

Chapter 18

ENVIRONMENT*

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ARTICLE I. IN GENERAL**Sec. 18-1. Noise.**

(a) It is declared as a matter of legislative determination and public policy that the making, creation or maintenance of excessive, unreasonable or unusually loud noises, unusual and unnatural in their time and place and which disturb the usual peace, quietude, tranquility and normal enjoyable use of any area are detrimental to the public health, safety, convenience, welfare and prosperity of the residents of the town and constitute a public nuisance.

(b) Any person who permits, allows or suffers any excessive, unreasonable, loud or unusual noises to emanate from his property or place of business or from public property so as to disturb the usual peace, quietude, tranquility and normal enjoyable use of any residence or residences in the town shall be guilty of maintaining a public nuisance and guilty of a class 2 misdemeanor.

(c) The following acts are specifically violations of this section:

- (1) Sounding a horn or other signaling device on any motor vehicle except as an emergency or danger warning signal.
- (2) Operating a motor vehicle, other than an authorized emergency vehicle or a vehicle moving under special permit, which creates a noise disturbance.
- (3) Operating, loading or unloading any vehicle, including but not limited to trucks, or the opening and destruction of bales, boxes, crates and containers in the outdoors within 100 yards of a lawfully occupied dwelling between the hours of 10:00 p.m. and 7:00 a.m. on weekdays and between the hours of 10:00 p.m. and 9:00 a.m. on Saturdays, Sundays and legal holidays.
- (4) Operating and causing to be operated between the hours of 10:00 p.m. and 7:00 a.m. on weekdays and between the hours of 10:00 p.m. and 9:00 a.m. on Saturdays, Sundays and legal holidays any equipment used in construction, repair, alteration or demolition work on buildings, structures or appurtenances thereto in the outdoors within 100 yards of a lawfully occupied dwelling. This provision shall not apply to work performed by private or public utility companies for the repair of facilities or restoration of services. In cases where operation of such equipment between 10:00 p.m. and 7:00 a.m. on weekdays or between 10:00 p.m. and 9:00 a.m. on Saturdays, Sundays, or legal holidays would reduce the disruption to services provided to town residents, the council

may issue a permit for such operation and impose reasonable conditions on the permit.

- (5) Using, operating or causing to be operated mechanical loudspeakers or other sound amplification devices on trucks or other moving vehicles or in commercial establishments for the purpose of commercial advertising or attracting the attention of the public.
 - (6) Operating or permitting to be operated any powered model aircraft in the outdoors during the nighttime.
 - (7) The playing of radios, phonographs, televisions, tape or disc players, musical instruments or drums, sound amplifiers or similar devices that produce, reproduce or amplify sound in such a manner as to create a noise disturbance.
- (d) In applying, enforcing, and interpreting this section, a “reasonable person” standard shall apply, such that a noise, to be considered an offense under this section, must be of such volume (dB), duration, and/or character on public or private property as to disturb a reasonable person.

(Code 1981, § 5-56; Ord. O-2006-01, § 18-1)

Secs. 18-2—18-30. Reserved.

ARTICLE II. EROSION AND SEDIMENT CONTROL

Sec. 18-31. Purpose.

The purpose of this article is to conserve the land, water and other natural resources of the town and promote the public health and welfare of the people residing in the town by establishing requirements for the control of erosion and sediment, and by establishing procedures whereby these requirements shall be administered and enforced. This article complements chapter 66, article II, division 7.

(Code 1981, § 15-2)

Sec. 18-32. Authorization.

This article is authorized by Code of Virginia, § 10.1-560 et seq., known as the "Erosion and Sediment Control Law." This article provides for a comprehensive statewide program,

with standards and guidelines to control soil erosion and sedimentation, which is implemented on the local level.

(Code 1981, § 15-3)

Sec. 18-33. Definitions.

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

Administrator means the town engineer and/or building/code official of the town, who has been appointed to serve as the agent of the town council in administering this article.

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.

Board or state soil and water conservation board means the agency continued in Code of Virginia, § 10.1-502.

Clearing means any activity that removes the vegetative ground cover, including but not limited to root mat removal and/or topsoil removal.

Conservation plan, 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 assure that the entire unit of land will be so treated to achieve the conservation objectives.

Conservation standards or standards means the guidelines, techniques and methods for the control of erosion and sediment.

District or soil and water conservation district means the Prince William Soil and Water Conservation District.

Erosion and sediment control permit means a permit issued by the town for installation of erosion and sediment control devices or measures, including only the minimum degree of clearing and grading necessary to install such devices or measures.

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.

Excavating means any digging, scooping or other method of removing earth materials.

Filling means any depositing or stockpiling of earth materials.

Grading means any excavating or filling of earth materials, or any combination of materials, including the land in its excavated or filled condition.

Land disturbing activity means any land change 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 which 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) Surface or deep mining;
- (6) Exploration or drilling for oil and gas, including the well site, roads, feeder lines and off-site disposal areas;

- (7) Tilling, planting or harvesting of agricultural, horticultural or forest crops, or livestock feedlot operations, including engineering operations as follows: construction of terraces, terrace outlets, check dams, de-silting 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 Code of Virginia, § 10.1-1100 et seq., or is converted to bona fide agricultural or improved pasture use as described in Code of Virginia, § 10.1-1163(B);
- (8) Repair or rebuilding of the tracks, right-of-way, bridges, communication facilities and other related structures and facilities of a railroad company;
- (9) Agricultural engineering operations including but not limited to the construction of terraces, terrace outlets, check dams, de-silting basins, dikes, ponds not required to comply with the provisions of the Dam Safety Act (Code of Virginia, § 10.1-604 et seq.), ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage and land irrigation;
- (10) Disturbed land areas less than 2,500 square feet in size;
- (11) Installation of fence and sign posts or telephone and electric poles and other kinds of posts or poles;
- (12) Shore erosion control projects on tidal waters when the projects are approved by local wetlands boards, the state marine resources commission or the United States Army Corps of Engineers; however, any associated land that is disturbed outside of this exempted area shall remain subject to this ordinance;
- (13) 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 plan approving authority; and
- (14) Activities specifically exempted by Code of Virginia, § 10.1-560 et seq.

Land disturbing permit means a permit issued by the town for clearing, filling, excavating, grading or transporting, or any combination of such activities, on all lands, except privately owned occupied or operated, agricultural, horticultural or forestry land.

Local erosion and sediment control program or local control program means an outline of the various methods employed by a program authority to regulate land disturbing activities and thereby minimize erosion and sedimentation in compliance with the state program and may include such items as local ordinances, policies and guidelines, technical materials, inspection, enforcement and evaluation.

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

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, any interstate body, or any other legal entity.

Plan approving authority means the town council.

Program authority means the Town of Occoquan.

State erosion and sediment control program or state program means the program administered by the board pursuant to this article, including regulations designed to minimize erosion and sedimentation.

State waters means all waters on the surface and under the ground wholly or partially within or bordering the commonwealth or within its jurisdiction.

Subdivision means as defined in chapter 54.

Transporting means any moving of earth materials from one place to another, other than such movement incidental to grading, when such movement results in destroying the vegetative ground cover, either by tracking or the buildup of earth materials to the extent that erosion and sedimentation will result from the soil or earth materials over which such transporting occurs.

(Code 1981, § 15-4; Ord. O-2006-10, § 18-33; Ord. O-2012-03, § 18-33)

Cross reference(s)—Definitions generally, § 1-2.

Sec. 18-34. Local erosion and sediment control program.

(a) This chapter, the Virginia Erosion and Sediment Control Handbook, and all locally adopted guidelines, procedures and standards shall comprise and be integral parts of the town erosion and sediment control program.

(b) The guidelines, procedures and other elements of the local control program shall be developed consistent with the state program and guidelines.

(c) To carry out the local control program, conservation standards are established. Such standards shall include criteria, guidelines, techniques and methods for the control of erosion and sedimentation. (See section 18-35(a).) The conservation standards shall be included in part III of the Virginia Erosion and Sediment Control Handbook.

(d) The standards and specifications of the Virginia Erosion Control Handbook shall be modified within the town as follows:

- (1) Temporary gravel construction entrances (minimum standard #17) shall have a minimum length of 70 feet and minimum width of 12 feet. Wash racks with appropriate water sources shall also be provided for washing mud off the tires of construction vehicles before entering the public road. Wash water shall be directed to a settling area for sediment removal.
- (2) Straw bale barriers (standard and specification #3.04) shall be used only for sheet flow application and not as perimeter controls or in any channel or drainageway.
- (3) Brush barriers (standard and specification #3.06) shall not be acceptable for use in the town.
- (4) Storm drain inlet protection (standard and specification #3.07) shall consist of VDOT #3, #357 or #5 stone wrapped in wire mesh and supported by concrete blocks, or standard block and gravel devices as illustrated in the Virginia Erosion and Sediment Control Handbook. Inlet protection devices will not be considered sufficient protection for drainage areas of one acre or more.
- (5) Temporary sediment traps (standard and specification #3.13) shall be cleaned of sediment after every storm or shall be sized to provide storage volume of 134 cubic yards per acre of drainage area and be cleared out when half the storage volume is displaced by trapped sediment. Stone outlets for sediment traps shall be constructed with VDOT #3, #357 or #5 course aggregate and faced on the upstream side with a one-foot-thick layer of VDOT class 1 stone.

- (6) Temporary sediment basins (standard and specification #3.14) shall be provided for any disturbed area exceeding three acres.
- (7) Temporary seeding (standard and specification #3.31) with mulching is required for all denuded areas where no land disturbing construction activities take place for a period exceeding 14 days.

(e) Stream restoration and relocation projects that incorporate natural channel design concepts are not manmade channels and shall be exempt from any flow rate capacity and velocity requirements for natural or manmade channels as defined in any regulations promulgated pursuant to Virginia Code §§ 10.1-561, 10.1-562, or 10.1-570. Any land-disturbing activity that provides for stormwater management intended to address any flow rate capacity and velocity requirements for natural or manmade 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 manmade channels as defined in any regulations promulgated pursuant to §10.1-562 or 10.1-570.

(Code 1981, § 15-5; Ord. O-2009-02, § 34)

Sec. 18-35. Regulated land disturbing activities.

(a) Except as provided in this section, no person shall engage in any land disturbing activity until an erosion and sediment control plan for such activity has been submitted to and approved by the town. For the purposes of this section, 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. The plan shall indicate phases of construction, as appropriate, and a detailed narrative shall be submitted to indicate in detail the timing and method of implementing each phase. This phased plan shall be designed to ensure adequate erosion and sediment control protection from the beginning of a project until its completion. Where storm sewers or paved areas are to be constructed, there shall be a minimum of two phases indicated on all erosion and sediment control plans. Plans shall clearly state when any proposed stormwater management facility is to be constructed.

(b) Any person who owns, occupies or operates private agricultural, horticultural or forest lands shall not be deemed to be in violation of this article for land disturbing activities that result from the tilling, planting or harvesting of agricultural, horticultural or forest crops, or products of engineering operations.

(c) Where land disturbing activities involve lands under the jurisdiction of more than one local control program, an erosion and sediment control plan may, at the option of the applicant, be submitted to the board for review and approval rather than to each jurisdiction concerned.

(d) Electric, natural gas and telephone utility companies, interstate and intrastate natural gas pipeline companies and railroad companies shall file general erosion and sediment control specifications annually with the Board for review and written comments. The specifications shall apply to:

1. Construction, installation or maintenance of electric, natural gas and telephone utility lines, and pipelines; and;
2. Construction of the tracks, rights-of-way, bridges, communication facilities and other related structures and facilities of the railroad company.

Individual approval of separate projects within subdivisions 1 and 2 of this subsection is not necessary when Board approved specifications are followed, however, projects included in subdivisions 1 and 2 must comply with Board approved specifications. Projects not included in subdivisions 1 and 2 of this subsection shall comply with the requirements of the Town of Occoquan erosion and sediment control program.

(e) State agency projects are exempt from the provisions of this ordinance except as provided for in the Code of Virginia, Sec. 10.1-564.

(f) 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 plan approving authority.

(Code 1981, § 15-6; Ord. O-2006-10, § 18-35)

Sec. 18-36. Action on erosion and sediment control plans.

(a) The town, through the town engineer, shall, within 45 days, approve any erosion and sediment control plan submitted or specify, in writing, to the applicant, such modifications,

terms and conditions that will permit approval of the plan. The person responsible for carrying out the plan shall certify that he will properly perform the conservation measures included in the plan and will conform to 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 program authority, as provided by Virginia Code § 10.1-561, of the Virginia Erosion and Sediment Control Law, who will be in charge of and responsible for carrying out the land-disturbing activity. 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 ordinance. If no action is taken by the plan approving authority within the time specified in this section, the plan shall be deemed approved and the person authorized to proceed with the proposed activity. However, any plan-approving 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 §10.1-561.

(b) The town shall immediately transmit, for review, the plan to the district, which will return comments within 30 days.

(c) The approved plan may be changed by the town which has approved the plan, in the following cases:

1. Where inspection has revealed the inadequacy of the plan to accomplish the erosion and sediment control objectives of the plan, appropriate modifications to correct the deficiencies of the plan may be directed by the town.
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, are agreed to by the town and the person responsible for carrying out the plan.

(d) Any person engaging, in more than one jurisdiction, in the creation and operation of wetland mitigation or stream restoration banks, which have been approved and have been 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 specifications for wetland mitigation or stream restoration banks annually with the Board for review and approval consistent with guidelines established by the Board. Projects not included in this subsection shall comply with this Article. Approval of general erosion and sediment control specifications by the Board 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.

(Code 1981, § 15-7; Ord. O-2006-10, § 18-36; Ord. O-2009-02, § 36)

Sec. 18-37. Submission of plan by owner.

For the purposes of sections 18-35 and 18-36, 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.

State law reference(s)—Similar provisions, Code of Virginia, § 10.1-563(F).

Sec. 18-38. Issuance of land disturbing permit; fees.

(a) No person subject to the provisions of this article shall engage in any land disturbing activity until a sediment and erosion control permit for the property shall have been obtained from the town. The initial phase of the approved erosion and sediment control plan shall be installed and approved by the town prior to issuance of any further permits or commencement of any other land disturbing activities on the site.

(b) Where an erosion and sediment control plan is approved as part of a site plan, grading plan or other plan, separate cost estimates shall be prepared for all sediment and erosion control measures; and cash escrow, letter of credit or other approved surety shall be provided for such measures separate and apart from any other required bonds or surety.

(c) Persons conducting grading, excavating or filling operations on private agricultural, horticultural or forest lands shall not be required to obtain a permit for erosion and sediment control measures, but shall submit and receive approval of an erosion and sediment control plan prior to commencing any land disturbance.

(d) A plan review and inspection fee shall be paid to the town at the time of filing the erosion and sediment control plan, in accordance with the town's adopted fee schedule.

(Code 1981, § 15-8)

Sec. 18-39. Approved plan required for issuance of permits; certification; bonding of performance.

(a) The town shall not issue any grading, land disturbing, building or other permits for activities that involve land disturbing activities unless the applicant submits, with his application, the approved erosion and sediment control plan or certification of such approved plan from the town and certification that such plan will be followed. Permits for permanent construction shall not be issued until the initial erosion and sediment control measures have been inspected and approved by the town engineer.

(b) The town, prior to the issuance of any grading, land disturbing, building or other permit, may require from any applicant a reasonable performance bond with surety, cash escrow, letter of credit, any combination thereof, or such other legal arrangement as is acceptable to the town, to ensure that emergency measures could be taken by the town, at the applicant's expense, should he fail, within the time specified, to initiate appropriate conservation action, which may be required of him as a result of his land disturbing activity. This bond, cash escrow, letter of credit or other acceptable legal arrangement will provide for a right of entry by representatives of the town for the purpose of inspection, reinstallation, maintenance or any other conservation practice that may be necessary. Within 60 days of the achievement of adequate stabilization of the land disturbing activity in any project or section of such activity, the bond, cash escrow, letter of credit or other legal arrangement, or the unexpended or unobligated portion of such arrangement, shall be refunded to the applicant or terminated based upon the percentage of stabilization accomplished in the project or section of the project. The town may collect stabilization costs in excess of the security held.

(c) The requirements of this section are in addition to all other provisions of the law that relate to the issuance of such permits. The building/code official shall issue no building or other permit until the erosion and sediment control measures have been inspected and approved by the town.

(Code 1981, § 15-9)

Sec. 18-40. Monitoring, reports and inspections.

(a) The town, through the town engineer or other agent, shall periodically inspect the land disturbing activity to ensure compliance with the approved plan, and to determine whether the measures required in that plan are effective in controlling erosion and sediment resulting from the land disturbing activity. For purposes of this section, the word “periodically” means 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. The right of entry to conduct such inspections shall be expressly reserved in the permit. The owner, permittee or person responsible for carrying out the plan shall be given notice of the inspection. If the town, through the town engineer, finds that the permit holder has failed to comply with the plan, the town shall immediately serve a notice to comply upon the permit holder by registered or certified mail, at the address to be specified by the permit holder in his permit application. Such notice shall set forth specifically the measures necessary to comply with such plan. If no action is taken within the time specified in the letter, the town shall prepare a letter of intent to use the escrow account to correct the deficiency. This letter will be cleared by the town attorney and sent by registered mail to the owner, builder or developer, with a copy to the escrow agent. The town will undertake the work, and the applicable account shall then be reimbursed from the escrow account. The owner, builder or developer shall then be obligated to replenish the escrow account within ten days of the expenditure. Failure to do so will constitute a violation of this article. In addition, if the owner, builder or developer fails to act within the specified time, the permit may be revoked; furthermore, the permittee or person responsible for carrying out the plan shall be deemed to be in violation of this article; and, upon conviction, shall be subject to the penalties provided by this article. Upon issuance of the letter of intent, the town and the building/code official shall withhold all future permits until such violation is corrected.

(b) With respect to approved plans for erosion and sediment control in connection with all regulated land disturbing activities that require no permit, the town may require of the person responsible for carrying out the plan such monitoring and reports, and may make such on-site inspections, after notice to that person, as are deemed necessary to determine whether the soil erosion and sediment control has been performed, and whether such measures are effective in controlling soil erosion and sediment resulting from the land disturbing activity. The owner, permittee or person responsible for carrying out the plan shall be given notice of the inspection. If it is determined that there is a failure to comply with the approved plan, the town shall serve notice of such failure upon the person who is responsible for carrying out the plan, at the address specified by him in his certification, at the time of obtaining his approved plan. Such notice shall set forth the measures necessary for compliance and the time within which such measures shall be completed. Upon failure of such person to comply within the specified period, he will be deemed to be in violation of this article and, upon conviction, shall be subject to the penalties provided for by this article.

(c) After land clearing operations have begun, no area shall be denuded for more than 30 days unless authorized by the town. All trenches for storm sewer, electric power, telephone, water and gas lines are to be back-filled, compacted, seeded and mulched within seven days after installation.

(d) For projects involving more than two acres of land disturbance, permit holders will be required to file periodic reports to document monitoring and compliance with the approved plan. Such reports shall be in a form approved by the town engineer and shall be certified by a registered professional engineer.

- (e) (1) Upon determination of a violation of this ordinance, the mayor or town engineer may, in conjunction with or subsequent to a notice to comply as specified in this ordinance, 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.
- (2) If land-disturbing activities have commenced without an approved plan, the mayor or town engineer may, in conjunction with or subsequent to a notice to comply as specified in this ordinance, issue an order requiring that all of the land-disturbing activities be stopped until an approved plan or any required permits are obtained.
- (3) 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 plan or any required permits, such an order may be issued without regard to whether the permittee has been issued a notice to comply as specified in this ordinance. Otherwise, such an order may be issued only after the permittee has failed to comply with such a notice to comply. The order shall be served in the same manner as a notice to comply, and shall remain in effect for a period of seven days from the date of service pending application by the enforcing authority or permit holder for appropriate relief to the Circuit Court.
- (4) If the alleged violator has not obtained an approved plan or any required permits within seven days from the date of service of the order, the mayor or town engineer may issue an order to the owner requiring that all construction and other work on the site, other than corrective measures, be stopped until an approved plan and any required permits have been obtained. Such an order shall be served upon the owner by registered or certified mail to the address specified in the permit application or the land records of the town.
- (5) The owner may appeal the issuance of an order to the Circuit Court.
- (6) Any person violating or failing, neglecting or refusing to obey an order issued by the mayor or town engineer may be compelled in a proceeding instituted in the Circuit 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.

- (7) Nothing in this section shall prevent the mayor or town engineer from taking any other action authorized by this ordinance.

(Code 1981, § 15-10; Ord. O-2006-10, § 18-40; ordinance internally misnumbered, but corrected in accordance with Code § 1-12.)

Sec. 18-41. Administrative appeal; judicial review.

Final decisions of the town engineer under this article shall be subject to review by the town council, provided an appeal is filed within 30 days from the date of any written decision by the town engineer that adversely affects the rights, duties or privileges of the person engaging in or proposing to engage in land disturbing activities.

(Code 1981, § 15-11)

Sec. 18-42. Penalties, injunctions and other legal actions.

(a) A violation of this article shall be deemed a class 1 misdemeanor. Violators shall be denied all future permits, until violations of this article are corrected. The decision of the town council shall be final unless, within 30 days of such decision, the appellant shall file an appeal in proper legal form with the circuit court of the county.

(b) Violations of any regulation or order of the board, any provision of its program, any condition of a permit, or any provision of Code of Virginia, §§ 10.1-560--10.1-571, shall be subject to a civil penalty. The civil penalty for any one violation shall be \$100.00, except that the civil penalty for commencement of land disturbing activities without an approved plan as provided in Code of Virginia, § 10.1-563, shall be \$1,000.00. 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 \$3,000.00, 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 \$10,000.00. This subsection shall be in lieu of criminal sanctions and shall preclude the prosecution of such violation as a misdemeanor under Code of Virginia, § 10.1-569(A).

(c) Any person who violates any regulation or order of the board, any condition of a permit, any provision of its program, or any provision of Code of Virginia, §§ 10.1-560--10.1-571, shall, upon a finding of an appropriate general district court, be assessed a civil penalty in accordance with subsection (b) of this section. The erosion and sediment

control administrator, his deputy or a certified inspector for the town may issue a summons for collection of the civil penalty; and the action may be prosecuted by the town. In any trial for a scheduled violation, it shall be the burden of the town 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 town; except that where the violator is the town itself, or its agent, the court shall direct the penalty to be paid into the state treasury.

(d) The town attorney may apply to the circuit court of the county for injunctive relief to enjoin a violation or threatened violation of this article.

(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 \$2,000.00 for each violation. A civil action for such violation or failure may be brought by the town. Any civil penalties assessed by a court shall be paid into the treasury of the town; except that where the violator is the town itself, or its agent, the court shall direct the penalty to be paid into the state treasury.

(f) The town attorney shall take legal action to enforce the provisions of this article.

(g) 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 that the complaining party must show negligence in order to recover damages.

(Code 1981, § 15-12)

ARTICLE III. Virginia stormwater management program.

DIVISION 1. General

18-51. Purpose and authority.

(a) Pursuant to the authority and mandates of the Virginia Stormwater Management Act, Article 2.3 (§ 62.1-44.15:24 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia, and the Virginia Stormwater Management Program (VSMP) Permit Regulations (9VAC25-870 et seq.), this Ordinance is adopted as part of an initiative to integrate the Town of Occoquan stormwater management requirements with the Town's Erosion and Sediment Control ordinance, Floodplain Management ordinance, and Chesapeake Bay Preservation Overlay District ordinance into a

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

- (b) The purpose of this Ordinance is to ensure the general health, safety, and welfare of the citizens of the Town and protect the quality and quantity of state waters from the potential harm of unmanaged stormwater, including protection from a land disturbing activity causing unreasonable degradation of properties, water quality, stream channels, and other natural resources, and to establish procedures whereby stormwater requirements related to water quality and quantity shall be administered and enforced.
- (c) All references to the Virginia Code, acts of the General Assembly, and Virginia Administrative Code herein are expressly intended to include future amendments to the provisions of the Code, acts of the General Assembly or state regulations, pursuant to the authorization of Virginia Code § 1-220.

18-52. Definitions.

In addition to the definitions set forth in 9VAC25-870-10 of the Virginia Stormwater Management Regulations, as amended, which are expressly adopted and incorporated herein by reference, the following words and terms used in this Ordinance have the following meanings unless otherwise specified herein. Where definitions differ, those incorporated herein shall have precedence.

"*Administrator*" means the VSMP authority including the Town staff person or department responsible for administering the VSMP on behalf of the locality. The Town Manager shall act as Administrator. Town Council may appoint one or more Deputy or Assistant Administrators who shall have the full authority of the Administrator. The senior Deputy or Assistant Administrator shall, without further action of the Town Council, serve as Acting Administrator in the event of any vacancy in the office of Administrator. The Administrator will be responsible for accepting complete registration statements, completing plan review, plan approval, inspection and maintenance compliance, and enforcement and may assign those tasks as the Administrator deems appropriate.

"*Agreement in lieu of a stormwater management plan*" means a contract between the VSMP authority and the owner or permittee that specifies methods that shall be implemented to comply with the requirements of the VSMP for the construction of a single-family

residence; such contract may be executed by the VSMP authority in lieu of a stormwater management plan.

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

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

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

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

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

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

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

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

"*General permit*" means the state permit titled GENERAL PERMIT FOR DISCHARGES OF STORMWATER FROM CONSTRUCTION ACTIVITIES found in Part XIV (9VAC25-870-1100 et seq.) of the Regulations authorizing a category of

discharges under the CWA and the Act within a geographical area of the Commonwealth of Virginia.

"Land disturbance" or "land-disturbing activity" means a man-made change to the land surface that potentially changes its runoff characteristics including clearing, grading, or excavation except that the term shall not include those exemptions specified in Section 18-53 (c) of this Ordinance.

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

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

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

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

"Permittee" means the person to whom the VSMP Authority Permit is issued.

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

"Regulations" means the Virginia Stormwater Management Program (VSMP) Permit Regulations, 4 VAC 50-60, as amended.

"Site" means the land or water area where any facility or land-disturbing activity is physically located or conducted, including adjacent land used or preserved in connection with the facility or land-disturbing activity. Areas channelward of mean low water in tidal Virginia shall not be considered part of a site.

"State" means the Commonwealth of Virginia.

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

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

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

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

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

"Stormwater management plan" means a document(s) containing material describing methods for complying with the requirements of Section 18-56 of this Ordinance.

"Stormwater Pollution Prevention Plan" or *"SWPPP"* means a document that is prepared in accordance with good engineering practices and that identifies potential sources of pollutants that may reasonably be expected to affect the quality of stormwater discharges from the construction site, and otherwise meets the requirements of this Ordinance. In addition the document shall identify and require the implementation of control measures, and shall include, but not be limited to the inclusion of, or the incorporation by reference of, an approved erosion and sediment control plan, an approved stormwater management plan, and a pollution prevention plan.

"Subdivision" means the same as defined in Section 54-1 of the Town Subdivision Ordinance.

"Total maximum daily load" or *"TMDL"* means the sum of the individual wasteload allocations for point sources, load allocations for nonpoint sources, natural background

loading and a margin of safety. TMDLs can be expressed in terms of either mass per time, toxicity, or other appropriate measure. The TMDL process provides for point versus nonpoint source trade-offs.

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

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

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

"Virginia Stormwater Management Program authority" or "VSMP authority" means an authority approved by the State Board after September 13, 2011, to operate a Virginia Stormwater Management Program.

Sec. 18-53. – Stormwater permit requirement; Exemptions.

- (a) Except as provided herein, no person may engage in any land-disturbing activity until a VSMP authority permit has been issued by the Administrator in accordance with the provisions of this Ordinance.
- (b) A Chesapeake Bay Preservation Act Land-Disturbing Activity shall be subject to an erosion and sediment control plan consistent with the requirements of the Erosion and Sediment Control Ordinance, a stormwater management plan as outlined under Section 18-56, the technical criteria and administrative requirements for land-disturbing activities outlined in Section 18-59, and the requirements for control measures long-term maintenance outlined under Section 18-60.
- (c) Notwithstanding any other provisions of this Ordinance, the following activities are exempt, unless otherwise required by federal law:

- (1) Permitted surface or deep mining operations and projects, or oil and gas operations and projects conducted under the provisions of Title 45.1 of the Code of Virginia;
- (2) Clearing of lands specifically for agricultural purposes and the management, tilling, planting, or harvesting of agricultural, horticultural, or forest crops, livestock feedlot operations, or as additionally set forth by the State Board in regulations, including engineering operations as follows: construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds, ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage, and land irrigation; however, this exception shall not apply to harvesting of forest crops unless the area on which harvesting occurs is reforested artificially or naturally in accordance with the provisions of Chapter 11 (§ 10.18-6100 et seq.) of Title 10.1 of the Code of Virginia or is converted to bona fide agricultural or improved pasture use as described in Subsection B of § 10.18-6163 of Article 9 of Chapter 11 of Title 10.1 of the Code of Virginia;
- (3) Single-family residences separately built and disturbing less than 2,500 square feet and not part of a larger common plan of development or sale, including additions or modifications to existing single-family detached residential structures;
- (4) Land disturbing activities that disturb less than 2,500 square feet of land area, or activities that are part of a larger common plan of development or sale that is one acre or greater of disturbance;
- (5) Discharges to a sanitary sewer or a combined sewer system;
- (6) Activities under a State or federal reclamation program to return an abandoned property to an agricultural or open land use;
- (7) Routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original construction of the project. The paving of an existing road with a compacted or impervious surface and reestablishment of existing associated ditches and shoulders shall be deemed routine maintenance if performed in accordance with this Subsection; and
- (8) Conducting land-disturbing activities in response to a public emergency where the related work requires immediate authorization to avoid imminent endangerment to human health or the environment. In such situations, the Administrator shall be advised of the disturbance within seven days of commencing the land-disturbing activity and compliance with the administrative

requirements of Subsection (a) is required within 30 days of commencing the land-disturbing activity.

- (d) When land-disturbing activity results from the construction of a single-family residence, an agreement in lieu of a stormwater management plan may be substituted for a stormwater management plan if approved by the program administrator. Failure to comply with the terms of an agreement in lieu of a stormwater management plan shall constitute a violation of this chapter which may be enforced pursuant to section 18-64 herein.

Sec. 18-54. – Stormwater management program established; Submission and approval of plans; Prohibitions.

- (a) Pursuant to § 62.1-44.15:24 et seq. of the Code of Virginia, the Town hereby establishes a Virginia stormwater management program for land-disturbing activities and adopts the applicable Regulations that specify standards and specifications for VSMPs promulgated by the State Board for the purposes set out in Section 18-51 of this Ordinance. The Town Council hereby designates the Town Manager as the Administrator of the Virginia stormwater management program
- (b) No VSMP authority permit shall be issued by the Administrator, until the following items have been submitted to and approved by the Administrator as prescribed herein:
 - (1) A permit application that includes a general permit registration statement, if such statement is required;
 - (2) An erosion and sediment control plan approved in accordance with the Town's Erosion and Sediment Control Ordinance; and
 - (3) An approved stormwater management plan that meets the requirements of Section 18-56 of this Ordinance.
- (c) No VSMP authority permit shall be issued until evidence of general permit coverage is obtained. A registration statement is not required for detached single-family home construction within or outside a common plan of development or sale, but such projects must adhere to the requirements of the "General permit."

- (d) No VSMP authority permit shall be issued until the fees required to be paid pursuant to the uncodified ordinance are received, and a reasonable performance bond required pursuant to Section 18-65 of this Ordinance has been submitted.
- (e) No VSMP authority permit shall be issued unless and until the permit application and attendant materials and supporting documentation demonstrate that all land clearing, construction, disturbance, land development and drainage will be done according to the approved permit.
- (f) No grading, building or other local permit shall be issued for a property unless a VSMP authority permit has been issued by the Administrator.
- (g) A stormwater management plan that is approved for a residential, commercial, or industrial subdivision shall govern the development of the individual parcels, including those parcels developed under subsequent owners.

Sec. 18-55. – Stormwater pollution prevention plan; Contents of plans.

- (a) The Stormwater Pollution Prevention Plan (SWPPP) shall include the content specified by Section 9VAC25-870-54 and must also comply with the requirements and general information set forth in Section 9VAC25-880-70, Section II [stormwater pollution prevention plan] of the general permit.
- (b) The SWPPP shall be amended by the operator whenever there is a change in design, construction, operation, or maintenance that has a significant effect on the discharge of pollutants to state waters which is not addressed by the existing SWPPP.
- (c) The SWPPP must be maintained by the operator at a central location onsite. If an onsite location is unavailable, notice of the SWPPP's location must be posted near the main entrance at the construction site. Operators shall make the SWPPP available for public review in accordance with Section II of the general permit, either electronically or in hard copy.

Sec. 18-56. – Stormwater management plan; Contents of plans.

- (a) The Stormwater Management Plan, required in Section 18-54 of this Ordinance, shall apply the stormwater management technical criteria set forth in Section 18-59 of this Ordinance to the entire land-disturbing activity, consider all sources of

surface runoff and all sources of subsurface and groundwater flows converted to surface runoff, and include the following information:

- (1) Information on the type and location of stormwater discharges; information on the features to which stormwater is being discharged including surface waters or karst features, if present, and the predevelopment and post development drainage areas;
- (2) Contact information including the name, address, and telephone number of the owner and the tax reference number and parcel number of the property or properties affected;
- (3) A narrative that includes a description of current site conditions and final site conditions;
- (4) A general description of the proposed stormwater management facilities and the mechanism through which the facilities will be operated and maintained after construction is complete;
- (5) Information on the proposed stormwater management facilities, including:
 - (i) The type of facilities;
 - (ii) Location, including geographic coordinates;
 - (iii) Acres treated; and
 - (iv) The surface waters or karst features, if present, into which the facility will discharge.
- (6) Hydrologic and hydraulic computations, including runoff characteristics;
- (7) Documentation and calculations verifying compliance with the water quality and quantity requirements of Sections 9VAC25-870-62 through 9VAC25-870-92 of the Regulations.
- (8) A map or maps of the site that depicts the topography of the site and includes:
 - (i) All contributing drainage areas;
 - (ii) Existing streams, ponds, culverts, ditches, wetlands, other water bodies, and floodplains;
 - (iii) Soil types, geologic formations if karst features are present in the area, forest cover, and other vegetative areas;
 - (iv) Current land use including existing structures, roads, and locations of known utilities and easements;

- (v) Sufficient information on adjoining parcels to assess the impacts of stormwater from the site on these parcels;
 - (vi) The limits of clearing and grading, and the proposed drainage patterns on the site;
 - (vii) Proposed buildings, roads, parking areas, utilities, and stormwater management facilities; and
 - (viii) Proposed land use with tabulation of the percentage of surface area to be adapted to various uses, including but not limited to planned locations of utilities, roads, and easements.
- (b) A stormwater management plan for a land disturbing activity shall apply the stormwater management technical criteria set forth in this part to the entire land disturbing activity. Individual lots in new residential, commercial, or industrial developments shall not be considered separate land-disturbing activities.
- (c) If an operator intends to meet the water quality and/or quantity requirements set forth in Section 18-59 of this Ordinance through the use of off-site compliance options, where applicable, then a letter of availability from the off-site provider must be included. Approved off-site options must achieve the necessary nutrient reductions prior to the commencement of the applicant's land-disturbing activity except as otherwise allowed by the Code of Virginia.
- (d) Elements of the stormwater management plans that include activities regulated under Chapter 4 (§54.1-400 et seq.) of Title 54.1 of the Code of Virginia shall be appropriately sealed and signed by a professional registered in the Commonwealth of Virginia pursuant to Article 1 (§ 54.1-400 et seq.) of Chapter 4 of Title 54.1 of the Code of Virginia.
- (e) A construction record drawing for permanent stormwater management facilities shall be submitted to the Administrator. The construction record drawing shall be appropriately sealed and signed by a professional registered in the Commonwealth of Virginia, certifying that the stormwater management facilities have been constructed in accordance with the approved plan. An Administrator may elect not to require construction record drawings for stormwater management facilities for which maintenance agreements are not required pursuant to Section 18-60 (b).

Sec. 18-57. – Pollution prevention plan; Contents of plans.

- (a) Pollution Prevention Plan, required by 9VAC25-870-56, shall be developed, implemented, and updated as necessary and must detail the design, installation, implementation, and maintenance of effective pollution prevention measures to

minimize the discharge of pollutants. At a minimum, such measures must be designed, installed, implemented, and maintained to:

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

Sec. 18-58. – Review of Stormwater management plan.

- (a) The Administrator shall review stormwater management plans and shall approve or disapprove a stormwater management plan according to the following:
 - (1) The Administrator shall determine the completeness of a plan in accordance with Section 18-56 of this Ordinance, and shall notify the applicant, in writing, of such determination, within 15 calendar days of receipt. If the plan is

deemed to be incomplete, the above written notification shall contain the reasons the plan is deemed incomplete.

- (2) The Administrator shall have an additional 60 calendar days from the date of the communication of completeness to review the plan, except that if a determination of completeness is not made within the time prescribed in subdivision (1), then plan shall be deemed complete and the Administrator shall have 60 calendar days from the date of submission to review the plan.
 - (3) The Administrator shall review any plan that has been previously disapproved, within
45 calendar days of the date of resubmission.
 - (4) During the review period, the plan shall be approved or disapproved and the decision communicated in writing to the person responsible for the land-disturbing activity or his designated agent. If the plan is not approved, the reasons for not approving the plan shall be provided in writing. Approval or denial shall be based on the plan's compliance with the requirements of this Ordinance.
 - (5) If a plan meeting all requirements of this Ordinance is submitted and no action is taken within the time provided above in subdivision (2) for review, the plan shall be deemed approved.
- (b) Approved stormwater plans may be modified as follows:
- (1) Modifications to an approved stormwater management plan shall be allowed only after review and written approval by the Administrator. The Administrator shall have
60 calendar days to respond in writing either approving or disapproving such request.
 - (2) The Administrator may require that an approved stormwater management plan be amended, within a time prescribed by the Administrator, to address any deficiencies noted during inspection.
- (c) The Administrator shall require the submission of a construction record drawing for permanent stormwater management facilities. The Administrator may elect not to require construction record drawings for stormwater management facilities for which recorded maintenance agreements are not required pursuant to Section 18-60 (b).

Sec. 18-59 – Technical criteria for regulated land disturbing activities.

- (a) To protect the quality and quantity of state water from the potential harm of unmanaged stormwater runoff resulting from land-disturbing activities, the Town hereby adopts the technical criteria for regulated land-disturbing activities set forth in Part II B of the Regulations, as amended, expressly to include 9VAC25-870-62 [applicability]; 9VAC25-870-63 [water quality design criteria requirements]; 9VAC25-870-65 [water quality compliance]; 9VAC25-870-66 [water quantity]; 9VAC25-870-69 [offsite compliance options]; 4VAC 50-60-72 [design storms and hydrologic methods]; 9VAC25-870-74 [stormwater harvesting]; 9VAC25-870-76 [linear development project]; and, 9VAC25-870-85 [stormwater management impoundment structures or facilities]; 9VAC25-870-92 [comprehensive stormwater management plans], which shall apply to all land-disturbing activities regulated pursuant to this Ordinance, except as expressly set forth in Subsection (b) of this Section.
- (b) Any land disturbing activity shall be considered grandfathered and shall be subject to the Part II C technical criteria of the VSMP Regulation provided:
- (1) A proffered or conditional zoning plan, zoning with a plan of development, preliminary or final subdivision plat, preliminary or final site plan, or any document determined by the locality to be equivalent thereto (i) was approved by the locality prior to July 1, 2012, (ii) provided a layout as defined in 9VAC25-870-10, (iii) will comply with the Part II C technical criteria of the VSMP Regulation, expressly to include 9VAC25-870-93 [definitions]; 9VAC25-870-94 [applicability]; 9VAC25-870-95 [general]; 9VAC25-870-96 [water quality]; 9VAC25-870-97 [stream channel erosion]; 9VAC25-870-98 [stream channel erosion]; 9VAC25-870-99 [regional (watershed-wide) stormwater management plans], and (iv) has not been subsequently modified or amended in a manner resulting in an increase in the amount of phosphorus leaving each point of discharge, and such that there is no increase in the volume or rate of runoff;
 - (2) A state permit has not been issued prior to July 1, 2014; and
 - (3) Land disturbance did not commence prior to July 1, 2014.
- (c) Locality, state and federal projects shall be considered grandfathered by the VSMP authority and shall be subject to the Part II C technical criteria of the VSMP Regulation provided:

- (1) There has been an obligation of locality, state or federal funding, in whole or in part, prior to July 1, 2012, or the department has approved a stormwater management plan prior to July 1, 2012;
 - (2) A state permit has not been issued prior to July 1, 2014; and
 - (3) Land disturbance did not commence prior to July 1, 2014.
- (d) Land disturbing activities grandfathered under subsections A and B of this section shall remain subject to the Part II C technical criteria of the VSMP Regulation for one additional state permit cycle. After such time, portions of the project not under construction shall become subject to any new technical criteria adopted by the State Board.
- (e) In cases where governmental bonding or public debt financing has been issued for a project prior to July 1, 2012, such project shall be subject to the technical criteria of Part II C.
- (f) The Administrator may grant exceptions to the technical requirements of Part IIB or Part IIC of the Regulations, provided that (i) the exception is the minimum necessary to afford relief, (ii) reasonable and appropriate conditions are imposed so that the intent of the Act, the Regulations, and this Ordinance are preserved, (iii) granting the exception will not confer any special privileges that are denied in other similar circumstances, and (iv) exception requests are not based upon conditions or circumstances that are self-imposed or self-created. Economic hardship alone is not sufficient reason to grant an exception from the requirements of this Ordinance.
- (1) Exceptions to the requirement that the land-disturbing activity obtain required VSMP authority permit shall not be given by the Administrator, nor shall the Administrator approve the use of a BMP not found on the Virginia Stormwater BMP Clearinghouse Website, or any other control measure duly approved by the Director.
 - (2) Exceptions to requirements for phosphorus reductions shall not be allowed unless offsite options otherwise permitted pursuant to 9VAC25-870-69 have been considered and found not available.
- (g) Nothing in this Section shall preclude an operator from constructing to a more stringent standard at their discretion.

Sec. 18-60 – Long-term maintenance of permanent stormwater facilities.

- (a) The Administrator shall require the provision of long-term responsibility for and maintenance of stormwater management facilities and other techniques specified to manage the quality and quantity of runoff. Such requirements shall be set forth in an instrument recorded in the local land records prior to general permit termination or earlier as required by the Administrator and shall at a minimum:
- (1) Be submitted to the Administrator for review and approval prior to the approval of the stormwater management plan;
 - (2) Be stated to run with the land;
 - (3) Provide for all necessary access to the property for purposes of maintenance and regulatory inspections;
 - (4) Provide for inspections and maintenance and the submission of inspection and maintenance reports to the Administrator; and
 - (5) Be enforceable by all appropriate governmental parties.
- (b) At the discretion of the Administrator, such recorded instruments need not be required for stormwater management facilities designed to treat stormwater runoff primarily from an individual residential lot on which they are located, provided it is demonstrated to the satisfaction of the Administrator that future maintenance of such facilities will be addressed through an enforceable mechanism at the discretion of the Administrator. If the Administrator exercises the discretion granted by this subsection (b), he or she will document that decision and the nature of the enforceable mechanism in the applicable record, which will thereafter be retained for as long as the enforceable mechanism remains in effect, and for one year thereafter.
- (c) If a recorded instrument is not required pursuant to Section 18-60 (b), the Administrator shall develop a strategy for addressing maintenance of stormwater management facilities designed to treat stormwater runoff primarily from an individual residential lot. Such a strategy may include periodic inspections, homeowner outreach and education, or other method targeted at promoting the long-term maintenance of such facilities. Such facilities may not be subject to the requirement for an inspection to be conducted by the Administrator.

Sec. 18-61. – Monitoring and inspections.

- (a) The Administrator shall inspect the land-disturbing activity during construction for:
 - (1) Compliance with the approved erosion and sediment control plan;
 - (2) Compliance with the approved stormwater management plan;
 - (3) Development, updating, and implementation of a pollution prevention plan; and
 - (4) Development and implementation of any additional control measures necessary to address a TMDL.
- (b) The Administrator 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 Ordinance.
- (c) In accordance with a performance bond with surety, cash escrow, letter of credit, any combination thereof, or such other legal arrangement or instrument, the Administrator may also enter any establishment or upon any property, public or private, for the purpose of initiating or maintaining appropriate actions which are required by the permit conditions associated with a land-disturbing activity when a permittee, after proper notice, has failed to take acceptable action within the time specified.
- (d) Pursuant to § 62.1-44.15:40 of the Code of Virginia, the Administrator may require every VSMP authority permit applicant or permittee, or any such person subject to VSMP authority permit requirements under this Ordinance, to furnish when requested such application materials, plans, specifications, and other pertinent information as may be necessary to determine the effect of his discharge on the quality of state waters, or such other information as may be necessary to accomplish the purposes of this Ordinance.
- (e) Post-construction inspections of stormwater management facilities required by the provisions of this Ordinance shall be conducted by the Administrator pursuant to the Locality's adopted and State Board approved inspection program, and shall occur, at minimum, at least once every five (5) years except as may otherwise be provided for in Section 18-60.
- (f) The Administrator shall keep records in accordance with the following:

- (1) Project records, including approved stormwater management plans, shall be kept for three years after state permit termination or project completion.
- (2) Stormwater management facility inspection records shall be documented and retained for at least five years from the date of inspection.
- (3) Construction record drawings shall be maintained in perpetuity or until a stormwater management facility is removed.
- (4) All registration statements submitted in accordance with 9VAC25-870-59 shall be documented and retained for at least three years from the date of project completion or state permit termination.

Sec. 18-62. – Hearings.

- (a) Any permit applicant or permittee, or person subject to this Ordinance's requirements, aggrieved by any action of the Town taken without a formal hearing, or by inaction of the Town, may demand in writing a formal hearing by the Town council. A petition requesting a hearing based on Town action must be filed with the Administrator within 30 days after notice of such action is given by the Administrator. A petition based on Town inaction must be filed within thirty days after the Town's deadline for action, if there is one, or if there is no deadline then within thirty days of the date the petitioner had actual or constructive notice that the Town should have acted.
- (b) The hearings held under this section shall be conducted by the Town council at a regular or special meeting of the Town council, or by at least one member of the Town council designated by the Town council to conduct such hearings on behalf of the Town council at any other time and place authorized by the Town council. The Town shall give at least 15 days' notice of the date, time and location of the hearing to the party filing the appeal and to the property owner or record. In reviewing the Administrator's actions, the Town Council or its designee(s) shall consider evidence and opinions presented by the aggrieved applicant and the Administrator. After considering the evidence and opinions, the Town Council or its designee(s) may affirm, reverse or modify the action. Such decision shall be final, subject only to appeal under Section 58-111 of the Code.
- (c) A verbatim record of the proceedings of such hearings shall be taken and filed with the Town council. Depositions may be taken and read as in actions at law.
- (d) The Town council or its designated member(s), as the case may be, shall have power to issue subpoenas and subpoenas duces tecum, and at the request of any party shall

issue such subpoenas. The failure of a witness without legal excuse to appear or to testify or to produce documents shall be acted upon by the Town council, or its designated member(s), whose action may include the procurement of an order of enforcement from the circuit court. Witnesses who are subpoenaed shall receive the same fees and reimbursement for mileage as in civil actions.

Sec. 18-63. – Appeals.

- (a) Final decisions of the Town under this article shall be subject to appeal to the Prince William Circuit Court, 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) The burden shall be upon the party complaining of Town action to designate and demonstrate an error subject to review by the court. Allegations of error may be based upon: (i) accordance with constitutional right, power, privilege, or immunity, (ii) compliance with statutory authority, jurisdiction limitations, or right as provided in the Act, the stated objectives for which regulations may be made, and the factual showing respecting violations or entitlement in connection with case decisions, (iii) observance of required procedure where any failure therein is not mere harmless error, and (iv) the substantiality of the evidentiary support for findings of fact. The determination of the substantiality of the evidence shall be made upon the whole evidentiary record provided by the Town and the court shall determine whether there was substantial evidence in the Town's record to support its decision.
- (c) The court shall take due account of the presumption of official regularity, the experience and specialized competence of the Town, and the purposes of the Act.
- (d) The court may dismiss the appeal, order the Town to take any nondiscretionary action that the Town has withheld, or remand the matter to the Town for further proceedings as the court may permit or direct in accordance with law. The court shall not itself undertake to supply Town action committed by the Act to the Town.

Sec. 18-64. – Enforcement.

- (a) If the Administrator determines that there is a failure to comply with the VSMP authority permit conditions or an agreement in lieu of a stormwater management plan or determines there is an unauthorized discharge, notice shall be served upon the permittee or person responsible for carrying out the permit conditions by any of

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

- (1) The notice shall specify the measures needed to comply with the permit conditions and shall specify the time within which such measures shall be completed. Upon failure to comply within the time specified, a stop work order may be issued in accordance with Subsection (b) or the permit may be revoked by the Administrator.
 - (2) If a permittee fails to comply with a notice issued in accordance with this Section within the time specified, the Administrator may issue an order requiring the owner, permittee, person responsible for carrying out an approved plan, or the person conducting the land-disturbing activities without an approved plan or required permit to cease all land-disturbing activities until the violation of the permit has ceased, or an approved plan and required permits are obtained, and specified corrective measures have been completed
 - (3) Such orders shall be issued in accordance with local procedures, if adopted. In the absence of local procedures, such orders shall provide sufficient information for the recipient(s) to understand and comply with the order. Such orders shall become effective upon service on the person by certified mail, return receipt requested, sent to his address specified in the land records of the locality, or by personal delivery by an agent of the Administrator. However, if the Administrator finds that any such violation is grossly affecting or presents an imminent and substantial danger of causing harmful erosion of lands or sediment deposition in waters within the watersheds of the Commonwealth or otherwise substantially impacting water quality, it may issue, without advance notice or hearing, an emergency order directing such person to cease immediately all land-disturbing activities on the site and shall provide an opportunity for a hearing, after reasonable notice as to the time and place thereof, to such person, to affirm, modify, amend, or cancel such emergency order. If a person who has been issued an order is not complying with the terms thereof, the Administrator may institute a proceeding for an injunction, mandamus, or other appropriate remedy in accordance with Subsection 18-64 (c).
- (b) In addition to any other remedy provided by this Ordinance, if the Administrator or his designee determines that there is a failure to comply with the provisions of this

Ordinance, they may initiate such informal and/or formal administrative enforcement procedures in a manner that is consistent with the public interest.

- (c) Any person violating or failing, neglecting, or refusing to obey any rule, regulation, ordinance, order, approved standard or specification, or any permit condition issued by the Administrator may be compelled in a proceeding instituted in Prince William Circuit Court by the Locality to obey same and to comply therewith by injunction, mandamus or other appropriate remedy.
- (d) Any person who violates any provision of this Ordinance or who fails, neglects, or refuses to comply with any order of the Administrator, shall be subject to a civil penalty not to exceed \$32,500 for each violation within the discretion of the court. Each day of violation of each requirement shall constitute a separate offense.
 - (1) Violations for which a penalty may be imposed under this Subsection shall include but not be limited to the following:
 - (i) No state permit registration;
 - (ii) No SWPPP;
 - (iii) Incomplete SWPPP;
 - (iv) SWPPP not available for review;
 - (v) No approved erosion and sediment control plan;
 - (vi) Failure to install stormwater BMPs or erosion and sediment controls;
 - (vii) Stormwater BMPs or erosion and sediment controls improperly installed or maintained;
 - (viii) Operational deficiencies;
 - (ix) Failure to conduct required inspections;
 - (x) Incomplete, improper, or missed inspections; and
 - (xi) Discharges not in compliance with the requirements of Section 4VAC 50-60-1170 of the general permit.
 - (2) The Administrator may issue a summons for collection of the civil penalty and the action may be prosecuted in the appropriate court.
 - (3) In imposing a civil penalty pursuant to this Subsection, the court may consider the degree of harm caused by the violation and also the economic benefit to the violator from noncompliance.

- (4) Any civil penalties assessed by a court as a result of a summons issued by the Locality shall be paid into the treasury of the Town to be used for the purpose of minimizing, preventing, managing, or mitigating pollution of the waters of the locality and abating environmental pollution therein in such manner as the court may, by order, direct.
- (e) Notwithstanding any other civil or equitable remedy provided by this Section or by law, any person who willfully or negligently violates any provision of this Ordinance, any order of the Administrator, any condition of a permit, or any order of a court shall, be guilty of a misdemeanor punishable by confinement in jail for not more than 12 months or a fine of not less than \$2,500 nor more than \$32,500, or both.

18-65. Performance Bond.

Prior to issuance of any permit, the Administrator may require a reasonable performance bond with surety, cash escrow, letter of credit, any combination thereof, or such other legal arrangement acceptable to the [local government attorney], to ensure that measures could be taken by the Town at the Applicant's expense should he fail, after proper notice, within the time specified to initiate or maintain appropriate actions which may be required of him by the permit conditions as a result of his land disturbing activity. If the Town takes such action upon such failure by the Applicant, the Locality may collect from the Applicant for the difference should the amount of the reasonable cost of such action exceed the amount of the security held, if any. Within 60 days of the completion of the requirements of the permit conditions, such bond, cash escrow, letter of credit or other legal arrangement, or the unexpended or unobligated portion thereof, shall be refunded to the Applicant or terminated.

18-66. Fees.

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

(Ord. O-2015-01, § 51-66)