

# STORMWATER MANAGEMENT

Amended February 10, 2016

Pursuant to Code § 62.1-44.15:27, this ordinance is adopted as part of an initiative to integrate the City of Hopewell's stormwater management requirements with the City of Hopewell's erosion and sediment control ordinance, Chapter 14 of the Hopewell City Code, flood insurance, flood plain management, Article XV of the City Zoning Ordinance and Chesapeake Bay Preservation Act, Article XV-A of the City Zoning Ordinance requirements 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 City of Hopewell and those responsible for compliance with these programs.

## **1-1. Purpose and Authority.** (Section 9VAC25-870-20, 9VAC25-870-40)

- a) The purpose of this Ordinance is to ensure the general health, safety, and welfare of the citizens of the City of Hopewell and protect the quality and quantity of state waters from the potential harm of unmanaged stormwater, including protection from a land disturbing activity causing unreasonable degradation of properties, water quality, stream channels, and other natural resources, and to establish procedures whereby stormwater requirements related to water quality and quantity shall be administered and enforced.
- b) This ordinance is adopted pursuant to Article 1.1 (§62.1-44.1 5:24 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia.

## **1-2. Definitions.** (9VAC25-870-10)

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 City of Hopewell staff person or department responsible for administering the VSMP on behalf of the locality, or the duly authorized agent of the Administrator. Until amended by ordinance, the Administrator for the city of Hopewell is the Department of Public Works.

*"Agreement in lieu of a stormwater management plan"* means a contract between the plan approving authority and the landowner with minimum requirements necessary to meet the intent of a stormwater pollution prevention plan as defined in this Article.

*"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.

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*"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 :75, et seq.

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

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

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

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

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

*"General permit"* means the state permit titled GENERAL PERMIT FOR DISCHARGES OF STORMWATER FROM CONSTRUCTION ACTIVITIES found in Part XIV (9VAC25-880-1 et seq.) of the Regulations authorizing a category of discharges under the CWA and the Act within a geographical area of the Commonwealth of Virginia.

*"Land disturbance" or "land-disturbing activity"* means a man-made change to the land surface that potentially changes its runoff characteristics including clearing, grading, or excavation except that the term shall not include those exemptions specified in Section 1-3 (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.

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*"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, 9VAC25-870, as amended.

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

*"State"* means the Commonwealth of Virginia.

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

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

*"State Water Control Law"* means 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 1-6 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

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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 2 - 5 3 of the City of Hopewell's Subdivision Ordinance.

*"Total maximum daily load" or "TMDL"* means the sum of the individual waste load 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 1.1 (§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. For the purposes of this Ordinance, the City of Hopewell is the VSMP Authority.

## **1-3. 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 1-6, the technical criteria and administrative requirements for land-disturbing activities outlined in Section 1-9, and the requirements for control measures long-term maintenance

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outlined under Section 1-10, and provisions for inspections pursuant to 9V AC870-114 of the Regulations. Chesapeake Bay Preservation Act Land-Disturbing activities do not require completion of a registration statement or require coverage under the General Permit. Exceptions may be requested pursuant to 9VAC25-870-57.

- 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 (§ 10.1-1100 et seq.) of Title 10.1 of the Code of Virginia or is converted to bona fide agricultural or improved pasture use as described in Subsection B of § 10.1-1163 of Article 9 of Chapter 11 of Title 10.1 of the Code of Virginia;
  - 3) Single-family residences separately built and disturbing less than one acre and not part of a larger common plan of development or sale, including additions or modifications to existing single-family detached residential structures do not require completion of a registration statement; however, such residences are subject to general permit requirements.
  - 4) Land-disturbing activities that disturb less than one acre of land area except for land disturbing activity exceeding an area of 2,500 square feet in all areas of the (City) jurisdictions designated as subject to the Chesapeake Bay Preservation Area Designation and Management Regulations (9V AC 25-830) adopted pursuant to the provisions of the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq.) or activities that are part of a larger common plan of development or sale that is one acre or greater of disturbance;
  - 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

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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.

## **1-4. Stormwater Management Program Established; Submission and Approval of Plans; Prohibitions.**

- a) Pursuant to § 62.1-44.15:27 of the Code of Virginia, the City of Hopewell 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 1-1 of this Ordinance. The City Council of the City of Hopewell hereby designates the Department of Public Works 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, where applicable;
  - 2) An erosion and sediment control plan approved in accordance with the City of Hopewell's Erosion and Sediment Control Ordinance, Chapter 14 of the Hopewell City Code; and
  - 3) A stormwater management plan that meets the requirements of Section 1-6 of this Ordinance, or an executed agreement in lieu of a stormwater management plan, which shall be a contract on a form approved by the Administrator between the City of Hopewell and the person who is applying for a permit that specifies methods that will be implemented to comply with the requirements of a VSMP for the construction of a single family residence.
- c) No VSMP authority permit shall be issued until evidence of general permit coverage is obtained.
- d) No VSMP authority permit shall be issued until the fees required to be paid pursuant to Section 1-14, are received, and if so required by the Administrator, the Land Disturbance Permit performance bond surety in the form of a Letter of Credit, Corporate Check, Certified Check or Cash, has been posted by the applicant, per the City Article II, Bonds and Agreements Guidelines, and pursuant to Section 1-15 of this Ordinance has been submitted.

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- 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.

## **1-5. Stormwater Pollution Prevention Plan; Contents of Plans.**

- a) The Stormwater Pollution Prevention Plan (SWPPP) shall include the content specified by Section 9V AC25-870-54 and must also comply with the requirements and general information set forth in Section 9VAC880-70, 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.

## **1-6. Stormwater Management Plan; Contents of Plan.**

- a) The Stormwater Management Plan, required in Section 1-4 of this Ordinance, must apply the stormwater management technical criteria set forth in Section 1-9 of this Ordinance to the entire land-disturbing activity. Individual lots in new residential, commercial, or industrial developments shall not be considered separate land-disturbing activities. A stormwater management plan shall consider all sources of surface runoff and all sources of subsurface and groundwater flows converted to surface runoff, and include the following information:
  - 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 describing the current site conditions and final site conditions, and which includes the following:
    - i. Existing and finished topography with a maximum of two (2)-foot contour intervals with spot elevations where necessary. Plans depicting any off-site

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- drainage area shall show off-site topography with a maximum of five (5) foot contour intervals.
- ii. Storm drainage systems, and all natural, artificial and man-made watercourses.
  - iii. Storm sewers systems, to include the location, sizes, and inverts of the facilities and proposed extensions in and near the project.
  - iv. Plans for collecting and depositing stormwater, (in accordance with the latest Virginia Erosion Control and Sedimentation Handbook) and method of treatment of natural, artificial and man-made watercourses, including a delineation of proposed limits of floodplains, if any, as created or enlarged by the proposed development.
- 4) A general description of the proposed storm water management facilities and the mechanism through which the facilities will be operated and maintained after construction is complete;
  - 5) Information on the proposed stormwater management facilities, including:
    - i. The type of facilities;
    - ii. Location, including geographic coordinates;
    - iii. Acres treated; and
    - iv. The surface waters or karst features, if present, into which the facility will discharge.
  - 6) Hydrologic and hydraulic computations, including runoff characteristics;
  - 7) Documentation and calculations verifying compliance with the water quality and quantity requirements of Section 1-9 of this Ordinance.
  - 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.

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- b) If an operator intends to meet the water quality and/or quantity requirements set forth in Section 1-9 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 § 62.1-44.15:35 of the Code of Virginia.
- c) 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.
- d) A construction record drawing for permanent storm water 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. However, the Administrator may elect not to require construction record drawings for stormwater management facilities for which maintenance agreements are not required pursuant to Section 1-10(b).

## **1-7. Pollution Prevention Plan; Contents of Plans.**

- a) Pollution Prevention Plan, required by 9VAC25870-56, 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;

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- 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.

## **1-8. Review of Stormwater Management Plan.**

- a) The Administrator or any duly authorized agent of the Administrator shall review stormwater management plans and shall approve or disapprove a stormwater management plan according to the following:
- 1) The Administrator shall determine the completeness of a plan in accordance with Section 1-6 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.

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- 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 1-10 (b).

## **1-9. Technical Criteria for Regulated Land Disturbing Activities.**

- a) To protect the quality and quantity of state water from the potential harm of unmanaged stormwater runoff resulting from land-disturbing activities, the City of Hopewell 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); 9VAC25-870-72 (Design Storms and Hydrologic Methods); 9VAC25-870-74 (Stormwater Harvesting); 9VAC25-870-76 (Linear Development Project); 9VAC25-870-85 (Stormwater Management Impoundment Structures or Facilities); and 9VAC25-870-92 (Comprehensive Stormwater Management Plans), which shall apply to all land-disturbing activities, including all Chesapeake Bay Preservation Act land-disturbing activities, regulated by this Ordinance, except as expressly set forth in subsection (b), (d) and (e) below.
- b) Land disturbing activities, including all Chesapeake Bay Preservation Act land-disturbing activities, that obtain an initial state permit or commence land disturbance prior to July 1, 2014, shall be conducted in accordance with the technical criteria for regulated land disturbing activities set forth in part II C of the Regulations, 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 (Flooding); and 9VAC25-870-99 (Regional (Watershed-Wide) Stormwater Management Plans]. Such projects shall remain subject to the Part II C technical criteria for an additional two general permit cycles. After such time, portions of the project not under construction shall become subject to any new technical criteria adopted by the Board.
- c) Land-disturbing activities that obtain general permit coverage on or after July 1, 2014, shall be conducted in accordance with the Part II B technical criteria of the Regulations. Such projects shall remain subject to the Part II B technical criteria for an additional two general permit cycles except as provided for in 9VAC25-870-48. After such time, portions of the project not under construction shall be subject to any new technical criteria adopted by the Board.
- d) Any land-disturbing activity shall be considered grandfathered and shall be subject to the Part II C technical criteria of this chapter provided:
  - 1) A proffered or conditional zoning plan, zoning with a plan of development, preliminary or final subdivision plat, a preliminary or final site plan, or any document determined by the City of Hopewell to be equivalent thereto (i) was approved by the City of Hopewell prior to July 1, 2012, (ii) provided a layout as

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defined in 9V AC25-870-10, (iii) will comply with the Part II C technical criteria of the Regulations, and (iv) has not been subsequently modified or amended in a manner resulting in an increase in the amount of phosphorous 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.
- e) The City of Hopewell, state, and federal projects shall be considered grandfathered by the VSMP authority and shall be subject to the Part II C technical criteria of this chapter provided:
- 1) There has been an obligation of local, state, or federal funding, in whole or in part, prior to July 1, 2012, or the department has approved a storm water 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.
- f) Land-disturbing activities grandfathered under Subsections (d) and (e) 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 requirements adopted by the board.
- g) In cases where governmental bonding or public debt financing has been issued for a project prior to July 1, 2012, such project shall be subject to the technical requirements Part IIC.
- h) The Administrator may grant exceptions to the technical requirements of Part II B or Part II C of the Regulations, provided that (i) the exception is the minimum necessary to afford relief, (ii) reasonable and appropriate conditions are imposed so that the intent of the Act, the Regulations, and this 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 9V AC25-870-69 have been considered and found not available.

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- i) Nothing in this Section shall preclude an operator from constructing to a more stringent standard at his discretion.

## **1-10. Long-Term Maintenance of Permanent Stormwater Facilities**

- a) The Administrator shall require the provision of long-term responsibility for and maintenance of stormwater management facilities and other techniques specified to manage the quality and quantity of runoff. Such requirements shall be set forth in an instrument recorded in the local land records prior to 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) Pass the responsibility for such maintenance to successors in title;
  - 4) Provide for all necessary access to the property for purposes of maintenance and regulatory inspections;
  - 5) Provide for inspections and maintenance and the submission of inspection and maintenance reports to the Administrator; and
  - 6) Be enforceable by all appropriate governmental parties.
- b) At the discretion of the Administrator, such recorded instruments need not be required for stormwater management facilities designed to treat stormwater runoff primarily from an individual residential lot on which they are located, provided it is demonstrated to the satisfaction of the Administrator that future maintenance of such facilities will be addressed through an enforceable mechanism at the discretion of the Administrator.
- c) If a recorded instrument is not required pursuant to Subsection 1-10 (b), the Administrator shall develop a strategy for addressing maintenance of stormwater management facilities designed to treat stormwater runoff primarily from an individual residential lot on which they are located. Such a strategy may include periodic inspections, homeowner outreach and education, or other method targeted at promoting the long-term maintenance of such facilities. Such facilities shall not be subject to the requirement for an inspection to be conducted by the Administrator or any duly authorized agent of the Administrator.

## **1-11. Monitoring and Inspections.**

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

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- 4) Development and implementation of any additional control measures necessary to address a TMDL.
- b) The Administrator or any duly authorized agent of the Administrator may, at reasonable times and under reasonable circumstances, enter any establishment or upon any property, public or private, for the purpose of obtaining information or conducting surveys or investigations necessary in the enforcement of the provisions of this 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. [NOTE: Please see §62.1-44.15:40 regarding protection of specified confidential information.]
- e) Post-construction inspections of stormwater management facilities required by the provisions of this Ordinance shall be conducted by the Administrator or any duly authorized agent of the Administrator pursuant to the City of Hopewell'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 1-10.

## **1-12. Appeals.**

Any permit applicant or permittee, or person subject to Ordinance requirements, aggrieved by a permit or enforcement decision of the Administrator may file an appeal with the Hopewell Circuit Court if allowed by state law.

## **1-13. Enforcement**

- a) If the Administrator determines that there is a failure to comply with the VSMP authority permit conditions or determines there is an unauthorized discharge, notice shall be served upon the permittee or person responsible for carrying out the permit conditions by any of the following: verbal warnings and inspection reports, notices of corrective action, 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.

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- 1) The notice shall specify the measures needed to comply with the permit conditions and shall specify the time within which such measures shall be completed. Upon failure to comply within the time specified, a stop work order may be issued in accordance with Subsection (b) or the permit may be revoked by the Administrator.
- 2) If a permittee fails to comply with a notice issued in accordance with this Section within the time specified, the Administrator may issue an order requiring the owner, permittee, person responsible for carrying out an approved plan, or the person conducting the land-disturbing activities without an approved plan or required permit to cease all land-disturbing activities until the violation of the permit has ceased, or an approved plan and required permits are obtained, and specified corrective measures have been completed.

Such orders shall be issued in accordance with the provisions of Section 14-5 ( d) of the Hopewell City Code. 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 1-14 (c).

- b) In addition to any other remedy provided by this Ordinance, if the Administrator determines there is a failure to comply with the provisions of this Ordinance, the Administrator may initiate such informal and/or formal administrative enforcement procedures in a manner authorized by this Ordinance, the City of Hopewell Code of Ordinances, and any applicable City of Hopewell policies. Such measures include, but are not limited to:

- 1) With the consent of any person subject to a VSMP authority permit who has violated or failed, neglected, or refused to comply with any Ordinance or permit issued by the City of Hopewell; who has failed to comply with any decision of the Administrator; or who has violated the terms of any order issued by the Administrator, a consent special order issued pursuant to §62.1-44.15:48 of the Code of Virginia. A consent special order shall order the person to comply with the terms of the order, as well as any provision of this Ordinance or decision by the Administrator. Such special orders shall be issued in accordance with City of

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Hopewell procedures, including procedures for public notice and comment, unless issued as an emergency order consistent with (a) above. Consent special orders may include a civil charge for violations of the requirements listed above instead of civil penalties that could be imposed under this section. The City of Hopewell may proceed directly to use any other enforcement measures at its discretion.

- 2) Special orders and emergency special orders issued pursuant to §62.1-44.15:25 of the Code of Virginia.
- 3) Any person violating or failing, neglecting or refusing to obey any rule, regulation, ordinance, order, or permit condition issued by the Administrator or any other part of this Ordinance may be compelled in a proceeding instituted in any appropriate court by the City of Hopewell to obey same and to comply therewith by injunction, mandamus or other appropriate remedy.
- 4) Any person who violates any provision of this Ordinance or who fails, neglects, or refuses to comply with any order of the Administrator or the City of Hopewell, 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. The City of Hopewell may issue a summons for the collection of the civil penalty and the action may be prosecuted in the appropriate court. 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 4V AC 50-60-1170 of the general permit.
- 5) 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.

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## 1-14. Fees

- a) Fees to cover costs associated with implementation of a VSMP related to land disturbing activities and issuance of general permit coverage and VSMP authority permits shall be imposed in accordance with Table 1. When a site or sites has been purchased for development within a previously permitted common plan of development or sale, the Applicant shall be subject to fees ("total fee to be paid by applicant" column) in accordance with the disturbed acreage of their site or sites according to Table 1.

### **Table 1: Fees for permit issuance**

An applicant shall pay the fees provided below for initial issuance of General Permit coverage and VSMP authority permit coverage. No more than 50% of the total fee to be paid by the applicant shall be due at the time that a stormwater management plan or an initial stormwater management plan is submitted to the City of Hopewell for review. The balance shall be paid prior to the issuance of coverage under the General Permit. When a site or sites are purchased for development within a previously permitted common plan of development or sale, the applicant shall be subject to fees in accordance with the disturbed acreage of their site or sites according to the following table:

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Fee Type	Total fee to be paid by Applicant (includes both VSMP authority and Department portions where applicable)	Department portion of "total fee to be paid by Applicant" (based on 28% of total <b>fee paid</b> *)
Chesapeake Bay Preservation Act Land-Disturbing Activity (not subject to General Permit coverage; sites within designated areas of Chesapeake Bay Act localities with land-disturbance acreage equal to or greater than 2,500 square feet and less than 1 acre)	\$290	\$0
General/Stormwater Management - Small Construction Activity/Land Clearing (Areas within common plans of development or sale with land disturbance acreage less than 1 acre and, if required by state law, detached single family residences within or without a common plan of development or sale with land-disturbance acreage equal to or greater than one acre and less than five acres)	\$290	\$81 (except for detached single family residences in which case, if required by law, \$0 is paid to the Department)
General/Stormwater Management - Small Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 1 acre and less than 5 Acres, not to include detached single family residences within or without a common plan of development or sale)	\$2,700	\$756
General/Stormwater Management - Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 5 acres and less than 10 acres)	\$3,400	\$952
General/Stormwater Management - Large Construction Activity/Land Clearing [Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 10 acres and less than 50 acres]	\$4,500	\$1,260
General/Stormwater Management - Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 50 acres and less than 100 acres)	\$6,100	\$1,708
General/Stormwater Management - Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 100 acres)	\$9,600	\$2,688

\* If the project is completely administered by the Department such as may be the case for a state or federal project or projects covered by individual permits, the entire applicant fee shall be paid to the Department.

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- b) Fees for the modification or transfer of registration statements from the general permit issued by the State Board shall be imposed in accordance with Table 2. If the general permit modifications result in changes to stormwater management plans that require additional review by the City of Hopewell, such reviews shall be subject to the fees set out in Table 2. The fee assessed shall be based on the total disturbed acreage of the site. In addition to the general permit modification fee, modifications resulting in an increase in total disturbed acreage shall pay the difference in the initial permit fee paid and the permit fee that would have applied for the total disturbed acreage in Table 1. Fees Specified in this Subsection go to the City of Hopewell, Department of Public Works funding accounts for VSMP permits administration and CIP and Operations Maintenance activities related to City-wide drainage improvements.

**Table 2: Fees for the modification or transfer of registration statements for the General Permit for Discharges of Stormwater from Construction Activities**

Type of Permit	Fee Amount
General/Stormwater Management - Small Construction Activity/Land Clearing (Areas within common plans of development or sale with land disturbance acreage less than 1 acre)	\$20
General/Stormwater Management - Small Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 1 and less than 5 acres)	\$200
General/Stormwater Management - Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 5 acres and less than 10 acres)	\$250
General/Stormwater Management - Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 10 acres and less than 50 acres)	\$300
General/Stormwater Management - Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 50 acres and less than 100 acres)	\$450
General/Stormwater Management - Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 100 acres)	\$700

- c) The following annual permit maintenance shall be imposed in accordance with Table 3, including fees imposed on expired permits that have been administratively continued. With respect to the general permit, these fees shall apply until the permit coverage is terminated. Fees Specified in this Subsection go to the City of Hopewell, Department of Public Works funding accounts for VSMP permits administration and CIP and Operations Maintenance activities related to City-wide drainage improvements.

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**Table 3: Permit Maintenance Fees**

Type of Permit	Fee Amount
Chesapeake Bay Preservation Act Land-Disturbing Activity (not subject to General Permit coverage; sites within designated areas of Chesapeake Bay Act localities with land-disturbance acreage equal to .or greater than 2,500 square feet and less than 1 acre)	\$50
General/Stormwater Management - Small Construction Activity/Land Clearing (Areas within common plans of development or sale with land disturbance acreage less than 1 acre)	\$50
General/Stormwater Management - Small Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance equal to or greater than 1 acre and less than 5 acres)	\$400
General/Stormwater Management - Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 5 acres and less than 10 acres)	\$500
General/Stormwater Management - Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 10 acres and less than 50 acres)	\$650
General/Stormwater Management - Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 50 acres and less than 100 acres)	\$900
General/Stormwater Management - Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater 100 acres)	\$1,400

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

- d) The fees set forth in Subsections (a) through (c) above, shall apply to:
  - 1) All persons seeking coverage under the general permit.
  - 2) All permittees who request modifications to or transfers of their existing registration statement for coverage under a general permit.
  - 3) Persons whose coverage under the general permit has been revoked shall apply to the Department for an Individual Permit for Discharges of Storm water From Construction Activities.
  - 4) Permit and permit coverage maintenance fees outlined under Section 1-15 (c) may apply to each general permit holder.

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- e) No general permit application fees will be assessed to:
  - 1) Permittees who request minor modifications to general permits as defined in Section 1-2 of this Ordinance. Permit modifications at the request of the permittee resulting in changes to stormwater management plans that require additional review by the Administrator shall not be exempt pursuant to this Section.
  - 2) Permittees whose general permits are modified or amended at the initiative of the Department, excluding errors in the registration statement identified by the Administrator or errors related to the acreage of the site.
- f) All incomplete payments will be deemed as nonpayments, and the applicant shall be notified of any incomplete payments. Interest may be charged for late payments at the underpayment rate set forth in §58.1-15 of the Code of Virginia and is calculated on a monthly basis at the applicable periodic rate. A 10% late payment fee shall be charged to any delinquent (over 90 days past due) account. The City of Hopewell shall be entitled to all remedies available under the Code of Virginia in collecting any past due amount.

### **1-15. Performance Bond** (9VAC25-870-104.D and Code§ 62.1-44.15:34 (A))

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