

**AN ORDINANCE BY THE COUNCIL OF
THE TOWN OF ABINGDON, VIRGINIA
TO ESTABLISH AND ENACT A
STORMWATER MANAGEMENT ORDINANCE,
CHAPTER 30 - ARTICLE V, SECTIONS 30-100 - 30-120
TO BE INCLUDED IN
THE CODE OF ORDINANCES OF THE TOWN OF ABINGDON, VIRGINIA**

WHEREAS, Virginia Code §62.1-44.15.27, the Virginia Stormwater Act, established that the governing body of any town shall be required to adopt a Virginia Stormwater Management Program, (hereinafter "VSMP"), for land-disturbing activities to ensure the general health, safety and welfare of the citizens of the Town of Abingdon, to protect the quality and quantity of state waters from the potential harm of unmanaged stormwater, to provide the framework for the administration, implementation and enforcement of the provisions of Virginia Stormwater Management Act, and to delineate the procedure and requirements to be followed in connection with permits issued by the Town; and

WHEREAS, in the interest of meeting any/all requirements and compliance issues set forth in the aforementioned section of the Code of Virginia, 1950, as amended, and in the interests of ensuring the general health, safety and welfare of the citizens of the Town of Abingdon, the Council of the Town of Abingdon, Virginia hereby desires to adopt such an ordinance and enact same as expeditiously as is allowed pursuant to the Code of Virginia, 1950, as amended and the Code of Ordinances for the Town of Abingdon; and

NOW THEREFORE, BE IT ORDAINED, by the Council of the Town of Abingdon, Virginia, after having given notice and having held a public hearing as required by law, adopts this Ordinance pursuant to the Code of Virginia, 1950, as amended, §62.1-44.15.27; and

1. That this ordinance was established and adopted on May 7, 2014 to become effective on July 1, 2014.
2. That should any section or provision of this ordinance be decided to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity or constitutionality of any other section or provision of this ordinance of the Code of the Town of Abingdon, Virginia.
3. That the Ordinance by the Council of the Town of Abingdon, Virginia which establishes and enacts a Stormwater Management Program shall be set forth and read as follows:

THE TOWN OF ABINGDON, VIRGINIA

TOWN CODE

CHAPTER 30

ARTICLE V

STORMWATER MANAGEMENT ORDINANCE

Sec. 30-100. Purpose and authority.

Pursuant to 9VAC25-870-20 and 9VAC25-870-40, the purpose of this ordinance is to ensure the general health, safety, and welfare of the citizens of the Town of Abingdon (hereinafter "Town") and protect the quality and quantity of state waters from the potential harm of unmanaged stormwater and to provide the framework for the administration, implementation and enforcement of the provisions of the Virginia Stormwater Management Act (§ 62.1-44.15:24 et seq., Code of Virginia) and delineates the procedures and requirements to be followed in connection with permits issued by the Town.

This ordinance is adopted pursuant to the requirement of the State Water Control Law (§62.1-44.15.27 et seq., Code of Virginia), the Virginia Stormwater Management Act, and their attendant regulations.

In any case where the requirements of this ordinance conflict with any other provision of this Code or existing state or federal regulations, whichever imposes more stringent restrictions shall apply.

Sec. 30-101. 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 of Abingdon staff person or department responsible for administering the VSMP on behalf of the Town.

"*Agreement in lieu of a permit*" means a contract between the Town of Abingdon and the permittee that specifies conservation measures that shall be implemented in the construction of a single-family residence; such contract may be executed by the Town in lieu of a Virginia Stormwater Management Program permit.

"*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.

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

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

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

"Department" means the Department of Environmental Quality.

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

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

"General permit" means the state permit titled GENERAL PERMIT FOR DISCHARGES OF STORMWATER FROM CONSTRUCTION ACTIVITIES (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 30-102 (b) 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.

"State" means the Commonwealth of Virginia.

"State Board" means the State Water Control Board.

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

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

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

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

"Stormwater management plan" means a document(s) containing material describing methods for complying with the requirements of Section 30-105 of this ordinance.

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

"Subdivision" means the same as defined in Section 2.2 of Article II of Appendix A of the Town of Abingdon Subdivision Ordinance.

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

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

"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 ordinance, and evaluation consistent with the requirements of this ordinance and associated regulations.

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

Sec. 30-102. Stormwater permit requirement; exemptions.

- (a) Except as provided herein, no person shall conduct any land-disturbing activity until he has submitted a permit application to the Town of Abingdon that includes a state VSMP permit registration statement, if such statement is required, and, after July 1, 2014, a stormwater management plan or an executed agreement in lieu of a stormwater management plan, and has obtained Town approval to begin land disturbance. Upon the development of an online reporting system by the Department, but no later than July 1, 2014, the Town shall be required to obtain evidence of state VSMP permit coverage where it is required prior to providing approval to begin land disturbance. The Town shall act on any permit application within 60 days after it has been determined by the Town to be a complete application. The Town may either issue project approval or denial and shall provide written rationale for the denial. The Town shall act on any permit application that has been previously disapproved within 45 days after the application has been revised, resubmitted for approval, and deemed complete. Prior to issuance of any approval, the Town may also require an applicant, excluding state and federal entities, 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, 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 that 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 Town may collect from the applicant the difference should the amount of the reasonable cost of such action exceed the amount of the security held. 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. These requirements are in addition to all other provisions of law relating to the issuance of permits and are not intended to otherwise affect the requirements for such permits.

- (b) 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 Chapter 11 of Title 10.1 of the Code of Virginia;
 - (3) Single-family residences separately built and disturbing less than one acre and not part of a larger common plan of development or sale, including additions or modifications to existing single-family detached residential structures;
 - (4) Land disturbing activities that disturb less than one acre of land area that are part of a larger common plan of development or sale that is one acre or greater of disturbance;
 - (5) Discharges to a sanitary sewer or a combined sewer system;
 - (6) Activities under a state or federal reclamation program to return an abandoned property to an agricultural or open land use;
 - (7) Routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original construction of the project. The paving of an existing road with a compacted or impervious surface and reestablishment of existing associated ditches and shoulders shall be deemed routine maintenance if performed in accordance with this Subsection; and

- (8) Conducting land-disturbing activities in response to a public emergency where the related work requires immediate authorization to avoid imminent endangerment to human health or the environment. In such situations, the Administrator shall be advised of the disturbance within seven days of commencing the land-disturbing activity and compliance with the administrative requirements of Subsection (a) is required within 30 days of commencing the land-disturbing activity.
- (a) Where land-disturbing activity results from the construction of a single-family residence, an agreement in lieu of a permit may be substituted for a Virginia Stormwater Management Program permit if executed by the Town of Abingdon.

Sec. 30-103. Stormwater management program established; submission and approval of plans; prohibitions.

- (a) Pursuant to § 62.1-44.15:27 of the Code of Virginia, The Town of Abingdon 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 30-100 of this ordinance. The Town hereby designates the Director of Public Works or his designee 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 (a registration statement is not required for construction activity involving a single-family detached residential structure, within or outside of a common plan of development or sale pursuant to §62.1-44.15:28.8);
 - (2) An erosion and sediment control plan approved in accordance with the Town of Abingdon Erosion and Sediment Control Ordinance (Chapter 30, Article IV) and
 - (3) A stormwater management plan that meets the requirements of Section 30-105 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 30-114, are received, and a reasonable performance bond required pursuant to Section 30-115 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.

Sec. 30-104. Stormwater pollution prevention plan; contents of plans.

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

Sec. 30-105. Stormwater management plan; contents of plan.

- (a) The Stormwater Management Plan, required in Section 30-103 of this ordinance, must apply the stormwater management technical criteria set forth in Section 30-108 of this ordinance to the entire land-disturbing activity. Individual lots in new residential, commercial, or industrial developments shall not be considered separate land-disturbing activity. The stormwater management plan shall consider all sources of surface runoff and all sources of subsurface and groundwater flows converted to surface runoff, and include the following information:
 - (1) Information on the type and location of stormwater discharges; information on the features to which stormwater is being discharged including surface waters or karst features, if present, and the pre-development and post-development drainage areas;
 - (2) Contact information including the name, address, and telephone number of the owner and the tax reference number and parcel number of the property or properties affected;
 - (3) A narrative that includes a description of current site conditions and final site conditions;
 - (4) A general description of the proposed stormwater management facilities and the mechanism through which the facilities will be operated and maintained after construction is complete;
 - (5) Information on the proposed stormwater management facilities, including:
 - (i) The type of facilities;

- (ii) Location, including geographic coordinates;
 - (iii) Acres treated; and
 - (iv) The surface waters or karst features, if present, into which the facility will discharge.
- (6) Hydrologic and hydraulic computations, including runoff characteristics;
- (7) Documentation and calculations verifying compliance with the water quality and quantity requirements of Section 30-108 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 30-108 of this ordinance through the use of off-site compliance options, where applicable, then a letter of availability from the off-site provider must be included. Approved off-site options must achieve the necessary nutrient reductions prior to the commencement of the applicant's land-disturbing activity except as otherwise allowed by § 62.1-44.15:35 of the Code of Virginia.
- (c) Elements of the stormwater management plans that include activities regulated under Chapter 4 (§54.1-400 et seq.) of Title 54.1 of the Code of Virginia shall be appropriately sealed and signed by a professional registered in the Commonwealth of Virginia pursuant to Article 1 (§ 54.1-400 et seq.) of Chapter 4 of Title 54.1 of the Code of Virginia.
- (d) A construction record drawing for permanent 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.

Sec. 30-106. Pollution prevention plan; contents of plans.

- (a) Pollution Prevention Plan, required by 9VAC25-870-56, shall be developed, implemented, and updated as necessary and must detail the design, installation, implementation, and maintenance of effective pollution prevention measures to minimize the discharge of pollutants. At a minimum, such measures must be designed, installed, implemented, and maintained to:
 - (1) Minimize the discharge of pollutants from equipment and vehicle washing, wheel wash water, and other wash waters. Wash waters must be treated in a sediment basin or alternative control that provides equivalent or better treatment prior to discharge;
 - (2) Minimize the exposure of building materials, building products, construction wastes, trash, landscape materials, fertilizers, pesticides, herbicides, detergents, sanitary waste, and other materials present on the site to precipitation and to stormwater; and
 - (3) Minimize the discharge of pollutants from spills and leaks and implement chemical spill and leak prevention and response procedures.
- (b) The pollution prevention plan shall include effective best management practices to prohibit the following discharges:
 - (1) Wastewater from washout of concrete, unless managed by an appropriate control;
 - (2) Wastewater from washout and cleanout of stucco, paint, form release oils, curing compounds, and other construction materials;
 - (3) Fuels, oils, or other pollutants used in vehicle and equipment operation and maintenance; and
 - (4) Soaps or solvents used in vehicle and equipment washing.
- (c) Discharges from dewatering activities, including discharges from dewatering of trenches and excavations, are prohibited unless managed by appropriate controls.

Sec. 30-107. 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 30-105 of this ordinance, and shall notify the applicant, in writing, of such determination, within 15 calendar days of receipt. If the plan is deemed to be incomplete, the above written notification shall contain the reasons the plan is deemed incomplete.
 - (2) The Administrator shall have an additional 60 calendar days from the date of the communication of completeness to review the plan, except that if a determination of completeness is not made within the time prescribed in subdivision (1), then plan

shall be deemed complete and the Administrator shall have 60 calendar days from the date of submission to review the plan.

- (3) The Administrator shall review any plan that has been previously disapproved, within 45 calendar days of the date of resubmission.
 - (4) During the review period, the plan shall be approved or disapproved and the decision communicated in writing to the person responsible for the land-disturbing activity or his designated agent. If the plan is not approved, the reasons for not approving the plan shall be provided in writing. Approval or denial shall be based on the plan's compliance with the requirements of this ordinance.
 - (5) If a plan meeting all requirements of this ordinance is submitted and no action is taken within the time provided above in subdivision (2) for review, the plan shall be deemed approved.
- (b) Approved stormwater plans may be modified as follows:
- (1) Modifications to an approved stormwater management plan shall be allowed only after review and written approval by the Administrator. The Administrator shall have 60 calendar days to respond in writing either approving or disapproving such request.
 - (2) The Administrator may require that an approved stormwater management plan be amended, within a time prescribed by the Administrator, to address any deficiencies noted during inspection.
- (c) The approved stormwater management plan for a residential, commercial, or industrial subdivision shall govern the development of the individual parcels, including those parcels developed under subsequent owners.
- (d) 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 30-109 (b).

Sec. 30-108. Technical criteria for regulated land disturbing activities.

- (a) To protect the quality and quantity of state water from the potential harm of unmanaged stormwater runoff resulting from land-disturbing activities, the Town hereby adopts the technical criteria for regulated land-disturbing activities set forth in Part II B of the Regulations, as amended, expressly to include 9VAC25-870-63 [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]; 9VAC25-870-92 [Comprehensive stormwater management plans]; 9VAC25-870-93 [Definitions]; 9VAC25-870-94 [Applicability]; 9VAC25-870-95 [General]; 9VAC25-870-96 [Water quality]; 9VAC25-870-97 [Stream

channel erosion]; 9VAC25-870-98 [Flooding]; 9VAC25-870-99 [Regional (watershed-wide) stormwater management plans], which shall apply to all land-disturbing activities regulated pursuant to this ordinance, except as expressly set forth in Subsection (b) of this Section.

- (b) 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 Town as being equivalent thereto, was approved by the Town 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 Town as being equivalent thereto, (i) provides for a layout as defined in 9VAC25-870-10 and (ii) the resulting land-disturbing activity will be compliant with the requirements of Part II C. In the event that the Town-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 II C of the Regulations, as adopted by the Town 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, except where allowed under Part II C of 9VAC25-870-93.
 - (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.
 - (3) A record of all exceptions granted shall be maintained by the Town in accordance with 9VAC25-870-126.
- (e) Nothing in this Section shall preclude an operator from constructing to a more stringent standard at their discretion.

Sec. 30-109. 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 Subsection 30-109 (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.

Sec. 30-110. 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 Town'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 30-109.

Sec. 30-111. 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 causing such grievance, 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 Town Council at a regular or special meeting of the Town Council. Town Council members shall conduct such hearings on behalf of the Town at any other time and place authorized by the Town Council.
- (c) A verbatim record of the proceedings of such hearings shall be taken and filed with the Town Council. Depositions may be taken and read as in actions at law.
- (d) The Town Council shall have power to issue subpoenas and subpoenas duces tecum, and at the request of any party shall issue such subpoenas. The failure of a witness without legal excuse to appear or to testify or to produce documents shall be acted upon by the Town Council, whose action may include the procurement of an order of enforcement from the circuit court. Witnesses who are subpoenaed shall receive the same fees and reimbursement for mileage as in civil actions.

Sec. 30-112. Appeals.

- (a) Any applicant under the provision of this ordinance who is aggrieved by any action of the town or its agent shall have the right to apply for and receive a review of such action by the Town Council provided an appeal is filed within 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 hearing 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 Washington County, Virginia.
- (b) Final decisions of the Town Council under this ordinance shall be subject to review by the Circuit Court of Washington County, Virginia 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.

Sec. 30-113. Enforcement.

- (a) Informal and formal administrative enforcement procedures may include the following as required by 9VAC25-870-116:
 - (1) Verbal warnings and inspection reports;
 - (2) Notices of corrective action;

- (3) Consent special orders and civil charges in accordance with subdivision 6 of §62.1-44.15:37 of the Code of Virginia;
- (4) Notices to comply in accordance with §62.1-44.15:25 of the Code of Virginia;
- (5) Special orders in accordance with subdivision 6 of §62.1-44.15:25 of the Code of Virginia; and
- (6) Public notice and comment periods for proposed settlements and consent special orders pursuant to 9VAC25-870-660.
- (7) 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.
- (8) 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 Town, 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 30-113 (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 Section 30-103 of this ordinance.
- (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

Washington County by the Town to obey same and to comply therewith by injunction, mandamus or other appropriate remedy.

- (d) Civil and criminal judicial enforcement procedures may include the following as required in 9VAC25-870-116:
- (1) Schedule of civil penalties in accordance with §62.1-44.15:48 of the Code of Virginia;
 - (2) Criminal penalties in accordance with §62.1-44.15:48 B and C of the Code of Virginia; and
 - (3) Injunctions in accordance with §§62.1-44.15:25, 62.1-44.15:42, and 62.1-44.15:48 D 1 of the Code of Virginia.
- (e) 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 9VAC25-880-70 of the general permit.
 - (2) The Administrator may issue a summons for collection of the civil penalty and the action may be prosecuted in the appropriate court.
 - (3) In imposing a civil penalty pursuant to this Subsection, the court may consider the degree of harm caused by the violation and also the economic benefit to the violator from noncompliance.
 - (4) Any civil penalties assessed by a court as a result of a summons issued by the Town shall be paid into the treasury of the Town to be used for the purpose of minimizing, preventing, managing, or mitigating pollution of the waters of the Town and abating environmental pollution therein in such manner as the court may, by order, direct.

- (f) Notwithstanding any other civil or equitable remedy provided by this Section or by law, any person who willfully or negligently violates any provision of this 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. 30-114. 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 as approved by the Town Council from time to time. When a site or sites have been purchased for development within a previously permitted common plan of development or sale, the Applicant shall be subject to fees in accordance with the disturbed acreage of their site. The permit fee schedule is on file in the office of the Director of Public Works.
- (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 of the fee schedule. If the general permit modifications result in changes to stormwater management plans that require additional review by the 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 of the fee schedule.
- (c) The annual permit maintenance fee shall be imposed in accordance with Table 3 of the fee schedule, 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.
- (d) All incomplete payments will be deemed as nonpayments, and the applicant shall be notified of any incomplete payments. Interest may be charged for late payments at the underpayment rate set forth in §58.1-15 of the Code of Virginia and is calculated on a monthly basis at the applicable periodic rate. A 10% late payment fee shall be charged to any delinquent (over 90 days past due) account. The Town shall be entitled to all remedies available under the Code of Virginia in collecting any past due amount.

Sec. 30-115. Performance bond.

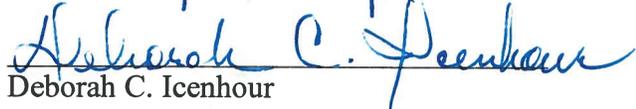
Prior to issuance of any permit, the Applicant shall be required to submit a reasonable performance bond with surety, cash escrow, letter of credit, any combination thereof, or such other legal arrangement acceptable to the Town Attorney, to ensure that measures could be taken by the Town at the Applicant's 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 Town 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.

Sec. 30-116 – 30-120. Reserved.

CERTIFICATE

Pursuant to Section 2-100 of the Code of the Town of Abingdon, I hereby certify that I have reviewed the foregoing proposed ordinance to enact the Stormwater Management Ordinance provided for in Code of Virginia §62.1-44.15:27 of the Code of the Town of Abingdon, Virginia and find it to be in correct form this April 7 day of April, 2014.


Deborah C. Icenhour

Town Attorney for the Town of Abingdon, Virginia

This Ordinance was adopted on April 7, 2014 to take effect on July 1, 2014.



Edward B. Morgan, Mayor
Town of Abingdon

The undersigned Clerk of the Town of Abingdon, Virginia (the "Town"), hereby certifies that the foregoing constitutes a true and correct copy of an ordinance duly adopted at a meeting of the Council held on the 7th day of April, 2014. I hereby certify that such meeting was a regularly scheduled meeting and that, during the consideration of the foregoing ordinance, a quorum was present. I further certify that the minutes of meeting was a regularly scheduled meeting and that, during the consideration of the foregoing ordinance, a quorum was present. I further certify that the minutes of such meeting reflect the attendance of the members and the voting on the foregoing ordinance was as follows:

MEMBERS	ATTENDANCE	VOTE
Edward B. Morgan, Mayor	yes	aye
Cathy C. Lowe, Vice Mayor	yes	aye
Robert M. Howard	yes	aye
Richard E. Humphreys	yes	aye
Jayne A. Duehring	yes	aye

WITNESS MY HAND and the seal of the Town of Abingdon as of May 7, 2014.

(SEAL)


Clerk, Town of Abingdon



T O W N O F A B I N G D O N

OFFICE OF DIRECTOR OF PUBLIC WORKS
FEE SCHEDULE

Table 1: Fees for permit issuance for land-disturbing activities that meet the requirements of Chapter 30 Article V of the Town Code.

Fee type	Total fee to be paid by Applicant (includes both Town and Department portions where applicable)	Department portion of "total fee to be paid by Applicant" (based on 28% of total fee paid*)
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.

(a) Fees for the modification or transfer of registration statements from the general permit issued by the State Board shall be imposed in accordance with Table 2. If the general

permit modifications result in changes to stormwater management plans that require additional review by the 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

(b) 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.

Table 3: Permit Maintenance Fees

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)	\$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

than 10 acres)	
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.

(c) 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 (c) may apply to each general permit holder.

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

- (1) Permittees who request minor modifications to general permits as defined in Section 30-95 of the Town's Stormwater 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.

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

Approved by Town Council: 4/7/2014