

Chapter 7 - EROSION AND SEDIMENT CONTROL AND STORMWATER MANAGEMENT

Footnotes:

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Editor's note— Ord. No. 12-02-16, adopted Feb. 17, 2016, amended Ch. 7 in its entirety to read as herein set out. Former Ch. 7, §§ 7-1—7-62, pertained to similar subject matter, and derived from Ord. of 4-15-14.

Cross reference— Building regulations, Ch. 5; floodplain management, Ch. 9; subdivisions, Ch. 19; PUD District Ordinance, App. A.

State Law reference— Erosion and Sediment Control Law, Code of Virginia, § 10.1-560.

ARTICLE I. - IN GENERAL

DIVISION 1. - AUTHORITY

Sec. 7-1. - Title of article.

This article shall be known as the "Erosion and Sediment Control and Stormwater Management Ordinance of Franklin County, Virginia."

(Ord. No. 12-02-16, 2-17-16)

Sec. 7-2. - Purpose of article.

The purpose of this article is as follows:

- (1) Erosion and sediment control (ESC) conserves the land, water, air and other natural resources of Franklin County and the State of Virginia and promotes the health, welfare and convenience of county residents by establishing requirements for the control of erosion and sedimentation and by establishing procedures by which these requirements can be administered and enforced.
- (2) Stormwater management provides the framework for the administration, implementation and enforcement of the Virginia Stormwater Management Act (SWM Act) and to delineate the procedures and requirements to be followed in connection with state permits issued by a Virginia Stormwater Management Program (VSMP) Authority, while at the same time providing flexibility for innovative solutions to stormwater management issues.

(Ord. No. 12-02-16, 2-17-16)

Sec. 7-3. - Authority for article.

This article is adopted pursuant to the following:

- (1) Code of Virginia, 1950, as amended, Title 62.1, Chapter 3.1, Article 2.4 (§ 62.1-15:51 et seq.), known as the "Erosion and Sediment Control Law."
- (2) Code of Virginia, 1950, as amended, Title 62.1, Chapter 3.1, Article 2.3 (§ 62.1-15:24 et seq.) known as the "Stormwater Management Law."
- (3) Virginia Administrative Code Chapter 840 Erosion and Sediment Control Regulations (9VAC25-840-10 et seq.).
- (4) Virginia Administrative Code Chapter 850 Erosion and Sediment Control and Stormwater Management Certification Regulations (9VAC25-850-10 et seq.).
- (5) Virginia Administrative Code Chapter 870 Virginia Stormwater Management Program (VSMP) Regulation (9VAC25-870-10 et seq.).
- (6) Virginia Administrative Code Chapter 880 General Permit for Discharges of Stormwater from Construction Activities (9VAC25-880-1 et seq.).

Such laws provide for a comprehensive statewide program, with standards and guidelines to control erosion and sedimentation and stormwater quantity and quality, which are implemented on a local level.

(Ord. No. 12-02-16, 2-17-16)

Sec. 7-4. - Local control program established.

In accordance with the authority granted by the State of Virginia (62.1-44.15:27), Franklin County hereby establishes the following local control programs:

- (1) Effective April 15, 2014, a Virginia Erosion and Sediment Control Program (VESCP) shall be in effect to control soil erosion, sediment deposition and nonagricultural runoff which must be met to prevent the degradation of properties, stream channels, waters and other natural resources. Franklin County hereby adopts this article, any regulations promulgated by the Virginia State Water Control Board pursuant to the Code of Virginia, as amended; and the Virginia Erosion and Sediment Control (VESC) Handbook as currently in effect and amended from time to time. Franklin County hereby designates the Development Review Coordinator as the Administrator of its Virginia Erosion and Sediment Control Program.
- (2) Effective July 1, 2014, a Virginia Stormwater Management Program (VSMP) for land disturbing activities and adopts the applicable regulations that specify standards and specifications for VSMP's promulgated by the Virginia State Water Control Board pursuant to the Code of Virginia, as amended; and the Virginia Stormwater Management Handbook as currently in effect and amended from time to time. Franklin County hereby designates the Development Review Coordinator as the Administrator of its Virginia Stormwater Management Program (VSMP).

(Ord. No. 12-02-16, 2-17-16)

Sec. 7-5. - Geographic applicability.

This chapter shall apply to any land disturbing activity in Franklin County and the incorporated Towns of Boones Mill and Rocky Mount, unless they choose to administer their own program.

(Ord. No. 12-02-16, 2-17-16)

Sec. 7-6. - Severability.

If any section, subsection, sentence, clause or phrase of this chapter is for any reason held illegal, invalid, or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions hereto. The Franklin County Board of Supervisors hereby declares that it would have enacted this chapter and each section, subsection, sentence, clause, and phrases hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared illegal, invalid, or unconstitutional.

(Ord. No. 12-02-16, 2-17-16)

Sec. 7-7. - Standards to be used in preparation and consideration.

- (a) The most recent edition of the Virginia Erosion and Sediment Control (VESC) Handbook and Virginia Erosion and Sediment Control and Stormwater Management (SWM) Regulations and the Virginia Stormwater Management (VSMP) Handbook shall be available at the program administrators office as well as online and shall be used in preparing the erosion and sediment control and stormwater management plans required by this article. The county, in considering the adequacy of such erosion and sediment control and stormwater management plans, shall be guided by the standards set forth in state regulations, or otherwise included in the Virginia Erosion and Sediment Control Handbook, the Virginia Stormwater Management Handbook, or the local program manual.
- (b) In areas governed by American Electric Power's (AEP) Smith Mountain Lake Shoreline Management Plan adopted as of January 30, 2014, as amended; any land disturbing activities shall be subject to AEP approval.
- (c) All installation of materials shall be according to the VESC Handbook and manufacturers specifications.

(Ord. No. 12-02-16, 2-17-16)

Secs. 7-8, 7-9. - Reserved.

DIVISION 2. - ADMINISTRATION

Sec. 7-10. - Permits.

The following land disturbing permits may be issued pursuant to this chapter:

- (1) Erosion and sediment control permit.
- (2) Stormwater management permit.

(Ord. No. 12-02-16, 2-17-16)

Sec. 7-11. - Fees.

- (a) There shall be a reasonable fee charged for the processing of erosion and sediment control application(s). The application review fee shall be due at the time of initial submittal of the erosion and sediment control application.
- (b) The application review fees shall cover costs associated with the implementation of the VSMP and VESCP related to land disturbing activities as listed on the Land Use Development Fee Schedule, Chapter 27 of the Franklin County Code for Planning & Community Development.
- (c) There shall be a reasonable fee charged for the processing of stormwater management application(s). The permit application review fee a minimum of fifty (50) percent shall be due at the time of initial submittal of the stormwater management plan application.
- (d) All incomplete payments will be deemed as non-payments, and the applicant shall be notified of any incomplete payments. Interest may be charged for late payments at the underpayment rate set forth in the Code of Virginia § 58.1-15 and will be calculated on a monthly basis at the applicable periodic rate. A ten (10) percent late fee shall be charged to any delinquent (over ninety (90) days past due) account. The county shall be entitled to all remedies available under the Code of Virginia in collecting any past due amount.

(Ord. No. 12-02-16, 2-17-16)

Sec. 7-12. - Reference documents.

In administering this chapter, the local program authority may refer to any document, manual, handbook or guideline recognized by the State of Virginia related to erosion and sediment control and/or stormwater management. In addition, the local program authority may develop and reference a local program manual to establish policies and procedures for program administration, plan review, inspections and enforcement related to this chapter.

(Ord. No. 12-02-16, 2-17-16)

Sec. 7-13. - Appeals.

Final decisions of the program administrator under this article shall be subject to review by the Franklin County Board of Supervisors, provided an appeal is filed within thirty (30) days from any written decision by the program administrator which adversely affects the rights, duties or privileges of the person engaging in or proposing to engage in land disturbing activities.

Final decisions of the board of supervisors under this article shall be subject to review by Circuit Court of Franklin County, provided an appeal is filed within thirty (30) days from the date of any written decision by the Franklin County Board of Supervisors which adversely affects the rights, duties or privileges of the person engaging in or proposing to engage in land disturbing activities.

(Ord. No. 12-02-16, 2-17-16)

Sec. 7-14. - Reserved.

DIVISION 3. - DEFINITIONS

Sec. 7-15. - General usage terms.

As used in this article, the following words and terms shall have the meanings ascribed to them in this section unless the context clearly indicates otherwise:

Administrator means the VESCP and/or VSMP administrator, hereby designated as the development review coordinator.

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

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

Agreement in lieu of a stormwater management plan means a contract between the VSMP authority and the owner or permittee that specifies the methods that shall be implemented to comply with the requirements of a VSMP for the construction of a single-family residence; such contract may be executed by the VSMP authority in lieu of a stormwater management plan.

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

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

Board or *state board* means the state water control board.

Channel means a natural stream or manmade waterway.

Certification means the process whereby the board, on behalf of the commonwealth, issues a certificate to persons who have completed board-approved training programs and met any additional eligibility requirements of 9VAC25-850-50 related to the specified classifications (9VAC25-850-40) within the areas of ESC or SWM or in other ways demonstrated adequate knowledge and experience in accordance with the eligibility requirements of 9VAC25-850-50 in the specified classifications within the areas of ESC or SWM.

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

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

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

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

Certified plan reviewer for ESC means an employee or agent of a VESCP authority who:

- (1) Holds a certificate of competence from the board in the classification of plan reviewer in the area of ESC;
- (2) Is a professional registered in the Commonwealth pursuant to Article 1 (§ 54.1-400 et seq.) of Chapter 4 of Title 54.1 of the Code of Virginia; or
- (3) Is a professional soil scientist as defined in Chapter 22 (§ 54.1-2200 et seq.) of Title 54.1 of the Code of Virginia.

Certified plan reviewer for SWM means an employee or agent of a VSMP authority who:

- (1) Holds a certificate of competence from the board in the classification of plan reviewer in the area of SWM; or
- (2) Is a professional registered in the Commonwealth pursuant to Article 1 (§ 54.1-400 et seq.) of Chapter 4 of Title 54.1 of the Code of Virginia.

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

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

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

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

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

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

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.

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. Common plan of development or sale does not include any residential, commercial, or industrial lot recorded in the Franklin County Clerk of the Circuit Court's office on or before July 1, 2004.

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

County means the County of Franklin.

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

Department or *DEQ* means the Virginia Department of Environmental Quality.

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

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

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

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

ESC means erosion and sediment control.

ESC Act means the Erosion and Sediment Control Law, Article 4 (§ 62.1-44.15:51 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia.

Erosion and Sediment Control Plan or *ESC plan* means a document containing material for the conservation of soil and water resources of a unit or group of units of land. It may include appropriate maps, an appropriate soil and water plan inventory and management information with needed interpretations, and a record of decisions contributing to conservation treatment. The plan shall contain all major conservation decisions and all information deemed necessary by the plan-approving authority to assure that the entire unit or units of land will be so treated to achieve the conservation objectives. All erosion and sediment control plans must be prepared by a professional registered in the commonwealth pursuant to Article 1 (§ 54.1-400 et seq.) of Chapter 4 of Title 54.1 of the Code of Virginia, or a professional soil scientist as defined in Chapter 22 (§ 54.1-2200 et seq.) of Title 54.1 of the Code of Virginia.

Erosion and sediment control agreement means an agreement authorized by the program administrator to be provided in lieu of a performance surety on single-family home construction. See agreement in lieu of plans.

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 ten thousand (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.

General permit means the state permit titled general permit for discharges of stormwater from construction activities found in Chapter 880 (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.

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

Land disturbance or *land disturbing activity* means any man-made change to the land surface that may result in soil erosion from water or wind and the movement of sediments into state waters or onto lands in the commonwealth, or that potentially changes its runoff characteristics including, but not limited to, clearing, grading, and excavation, transporting and filling of land except that the term shall not include those exemptions specified elsewhere in this chapter.

Land disturbing activity permit. See permit for land disturbing activity.

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

Licensed professional or *professional registered in the Commonwealth of Virginia* means a person registered to engage in the practice of engineering, land surveying, or landscape architecture pursuant to Article 1 (§ 54.1-400 et seq.) of Chapter 4 of Title 54.1 of the Code of Virginia, or a professional soil scientist as defined in Chapter 22 (§ 54.1-2200 et seq.) of Title 54.1 of the Code of Virginia.

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

Local program manual means a reference document developed by the local program authority to document policies and procedures for program administration, plan review, inspections or enforcement related to erosion and sediment control and/or stormwater management.

Locality means Franklin County, including the incorporated towns of Boones Mill and Rocky Mount.

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.

Natural stream means tidal or non-tidal watercourses that are part of the natural topography. They usually maintain a continuous or seasonal flow during the year and are characterized as being irregular in cross-section with a meandering course. Constructed channels such as drainage ditches or swales shall not be considered natural streams. Channels designed utilizing natural design concepts may be considered natural streams.

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

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

Owner. The owner or owners 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, firm or corporation in control of a property.

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 chapter, and which may only be issued after evidence of general permit coverage has been provided by the department where applicable.

Permit for land disturbing activity. A permit issued by the county authorizing the applicant to undertake a land disturbing activity in accordance with the provisions of the VESCP or VSMP programs.

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

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

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

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

Plan approving authority. The Department of Planning and Community Development of Franklin County.

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

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

Program authority refers to Franklin County, Virginia.

Regulations include, but are not limited to, the Virginia Stormwater Management Program (VSMP) Permit Regulations, 9VAC25-870 and 9VAC25-880, as amended; and the Virginia Erosion and Sediment Control Program (VESCP) Regulations 9VAC25-840, as amended.

Responsible land disturber or *RLD*. An individual from the project or development team who will be in charge of and responsible for carrying out a land disturbing activity covered by an approved erosion and sediment control plan or an erosion and sediment control agreement, who:

- (1) Holds a responsible land disturber certificate of competence;
- (2) Holds a current certificate of competence from the board in the areas of combined administration, program administration, inspection, or plan review;
- (3) Holds a current contractor certificate of competence for erosion and sediment control;
- (4) Is registered as a professional in the Commonwealth pursuant to Article 1 (Code of Virginia, § 54.1-400 et seq.) of Chapter 4 of Title 54.1; or
- (5) Is a professional soil scientist as defined in Chapter 22 (§ 54.1-2200 et seq.) of Title 54.1 of the Code of Virginia.

Single-family residence. A noncommercial dwelling unit that is occupied exclusively by one family.

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 channel ward of mean low water in tidal Virginia shall not be considered part of a site.

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

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 erosion and sediment control program or *VESCP* means the program administered by the department of environmental quality pursuant to the state code including regulations designed to minimize erosion and sedimentation.

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

Stormwater maintenance facility means a control measure that controls stormwater runoff and changes the characteristics of that runoff including but not limited to, the quantity and quality, the period of release or velocity of flow.

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

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 chapter. In addition the document shall identify and require the implementation of control measures, and shall include, but not be limited to the inclusion of or the incorporation by reference of, an approved erosion and sediment control plan, an approved stormwater management plan, and a pollution prevention plan.

Surface water means all water, at or above the land's surface including, but not limited to springs, streams, rivers, lakes, ponds, wetlands, and artificially created water bodies.

SWM means stormwater management.

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.

Town. An incorporated town.

Transporting. Any movement of earth material from one place to another, when such movement results in destroying the vegetative cover, either by tracking or the buildup of earth materials, to the extent that erosion and sedimentation will result from the area over which such transporting occurs.

Virginia Erosion and Sediment Control Program or *VESCP* means a program approved by the board that has been established by a VESCP authority for the effective control of soil erosion, sediment deposition, and nonagricultural runoff associated with a land disturbing activity to prevent the unreasonable degradation of properties, stream channels, waters, and other natural resources and shall include such items where applicable as local ordinances, rules, permit requirements, annual standards and specifications, policies and guidelines, technical materials, and requirements for plan review, inspection, enforcement where authorized in the ESC Act and this article, and evaluation consistent with the requirements of the ESC Act and this article.

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

Virginia Stormwater Management Act or *SWM 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 board after July 1, 2013, that has been established by a VSMP authority to manage the quality and quantity of runoff resulting from land disturbing activities and shall include such items as local ordinances, rules, permit requirements, annual standards and specifications, policies and guidelines, technical materials, and requirements for plan review, inspection, enforcement, where authorized in the SWM Act and associated regulations, and evaluation consistent with the requirements of the SWM Act and associated regulations.

Virginia Stormwater Management Program authority or *VSMP authority* means an authority approved by the board after July 1, 2013, to operate a Virginia Stormwater Management Program or, until such approval is given, the department. An authority may include a locality; state entity, including the department; federal entity; or, for linear projects subject to annual standards and specifications in accordance with subsection B of § 62.1-44.15:31 of the Code of Virginia, electric, natural gas, and telephone utility companies, interstate and intrastate natural gas pipeline companies, railroad companies, or authorities created pursuant to § 15.2-5102 of the Code of Virginia.

(Ord. No. 12-02-16, 2-17-16)

Secs. 7-16—7-19. - Reserved.

ARTICLE II. - EROSION AND SEDIMENT CONTROL

Sec. 7-20. - Exemptions.

- (a) Except as provided herein, no person may engage in any land disturbing activity until an erosion and sediment control permit has been issued by the administrator in accordance with the provisions of this chapter.
- (b)

Notwithstanding any other provisions of this chapter, the following activities are exempt, unless otherwise required by federal law:

- (1) Minor activities such as home gardens and individual home landscaping, repairs and maintenance work;
- (2) Individual utility service connections;
- (3) Installation, repair and maintenance of any underground public utility lines when such activity occurs on an existing hard surfaced road, street or sidewalk provided the 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) Permitted surface or deep mining operations and projects, or oil and gas operations and projects conducted pursuant to Title 45.1 of the Code of Virginia;
- (6) Tilling, planting, or harvesting of agricultural horticultural, or forest crops, or livestock feedlot operations, or as additionally set forth by the board in regulation, including engineering operations as follows: construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds, ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage and land irrigation; however, this exception shall not apply to harvesting of forest crops unless the area on which harvesting occurs is reforested artificially or naturally in accordance with the provisions of Chapter 11 (10.1-1100 et seq.) of Title 10.1 of the Code of Virginia or is converted to bona fide agricultural or improved pasture use as described in subsection B of Section 10.1-1163 of Article 9 of Chapter 11 of Title 10.1 of the Code of Virginia;
- (7) Repair or rebuilding of the tracks, right-of-way, bridges, communication facilities and other related structures and facilities of a railroad company;
- (8) Agricultural engineering operations, including but not limited to the construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds not required to comply with the provisions of the Dam Safety Act, Article 2 (10.1-604 et seq.) of Chapter 6, ditches, strip, cropping, lister furrowing, contour cultivating, contour furrowing, land drainage and land irrigation;
- (9) Disturbed land areas of less than three thousand (3,000) square feet in size. See section 7-21 for clarification as to when a permit is required;
- (10) Installation of fence and sign posts or telephone and electric poles and other kinds of posts or poles;
- (11) Shoreline erosion control projects on tidal waters when all of the land disturbing activities are within the regulatory authority of and approved by local wetlands boards, the Marine Resources Commission or the United States Army Corps of Engineers; however, any

associated land that is disturbed outside of this exempted area shall remain subject to this article and the regulations adopted pursuant thereto; and

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

(Ord. No. 12-02-16, 2-17-16)

Sec. 7-21. - Permit required for land disturbing activities.

- (a) Except as otherwise provided in this article, no land disturbing activity shall commence prior to the issuance of an erosion and sediment control permit by the department of planning and community development.
- (b) An erosion and sediment control permit is required if:
 - (1) The area of land disturbance is ten thousand (10,000) square feet or greater; or
 - (2) The area of land disturbance is three thousand (3,000) square feet or greater; and the area of land disturbance is located within two hundred (200) feet of any surface water.
- (c) An erosion and sediment control permit is not required if:
 - (1) The area of land disturbance is less than ten thousand (10,000) square feet, and such area is located more than two hundred (200) feet from any surface water; or
 - (2) The area of land disturbance is less than three thousand (3,000) square feet, and such area is located within two hundred (200) feet of any surface water.
 - (3) Any land disturbance in accordance with section 7-20(b) shall be exempt.

(Ord. No. 12-02-16, 2-17-16)

Sec. 7-22. - Erosion and sediment control plan required.

- (a) Except as otherwise provided in this article, no erosion and sediment control permit for land disturbing activity shall be issued without an approved erosion and sediment control plan.
- (b) An agreement in lieu of a plan may be substituted for an erosion and sediment control plan under the following conditions:
 - (1) The land disturbing activity is associated with the construction of a single-family residence;
 - (2) The area of land disturbance is less than five (5) acres; and
 - (3) No additional proffers or conditions are required as part of a rezoning or special use permit which require low impact development techniques.

(Ord. No. 12-02-16, 2-17-16)

Sec. 7-23. - Erosion impact areas.

In order to prevent further erosion, the program administrator may identify any land, whether or not disturbed by the building process, as an erosion impact area as defined above and require an approved erosion and sediment control plan and erosion and sediment control permit.

(Ord. No. 12-02-16, 2-17-16)

Sec. 7-24. - Submission and approval of plan.

- (a) Except as otherwise specifically provided, no person shall engage in any land disturbing activity until an erosion and sediment control plan (ESC plan) has been submitted and approved by the county, and a permit has been issued by the program administrator.
- (b) Any person whose land disturbing activity involves lands which extend into the jurisdiction of another local erosion and sediment control program may submit an erosion and sediment control plan to the department of environmental quality (DEQ) for review and approval, rather than submission to each jurisdiction concerned. In such events, the applicant shall obtain permits for the land disturbing activity from each jurisdiction.
- (c) No grading, land disturbing activity, building or other permit shall be issued by the county for any work which involves land disturbing activity for which permit is required unless the applicant submits with his application an ESC plan for approval (unless otherwise exempted by this chapter), and certifies, after approval, that the ESC plan will be followed.
- (d) Where the land disturbing activity results from the construction or location of a single-family residence, an agreement in lieu of plans may be substituted for an ESC plan in accordance with section 7-22(b) if executed by the plan approving authority.
- (e) Prior to the issuance of any permit for land disturbing activity, the person responsible for carrying out the ESC plan or agreement in lieu of plan shall provide the name of the responsible land disturber who will be in charge of and responsible for the projects land disturbance.
- (f) 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 DEQ for review and approval prior to performing work in Franklin County. 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.

(Ord. No. 12-02-16, 2-17-16)

Sec. 7-25. - Responsibility of property owner when work is being done by a contractor.

Whenever a land disturbing activity is proposed to be conducted by a contractor performing construction work pursuant to a construction contract, the preparation, submission and approval of the required ESC plan shall be the responsibility of the owner of the land.

(Ord. No. 12-02-16, 2-17-16)

Sec. 7-26. - Approval or disapproval.

- (a) Upon receipt of an ESC plan submitted under this article, together with the required fees, the program administrator shall act on such ESC plan within forty-five (45) days, by either approving the ESC plan in writing or by disapproving ESC plan in writing and giving specific reasons for disapproval. The program administrator shall approve the ESC plan if the ESC plan meets the conservation standards of the county ESC program and if the person responsible for carrying out the ESC plan certifies that he will properly perform the erosion and sediment control measures included in the ESC plan and will comply with all provisions of this article. If a temporary sediment basin, a permanent stormwater detention basin or any other permanent feature is a part of the approved ESC plan, this same person must designate, in writing the person who will be liable for necessary long-term maintenance on these structures.
- (b) If an ESC plan is disapproved, the program administrator shall specify such modifications, terms and conditions as will permit approval of the ESC plan and shall communicate such requirements to the permit applicant.
- (c) If no action is taken by the plan approving authority within the time specified in subsection (a) above, the ESC plan shall be deemed approved and the program administrator shall issue the land disturbing permit.
- (d) If action is taken by the plan approving authority within the time specified in subsection (a) above, and the ESC plan is deemed disapproved, the applicant must resubmit within six (6) months following the date of disapproval, or the ESC plan shall be deemed abandoned. If an ESC plan is deemed abandoned, the applicant may resubmit the ESC plan after the six (6) month period, however, the following shall apply:
 - (1) The ESC plan will be subject to a new review and all applicable fees must be paid.
 - (2) The ESC plan will be reviewed under the current DEQ regulations in place at the time of resubmittal.
- (e) Should a land disturbing activity not begin within one hundred eighty (180) days following ESC plan approval, or after the ESC plan is ready for approval but the plan approval authority has not received the required performance surety, the plan will be considered abandoned. If an ESC plan is deemed abandoned, the following shall apply:

- (1) The ESC plan will be subject to a new review and all applicable fees must be paid.
- (2) The ESC plan will be reviewed under the current DEQ regulations in place at the time of re-submittal.

(f) Should a land disturbing activity cease for more than one hundred eighty (180) days, the plan approval authority may evaluate the existing approved ESC plan to determine whether the ESC plan still satisfies local and state erosion and sediment control criteria and to verify that all design factors are still valid. Should the plan approval authority determine the ESC plan is no longer valid, the ESC plan shall be deemed abandoned. If an ESC plan is deemed abandoned, the following shall apply:

- (1) The ESC plan will be subject to a new review and all applicable fees must be paid.
- (2) The ESC plan will be reviewed under the current DEQ regulations in place at the time of re-submittal.

(Ord. No. 12-02-16, 2-17-16)

Sec. 7-27. - Variances.

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

- (1) At the time of plan submission, an applicant may request a variance to become part of the approved ESC plan. The applicant shall explain the reasons for requesting variances in writing. Specific variances which are allowed by the VESCP authority shall be documented in the plan.
- (2) During construction, the person responsible for implementing the approved plan may request a variance in writing from the VESCP authority. The VESCP authority shall respond in writing either approving or disapproving such a request. If the VESCP authority does not approve a variance within ten (10) days of receipt of the request, the request shall be considered to be disapproved. Following disapproval, the applicant may resubmit a variance request with additional documentation.
- (3) The VESCP authority shall consider variance requests judiciously, keeping in mind both the need of the applicant to maximize cost effectiveness and the need to protect off-site properties and resources from damage.

(Ord. of 4-15-14; Ord. of 12-02-16)

Sec. 7-28. - Changing an approved erosion and sediment control plan.

An ESC plan that has been approved under this article may be changed by the program administrator in the following cases:

- (1) Where inspection has revealed that the ESC plan is inadequate to satisfy applicable regulations.
- (2) Where the person responsible for carrying out the approved ESC plan finds that because of changed circumstances or for other reasons the ESC plan cannot be effectively carried out, and proposed amendments, consistent with the requirements of this article, are agreed to by the program administrator and the person responsible for carrying out the plan.

(Ord. No. 12-02-16, 2-17-16)

Sec. 7-29. - Performance surety.

Except as otherwise provided in this article, no erosion and sediment control permit for land disturbing activity shall be issued without the submittal and approval of a reasonable surety to secure the required erosion and sediment control measures. Such surety may take the form of cash escrow, letter of credit, insurance bond, any combination thereof, or such legal arrangement acceptable to the county attorney. Such surety shall be held by the program authority. In the event that the applicant fails to initiate or maintain appropriate conservation actions which may be required of him by the approved ESC plan, the county may utilize said surety to implement the appropriate conservation actions.

If the county takes such conservation action upon failure by the applicant or owner, the county may collect from the applicant or owner for the difference should the amount of the reasonable cost of such action exceed the amount of the security held. Within sixty (60) days of the achievement of adequate stabilization of the land disturbing activity, such surety, cash escrow, letter of credit, insurance bond, or other legal arrangement or the unexpended or unobligated portion thereof, shall be refunded to the applicant or owner or terminated. These requirements are in addition to all other provisions of law relating to the issuance of such permits and are not intended to otherwise affect the requirements for such permits.

For land disturbing activities that are associated with the construction or location of a single-family residence, an agreement in lieu of a plan may be substituted for an engineered plan and an associated surety to secure the required erosion and sediment control permit.

(Ord. No. 12-02-16, 2-17-16)

Sec. 7-30. - Long term maintenance of permanent facilities.

- (a) The administrator shall require the provision of long-term responsibility for and maintenance of permanent erosion and sediment control facilities. 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 ESC 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 erosion and sediment control facilities designed to accommodate 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.

(Ord. No. 12-02-16, 2-17-16)

Sec. 7-31. - Closure of erosion and sediment control permit.

Post-construction record documents, also known as "as-built" drawings, are required for all development projects that include permanent facilities for erosion and sediment control. Such post-construction record documents shall be 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, and shall include language on the record documents certifying that the permanent facilities are in conformance with the approved ESC plan.

(Ord. No. 12-02-16, 2-17-16)

Sec. 7-32. - Monitoring and inspections.

- (a) The program administrator shall provide for periodic inspections of land disturbing activity either through the district or through county personnel. The district may inspect, monitor and make reports to the county, but enforcement shall be the responsibility of the program administrator. The program administrator may require monitoring and reports from the person responsible for carrying out the ESC plan or agreement in lieu of plans to ensure compliance with the approved plan and to determine whether the measures required in the approved plans are effective in controlling erosion and sediment. The owner, occupier or operator shall be given notice of the inspection and an opportunity to accompany the inspectors. Inspections shall be performed in accordance with the Virginia State Soil and Water Conservation Board's approved Alternative Inspection Program (AIP) for Franklin County, approved February 1, 2008. See Article III.
- (b) If the program administrator determines that there is a failure to comply with the ESC plan or agreement in lieu of plans, notice shall be served upon the permittee or person responsible for carrying out the ESC plan or agreement in lieu of plan by registered or certified mail to the address specified in the permit application or in the plan certification, or by delivery, to the site of

the land disturbing activities, to the agent or employee supervising such activities. The notice shall specify the measures needed to comply with the ESC plan or agreement in lieu of plans and shall specify the time within which such measures shall be completed. Upon failure to comply within the time specified, the permit may be revoked and the permittee or person responsible for carrying out the ESC plan or agreement in lieu of plans shall be deemed to be in violation of this article, and upon conviction shall be subject to the penalties provided herein.

- (c) Upon receipt of a sworn complaint of a substantial violation of this article from a designated inspector of the county or the district, the program administrator may, in conjunction with or subsequent to a notice to comply as specified in subsection (b) above, issue an order requiring that all or part of the land disturbing activities permitted on the site be stopped until the specified corrective measures have been taken, or, if land disturbing activities have commenced without an approved ESC plan or agreement in lieu of plan, requiring that all of the land disturbing activities be stopped until an approved ESC plan or agreement in lieu of plan, or any required permits are obtained. Where the alleged noncompliance is causing, or is in imminent danger of causing, harmful erosion of lands or sediment deposition in waters within the watersheds of the commonwealth, or where the land disturbing activities have commenced without an approved ESC plan, or any required permits, such an order may be issued whether or not the alleged violator has been issued a notice to comply order. The order shall be served in the same manner as a notice to comply and shall remain in effect for seven (7) days from the date of service, pending application by the enforcing authority or alleged violator for appropriate relief to the Circuit Court of Franklin County. Within seven (7) days from the service of the order, it shall be the responsibility of the owner to retain the services of a plan preparer to prepare and submit the required ESC plan, and notify the program administrator that a plan preparer has been retained. Within this seven (7) day period temporary corrective measures shall be installed to prevent harmful erosion of lands or sediment deposition in waters within the watersheds of the commonwealth. Such temporary corrective measures shall be maintained until an approved ESC plan and any required permits have been obtained. If the alleged violator has not obtained a plan preparer and/or installed the necessary temporary corrective measures within seven (7) days from the date of service of the order, the program administrator 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 ESC plan and any required permits have been obtained.
- (d) The required ESC plan shall be submitted within (30) thirty days from the date of service of the order, unless otherwise agreed to by the program administrator. If the alleged violator has not submitted the required ESC plan within the time period authorized by the program administrator, the program administrator may issue an order to owner requiring that all construction and other work on the site, other than corrective measures, be stopped until an approved erosion and sediment control plan and any required permits have been obtained.

Sec. 7-33. - Enforcement.

- (a) A violation of any provision of this article shall be deemed a Class 1 misdemeanor.
- (b) The county, district, or board may apply to the Circuit Court of Franklin County for injunctive relief to enjoin a violation or a threatened violation of the article, without the necessity of showing that there is not an adequate remedy at law. Without limiting the remedies which 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 two thousand dollars (\$2,000.00) for each violation.
- (c) Civil penalties: A civil penalty in the amount listed on the schedule below shall be assessed for each violation of the respective offenses:
 - (1) Commencement of a land disturbing activity without an approved land disturbing permit shall be not less than one hundred dollars (\$100.00)/day and no more than one thousand dollars (\$1,000.00)/day.
 - (2) Failure to comply with the vegetative measures, structural measures, watercourse measures or underground utility measures of the minimum standards found in the Virginia Erosion and Sediment Control Handbook shall be up to one hundred dollars (\$100.00)/violation/day.
 - (3) Failure to obey a stop work order shall be up to one hundred dollars (\$100.00)/day.
 - (4) Failure to stop work when a permit is revoked shall be up to one thousand dollars (\$1,000.00)/day.
- (d) Each day during which the violation is found to have existed shall constitute a separate offense. However, in no event shall a series of specified violations arising from the same operative set of facts result in civil penalties which exceed a total of ten thousand dollars (\$10,000.00), except that a series of violations arising from commencement of land disturbing activities without an approved ESC plan or an approved erosion and sediment control agreement for any site shall not result in civil penalties which exceed a total of ten thousand dollars (\$10,000.00). The assessment of civil penalties according to this schedule shall be in lieu of criminal sanctions and shall preclude the prosecution of such violation as a misdemeanor under subsection (a) of (§ 62.1-44.15:63).
- (e) Individuals who hold a responsible land disturber certification as issued by the state water control board and administered by the Virginia Department of Environmental Quality (DEQ) are hereby considered to be the person responsible for carrying out the plan and upon repeated violations, will be reported to DEQ for revocation of their certification. A responsible land disturber is also accountable for any and all sanctions included in this article and is subject to the same penalties as the owner of the property.
- (f)

Any civil penalties assessed by the court shall be paid into the treasury of Franklin County, except that where the violator is the county itself, or its agent, the court shall direct the penalty to be paid into the state treasury.

- (g) With the consent of any person who has violated or failed, neglected or refused to obey any regulation or order of the program administrator, or any condition of a permit or any provision of this article, the administrator may provide, in an order issued by the program administrator against such persons, for the payment of civil charges for violations in specific sums not to exceed the limit specified in paragraph (b) of this section. Such civil charges shall be in lieu of any appropriate civil penalty which could be imposed under paragraphs (b) and (c).
- (h) Except when land disturbance requiring a permit has begun without a permit, or when in the opinion of the administrator, conditions pose an imminent danger to life, limb, property, or to the waters of the commonwealth, this article shall be enforced as follows:
 - (1) Issue a field correction notice listing the violations noted during inspection and the required corrective action.
 - (2) Send a notice to comply by certified mail, return receipt required, identifying the violations noted in the correction letter which have not yet been corrected and allowing ten (10) days after the receipt of the notice for the implementation of the corrective actions.
 - (3) Issue a stop work order by certified mail, return receipt required; requiring that all work on the site should be stopped until the corrective measures noted in the notice to comply are implemented. A maximum period of seven (7) days after the receipt of the order shall be allowed to correct the violations. In addition, the land disturbing permit may be revoked during this period until the corrective actions are taken. Should this permit be revoked, all construction work on the site shall be stopped. Upon the completion of the corrective actions, the stop work order is rescinded and the permit is reinstated.
 - (4) Imposition of criminal or civil penalties. Either, but not both, of these penalties may be imposed if the seven (7) day period in the stop work order passes without the implementation of necessary corrective actions. The time frame for computing the number of days in violation shall not begin until the seven (7) days allowed for corrective action has expired unless work was not stopped as ordered.
 - (5) Such orders shall be issued in accordance with the Erosion and Sediment Control and Stormwater Management Manual.

(Ord. No. 12-02-16, 2-17-16)

Secs. 7-34—7-39. - Reserved.

ARTICLE III. - ALTERNATIVE INSPECTION PROGRAM FOR EROSION AND SEDIMENT CONTROL

Sec. 7-40. - Alternative inspection program.

PURPOSE: The alternative inspection program described herein for the County of Franklin is designed to provide the oversight of urban land disturbing activities by effectively utilizing local staff to meet specific urbanization trends while addressing specific environmental conditions within the locality.

AUTHORIZATION: 62.1-44.15:52 of Title 62.1, Chapter 3.1 Article 2.4 of the Code of Virginia and 9VAC25 840-60 of the Erosion and Sediment Control Regulations.

POLICY: To most effectively utilize local staff and protect the resources of the County of Franklin and the Commonwealth, the County of Franklin will implement an alternative inspection program based on a system of priorities. The system of priorities will be based upon the amount of disturbed project area, site conditions, stages of construction, and site conditions noted on previous inspections.

IMPLEMENTATION:

1. The erosion and off-site environmental impact potential of regulated projects shall be determined by an evaluation of the topography soil characteristics, acreage disturbed, proximity to water resources, and proximity to adjacent property lines.
2. After plan review and a site visit, the plan reviewer and the program administrator will assign a classification number to the project.
3. Classification numbers will be assigned to projects which address site specific erosion potential and off-site environmental impact. These classification numbers will be used to determine the frequency of inspections. The classification numbers will range from one (1) to three (3), one (1) requiring a less frequent inspection schedule and three (3) requiring a more frequent inspection schedule.
4. The classification of a project may be adjusted to a higher or lower classification by the program administrator based upon complaints, violations, inspections, and stages of construction.
5. The classification number shall be included on the approved plan, written on the file folder, written on the building permit application, and made a part of the project database.

BASIS FOR CLASSIFICATION: Project classifications shall be assigned to projects based on a preliminary site visit, plan review, and utilizing the Tabular Rating System:

| | |
|-------------------|---|
| CLASS 1 (LOW) | Projects typically with total acres disturbed under two acres; greater than 150 foot buffer between disturbed area and any property lines, water resources, or public streets; slopes are 0—7 percent and less than or equal to 300 feet; weighted soil K-factor is less than .23 within the limits of disturbance. |
| CLASS 2 (MED) | Projects typically with total acres disturbed under two acres; disturbed area is 50 feet to 150 feet from any property lines, water resources, or public streets; slopes are 7—15 percent and less than or equal to 150 feet; weighted soil K-factor is between .23 and .36 within the limits of disturbance. |
| CLASS 3 (HIGH) | Projects typically with total acres disturbed over two acres; disturbed area is less than 50 feet from any property lines, water resources, or public streets; slopes are greater than 15 percent and less than or equal to 75 feet; weighted soil K-factor is greater than .36 within the limits of disturbance. |

FREQUENCY OF INSPECTIONS:

1. All permitted land disturbing activities will be inspected at a minimum frequency according to the following schedule:

| | |
|---------|---|
| CLASS 1 | At the beginning and completion of the project and every eight weeks. |
| CLASS 2 | At the beginning and completion of the project and at least every five weeks. |
| CLASS 3 | At the beginning and completion of the project and at least every two weeks. |

2. All inspections will be documented on an inspection log maintained as a part of each project file. Project owners will receive copies of inspection reports with noted violations.
3. Inspection return frequency is not limited to the above schedule and will increase in frequency due to runoff producing storm events or documented violations.

TABULAR RATING SYSTEM—EROSION AND SEDIMENT CONTROL

| <i>TOTAL DISTURBED ACREAGE</i> | <i>CHECK</i> | <i>RATING</i> | <i>DISTANCE TO WATERCOURSE</i> | <i>CHECK</i> | <i>RATING</i> |
|--|--------------|---------------|--|--------------|---------------|
| Less than ½ acre | | 0 | 0—50 feet | | 5 |
| ½ acre to one acre | | 3 | 50—100 feet | | 3 |
| 1 to 2 acres | | 5 | 150—300 feet | | 1 |
| > 2 acres—Must inspect every two weeks | | | Greater than 300 feet | | 0 |
| (High Priority) | | | | | |
| Soil Erodibility (base on K-Factor) | | | Distance—Downstream Adjacent Property | | |
| Low (0.23 and lower) | | 1 | Less than 50 feet | | 5 |
| Moderate (0.24—0.036) | | 3 | 50 feet to 150 feet | | 3 |
| High (0.037 and higher) | | 5 | Greater than 150 feet | | 1 |
| Buffer Vegetation Condition | | | Width of Buffer | | |
| Very Good (Dense, grass, hayfield) | | 0 | 0—50 feet | | 5 |
| Good (Avg. grass, forest good pasture) | | 1 | 50—150 feet | | 3 |
| Fair (poor grass, fair pasture) | | 3 | 150—300 feet | | 1 |
| Poor (Bare soil, pavement) | | 5 | Greater than 300 feet | | 0 |

| Critical Slope | | | Crossing Water Course | | |
|--|--|--|---|---|--|
| Does the slope meet or exceed the following | | | Yes—inspect every two weeks | | |
| Criteria | | | (High Priority) | | |
| Grade of slope—0—7%, slope length > 300 feet OR | | | No | 0 | |
| Grade of slope—7—15%, slope length > 150 feet OR | | | | | |
| Grade of slope—15%, slope length > 75 feet | | | | | |
| If yes to any of these slope conditions, rating 3 If no, rating 0 | | | | | |
| OVERALL RATING (TOTAL OF THE ABOVE CATEGORIES) | | | INSPECTION RETURN FREQUENCY | | |
| If _____ is 26-33 then | | | _____ Once every two (2) weeks | | |
| If _____ is 20-26 then | | | _____ Once every five (5) weeks | | |
| If _____ is 13-19 then | | | _____ Once every eight (8) weeks | | |
| If _____ is 12 or less then | | | _____ Frequency based on criteria below | | |

Note: Inspection return frequency is not limited to the above schedule and will increase in frequency due to run-off producing storm events or documented violations. Also, an inspection will be performed at the beginning and completion of all projects, regardless of rating.

Project Name: _____ Approved By: _____

Date: ___/___/___

(Ord. No. 12-02-16, 2-17-16)

Secs. 7-41—7-49. - Reserved.

ARTICLE IV. - STORMWATER MANAGEMENT

Sec. 7-50. - Exemptions.

- (a) Except as provided herein, no person may engage in any land disturbing activity until a Virginia Stormwater Management Program or VSMP authority permit has been issued by the administrator in accordance with the provisions of this Ordinance.
- (b) Notwithstanding any other provisions of this chapter, 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 (1) acre and not part of a larger common plan of development or sale, including additions or modifications to existing single-family detached residential structures.
 - (4) Land disturbing activities that disturb less than one (1) acre 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 thirty (30) days of commencing the land disturbing activity.

(Ord. No. 12-02-16, 2-17-16)

Sec. 7-51. - Permit required for land disturbing activities.

- (a) Except as otherwise provided in this article, no land disturbing activity shall commence prior to the issuance of a SWM permit by the department of planning and community development.
- (b) A stormwater management permit is required if:
 - (1) The area of land disturbance is one (1) acre or greater; or
 - (2) The area of land disturbance as part of a common plan of development or sale not covered by an active SWM permit.
- (c) A stormwater management permit is not required if:
 - (1) The area of land disturbance is less than one (1) acre;
 - (2) The area of land disturbance as part of a common plan of development or sale covered by an active SWM permit.
 - (3) Any land disturbance in accordance with section 7-50(b) shall be exempt.

(Ord. No. 12-02-16, 2-17-16)

Sec. 7-52. - Stormwater management.

- (a) Except as otherwise provided in this article, no SWM permit for land disturbing activity shall be issued without an approved SWM plan.
- (b) An agreement in lieu of a stormwater management plan may be substituted for a stormwater management plan under the following conditions:
 - (1) The land disturbing activity is associated with the construction of a single-family residence;
 - (2) The area of land disturbance is less than five (5) acres; and
 - (3) No additional proffers or conditions are required as part of a rezoning or special use permit which require low impact development techniques.

(Ord. No. 12-02-16, 2-17-16)

Sec. 7-53. - Submission and approval of plans.

- (a) 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 ESC plan approved in accordance with the Franklin County Erosion and Sediment Control Ordinance section 7-24; and,
 - (3) A SWM Plan that meets the requirements of sections 7-53 and 7-54 of this chapter.
- (b) No VSMP authority permit shall be issued until evidence of general permit coverage is obtained.
- (c) No VSMP authority permit shall be issued until the appropriate fees have been paid and a performance bond has been submitted and approved.
- (d) 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.
- (e) No grading, building or other local permit shall be issued for a property unless a VSMP authority permit has been issued by the administrator unless otherwise exempted by this chapter.

(Ord. No. 12-02-16, 2-17-16)

Sec. 7-54. - Stormwater pollution prevention plan.

- (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 Chapter 880 General Permit for Discharges of Stormwater from Construction Activities 9VAC25-880-70.
- (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.

(Ord. No. 12-02-16, 2-17-16)

Sec. 7-55. - Stormwater management plan.

(a) The SWM plan, as required by this article, must apply the stormwater management technical criteria set forth in this article to the entire land disturbing activity, consider all sources of surface runoff and all sources of subsurface and groundwater flows converted to surface runoff, individuals lots in new residential, commercial, or industrial developments shall not be considered separate land disturbing activities, and include the following information including but not limited to any additional information as required by the VSMP Permit Regulations (9VAC25-870-55) and the Franklin County Erosion and Sediment Control and Stormwater Management Manual:

- (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 but not limited to:
 - a. The type of facilities;
 - b. Location, including geographic or state plain coordinates;
 - c. Acres treated; and,
 - d. 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 this article and the Franklin County Erosion and Sediment Control and Stormwater Management Manual.
- (8) A map or maps of the site that depicts the topography of the site and includes at a minimum:
 - a. All contributing drainage areas;
 - b. Existing streams, ponds, culverts, ditches, wetlands, other water bodies, and floodplains;
 - c. Soil types, geologic formations if karst features are present in the area, forest cover, and other vegetative areas;
 - d. Current land use including existing structures, roads, and locations of known utilities and easements;
 - e. Sufficient information on adjoining parcels to assess the impacts of stormwater from the site on these parcels;

- f. The limits of clearing and grading, and the proposed drainage patterns on the site;
- g. Proposed buildings, roads, parking areas, utilities, and stormwater management facilities; and
- h. 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) If an operator intends to meet the water quality and/or quantity requirements set forth in this section of the chapter 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 stormwater management facilities shall be submitted to the administrator except for stormwater management facilities for which maintenance agreements are not required pursuant to this article. The construction record drawing shall be appropriately sealed and signed by a licensed 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 certifying that the stormwater management facilities have been constructed in accordance with the approved plan.

(Ord. No. 12-02-16, 2-17-16)

Sec. 7-56. - Pollution prevention plan.

(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 as specified in 40 CFR 450.21 (d) 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 in accordance with 40 CFR 450 21 (e):
 - (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 in accordance with 40 CFR 45.21 (c).

(Ord. No. 12-02-16, 2-17-16)

Sec. 7-57. - 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 SWM plan according to the following:
 - (1) The administrator shall determine the completeness of a plan in accordance with this article, and shall notify the applicant, in writing, of such determination, within fifteen (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 sixty (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 sixty (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 forty-five (45) calendar days of the date of resubmission.
 - (4) For plans not approved by the administrator, all return comments shall be addressed by the applicant within ninety (90) calendar days. Plans that are not resubmitted within this time period will be subject to a new application fee and review for current regulations.
 - (5) 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 chapter and the Erosion and Sediment Control and Stormwater Management Manual.

- (6) If a plan meeting all requirements of this chapter 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 SWM plans may be modified as follows:
 - (1) Modifications to an approved SWM plan shall be allowed only after review and written approval by the administrator. The administrator shall have sixty (60) calendar days to respond in writing either approving or disapproving such request.
 - (2) The administrator may require that an approved SWM 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 this article.

(Ord. No. 12-02-16, 2-17-16)

Sec. 7-58. - Technical criteria for regulated land disturbing activities.

- (a) All land disturbing activities shall comply with the technical criteria outlined in the Erosion and Sediment Control and Stormwater Management Manual, latest edition.
- (b) Any land disturbing activity shall be considered grandfathered by the VSMP authority and shall be subject to the Part II C (9VAC25-870-93 et seq.) technical criteria of the article 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 this chapter, 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 this article 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 article for one additional state permit cycle. After such time, portions of the project not under construction shall become subject to any new technical criteria adopted by the board.
- (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) Nothing in this section shall preclude an operator from constructing to a more stringent standard at their discretion.

(Ord. No. 12-02-16, 2-17-16)

Sec. 7-59. - Performance surety.

Prior to issuance of any permit, the applicant shall be required to submit a reasonable surety, cash escrow, letter of credit, insurance bond or any combination thereof, or such other legal arrangement acceptable to the county attorney, to ensure that measures could be taken by the County of Franklin at the applicant's expense should he/she fail, after proper notice, within the time specified to initiate or maintain appropriate actions which may be required of him/her by the permit conditions as a result of his/her land disturbing activity. If the County of Franklin 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 sixty (60) days of the completion of the requirements of the permit conditions, such surety, cash escrow, letter of credit, insurance bond or other legal arrangement, or the unexpended or unobligated portion thereof, shall be refunded to the applicant or terminated.

(Ord. No. 12-02-16, 2-17-16)

Sec. 7-60. - 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 SWM 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.

(c) If a recorded instrument is not required pursuant to section 7-60(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 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.

(Ord. No. 12-02-16, 2-17-16)

Sec. 7-61. - Closure of land disturbing activities.

Post-construction record documents, also known as "as-built" drawings, are required for all development projects that include permanent facilities for stormwater management; excluding individual residential lot improvement (agreement in lieu of plan). Such post-construction record documents shall be 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, and shall include language on the record documents certifying that the permanent facilities are in conformance with the approved SWM plan.

(Ord. No. 12-02-16, 2-17-16)

Sec. 7-62. - 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 ESC plan;
 - (2) Compliance with the approved SWM plan;
 - (3) Development, updating, and implementation of a stormwater pollution prevention plan; and
 - (4) Development and implementation of any additional control measures necessary to address a TMDL.

(b) The VSMP authority shall establish an inspection program that ensures that stormwater management facilities are being adequately maintained as designed after completion of land disturbing activities. Inspection programs shall:

- (1) Be approved by the board;
- (2) Ensure that each stormwater management facility is inspected by VSMP authority, or its designee, not to include the owner, except as provided in subsections (c) and (d) of this section, at least once every five (5) years; and
- (3) Be documented by records.

(c) The Virginia Stormwater Management Program (VSMP) authority may utilize the inspection reports of the owner of a stormwater management facility as part of an inspection program established in subsection (b) of this section if the inspection is conducted by a person who is licensed as a professional engineer, architect, landscape architect, or land surveyor pursuant to Article I (Section 54.1-400 et. seq.) of Chapter 4 of Title 54.1; a person who works under the direction and oversight of the licensed professional engineer, architect, landscape architect, or land surveyor; or a person who holds an appropriate certificate of competence from the board.

(d) If a recorded instrument is not required pursuant to 9VAC25-870-112, a VSMP authority 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 VSMP authority.

(e) 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 chapter.

(f) In accordance with a performance surety with cash escrow, letter of credit, insurance bond or 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.

(g) 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 chapter, 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 chapter.

(Ord. No. 12-02-16, 2-17-16)

Sec. 7-63. - 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, 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.
- (b) Such orders shall be issued in accordance with the Erosion and Sediment Control and Stormwater Management Manual. 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 this article.
- (c)

In addition to any other remedy provided by this chapter, if the administrator or his designee determines that there is a failure to comply with the provisions of this chapter, they may initiate such informal and/or formal administrative enforcement procedures in a manner that is consistent with the Franklin County Erosion and Sediment Control and Stormwater Management Manual.

- (d) 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 Franklin County Circuit Court by Franklin County or towns within the county to obey same and to comply therewith by injunction, mandamus or other appropriate remedy.
- (e) Any person who violates any provision of this chapter or who fails, neglects, or refuses to comply with any order of the administrator, shall be subject to a civil penalty not to exceed thirty two thousand five hundred dollars (\$32,500.00) 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:
 - a. No state permit registration;
 - b. No SWPPP;
 - c. Incomplete SWPPP;
 - d. SWPPP not available for review;
 - e. No approved erosion and sediment control plan;
 - f. Failure to install stormwater BMPs or erosion and sediment controls;
 - g. Stormwater BMPs or erosion and sediment controls improperly installed or maintained;
 - h. Operational deficiencies;
 - i. Failure to conduct required inspections;
 - j. Incomplete, improper, or missed inspections; and
 - k. Discharges not in compliance with the requirements of Section 9VAC25-880-70 of the general permit.
 - (2) The 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 Franklin County shall be paid into the treasury of Franklin County to be used for the purpose of minimizing, preventing, managing, or mitigating pollution of the waters of Franklin County or towns within

the county and abating environmental pollution therein in such manner as the court may, by order, direct.

(f) 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 chapter, 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 twelve (12) months or a fine of not less than two thousand five hundred dollars (\$2,500.00) nor more than thirty two thousand five hundred dollars (\$32,500.00), or both.

(Ord. No. 12-02-16, 2-17-16)

Sec. 7-64. - Reserved.