

AN ORDINANCE INTEGRATING COUNTY STORMWATER REQUIREMENTS WITH  
COUNTY EROSION AND SEDIMENT CONTROL REQUIREMENTS INTO A  
CONSOLIDATED EROSION AND STORMWATER MANAGEMENT PROGRAM BY  
AMENDING CHAPTER 8 PLANNING AND DEVELOPMENT OF THE CODE OF THE  
COUNTY OF MONTGOMERY BY DELETING SECTIONS 8-61 THROUGH 8-69 AND  
BY AMENDING SECTIONS 8-70 THROUGH 8-85 AND BY ADOPTING SECTIONS  
8-86 THROUGH 8-88

BE IT ORDAINED, by the Board of Supervisors of the County of Montgomery, Virginia,  
that Chapter 8, entitled Planning and Development, Sections 8-61 thru 8-88 of the Code of the  
county of Montgomery, Virginia, shall be amended and reordained as follows:

**8-III DIVISION 2 STORMWATER MANAGEMENT EROSION AND STORMWATER  
MANAGEMENT**

~~Sec 8-61 Title, Purpose, And Authority~~

~~Sec 8-62 Definitions~~

~~Sec 8-63 Local Erosion And Sediment Control Program~~

~~Sec 8-64 Regulated Land Disturbing Activities; Submission And Approval Of Plans;  
Contents Of Plans~~

~~Sec 8-65 Permits; Fees; Bonding; Etc~~

~~Sec 8-66 Monitoring, Reports, And Inspections~~

~~Sec 8-67 Penalties, Injunctions, And Other Legal Actions~~

~~Sec 8-68 Appeals And Judicial Review~~

~~Sec 8-69 Fee Schedule~~

Sec 8-70 Purpose And Authority

Sec 8-71 Definitions

Sec 8-72 ~~Stormwater Permit Requirement; Exemptions~~ Virginia Erosion and Stormwater  
Management Program Established

Sec 8-73 ~~Stormwater Management Program Established; Submission And Approval Of  
Plans; Prohibitions Regulated Land Disturbing Activities~~

Sec 8-74 ~~Stormwater Pollution Prevention Plan; Contents Of Plans~~

Review and Appeal of Plans (§62.1-44.15.34 of the Code of Virginia);

Prohibitions

Sec 8-75 ~~Stormwater Management Plan; Contents Of Plan~~ Review of A Soil Erosion  
Control and Stormwater Management Plan (ESM Plans)

Sec 8-76 ~~Pollution Prevention Plan; Contents Of Plans~~ Stormwater Permit Requirement;  
Exemptions

Sec 8-77 ~~Review Of Stormwater Management Plan~~ Stormwater Pollution Prevention  
Plan; Contents of Plans (9VAC 25-875-500)

Sec 8-78 ~~Technical Criteria For Regulated Land Disturbing Activities; Grandfathering  
Stormwater Management Plan; Contents of Plan (9VAC 25-875-510)~~

Sec 8-79 ~~Long-Term Maintenance Of Permanent Stormwater Facilities~~ Pollution  
Prevention Plan; Contents of Plans (9VAC 25-875-520)

Sec 8-80 ~~Monitoring And Inspections~~ Erosion and Sediment Control Plan; Contents of  
Plans (9 VAC 25-875-500)

Sec 8-81 ~~Hearings~~ Technical Criteria For Regulated Land Disturbing Activities

Sec 8-82 ~~Appeals~~ Long-Term Maintenance of Permanent Stormwater Facilities

Sec 8-83 Enforcement Monitoring and Inspections

Sec 8-84 ~~Performance Bond~~ Appeals

Sec 8-85 Right of Entry

Sec 8-86 Enforcement

Sec 8-87 Fees

Sec 8-88 Performance Bond (4VAC50-60-104.D and Code § 603.8(A))

### **Sec 8-61 Title, Purpose, And Authority**

~~This ordinance shall be known as the "Erosion and Sediment Control Ordinance of Montgomery County." The purpose of this ordinance is to prevent degradation of properties, stream channels, waters, and other natural resources of Montgomery County by establishing requirements for the control of erosion, sedimentation, and non-agricultural runoff and by establishing procedures whereby these requirements shall be administered and enforced.~~

~~This ordinance is authorized by the Code of Virginia, Title 62.1, Chapter 3.1, Article 2.4, known as the Virginia Erosion and Sediment Control Law.~~

### **Sec 8-62 Definitions**

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

~~*Agreement in lieu of an erosion and sediment control plan* means a contract between the VESCP plan approving authority and the owner which specifies conservation measures which must be implemented in the construction of a single family residence within and outside a common plan of development; this contract may be executed by the VESCP plan approving authority in lieu of a formal site plan.~~

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

~~*Board* means the Virginia State Water Control Board.~~

~~*Certified inspector* means an employee or agent of a VESCP authority who (1) holds a certificate of competence from the board in the area of project inspection or (2) is enrolled in the board's training program for project inspection and successfully completes such program within one (1) year after enrollment.~~

~~*Certified plan reviewer* means an employee or agent of a VESCP authority who: (1) holds a certificate of competence from the board in the area of plan review; (2) is enrolled in the board's training program for plan review and successfully completes such program within one (1) year after enrollment; or (3) is licensed as a professional engineer, architect, certified landscape architect or land surveyor pursuant to Code of Virginia, tit. 54.1, ch. 4, art. 1, § 54.1-400 et seq. or a professional soil scientist as defined in Code of Virginia, § 54.1-2200.~~

~~*Certified program administrator* means an employee or agent of a VESCP authority who:~~

~~(1) holds a certificate of competence from the board in the area of program administration or (2) is enrolled in the board's training program for program administration and successfully completes such program within one (1) year after enrollment.~~

~~Clearing means any activity which removes the vegetative ground cover including, but not limited to, root mat removal or top soil removal.~~

~~Common plan of development or sale means a continuous area where separate and distinct construction activities may be taking place at different times on different schedules under one common plan. Site plans, as defined in Va. Code § 15.2-2201, approved zoning requests and preliminary plats are documentation of common plans of development. Individual lots within existing residential, commercial or industrial site plans, and subdivision plans that were platted prior to July 1, 2004 may be considered separate land disturbing activities.~~

~~County means the County of Montgomery.~~

~~Department means the department of environmental quality.~~

~~Development means a tract of land developed or to be developed as a single unit under single ownership or unified control which is to be used for any business or industrial purpose or is to contain three (3) or more residential dwelling units.~~

~~Director means the director of the department of environmental quality.~~

~~District or soil and water conservation district refers to the skyline soil and water conservation district.~~

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

~~Erosion impact area means an area of land not associated with current land disturbing activity but subject to persistent soil erosion resulting in the delivery of sediment onto neighboring properties or into state waters. This definition shall not apply to any lot or parcel of land of ten thousand (10,000) square feet or less used for residential purposes.~~

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

~~Filling means any depositing or stockpiling of earth materials.~~

~~Grading means any excavating or filling of earth material or any combination thereof, including the land in its excavated or filled conditions.~~

~~Land disturbing activity means any manmade change to the land surface that may result~~

~~in soil erosion from water or wind and the movement of sediments into state waters or onto lands in the commonwealth, including, but not limited to, clearing, grading, excavating, transporting and filling of land, except that the term shall not include:~~

- ~~1. Minor land disturbing activities such as home gardens and individual home landscaping, repairs and maintenance work;~~
- ~~2. Individual service connections;~~
- ~~3. Installation, maintenance, or repairs of any underground public utility lines when such activity occurs on an existing hard surfaced road, street or sidewalk provided such land disturbing activity is confined to the area of the road, street or sidewalk which is hardsurfaced;~~
- ~~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 Code of Virginia tit. 45.1;~~
- ~~6. Tilling, planting, or harvesting of agricultural, horticultural, or forest crops, or livestock feedlot operations; including engineering operations and agricultural engineering operations as follows: construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds not required to comply with the Dam Safety Act, Code of Virginia, ch. 6, art. 2 (§ 10-1-604 et seq.), ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage, and land irrigation; however, this exception shall not apply to harvesting of forest crops unless the area on which harvesting occurs is reforested artificially or naturally in accordance with the provisions of Code of Virginia, ch. 11 (§ 10.1-1100 et seq.) of tit. 10.1 or is converted to bona fide agricultural or improved pasture use as described in Code of Virginia, § 10.1-1163, subsection B;~~
- ~~7. Repair or rebuilding of the tracks, rights-of-way, bridges, communication facilities and other related structures and facilities of a railroad company;~~
- ~~8. Disturbed land areas of less than ten thousand (10,000) square feet in size;~~
- ~~9. Installation of fence and sign posts or telephone and electric poles and other kinds of posts or poles;~~
- ~~10. 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 plan approving authority.~~

~~*Land disturbing permit* means a permit issued by Montgomery County for the clearing, filling, excavating, grading, transporting of land or for any combination thereof or for any other land disturbing activity or for any purpose set forth herein.~~

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

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

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

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

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

~~*VESCP plan approving authority* means the Montgomery County department of engineering and regulatory compliance responsible for determining the adequacy of a plan submitted for land disturbing activities on a unit or units of lands and for approving plans.~~

~~*VESCP authority or program authority* means Montgomery County which has adopted a soil erosion and sediment control program approved by the board.~~

~~*Responsible land disturber* means 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 plan or agreement in lieu of a plan, who: (i) holds a responsible land disturber certificate of competence, (ii) holds a current certificate of competence from the board in the areas of combined administration, program administration, inspection or plan review, or (iii) is licensed in Virginia as a professional engineer, architect, certified landscape architect or land surveyor pursuant to Code of Virginia, tit. 54.1, ch. 4, art. 1 (§ 54.1-400 et seq.) or a professional soil scientist as defined in § 54.1-2200.~~

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

~~*Single family residence* means a noncommercial dwelling that is occupied exclusively by one (1) family.~~

~~*State erosion and sediment control program or state program* means the program administered by the Virginia soil and water conservation board pursuant to the state code including regulations designed to minimize erosion and sedimentation.~~

~~State permit means an approval to conduct a land disturbing activity issued by the department in the form of a state stormwater individual permit or coverage issued under a state general permit.~~

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

~~Transporting means any moving of earth materials from one (1) place to another place other than such movement incidental to grading, when such movement results in destroying the vegetative ground cover either by tracking or the buildup of earth materials to the extent that erosion and sedimentation will result from the soil or earth materials over which such transporting occurs.~~

~~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 non-agricultural runoff associated with a land disturbing activity to prevent the unreasonable degradation of properties, stream channels, waters, and other natural resources and shall include such items where applicable as local ordinances, rules, permit requirements, annual standards and specifications, policies and guidelines, technical materials, and requirements for plan review, inspection, enforcement where authorized in this article, and evaluation consistent with the requirements of this article and its associated regulations.~~

~~Water quality volume means the volume equal to the first one-half (1/2) inch of runoff multiplied by the impervious surface of the land development project.~~

### **Sec 8-63 Local Erosion And Sediment Control Program**

- ~~(a) Pursuant to Code of Virginia, § 62.1-44.15:54, Montgomery County hereby establishes a VESCP program and adopts the regulations, references, guidelines, standards and specifications promulgated by the board for the effective control of soil erosion and sediment deposition to prevent the unreasonable degradation of properties, stream channels, waters and other natural resources. Said regulations, references, guidelines, standards and specifications for erosion and sediment control are included in but not limited to the "Virginia erosion and sediment control regulations" and the Virginia Erosion and Sediment Control Handbook, as amended.~~
- ~~(b) Before adopting or revising regulations, Montgomery County shall give due notice and conduct a public hearing on the proposed or revised regulations, except that a public hearing shall not be required when Montgomery County is amending its program to conform to revisions in the state program. However, a public hearing shall be held if Montgomery County proposes or revises regulations that are more stringent than the state program.~~
- ~~(c) In addition stream restoration and relocation projects that incorporate natural channel design concepts are not manmade channels and shall be exempt from any flow rate capacity and velocity requirements for natural or manmade channels as defined in any regulations promulgated pursuant to Code of Virginia §§ 62.1-44, 15:52.62.1-44.15:54 or 62.1-44.15:65.~~

- (d) ~~In accordance with Code of Virginia, § 62.1-44.15:52, any plan approved prior to July 1, 2014 that provides for stormwater management intended to address any flow rate capacity and velocity requirements for natural or manmade channels shall satisfy the flow rate capacity and velocity requirements for natural or manmade channels if the practices are designed to (i) detain the water quality volume and to release it over forty-eight (48) hours; (ii) detain and release over a twenty-four-hour period the expected rainfall resulting from the one (1) year, twenty-four-hour storm; and (iii) reduce the allowable peak flow rate resulting from the one and one-half (1½), two (2), and ten-year, twenty-four-hour storms to a level that is less than or equal to the peak flow rate from the site assuming it was in a good forested condition, achieved through multiplication of the forested peak flow rate by a reduction factor that is equal to the runoff volume from the site when it was in good forested condition divided by the runoff volume from the site in its proposed condition, and shall be exempt from any flow rate capacity and velocity requirements for natural or manmade channels. For plans approved after July 1, 2014, the flow rate capacity and velocity requirements for natural and manmade channels shall be satisfied by compliance with water quantity requirements specified in the Stormwater Management Act § 62.1-44.15:28 and 9 VAC 25-870-66 of the Virginia Stormwater Management Program (VSMP), unless such land disturbing activities are in accordance with the grandfathering provisions of the Virginia Stormwater Management Program (VSMP) Permit Regulations.~~
- (e) ~~Pursuant to Code of Virginia, § 62.1-44.15:53, an erosion control plan shall not be approved until it is reviewed by a certified plan reviewer. Inspections of land disturbing activities shall be conducted by a certified inspector. The erosion control program of Montgomery County shall contain a certified program administrator, a certified plan reviewer, and a certified inspector, who may be the same person.~~
- (f) ~~Montgomery County hereby designates the department of engineering and regulatory as the VESCP plan-approving authority.~~
- (g) ~~The program and regulations provided for in this section shall be made available for public inspection at the office of the department of engineering and regulatory compliance.~~

#### **Sec 8-64 Regulated Land Disturbing Activities; Submission And Approval Of Plans; Contents Of Plans**

- (a) ~~Except as provided herein, no person may engage in any land disturbing activity until he or she has submitted to the department of engineering and regulatory compliance for Montgomery County an erosion and sediment control plan for the land disturbing activity and such plan has been reviewed and approved by the~~

~~VESCP plan-approving authority. No approval to begin a land disturbing activity will be issued unless evidence of state permit coverage is obtained where it is required. Where land disturbing activities involve lands under the jurisdiction of more than one (1) local control program, an erosion and sediment control plan, at the option of the applicant, may be submitted to the department for review and approval rather than to each jurisdiction concerned. Where the land disturbing activity results from the construction of single-family residence, an agreement in lieu of a plan may be substituted for an erosion and sediment control plan if executed by the VESCP plan-approving authority.~~

- ~~(b) The standards contained within the Virginia Erosion and Sediment Control Regulations and the Virginia Erosion and Sediment Control Handbook as amended are to be used by the applicant when making a submittal under the provisions of this section and in the preparation of an erosion and sediment control plan. The VESCP plan-approving authority, in considering the adequacy of a submitted plan, shall be guided by the same standards, regulations and guidelines. When the standards vary between the publications, the state regulations shall take precedence.~~
- ~~(c) The VESCP plan-approving authority shall review erosion and sediment control plans submitted to it and grant written approval within forty-five (45) days of the receipt of the plan if it determines that the plan meets the requirements of the erosion and sediment control law and the board's regulations and if the person responsible for carrying out the plan certifies that he or she will properly perform the erosion and sediment control measures included in the plan and will conform to the provisions of this section. In addition, as a prerequisite to engaging in the land disturbing activities shown on the approved plan, the person responsible for carrying out the plan shall provide the name of the responsible land disturbing to the program authority, as provided by Code of Virginia, § 62.1-44.15:52, of the Virginia Erosion and Sediment Control Law who will be in charge of and responsible for carrying out the land disturbing activity. Failure to provide the name of the responsible land disturber prior to engaging in land disturbing activities may result in revocation of the approval of the plan and the person responsible for carrying out the plan shall be subject to the penalties provided in this ordinance. However, the VESCP plan-approving authority may waive the certificate of competence requirement for an agreement in lieu of a plan for construction of a single-family residence. If a violation occurs during the land disturbing activity, then the person responsible for carrying out the agreement in lieu of a plan shall correct the violation and provide the name of the responsible land disturber as provided by Code of Virginia, § 62.1-44.15:52 of the Virginia Erosion and Sediment Control Law. Failure to provide the name of an individual holding a certificate of competence shall be a violation of this ordinance.~~
- ~~(d) The plan shall be acted upon within forty-five (45) days from receipt thereof by either approving said plan in writing or by disapproving said plan in writing and~~

giving specific reasons for its disapproval.

~~When a plan is determined to be inadequate, the VESCP plan-approving authority shall specify the modifications, terms and conditions that will permit approval of the plan. If no action is taken within forty five (45) days, the plan shall be deemed approved and the person authorized to proceed with the proposed activity. The VESCP authority shall act on any erosion and sediment control plan that has been previously disapproved within forty-five (45) days after the plan has been revised, resubmitted for approval and deemed adequate.~~

(e) ~~The VESCP plan-approving authority may require changes to an approved plan when:~~

~~(1) The inspection reveals that the plan is inadequate to satisfy applicable regulations; or~~

~~(2) The person responsible for carrying out the approved plan finds that because of changed circumstances or for other reasons the approved plan cannot be effectively carried out, and proposed amendments to the plan, consistent with the requirements of this ordinance, are agreed to by the VESCP plan-approving authority and the person responsible for carrying out the plans.~~

(f) ~~Variances. The VESCP plan-approving authority may waive or modify any of the standards that are deemed to be inappropriate or too restrictive for the site conditions, by granting a variance. A variance may be granted under these conditions:~~

~~(1) At the time of plan submission, an applicant may request a variance to become part of the approved erosion and sediment control plan. The applicant shall explain the reasons for requesting variances in writing. Specific variances which are allowed by the VESCP plan-approving 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 plan-approving authority. The VESCP plan-approving authority shall respond in writing either approving or disapproving such a request. If the VESCP plan-approving 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.~~

(g) ~~In order to prevent further erosion, Montgomery County may require approval of a plan for any land identified in the local program as an erosion impact area.~~

(h) ~~When land disturbing activity will be required of a contractor performing construction work pursuant to a construction contract, the preparation,~~

~~submission, and approval of an erosion and sediment control plan shall be the responsibility of the owner.~~

- ~~(i) In accordance with the procedure set forth by Code of Virginia, § 62.1-44.15:55(E), any person engaging in the creation and operation of wetland mitigation or stream restoration banks in multiple jurisdictions, which have been approved and are operated in accordance with applicable federal and state guidance, laws, or regulations for the establishment, use, and operation of wetland mitigation or stream restoration banks, pursuant to a mitigation banking instrument signed by the Department of Environmental Quality, the Marine Resources Commission, or the U.S. Army Corps of Engineers, may, at the option of the person, file general erosion and sediment control specifications for wetland mitigation and stream restoration banks annually with the board for review and approval consistent with guidelines established by the board.~~
- ~~(j) Electric, natural gas and telephone utility companies, interstate and intrastate natural gas companies and railroad companies shall file general erosion and sediment control specifications annually with the department for review and approval. These specifications shall apply to:
  - ~~(1) Construction, installation and maintenance of electric transmission, 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.~~~~

~~Projects not included in subsections (j)(1) and (2) shall comply with the requirements of the Montgomery County erosion and sediment control program, pursuant to Code of Virginia, § 62.1-44.15:56D of the Virginia Erosion and Sediment Control Law.~~

- ~~(k) State agency projects are exempt from the provisions of this ordinance except as provided for in Code of Virginia, § 62.1-44.15:56 of the Virginia Erosion and Sediment Control Law.~~
- ~~(l) If the grade of a site is more than thirty-three and one-third (33 1/3) percent, refer to the International Building Code, Chapter 18, as amended, for foundation clearances from slopes.~~
- ~~(m) Cut slopes or fill slopes shall not be greater than 2:1 (horizontal:vertical), unless a geotechnical report is provided for the proposed slopes.~~
- ~~(n) Cut slopes or fill slopes shall not be greater than twenty-five (25) vertical feet in height, unless a geotechnical report is provided for the proposed slopes. Cut slopes or fill slopes less than or equal to 3:1 (horizontal:vertical) may exceed twenty-five (25) vertical feet in height and shall not require a geotechnical report.~~
- ~~(o) For any cut slopes or fill slopes greater than or equal to 2:1 (horizontal:vertical) or greater than or equal to twenty-five (25) vertical feet in height with a slope~~

~~greater than 3:1 (horizontal:vertical), as-built plans showing that the finished geometry, based on a field survey performed by a licensed surveyor, is in substantial conformity with the design shall be provided to the plan-approving authority.~~

- ~~(p) Fill materials, compaction methods and density specifications shall be indicated on the site development plans. Fill areas intended to support structures shall also be indicated on the site development plans.~~
- ~~(q) Site plans and lot grading plans shall show proposed lot grades to ensure positive drainage from building pads, compatibility with stormwater management plans, and protection of downstream properties including future buildable lots.~~
- ~~(r) The administrator may waive the lot grading requirement when proposed mass grading demonstrates compatibility with overall stormwater management plans. The waiver conditions will require individual lot grading plan submittal for review at the time of building permit application. Lot grading plans shall demonstrate compliance with the overall stormwater management plan and compatibility with development of adjacent and downstream lots.~~

#### **Sec 8-65 Permits; Fees; Bonding; Etc**

- ~~(a) Agencies authorized under any other law to issue grading, building, or other permits for activities involving land disturbing activities shall not issue any such permit unless the applicant submits, with his application, an approved erosion and sediment control plan and certification that the plan will be followed and evidence of state permit coverage where it is required.~~
- ~~(b) No person may engage in any land disturbing activity unless the proposed land disturbing activity is specifically exempt from the provisions of this ordinance, until he or she has acquired a land disturbing permit, and has paid the fees and posted the required bond.~~
- ~~(c) Fees. An administrative fee for plan review set out by ordinance approved by the board of supervisors shall be paid to Montgomery County at the time of submission of an erosion and sediment control plan or agreement in lieu of a plan.~~
- ~~(d) No land disturbing permit shall be issued until the applicant submits, with his application, an approved erosion and sediment control plan or agreement in lieu of an approved erosion and sediment control plan and certification that the plan will be followed and pays all the required fees.~~
- ~~(e) Bond. All applicants for permits shall provide to Montgomery County a performance bond with surety, cash escrow, or an irrevocable letter of credit acceptable to the department of engineering and regulatory compliance, to ensure that measures could be taken by Montgomery County at the applicant's expense should the applicant fail, after proper notice, within the time specified to initiate or maintain appropriate conservation measures required of him by the approved plan as a result of his land disturbing activity. Should it be necessary for Montgomery County to take such conservation action, Montgomery County~~

~~may collect from the applicant any costs in excess of the amount of the surety held. The amount of the bond or other security for performance shall not exceed the total of the estimated cost to initiate and maintain the appropriate conservation action based on unit price for new public or private sector construction in Montgomery County and a reasonable allowance for estimated administrative costs and inflation which shall not exceed twenty-five (25) percent of the estimated cost of the conservation action.~~

~~Within sixty (60) days of adequate stabilization, as determined by the department of engineering and regulatory compliance in any project or section of a project, such bond, cash escrow or letter of credit, or the unexpended or unobligated portion thereof shall be either refunded to the applicant or terminated based on the percentage of stabilization accomplished in the project or section thereof. These requirements are in addition to all other provisions relating to the issuance of permits and are not intended to otherwise affect the requirements for such permits.~~

#### **Sec 8-66 Monitoring, Reports, And Inspections**

- ~~(a) As provided by Code of Virginia, § 62.1-44.15:52, the responsible land disturber shall be in charge of and responsible for carrying out the land disturbing activity and provide periodic inspections of the land disturbing activity. Montgomery County may require a person responsible for carrying out the plan to monitor and maintain the land disturbing activity. The person responsible for carrying out the plan will maintain records of these inspections and maintenance, to ensure compliance with the approved plan and to determine whether the measures required in the plan are effective in controlling erosion and sedimentation.~~
- ~~(b) The department of engineering and regulatory compliance shall periodically inspect the land disturbing activity in accordance with Section 9 VAC 25-840-60 of the Virginia Erosion and Sediment Control Regulations to ensure compliance with the approved plan and to determine whether the measures required in the plan are effective in controlling erosion and sedimentation. The owner, permittee, or person responsible for carrying out the plan shall be given notice of the inspection.~~

~~If the department of engineering and regulatory compliance determines that there is a failure to comply with the plan, notice shall be served upon the permittee or person responsible for carrying out the plan by registered or certified mail to the address specified in the permit application or in the plan certification, or by delivery at the site of the land disturbing activities to the agent or employee supervising such activities.~~

~~The notice shall specify the measures needed to comply with the plan and shall specify the time within which such measures shall be completed. Upon failure to comply with the specified time, the permit may be revoked and the permittee or person responsible for carrying out the plan shall be deemed to be in violation of this article and shall be subject to the penalties provided by this ordinance.~~

- ~~(c) Upon issuance of an inspection report denoting a violation of this ordinance the department of engineering and regulatory compliance may, in conjunction with or subsequent to a notice to comply as specified in this ordinance, issue an order requiring that all or part of the land disturbing activities permitted on the site be stopped until the specified corrective measures have been taken. If land disturbing activities have commenced without an approved plan, the department of engineering and regulatory compliance may issue an order requiring that all of the land disturbing activities be stopped until an approved plan or any required permits are obtained.~~

~~Where the alleged noncompliance is causing or is in imminent danger of causing harmful erosion of lands or sediment deposition in water within the watersheds of the commonwealth, or where the land disturbing activities have commenced without an approved plan or any required permits, such an order may be issued whether or not the alleged violator has been issued a notice to comply as specified in this ordinance. Otherwise, such an order may be issued only after the alleged violator has failed to comply with a notice to comply.~~

~~The order shall be served in the same manner as notice to comply and shall remain in effect for a period of seven (7) days from the date of service pending application by Montgomery County or alleged violator for appropriate relief to the Montgomery County Circuit Court or other appropriate court. Montgomery County shall serve such order for disturbance without an approved plan or permits upon the owner by mailing with confirmation of delivery to the address specified in the land records. Said order shall be posted on the site where the disturbance is occurring and shall remain in effect until permits and plan approvals are secured except in such situations where an agricultural exemption applies.~~

~~If the alleged violator has not obtained an approved plan or any required permits within seven (7) days from the date of service of the order, the department of engineering and regulatory compliance may issue an order to the owner requiring that all construction and other work on the site, other than corrective measures, be stopped until an approved plan and any required permits have been obtained. Such an order shall be served upon the owner by registered or certified mail to the address specified in the permit application or the land records of Montgomery County. The owner may appeal the issuance of an order to the Montgomery County Circuit Court or other appropriate court.~~

~~Any person violating or failing, neglecting or refusing to obey an order issued by the department of engineering and regulatory compliance may be compelled in a proceeding instituted in the Montgomery County Circuit Court to obey the order and to comply therewith by injunction, mandamus or other appropriate remedy. Upon completion and approval of corrective action or obtaining an approved plan or any required permits, the order shall immediately be lifted.~~

~~Nothing in this section shall prevent the department of engineering and regulatory compliance from taking any other action authorized by this ordinance.~~

## **Sec 8-67 Penalties, Injunctions, And Other Legal Actions**

- ~~(a) Violators of this ordinance shall be guilty of a Class 1 misdemeanor.~~
- ~~(b) Any person who violates any provision of this ordinance shall, upon a finding of the Montgomery County General District Court, be assessed a civil penalty in accordance with this ordinance. The civil penalty for any one (1) violation shall be not less than one hundred dollars (\$100.00) nor more than one thousand dollars (\$1,000), except that the civil penalty for commencement of land disturbing activities without an approved plan shall be one thousand dollars (\$1,000.00). Each day during which the violation is found to have existed shall constitute a separate offense. In no event shall a series of specified violations arising from the same operative set of facts result in civil penalties which exceed a total of ten thousand dollars (\$10,000), except that a series of violations arising from the commencement of land disturbing activities without an approved plan for any site shall not result in civil penalties which exceed a total of ten thousand dollars (\$10,000.00). Any assessment of civil penalties shall be in lieu of criminal sanctions and shall preclude the prosecution of such violations as a Class 1 misdemeanor.~~
- ~~(c) The department of engineering and regulatory compliance, or the owner of property which has sustained damage or which is in imminent danger of being damaged, may apply to the Montgomery County Circuit Court to enjoin a violation or a threatened violation of this ordinance, without the necessity of showing that an adequate remedy at law does not exist.~~

~~However, an owner of property shall not apply for injunctive relief unless (i) he or she has notified in writing the person who has violated the local program, and Montgomery County, that a violation of the local program has caused, or creates a probability of causing, damage to his or her property, and (ii) neither the person who has violated the local program nor the Montgomery County has taken corrective action within fifteen (15) days to eliminate the conditions which has caused, or create the probability of causing, damage to his or her property.~~

- ~~(d) In addition to any criminal penalties provided under this article, any person who violates any provision of this ordinance may be liable to Montgomery County in a civil action for damages.~~
- ~~(e) 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. A civil action for such violation or failure may be brought by Montgomery County. Any civil penalties assessed by a court shall be paid into the Montgomery County treasury, except that where the violator is the locality itself, or its agent, the court shall direct the penalty to be paid into the state treasury.~~
- ~~(f) With the consent of any person who has violated or failed, neglected or refused to obey any regulation or condition of a permit or any provision of this article, or order of the VESCP authority, Montgomery County may provide, for the payment~~

~~of civil charges by such person for violations in specific sums, not to exceed the limit specified in subsection (e) of this section. Such civil charges shall be instead of any appropriate civil penalty which could be imposed under subsection (b) or (e).~~

- ~~(g) The commonwealth's attorney shall, upon request of Montgomery County or the permit issuing authority, take legal action to enforce the provisions of this article.~~
- ~~(h) Compliance with the provisions of this ordinance shall be prima facie evidence in any legal or equitable proceeding for damages caused by erosion, siltation or sedimentation that all requirements of law have been met, and the complaining party must show negligence in order to recover any damages.~~

### **Sec 8-68 Appeals And Judicial Review**

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

### **Sec 8-69 Fee Schedule**

#### ~~(a) Residential:~~

Agreement \_\_\_\_\_ in \_\_\_\_\_ lieu \_\_\_\_\_ of \_\_\_\_\_ a  
plan.....  
..... \$290.00  
(includes all processing charges and required inspections but does not include  
technology fee)

#### ~~(b) Non-residential:~~

- ~~(1) For projects that disturb less than one (1) acre and are not within a common plan of development — \$290.00~~
- ~~(2) For projects that disturb more than one (1) acre or are within a common plan of development, the fee shall be as given in section 8-84 of the Montgomery County Stormwater Management Ordinance.~~

- ~~(c) Technology fee. There shall be a ten dollar (\$10.00) technology fee assessed on all residential and non-residential fees charged above.~~

### **Sec 8-70 Purpose And Authority**

- ~~(a) This ordinance shall be known as the Erosion and Stormwater Management Ordinance of Montgomery County. Pursuant to Virginia Code §62.1-44.15:27, this ordinance is adopted as part of an initiative to integrate Montgomery County's stormwater requirements with Montgomery County erosion and sediment control, into a consolidated erosion and stormwater management program. This unified~~

program is intended to facilitate the submission and approval of plans, issuance of permits, payment of fees, and coordination of inspection and enforcement activities into a more convenient and efficient manner.

~~The purpose of this division is to ensure the general health, safety, and welfare of the citizens of Montgomery County and protect the quality and quantity of state waters from the potential harm of unmanaged stormwater, including protection from a land disturbing activity causing unreasonable degradation of properties, water quality, stream channels, and other natural resources, and to establish procedures whereby stormwater requirements related to water quality and quantity shall be administered and enforced. This division provides the framework for the administration, implementation, and enforcement of the provisions of the Virginia Stormwater Management Act and delineates the procedures and requirements to be followed in connection with permits issued by the local VSMP Authority, Montgomery County.~~

- (b) The purpose of this article is to ensure the general health, safety, and welfare of the citizens of Montgomery County and protect the quality and quantity of state waters from the potential harm of unmanaged stormwater and soil erosion, including protection from a land disturbing activity causing unreasonable degradation of properties, water quality, stream channels, and other natural resources, and to establish procedures whereby stormwater requirements related to water quality and quantity shall be administered and enforced.

~~This division is adopted pursuant to Virginia Code §62.1-44.15:27, as part of an initiative to integrate Montgomery County's stormwater requirements with its erosion and sediment control, flood insurance and floodplain management requirements into a unified stormwater program. This unified program is intended to facilitate the submission and approval of plans, issuance of permits, payment of fees, and coordination of inspection and enforcement activities into a more convenient and efficient manner.~~

## **Sec 8-71 Definitions**

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

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

~~*Administrator* means the VSMP authority including the County staff person or department responsible for administering the VSMP on behalf of the locality. The Montgomery County Board of Supervisors hereby designates the County administrator or their designee as the Administrator of the Virginia Stormwater Management Program.~~

~~*Administrative guidance manual* means the documentation of policies and procedures for documentation and calculations verifying compliance with the water quality and quantity requirements review and appeal of stormwater pollution prevention plans and~~

~~stormwater management plans, site inspections, obtaining and releasing bonds, reporting and record keeping, and compile a strategies for reviews, enforcement and long term maintenance and inspection programs.~~

**Adequate Channel** means a channel that will convey the designated frequency storm event without over topping the channel bank nor causing erosive damage to the channel bed or banks.

~~Agreement in lieu of a stormwater management plan means a contract between the County and the owner or permittee that specifies methods that shall be implemented to comply with the requirements of the stormwater management program for the construction of a single family residence within and outside a common plan of development; such contract may be executed by the County in lieu of a stormwater management plan.~~VESMA and this ordinance for construction of a (i) single family detached residential structure or (ii) farm building or structure on a parcel of land with a total impervious cover percentage including the impervious cover from the farm building or structure to be constructed, of less than five percent; such contract may be executed by Montgomery County in lieu of a soil erosion control and stormwater management plan. For a single family detached residential structure with less than one acre of land disturbance, an agreement in lieu of a plan may be used when either (a) it is located within a common plan of development or sale with an approved stormwater pollution prevention plan consistent with 9VAC25-875-500 and a permit, if required; or (b) the single family detached residential is located outside of a common plan of development or sale.

~~Applicant means any person submitting an application for a permit or requesting issuance of a permit under this division.~~a soil erosion control and stormwater management plan to a VESMP authority for approval in order to obtain authorization to commence a land-disturbing activity.

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

1. Nonproprietary best management practice means both structural and nonstructural practices to prevent or reduce the pollution of surface waters and groundwater systems that are in the public domain and are not protected by trademark, patent, or copyright.
2. Proprietary best management practice means both structural and nonstructural practices to prevent or reduce the pollution of surface water and groundwater systems that are privately owned and controlled and may be protected by trademark, patent or copyright.

**Board** means State Water Control Board

**Coffer dam** means a water tight temporary structure in a river, lake, etc., for keeping the water from an enclosed area that may have been pumped dry so that bridge foundations,

dams, etc. maybe constructed.

*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 under one common plan. Site plans, as defined in Va. Code § 15.2-2201, approved zoning requests and preliminary plats are documentation of common plans of development. Individual lots within existing residential, commercial or industrial site plans and subdivision plans that were platted prior to July 1, 2004, may be considered separate land disturbing activities.

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

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

*Channel* means a natural stream or man made waterway.

*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.

*Comprehensive stormwater management plan* means a plan, which may be integrated with other land use plans or regulations that specifies how the water quality components, quantity components, or both of stormwater are to be managed on the basis of an entire watershed or a portion thereof. The plan may also provide for the remediation of erosion, flooding, and water quality and quantity problems caused by prior development.

*Construction activity* means any clearing, grading or excavation associated with large construction activity or associated with small construction activity.

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

*County* means County of Montgomery-, Virginia or the word “County” shall be construed as if the words “of Montgomery County, Virginia” followed.

*CWA and regulations* means the Clean Water Act and applicable regulations published in the Code of Federal Regulations promulgated thereunder. For the purposes of this Ordinance, it includes state program requirements.

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

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

*Department* means the 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. The regulation of discharge from development for purposes of stormwater management, does not include the exclusions found in 9VAC25-875-860.

~~*General permit* means the state permit titled General Permit For Discharges Of Stormwater From Construction Activities found in Part XIV (9VAC25-880-1 et seq.) of the Regulations authorizing a category of discharges under the CWA and the Act within a geographical area of the Commonwealth of Virginia.~~

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

*Discharge* when used without qualification, means the discharge of a pollutant.

*Discharge of a pollutant* means:

1. Any addition of any pollutant or combination of pollutants to state waters from any point source; or
2. Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.

This definition includes additions of pollutants into surface waters from: surface runoff that is collected or channeled by man; discharges through pipes, sewers, or other conveyances owned by a state, municipality, or other person that do not lead to a treatment works; and discharges through pipes, sewers, or other conveyances, leading into privately owned treatment works. This term does not include an addition of pollutants by an indirect discharger.

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

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

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

*Drainage area* means a land area, water area, or both from which runoff flows to a common point.

*Energy dissipator* means a nonerodable structure which reduces the relocating to concentrated flow to reduce its erosive effects.

Environmental Protection Agency or EPA means the United States Environmental Protection Agency

Erosion and sediment control plan means a document containing material for the conservation of soil and water resources of a unit or group of units of land. It may include appropriate maps, an appropriate soil and water plan inventory and management information with needed interpretations, and a record of decisions contributing to conservation treatment. The plan shall contain all major conservation decisions to ensure that the entire unit or units of land will be so treated to achieve the conservation objectives.

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

ESC means erosion and sediment control.

ESM plan means a soil erosion control and stormwater management plan, commonly referred to as the erosion control and stormwater management plan.

Farm building or structure means the same as that term is defined in § 36-97 of the Code of Virginia and also includes any building or structure used for agritourism activity, as defined in § 3.2-6400 of the Code of Virginia, and any related impervious services including roads, driveways, and parking areas.

Flood fringe means the portion of the floodplain outside the floodway that is usually covered with water from the 100-year flood or storm event. This includes the flood or floodway fringe designated by the Federal Emergency Management Agency.

Flooding means a volume of water that is too great to be confined within the banks or walls of the stream, water body, or conveyance system and that overflows onto adjacent lands, thereby causing or threatening damage.

Floodplain means the area adjacent to a channel, river, stream, or other water body that is susceptible to being inundated by water normally associated with the 100-year flood or storm event. This includes the floodplain designated by the Federal Emergency Management Agency.

Flood-prone area means the component of a natural or restored stormwater conveyance system that is outside the main channel. Flood-prone areas may include the floodplain, the floodway, the flood fringe, wetlands, riparian buffers, or other areas adjacent to the main channel.

Floodway means the channel of a river or other watercourse and the adjacent land areas, usually associated with flowing water, that must be reserved in order to discharge the 100-year flood or storm event without cumulatively increasing the water surface elevation more than one foot. This includes the floodway designated by the Federal Emergency Management Agency.

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

General permit means a permit issued by the Department and administered by the County authorizing a category of discharges under the CWA and the VESMA within a geographical area.

Hydrologic Unit Code or HUC means a watershed unit established in the most recent version of Virginia's 6<sup>th</sup> Order National Watershed Boundary Dataset unless specifically identified as another order.

Impervious cover means a surface composed of material that significantly impedes or prevents natural infiltration of water into soil.

Incorporated place means a city, town, township, or village that is incorporated under the Code of Virginia.

Inspection means an on-site review of the project's compliance with any applicable design criteria, or an on-site review to obtain information or conduct surveys or investigations necessary in the implementation or enforcement of the VESMA and applicable regulations.

Karst area means any land area predominantly underlain at the surface or shall subsurface by limestone, dolomite, or other soluble bedrock regardless of any obvious surface karst features.

Karst features means sinkholes, sinking and losing streams, caves, large flow springs, and other such landscape features found in karst areas.

Land disturbance or land disturbing activity means a man-made change to the land surface that may result in soil erosion or has the potential to potentially changes its runoff characteristics including construction activity such as clearing, grading, or excavation except that the term shall not include those exemptions specified in section 8-72 (b) of this division excavating or filling the land.

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

Land disturbing permit or LDP means a permit issued by the County for land disturbance [as required of a Virginia Erosion and Stormwater Management Authority] or [as required under the Virginia Erosion and Stormwater Management Program].

Land-disturbance approval means an approval allowing a land-disturbing activity to commence issued by the VESMP authority after the requirements of § 62.1-44.15:34 of the Code of Virginia have been met.

Large construction activity means construction activity including clearing, grading, and excavation, except operations that result in the disturbance of less than five acres of total land area. Large construction activity also includes the disturbance of less than five acres of total land that is a part of a larger common plan of development or sale if the larger

common plan will ultimately disturb five acres or more. Large construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility.

Linear development project means a land-disturbing activity that is linear in nature such as, but not limited to, (i) the construction of electric and telephone utility lines, and natural gas pipelines; (ii) construction of tracks, rights-of-way, bridges, communication facilities and other related structures of a railroad company; (iii) highway construction projects; (iv) construction of stormwater channels and stream restoration activities; (v) water and sewer lines. Private subdivision roads or streets shall not be considered linear development projects.

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

Locality means The County of Montgomery, Virginia.

Localized flooding means smaller scale flooding that may occur outside of a stormwater conveyance system. This may include high water, ponding, or standing water from stormwater runoff, which is likely to cause property damage or unsafe conditions.

~~Lot grading plans specifies the proposed elevations and drainage patterns for land development on a single parcel of land. The plan shall include design elevations and any storm drainage features. The plan establishes the grading relationship between adjacent properties and serves as the basis for controlling surface runoff.~~

Main channel means the portion of the stormwater conveyance system that contains the base flow and small frequent storm events.

Man-made means construction by man.

Minimize means to reduce or eliminate the discharge of pollutants to the extent achievable using stormwater controls, that are technologically available and economically practicable.

~~Minor modification means an modifications and amendments 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 LPD or 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.~~

Montgomery County Stormwater Manual or Manual means the documentation of policies and procedures that serve as guidance to the County Code for property owners, developers, and design professionals to assist with development within the County. The manual may be revised and updated as needed by the administrator or his designee.

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

~~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 division, and which may only be issued after evidence of general permit coverage if such statement is required has been provided by the department.

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

Natural stream means a tidal or nontidal watercourse that is part of the natural topography. It usually maintains a continuous or seasonal flow during the year and is characterized as being irregular in cross-section with a meandering course. Constructed channels such as drainage ditches or swales shall not be considered streams; however, channels designed utilizing natural channel design concepts may be considered natural streams.

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

Nonpoint source pollution means pollution such as sediment, nitrogen, phosphorous, hydrocarbons, heavy metals, and toxics whose sources cannot be pinpointed but rather are washed from the land surface in a diffuse manner by stormwater.

Operator means the owner or operator of any facility or activity subject to the VESMA and this ordinance. In the context of stormwater associated with a large or small construction activity, operator means any person associated with a construction project that meets either of the following two criteria: (i) the person has direct operational control over construction plans and specifications, including the ability to make modifications to those plans and specifications or (ii) the person has day-to-day operational control of those activities at a project that are necessary to ensure compliance with a stormwater pollution prevention plan for the site or other general permit or County land disturbance permit conditions (i.e., they are authorized to direct workers at a site to carry out activities required by the stormwater pollution prevention plan or comply with other LDP or general permit conditions).

Owner means the same as that term is defined in § 62.1-44.3 of the Code of Virginia. For a regulated land-disturbing activity that does not require an LDP or general permit, "owner" also means the owner or owners of the freehold of the premises or lesser estate therein, mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee, or other person, firm, or corporation in control of a property.

Peak flow rate means the maximum instantaneous flow from a prescribed design storm at a particular location.

Percent impervious means the impervious area within the site divided by the area of the site multiplied by 100.

General permit coverage means the General VPDES Permit for Discharge of Stormwater from Construction Activities found at 9VAC25-880-70 a VPDES permit issued by the department pursuant to § 62.1-44.15 of the Code of Virginia for stormwater discharges from a land-disturbing activity.

Permittee means the person to whom ~~a~~ the VSMP authority permit is issued.

Person means any individual, public or private corporation, partnership, firm, association, joint venture, trust, estate, state, municipality, commission, board, utility or political subdivision of a state, governmental body, including federal, state, or local entity as applicable, any interstate body or any other legal entity.

Point of discharge means a location at which concentrated stormwater runoff is released.

Point source means any discernible, confined, and discrete conveyance including any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel, or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural stormwater runoff.

Pollutant discharge means the average amount of a particular pollutant measured in pounds per year or other standard reportable unit as appropriate, delivered by stormwater runoff.

Pollution means such alteration of the physical, chemical, or biological properties of any state waters as will or is likely to create a nuisance or render such waters (a) harmful or detrimental or injurious to the public health, safety, or welfare, or to the health of animals, fish or aquatic life; (b) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that (i) an alteration of the physical, chemical, or biological property of state waters, or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution, but which, in combination with such alteration of or discharge or deposit to state waters by other owners, is sufficient to cause pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii) contributing to the contravention of standards of water quality duly established by the State Water Control Board, are "pollution" for the terms and purposes of this ordinance.

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

Pre-development refers to the conditions that exist at the time that plans for the land-disturbing activity are submitted to the VESMP authority. Where phased development or plan approval occurs (preliminary grading, demolition of existing structures, roads and utilities, etc.), the existing conditions at the time prior to the commencement of land-disturbing activity shall establish predevelopment conditions.

Prior developed lands means land that has been previously utilized for residential, commercial, industrial, institutional, recreation, transportation, or utility facilities or structures, and that will have the impervious areas associated with those uses altered during a land-disturbing activity.

Qualified personnel means a person knowledgeable in the principals and practices of erosion and sediment and stormwater management controls who possesses the skills to assess conditions at the construction site for the operator that could impact stormwater quality and quantity and to assess the effectiveness of any sediment and erosion control measures of stormwater management facilities selected to control the quality and quantity of stormwater discharges from the construction activity.

Regulations means the Virginia Stormwater Management Program (VSMP) Permit Regulations, 9VAC25-870, as amended.

Responsible Land Disturber or RLD means an individual holding a certificate issued by the department who is responsible for carrying out the land-disturbing activity in accordance with the approved erosion and sediment control plan or ESM plan. The RLD may be the owner, applicant, permittee, designer, superintendent, project manager, contractor, or any other project or development team member. The RLD must be designated on the erosion and sediment control plan or ESM plan, and the County LDP as defined in this ordinance as a prerequisite for engaging in land disturbance.

Runoff or stormwater runoff means that portion of precipitation that is discharged across the land surface or through conveyances to one or more waterways.

Runoff characteristics includes maximum velocity, peak flow rate, volume and flow duration.

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

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

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

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

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

Site means the land or water area where any facility or land disturbing activity is physically located or conducted, including adjacent land used or preserved in connection with the facility or land disturbing activity. Areas channelward of mean low water in tidal Virginia

shall not be considered part of a site.

Site hydrology means the movement of water on, across, through, and off the site as determined by parameters including soil types, soil permeability, vegetative cover, seasonal water tables, slopes, land cover, and impervious cover.

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

Small construction activity means:

1. Construction activities including clearing, grading, and excavating that results in land disturbance of equal to or greater than one acre and less than five acres. Small construction activity also includes the disturbance of less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one and less than five acres. Small construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility. The department may waive the otherwise applicable requirements in a general permit for a stormwater discharge from construction activities that disturb less than five acres where stormwater controls are not needed based on an approved "total maximum daily load" (TMDL) that addresses the pollutants of concern or, for nonimpaired waters that do not require TMDLs, an equivalent analysis that determines allocations for small construction sites for the pollutants of concern or that determines that such allocations are not needed to protect water quality based on consideration of existing instream concentrations, expected growth in pollutant contributions from all sources, and a margin of safety. For the purpose of this subdivision, the pollutants of concern include sediment or a parameter that addresses sediment (such as total suspended solids, turbidity, or siltation) and any other pollutant that has been identified as a cause of impairment of any water body that will receive a discharge from the construction activity. The operator shall certify to the department that the construction activity will take place, and stormwater discharges will occur, within the drainage area addressed by the TMDL or provide an equivalent analysis. As of the start date in Table 1 of 9VAC25-31-1020, all certifications submitted in support of the waiver shall be submitted electronically by the owner or operator to the department in compliance with this subdivision and 40 CFR Part 3 (including, in all cases, 40 CFR Part 3 Subpart D), 9VAC25-875-940, and Part XI (9VAC25-31-950 et seq.) of the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation. Part XI of 9VAC25-31 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of Part XI of 9VAC25-31, permittees may be required to report electronically if specified by a particular permit.
2. Any other construction activity designated by either the department or the EPA regional administrator, based on the potential for contribution to a violation of a water quality standard or for significant contribution of pollutants to surface waters.

Soil erosion means the movement of soil by wind or water into state waters or onto lands in the Commonwealth.

Soil erosion control and stormwater management plan commonly referred to as the erosion control and stormwater management plan, or “ESM plan” means a document describing methods for controlling soil erosion and managing stormwater in accordance with the requirements adopted pursuant to the VESMA. The ESM plan may consist of aspects of the erosion and sediment control plan and the stormwater management plan as each is described in this ordinance.

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 Application or application means the standard form or forms including any additions, revision or modifications to the forms approved by the administrator and the department for applying for a general permit.

State board means the Virginia State Water Control Board.

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

State water control law means Chapter 3.1 (§62.1-44.2 et seq.) of Title 62.1 of the Code of Virginia.

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

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

Stormwater for the purpose of the VESMA 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 conveyance system means a combination of drainage components that are used to convey stormwater discharge, either within or downstream of the land-disturbing activity. This includes:

1. Manmade stormwater conveyance system means a pipe, ditch, vegetated swale, or other stormwater conveyance system constructed by man except for restored stormwater conveyance systems;
2. Natural stormwater conveyance system means the main channel of a natural

stream and the flood-prone area adjacent to the main channel; or

3. Restored stormwater conveyance system means a stormwater conveyance system that has been designed and constructed using natural channel design concepts. Restored stormwater conveyance systems include the main channel and the flood-prone area adjacent to the main channel.

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

Stormwater management facility means a control measure that controls stormwater runoff and changes the characteristics of that runoff including the quantity and quality, the period of release or the velocity of flow.

*Stormwater management plan* means a document(s) containing material describing methods for complying with the requirements of ~~section 8-75 of this division~~ the VESMP.

*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 division. In addition the document shall identify and~~ A SWPPP required under the VESMP for construction activities shall identify and require the implementation of control measures, and shall include, but not be limited to the inclusion of, or the incorporation by reference of, an approved erosion and sediment control plan, an approved stormwater management plan, and a pollution prevention plan.

*Subdivision* means the same as defined in Chapter 8, Article IV Subdivisions of the Code of the County of Montgomery, Virginia.

*Surface waters means:*

1. All waters that are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters that are subject to the ebb and flow of the tide;
2. All interstate waters, including interstate wetlands;
3. All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:
  - a) That are or could be used by interstate or foreign travelers for recreational or other purposes;
  - b) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or
  - c) That are used or could be used for industrial purposes by industries in interstate commerce;
4. All impoundments of waters otherwise defined as surface waters under this

definition;

5. Tributaries of waters identified in subdivisions 1 through 4 of this definition;
6. The territorial sea; and
7. Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in subdivision 1 and 6 of this definition.

Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of the CWA and the law, are not surface waters. Surface waters do not include prior converted cropland. Notwithstanding the determination of an area's status as prior converted cropland by any other agency, for the purposes of the CWA, the final authority regarding the CWA jurisdiction remains with the EPA.

SWM means stormwater management.

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

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

Total maximum daily load or TMDL means the sum of the individual wasteload allocations for point sources, load allocations (LAs) 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 means an incorporated Town.

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

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

Virginia Erosion and Stormwater Management Act or VESMA means Article 2.3 (§ 62.1-44.15:24 et seq.) of Chapter 3.1, State Water Control Law, of Title 62.1 of the Code of Virginia.

Virginia Erosion and Stormwater Management Program or "VESMP" means a program established by the VESMP authority for the effective control of soil erosion and sediment deposition and the management of the quality and quantity of runoff resulting from land-disturbing activities to prevent the unreasonable degradation of properties, stream channels, waters, and other natural resources. The program shall include such items as

local ordinances, rules, requirements for permits and land-disturbance approvals, policies and guidelines, technical materials, and requirements for plan review, inspection, and enforcement consistent with the requirements of the VESMA.

Virginia Erosion and Stormwater Management Program Authority or “VESMP authority” means the County, as approved by the department to operate the VESMP.

Virginia Pollutant Discharge Elimination System (VPDES) permit or “VPDES permit” means a document issued by the department pursuant to the State Water Control Law authorizing, under prescribed conditions, the potential or actual discharge of pollutants from a point source to surface waters.

Virginia Stormwater BMP clearinghouse ~~website~~ means a ~~website~~ collection 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 VESMA and associated regulations.

Virginia Stormwater Management Handbook means a collection of pertinent information that provides general guidance for compliance with the VESMA and associated regulations and is developed by the department with advice from a stakeholder advisory committee.

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

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

Wasteload allocation or wasteload means the portion of a receiving surface water’s loading or assimilative capacity allocated to one of its existing or future point sources of pollution. Wasteload allocations are a type of water quality-based effluent limitation.

Water quality technical criteria means standards set forth in regulations adopted pursuant to the VESMA that establish minimum design criteria for measures to control nonpoint source pollution.

Water quantity technical criteria means standards set forth in regulations adopted pursuant to the VESMA that establish minimum design criteria for measures to control localized flooding and stream channel erosion.

Watershed means a defined land area drained by a river or stream, karst system, or system of connecting rivers or streams such that all surface water within the area flows through a single outlet. In karst areas, the karst feature to which water drains may be

considered the single outlet for the watershed.

Wetlands means those areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marches, bogs, and similar areas.

**Sec 8-73 8-72 Virginia Erosion and Stormwater Management Program Established; Submission And Approval Of Plans; Prohibitions**

- (a) Pursuant to §62.1-44.15:27 of the Code of Virginia, Montgomery the County hereby establishes a Virginia erosion and stormwater management program for land disturbing activities and adopts the applicable stormwater management regulations that specify standards and specifications for VSMPs VESMPs promulgated by the state water control board for the purposes set out in section 8-70 of this division ordinance. The Montgomery County Board of Supervisors hereby designates the County administrator or their designee as the Administrator of the Virginia Erosion and Stormwater Management Program.
- (b) Pursuant to §62.1-44.15:28 7 of the Code of Virginia, the County must ensure the stormwater management plans for residential, commercial or industrial subdivisions are approved and govern the development of individual parcels within that plan, throughout the development life even if ownership changes.
- (c) Pursuant to §62.1-44.15:28 8 of the Code of Virginia, a general permit statement is not required for detached single family home construction within or outside of common plan of development or sale with a land disturbing activity less than five (5) acres, however such projects must adhere to the requirements of the general permit.
- (d) An agreement in lieu of a stormwater management plan may be granted by the Administrator for detached single family detached residential structure home construction within or outside of common plan of development or sale with a land disturbing activity less than five (5) acres; however such projects must comply with the requirements of the general permit. if the single family residential structure has less than one acre of land disturbance and complies with one of the following conditions:
  - (1) It is within a common plan of development with an approved erosion and sediment control and stormwater management plans and general permit coverage for the entire common plan of development; or
  - (2) It is within a common plan of development established prior to July 1, 2004 that does not have an approved erosion and sediment control and stormwater management plan; or
  - (3) It is outside a common plan of development.
  - (4) However, such projects must comply with the requirements of the general permit and have a stormwater pollution prevention plan onside.
- (e) No VSMP authority permit shall be issued by the administrator until an executed agreement in lieu of a stormwater management plan is provided and/or 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 a statement is required;~~
- ~~(2) An erosion and sediment control plan approved in accordance with the Montgomery County Erosion and Sediment Control Ordinance Chapter 8, Article III of this Code; and~~
- ~~(3) A stormwater management plan that meets the requirements of Section 8-75 of this division, or an executed agreement in lieu of a plan as provided for in section 8-73(d) of this division.~~
- ~~(4) Other requirements as set forth in section 9VAC25-880-70 of the general permit.~~
- ~~(f) No VSMP authority permit shall be issued until evidence of general permit coverage is obtained, if such permit is required.~~
- ~~(g) No VSMP authority permit shall be issued until the fees required to be paid pursuant to section 8-84, are received, and a reasonable performance bond required pursuant to section 8-85 of this division has been submitted.~~
- ~~(h) 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.~~
- ~~(i) No grading, building or other local permit shall be issued for a property unless a VSMP authority permit has been issued by the administrator.~~

### **Sec 8-73. Regulated Land Disturbing Activities**

- ~~(a) Land-disturbing activities that meet one of the criteria below are regulated as follows:~~
  - ~~(1) Land-disturbing activity that disturbs 10,000 square feet or more, is less than one acre and not part of a common plan of development or sale, is subject to the soil erosion and sediment control criteria, techniques, and methods defined in Article 2 (9VAC25-875-540 et seq.) of Part V of the Virginia Erosion and Stormwater Management Regulation (Regulation).~~
  - ~~(2) Land-disturbing activity that disturbs less than one acre, but is part of a larger common plan of development or sale that disturbs one acre or more, is subject to the soil erosion and sediment control criteria, techniques, and methods defined in Article 2 (9VAC25-875-540 et seq.) and Water Quantity and Water Quality Technical criteria defined in Article 3 (9VAC25-875- 570 et seq.) of Part V unless Water Quantity and Water Quality Technical Criteria for Grandfathered Projects of Article 4 (9VAC25-875-670 et seq.) of Part V of the Regulation is applicable, as determined in accordance with the applicability and time limits criteria of 9VAC25-875-480 and the Grandfathering criteria of 9VAC25-875-490.~~
  - ~~(3) Land-disturbing activity that disturbs one acre or more is subject to the soil erosion and sediment control criteria, techniques, and methods defined in Article 2 (9VAC25-875-540 et seq.) and Water Quantity and Water Quality Technical criteria defined in Article 3 (9VAC25-875-570 et seq.) of Part V unless Water Quantity and Water Quality Technical Criteria for Grandfathered Projects of Article 4 (9VAC25-875-670 et seq.) of Part V is~~

applicable, as determined in accordance with the applicability and time limits criteria of 9VAC25-875-480 and the Grandfathering criteria of 9VAC25-875-490.

- (b) Land-disturbing activities exempt per Section 8-76 and 9VAC25-875-90 are not required to comply with the requirements of the VESMA unless otherwise required by federal law.

**Sec 8-74 Review And Approval Of Plans (§ 62.1-44.15:34 Of The Code Of Virginia): Prohibitions.**

- (a) The Montgomery County Stormwater Manual outlines detailed plan submittal requirements.
- (b) A person who wishes to conduct a land-disturbing activity in the County shall submit a soil erosion control and stormwater management plan (ESM) that is consistent with the requirements of the Virginia Erosion and Stormwater Management Act (VESMA) unless the County has exercised the option to allow for an agreement in lieu of a plan for activities that qualify for an agreement.  
Activities not required to comply with VESMA are defined in 9VAC25-875-90
- (c) A person shall not conduct any land-disturbing activity in the County until:

- (1) An application that includes a general permit registration statement, if required, a soil erosion control and stormwater management plan or an executed agreement in lieu of a plan, if required, has been submitted to the County, except that a County screening form shall be submitted for projects eligible for an agreement in lieu of a plan; and
- (2) The name of the individual who will be assisting the owner in carrying out the activity and holds a Responsible Land Disturber certificate pursuant to § 62.1-44.15:30 of the Code of Virginia is submitted to the County, except that such certificate shall not be required where the County has the authority and has granted the option of an agreement in lieu of a plan for construction of a single-family detached residential structure; however, if a violation occurs during the land-disturbing activity for the single-family detached residential structure, then the owner shall correct the violation and provide the name of the individual holding a Responsible Land Disturber certificate as provided by § 62.1-14:30 of the Code of Virginia. Failure to provide the name of an individual holding a Responsible Land Disturber certificate prior to engaging in land-disturbing activities may result in revocation of the land-disturbance approval and shall subject the owner to the penalties provided by the VESMA; and
- (3) The County has issued its land-disturbance approval. In addition, as a prerequisite to engaging in an approved land-disturbing activity, the name of the individual who will be assisting the owner in carrying out the activity and holds a Responsible Land Disturber certificate pursuant to § 62.1-44.15:30 of the Code of Virginia shall be submitted to the County. The County may waive the Responsible Land Disturber certificate requirement for an agreement in lieu of a plan for construction of a single-family detached residential structure; however, if a violation occurs during the land-disturbing

activity for the single-family detached residential structure, then the owner shall correct the violation and provide the name of the individual holding a Responsible Land Disturber certificate as provided by § 62.1-14:30 of the Code of Virginia. Failure to provide the name of an individual holding a Responsible Land Disturber certificate prior to engaging in land-disturbing activities may result in revocation of the land-disturbance approval and shall subject the owner to the penalties provided the Act.

- (d) The County may require changes to an approved ESM plan in the following cases:
  - (1) Where inspection has revealed that the plan is inadequate to satisfy applicable regulations or ordinances; or
  - (2) Where the owner finds that because of changed circumstances or for other reasons the plan cannot be effectively carried out, and proposed amendments to the plan, consistent with the requirements of the Act, are agreed to by the VESMP authority and the owner.
- (e) In order to prevent further erosion, the County may require approval of an erosion and sediment control plan and a stormwater management plan for any land it identifies as an erosion impact area. (§ 62.1-44.15:34)
- (f) As a part of the land-disturbance approval process, the County may also require an applicant, excluding state agencies and federal entities, to submit a reasonable performance bond with surety, cash escrow, letter of credit, any combination thereof, or such other legal arrangement the County finds acceptable, to ensure that it can take measures at the applicant's expense should the applicant fail, after proper notice, within the time specified to comply with the conditions the County imposes as a result of the applicant's land-disturbing activity. The Montgomery County Stormwater Manual outlines surety requirements. If the County takes such action upon such failure by the applicant, the County may collect from the applicant the difference should the amount of the reasonable cost of such action exceed the amount of the security held. If the applicant fulfills the County's conditions, such bond, cash escrow, letter of credit, or other legal arrangement, or the unexpended or unobligated portion thereof, shall be refunded to the applicant or terminated within 60 days of the fulfillment of the County's conditions.
- (g) The County may enter into an agreement with an adjacent VESMP authority regarding the administration of multijurisdictional projects, specifying who shall be responsible for all or part of the administrative procedures. Should adjacent VESMP authorities fail to reach such an agreement, each shall be responsible for administering the area of the multijurisdictional project that lies within its jurisdiction.
- (h) No exception to, or waiver of, post-development nonpoint nutrient runoff compliance requirements shall be granted unless offsite options have been considered and found not available in accordance with subsection D of § 62.1-44.15:35 of the Code of Virginia.
- (i) The County is authorized to cooperate and enter into agreements with any federal or state agency in connection with the requirements for land-disturbing activities in accordance with § 62.1-44.15:50 of the Code of Virginia.

## **Sec 8-75 Review Of A Soil Erosion Control And Stormwater Management Plan (ESM Plan)**

- (a) The County shall approve or disapprove an ESM plan according to the following:
- (1) The County shall determine the completeness of any application within 15 days after receipt, and shall act on any application within 60 days after it has been determined by the County to be complete.
  - (2) The County shall issue either land-disturbance approval or denial and provide written rationale for any denial.
  - (3) Prior to issuing a land-disturbance approval, the County shall be required to obtain evidence of general permit coverage when such coverage is required.
  - (4) The County also shall determine whether any resubmittal of a previously disapproved application is complete within 15 days after receipt and shall act on the resubmitted application within 45 days after receipt.

## **Sec 8-76 Stormwater Permit Requirement; Exemptions**

Except as provided herein, no person may engage in any land-disturbing activity until land disturbance approval has been issued by the County in accordance with the provisions of this ordinance and the Regulation.

- (a) Notwithstanding any other provisions of this ordinance, the following activities are not required to comply with the requirements of this ordinance unless otherwise required by federal law:
- (1) Minor land-disturbing activities, including home gardens and individual home landscaping, repairs, and maintenance work;
  - (2) Installation, maintenance, or repair of any individual service connection;
  - (3) Installation, maintenance, or repair of any underground utility line when such activity occurs on an existing hard surfaced road, street, or sidewalk, provided the land-disturbing activity is confined to the area of the road, street, or sidewalk that is hard surfaced;
  - (4) Installation, maintenance, or repair of any septic tank line or drainage field 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 45.2 of the Code of Virginia;
  - (6) Clearing of lands specifically for bona fide agricultural purposes; the management, tilling, planting, or harvesting of agricultural, horticultural, or forest crops; livestock feedlot operations; agricultural engineering operations, including 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; or as additionally set forth by the Board in regulations. However, this exception shall not apply to harvesting of forest crops unless the area on which harvesting occurs is reforested artificially or naturally in accordance

- with the provisions of Chapter 11 (§ 10.1-1100 et seq. of the Code of Virginia) or is converted to bona fide agricultural or improved pasture use as described in subsection B of § 10.1-1163 of the Code of Virginia;
- (7) Installation of fence and sign posts or telephone and electric poles and other kinds of posts or poles;
  - (8) 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 the VESMA and the regulations adopted pursuant thereto;
  - (9) Repair or rebuilding of the tracks, rights-of-way, bridges, communication facilities, and other related structures and facilities of a railroad company;
  - (10) 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 County shall be advised of the disturbance within seven days of commencing the land-disturbing activity, and compliance with the administrative requirements of subsection A is required within 30 days of commencing the land-disturbing activity; and
  - (11) Discharges to a sanitary sewer or a combined sewer system; that are not from a land-disturbing activity.
- (b) Notwithstanding this ordinance and in accordance with the Virginia Erosion and Stormwater Management Act, Article 2.3 (§ 62.1-44.15:24 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia, the following activities are required to comply with the soil erosion control requirements but are not required to comply with the water quantity and water quality technical criteria, unless otherwise required by federal law:
- (1) Activities under a state or federal reclamation program to return an abandoned property to an agricultural or open land use;
  - (2) 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
  - (3) Discharges from a land-disturbing activity to a sanitary sewer or a combined sewer system.

#### **Sec 8-77 Stormwater Pollution Prevention Plan; Contents Of Plans (9VAC25-875-500)**

- (a) A stormwater pollution prevention plan shall include, but not be limited to, an approved erosion and sediment control plan, an approved stormwater management plan, a pollution prevention plan for regulated land-disturbing activities, and a description of any additional control measures necessary to address a TMDL pursuant to subsection D of this section.
- A soil erosion control and stormwater management (ESM) plan consistent with the requirements of the Virginia Erosion and Stormwater Management Act

(VESMA) and regulations must be designed and implemented during construction activities. Prior to land disturbance, this plan must be approved by the County in accordance with the VESMA, this ordinance, and attendant regulations.

(b) A pollution prevention plan that identifies potential sources of pollutants that may reasonably be expected to affect the quality of stormwater discharges from the construction site and describe control measures that will be used to minimize pollutants in stormwater discharges from the construction site must be developed before land disturbance commences.

(c) In addition to the requirements of subsections (a) through (b) of this section, if a specific wasteload allocation for a pollutant has been established in an approved TMDL and is assigned to stormwater discharges from a construction activity, additional control measures must be identified and implemented by the operator so that discharges are consistent with the assumptions and requirements of the wasteload allocation.

(d) The stormwater pollution prevention plan must address the following requirements as specified in 40 CFR 450.21, to the extent otherwise required by state law or regulations and any applicable requirements of a state permit.

(1) Control stormwater volume and velocity within the site to minimize soil erosion;

(2) Control stormwater discharges, including both peak flow rates and total stormwater volume, to minimize erosion at outlets and to minimize downstream channel and stream bank erosion;

(3) Minimize the amount of soil exposed during construction activity;

(4) Minimize the disturbance of steep slopes;

(5) Minimize sediment discharges from the site. The design, installation and maintenance of erosion and sediment controls must address factors such as the amount, frequency, intensity and duration of precipitation, the nature of resulting stormwater runoff, and soil characteristics, including the range of soil particle sizes expected to be present on the site;

(6) Provide and maintain natural buffers around surface waters, direct stormwater to vegetated areas to increase sediment removal and maximize stormwater infiltration, unless infeasible;

(7) Minimize soil compaction and, unless infeasible, preserve topsoil;

(8) Stabilization of disturbed areas must, at a minimum, be initiated immediately whenever any clearing, grading, excavating, or other earth disturbing activities have permanently ceased on any portion of the site, or temporarily ceased on any portion of the site and will not resume for a period exceeding 14 calendar days. Stabilization must be completed within a period of time determined by the VESMP authority. In arid, semiarid, and drought-stricken areas where initiating vegetative stabilization measures immediately is infeasible, alternative stabilization measures must be employed as specified by the VESMP authority; and

(9) Utilize outlet structures that withdraw water from the surface, unless infeasible, when discharging from basins and impoundments.

(e) The SWPPP shall be amended whenever there is a change in design, construction, operation, or maintenance that has a significant effect on the discharge of pollutants to state waters and that has not been previously

addressed in the SWPPP. The SWPPP must be maintained 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.

#### **Sec 8-78 Stormwater Management Plan; Contents Of Plan (9VAC25-875-510)**

(a) A stormwater management plan shall be developed and submitted to the County. The stormwater management plan shall be implemented as approved or modified by the County and shall be developed in accordance with the following:

- (1) A stormwater management plan for a land-disturbing activity shall apply the stormwater management technical criteria set forth in this ordinance and Article 4 (9VAC25-875-670 et seq) of Part V of the Regulation to the entire land-disturbing activity. Individual lots in new residential, commercial, or industrial developments, including those developed under subsequent owners, shall not be considered separate land-disturbing activities.
- (2) A stormwater management plan shall consider all sources of surface runoff and all sources of subsurface and groundwater flows converted to surface runoff.

(b) A complete stormwater management plan shall include the following elements:

- (1) Information on the type of and location of stormwater discharges, information on the features to which stormwater is being discharged including surface waters or karst features if present, and predevelopment and post-development drainage areas;
- (2) Contact information including the name, address, telephone number, and email address 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 or if allowed by the VESMP authority, the information provided and documented during the review process that addresses the current and final site conditions;
- (4) A general description of the proposed stormwater management facilities and the mechanism through which the facilities will be operated and maintained after construction is complete;
- (5) Information on the proposed stormwater management facilities, including
  - (i) detailed narrative on the conversion to a long-term stormwater management facility if the facility was used as a temporary ESC measure;
  - (ii) the type of facilities;
  - (iii) location, including geographic coordinates;
  - (iv) acres treated;
  - (v) the surface waters or karst features 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 these regulations;
- (8) A map of the site that depicts the topography of the site and includes:
  - 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 planned locations of utilities, roads, and easements;
- (9) If an operator intends to meet the requirements established in 9VAC25-875-580 or 9VAC25-875-600 through the use of off-site compliance options, where applicable, then a letter of availability from the off-site provider must be included; and
- (10) The County requires payment of a fee with the stormwater management plan submission. The fee shall be in accordance with Section 8-87 of this ordinance.
- (c) All final plan elements, specifications, or calculations of the stormwater management plans whose preparation requires a license under Chapter 4 (§ 54.1-400 et seq.) or 22 (§ 54.1- 2200 et seq.) of Title 54.1 of the Code of Virginia shall be appropriately signed and sealed by a professional who is licensed to engage in practice in the Commonwealth of Virginia. Nothing in this subsection shall authorize any person to engage in practice outside his area of professional competence.

#### **Sec 8-79 Pollution Prevention Plan; Contents Of Plans (9VAC25-875-520)**

- (a) A plan for implementing pollution prevention measures during construction activities shall be developed, implemented, and updated as necessary. The pollution prevention plan shall 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 450.21(c).

#### **Sec 8-80 Erosion And Sediment Control Plan; Contents Of Plans (9VAC25-875-550)**

- (a) An erosion and sediment control plan, which is a component of the ESM plan, shall be filed for a development and the buildings constructed within, regardless of the phasing of construction. The erosion and sediment control plan shall contain all major conservation decisions to ensure that the entire unit or units of land will be so treated to achieve the conservation objectives in 9VAC25-875-560. The Montgomery County Stormwater Manual outlines erosion and sediment control plan requirements.
- (b) A statement describing the maintenance responsibilities of the individual responsible for carrying out the land-disturbing activity shall be included in the approved erosion and sediment control plan.
- (c) Site grading shall address the following requirements in fill and steep slope areas:
  - (1) If the grade of a site is greater (steeper) than 3:1 (horizontal:vertical), refer to the International Building Code, Chapter 18, as amended, for foundation clearances from slopes.
  - (2) Cut slopes or fill slopes shall not be steeper than 2:1 (horizontal:vertical), unless a geotechnical report is provided for the proposed slopes.
  - (3) Cut slopes or fill slopes shall not be greater than twenty-five (25) vertical feet in height, unless a geotechnical report is provided for the proposed slopes. Cut slopes or fill slopes less (flatter) than or equal to 3:1 (horizontal:vertical) may exceed twenty-five (25) vertical feet in height and shall not require a geotechnical report.
  - (4) For any cut slopes or fill slopes steeper than or equal to 2:1 (horizontal:vertical) or greater than or equal to twenty-five (25) vertical feet in height with a slope steeper than 3:1 (horizontal:vertical), as-built plans showing that the finished geometry, based on a field survey performed by a licensed surveyor, is in substantial conformity with the design shall be provided to the County.

- (5) Fill materials, compaction methods and density specifications shall be indicated on the site development plans.
- (6) Fill areas intended to support structures shall also be indicated on the site development plans.
- (d) Site plans and lot grading plans shall show proposed lot grades to ensure positive drainage from building pads, compatibility with stormwater management plans, and protection of downstream properties including future buildable lots.
- (e) The administrator may waive the lot grading requirement when proposed mass grading demonstrates compatibility with overall stormwater management plans. The waiver conditions will require individual lot grading plan submittal for review at the time of building permit application. Lot grading plans shall demonstrate compliance with the overall stormwater management plan and compatibility with development of adjacent and downstream lots.
- (f) The person responsible for carrying out the plan shall provide the name of an individual holding a certificate who will be in charge of and responsible for carrying out the land-disturbing activity to the County. The County may waive the Responsible Land Disturber certificate requirement for an activity covered under an agreement in lieu of a plan.
- (g) If individual lots or sections in a residential development are being developed by different property owners, all land-disturbing activities related to the building construction shall be covered by an erosion and sediment control plan. The County may waive the plan requirement for an activity covered under an agreement in lieu of a plan.
- (h) Land-disturbing activity of less than 10,000 square feet on individual lots in a residential development shall not be considered exempt from the provisions of the VESMA if the total land-disturbing activity in the development is equal to or greater than 10,000 square feet.

#### **Sec 8-81 Technical Criteria For Regulated Land Disturbing Activities.**

- (a) To protect the quality and quantity of state water from the potential harm of unmanaged stormwater runoff resulting from land-disturbing activities, the County hereby adopts the technical criteria for regulated land-disturbing activities set forth in Part V of 9VAC25-875 expressly to include 9VAC25-875-580 [water quality design criteria requirements]; 9VAC25-875-590 [water quality compliance]; 9VAC25-875-600 [water quantity]; 9VAC25-875-610 [offsite compliance options]; 9VAC25-875-620 [design storms and hydrologic methods]; 9 VAC 25-875-630 [stormwater harvesting]; 9 VAC 25-875-640 [linear development project]; and, 9VAC25-875-650 [stormwater management impoundment structures or facilities], which shall apply to all land-disturbing activities regulated pursuant to this ordinance, except as expressly set forth in Subsection (b) of this Section.
- (b) Any land-disturbing activity shall be considered grandfathered and shall be subject to Article 4 (9VAC25-875-670 et seq) of Part V of the Regulation provided:
  - (1) A proffered or conditional zoning plan, zoning with a plan of development, preliminary or final subdivision plat, preliminary or final site plan, or any document determined by the County to be equivalent thereto (i) was approved by the County prior to July 1, 2012, (ii) provided a layout as

- defined in 9VAC25-875-670, (iii) will comply with the technical criteria of Article 4 of Part V of 9VAC25-875, 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 general 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 County and shall be subject to the technical criteria of Article 4 of Part V of 9VAC25-875 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 general 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 technical criteria of Article 4 of Part V of 9VAC25-875 for one additional general 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 Article 4 of Part V of 9VAC25-875.
- (f) Nothing in this section shall preclude an operator from constructing to a more stringent standard at their discretion.

## **Sec 8-82 Long-Term Maintenance Of Permanent Stormwater Facilities**

- (a) The operator shall submit a construction record drawing for permanent stormwater management facilities to the County in accordance with 9VAC25-875-535. The record drawing shall contain a statement signed by a professional registered in the Commonwealth of Virginia pursuant to Chapter 4 of Title 54.1 of the Code of Virginia, stating that to the best of their knowledge, the construction record drawing shows all adjustments and revisions to the Stormwater Management Plan made during construction and serve as a permanent record of the actual location of all constructed elements. The Montgomery County Stormwater Manual outlines record drawing submittal requirements.
- (b) The County 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. The Montgomery County Stormwater Manual provides maintenance agreement templates. Such requirements shall be set forth in an instrument recorded in the local land records prior to LDP and general permit termination or earlier as required by the County and shall at a minimum:
  - (1) Be submitted to the County for review and approval prior to the approval of the stormwater management plan;

- (2) Be stated to run with the land;
  - (3) Provide for all necessary access to the property for purposes of maintenance and regulatory inspections;
  - (4) Provide for inspections and maintenance and the submission of inspection and maintenance reports to the County; and
  - (5) Be enforceable by all appropriate governmental parties.
- (c) At the discretion of the County, 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 County that future maintenance for those facilities will be addressed through an enforceable mechanism at the discretion of the County.
- (d) If a recorded instrument is not required pursuant to Subsection C., the County 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 County or its duly authorized agent.

### **Sec 8-83 Monitoring And Inspections**

- (a) The Montgomery County Stormwater Manual provides templates for permittee inspections and record keeping. The permittee shall maintain and make available upon request inspections of the land-disturbing activity during construction for the following compliance, development, and implementation requirements:
- (1) Compliance with the approved erosion and sediment control plan;
  - (2) Compliance with the approved stormwater management plan;
  - (3) Development, updating, and implementation of a pollution prevention plan; and
  - (4) Development and implementation of any additional control measures necessary to address a TMDL.
- (b) The County shall conduct periodic inspections on all projects during construction. The County shall either:
- (1) Provide for an inspection during or immediately following initial installation of erosion and sediment controls, at least once in every two-week period, within 48 hours following any runoff producing storm event, and at the completion of the project prior to the release of any performance bonds; or
  - (2) Inspect Single Family Detached that meet applicable criteria by the County's State approved alternative inspection program.
- (c) Approved site plans and a maintenance agreement shall provide for owner inspections that ensure that permanent stormwater management facilities are being adequately maintained as designed after completion of land-

disturbing activities.

- (1) The maintenance agreement requires the land owner to provide for inspections to ensure that each stormwater management facility is in compliance with the approved plan. Inspections shall be performed by as described in Part (d) below.
  - (2) The land owner is responsible to maintain inspections records and provide them upon request in accordance with the conditions of the maintenance agreement.
- (d) Post-construction inspections of stormwater management facilities required by the provisions of this division and the recorded maintenance agreement shall be conducted by the owner and at the owner's cost and shall occur annually, at a minimum, or more frequently if specified in the approved plans or, in the case of Manufactured Treatment Devices, per manufacturer's recommendations.
- (e) The County may utilize the inspection reports of the owner of a stormwater management facility as part of a County inspection program if the inspection is conducted by a person who is licensed as a professional engineer, architect, landscape architect, or land surveyor pursuant to Article 1 (§ 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 department.
- (f) If a recorded instrument is not required pursuant to 9VAC25-875-130, the County 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 County.

#### **Sec 8-84. Appeals**

Code of Virginia Article § 62.1-44.15:46 provides that a final decision by the County, when serving as a VESMP authority, shall be subject to judicial review, provided that an appeal is filed in the appropriate court within 30 days from the date of any written decision adversely affecting the rights, duties, or privileges of the person engaging in or proposing to engage in a land-disturbing activity.

#### **Sec 8-85 Right Of Entry**

- (a) In accordance with §62.1-44.15:39 and 9VAC25-875-150, the County or any duly authorized agent thereof may, at reasonable times and under reasonable circumstances, enter any establishment or upon any property, public or private, for the purpose of obtaining information or conducting surveys or investigations necessary in the enforcement of the provisions of this ordinance.
- (b) In accordance with a performance bond with surety, cash escrow, letter of credit, any combination thereof, or such other legal arrangement, the County may also enter any establishment or upon any property, public or private, for the purpose of

initiating or maintaining appropriate actions that are required by conditions imposed by the County on a land-disturbing activity when an owner, after proper notice, has failed to take acceptable action within the time specified.

## **Sec 8-86 Enforcement**

- (a) In accordance with §62.1-44.15:48 subdivision A, for a land-disturbing activity that disturbs one acre or more of land or is part of a larger common plan of development or sale that disturbs one acre or more of land, any person who violates any applicable provision of an ordinance adopted pursuant to this article, including those adopted pursuant to the conditions of an MS4 permit, or any condition of a local land-disturbance approval, or who fails, neglects, or refuses to comply with any order of a locality serving as a VESMP authority or a court, issued as herein provided, shall be subject to a civil penalty not to exceed \$32,500 for each violation within the discretion of the court. Each day of violation of each requirement shall constitute a separate offense.
- (b) In accordance with §62.1-44.15:48 subdivision B, for a land-disturbing activity that disturbs an area measuring not less than 10,000 square feet but less than one acre and is not part of a larger common plan of development or sale that disturbs one acre or more of land, any person who violates any applicable provision of an ordinance or order of a locality issued pursuant to this article, or any condition of a land-disturbance approval issued by the locality, or fails to obtain a required land-disturbance approval, shall be subject to a civil penalty not to exceed \$5,000 for each violation with a limit of \$50,000 within the discretion of the court in a civil action initiated by the locality. Each day during which the violation is found to have existed shall constitute a separate offense. In no event shall a series of specified violations arising from the same operative set of facts result in civil penalties that exceed a total of \$50,000.
- (c) If the County Administrator or their designee determines that there is a failure to comply with the LDP or general 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, by email at the internet address specified in the permit application, or by delivery at the site of the development activities by an agent of the County to the agent, contractor, responsible land disturber, applicant, permittee, or Owner 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 (2) or the permit may be revoked by the Administrator and/or civil penalties may be issued.
  - (2) If a permittee fails to comply with a notice issued in accordance with this Section within the time specified, the County Administrator or their designee may issue an order requiring the owner, permittee, person responsible for carrying out an approved plan, or the person conducting the land-disturbing activities without an approved plan or required permit to

cease all land-disturbing activities until the violation of the permit has ceased, or an approved plan and required permits are obtained, and specified corrective measures have been completed.

Such orders shall be issued in accordance with applicable law and consistent with the Montgomery County Stormwater Manual. Such orders shall become effective upon service on the person by certified mail, return receipt requested, sent to their address specified in the land records of the locality, or by personal delivery by an agent of the Administrator. However, if the County Administrator or their designee 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 County Administrator or their designee may institute a proceeding for an injunction, mandamus, or other appropriate remedy in accordance with this Section.

- (d) In addition to any other remedy provided by this Ordinance, if the County Administrator or their designee or his designee determines that there is a failure to comply with the provisions of this Ordinance, they may initiate such informal and/or formal administrative enforcement procedures in a manner that is consistent with the Montgomery County Stormwater Manual
- (e) 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 County Administrator or their designee may be compelled in a judicial proceeding instituted by the County to obey same and to comply therewith by injunction, mandamus or other appropriate remedy.
- (1) Violations for which a penalty may be imposed under this Subsection shall include but not be limited to the following:
  - a. No general permit registration and/or no County LDP;
  - 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 improperly installed or maintained;
  - h. Operational deficiencies;
  - i. Failure to conduct required inspections;
  - j. Incomplete, improper, or missed inspections;
  - k. Discharges not in compliance with the requirements of 9VAC25-880-70.
  - l. Erosion and sediment control measure inspection, maintenance and

- repair: Failure to comply with requirements to ensure performance of all erosion and sediment control structures and systems as intended.
- m. Failure to comply with 9VAC25-875-560 erosion and sediment control criteria, techniques, and methods.
  - n. Erosion control standards and specifications: failure to comply with any standards and specifications for Construction or Post-Construction Best Management Practices contained in the current edition of the Virginia Stormwater Management Handbook.
  - o. Failure of the person responsible for carrying out the plan to provide the name of an individual holding a certificate of competence, as provided by Code of Virginia, § 62.1-44.15:34, who will be in charge of and responsible for carrying out the land-disturbing activity.
  - p. Certified responsible land disturber: failure of the certified responsible land disturber to fulfill any responsibilities provided for in this chapter.
  - q. Failure to obey the provisions of a stop work order.
  - r. Failure to stop work when a permit is revoked.
- (2) The Montgomery County Stormwater Manual includes a schedule of civil penalties in accordance with 9VAC875-875-150, and § 62.1-44.15:25.1 and §62.1-44.15:48 of the Code of Virginia. Each day of violation of each requirement shall constitute a separate offense. The County Administrator or their designee may issue a summons for collection of the civil penalty and the action may be prosecuted in the appropriate court. The Montgomery County Stormwater Manual lists daily penalties for the violations listed in subdivision e.1 of this section.
- (3) In imposing a civil penalty pursuant to this Subsection, the court or the Administrator or their designee may also consider the degree of harm caused by the violation and also the economic benefit to the violator from noncompliance.
- (4) Any civil penalties assessed by a court as a result of a summons issued by the County shall be made payable to the County to be used for the purpose of minimizing, preventing, managing, or mitigating pollution of the waters of the County and abating environmental pollution therein in such manner as the court may, by order, direct.
- (5) Any person who has violated or failed, neglected or refused to obey any condition of a permit or any provision of this article or any provision of the VESMA may enter into a consent order with the County providing for the payment of civil charges for violation in specific sums, not to exceed the amounts provided for in Section 8.86.A and 8.86.B. Such civil charges shall be instead of any civil penalty which could be imposed.
- (f) Should a civil violation summons be issued as provided in this article, it shall provide that any person issued the summons may, within ten working days of receipt of the summons, elect to pay the civil penalty by making an appearance in person or by certified mail to the county treasurer's office and, by such appearance may enter a waiver of trial, admit liability, and pay the civil penalty established for the violation charged and provide that a signature to an admission of liability shall have the same force and effect as a judgment in court; however, an admission shall not be deemed a criminal conviction for any purpose.
- (g) Notwithstanding any other civil or equitable remedy provided by this ordinance or

by law, any person who willfully or negligently violates any provision of this ordinance, any order of the Administrator, any condition of a permit, or any order of a court shall, be guilty of a misdemeanor punishable by confinement in jail for not more than 12 months or a fine of not less than \$2,500 nor more than \$32,500, or both.

## **Sec 8-87 Fees**

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

**Table 1: Fees for permit issuance**

| <b><u>Fee type</u></b>                                                                                                                                                                                                                | <b><u>Total fee to be paid by applicant (includes both VESMP authority and department portions where applicable)</u></b> | <b><u>Department portion of "total fee to be paid by applicant" (based on 28% of total fee paid*)</u></b> |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------|
| <u>Areas outside common plans of development or sale with land disturbance area equal or greater than 10,000 square feet and less than 1 acre.</u>                                                                                    | <u>\$290</u>                                                                                                             | <u>\$0</u>                                                                                                |
| <u>General / Stormwater Management - Small Construction Activity/Land Clearing (Areas within common plans of development or sale with land disturbance acreage less than 1 acre.)</u>                                                 | <u>\$290</u>                                                                                                             | <u>\$81</u>                                                                                               |
| <u>General / Stormwater Management - Small Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 1 acre and less than 5 Acres)</u>    | <u>\$2,700</u>                                                                                                           | <u>\$756</u>                                                                                              |
| <u>General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 5 acres and less than 10 acres)</u>  | <u>\$3,400</u>                                                                                                           | <u>\$952</u>                                                                                              |
| <u>General / Stormwater Management – Large Construction Activity/Land Clearing [Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 10 acres and less than 50 acres]</u> | <u>\$4,500</u>                                                                                                           | <u>\$1,260</u>                                                                                            |

|                                                                                                                                                                                                                                        |                |                |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------|----------------|
| <u>General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 50 acres and less than 100 acres)</u> | <u>\$6,100</u> | <u>\$1,708</u> |
| <u>General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 100 acres)</u>                        | <u>\$9,600</u> | <u>\$2,688</u> |

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

(c) Fees for the modification or transfer of registration statements from the general permit issued by the department shall be imposed in accordance with Table 2. If the general permit modifications result in changes to stormwater management plans that require additional review by the County, such reviews shall be subject to the fees set out in Table 2. The fee assessed shall be based on the total disturbed acreage of the site. In addition to the general permit modification fee, modifications resulting in an increase in total disturbed acreage shall pay the difference in the initial permit fee paid and the permit fee that would have applied for the total disturbed acreage in Table 1.

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

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

|                         |  |
|-------------------------|--|
| greater than 100 acres) |  |
|-------------------------|--|

- (d) The following annual permit maintenance shall be imposed in accordance with Table 3, including fees imposed on expired permits that have been administratively continued. With respect to the general permit, these fees shall apply until the general permit coverage is terminated.

**Table 3: Permit Maintenance Fees**

| <b><u>Type of Permit</u></b>                                                                                                                                                                                                           | <b><u>Fee Amount</u></b> |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------|
| <u>General / Stormwater Management – Small Construction Activity/Land Clearing (Areas outside or within common plans of development or sale with land disturbance acreage less than 1 acre)</u>                                        | <u>\$50</u>              |
| <u>General / Stormwater Management – Small Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance equal to or greater than 1 acre and less than 5 acres)</u>             | <u>\$400</u>             |
| <u>General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 5 acres and less than 10 acres)</u>   | <u>\$500</u>             |
| <u>General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 10 acres and less than 50 acres)</u>  | <u>\$650</u>             |
| <u>General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 50 acres and less than 100 acres)</u> | <u>\$900</u>             |
| <u>General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater 100 acres)</u>                             | <u>\$1,400</u>           |

General permit coverage maintenance fees shall be paid annually to the County, by April 1<sup>st</sup> of the calendar year, or by the anniversary date of general permit coverage. No permit will be reissued or automatically continued without payment of the required fee. The County Administrator or their designee may suspend or revoke the County LDP for non-payment of the required general permit fee. General permit coverage maintenance fees shall be applied until a Notice of Termination is effective.

- (e) The fees set forth in Subsections (a) through (c) of this section, shall apply to:
- (1) All persons seeking coverage under the general permit.
  - (2) All permittees who request modifications to or transfers of their existing registration statement for coverage under a general permit.
- (f) Permit and general permit coverage maintenance fees outlined under Section 8-87 may apply to each general permit holder.

(g) No general permit application fees will be assessed to:

(1) Permittees who request minor modifications to general permits as defined in Section 8-71 of this ordinance. Permit modifications at the request of the permittee resulting in changes to stormwater management plans that require additional review by the County Administrator or their designee shall not be exempt pursuant to this Section.

(2) Permittees whose general permits are modified or amended at the initiative of the department, excluding errors in the registration statement identified by the County Administrator or their designee or errors related to the acreage of the site.

(h) All incomplete payments will be deemed as nonpayment, and the applicant shall be notified of any incomplete payments. Interest may be charged for late payments at the underpayment rate set forth in §58.1-15 of the Code of Virginia and is calculated on a monthly basis at the applicable periodic rate. A 10% late payment fee shall be charged to any delinquent (over 90 days past due) account. The County shall be entitled to all remedies available under the Code of Virginia in collecting any past due amount.

#### **Sec 8-88 Performance Bond (4VAC50-60-104.D and Code § 603.8(A))**

(a) Prior to issuance of any permit, the applicant shall be required to submit a reasonable performance bond with surety, cash escrow, letter of credit, any combination thereof, or such other legal arrangement acceptable to the County Attorney, to ensure that measures could be taken by the County at the applicant's expense should the applicant fail, after proper notice, within the time specified to initiate or maintain appropriate actions which may be required of the applicant by permit conditions as a result of the applicants land disturbing activity. If the County takes such action upon such failure by the applicant, the County may collect from the applicant for the difference should the amount of the reasonable cost of such action exceed the amount of any security held. Within 60 days of the completion of the requirements of the LDP and general permit conditions, such bond, cash escrow, letter of credit or other legal arrangement, or the unexpended or unobligated portion thereof, shall be refunded to the applicant or terminated.

(b) If the owner or permit holder does not faithfully perform the approved erosion and stormwater management plan or any other measures deemed necessary by the County administrator or their designee, as provided for in Code of Virginia, § 62.1-44.15:24 et seq., 9VAC25-875, and the most recently approved edition of the state stormwater management handbook, the Administrator or their designee shall revoke the land disturbance permit prior to using any funds that are posted to implement any portion of the erosion and stormwater management plan or other measures deemed necessary by the Administrator or their designee. The person who posted the bond, letter of credit or cash escrow shall increase the bond, letter of credit or cash escrow back to the original amount approved by the Administrator or their designee before the Administrator or their designee reissues the land disturbance permit to the permit holder.