



**AT A REGULAR MEETING OF THE DUMFRIES TOWN COUNCIL, HELD ON MAY 7, 2014, IN COUNCIL CHAMBERS, 17755 MAIN STREET, DUMFRIES, VIRGINIA: ON A MOTION MADE BY , AND SECONDED BY , THE FOLLOWING ORDINANCE WAS ADOPTED BY THE FOLLOWING VOTE:**

Charles C. Brewer, ;  
Gerald M. Foreman, II, ;  
Kristin W. Forrester, ;  
Helen D. Reynolds, ;  
Willie J. Toney, ;  
Gwen P. Washington, ;  
Derrick R. Wood, ;

**AN ORDINANCE TO AMEND THE CODE OF THE TOWN OF DUMFRIES, VIRGINIA, AS AMENDED, BY ADDING ARTICLE V, DIVISION 3, SECTIONS 170 - 185 TO CHAPTER 26, RELATING GENERALLY TO THE ESTABLISHMENT OF A STORMWATER MANAGEMENT PROGRAM**

WHEREAS, the Town of Dumfries operates a regulated Municipal Separate Storm Sewer System (MS4); and

WHEREAS, in Va. Code Ann. § 62.1-44.15:27, Establishment of Virginia Stormwater Management Programs requires that towns that operate a regulated MS4 shall be required to adopt a Virginia Stormwater Management Program (VSMP) for land-disturbing activities; and

WHEREAS, each Locality that administers an approved VSMP shall, by ordinance, establish a VSMP that shall be administered in conjunction with a local MS4 program; and

WHEREAS, the ordinance shall be consistent with regulations adopted in § 62.1-44.15:27; and

WHEREAS, the ordinance shall provide for long-term responsibility for and maintenance of stormwater management control devices and other techniques specified to manage the quality and quantity of runoff; and

WHEREAS, the existing ordinance does not meet the requirements of the recently revised Virginia Stormwater Maintenance Program requirements; and

WHEREAS, the Virginia Department of Environmental Quality has published a Model Stormwater Management Ordinance which meets State regulations; and

WHEREAS, the Model Stormwater Management Ordinance has been edited to complement the Town's MS4 program.

WHEREAS, Town Council requested the Town Manger advertise a public hearing at its February 18, 2014 meeting, and

WHEREAS, Town Council held a duly advertised public hearing on April 1, 2014.

NOW, THEREFORE BE IT ORDAINED by the Council of the Town of Dumfries on this the 7th day of May, 2014, that the Code of Ordinances, Town of Dumfries, Virginia, as amended, is further amended by adding Division 3. Sections 170 - 185 to Article V, Chapter 26, and is enacted as follows:

**Article V of Chapter 26, Stormwater Management Ordinance**

**DIVISION 3. STORMWATER MANAGEMENT PROGRAM**

Sect. 26-170 Purpose and Authority

The purpose of this Ordinance is to ensure the general health, safety, and welfare of the citizens of the Town of Dumfries 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.

Sect. 26-171 Definitions

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

"*Administrator*" means the VSMP authority including the Town staff person or department responsible for administering the VSMP on behalf of the Locality.

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

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

"*Chesapeake Bay Preservation Act land-disturbing activity*" means a land-disturbing activity including clearing, grading, or excavation that results in a land disturbance equal or greater than 2,500 square feet and less than one acre in all areas of jurisdictions designated as subject to the regulations adopted pursuant to the Chesapeake Bay Preservation Area Designation and Management Regulations (9VAC25-830) adopted pursuant to the Chesapeake Bay Preservation Act.

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

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

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

*"Council"* means the Town of Dumfries Town Council.

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

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

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

*"Land disturbance" or "land-disturbing activity"* means a man-made change to the land surface that potentially changes its runoff characteristics including clearing, grading, or excavation except that the term shall not include those exemptions specified in Section 26-172(c) of this Ordinance.

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

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

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

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

provided by the Department.

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

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

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

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

*"State"* means the Commonwealth of Virginia.

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

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

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

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

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

*"Stormwater management plan"* means a document(s) containing material describing methods for complying with the requirements of Section 26-175 of this Ordinance.

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

"*Subdivision*" means the same as defined in Chapter 54 Subdivisions the of Town Code of Ordinances.

"*Total maximum daily load*" or "*TMDL*" means the sum of the individual waste load allocations for point sources, load allocations for nonpoint sources, natural background loading and a margin of safety. TMDLs can be expressed in terms of either mass per time, toxicity, or other appropriate measure. The TMDL process provides for point versus nonpoint source trade-offs.

"*Town*" means the Town of Dumfries, Virginia.

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

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

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

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

#### Sect. 26-172 Stormwater Permit Requirement; Exemptions

(a) Except as provided herein, no person may engage in any land-disturbing activity until a VSMP authority permit has been issued by the Administrator in accordance with the provisions of this Ordinance.

(b) A Chesapeake Bay Preservation Act Land-Disturbing Activity shall be subject to an erosion and sediment control plan consistent with the requirements of the Erosion and Sediment Control Ordinance, a stormwater management plan as outlined under Section 26-175, the technical criteria and administrative requirements for land-disturbing activities outlined in Section 26-178, and the requirements for control measures long-term maintenance outlined under Section 26-179.

(c) Notwithstanding any other provisions of this Ordinance, the following activities are exempt, unless otherwise required by federal law:

(1) Permitted surface or deep mining operations and projects, or oil and gas operations and

projects conducted under the provisions of Title 45.1 of the Code of Virginia;

- (2) Clearing of lands specifically for agricultural purposes and the management, tilling, planting, or harvesting of agricultural, horticultural, or forest crops, livestock feedlot operations, or as additionally set forth by the State Board in regulations, including engineering operations as follows: construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds, ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage, and land irrigation; however, this exception shall not apply to harvesting of forest crops unless the area on which harvesting occurs is reforested artificially or naturally in accordance with the provisions of Chapter 11 (§ 10.1-1100 et seq.) of Title 10.1 of the Code of Virginia or is converted to bona fide agricultural or improved pasture use as described in Subsection B of § 10.1-1163 of Article 9 of Chapter 11 of Title 10.1 of the Code of Virginia;
- (3) Land-disturbing activities that disturb less than 2,500 square feet of land area, or activities that are part of a larger common plan of development or sale that is one acre or greater of disturbance;
- (4) Discharges to a sanitary sewer or a combined sewer system;
- (5) Activities under a State or federal reclamation program to return an abandoned property to an agricultural or open land use;
- (6) 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
- (7) Conducting land-disturbing activities in response to a public emergency where the related work requires immediate authorization to avoid imminent endangerment to human health or the environment. In such situations, the Administrator shall be advised of the disturbance within seven days of commencing the land-disturbing activity and compliance with the administrative requirements of Subsection (a) is required within 30 days of commencing the land-disturbing activity.

Sec. 26-173 Stormwater Management Program Established; Submission And Approval Of Plans; Prohibitions.

- (a) Pursuant to § 62.1-44.15:34 of the Code of Virginia, the Town of Dumfries hereby establishes a Virginia stormwater management program for land-disturbing activities and adopts the applicable Regulations that specify standards and specifications for VSMPs promulgated by the State Board for the purposes set out in Section 26-170 of this Ordinance. The Town Council hereby designates the Director of Public Works as the Administrator of the Virginia stormwater management program.
- (b) No VSMP authority permit shall be issued by the Administrator until the following items have been submitted to and approved by the Administrator as prescribed herein:

- (1) A permit application that includes a general permit registration statement;
  - (2) An erosion and sediment control plan approved in accordance with the Chapter 26, Erosion and Sediment Control, of the Town Code; and
  - (3) A stormwater management plan that meets the requirements of Section 26-175 of this Ordinance.
- (c) No VSMP authority permit shall be issued until evidence of general permit coverage is obtained.
- (d) No VSMP authority permit shall be issued until the fees required to be paid pursuant to Section 26-184, are received, and a reasonable performance bond required pursuant to Section 26-185 of this Ordinance has been submitted.
- (e) No VSMP authority permit shall be issued unless and until the permit application and attendant materials and supporting documentation demonstrate that all land clearing, construction, disturbance, land development and drainage will be done according to the approved permit.
- (f) No grading, building or other local permit shall be issued for a property unless a VSMP authority permit has been issued by the Administrator.

Sect. 26-174 Stormwater Pollution Prevention Plan; Contents Of Plans

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

Sect. 26-175 Stormwater Management Plan; Contents of Plan

- (a) The Stormwater Management Plan, required in Section 26-173 of this Ordinance, must apply the stormwater management technical criteria set forth in Section 26-178 of this Ordinance to the entire land-disturbing activity, consider all sources of surface runoff and all sources of subsurface and groundwater flows converted to subsurface runoff, and include the following information:

- (1) Information on the type and location of stormwater discharges; information on the

features to which stormwater is being discharged including surface waters or karst features, if present, and the predevelopment and postdevelopment drainage areas;

(2) Contact information including the name, address, and telephone number of the owner and the tax reference number and parcel number of the property or properties affected;

(3) A narrative that includes a description of current site conditions and final site conditions;

(4) A general description of the proposed stormwater management facilities and the mechanism through which the facilities will be operated and maintained after construction is complete;

(5) Information on the proposed stormwater management facilities, including:

(i) The type of facilities;

(ii) Location, including geographic coordinates;

(iii) Acres treated; and

(iv) The surface waters or karst features, if present, into which the facility will discharge.

(6) Hydrologic and hydraulic computations, including runoff characteristics;

(7) Documentation and calculations verifying compliance with the water quality and quantity requirements of Section 26-178 of this Ordinance.

(8) A map or maps of the site that depicts the topography of the site and includes:

(i) All contributing drainage areas;

(ii) Existing streams, ponds, culverts, ditches, wetlands, other water bodies, and floodplains;

(iii) Soil types, geologic formations if karst features are present in the area, forest cover, and other vegetative areas;

(iv) Current land use including existing structures, roads, and locations of known utilities and easements;

(v) Sufficient information on adjoining parcels to assess the impacts of stormwater from the site on these parcels;

(vi) The limits of clearing and grading, and the proposed drainage patterns on the site;

(vii) Proposed buildings, roads, parking areas, utilities, and stormwater management facilities; and

(viii) Proposed land use with tabulation of the percentage of surface area to be adapted to various uses, including but not limited to planned locations of utilities, roads, and easements.

(b) If an operator intends to meet the water quality and/or quantity requirements set forth in Section 26-178 of this Ordinance through the use of off-site compliance options, where applicable, then a letter of availability from the off-site provider must be included. Approved off-site options must achieve the necessary nutrient reductions prior to the commencement of the applicant's land-disturbing activity except as otherwise allowed by 9VAC25-870-55.B 9.

(c) Elements of the stormwater management plans that include activities regulated under

Chapter 4 of Title 54.1 of the Code of Virginia shall be appropriately sealed and signed by a professional registered in the Commonwealth of Virginia.

(d) A construction record drawing for permanent stormwater management facilities shall be submitted to the Administrator. The construction record drawing shall be appropriately sealed and signed by a professional registered in the Commonwealth of Virginia, certifying that the stormwater management facilities have been constructed in accordance with the approved plan.

#### Sect. 26-176 Pollution Prevention Plan; Contents of Plans

(a) Pollution Prevention Plan, required by 9VAC25-870-54, shall be developed, implemented, and updated as necessary and must detail the design, installation, implementation, and maintenance of effective pollution prevention measures to minimize the discharge of pollutants. At a minimum, such measures must be designed, installed, implemented, and maintained to:

(1) Minimize the discharge of pollutants from equipment and vehicle washing, wheel wash water, and other wash waters. Wash waters must be treated in a sediment basin or alternative control that provides equivalent or better treatment prior to discharge;

(2) Minimize the exposure of building materials, building products, construction wastes, trash, landscape materials, fertilizers, pesticides, herbicides, detergents, sanitary waste, and other materials present on the site to precipitation and to stormwater; and

(3) Minimize the discharge of pollutants from spills and leaks and implement chemical spill and leak prevention and response procedures.

(b) The pollution prevention plan shall include effective best management practices to prohibit the following discharges:

(1) Wastewater from washout of concrete, unless managed by an appropriate control;

(2) Wastewater from washout and cleanout of stucco, paint, form release oils, curing compounds, and other construction materials;

(3) Fuels, oils, or other pollutants used in vehicle and equipment operation and maintenance; and

(4) Soaps or solvents used in vehicle and equipment washing.

(c) Discharges from dewatering activities, including discharges from dewatering of trenches and excavations, are prohibited unless managed by appropriate controls.

#### Sect. 26-177 Review Of Stormwater Management Plan

(a) The Administrator or any duly authorized agent of the Administrator shall review stormwater management plans and shall approve or disapprove a stormwater management plan according to the following:

(1) The Administrator shall determine the completeness of a plan in accordance with Section 26-175 of this Ordinance, and shall notify the applicant, in writing, of such determination, within 15 calendar days of receipt. If the plan is deemed to be incomplete, the above written notification shall contain the reasons the plan is deemed incomplete.

(2) The Administrator shall have an additional 60 calendar days from the date of the communication of completeness to review the plan, except that if a determination of completeness is not made within the time prescribed in subdivision (1), then plan shall be deemed complete and the Administrator shall have 60 calendar days from the date of submission to review the plan.

(3) The Administrator shall review any plan that has been previously disapproved, within 45 calendar days of the date of resubmission.

(4) During the review period, the plan shall be approved or disapproved and the decision communicated in writing to the person responsible for the land-disturbing activity or his designated agent. If the plan is not approved, the reasons for not approving the plan shall be provided in writing. Approval or denial shall be based on the plan's compliance with the requirements of this Ordinance.

(5) If a plan meeting all requirements of this Ordinance is submitted and no action is taken within the time provided above in paragraph (2) above for review, the plan shall be deemed approved.

(b) Approved stormwater plans may be modified as follows:

(1) Modifications to an approved stormwater management plan shall be allowed only after review and written approval by the Administrator. The Administrator shall have 60 calendar days to respond in writing either approving or disapproving such request.

(2) The Administrator may require that an approved stormwater management plan be amended, within a time prescribed by the Administrator, to address any deficiencies noted during inspection.

(c) The Administrator shall require the submission of a construction record drawing for permanent stormwater management facilities. The Administrator may elect not to require construction record drawings for stormwater management facilities for which recorded maintenance agreements are not required pursuant to Section 26-179(b).

#### Sect. 26-178 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 Locality hereby adopts the technical criteria for regulated land-disturbing activities set forth in Part II B of the Regulations, as amended, expressly to include 9VAC25-870-63 [water quality design criteria requirements]; 9VAC25-870-65 [water quality compliance]; 9VAC25-870-66 [water quantity]; 9VAC25-870-69 [offsite compliance options]; 9VAC25-870-72 [design storms and hydrologic methods];

9VAC25-870-74 [stormwater harvesting]; 9VAC25-870-76 [linear development project]; and, 9VAC25-870-85 [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) Until June 30, 2019, any land-disturbing activity for which a currently valid proffered or conditional zoning plan, preliminary or final subdivision plat, preliminary or final site plan or zoning with a plan of development, or any document determined by the Locality as being equivalent thereto, was approved by the Locality prior to July 1, 2012, and for which no coverage under the general permit has been issued prior to July 1, 2014, shall be considered grandfathered by the Administrator and shall not be subject to the technical criteria of Part II B [of the Regulations], but shall be subject to the technical criteria of Part II C [of the Regulations] for those areas that were included in the approval, provided that the Administrator finds that such proffered or conditional zoning plan, preliminary or final subdivision plat, preliminary or final site plan or zoning with a plan of development, or any document determined by the Locality as being equivalent thereto, (i) provides for a layout and (ii) the resulting land-disturbing activity will be compliant with the requirements of Part II C. In the event that the Locality-approved document is subsequently modified or amended in a manner such that there is no increase over the previously approved plat or plan in the amount of phosphorus leaving each point of discharge of the land-disturbing activity through stormwater runoff, and such that there is no increase over the previously approved plat or plan in the volume or rate of runoff, the grandfathering shall continue as before.

(1) Until June 30, 2019, for local, state, and federal projects for which there has been an obligation of local, state, or federal funding, in whole or in part, prior to July 1, 2012, or for which the Department has approved a stormwater management plan prior to July 1, 2012, such projects shall be considered grandfathered by the Town and shall not be subject to the technical requirements of Part II B of the Regulations, but shall be subject to the technical requirements of Part II C of the Regulations for those areas that were included in the approval.

(2) For land-disturbing activities grandfathered under this Subsection, construction must be completed by June 30, 2019, or portions of the project not under construction shall become subject to the technical requirements of Subsection (a) above.

(c) In cases where governmental bonding or public debt financing has been issued for a project prior to July 1, 2012, such project shall be subject to the technical requirements Part IIC of the Regulations, as adopted by the Locality in Subsection (b) of this Section.

(d) The Administrator may grant exceptions to the technical requirements of Part II B or Part II C of the Regulations, provided that

(i) the exception is the minimum necessary to afford relief,

(ii) reasonable and appropriate conditions are imposed so that the intent of the Act, the Regulations, and this Ordinance are preserved,

(iii) granting the exception will not confer any special privileges that are denied in other similar circumstances, and

(iv) exception requests are not based upon conditions or circumstances that are self-imposed

or self-created. Economic hardship alone is not sufficient reason to grant an exception from the requirements of this Ordinance.

- (1) Exceptions to the requirement that the land-disturbing activity obtain required VSMP authority permit shall not be given by the Administrator, nor shall the Administrator approve the use of a BMP not found on the Virginia Stormwater BMP Clearinghouse Website, or any other control measure duly approved by the Director.
- (2) Exceptions to requirements for phosphorus reductions shall not be allowed unless offsite options otherwise permitted pursuant to 9VAC25-870-69 have been considered and found not available.
- (e) Nothing in this Section shall preclude an operator from constructing to a more stringent standard at their discretion.

#### Sect. 26-179 Long-Term Maintenance of Permanent Stormwater Facilities

(a) The Administrator shall require the provision of long-term responsibility for and maintenance of stormwater management facilities and other techniques specified to manage the quality and quantity of runoff. Such requirements shall be set forth in an instrument recorded in the local land records prior to general permit termination or earlier as required by the Administrator and shall at a minimum:

- (1) Be submitted to the Administrator for review and approval prior to the approval of the stormwater management plan;
- (2) Be stated to run with the land;
- (3) Provide for all necessary access to the property for purposes of maintenance and regulatory inspections;
- (4) Provide for inspections and maintenance and the submission of inspection and maintenance reports to the Administrator; and
- (5) Be enforceable by all appropriate governmental parties.

(b) At the discretion of the Administrator, such recorded instruments need not be required for stormwater management facilities designed to treat stormwater runoff primarily from an individual residential lot on which they are located, provided it is demonstrated to the satisfaction of the Administrator that future maintenance of such facilities will be addressed through an enforceable mechanism at the discretion of the Administrator.

(c) If a recorded instrument is not required pursuant to Section 26-179 (b), the Administrator shall develop a strategy for addressing maintenance of stormwater management facilities designed to treat stormwater runoff primarily from an individual residential lot on which they are located. Such a strategy may include periodic inspections, homeowner outreach and education, or other method targeted at promoting the long-term maintenance of such facilities. Such facilities shall not be subject to the requirement for an inspection to be conducted by the Administrator or any

duly authorized agent of the Administrator.

#### Sect. 26-180 Monitoring And Inspections

(a) The Administrator or any duly authorized agent of the Administrator shall inspect the land-disturbing activity during construction for:

- (1) Compliance with the approved erosion and sediment control plan;
- (2) Compliance with the approved stormwater management plan;
- (3) Development, updating, and implementation of a pollution prevention plan; and
- (4) Development and implementation of any additional control measures necessary to address a TMDL.

(b) The Administrator or any duly authorized agent of the Administrator may, at reasonable times and under reasonable circumstances, enter any establishment or upon any property, public or private, for the purpose of obtaining information or conducting surveys or investigations necessary in the enforcement of the provisions of this Ordinance.

(c) In accordance with a performance bond with surety, cash escrow, letter of credit, any combination thereof, or such other legal arrangement or instrument, the Administrator may also enter any establishment or upon any property, public or private, for the purpose of initiating or maintaining appropriate actions which are required by the permit conditions associated with a land-disturbing activity when a permittee, after proper notice, has failed to take acceptable action within the time specified.

(d) Pursuant to § 62.1-44.15:40 of the Code of Virginia, the Administrator may require every VSMP authority permit applicant or permittee, or any such person subject to VSMP authority permit requirements under this Ordinance, to furnish when requested such application materials, plans, specifications, and other pertinent information as may be necessary to determine the effect of his discharge on the quality of state waters, or such other information as may be necessary to accomplish the purposes of this Ordinance.

(e) Post-construction inspections of stormwater management facilities required by the provisions of this Ordinance shall be conducted by the Administrator or any duly authorized agent of the Administrator pursuant to the Locality's adopted and State Board approved inspection program, and shall occur, at minimum, at least once every five (5) years except as may otherwise be provided for in Section 26-179.

#### Sect. 26-181 Hearings

(a) Any permit applicant or permittee, or person subject to Ordinance requirements, aggrieved by any action of the Town taken without a formal hearing, or by inaction of the Town, may demand in writing a formal hearing by the Town Council, provided a petition requesting such hearing is filed with the Administrator within 30 days after notice of such action is given by the Administrator.

(b) The hearings held under this Section shall be conducted by the Council at a regular or special meeting of the Council.

(c) A verbatim record of the proceedings of such hearings shall be taken and filed with the Council. Depositions may be taken and read as in actions at law.

(d) The Council shall have power to issue subpoenas and subpoenas duces tecum, and at the request of any party shall issue such subpoenas. The failure of a witness without legal excuse to appear or to testify or to produce documents shall be acted upon by the local governing body, or its designated member, whose action may include the procurement of an order of enforcement from the circuit court. Witnesses who are subpoenaed shall receive the same fees and reimbursement for mileage as in civil actions.

#### Sect. 26-182 Appeals

(a) Any applicant under the provision of this article who is aggrieved by any action of the Town of Dumfries, or its agent, in disapproving plans submitted pursuant to this article shall have the right to apply for and receive a review of such action by the Town Council, provided an appeal is filed with 30 days from the date of the action. Any applicant who seeks an appeal hearing before the Town Council shall be heard at the next regularly scheduled Town Council public meeting provided that the Town Council and other involved parties have at least 30 days prior notice. In reviewing the agent's actions, the Town Council shall consider evidence and opinions presented by the aggrieved applicant and agent. After considering the evidence and opinions, the Town Council may affirm, reverse, or modify the action. The Town Council's decision shall be final, subject only to review by the Circuit Court of Prince William County.

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

#### Sect. 26-183 Enforcement

(a) If the Administrator determines that there is a failure to comply with the VSMP authority permit conditions or determines there is an unauthorized discharge, notice shall be served upon the permittee or person responsible for carrying out the permit conditions by any of the following: verbal warnings and inspection reports, notices of corrective action, consent special orders, and notices to comply. Written notices shall be served by registered or certified mail to the address specified in the permit application or by delivery at the site of the development activities to the agent or employee supervising such activities.

(1) The notice shall specify the measures needed to comply with the permit conditions and shall specify the time within which such measures shall be completed. Upon failure to comply within the time specified, a stop work order may be issued in accordance with Subsection (b) or the permit may be revoked by the Administrator.

(2) If a permittee fails to comply with a notice issued in accordance with this Section

within the time specified, the Administrator may issue an order requiring the owner, permittee, person responsible for carrying out an approved plan, or the person conducting the land-disturbing activities without an approved plan or required permit to cease all land-disturbing activities until the violation of the permit has ceased, or an approved plan and required permits are obtained, and specified corrective measures have been completed.

Such orders shall become effective upon service on the person by certified mail, return receipt requested, sent to his address specified in the land records of the Locality, or by personal delivery by an agent of the Administrator. However, if the Administrator finds that any such violation is grossly affecting or presents an imminent and substantial danger of causing harmful erosion of lands or sediment deposition in waters within the watersheds of the Commonwealth or otherwise substantially impacting water quality, it may issue, without advance notice or hearing, an emergency order directing such person to cease immediately all land-disturbing activities on the site and shall provide an opportunity for a hearing, after reasonable notice as to the time and place thereof, to such person, to affirm, modify, amend, or cancel such emergency order. If a person who has been issued an order is not complying with the terms thereof, the Administrator may institute a proceeding for an injunction, mandamus, or other appropriate remedy in accordance with Subsection 26-183(c).

(b) In addition to any other remedy provided by this Ordinance, if the Administrator or his designee determines that there is a failure to comply with the provisions of this Ordinance, they may initiate such informal and/or formal administrative enforcement procedures in a manner that is consistent with the Prince William County Design and Construction Standards Manual.

(c) Any person violating or failing, neglecting, or refusing to obey any rule, regulation, ordinance, order, approved standard or specification, or any permit condition issued by the Administrator may be compelled in a proceeding instituted in the Circuit Court of Prince William County by the Town to obey same and to comply therewith by injunction, mandamus or other appropriate remedy.

(d) Any person who violates any provision of this Ordinance or who fails, neglects, or refuses to comply with any order of the Administrator, shall be subject to a civil penalty not to exceed \$32,500 for each violation within the discretion of the court. Each day of violation of each requirement shall constitute a separate offense.

(1) Violations for which a penalty may be imposed under this Subsection shall include but not be limited to the following:

- (i) No state permit registration;
- (ii) No SWPPP;
- (iii) Incomplete SWPPP;
- (iv) SWPPP not available for review;
- (v) No approved erosion and sediment control plan;
- (vi) Failure to install stormwater BMPs or erosion and sediment controls;
- (vii) Stormwater BMPs or erosion and sediment controls improperly installed or maintained;
- (viii) Operational deficiencies;
- (ix) Failure to conduct required inspections;
- (x) Incomplete, improper, or missed inspections; and
- (xi) Discharges not in compliance with the requirements of Section 9VAC25-870-116 of the

general permit.

(2) The Administrator may issue a summons for collection of the civil penalty and the action may be prosecuted in the appropriate court.

(3) In imposing a civil penalty pursuant to this Subsection, the court may consider the degree of harm caused by the violation and also the economic benefit to the violator from noncompliance.

(4) Any civil penalties assessed by a court as a result of a summons issued by the Locality shall be paid into the treasury of the Town of Dumfries to be used for the purpose of minimizing, preventing, managing, or mitigating pollution of the waters of the Locality and abating environmental pollution therein in such manner as the court may, by order, direct.

(e) Notwithstanding any other civil or equitable remedy provided by this Section or by law, any person who willfully or negligently violates any provision of this Ordinance, any order of the Administrator, any condition of a permit, or any order of a court shall, be guilty of a misdemeanor punishable by confinement in jail for not more than 12 months or a fine of not less than \$2,500 nor more than \$32,500, or both.

#### Sect. 26-184 Fees

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

Table 1: Fees for permit issuance

<b>Fee type</b>	<b>Total fee to be paid by Applicant (includes both VSMP authority and Department portions where applicable)</b>	<b>Department portion of "total fee to be paid by Applicant" (based on 28% of total fee paid*)</b>
Chesapeake Bay Preservation Act Land-Disturbing Activity (not subject to General Permit coverage; sites within designated areas of Chesapeake Bay Act localities with land-disturbance acreage equal to or greater than 2,500 square feet and less than 1 acre)	\$290	\$0
General / Stormwater Management - Small Construction Activity/Land Clearing (Areas within common plans of development or sale with land disturbance acreage less than 1 acre.)	\$290	\$81

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)	\$2,700	\$756
General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 5 acres and less than 10 acres)	\$3,400	\$952
General / Stormwater Management – Large Construction Activity/Land Clearing [Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 10 acres and less than 50 acres]	\$4,500	\$1,260
General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 50 acres and less than 100 acres)	\$6,100	\$1,708
General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 100 acres)	\$9,600	\$2,688

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

(b) Fees for the modification or transfer of registration statements from the general permit issued by the State Board shall be imposed in accordance with Table 2. If the general permit modifications result in changes to stormwater management plans that require additional review by Town, 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**

Type of Permit	Fee Amount
General / Stormwater Management – Small Construction Activity/Land Clearing (Areas within common plans of development or sale with land disturbance acreage less than 1 acre)	\$20

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

(c) The following annual permit maintenance shall be imposed in accordance with Table 3, including fees imposed on expired permits that have been administratively continued. With respect to the general permit, these fees shall apply until the permit coverage is terminated. [NOTE: Fees specified in this Subsection go to the Town of Dumfries.]

Table 3: Permit Maintenance Fees

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

General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 50 acres and less than 100 acres)	\$900
General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater 100 acres)	\$1,400

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

(d) The fees set forth in Subsections (a) through (c) above, shall apply to:

(1) All persons seeking coverage under the general permit.

(2) All permittees who request modifications to or transfers of their existing registration statement for coverage under a general permit.

(3) Persons whose coverage under the general permit has been revoked shall apply to the Department for an Individual Permit for Discharges of Stormwater From Construction Activities.

(4) Permit and permit coverage maintenance fees outlined under Section 26-184(c) may apply to each general permit holder.

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

(1) Permittees who request minor modifications to general permits as defined in Section 26-171 of this Ordinance. Permit modifications at the request of the permittee resulting in changes to stormwater management plans that require additional review by the Administrator shall not be exempt pursuant to this Section.

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

(f) All incomplete payments will be deemed as nonpayments, and the applicant shall be notified of any incomplete payments. Interest may be charged for late payments at the underpayment rate set forth in 9VAC25-870-770 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 Town of Dumfries shall be entitled to all remedies available under the Code of Virginia in collecting any past due amount.

#### Sect. 26-185 Performance Bond

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

This ordinance shall become effective May 7, 2014.

By Order of Council:

\_\_\_\_\_  
Gerald M. Foreman, Mayor

**Attest:** \_\_\_\_\_  
Dawn Hobgood, Town Clerk

AT A REGULAR MEETING OF THE DUMFRIES TOWN COUNCIL, HELD ON MARCH 4, 2014, IN COUNCIL CHAMBERS, 17755 MAIN STREET, DUMFRIES, VIRGINIA: ON A MOTION MADE BY \_\_\_\_\_, AND SECONDED BY \_\_\_\_\_, THE FOLLOWING RESOLUTION WAS ADOPTED BY THE FOLLOWING VOTE:

Charles C. Brewer, ;  
Gerald M. Foreman, II, ;  
Kristin W. Forrester, ;  
Helen D. Reynolds, ;  
Willie J. Toney, ;  
Gwen P. Washington, ;  
Derrick R. Wood, ;

**RESOLUTION TO AUTHORIZE THE TOWN MANAGER TO ADVERTISE A PUBLIC HEARING TO AMEND TOWN CODE BY AMENDING CHAPTER 26, ENVIRONMENT, ARTICLE V, STORMWATER MANAGEMENT**

**WHEREAS**, the Town of Dumfries operates a regulated Municipal Separate Storm Sewer System (MS4); and

**WHEREAS**, in Va. Code Ann. § 62.1-44.15:27, Establishment of Virginia Stormwater Management Programs requires that towns that operate a regulated MS4 shall be required to adopt a Virginia Stormwater Management Program (VSMP) for land-disturbing activities; and

**WHEREAS**, each locality that administers an approved VSMP shall, by ordinance, establish a VSMP that shall be administered in conjunction with a local MS4 program; and

**WHEREAS**, the ordinance shall be consistent with regulations adopted in § 62.1-44.15:27; and

**WHEREAS**, the ordinance shall provide for long-term responsibility for and maintenance of stormwater management control devices and other techniques specified to manage the quality and quantity of runoff; and

**WHEREAS**, the existing ordinance does not meet the requirements of the recently revised Virginia Stormwater Maintenance Program requirements; and

**WHEREAS**, the Virginia Department of Environmental Quality has published a Model Stormwater Management Ordinance which meets State regulations; and

**WHEREAS**, the Model Stormwater Management Ordinance has been edited to complement the Town's MS4 program.

**NOW, THEREFORE, BE IT RESOLVED** by Town Council that the Town Manager be authorized to advertise for a public hearing to be held on April 1, 2014 for the consideration of amending Article V, Stormwater Management, Chapter 26, Environment by adding Division 3, Sections 170-185.

By Order of Council:

---

Gerald M. Foreman, Mayor

ATTEST:

---

Dawn Hobgood, Town Clerk

**NOTICE OF PUBLIC HEARING**

**BY THE TOWN COUNCIL**

**OF THE TOWN OF DUMFRIES, VIRGINIA ON**

**April 1, 2014 at 7:00 PM**

**or as soon thereafter as may be heard**

The Town Council of the Town of Dumfries hereby gives notice of a Public Hearing to consider an amendment to the Code of the Town of Dumfries specifically to amend Chapter 26 by revising Article V, Stormwater Management by adding to Article V, Division 3, Sections 170 – 185, Relating Generally to the Establishment of a Stormwater Management Program.

All supporting material is available for public inspection at the Office of the Town Clerk at 17755 Main Street, Dumfries, Virginia 22026 between the hours of 8:30 AM and 5:00 PM; M-F. The public hearing is being held in a public facility believed to be accessible to persons with disabilities. Any person with questions on the accessibility of the facility or needing to discuss accommodation of a disability should contact the Town Clerk at 703-221-3400 or [dhobgood@dumfriesva.gov](mailto:dhobgood@dumfriesva.gov), during normal working hours.

BY GERALD M. FOREMAN, MAYOR

TOWN OF DUMFRIES, VIRGINIA

Press Release dates of March 19 and 26