

§4.15.8 Existing structures in floodplain areas

**F. Recreational vehicles**

All recreational vehicles shall be prohibited within any special flood hazard area. No special exceptions or variances will be granted.

**G. Subdivisions**

For Subdivision standards, see Chapter 86, Subdivision Ordinance.

**§4.15.8. Existing structures in floodplain areas**

A structure, including accessory structures, or use of a structure or premises which lawfully existed before the enactment of these provisions, but which is not in conformity with these provisions, may be continued subject to the following conditions:

- A. Existing structures in the floodway shall not be expanded or enlarged unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practices that the proposed expansion would not result in any increase in the base flood elevation.
- B. Any modification, alteration, repair, reconstruction, or improvement of any kind to a structure and/or use located in any floodplain areas to an extent or amount of less than 49 percent of its market value shall conform to the Virginia USBC and the appropriate provisions of these regulations.
- C. The modification, alteration, repair, reconstruction, or improvement of any kind to a structure and/or use, regardless of its location in a floodplain area to an extent or amount of 49 percent or more of its market value shall be undertaken only in full compliance with these regulations and shall require the entire structure to conform to the Virginia USBC.

**§4.15.9. Variances**

See provisions of §6.17 for variances.

**§4.16. EROSION AND STORMWATER MANAGEMENT AND STORM DRAINAGE FACILITIES**

**§4.16.1. Purpose**

- A. The purpose of §4.16 is to define the erosion and stormwater management and storm drainage facilities which must be provided by landowners to control rainfall runoff from and across their property in a manner not detrimental to other inhabitants of the city and to preserve, where possible, presently existing natural creek channels. It is the further purpose of §4.16 to minimize the adverse effects of stormwater runoff on downstream drainageways within the city.
- B. Article 2.3 (§62.1-44.15:27) of Chapter 3.1 of Title 62.1 of the Code of Virginia establishes the requirement for localities to establish an erosion and stormwater management program. §4.16 is adopted pursuant to Chapter 3.1 of Title 62.1 of the Code of Virginia (§62.1-44.15:25 and §62.1-44.15:27 et seq.).

**§4.16.2. Performance standards for facilities**

Stormwater BMPs, on-site detention facilities, and on-site drainage facilities shall be designed and maintained in such a manner as to minimize economic and environmental costs to the city and its inhabitants in accordance with §4.16.7.

### §4.16.3. Performance requirements

Performance requirements for stormwater BMPs, on-site detention facilities, and on-site drainage facilities shall be as specified in §4.16.8.

### §4.16.4. Design, construction, inspection and maintenance requirements

Design, construction, inspection and maintenance requirements shall be as defined in the city storm drainage facility specifications as they may be hereafter promulgated by the city engineer and approved by the city council from time to time.

### §4.16.5. Usage, improvement and preservation of creeks and channels

- A. Natural creeks and drainage channels may be used where available to route stormwater runoff from the city.
- B. Natural drainage systems will be improved where necessary in accordance with 9VAC25-875-600 of the Regulations. To the maximum degree possible, these improvements shall be made in such a manner as to preserve, enhance or restore the vegetation, including trees, along the creek line so that the aesthetic, environmental and ecological values of the vegetation are not lost to the community.
- C. Land disturbances within resource protection areas or resource management areas may require a water quality impact assessment in accordance with §4.18.8.
- D. Land disturbances shall comply with §4.5 and §4.18.

### §4.16.6. Landowner's duties and responsibilities

#### A. Erosion and stormwater management permit requirement; exemptions

- 1. Except as provided herein, no person may engage in any land-disturbing activity until a VESMP authority permit has been issued in accordance with the provisions of §4.16. A land-disturbing activity shall be subject to:
  - (a) An erosion and sediment control plan as outlined in §4.16.6.B;
  - (b) A stormwater management plan as outlined under §4.16.6.C;
  - (c) A Stormwater Pollution Prevention Plan as outlined in §4.16.6.D;
  - (d) A Pollution Prevention Plan as outlined in §4.16.6.E;
  - (e) The technical criteria and administrative requirements for land-disturbing activities outlined in §4.16.7;
  - (f) Payment of all fees as outlined in §4.16.7.G;
  - (g) Payment of all bonds as outlined in §4.16.7.H; and
  - (h) The requirements for long-term maintenance of control measures outlined under §4.16.8.K.
- 2. In addition to the provisions in §4.16.6.A.1, a land-disturbing activity that disturbs one (1) acre or greater or is part of a common plan of development or sale that disturbs one acre or greater shall also be subject to:
  - (a) A VPDES Construction General Permit Registration Statement;

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- (b) Documentation of an individual VPDES permit authorizing discharge of construction stormwater or coverage under the VPDES General Permit for Discharges of Stormwater from Construction Activities.
- 3. A land-disturbing activity that disturbs 2,500 sq. ft. or greater and less than one acre for a single-family detached residential structure, including additions or modifications to existing single-family detached residential structures, and is not part of a common plan or development or sale that disturbs one acre or greater, shall be subject to:
  - (a) An erosion and sediment control plan as outlined in §4.16.6.B;
  - (b) A stormwater management plan, as outlined under §4.16.6.C;
  - (c) The technical criteria and administrative requirements for land-disturbing activities outlined in §4.16.7;
  - (d) Payment of all fees as outlined in §4.16.7.G;
  - (e) Payment of all bonds as outlined in §4.16.7.H; and
  - (f) The requirements for long-term maintenance of control measures outlined under §4.16.8.K.
- 4. Land disturbance associated with routine maintenance. Routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original construction of a project shall be subject to:
  - (a) An erosion and sediment control plan as outlined in §4.16.6.B;
  - (b) Payment of all fees as outlined in §4.16.7.G; and
  - (c) Payment of all bonds as outlined in §4.16.7.H.

The paving of an existing road with a compacted or impervious surface and re-establishment of existing associated ditches and shoulders shall be deemed routine maintenance if performed in accordance with this.
- 5. Land disturbance associated with a state or federal reclamation program. Activities under a state or federal reclamation program to return an abandoned property to an agricultural or open land use shall be subject to:
  - (a) An erosion and sediment control plan as outlined in §4.16.6.B;
  - (b) Payment of all fees as outlined in §4.16.7.G; and
  - (c) Payment of all bonds as outlined in §4.16.7.H.
- 6. 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 VESMP administrator shall be advised of the disturbance within seven days of commencing the land-disturbing activity and compliance with the administrative requirements of §4.16.6 is required within 30 days of commencing the land-disturbing activity.

**B. Erosion and sediment control plan; contents of plan**

- 1. An erosion and sediment control plan, which is a component of the erosion and stormwater management plan, shall be filed for a development and the buildings

constructed within, regardless of the phasing of construction. The erosion and sediment control plan shall contain all major conservation decisions to ensure that the entire unit or units of land will be so treated to achieve the conservation objectives in 9VAC25-875-560. The erosion and sediment control plan may include:

- (a) Appropriate maps;
  - (b) An appropriate soil and water plan inventory and management information with needed interpretations; and
  - (c) A record of decisions contributing to conservation treatment.
2. The person responsible for carrying out the plan shall provide the name of an individual holding a certificate who will be in charge of and responsible for carrying out the land-disturbing activity prior to issuance of a VESMP authority permit.
  3. If individual lots or sections in a residential development are being developed by different property owners, all land-disturbing activities related to the building construction shall be covered by an erosion and sediment control plan.
  4. Land-disturbing activity of less than 2,500 square feet on individual lots in a residential development shall not be considered exempt from the provisions of the VESMA if the total land-disturbing activity in the development is equal to or greater than 2,500 square feet.
  5. The erosion and sediment control plan shall demonstrate location of vegetation that is to be preserved in compliance with §4.5.

**C. Stormwater management plan; contents of plan**

1. The stormwater management plan, required in §4.16.7.D, must adhere to the performance standards and performance requirements set forth in §4.16.2 and §4.16.3, respectively, and apply the stormwater management technical criteria set forth in §4.16.8.C to the entire land-disturbing activity. Individual lots in new residential, commercial, or industrial developments, including those developed under subsequent owners, shall not be considered separate land-disturbing activities. The stormwater management plan shall consider all sources of surface runoff and all sources of subsurface and groundwater flows converted to surface runoff, and include the following information:
  - (a) 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 pre-development and post-development drainage areas;
  - (b) 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;
  - (c) A narrative that includes a description of current site conditions and final site conditions;

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- (d) A general description of the proposed stormwater management facilities and the mechanism through which the facilities will be operated and maintained after construction is complete;
  - (e) Information on the proposed stormwater management facilities, including:
    - (1) The type of facilities;
    - (2) Location, including geographic coordinates;
    - (3) Acres treated;
    - (4) The surface waters or karst features, if present, into which the facility will discharge;
    - (5) Hydrologic and hydraulic computations, including runoff characteristics;
    - (6) Documentation and calculations verifying compliance with the water quality and quantity requirements of §4.16.8.C;
    - (7) A map or maps of the site that depicts the topography of the site and includes:
      - (i) All contributing drainage areas;
      - (ii) Existing drainage facilities and creeks and channels, including all 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 lots, 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.
2. Off-site compliance options such as the purchase of nutrient credits shall not be utilized in contravention of local water quality-based limitation as outlined in by §62.1-44.15:35 B of the Code of Virginia. An operator may meet the water quality and/or quantity requirements set forth in §4.16.8.C through the use of off-site compliance options, where applicable, if it has been determined that on-site mitigation is infeasible. If off-site compliance options are used, 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 §62.1-44.15:35, Code of Virginia.

3. Elements of the stormwater management plans that include activities regulated under Chapter 4 (§54.1-400 et seq.) of Title 54.1 of the Code of Virginia shall be appropriately sealed and signed by a professional registered in the state pursuant to Article 1 (§54.1-400 et seq.) of Chapter 4 of Title 54.1, Code of Virginia.
4. A construction record drawing for permanent stormwater management facilities shall be submitted to the VESMP administrator. The construction record drawing shall be appropriately sealed and signed by a professional registered in the state, certifying that the stormwater management facilities have been constructed in accordance with the approved plan.

**D. Stormwater pollution prevention plan; contents of plan**

1. The Stormwater Pollution Prevention Plan (SWPPP) shall include the content specified by Section 9VAC25-875-500 and must also comply with the requirements and general information set forth in Section 9VAC25-880-70, Section II [stormwater pollution prevention plan] of the general permit.
2. 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.
3. The SWPPP must be maintained by the operator at a central location on site. If an on site 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.

**E. Pollution prevention plan; contents of plan**

1. A pollution prevention plan, as required by 9VAC25-875-520, 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:
  - (a) 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;
  - (b) 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
  - (c) Minimize the discharge of pollutants from spills and leaks and implement chemical spill and leak prevention and response procedures.
2. The pollution prevention plan shall include effective best management practices to prohibit the following discharges:

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- (a) Wastewater from washout of concrete, unless managed by an appropriate control;
  - (b) Wastewater from washout and cleanout of stucco, paint, form release oils, curing compounds, and other construction materials;
  - (c) Fuels, oils, or other pollutants used in vehicle and equipment operation and maintenance; and
  - (d) Soaps or solvents used in vehicle and equipment washing.
3. Discharges from dewatering activities, including discharges from dewatering of trenches and excavations, are prohibited unless managed by appropriate controls.

**F. Maintenance of facilities**

Maintenance provisions shall be set forth in an instrument recorded in the local land records and facilities shall be maintained by the landowner in accordance with §4.16.8.K.

**§4.16.7. City responsibilities**

**A. City-owned drainage system**

The city shall maintain and control natural drainage systems and other facilities constructed by or dedicated to the city. In no event will the city be financially responsible for maintenance of private systems.

**B. City-owned drainage system development impacted**

The city shall specify, design and construct off-site improvements to the storm drainage system when such improvements are made necessary by changes in land use and when additional runoff caused by such changed land use cannot be adequately accommodated by facilities designed in accordance with the technical criteria specified in §4.16.8.C. Inadequacy must be sufficiently demonstrated through a request for exception, as specified in 9VAC25-875-170. Further, such off-site improvements are to be paid for by those landowners whose land alteration made the improvements necessary.

**C. Stormwater management program established; submission and approval of plans; prohibitions**

1. Pursuant to §62.1-44.15:27 of the Code of Virginia, The city of Fairfax hereby establishes a Virginia erosion and stormwater management program (VESMP) for land-disturbing activities and adopts the applicable regulations that specify standards and specifications for VESMPs promulgated by the State Board for the purposes of §4.16.1. The city of Fairfax hereby designates the Department of Public Works as the VESMP administrator.
2. No VESMP authority permit shall be issued by the VESMP administrator until the following items have been submitted to and approved by the VESMP administrator as prescribed herein:
  - (a) A permit application that includes a general permit registration statement, except for the construction of a single-family detached residential structure within or outside a common plan of development or sale, where no registration statement is required;





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2. The VESMP administrator may waive or modify any of the erosion and sediment control plan requirements that are deemed inappropriate or too restrictive for site conditions, by granting a VESMP variance. A VESMP variance may be granted under these conditions:
  - (a) At the time of plan submission, an applicant may request a VESMP variance to become part of the approved erosion and sediment control plan. The applicant shall explain the reasons for requesting VESMP variances in writing. Specific VESMP variances which are allowed by the VESMP administrator, shall be documented in the plan.
  - (b) During construction, the person responsible for implementing the approved plan may request a VESMP variance in writing from the VESMP administrator. The VESMP administrator shall respond in writing either approving or disapproving such a request. If the VESMP administrator does not approve a VESMP variance within ten (10) working days of receipt of the request, the request shall be considered to be disapproved. Following disapproval, the applicant may resubmit a VESMP variance request with additional documentation.
  - (c) The VESMP administrator shall consider VESMP variance requests judiciously, keeping in mind both the need of the applicant to maximize cost effectiveness and the need to protect offsite properties and resources from damage.
3. Approved stormwater plans may be modified as follows:
  - (a) Modifications to an approved stormwater management plan shall be allowed only after review and written approval by the VESMP administrator. The VESMP administrator shall have 60 calendar days to respond in writing either approving or disapproving such request.
  - (b) The VESMP administrator may require that an approved stormwater management plan be amended, within a time prescribed by the VESMP administrator, to address any deficiencies noted during inspection.
  - (c) The VESMP administrator shall require the submission of a construction record drawing for permanent stormwater management facilities. The VESMP administrator may elect not to require construction record drawings for stormwater management facilities for which recorded maintenance agreements are not required pursuant to §4.16.8.K.2.

**E. Hearings**

1. Any permit applicant or permittee, or person subject to requirements of §4.16 aggrieved by any action of the city of Fairfax taken without a formal hearing, or by inaction of the city of Fairfax, may demand in writing a formal hearing by the city council causing such grievance, provided a petition requesting such hearing is filed with the VESMP administrator within 30 days after notice of such action is given by the VESMP administrator.
2. The hearings held under §4.16 shall be conducted by the city council at a regular or special meeting of the city council.

3. A verbatim record of the proceedings of such hearings shall be taken and filed with the circuit court of the county. Depositions may be taken and read as in actions at law.
4. The circuit court of the county or its designated member, as the case may be, shall have power to issue subpoenas and subpoenas duces tecum, and at the request of any party shall issue such subpoenas. The failure of a witness without legal excuse to appear or to testify or to produce documents shall be acted upon by the local governing body, or its designated member, 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.

#### **F. Appeals**

1. Final decisions of the VESMP administrator under §4.16 may be appealed to the city council, provided an appeal is filed within 30 days from the date of any written decision by the VESMP administrator which adversely affects the rights, duties or privileges of any permit applicant or permittee, or person subject to ordinance requirements.
2. Final decisions of the city council under §4.16 may be subject to review by the circuit court of the county, provided an appeal is filed within 30 days from the date of the final written decision which adversely affects the rights, duties or privileges of any permit applicant or permittee, or person subject to ordinance requirements.

#### **G. Fees**

##### **1. Issuance of general permit coverage**

Fees to cover costs associated with implementation of a VESMP related to land-disturbing activities and issuance of general permit coverage and VESMP authority permits shall be imposed in accordance with the VESMP Fee Schedule. 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 VESMP Fee Schedule, as specified in §6.2.3.D.

##### **2. Modifications or transfer of permit coverage**

Fees for the modification or transfer of registration statements from the general permit issued by the State Board shall be imposed in accordance with the VESMP Fee Schedule, as specified in §6.2.3.D. If the general permit modifications result in changes to stormwater management plans that require additional review by the city of Fairfax, such reviews shall be subject to the fees established in the VESMP Fee Schedule, as specified in §6.2.3.D. 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 VESMP Fee Schedule, as provided within the permit application package.

##### **3. Annual permit maintenance fee**

The following annual permit maintenance fee shall be imposed in accordance with the VESMP Fee Schedule, as specified in §6.2.3.D, 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

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maintenance fees shall be paid annually to the city of Fairfax by April 1st of each year. 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.

**4. The fees set forth in subsections 1 through 3, above, shall apply to:**

- (a) All persons seeking coverage under the general permit.
- (b) All permittees who request modifications to or transfers of their existing registration statement for coverage under a general permit.
- (c) Persons whose coverage under the general permit has been revoked shall apply to the department for an Individual VPDES Permit for discharges associated with the construction activity.
- (d) Permit and permit coverage maintenance fees, as adopted by the city outlined under subsection 3, above, may apply to each general permit holder.

**5. No general permit application fees will be for:**

- (a) Minor modifications to general permits as defined in §4.16.6.C. Permit modifications at the request of the permittee resulting in changes to stormwater management plans that require additional review by the VESMP administrator shall not be exempt pursuant to §4.16.
- (b) General permits modified or amended at the initiative of the department, excluding errors in the registration statement identified by the VESMP administrator or errors related to the acreage of the site.

**6. Incomplete payments**

All incomplete payments will be deemed as non-payments, 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 percent late payment fee shall be charged to any delinquent (over 90 days past due) account. The city of Fairfax shall be entitled to all remedies available under the Code of Virginia in collecting any past due amount.

**H. 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 city attorney, to ensure that measures could be taken by the city of Fairfax 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 the city of Fairfax takes such action upon such failure by the applicant, the city 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.

### §4.16.8. Specifications

#### A. Purpose

§4.16.8 specifies design, construction, inspection and maintenance requirements for stormwater BMPs, on-site detention facilities, and on-site drainage facilities to be used within the city.

#### B. Applicability

The design, construction, inspection and maintenance of all stormwater BMPs, on-site detention facilities, and on-site drainage facilities, whether privately or municipally owned, are to be accomplished in accordance with applicable provisions of §4.16.8.

#### C. Design requirements

1. To protect the quality and quantity of state water from the potential harm of unmanaged stormwater runoff resulting from land-disturbing activities, the city of Fairfax hereby adopts the technical criteria for regulated land-disturbing activities set forth in Part V of 9VAC25-875 expressly to include 9VAC25-875-580 [water quality design criteria requirements]; 9VAC25-875-590 [water quality compliance]; 9VAC25-875-600 [water quantity]; 9VAC25-875-610 [offsite compliance options]; 9VAC25-875-620 [design storms and hydrologic methods]; 9VAC25-875-630 [stormwater harvesting]; 9VAC25-875-640 [linear development project]; and, 9VAC25-875-650 [stormwater management impoundment structures or facilities], which shall apply to all land-disturbing activities regulated pursuant to §4.16, except as expressly set forth in §4.16.8.C.2.
2. Any land-disturbing activity shall be considered grandfathered by the VESMP authority and shall be subject to the technical requirements Part II C of the VESMP Regulations (9VAC25-875-670 et seq.):
  - (a) 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 locality to be equivalent thereto (i) was approved by the locality prior to July 1, 2012, (ii) provided a layout as defined in 9VAC25-875-20, (iii) will comply with the Part II C technical criteria of the VESMP Regulation, 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;
  - (b) A state permit has not been issued prior to July 1, 2014; and
  - (c) Land disturbance did not commence prior to July 1, 2014.
3. Locality, state and federal projects shall be considered grandfathered by the VESMP authority and shall be subject to the technical requirements Part II C of the VESMP Regulations (9VAC25-875-670 et seq.) provided:
  - (a) 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;
  - (b) A state permit has not been issued prior to July 1, 2014; and

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- (c) Land disturbance did not commence prior to July 1, 2014.
4. Land-disturbing activities grandfathered under subsections 2 and 3, above, shall remain subject to the Part II C technical criteria (VAC25-875-670 et seq.) of the VESMP Regulation 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.
  5. 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 Part II C (VAC25-875-670 et seq.).
  6. The VESMP 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 §4.16 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 §4.16.
    - (a) Exceptions to the requirement that the land-disturbing activity obtain required VESMP authority permit shall not be given by the VESMP administrator, nor shall the VESMP 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 department.
    - (b) Exceptions to requirements for phosphorus reductions shall not be allowed unless off site options otherwise permitted pursuant to 9VAC25-875-610 have been considered and found not available.
  7. Nothing in §4.16 shall preclude an operator from constructing to a more stringent standard at their discretion.
- D. On-site drainage facilities**
1. **On-site drainage**

On-site drainage shall be adequate to prevent flooding or damage to any structure located on the site.
  2. **Gutters and inlets**

Gutters and inlets shall be adequate to limit the spread of water in the street to half a travel lane plus its gutter, or eight feet.
  3. **Primary drainage facilities**
    - (a) Where culverts, storm sewers or other enclosed conduits have been approved for use by the director of public works as storm drainage transport they shall, in addition to meeting other requirements, be adequate in the opinion of the director of public works to prevent flood damage to private or public property. Conduits used in conjunction with gutters and inlets shall be adequate to limit the system hydraulic grade line to no higher than one foot below the grade of the gutter.

- (b) Where on-site drainage facilities are proposed, the applicant shall make provision or identify for:
  - (1) Safety factors;
  - (2) Materials; and
  - (3) Cleaning, maintenance, inspection.

**4. Design storms shall be as specified:**

Usage	Design storm
Streets, gutters and inlets	10-year storm
Culverts/storm sewers	100-year storm [1]

[1] In the absence of potentially damaged private or public property the 25-year design storm shall be used as a minimum

**E. On-site detention facilities**

The design of on-site detention facilities, as may be requested or approved by the VESMP administrator, shall be as set forth in Part II B of the Regulations, 9VAC25-875-600 [water quantity], as specified in §4.16.8.C.

**F. Municipal creeks and channels**

Where primary channels or other open conduits have been approved for use by the director of public works as storm drainage transports they shall, in addition to meeting other requirements, be adequate in the opinion of the director of public works to prevent flooding outside of any floodplain area designated in this chapter. The design storm for channels to be used for conveyance shall be the 100-year storm.

**G. Municipal detention facilities**

Design criteria shall be as set forth in §4.16.8.E where applicable.

**H. Municipal drainage facility**

Design criteria shall be as set forth in §4.16.8.D where applicable.

**I. Construction requirements**

All construction shall conform to the ASTM standards, the state department of transportation road and bridge specifications, as amended, and the Virginia Uniform Statewide Building Code, as amended.

**J. Inspection requirements**

Periodic inspections shall be performed by the city to ensure that the facilities are being built in accordance with the plans and specifications.

- 1. The VESMP administrator, or any duly authorized agent of the VESMP administrator, shall inspect the land-disturbing activity during construction for:
  - (a) Compliance with the approved erosion and sediment control plan;
  - (b) Compliance with the approved stormwater management plan;
  - (c) Development, updating, and implementation of a pollution prevention plan; and
  - (d) Development and implementation of any additional control measures necessary to address a TMDL.

## §4.16.8 Specifications

2. The VESMP administrator, or any duly authorized agent of the VESMP administrator, may, at reasonable times and under reasonable circumstances, enter any establishment or any property, public or private, for the purpose of obtaining information or conducting surveys or investigations necessary in the enforcement of the provisions of §4.16.
3. In accordance with a performance bond with surety, cash escrow, letter of credit, any combination thereof, or such other legal arrangement or instrument, the VESMP 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.
4. Pursuant to §62.1-44.15:40 of the Code of Virginia, the VESMP administrator may require every VESMP authority permit applicant or permittee, or any such person subject to VESMP authority permit requirements under §4.16, 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 §4.16.
5. Post-construction inspections of stormwater management facilities required by the provisions of §4.16 shall be conducted by the VESMP administrator, or any duly authorized agent of the VESMP administrator, pursuant to the city's adopted and State Board approved inspection program, and shall occur, at minimum, at least once every five years except as may otherwise be provided for in §4.16.8.K.

**K. Long-term maintenance of permanent stormwater facilities**

1. Provisions for long-term responsibility and maintenance of stormwater management facilities and other techniques specified to manage the quality and quantity of runoff are required by the VESMP administrator provisions shall be set forth in an instrument recorded in the local land records prior to general permit termination, or earlier, as may be required by the VESMP administrator and shall at a minimum:
  - (a) Be submitted to the VESMP administrator for review and approval prior to the approval of the stormwater management plan;
  - (b) Be stated to run with the land;
  - (c) Provide for all necessary access to the property for purposes of maintenance and regulatory inspections;
  - (d) Provide for inspections and maintenance and the submission of inspection and maintenance reports to the VESMP administrator; and
  - (e) Be enforceable by all appropriate governmental parties.
2. **Natural drainage channels on private property**

Where natural drainage channels pass through a landowner's property, it shall be the responsibility of the landowner to maintain the natural channel in a manner that will not be detrimental to other inhabitants of the city. No change shall be made in the

contours of any land which affects the course, width or elevation of any floodplain or natural or other drainage channel in any manner which will obstruct, interfere with or change the drainage of such land without providing adequate drainage in connection therewith, as approved by the VESMP administrator. The bounds of the natural stream channel are to be considered as extending to the water level identified for the 100-year storm as defined in Article 9. All natural stream modifications and maintenance are to be accomplished in accordance with the city storm drainage facility specifications as they may be promulgated by the VESMP administrator and approved by the city council from time to time.

### 3. Maintenance of facilities

- (a) The landowner and his successors in title to the facilities and the site served thereby shall be responsible for the repair, replacement and other maintenance of the facility.
- (b) The landowner and his successors shall perform periodic maintenance on the facilities and such other repairs, replacements or maintenance thereon as may be required by the VESMP administrator.
- (c) The VESMP administrator, his agent or representative, may inspect the facilities from time to time to determine the necessity of repair, replacement or other maintenance thereof.
- (d) If the facilities are determined to be in need of repair, replacement or other maintenance, the VESMP administrator, his agent or representative, shall serve on the landowner a written notice describing the condition of the facilities and specifying the required repairs, replacements or other maintenance to be made to correct such deficiencies.
- (e) Any landowner aggrieved by the determination of the VESMP administrator, his agent or representative, may appeal such determination to the city in accordance with §4.16.7.F.
- (f) Upon refusal or neglect by the landowner or his successors to comply with the repairs, replacements or other maintenance required by the VESMP administrator, the city, through its agents or employees, may repair, replace or otherwise maintain such facilities.
- (g) If the city, through its agents or employees, repairs, replaces or otherwise maintains any facility after complying with the notice requirements of §4.16, the costs or expenses thereof shall be charged to and paid by the landowner and/or his successors and may be collected by the city as taxes and levies are collected.
- (h) Every charge authorized by §4.16 with which the landowner or his successors has been assessed and which remains unpaid shall constitute a lien against the property.

### §4.16.9. Enforcement

- A. If the VESMP administrator determines that there is a failure to comply with the VESMP authority 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



## §4.16.9 Enforcement

any of the following: verbal warnings and inspection reports, notices of corrective action, consent special orders, and notices to comply. Written notices shall be served by registered or certified mail to the address specified in the permit application or by delivery at the site of the development activities to the agent or employee supervising such activities.

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 §4.16.8 or the permit may be revoked by the VESMP administrator.
  2. If a permittee fails to comply with a notice issued in accordance with §4.16 within the time specified, the VESMP 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 §4.16.9. 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 city, or by personal delivery by an agent of the VESMP administrator. However, if the VESMP 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 state 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 VESMP administrator may institute a proceeding for an injunction, mandamus, or other appropriate remedy in accordance with §4.16.2).
- B.** In addition to any other remedy provided by §4.16, if the VESMP administrator determines that there is a failure to comply with the provisions of §4.16, they may initiate such informal and/or formal administrative enforcement procedures in a manner that is consistent with §4.16.9.
- C.** Any person violating or failing, neglecting, or refusing to obey any rule, regulation, ordinance, order, approved standard or specification, or any permit condition issued by the VESMP administrator may be compelled in a proceeding instituted in circuit court of the county by the city to obey same and to comply therewith by injunction, mandamus or other appropriate remedy.
- D.** Any person who violates any provision of §4.16 or who fails, neglects, or refuses to comply with any order of the VESMP 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 §4.16 shall include but not be limited to the following:
    - (a) No state permit registration;

§4.16.10 Erosion, stormwater management, and storm drainage facilities-related definitions

- (b) No SWPPP;
  - (c) Incomplete SWPPP;
  - (d) SWPPP not available for review;
  - (e) No approved erosion and sediment control plan;
  - (f) Failure to install stormwater BMPs or erosion and sediment controls;
  - (g) Stormwater BMPs or erosion and sediment controls improperly installed or maintained;
  - (h) Operational deficiencies;
  - (i) Failure to conduct required inspections;
  - (j) Incomplete, improper, or missed inspections; and
  - (k) Discharges not in compliance with the requirements of Section 9VAC25-880-70 of the general permit.
2. The VESMP administrator may issue a summons for collection of the civil penalty and the action may be prosecuted in the appropriate court.
  3. In imposing a civil penalty pursuant to §4.16, 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 city shall be paid into the treasury of the city to be used for the purpose of minimizing, preventing, managing, or mitigating pollution of the waters of the city 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 §4.16, any order of the VESMP 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.

**§4.16.10. Erosion, stormwater management, and storm drainage facilities-related definitions**

In addition to the definitions set forth in 9VAC25-875-20 of the Virginia Erosion and Stormwater Management Regulations, as amended, which are expressly adopted and incorporated herein by reference, the following words and terms used in §4.16 have the following meanings unless otherwise specified herein. Where definitions differ, those incorporated herein shall have precedence.

**APPLICANT:** Any person, including any authorized agent, submitting an application for a permit or requesting issuance of a permit under §4.16.

**DESIGN STORM:** All possible combinations of particular storm intensity-duration events occurring on the design storm curve.

**DEVELOPMENT:** All and any disturbance and the resulting landform associated with the construction of residential, commercial, industrial, institutional, recreation, transportation or utility facilities or

§4.16.10 Erosion, stormwater management, and storm drainage facilities-related definitions

structures or the clearing of land for non-agricultural or non-silviculture purposes. See definition in §9.3.1 regarding applicability other than for storm drainage facilities.

**EROSION IMPACT AREA:** An area of land not associated with current land-disturbing activity but subject to persistent soil erosion resulting in the delivery of sediment onto neighboring properties or into state waters. This definition shall not apply to any lot or parcel of land of 10,000 square feet or less used for residential purposes or to shorelines where the erosion results from wave action or other coastal processes.

**FACILITY:** A stormwater BMP, on-site detention facility, or an on-site drainage facility.

**LAND-DISTURBING ACTIVITY:** Any land change which may result in soil erosion from water or wind and the movement of sediments into state waters or onto lands in the state, including, but not limited to, clearing, grading, excavating, transporting, and filling of land, except that the term shall not include: (1) Minor land-disturbing activities such as home gardens and individual home landscaping, repairs and maintenance work; (2) Installation, maintenance or repair of any individual service connections; (3) Installation, maintenance, or repair of any underground public utility lines when such activity occurs on an existing hard surfaced road, street or sidewalk provided the land-disturbing activity is confined to the area of the road, street or sidewalk which is hard surfaced; (4) Installation, maintenance or repair of any septic tank lines or drainage fields unless included in an overall plan for land-disturbing activity relating to construction of the building to be served by the septic tank system; (5) Permitted surface or deep mining operations and projects, or oil and gas operations and projects conducted under the provisions of Title §45.2 of the Code of Virginia; (6) Repair or rebuilding of the tracks, right-of-way, bridges, communication facilities and other related structures and facilities of a railroad company; (7) 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 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 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 the Code of Virginia; (8) Disturbed land areas of less than 2,500 square feet in size; (9) Installation of fence and sign posts or telephone and electric poles and other kinds of posts or poles; (10) Shore erosion control projects on tidal waters when the projects are approved by local wetlands boards, the state marine resources commission or the United States Army Corps of Engineers; however, any associated land that is disturbed outside of this exempted area shall remain subject to the VESMA and the regulations adopted pursuant thereto; and (11) 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 City shall be advised of the disturbance within seven days of commencing the land-disturbing activity and compliance with the administrative requirements of this article are required within thirty (30) days of commencing the land-disturbing activity.

**LAYOUT:** A conceptual drawing sufficient to provide for the specified stormwater management facilities required at the time of approval.

§4.16.10 Erosion, stormwater management, and storm drainage facilities-related definitions

**MAXIMUM PEAK RUNOFF:** The largest peak runoff permitted to occur from any of the particular storms on the design storm curve.

**METERING:** The controlled release of water into the primary drainage system.

**MINOR MODIFICATION:** 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.

**MUNICIPAL DETENTION FACILITIES:** City-owned facilities located along primary drainage facilities. Creeks or channels that serve the purpose of reducing peak flow by metered release and by storage of that input flow which exceeds the metered output.

**MUNICIPAL SEPARATE STORM SEWER SYSTEM OR "MS4":** All separate storm sewers that are defined as "large" or "medium" or "small" municipal separate storm sewer systems or designated under 9VAC25-875-950.

**ON-SITE DETENTION FACILITY:** A facility located on a site which serves the purpose of collecting and detaining rainfall falling on the site for controlled release to the primary facilities as a result of land alteration.

**OPERATOR:** The owner or operator of any facility or activity subject to regulation under §4.16.

**PEAK RUNOFF:** The largest runoff intensity that will occur from a particular storm intensity-duration event on the design storm curve.

**PERMIT OR VESMP AUTHORITY PERMIT:** An approval to conduct a land-disturbing activity issued by the VESMP administrator for the initiation of a land-disturbing activity, in accordance with §4.16, and which may only be issued after evidence of general permit coverage has been provided by the Department.

**PERMITTEE:** The person to whom the VESMP Authority Permit is issued.

**PRIMARY CREEKS AND CHANNELS:** Natural creeks and open channels located on either private or public property which serve the purpose of collecting rainfall runoff from other sites and routing it from the city to the rivers. A creek or channel shall be considered a primary facility if it accommodates a runoff flow of at least 1.5 times that amount originating from the site on which it is located.

**PRIMARY DRAINAGE FACILITIES:** Culverts, gutters, enclosed channels, etc., which serve the purpose of collecting rainfall runoff from other sites and routing it to primary creeks and channels. Drainage Facilities shall be considered as primary if they accommodate a flow of at least 1.5 times that amount originating from the site on which they are located.

**REGULATIONS:** Virginia Erosion and Stormwater Management Program (VESMP) Permit Regulations, 9VAC25-875-10 et seq., as amended.

**STATE BOARD:** The State Water Control Board.

**STATE PERMIT:** 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

**§4.17.1 Illicit Discharges**

permits, the State imposes and enforces requirements pursuant to the federal Clean Water Act and regulations, the Virginia Stormwater Management Act, and the Regulations.

**STORMWATER MANAGEMENT PLAN:** A document(s) containing material describing methods for complying with the requirements of §4.16.

**STORMWATER POLLUTION PREVENTION PLAN OR SWPPP:** 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:** Division or re-division of a lot, tract or parcel of land into two or more lots or other division of land. This includes any changes in street or lot lines.

**VESMP VARIANCE:** As applied to the VESMP, a waiver or modification of the erosion and sediment control requirements found in Article 2 (9VAC25-875-540 et seq.) of Part V (9VAC25-875-470 et seq.) of the Virginia Erosion and Stormwater Management Regulations, as applied in §4.16 Virginia Stormwater Management Act or Act: Article 2.3 (§62.1-44.15:24 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia.

**VESMP ADMINISTRATOR:** The VESMP authority including the city of Fairfax staff person, department, or assigned designee responsible for administering the VESMP on behalf of the city.

**VIRGINIA EROSION AND STORMWATER MANAGEMENT ACT OR ACT:** Article 2.3 (§62.1-44.15:24 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia.

**VIRGINIA EROSION AND STORMWATER MANAGEMENT PROGRAM OR VESMP:** A program approved by the State Board after September 13, 2011, that has been established by the city of Fairfax 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 §4.16, and evaluation consistent with the requirements of §4.16 and associated regulations.

**VIRGINIA EROSION AND STORMWATER MANAGEMENT PROGRAM AUTHORITY OR VESMP AUTHORITY:** The authority approved by the State Board after September 13, 2011, to operate a Virginia Erosion and Stormwater Management Program.

## **§4.17. ILLICIT DISCHARGES**

### **§4.17.1. Illicit Discharges**

It shall be unlawful for any person to discharge to or allow the discharge to the city's municipal separate storm sewer system any substance not composed entirely of stormwater. Unlawful discharges shall include any unauthorized runoff or illicit storm sewer connections on any property in the city of Fairfax that causes or allows by storm or floodwater the pollution of any state waters. Enforcement of illicit discharges shall be in accordance with 9VAC25-875-150 C and §4.16.9.

**A.** The following activities shall be exempt from §4.17: