

ORDINANCE NO. 2014-03

ORDINANCE NO. 2014-03 AMENDS THE ASHLAND TOWN CODE BY AMENDING CHAPTER 4.1, "ENVIRONMENTAL PROTECTION," BY ADDITION ARTICLE II, "STORMWATER MANAGEMENT," SECTION 4.1-4 "PURPOSE AND AUTHORITY," SECTION 4.1-5, "DEFINITIONS," SECTION 4.1-6 "STORMWATER PERMIT REQUIREMENT/AGREEMENT IN LIEU OF A STORMWATER MANAGEMENT PLAN; EXEMPTIONS," SECTION 4.1-7 "STORMWATER MANAGEMENT PROGRAM ESTABLISHED; SUBMISSION AND APPROVAL OF PLANS; PROHIBITIONS," SECTION 4.1-8 STORMWATER POLLUTION PREVENTION PLAN; CONTENTS OF PLANS," SECTION 4.1-9 "STORMWATER MANAGEMENT PLAN; CONTENTS OF PLAN," SECTION 4.1-10 "POLLUTION PREVENTION PLAN; CONTENTS OF PLANS," SECTION 4.1-11 "REVIEW OF STORMWATER MANAGEMENT PLAN," SECTION 4.1-12 "TECHNICAL CRITERIA FOR REGULATED LAND DISTURBING ACTIVITIES," SECTION 4.1-13 "LONG-TERM MAINTENANCE OF PERMANENT STORMWATER FACILITIES," SECTION 4.1-14 "MONITORING AND INSPECTIONS," SECTION 4.1-15 "HEARINGS," SECTION 4.1-16 "APPEALS," SECTION 4.1-17, "ENFORCEMENT" SECTION 4.1-18 "FEES," AND SECTION 4.1-19 "PERFORMANCE BOND." ORDINANCE NO. 2014-03 ALSO ESTABLISHES A FEE SCHEDULE FOR STORMWATER MANAGEMENT. ORDINANCE NO. 2014-03 IS CONSIDERED PURSUANT TO THE GRANT OF AUTHORITY CONTAINED IN VA CODE §62.1-44-15:24 *ET SEQ.*

WHEREFORE pursuant to Virginia Code § 62.1-44.15:27, this Ordinance is part of an initiative to integrate the Town of Ashland's (the Town) stormwater management requirements with the Town's erosion and sediment control (Chapter 5), flood insurance and flood plain management (Appendix B), and Chesapeake Bay Preservation Act (Chapter 4.1, Sections III and V) requirements into a unified stormwater program; and

WHEREAS the unified stormwater program is intended to facilitate the submission and approval of plans, issuance of permits, payment of fees, and coordination of inspection and enforcement activities into a more convenient and efficient manner for both the Town and those responsible for compliance with these programs.

NOW THEREFORE BE IT ORDAINED by the Ashland Town Council that the Ashland Town Code be amended by adding Chapter 4.1, Article II, "Stormwater Management" to read in its entirety as follows:

“Sec. 4.1-1. PURPOSE AND AUTHORITY.

- (a) The purpose of this Chapter is to ensure the general health, safety, and welfare of the citizens of the Town and protect the quality and quantity of state waters from the potential harm of unmanaged stormwater.
- (b) This Chapter is adopted pursuant to Virginia Code § 62.1-44.15:24 *et seq.*

Sec. 4.1-2. DEFINITIONS.

In addition to the definitions set forth in Virginia Stormwater Management Program Regulations, 9 VAC 25-870-10, which are expressly incorporated herein by reference, the following words and terms used in this Chapter have the following meanings unless otherwise specified herein. Where definitions differ, those incorporated herein shall have precedence.

"*Administrator*" means the Town of Ashland Director of Public Works or his/her designee.

"*Agreement in Lieu of a Stormwater Management Plan*" means a contract between the VSMP authority and the owner or permittee that specifies methods that shall be implemented to comply with the requirements of a VSMP for the construction of a single-family residence; such contract may be executed by the VSMP authority in lieu of a stormwater management plan.

"*Applicant*" means any person submitting an application for a permit or requesting issuance of a permit under this Chapter.

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

"*Chesapeake Bay Preservation Act land disturbing activity*" means a land disturbing activity including clearing, grading, or excavation that results in a land disturbance equal or greater than 2,500 square feet and less than one acre in all areas of jurisdictions designated as subject to the regulations adopted pursuant to the Chesapeake Bay Preservation Act, Virginia Code § 62.1-44.15:67 *et seq.*

"*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.

"*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.

"Department" means the 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.

"General permit" means the state permit titled GENERAL VSMP PERMIT FOR DISCHARGES OF STORMWATER FROM CONSTRUCTION ACTIVITIES found in 9 VAC Section 25-880-1 *et seq.* of the Regulations authorizing a category of discharges under the CWA and the Act within a geographical area of the Commonwealth of Virginia.

"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 4.1-3(c) of this Chapter.

"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, 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.

"Owner" or *"Operator"* means the owner or operator of any facility or activity subject to regulation under this Chapter.

"Permit" or *"Land Disturbing Permit"* means an approval to conduct a land disturbing activity issued by the Administrator for the initiation of a land disturbing activity, in accordance with this Chapter, and which may only be issued after evidence of general permit coverage has been provided by the Department.

"Permittee" means the person to whom the Land Disturbing Permit is issued.

"Person" means any individual, corporation, partnership, association, state, municipality, commission, or political subdivision of a state, governmental body, including federal, state, or local entity as applicable, any interstate body or any other legal entity.

"Regulations" means the Virginia Stormwater Management Program (VSMP) Permit Regulations, 9 VAC Section 25-870-10 *et seq.*

"*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 Board*" means the State Water Control Board.

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

"*State Water Control Law*" means Virginia Code § 62.1-44.2 *et seq.*

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

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

"*Stormwater management plan*" means a document containing material describing methods for complying with the requirements of Section 4.1-6 of this Chapter.

"*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 Chapter. In addition the document shall identify and require the implementation of control measures, and shall include, but not be limited to the inclusion of, or the incorporation by reference of, an approved erosion and sediment control plan, an approved stormwater management plan, and a pollution prevention plan.

"*Subdivision*" means the same as defined in Section 17-3 of the Ashland Town Code.

"*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.

"*Town*" means the incorporated Town of Ashland.

"Virginia Stormwater Management Act" or "Act" means Virginia Code § 62.1-44.15:24 *et seq.*

"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 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 shall include such items as local Chapters, rules, permit requirements, annual standards and specifications, policies and guidelines, technical materials, and requirements for plan review, inspection, enforcement, where authorized in this article, and evaluation consistent with the requirements of this article and associated regulations.

"Virginia Stormwater Management Program authority" or "VSMP authority" means an authority approved by the State Board after September 13, 2011, to operate a Virginia Stormwater Management Program; for the purpose of this ordinance, it means the Town of Ashland.

Sec. 4.1-3. - STORMWATER PERMIT REQUIREMENT/AGREEMENT IN LIEU OF A STORMWATER MANAGEMENT PLAN; EXEMPTIONS.

- (a) Except as provided herein, no person may engage in any land disturbing activity until a Land Disturbing Permit has been issued by the Administrator in accordance with the provisions of this Chapter or until an Agreement in lieu of a Stormwater Management Plan has been executed.
- (b) A Chesapeake Bay Preservation Act land disturbing activity shall be subject to an erosion and sediment control plan consistent with the requirements of the Erosion and Sediment Control Chapter, a stormwater management plan as outlined under Section 4.1-6, the technical criteria and administrative requirements for land disturbing activities outlined in Section 4.1-9, and the requirements for control measures long-term maintenance outlined under Section 4.1-10.
- (c) Notwithstanding any other provisions of this Chapter, neither a registration statement nor payment of the state's portion of the statewide permit fee shall be required for coverage under the General Permit for Discharges of Stormwater from Construction Activities for construction activity involving a single-family detached residential structure, within or outside a common plan of development or sale. Except as exempt below, an Agreement in lieu of a Stormwater Management Plan must be executed with the Town.
- (d) Notwithstanding any other provisions of this Chapter, the following activities are exempt, unless otherwise required by federal law:

- (1) 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;
- (2) Clearing of lands specifically for agricultural purposes and the management, tilling, planting, or harvesting of agricultural, horticultural, or forest crops, livestock feedlot operations, or as additionally set forth by the State Board in regulations, including engineering operations as follows: construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds, ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage, and land irrigation; however, this exception shall not apply to harvesting of forest crops unless the area on which harvesting occurs is reforested artificially or naturally in accordance with the provisions of Virginia Code § 10.1-1100 *et seq.* or is converted to bona fide agricultural or improved pasture use as described in Subsection B of Virginia Code § 10.1-1163;
- (3) Single-family residences separately built and disturbing less than 2,500 square feet (pursuant to Chapter 4.1, Article III of the Town Code) and not part of a larger common plan of development or sale, including additions or modifications to existing single-family detached residential structures;
- (4) Land disturbing activities that disturb less than 2,500 square feet of land area (pursuant to Chapter 4.1, Article III and V of the Ashland Town Code), except for activities that are part of a larger common plan of development or sale that is one acre or greater of disturbance;
- (5) Discharges to a sanitary sewer or a combined sewer system;
- (6) Activities under a State or federal reclamation program to return an abandoned property to an agricultural or open land use;
- (7) Routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original construction of the project. The paving of an existing road with a compacted or impervious surface and reestablishment of existing associated ditches and shoulders shall be deemed routine maintenance if performed in accordance with this Subsection; and
- (8) 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 Administrator shall be advised of the disturbance within seven days of commencing the land disturbing activity and compliance with the administrative requirements of Subsection (a) is required within 30 days of commencing the land disturbing activity.

Sec. 4.1-4. STORMWATER MANAGEMENT PROGRAM ESTABLISHED;
SUBMISSION AND APPROVAL OF PLANS; PROHIBITIONS.

- (a) Pursuant to Virginia Code § 62.1-44.15:27, the Town hereby establishes a Virginia stormwater management program for land disturbing activities and adopts the applicable Regulations that specify standards and specifications for VSMPs promulgated by the State Board for the purposes set out in Section 4.1-1 of this Chapter. The Town hereby designates Director of Public Works or his/her designee as the Administrator of the Virginia stormwater management program.
- (b) No Land Disturbing Permit shall be issued by the Administrator, until the following items have been submitted to and approved by the Administrator as prescribed herein:
 - (1) A permit application that includes a general permit registration statement, if such statement is required;
 - (2) An erosion and sediment control plan approved in accordance with the Town's Erosion and Sediment Control Chapter 5; and
 - (3) A stormwater management plan or executed agreement in lieu of a stormwater management plan that meets the requirements of Section 4.1-6 of this Chapter.
- (c) No Land Disturbing Permit shall be issued until evidence of general permit coverage is obtained.
- (d) No Land Disturbing Permit shall be issued until the fees required to be paid pursuant to Section 4.1-15, are received.
- (e) No Land Disturbing Permit shall be issued unless and until the permit application and attendant materials and supporting documentation demonstrate that all land clearing, construction, disturbance, land development and drainage will be done according to the approved permit.
- (f) No grading, building or other local permit shall be issued for a property unless a Land Disturbing Permit has been issued by the Administrator.

Sec. 4.1-5. - STORMWATER POLLUTION PREVENTION PLAN; CONTENTS OF PLANS.

- (a) The Stormwater Pollution Prevention Plan (SWPPP) shall include the content specified by Section 9 VAC 25-870-54 and must also comply with the requirements and general information set forth in Section 9 VAC 25-880-70, Section II [stormwater pollution prevention plan] of the general permit.
- (b) The SWPPP shall be amended by the operator whenever there is a change in design, construction, operation, or maintenance that has a significant effect on the discharge of pollutants to state waters which is not addressed by the existing SWPPP.

- (c) The SWPPP must be maintained by the operator at a central location onsite. If an onsite location is unavailable, notice of the SWPPP's location must be posted near the main entrance at the construction site. Operators shall make the SWPPP available for public review in accordance with Section II of the general permit, either electronically or in hard copy.

Sec. 4.1-6. - STORMWATER MANAGEMENT PLAN; CONTENTS OF PLAN.

A. The Stormwater Management Plan, required in Section 4.1-4 of this Chapter, must apply the stormwater management technical criteria set forth in Section 4.1-9 of this Chapter to the entire land disturbing activity, consider all sources of surface runoff and all sources of subsurface and groundwater flows converted to surface runoff, and include the following information. Individual lots in new residential, commercial, or industrial developments shall not be considered separate land disturbing activities.

- (1) Information on the type and location of stormwater discharges; information on the features to which stormwater is being discharged including surface waters or karst features, if present, and the predevelopment and post-development drainage areas;
- (2) Contact information including the name, address, and telephone number of the owner and the tax reference number and parcel number of the property or properties affected;
- (3) A narrative that includes a description of current site conditions and final site conditions;
- (4) A general description of the proposed stormwater management facilities and the mechanism through which the facilities will be operated and maintained after construction is complete;
- (5) Information on the proposed stormwater management facilities, including:
 - (i) The type of facilities;
 - (ii) Location, including geographic coordinates;
 - (iii) Acres treated; and
 - (iv) The surface waters or karst features, if present, into which the facility will discharge.
- (6) Hydrologic and hydraulic computations, including runoff characteristics;
- (7) Documentation and calculations verifying compliance with the water quality and quantity requirements of Section 4.1-9 of this Chapter.
- (8) A map or maps of the site that depicts the topography of the site and includes:

- (i) All contributing drainage areas;
- (ii) Existing streams, ponds, culverts, ditches, wetlands, other water bodies, and floodplains;
- (iii) Soil types, geologic formations if karst features are present in the area, forest cover, and other vegetative areas;
- (iv) Current land use including existing structures, roads, and locations of known utilities and easements;
- (v) Sufficient information on adjoining parcels to assess the impacts of stormwater from the site on these parcels;
- (vi) The limits of clearing and grading, and the proposed drainage patterns on the site;
- (vii) Proposed buildings, roads, parking areas, utilities, and stormwater management facilities; and
- (viii) Proposed land use with tabulation of the percentage of surface area to be adapted to various uses, including but not limited to planned locations of utilities, roads, and easements.
- (ix) If an operator intends to meet the water quality and/or quantity requirements set forth in Section 4.1-9 of this Chapter through the use of off-site compliance options, where applicable, then a letter of availability from the off-site provider must be included. Approved off-site options must achieve the necessary nutrient reductions prior to the commencement of the applicant's land disturbing activity except as otherwise allowed by Virginia Code § 62.1-44.15:35.

B. Elements of the stormwater management plans that include activities regulated under Virginia Code § 54.1-400 *et seq.* shall be appropriately sealed and signed by a professional registered in the Commonwealth of Virginia pursuant to Virginia Code § 54.1-400 *et seq.*

C. A construction record drawing for permanent stormwater management facilities shall be submitted to the Administrator. The construction record drawing shall be appropriately sealed and signed by a professional registered in the Commonwealth of Virginia, certifying that the stormwater management facilities have been constructed in accordance with the approved plan. The construction record drawing shall be submitted in Auto CAD, and formatted per the Administrator's requirements.

Sec. 4.1-7. – POLLUTION PREVENTION PLAN; CONTENTS OF PLANS.

(a) Pollution Prevention Plan, required by 9 VAC Section 25-870-56, shall be developed, implemented, and updated as necessary and must detail the design, installation, implementation, and maintenance of effective pollution prevention measures to minimize the discharge of pollutants. At a minimum, such measures must be designed, installed, implemented, and maintained to:

- (1) Minimize the discharge of pollutants from equipment and vehicle washing, wheel wash water, and other wash waters. Wash waters must be treated in a sediment

basin or alternative control that provides equivalent or better treatment prior to discharge;

- (2) Minimize the exposure of building materials, building products, construction wastes, trash, landscape materials, fertilizers, pesticides, herbicides, detergents, sanitary waste, and other materials present on the site to precipitation and to stormwater; and
 - (3) Minimize the discharge of pollutants from spills and leaks and implement chemical spill and leak prevention and response procedures.
- (b) The pollution prevention plan shall include effective best management practices to prohibit the following discharges:
- (1) Wastewater from washout of concrete, unless managed by an appropriate control;
 - (2) Wastewater from washout and cleanout of stucco, paint, form release oils, curing compounds, and other construction materials;
 - (3) Fuels, oils, or other pollutants used in vehicle and equipment operation and maintenance; and
 - (4) Soaps or solvents used in vehicle and equipment washing.
- (c) Discharges from dewatering activities, including discharges from dewatering of trenches and excavations, are prohibited unless managed by appropriate controls.

Sec. 4.1-8. - REVIEW OF STORMWATER MANAGEMENT PLAN.

- (a) The Administrator or any duly authorized agent of the Administrator shall review stormwater management plans and shall approve or disapprove a stormwater management plan according to the following:
 - (1) The Administrator shall determine the completeness of a plan in accordance with Section 4.1-6 of this Chapter, and shall notify the applicant, in writing, of such determination, within 15 calendar days of receipt. If the plan is deemed to be incomplete, the above written notification shall contain the reasons the plan is deemed incomplete.
 - (2) The Administrator shall have an additional 60 calendar days from the date of the communication of completeness to review the plan, except that if a determination of completeness is not made within the time prescribed in subdivision (1), then plan shall be deemed complete and the Administrator shall have 60 calendar days from the date of submission to review the plan.
 - (3) The Administrator 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 Chapter is submitted and no action is taken within the time provided above in subdivision (2) for review, the plan shall be deemed approved.
- (b) Approved stormwater plans may be modified as follows:
- (1) Modifications to an approved stormwater management plan shall be allowed only after review and written approval by the Administrator. The Administrator shall have 60 calendar days to respond in writing either approving or disapproving such request.
 - (2) The Administrator may require that an approved stormwater management plan be amended, within a time prescribed by the Administrator, to address any deficiencies noted during inspection.
- (c) The Administrator shall require the submission of a construction record drawing for permanent stormwater management facilities. The Administrator may elect not to require construction record drawings for stormwater management facilities for which recorded maintenance agreements are not required pursuant to Section 4.1-10 (b).

Sec. 4.1-9 - TECHNICAL CRITERIA FOR REGULATED LAND DISTURBING ACTIVITIES.

- (a) To protect the quality and quantity of state water from the potential harm of unmanaged stormwater runoff resulting from land disturbing activities, the Town hereby adopts the technical criteria for regulated land disturbing activities set forth in Part II B of the Regulations, as amended, 9 VAC Section 25-870-62 through 99, which shall apply to all land disturbing activities regulated pursuant to this Chapter, except as expressly set forth in Subsection (b) of this Section.
- (b) Until June 30, 2019, the grandfathering provisions of 9 VAC Section 25-870-48 may apply, along with technical criteria set forth in Part II C of the Regulations.
- (c) In cases where governmental bonding or public debt financing has been issued for a project prior to July 1, 2012, such project shall be subject to the technical requirements Part II C of the Regulations, as adopted by the Town in Subsection (b) of this Section.
- (d) The Administrator may grant exceptions to the technical requirements of Part II B or Part II C of the Regulations, provided that (i) the exception is the minimum

necessary to afford relief, (ii) reasonable and appropriate conditions are imposed so that the intent of the Act, the Regulations, and this Chapter are preserved, (iii) granting the exception will not confer any special privileges that are denied in other similar circumstances, and (iv) exception requests are not based upon conditions or circumstances that are self-imposed or self-created. Economic hardship alone is not sufficient reason to grant an exception from the requirements of this Chapter.

- (1) Exceptions to the requirement that the land disturbing activity obtain required Land Disturbing Permit shall not be given by the Administrator, nor shall the Administrator approve the use of a BMP not found on the Virginia Stormwater BMP Clearinghouse Website, or any other control measure duly approved by the Director.
 - (2) Exceptions to requirements for phosphorus reductions shall not be allowed unless offsite options otherwise permitted pursuant to 9 VAC Section 25-870-69 have been considered and found not available.
- (e) Nothing in this Section shall preclude an operator from constructing to a more stringent standard at his discretion.

Sec. 4.1-10 - LONG-TERM MAINTENANCE OF PERMANENT STORMWATER FACILITIES

- (a) The Administrator shall require the provision of long-term responsibility for and maintenance of stormwater management facilities and other techniques specified to manage the quality and quantity of runoff. Such requirements shall be set forth in an instrument recorded in the local land records prior to issuance of any permits for construction:
 - (1) Be submitted to the Administrator for review and approval prior to the approval of the stormwater management plan;
 - (2) Be stated to run with the land;
 - (3) Provide for all necessary access to the property for purposes of maintenance and regulatory inspections;
 - (4) Provide for annual inspections and maintenance; and the submission of inspection and maintenance reports, prepared by or under the supervision of a Professional Engineer registered in Virginia, and sealed by that professional, to the Administrator once every three (3) years; and
 - (5) Be enforceable by all appropriate governmental parties.
- (b) At the discretion of the Administrator, such recorded instruments need not be required for stormwater management facilities designed to treat stormwater runoff primarily from an individual residential lot on which they are located, provided it is demonstrated to the satisfaction of the Administrator that future maintenance of

such facilities will be addressed through an enforceable mechanism at the discretion of the Administrator.

- (c) If a recorded instrument is not required pursuant to Subsection 4.1-10 (b), the Administrator shall develop a strategy for addressing maintenance of stormwater management facilities designed to treat stormwater runoff primarily from an individual residential lot on which they are located. Such a strategy may include periodic inspections, homeowner outreach and education, or other method targeted at promoting the long-term maintenance of such facilities. Such facilities shall not be subject to the requirement for an inspection to be conducted by the Administrator or any duly authorized agent of the Administrator.

Sec. 4.1-11. - MONITORING AND INSPECTIONS.

- (a) The Administrator or any duly authorized agent of the Administrator shall inspect the land disturbing activity during construction for:
 - (1) Compliance with the approved erosion and sediment control plan;
 - (2) Compliance with the approved stormwater management plan;
 - (3) Development, updating, and implementation of a pollution prevention plan; and
 - (4) Development and implementation of any additional control measures necessary to address a TMDL.
- (b) The Administrator or any duly authorized agent of the Administrator may, at reasonable times and under reasonable circumstances, enter any establishment or upon any property, public or private, for the purpose of obtaining information or conducting surveys or investigations necessary in the enforcement of the provisions of this Chapter.
- (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 Administrator 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 Virginia Code § 62.1-44.15:40, the Administrator may require every Land Disturbing Permit applicant or permittee, or any such person subject to Land Disturbing Permit requirements under this Chapter, 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 Chapter.

- (e) Post-construction inspections of stormwater management facilities required by the provisions of this Chapter shall be conducted by the Administrator or any duly authorized agent of the Administrator pursuant to the Locality's adopted and State 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 4.1-10.

Sec. 4.1-12. – HEARINGS

- (a) Any permit applicant or permittee, or person subject to article requirements, 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 before the Town Manager or his/her designee concerning such grievance, provided a petition requesting such hearing is filed with the Administrator within 30 days after notice of such action is given by the Administrator.
- (b) The hearings held under this Section shall be conducted by the Town Manager or his/her designee in accordance with local hearing procedures.

Sec. 4.1-13. - APPEALS.

Any permittee or party aggrieved by a Land Disturbing Permit or enforcement decision of the Administrator is entitled to judicial review thereof by the Hanover County Circuit Court. The circuit court shall conduct such review in accordance with the standards established in § [2.2-4027](#) of the Code of Virginia, and the decisions of the circuit court shall be subject to review by the Court of Appeals, as in other cases under this article.

Sec. 4.1-14. – ENFORCEMENT

- (a) If the Administrator determines that there is a failure to comply with the land disturbance permit conditions or determines there is an unauthorized discharge, notice shall be delivered to the permittee or person responsible for carrying out the permit conditions by any of the following: verbal warnings, inspection reports, and notices to comply. Notices to comply shall be sent by certified mail to the address specified in the permit application or by delivery at the site of the development activities to the agent or employee supervising such activities.
 - (1) The notice shall specify the measures needed to comply with the permit conditions and shall specify the time within which such measures shall be completed. Upon failure to comply within the time specified, a stop work order may be issued in accordance with Subsection (b) or the permit may be revoked by the Administrator.
 - (2) If a permittee fails to comply with a notice issued in accordance with this Section within the time specified, the Administrator may issue an order requiring the owner, permittee, person responsible for carrying out an approved plan, or the person conducting the land disturbing activities without an approved plan or

required permit to cease all land disturbing activities until the violation of the permit has ceased, or an approved plan and required permits are obtained, and specified corrective measures have been completed.

Such orders shall be issued in accordance with Chapter 5 Section 5-6(b). Such orders shall become effective upon service on the person by certified mail, return receipt requested, sent to his address specified in the land records of the locality, or by personal delivery by an agent of the Administrator. However, if the Administrator 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 Administrator may institute a proceeding for an injunction, mandamus, or other appropriate remedy in accordance with Subsection 4.1-14 (c).

- (b) In addition to any other remedy provided by this Chapter, if the Administrator or his designee determines that there is a failure to comply with the provisions of this Chapter, they may initiate such informal and/or formal administrative enforcement.
- (c) Any person violating or failing, neglecting, or refusing to obey any rule, regulation, Chapter, order, approved standard or specification, or any permit condition issued by the Administrator may be compelled in a proceeding instituted in Hanover County Circuit Court by the Town to obey same and to comply therewith by injunction, mandamus or other appropriate remedy.
- (d) Any person who violates any provision of this Chapter or who fails, neglects, or refuses to comply with any order of the Administrator, shall be subject to a civil penalty not to exceed \$32,500 for each violation within the discretion of the court. Each day of violation of each requirement shall constitute a separate offense.
 - (1) Violations for which a penalty may be imposed under this Subsection shall include but not be limited to the following:
 - (i) No state permit registration;
 - (ii) No SWPPP;
 - (iii) Incomplete SWPPP;
 - (iv) SWPPP not available for review;
 - (v) No approved erosion and sediment control plan;
 - (vi) Failure to install stormwater BMPs or erosion and sediment controls;
 - (vii) Stormwater BMPs or erosion and sediment controls improperly installed or maintained;
 - (viii) Operational deficiencies;
 - (ix) Failure to conduct required inspections;
 - (x) Incomplete, improper, or missed inspections; and

- (xi) Discharges not in compliance with the requirements of 9 VAC Section 25-880-70 of the general permit.
- (2) The Administrator may issue a summons for collection of the civil penalty and the action may be prosecuted in the Hanover County General District Court.
- (3) In imposing a civil penalty pursuant to this Subsection, the court may consider the degree of harm caused by the violation and also the economic benefit to the violator from noncompliance.
- (4) Any civil penalties assessed by a court as a result of a summons issued by the Town shall be paid into the treasury of the Town to be used for the purpose of minimizing, preventing, managing, or mitigating pollution of the waters of the locality and abating environmental pollution therein in such manner as the court may, by order, direct.
- (e) Notwithstanding any other civil or equitable remedy provided by this Section or by law, any person who willfully or negligently violates any provision of this Chapter, any order of the Administrator, any condition of a permit, or any order of a court shall, be guilty of a misdemeanor punishable by confinement in jail for not more than 12 months or a fine of not less than \$2,500 nor more than \$32,500, or both.

Sec. 4.1-15. FEES

Fees to cover costs associated with plan review, inspection, and implementation of the Town's VSMP shall be imposed by the Town pursuant to the Stormwater Fee Schedule. State program fees are imposed by the state pursuant to the regulations.

All incomplete payments will be deemed as non-payments. The Town shall provide notification to the state of any incomplete payments.

Interest may be charged for late payments at the underpayment rate set forth in § 58.1-15 of the Code of Virginia and is calculated on a monthly basis at the applicable periodic rate. A 10% late payment fee shall be charged to any delinquent (over 90 days past due) account.

The Department of Environmental Quality and the Town are entitled to all remedies available under the Code of Virginia in collecting any past due amount.

Sec. 4.1-16. PERFORMANCE BOND

Prior to issuance of any permit, the Applicant shall be required to submit a reasonable performance bond with surety, cash escrow, letter of credit, any combination thereof, or such other legal arrangement acceptable to the Administrator, to ensure that measures could be taken by the Town at the Applicant's expense should the Applicant fail, after proper notice, within the time specified to initiate or maintain appropriate actions which may be required of him by the permit conditions as a result of his land disturbing activity. If the Town takes such action upon such failure by the Applicant, the Town may collect from the Applicant for the difference should the amount of the reasonable cost of such action exceed

the amount of the security held, if any. Following the completion of the requirements of the permit conditions, such bond, cash escrow, letter of credit or other legal arrangement, or the unexpended or unobligated portion thereof, shall be refunded to the Applicant or terminated.”

THIS ORDINANCE SHALL TAKE EFFECT ON JULY 1, 2014.