

PART II - TOWN CODE
Chapter 14 - ENVIRONMENT
ARTICLE II. - STORMWATER MANAGEMENT

DCR Review Draft – March 25, 2013

December 18, 2013 Revisions in Yellow

March 21, 2014 Revisions in Blue

AMEC Comments on DEQ April 8, 2014 Review and April 22, 2014 Meeting in Green

ARTICLE II. - STORMWATER MANAGEMENT [12]

⁽¹²⁾ **State Law reference** — Location regulation of stormwater, Code of Virginia, §§ HO.1-603.362.1-44.15:27, 62.1-44.15:3340.1-603.7, 15.2-2114.

- [Sec. 14-19. - Definitions.](#)
- [Sec. 14-20. - Purpose and findings.](#)
- [Sec. 14-21. - Authority.](#)
- [Sec. 14-22. - Administration.](#)
- [Sec. 14-23. - Program components.](#)
- [Sec. 14-24. - Violations.](#)
- [Sec. 14-25. – Hearings](#)
- [Sec. 14-26. – Appeals.](#)

Sec. 14-19. - Definitions.

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

Agreement in lieu of a stormwater management plan means a contract between the town and the owner or permittee that specifies methods that shall be implemented to comply with the requirements of section 14-23(g) for the construction of a single-family residence separately built. Such contract may be executed by the town in lieu of the stormwater management plan in section 14-23(g)(2) and shall be considered a stormwater management plan for the purposes of implementing and enforcing this article.

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

Best management practice or BMP means a practice, or combination of practices, that is determined by the director to be the most effective, practicable means of preventing or reducing nonpoint source pollution means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices, including both structural and nonstructural practices, to prevent or reduce the pollution of surface waters and groundwater systems from the impacts of land-disturbing activities.

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

Conservation plan means a document containing materials for the conservation of soil and water resources of a unit or group of units of land. It may include appropriate maps, an appropriate soil and water plan inventory and management information with needed interpretations, and a record of decisions

Comment [d1]: New VSMP requirements are integrated into the Town's existing stormwater requirements, which are provided in Town Code Chapter 14, Article II Stormwater Management.

The Town met with DCR staff (Ginny Snead and Joan Salvati) on January 17, 2013 to discuss the draft ordinance. Note that the program is now transferred to DEQ.

Comment [MC2]: DEQ (Marian Carroll) Comments in Pink

Comment [d3]: Most Code of Virginia sections dealing with stormwater were transferred from Title 10.1 to Title 62.1 by act of the 2013 General Assembly.

Note the reference to 15.2-2114 is deleted. While the title is "Regulation of Stormwater," it deals exclusively with the authority of a locality to adopt a stormwater utility for revenue generation purposes – something the Town is not proposing at this time.

Comment [d4]: DEQ noted missing definitions for "administrator," "VSMP permit," "State Board," and "VSMP authority." Verified with DEQ at meeting on 4/22/14 that these definitions are not needed since they are not used in the ordinance.

Comment [d5]: The model ordinance has a definition of Administrator. It is not included since Sec. 14-21 clearly identifies the director as the person responsible for administering the regulations.

Comment [d6]: The General Assembly made changes to the Stormwater Management Act (HB1173) in 2014 that gives the Town the option of entering into an agreement with the owner of a property where a single family residence is proposed. This is similar to an agreement in lieu of a plan for E&SC. Note that even though single family residential under one acre is exempt from the stormwater plan requirements, this provision...

Comment [MC7]: This definition is not word for word from the SWM law, but I believe it is ok.

Comment [d8]: No changes made to the definition of "agreement in lieu of a stormwater management plan" per DEQ comment.

Comment [MC9]: Wording is different

Comment [d10]: Definition OK per DEQ meeting on 4/22/14

Comment [MC11]: Added to end of sentence, per 9VAC25-870-10

Comment [d12]: Agree.

Comment [MC13]: This definition is no longer in the ESC law and regulations (it has been replaced by "erosion and sediment control plan")

Comment [d14]: Renamed and moved per DEQ comment. Relevant sections of the article that...

PART II - TOWN CODE
Chapter 14 - ENVIRONMENT
ARTICLE II. - STORMWATER MANAGEMENT

~~contributing to conservation treatment. The plan will contain all major conservation decisions to ensure that the entire unit or group of units of land will be so treated to achieve the conservation objectives.~~

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

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

DCSM means the most recent edition of the town's design and construction standards manual.

Department or DEQ means the Virginia Department of Environmental Quality.

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

Director means the director of plan review, or his designee, except where the context clearly indicates otherwise.

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

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

Low impact development Environmental site design or LID-ESD means a design strategy with the goal of maintaining or replicating the predevelopment hydrologic regime through the use of design techniques to create a functionally equivalent hydrologic site design. Hydrologic functions that may be considered include storage volume, infiltration and ground water recharge through the use of integrated and distributed micro-scale stormwater retention and detention areas where the volume and frequency of discharges can be maintained through the reduction of impervious surfaces and/or the lengthening of runoff flow paths and flow time. Other strategies include the preservation of environmentally sensitive site features such as riparian buffers, wetlands, steep slopes, valuable (mature) trees, flood plains, woodlands, and highly permeable soils.

Erosion impact area means an area of land not associated with current land-disturbing activity but subject to persistent soil erosion resulting in the delivery of sediment onto neighboring properties or into waters of the state. The term "erosion impact area" does not mean and include any lot or parcel of land 10,000 square feet or less used for residential purposes or to shorelines where the erosion results from natural processes.

Comment [d15]: Updated definition based on DEQ comment. It is actually two definitions [discharge and discharge of a pollutant].

Comment [MC16]: This definition differs from 9VAC25-870-10

Comment [d17]: Amended to reflect the change in terms in the DCSM.

PART II - TOWN CODE
Chapter 14 - ENVIRONMENT
ARTICLE II. - STORMWATER MANAGEMENT

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

Comment [d18]: Per DEQ comment, this has been changed from conservation plan to erosion and sediment control plan and updated accordingly.

General permit means the state permit titled GENERAL PERMIT FOR DISCHARGES OF STORMWATER FROM CONSTRUCTION ACTIVITIES found in 9VAC25-880-70 in Part XIV (9VAC25-880-1 et seq.) of the Virginia Stormwater Management Regulations authorizing a category of discharges under the CWA and the Virginia Stormwater Management Act within a geographical area of the Commonwealth of Virginia.

Comment [d19]: Updated reference to specific VAC section per DEQ comment.

Comment [MC20]: Is the GP still in Part XIV of the regulations?

Highly erodible soil means a soil (excluding vegetation) with an erodibility index from sheet and rill erosion equal to or greater than eight. The erodibility index for any soil is defined as the product of the formula $RKLS/T$, where K is the soil susceptibility to water erosion in the surface layer, R is the rainfall and runoff, LS is the combined effects of slope length and steepness, and T is the soil loss tolerance.

Illicit discharge means any discharge to ~~the stormwater management municipal separate storm sewer system~~ that is not composed entirely of stormwater, except discharges pursuant to either a separate VPDES or state permit (other than the state permit for discharges from the municipal separate storm sewer), or discharges resulting from firefighting activities, and discharges identified by and in compliance with 9VAC25-870-400.D.2.c(3). ~~The term "illicit discharge" does not mean and include discharges listed in section 14-23(c), unless the town identifies such discharges as sources of pollutants to waters of the state.~~

Comment [MC21]: Wording differs from 9VAC25-870-10

Comment [d22]: Updated per DEQ comment.

Impervious surface area means a surface composed of material that significantly impedes or prevents natural infiltration of water into the soil. ~~Impervious surface area includes that is compacted or covered with material that is resistant to infiltration by water, including~~, but is not limited to, most conventionally surfaced streets, roofs, sidewalks, parking areas, and other similar structures. Compacted gravel surfaces shall be considered impervious unless demonstrated to the contrary.

Comment [MC23]: See definition of impervious cover in 9VAC25-870-10

Comment [d24]: Amended the first sentence to match the definition in the regulations (the definition in the regulations is only the first sentence). Kept the rest of the existing language since it illustrates what the Town considers to be an impervious area. Verified approach with DEQ at meeting on 4/22/14.

Industrial waste means liquid or other wastes resulting from any process of industry, manufacture, trade or business, or from the development of any natural resources.

Intermittent stream means a well defined natural or engineered channel that contains water for only part of the year, typically during winter and spring when the aquatic bed is below the water table. The flow may be heavily supplemented by stormwater runoff. An intermittent stream may lack some or all of the biological and hydrological characteristics commonly associated with the conveyance of water. The width of the intermittent stream extends from top-of-bank to top-of-bank of the channel. Acceptable methodologies for establishing the presence of intermittent flow are described in the DCSM.

Land disturbance or land-disturbing activity means a man-made change to the land surface that potentially changes its runoff characteristics including clearing, grading, or excavation except that the term shall not include those exemptions specified in section 14-23(e)(6) of this article.

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

Minor modification means an amendment to an existing general permit before its expiration not requiring extensive review and evaluation including, but not limited to, changes in EPA promulgated test protocols,

PART II - TOWN CODE
Chapter 14 - ENVIRONMENT
ARTICLE II. - STORMWATER MANAGEMENT

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

Municipal separate storm sewer or MS4 means a conveyance or system of conveyances otherwise known as a municipal separate storm sewer system (MS4), including the conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains):

- (1) Owned or operated by ~~the a federal,~~ state, city, ~~the~~ town, county, district, association, or other public body, ~~(created by or pursuant to state law,)~~ having jurisdiction or delegated authority for erosion and sediment control and stormwater management, or a designated and approved management agency under §208 of the federal Clean Water Act that discharges to surface waters; over disposal of sewage, industrial wastes, stormwater, or other wastes, including special districts under state law such as a sewer district, flood control district or drainage district, or similar entity;
- (2) Designed or used for collecting or conveying stormwater;
- (3) ~~Which-That~~ is not a combined sewer; and,
- (4) ~~Which-That~~ is not part of a publicly owned treatment works.

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

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

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

Perennial stream means a body of water that flows in a natural or engineered channel year around during a year of normal precipitation. Lakes and ponds, through which a perennial stream flows, are part of the perennial stream. Generally, the water table is located above the streambed for most of the year and groundwater is the primary source for stream flow. The width of the perennial stream extends from top-of-bank to top-of-bank of the channel or to the limits of the normal water level for a pond or lake when there is no definable top-of-bank. Acceptable methodologies for establishing the presence of perennial flow shall be provided by the director.

Permittee means the person to whom a state permit is issued, including any owner or operator whose construction site is covered under a state construction general permit. The term also includes a person subject to any grading, building, land disturbing, or similar permit issued by the town.

Person means any individual, corporation, partnership, association, state, municipality, commission, or

Comment [MC25]: Wording differs from 9VAC25-870-10

Comment [d26]: Updated per DEQ comment.

Comment [MC27]: Definition differs from "Natural Stream" in 9VAC25-870-10

Comment [d28]: Updated per DEQ comment except kept channel in addition to stream.

Comment [d29]: DEQ did not note this, but definition updated per state regulations.

Comment [d30]: DEQ noted that they want to include the definition of permittee, which is OK since it is used in the enforcement section. However, it is modified slightly since the state definition includes the VSMP permit – which the Town is not using. Instead, the Town refers to other grading, building, land disturbing, or similar permits. Verified approach with DEQ at meeting on 4/22/14.

Comment [d31]: Based on discussions with DCR, the Town does not propose to create a new permit for implementation of the VSMP requirements. Rather, any land-disturbing activity, or the issuance of a permit that would allow a land-disturbing activity, is now contingent on meeting the requirements of this article.

PART II - TOWN CODE
Chapter 14 - ENVIRONMENT
ARTICLE II. - STORMWATER MANAGEMENT

political subdivision of a state, governmental body, including federal, state, or local entity as applicable, any interstate body or any other legal entity.

~~Point source pollution means pollution of state waters resulting from any discernible, defined or discrete conveyances any discernible, confined, and discrete conveyance including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel, or other floating craft from which pollutants are or may be discharged. This term does not include return flow from irrigated agriculture or agricultural stormwater runoff.~~

Comment [MC32]: Definition differs from 9VAC25-870-10

Comment [d33]: Updated per DEQ comment. Note that only the term "point source" is used in the ordinance.

Pollution shall be defined by Code of Virginia, § 62.1-44.3.

Predevelopment means the land use that exists at the time that plans for development are submitted to the town. Where phased development or plan approval occurs, the land use at the time the first item is submitted shall establish predevelopment conditions.

Postdevelopment means the land use that reasonably may be expected or anticipated to exist after completion of the development activity on a specific site or tract of land.

Regulations or VSMP regulations means the Virginia Stormwater Management Program (VSMP) Regulations, 9VAC25-870, as amended.

Site means the land or water area where any facility or land-disturbing activity is physically located or conducted, including adjacent land used or preserved in connection with the facility or land-disturbing activity.

State means the Commonwealth of Virginia.

State permit means an approval to conduct a land-disturbing activity issued by the State Water Control Board in the form of a state stormwater individual permit or coverage issued under a state general permit or an approval issued by the State Water Control Board for stormwater discharges from an MS4. Under these state permits, the Commonwealth imposes and enforces requirements pursuant to the federal Clean Water Act and regulations, the Virginia Stormwater Management Act, and the VSMP regulations.

Comment [d34]: Added per the model ordinance.

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

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

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

Stormwater maintenance agreement means an agreement between a private property owner and the town that establishes the responsibilities for maintenance of stormwater management infrastructure.

Stormwater management plan means a document(s) containing material describing methods for complying with the requirements of section 14-23(g) of this article.

Stormwater management system means the series of structural and nonstructural stormwater infrastructure established to manage the quantity and or quality of stormwater runoff. The stormwater management system includes, but is not limited to, storm drains, catchbasins, inlets, pipes, open

PART II - TOWN CODE
Chapter 14 - ENVIRONMENT
ARTICLE II. - STORMWATER MANAGEMENT

channels and ditches, facilities designed to control stormwater volume and velocity, and various BMPs designed to reduce stormwater pollution.

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

Subdivision means the same as defined in section 7.01 of the Subdivision and Land Development Regulations.

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

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

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

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

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

Water quality volume or WQV means the volume equal to the first 0.5 inch of runoff multiplied by the total impervious area of the tax map parcel.

(Ord. No. 2007-0-21, § 1(21-4), 11-27-2007)

Sec. 14-20. - Purpose and findings.

The health, safety, and welfare of the residents of the town depends on the design, development, improvement, operation, maintenance, and oversight of a program to effectively manage stormwater (quantity and quality) as well as illicit discharge to include, but not be limited to, the prevention of flood events, degradation of the town's waterways, and erosion of the town's lands. Therefore, to protect the health, safety, and welfare of residents, the town council has adopted the following stormwater quantity and quality management and erosion and sediment control program.

Comment [d35]: The term VSMP authority is left out since it is simply a reference to the Town.

Comment [MC36]: Wording is different than the model ordinance, but intent is the same.

Comment [d37]: OK, kept as per DEQ comment.

PART II - TOWN CODE
Chapter 14 - ENVIRONMENT
ARTICLE II. - STORMWATER MANAGEMENT

(Ord. No. 2007-0-21, § 1(21-1), 11-27-2007)

Sec. 14-21. - Authority.

This article is issued ~~as required by Code of Virginia §62.1-44.15:27 and~~ under the ~~general~~ authority of ~~the State Water Control Law, the Virginia Stormwater Management Act, the Virginia Erosion and Sediment Control Law, and their attendant regulations. Code of Virginia, tit. 10.1, ch. 6, art. 1.1 (Code of Virginia, § 10.1-603.2 et seq.) and the state stormwater management program (VSMP) permit regulations (4 VAC 50-60 et seq.); and, the Code of Virginia, tit. 10.1, ch. 5, art. 4 (Code of Virginia, § 10.1-560 et seq.) and regulations (4 VAC 50-30 et seq.).~~

Comment [d38]: The DEQ ordinance checklist requires a specific citation to this section of the Code of Virginia, which requires the establishment of local programs.

(Ord. No. 2007-0-21, § 1(21-2), 11-27-2007)

Sec. 14-22. - Administration.

The director of plan review, hereby referred to as the director, is charged with responsibility for the administration of this article. The director may, at his discretion, delegate authority to implement this article.

(Ord. No. 2007-0-21, § 1(21-4), 11-27-2007)

Sec. 14-23. - Program components.

Comment [MC39]: did not review (a) – (d) of this section

(a) *Elements.* The town stormwater quantity and quality management and erosion and sediment control program shall consist of the following elements:

- (1) Illicit discharge detection and elimination;
- ~~(2)~~ VSMP compliance;
- ~~(3)~~ Construction site stormwater control;
- ~~(4)~~ Postconstruction stormwater control; and
- ~~(5)~~ Stormwater management system maintenance.

It shall be unlawful to cause a stormwater discharge from a municipal separate storm sewer or a land-disturbing activity without a permit from a permit issuing authority, unless such discharge is explicitly allowed without a permit under the provisions of this article.

(b) *Illicit discharge detection and elimination.* The following shall be the illicit discharge and detection and elimination requirements:

- (1) *Discharges to the stormwater management system.* It is the intent of the town to prohibit the entry of any substance other than stormwater, whether liquid or solid, into the stormwater management system. For illustrative purposes, prohibited substances include, but are not limited to: waste, trash, and garbage; food and kitchen waste; leakage from dumpsters or trash containers; gasoline, waste oil, lubricants, grease, antifreeze, or any other automotive, motor, or equipment fluids; fertilizers, grass clippings, mulch, and any yard waste; any chemical or solvent; soluble and non-soluble metals; wash water, detergents, and cleaning agents; paints; plastics; soot, ash, and sludge; animal waste; eroded soils and sediment; carcasses; chlorinated swimming pool water; and, any material that impedes or interferes with the free flow of stormwater.

PART II - TOWN CODE
Chapter 14 - ENVIRONMENT
ARTICLE II. - STORMWATER MANAGEMENT

(2) *Unlawful.* It shall be unlawful to:

- a. Cause or allow illicit discharges to the town's stormwater management system;
- b. Discharge materials other than stormwater to the stormwater management system by spills, dumping, or disposal without a VSMP permit;
- c. Cause or allow industrial waste to be discharged into the stormwater management system without a VSMP permit;
- d. Cause a connection to the stormwater conveyance system that will or has the potential to allow for an illicit discharge to enter the system; or
- e. Violate any condition or provision of this article or any permit granted for stormwater discharges.

(c) *Not unlawful-illicit discharge.* The following activities shall not be unlawful as illicit discharges subject to the provisions in subsection (d) of this section:

- (1) Water line flushing;
- (2) Landscape irrigation;
- (3) Diverting stream flows or raising groundwater;
- (4) ~~Infiltration of u~~Uncontaminated groundwater infiltration;
- (5) Uncontaminated pumped groundwater;
- ~~(6) Discharges from potable water sources;~~
- ~~(7) Foundation drains;~~
- ~~_Pumping uncontaminated groundwater from potable water sources, foundation drains, irrigation waters, springs or water from crawl spaces or footing drains;_~~
- ~~(78) Air conditioning condensate;~~
- ~~(89) Lawn wateringIrrigation water~~;
- ~~(10) Springs~~;
- ~~(11) Water from crawl space pumps~~;
- ~~(12) Footing drains~~;
- ~~(13) Lawn watering~~;
- ~~(914) Individual residential car washing-on residential properties~~;
- ~~(15) Flows from riparian habitats and wetlands~~;
- ~~(4016) Dechlorinated swimming pool discharges~~;

Comment [d40]: This section was adopted in 2007 as part of the Town's compliance with the discharge detection and elimination requirements of its MS4 permit. The section has been updated based on the draft MS4 Phase II regulations.

PART II - TOWN CODE
Chapter 14 - ENVIRONMENT
ARTICLE II. - STORMWATER MANAGEMENT

~~_(11) Lawn fertilizer, provided it is applied in accordance with the manufacturer's recommendations;~~

~~(17)~~ Street washing; and

~~(18)~~ Discharges or flows from firefighting activities.

(d) *Written notice.* If any of the activities listed in subsection (c) of this section are found by the director to be a source of pollutants to the waters of the state, the director shall serve written notice to the person performing such activities and shall order that such activities be stopped or conducted in such manner as to avoid the discharge of pollutants. The notice shall state the date by which the activity shall cease or be conducted without pollution. Failure to comply with any such order within the time stated in the notice shall constitute a violation of this article.

(1) *Inspections and sampling.* The following shall be the procedure for inspection and sampling:

a. The director shall have authority to enter onto public and private property to carry out all inspections, surveillance, and sampling procedures necessary to determine compliance and noncompliance with the conditions of the town's VSMP permit and this article, including the prohibition of illicit discharges to the stormwater management system. The director may sample stormwater outfalls or other components of the stormwater management system as may be appropriate in the administration and enforcement of this article.

b. If an illicit discharge as defined herein is detected, it shall be a violation of this article and the owner shall be notified in writing of the actions that must be taken to correct deficiencies along with a specific time for taking corrective action. If the corrective action is not performed within the specified time, the town may perform the necessary corrections and bill the property owner. If the owner fails to reimburse the town within 30 days, the town shall have a lien against the property in the amount of such costs, plus interest at the legal rate, and may enforce same in the same manner as a lien for real property taxes may be enforced. Any relief obtained under this section shall not prevent the town from seeking other and further relief authorized under the provisions of section 14-24

c. The director is authorized to require immediate abatement of any violation of this article that constitutes an immediate threat to the health, safety or well-being of the public. If any such violation is not abated immediately as directed by the director, the town, or its designated contractor, is authorized to enter onto private property and take any and all measures required to remediate the violation. Any expense related to such remediation undertaken by the town shall be fully reimbursed by the property owner and/or responsible party. Any relief obtained under this section shall not prevent the town from seeking other and further relief authorized under the provisions of section 14-24

d. If deemed necessary to prevent future occurrences of illicit discharges, the director shall have the authority to require a stormwater pollution prevention plan, as set forth in the DCSM, from any person whose discharge causes, or may cause, a violation of this article.

(2) *Erosion impact areas and environmentally sensitive areas.* The following shall be the provisions to determine erosion impact areas and environmentally sensitive areas:

a. The town council may designate portions of the town as erosion impact areas after conducting an investigation and a public hearing. The designated area may consist of a single parcel, or multiple parcels, and may include parcels where there is no active erosion, but where

PART II - TOWN CODE
Chapter 14 - ENVIRONMENT
ARTICLE II. - STORMWATER MANAGEMENT

sheet flow from the parcel causes or significantly contributes to erosion on adjacent parcels.

b. The director may require the development of ~~a conservation~~ an erosion and sediment control plan for any portion of the town designated as an erosion impact area.

Comment [d41]: Changed per DEQ comment that conservation plan is now erosion and sediment control plan per State Code.

c. Areas of the town consisting of slopes greater than 25 percent or consisting of highly erodible soils shall be designated as environmentally sensitive areas.

d. When a parcel in an erosion impact area or an environmentally sensitive area is subject to the construction site stormwater runoff controls of subsection (ef) of this section or the postconstruction stormwater runoff controls of subsection (fg) of this section, the director may, as a condition of approval, require the development and implementation of ~~a conservation~~ erosion and sediment control plan.

(e) VSMP compliance. Except as provided herein, no person may engage in any land-disturbing activity, and no grading, building, land disturbing, or similar permit shall be issued for a property, until the items required by this section are submitted to and approved by the director.

(1) VSMP compliance elements.

a. A permit application on a form provided by the director that includes a general permit registration statement, if such registration statement is required:

Comment [d42]: Added to comply with changed per the 2014 General Assembly.

b. Evidence of general permit coverage, if such general permit coverage is required:

c. Compliance with construction site stormwater control requirements in subsection (f), including an approved erosion and sediment control plan and pollution prevention plan; and,

d. Compliance with postconstruction stormwater control requirements in subsection (g), including an approved stormwater management plan, and compliance with stormwater management system maintenance requirements in subsection (h), including an approved stormwater maintenance agreement.

Comment [MC43]: Does this mean that stormwater maintenance agreements will be submitted prior to the approval of the SWM plan and before any permits are issued?

(2) Stormwater pollution prevention plan.

a. The applicant must develop prior to a land-disturbing activity, implement, and keep at the site for inspection a stormwater pollution prevention plan that meets the requirements of this section.

Comment [d44]: Added language concerning the maintenance agreement. Section 14-23(h)(1) has also been modified to make it clearer that the agreement must be approved prior to stormwater plan approval; except that it must only be entered into the land records prior to general permit expiration per the state regulations (9VAC25-870-112).

b. The stormwater pollution prevention plan required by the general permit must comply with the requirements set forth in 9VAC25-870-54 and the terms of the general permit as set forth in 9VAC25-870-70.

c. The stormwater pollution prevention plan must be amended whenever there is a change in design, construction, operation, or maintenance that has a significant effect on the discharge of pollutants to waters of the state and that is not addressed in the existing plan.

Comment [d45]: Based on discussions with DCR, this plan must be developed and be available at the site, but is not reviewed as part of the issuance of the permit in (e)(1) above.

d. The stormwater pollution prevention plan must be maintained at a central location onsite. If an onsite location is unavailable, notice of the plan's location must be posted near the main entrance at the construction site. Operators must make the plan available for public review in accordance with the general permit, either electronically or in hard copy.

Comment [d46]: Added citation for general permit per comment by DEQ in the ordinance checklist.

PART II - TOWN CODE
Chapter 14 - ENVIRONMENT
ARTICLE II. - STORMWATER MANAGEMENT

(3) Fees and bonds. All fees required to be paid pursuant to section 1.04 of the Subdivision and Land Development Regulations must be received and the performance bonding requirements pursuant to division 6 of the Subdivision and Land Development Regulations must be satisfied.

Comment [d47]: Refer to revised Town of Leesburg Land Development Review and Inspection Fee Schedule – Stormwater Management Fees.

(4) Grandfathering. A land-disturbing activity as defined in 9VAC25-870-48 shall be grandfathered and meet the technical criteria in 9VAC25-870-93 through 9VAC25-870-99, except that the more stringent of the technical criteria in 9VAC25-870-93 through 9VAC25-870-99 or the Town Code in effect prior to July 1, 2014 shall apply to the land-disturbing activity.

Comment [d48]: This section was expanded from a simple reference to the grandfathering provisions to ensure that the project is subject to the more stringent of the requirements of 9VAC870-48 or the Town Code in effect prior to the effective date of these changes. It also makes explicit reference to the grandfathering technical criteria.

(5) Monitoring and inspections.

a. The director shall inspect land-disturbing activities for:

Comment [MC49]: Is the Town Code similar or more stringent than Part IIC of the VSMP regulations?

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

Comment [d50]: The Town Code is consistent with Part IIC of the VSMP regulations since it is an MS4 locality. In addition, the more stringent applies in any case. Verified language with DEQ at meeting on 4/22/14.

b. The director may, at reasonable times, and under reasonable circumstances, enter any establishment or upon any property, public or private, for the purpose of obtaining information or conducting surveys or investigations necessary in the enforcement of the provisions of VSMP compliance elements.

Comment [MC51]: Added "may"

Comment [d52]: Agree.

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

d. Pursuant to § 62.1-44.15:40 of the Code of Virginia, the director may require every person subject to VSMP compliance elements to furnish when requested such application materials, plans, specifications, and other pertinent information as may be necessary to determine the effect of his discharge on the quality of state waters, or such other information as may be necessary to accomplish the purposes of this article.

e. Post-construction inspections of stormwater management facilities required by the provisions of this article shall be conducted by the director pursuant to the town's adopted and State Water Control Board-approved inspection program, and shall occur, at minimum, at least once every five (5) years except as may otherwise be provided for in section (h).

Comment [d53]: There are a number of exemptions that aren't applicable to the Town. These have been streamlined as appropriate.

Comment [MC54]: I'm not sure about this exemption.

Comment [d55]: The Town has the authority and flexibility to regulate land disturbing activities under one acre and to qualify such regulation per 62.1-44.15:34.C.4. However, language has been added to make it clear that this only applies to activities under one acre. Verified approach with DEQ at meeting on 4/22/14.

(6) Exemptions. The following activities are exempt from the compliance elements in subsection (1) above unless otherwise required by town code or state or federal law:

Comment [d56]: While the Town can provide an exemption for all projects under one acre, this language exempts very small projects given that any new impervious cover adds to the Town's Chesapeake Bay TMDL requirements. A project must still meet the requirements for an erosion and sediment control plan; however, the Director has discretion under 10,000 SF of land-disturbing area to require a plan that is commensurate with the activity involved.

a. Any land disturbance that requires only a site plan waiver or a standard zoning permit provided that it is less than one acre, not part of a larger common plan of development or sale

PART II - TOWN CODE
Chapter 14 - ENVIRONMENT
ARTICLE II. - STORMWATER MANAGEMENT

that is one acre or greater and that all erosion and sediment control requirements in subsection (f) are met:

b. Any single-family residence separately built and disturbing less than one acre and not part of a common plan of development or sale, including additions or modifications to existing single-family detached residential structures, provided that all erosion and sediment control requirements in subsection (f) are met;

c. Any land disturbance that is less than one acre and is not part of a common plan of development or sale that will result in a land-disturbing activity of one acre or greater provided that all erosion and sediment control requirements in subsection (f) are met, that all postconstruction stormwater control requirements in subsection (g) are met and that all stormwater management system maintenance requirements in subsection (h) are met with the exception of the requirements of 9VAC25-870-66, which may be met through subdivision 10 of 9VAC25-840-40;

d. Discharges to a sanitary sewer or a combined sewer;

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

f. Conducting land-disturbing activities in response to a public emergency where the related work requires immediate authorization to avoid imminent endangerment to human health or the environment. In such situations, the director shall be advised of the disturbance within seven days of commencing the land-disturbing activity and compliance with this article shall be required within 30 days of commencing the land-disturbing activity;

g. Land disturbances associated with Permitted surface or deep mining operations and projects, or oil and gas operations and projects conducted under the provisions of Title 45.1 of the Code of Virginia;

h. Land clearing for agricultural or silvicultural purposes, and related activities, in accordance with section 62.1-44.15:34.C.2 of the Code of Virginia; and,

i. Activities under a state or federal reclamation program to return an abandoned property to an agricultural or open land use.

(ef) Construction site stormwater control. The following shall be the construction site stormwater control provisions:

(1) *Minimum requirements.* Any proposed disturbance of the natural terrain of any subdivision or development where the disturbed area is greater than 500 square feet or includes the removal or addition of soil in excess of 12 inches in depth shall comply with the town's DCSM and land subdivision ordinance.

(2) *Erosion and sediment control plan.* All proposed land disturbance shall be subject to the following construction site stormwater control requirements prior to any clearing of the site or issuance of any building, land use, or land development permit:

Comment [d57]: Changed language in a, b, and c from requiring an erosion and sediment control plan to meeting the erosion and sediment control requirements. This is broader and captures that a plan may not always be required.

Comment [d58]: Based on a discussion with Troy Smith at DEQ, it was confirmed that the Town does not have the discretion to regulate a single-family residence that is not part of a common plan of development or sale. The authority to regulate these single-family homes is granted to Chesapeake Bay Act localities only. However, erosion and sediment control requirements still apply.

Comment [MC59]: New wording because these exemptions are combined with ESC regulations?

Comment [d60]: Agree.

Comment [MC61]: Does this mean water quality requirements will be imposed on projects less than an acre? What about MS-19 requirements on projects that are regulated by the ESC law and regulations?

Comment [d62]: As discussed with DEQ on 4/22/14, this section has been changed. Originally the intent was for projects under an acre to meet the old MS19 requirements rather than the new water quantity technical criteria. However, for projects over 10,000 the Town cannot do this since the E&SC regulations require compliance with 9VAC25-870-66. The ordinance now requires all development not otherwise exempted to meet the technical criteria in (g) below. In addition, while subsection (h) is indirectly referenced in (g), it has been explicitly added here to avoid confusion.

Comment [d63]: This section recognizes that for development under one acre, but not including (a) and (b) above, the Town still wants an erosion and sediment control plan and compliance with water...

Comment [d64]: OK with changes proposed by DEQ below

Comment [MC65]: Added "an"

Comment [MC66]: Added "associated", per the regulations

Comment [MC67]: Changed "is" to "shall be"

Comment [MC68]: Is this the same as the administrative requirements in subsection A of the SWM law?

Comment [d69]: Language is fine as-is per DEQ meeting on 4/22/14.

Comment [MC70]: Deleted "Land disturbances associated with"

Comment [MC71]: Added "surface"

Comment [d72]: These two changes are fine.

Comment [MC73]: I did not review (f)

PART II - TOWN CODE
Chapter 14 - ENVIRONMENT
ARTICLE II. - STORMWATER MANAGEMENT

a. An erosion and sediment control plan approved by the director ~~and~~ for disturbances over 500 square feet. In addition to director approval, for all disturbances ~~5,000~~ 40,000-square feet or greater, a formal grading/land disturbance permit is required to be obtained from the Loudoun County Department of Building and Development in accordance with the memorandum of understanding executed between the town and the county dated February 3, 2010, as amended. county department of building and development.

b. Documentation that any and all necessary permits and plans have been obtained including but not limited to permits required to meet the state pollution discharge elimination system permit regulations, wetlands permits, county grading permits as well as FEMA conditional letters of map revision.

c. The erosion and sediment control plan shall be of sufficient detail to demonstrate, to the satisfaction of the director, compliance with the provisions of DCSM and the state erosion and sediment control handbook, whichever is more restrictive.

(3) Pollution prevention plan. A pollution prevention plan, ~~if~~ required by 9VAC25-870-56, must detail the design, installation, implementation, and maintenance of effective pollution prevention measures to minimize the discharge of pollutants.

a. At a minimum, such measures must be designed, installed, implemented and maintained to achieve the following:

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

2. Minimize the exposure of building materials, building products, construction wastes, trash, landscape materials, fertilizers, pesticides, herbicides, detergents, sanitary waste, and other materials present on the site to precipitation and to stormwater; and,

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

b. The pollution prevention plan shall include effective best management practices to prohibit the following discharges:

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

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

3. Fuels, oils, or other pollutants used in vehicle and equipment operations and maintenance; and,

4. Soaps or solvents used in vehicle equipment washing;

c. Discharges from dewatering activities, including discharges from dewatering of trenches and excavations, are prohibited unless managed by appropriate controls.

Comment [d74]: The pollution prevention plan is related to construction site activities. Therefore, to streamline review and ensure consistency, this requirement is proposed to be added in this section.

Comment [d75]: Added "if" to clarify that it is only required when needing to meet the requirements of 9VAC25-870-56.

PART II - TOWN CODE
Chapter 14 - ENVIRONMENT
ARTICLE II. - STORMWATER MANAGEMENT

(fg) *Postconstruction stormwater control.* The following shall be the postconstruction stormwater control provisions:

(1) *Minimum requirements.* All development, redevelopment, and ~~uses-land disturbing activities regulated pursuant to this article~~ within the town shall comply with the DCSM and the technical criteria for land disturbing activities set forth in the regulations, as amended, ~~whichever is more stringent, expressly to include 9VAC25-870-62 (applicability), 9VAC25-870-63 (water quality design criteria requirements), 9VAC25-870-65 (water quality compliance), 9VAC25-870-66 (water quantity), 9VAC25-870-69 (offsite compliance options), 9VAC25-870-72 (design storms and hydrologic methods), 9VAC25-870-74 (stormwater harvesting), 9VAC25-870-762 (linear development), 9VAC25-870-85 (stormwater management impoundment structures or facilities), and 9VAC25-870-92 (comprehensive stormwater management plans). the state stormwater management handbook, whichever is more restrictive.~~

(2) *Stormwater management plan.* ~~A stormwater management plan shall be developed and submitted to the town for all development, redevelopment, and land disturbing activities regulated pursuant to this article, except that the director may execute an agreement in lieu of a stormwater management plan to comply with the requirements of this section. The stormwater management plan shall be implemented as approved or modified by the town. The stormwater management plan must apply the stormwater technical requirements of (1) above to the entire common plan of development or sale where applicable-land disturbing activity. Individual lots or parcels in new residential, commercial, or industrial developments shall not be considered separate land-disturbing activities. Instead, the common plan, as a whole, shall be considered to be a single land-disturbing activity. The plan must also consider all sources of surface runoff and all sources of subsurface and groundwater flows converted to subsurface runoff. The plan shall contain maps, charts, graphs, tables, photographs, narrative descriptions, explanations, calculations, and citations to supporting references as appropriate to communicate the information required by this article. At a minimum, the stormwater management plan must contain the following:~~

a. ~~Information on the type and location of stormwater discharges; information on the features to which stormwater is being discharged including surface waters, and the pre-development and post-development drainage areas. Any development, redevelopment, or use subject to the postconstruction stormwater control requirements contained here within shall be subject to a stormwater management plan being approved by the director prior to any clearing of the site or issuance of any building, land use, or land development permit.~~

b. ~~Contact information including the name, address, and telephone number of the owner and the tax reference and parcel number of the property or properties affected. The stormwater management plan shall be of sufficient detail to demonstrate, to the satisfaction of the director, compliance with the provisions of the DCSM and the state stormwater management handbook, whichever is more restrictive.~~

c. ~~A narrative that includes a description of current site conditions and final site conditions; The stormwater management plan shall include a copy of any and all permits and plans, including any individual or general permit for stormwater discharges associated with industrial activity, required to meet the state stormwater management program permit regulation set forth in 4 VAC 50-60-1170 et seq.~~

d. ~~A general description of the proposed stormwater management facilities and the mechanism through which the facilities will be operated and maintained after construction is~~

Comment [MC76]: 9VAC25-870-62 and 9VAC25-870-69 are not included here.

Comment [d77]: Changed to say more stringent rather than greater.

Comment [MC78]: What does "greater" mean?

Comment [d79]: Although not required (per DEQ meeting), added 9VAC25-870-62 and -69.

Comment [MC80]: Change 72 to 76

Comment [d81]: This language has been added to mirror language in the state regulations as requested by DEQ in their ordinance checklist review.

Comment [d82]: This language is added to make it clear that a stormwater management plan is required unless an agreement in lieu of a plan has been developed. This is per the changes made by the General Assembly in 2014.

Comment [d83]: Made minor changes in addition to DEQ changes below to make the language match with 9VAC25-870-55.A.

Comment [d84]: This language was changed to reflect amendments to the regulations that were acted on by the SWCB on December 17, 2013.

Comment [MC85]: Replace "common plan of development or sale where applicable" with "land disturbing activity"

Comment [MC86]: insert "new"

Comment [MC87]: Change to "surface"

Comment [MC88]: This is a clarifying sentence or expectation. I don't believe it to be more stringent.

PART II - TOWN CODE
Chapter 14 - ENVIRONMENT
ARTICLE II. - STORMWATER MANAGEMENT

complete.

e. Information on the proposed stormwater management facilities, including:

1. The type of facilities;
2. Location, including geographic coordinates;
3. Acres treated; and,
4. The surface waters into which the facility will discharge.

f. Hydrologic and hydraulic computations, including runoff characteristics.

g. Documentation and calculations verifying compliance with the water quality and water quantity requirements of (1) above.

h. A map or maps of the site that depicts the topography of the site and includes:

1. All contributing drainage areas;
2. Existing streams, ponds, culverts, ditches, wetlands, other water bodies, and floodplains;
3. Soil types, relevant geological formations, forest cover, and other vegetative areas;
4. Current land use including existing structures, roads, and locations of known utilities and easements;
5. Sufficient information on adjoining parcels to assess the impacts of stormwater from the site on these parcels;
6. The limits of clearing and grading, and the proposed drainage patterns on the site;
7. Proposed buildings, roads, parking areas, utilities, and stormwater management facilities; and,
8. Proposed land use with tabulation of the percentage of surface area to be adapted to various uses, including but not limited to planned locations of utilities, roads, and easements.

i. If an operator intends to meet the water quality requirements set forth in (1) above through the use of off-site credits in accordance with section (3), then a letter of availability from the off-site provider must be included. Approved off-site options must achieve the necessary reductions prior to the commencement of the applicant's land-disturbing activity except as otherwise allowed by section ~~62.1-44.15:35~~, ~~40.603-8:1~~ of the Code of Virginia.

j. Elements of the stormwater management plan that include activities regulated under Chapter 4 (§ 54.1-400 et seq.) of Title 54.1 of the Code of Virginia shall be appropriately sealed and signed by a professional registered in the Commonwealth of Virginia pursuant to Article 1 (§ 54.1-400 et seq.) of Chapter 4 of Title 54.1 of the Code of Virginia.

Comment [d89]: Updated per DEQ comment.

Comment [MC90]: Update reference to 62.1-44.15:35

PART II - TOWN CODE
Chapter 14 - ENVIRONMENT
ARTICLE II. - STORMWATER MANAGEMENT

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

(3) Nutrient credit offsets.

a. The director shall allow operators to utilize off-site compliance options in accordance with 9VAC25-870-69 under the following conditions:

1. Less than five acres of land will be disturbed;
2. The postconstruction phosphorus control requirement is less than 10 pounds per year; or,
3. At least 75% of the required phosphorus nutrient reductions are achieved on-site. If at least 75% of the required phosphorus nutrient reductions cannot be met on-site, and the operator can demonstrate to the satisfaction of the director that (i) alternative site designs have been considered that may accommodate on-site best management practices, (ii) on-site best management practices have been considered in alternative site designs to the maximum extent practicable, (iii) appropriate on-site best management practices will be implemented, and, (iv) full compliance with postdevelopment nonpoint nutrient runoff compliance requirements cannot practicably be met on-site, then the required phosphorus nutrient reductions may be achieved, in whole or in part, through the use of off-site compliance options.

b. The director may establish criteria for an operator to use nutrient credits in accordance with § 62.1-44.15:35 of the Code of Virginia to meet required phosphorus reductions that do not meet the conditions of subsection a of this section.

c. Notwithstanding subsections a and b of this section, offsite options shall not be allowed:

1. Unless the selected offsite option achieves the necessary nutrient reductions prior to the commencement of the operator's land-disturbing activity. In the case of a phased project, the operator may acquire or achieve offsite nutrient reductions prior to the commencement of each phase of land-disturbing activity in an amount sufficient for each phase.
2. In contravention of local water quality-based limitations at the point of discharge that are (i) consistent with the determinations made pursuant to subsection B of § 62.1-44.19:7 of the Code of Virginia, (ii) contained in the town's MS4 program plan accepted by the department, or (iii) as otherwise may be established or approved by the State Water Control Board.

(4) Stormwater management plan review.

a. The director shall review stormwater management plans and shall approve or disapprove a stormwater management plan according to the following:

1. The director shall determine the completeness ~~to review of~~ a plan in accordance with section (g)(2) of this section, and shall notify the applicant, in writing, of such

Comment [d91]: This language provides the director with the flexibility to establish additional criteria for the use of nutrient credits. Such an approach may be used where the Town is looking to achieve higher densities or where on-site BMPs conflict with other Town plans and policies.

Comment [MC92]: Is this more stringent?

Comment [d93]: Not more stringent per the Town's flexibility authorized in 62.1-44.15:35.B. Verified at 4/22/14 DEQ meeting.

Comment [MC94]: Changed wording

Comment [MC95]: Should this reference Section (g)(2)?

Comment [d96]: Yes, made changes.

PART II - TOWN CODE
Chapter 14 - ENVIRONMENT
ARTICLE II. - STORMWATER MANAGEMENT

determination, within 15 calendar days of receipt. If the plan is deemed to be incomplete, the above written notification shall contain the reasons the plan is deemed incomplete.

2. The director shall have an additional 60 calendar days from the date of the communication of completeness to review the plan, except that if a determination of completeness is not made within the time prescribed in subsection a.1, then the plan shall be deemed complete and the director shall have 60 calendar days from the date of submission to review the plan.

3. The director shall review any plan that has been previously disapproved within 45 calendar days of the date of resubmission.

4. During the review period, the plan shall be approved or disapproved and the decision communicated in writing to the person responsible for the land-disturbing activity or his designated agent. If the plan is not approved, the reasons for not approving the plan shall be provided in writing. Approval or denial shall be based on the plan's compliance with the requirements of this chapter.

5. If a plan meeting all requirements of this article is submitted and no action is taken within the time provided above in subsection a.2 for review, the plan shall be deemed approved.

b. Approved stormwater plans may be modified as follows:

1. Modifications to an approved stormwater management plan shall be allowed only after review and written approval by the director. The director shall have 60 calendar days to respond in writing either approving or disapproving such request.

2. The director may require that an approved stormwater management plan be amended, within a time prescribed by the director, to address any deficiencies noted during inspection.

c. The director shall require the submission of a construction record drawing for permanent stormwater management facilities. The director may elect not to require construction record drawings for stormwater management facilities for which recorded maintenance agreements are not required pursuant to (h) below.

(5) Exceptions.

a. The director may grant exceptions to the technical requirements of (1) above provided that the exception is the minimum necessary to afford relief, reasonable and appropriate conditions are imposed so that the intent of this article is preserved, granting the exception will not confer any special privileges that are denied in other circumstances, and exception requests are not based on conditions or circumstances that are self-imposed or self-created. Economic hardship alone is not sufficient reason to grant an exception.

Comment [MC97]: Should this reference subsection a.1?

Comment [MC98]: Added "the"

Comment [MC99]: Or director?

Comment [d100]: Made changes per DEQ comments.

Comment [d101]: Yes, made change.

Comment [MC102]: Should this reference subsection a.2?

Comment [MC103]: Or director?

Comment [d104]: Made change.

Comment [MC105]: What about the pre-July 1, 2014 technical criteria?

Comment [d106]: Per meeting with DEQ on 4/22/14 no change is needed since exception language in the regulations do not apply to grandfathering.

PART II - TOWN CODE
Chapter 14 - ENVIRONMENT
ARTICLE II. - STORMWATER MANAGEMENT

1. Exceptions to the requirement that the land-disturbing activity obtain a general permit shall not be given by the director, nor shall the director approve the use of a BMP not found on the Virginia BMP Clearinghouse website or any other control measure duly approved by the Department.

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

b. The director may grant exceptions to the water quantity requirements of 9VAC25-870-66 in cases where stormwater detention would conflict with the town's flood management programs.

(gh) *Stormwater management system maintenance.* The following shall be the stormwater management system maintenance requirements:

(1) *Minimum maintenance requirements.* The owner of any component of the stormwater management system shall provide adequate maintenance to ensure that the system functions as designed. The following requirements apply to all existing and future facilities constructed in the town:

a. The owner shall enter into a maintenance agreement with the town that outlines facility-specific maintenance requirements in accordance with the following.

1. The maintenance agreement shall provide all necessary provisions to ensure compliance with this section and shall be submitted to the director for review and approval prior to the approval of the stormwater management plan in section 14-23(g)(2).

2. Maintenance agreement forms shall be prepared in a format acceptable to the director of public works and the town attorney.

3. The maintenance agreement shall run with the land and be set forth in an instrument recorded in the county land records prior to general permit termination or earlier if required by the director.

~~Maintenance agreement forms shall be prepared in a format acceptable to the director of public works and the town attorney.~~

b. On completion of construction and town approval of a new BMP or system of BMPs, the owner shall enter into a two-year performance for maintenance bond with the town in an amount approved by the ~~Director of Public Works~~ director as being equivalent to two years of routine maintenance of the facility. Performance for maintenance bond forms shall be provided by the ~~Director of Public Works~~ director. The performance for maintenance bond shall be released only after an inspection by the ~~Director of Public Works~~ director determines that the facility has been maintained and functions as designed.

c. The owner shall prepare and submit an annual certification of maintenance to the town.

1. Certification shall be made by a registered engineer or licensed surveyor (qualified to perform such routine inspections) using a certification of maintenance form provided by

Comment [d107]: The Town has expressed concern to DCR that it needs to have the flexibility to waive requirements that conflict with flood control requirements and plans. In the meeting with DCR, it was agreed that DCR would provide additional guidance during the ordinance development process.

Comment [MC108]: This is additional and specific to the Town. I believe it is ok.

Comment [d109]: OK per DEQ comment.

Comment [d110]: DEQ made a comment in Section 14-23(e)(1) about whether the maintenance agreement would be required prior to approval of the stormwater management plan. This section has been expanded to make the submittal and approval process clearer. The agreement must be approved prior to the approval of the stormwater management plan; however, it only needs to be entered into the land records prior to general permit expiration. This seems prudent in case there are changes that need to be made.

Comment [d111]: Verifying with the Town that DPW director is appropriate here.

Comment [d112]: Added per DEQ comment in ordinance checklist.

Comment [MC113]: This may be more stringent than State code.

Comment [d114]: This is more stringent than the minimum standard in 62.1-44.15-34.A. Since it is pre-existing language approved by DCR, DEQ stated on 4/22/14 to note that this is more stringent and to provide the adoption date. The Town adopted this provision on November 27, 2007 as part of a comprehensive ordinance update to meet 2008 MS4 permit requirements.

Comment [d115]: The new regulations require that each owner provides proof of maintenance and inspections. Since the Town already does this, no major revisions are needed.

PART II - TOWN CODE
Chapter 14 - ENVIRONMENT
ARTICLE II. - STORMWATER MANAGEMENT

the ~~Director of Public Works~~ director.

2. Such certification shall state the general condition of the facility and also state whether the infrastructure is functioning properly as originally designed.

3. If the facility is not functioning as designed, a plan for proposed remedial actions and a timeline for completion shall be noted in the certification report. The plan and timeline for completion are subject to the approval of the ~~Director of Public Works~~ director. If the ~~Director of Public Works~~ director determines that the proposed plan and timeline for completion is insufficient to protect the public health, safety, and welfare, the owner of the facility must either submit a new plan and timeline, or alternatively, the director may take action in accordance with subsection (d)(2) of this section. Once remedial actions have been completed, the owner shall submit a new certification in accordance with subsections (g)(1)a and b of this section.

(2) *Inspections and access.* The owner shall provide the town with access to the facility to perform quality assurance and performance inspections. Failure to provide access shall be considered a violation of this article under section 14-24. If inadequate maintenance is observed by the town, the owner shall be notified in writing of the actions that must be taken to correct deficiencies along with a specific time for taking corrective action. If the corrective action is not performed within the specified time, the town may perform the necessary corrections and bill the property owner. If the owner fails to reimburse the town within 30 days, the town shall have a lien against the property in the amount of such costs, plus interest at the legal rate, and may enforce same in the same manner as a lien for real property taxes may be enforced. In addition to performing required maintenance, sanctions may be imposed as provided in section 14-24

~~(3) Stormwater pollution prevention plans. The owner shall, on an annual basis, provide the town with proof of compliance with any stormwater pollution prevention plan developed to comply with the state pollutant discharge elimination system permit regulation set forth in 9 VAC 25-31 et seq., or section 5-100 et seq., of the DCSM.~~

(43) *Applicable facilities.* The ~~Director of Public Works~~ director shall have the ability to enforce the maintenance requirements noted herein for all stormwater systems within the town's corporate limits to include proposed facilities as well as existing facilities.

(Ord. No. 2007-0-21, § 1(21-5), 11-27-2007)

Sec. 14-24. - Violations.

(a) *Conflicting provisions.* If the penalties noted herein should ever contradict with ~~or be less than~~ future penalties implemented by the ~~state State soil and water conservation board~~ **Water Control Board**, the penalties defined by the ~~state State soil and water conservation board~~ **Water Control Board** shall govern and supersede those noted herein.

~~(b) Civil penalty. The following shall be the civil penalties for violation of this chapter:~~

~~(1) Any person who, intentionally or otherwise, commits any of the acts prohibited by section 14-23(b) shall be liable to the town for all costs of testing, containment, cleanup, abatement,~~

Comment [d116]: This section references the VPDES industrial SWPPPs. They are required to provide these to the Town in the industrial permits, so this is redundant.

Comment [d117]: The State Water Control Board now has authority over the Virginia Stormwater Management Regulations.

Comment [d118]: The Town's current enforcement section has been replaced with language from the model ordinance. .

PART II - TOWN CODE
Chapter 14 - ENVIRONMENT
ARTICLE II. - STORMWATER MANAGEMENT

~~removal, and disposal of any substance unlawfully discharged into the stormwater management system.~~

~~(2) Without limiting the remedies that may be obtained under this section, the town may bring a civil action against any person for violation of this article. The action may seek the imposition of a civil penalty of not more than \$2,000.00 against the person for each violation.~~

~~(3) The town may petition the circuit court to enjoin a violation or a threatened violation of this article without the necessity of showing that an adequate remedy at law does not exist.~~

~~(4) In lieu of section 14-24(b)(2), with the consent of any person who has violated or failed, neglected or refused to obey the provisions of this article, the town may provide, in an order issued by the director against such person, for the payment of civil charges for violations, in specific sums, not to exceed the limit specified in section 14-24(b)(2). Such civil charges shall be in lieu of any appropriate civil penalty, which could be imposed under section 14-24(b)(2).~~

~~(5) The remedies set forth in this section shall be cumulative, not exclusive, and it shall not be a defense to any action that one or more of the remedies set forth in this section has been sought or granted.~~

~~(6) Civil penalties imposed as a result of this section shall be paid into the town's general fund, except that where the violator is the town itself or its agent, the civil charges shall be paid into the treasury of the commonwealth.~~

(b) Penalties.

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

a. The notice shall specify the measures needed to comply with the permit conditions and shall specify the time within which such measures shall be completed. Upon failure to comply within the time specified, a stop work order may be issued in accordance with subsection b or the permit may be revoked by the director. The director may also pursue enforcement in accordance with this section.

b. If a permittee fails to comply with a notice issued in accordance with this section within the time specified, the director may issue an order requiring the owner, permittee, person responsible for carrying out an approved plan, or the person conducting the land-disturbing activities without an approved plan or required permit to cease all land-disturbing activities until the violation of the permit has ceased, or an approved plan and required permits are obtained, and specified corrective measures have been completed.

Comment [MC119]: Missing "or determines there is an unauthorized discharge"...

Comment [MC120]: The model ordinance lists example notices, such as verbal warnings, inspection reports, etc. These notices are not listed.

Comment [d121]: Added per DEQ comments.

PART II - TOWN CODE
Chapter 14 - ENVIRONMENT
ARTICLE II. - STORMWATER MANAGEMENT

Such orders shall become effective upon service on the person by certified mail, return receipt requested, sent to his address specified in the land records of the locality, or by personal delivery by an agent of the director. However, if the director finds that any such violation is grossly affecting or presents an imminent and substantial danger of causing harmful erosion of lands or sediment deposition in waters within the watersheds of the Commonwealth or otherwise substantially impacting water quality, it may issue, without advance notice or hearing, an emergency order directing such person to cease immediately all land-disturbing activities on the site and shall provide an opportunity for a hearing, after reasonable notice as to the time and place thereof, to such person, to affirm, modify, amend, or cancel such emergency order. If a person who has been issued an order is not complying with the terms thereof, the director may institute a proceeding for an injunction, mandamus, or other appropriate remedy in accordance with subsection 3.

(2) In addition to any other remedy provided by this article, if the director or his or her designee determines that there is a failure to comply with the provisions of this article, ~~they~~ **the director** may initiate such informal and/or formal administrative enforcement procedures in a manner that is consistent with the DCSM or other policies adopted by the director.

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

(4) Any person who violates any provision of this article or who fails, neglects or refuses to comply with any order of the town, the department, **State Water Control** Board, or court, shall be subject to a civil penalty not to exceed \$32,500 for each violation within the discretion of the court. Each day of violation of each requirement shall constitute a separate offense.

a. Violations for which a penalty may be imposed under this subsection shall include but not be limited to the following: (i) no permit registration, (ii) no stormwater pollution prevention plan, (iii) incomplete stormwater pollution prevention plan; (iv) stormwater pollution prevention plan not available for review; (v) no approved erosion and sediment control plan; (vi) failure to install stormwater BMPs or erosion and sediment controls; (vii) stormwater BMPs or erosion and sediment controls improperly installed or maintained; (viii) operational deficiencies; (ix) failure to conduct required inspections; (x) incomplete, improper, or missed inspections; **and (xi) discharges not in compliance with the requirements of 9VAC25-880-70 of the general permit.**

b. The town may issue a summons for collection of the civil penalty and the action may be prosecuted in the appropriate court.

Comment [MC122]: Should this reference subsection 3?

Comment [d123]: Correct, made the changes.

Comment [MC124]: The director?

Comment [MC125]: Missing "and discharges not in compliance with the requirements of Section 9VAC25-880-70 of the general permit".

Comment [d126]: Added per DEQ comment.

PART II - TOWN CODE
Chapter 14 - ENVIRONMENT
ARTICLE II. - STORMWATER MANAGEMENT

c. In imposing a civil penalty pursuant to this subsection, the court may consider the degree of harm caused by the violation and also the economic benefit to the violator from noncompliance.

d. Any civil penalties assessed by a court as a result of a summons issued by the town shall be paid into the treasury of the town to be used for the purpose of minimizing, preventing, managing, or mitigating pollution of the waters of the locality and abating environmental pollution therein in such manner as the court may, by order, direct.

(5) Notwithstanding any other civil or equitable remedy provided by this section, any person who willfully or negligently violates any provision of this chapter, any order of the town or the department, any condition of a permit, or any order of a court shall be guilty of a misdemeanor punishable by confinement in jail for not more than 12 months and a fine of not less than \$2,500 nor more than \$32,500, either or both.

(6) Any person who knowingly violates any provision of this chapter, any regulation or order of the State Water Control Board or the town, any condition of a permit or any order of a court as herein provided, or who knowingly makes any false statement in any form required to be submitted under this article or knowingly renders inaccurate any monitoring device or method required to be maintained under this article, shall be guilty of a felony punishable by a term of imprisonment of not less than one year nor more than three years, or in the discretion of the jury or the court trying the case without a jury, confinement in jail for not more than 12 months and a fine of not less than \$5,000 nor more than \$50,000 for each violation.

Any defendant that is not an individual shall, upon conviction of a violation under this subsection, be sentenced to pay a fine of not less than \$10,000. Each day of violation of each requirement shall constitute a separate offense.

(7) Any person who knowingly violates any provision of this chapter, and who knows at that time that he thereby places another person in imminent danger of death or serious bodily harm, shall, upon conviction, be guilty of a felony punishable by a term of imprisonment of not less than two years nor more than 15 years and a fine of not more than \$250,000, either or both. A defendant that is not an individual shall, upon conviction of a violation under this subsection, be sentenced to pay a fine not exceeding the greater of \$1 million or an amount that is three times the economic benefit realized by the defendant as a result of the offense. The maximum penalty shall be doubled with respect to both fine and imprisonment for any subsequent conviction of the same person under this subsection.

(Ord. No. 2007-0-21, § 1(21-6), 11-27-2007)

Sec. 14-25. - Hearings.

(a) Any applicant, or person subject to this article aggrieved by any action of the town taken without a formal hearing, or by inaction of the town, may demand in writing a formal hearing by the town council,

Comment [d127]: Per DEQ meeting on 4/22/14 this language can stay in the ordinance if the Town chooses. These sections are found in 62.1-44.15:48. The language in (6) mirrors the language in :48(B) and applies specifically to VSMP authorities (which is the Town). The language in (7) mirrors :48(C), which states that it applies to any violation of the article (in the State Code).

Comment [MC128]: This is from the SWM Act, but is not in the model ordinance. Does it apply to local VSMPs?

PART II - TOWN CODE
Chapter 14 - ENVIRONMENT
ARTICLE II. - STORMWATER MANAGEMENT

provided a petition requesting such hearing is filed with the director within 30 days after notice of such action is given by the director.

(b) The hearings held under this section shall be conducted by the town council at a regular or special meeting of the town council or by at least one member of the town council designated by the town council to conduct such hearings on behalf of the town council at any other time and place authorized by the town council.

(c) A verbatim record of the proceedings of such hearing shall be taken and filed with the town council. Depositions may be taken and read as in actions at law.

(d) The town council or its designated member, as the case may be, shall have power to issue subpoenas and subpoenas duces tecum, and at the request of any party shall issue such subpoenas. The failure of a witness without legal excuse to appear or testify or to produce documents shall be acted upon by the town whose action may include the procurement of an order of enforcement from the circuit court. Witnesses who are subpoenaed shall receive the same fees and reimbursements for mileage as in civil actions.

Sec. 14-26. - Appeals.

(a) Final decisions of the director under this article shall be in writing and be subject to review by the town manager. Any appeal shall be filed with the town manager within 30 days from the date of any written decision by the department of plan review which adversely affects the rights, duties, or privileges of the persons engaging in or proposing to engage in land disturbing activities.

(b) All appeals must be written and must contain sufficient information to acquaint the town manager with the facts involved.

(c) A final decision of the town manager may be appealed to the town council, provided that a written appeal is filed with the town manager within 30 days after the date of his decision.

(d) A final decision of the town is subject to review by the circuit court of Loudoun County, provided that the appeal is filed within 30 days of the town council's action.