwater
 15999 management program.

16000 d. NOTE: In referencing an MS4's stormwater management program, you should
 16001 briefly describe how the existing plan will address discharges from your small MS4 or
 16002 would need to be supplemented in order to adequately address your discharges. You
 16003 should also explain your role in coordinating stormwater pollutant control activities in
 16004 your MS4 and detail the resources available to you to accomplish the plan.

16005 3. If you operate a regulated small MS4:

16006 a. Designated under subdivision B 1 a of this section, you must apply for coverage
 16007 under a permit or apply for a modification of an existing permit under subdivision 2 c
 16008 of this subsection within 180 days of notice, unless the department grants a later date.

16009 b. Designated under subdivision B 1 b of this section, you must apply for coverage
 16010 under a permit or apply for a modification of an existing permit under subdivision 2 c
 16011 of this subsection within 180 days of notice, unless the department grants a later date.

16012 D. As an operator of a regulated small MS4, what will my MS4 permit require?

16013 1. Your MS4 permit will require at a minimum that you develop, implement, and enforce a
 16014 stormwater management program designed to reduce the discharge of pollutants from
 16015 your MS4 to the maximum extent practicable (MEP), to protect water quality, and to satisfy
 16016 the appropriate water quality requirements of the Clean Water Act, the Virginia Erosion
 16017 and Stormwater Management Act, and the State Water Control Law. Your stormwater
 16018 management program must include the minimum control measures described in
 16019 subdivision 2 of this subsection unless you apply for a permit under 9VAC25-875-950 C.
 16020 For purposes of this section, narrative effluent limitations requiring implementation of best
 16021 management practices (BMPs) are generally the most appropriate form of effluent
 16022 limitations when designed to satisfy technology requirements (including reductions of
 16023 pollutants to the maximum extent practicable) and to protect water quality. Implementation
 16024 of best management practices consistent with the provisions of the stormwater
 16025 management program required pursuant to this section and the provisions of the permit
 16026 required pursuant to subsection C of this section constitutes compliance with the standard
 16027 of reducing pollutants to the maximum extent practicable. The department will specify a
 16028 time period of up to five years from the date of permit issuance for you to develop and
 16029 implement your program.

16030 2. Minimum control measures.

16031 a. Public education and outreach on stormwater impacts.

16032 (1) You must implement a public education program to distribute educational materials
16033 to the community or conduct equivalent outreach activities about the impacts of
16034 stormwater discharges on water bodies and the steps that the public can take to
16035 reduce pollutants in stormwater runoff.

16036 (2) NOTE: You may use stormwater educational materials provided by the state, your
16037 tribe, EPA, environmental, public interest or trade organizations, or other MS4s. The
16038 public education program should inform individuals and households about the steps
16039 they can take to reduce stormwater pollution, such as ensuring proper septic system
16040 maintenance, ensuring the proper use and disposal of landscape and garden
16041 chemicals including fertilizers and pesticides, protecting and restoring riparian
16042 vegetation, and properly disposing of used motor oil or household hazardous wastes.
16043 The department recommends that the program inform individuals and groups how to
16044 become involved in local stream and beach restoration activities as well as activities
16045 that are coordinated by youth service and conservation corps or other citizen groups.
16046 The department recommends that the public education program be tailored, using a
16047 mix of locally appropriate strategies, to target specific audiences and communities.
16048 Examples of strategies include: distributing brochures or fact sheets, sponsoring
16049 speaking engagements before community groups, providing public service
16050 announcements, implementing educational programs targeted at school-age children,
16051 and conducting community-based projects such as storm drain stenciling, and
16052 watershed and beach cleanups. In addition, the department recommends that some
16053 of the materials or outreach programs be directed toward targeted groups of
16054 commercial, industrial, and institutional entities likely to have significant stormwater
16055 impacts. For example, providing information to restaurants on the impact of grease
16056 clogging storm drains and to garages on the impact of oil discharges. You are
16057 encouraged to tailor your outreach program to address the viewpoints and concerns
16058 of all communities, particularly minority and disadvantaged communities, as well as
16059 any special concerns relating to children.

16060 b. Public involvement/participation.

16061 (1) You must, at a minimum, comply with state, tribal, and local public notice
16062 requirements when implementing a public involvement/participation program.

16063 (2) The department recommends that the public be included in developing,
16064 implementing, and reviewing your stormwater management program and that the
16065 public participation process should make efforts to reach out and engage all economic
16066 and ethnic groups. Opportunities for members of the public to participate in program
16067 development and implementation include serving as citizen representatives on a local
16068 stormwater management panel, attending public hearings, working as citizen
16069 volunteers to educate other individuals about the program, assisting in program
16070 coordination with other pre-existing programs, or participating in volunteer monitoring
16071 efforts. (Citizens should obtain approval where necessary for lawful access to
16072 monitoring sites.)

16073 c. Illicit discharge detection and elimination.

16074 (1) You must develop, implement and enforce a program to detect and eliminate illicit
16075 discharges (as defined in 9VAC25-875-850) into your small MS4.

16076 (2) You must:

16077 (a) Develop, if not already completed, a storm sewer system map, showing the location
16078 of all outfalls and the names and location of all surface waters that receive discharges
16079 from those outfalls;

16080 (b) To the extent allowable under state, tribal or local law, effectively prohibit, through
16081 ordinance or other regulatory mechanism, nonstormwater discharges into your storm
16082 sewer system and implement appropriate enforcement procedures and actions;

16083 (c) Develop and implement a plan to detect and address nonstormwater discharges,
16084 including illegal dumping, to your system; and

16085 (d) Inform public employees, businesses, and the general public of hazards associated
16086 with illegal discharges and improper disposal of waste.

16087 (3) You need to address the following categories of nonstormwater discharges or flows
16088 (i.e., illicit discharges) only if you identify them as significant contributors of pollutants
16089 to your small MS4: water line flushing, landscape irrigation, diverted stream flows,
16090 rising groundwaters, uncontaminated groundwater infiltration (as defined in 40 CFR
16091 35.2005(20)), uncontaminated pumped groundwater, discharges from potable water
16092 sources, foundation drains, air conditioning condensation, irrigation water, springs,
16093 water from crawl space pumps, footing drains, lawn watering, individual residential car
16094 washing, flows from riparian habitats and wetlands, dechlorinated swimming pool
16095 discharges, and street wash water. (Discharges or flows from fire-fighting activities are
16096 excluded from the effective prohibition against nonstormwater and need only be
16097 addressed where they are identified as significant sources of pollutants to surface
16098 waters.)

16099 (4) NOTE: The department recommends that the plan to detect and address illicit
16100 discharges include the following four components: (i) procedures for locating priority
16101 areas likely to have illicit discharges, (ii) procedures for tracing the source of an illicit
16102 discharge, (iii) procedures for removing the source of the discharge, and (iv)
16103 procedures for program evaluation and assessment. The department recommends
16104 visually screening outfalls during dry weather and conducting field tests of selected
16105 pollutants as part of the procedures for locating priority areas. Illicit discharge
16106 education actions may include storm drain stenciling; a program to promote, publicize,
16107 and facilitate public reporting of illicit connections or discharges; and distribution of
16108 outreach materials.

16109 d. Construction site stormwater runoff control.

16110 (1) You must develop, implement, and enforce a program to reduce pollutants in any
16111 stormwater runoff to your small MS4 from construction activities that result in a land
16112 disturbance of greater than or equal to one acre, or equal to or greater than 2,500
16113 square feet in all areas of the jurisdictions designated as subject to the Chesapeake
16114 Bay Preservation Area Designation and Management Regulations adopted pursuant
16115 to the Chesapeake Bay Preservation Act. Reduction of stormwater discharges from
16116 construction activity disturbing less than one acre must be included in your program if
16117 that construction activity is part of a larger common plan of development or sale that
16118 would disturb one acre or more. If the department waives requirements for stormwater
16119 discharges associated with small construction activity in accordance with the definition
16120 in 9VAC25-875-850, you are not required to develop, implement, and/or enforce a
16121 program to reduce pollutant discharges from such sites.

16122 (2) Your program must include the development and implementation of, at a minimum:

16123 (a) An ordinance or other regulatory mechanism to require erosion and sediment
16124 controls, as well as sanctions to ensure compliance, to the extent allowable under
16125 state, tribal, or local law;

- 16126 (b) Requirements for construction site operators to implement appropriate erosion and
16127 sediment control best management practices;
- 16128 (c) Requirements for construction site operators to control waste such as discarded
16129 building materials, concrete truck washout, chemicals, litter, and sanitary waste at the
16130 construction site that may cause adverse impacts to water quality;
- 16131 (d) Procedures for site plan review which incorporate consideration of potential water
16132 quality impacts;
- 16133 (e) Procedures for receipt and consideration of information submitted by the public;
16134 and
- 16135 (f) Procedures for site inspection and enforcement of control measures.
- 16136 (3) NOTE: Examples of sanctions to ensure compliance include nonmonetary
16137 penalties, fines, bonding requirements and/or permit denials for noncompliance. The
16138 department recommends that procedures for site plan review include the review of
16139 individual pre-construction site plans to ensure consistency with erosion and sediment
16140 control requirements. Procedures for site inspections and enforcement of control
16141 measures could include steps to identify priority sites for inspection and enforcement
16142 based on the nature of the construction activity, topography, and the characteristics of
16143 soils and receiving water quality. You are encouraged to provide appropriate
16144 educational and training measures for construction site operators. You may wish to
16145 require a stormwater pollution prevention plan for construction sites within your
16146 jurisdiction that discharge into your system. (See 9VAC25-875-1030 L and subdivision
16147 E 2 of this section.) The department may recognize that another government entity
16148 may be responsible for implementing one or more of the minimum measures on your
16149 behalf.
- 16150 e. Post-construction stormwater management in new development and
16151 redevelopment.
- 16152 (1) You must develop, implement, and enforce a program to address stormwater runoff
16153 from new development and redevelopment projects that disturb greater than or equal
16154 to one acre, including projects less than one acre that are part of a larger common
16155 plan of development or sale, that discharge into your small MS4. Your program must
16156 ensure that controls are in place that would prevent or minimize water quality impacts.
- 16157 (2) You must:
- 16158 (a) Develop and implement strategies that include a combination of structural and/or
16159 nonstructural best management practices (BMPs) appropriate for your community;
- 16160 (b) Use an ordinance or other regulatory mechanism to address post-construction
16161 runoff from new development and redevelopment projects to the extent allowable
16162 under state, tribal or local law; and
- 16163 (c) Ensure adequate long-term operation and maintenance of BMPs.
- 16164 (3) NOTE: If water quality impacts are considered from the beginning stages of a
16165 project, new development and potentially redevelopment provide more opportunities
16166 for water quality protection. The department recommends that the BMPs chosen be
16167 appropriate for the local community, minimize water quality impacts, and attempt to
16168 maintain pre-development runoff conditions. In choosing appropriate BMPs, the
16169 department encourages you to participate in locally based watershed planning efforts
16170 that attempt to involve a diverse group of stakeholders, including interested citizens.
16171 When developing a program that is consistent with this measure's intent, the
16172 department recommends that you adopt a planning process that identifies the
16173 municipality's program goals (e.g., minimize water quality impacts resulting from post-

16174 construction runoff from new development and redevelopment), implementation
16175 strategies (e.g., adopt a combination of structural and/or nonstructural BMPs),
16176 operation and maintenance policies and procedures, and enforcement procedures. In
16177 developing your program, you should consider assessing existing ordinances, policies,
16178 programs and studies that address stormwater runoff quality. In addition to assessing
16179 these existing documents and programs, you should provide opportunities to the public
16180 to participate in the development of the program. Nonstructural BMPs are preventative
16181 actions that involve management and source controls such as: (i) policies and
16182 ordinances that provide requirements and standards to direct growth to identified
16183 areas, protect sensitive areas such as wetlands and riparian areas, maintain and/or
16184 increase open space (including a dedicated funding source for open space
16185 acquisition), provide buffers along sensitive water bodies, minimize impervious
16186 surfaces, and minimize disturbance of soils and vegetation; (ii) policies or ordinances
16187 that encourage infill development in higher density urban areas, and areas with
16188 existing infrastructure; (iii) education programs for developers and the public about
16189 project designs that minimize water quality impacts; and (iv) measures such as
16190 minimization of percent impervious area after development and minimization of directly
16191 connected impervious areas. Structural BMPs include: storage practices such as wet
16192 ponds and extended-detention outlet structures; filtration practices such as grassed
16193 swales, sand filters and filter strips; and infiltration practices such as infiltration basins
16194 and infiltration trenches. The department recommends that you ensure the appropriate
16195 implementation of the structural BMPs by considering some or all of the following: pre-
16196 construction review of BMP designs; inspections during construction to verify BMPs
16197 are built as designed; post-construction inspection and maintenance of BMPs; and
16198 penalty provisions for the noncompliance with design, construction or operation and
16199 maintenance. Stormwater technologies are constantly being improved, and the
16200 department recommends that your requirements be responsive to these changes,
16201 developments or improvements in control technologies.

16202 f. Pollution prevention/good housekeeping for municipal operations.

16203 (1) You must develop and implement an operation and maintenance program that
16204 includes a training component and has the ultimate goal of preventing or reducing
16205 pollutant runoff from municipal operations. Using training materials that are available
16206 from EPA, state, tribe, or other organizations, your program must include employee
16207 training to prevent and reduce stormwater pollution from activities such as park and
16208 open space maintenance, fleet and building maintenance, new construction and land
16209 disturbances, and stormwater system maintenance.

16210 (2) NOTE: The department recommends that, at a minimum, you consider the
16211 following in developing your program: maintenance activities, maintenance schedules,
16212 and long-term inspection procedures for structural and nonstructural stormwater
16213 controls to reduce floatables and other pollutants discharged from your separate storm
16214 sewers; controls for reducing or eliminating the discharge of pollutants from streets,
16215 roads, highways, municipal parking lots, maintenance and storage yards, fleet or
16216 maintenance shops with outdoor storage areas, salt/sand storage locations and snow
16217 disposal areas operated by you, and waste transfer stations; procedures for properly
16218 disposing of waste removed from the separate storm sewers and areas listed above
16219 (such as dredge spoil, accumulated sediments, floatables, and other debris); and ways
16220 to ensure that new flood management projects assess the impacts on water quality
16221 and examine existing projects for incorporating additional water quality protection
16222 devices or practices. Operation and maintenance should be an integral component of
16223 all stormwater management programs. This measure is intended to improve the

16224 efficiency of these programs and require new programs where necessary. Properly
16225 developed and implemented operation and maintenance programs reduce the risk of
16226 water quality problems.

16227 3. If an existing VESMP requires you to implement one or more of the minimum control
16228 measures of subdivision 2 of this subsection, the department may include conditions in
16229 your permit that direct you to follow that VESMP's requirements rather than the
16230 requirements of subdivision 2 of this subsection. A VESMP is a local, state or tribal
16231 municipal stormwater management program that imposes, at a minimum, the relevant
16232 requirements of subdivision 2 of this subsection.

16233 4. a. In your permit application (either a registration statement for coverage under a
16234 general permit or an individual permit application), you must identify and submit to the
16235 department the following information:

16236 (1) The best management practices (BMPs) that you or another entity will implement
16237 for each of the stormwater minimum control measures provided in subdivision 2 of this
16238 subsection;

16239 (2) The measurable goals for each of the BMPs including, as appropriate, the months
16240 and years in which you will undertake required actions, including interim milestones
16241 and the frequency of the action; and

16242 (3) The person or persons responsible for implementing or coordinating your
16243 stormwater management program.

16244 b. If you obtain coverage under a general permit, you are not required to meet any
16245 measurable goals identified in your registration statement in order to demonstrate
16246 compliance with the minimum control measures in subdivisions 2 c through f of this
16247 subsection unless, prior to submitting your registration statement, EPA or the
16248 department has provided or issued a menu of BMPs that addresses each such
16249 minimum measure. Even if no regulatory authority issues the menu of BMPs, however,
16250 you still must comply with other requirements of the general permit, including good
16251 faith implementation of BMPs designed to comply with the minimum measures.

16252 c. NOTE: Either EPA or the department will provide a menu of BMPs. You may choose
16253 BMPs from the menu or select others that satisfy the minimum control measures.

16254 5. a. You must comply with any more stringent effluent limitations in your permit, including
16255 permit requirements that modify or are in addition to the minimum control measures based
16256 on an approved total maximum daily load (TMDL) or equivalent analysis. The department
16257 may include such more stringent limitations based on a TMDL or equivalent analysis that
16258 determines such limitations are needed to protect water quality.

16259 b. NOTE: The department strongly recommends that until the evaluation of the
16260 stormwater program in subsection G of this section, no additional requirements
16261 beyond the minimum control measures be imposed on regulated small MS4s without
16262 the agreement of the operator of the affected small MS4, except where an approved
16263 TMDL or equivalent analysis provides adequate information to develop more specific
16264 measures to protect water quality.

16265 6. You must comply with other applicable permit requirements, standards and conditions
16266 established in the individual or general permit developed consistent with the provisions of
16267 [9VAC25-31-190](#) through [9VAC25-31-250](#), as appropriate.

16268 7. Evaluation and assessment.

16269 a. You must evaluate program compliance, the appropriateness of your identified best
16270 management practices, and progress towards achieving your identified measurable
16271 goals. The department may determine monitoring requirements for you in accordance

16272 with monitoring plans appropriate to your watershed. Participation in a group
16273 monitoring program is encouraged.

16274 b. You must keep records required by the permit for at least three years. You must
16275 submit your records to the department only when specifically asked to do so. You must
16276 make your records, including a description of your stormwater management program,
16277 available to the public at reasonable times during regular business hours (see
16278 9VAC25-875-900 for confidentiality provision). You may assess a reasonable charge
16279 for copying. You may require a member of the public to provide advance notice.

16280 c. Unless you are relying on another entity to satisfy your permit obligations under
16281 subdivision E 1 of this section, you must submit annual reports to the department for
16282 your first permit term. For subsequent permit terms, you must submit reports in years
16283 two and four unless the department requires more frequent reports. As of the start date
16284 in Table 1 of 9VAC25-31-1020, all reports submitted in compliance with this subsection
16285 shall be submitted electronically by the owner, operator, or the duly authorized
16286 representative of the small MS4 to the department in compliance with this section and
16287 40 CFR Part 3 (including, in all cases, 40 CFR Part 3 Subpart D), 9VAC25-875-940,
16288 and Part XI (9VAC25-31-950 et seq.) of the Virginia Pollutant Discharge Elimination
16289 System (VPDES) Permit Regulation. Part XI of 9VAC25-31 is not intended to undo
16290 existing requirements for electronic reporting. Prior to this date, and independent of
16291 Part XI of 9VAC25-31, the owner, operator, or the duly authorized representative of
16292 the small MS4 may be required to report electronically if specified by a particular
16293 permit. Your report must include:

16294 (1) The status of compliance with permit conditions, an assessment of the
16295 appropriateness of your identified best management practices and progress towards
16296 achieving your identified measurable goals for each of the minimum control measures;

16297 (2) Results of information collected and analyzed, including monitoring data, if any,
16298 during the reporting period;

16299 (3) A summary of the stormwater activities you plan to undertake during the next
16300 reporting cycle;

16301 (4) A change in any identified best management practices or measurable goals for any
16302 of the minimum control measures; and

16303 (5) Notice that you are relying on another governmental entity to satisfy some of your
16304 permit obligations (if applicable).

16305 E. As an operator of a regulated small MS4, may I share the responsibility to implement the
16306 minimum control measures with other entities?

16307 1. You may rely on another entity to satisfy your permit obligations to implement a
16308 minimum control measure if:

16309 a. The other entity, in fact, implements the control measure;

16310 b. The particular control measure, or component thereof, is at least as stringent as the
16311 corresponding permit requirement; and

16312 c. The other entity agrees to implement the control measure on your behalf. In the
16313 reports you must submit under subdivision D 7 c of this section, you must also specify
16314 that you rely on another entity to satisfy some of your permit obligations. If you are
16315 relying on another governmental entity regulated under the permit program to satisfy
16316 all of your permit obligations, including your obligation to file periodic reports required
16317 by subdivision D 7 c of this section, you must note that fact in your registration
16318 statement, but you are not required to file the periodic reports. You remain responsible
16319 for compliance with your permit obligations if the other entity fails to implement the

16320 control measure (or component thereof). Therefore, the department encourages you
 16321 to enter into a legally binding agreement with that entity if you want to minimize any
 16322 uncertainty about compliance with your permit.

16323 2. In some cases, the department may recognize, either in your individual permit or in a
 16324 general permit, that another governmental entity is responsible under a permit for
 16325 implementing one or more of the minimum control measures for your small MS4. Where
 16326 the department does so, you are not required to include such minimum control measure(s)
 16327 in your stormwater management program. Your permit may be reopened and modified to
 16328 include the requirement to implement a minimum control measure if the entity fails to
 16329 implement it.

16330 F. As an operator of a regulated small MS4, what happens if I don't comply with the application
 16331 or permit requirements in subsections C through E of this section?

16332 Permits are enforceable under the Clean Water Act and the Virginia Erosion and Stormwater
 16333 Management Act. Violators may be subject to the enforcement actions and penalties described
 16334 in Clean Water Act §§ 309(b), (c), and (g) and 505 or under §§ 62.1-44.15:39 through 62.1-
 16335 44.15:48 of the Code of Virginia and Article 5 of the State Water Control Law. Compliance with a
 16336 permit issued pursuant to § 402 of the Clean Water Act is deemed compliance, for purposes of
 16337 §§ 309 and 505, with §§ 301, 302, 306, 307, and 403, except any standard imposed under § 307
 16338 for toxic pollutants injurious to human health. If you are covered as a state co-permittee under an
 16339 individual permit or under a general permit by means of a joint registration statement, you remain
 16340 subject to the enforcement actions and penalties for the failure to comply with the terms of the
 16341 permit in your jurisdiction except as set forth in subdivision E 2 of this section.

16342 G. Will the small MS4 stormwater program regulations at subsections B through F of this
 16343 section change in the future?

16344 EPA intends to conduct an enhanced research effort and compile a comprehensive evaluation
 16345 of the NPDES MS4 stormwater program. The board will reevaluate the regulations based on data
 16346 from the EPA NPDES MS4 stormwater program, from research on receiving water impacts from
 16347 stormwater, and the effectiveness of best management practices (BMPs), as well as other
 16348 relevant information sources.

16349 **9VAC25-875-980. General permits.**

16350 A. The department may issue a general permit in accordance with the following:

16351 1. The general permit shall be written to cover one or more categories or subcategories of
 16352 discharges, except those covered by individual permits, within a geographic area. The
 16353 area should correspond to existing geographic or political boundaries, such as:

16354 a. Designated planning areas under §§ 208 and 303 of CWA;

16355 b. Sewer districts or sewer authorities;

16356 c. City, county, or state political boundaries;

16357 d. State highway systems;

16358 e. Standard metropolitan statistical areas as defined by the Office of Management and
 16359 Budget;

16360 f. Urbanized areas as designated by the Bureau of the Census according to criteria in
 16361 30 FR 15202 (May 1, 1974); or

16362 g. Any other appropriate division or combination of boundaries.

16363 2. The general permit may be written to regulate one or more categories within the area
 16364 described in subdivision 1 of this subsection, where the sources within a covered
 16365 subcategory of discharges are stormwater point sources.

16366 3. Where sources within a specific category of dischargers are subject to water quality-
16367 based limits imposed pursuant to 9VAC25-875-1030, the sources in that specific category
16368 or subcategory shall be subject to the same water quality-based effluent limitations.

16369 4. The general permit must clearly identify the applicable conditions for each category or
16370 subcategory of dischargers covered by the permit.

16371 5. The general permit may exclude specified sources or areas from coverage.

16372 B. Administration.

16373 1. General permits may be issued, modified, revoked and reissued, or terminated in
16374 accordance with applicable requirements of this chapter.

16375 2. Authorization to discharge.

16376 a. Except as provided in subdivisions 2 e and 2 f of this subsection, dischargers
16377 seeking coverage under a general permit shall submit to the department a written
16378 notice of intent to be covered by the general permit. A discharger who fails to submit
16379 a notice of intent in accordance with the terms of the permit is not authorized to
16380 discharge, under the terms of the general permit unless the general permit, in
16381 accordance with subdivision 2 e of this subsection, contains a provision that a notice
16382 of intent is not required or the department notifies a discharger (or treatment works
16383 treating domestic sewage) that it is covered by a general permit in accordance with
16384 subdivision 2 f of this subsection. A complete and timely notice of intent (NOI) to be
16385 covered in accordance with general permit requirements fulfills the requirements for
16386 permit applications for the purposes of this chapter. As of the start date in Table 1 of
16387 [9VAC25-31-1020](#), all notices of intent submitted in compliance with this subdivision
16388 shall be submitted electronically by the discharger (or treatment works treating
16389 domestic sewage) to the department in compliance with this subdivision and 40 CFR
16390 Part 3 (including, in all cases, 40 CFR Part 3 Subpart D), 9VAC25-875-940, and Part
16391 XI ([9VAC25-31-950](#) et seq.) of the Virginia Pollutant Discharge Elimination System
16392 (VPDES) Permit Regulation. Part XI of [9VAC25-31](#) is not intended to undo existing
16393 requirements for electronic reporting. Prior to this date, and independent of Part XI of
16394 [9VAC25-31](#), dischargers (or treatment works treating domestic sewage) may be
16395 required to report electronically if specified by a particular permit.

16396 b. The contents of the notice of intent shall be specified in the general permit and shall
16397 require the submission of information necessary for adequate program
16398 implementation, including at a minimum, the legal name and address of the owner or
16399 operator, the facility name and address, type of facility or discharges, and the receiving
16400 stream or streams, and other required data elements as identified in Appendix A to 40
16401 CFR Part 127 as adopted by reference in [9VAC25-31-1030](#). All notices of intent shall
16402 be signed in accordance with 9VAC25-875-940.

16403 c. General permits shall specify the deadlines for submitting notices of intent to be
16404 covered and the date or dates when a discharger is authorized to discharge under the
16405 permit.

16406 d. General permits shall specify whether a discharger that has submitted a complete
16407 and timely notice of intent to be covered in accordance with the general permit and
16408 that is eligible for coverage under the permit, is authorized to discharge in accordance
16409 with the permit either upon receipt of the notice of intent by the department, after a
16410 waiting period specified in the general permit, on a date specified in the general permit,
16411 or upon receipt of notification of inclusion by the department. Coverage may be
16412 terminated or revoked in accordance with subdivision 3 of this subsection.

16413 e. Stormwater discharges associated with small construction activity may, at the
16414 discretion of the department, be authorized to discharge under a general permit
16415 without submitting a notice of intent where the department finds that a notice of intent
16416 requirement would be inappropriate. In making such a finding, the department shall
16417 consider the (i) type of discharge, (ii) expected nature of the discharge, (iii) potential
16418 for toxic and conventional pollutants in the discharges, (iv) expected volume of the
16419 discharges, (v) other means of identifying discharges covered by the permit, and (vi)
16420 estimated number of discharges to be covered by the permit. The department shall
16421 provide in the public notice of the general permit the reasons for not requiring a notice
16422 of intent.

16423 f. The department may notify a discharger that it is covered by a general permit, even
16424 if the discharger has not submitted a notice of intent to be covered. A discharger so
16425 notified may request an individual permit under subdivision 3 c of this subsection.

16426 3. Requiring an individual permit.

16427 a. The department may require any discharger authorized by a general permit to apply
16428 for and obtain an individual permit. Any interested person may request the department
16429 to take action under this subdivision. Cases where an individual permit may be
16430 required include the following:

16431 (1) The discharger is not in compliance with the conditions of the general permit;

16432 (2) A change has occurred in the availability of demonstrated technology or practices
16433 for the control or abatement of pollutants applicable to the point source;

16434 (3) Effluent limitation guidelines are promulgated for point sources covered by the
16435 general permit;

16436 (4) A water quality management plan, established by the department pursuant to
16437 [9VAC25-720](#), containing requirements applicable to such point sources is approved;

16438 (5) Circumstances have changed since the time of the request to be covered so that
16439 the discharger is no longer appropriately controlled under the general permit, or either
16440 a temporary or permanent reduction or elimination of the authorized discharge is
16441 necessary;

16442 (6) The discharge(s) is a significant contributor of pollutants. In making this
16443 determination, the department may consider the following factors:

16444 (a) The location of the discharge with respect to surface waters;

16445 (b) The size of the discharge;

16446 (c) The quantity and nature of the pollutants discharged to surface waters; and

16447 (d) Other relevant factors;

16448 b. Permits required on a case-by-case basis.

16449 (1) The department may determine, on a case-by-case basis, that certain stormwater
16450 discharges, and certain other facilities covered by general permits that do not generally
16451 require an individual permit may be required to obtain an individual permit because of
16452 their contributions to water pollution.

16453 (2) Whenever the department decides that an individual permit is required under this
16454 subsection, except as provided in subdivision 3 b (3) of this subsection, the department
16455 shall notify the discharger in writing of that decision and the reasons for it, and shall
16456 send an application form with the notice. The discharger must apply for a permit within
16457 60 days of notice, unless permission for a later date is granted by the department. The
16458 question whether the designation was proper will remain open for consideration during
16459 the public comment period for the draft permit and in any subsequent public hearing.

16460 (3) Prior to a case-by-case determination that an individual permit is required for a
 16461 stormwater discharge under this subsection, the department may require the
 16462 discharger to submit a permit application or other information regarding the discharge
 16463 under the State Water Control Law and § 308 of the CWA. In requiring such
 16464 information, the department shall notify the discharger in writing and shall send an
 16465 application form with the notice. The discharger must apply for a permit under
 16466 9VAC25-875-950 A 1 within 60 days of notice or under 9VAC25-875-950 A 8 within
 16467 180 days of notice, unless permission for a later date is granted by the department.
 16468 The question whether the initial designation was proper will remain open for
 16469 consideration during the public comment period for the draft permit and in any
 16470 subsequent public hearing.

16471 c. Any owner or operator authorized by a general permit may request to be excluded
 16472 from the coverage of the general permit by applying for an individual permit. The owner
 16473 or operator shall submit an application under 9VAC25-875-920 with reasons
 16474 supporting the request. The request shall be processed under the applicable parts of
 16475 this chapter. The request shall be granted by issuing of an individual permit if the
 16476 reasons cited by the owner or operator are adequate to support the request.

16477 d. When an individual permit is issued to an owner or operator otherwise subject to a
 16478 general permit, the applicability of the general permit to the individual permit permittee
 16479 is automatically terminated on the effective date of the individual permit.

16480 e. A source excluded from a general permit solely because it already has an individual
 16481 permit may request that the individual permit be revoked, and that it be covered by the
 16482 general permit. Upon revocation of the individual permit, the general permit shall apply
 16483 to the source.

16484 **9VAC25-875-990. New sources and new discharges.**

16485 **A. Criteria for new source determination.**

16486 1. Except as otherwise provided in an applicable new source performance standard, a
 16487 source is a new source if it meets the definition of new source in this chapter and

16488 a. It is constructed at a site at which no other source is located;

16489 b. It totally replaces the process or production equipment that causes the discharge of
 16490 pollutants at an existing source; or

16491 c. Its processes are substantially independent of an existing source at the same site.
 16492 In determining whether these processes are substantially independent, the
 16493 department shall consider such factors as the extent to which the new facility is
 16494 integrated with the existing plant and the extent to which the new facility is engaged in
 16495 the same general type of activity as the existing source.

16496 2. A source meeting the requirements of subdivisions 1 a, b, or c of this subsection is a
 16497 new source only if a new source performance standard is independently applicable to it.
 16498 If there is no such independently applicable standard, the source is a new discharger.

16499 3. Construction on a site at which an existing source is located results in a permit
 16500 modification subject to 9VAC25-875-1230 rather than a new source (or a new discharger)
 16501 if the construction does not create a new building, structure, facility, or installation meeting
 16502 the criteria of subdivisions 1 b or c of this subsection but otherwise alters, replaces, or
 16503 adds to existing process or production equipment.

16504 4. Construction of a new source has commenced if the owner or operator has:

16505 a. Begun, or caused to begin as part of a continuous on-site construction program:

16506 (1) Any placement, assembly, or installation of facilities or equipment; or

- 16507 (2) Significant site preparation work including clearing, excavation or removal of
16508 existing buildings, structures, or facilities which is necessary for the placement,
16509 assembly, or installation of new source facilities or equipment; or
- 16510 b. Entered into a binding contractual obligation for the purchase of facilities or
16511 equipment which are intended to be used in its operation within a reasonable time.
16512 Options to purchase or contracts which can be terminated or modified without
16513 substantial loss, and contracts for feasibility engineering, and design studies do not
16514 constitute a contractual obligation under the paragraph.
- 16515 B. Effect of compliance with new source performance standards. The provisions of this
16516 subsection do not apply to existing sources which modify their pollution control facilities or
16517 construct new pollution control facilities and achieve performance standards, but which are neither
16518 new sources or new dischargers or otherwise do not meet the requirements of this subdivision.
- 16519 1. Except as provided in subdivision 2 of this subsection, any new discharger, the
16520 construction of which commenced after October 18, 1972, or new source which meets the
16521 applicable promulgated new source performance standards before the commencement of
16522 discharge, may not be subject to any more stringent new source performance standards
16523 or to any more stringent technology-based standards under § 301(b)(2) of the CWA for
16524 the soonest ending of the following periods:
- 16525 a. Ten years from the date that construction is completed;
- 16526 b. Ten years from the date the source begins to discharge process or other
16527 nonconstruction related wastewater; or
- 16528 c. The period of depreciation or amortization of the facility for the purposes of § 167 or
16529 § 169 (or both) of the Internal Revenue Code of 1954 (26 USC 167 and 26 USC 169,
16530 respectively).
- 16531 2. The protection from more stringent standards of performance afforded by subdivision 1
16532 of this subsection does not apply to:
- 16533 a. Additional or more stringent permit conditions that are not technology based; for
16534 example, conditions based on water quality standards, or toxic effluent standards or
16535 prohibitions under the State Water Control Law and § 307(a) of the CWA; or
- 16536 b. Additional permit conditions controlling toxic pollutants or hazardous substances
16537 that are not controlled by new source performance standards. This includes permit
16538 conditions controlling pollutants other than those identified as toxic pollutants or
16539 hazardous substances when control of these pollutants has been specifically identified
16540 as the method to control the toxic pollutants or hazardous substances.
- 16541 3. When a separate VPDES or permit issued to a source with a protection period under
16542 subdivision 1 of this subsection will expire on or after the expiration of the protection
16543 period, that permit shall require the owner or operator of the source to comply with the
16544 requirements of § 301 of the CWA and any other then applicable requirements of the CWA
16545 and the State Water Control Law immediately upon the expiration of the protection period.
16546 No additional period for achieving compliance with these requirements may be allowed
16547 except when necessary to achieve compliance with requirements promulgated less than
16548 three years before the expiration of the protection period.
- 16549 4. The owner or operator of a new source, a new discharger which commenced discharge
16550 after August 13, 1979, or a recommencing discharger shall install and have in operating
16551 condition, and shall start-up all pollution control equipment required to meet the conditions
16552 of its permits before beginning to discharge. Within the shortest feasible time (not to
16553 exceed 90 days), the owner or operator must meet all permit conditions. The requirements

16554 of this paragraph do not apply if the owner or operator is issued a permit containing a
 16555 compliance schedule under 9VAC25-875-1060 A 2.

16556 5. After the effective date of new source performance standards, it shall be unlawful for
 16557 any owner or operator of any new source to operate the source in violation of those
 16558 standards applicable to the source.

16559 Article 4

16560 Permit conditions

16561 **9VAC25-875-1000. Conditions applicable to all permits.**

16562 The following conditions apply to all permits. Additional conditions applicable to permits are in
 16563 9VAC25-875-1010. All conditions applicable to permits shall be incorporated into the permits
 16564 either expressly or by reference. If incorporated by reference, a specific citation to this regulation
 16565 must be given in the permit.

16566 A. The permittee shall comply with all conditions of the permit. Any permit noncompliance
 16567 constitutes a violation of the State Water Control Law and the CWA, except that noncompliance
 16568 with certain provisions of the permit may constitute a violation of the State Water Control Law but
 16569 not the CWA. Permit noncompliance is grounds for enforcement action; for permit termination,
 16570 revocation and reissuance, or modification; or denial of a permit renewal application.

16571 The permittee shall comply with effluent standards or prohibitions established under § 307(a)
 16572 of the CWA for toxic pollutants within the time provided in the chapters that establish these
 16573 standards or prohibitions, even if the permit has not yet been modified to incorporate the
 16574 requirement.

16575 B. If the permittee wishes to continue an activity regulated by the permit after the expiration
 16576 date of the permit, the permittee must apply for and obtain a new permit.

16577 C. It shall not be a defense for a permittee in an enforcement action that it would have been
 16578 necessary to halt or reduce the permitted activity in order to maintain compliance with the
 16579 conditions of the permit.

16580 D. The permittee shall take all reasonable steps to minimize or prevent any discharge in
 16581 violation of the permit that has a reasonable likelihood of adversely affecting human health or the
 16582 environment.

16583 E. The permittee shall at all times properly operate and maintain all facilities and systems of
 16584 treatment and control (and related appurtenances) that are installed or used by the permittee to
 16585 achieve compliance with the conditions of the permit. Proper operation and maintenance also
 16586 includes adequate laboratory controls and appropriate quality assurance procedures. This
 16587 provision requires the operation of back-up or auxiliary facilities or similar systems that are
 16588 installed by a permittee only when the operation is necessary to achieve compliance with the
 16589 conditions of the permit.

16590 F. Permits may be modified, revoked and reissued, or terminated for cause. The filing of a
 16591 request by the permittee for a permit modification, revocation and reissuance, or termination, or
 16592 a notification of planned changes or anticipated noncompliance does not stay any permit
 16593 condition.

16594 G. Permits do not convey any property rights of any sort, or any exclusive privilege.

16595 H. The permittee shall furnish to the department, within a reasonable time, any information
 16596 that the department may request to determine whether cause exists for modifying, revoking and
 16597 reissuing, or terminating the permit or to determine compliance with the permit. The department
 16598 may require the permittee to furnish, upon request, such plans, specifications, and other pertinent
 16599 information as may be necessary to determine the effect of the wastes from his discharge on the
 16600 quality of state waters, or such other information as may be necessary to accomplish the purposes

16601 of the Act. The permittee shall also furnish to the department upon request, copies of records
 16602 required to be kept by the permit.

16603 I. The permittee shall allow the director, the department, or an authorized representative
 16604 (including an authorized contractor acting as a representative of the administrator), upon
 16605 presentation of credentials and other documents as may be required by law, to:

16606 1. Enter upon the permittee's premises where a regulated facility or activity is located or
 16607 conducted, or where records must be kept under the conditions of the permit;

16608 2. Have access to and copy, at reasonable times, any records that must be kept under the
 16609 conditions of the permit;

16610 3. Inspect at reasonable times any facilities, equipment (including monitoring and control
 16611 equipment), practices, or operations regulated or required under the permit; and

16612 4. Sample or monitor at reasonable times, for the purposes of assuring permit compliance
 16613 or as otherwise authorized by the CWA and the Act, any substances or parameters at any
 16614 location.

16615 J. Monitoring and records.

16616 1. Samples and measurements taken for the purpose of monitoring shall be representative
 16617 of the monitored activity.

16618 2. The permittee shall retain records of all monitoring information, including all calibration
 16619 and maintenance records and all original strip chart recordings for continuous monitoring
 16620 instrumentation, copies of all reports required by the permit, and records of all data used
 16621 to complete the application for the permit, for a period of at least three years from the date
 16622 of the sample, measurement, report or application. This period of retention shall be
 16623 extended automatically during the course of any unresolved litigation regarding the
 16624 regulated activity or regarding control standards applicable to the permittee, or as
 16625 requested by the department.

16626 3. Records of monitoring information shall include:

16627 a. The date, exact place, and time of sampling or measurements;

16628 b. The individual or individuals who performed the sampling or measurements;

16629 c. The date or dates analyses were performed;

16630 d. The individual or individuals who performed the analyses;

16631 e. The analytical techniques or methods used; and

16632 f. The results of such analyses.

16633 4. Monitoring results must be conducted according to test procedures approved under 40
 16634 CFR Part 136 or alternative EPA approved methods, unless other test procedures have
 16635 been specified in the permit. Analyses performed according to test procedures approved
 16636 under 40 CFR Part 136 shall be performed by an environmental laboratory certified under
 16637 regulations adopted by the Department of General Services ([1VAC30-45](#) or [1VAC30-46](#)).

16638 K. All applications, reports, or information submitted to the VESMP authority and department
 16639 shall be signed and certified as required by 9VAC25-875-940.

16640 L. Reporting requirements.

16641 1. The permittee shall give notice to the department as soon as possible of any planned
 16642 physical alterations or additions to the permitted facility. Notice is required only when:

16643 a. The alteration or addition to a permitted facility may meet one of the criteria for
 16644 determining whether a facility is a new source in 9VAC25-875-990 A; or

- 16645 b. The alteration or addition could significantly change the nature or increase the
16646 quantity of pollutants discharged. This notification applies to pollutants that are not
16647 subject to effluent limitations in the permit.
- 16648 2. The permittee shall give advance notice to the department of any planned changes in
16649 the permitted facility or activity that may result in noncompliance with permit requirements.
- 16650 3. Permits are not transferable to any person except in accordance with 9VAC25-875-
16651 1220.
- 16652 4. Monitoring results shall be reported at the intervals specified in the permit.
- 16653 a. Monitoring results must be reported on a Discharge Monitoring Report (DMR) or
16654 forms provided or specified by the department. As of the start date in Table 1 of
16655 9VAC25-31-1020, all reports and forms submitted in compliance with this subdivision
16656 shall be submitted electronically by the permittee to the department in compliance with
16657 this section and 40 CFR Part 3 (including, in all cases, 40 CFR Part 3 Subpart D),
16658 9VAC25-875-940, and Part XI (9VAC25-31-950 et seq.) of the Virginia Pollutant
16659 Discharge Elimination System (VPDES) Permit Regulation. Part XI of 9VAC25-31 is
16660 not intended to undo existing requirements for electronic reporting. Prior to this date,
16661 and independent of Part XI of 9VAC25-31, permittees may be required to report
16662 electronically if specified by a particular permit.
- 16663 b. If the permittee monitors any pollutant specifically addressed by the permit more
16664 frequently than required by the permit using test procedures approved under 40 CFR
16665 Part 136 or as otherwise specified in the permit, the results of this monitoring shall be
16666 included in the calculation and reporting of the data submitted in the DMR or reporting
16667 form specified by the department.
- 16668 c. Calculations for all limitations that require averaging of measurements shall utilize
16669 an arithmetic mean unless otherwise specified in the permit.
- 16670 5. Reports of compliance or noncompliance with, or any progress reports on, interim and
16671 final requirements contained in any compliance schedule of the permit shall be submitted
16672 no later than 14 days following each schedule date.
- 16673 6. If any unusual or extraordinary discharge including a bypass or upset should occur from
16674 a facility and such discharge enters or could be expected to enter state waters, the
16675 permittee shall promptly notify, in no case later than 24 hours, the department by
16676 telephone after the discovery of such discharge. This notification shall provide all available
16677 details of the incident, including any adverse effects on aquatic life and the known number
16678 of fish killed. The permittee shall reduce the report to writing and shall submit it to the
16679 department within five days of discovery of the discharge in accordance with subdivision
16680 7 a of this subsection. Unusual and extraordinary discharges include but are not limited to
16681 any discharge resulting from:
- 16682 a. Unusual spillage of materials resulting directly or indirectly from processing
16683 operations;
- 16684 b. Breakdown of processing or accessory equipment;
- 16685 c. Failure or taking out of service of the treatment plant or auxiliary facilities (such as
16686 sewer lines or wastewater pump stations); and
- 16687 d. Flooding or other acts of nature.
- 16688 7. Twenty-four hour and five-day reporting.
- 16689 a. The permittee shall report any noncompliance that may endanger health or the
16690 environment. Any information shall be provided orally within 24 hours from the time
16691 the permittee becomes aware of the circumstances. A report in the format required by

16692 the department shall also be provided within five days of the time the permittee
16693 becomes aware of the circumstances. The five-day report shall contain a description
16694 of the noncompliance and its cause; the period of noncompliance, including exact
16695 dates and times, and if the noncompliance has not been corrected, the anticipated
16696 time it is expected to continue; and steps taken or planned to reduce, eliminate, and
16697 prevent reoccurrence of the noncompliance.

16698 (1) For noncompliance events related to combined sewer overflows, sanitary sewer
16699 overflows, or bypass events, these reports must include the data described in
16700 subdivision 7 a of this subsection (with the exception of time of discovery), as well as
16701 the type of event (i.e., combined sewer overflows, sanitary sewer overflows, or bypass
16702 events); type of sewer overflow structure (e.g., manhole, combine sewer overflow
16703 outfall); discharge volumes untreated by the treatment works treating domestic
16704 sewage; types of human health and environmental impacts of the sewer overflow
16705 event; and whether the noncompliance was related to wet weather.

16706 (2) As of the start date in Table 1 of [9VAC25-31-1020](#), all reports related to combined
16707 sewer overflows, sanitary sewer overflows, or bypass events submitted in compliance
16708 with this subdivision 7 shall be submitted electronically by the permittee to the
16709 department in compliance with this subdivision 7 and 40 CFR Part 3 (including, in all
16710 cases, 40 CFR Part 3 Subpart D), [9VAC25-875-940](#), and Part XI ([9VAC25-31-950](#) et
16711 seq.) of the Virginia Pollutant Discharge Elimination System (VPDES) Permit
16712 Regulation. Part XI of [9VAC25-31](#) is not intended to undo existing requirements for
16713 electronic reporting. Prior to this date, and independent of Part XI of [9VAC25-31](#),
16714 permittees may be required to electronically submit reports related to combined sewer
16715 overflows, sanitary sewer overflows, or bypass events under this subdivision 7 by a
16716 particular permit.

16717 (3) The director may also require permittees to electronically submit reports not related
16718 to combined sewer overflows, sanitary sewer overflows, or bypass events under this
16719 subdivision 7.

16720 b. The following shall be reported within 24 hours under this subdivision:

16721 (1) Any unanticipated bypass that exceeds any effluent limitation in the permit.

16722 (2) Any upset that exceeds any effluent limitation in the permit.

16723 (3) Violation of a maximum daily discharge limitation for any of the pollutants listed in
16724 the permit to be reported within 24 hours.

16725 c. The department may waive the five-day report on a case-by-case basis for reports
16726 under this subdivision if the oral report has been received within 24 hours.

16727 8. The permittee shall report all instances of noncompliance not reported under
16728 subdivisions 4, 5, 6, and 7 of this subsection, in the format required by the department, at
16729 the time the next monitoring reports are submitted. The reports shall contain the
16730 information listed in subdivision 7 of this subsection.

16731 a. For noncompliance events related to combined sewer overflows, sanitary sewer
16732 overflows, or bypass events, these reports shall contain the information described in
16733 subdivision 7 a of this subsection and the applicable required data in Appendix A to
16734 40 CFR Part 127 as adopted by reference in [9VAC25-31-1030](#).

16735 b. As of the start date in Table 1 of [9VAC25-31-1020](#), all reports related to combined
16736 sewer overflows, sanitary sewer overflows, or bypass events submitted in compliance
16737 with this subdivision 8 shall be submitted electronically by the permittee to the
16738 department in compliance with this subdivision 8 and 40 CFR Part 3 (including, in all
16739 cases, 40 CFR Part 3 Subpart D), [9VAC25-875-940](#), and Part XI ([9VAC25-31-950](#) et

16740 seq.) of the Virginia Pollutant Discharge Elimination System (VPDES) Permit
16741 Regulation. Part XI of 9VAC25-31 is not intended to undo existing requirements for
16742 electronic reporting. Prior to this date, and independent of Part XI of 9VAC25-31,
16743 permittees may be required to electronically submit reports related to combined sewer
16744 overflows, sanitary sewer overflows, or bypass events under this section by a
16745 particular permit.

16746 c. The director may also require permittees to electronically submit reports not related
16747 to combined sewer overflows, sanitary sewer overflows, or bypass events under this
16748 section.

16749 9. Where the permittee becomes aware that it failed to submit any relevant facts in a permit
16750 application, or submitted incorrect information in a permit application or in any report to
16751 the department, it shall promptly submit such facts or information.

16752 10. The owner, operator, or the duly authorized representative of an VPDES-regulated
16753 entity is required to electronically submit the required information, as specified in Appendix
16754 A to 40 CFR Part 127 as adopted by reference in 9VAC25-31-1030, to the department.

16755 M. Bypass.

16756 1. The permittee may allow any bypass to occur that does not cause effluent limitations to
16757 be exceeded, but only if it also is for essential maintenance to assure efficient operation.
16758 These bypasses are not subject to the provisions of subdivisions 2 and 3 of this
16759 subsection.

16760 2. Notice.

16761 a. Anticipated bypass. If the permittee knows in advance of the need for a bypass, it
16762 shall submit prior notice, if possible at least 10 days before the date of the bypass. As
16763 of the start date in Table 1 of 9VAC25-31-1020, all notices submitted in compliance
16764 with this subdivision shall be submitted electronically by the permittee to the
16765 department in compliance with this subsection and 40 CFR Part 3 (including, in all
16766 cases, 40 CFR Part 3 Subpart D), 9VAC25-875-940, and Part XI (9VAC25-31-950 et
16767 seq.) of the Virginia Pollutant Discharge Elimination System (VPDES) Permit
16768 Regulation. Part XI of 9VAC25-31 is not intended to undo existing requirements for
16769 electronic reporting. Prior to this date, and independent of Part XI of 9VAC25-31,
16770 permittees may be required to report electronically if specified by a particular permit.

16771 b. Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass
16772 as required in subdivision L 7 of this section. As of the start date in Table 1 of 9VAC25-
16773 31-1020, all notices submitted in compliance with this subdivision shall be submitted
16774 electronically by the permittee to the department in compliance with this subdivision
16775 and 40 CFR Part 3 (including, in all cases, 40 CFR Part 3 Subpart D), 9VAC25-875-
16776 940, and Part XI (9VAC25-31-950 et seq.) of the Virginia Pollutant Discharge
16777 Elimination System (VPDES) Permit Regulation. Part XI of 9VAC25-31 is not intended
16778 to undo existing requirements for electronic reporting. Prior to this date, and
16779 independent of Part XI of 9VAC25-31, permittees may be required to report
16780 electronically if specified by a particular permit.

16781 3. Prohibition of bypass.

16782 a. Bypass is prohibited, and the department may take enforcement action against a
16783 permittee for bypass, unless:

16784 (1) Bypass was unavoidable to prevent loss of life, personal injury, or severe property
16785 damage;

16786 (2) There were no feasible alternatives to the bypass, such as the use of auxiliary
16787 treatment facilities, retention of untreated wastes, or maintenance during normal

16788 periods of equipment downtime. This condition is not satisfied if adequate back-up
 16789 equipment should have been installed in the exercise of reasonable engineering
 16790 judgment to prevent a bypass that occurred during normal periods of equipment
 16791 downtime or preventive maintenance; and
 16792 (3) The permittee submitted notices as required under subdivision 2 of this subsection.
 16793 b. The department may approve an anticipated bypass, after considering its adverse
 16794 effects, if the department determines that it will meet the three conditions listed in
 16795 subdivision 3 a of this subsection.

16796 N. Upset.

16797 1. An upset constitutes an affirmative defense to an action brought for noncompliance with
 16798 such technology based permit effluent limitations if the requirements of subdivision 2 of
 16799 this subsection are met. No determination made during administrative review of claims
 16800 that noncompliance was caused by upset, and before an action for noncompliance, is final
 16801 administrative action subject to judicial review.

16802 2. A permittee who wishes to establish the affirmative defense of upset shall demonstrate,
 16803 through properly signed, contemporaneous operating logs, or other relevant evidence
 16804 that:

16805 a. An upset occurred and that the permittee can identify the cause or causes of the
 16806 upset;

16807 b. The permitted facility was at the time being properly operated;

16808 c. The permittee submitted notice of the upset as required in subdivision L 7 b (2) of
 16809 this section (24-hour notice); and

16810 d. The permittee complied with any remedial measures required under subsection D
 16811 of this section.

16812 3. In any enforcement proceeding the permittee seeking to establish the occurrence of an
 16813 upset has the burden of proof.

16814 **9VAC25-875-1010. Additional conditions applicable to municipal separate storm sewer**
 16815 **permits.**

16816 In addition to those conditions set forth in 9VAC25-875-1000, the operator of a large or
 16817 medium municipal separate storm sewer system or a municipal separate storm sewer that has
 16818 been designated by the department under 9VAC25-875-950 A 1 e must submit an annual report
 16819 by a date specified in the permit for such system. As of the start date in Table 1 of [9VAC25-31-](#)
 16820 [1020](#), all reports submitted in compliance with this section shall be submitted electronically by the
 16821 owner, operator, or the duly authorized representative of the MS4 to the department in compliance
 16822 with this section and 40 CFR Part 3 (including, in all cases, 40 CFR Part 3 Subpart D), 9VAC25-
 16823 875-940, and Part XI ([9VAC25-31-950](#) et seq.) of the Virginia Pollutant Discharge Elimination
 16824 System (VPDES) Permit Regulation. Part XI of [9VAC25-31](#) is not intended to undo existing
 16825 requirements for electronic reporting. Prior to this date, and independent of Part XI of [9VAC25-](#)
 16826 [31](#), the owner, operator, or the duly authorized representative of the small MS4 may be required
 16827 to report electronically if specified by a particular permit. The report shall include:

16828 1. The status of implementing the components of the stormwater management program
 16829 that are established as permit conditions;

16830 2. Proposed changes to the stormwater management programs that are established as
 16831 permit conditions. Such proposed changes shall be consistent with 9VAC25-875-950 C 2
 16832 d;

16833 3. Revisions, if necessary, to the assessment of controls and the fiscal analysis reported
 16834 in the permit application;

16835 4. A summary of data, including monitoring data, that is accumulated throughout the
 16836 reporting year;

16837 5. Annual expenditures and budget for year following each annual report;

16838 6. A summary describing the number and nature of enforcement actions, inspections, and
 16839 public education programs; and

16840 7. Identification of water quality improvements or degradation.

16841 **9VAC25-875-1020. Establishing permit conditions.**

16842 A. In addition to conditions required in all permits, the department shall establish conditions,
 16843 as required on a case-by-case basis, to provide for and assure compliance with all applicable
 16844 requirements of the Virginia Erosion and Stormwater Management Act, the State Water Control
 16845 Law, the CWA, and attendant regulations. These shall include conditions under 9VAC25-875-
 16846 1050 (duration of permits), 9VAC25-875-1060 (schedules of compliance), 9VAC25-875-1030
 16847 (monitoring), electronic reporting requirements of 40 CFR Part 3, and Part XI (9VAC25-31-950 et
 16848 seq.) of the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation.

16849 B. 1. An applicable requirement is a state statutory or regulatory requirement which takes
 16850 effect prior to final administrative disposition of a permit. An applicable requirement is also any
 16851 requirement that takes effect prior to the modification or revocation and reissuance of a permit to
 16852 the extent allowed in Article 6 (9VAC25-875-1210 et seq.) of Part VII of this chapter.

16853 2. New or reissued permits, and to the extent allowed under Article 6 (9VAC25-875-1210
 16854 et seq.) of Part VII of this chapter modified or revoked and reissued permits, shall
 16855 incorporate each of the applicable requirements referenced in 9VAC25-875-1030 and
 16856 9VAC25-875-1040.

16857 C. All permit conditions shall be incorporated either expressly or by reference. If incorporated
 16858 by reference, a specific citation to the applicable regulations or requirements must be given in the
 16859 permit.

16860 **9VAC25-875-1030. Establishing limitations, standards, and other permit conditions.**

16861 In addition to the conditions established under 9VAC25-875-1020 A, each permit shall include
 16862 conditions meeting the following requirements when applicable.

16863 A. 1. Technology-based effluent limitations and standards based on effluent limitations and
 16864 standards promulgated under § 301 of the CWA, on new source performance standards
 16865 promulgated under § 306 of CWA, on case-by-case effluent limitations determined under §
 16866 402(a)(1) of CWA, or a combination of the three. For new sources or new dischargers, these
 16867 technology-based limitations and standards are subject to the provisions of 9VAC25-875-990 B
 16868 (protection period).

16869 2. The department may authorize a discharger subject to technology-based effluent
 16870 limitations guidelines and standards in a permit to forego sampling of a pollutant found at
 16871 40 CFR Subchapter N if the discharger has demonstrated through sampling and other
 16872 technical factors that the pollutant is not present in the discharge or is present only at
 16873 background levels from intake water and without any increase in the pollutant due to
 16874 activities of the discharger. This waiver is good only for the term of the permit and is not
 16875 available during the term of the first permit issued to a discharger. Any request for this
 16876 waiver must be submitted when applying for a reissued permit or modification of a reissued
 16877 permit. The request must demonstrate through sampling or other technical information,
 16878 including information generated during an earlier permit term, that the pollutant is not
 16879 present in the discharge or is present only at background levels from intake water and
 16880 without any increase in the pollutant due to activities of the discharger. Any grant of the
 16881 monitoring waiver must be included in the permit as an express permit condition and the
 16882 reasons supporting the grant must be documented in the permit's fact sheet or statement

16883 of basis. This provision does not supersede certification processes and requirements
16884 already established in existing effluent limitations guidelines and standards.

16885 B. Other effluent limitations and standards under §§ 301, 302, 303, 307, 318 and 405 of the
16886 CWA. If any applicable toxic effluent standard or prohibition (including any schedule of compliance
16887 specified in such effluent standard or prohibition) is promulgated under § 307(a) of the CWA for
16888 a toxic pollutant and that standard or prohibition is more stringent than any limitation on the
16889 pollutant in the permit, the department shall institute proceedings under this chapter to modify or
16890 revoke and reissue the permit to conform to the toxic effluent standard or prohibition.

16891 C. Water quality standards and state requirements. Any requirements in addition to or more
16892 stringent than promulgated effluent limitations guidelines or standards under §§ 301, 304, 306,
16893 307, 318 and 405 of the CWA necessary to:

16894 1. Achieve water quality standards established under the State Water Control Law and §
16895 303 of the CWA, including state narrative criteria for water quality.

16896 a. Limitations must control all pollutants or pollutant parameters (either conventional,
16897 nonconventional, or toxic pollutants) which the department determines are or may be
16898 discharged at a level that will cause, have the reasonable potential to cause, or
16899 contribute to an excursion above any Virginia water quality standard, including Virginia
16900 narrative criteria for water quality.

16901 b. When determining whether a discharge causes, has the reasonable potential to
16902 cause, or contributes to an in-stream excursion above a narrative or numeric criteria
16903 within a Virginia water quality standard, the department shall use procedures that
16904 account for existing controls on point and nonpoint sources of pollution, the variability
16905 of the pollutant or pollutant parameter in the effluent, the sensitivity of the species to
16906 toxicity testing (when evaluating whole effluent toxicity), and where appropriate, the
16907 dilution of the effluent in the receiving water.

16908 c. When the department determines, using the procedures in subdivision 1 b of this
16909 subsection, that a discharge causes, has the reasonable potential to cause, or
16910 contributes to an in-stream excursion above the allowable ambient concentration of a
16911 Virginia numeric criteria within a Virginia water quality standard for an individual
16912 pollutant, the permit must contain effluent limits for that pollutant.

16913 d. Except as provided in this subdivision, when the department determines, using the
16914 procedures in subdivision 1 b of this subsection, toxicity testing data, or other
16915 information, that a discharge causes, has the reasonable potential to cause, or
16916 contributes to an in-stream excursion above a narrative criterion within an applicable
16917 Virginia water quality standard, the permit must contain effluent limits for whole effluent
16918 toxicity. Limits on whole effluent toxicity are not necessary where the department
16919 demonstrates in the fact sheet or statement of basis of the permit, using the
16920 procedures in subdivision 1 b of this subsection, that chemical-specific limits for the
16921 effluent are sufficient to attain and maintain applicable numeric and narrative Virginia
16922 water quality standards.

16923 e. Where Virginia has not established a water quality criterion for a specific chemical
16924 pollutant that is present in an effluent at a concentration that causes, has the
16925 reasonable potential to cause, or contributes to an excursion above a narrative
16926 criterion within an applicable Virginia water quality standard, the department must
16927 establish effluent limits using one or more of the following options:

16928 (1) Establish effluent limits using a calculated numeric water quality criterion for the
16929 pollutant which the department demonstrates will attain and maintain applicable
16930 narrative water quality criteria and will fully protect the designated use. Such a criterion
16931 may be derived using a proposed Virginia criterion, or an explicit policy or regulation

- 16932 interpreting Virginia's narrative water quality criterion, supplemented with other
16933 relevant information which may include: EPA's Water Quality Standards Handbook,
16934 August 1994, risk assessment data, exposure data, information about the pollutant
16935 from the Food and Drug Administration, and current EPA criteria documents;
- 16936 (2) Establish effluent limits on a case-by-case basis, using EPA's water quality criteria,
16937 published under § 307(a) of the CWA, supplemented where necessary by other
16938 relevant information; or
- 16939 (3) Establish effluent limitations on an indicator parameter for the pollutant of concern,
16940 provided:
- 16941 (a) The permit identifies which pollutants are intended to be controlled by the use of
16942 the effluent limitation;
- 16943 (b) The fact sheet required by 9VAC25-875-1090 sets forth the basis for the limit,
16944 including a finding that compliance with the effluent limit on the indicator parameter
16945 will result in controls on the pollutant of concern which are sufficient to attain and
16946 maintain applicable water quality standards;
- 16947 (c) The permit requires all effluent and ambient monitoring necessary to show that
16948 during the term of the permit the limit on the indicator parameter continues to attain
16949 and maintain applicable water quality standards; and
- 16950 (d) The permit contains a reopener clause allowing the department to modify or revoke
16951 and reissue the permit if the limits on the indicator parameter no longer attain and
16952 maintain applicable water quality standards.
- 16953 f. When developing water quality-based effluent limits under this subdivision the
16954 department shall ensure that:
- 16955 (1) The level of water quality to be achieved by limits on point sources established
16956 under this subsection is derived from, and complies with all applicable water quality
16957 standards; and
- 16958 (2) Effluent limits developed to protect a narrative water quality criterion, a numeric
16959 water quality criterion, or both, are consistent with the assumptions and requirements
16960 of any available wasteload allocation for the discharge prepared by Virginia and
16961 approved by EPA pursuant to 40 CFR 130.7;
- 16962 2. Attain or maintain a specified water quality through water quality related effluent limits
16963 established under the State Water Control Law and § 302 of the CWA;
- 16964 3. Conform to the conditions of a Virginia Water Protection Permit (VWPP) issued under
16965 the State Water Control Law and § 401 of the CWA;
- 16966 4. Conform to applicable water quality requirements under § 401(a)(2) of the CWA when
16967 the discharge affects a state other than Virginia;
- 16968 5. Incorporate any more stringent limitations, treatment standards, or schedule of
16969 compliance requirements established under the State Water Control Law or regulations in
16970 accordance with § 301(b)(1)(C) of the CWA;
- 16971 6. Ensure consistency with the requirements of a Water Quality Management plan
16972 established by the State Water Control Board pursuant to [9VAC25-720](#) and approved by
16973 EPA under § 208(b) of the CWA;
- 16974 7. Incorporate § 403(c) criteria under 40 CFR Part 125, Subpart M, for ocean discharges;
16975 or
- 16976 8. Incorporate alternative effluent limitations or standards where warranted by
16977 fundamentally different factors, under 40 CFR Part 125, Subpart D.

16978 D. Technology-based controls for toxic pollutants. Limitations established under subsections
16979 A, B, or C of this section, to control pollutants meeting the criteria listed in subdivision 1 of this
16980 subsection. Limitations will be established in accordance with subdivision 2 of this subsection. An
16981 explanation of the development of these limitations shall be included in the fact sheet.

16982 1. Limitations must control all toxic pollutants that the department determines (based on
16983 information reported in a permit application or in a notification required by the permit or on
16984 other information) are or may be discharged at a level greater than the level that can be
16985 achieved by the technology-based treatment requirements appropriate to the permittee;
16986 or

16987 2. The requirement that the limitations control the pollutants meeting the criteria of
16988 subdivision 1 of this subsection will be satisfied by:

16989 a. Limitations on those pollutants; or

16990 b. Limitations on other pollutants that, in the judgment of the department, will provide
16991 treatment of the pollutants under subdivision 1 of this subsection to the levels required
16992 by the Virginia Erosion and Stormwater Management Act, the State Water Control
16993 Law, and 40 CFR Part 125, Subpart A.

16994 E. A notification level that exceeds the notification level of 9VAC25-31-200, upon a petition
16995 from the permittee or on the department's initiative. This new notification level may not exceed
16996 the level which can be achieved by the technology-based treatment requirements appropriate to
16997 the permittee.

16998 F. Twenty-four-hour reporting. Pollutants for which the permittee must report violations of
16999 maximum daily discharge limitations under 9VAC25-875-1000 L 7 b (3) (24-hour reporting) shall
17000 be listed in the permit. This list shall include any toxic pollutant or hazardous substance, or any
17001 pollutant specifically identified as the method to control a toxic pollutant or hazardous substance.

17002 G. Durations for permits, as set forth in 9VAC25-875-1050.

17003 H. Monitoring requirements.

17004 1. Requirements concerning the proper use, maintenance, and installation, when
17005 appropriate, of monitoring equipment or methods (including biological monitoring methods
17006 when appropriate);

17007 2. Required monitoring including type, intervals, and frequency sufficient to yield data that
17008 are representative of the monitored activity including, when appropriate, continuous
17009 monitoring;

17010 3. Applicable reporting requirements based upon the impact of the regulated activity and
17011 as specified in 9VAC25-875-1000, subdivisions 5 through 8 of this subsection, and Part
17012 XI ([9VAC25-31-950](#) et seq.) of the Virginia Pollutant Discharge Elimination System
17013 (VPDES) Permit Regulation. Reporting shall be no less frequent than specified in the
17014 above regulation;

17015 4. To assure compliance with permit limitations, requirements to monitor:

17016 a. The mass (or other measurement specified in the permit) for each pollutant limited
17017 in the permit;

17018 b. The volume of effluent discharged from each outfall;

17019 c. Other measurements as appropriate including pollutants; frequency, rate of
17020 discharge, etc., for noncontinuous discharges; pollutants subject to notification
17021 requirements; or as determined to be necessary on a case-by-case basis pursuant to
17022 the Virginia Erosion and Stormwater Management Act, the State Water Control Law,
17023 and § 405(d)(4) of the CWA;

- 17024 d. According to test procedures approved under 40 CFR Part 136 for the analyses of
17025 pollutants having approved methods under that part, or alternative EPA approved
17026 methods, and according to a test procedure specified in the permit for pollutants with
17027 no approved methods; and
- 17028 e. With analyses performed according to test procedures approved under 40 CFR Part
17029 136 being performed by an environmental laboratory certified under regulations
17030 adopted by the Department of General Services (1VAC30-45 or 1VAC30-46).
- 17031 5. Except as provided in subdivisions 7 and 8 of this subsection, requirements to report
17032 monitoring results shall be established on a case-by-case basis with a frequency
17033 dependent on the nature and effect of the discharge, but in no case less than once a year.
17034 All results shall be electronically reported in compliance with 40 CFR Part 3 (including, in
17035 all cases, 40 CFR Part 3 Subpart D), 9VAC25-875-940, and Part XI (9VAC25-31-950 et
17036 seq.) of the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation;
- 17037 6. Requirements to report monitoring results for stormwater discharges associated with
17038 industrial activity that are subject to an effluent limitation guideline shall be established on
17039 a case-by-case basis with a frequency dependent on the nature and effect of the
17040 discharge, but in no case less than once a year;
- 17041 7. Requirements to report monitoring results for stormwater discharges (other than those
17042 addressed in subdivision 6 of this subsection) shall be established on a case-by-case
17043 basis with a frequency dependent on the nature and effect of the discharge. At a minimum,
17044 a permit for such a discharge must require:
- 17045 a. The discharger to conduct an annual inspection of the facility site to identify areas
17046 contributing to a stormwater discharge and evaluate whether measures to reduce
17047 pollutant loading identified in a stormwater pollution prevention plan are adequate and
17048 properly implemented in accordance with the terms of the permit or whether additional
17049 control measures are needed;
- 17050 b. The discharger to maintain for a period of three years a record summarizing the
17051 results of the inspection and a certification that the facility is in compliance with the
17052 plan and the permit, and identifying any incidents of noncompliance;
- 17053 c. Such report and certification be signed in accordance with 9VAC25-875-940; and
- 17054 8. Permits which do not require the submittal of monitoring result reports at least annually
17055 shall require that the permittee report all instances of noncompliance not reported under
17056 9VAC25-875-1000 L 1, 4, 5, 6, and 7 at least annually.
- 17057 I. Best management practices to control or abate the discharge of pollutants when:
- 17058 1. Authorized under § 402(p) of the CWA for the control of stormwater discharges;
- 17059 2. Numeric effluent limitations are infeasible; or
- 17060 3. The practices are reasonably necessary to achieve effluent limitations and standards
17061 or to carry out the purposes and intent of the Virginia Erosion and Stormwater
17062 Management Act, the State Water Control Law, and the CWA.
- 17063 J. Reissued permits.
- 17064 1. In the case of effluent limitations established on the basis of § 402(a)(1)(B) of the CWA,
17065 a permit may not be renewed, reissued, or modified on the basis of effluent guidelines
17066 promulgated under § 304(b) of the CWA subsequent to the original issuance of such
17067 permit, to contain effluent limitations that are less stringent than the comparable effluent
17068 limitations in the previous permit. In the case of effluent limitations established on the basis
17069 of § 301(b)(1)(C) or § 303(d) or (e) of the CWA, a permit may not be renewed, reissued,
17070 or modified to contain effluent limitations that are less stringent than the comparable

17071 effluent limitations in the previous permit except in compliance with § 303(d)(4) of the
 17072 CWA.

17073 2. Exceptions. A permit with respect to which subdivision 1 of this subsection applies may
 17074 be renewed, reissued, or modified to contain a less stringent effluent limitation applicable
 17075 to a pollutant, if:

17076 a. Material and substantial alterations or additions to the permitted facility occurred
 17077 after permit issuance that justify the application of a less stringent effluent limitation;

17078 b. (1) Information is available that was not available at the time of permit issuance
 17079 (other than revised regulations, guidance, or test methods) and that would have
 17080 justified the application of a less stringent effluent limitation at the time of permit
 17081 issuance; or

17082 (2) The department determines that technical mistakes or mistaken interpretations of
 17083 the State Water Control Law were made in issuing the permit under § 402(a)(1)(B) of
 17084 the CWA;

17085 c. A less stringent effluent limitation is necessary because of events over which the
 17086 permittee has no control and for which there is no reasonably available remedy;

17087 d. The permittee has received a permit modification under the Virginia Erosion and
 17088 Stormwater Management Act, the State Water Control Law, and § 301(c), 301(g),
 17089 301(h), 301(i), 301(k), 301(n), or 316(a) of the CWA; or

17090 e. The permittee has installed the treatment facilities required to meet the effluent
 17091 limitations in the previous permit and has properly operated and maintained the
 17092 facilities but has nevertheless been unable to achieve the previous effluent limitations,
 17093 in which case the limitations in the reviewed, reissued, or modified permit may reflect
 17094 the level of pollutant control actually achieved (but shall not be less stringent than
 17095 required by effluent guidelines in effect at the time of permit renewal, reissuance, or
 17096 modification).

17097 Subdivision 2 b of this subsection shall not apply to any revised waste load allocations
 17098 or any alternative grounds for translating water quality standards into effluent
 17099 limitations, except where the cumulative effect of such revised allocations results in a
 17100 decrease in the amount of pollutants discharged into the concerned waters, and such
 17101 revised allocations are not the result of a discharger eliminating or substantially
 17102 reducing its discharge of pollutants due to complying with the requirements of the State
 17103 Water Control Law or the CWA or for reasons otherwise unrelated to water quality.

17104 3. In no event may a permit with respect to which subdivision 2 of this subsection applies
 17105 be renewed, reissued, or modified to contain an effluent limitation that is less stringent
 17106 than required by effluent guidelines in effect at the time the permit is renewed, reissued,
 17107 or modified. In no event may such a permit to discharge into waters be renewed, issued,
 17108 or modified to contain a less stringent effluent limitation if the implementation of such
 17109 limitation would result in a violation of a Virginia water quality standard applicable to such
 17110 waters.

17111 K. Navigation. Any conditions that the Secretary of the Army considers necessary to ensure
 17112 that navigation and anchorage will not be substantially impaired in accordance with 9VAC25-875-
 17113 1170.

17114 L. Qualifying state, tribal, or local programs.

17115 1. For stormwater discharges associated with small construction activity identified in
 17116 9VAC25-875-850, the department may include permit conditions that incorporate
 17117 qualifying state, tribal, or local erosion and sediment control program requirements by
 17118 reference. Where a qualifying state, tribal, or local program does not include one or more

17119 of the elements in this subdivision, then the department must include those elements as
 17120 conditions in the permit. A qualifying state, tribal, or local erosion and sediment control
 17121 program is one that includes:

17122 a. Requirements for construction site operators to implement appropriate erosion and
 17123 sediment control best management practices;

17124 b. Requirements for construction site operators to control waste such as discarded
 17125 building materials, concrete truck washout, chemicals, litter, and sanitary waste at the
 17126 construction site that may cause adverse impacts to water quality;

17127 c. Requirements for construction site operators to develop and implement a
 17128 stormwater pollution prevention plan. A stormwater pollution prevention plan includes
 17129 site descriptions; descriptions of appropriate control measures; copies of approved
 17130 state, tribal or local requirements; maintenance procedures; inspection procedures;
 17131 and identification of nonstormwater discharges; and

17132 d. Requirements to submit a site plan for review that incorporates consideration of
 17133 potential water quality impacts.

17134 2. For stormwater discharges from construction activity that does not meet the definition
 17135 of a small construction activity, the department may include permit conditions that
 17136 incorporate qualifying state, tribal, or local erosion and sediment control program
 17137 requirements by reference. A qualifying state, tribal or local erosion and sediment control
 17138 program is one that includes the elements listed in subdivision 1 of this subsection and
 17139 any additional requirements necessary to achieve the applicable technology-based
 17140 standards of "best available technology" and "best conventional technology" based on the
 17141 best professional judgment of the permit writer.

17142 **9VAC25-875-1040. Calculating permit conditions.**

17143 A. Permit effluent limitations, monitoring requirements, standards and prohibitions shall be
 17144 established for each outfall or discharge point of the permitted facility, except as otherwise
 17145 provided under 9VAC25-875-1030.

17146 B. All permit effluent limitations, standards, or prohibitions for a metal shall be expressed in
 17147 terms of total recoverable metal as defined in 40 CFR Part 136 unless:

17148 1. An applicable effluent standard or limitation has been promulgated under the CWA and
 17149 specifies the limitation for the metal in the dissolved or valent or total form; or

17150 2. In establishing permit limitations on a case-by-case basis under 40 CFR 125.3, it is
 17151 necessary to express the limitation on the metal in the dissolved or valent or total form to
 17152 carry out the provisions of the CWA, Virginia Erosion and Stormwater Management Act
 17153 and the State Water Control Law; or

17154 3. All approved analytical methods for the metal inherently measure only its dissolved form
 17155 (e.g., hexavalent chromium).

17156 C. Discharges that are not continuous, as defined in 9VAC25-875-850, shall be particularly
 17157 described and limited, considering the following factors, as appropriate:

17158 1. Frequency;

17159 2. Total mass;

17160 3. Maximum rate of discharge of pollutants during the discharge; and

17161 4. Prohibition or limitation of specified pollutants by mass, concentration, or other
 17162 appropriate measure.

17163 D. Mass Limitations.

- 17164 1. All pollutants limited in permits shall have limitations, standards or prohibitions
 17165 expressed in terms of mass except:
- 17166 a. For pH, temperature, radiation, or other pollutants that cannot appropriately be
 17167 expressed by mass;
- 17168 b. When applicable standards and limitations are expressed in terms of other units of
 17169 measurement; or
- 17170 c. If in establishing technology-based permit limitations on a case-by-case basis,
 17171 limitations expressed in terms of mass are infeasible because the mass of the pollutant
 17172 discharged cannot be related to a measure of operation (for example, discharges of
 17173 TSS from certain mining operations), and permit conditions ensure that dilution will not
 17174 be used as a substitute for treatment.
- 17175 2. Pollutants limited in terms of mass additionally may be limited in terms of other units of
 17176 measurement, and the permit shall require the permittee to comply with both limitations.
- 17177 **9VAC25-875-1050. Duration of permits.**
- 17178 A. Permits shall be effective for a fixed term not to exceed five years.
- 17179 B. Except as provided in 9VAC25-875-890, the term of a permit shall not be extended by
 17180 modification beyond the maximum duration specified in this section.
- 17181 C. The department may issue any permit for a duration that is less than the full allowable term
 17182 under this section.
- 17183 D. A permit may be issued to expire on or after the statutory deadline set forth in §§ 301(b)(2)
 17184 (A), (C), and (E) of the CWA, if the permit includes effluent limitations to meet the requirements
 17185 of §§ 301(b)(2) (A), (C), (D), (E) and (F) of the CWA, whether or not applicable effluent limitations
 17186 guidelines have been promulgated or approved.
- 17187 **9VAC25-875-1060. Schedules of compliance.**
- 17188 A. The permit may, when appropriate, specify a schedule of compliance leading to compliance
 17189 with the Act, the CWA and regulations.
- 17190 1. Any schedules of compliance under this section shall require compliance as soon as
 17191 possible, but not later than the applicable statutory deadline under the CWA.
- 17192 2. The first permit issued to a new source or a new discharger shall contain a schedule of
 17193 compliance only when necessary to allow a reasonable opportunity to attain compliance
 17194 with requirements issued or revised after commencement of construction but less than
 17195 three years before commencement of the relevant discharge. For recommencing
 17196 dischargers, a schedule of compliance shall be available only when necessary to allow a
 17197 reasonable opportunity to attain compliance with requirements issued or revised less than
 17198 three years before recommencement of discharge.
- 17199 3. Schedules of compliance may be established in permits for existing sources that are
 17200 reissued or modified to contain new or more restrictive water quality-based effluent
 17201 limitations. The schedule may allow a reasonable period of time, not to exceed the term
 17202 of the permit, for the discharger to attain compliance with the water quality-based
 17203 limitations.
- 17204 4. Except as provided in subdivision B 1 b of this section, if a permit establishes a schedule
 17205 of compliance that exceeds one year from the date of permit issuance, the schedule shall
 17206 set forth interim requirements and the dates for their achievement.
- 17207 a. The time between interim dates shall not exceed one year.
- 17208 b. If the time necessary for completion of any interim requirement is more than one
 17209 year and is not readily divisible into stages for completion, the permit shall specify

17210 interim dates for the submission of reports of progress toward completion of the interim
 17211 requirements and indicate a projected completion date.

17212 5. The permit shall be written to require that no later than 14 days following each interim
 17213 date and the final date of compliance, the permittee shall notify the department in writing
 17214 of its compliance or noncompliance with the interim or final requirements, or submit
 17215 progress reports if subdivision 4 b of this subsection is applicable.

17216 B. A permit applicant or permittee may cease conducting regulated activities (by termination
 17217 of direct discharge for sources) rather than continuing to operate and meet permit requirements
 17218 as follows:

17219 1. If the permittee decides to cease conducting regulated activities at a given time within
 17220 the term of a permit that has already been issued:

17221 a. The permit may be modified to contain a new or additional schedule leading to timely
 17222 cessation of activities; or

17223 b. The permittee shall cease conducting permitted activities before noncompliance
 17224 with any interim or final compliance schedule requirement already specified in the
 17225 permit;

17226 2. If the decision to cease conducting regulated activities is made before issuance of a
 17227 permit whose term will include the termination date, the permit shall contain a schedule
 17228 leading to termination which will ensure timely compliance with applicable requirements
 17229 no later than the statutory deadline;

17230 3. If the permittee is undecided whether to cease conducting regulated activities, the
 17231 department may issue or modify a permit to contain two schedules as follows:

17232 a. Both schedules shall contain an identical interim deadline requiring a final decision
 17233 on whether to cease conducting regulated activities no later than a date that ensures
 17234 sufficient time to comply with applicable requirements in a timely manner if the decision
 17235 is to continue conducting regulated activities;

17236 b. One schedule shall lead to timely compliance with applicable requirements no later
 17237 than the statutory deadline;

17238 c. The second schedule shall lead to cessation of regulated activities by a date that
 17239 will ensure timely compliance with applicable requirements no later than the statutory
 17240 deadline; and

17241 d. Each permit containing two schedules shall include a requirement that after the
 17242 permittee has made a final decision under subdivision 3 a of this subsection it shall
 17243 follow the schedule leading to compliance if the decision is to continue conducting
 17244 regulated activities, and follow the schedule leading to termination if the decision is to
 17245 cease conducting regulated activities; and

17246 4. The permit applicant's or permittee's decision to cease conducting regulated activities
 17247 shall be evidenced by a firm public commitment satisfactory to the department, such as a
 17248 resolution of the board of directors of a corporation.

17249 Article 5

17250 Public involvement

17251 **9VAC25-875-1070. Draft permits.**

17252 A. Once an application for an individual permit is complete, the department shall tentatively
 17253 decide whether to prepare a draft individual permit or to deny the application.

17254 B. If the department tentatively decides to deny the individual permit application, the owner
 17255 shall be advised of that decision and of the changes necessary to obtain approval. The owner

17256 may withdraw the application prior to department action. If the application is not withdrawn or
 17257 modified to obtain the tentative approval to issue, the department shall provide public notice and
 17258 opportunity for a public hearing prior to department action on the application.

17259 C. If the department tentatively decides to issue a general permit, a draft general permit shall
 17260 be prepared under subsection D of this section.

17261 D. If the department decides to prepare a draft permit, the draft permit shall contain the
 17262 following information:

17263 1. All conditions under 9VAC25-875-1000 and 9VAC25-875-1020;

17264 2. All compliance schedules under 9VAC25-875-1060;

17265 3. All monitoring requirements under 9VAC25-875-1030; and

17266 4. Effluent limitations, standards, prohibitions and conditions under 9VAC25-875-1000,
 17267 9VAC25-875-1010, and 9VAC25-875-1030, and all variances that are to be included.

17268 **9VAC25-875-1080. Statement of basis.**

17269 A statement of basis shall be prepared for every draft permit for which a fact sheet under
 17270 9VAC25-875-1090 is not prepared. The statement of basis shall briefly describe the derivation of
 17271 the conditions of the draft permit and the reasons for them or, in the case of notices of intent to
 17272 deny or terminate, reasons supporting the tentative decision. The statement of basis shall be sent
 17273 to the permit applicant and, on request, to any other person.

17274 **9VAC25-875-1090. Fact sheet.**

17275 A. A fact sheet shall be prepared for every draft individual permit for a major facility or activity,
 17276 for every general permit, for every draft permit that incorporates a variance or requires an
 17277 explanation under subsection B 8 of this section, and for every draft permit that the department
 17278 finds is the subject of wide-spread public interest or raises major issues. The fact sheet shall
 17279 briefly set forth the principal facts and the significant factual, legal, methodological and policy
 17280 questions considered in preparing the draft permit. The department shall send this fact sheet to
 17281 the permit applicant and, on request, to any other person.

17282 B. The fact sheet shall include, when applicable:

17283 1. A brief description of the type of facility or activity that is the subject of the draft permit;

17284 2. The type and quantity of wastes, fluids, or pollutants that are proposed to be or are
 17285 being treated, stored, disposed of, injected, emitted, or discharged;

17286 3. A brief summary of the basis for the draft permit conditions including references to
 17287 applicable statutory or regulatory provisions;

17288 4. Reasons why any requested variances or alternatives to required standards do or do
 17289 not appear justified;

17290 5. A description of the procedures for reaching a final decision on the draft permit including:

17291 a. The beginning and ending dates of the comment period for the draft permit and the
 17292 address where comments will be received;

17293 b. Procedures for requesting a public hearing and the nature of that hearing; and

17294 c. Any other procedures by which the public may participate in the final decision;

17295 6. Name, telephone number, and email address of a person to contact for additional
 17296 information;

17297 7. Any calculations or other necessary explanation of the derivation of specific effluent
 17298 limitations and conditions or standards for sewage sludge use or disposal, including a
 17299 citation to the applicable effluent limitation guideline, performance standard, or standard
 17300 for sewage sludge use or disposal and reasons why they are applicable or an explanation
 17301 of how the alternate effluent limitations were developed;

17302 8. When the draft permit contains any of the following conditions, an explanation of the
 17303 reasons why such conditions are applicable:

17304 a. Limitations to control toxic pollutants;

17305 b. Limitations on indicator pollutants;

17306 c. Technology-based limitations set on a case-by-case basis;

17307 d. Limitations to meet the criteria for permit issuance under 9VAC25-875-870; or

17308 e. Waivers from monitoring requirements granted under 9VAC25-875-1030 A; and

17309 9. When appropriate, a sketch or detailed description of the location of the discharge or
 17310 regulated activity described in the application.

17311 **9VAC25-875-1100. Public notice of draft permit actions and public comment period.**

17312 A. Scope.

17313 1. The department shall give public notice that the following actions have occurred:

17314 a. A draft permit has been prepared under 9VAC25-875-1070 D;

17315 b. A public hearing has been scheduled under 9VAC25-875-1120; or

17316 c. A new source determination has been made under 9VAC25-875-990.

17317 2. No public notice is required when a request for an individual permit modification,
 17318 revocation and reissuance, or termination is denied under 9VAC25-875-1210 B. Written
 17319 notice of that denial shall be given to the requester and to the permittee. Public notice shall
 17320 not be required for submission or approval of plans and specifications or conceptual
 17321 engineering reports not required to be submitted as part of the application.

17322 3. Public notices may describe more than one draft permit or draft permit actions.

17323 B. Timing.

17324 1. Public notice of the preparation of a draft permit required under subsection A of this
 17325 section shall allow at least 30 days for public comment.

17326 2. Public notice of a public hearing shall be given at least 30 days before the hearing.
 17327 (Public notice of the hearing may be given at the same time as public notice of the draft
 17328 permit and the two notices may be combined.)

17329 C. Methods. Public notice of activities described in subdivision A 1 of this section shall be
 17330 given by the following methods:

17331 1. By mailing, either by electronic or postal delivery, a copy of a notice to the following
 17332 persons (any person otherwise entitled to receive notice under this subdivision may waive
 17333 his rights to receive notice for any classes and categories of permits):

17334 a. The permit applicant (except for general permits when there is no permit applicant);

17335 b. Any other agency that the department knows has issued or is required to issue a
 17336 VPDES permit;

17337 c. Federal and state agencies with jurisdiction over fish, shellfish, and wildlife
 17338 resources and over coastal zone management plans, the Advisory Council on Historic
 17339 Preservation, State Historic Preservation Officers, including any affected states (Indian
 17340 Tribes);

17341 d. Any state agency responsible for plan development under § 208(b)(2), 208(b)(4) or
 17342 § 303(e) of the CWA and the U.S. Army Corps of Engineers, the U.S. Fish and Wildlife
 17343 Service and the National Marine Fisheries Service;

17344 e. Persons on a mailing list developed by:

17345 (1) Including those who request in writing to be on the list;

17346 (2) Soliciting persons for area lists from participants in past permit proceedings in that
 17347 area; and

17348 (3) Notifying the public of the opportunity to be put on the mailing list through periodic
 17349 publication in the public press, and in such publications as EPA regional and state
 17350 funded newsletters, environmental bulletins, or state law journals. (The department
 17351 may update the mailing list from time to time by requesting written indication of
 17352 continued interest from those listed. The department may delete from the list the name
 17353 of any person who fails to respond to such a request.);

17354 f. (1) Any unit of local government having jurisdiction over the area where the facility
 17355 is proposed to be located; and

17356 (2) Each state agency having any authority under state law with respect to the
 17357 construction or operation of such facility;

17358 2. By publication once a week for two successive weeks in a newspaper of general
 17359 circulation in the area affected by the discharge. The cost of public notice shall be paid by
 17360 the owner; and

17361 3. Any other method reasonably calculated to give actual notice of the action in question
 17362 to the persons potentially affected by it, including press releases or any other forum or
 17363 medium to elicit public participation.

17364 D. Contents.

17365 1. All public notices issued under this part shall contain the following minimum information:

17366 a. Name and address of the office processing the permit action for which notice is
 17367 being given;

17368 b. Name and address of the permittee or permit applicant and, if different, of the facility
 17369 or activity regulated by the permit, except in the case of draft general permits;

17370 c. A brief description of the business conducted at the facility or activity described in
 17371 the individual permit application or the draft permit, for general permits when there is
 17372 no application;

17373 d. Name, address, telephone number, and email address of a person from whom
 17374 interested persons may obtain further information, including copies of the draft permit,
 17375 statement of basis or fact sheet, and the application;

17376 e. A brief description of the procedures for submitting comments and the time and
 17377 place of any public hearing that will be held, including a statement of procedures to
 17378 request a public hearing (unless a hearing has already been scheduled) and other
 17379 procedures by which the public may participate in the final individual or general permit
 17380 decision;

17381 f. For an individual permit, a general description of the location of each existing or
 17382 proposed discharge point and the name of the receiving water; and

17383 g. Any additional information considered necessary or proper.

17384 2. In addition to the general public notice described in subdivision 1 of this subsection, the
 17385 public notice of a public hearing under 9VAC25-875-1120 shall contain the following
 17386 information:

17387 a. Reference to the date of previous public notices relating to the draft permit;

17388 b. Date, time, and place of the public hearing;

17389 c. A brief description of the nature and purpose of the public hearing, including the
 17390 applicable rules and procedures; and

17391 d. A concise statement of the issues raised by the persons requesting the public
 17392 hearing.

17393 E. In addition to the general public notice described in subdivision D 1 of this section, all
 17394 persons identified in subdivisions C 1 a through 1 d of this section shall be mailed, either by
 17395 electronic or postal delivery, a copy of the fact sheet or statement of basis, the individual permit
 17396 application (if any) and the draft permit (if any).

17397 **9VAC25-875-1110. Public comments and requests for public hearings.**

17398 During the public comment period provided under 9VAC25-875-1100, any interested person
 17399 may submit written comments on the draft permit and may request a public hearing, if no public
 17400 hearing has already been scheduled. A request for a public hearing shall be in writing and shall
 17401 meet the requirements of 9VAC25-875-1120 and 9VAC25-875-1130. All comments shall be
 17402 considered in making the final decision and shall be answered as provided in 9VAC25-875-1160.

17403 **9VAC25-875-1120. Public hearings.**

17404 A. 1. Procedures for public hearings and permits before the department are those set forth in
 17405 9VAC25-875-1130.

17406 2. Public notice of the public hearing shall be given as specified in 9VAC25-875-1100.

17407 3. Any public hearing convened pursuant to this section shall be held in the geographical
 17408 area of the proposed discharge, or in another appropriate area. Related groups of
 17409 individual permit applications may be considered at any such public hearing.

17410 B. Any person may submit oral or written statements and data concerning the draft individual
 17411 permit. Reasonable limits may be set upon the time allowed for oral statements, and the
 17412 submission of statements in writing may be required.

17413 C. A recording or written transcript of the hearing shall be made available to the public.

17414 **9VAC25-875-1130. Criteria for requesting and granting a public hearing in a permit action.**

17415 A. During the public comment period on a permit action in those instances where a public
 17416 hearing is not mandatory under state or federal law or regulation, interested persons may request
 17417 a public hearing to contest the action or terms and conditions of the permit.

17418 B. Requests for a public hearing shall contain the following information:

17419 1. The name and postal mailing or email address of the requester;

17420 2. The names and addresses of all persons for whom the requester is acting as a
 17421 representative;

17422 3. The reason for the request for a public hearing;

17423 4. A brief, informal statement setting forth the factual nature and extent of the interest of
 17424 the requester or of the persons for whom the requester is acting as representative in the
 17425 application or tentative determination, including an explanation of how and to what extent
 17426 such interest would be directly and adversely affected by the issuance, denial,
 17427 modification, or revocation of the permit in question; and

17428 5. Where possible, specific references to the terms and the conditions of the permit in
 17429 question, together with suggested revisions and alterations to those terms and conditions
 17430 that the requester considers are needed to conform the permit to the intent and provisions
 17431 of the basic laws of the State Water Control Board.

17432 C. Upon completion of the public comment period on a permit action, the director shall review
 17433 all timely requests for public hearing filed during the comment period on the permit action and,
 17434 within 30 calendar days following the expiration of the time period for the submission of requests,
 17435 shall grant a public hearing, unless the permittee or applicant agrees to a later date, if the director
 17436 finds the following:

17437 1. That there is a significant public interest in the issuance, denial, modification, or
 17438 revocation of the permit in question as evidenced by receipt of a minimum of 25 individual
 17439 requests for a public hearing;

17440 2. That the requesters raise substantial disputed issues relevant to the issuance, denial,
 17441 modification, or revocation of the permit in question; and

17442 3. That the action requested by the interested party is not on its face inconsistent with or
 17443 in violation of the basic laws of the State Water Control Board for a water permit action,
 17444 federal law, or any regulation promulgated thereunder.

17445 D. The director shall notify by email or mail at his last known address (i) each requester and
 17446 (ii) the applicant or permittee of the decision to grant or deny a public hearing.

17447 E. If the request for a public hearing is granted, the director shall:

17448 1. Schedule the hearing at a time between 45 and 75 days after emailing or mailing of the
 17449 notice of the decision to grant the public hearing; and

17450 2. Cause, or require the applicant to publish, notice of a public hearing to be published
 17451 once, in a newspaper of general circulation in the city or county where the facility or
 17452 operation that is the subject of the permit or permit application is located at least 30 days
 17453 before the hearing date.

17454 F. The public comment period shall remain open for 15 days after the close of the public
 17455 hearing if required by § 62.1-44.15:01 of the Code of Virginia.

17456 G. The director may, at his discretion, convene a public hearing in a permit action.

17457 **9VAC25-875-1140. Controversial permits.**

17458 Before rendering a final decision on a controversial permit, the department shall publish a
 17459 summary of public comments received during the applicable public comment period and public
 17460 hearing. After such publication, the department shall publish responses to the public comment
 17461 summary and hold a public hearing to provide an opportunity for individuals who previously
 17462 commented, either at a public hearing or in writing during the applicable public comment period,
 17463 to respond to the department's public comment summary and response. No new information will
 17464 be accepted at that time. In making its decision, the department shall consider (i) the verbal and
 17465 written comments received during the comment period and the public hearing made part of the
 17466 record, (ii) any commentary of the board, and (iii) the agency files.

17467 **9VAC25-875-1150. Controversial permits reporting.**

17468 At each regular meeting of the board, the department shall provide an overview and update
 17469 regarding any controversial permits pending before the department that are relevant. Immediately
 17470 after such presentation by the department, the board shall have an opportunity to respond to the
 17471 department's presentation and provide commentary regarding such pending permits.

17472 **9VAC25-875-1160. Response to comments.**

17473 A. At the time that a final individual or general permit is issued, the department shall issue a
 17474 response to comments. This response shall:

17475 1. Specify which provisions, if any, of the draft individual or general permit have been
 17476 changed in the final individual or general permit decision, and the reasons for the change;
 17477 and

17478 2. Briefly describe and respond to all significant comments on the draft permit raised during
 17479 the public comment period, or during any public hearing.

17480 B. The response to comments shall be available to the public.

17481 **9VAC25-875-1170. Conditions requested by the Corps of Engineers and other government**
 17482 **agencies.**

17483 A. If during the comment period for a draft permit, the district engineer advises the department
 17484 in writing that anchorage and navigation of any of the waters of the United States would be
 17485 substantially impaired by the granting of an individual or general permit, the individual or general
 17486 permit shall be denied and the individual permit applicant so notified. If the district engineer
 17487 advises the department that imposing specified conditions upon the individual or general permit
 17488 is necessary to avoid any substantial impairment of anchorage or navigation, then the department
 17489 shall include the specified conditions in the individual or general permit. Review or appeal of denial
 17490 of an individual or general permit or of conditions specified by the district engineer shall be made
 17491 through the applicable procedures of the Corps of Engineers, and may not be made through the
 17492 procedures provided in this part. If the conditions are stayed by a court of competent jurisdiction
 17493 or by applicable procedures of the Corps of Engineers, those conditions shall be considered
 17494 stayed in the individual or general permit for the duration of that stay.

17495 B. If during the comment period the U.S. Fish and Wildlife Service, the National Marine
 17496 Fisheries Service, or any other state or federal agency with jurisdiction over fish, wildlife, or public
 17497 health advises the department in writing that the imposition of specified conditions upon the
 17498 individual or general permit is necessary to avoid substantial impairment of fish, shellfish, or
 17499 wildlife resources, the department may include the specified conditions in the individual or general
 17500 permit to the extent they are determined necessary to carry out the provisions of this regulation,
 17501 the State Water Control Law and of the CWA.

17502 C. In appropriate cases the department may consult with one or more of the agencies referred
 17503 to in this section before issuing a draft permit and may reflect their views in the statement of basis,
 17504 the fact sheet, or the draft permit.

17505 **9VAC25-875-1180. Decisions on variances.**

17506 A. The department may grant or deny requests for variances requested pursuant to 9VAC25-
 17507 875-920 G 4, subject to EPA objection. Decisions on these variances shall be made according to
 17508 the criteria of 40 CFR Part 125, Subpart H.

17509 B. The department may deny, or forward to the regional administrator with a written
 17510 concurrence, or submit to EPA without recommendation a completed request for:

17511 1. A variance based on the economic capability of the individual permit applicant submitted
 17512 pursuant to 9VAC25-875-920 G 2; or

17513 2. A variance based on water quality related effluent limitations submitted pursuant to
 17514 9VAC25-875-920 G 3.

17515 C. If the EPA approves the variance, the department may prepare a draft individual permit
 17516 incorporating the variance. Any public notice of a draft individual permit for which a variance or
 17517 modification has been approved or denied shall identify the applicable procedures for appealing
 17518 that decision.

17519 D. The department may deny or forward to the administrator with a written concurrence a
 17520 completed request for:

17521 1. A variance based on the presence of fundamentally different factors from those on
 17522 which an effluent limitations guideline was based, made according to the criteria and
 17523 standards of 40 CFR Part 125, Subpart D; or

17524 2. A variance based upon certain water quality factors submitted pursuant to 9VAC25-
 17525 875-920 G 2.

17526 E. If the administrator approves the variance, the department may prepare a draft individual
 17527 permit incorporating the variance. Any public notice of a draft individual permit for which a variance

17528 or modification has been approved or denied shall identify the applicable procedures for appealing
 17529 that decision.

17530 **9VAC25-875-1190. Appeals of variances.**

17531 When the department issues an individual permit on which EPA has made a variance
 17532 decision, separate appeals of the individual permit and of the EPA variance decision are possible.

17533 **9VAC25-875-1200. Computation of time.**

17534 A. Any time period scheduled to begin on the occurrence of an act or event shall begin on the
 17535 day after the act or event.

17536 B. Any time period scheduled to begin before the occurrence of an act or event shall be
 17537 computed so that the period ends on the day before the act or event.

17538 C. If the final day of any time period falls on a weekend or legal holiday, the time period shall
 17539 be extended to the next working day.

17540 D. Whenever a party or interested person has the right or is required to act within a prescribed
 17541 period after the service of notice or other paper upon him by mail or by electronic or postal
 17542 delivery, three days shall be added to the prescribed time.

17543 Article 6

17544 Transfer, modification, revocation and reissuance, and termination of permits

17545 **9VAC25-875-1210. Modification, revocation and reissuance, or termination of permits.**

17546 A. Permits may be modified, revoked and reissued, or terminated either at the request of any
 17547 interested person (including the permittee) or upon the department's initiative. When the
 17548 department receives any information (for example, inspects the facility, receives information
 17549 submitted by the permittee as required in the permit, receives a request for modification or
 17550 revocation and reissuance, or conducts a review of the permit file) it may determine whether one
 17551 or more of the causes listed in this section for modification or revocation and reissuance, or both,
 17552 exist. However, permits may only be modified, revoked and reissued, or terminated for the
 17553 reasons specified in 9VAC25-875-1230 or 9VAC25-875-1250. All requests shall be in writing and
 17554 shall contain facts or reasons supporting the request. If cause does not exist under these sections,
 17555 the department shall not modify, revoke and reissue or terminate the permit. If a permit
 17556 modification satisfies the criteria for minor modifications, the permit may be modified without a
 17557 draft permit or public review. Otherwise, a draft permit must be prepared and other procedures in
 17558 Article 5 (9VAC25-875-1070 et seq.) of Part VII of this chapter followed.

17559 B. If the department decides the request is not justified, it shall send the requester a brief
 17560 written response giving a reason for the decision. Denials of requests for modification, revocation
 17561 and reissuance, or termination are not subject to public notice, comment, or public hearings.

17562 C. 1. If the department tentatively decides to modify or revoke and reissue a permit, it shall
 17563 prepare a draft permit incorporating the proposed changes. The department may request
 17564 additional information and, in the case of a modified permit, may require the submission of an
 17565 updated application. In the case of revoked and reissued permits, the department shall require
 17566 the submission of a new application.

17567 2. In a permit modification under this section, only those conditions to be modified shall be
 17568 reopened when a new draft permit is prepared. All other aspects of the existing permit
 17569 shall remain in effect for the duration of the unmodified permit. When a permit is revoked
 17570 and reissued under this section, the entire permit is reopened just as if the permit had
 17571 expired and was being reissued and the permit is reissued for a new term. During any
 17572 revocation and reissuance proceeding the permittee shall comply with all conditions of the
 17573 existing permit until a new final permit is reissued.

17574 3. Minor modifications as defined in 9VAC25-875-1240 are not subject to the requirements
 17575 of this section.

17576 D. If the department tentatively decides to terminate a permit under 9VAC25-875-1250, where
 17577 the permittee objects, it shall do so in accordance with the Administrative Process Act (§ 2.2-4000
 17578 et seq. of the Code of Virginia).

17579 **9VAC25-875-1220. Transfer of permits.**

17580 A. Except as provided in subsection B of this section, a permit may be transferred by the
 17581 permittee to a new owner or operator only if the permit has been modified or revoked and
 17582 reissued, or a minor modification made, to identify the new permittee and incorporate such other
 17583 requirements as may be necessary under the Virginia Erosion and Stormwater Management Act
 17584 and the CWA.

17585 B. Automatic transfers. As an alternative to transfers under subsection A of this section, any
 17586 permit may be automatically transferred to a new permittee if:

17587 1. The current permittee notifies the department at least 30 days in advance of the
 17588 proposed transfer date in subdivision 2 of this subsection;

17589 2. The notice includes a written agreement between the existing and new permittees
 17590 containing a specific date for transfer of permit responsibility, coverage, and liability
 17591 between them; and

17592 3. The department does not notify the existing permittee and the proposed new permittee
 17593 of its intent to modify or revoke and reissue the permit. A modification under this
 17594 subdivision may also be a minor modification. If this notice is not received, the transfer is
 17595 effective on the date specified in the agreement mentioned in subdivision 2 of this
 17596 subsection.

17597 **9VAC25-875-1230. Modification or revocation and reissuance of permits.**

17598 A. Causes for modification. The following are causes for modification but not revocation and
 17599 reissuance of permits except when the permittee requests or agrees.

17600 1. There are material and substantial alterations or additions to the permitted facility or
 17601 activity that occurred after permit issuance that justify the application of permit conditions
 17602 that are different or absent in the existing permit.

17603 2. The department has received new information. Permits may be modified during their
 17604 terms for this cause only if the information was not available at the time of permit issuance
 17605 (other than revised regulations, guidance, or test methods) and would have justified the
 17606 application of different permit conditions at the time of issuance. For general permits this
 17607 cause includes any information indicating that cumulative effects on the environment are
 17608 unacceptable. For new source or new discharger permits this cause shall include any
 17609 significant information derived from effluent testing required on the permit application after
 17610 issuance of the permit.

17611 3. The standards or regulations on which the permit was based have been changed by
 17612 promulgation of amended standards or regulations or by judicial decision after the permit
 17613 was issued. Permits may be modified during their terms for this cause only as follows:

17614 a. For promulgation of amended standards or regulations, when:

17615 (1) The permit condition requested to be modified was based on a promulgated effluent
 17616 limitation guideline, EPA approved or promulgated water quality standards;

17617 (2) EPA has revised, withdrawn, or modified that portion of the regulation or effluent
 17618 limitation guideline on which the permit condition was based, or has approved a state
 17619 action with regard to a water quality standard on which the permit condition was based;
 17620 and

- 17621 (3) A permittee requests modification in accordance with this chapter within 90 days
 17622 after Federal Register notice of the action on which the request is based;
- 17623 b. For judicial decisions, a court of competent jurisdiction has remanded and stayed
 17624 EPA promulgated regulations or effluent limitation guidelines, if the remand and stay
 17625 concern that portion of the regulations or guidelines on which the permit condition was
 17626 based and a request is filed by the permittee in accordance with this chapter within 90
 17627 days of judicial remand; or
- 17628 c. For changes based upon modified state certifications of permits.
- 17629 4. The department determines good cause exists for modification of a compliance
 17630 schedule, such as an act of God, strike, flood, or materials shortage or other events over
 17631 which the permittee has little or no control and for which there is no reasonably available
 17632 remedy. However, in no case may a compliance schedule be modified to extend beyond
 17633 an applicable CWA statutory deadline.
- 17634 5. When the permittee has filed a request for a variance pursuant to 9VAC25-875-920 G
 17635 within the time specified in this chapter.
- 17636 6. When required to incorporate an applicable CWA § 307(a) toxic effluent standard or
 17637 prohibition.
- 17638 7. When required by the reopener conditions in a permit that are established under
 17639 9VAC25-875-1030 B.
- 17640 8. Upon failure to notify another state whose waters may be affected by a discharge.
- 17641 9. When the level of discharge of any pollutant that is not limited in the permit exceeds the
 17642 level that can be achieved by the technology-based treatment requirements appropriate
 17643 to the permittee.
- 17644 10. To establish a notification level as provided in 9VAC25-875-1030 E.
- 17645 11. To correct technical mistakes, such as errors in calculation, or mistaken interpretations
 17646 of law made in determining permit conditions.
- 17647 12. When the discharger has installed the treatment technology considered by the permit
 17648 writer in setting effluent limitations imposed under the State Water Control Law and §
 17649 402(a)(1) of the CWA and has properly operated and maintained the facilities but
 17650 nevertheless has been unable to achieve those effluent limitations. In this case, the
 17651 limitations in the modified permit may reflect the level of pollutant control actually achieved
 17652 (but shall not be less stringent than required by a subsequently promulgated effluent
 17653 limitations guideline).
- 17654 13. For a small MS4, to include an effluent limitation requiring implementation of a
 17655 minimum control measure or measures as specified in 9VAC25-875-970 D 2 when:
- 17656 a. The permit does not include such measures based upon the determination that
 17657 another entity was responsible for implementation of the requirements; and
- 17658 b. The other entity fails to implement measures that satisfy the requirements.
- 17659 B. Causes for modification or revocation and reissuance. The following are causes to modify
 17660 or, alternatively, revoke and reissue a permit:
- 17661 1. Cause exists for termination under 9VAC25-875-1250, and the department determines
 17662 that modification or revocation and reissuance is appropriate; or
- 17663 2. The department has received notification of a proposed transfer of the permit. A permit
 17664 also may be modified to reflect a transfer after the effective date of an automatic transfer
 17665 but will not be revoked and reissued after the effective date of the transfer except upon
 17666 the request of the new permittee.

17667 9VAC25-875-1240. Minor modifications of individual permits.

17668 Upon the consent of the permittee, the department may modify an individual permit to make
 17669 the corrections or allowances for changes in the permitted activity listed in this section, without
 17670 following the procedures of Article 5 (9VAC25-875-1070 et seq.) of Part VII of this chapter. Any
 17671 individual permit modification not processed as a minor modification under this section must be
 17672 made for cause and with draft permit and public notice. Minor modifications may only:

- 17673 1. Correct typographical errors;
 17674 2. Require more frequent monitoring or reporting by the permittee;
 17675 3. Change an interim compliance date in a schedule of compliance, provided the new date
 17676 is not more than 120 days after the date specified in the existing individual permit and
 17677 does not interfere with attainment of the final compliance date requirement;
 17678 4. Allow for a change in ownership or operational control of a facility where the department
 17679 determines that no other change in the individual permit is necessary, provided that a
 17680 written agreement containing a specific date for transfer of individual permit responsibility,
 17681 coverage, and liability between the current and new individual permittees has been
 17682 submitted to the department;
 17683 5. a. Change the construction schedule for a discharger which is a new source. No such
 17684 change shall affect a discharger's obligation to have all pollution control equipment
 17685 installed and in operation prior to discharge.
 17686 b. Delete a point source outfall when the discharge from that outfall is terminated and
 17687 does not result in discharge of pollutants from other outfalls except in accordance with
 17688 permit limits; or
 17689 6. Require electronic reporting requirements (to replace paper reporting requirements)
 17690 including those specified in 40 CFR Part 3 and Part XI (9VAC25-31-950 et seq.) of the
 17691 Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation.

17692 9VAC25-875-1250. Termination of permits.

17693 A. The following are causes for terminating a permit during its term, or for denying an individual
 17694 permit, or coverage under a general permit renewal application, after notice and opportunity for a
 17695 hearing by the department.

- 17696 1. The permittee has violated any regulation of the board or order of the department, any
 17697 order of the VESMP authority, any provision of the State Water Control Law or this chapter,
 17698 or any order of a court, where such violation results in the unreasonable degradation of
 17699 properties, water quality, stream channels, and other natural resources, or the violation is
 17700 representative of a pattern of serious or repeated violations that in the opinion of the
 17701 department, demonstrates the permittee's disregard for or inability to comply with
 17702 applicable laws, regulations, permit conditions, orders, rules, or requirements;
 17703 2. Noncompliance by the permittee with any condition of the permit;
 17704 3. The permittee's failure to disclose fully all relevant material facts, or the permittee's
 17705 misrepresentation of any relevant material facts in applying for a permit, or in any other
 17706 report or document required under the State Water Control Law or this chapter;
 17707 4. A determination that the permitted activity endangers human health or the environment
 17708 and can only be regulated to acceptable levels by permit modification or termination;
 17709 5. A change in any condition that requires either a temporary or permanent reduction or
 17710 elimination of any discharge controlled by the permit;
 17711 6. The activity for which the permit was issued causes unreasonable degradation of
 17712 properties, water quality, stream channels, and other natural resources; or

17713 7. There exists a material change in the basis on which the permit was issued that requires
 17714 either a temporary or a permanent reduction or elimination of any discharge or land-
 17715 disturbing activity controlled by the permit necessary to prevent unreasonable degradation
 17716 of properties, water quality, stream channels, and other natural resources.

17717 B. The department shall follow the applicable procedures in this chapter in terminating any
 17718 permit under this section, except that if the entire discharge is permanently terminated by
 17719 elimination of the flow or by connection to a POTW or a PVOTW (but not by land application or
 17720 disposal into a well), the department may terminate the permit by notice to the permittee.
 17721 Termination by notice shall be effective 30 days after notice is sent, unless the permittee objects
 17722 within that time. If the permittee objects during that period, the department shall follow the
 17723 applicable procedures for termination under 9VAC25-875-1210 D. Expedited permit termination
 17724 procedures are not available to permittees that are subject to pending state or federal
 17725 enforcement actions including citizen suits brought under state or federal law. If requesting
 17726 expedited permit termination procedures, a permittee must certify that it is not subject to any
 17727 pending state or federal enforcement actions including citizen suits brought under state or federal
 17728 law.

17729 C. Permittees that wish to terminate their permit must submit a notice of termination (NOT) to
 17730 the department. If requesting expedited permit termination procedures, a permittee must certify
 17731 in the NOT that it is not subject to any pending state or federal enforcement actions including
 17732 citizen suits brought under state or federal law. As of the start date in Table 1 of [9VAC25-31-](#)
 17733 [1020](#), all NOTs submitted in compliance with this subsection shall be submitted electronically by
 17734 the permittee to the department in compliance with this subsection and 40 CFR Part 3 (including,
 17735 in all cases, 40 CFR Part 3 Subpart D), 9VAC25-875-940, and Part XI ([9VAC25-31-950](#) et seq.)
 17736 of the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation. Part XI of
 17737 [9VAC25-31](#) is not intended to undo existing requirements for electronic reporting. Prior to this
 17738 date, and independent of Part XI of [9VAC25-31](#), the permittee may be required to report
 17739 electronically if specified by a particular permit.

17740 Article 7

17741 Enforcement of permits

17742 **9VAC25-875-1260. Enforcement.**

17743 A. The department may enforce the provisions of this chapter by:
 17744 1. Issuing directives in accordance with the State Water Control Law;
 17745 2. Issuing special orders in accordance with the State Water Control Law;
 17746 3. Issuing emergency special orders in accordance with the State Water Control Law;
 17747 4. Seeking injunction, mandamus or other appropriate remedy as authorized by the State
 17748 Water Control Law;
 17749 5. Seeking civil penalties under the State Water Control Law; or
 17750 6. Seeking remedies under the State Water Control Law, the CWA or under other laws
 17751 including the common law.

17752 B. The department encourages citizen participation in all its activities, including enforcement.
 17753 In particular:

17754 1. The department will investigate citizen complaints and provide written response to all
 17755 signed, written complaints from citizens concerning matters within the department's
 17756 purview;
 17757 2. The department will not oppose intervention in any civil enforcement action when such
 17758 intervention is authorized by statute or Supreme Court rule; and

17759 3. At least 30 days prior to the final settlement of any civil enforcement action or the
 17760 issuance of any consent special order, the department will publish public notice of such
 17761 settlement or order in a newspaper of general circulation in the county, city or town in
 17762 which the discharge is located, and in The Virginia Register of Regulations. This notice
 17763 will identify the owner, specify the enforcement action to be taken and specify where a
 17764 copy of the settlement or order can be obtained. A consent special order is a special order
 17765 issued without a public hearing and with the written consent of the affected owner. For the
 17766 purpose of this chapter, an emergency special order is not a consent special order. The
 17767 department shall consider all comments received during the comment period before taking
 17768 final action.

17769 C. When a permit is amended solely to reflect a new owner, and the previous owner had been
 17770 issued a consent special order that, at the time of permit amendment was still in full force and
 17771 effect, a consent special order issued to the new owner does not have to go to public notice
 17772 provided that:

- 17773 1. The permit amendment does not have to go to public notice; and
- 17774 2. The terms of the new consent order are the same as issued to the previous owner.

17775 D. Notwithstanding subdivision B 3 of this subsection, a special order may be issued by
 17776 agreement without further notice when a hearing has been scheduled to issue a special order to
 17777 the affected owner, whether or not the hearing is actually held.

17778 Article 8

17779 Miscellaneous

17780 **9VAC25-875-1270. Transition.**

17781 Upon the effective date of this chapter the following will occur:

- 17782 1. All applications received after the effective date of this chapter will be processed in
 17783 accordance with these procedures.
- 17784 2. Permits issued by the Soil and Water Conservation Board allowing the discharge of
 17785 stormwater into surface waters from municipal separate storm sewer systems or land-
 17786 disturbing activities that have not expired or been revoked or terminated before or on the
 17787 program transfer date to the department shall continue to remain in effect until their
 17788 specified expiration dates.

17789 Article 9

17790 Electronic reporting requirements

17791 **9VAC25-875-1280. Electronic reporting.**

17792 Operators shall comply with the electronic reporting requirements set forth in Part XI of
 17793 9VAC25-31.

17794 Part VIII

17795 Fees

17796 Article 1

17797 Fees

17798 **9VAC25-875-1290. Purpose.**

17799 Sections [62.1-44.15:28](#) and [62.1-44.15:31](#) of the Code of Virginia authorize the establishment
 17800 of a statewide fee schedule, including administrative charges for state agencies, for stormwater
 17801 management for land-disturbing activities and for municipal separate storm sewer systems. This

17802 part establishes the fee assessment and the collection and distribution systems for those fees.
 17803 The fees shall be established for individual permits or coverage under the General VPDES Permit
 17804 for Discharges of Stormwater from Construction Activities (permits for stormwater management
 17805 for land-disturbing activities) to cover all costs associated with the implementation of a VESMP
 17806 by a VESMP authority that has been approved by the department. Such fee attributes include the
 17807 costs associated with plan review, registration statement review, permit issuance, state-coverage
 17808 verification, inspections, reporting, database management, and compliance activities associated
 17809 with the land-disturbing activities as well as for program oversight costs. Fees shall also be
 17810 established for permit maintenance, modification, and transfer.

17811 Fees collected pursuant to this part shall be in addition to any general fund appropriations
 17812 made to the department or other supporting revenue from a VESMP; however, the fees shall be
 17813 set at a level sufficient for the department and the VESMP authority to fully carry out their
 17814 responsibilities under the VESMA, this chapter, local ordinances, or standards and specifications
 17815 where applicable.

17816 When establishing a VESMP, the VESMP authority shall assess the statewide fee schedule
 17817 and shall have the authority to reduce or increase such fees, and to consolidate such fees with
 17818 other program-related charges, but in no case shall such fee changes affect the amount
 17819 established in 9VAC25-875-1400 as available to the department for program oversight
 17820 responsibilities pursuant to § 62.1-44.15:28 A 9 of the Code of Virginia. Accordingly, should a
 17821 VESMP authority demonstrate to the department its ability to fully and successfully implement a
 17822 VESMP without a full implementation of the fees set out in this part, the department may authorize
 17823 the administrative establishment of a lower fee for that program provided that such reduction shall
 17824 not reduce the amount of fees due to the department for its program oversight and shall not affect
 17825 the fee schedules set forth herein.

17826 A VESMP authority may establish greater fees than those base fees specified by this part
 17827 should it be demonstrated to the department that such greater fees are necessary to properly
 17828 administer the VESMP. Any fee increases established by the VESMP authority beyond those
 17829 base fees established in this part shall not be subject to the fee distribution formula set out in
 17830 9VAC25-875-1360. Nothing in this part shall prohibit a locality from establishing other local fees
 17831 authorized by the Code of Virginia related to stormwater management within their jurisdictions.

17832 A VESMP's portion of the fees shall be used solely to carry out the VESMP's responsibilities
 17833 under the VESMA, this chapter, ordinances, or standards and specifications.

17834 As part of its program oversight, the department shall periodically assess the revenue
 17835 generated by both the VESMP authorities and the department to ensure that the fees have been
 17836 appropriately set and the fees may be adjusted through periodic regulatory actions should
 17837 significant deviations become apparent.

17838 **9VAC25-875-1300. Authority.**

17839 The authority for this part is §§ 62.1-44.15:28 and 62.1-44.15:31 of the Code of Virginia.

17840 **9VAC25-875-1310. Applicability.**

17841 A. This part applies to:

17842 1. All persons seeking coverage of a MS4 under a new permit. The fee due shall be as
 17843 specified under 9VAC25-875-1380.

17844 2. All operators who request that an existing MS4 individual permit be modified, except as
 17845 specifically exempt under 9VAC25-875-1320. The fee due shall be as specified under
 17846 9VAC25-875-1390.

17847 3. All persons seeking coverage under the General VPDES Permit for Discharges of
 17848 Stormwater from Construction Activities or a person seeking an Individual VPDES Permit

17849 for Discharges of Stormwater from Construction Activities. The fee due shall be as
 17850 specified under 9VAC25-875-1400.

17851 4. All permittees who request modifications to or transfers of their existing registration
 17852 statement for coverage under a General VPDES Permit for Discharges of Stormwater from
 17853 Construction Activities or of an Individual VPDES Permit for Discharges of Stormwater
 17854 from Construction Activities. The fee due shall be as specified under 9VAC25-875-1410
 17855 in addition to any additional fees necessary pursuant to 9VAC25-875-1400 due to an
 17856 increase in acreage.

17857 5. Reinspection fees assessed by the department to recoup the costs associated with
 17858 each visit to a land-disturbing project site that was necessary to check on the status of
 17859 project site items noted to be in noncompliance and documented as such on a prior project
 17860 inspection. The fee due shall be as specified under 9VAC25-875-1370.

17861 6. Business transaction costs assessed associated with processing credit card payments.

17862 B. Persons who are applicants for an individual Municipal Separate Stormwater Sewer System
 17863 permit as a result of existing permit revocation shall be considered an applicant for a new permit.
 17864 The fee due shall be as specified under 9VAC25-875-1380.

17865 Persons whose coverage under the General VPDES Permit for Discharges of Stormwater
 17866 from Construction Activities has been revoked shall reapply for an Individual VPDES Permit for
 17867 Discharges of Stormwater from Construction Activities. The fee due shall be as specified under
 17868 9VAC25-875-1400.

17869 C. Permit maintenance fees may apply to each permit holder. The fee due shall be as
 17870 specified under 9VAC25-875-1420.

17871 **9VAC25-875-1320. Exemptions.**

17872 A. No permit application fees will be assessed to:

17873 1. Permittees who request minor modifications to permits as defined in 9VAC25-875-20
 17874 or other minor amendments at the discretion of the VESMP authority.

17875 2. Permittees whose permits are modified or amended at the request of the VESMP
 17876 authority or department. This does not include errors in the registration statement
 17877 identified by the VESMP authority or department or errors related to the acreage of the
 17878 site.

17879 B. Permit modifications at the request of the permittee resulting in changes to stormwater
 17880 management or ESM plans that require additional review by the VESMP authority shall not be
 17881 exempt pursuant to this section and shall be subject to fees specified under 9VAC25-875-1410.

17882 **9VAC25-875-1330. Due dates for permits.**

17883 A. Requests for a permit, permit modification, or general permit coverage shall not be
 17884 processed until the fees required pursuant to this part are paid in accordance with 9VAC25-875-
 17885 1340.

17886 B. Individual permit or general permit coverage maintenance fees shall be paid annually to
 17887 the department or the VESMP authority, as applicable. No permit will be reissued or automatically
 17888 continued without payment of the required fee. Individual permit or general permit coverage
 17889 maintenance fees shall be applied until a Notice of Termination is effective.

17890 Permit maintenance fees for MS4 individual permits or MS4 general permit coverages are due
 17891 by October 1 of each year. Effective April 1, 2014, any operator whose permit or general permit
 17892 coverage (including operators whose permits or general permit coverages have been
 17893 administratively continued) is effective as of April 1 of any given year shall pay the permit
 17894 maintenance fee or fees to the department or the VESMP authority by October 1 of that same
 17895 year.

17896 Permit maintenance fees for discharges of stormwater from construction activities pursuant to
 17897 9VAC25-875-1420 are due by April 1 of each year. After approval of a VESMP authority, including
 17898 the department when acting in that capacity, any owner whose permit or general permit coverage
 17899 authorizing discharges of stormwater from construction activities (including owners whose permits
 17900 or general permit coverages have been administratively continued) is effective as of the effective
 17901 date of the VESMP authority shall pay the permit maintenance fee or fees to the department or
 17902 the VESMP authority by April 1 of that same year.

17903 **9VAC25-875-1340. Method of payment.**

17904 A. Fees shall be collected utilizing, where practicable, an online payment system. Until such
 17905 system is operational, fees, as applicable, shall be, at the discretion of the department, submitted
 17906 electronically or be paid by check, draft or postal money order payable to:

17907 1. The Treasurer of Virginia, for a MS4 individual or general permit or for a coverage issued
 17908 by the department under the General VPDES Permit for Discharges of Stormwater from
 17909 Construction Activities or Individual VPDES Permit for Discharges of Stormwater from
 17910 Construction Activities, and must be in U.S. currency, except that agencies and institutions
 17911 of the Commonwealth of Virginia may submit Interagency Transfers for the amount of the
 17912 fee. The department may provide a means to pay fees electronically. Fees not submitted
 17913 electronically shall be sent to the Virginia Department of Environmental Quality.

17914 2. The VESMP authority, for VESMP operational costs of the VESMP authority under the
 17915 General VPDES Permit for Discharges of Stormwater from Construction Activities, and
 17916 must be in U.S. currency.

17917 B. When fees are collected electronically pursuant to this part through credit cards, business
 17918 transaction costs associated with processing such payments may be additionally assessed.

17919 C. Nothing in this part shall prohibit the department and a VESMP authority from entering into
 17920 an agreement whereby the total fee to be paid by the applicant for coverage under the General
 17921 VPDES Permit for Discharges of Stormwater from Construction Activities is payable to the
 17922 VESMP authority, and the VESMP authority transmits the department's portion set forth in
 17923 9VAC25-875-1400 to the department on a schedule established by the department.

17924 D. Required information for permits or permit coverage. All applicants, unless otherwise
 17925 specified by the department, shall submit the following information along with the fee payment or
 17926 utilize the department Permit Application Fee Form:

17927 1. Applicant name, address and daytime phone number.

17928 2. The name of the facility/activity, and the facility/activity location.

17929 3. The type of permit applied for.

17930 4. Whether the application is for a new permit issuance, permit reissuance, permit
 17931 maintenance, or permit modification.

17932 5. The amount of fee submitted.

17933 6. The existing permit number, if applicable.

17934 7. Other information as required by the VESMP authority.

17935 **9VAC25-875-1350. Incomplete and late payments.**

17936 All incomplete payments will be deemed as nonpayments. The department or the VESMP
 17937 authority, as applicable, shall provide notification to the applicant of any incomplete payments.

17938 Interest may be charged for late payments at the underpayment rate set forth in § 58.1-15 of
 17939 the Code of Virginia and is calculated on a monthly basis at the applicable periodic rate.

17940 A 10% late payment fee shall be charged to any delinquent (over 90 days past due) account.

17941 The department and the VESMP authority are entitled to all remedies available under the
 17942 Code of Virginia in collecting any past due amount.

17943 **9VAC25-875-1360. Deposit and use of fees.**

17944 A. All fees collected by the department pursuant to this chapter shall be deposited into the
 17945 Virginia Stormwater Management Fund and shall be used and accounted for as specified in §
 17946 62.1-44.15:29 of the Code of Virginia. Fees collected by the department shall be exempt from
 17947 statewide indirect costs charged and collected by the Department of Accounts.

17948 B. All fees collected by a VESMP authority pursuant to this chapter shall be subject to
 17949 accounting review and shall be used solely to carry out the VESMP authority's responsibilities
 17950 pursuant to the VESMA, Part V and Article 3 (9VAC25-875-100 et seq.) of Part II of this chapter,
 17951 local ordinances, or standards and specifications.

17952 Pursuant to subdivision A 9 of § 62.1-44.15:28 of the Code of Virginia, whenever the
 17953 department has authorized the administration of a VESMP by a VESMP authority, 28% of the
 17954 total revenue generated by the statewide stormwater management fees collected in accordance
 17955 with 9VAC25-875-1400 shall be remitted on a schedule determined by the department to the
 17956 State Treasurer for deposit in the Virginia Stormwater Management Fund unless otherwise
 17957 collected electronically. If the VESMP authority waives or reduces any fee due in accordance with
 17958 9VAC25-875-1400, the VESMP authority shall remit the 28% portion that would be due to the
 17959 Virginia Stormwater Management Fund if such fee were charged in full. Any fee increases
 17960 established by the VESMP authority beyond the base fees established in this part shall not be
 17961 subject to the fee distribution formula.

17962 **9VAC25-875-1370. General.**

17963 The fees for individual permits, general permit coverage, permit or registration statement
 17964 modification, or permit transfers are considered separate actions and shall be assessed a
 17965 separate fee, as applicable.

17966 **9VAC25-875-1380. Fee schedules for municipal separate storm sewer system new permit**
 17967 **issuance.**

17968 The following fee schedule applies to permit applications for issuance of a new individual
 17969 municipal separate storm sewer system permit or coverage under a MS4 General Permit. All
 17970 regulated MS4s that apply for joint coverage under an individual permit or general permit
 17971 registration shall each pay the appropriate fees set out below.

Municipal Stormwater / MS4 Individual (Large and Medium)	\$16,000
Municipal Stormwater / MS4 Individual (Small)	\$8,000
Municipal Stormwater / MS4 General Permit (Small)	\$4,000

17972 **9VAC25-875-1390. Fee schedules for major modification of MS4 individual permits**
 17973 **requested by the operator.**

17974 The following fee schedule applies to applications for major modification of an individual MS4
 17975 permit requested by the permittee:

Municipal Stormwater / MS4 Individual (Large and Medium)	\$5,000
Municipal Stormwater / MS4 Individual (Small)	\$2,500

17976 **9VAC25-875-1400. Fees for individual permit or coverage under the General Permit of**
 17977 **Discharges of Stormwater from Construction Activities.**

17978 The following total fees to be paid by an applicant apply to any operator seeking coverage
 17979 under a General VPDES Permit for Discharges of Stormwater from Construction Activities or a
 17980 state agency or federal entity that does not file standards and specifications, or an individual
 17981 permit issued by the department. On and after approval by the department of a VESMP authority

17982 for coverage under the General VPDES Permit for Discharges of Stormwater from Construction
 17983 Activities, no more than 50% of the total fee to be paid by an applicant set out in this part shall be
 17984 due at the time that a stormwater management plan or an initial stormwater management plan is
 17985 submitted for review in accordance with 9VAC25-875-530. The remaining total fee balance to be
 17986 paid by an applicant shall be due prior to the issuance of coverage under the General VPDES
 17987 Permit for Discharges of Stormwater from Construction Activities.

17988 When a site or sites are purchased for development within a previously permitted common
 17989 plan of development or sale, the applicant shall be subject to fees ("total fee to be paid by
 17990 applicant" column) in accordance with the disturbed acreage of their site or sites according to the
 17991 following table.

<u>Fee type</u>	<u>Total fee to be paid by applicant (includes both VESMP authority and department portions where applicable)</u>	<u>Department portion of "total fee to be paid by applicant" (based on 28% of total fee paid*)</u>
<u>Land-Disturbing Activity in a Chesapeake Bay Preservation Area (not subject to General Permit coverage; sites within designated areas of Chesapeake Bay Act localities with land-disturbance acreage equal to or greater than 2,500 square feet and less than one acre)</u>	<u>\$290</u>	<u>\$0</u>
<u>General / Stormwater Management - Small Construction Activity/Land-Disturbing Activity in a Chesapeake Bay Preservation Area (not subject to General Permit coverage)/Land Clearing (Single-family detached residential structures within or outside a common plan of development or sale with land-disturbance acreage less than five acres)</u>	<u>\$209</u>	<u>\$0</u>
<u>General / Stormwater Management - Small Construction Activity/Land Clearing (Areas within common plans of development or sale with land-disturbance acreage less than one acre, except for</u>	<u>\$290</u>	<u>\$81</u>

<u>single-family detached residential structures)</u>		
<u>General / Stormwater Management - Small Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than one acre and less than five acres)</u>	<u>\$2,700</u>	<u>\$756</u>
<u>General / Stormwater Management - Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than five acres and less than 10 acres)</u>	<u>\$3,400</u>	<u>\$952</u>
<u>General / Stormwater Management - Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than 10 acres and less than 50 acres)</u>	<u>\$4,500</u>	<u>\$1,260</u>
<u>General / Stormwater Management - Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than 50 acres and less than 100 acres)</u>	<u>\$6,100</u>	<u>\$1,708</u>
<u>General / Stormwater Management - Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage</u>	<u>\$9,600</u>	<u>\$2,688</u>

equal to or greater than 100 acres)		
<u>Individual VPDES Permit for Discharges of Stormwater from Construction Activities (This will be administered by the department)</u>	<u>\$15,000</u>	<u>\$15,000</u>
<u>* If the project is completely administered by the department such as may be the case for a state or federal project or projects covered by individual permits, the entire applicant fee shall be paid to the department.</u>		

17992 The following fees apply to coverage under the General VPDES Permit for Discharges of
17993 Stormwater from Construction Activities issued by the department for a state agency or federal
17994 entity that has standards and specifications approved by the department.

<u>General / Stormwater Management - Phase I Land Clearing (Large Construction Activity - Sites or common plans of development equal to or greater than five acres)</u>	<u>\$750</u>
<u>General / Stormwater Management - Phase II Land Clearing (Small Construction Activity - Sites or common plans of development equal to or greater than one acre and less than five acres)</u>	<u>\$450</u>

17995 **9VAC25-875-1410. Fees for the modification or transfer of individual permits or of**
17996 **registration statements for the General VPDES Permit for Discharges of Stormwater from**
17997 **Construction Activities.**

17998 The following fees apply to modification or transfer of individual permits or of registration
17999 statements for the General VPDES Permit for Discharges of Stormwater from Construction
18000 Activities issued by the department. If the permit modifications result in changes to stormwater
18001 management plans that require additional review by the VESMP authority, such reviews shall be
18002 subject to the fees set out in this section. The fee assessed shall be based on the total disturbed
18003 acreage of the site. In addition to the permit modification fee, modifications resulting in an increase
18004 in total disturbed acreage shall pay the difference in the initial permit fee paid and the permit fee
18005 that would have applied for the total disturbed acreage in 9VAC25-875-1400. No modification or
18006 transfer fee shall be required until such department-approved programs exist. These fees shall
18007 only be effective when assessed by a VESMP authority, including the department when acting in
18008 that capacity, that has been approved by the department. No modification fee shall be required
18009 for the General VPDES Permit for Discharges of Stormwater from Construction Activities for a
18010 state agency or federal entity that is administering a project in accordance with approved
18011 standards and specifications but shall apply to all other state or federal agency projects.

<u>General / Stormwater Management – Small Construction Activity/Land Clearing (Areas within common plans of development or sale with land-disturbance acreage less than one acre, except for single-family detached residential structures)</u>	<u>\$20</u>
<u>General / Stormwater Management – Small Construction Activity/Land-Disturbing Activity in a Chesapeake Bay Preservation Area (not subject to General Permit coverage)/Land Clearing (Single-family detached residential structures within or outside a common plan of development or sale with land-disturbance acreage less than five acres where the locality is the VESMP authority)</u>	<u>\$20</u>

<u>General / Stormwater Management – Small Construction Activity/Land Clearing (Single-family detached residential structures within or outside a common plan of development or sale with land-disturbance acreage less than five acres where the department is the VSMP authority)</u>	<u>\$0</u>
<u>General / Stormwater Management – Small Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than one and less than five acres)</u>	<u>\$200</u>
<u>General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than five acres and less than 10 acres)</u>	<u>\$250</u>
<u>General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than 10 acres and less than 50 acres)</u>	<u>\$300</u>
<u>General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than 50 acres and less than 100 acres)</u>	<u>\$450</u>
<u>General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than 100 acres)</u>	<u>\$700</u>
<u>Individual VPDES Permit for Discharges of Stormwater from Construction Activities</u>	<u>\$5,000</u>

18012 9VAC25-875-1420. Permit maintenance fees.

18013 The following annual permit maintenance fees apply to each permit identified below, including
 18014 expired permits that have been administratively continued. With respect to the General VPDES
 18015 Permit for Discharges of Stormwater from Construction Activities, these fees shall apply until the
 18016 permit coverage is terminated, and shall only be effective when assessed by a VESMP authority
 18017 including the department when acting in that capacity that has been approved by the department.
 18018 No maintenance fee shall be required for the General VPDES Permit for Discharges of
 18019 Stormwater from Construction Activities for a state agency or federal entity that is administering
 18020 a project in accordance with approved standards and specifications but shall apply to all other
 18021 state or federal agency projects. All regulated MS4s who are issued joint coverage under an
 18022 individual permit or general permit registration shall each pay the appropriate fees set out below:

<u>Municipal Stormwater / MS4 Individual (Large and Medium)</u>	<u>\$8,800</u>
<u>Municipal Stormwater / MS4 Individual (Small)</u>	<u>\$6,000</u>
<u>Municipal Stormwater / MS4 General Permit (Small)</u>	<u>\$3,000</u>
<u>Land-Disturbing Activity in a Chesapeake Bay Preservation Area (not subject to General Permit coverage; sites within designated areas of Chesapeake Bay Act localities with land-disturbance acreage equal to or greater than 2,500 square feet and less than 1 acre)</u>	<u>\$50</u>
<u>General / Stormwater Management – Small Construction Activity/Land Clearing (Areas within common plans of development or sale with land-disturbance acreage less than one acre, except for single-family detached residential structures)</u>	<u>\$50</u>

<u>General / Stormwater Management – Small Construction Activity/Land-Disturbing Activity in a Chesapeake Bay Preservation Area (not subject to General Permit coverage)/Land Clearing (Single-family detached residential structures within or outside a common plan of development or sale with land-disturbance acreage less than five acres where the locality is the VESMP authority)</u>	<u>\$50</u>
<u>General / Stormwater Management – Small Construction Activity/Land Clearing (Single-family detached residential structures within or outside a common plan of development or sale with land-disturbance acreage less than five acres where the department is the VSMP authority)</u>	<u>\$0</u>
<u>General / Stormwater Management – Small Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance equal to or greater than one acre and less than five acres)</u>	<u>\$400</u>
<u>General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than five acres and less than 10 acres)</u>	<u>\$500</u>
<u>General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than 10 acres and less than 50 acres)</u>	<u>\$650</u>
<u>General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than 50 acres and less than 100 acres)</u>	<u>\$900</u>
<u>General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater 100 acres)</u>	<u>\$1,400</u>
<u>Individual VPDES Permit for Discharges from Construction Activities</u>	<u>\$3,000</u>

- 18023 [Documents Incorporated by Reference \(9VAC25-875\)](#)
- 18024 [Virginia Runoff Reduction Method: Instructions & Documentation, March 28, 2011](#)
- 18025 [Virginia Erosion and Sediment Control Regulation Minimum Standard 19 in effect prior to July 1, 2014](#)
- 18026 [Virginia Erosion and Sediment Control Regulation Minimum Standard 19 in effect prior to July 1, 2014](#)