COMMONWEALTH of VIRGINIA

Virginia Erosion and Sediment Control Law

Virginia Erosion and Sediment Control Regulations and Certification Regulations

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VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

INDEX

EROSION AND SEDIMENT CONTROL LAW AND REGULATIONS AND EROSION AND SEDIMENT CONTROL AND STORMWATER MANAGEMENT CERTIFICATION REGULATIONS

PAGE

Erosion and Sediment Control Law,

62.1-44.15:51 Definitions 5

62.1-44.15:52 Virginia Erosion and Sediment Control Program 8

62.1-44.15:53 Certification of Local Program Personnel 10

62.1-44.15:54 Establishment of Erosion and Sediment Control Programs 10

62.1-44.15:55 Regulated Land-Disturbing Activities; Submission and Approval of Erosion and Sediment Control Plan 13

62.1-44.15:56 State and Federal Agency Projects 15

62.1-44.15:57 Approved Plan Required for Issuance of Grading, Building or Other Permits; Security for Performance 16

62.1-44.15:58 Monitoring, Reports and Inspections 17

62.1-44.15:59 Reporting 18

62.1-44.15:60 Right of Entry 18

62.1-44.15:61 Cooperation with Federal and State Agencies 19

62.1-44.15:61 Appeals 19

62.1-44.15:63 Penalties, Injunctions and Other Legal Actions 19

62.1-44.15:64 Stop Work Orders By Board; Civil Penalties 20

62.1-44.15:65 Authorization for More Stringent Regulations 21

62.1-44.15:66 No limitation on Authority of Water Control Board or Department of Mines, Minerals and Energy 22

Erosion and Sediment Control Regulations 4VAC50-30

1. Definitions 23

2. Purpose 26

3. Scope and Applicability 26

4. Minimum Standards 27

5. Variances 32

6. Maintenance and Inspections 32

7. Reporting 33

8. Developments 33

9. Criteria for Determining Status of Land-disturbing Activity 33

10. Review and Evaluation of VESCPs: Minimum Program Standards 34

11. State Agency Projects 35

Erosion and Sediment Control and Stormwater Management Certification Regulations 4VAC50-50

1. Definitions 37

2. Purpose 40

3. Applicability 40

4. Certificates of Competence 40

5. Eligibility Requirements 41

6. Classification acknowledgement for the purposes of program compliance reviews 43

7. Fees 43

8. Examination 43

9. Application..... 44

10. Discipline of Certified Personnel..... 44

The following is a unofficial copy of the Virginia Erosion and Sediment Control Law Please refer to the Code of Virginia for an official copy of the Law.

§ 62.1-44.15:51. Definitions.

As used in this article, unless the context requires a different meaning:

"Agreement in lieu of a plan" means a contract between the plan-approving authority and the owner that specifies conservation measures that must be implemented in the construction of a single-family residence; this contract may be executed by the plan-approving authority in lieu of a formal site plan.

"Applicant" means any person submitting an erosion and sediment control plan for approval or requesting the issuance of a permit, when required, authorizing land-disturbing activities to commence.

"Certified inspector" means an employee or agent of a VESCP authority who (i) holds a certificate of competence from the Board in the area of project inspection or (ii) is enrolled in the Board's training program for project inspection and successfully completes such program within one year after enrollment.

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

"Certified program administrator" means an employee or agent of a VESCP authority who (i) holds a certificate of competence from the Board in the area of program administration or (ii) is enrolled in the Board's training program for program administration and successfully completes such program within one year after enrollment.

"Department" means the Department of Environmental Quality.

"Director" means the Director of the Department of Environmental Quality.

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

"Erosion and sediment control plan" or "plan" means a document containing material for the conservation of soil and water resources of a unit or group of units of land. It may include appropriate maps, an appropriate soil and water plan inventory and management information with needed interpretations, and a record of decisions contributing to conservation treatment. The

plan shall contain all major conservation decisions to ensure that the entire unit or units of land will be so treated to achieve the conservation objectives.

"Erosion impact area" means an area of land not associated with current land-disturbing activity but subject to persistent soil erosion resulting in the delivery of sediment onto neighboring properties or into 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.

"Land-disturbing activity" means any man-made change to the land surface that may result in soil erosion from water or wind and the movement of sediments into state waters or onto lands in the Commonwealth, 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. 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 that is hard surfaced;

4. 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 pursuant to Title 45.1;

6. Tilling, planting, or harvesting of agricultural, horticultural, or forest crops, livestock feedlot operations, or as additionally set forth by the Board in regulation, 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 or is converted to bona fide agricultural or improved pasture use as described in subsection B of § 10.1-1163;

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

8. Agricultural engineering operations, including but not limited to the construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds not required to comply with the provisions of the Dam Safety Act (§ 10.1-604 et seq.), ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage, and land irrigation;

9. Disturbed land areas of less than 10,000 square feet in size or 2,500 square feet in all areas of the jurisdictions designated as subject to the Chesapeake Bay Preservation Area Designation and Management Regulations; however, the governing body of the program authority may reduce this exception to a smaller area of disturbed land or qualify the conditions under which this exception shall apply;

10. Installation of fence and sign posts or telephone and electric poles and other kinds of posts or poles;

11. Shoreline erosion control projects on tidal waters when all of the land-disturbing activities are within the regulatory authority of and approved by local wetlands boards, the 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 this article and the regulations adopted pursuant thereto; and

12. Emergency work to protect life, limb, or property, and emergency repairs; however, if the land-disturbing activity would have required an approved erosion and sediment control plan, if the activity were not an emergency, then the land area disturbed shall be shaped and stabilized in accordance with the requirements of the VESCP authority.

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

"Owner" means the owner or owners of the freehold of the premises or lesser estate therein, mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee, or other person, firm, or corporation in control of a property.

"Peak flow rate" means the maximum instantaneous flow from a given storm condition at a particular location.

"Permittee" means the person to whom the local permit authorizing land-disturbing activities is issued or the person who certifies that the approved erosion and sediment control plan will be followed.

"Person" means any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, county, city, town, or other political subdivision of the Commonwealth, governmental body, including a federal or state entity as applicable, any interstate body, or any other legal entity.

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

"Town" means an incorporated town.

"Virginia Erosion and Sediment Control Program" or "VESCP" means a program approved by the Board that has been established by a VESCP authority for the effective control of soil erosion, sediment deposition, and nonagricultural runoff associated with a land-disturbing activity to prevent the unreasonable degradation of properties, stream channels, waters, and other natural resources and shall include such items where applicable 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 its associated regulations.

"Virginia Erosion and Sediment Control Program authority" or "VESCP authority" means an authority approved by the Board to operate a Virginia Erosion and Sediment Control Program. An authority may include a state entity, including the Department; a federal entity; a district, county, city, or town; or for linear projects subject to annual standards and specifications, electric, natural gas, and telephone utility companies, interstate and intrastate natural gas pipeline companies, railroad companies, or authorities created pursuant to § 15.2-5102.

"Water quality volume" means the volume equal to the first one-half inch of runoff multiplied by the impervious surface of the land development project.

62.1-44.15:52**. Virginia erosion and sediment control program.**

A. The Board shall develop a program and adopt regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) for the effective control of soil erosion, sediment deposition, and nonagricultural runoff that shall be met in any control program to prevent the unreasonable degradation of properties, stream channels, waters, and other natural resources. Stream restoration and relocation projects that incorporate natural channel design concepts are not man-made channels and shall be exempt from any flow rate capacity and velocity requirements for natural or man-made channels as defined in any regulations promulgated pursuant to this section or § 62.1-44.15:54 or 62.1-44.15:65. Any plan approved prior to July 1, 2014, that provides for stormwater management that addresses any flow rate capacity and velocity requirements for natural or man-made channels shall satisfy the flow rate capacity and velocity requirements for natural or man-made channels if the practices are designed to (i) detain the water quality volume and to release it over 48 hours; (ii) detain and release over a 24-hour period the expected rainfall resulting from the one-year, 24-hour storm; and (iii) reduce the allowable peak flow rate resulting from the 1.5-year, two-year, and 10-year, 24-hour storms to a level that is less than or equal to the peak flow rate from the site assuming it was in a good forested condition, achieved through multiplication of the forested peak flow rate by a reduction factor that is equal to the runoff volume from the site when it was in a good forested condition divided by the runoff volume from the site in its proposed condition, and shall be exempt from any flow rate capacity and velocity requirement for natural or man-made channels as defined in regulations promulgated pursuant to § 62.1-44.15:54 or 62.1-44.15:65. For plans approved on and after July 1, 2014, the flow rate capacity and velocity requirements of this subsection shall be satisfied by compliance with water quantity requirements in the Stormwater Management Act (§ 62.1-44.15:24 et seq.) and attendant regulations, unless such land-disturbing activities are in accordance with the grandfathering provisions of the Virginia Stormwater Management Program (VSMP) Permit Regulations.

The regulations shall:

1. Be based upon relevant physical and developmental information concerning the watersheds and drainage basins of the Commonwealth, including, but not limited to, data relating to land use, soils, hydrology, geology, size of land area being disturbed, proximate water bodies and their characteristics, transportation, and public facilities and services;

2. Include such survey of lands and waters as may be deemed appropriate by the Board or required by any applicable law to identify areas, including multijurisdictional and watershed areas, with critical erosion and sediment problems; and

3. Contain conservation standards for various types of soils and land uses, which shall include criteria, techniques, and methods for the control of erosion and sediment resulting from land-disturbing activities.

B. The Board shall provide technical assistance and advice to, and conduct and supervise educational programs for VESCP authorities.

C. The Board shall adopt regulations establishing minimum standards of effectiveness of erosion and sediment control programs, and criteria and procedures for reviewing and evaluating the effectiveness of VESCPs. In developing minimum standards for program effectiveness, the Board shall consider information and standards on which the regulations promulgated pursuant to subsection A are based.

D. The Board shall approve VESCP authorities and shall periodically conduct a comprehensive program compliance review and evaluation to ensure that all VESCPs operating under the jurisdiction of this article meet minimum standards of effectiveness in controlling soil erosion, sediment deposition, and nonagricultural runoff. The Department shall develop a schedule for conducting periodic reviews and evaluations of the effectiveness of VESCPs unless otherwise directed by the Board. Such reviews where applicable shall be coordinated with those being implemented in accordance with the Stormwater Management Act (§ 62.1-44.15:24 et seq.) and associated regulations and the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq.) and associated regulations. The Department may also conduct a comprehensive or partial program compliance review and evaluation of a VESCP at a greater frequency than the standard schedule.

E. The Board shall issue certificates of competence concerning the content, application, and intent of specified subject areas of this article and accompanying regulations, including program administration, plan review, and project inspection, to personnel of program authorities and to any other persons who have completed training programs or in other ways demonstrated adequate knowledge. The Department shall administer education and training programs for specified subject areas of this article and accompanying regulations, and is authorized to charge persons attending such programs reasonable fees to cover the costs of administering the programs. Such education and training programs shall also contain expanded components to address plan review and project inspection elements of the Stormwater Management Act (§ 62.1-44.15:24 et seq.) and attendant regulations in accordance with § 62.1-44.15:30.

F. Department personnel conducting inspections pursuant to this article shall hold a certificate of competence as provided in subsection E.

§ 62.1-44.15:53. Certification of local program personnel.

A. The minimum standards of VESCP effectiveness established by the Board pursuant to subsection C of § 62.1-44.15:52 shall provide that (i) an erosion and sediment control plan shall not be approved until it is reviewed by a certified plan reviewer; (ii) inspections of land-disturbing activities shall be conducted by a certified inspector; and (iii) a VESCP shall contain a certified program administrator, a certified plan reviewer, and a certified project inspector, who may be the same person.

B. Any person who holds a certificate of competence from the Board in the area of plan review, project inspection, or program administration that was attained prior to the adoption of the mandatory certification provisions of subsection A shall be deemed to satisfy the requirements of that area of certification.

C. Professionals registered in the Commonwealth pursuant to Article 1 (§ 54.1-400 et seq.) of Chapter 4 of Title 54.1 or a professional soil scientist as defined in § 54.1-2200 shall be deemed to satisfy the certification requirements for the purposes of renewals.

§ 62.1-44.15:54. Establishment of Virginia erosion and sediment control programs.

A. Counties and cities shall adopt and administer a VESCP.

Any town lying within a county that has adopted its own VESCP may adopt its own program or shall become subject to the county program. If a town lies within the boundaries of more than one county, the town shall be considered for the purposes of this article to be wholly within the county in which the larger portion of the town lies.

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

C. Any VESCP adopted by a county, city, or town shall be approved by the Board if it establishes by ordinance requirements that are consistent with this article and associated regulations.

D. Each approved VESCP operated by a county, city, or town shall include provisions for the integration of the VESCP with Virginia stormwater management, flood insurance, flood plain management, and other programs requiring compliance prior to authorizing a land-disturbing activity in order to make the submission and approval of plans, issuance of permits, payment of

fees, and coordination of inspection and enforcement activities more convenient and efficient both for the local governments and those responsible for compliance with the programs.

E. The Board may approve a state entity, federal entity, or, for linear projects subject to annual standards and specifications, electric, natural gas, and telephone utility companies, interstate and intrastate natural gas pipeline companies, railroad companies, or authorities created pursuant to § 15.2-5102 to operate a VESCP consistent with the requirements of this article and its associated regulations and the VESCP authority's Department-approved annual standards and specifications. For these programs, enforcement shall be administered by the Department and the Board where applicable in accordance with the provisions of this article.

F. Following completion of a compliance review of a VESCP in accordance with subsection D of § 62.1-44.15:52, the Department shall provide results and compliance recommendations to the Board in the form of a corrective action agreement if deficiencies are found; otherwise, the Board may find the program compliant. If a comprehensive or partial program compliance review conducted by the Department of a VESCP indicates that the VESCP authority has not administered, enforced where authorized to do so, or conducted its VESCP in a manner that satisfies the minimum standards of effectiveness established pursuant to subsection C of § 62.1-44.15:52, the Board shall establish a schedule for the VESCP authority to come into compliance. The Board shall provide a copy of its decision to the VESCP authority that specifies the deficiencies, actions needed to be taken, and the approved compliance schedule required to attain the minimum standard of effectiveness and shall include an offer to provide technical assistance to implement the corrective action. If the VESCP authority has not implemented the necessary compliance actions identified by the Board within 30 days following receipt of the corrective action agreement, or such additional period as is granted to complete the implementation of the corrective action, then the Board shall have the authority to (i) issue a special order to any VESCP, imposing a civil penalty not to exceed $5,000 per day with the maximum amount not to exceed $20,000 per violation for noncompliance with the state program, to be paid into the state treasury and deposited in the Virginia Stormwater Management Fund established by § 62.1-44.15:29 or (ii) revoke its approval of the VESCP. The Administrative Process Act (§ 2.2-4000 et seq.) shall govern the activities and proceedings of the Board and the judicial review thereof.

In lieu of issuing a special order or revoking the program, the Board is authorized to take legal action against a VESCP to ensure compliance.

G. If the Board revokes its approval of the VESCP of a county, city, or town, and the locality is in a district, the district, upon approval of the Board, shall adopt and administer a VESCP for the locality. To carry out its program, the district shall adopt regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) consistent with this article and associated regulations. The regulations may be revised from time to time as necessary. The program and regulations shall be available for public inspection at the principal office of the district.

H. If the Board (i) revokes its approval of a VESCP of a district, or of a county, city, or town not in a district, or (ii) finds that a local program consistent with this article and associated regulations has not been adopted by a district or a county, city, or town that is required to adopt and administer a VESCP, the Board shall find the VESCP authority provisional, and have the

Department assist with the administration of the program until the Board finds the VESCP authority compliant with the requirements of this article and associated regulations. "Assisting with administration" includes but is not limited to the ability to review and comment on plans to the VESCP authority, to conduct inspections with the VESCP authority, and to conduct enforcement in accordance with this article and associated regulations.

I. If the Board revokes its approval of a state entity, federal entity, or, for linear projects subject to annual standards and specifications, electric, natural gas, and telephone utility companies, interstate and intrastate natural gas pipeline companies, railroad companies, or authorities created pursuant to § 15.2-5102, the Board shall find the VESCP authority provisional, and have the Department assist with the administration of the program until the Board finds the VESCP authority compliant with the requirements of this article and associated regulations. "Assisting with administration" includes the ability to review and comment on plans to the VESCP authority and to conduct inspections with the VESCP authority in accordance with this article and associated regulations.

J. Any VESCP authority that administers an erosion and sediment control program may charge applicants a reasonable fee to defray the cost of program administration. Such fee may be in addition to any fee charged for administration of a Virginia Stormwater Management Program, although payment of fees may be consolidated in order to provide greater convenience and efficiency for those responsible for compliance with the programs. A VESCP authority shall hold a public hearing prior to establishing a schedule of fees. The fee shall not exceed an amount commensurate with the services rendered, taking into consideration the time, skill, and the VESCP authority's expense involved.

K. The governing body of any county, city, or town, or a district board that is authorized to administer a VESCP, may adopt an ordinance or regulation where applicable providing that violations of any regulation or order of the Board, any provision of its program, any condition of a permit, or any provision of this article shall be subject to a civil penalty. The civil penalty for any one violation shall be not less than $100 nor more than $1,000. Each day during which the violation is found to have existed shall constitute a separate offense. In no event shall a series of specified violations arising from the same operative set of facts result in civil penalties that exceed a total of $10,000, except that a series of violations arising from the commencement of land-disturbing activities without an approved plan for any site shall not result in civil penalties that exceed a total of $10,000. Adoption of such an ordinance providing that violations are subject to a civil penalty shall be in lieu of criminal sanctions and shall preclude the prosecution of such violation as a misdemeanor under subsection A of § 62.1-44.15:63. The penalties set out in this subsection are also available to the Board in its enforcement actions.

§ 62.1-44.15:55. Regulated land-disturbing activities; submission and approval of erosion and sediment control plan.

A. Except as provided in § 62.1-44.15:56 for state agency and federal entity land-disturbing activities, no person shall engage in any land-disturbing activity until he has submitted to the VESCP authority an erosion and sediment control plan for the land-disturbing activity and the plan has been reviewed and approved. Upon the development of an online reporting system by

the Department, but no later than July 1, 2014, a VESCP authority shall then be required to obtain evidence of Virginia Stormwater Management Program permit coverage where it is required prior to providing approval to begin land disturbance. Where land-disturbing activities involve lands under the jurisdiction of more than one VESCP, an erosion and sediment control plan may, at the request of one or all of the VESCP authorities, be submitted to the Department for review and approval rather than to each jurisdiction concerned. The Department may charge the jurisdictions requesting the review a fee sufficient to cover the cost associated with conducting the review. A VESCP may enter into an agreement with an adjacent VESCP regarding the administration of multijurisdictional projects whereby the jurisdiction that contains the greater portion of the project shall be responsible for all or part of the administrative procedures. Where the land-disturbing activity results from the construction of a single-family residence, an agreement in lieu of a plan may be substituted for an erosion and sediment control plan if executed by the VESCP authority.

B. The VESCP authority shall review erosion and sediment control plans submitted to it and grant written approval within 60 days of the receipt of the plan if it determines that the plan meets the requirements of this article and the Board's regulations and if the person responsible for carrying out the plan certifies that he will properly perform the erosion and sediment control measures included in the plan and shall comply with the provisions of this article. In addition, as a prerequisite to engaging in the land-disturbing activities shown on the approved plan, the person responsible for carrying out the plan shall provide the name of an individual holding a certificate of competence to the VESCP authority, as provided by § 62.1-44.15:52, who will be in charge of and responsible for carrying out the land-disturbing activity. However, any VESCP authority may waive the certificate of competence requirement for an agreement in lieu of a plan for construction of a single-family residence. If a violation occurs during the land-disturbing activity, then the person responsible for carrying out the agreement in lieu of a plan shall correct the violation and provide the name of an individual holding a certificate of competence, as provided by § 62.1-44.15:52. Failure to provide the name of an individual holding a certificate of competence prior to engaging in land-disturbing activities may result in revocation of the approval of the plan and the person responsible for carrying out the plan shall be subject to the penalties provided in this article.

When a plan is determined to be inadequate, written notice of disapproval stating the specific reasons for disapproval shall be communicated to the applicant within 45 days. The notice shall specify the modifications, terms, and conditions that will permit approval of the plan. If no action is taken by the VESCP authority within the time specified in this subsection, the plan shall be deemed approved and the person authorized to proceed with the proposed activity. The VESCP authority shall act on any erosion and sediment control plan that has been previously disapproved within 45 days after the plan has been revised, resubmitted for approval, and deemed adequate.

C. The VESCP authority may require changes to an approved plan in the following cases:

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

2. Where the person responsible for carrying out the approved plan finds that because of changed circumstances or for other reasons the approved plan cannot be effectively carried out, and

proposed amendments to the plan, consistent with the requirements of this article and associated regulations, are agreed to by the VESCP authority and the person responsible for carrying out the plan.

D. Electric, natural gas, and telephone utility companies, interstate and intrastate natural gas pipeline companies, and railroad companies shall, and authorities created pursuant to § 15.2-5102 may, file general erosion and sediment control standards and specifications annually with the Department for review and approval. Such standards and specifications shall be consistent with the requirements of this article and associated regulations and the Stormwater Management Act (§ 62.1-44.15:24 et seq.) and associated regulations where applicable. The specifications shall apply to:

1. Construction, installation, or maintenance of electric transmission, natural gas, and telephone utility lines and pipelines, and water and sewer lines; and

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

The Department shall have 60 days in which to approve the standards and specifications. If no action is taken by the Department within 60 days, the standards and specifications shall be deemed approved. Individual approval of separate projects within subdivisions 1 and 2 is not necessary when approved specifications are followed. Projects not included in subdivisions 1 and 2 shall comply with the requirements of the appropriate VESCP. The Board shall have the authority to enforce approved specifications and charge fees equal to the lower of (i) $1,000 or (ii) an amount sufficient to cover the costs associated with standard and specification review and approval, project inspections, and compliance.

E. Any person engaging, in more than one jurisdiction, in the creation and operation of a wetland mitigation or stream restoration bank or banks, which have been approved and are operated in accordance with applicable federal and state guidance, laws, or regulations for the establishment, use, and operation of wetlands mitigation or stream restoration banks, pursuant to a mitigation banking instrument signed by the Department of Environmental Quality, the Marine Resources Commission, or the U.S. Army Corps of Engineers, may, at the option of that person, file general erosion and sediment control standards and specifications for wetland mitigation or stream restoration banks annually with the Department for review and approval consistent with guidelines established by the Board.

The Department shall have 60 days in which to approve the specifications. If no action is taken by the Department within 60 days, the specifications shall be deemed approved. Individual approval of separate projects under this subsection is not necessary when approved specifications are implemented through a project-specific erosion and sediment control plan. Projects not included in this subsection shall comply with the requirements of the appropriate local erosion and sediment control program. The Board shall have the authority to enforce approved specifications and charge fees equal to the lower of (i) $1,000 or (ii) an amount sufficient to cover the costs associated with standard and specification review and approval, projection inspections, and compliance. Approval of general erosion and sediment control specifications by

the Department does not relieve the owner or operator from compliance with any other local ordinances and regulations including requirements to submit plans and obtain permits as may be required by such ordinances and regulations.

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

G. For the purposes of subsections A and B, when land-disturbing activity will be required of a contractor performing construction work pursuant to a construction contract, the preparation, submission, and approval of an erosion and sediment control plan shall be the responsibility of the owner.

§ § 62.1-44.15:56. State agency and federal entity projects.

A. A state agency shall not undertake a project involving a land-disturbing activity unless (i) the state agency has submitted annual standards and specifications for its conduct of land-disturbing activities that have been reviewed and approved by the Department as being consistent with this article and associated regulations or (ii) the state agency has submitted an erosion and sediment control plan for the project that has been reviewed and approved by the Department. When a federal entity submits an erosion and sediment control plan for a project, land disturbance shall not commence until the Department has reviewed and approved the plan.

B. The Department shall not approve an erosion and sediment control plan submitted by a state agency or federal entity for a project involving a land-disturbing activity (i) in any locality that has not adopted a local program with more stringent regulations than those of the state program or (ii) in multiple jurisdictions with separate local programs, unless the erosion and sediment control plan is consistent with the requirements of the state program.

C. The Department shall not approve an erosion and sediment control plan submitted by a state agency or federal entity for a project involving a land-disturbing activity in one locality with a local program with more stringent ordinances than those of the state program unless the erosion and sediment control plan is consistent with the requirements of the local program. If a locality has not submitted a copy of its local program regulations to the Department, the provisions of subsection B shall apply.

D. The Department shall have 60 days in which to comment on any standards and specifications or erosion and sediment control plan submitted to it for review, and its comments shall be binding on the state agency and any private business hired by the state agency.

E. As onsite changes occur, the state agency shall submit changes in an erosion and sediment control plan to the Department.

F. The state agency responsible for the land-disturbing activity shall ensure compliance with an approved plan, and the Department and Board, where applicable, shall provide project oversight and enforcement as necessary.

G. If the state agency or federal entity has developed, and the Department has approved, annual standards and specifications, and the state agency or federal entity has been approved by the Board to operate a VESCP as a VESCP authority, erosion and sediment control plan review and approval and land-disturbing activity inspections shall be conducted by such entity. The Department and the Board, where applicable, shall provide project oversight and enforcement as necessary and comprehensive program compliance review and evaluation. Such standards and specifications shall be consistent with the requirements of this article and associated regulations and the Stormwater Management Act (§ 62.1-44.15:24 et seq.) and associated regulations when applicable.

§ 62.1-44.15:57. Approved plan required for issuance of grading, building, or other permits; security for performance.

Agencies authorized under any other law to issue grading, building, or other permits for activities involving land-disturbing activities regulated under this article shall not issue any such permit unless the applicant submits with his application an approved erosion and sediment control plan and certification that the plan will be followed and, upon the development of an online reporting system by the Department but no later than July 1, 2014, evidence of Virginia Stormwater Management Program permit coverage where it is required. Prior to issuance of any permit, the agency may also require an applicant to submit a reasonable performance bond with surety, cash escrow, letter of credit, any combination thereof, or such other legal arrangement acceptable to the agency, to ensure that measures could be taken by the agency at the applicant's expense should he fail, after proper notice, within the time specified to initiate or maintain appropriate conservation action that may be required of him by the approved plan as a result of his land-disturbing activity. The amount of the bond or other security for performance shall not exceed the total of the estimated cost to initiate and maintain appropriate conservation action based on unit price for new public or private sector construction in the locality and a reasonable allowance for estimated administrative costs and inflation, which shall not exceed 25 percent of the estimated cost of the conservation action. If the agency takes such conservation action upon such failure by the permittee, the agency may collect from the permittee the difference should the amount of the reasonable cost of such action exceed the amount of the security held. Within 60 days of the achievement of adequate stabilization of the land-disturbing activity in any project or section thereof, the 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 based upon the percentage of stabilization accomplished in the project or section thereof. These requirements are in addition to all other provisions of law relating to the issuance of such permits and are not intended to otherwise affect the requirements for such permits.

§ 62.1-44.15:58. Monitoring, reports, and inspections.

A. The VESCP authority (i) shall provide for periodic inspections of the land-disturbing activity and require that an individual holding a certificate of competence, as provided by § 62.1-44.15:52, who will be in charge of and responsible for carrying out the land-disturbing activity and (ii) may require monitoring and reports from the person responsible for carrying out the erosion and sediment control plan, to ensure compliance with the approved plan and to determine whether the measures required in the plan are effective in controlling erosion and sediment.

However, any VESCP authority may waive the certificate of competence requirement for an agreement in lieu of a plan for construction of a single-family residence. The owner, permittee, or person responsible for carrying out the plan shall be given notice of the inspection. If the VESCP authority, where authorized to enforce this article, or the Department determines that there is a failure to comply with the plan following an inspection, notice shall be served upon the permittee or person responsible for carrying out the plan by mailing with confirmation of delivery to the address specified in the permit application or in the plan certification, or by delivery at the site of the land-disturbing activities to the agent or employee supervising such activities. The notice shall specify the measures needed to comply with the plan and shall specify the time within which such measures shall be completed. Upon failure to comply within the time specified, the permit may be revoked and the VESCP authority, where authorized to enforce this article, the Department, or the Board may pursue enforcement as provided by § 62.1-44.15:63.

B. Notwithstanding the provisions of subsection A, a VESCP authority is authorized to enter into agreements or contracts with districts, adjacent localities, or other public or private entities to assist with the responsibilities of this article, including but not limited to the review and determination of adequacy of erosion and sediment control plans submitted for land-disturbing activities as well as monitoring, reports, inspections, and enforcement where an authority is granted such powers by this article.

C. Upon issuance of an inspection report denoting a violation of this section, § 62.1-44.15:55 or 62.1-44.15:56, in conjunction with or subsequent to a notice to comply as specified in subsection A, a VESCP authority, where authorized to enforce this article, or the Department may issue an order requiring that all or part of the land-disturbing activities permitted on the site be stopped until the specified corrective measures have been taken or, if land-disturbing activities have commenced without an approved plan as provided in § 62.1-44.15:55, requiring that all of the land-disturbing activities be stopped until an approved plan or any required permits are obtained. Where the alleged noncompliance is causing or is in imminent danger of causing harmful erosion of lands or sediment deposition in waters within the watersheds of the Commonwealth, or where the land-disturbing activities have commenced without an approved erosion and sediment control plan or any required permits, such an order may be issued whether or not the alleged violator has been issued a notice to comply as specified in subsection A. Otherwise, such an order may be issued only after the alleged violator has failed to comply with a notice to comply. The order for noncompliance with a plan shall be served in the same manner as a notice to comply, and shall remain in effect for seven days from the date of service pending application by the VESCP authority, the Department, or alleged violator for appropriate relief to the circuit court of the jurisdiction wherein the violation was alleged to have occurred or other appropriate court. The order for disturbance without an approved plan or permits shall be served upon the owner by mailing with confirmation of delivery to the address specified in the land records of the locality, shall be posted on the site where the disturbance is occurring, and shall remain in effect until such time as permits and plan approvals are secured, except in such situations where an agricultural exemption applies. If the alleged violator has not obtained an approved erosion and sediment control plan or any required permit within seven days from the date of service of the order, the Department or the chief administrative officer or his designee on behalf of the VESCP authority may issue a subsequent order to the owner requiring that all construction and other work on the site, other than corrective measures, be stopped until an approved erosion and

sediment control plan and any required permits have been obtained. The subsequent order shall be served upon the owner by mailing with confirmation of delivery to the address specified in the permit application or the land records of the locality in which the site is located. The owner may appeal the issuance of any order to the circuit court of the jurisdiction wherein the violation was alleged to have occurred or other appropriate court. Any person violating or failing, neglecting, or refusing to obey an order issued by the Department or the chief administrative officer or his designee on behalf of the VESCP authority may be compelled in a proceeding instituted in the circuit court of the jurisdiction wherein the violation was alleged to have occurred or other appropriate court to obey same and to comply therewith by injunction, mandamus, or other appropriate remedy. Upon completion and approval of corrective action or obtaining an approved plan or any required permits, the order shall immediately be lifted. Nothing in this section shall prevent the Department, the Board, or the chief administrative officer or his designee on behalf of the VESCP authority from taking any other action specified in § 62.1-44.15:63.

§ 62.1-44.15:59. Reporting.

Each VESCP authority shall report to the Department, in a method such as an online reporting system and on a time schedule established by the Department, a listing of each land-disturbing activity for which a plan has been approved by the VESCP under this article.

§ 62.1-44.15:60. Right of entry.

The Department, the VESCP authority, where authorized to enforce this article, or any duly authorized agent of the Department or such VESCP authority 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 article.

In accordance with a performance bond with surety, cash escrow, letter of credit, any combination thereof, or such other legal arrangement, a VESCP authority may also enter any establishment or upon any property, public or private, for the purpose of initiating or maintaining appropriate actions that 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.

§ 62.1-44.15:61. Cooperation with federal and state agencies.

A VESCP authority and the Board are authorized to cooperate and enter into agreements with any federal or state agency in connection with the requirements for erosion and sediment control with respect to land-disturbing activities.

§ 62.1-44.15:62. Judicial appeals.

A. A final decision by a county, city, or town, when serving as a VESCP authority under this article, shall be subject to judicial review, provided that an appeal is filed within 30 days from

the date of any written decision adversely affecting the rights, duties, or privileges of the person engaging in or proposing to engage in land-disturbing activities.

B. Final decisions of the Board, Department, or district shall be subject to judicial review in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

§ 62.1-44.15:63. Penalties, injunctions and other legal actions.

A. Violators of § 62.1-44.15:55, 62.1-44.15:56, or 62.1-44.15:58 shall be guilty of a Class 1 misdemeanor.

B. Any person who has violated or failed, neglected, or refused to obey any regulation or order of the Board, any order, notice, or requirement of the Department or VESCP authority, any condition of a permit, or any provision of this article or associated regulation shall, upon a finding of an appropriate court, be assessed a civil penalty. If a locality or district serving as a VESCP authority has adopted a uniform schedule of civil penalties as permitted by subsection K of § 62.1-44.15:54, such assessment shall be in accordance with the schedule. The VESCP authority or the Department may issue a summons for collection of the civil penalty. In any trial for a scheduled violation, it shall be the burden of the locality or Department to show the liability of the violator by a preponderance of the evidence. An admission or finding of liability shall not be a criminal conviction for any purpose. Any civil penalties assessed by a court shall be paid into the treasury of the locality wherein the land lies, except that where the violator is the locality itself, or its agent, or where the Department is issuing the summons, the court shall direct the penalty to be paid into the state treasury.

C. The VESCP authority, the Department, or the owner of property that has sustained damage or which is in imminent danger of being damaged may apply to the circuit court in any jurisdiction wherein the land lies or other appropriate court to enjoin a violation or a threatened violation under § 62.1-44.15:55, 62.1-44.15:56, or 62.1-44.15:58 without the necessity of showing that an adequate remedy at law does not exist; however, an owner of property shall not apply for injunctive relief unless (i) he has notified in writing the person who has violated the VESCP, the Department, and the VESCP authority that a violation of the VESCP has caused, or creates a probability of causing, damage to his property, and (ii) neither the person who has violated the VESCP, the Department, nor the VESCP authority has taken corrective action within 15 days to eliminate the conditions that have caused, or create the probability of causing, damage to his property.

D. In addition to any criminal or civil penalties provided under this article, any person who violates any provision of this article may be liable to the VESCP authority or the Department, as appropriate, in a civil action for damages.

E. Without limiting the remedies that may be obtained in this section, any person violating or failing, neglecting, or refusing to obey any injunction, mandamus, or other remedy obtained pursuant to this section shall be subject, in the discretion of the court, to a civil penalty not to exceed $2,000 for each violation. A civil action for such violation or failure may be brought by the VESCP authority wherein the land lies or the Department. Any civil penalties assessed by a

court shall be paid into the treasury of the locality wherein the land lies, except that where the violator is the locality itself, or its agent, or other VESCP authority, or where the penalties are assessed as the result of an enforcement action brought by the Department, the court shall direct the penalty to be paid into the state treasury.

F. With the consent of any person who has violated or failed, neglected, or refused to obey any regulation or order of the Board, any order, notice, or requirement of the Department or VESCP authority, any condition of a permit, or any provision of this article or associated regulations, the Board, the Director, or VESCP authority may provide, in an order issued by the Board or VESCP authority against such person, for the payment of civil charges for violations in specific sums, not to exceed the limit specified in subsection E. Such civil charges shall be instead of any appropriate civil penalty that could be imposed under subsection B or E.

G. Upon request of a VESCP authority, the attorney for the Commonwealth shall take legal action to enforce the provisions of this article. Upon request of the Board, the Department, or the district, the Attorney General shall take appropriate legal action on behalf of the Board, the Department, or the district to enforce the provisions of this article.

H. Compliance with the provisions of this article shall be prima facie evidence in any legal or equitable proceeding for damages caused by erosion or sedimentation that all requirements of law have been met and the complaining party must show negligence in order to recover any damages.

§ 62.1-44.15:64. Stop work orders by Department; civil penalties.

A. An aggrieved owner of property sustaining pecuniary damage resulting from a violation of an approved erosion and sediment control plan or required permit, or from the conduct of land-disturbing activities commenced without an approved plan or required permit, may give written notice of the alleged violation to the VESCP authority and to the Director.

B. Upon receipt of the notice from the aggrieved owner and notification to the VESCP authority, the Director shall conduct an investigation of the aggrieved owner's complaint.

C. If the VESCP authority has not responded to the alleged violation in a manner that causes the violation to cease and abates the damage to the aggrieved owner's property within 30 days following receipt of the notice from the aggrieved owner, the aggrieved owner may request that the Director require the violator to stop the violation and abate the damage to his property.

D. If (i) the Director's investigation of the complaint indicates that the VESCP authority has not responded to the alleged violation as required by the VESCP, (ii) the VESCP authority has not responded to the alleged violation within 30 days from the date of the notice given pursuant to subsection A, and (iii) the Director is requested by the aggrieved owner to require the violator to cease the violation, then the Director shall give written notice to the VESCP authority that the Department intends to issue an order pursuant to subsection E.

E. If the VESCP authority has not instituted action to stop the violation and abate the damage to the aggrieved owner's property within 10 days following receipt of the notice from the Director, the Department is authorized to issue an order requiring the owner, permittee, person responsible for carrying out an approved erosion and sediment control plan, or person conducting the land-disturbing activities without an approved plan or required permit to cease all land-disturbing activities until the violation of the plan or permit has ceased or an approved plan and required permits are obtained, as appropriate, and specified corrective measures have been completed. The Department also may immediately initiate a program review of the VESCP.

F. Such orders are to be issued after a hearing held in accordance with the requirements of the Administrative Process Act (§ 2.2-4000 et seq.), and they shall become effective upon service on the person by mailing with confirmation of delivery, sent to his address specified in the land records of the locality, or by personal delivery by an agent of the Director. Any subsequent identical mail or notice that is sent by the Department may be sent by regular mail. However, if the Department 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, it may issue, without advance notice or hearing, an emergency order directing such person to cease all land-disturbing activities on the site immediately 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.

G. If a person who has been issued an order or emergency order is not complying with the terms thereof, the Board may institute a proceeding in the appropriate circuit court for an injunction, mandamus, or other appropriate remedy compelling the person to comply with such order.

H. Any person violating or failing, neglecting, or refusing to obey any injunction, mandamus, or other remedy obtained pursuant to subsection G shall be subject, in the discretion of the court, to a civil penalty not to exceed $2,000 for each violation. Any civil penalties assessed by a court shall be paid into the state treasury.

§ 62.1-44.15:65. Authorization for more stringent regulations.

A. As part of a VESCP, a district or locality is authorized to adopt more stringent soil erosion and sediment control regulations or ordinances than those necessary to ensure compliance with the Board's regulations, provided that the more stringent regulations or ordinances are based upon factual findings of local or regional comprehensive watershed management studies or findings developed through the implementation of an MS4 permit or a locally adopted watershed management study and are determined by the district or locality to be necessary to prevent any further degradation to water resources, to address total maximum daily load requirements, to protect exceptional state waters, or to address specific existing water pollution including nutrient and sediment loadings, stream channel erosion, depleted groundwater resources, or excessive localized flooding within the watershed and that prior to adopting more stringent regulations or ordinances, a public hearing is held after giving due notice. The VESCP authority shall report to the Board when more stringent stormwater management regulations or ordinances are determined to be necessary pursuant to this section. However, this section shall not be construed

to authorize any district or locality to impose any more stringent regulations for plan approval or permit issuance than those specified in §§ 62.1-44.15:55 and 62.1-44.15:57.

B. Any provisions of an erosion and sediment control program in existence before July 1, 2012, that contains more stringent provisions than this article shall be exempt from the analysis requirements of subsection A.

§ 62.1-44.15:66. No limitation on authority of Water Control Board or Department of Mines, Minerals and Energy.

The provisions of this article shall not limit the powers or duties of the Department of Mines, Minerals and Energy as they relate to strip mine reclamation under Chapters 16 (§ 45.1-180 et seq.) and 19 (§ 45.1-226 et seq.) of Title 45.1 or oil or gas exploration under the Virginia Gas and Oil Act (§ 45.1-361.1 et seq.).

The following is a complete, edited text (unofficial copy) of the Virginia Erosion and Sediment Control Regulations (4VAC50-30). Please refer to the Virginia Administrative Code for an official copy of the Regulations.

4VAC50-30-10. Definitions.

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise. In addition, some terms not defined herein are defined in § 62.1-44.15:51of the Erosion and Sediment Control Law.

"Act" means the Erosion and Sediment Control Law, Article 4 62.1-44.15:51 et seq.) of Chapter 5 of Title 10.1 of the Code of Virginia.

"Adequate channel" means a watercourse that will convey the designated frequency storm event without overtopping its banks or causing erosive damage to the bed, banks and overbank sections of the same.

"Agreement in lieu of a plan" means a contract between the VESCP authority and the owner that specifies conservation measures that must be implemented in the construction of a single-family residence; this contract may be executed by the VESCP authority in lieu of an erosion and sediment control plan.

"Applicant" means any person submitting an erosion and sediment control plan or an agreement in lieu of a plan for approval or requesting the issuance of a permit, when required, authorizing land-disturbing activities to commence.

"Board" means the Virginia Soil and Water Conservation Board.

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

"Channel" means a natural stream or manmade waterway.

"Cofferdam" means a watertight temporary structure in a river, lake, etc., for keeping the water from an enclosed area that has been pumped dry so that bridge foundations, dams, etc., may be constructed.

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

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

"Department" means the Department of Environmental Quality.

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

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

"Director" means the Director of the Department of Environmental Quality.

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

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

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

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

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

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

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

"Locality" means a county, city or town.

"Natural stream" means nontidal waterways that are part of the natural topography. They usually maintain a continuous or seasonal flow during the year and are characterized as being irregular in cross-section with a meandering course. Constructed channels such as drainage ditches or swales shall not be considered natural streams.

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

"Person" means any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, county, city, town or other political subdivision of the Commonwealth, governmental body, including a federal or state entity as applicable, any interstate body, or any other legal entity.

"Post-development" refers to conditions that may be reasonably expected or anticipated to exist after completion of the land development activity on a specific site or tract of land.

"Program administrator" means the person or persons responsible for administering and enforcing the erosion and sediment control program of a VESCP authority.

"Pre-development" refers to conditions at the time the erosion and sediment control plan is submitted to the VESCP authority. Where phased development or plan approval occurs (preliminary grading, roads and utilities, etc.), the existing conditions at the time the erosion and sediment control plan for the initial phase is submitted for approval shall establish pre-development conditions.

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

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

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

"Shore erosion control project" means an erosion control project approved by local wetlands boards, the Virginia Marine Resources Commission, the Virginia Department of Environmental Quality or the United States Army Corps of Engineers and located on tidal waters and within nonvegetated or vegetated wetlands as defined in Title 28.2 of the Code of Virginia.

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

"Stabilized" means land that has been treated to withstand normal exposure to natural forces without incurring erosion damage.

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

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

"Temporary vehicular stream crossing" means a temporary nonerodible structural span installed across a flowing watercourse for use by construction traffic. Structures may include bridges, round pipes or pipe arches constructed on or through nonerodible material.

"Ten-year storm" means a storm that is capable of producing rainfall expected to be equaled or exceeded on the average of once in 10 years. It may also be expressed as an exceedence probability with a 10% chance of being equaled or exceeded in any given year.

"Two-year storm" means a storm that is capable of producing rainfall expected to be equaled or exceeded on the average of once in two years. It may also be expressed as an exceedence probability with a 50% chance of being equaled or exceeded in any given year.

"Twenty-five-year storm" means a storm that is capable of producing rainfall expected to be equaled or exceeded on the average of once in 25 years. It may also be expressed as exceedence probability with a 4.0% chance of being equaled or exceeded in any given year.

"Virginia Erosion and Sediment Control Program" or "VESCP" means a program approved by the board that has been established by a VESCP authority for the effective control of soil erosion, sediment deposition, and nonagricultural runoff associated with a land-disturbing activity to prevent the unreasonable degradation of properties, stream channels, waters, and other natural resources and shall include such items where applicable 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 the Act and this chapter.

"Virginia Erosion and Sediment Control Program authority" or "VESCP authority" means an authority approved by the board to operate a Virginia Erosion and Sediment Control Program. An authority may include a state entity, including the department; a federal entity; a district, county, city, or town; or for linear projects subject to annual standards and specifications, electric, natural gas and telephone utility companies, interstate and intrastate natural gas pipeline companies, railroad companies, or authorities created pursuant to § 15.2-5102 of the Code of Virginia.

9VAC25-840-20**. Purpose.**

The purpose of this chapter is to form the basis for the administration, implementation and enforcement of the Act. The intent of this chapter is to establish the framework for compliance with the Act while at the same time providing flexibility for innovative solutions to erosion and sediment control concerns.

9VAC25-840-30**. Scope and applicability.**

A. This chapter sets forth minimum standards for the effective control of soil erosion, sediment deposition, and nonagricultural runoff that must be met:

1. In VESCPs adopted under § 62.1-44.15:54 of the Act;

2. In erosion and sediment control plans that may be submitted directly to the department pursuant to § 62.1-44.15:55 A of the Act;

3. In annual general erosion and sediment control standards and specifications that electric, natural gas, and telephone utility companies, interstate and intrastate natural gas pipeline companies, and railroad companies are required to file, and authorities created pursuant to § 15.2-5102 of the Code of Virginia may file with the department pursuant to § 62.1-44.15:55 D of the Act;

4. In erosion and sediment control plans or annual standards and specifications that state agencies are required to file with the department pursuant to § 62.1-44.15:56 of the Act; and

5. In erosion and sediment control plans or annual standards and specifications that federal agencies may submit to the department pursuant to § 62.1-44.15:56 of the Act.

B. The submission of annual standards and specifications to the department does not eliminate the need where applicable for a project specific Erosion and Sediment Control Plan.

C. In accordance with Item 360 I1 of Chapter 3 of the 2012 Virginia Acts of Assembly, Special Session 1, public institutions of higher education, including community colleges, colleges, and universities, shall be subject to project review and compliance for state erosion and sediment control requirements by the VESCP authority of the locality within which the land-disturbing activity is located, unless such institution submits annual specifications to the Department in accordance with § 62.1-44.15:56 A (i) of the Code of Virginia.

D. Any VESCP authority that administers a VESCP may charge applicants a reasonable fee to defray the costs of program administration. Such fee may be in addition to any fee charged for administration of a Virginia stormwater management program, although payment of fees may be consolidated in order to provide greater convenience and efficiency for those responsible for compliance with the programs. A VESCP authority shall hold a public hearing prior to establishing a schedule of fees. The fee shall not exceed an amount commensurate with the services rendered, taking into consideration the time, skill, and the VESCP authority's expense involved.

9VAC25-840-40**. Minimum standards.**

A VESCP must be consistent with the following criteria, techniques and methods:

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

2. During construction of the project, soil stock piles and borrow areas shall be stabilized or protected with sediment trapping measures. The applicant is responsible for the temporary

protection and permanent stabilization of all soil stockpiles on site as well as borrow areas and soil intentionally transported from the project site.

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

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

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

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

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

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

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

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

9. Whenever water seeps from a slope face, adequate drainage or other protection shall be provided.

10. All storm sewer inlets that are made operable during construction shall be protected so that sediment-laden water cannot enter the conveyance system without first being filtered or otherwise treated to remove sediment.

11. Before newly constructed stormwater conveyance channels or pipes are made operational, adequate outlet protection and any required temporary or permanent channel lining shall be installed in both the conveyance channel and receiving channel.

12. When work in a live watercourse is performed, precautions shall be taken to minimize encroachment, control sediment transport and stabilize the work area to the greatest extent possible during construction. Nonerodible material shall be used for the construction of causeways and cofferdams. Earthen fill may be used for these structures if armored by nonerodible cover materials.

13. When a live watercourse must be crossed by construction vehicles more than twice in any six-month period, a temporary vehicular stream crossing constructed of nonerodible material shall be provided.

14. All applicable federal, state and local requirements pertaining to working in or crossing live watercourses shall be met.

15. The bed and banks of a watercourse shall be stabilized immediately after work in the watercourse is completed.

16. Underground utility lines shall be installed in accordance with the following standards in addition to other applicable criteria:

a. No more than 500 linear feet of trench may be opened at one time.

b. Excavated material shall be placed on the uphill side of trenches.

c. Effluent from dewatering operations shall be filtered or passed through an approved sediment trapping device, or both, and discharged in a manner that does not adversely affect flowing streams or off-site property.

d. Material used for backfilling trenches shall be properly compacted in order to minimize erosion and promote stabilization.

e. Restabilization shall be accomplished in accordance with this chapter.

f. Applicable safety requirements shall be complied with.

17. Where construction vehicle access routes intersect paved or public roads, provisions shall be made to minimize the transport of sediment by vehicular tracking onto the paved surface. Where sediment is transported onto a paved or public road surface, the road surface shall be cleaned thoroughly at the end of each day. Sediment shall be removed from the roads by shoveling or sweeping and transported to a sediment control disposal area. Street washing shall be allowed only after sediment is removed in this manner. This provision shall apply to individual development lots as well as to larger land-disturbing activities.

18. All temporary erosion and sediment control measures shall be removed within 30 days after final site stabilization or after the temporary measures are no longer needed, unless otherwise authorized by the VESCP authority. Trapped sediment and the disturbed soil areas resulting from

the disposition of temporary measures shall be permanently stabilized to prevent further erosion and sedimentation.

19. Properties and waterways downstream from development sites shall be protected from sediment deposition, erosion and damage due to increases in volume, velocity and peak flow rate of stormwater runoff for the stated frequency storm of 24-hour duration in accordance with the following standards and criteria. Stream restoration and relocation projects that incorporate natural channel design concepts are not man-made channels and shall be exempt from any flow rate capacity and velocity requirements for natural or man-made channels:

a. Concentrated stormwater runoff leaving a development site shall be discharged directly into an adequate natural or man-made receiving channel, pipe or storm sewer system. For those sites where runoff is discharged into a pipe or pipe system, downstream stability analyses at the outfall of the pipe or pipe system shall be performed.

b. Adequacy of all channels and pipes shall be verified in the following manner:

(1) The applicant shall demonstrate that the total drainage area to the point of analysis within the channel is one hundred times greater than the contributing drainage area of the project in question; or

(2)(a) Natural channels shall be analyzed by the use of a two-year storm to verify that stormwater will not overtop channel banks nor cause erosion of channel bed or banks.

(b) All previously constructed man-made channels shall be analyzed by the use of a ten-year storm to verify that stormwater will not overtop its banks and by the use of a two-year storm to demonstrate that stormwater will not cause erosion of channel bed or banks; and

(c) Pipes and storm sewer systems shall be analyzed by the use of a ten-year storm to verify that stormwater will be contained within the pipe or system.

c. If existing natural receiving channels or previously constructed man-made channels or pipes are not adequate, the applicant shall:

(1) Improve the channels to a condition where a ten-year storm will not overtop the banks and a two-year storm will not cause erosion to channel the bed or banks; or

(2) Improve the pipe or pipe system to a condition where the ten-year storm is contained within the appurtenances;

(3) Develop a site design that will not cause the pre-development peak runoff rate from a two-year storm to increase when runoff outfalls into a natural channel or will not cause the pre-development peak runoff rate from a ten-year storm to increase when runoff outfalls into a man-made channel; or

(4) Provide a combination of channel improvement, stormwater detention or other measures which is satisfactory to the VESCP authority to prevent downstream erosion.

d. The applicant shall provide evidence of permission to make the improvements.

e. All hydrologic analyses shall be based on the existing watershed characteristics and the ultimate development condition of the subject project.

f. If the applicant chooses an option that includes stormwater detention, he shall obtain approval from the VESCP of a plan for maintenance of the detention facilities. The plan shall set forth the maintenance requirements of the facility and the person responsible for performing the maintenance.

g. Outfall from a detention facility shall be discharged to a receiving channel, and energy dissipators shall be placed at the outfall of all detention facilities as necessary to provide a stabilized transition from the facility to the receiving channel.

h. All on-site channels must be verified to be adequate.

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

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

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

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

m. For plans approved on and after July 1, 2014, the flow rate capacity and velocity requirements of § 62.1-44.15:52 A of the Act and this subsection shall be satisfied by compliance with water quantity requirements in the Stormwater Management Act (§62.1-44.15:24 et seq. of the Code of Virginia) and attendant regulations, unless such land-disturbing activities are in accordance with 9VAC25-870-48 of the Virginia Stormwater Management Program (VSMP) Permit Regulations.

n. Compliance with the water quantity minimum standards set out in 9VAC25-870-66 of the Virginia Stormwater Management Program (VSMP) Permit Regulations shall be deemed to satisfy the requirements of Minimum Standard 19.

9VAC25-840-50. Variances.

The VESCP authority may waive or modify any of the requirements that are deemed inappropriate or too restrictive for site conditions, by granting a variance. A variance may be granted under these conditions:

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

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

3. The VESCP authority shall consider variance requests judiciously, keeping in mind both the need of the applicant to maximize cost effectiveness and the need to protect off-site properties and resources from damage.

9VAC25-840-60. Maintenance and inspections.

A. All erosion and sediment control structures and systems shall be maintained, inspected and repaired as needed to insure continued performance of their intended function. A statement describing the maintenance responsibilities of the permittee shall be included in the approved erosion and sediment control plan.

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

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

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

a. Approved by the board prior to implementation;

b. Established in writing;

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

d. Documented by inspection records.

9VAC25-840-65. Reporting.

Each VESCP authority shall report to the department, in a method such as an online reporting system and on a time schedule established by the department, a listing of each land-disturbing activity for which a plan has been approved by the VESCP authority under the Act and this chapter.

9VAC25-840-70. Developments.

A. An erosion and sediment control plan shall be filed for a development and the buildings constructed within, regardless of the phasing of construction.

B. 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 or an "Agreement in Lieu of a Plan" signed by the property owner.

C. Land-disturbing activity of less than 10,000 square feet on individual lots in a residential development shall not be considered exempt from the provisions of the Act and this chapter if the total land-disturbing activity in the development is equal to or greater than 10,000 square feet.

9VAC25-840-80. Criteria for determining status of land-disturbing activity.

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

B. Should a land-disturbing activity not begin during the 180-day period following plan approval or cease for more than 180 days, the VESCP authority may evaluate the existing approved erosion and sediment control plan to determine whether the plan still satisfies local and state erosion and sediment control criteria and to verify that all design factors are still valid. If the

VESCP authority finds the previously filed plan to be inadequate, a modified plan shall be submitted and approved prior to the resumption of land-disturbing activity.

C. Shore erosion control projects are not subject to this chapter. However, land-disturbing activity immediately outside the limits of the shore erosion project is subject to the Act and this chapter.

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

1. Consider the off-site activity as being part of the proposed land-disturbing activity; or

2. If the off-site activity is already covered by an approved erosion and sediment control plan, the VESCP authority may require the applicant to provide proof of the approval and to certify that the plan will be implemented in accordance with a the Act and this chapter.

9VAC25-840-90. Review and evaluation of VESCPs: minimum program standards.

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

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

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

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

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

4. Each VESCP operated by a county, city, or town shall include provisions for the integration of the VESCP with Virginia stormwater management, flood insurance, flood plain management, and other programs requiring compliance prior to authorizing a land-disturbing activity in order to make the submission and approval of plans, issuance of permits, payment of fees, and

coordination of inspection and enforcement activities more convenient and efficient both for the local governments and those responsible for compliance with the programs.

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

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

C. Local programs shall be reviewed and evaluated for effectiveness in carrying out the Act and this chapter using the criteria in this section.

D. If deficiencies noted in the review will cause the erosion and sediment control program to be inconsistent with the state program and this chapter, the board shall provide the VESCP authority with a copy of its decision that specifies the deficiencies, action needed to be taken, and an approved corrective action plan and schedule required to attain the minimum standard of effectiveness. If the VESCP authority has not implemented the necessary compliance actions identified by the board within the corrective action schedule, or such additional period as is granted to complete the implementation of the corrective action, then the board shall have the authority to (i) issue a special order to any VESCP imposing a civil penalty set out in § 62.1-44.15:54 F of the Act or (ii) revoke its approval of the VESCP. The Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia) shall govern the activities and proceedings of the board and the judicial review thereof. In lieu of issuing a special order or revoking the program, the board is authorized to take legal action against a VESCP to ensure compliance.

E. Review and evaluation of VESCPs shall be conducted according to a schedule adopted by the department.

9VAC25-840-100. State agency projects.

A. All state agency land-disturbing activities that are not exempt and that have commenced without an approved erosion and sediment control plan shall immediately cease until the state agency has submitted annual standards and specifications for its conduct of land-disturbing activities which has been reviewed and approved by the department as being consistent with the Act and this chapter, or an erosion and sediment control plan has been submitted to and approved by the department. A formal "Notice of Plan Requirement" will be sent to the state agency under whose purview the project lies since that agency is responsible for compliance with the Act and this chapter.

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

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

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

The following is a complete, edited text (unofficial copy) of the Virginia Erosion and Sediment Control and Stormwater Management Certification Regulations (4VAC50-50). Please refer to the Virginia Administrative Code for an official copy of the Certification Regulations.

4VAC50-50-10. Definitions.

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

"Applicant" means any person submitting a request to be considered for certification.

"Board" means the Virginia Soil and Water Conservation Board.

"Certification" means the process whereby the board, on behalf of the Commonwealth, issues a certificate to persons who have completed board-approved training programs and met any additional eligibility requirements of 4VAC50-50-50 related to the specified classifications (4VAC50-50-40) within the areas of ESC or SWM or in other ways demonstrated adequate knowledge and experience in accordance with the eligibility requirements of 4VAC50-50-50 in the specified classifications within the areas of ESC or SWM.

"Certified combined administrator for ESC" means an employee or agent of a VESCP authority who holds a certificate of competence from the board in the combined ESC classifications of program administrator, plan reviewer, and project inspector in the area of ESC. "Certified combined administrator for SWM" means an employee or agent of a VSMP authority who holds a certificate of competence from the board in the combined classifications of program administrator, plan reviewer, and project inspector in the area of SWM.

"Certified project inspector for ESC" means an employee or agent of a VESCP authority who holds a certificate of competence from the board in the classification of project inspector in the area of ESC.

"Certified project inspector for SWM" means an employee or agent of a VSMP authority who holds a certificate of competence from the board in the classification of project inspector in the area of SWM.

"Certified plan reviewer for ESC" means an employee or agent of a VESCP authority who: (i) holds a certificate of competence from the board in the classification of plan reviewer in the area of ESC; (ii) is licensed as a professional engineer, architect, certified landscape architect, or land surveyor pursuant to Article 1 (§ 54.1-400 et seq.) of Chapter 4 of Title 54.1 of the Code of Virginia; or (iii) is a professional soil scientist as defined in Chapter 22 (§ 54.1-2200 et seq.) of Title 54.1 of the Code of Virginia.

"Certified plan reviewer for SWM" means an employee or agent of a VSMP authority who holds a certificate of competence from the board in the classification of plan reviewer in the area of SWM.

"Certified program administrator for ESC" means an employee or agent of a VESCP authority who holds a certificate of competence from the board in the classification of program administrator in the area of ESC.

"Certified program administrator for SWM" means an employee or agent of a VSMP authority who holds a certificate of competence from the board in the classification of program administrator in the area of SWM.

"Classification" refers to the four specific certificate of competence classifications within the areas of ESC or SWM that make up activities being performed (program administrator, plan reviewer, project inspector, and combined administrator).

"Combined administrator for ESC" means anyone who is responsible for performing the combined duties of a program administrator, plan reviewer and project inspector of a VESCP authority.

"Combined administrator for SWM" means anyone who is responsible for performing the combined duties of a program administrator, plan reviewer and project inspector of a VSMP authority.

"Department" means the Department of Conservation and Recreation.

"ESC" means erosion and sediment control.

"ESC Act" means the Erosion and Sediment Control Law, Article 4 (§62.1-44.15:51 et seq.) of Title 62.1 Waters of the State, Ports and Harbors, Chapter 3.1 State Water Control Law.

"Erosion and sediment control plan" or "ESC plan" means a document containing material for the conservation of soil and water resources of a unit or group of units of land. It may include appropriate maps, an appropriate soil and water plan inventory and management information with needed interpretations, and a record of all decisions contributing to conservation treatment. The 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 objective.

"Plan reviewer" means anyone who is responsible for determining the accuracy of ESC plans and supporting documents or SWM plans and supporting documents for approval by a VESCP authority or a VSMP authority as may be applicable in the areas of ESC or SWM.

"Program administrator" means the person or persons responsible for administering and enforcing the VESCP or VSMP of a VESCP authority or a VSMP authority as may be applicable in the areas of ESC or SWM.

"Project inspector" means anyone who, as a representative of a VESCP authority or a VSMP authority, is responsible for periodically examining the ESC or SWM activities and premises of a land-disturbing activity for compliance with the ESC Act and Regulations or the SWM Act and Regulations as may be applicable.

"Stormwater management plan" or "SWM plan" means a document containing material describing methods for complying with the requirements of a VSMP and the SWM Act and its attendant regulations.

"SWM" means stormwater management.

"SWM Act" means the Virginia Stormwater Management Act, (§62.1-44.15:24 et seq.) of Title 62.1 Waters of the State, Ports and Harbors, Chapter 3.1 State Water Control Law.

"Virginia Erosion and Sediment Control Program" or "VESCP" means a program approved by the board that has been established by a VESCP authority for the effective control of soil erosion, sediment deposition, and nonagricultural runoff associated with a land-disturbing activity to prevent the unreasonable degradation of properties, stream channels, waters, and other natural resources and shall include such items where applicable 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 the ESC Act and this chapter, and evaluation consistent with the requirements of the ESC Act and this chapter.

"Virginia Erosion and Sediment Control Program authority" or "VESCP authority" means an authority approved by the board to operate a Virginia erosion and sediment control program. An authority may include a state entity, including the department; a federal entity; a district, county, city, or town; or for linear projects subject to annual standards and specifications, electric, natural gas and telephone utility companies, interstate and intrastate natural gas pipeline companies, railroad companies, or authorities created pursuant to § 15.2-5102 of the Code of Virginia.

"Virginia Stormwater Management Program" or "VSMP" means a program approved by the board after September 13, 2011, that has been established by a VSMP authority 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 the SWM Act and associated regulations, and evaluation consistent with the requirements of the SWM Act and associated regulations.

"Virginia Stormwater Management Program authority" or "VSMP authority" means an authority approved by the board after September 13, 2011, to operate a Virginia Stormwater Management Program or, until such approval is given, the department. An authority may include a locality; state entity, including the department; federal entity; or, for linear projects subject to annual standards and specifications in accordance with subsection B of § 10.1-603.5 of the Code of Virginia, electric, natural gas, and telephone utility companies, interstate and intrastate natural

gas pipeline companies, railroad companies, or authorities created pursuant to § 15.2-5102 of the Code of Virginia.

4VAC50-50-20. Purpose.

The purpose of this chapter is to guide the issuance of certificates of competence required by §§ 10.1-561 E and 10.1-561.1 of the ESC Act and § 10.1-603.4:2 of the SWM Act.

4VAC50-50-30. Applicability.

This chapter is applicable to:

1. Every VESCP authority or VSMP authority that administers a VESCP or VSMP as may be applicable. Staff of a VESCP authority must be certified in accordance with §§ 10.1-560 E and 10.1-561.1 of the ESC Act. Staff of a VSMP authority must be certified in accordance with § 10.1-603.4:2 of the SWM Act.

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

3. Anyone voluntarily seeking certificates of competence from the board for classifications described in 4VAC50-50-40.

4VAC50-50-40. Certificates of competence.

A. Certificates of competence shall be issued by the board in accordance with the requirements of 4VAC50-50-50 for the following classifications:

1. Program administrator for ESC. The person employed as the VESCP administrator.

2. Plan reviewer for ESC. The person who reviews ESC plans to be approved by the VESCP authority.

3. Project inspector for ESC. The person responsible for inspecting erosion and sediment control practices to ensure compliance with the Virginia Erosion and Sediment Control Law and Regulations.

4. Combined administrator for ESC. The person responsible for performing the combined duties of program administrator, plan reviewer and project inspector for a VESCP authority.

5. Program administrator for SWM. The person employed as the VSMP administrator.

6. Plan reviewer for SWM. The person who reviews SWM plans to be approved by the VSMP authority.

7. Project inspector for SWM. The person responsible for inspecting regulated activities to ensure compliance with the SWM Act and Regulations.

8. Combined administrator for SWM. The person responsible for performing the combined duties of program administrator, plan reviewer, and project inspector for a VSMP authority.

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

C. Any person who holds a valid and unexpired certificate of competence issued by the board in the classification of ESC or SWM, or who obtains such a certificate, and who later successfully obtains an additional certificate of competence from the board in the parallel ESC or SWM classification may surrender both certificates of competence to the board and request in writing issuance of a dual certificate showing certification in both classifications. Such a request must be made while both of the ESC and SWM certificates of competence obtained are valid and unexpired. The expiration date of the dual certificate shall be three years from the date of expiration of the additional certificate acquired.

4VAC50-50-50. Eligibility requirements.

A. Certification may be obtained by satisfactorily completing and submitting an application to the department for review and approval and:

1. By obtaining a total of 800 hours of experience as an ESC or SWM plan reviewer, project inspector, or combined administrator and obtaining a passing score on the certification examination administered by the department in the applicable ESC or SWM area; or

2. By enrolling in and completing a board-approved training program in the classifications of program administrator, plan reviewer, project inspector, or combined administrator and obtaining within one year of completion of the training program a passing score on the certification examination administered by the department in the applicable ESC or SWM area.

a. The training program for project inspectors for ESC will consist of attending and completing courses/seminars in "Basic Erosion and Sediment Control in Virginia" and "Erosion and Sediment Control for Inspectors."

b. The training program for plan reviewers for ESC will consist of attending and completing courses/seminars in "Basic Erosion and Sediment Control in Virginia" and "Erosion and Sediment Control for Plan Reviewers."

c. The training program for program administrators for ESC will consist of attending the seminar "Basic Erosion and Sediment Control in Virginia."

d. The training program for combined administrators for ESC will consist of attending the courses/seminars "Basic Erosion and Sediment Control in Virginia," "Erosion and Sediment Control for Inspectors," and "Erosion and Sediment Control for Plan Reviewers."

e. The training program for project inspectors for SWM will consist of attending and completing courses/seminars in "Basic Stormwater Management in Virginia" and "Stormwater Management for Inspectors."

f. The training program for plan reviewers for SWM will consist of attending and completing courses/seminars in "Basic Stormwater Management in Virginia" and "Stormwater Management for Plan Reviewers."

g. The training program for program administrators for SWM will consist of attending the seminar "Basic Stormwater Management in Virginia."

h. The training program for combined administrators for SWM will consist of attending the courses/seminars "Basic Stormwater Management in Virginia," "Stormwater Management for Inspectors," and "Stormwater Management for Plan Reviewers."

B. Certification and recertification shall be valid for three years and will expire on the last day of the expiration month except as otherwise set out in 4VAC50-50-40 C or 4VAC50-50-90.

C. Recertification may be obtained for classifications outlined in 4VAC50-50-40 of this chapter prior to the expiration date of a certification by:

1. Obtaining a passing score on the certification examination;

2. Successfully completing a board-approved training program during the last 12 months of the term of the certificate but prior to its expiration date;

3. Being a professional registered in the Commonwealth pursuant to Article 1 (§ 54.1-400 et seq.) of Chapter 4 of Title 54.1 of the Code of Virginia or a professional soil scientist as defined in Chapter 22 (§ 54.1-2200 et seq.) of Title 54.1, and paying the required fee for recertification. Such professionals shall be deemed to satisfy the provisions of this subsection for classifications in subdivisions A 1 through 4 of 4VAC50-50-40. However, such professionals when in the classification of plan reviewer for ESC shall be exempt from the recertification requirements and fees of this chapter provided they maintain their professional license; or

4. Being a professional registered in the Commonwealth pursuant to Article 1 (§ 54.1-400 et seq.) of Chapter 4 of Title 54.1 of the Code of Virginia and paying the required fee for recertification. Such professionals shall be deemed to satisfy the provisions of this subsection for classifications in subdivisions A 5 through 8 of 4VAC50-50-40.

4VAC50-50-55. Classification acknowledgement for the purposes of program compliance reviews.

For the purposes of VESCP or VSMP compliance reviews and evaluations, the certification requirements of §§ 10.1-561.1 and 10.1-603.4:2 of the Code of Virginia shall be deemed to have been met if the VESCP or the VSMP authority has a person or persons enrolled in the board's ESC or SWM training programs for the necessary classifications and such person or persons obtains certification within one year of completing the necessary training programs.

4VAC50-50-60. Fees.

A. Application, recertification, and dual certificate issuance fees shall be collected to cover the administrative cost for the certification program.

B. A fee will also be charged to present education and training program courses/seminars which support the certification program.

C. Fees are nonrefundable and shall not be prorated.

4VAC50-50-70. Examination.

A. A board approved examination shall be administered at least twice a year.

B. An individual may take the certification examination for the desired certificate of competence after fulfilling the prerequisite experience requirement or completing a board-approved training program in accordance with 4VAC50-50-50.

C. An individual who is unable to take an examination at the time scheduled shall notify the department within 48 hours prior to the date of the examination; such an individual may be rescheduled for the next examination. Failure to notify the department may require an individual to submit a new application and payment of fees in accordance with this chapter.

D. An applicant who is unsuccessful in passing an examination will be allowed to pay the appropriate fee and retake the appropriate exam within one year without resubmitting an application. After the one-year period has elapsed, an applicant will be required to submit a new application with the appropriate fee in accordance with this chapter in order to take the examination. Application for examination must be received at least 60 days prior to the scheduled examination by the department to be eligible to sit for the examination.

E. A minimum passing score of 70% will be required on the appropriate certification exam(s).

F. All applicants will be notified in writing within 60 days of the results of the examination.

4VAC50-50-80. Application.

A. Any person seeking certification by a combination of experience and examination or by the combination of completion of the training program and examination shall submit a completed application with the appropriate fee(s) attached. The application shall contain the following:

1. The applicant's name, address, daytime phone number, and name and address of business as well as the date the application was filled out.

2. The classification of certification applying for as set forth in 4VAC50-50-40 of this chapter, and if applying for initial certification or recertification.

3. If any special arrangements must be provided for because of a handicap.

4. A verification of all work experience signed and dated by applicant's supervisor.

5. A signed and notarized affidavit confirming that all statements in the application are believed to be true.

Incomplete applications will be returned to the applicant. All applications must be received in the appropriate department office or by mail post marked at least 60 days prior to the scheduled examination date in order to be able to sit for the examination.

B. All applications of candidates will be reviewed by the department to determine eligibility for certification. All applicants will be notified of the results of the review within 30 days of receipt of the application. Any applicant may appeal the review, in writing, to the board within 30 days of the department's determination. No applicant will be approved for certification unless they meet all requirements of this chapter.

C. Applicants who have been found ineligible to sit for an examination may request further consideration by submitting a letter to the board with the necessary evidence of additional qualifications. No additional fee will be required provided that all requirements for certification are met within one year from the date of original application.

4VAC50-50-90. Discipline of certified personnel.

The board may suspend, revoke or refuse to grant or renew the certification of any person if the board, in an informational fact finding under § 2.2-4019 of the Code of Virginia, finds that:

1. The certification was obtained or renewed thorough fraud or misinterpretation;

2. The certified person has violated or cooperated with others in violating any provision of this chapter;

3. The certified person has not demonstrated reasonable care, judgment, or application of his knowledge and ability in the performance of his duties; or

4. The certified person has made any material misrepresentation in the course of performing his duties.