

## **Chapter 16 ENVIRONMENT** <sup>[1]</sup>

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**State Law reference**— Erosion and Sediment Control Law, Code of Virginia, § 62.1-44.15:51 et seq. ([Back](#))

### **ARTICLE I. IN GENERAL**

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**Secs. 16-1—16-18. Reserved.**

### **ARTICLE II. EROSION AND SEDIMENT CONTROL** <sup>[2]</sup>

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## **Sec. 16-19. Definitions.**

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Administrator means the town manager and/or his designee, including the director of engineering and special projects, engineering development coordinator, certified program administrator, certified plan reviewer or certified inspector, who has been appointed to serve as the agent of the council in administering this article.

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

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

Board means the State Water Control Board.

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

Completion of land alteration activities means the completion of activities in the approved plan for the subject property, including adequate permanent stabilization of the disturbed area, plus reasonable evidence that soil erosion is under control.

Conservation standards or standards means the criteria, guidelines, techniques and methods for the control of erosion and sedimentation.

Department or DEQ means the Virginia Department of Environmental Quality.

Design and development manual or design manual means the Town of Christiansburg Design and Development Manual, as revised and updated from time to time by the administrator or his designee, town manager or director of engineering, a document that serves as a supplement to the town ordinances and also provides guidance, procedures, standards, and specifications for property owners, developers, and design professionals to assist with development within the town.

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

Director means the director of the department of environmental quality.

Director of engineering means the town director of engineering.

District or soil and water conservation district means a political subdivision of this commonwealth, organized in accordance with the provisions of Code of Virginia, § 62.1-44.15:51 et seq.

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

Erosion impact area means an area of land not associated with current land disturbing activity, but subject to persistent soil erosion resulting in the delivery of sediment onto neighboring properties or into state waters. The term "erosion impact area" shall not apply to any lot or parcel of land of 10,000 square

feet or less used for residential purposes or to shorelines where the erosion results from wave action or coastal processes.

ESC certified inspector means an employee or agent of a VESCP who:

- (1) Holds a certificate of competence from the soil and water conservation board (board) in the area of project inspection; or
- (2) Is enrolled in the board's training program for project inspection and successfully completes such program within one year after enrollment.

ESC certified plan reviewer means an employee or agent of a VESCP who:

- (1) Holds a certificate of competence from the soil and water conservation board (board) in the area of plan review;
- (2) Is enrolled in the board's training program for plan review and successfully completes such program within one year after enrollment; or
- (3) Is licensed as a professional engineer, architect, landscape architect or land surveyor pursuant to Code of Virginia, § 54.1-400 et seq. or professional soil scientist as defined in Code of Virginia, § 54.1-2200.

ESC certified program administrator means an employee or agent of a VESCP who:

- (1) Holds a certificate of competence from the soil and water conservation board (board) in the area of program administration; or
- (2) Is enrolled in the board's training program for program administration and successfully completes such program within one year after enrollment.

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

Filling means any depositing or stockpiling of earth materials.

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

Land disturbing activity.

- (1) The term "land distributing activity" means any manmade change to the land surface that may result in soil erosion from water or wind and the movement of sediments into state waters or onto lands in the commonwealth, including, but not limited to, clearing, grading, excavating, transporting and filling of land.
- (2) Except that the term "land distributing activity" shall not include:
  - a. Minor land disturbing activities such as home gardens and individual home landscaping, repairs and maintenance work;
  - b. Individual service connections;
  - c. Installation, maintenance, or repair of any underground public utility lines when such activity occurs on an existing hard surfaced road, street or sidewalk, provided the land disturbing activity is confined to the area of the road, street or sidewalk that is hard surfaced;
  - d. Septic tank lines or drainage fields, unless included in an overall plan for land disturbing activity relating to construction of the building to be served by the septic tank system;
  - e. Permitted surface or deep mining operations and projects, or oil and gas operations and projects conducted pursuant to Code of Virginia, title 45.1;
  - f. Tilling, planting or harvesting of agricultural, horticultural or forest crops, livestock feedlot operations, or as additionally set forth by the board in regulation, including engineering operations as follows: construction of terraces, terrace outlets, check dams, desilting

basins, dikes, ponds, ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage and land irrigation; however, this exception shall not apply to harvesting of forest crops unless the area on which harvesting occurs is reforested artificially or naturally in accordance with the provisions of Code of Virginia, § 10.1-1100 et seq. or is converted to bona fide agricultural or improved pasture use as described in Code of Virginia, § 10.1-1163 B;

- g. Repair or rebuilding of the tracks, right-of-way, bridges, communication facilities and other related structures and facilities of a railroad company;
- h. Agricultural engineering operations, including, but not limited to, the construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds not required to comply with the provisions of the Dam Safety Act, Code of Virginia, § 10.1-604 et seq., ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage and land irrigation;
- i. Disturbed land areas of less than 10,000 square feet;
- j. Installation of fence and sign posts or telephone and electric poles and other kinds of posts or poles;
- k. Shoreline erosion control projects on tidal waters when all of the land disturbing activities are within the regulatory authority of and approved by local wetlands boards, the marine resources commission or the United States Army Corps of Engineers; however, any associated land that is disturbed outside of this exempted area shall remain subject to this article and the regulations adopted pursuant thereto; and
- l. Emergency work to protect life, limb or property, and emergency repairs; however, if the land disturbing activity would have required an approved erosion and sediment control plan, if the activity were not an emergency, then the land area disturbed shall be shaped and stabilized in accordance with the requirements of the town.

Land disturbing permit, permit, or VSMP authority permit means an approval to conduct land disturbing activity issued by the administrator for the initiation of a land disturbing activity, in accordance with this article.

Local erosion and sediment control program or local control program means an outline of the various methods employed by a district or locality to regulate land disturbing activities and thereby minimize erosion and sedimentation in compliance with the state program and may include such items as local ordinances, policies and guidelines, technical materials, inspection, enforcement and evaluation.

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

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

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

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

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

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

- (1) Holds a responsible land disturber certificate of competence;
- (2) Holds a current certificate of confidence from the board in the areas of combined administration, program administration, inspection or plan review;
- (3) Holds a current contractor certificate of competence for erosion control; or
- (4) Is licensed in the state as a professional engineer, architect, certified landscape architect or surveyor pursuant to Code of Virginia, title 54.1, chapter 4, article 1 (Code of Virginia, § 54.1-400 et seq.).

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

Single-family residence means a noncommercial dwelling that is occupied exclusively by one family.

State board or board means the Virginia Water Control Board.

Town means the Town of Christiansburg, Virginia.

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

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

Water quality volume means the volume equal to the first one-half inch of runoff multiplied by the impervious surface of the land development project.

(Ord. No. 2014-3, 6-24-2014)

**State Law reference**— Similar definitions, Code of Virginia, § 62.1-44.15:51 et seq.

### **Sec. 16-20. Purpose.**

The purpose of this article is to conserve the land, water, air and other natural resources of the town and promote the public health and welfare of the people in the town by establishing requirements for the control of erosion and sedimentation and by establishing procedures whereby these requirements shall be administered and enforced.

(Ord. No. 2014-3, 6-24-2014)

### **Sec. 16-21. Authority.**

This article is authorized by the Erosion and Sediment Control Law, Code of Virginia, § 62.1-44.15:52 et seq. Such law provides for a comprehensive statewide program with standards and guidelines to control soil erosion and sedimentation, which is implemented on the local level.

(Ord. No. 2014-3, 6-24-2014)

### **Sec. 16-22. Local program; adoption of state standards and regulations.**

- (a) This article and the procedures for plan submission and review, on-site inspection and ordinance enforcement shall be an integral part of the erosion and sedimentation control program of the town, which program, by reference herein, is hereby adopted.
- (b) The state erosion and sediment control regulations are hereby adopted by reference as an integral part hereof.
- (c) Chapter 3 of the Virginia Erosion and Sediment Control Handbook, second edition, latest edition, and entitled State Minimum Criteria, Standards and Specifications, and as may be amended from time to time, is hereby adopted and shall be included as an integral part of the erosion and sedimentation control program of the town.
- (d) Chapter 2 of the Virginia Erosion and Sediment Control Handbook, second edition, latest edition, and entitled Erosion and Sediment Control Principals, Practices, and Costs as may be amended from time to time, and chapter 4 of the Virginia Erosion and Sediment Control Handbook, second edition, as may be amended from time to time, are hereby adopted in their entirety, and shall be included as an integral part of the erosion and sedimentation control program of the town.
- (e) The erosion and sedimentation control program for the town shall be outlined and contained in the erosion and sediment control handbook of the town, which handbook shall be used by the applicant, making a submittal under the provisions of this article, in preparing his erosion and sedimentation control plan. The VESCP authority, in considering the adequacy of such submitted plan, shall be guided by the same guidelines and standards.
- (f) In accordance with Code of Virginia, § 62.1-44.15:52, stream restoration and relocation projects that incorporate natural channel design concepts are not manmade channels and shall be exempt from any flow rate capacity and velocity requirements for natural or manmade channels, as defined in any regulations promulgated pursuant to this section, Code of Virginia, § 62.1-44.15:54 or 62.1-44.15:65.
- (g) In accordance with Code of Virginia, § 62.1-44.15:52, any land disturbing activity that provides for stormwater management intended to address any flow rate capacity and velocity requirements for natural or manmade channels shall satisfy the flow rate capacity and velocity requirements for natural or manmade channels if the practices are designed to:
  - (1) Detain the water quality volume and to release it over 48 hours;
  - (2) Detain and release over a 24-hour period the expected rainfall resulting from the one year, 24-hour storm; and
  - (3) Reduce the allowable peak flow rate resulting from the one and one-half, two, and ten-year, 24-hour storms to a level that is less than or equal to the peak flow rate from the site, assuming it was in a good forested condition, achieved through multiplication of the forested peak flow rate by a reduction factor that is equal to the runoff volume from the site when it was in a good forested condition divided by the runoff volume from the site in its proposed condition, and shall be exempt from any flow rate capacity and velocity requirements for natural or manmade channels.

(Ord. No. 2014-3, 6-24-2014)

**State Law reference**— Virginia erosion and sediment control program, Code of Virginia, § 62.1-44.15:52.

**Sec. 16-23. Erosion and sedimentation control plan; when required; exceptions; variances.**

- (a) Except as provided in this section, no person shall engage in any land disturbing activity until he has submitted to the administrator an erosion and sediment control plan for such land disturbing activity and until that plan has been reviewed and approved by the VESCP authority.
- (b) The VESCP authority may waive the certificate of competence requirement for an agreement in lieu of an erosion and sediment control plan for construction of a single-family residence. If a violation occurs during the land disturbing activity, then the person responsible for carrying out the agreement in lieu of an erosion and sediment control plan shall correct the violation and provide the name of an individual holding a certificate of competence, as provided by § 62.1-44.15:53 of the Virginia Erosion and Sediment Control Law (Code of Virginia, § 62.1-44.15:53). Failure to provide the name of an individual holding a certificate of competence shall be a violation of this article.
- (c) Any person who owns, occupies or operates private agricultural, horticultural or forest lands shall not be deemed to be in violation of this article for land disturbing activities which result from the tilling, planting or harvesting of agricultural, horticultural or forest crops or products or engineering operations such as the construction of terraces, terrace outlets, check dams, desilting basins, floodwater retarding structures, channel improvements, floodways, dikes, ponds, ditches, and the like; the utilization of strip cropping, lister furrowing, contour cultivating and contour furrowing; land drainage; land irrigation; seeding and planting of waste, sloping, abandoned or eroded lands to water-conserving and erosion-preventing plants, trees and grasses; forestation and reforestation; rotation of crops, soil stabilization with trees, grasses, legumes and other thick growing, soil holding crops; retardation of runoff by increasing absorption of rainfall; and retirement from cultivation of steep, highly erosive areas and areas now badly gullied or otherwise eroded. Any person who owns, occupies or operates private agricultural, horticultural or forest lands shall comply with the requirements of this article whenever that person proposes to conduct grading, excavating or filling operations.
- (d) The provisions of subsection (a) of this section shall not apply to any state agency that undertakes a project involving a land disturbing activity.
- (e) The provisions of subsection (a) of this section shall not apply to any person whose land disturbing activities involve lands which extend into the jurisdiction of another local erosion and sediment control program; provided, such person has a plan approved by the Virginia Soil and Water Conservation Board. Such persons shall comply with the requirements of this article concerning a performance bond, cash escrow, letter of credit, any combination thereof or such other legal arrangement as is acceptable to the town.
- (f) Whenever a land disturbing activity is proposed to be conducted by a contractor performing construction work pursuant to a construction contract, the preparation, submission and approval of the required erosion and sedimentation control plan shall be the responsibility of the owner of the land.
- (g) Electric, natural gas and telephone utility companies, interstate and intrastate natural gas pipeline companies and railroad companies shall file general erosion and sediment control specifications annually with the board for review and written comments. The specifications shall apply to:
  - (1) Construction, installation or maintenance of electric, natural gas and telephone utility lines, and pipelines; and
  - (2) Construction of the tracks, rights-of-way, bridges, communication facilities and other related structures and facilities of the railroad company.

Individual approval of separate projects within subsection (g)(1) and (2) of this section is not necessary when board-approved specifications are followed; however, projects included in subsections (g)(1) and (2) of this section must comply with board-approved specifications. Projects not included in subsections (g)(1) and (2) of this section shall comply with the requirements of the town erosion and sediment control program.

- (h) Variances. The plan-approving authority may waive or modify any of the standards that are deemed to be too restrictive for site conditions, by granting a variance. A variance may be granted under these conditions:
  - (1) At the time of plan submission, an applicant may request a variance to become part of the approved erosion and sediment control plan. The applicant shall explain the reasons for requesting variances, in writing. Specific variances which are allowed by the plan-approving authority shall be documented in the plan.
  - (2) During construction, the person responsible for implementing the approved plan may request a variance, in writing, from the plan-approving authority. The plan-approving authority shall respond, in writing, either approving or disapproving such a request. If the plan-approving authority does not approve a variance within ten days of receipt of the request, the request shall be considered to be disapproved. Following disapproval, the applicant may resubmit a variance request with additional documentation.
- (i) In accordance with the procedure set forth by Code of Virginia, § 62.1-44.15:55(E), any person engaging in the creation and operation of wetland mitigation banks in multiple jurisdictions, which have been approved and are operated in accordance with applicable federal and state guidance, laws or regulations for the establishment, use and operation of mitigation banks, pursuant to a permit issued by the department of environmental quality, the marine resources commission or the U.S. Army Corps of Engineers, may, at the option of that person, file general erosion and sediment control specifications for wetland mitigation banks annually with the board for review and approval consistent with guidelines established by the board.
- (j) The developer or builder shall submit grading plans detailing existing conditions and planned improvements and contours at one-foot or two-foot intervals prepared by a licensed state professional engineer, architect, landscape architect or land surveyor in accordance with the town grading and erosion and sediment control checklist.

(Ord. No. 2014-3, 6-24-2014)

**State Law reference**— Sediment control plan, Code of Virginia, § 62.1-44.15:55.

#### **Sec. 16-24. Erosion and sedimentation control plan review.**

- (a) The VESCP authority shall review conservation plans submitted to it and grant written approval within 45 days of receipt of the plan if it determines that the plan meets the requirements of the board's regulations and if the person responsible for carrying out the plan certifies that he will properly perform the conservation measures included in the plan and will conform to the provisions of this article. In addition, as a prerequisite to engaging in the land disturbing activities shown on the approved plan, the person responsible for carrying out the plan shall provide the name of an individual holding a certificate of competence to the program authority, as provided by Code of Virginia, § 62.1-44.15:53, who will be in charge of, and responsible for, carrying out the land disturbing activity. Failure to provide the name of an individual holding a certificate of competence prior to engaging in land disturbing activities may result in revocation of the approval of the plan and the person responsible for carrying out the plan shall be subject to the penalties provided in this article.
- (b) The VESCP authority shall act on all plans submitted to it within 45 days from receipt thereof by either approving such plan, in writing, or by disapproving such plan, in writing, and giving the specific

reasons for its disapproval. When a plan submitted for approval pursuant to this article is found, upon review by the VESCP authority, to be inadequate, the VESCP authority shall specify such modifications, terms and conditions as will permit approval of the plan and shall communicate these requirements to the applicant. If no action is taken by the plan approving authority within the time specified above, the plan shall be deemed approved and the person shall be authorized to proceed with the proposed activity.

- (c) An approved plan may be changed by the VESCP authority which has approved the plan in the following cases:
  - (1) Where inspection has revealed the inadequacy of the plan to accomplish the erosion and sedimentation control objectives of the plan; or
  - (2) Where the person responsible for carrying out the approved plan finds that, because of changed circumstances or for other reasons, the approved plan cannot be effectively carried out, and proposed amendments to the plan, consistent with the requirements of this article, are agreed to by the VESCP authority and the person responsible for carrying out the plan, or where it is necessary to coordinate the erosion and sedimentation control plan with other plans or activities such as a revised subdivision plan, site plan, etc.
- (d) In order to prevent further erosion, a local program may require approval of a conservation plan for any land identified in the local program as an erosion impact area.

(Ord. No. 2014-3, 6-24-2014)

#### **Sec. 16-25. Land disturbing permit; required; exceptions; fees.**

- (a) Except as provided in subsection (c) of this section, no person shall engage in any land disturbing activity until he has acquired a VSMP authority permit from the administrator.
- (b) Any person whose land disturbing activities require the issuance of a grading, building and other permit, and such issuance is conditioned on an approved erosion and sedimentation control plan, shall comply with the requirements of this article concerning a performance bond, cash escrow, letter of credit, any combination thereof or such other legal arrangement as is acceptable to the administrator and to the fees herein levied for land disturbing activities.
- (c) The requirements of subsection (a) of this section shall not apply to any person grading, filling or excavating on privately owned, occupied or operated agricultural, horticultural or forest lands.
- (d) There shall be a reasonable fee to defray the cost of program administration. Administrative fees for inspections and other procedures specified by this chapter shall be established by the town council. A schedule of these fees is available in the design manual.
- (e) The administrator shall designate an amount to be placed in a cash escrow account with the town to cover the actual costs and shall be paid at the time of filing the erosion and sediment control plans with the town.

(Ord. No. 2014-3, 6-24-2014)

#### **Sec. 16-26. Land disturbing activities plan approval prerequisite for issuance; certification; performance bond.**

- (a) The building official shall not issue any building or other permit, nor shall the administrator issue any grading, land disturbing or other permit for activities which involve land disturbing activities unless the applicant therefor submits with his application the approved erosion and sedimentation control plan or certification of such approved plan from the VESCP authority, and certification that such plan will be followed.

- (b) The administrator, prior to the issuance of any grading, land disturbing, building or other permit, shall require from any applicant a reasonable performance bond, cash escrow, letter of credit, any combination thereof or such other legal arrangement as is acceptable to the administrator, to ensure that emergency measures could be taken by the town at the applicant's expense should he fail within the time specified to initiate appropriate conservation action which may be required of him as a result of his land disturbing activity. If the town takes such conservation action upon failure by the permittee, the administrator may collect from the permittee for the difference should the reasonable cost of such action exceed the amount of security held. Within 60 days of the achievement of adequate stabilization of the land disturbing activity, 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, as the case may be.
- (c) The requirements of this section are in addition to all other provisions of law which relate to the issuance of such permits and shall not be construed to otherwise affect the requirements for such permits; except, that the legal arrangement for bonding of performance shall not be required in cases where such arrangement is already required under chapter 40 of this Code, provided the legal arrangement is sufficient to ensure that the measures required by this article can be carried out.

(Ord. No. 2014-3, 6-24-2014)

**State Law reference**— Approved plan, etc. required, Code of Virginia, § 62.1-44.15:57.

#### **Sec. 16-27. Monitoring, reports and inspections.**

- (a) The administrator or his agent shall periodically inspect the land disturbing activity and require that an individual holding a certificate of competence, as provided by Code of Virginia, § 62.1-44.15:53, will be in charge of, and responsible for, carrying out the land disturbing activity and may require monitoring and reports from the person responsible for carrying out the erosion and sediment control plan, to ensure compliance with the approved plan and to determine whether the measures required in the plan are effective in controlling erosion and sediment. The right of entry to conduct such inspections shall be expressly reserved in the permit. The permit holder, or his duly designated representative, shall be given notice of the inspection.
- (b) If the administrator determines that the permit holder has failed to comply with the plan, notice shall be served upon the permittee or person responsible for carrying out the plan by registered or certified mail to the address specified in the permit application or in the plan certification, or by delivery at the site of the land disturbing activities to the agent or employee supervising such activities. The notice shall specify the measures needed to comply with the plan and shall specify the time within which such measures shall be completed. Upon failure to comply within the time specified, the permit may be revoked and the administrator, where authorized to enforce this article, the department or the board may pursue enforcement as provided by Code of Virginia, § 62.1-44.15:63.
- (c) With respect to approved plans for erosion and sedimentation control in connection with all regulated land disturbing activities which require no permit, the administrator may require the person responsible for carrying out the plan to allow or provide such monitoring and reports, and may make such on-site inspections after notice to that person, as are deemed necessary to determine whether the soil erosion and sedimentation control measures required by the approved plan are being properly performed, and whether such measures are effective in controlling soil erosion and sedimentation resulting from the land disturbing activity. Such person shall be afforded an opportunity to accompany the inspectors on any on-site inspections.
- (d) If it is determined that there is a failure to comply with the approved plan, the administrator shall serve notice upon the person who is responsible for carrying out the plan at the address specified by him in his certification at the time of obtaining his approved plan, or by delivery at the site of the permitted activities to the agent or employee of the permittee supervising such activities. Such notice

shall set forth the measures needed for compliance and the time within which such measures shall be completed. Upon failure of such person to comply within the specified period, he will be deemed to be in violation of this article and upon conviction shall be subject to the penalties provided by this article.

- (e) Upon receipt of a sworn complaint of a substantial violation from the designated enforcement officer, the administrator, or his designee, may issue an order requiring that all or part of land disturbing activities permitted on the site be stopped until the specified corrective measures have been taken. Where the alleged noncompliance is causing, or is in imminent danger of causing, harmful erosion of lands or sediment deposition in waters within the watersheds of the commonwealth, such an order may be issued without regard to whether the permittee has been issued a notice to comply as specified in subsections (a) through (d) of this section. Otherwise, such an order may be issued only after the permittee has failed to comply with such a notice to comply. The order shall be served in the same manner as a notice to comply and shall remain in effect for a period of seven days from the date of service pending application by the enforcing authority or permit holder for appropriate relief to the circuit court of the county. Upon completion of corrective action, the order shall immediately be lifted. Nothing in this section shall prevent the town manager from taking any other action specified in section 16-29.
- (f) Inspection frequency shall be in accordance with 9 VAC 25-840-60.

(Ord. No. 2014-3, 6-24-2014)

**State Law reference**— Monitoring, reports and inspection, Code of Virginia, § 62.1-44.15:58, maintenance and inspections, 9 VAC 25-840-60.

#### **Sec. 16-28. Administrative appeal; judicial review.**

- (a) Final decisions of the administrator or the plan review technician shall be subject to review by the town council, provided an appeal is filed within 30 days from the date of any written decision by the administrator or the plan review technician which adversely affects the rights, duties or privileges of the person engaging in or proposing to engage in land disturbing activities.
- (b) Final decisions of the town council under this section shall be subject to review by the circuit court, provided an appeal is filed within 30 days from the date of the final written decision which adversely affects the rights, duties or privileges of the person engaging in or proposed to engage in land disturbing activities.

(Ord. No. 2014-3, 6-24-2014)

**State Law reference**— Appeals, Code of Virginia, § 62.1-44.15:62.

#### **Sec. 16-29. Penalties, injunctions and other legal actions.**

- (a) A violation of this article shall be deemed a Class 1 misdemeanor.
- (b) The town manager may apply to the circuit court of the county for injunctive relief to enjoin a violation or a threatened violation of this article without the necessity of showing that there does not exist an adequate remedy at law.
- (c) The town attorney shall, upon request of the town manager, take legal action to enforce the provisions of this article.

- (d) Compliance with the provisions of this article shall be prima facie evidence in any legal or equitable proceeding for damages caused by erosion, siltation or sedimentation that all requirements of law have been met and the complaining party must show negligence in order to recover any damages.
- (e) In addition to any criminal penalties provided under this article, any person who violates any provision of this article may be liable to the town in a civil action for damages.
  - (1) In accordance with Code of Virginia § 62.1-44.15:54(K), any condition of a permit, or any provision shall be subject to a civil penalty. The civil penalty for one such violation shall be not less than \$100.00 nor more than \$1,000.00. Each day during which the violation is found to have existed shall constitute a separate offense. In no event shall a series of specified violations arising out of the same operative set of facts result in civil penalties which exceed \$10,000.00. A complete schedule of uniform civil penalties may be found in the design manual.
    - a. Failure to obtain land disturbing permit prior to construction—\$1,000.00 per violation, per day.
    - b. Operating without an approved plan—\$1,000.00 per violation, per day.
    - c. Failure to properly install and maintain perimeter controls—\$100.00 per violation, per day.
    - d. Failure to properly install and maintain temporary stone construction entrance—\$100.00 per violation, per day.
    - e. Sediment or debris transported onto paved public road by vehicular traffic or runoff—\$100.00 per violation, per day.
    - f. Failure to install and maintain storm drain inlet protection—\$100.00 per violation, per day.
    - g. Failure to install and maintain storm drain outlet protection—\$100.00 per violation, per day.
    - h. Failure to install and maintain vegetative, structural, or any other measure as specified in the minimum standards—\$100.00 per violation, per day.
    - i. Failure to seed and mulch disturbed areas within 14 days of notice to comply—\$100.00 per violation, per day.
  - (2) The town may bring a civil action in the general district or circuit court of the county, as appropriate, to enforce the civil penalty and to abate the violation. In any trial for a violation, it shall be the burden of the town to show the liability of the violator by a preponderance of the evidence. Any civil penalties assessed by a court shall be paid into the treasury of the town.
- (f) Without limiting the remedies which may be obtained in this section, any person violating or failing, neglecting or refusing to obey any injunction, mandamus or other remedy obtained pursuant to this section shall be subject, in the discretion of the court, to a civil penalty not to exceed \$2,000.00 for each violation.
- (g) With the consent of any person who has violated or failed, neglected or refused to obey any regulation or order of the board, or any condition of a permit or any provision of this article, the board or VESCP authority may provide, in an order issued by the board or VESCP authority against such person, for the payment of civil charges for violations in specific sums, not to exceed the limit specified in subsection (f) of this section. Such civil charges shall be instead of any appropriate civil penalty which could be imposed under subsection (f) of this section.

(Ord. No. 2014-3, 6-24-2014)

**State Law reference**— Penalties, injunctions and other legal actions, Code of Virginia, § 62.1-44.15:63.

## **Sec. 16-30. Enforcement; stop work order.**

- (a) The town shall provide for periodic inspections of the land disturbing activity and require an individual holding a certificate of competence issued by the department of environmental quality who will be in charge of and responsible for carrying out the land disturbing activity, and may require monitoring and reports from the person responsible for carrying out the plan, to ensure compliance with the approved plan and to determine whether the measures required in the plan are effective in controlling erosion and sediment. If the town determines that there is a failure to comply with the plan, notice shall be served upon the permittee or person responsible for carrying out the plan by registered or certified mail to the address specified in the permit application or in the plan certification, or by delivery at the site of the land disturbing activities to the agent or employee supervising such activities. The notice shall specify the measures needed to comply with the plan and shall specify the time within which such measures shall be completed. Upon failure to comply within the time specified, the permit may be revoked and the permittee or person responsible for carrying out the plan shall be deemed to be in violation of this article and shall be subject to the penalties provided by this article.
- (b) Upon receipt of the administrator's or designee's sworn complaint of a violation of the terms of the plan or of this article, the town manager may, in conjunction with or subsequent to a notice to comply as specified above, issue an order requiring that all, or a part of, the land disturbing activities permitted on the site be stopped until the specified corrective measures have been taken or, if land disturbing activities have commenced without an approved plan as provided in this article, requiring that all of the land disturbing activities be stopped until an approved plan or any required permits are obtained.
- (c) Where the alleged noncompliance is causing, or is in imminent danger of causing, harmful erosion of lands or sediment deposition in water within the watershed of the town, or where the land disturbing activities have commenced without an approved plan or any required permits, such an order may be issued without regard to whether the alleged violator has been issued a notice to comply as specified above. Otherwise, such an order may be issued only after the alleged violator has failed to comply with such a notice to comply.
- (d) The order shall be served in the same manner as a notice to comply, and shall remain in effect for a period of seven days from the date of service pending application by the town or the alleged violator for appropriate relief to the circuit court of the county.
- (e) If the alleged violator has not obtained an approved plan or any required permits within seven days from the date of service of the order, the administrator, on behalf of the town, may issue an order to the owner requiring that all construction and other work on the site, other than control measures, be stopped until an approved plan and any required permits have been obtained. Such an order shall be served on the owner by registered or certified mail to the address specified in the permit application or the land records of the town or of the county.
- (f) Any person violating or failing, neglecting or refusing to obey the town manager's order may be compelled in a proceeding instituted in the circuit court of the county to obey the order, by injunction, mandamus or other appropriate remedy.
- (g) Upon completion of the corrective action, the order shall immediately be lifted. Nothing in this section shall prevent the town manager from taking any other enforcement action against the alleged violator, specified in this article or elsewhere in this Code.
- (h) Appeals of the decision of the town council made pursuant to this article shall be subject to review by the circuit court of the 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.
- (i) An aggrieved owner of property sustaining pecuniary damage resulting from a violation of an approved plan or required permit, or from the conduct of land disturbing activities commenced without an approved plan or required permit, may give written notice of the alleged violation to the administrator and to the director of the department of environmental quality (director).

- (1) Upon receipt of the notice from the aggrieved owner and notification to the town, the director shall conduct an investigation of the aggrieved owner's complaint.
- (2) If the town has not responded to the alleged violation in a manner which causes the violation to cease and abates the damage to the aggrieved owner's property within 30 days following receipt of the notice from the aggrieved owner, the aggrieved owner may request that the director require the violator to stop the violation and abate the damage to his property.
- (3) If:
  - a. The director's investigation of the complaint indicates that the town has not responded to the alleged violation as required by the local program;
  - b. The town has not responded to the alleged violation within 30 days from the date of the notice given pursuant to this subsection; and
  - c. The director is requested by the aggrieved owner to require the violator to cease the violation;then the director shall give written notice to the town that the director will request the Virginia State Water Control Board (board) to issue an order pursuant to subsection (i)(4) of this section.
- (4) If the town has not instituted action to stop the violation and abate the damage to the aggrieved owner's property within ten days following receipt of the notice from the director, the board is authorized to issue an order requiring the owner, permittee, person responsible for carrying out an approved plan or person conducting the land disturbing activities without an approved plan or required permit to cease all land disturbing activities until the violation of the plan or permit has ceased, or an approved plan and required permits are obtained, as appropriate, and specified corrective measures have been completed.
- (5) Such orders are to be issued only after a hearing with reasonable notice to the affected person of the time, place and purpose thereof, and they 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 director. However, if the board 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 town, it may issue, without advance notice or hearing, an emergency order directing such person to cease all land disturbing activities on the site immediately and shall provide an opportunity to a hearing, after reasonable notice as to the time and place thereof to such person, to affirm, modify, amend or cancel such emergency order.
- (6) If a person who has been issued an order or emergency order is not complying with the terms thereof, the board may institute a proceeding in the appropriate circuit court for an injunction, mandamus or other appropriate remedy compelling the person to comply with such order.
- (7) Any person violating or failing, neglecting or refusing to obey any injunction, mandamus or other remedy obtained pursuant to subsection (i)(6) of this section shall be subject, in the discretion of the court, to a civil penalty not to exceed \$2,000.00 for each violation.

(Ord. No. 2014-3, 6-24-2014)

**State Law reference**— Stop work orders, civil penalties, Code of Virginia, § 62.1-44.15:64.

**Secs. 16-31—16-48. Reserved.**

FOOTNOTE(S):

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**Editor's note**—Ord. No. 2014-3, adopted June 24, 2014, amended article II in its entirety to read as herein set out. Former article II, §§ 16-19—16-30, pertained to similar subject matter. See Code Comparative Table for complete derivation.[\(Back\)](#)

### **ARTICLE III. STORMWATER MANAGEMENT** <sup>[3]</sup>

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## **Sec. 16-49. Definitions.**

For the purpose of this article, the following words and phrases shall have the meanings respectively ascribed to them by this article. Furthermore, the definitions set forth in 9 VAC 25-870-10 of the Virginia Stormwater Management Regulations, as amended, are expressly adopted and incorporated herein by reference. Where definitions differ, those incorporated herein shall have precedence.

Administrator means the Town of Christiansburg including the town manager and/or his or her designee who is responsible for administering the VSMP on behalf of the town.

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

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

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.

Board or state board means the Virginia State Water Control Board.

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

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 or DEQ means the Virginia Department of Environmental Quality.

Design and development manual or design manual means the Town of Christiansburg Design and Development Manual, as revised and updated from time to time by the administrator or his designee, a document that serves as a supplement to town ordinances and also provides guidance, procedures, standards, and specifications for property owners, developers, and design professionals to assist with development within town.

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 department of environmental quality.

Director of engineering means the town director of engineering.

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

General permit means the state permit titled "General Permit."

Grassed swale means an earthen conveyance system which is broad and shallow with erosion resistant grasses and check dams, engineered to remove pollutants from stormwater runoff by filtration through grass and infiltration into the soil.

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 subsection 16-51(b) of this article.

Linear development project means a land disturbing activity that is linear in nature, such as, but not limited to:

- (1) The construction of electric and telephone utility lines, and natural gas pipelines;
- (2) Construction of tracks, rights-of-way, bridges, communication facilities and other related structures of a railroad company; and
- (3) Highway and recreational trail construction projects.

Streets constructed in association with residential, commercial, or industrial site development are not considered linear development projects.

Manual means the town's design manual, as revised and updated from time to time by the director.

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.

Municipal separate storm sewer means a conveyance or system of conveyances otherwise known as a municipal separate storm sewer system or "MS4," including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains:

- (1) Owned or operated by a federal, state, city, town, county, district, association, or other public body, created by or pursuant to state law, having jurisdiction or delegated authority for erosion and sediment control and stormwater management, or a designated and approved management agency under § 208 of the CWA that discharges to surface waters;
- (2) Designed or used for collecting or conveying stormwater;
- (3) That is not a combined sewer; and
- (4) That is not part of a publicly owned treatment works.

Municipal separate storm sewer management program means a management program covering the duration of a state permit for a municipal separate storm sewer system that includes a comprehensive planning process that involves public participation and intergovernmental coordination, to reduce the discharge of pollutants to the maximum extent practicable, to protect water quality, and to satisfy the appropriate water quality requirements of the CWA and regulations, and this article and its attendant regulations, using management practices, control techniques, and system, design, and engineering methods, and other such other provisions that are appropriate.

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

Permit, VSMP authority permit, or land disturbing 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 the ordinance.

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, and interstate body or any other legal entity.

Plan-approving authority means the Virginia Department of Conservation and Recreation, the program authority or a department of a program authority responsible for determining the adequacy of a submitted stormwater management plan.

Planning area means a designated portion of the parcel on which the land development project is located. Planning areas shall be established by delineation on a master plan. Once established, planning areas shall be applied consistently for all future projects.

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

Pre-development refers to the conditions that exist at the time that plans for the land development of a tract of land are approved by the plan-approving authority. Where phased development or plan approval occurs (preliminary grading, roads and utilities, etc.), the existing conditions at the time prior to the first item being approved or permitted, shall establish pre-development conditions.

Program authority means a district, county, city or town which has adopted a stormwater management program which has been approved by the board.

Recharge means the replenishment of underground water reserves.

Redevelopment means the process of developing land that is or has been previously developed where 10,000 square feet or more is disturbed.

Regional (watershed-wide) stormwater management facility or regional facility means a facility or series of facilities designed to control stormwater runoff from a specific watershed, although only portions of the watershed may experience development.

Regional (watershed-wide) stormwater management plan or regional plan means a document containing material describing how runoff from open space, existing development and future planned development areas within a watershed will be controlled by coordinated design and implementation of regional stormwater management facilities.

Regulations means the Virginia Stormwater Management Program (VSMP) Permit Regulations, 9 VAC 25-870, 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 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 Code of Virginia Title 62.1, Chapter 3.1 (§ 62.1-44.2 et seq.).

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

Stop work order means an order issued which requires that all construction activity on a site be stopped.

Stormwater detention basin or detention basin means a stormwater management facility which temporarily impounds runoff and discharges it through a hydraulic outlet structure to a downstream conveyance system. While a certain amount of outflow may also occur via infiltration through the surrounding soil, such amounts are negligible when compared to the outlet structure discharge rates and are, therefore, not considered in the facility's design. Since a detention facility impounds runoff only temporarily, it is normally dry during non-rainfall periods.

Stormwater extended detention basin or extended detention basin means a stormwater management facility which temporarily impounds runoff and discharges it through a hydraulic structure over a period of time to a downstream conveyance system for the purpose of water quality enhancement or stream channel erosion control. While a certain amount of outflow may also occur via infiltration through the surrounding soil, such amounts are negligible when compared to the outlet structure discharge rates and, therefore, are not considered in the facility's design. Since an extended detention basin impounds runoff only, temporarily, it is normally dry during non-rainfall periods.

Stormwater extended detention basin-enhanced or extended detention basin-enhanced means an extended detention basin modified to increase pollutant removal by providing a shallow marsh in the lower stage of the basin.

Stormwater management means the use of structural or non-structural practices that are designed to reduce stormwater runoff pollutant loads, discharge volumes and/or peak flow discharge rates.

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

Stormwater management handbook or SWMH means the latest edition of the Virginia Stormwater Management Handbook that provides guidance on the measures necessary to comply with the Virginia Stormwater Management Law and Virginia Stormwater Management Permit (VSMP) Regulations and protect the waters of the Commonwealth of Virginia from the adverse impacts of post-construction stormwater runoff.

Stormwater management plan means a document(s) containing material describing methods for complying with the requirements of the design manual and section 16-155 of this article.

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 article. 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.

Stormwater retention basin I or retention basin I means a retention basin with the volume of the permanent pool equal to three times the water quality volume.

Stormwater retention basin II or retention basin II means a retention basin with the volume of the permanent pool equal to four times the water quality volume.

Stormwater retention basin III or retention basin III means a retention basin with the volume of the permanent pool equal to four times the water quality volume with the addition of an aquatic bench.

Stormwater retrofit means a stormwater management practice designed for an existing development site that previously had either no stormwater management practice in place or a practice inadequate to meet the stormwater management requirements of the site.

Stormwater treatment practices (STPs) means measures, either structural or nonstructural, that are determined to be the most effective, practical means of preventing or reducing point source or nonpoint source pollution inputs to stormwater runoff and water bodies.

Subdivision means the same as defined by chapter 40, subdivisions.

SWM certified inspector means an employee or agent of the town who:

- (1) Holds a certificate of competence from the state water control board (board) in the area of project inspection; or
- (2) Is enrolled in the board's training program for project inspection and successfully completes such program within one year after enrollment.

SWM certified plan reviewer means an employee or agent of the town who:

- (1) Holds a certificate of competence from the state water control board (board) in the area of plan review; or
- (2) Is enrolled in the board's training program for plan review and successfully completes such program within one year after enrollment.

SWM certified program administrator means an employee or agent of the town who:

- (1) Holds a certificate of competence from the state water control board (board) in the area of program administration; or
- (2) Is enrolled in the board's training program for program administration and successfully completes such program within one year after enrollment.

Total maximum daily load or TDML 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.

Town means the Town of Christiansburg, Virginia.

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

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.

(Ord. No. 2014-3, 6-24-2014)

#### **Sec. 16-50. Purpose and statutory authority.**

- (a) The purpose of this article is to ensure the general health, safety, and welfare of the citizens of the town and protect the quality and quantity of state waters from the potential harm of unmanaged stormwater, including protection from a land disturbing activity causing unreasonable degradation of properties, water quality, stream channels, and other natural resources, and to establish procedures whereby stormwater requirements related to water quality and quantity shall be administered and enforced.
- (b) The ("Law"), Code of Virginia Title 62.1, Chapter 3.1, § 62.1-44.15:27, enables localities to adopt, by ordinance, a stormwater management program consistent with state regulations promulgated pursuant to the law.

(Ord. No. 2014-3, 6-24-2014)

#### **Sec. 16-51. Stormwater permit requirements; exemptions.**

- (a) Except as provided herein, no person may engage in any land disturbing activity until a VSMP authority permit, or an executed agreement in lieu of a stormwater management plan, has been issued by the administrator in accordance with the provisions of this article, required fees are paid, and permittee has obtained VSMP authority approval to begin land disturbance in accordance with

the preconstruction meeting and notice of commencement requirements as described in the design manual. For land disturbing activities requiring state permit coverage and eligible for coverage under the general permit for discharges of stormwater from construction activities, the VSMP authority permit may only be issued after evidence of general permit coverage has been provided by the department.

- (b) Notwithstanding any other provisions of this article, 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 Code of Virginia Title 45.1;
  - (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 Code of Virginia Title 10.1, Chapter 11 (§ 10.1-1100 et seq.) or is converted to bona fide agricultural or improved pasture use as described in Code of Virginia Title 10.1, Chapter 11, Article 9, § 10.1-1163, Subsection B;
  - (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 10,000 square feet of land area, except for activities that are part of a larger common plan of development or sale that are 10,000 square feet 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;
  - (8) Linear development projects that less than one acre of land will be disturbed;
  - (9) 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.

(Ord. No. 2014-3, 6-24-2014)

**Sec. 16-52. Stormwater management program established; submission and approval of plans; prohibitions.**

- (a) Pursuant to Code of Virginia, § 62.1-44.15:27, the Town of Christiansburg hereby establishes a Virginia stormwater management program for land disturbing activities and adopts 9 VAC 25-870, the Virginia Stormwater Management Regulations, that specify standards and specifications for VSMPs promulgated by the state board for the purposes set out in section 16-50 of this article. The

town hereby designates the town manager, or his designee, 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 article II of this chapter;
  - (3) A stormwater management plan that meets the requirements of section 16-55 of this article;
  - (4) A stormwater pollution prevention plan (SWPPP) that meets the requirements of section 16-54;
  - (5) Maintenance agreements in accordance with section 16-60;
  - (6) Evidence of general permit coverage if state general permit coverage is required:
    - i. In conformance with the land disturbance thresholds established in subsection 16-51(b)(4), those sites with land disturbance greater than 10,000 square feet and less than one acre shall require a VSMP authority permit and shall not require coverage under the construction general permit, unless part of a common plan of development.
- (c) No VSMP authority permit shall be issued until a performance bond required pursuant to section 16-62 of the article has been accepted.
- (d) No VSMP authority permit shall be issued unless and until the permit application and attendant materials and supporting documentation demonstrate that all land clearing, construction, disturbance, and land development will be completed in conformance with town and state regulations.
- (e) No grading, building or other local permit shall be issued for a property unless a VSMP authority permit has been issued by the administrator.
- (f) Should a land disturbing activity associated with an approved plan in accordance with this section not begin during the 180-day period following approval or cease for more than 180 days, the town may evaluate the existing approved stormwater management plan to determine whether the plan still satisfies local program requirements and to verify that all design factors are still valid. If the town finds the previously filed plan to be inadequate, a modified plan shall be submitted and approved prior to the initiation or resumption of land disturbing activities.
- (g) No land development permit or other land disturbing activity shall be granted or extended for more than a total five consecutive years from the date of the original permit issuance without reevaluation of the stormwater management requirements of this chapter.

(Ord. No. 2014-3, 6-24-2014)

### **Sec. 16-53. Compatibility with other permit and article requirements; severability.**

This article is not intended to interfere with, abrogate or annul any other ordinance, rule or regulation, statute or other provision of law. The requirements of this article should be considered minimum requirements, and where any provision of this article imposes restrictions different from those imposed by any other ordinance, rule or regulation or other provision of law, whichever provisions are more restrictive or impose higher protective standards for human health or the environment, shall be considered to take precedence.

If the provisions of any article, section, subsection, paragraph, subdivision or clause of this article shall be judged invalid by a court of competent jurisdiction, such order of judgment shall not affect or invalidate the remainder of any article, section, subsection, paragraph, subdivision or clause of this article.

(Ord. No. 2014-3, 6-24-2014)

**Sec. 16-54. Stormwater pollution prevention plan; contents of plan.**

The stormwater pollution prevention plan (SWPPP) shall include the content specified by 9 VAC 25-870-54 and must also comply with the requirements and general information set forth in 9 VAC25-880-70, Section II, of the general permit. The design manual specifies the minimum requirements of the SWPPP.

(Ord. No. 2014-3, 6-24-2014)

**Sec. 16-55. Stormwater management plan; stormwater management concept plan; contents of plan.**

- (a) The stormwater management plan, required in section 16-52 of this article, shall apply the stormwater management technical criteria set forth in section 16-58 of this article to the entire land disturbing activity, consider all sources of surface runoff and all sources of subsurface and groundwater flows converted to surface runoff. Individual lots in new residential, commercial, or industrial developments shall not be considered separate land disturbing activities.
- (b) The stormwater management plan shall include all the required information listed in the design manual, including the items on the stormwater management plan checklist.
- (c) The stormwater management concept plan shall include all the required information listed in the design manual.
- (d) If an operator intends to meet the water quality and/or quantity requirements set forth in section 16-58 of this article 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 the Code of Virginia § 62.1-44.15:35.
- (e) Elements of the stormwater management plans that include activities regulated under of Code of Virginia Title 54.1, Chapter 4 (§ 54.1-400 et seq.) shall be appropriately sealed and signed by a professional registered in the Commonwealth of Virginia pursuant to Code of Virginia Title 54.1, Chapter 4, Article 1 (§ 54.1-400 et seq.).
- (f) A construction record drawing and documentation for permanent stormwater management facilities shall be submitted to the administrator for review and approval. The construction record drawings shall be appropriately sealed and signed by a professional registered in the Commonwealth of Virginia. The requirements and procedures for record drawings and documentation are outlined in the design manual.

(Ord. No. 2014-3, 6-24-2014)

**Sec. 16-56. Pollution prevention plan; contents of plan.**

- (a) Pollution prevention plan, required by 9 VAC 25-870-56, 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.
- (b) The pollution prevention plan shall include all of the information as specified in the design manual.

(Ord. No. 2014-3, 6-24-2014)

**Sec. 16-57. Review of stormwater management plan; review of stormwater management concept plan.**

- (a) The administrator shall review stormwater management plans and shall approve or disapprove a stormwater management plan. All applications will be processed in accordance with procedures and time frames as set forth in the design manual.
- (b) Approved stormwater management 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 respond in writing either approving or disapproving such request. All requests for a modification shall be in writing.
  - (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) A stormwater management concept plan shall be submitted for review and approval, at the town's discretion, to ensure adequate planning for stormwater runoff. A stormwater management concept plan shall include information as set forth in the design manual. The stormwater management concept plan shall be used to evaluate the environmental characteristics of the project site, the potential impacts of all proposed development of the site, both present and future, on the water resources, and the effectiveness and acceptability of the measures proposed for managing stormwater generated at the project site. The concept plan should be prepared at the time of the preliminary plan of subdivision in accordance with chapter 40 "Subdivisions" or other early step in the development process, to identify the type of stormwater management measures necessary for the proposed project. The intent of this conceptual planning process is to ensure adequate planning for management of stormwater runoff from future development.

(Ord. No. 2014-3, 6-24-2014)

**Sec. 16-58. 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 of Christiansburg hereby adopts the technical criteria for regulated land disturbing activities set forth in Part II B of the Regulations, as amended, expressly to include 9 VAC 25-870-62 [applicability], 9 VAC 25-870-63 [water quality design criteria requirements]; 9 VAC 25-870-65 [water quality compliance]; 9 VAC 25-870-66 [water quantity]; 9 VAC 25-870-69 [offsite compliance options]; 9 VAC 25-870-72 [design storms and hydrologic methods]; 9 VAC 25-870-74 [stormwater harvesting]; 9 VAC 25-870-76 [linear development project]; 9 VAC 25-870-85 [stormwater management impoundment structures or facilities], and 9 VAC 25-870-92 [comprehensive stormwater management plans], which shall apply to all land disturbing activities regulated pursuant to this article, except as expressly set forth in subsection (b) of this section. The design manual will provide the detailed Code of Virginia language for informational purposes.
  - (1) To minimize accelerated stream channel erosion within the town, additional water quantity regulations for channel protection are hereby adopted. Stormwater runoff from a development shall be released at a postdevelopment peak flow rate for the two-year 24-hour storm event that is less than the predevelopment peak flow rate from the two-year 24-hour storm event and released at a postdevelopment peak flow rate for the ten-year 24-hour storm event that is less than the predevelopment peak flow rate from the ten-year 24-hour storm event. The factual findings of the Crab Creek and Roanoke River watershed TMDL studies identify sediment as the primary stressor causing the benthic impairment in the river systems and provide the basis for these standards as provided for in Code of Virginia § 62.1-44.15:33.

- (b) Any land disturbing activity shall be considered grandfathered by the VSMP authority and shall be subject to the Part II C (9 VAC 25-870-93 through 9 VAC 25-870-99) technical criteria provided:
  - (1) A proffered or conditional zoning plan, zoning with a plan of development, preliminary or final subdivision plat, preliminary or final site plan, or any document determined by the locality to be equivalent thereto (i) was approved by the locality prior to July 1, 2012, (ii) provided a layout as defined in 9 VAC 25-870-10, (iii) will comply with the Part II C technical criteria of this chapter, and (iv) has not been subsequently modified or amended in a manner resulting in an increase in the amount of phosphorus leaving each point of discharge, and such that there is no increase in the volume or rate of runoff; and
  - (2) A state permit has not been issued prior to July 1, 2014; and
  - (3) Land disturbance did not commence prior to July 1, 2014.
- (c) Locality, state, and federal projects shall be considered grandfathered by the VSMP authority and shall be subject to the Part II C technical criteria of this chapter provided:
  - (1) There has been an obligation of locality, state, or federal funding, in whole or in part, prior to July 1, 2012, or the department has approved a stormwater management plan prior to July 1, 2012; and
  - (2) A state permit has not been issued prior to July 1, 2014; and
  - (3) Land disturbance did not commence prior to July 1, 2014.
- (d) Land disturbing activities grandfathered under subsections b and c of this section shall remain subject to the Part II C technical criteria of this chapter for one additional state permit cycle. After such time, portions of the project not under construction shall become subject to any new technical criteria adopted by the Board.
- (e) In cases where governmental bonding or public debt financing has been issued for a project prior to July 1, 2012, such project shall be subject to the technical criteria of Part II C.
- (f) Land disturbing activities that obtain an initial state permit or commence land disturbance prior to July 1, 2014, shall be conducted in accordance with the Part II C (9 VAC 25-870-93 through 9 VAC 25-870-99). Such projects shall remain subject to the Part II C technical criteria for two additional state permit cycles. After such time, portions of the project not under construction shall become subject to any new technical criteria adopted by the board.
- (g) 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 article 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 article.
  - (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 9 VAC 25-870-69 have been considered and found not available.
- (h) Nothing in this article shall preclude an operator from constructing to a more stringent standard at their discretion.

(Ord. No. 2014-3, 6-24-2014)

### **Sec. 16-59. Development and design manual.**

- (a) The town will utilize the policy, criteria and information, including the specifications and standards of the design manual for the proper implementation of the requirements of this article.
- (b) The administrator or his designee may update or revise the design manual from time to time, with notification to town council, provided that those updates pertain to changes in policy or standard engineering practices and do not conflict with VSMP regulations.

(Ord. No. 2014-3, 6-24-2014)

### **Sec. 16-60. Stormwater facility maintenance agreements.**

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 meet the provisions for maintenance agreements detailed in the design manual.

(Ord. No. 2014-3, 6-24-2014)

### **Sec. 16-61. 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.

The design manual shall contain requirements for permittee to notify the town and schedule critical inspections by the administrator or any duly authorized representative.

- (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 article.
- (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 the Code of Virginia § 62.1-44.15:40, the Administrator may require every VSMP authority permit applicant or permittee, or any such person subject to VSMP authority permit requirements under this article, 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 article. The town and its agents shall abide by the provisions of [the Code of Virginia] § 62.1-44.15:40 regarding protection of specified confidential information.

- (e) Post-construction inspections of stormwater management facilities required by the provisions of this article 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 years.

(Ord. No. 2014-3, 6-24-2014)

#### **Sec. 16-62. Performance bonds.**

The Town of Christiansburg may, at its discretion, require the submittal of a performance security or bond with surety, cash escrow, letter of credit or such other acceptable legal arrangement prior to plan approval in order to insure that the stormwater practices are installed by the permit holder as required by the approved stormwater management plan.

- (a) The amount of the installation performance security shall be the total estimated construction cost of the stormwater management practices approved under the plan, plus 20 percent.
- (b) The performance security shall contain forfeiture provisions for failure, after proper notice, to complete work within the time specified, or to initiate or maintain appropriate actions which may be required of the applicant in accordance with the approved stormwater management plan.
- (c) If the Town of Christiansburg takes such action upon such failure by the applicant, the Town of Christiansburg 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.
- (d) Within 60 days of the completion of the requirements of the approved stormwater management plan in the form of a professionally certified as-built report and survey, such bond, cash escrow, letter of credit or other legal arrangement, except for the landscaping survivability, shall be refunded to the applicant or terminated.
- (e) The landscaping portion of the stormwater management plan shall be inspected one year after installation with replacement in accordance with the final plans and specifications prior to final release.
- (f) These requirements are in addition to all other provisions of Town of Christiansburg ordinances relating to the approval of such plans and are not intended to otherwise affect the requirements for such plans.

(Ord. No. 2014-3, 6-24-2014)

#### **Sec. 16-63. VSMP authority permit 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 Fee Table 1 as contained in the design manual. When a site (or sites) has (have) 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.
- (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 Fee Table 2 as contained in the design manual. If the general permit modifications result in changes to stormwater management plans that require additional review by the Town of Christiansburg, 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.

- (c) Annual permit maintenance fees shall be imposed in accordance with Fee Table 3 as contained in the design manual, 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.

Permit maintenance fees shall be paid annually to the Town of Christiansburg, by the anniversary date of 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 a VSMP authority permit or 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 Table 3 will 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 16-49 of this article. 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 the Code of Virginia § 58.1-15 and is calculated on a monthly basis at the applicable periodic rate. A ten percent late payment fee shall be charged to any delinquent (over 90 days past due) account. The Town of Christiansburg shall be entitled to all remedies available under the Code of Virginia in collecting any past due amount.

(Ord. No. 2014-3, 6-24-2014)

#### **Sec. 16-64. Regional stormwater management plans.**

Applicants are directed to communicate with the Town of Christiansburg prior to submitting an application for stormwater management plan approval to determine if a regional stormwater management plan has been developed for the applicable watershed. If such a plan is in existence, the applicant must provide stormwater management water quality treatment on-site in accordance with the provisions of the regional plan, and other management provisions as specified by the Town of Christiansburg.

(Ord. No. 2014-3, 6-24-2014)

#### **Sec. 16-65. 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 be issued in accordance with Town of Christiansburg procedures. 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, the town 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 16-65 (c).

- (b) In addition to any other remedy provided by this article, if the administrator or his designee determines that there is a failure to comply with the provisions of this article, they may initiate such informal and/or formal administrative enforcement procedures in a manner that is consistent with Town of Christiansburg procedures.
- (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 circuit court by the town to obey same and to comply therewith by injunction, mandamus or other appropriate remedy.
- (d) The stop work order shall be in effect until the town confirms that the land disturbing activity is in compliance with the requirements of this chapter and the violation has been satisfactorily addressed. Upon failure to comply within the time specified, the permit may be revoked and the applicant shall be deemed to be in violation of this article and upon conviction shall be subject to the penalties provided by this chapter.
- (e) Any person who violates any provision of this article or who fails, neglects, or refuses to comply with any order of the administrator, shall be subject to a civil penalty not to exceed \$32,500.00 for each violation within the discretion of the court. Each day of violation of each requirement shall constitute a separate offense.
  - (1) Violations for which a penalty may be imposed under this article shall include but not be limited to the following:
    - a. No state permit registration;
    - b. No SWPPP;
    - c. Incomplete SWPPP;

- d. SWPPP not available for review;
  - e. No approved erosion and sediment control plan;
  - f. Failure to attend preconstruction meeting or file a notice of commencement prior to beginning land disturbance;
  - g. Failure to install stormwater BMPs or erosion and sediment controls;
  - h. Stormwater BMPs or erosion and sediment controls improperly installed or maintained;
  - i. Operational deficiencies;
  - j. Failure to conduct required inspections;
  - k. Failure to notify administrator or his duly authorized agent of critical component inspections;
  - l. Incomplete, improper, or missed inspections;
  - m. Discharges not in compliance with the requirements of 9 VAC 25-880-70 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 article, 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 of Christiansburg 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.
- (e) Notwithstanding any other civil or equitable remedy provided by this article or by law, any person who willfully or negligently violates any provision of this article, 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 \$2,500.00 nor more than \$32,500.00, or both.

(Ord. No. 2014-3, 6-24-2014)

### **Sec. 16-66. Hearings.**

- (a) Any permit applicant, permittee, or person subject to state permit requirements under this article aggrieved by any action of the department or board taken without a formal hearing, or by inaction of the department or board, may demand in writing a formal hearing by the board, provided a petition requesting such hearing is filed with the board within 30 days after notice of such action. When holding hearings under this Article, the Board shall do so in a manner consistent with Code of Virginia § 62.1-44.26.
- (b) Any permit applicant or permittee, or person subject to article requirements, aggrieved by any action of the Town of Christiansburg taken without a formal hearing, or by inaction of the Town of Christiansburg, may demand in writing a formal hearing by the Town of Christiansburg 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.
  - (1) The hearings held under this section shall be conducted by the Town of Christiansburg Town Council at a regular or special meeting of the Town of Christiansburg Town Council or by at least one member of the Town of Christiansburg Town Council designated by the Town of Christiansburg Town Council to conduct such hearings on behalf of the Town of Christiansburg

Town Council at any other time and place authorized by the Town of Christiansburg Town Council.

- (2) A verbatim record of the proceedings of such hearings shall be taken and filed with the Town of Christiansburg Town Council. Depositions may be taken and read as in actions at law.
- (3) The Town of Christiansburg Town Council or its designated member, as the case may be, 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 town council, 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.

(Ord. No. 2014-3, 6-24-2014)

### **Sec. 16-67. Appeals.**

- (a) Final decisions of the administrator shall be subject to review by the town council, provided an appeal is filed within 30 days from the date of any written decision by the administrator or the plan review technician which adversely affects the rights, duties or privileges of the person engaging in or proposing to engage in land disturbing activities.
- (b) Final decisions of the town council under this section shall be subject to review by the circuit court, provided an appeal is filed within 30 days from the date of the final written decision which adversely affects the rights, duties or privileges of the person engaging in or proposed to engage in land disturbing activities.

(Ord. No. 2014-3, 6-24-2014)

### **Sec. 16-68. Restoration of lands.**

Any violator may be required to restore land to its undisturbed condition or in accordance with a notice of violation, stop work order, or permit requirements. In the event that restoration is not undertaken within a reasonable time after notice, the Town of Christiansburg may take necessary corrective action, the cost of which shall be covered by the performance bond, or become a lien upon the property until paid, or both.

(Ord. No. 2014-3, 6-24-2014)

### **Sec. 16-69. Construction inspection in general.**

Stormwater management construction inspection shall utilize the final approved plans and specifications for compliance. In addition, the inspection shall comply with the latest version of the erosion and sediment control regulations, promulgated pursuant to Code of Virginia Title 10.1, Chapter 5, Article 4 (Code of Virginia, § 10.1-566).

(Ord. No. 2014-3, 6-24-2014)

### **Sec. 16-70. Holds on occupancy permits.**

Occupancy permits shall not be granted until:

- (a) Corrections to all stormwater practices have been made in accordance with the approved plans, notice of violation, stop work order, or permit requirements, and corrections are reviewed and accepted by Town of Christiansburg; and
- (b) As-built record requirements are met and accepted and recordation of the maintenance agreement is completed.

(Ord. No. 2014-3, 6-24-2014)

**Secs. 16-71—16-105. Reserved.**

FOOTNOTE(S):

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**Editor's note**—Ord. No. 2014-3, adopted June, 24, 2014, amended article III in its entirety to read as herein set out. Former article III, §§ 16-49—16-79, pertained to similar subject matter. See Code Comparative Table for complete derivation.[\(Back\)](#)

**State Law reference**— Stormwater management, Code of Virginia, §§ 10.1-603.2—10.1-603.15.[\(Back\)](#)

#### **ARTICLE IV. ILLICIT DISCHARGE** <sup>[4]</sup>

[Sec. 16-106. In general.](#)

[Sec. 16-107. Intent and purpose.](#)

[Sec. 16-108. Definitions.](#)

[Sec. 16-109. Prohibited discharges or connections to the storm sewer system.](#)

[Sec. 16-110. Inspections and monitoring.](#)

[Sec. 16-111. Enforcement of article and penalties.](#)

[Sec. 16-112. Compliance with other laws and regulations.](#)

#### **Sec. 16-106. In general.**

The town finds that the discharge of pollutants to the town's storm sewer system has an adverse impact on the water quality of the receiving waters. Illicit discharges of substances other than stormwater could result in a significant source of pollutants to the town's storm sewer system. Amendments to the Federal Water Pollution Control Act, commonly known as the Clean Water Act, established the National Pollutant Discharge Elimination System (NPDES) Program, which requires permits for discharges from municipal storm sewer systems into the waters of the United States. The United States Environmental Protection Agency (EPA) has promulgated regulations implementing the NPDES program. Moreover, the EPA has authorized the Commonwealth of Virginia to issue NPDES permits under the Virginia Pollutant Discharge Elimination System (VPDES) permit system. The VPDES regulations for stormwater

discharges require certain municipalities, including the town, to control the contribution of pollutants to its storm sewer system, to prohibit illicit discharges to its storm sewer system, and to inspect, monitor and enforce the prohibitions of illicit discharges to its storm sewer system.

(Code 1992, § 10-60; Ord. No. 2007-5, 11-6-2007)

### **Sec. 16-107. Intent and purpose.**

The intent and purpose of this article is to promote the public health, safety and welfare of persons in the town through the regulation of stormwater discharges to the town's storm sewer system and to prohibit the illicit discharge of nonstormwater to the town's storm sewer system, subject to certain exceptions. This article is also intended to prohibit illicit connections and illicit discharges to the town's storm sewer system, and to establish inspections and monitoring procedures to ensure compliance with this article.

(Code 1992, § 10-61; Ord. No. 2007-5, 11-6-2007)

### **Sec. 16-108. Definitions.**

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Best management practices (BMPs) means the schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce pollutants from entering the storm sewer system or being improperly discharged from the storm sewer system. BMPs include, but are not limited to, treatment methods and practices to control the discharge of pollutants.

Building official means the town building official, or his designee.

Clean Water Act (CWA) means the Federal Clean Water Act (33 USC § 1251 et seq.), formerly referred to as the Federal Pollution Control Act.

Discharge means to dispose, deposit, spill, pour, inject, dump, pump, leak or place, by any means, or that which is disposed, deposited, spilled, poured, injected, dumped, pumped, leaked or placed, by any means.

Gray water means wastewater discharged from lavatories, bathtubs, showers, clothes washers and laundry sinks.

Groundwater means all subsurface water, including, but not limited to, that part within the zone of saturation.

Illicit connection means any connection to the town's storm sewer system which is not authorized by the town, by a valid NPDES or VPDES permit, or as may otherwise be authorized by law.

Illicit discharge means any discharge to any storm sewer system, public or private, or to the waters of the United States that is not composed entirely of stormwater, except discharges which are exempt pursuant to section 16-109(b). Any discharge in violation of an NPDES, VPDES or other stormwater discharge permit shall constitute an illicit discharge.

Industrial wastes means any liquid or wastes resulting from any process of industry, manufacture, trade or business, or from the development of any natural resource.

Inspection shall mean and include, but is not limited to, any on-site physical examination of all facilities and grounds which may discharge to a storm sewer system or the waters of the United States; a review of all records on the operation and maintenance of facilities and the results of any monitoring performed for compliance with state, federal and local regulations or permit requirements.

Landscaping chemicals means chemicals for maintaining lawns and landscapes. This includes, but is not limited to, fertilizers, lime and pesticides, which include herbicides, insecticides and fungicides,

when used in accordance with the manufacturer's recommendations. If not used in accordance with manufacturer's recommendations, any release to the environment is considered an illicit discharge.

National Pollutant Discharge Elimination System (NPDES) means the federal program for issuing, modifying, revoking, reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements under the CWA.

Other wastes means wastes that may adversely affect waters of the United States when discharged into those waters, including, but not limited to, sewage, garbage, refuse, lime, fertilizer, ashes, offal, tar, paint, solvents, petroleum products, antifreeze, pesticides and chemicals.

Person means any individual, firm, corporation, partnership, association, organization or other entity, including governmental entities, or any combination thereof, or any agent or employee of any such entity.

Private storm sewer system means all facilities, conveyances, structures and other items located within the town not owned and/or operated by the town which are designed or used for collecting, storing, treating or conveying stormwater. These include, but are not limited to, catchbasins, drop inlets, curbs, gutters, ditches, pipes, ponds, manmade channels, storm drains, retention basins, detention basins and infiltration basins and other facilities.

Sanitary sewer means a system of pipes, conduits or other devices that collect and/or convey sewage to a wastewater treatment or pumping facility.

Sewage means the sanitary wastewater from residences, buildings, industrial establishments or other places, together with such industrial wastes and other water that may be present.

Storm sewer system means all facilities, conveyances, structures and other items located within the town and owned or operated by the town which are designed or used for collecting, storing, treating or conveying stormwater. These include, but are not limited to, catchbasins, drop inlets, curbs, gutters, ditches, pipes, ponds, manmade channels, storm drains, retention basins, detention basins and infiltration basins and other facilities.

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.

Town means the Town of Christiansburg, Virginia.

Town manager means the town manager of the town, or his designee.

Virginia Pollution Discharge Elimination System (VPDES) means the program issued by the Commonwealth of Virginia for imposing and enforcing pretreatment requirements pursuant to the CWA.

(Code 1992, § 10-62; Ord. No. 2007-5, 11-6-2007)

### **Sec. 16-109. Prohibited discharges or connections to the storm sewer system.**

- (a) It shall be unlawful and a violation of this article to do any of the following, except as may be allowed in subsection (b) of this section:
  - (1) Cause or allow any illicit discharges, including, but not limited to, the discharge of sewage, gray water, industrial wastes or other wastes into the storm sewer system, or any component thereof, or onto driveways, sidewalks, parking lots or any other areas draining to the storm sewer system.
  - (2) Connect, or cause or allow to be connected, any sanitary sewer to the storm sewer system, including any unauthorized sanitary sewer connected to the storm sewer system as of the date of the adoption of this article.
  - (3) Connect, or cause or allow to be connected, to the storm sewer system, without a valid VPDES or NPDES permit, or unless otherwise authorized by law, any structure that conveys any liquid

or items other than stormwater or those discharges listed in subsection (b) of this section. Such illicit connections include, but are not limited to, pipes, drains, sanitary sewer lines, washing machine drains or floor drains.

- (4) Discharge any materials or items other than stormwater to the storm sewer system by spill, dumping or disposal of any type without a valid federal and/or state permit, or unless otherwise authorized by law.
  - (5) Throw, place or deposit, or cause to be thrown, placed or deposited, in the storm sewer system anything that impedes or interferes with the free flow of stormwater therein.
  - (6) Failure by any property owner to notify the town manager of an illicit connection on, or from, such owner's property to the town's storm sewer system.
  - (7) Violate any condition or provision of this article or any permit granted for stormwater discharges.
  - (8) To enter in any stormwater retention pond, storm sewer or drain, except that this shall not apply to any town personnel or others authorized to perform work in such areas.
- (b) Subject to the provisions of subsection (c) of this section, the following activities shall not be unlawful or a violation of this article:
- (1) Water line flushing;
  - (2) Landscape irrigation;
  - (3) Diverted stream flows or rising groundwater;
  - (4) Infiltration of uncontaminated groundwater;
  - (5) Pumping of uncontaminated groundwater;
  - (6) Discharge from potable water sources, foundation drains, irrigation water, springs, water from crawl spaces or footing drains;
  - (7) Air conditioning condensation;
  - (8) Lawn watering and maintenance with landscaping chemicals in accordance with the manufacturer's recommendations;
  - (9) Residential car washing;
  - (10) Dechlorinated swimming pool discharge;
  - (11) Street, right-of-way and storm system construction/maintenance activities employing BMPs;
  - (12) Discharge or flows from emergency firefighting activities and emergency response activities employing BMPs; or
  - (13) Any activity authorized by a valid Virginia Stormwater Program permit (VSMP), a valid VPDES or NPDES permit or a valid Virginia Pollution Abatement (VPA) permit, or as may be otherwise permitted by law.
- (c) In the event any of the activities listed in subsection (b) of this section are found to cause pollutants to be discharged into the storm sewer system, the building official shall so notify the person performing such activities, and shall order that such activities cease or be conducted in such a manner as to avoid the discharge of pollutants into the storm sewer system. The failure to comply with any such order shall constitute a violation of the provisions of this article.

(Code 1992, § 10-63; Ord. No. 2007-5, 11-6-2007)

### **Sec. 16-110. Inspections and monitoring.**

- (a) The building official shall have the authority to carry out inspections of buildings, vessels and other storage structures. The town manager shall have the authority to carry out all other inspections and monitoring procedures necessary to determine compliance and/or noncompliance with this article. The town manager shall have the authority to determine compliance or noncompliance and to enforce this article, including the prohibition of illicit discharges to the storm sewer system. The town manager may monitor stormwater outfalls or other components of the storm sewer system, as may be appropriate in the administration and enforcement of this article.
- (b) The town manager shall have the authority to require a stormwater pollution prevention plan from any person whose discharges cause, or may cause, a violation of the town's (VSMP) permit or any other permit required of the town relating to stormwater discharges.
- (c) The building official, town manager and/or duly authorized employees, agents or representatives of the town shall be authorized to enter any public or private property at any reasonable time for the purpose of enforcing this article, including, but not limited to, taking samples of discharges, inspecting monitoring equipment, inspecting and copying documents relevant to the enforcement of this article and such other items as may be deemed necessary for the enforcement of this article.
- (d) The town manager shall have the authority to require any person responsible for a discharge to the storm sewer system to document that such discharge meets, and is in compliance with, the requirements of this article. This includes, but is not limited to, the ability of the town manager to require such person to provide monitoring reports, test results to show that the discharge meets the requirements of this article and such other matters as may be deemed necessary to show that such discharge is in compliance with the requirements of this article. The cost of any required documentation shall be the responsibility of the person responsible for the discharge.
- (e) The failure of any person to comply with any of the requirements of this section shall constitute a violation of this article.

(Code 1992, § 10-64; Ord. No. 2007-5, 11-6-2007)

### **Sec. 16-111. Enforcement of article and penalties.**

- (a) Any person who violates any of the provisions of this article shall be guilty of a Class 1 misdemeanor.
- (b) Each day during which a violation of this article occurs or continues shall be deemed a separate and distinct violation of this article.
- (c) Any person who commits any of the acts prohibited by this article or violates any of the provisions of this article, shall be liable to the town for all costs of testing, containment, cleanup, abatement, removal, disposal and any other related costs or expenses that the town may incur in connection with the enforcement of this article and/or the prohibition and/or correction of a violation of this article and/or the abatement of any illicit discharge to the storm sewer system.
- (d) The town may bring legal action to enjoin a violation of this article and the existence of any other remedy shall be no defense to any such action.
- (e) In addition to any of the remedies set forth above, the town may seek to impose, or have imposed by the appropriate authority, any of the remedies provided by Code of Virginia, § 10.1-603.14, as amended, which are incorporated herein by reference.
- (f) In any court action that may result from enforcement of this article, a judge hearing the case may direct the person responsible for the violation or the property owner to correct the violation and each day that the violation continues shall constitute a separate violation of this article.
- (g) Any person who knowingly makes any false statements, representations or certifications in any record, report or other document, either filed or requested pursuant to this article, or who falsifies,

tampers with, or knowingly renders inaccurate any monitoring device or method required or used by the town under this article in monitoring discharges, shall be guilty of a violation of this article.

- (h) The remedies set forth in this article shall be cumulative, not exclusive, and it shall be no defense to any action that one or more of the remedies set forth in this article has been sought or granted.

(Code 1992, § 10-65; Ord. No. 2007-5, 11-6-2007)

**Sec. 16-112. Compliance with other laws and regulations.**

This article supplements the provisions of other federal, state and town laws, codes, ordinances, rules and regulations and all applicable federal, state and town laws, codes, ordinances, rules and regulations shall be complied with as well as the provisions of this article.

(Code 1992, § 10-66; Ord. No. 2007-5, 11-6-2007)

FOOTNOTE(S):

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**State Law reference**— Stormwater nonpoint nutrient offsets, Code of Virginia, § 10.1-603.8:1. ([Back](#))