

PRINCE WILLIAM COUNTY

ARTICLE IV STORMWATER MANAGEMENT CODE

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PRINCE WILLIAM COUNTY

ARTICLE IV STORMWATER MANAGEMENT CODE

PURPOSE, AUTHORITY, ADMINISTRATION AND EFFECTIVE DATE

SEC. 23.2-20.- PURPOSE AND AUTHORITY

- (a) The purpose of this Code is to ensure the general health, safety, and welfare of the citizens of Prince William County and protect the quality and quantity of state waters from the potential harm of unmanaged stormwater, including protection from a land disturbing activity causing unreasonable degradation of properties, water quality, stream channels, and other natural resources, and to establish procedures whereby stormwater requirements related to water quality and quantity shall be administered and enforced.
- (b) This Code is adopted pursuant to Article 2.3 (§ 62.1-44.15:24 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia.

SEC. 23.2-21.- ADMINISTRATION

- (a) The Director of Public Works or designee shall be responsible for the administration of the Stormwater Management Program.
- (b) Pursuant to § 62.1-44.15:27(B) of the Code of Virginia, any town lying within Prince William County may decide, but shall not be required, to become subject to this Stormwater Management Code.

SEC. 23.2-22.- EFFECTIVE DATE

This Stormwater Management Code of Prince William County, as herein presented, is hereby adopted on June 17, 2014, and becomes effective on July 1, 2014.

DEFINITIONS

SEC. 23.2-23.- DEFINITIONS

The following words and terms used in the Stormwater Management Code have the following meanings unless otherwise specified herein. Where definitions differ, those incorporated herein shall have precedence.

"Administrator" means the VSMP authority including the Director of Public Works, Prince William County staff person or department responsible for administering the VSMP on behalf of the County.

"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 the Stormwater Management Code.

"Approval authority" means the State Water Control Board or its designee.

"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.

"BOCS" means the Prince William Board of County Supervisors.

"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, *Code of Virginia*, § 10.1-2100, et seq.

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

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

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

"DCSM" means the Prince William County Design and Construction Standards Manual.

"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.

"Director" means the Director of Public Works

"Fee Schedule" means the Prince William County Land Development Fee Schedule as adopted by the Prince William Board of County Supervisors.

"General permit" means the state permit titled GENERAL PERMIT FOR DISCHARGES OF STORMWATER FROM CONSTRUCTION ACTIVITIES found in Part XIV (9VAC25-880-1 et seq.) 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 23.2-24 of the Stormwater Management Code.

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

"Locality" means the Prince William County or the County.

"Minor modification" means an amendment to an existing general permit before its expiration not requiring extensive review and evaluation including, but not limited to, changes in EPA promulgated test protocols, increasing monitoring frequency requirements, changes in sampling locations, and changes to compliance dates within the overall compliance schedules. A minor general permit modification or amendment does not substantially alter general permit conditions, substantially increase or decrease the amount of surface water impacts, increase the size of the operation, or reduce the capacity of the facility to protect human health or the environment.

"Operator" means the owner or operator of any facility or activity subject to regulation under the Stormwater Management Code.

"Permit" or *"VSMP Authority Permit"* or "Stormwater Permit" means an approval to conduct a land-disturbing activity issued by the director for the initiation of a land-disturbing activity, in accordance with the Stormwater Management Code, 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 state and/or County 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, 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. Areas channelward of mean low water in tidal Virginia shall not be considered part of a site.

"*State*" means the Commonwealth of Virginia.

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

"*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 Regulations.

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

"*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(s) containing material describing methods for complying with the requirements of Section 23.2-32 of the Stormwater Management Code.

"*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 the Stormwater Management Code. 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 25-2 of Prince William County Subdivision Ordinance.

"*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 Stormwater Management Act" or "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 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 shall include such items as local ordinances, 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 the director of Public Works or any duly authorized agent of the director approved by the State Water Control Board after September 13, 2011, to operate a Virginia Stormwater Management Program.

EXEMPTIONS

SEC. 23.2-24.- LAND DISTURBANCE ACTIVITIES EXEMPT FROM STORMWATER PERMIT REQUIREMENTS

- (a) Except as provided herein, no person may engage in any land-disturbing activity until a consolidated stormwater and land disturbance permit has been issued by the director in accordance with the provisions of this Code.
- (b) A Chesapeake Bay Preservation Act Land-Disturbing Activity (land disturbance equal or greater than 2,500 square feet and less than one acre) shall be subject to an erosion and sediment control plan consistent with the requirements of the Erosion and Sediment Control Ordinance, a stormwater management plan as outlined under Sec. 23.2-32, the technical criteria and administrative requirements for land-disturbing activities outlined in Sec. 23.2-36, and the requirements for control measures long-term maintenance outlined under Sec. 23.2-40 and Sec. 23.2-41. Land disturbance activities under this category do not require completion of a registration statement or require coverage under General Permit.
- (c) Notwithstanding any other provisions of this Code, 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 Water Control 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 Chapter 11 (§ 10.1-1100 et seq.) of Title 10.1 of the Code of Virginia or is converted to bona fide agricultural or improved pasture use as described in Subsection B of § 10.1-1163 of Article 9 of Chapter 11 of Title 10.1 of the Code of Virginia;

- (3) Single-family residences separately built and disturbing less than one acre 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 one acre of land area except for land-disturbing activity exceeding an area of 2,500 square feet in all areas of the jurisdictions designated as subject to the Chesapeake Bay Preservation Area Designation and Management Regulations adopted pursuant to the provisions of the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq.), or activities that are part of a larger common plan of development or sale that is one acre or greater of disturbance; however, “Board of County Supervisors” may reduce this exception to a smaller area of disturbed land or qualify the conditions under which this exception shall apply;
- (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, existing stormwater management and best management practices facilities, 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;
- (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 director shall be advised of the disturbance within seven days of commencing the land-disturbing activity and compliance with the applicable administrative requirements of Section 23.2-30 (a) is required within 30 days of commencing the land-disturbing activity; and
- (9) Minor land disturbing activities associated with individual home gardening/landscaping including maintenance that disturb less than one acre.

GENERAL ADMINISTRATIVE POLICY

SEC. 23.2-25.– RIGHT OF ENTRY

To the extent permitted by law, the director or any duly authorized agent of the director, may, at reasonable times and under reasonable circumstances, enter any establishment or upon any property, public or private, for the purpose of obtaining information or conducting surveys or investigations necessary in the enforcement of the provisions of this Code and applicable regulations.

SEC. 23.2-26. – SEVERABILITY

If any word, clause, sentence, section, subsection, or other part or parts of this Code shall be held by a court of competent jurisdiction to be unconstitutional or otherwise invalid, such unconstitutionality or invalidity shall not affect any of the remaining parts of this Code, nor shall it affect any application of this Code that may be given effect without the unconstitutional or invalid parts, and to this end, all provisions of this Code are hereby declared to be severable.

SEC. 23.2-27. – INTERPRETATION WHEN MORE THAN ONE STANDARD APPLIES

Whenever more than one (1) regulation or standard applies to any activity subject to this Code, the most restrictive or stringent shall govern.

SEC. 23.2-28.- APPLICABILITY OF OTHER LAWS AND CONFLICTING PROVISION POLICY

A. Nothing in this chapter shall be construed as limiting the applicability of other laws and regulations, including, but not limited to, the CWA, Virginia Stormwater Management Act, Virginia Erosion and Sediment Control Law, and the Chesapeake Bay Preservation Act, except as provided in § 62.1-44.15:27 K of the Code of Virginia, and all applicable regulations adopted in accordance with those laws, or the rights of other federal agencies, state agencies, or local governments to impose more stringent technical criteria or other requirements as allowed by law.

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

C. Whenever any provisions of this Code impose a greater requirement or a higher standard than is required in a state or federal regulation, or other County ordinances or regulations, the provisions of this Code shall govern.

D. Whenever any provision of any state or federal statute or other County ordinance or regulation imposes a greater requirement or a higher standard than is required by this Code, the provision of such state or federal statute-or other County ordinance or regulation shall govern.

STORMWATER MANAGEMENT PROGRAM

SEC. 23.2-29. - STORMWATER MANAGEMENT PROGRAM ESTABLISHED

Pursuant to § 62.1-44.15:27 of the Code of Virginia, Prince William County 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 Water Control Board for the purposes set out in Section 23.2-20 of this Code. The BOCS hereby designates the Director of Public Works or designee as the Administrator of the Virginia stormwater management program.

SEC. 23.2-30.- STORMWATER PERMIT

Stormwater Permit requirement applies to all regulated land disturbing activities unless exempt pursuant to Section 23.2-24 of this Code.

- (a) No person shall engage in any land-disturbing activity until a consolidated Stormwater and Land Disturbance Permit has been issued with the provisions of this Code.
- (b) No Stormwater permit shall be issued by the director, until the following items have been submitted to the County and approved by the director as prescribed herein:
 - (1) A permit application that includes a general permit registration statement, if such statement is required;
 - (2) Submission of registration statement shall not 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;
 - (3) An erosion and sediment control plan approved in accordance with Section 750.00 of the Prince William County Design and Construction Standards Manual and this Code; and
 - (4) An approved stormwater management plan that meets the requirements of Section 722.02 of the DCSM or for the construction of a single family residence an executed agreement in lieu of a stormwater management plan.
- (c) No Stormwater permit shall be issued until the evidence of general permit coverage is provided.
- (d) No State or local permits shall be issued for land disturbing activities until the fees required to be paid pursuant to Section 23.2-48, are received, and performance bond required pursuant to Section 23.2-54 of this Code has been submitted.
- (e) No Stormwater 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 general permit coverage/individual permit has been issued or exempt in accordance with Section 23.2-24 of this Code by the director.

SEC. 23.2-31.- STORMWATER POLLUTION PREVENTION PLAN

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

B. An erosion and sediment control plan consistent with the requirements of Section 752.00 of the DCSM, and Virginia Erosion and Sediment Control Law and regulations must be designed and implemented during construction activities. Prior to land disturbance, this plan must be approved by the director in accordance with the Virginia Erosion and Sediment Control Law and attendant regulations, DCSM, and Administrative Procedures Manual.

C. A stormwater management plan consistent with the requirements of Section 722.02 of the DCSM and Administrative Procedures Manual must be designed and implemented during construction activities. Prior to land disturbance, this plan must be approved by the director.

D. A pollution prevention plan that identifies potential sources of pollutants that may reasonably be expected to affect the quality of stormwater discharges from the construction site and describe control measures that will be used to minimize pollutants in stormwater discharges from the construction site pursuant to Stormwater Management Code and Section 750.06 of the DCSM must be developed before land disturbance commences. Prior to land disturbance, this plan must be approved by the director.

E. In addition to the requirements of subsections A through D of this section, if a specific WLA for a pollutant has been established in a TMDL and is assigned to stormwater discharges from a construction activity, additional control measures must be identified and implemented by the operator so that discharges are consistent with the assumptions and requirements of the WLA in a State Water Control Board-approved TMDL.

F. The stormwater pollution prevention plan must address the following requirements, to the extent otherwise required by state law or regulations and any applicable requirements of a state permit:

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

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

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

4. Minimize the disturbance of steep slopes;

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

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

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

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

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

G. The SWPPP shall be amended whenever there is a change in design, construction, operation, or maintenance that has a significant effect on the discharge of pollutants to state waters and that has not been previously addressed in the SWPPP. The SWPPP must be maintained 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.

SEC. 23.2-32.- STORMWATER MANAGEMENT PLAN

A stormwater management plan shall be developed consistent with the applicable requirements of Section 722.02 of the DCSM and APM, and submitted to the director for review and approval. The stormwater management plan shall be implemented as approved or modified in accordance with the Section 722.02(A) of the DCSM and APM.

SEC. 23.2-33.- POLLUTION PREVENTION PLAN

A Pollution Prevention Plan 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 consistent with requirements of Section 750.06 of the DCSM and the APM.

SEC. 23.2-34.- REVIEW OF STORMWATER MANAGEMENT PLAN

The director or any duly authorized agent of the director shall review stormwater management plans and shall approve or disapprove a stormwater management plan according to the requirements specified in Section 722.03 of the DCSM, and Administrative Procedures Manual.

SEC. 23.2-35.- CONSTRUCTION RECORD DRAWING (AS-BUILT PLAN)

A construction record drawing for permanent stormwater management facilities shall be prepared and submitted to the director consistent with applicable requirements of Section 722.04 of the DCSM. 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 and specifications.

TECHNICAL CRITERIA FOR REGULATED LAND DISTURBING ACTIVITIES

SEC. 23.2-36.- APPLICABILITY

A) To protect the quality and quantity of state water from the potential harm of unmanaged stormwater runoff resulting from land-disturbing activities, the Prince William County hereby adopts the technical criteria for regulated land-disturbing activities set forth in Section 700.00 of the DCSM effective July 1, 2014, as amended, which shall apply to all land-disturbing activities regulated pursuant to this Code, except as expressly set forth in Section 23.2-37 of this Code.

B. Land-disturbing activities that obtain an initial state permit on or after July 1, 2014 shall be conducted in accordance with the technical criteria of Section 700.00 of the DCSM (effective July 1, 2014), except as provided for in Sec. 23.2-37 of this Code. Land-disturbing activities conducted in accordance with Section 700.00 of the DCSM (effective July 1, 2014), technical criteria shall remain subject to Section 700.00 of the DCSM (effective July 1, 2014), technical criteria for two additional state permit cycles. After such time, portions of the project not under construction shall become subject to any new technical criteria adopted by the DEQ.

SEC. 23.2-37.- GRANDFATHERING

A. Any land-disturbing activity shall be considered grandfathered by the VSMP authority and shall be subject to the technical criteria of Sec. 23.2-39 of this Code provided:

1. A proffered or conditional zoning plan, zoning with a plan of development, preliminary or final subdivision plat, preliminary or final site plan, or any document determined by the County to be equivalent thereto (i) was approved by the locality prior to July 1, 2012, (ii) provided a layout as defined in Sec. 23.2-23, (iii) will comply with the technical criteria of Sec. 23.2-39 of this Code, and (iv) has not been subsequently modified or amended in a manner resulting in an increase in the amount of phosphorus leaving each point of discharge, and such that there is no increase in the volume or rate of runoff;
2. A state permit has not been issued prior to July 1, 2014; and
3. Land disturbance did not commence prior to July 1, 2014.

B. Locality, state, and federal projects shall be considered grandfathered by the VSMP authority and shall be subject to the technical criteria of Sec. 23.2-39 of this Code provided:

1. There has been an obligation of locality, state, or federal funding, in whole or in part, prior to July 1, 2012, or the department has approved a stormwater management plan prior to July 1, 2012.
2. A state permit has not been issued prior to July 1, 2014; and
3. Land disturbance did not commence prior to July 1, 2014.

C. Land disturbing activities grandfathered under subsections A and B of this section shall remain subject to the technical criteria of Sec. 23.2-39 of this Code for one additional state permit cycle. After such time, portions of the project not under construction shall become subject to any new technical criteria adopted by the board.

D. 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 criteria of Sec. 23.2-39.

E. Land-disturbing activities that obtain an initial state permit or commence land disturbance prior to July 1, 2014 shall be conducted in accordance with the technical criteria of Sec. 23.2-39 of this Code. Such projects shall remain subject to the technical criteria of Sec. 23.2-39 for two additional state permit cycles. After such time, portions of the project not under construction shall become subject to any new technical criteria adopted by the DEQ.

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

SEC. 23.2-38.- EXCEPTIONS TO THE TECHNICAL REQUIREMENTS

The director may grant exceptions to the technical requirements of Section 23.2-36 or Section 23.2-39 of the Regulations pursuant to Section 720.04 and 720.05 of the DCSM.

**TECHNICAL CRITERIA FOR REGULATED LAND DISTURBING
ACTIVITIES FOR GRANDFATHERED PROJECTS**

**SEC. 23.2-39.- TECHNICAL CRITERIA FOR REGULATED LAND
DISTURBING ACTIVITIES FOR GRANDFATHERED PROJECTS AND
PROJECTS SUBJECT TO THE PROVISIONS OF 23.2-37 ARE FOUND IN
SECTION 700 OF THE COUNTY'S DESIGN AND CONSTRUCTION
STANDARDS MANUAL IN EFFECT AS OF JUNE 30, 2014.**

**LONG-TERM MAINTENANCE OF PERMANENT STORMWATER
MANAGEMENT (SWM) AND BEST MANAGEMENT PRACTICE (BMP)
FACILITIES**

**SEC. 23.2-40.- LONG-TERM MAINTENANCE OF STORMWATER
MANAGEMENT AND BEST MANAGEMENT PRACTICE FACILITIES THAT
QUALIFY FOR COUNTY MAINTENANCE ARE DETAILED IN SECTION
720.10 OF THE DCSM**

**SEC. 23.2-41.- MAINTENANCE AGREEMENT FOR PRIVATELY
MAINTAINED STORMWATER MANAGEMENT (SWM) AND BEST
MANAGEMENT PRACTICE (BMP) FACILITIES**

- (a) Provision of long-term responsibility for and maintenance of stormwater management facilities and other techniques specified to manage the quality and quantity of runoff shall be required. Such requirements shall be set forth in a stormwater maintenance agreement recorded in the Prince William County land records prior to obtaining any land disturbance related permits. No modifications to this agreement can be made without the approval of the Department of Public Works and the property owner. The stormwater maintenance agreement shall at a minimum:
- (1) Be submitted to the director for review and approval prior to the approval of the stormwater management plan;
 - (2) Be stated to run with the land;
 - (3) Provide for all necessary access to the property for purposes of maintenance and regulatory inspections;
 - (4) Provide for inspections and maintenance and the submission of inspection and maintenance reports to the County by June 30th of each year. Details related to the inspection are found in the Virginia Stormwater Management Handbook and DCSM;
 - (5) Provide inspection reports certified by a professional engineer licensed in Virginia as per the stormwater management and best management practices facilities maintenance agreement;

- (6) Provision for the County to perform follow-up inspections as necessary;
 - (7) Provision for additional maintenance required by the Department of Public Works is completed within thirty (30) days of notification;
 - (8) Be enforceable by all appropriate governmental parties;
 - (9) Ensure that measures could be taken by the County to maintain the stormwater management/best management practice facilities or perform inspections at the owner's expense should the owner fail to maintain the facilities in good working order in accordance with the maintenance specifications in the agreement or perform the periodic inspections required by the agreement;
 - (10) Provide that in the event the County, pursuant to the agreement, performs work of any nature or expends any funds in performance of said work, the owner will reimburse the County for all costs incurred by the County; and
 - (11) Be in the format (template) provided as Exhibit 2 in the DCSM.
- (b) At the discretion of the director, such recorded instruments may not be required for stormwater management facilities designed to treat stormwater runoff primarily from an individual residential lot not part of a larger common plan of development on which they are located, provided it is demonstrated to the satisfaction of the director that future maintenance of such facilities will be addressed through an enforceable mechanism at the discretion of the director.
 - (c) In such situation, a strategy/mechanism 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 director or any duly authorized agent of the director.

MONITORING AND INSPECTIONS

SEC. 23.2-42.- MONITORING AND INSPECTIONS

- (a) The director or any duly authorized agent of the director shall inspect the land-disturbing activity during construction for:
 - (1) Compliance with the approved erosion and sediment control plan;
 - (2) Compliance with the approved stormwater management plan;
 - (3) Development, updating, and implementation of a pollution prevention plan; and

- (4) Development and implementation of any additional control measures necessary to address a TMDL.
- (b) The director “or any duly authorized agent of the director” may, at reasonable times and under reasonable circumstances, enter any establishment or upon any property, public or private, for the purpose of obtaining information or conducting surveys or investigations necessary in the enforcement of the provisions of this Code.
- (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 or any duly authorized agent of 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 permit applicant or permittee, or any such person subject to permit requirements under this Code, 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 Code.
- (e) Post-construction inspections of stormwater management facilities required by the provisions of this Code shall be conducted by the director “or any duly authorized agent of the director” pursuant to the County’s adopted and State Water Control Board approved inspection program, except as may otherwise be provided for in Section 23.2-41 of this Code. Post construction inspection of SWM facilities permitted after July 1, 2014 shall be inspected at a minimum, once every five (5) years.

HEARINGS AND APPEALS

SEC. 23.2-43.– HEARINGS

- (a) Any permit applicant or permittee, or person subject to Code requirements, aggrieved by any action of the County taken without a formal hearing, or by inaction of the County, may demand in writing a formal hearing on such action or inaction, such hearing to be conducted by the County Executive or designee, 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 County Executive or designee at a time and place to be determined by the County Executive or designee.
- (c) A verbatim record of the proceedings of such hearings shall be taken and filed with the County Executive or designee. Depositions may be taken and read as in actions at law.

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

SEC. 23.2-44.- APPEALS

The decision of the County Executive or designee following a hearing conducted pursuant to Sec. 23.2-43 is final. If the County Executive or designee disapproves any plan submitted based on the requirements of this Code, and the applicant of such plan contends that such disapprovals were not properly based on applicable state and local ordinances and policies, he may appeal to the Circuit Court having jurisdiction over Prince William County. Such appeal must be filed with the Circuit Court within sixty (60) days of the written disapproval of the County Executive or designee.

ENFORCEMENT

SEC. 23.2-45.- VIOLATIONS

- (a) If the director determines that there is a failure to comply with the stormwater permit/Land Disturbance 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 in accordance with § 62.1-44.15:25(6) and § 62.1-44.15:48(D)(2) of the Code of Virginia, and/or notices to comply in accordance with § 62.1-44.15:37 of the Code of Virginia. 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.
- (1) The notice shall specify the measures needed to comply with the permit conditions and shall specify reasonable 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 (2) or the permit may be revoked by the director.
- (2) If a permittee fails to comply with a notice issued in accordance with this Section within the time specified, the director may issue a stop work 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 become effective upon service as stated above. However, if the director finds that any such violation is grossly affecting or presents an imminent and substantial danger of causing harmful erosion of lands or sediment deposition in waters within the watersheds of the Commonwealth or otherwise substantially impacting water quality, it may issue, without advance notice or hearing, an emergency order directing such person to cease immediately all land-disturbing activities on the site and shall provide an opportunity for a hearing, after reasonable notice as to the time and place thereof, to such person, to affirm, modify, amend, or cancel such emergency order. If a person who has been issued an order is not complying with the terms thereof, the director may institute a proceeding for an injunction, mandamus, or other appropriate remedy in accordance with Subsection (c) below.

- (b) In addition to any other remedy provided by this Code, if the director or his designee determines that there is a failure to comply with the provisions of this Code, they may initiate such informal and/or formal administrative enforcement procedures in a manner that is consistent with subsection (c) below.
- (c) Any person violating or failing, neglecting, or refusing to obey any rule, regulation, ordinance, Code, order, approved standard or specification, or any permit condition issued by the director may be compelled in a proceeding instituted in the Circuit Court having jurisdiction in Prince William County by the Locality to obey same and to comply therewith by injunction, mandamus or other appropriate remedy including but not limited to a civil and criminal penalties.

SEC. 23.2-46.- CIVIL PENALTY

Any person who violates any provision of this Code or who fails, neglects, or refuses to comply with any order of the director or the 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.

- (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 Section 9VAC25-880-70 of the general permit.

The potential range of civil penalties associated with some of the violations is provided in a table format at the end of Stormwater Management Code section.

- (2) The director may issue a summons for collection of the civil penalty and the action may be prosecuted in the Prince William County Circuit 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 Locality shall be paid into the treasury of **Prince William County** 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.

SEC. 23.2-47.- CRIMINAL PENALTY

- (a) 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 Code, any order of the director, any condition of a permit, or any order of a court shall, be guilty of a misdemeanor punishable by confinement in jail for not more than 12 months or a fine of not less than \$2,500 nor more than \$32,500, or both.
- (b) Any person who knowingly violates any provision of this Code, any regulation or order of the State Water Control Board, order of the VSMP authority or the Department, ordinance, of any locality approved as a VSMP authority, any condition of a permit or state permit, or any order of a court issued 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.

- (c) Any person who knowingly violates any provision of this Code, 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.

FEES

SEC. 23.2-48.- FEES ASSOCIATED WITH IMPLEMENTATION OF STORMWATER MANAGEMENT PROGRAM

Fees to cover costs associated with implementation of a VSMP related to land disturbing activities and issuance of general permit coverage and County Stormwater permits shall be imposed in accordance with the Development Fee Schedule as adopted by the BOCS. When a site or sites has been purchased for development within a previously permitted common plan of development or sale, the Applicant shall be subject to fees in accordance with the disturbed acreage of their site or sites according to the Development Fee Schedule as adopted by the BOCS. Payment of the State's portion of the permit fee shall not 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.

SEC. 23.2-49.- FEES FOR MODIFICATION OR TRANSFER OF PERMIT

Fees for the modification or transfer of registration statements from the general permit issued by the State Water Control Board shall be imposed in accordance with the Development Fee Schedule. If the general permit modifications result in changes to stormwater management plans that require additional review by Prince William County, such reviews shall be subject to the fees set out in the Development Fee Schedule. The fee assessed shall be based on the total disturbed acreage of the site. In addition to the general permit modification fee, modifications resulting in an increase in total disturbed acreage shall pay the difference in the initial permit fee paid and the permit fee that would have applied for the total disturbed acreage in the Development Fee Schedule

SEC. 23.2-50.- FEES FOR PERMIT MAINTENANCE

Annual permit maintenance shall be imposed in accordance with the Development Fee Schedule, including fees imposed on expired permits that have been administratively

continued. With respect to the general permit, these fees shall apply until the permit coverage is terminated.

General permit coverage maintenance fees shall be paid annually to Prince William County, by the anniversary date of general permit coverage. No permit will be reissued or automatically continued without payment of the required fee. General permit coverage maintenance fees shall be applied until a Notice of Termination is effective.

SEC. 23.2-51.- APPLICABILITY

The fees set forth in FEES Sections above, shall apply to:

- (1) All persons seeking coverage under the general permit.
- (2) All permittees who request modifications to or transfers of their existing registration statement for coverage under a general permit.
- (3) Persons whose coverage under the general permit has been revoked shall apply to the Department for an Individual Permit for Discharges of Stormwater from Construction Activities.
- (4) Permit and permit coverage maintenance fees outlined under Section 23.2-50 may apply to each general permit holder.

SEC. 23.2-52.- EXEMPTIONS

No general permit application fees will be assessed to:

- (1) Permittees who request minor modifications to general permits as defined in Section 23.2-23 of this Code. Permit modifications at the request of the permittee resulting in changes to stormwater management plans that require additional review by the director shall not be exempt pursuant to this Section.
- (2) Permittees whose general permits are modified or amended at the initiative of the Department, excluding errors in the registration statement identified by the director or errors related to the acreage of the site.

SEC. 23.2-53.- INCOMPLETE PAYMENTS

All incomplete payments will be deemed as nonpayments, and the applicant shall be notified 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. Prince William County shall be entitled to all remedies available under the Code of Virginia in collecting any past due amount.

PERFORMANCE BOND

SEC. 23.2-54.- 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 County attorney, to ensure that measures could be taken by Prince William County at the Applicant's expense should he fail, after proper notice, within the time specified to initiate or maintain appropriate actions which may be required of him by the permit conditions as a result of his land disturbing activity. If Prince William County takes such action upon such failure by the Applicant, the County may collect from the Applicant for the difference should the amount of the reasonable cost of such action exceed the amount of the security held, if any. Within 60 days of the completion of the requirements of the permit conditions, 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. The performance bonding shall be consistent with the BONDING POLICY set forth under Section 130.00 of the DCSM.