

§4.16.1 Purpose

VIOLATION: the failure of a structure or other development to be fully compliant with the community's floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in these regulations is presumed to be in violation until such time as that documentation is provided.

WATERCOURSE: A lake, river, creek, stream, wash, channel or other topographic feature on or over which waters flow at least periodically. Watercourse includes specifically designated areas in which substantial flood damage may occur.

§4.16. STORM DRAINAGE FACILITIES

§4.16.1. Purpose

- A. The purpose of §4.16 to define those storm drainage facilities which must be provided by landowners to control rainfall runoff from and across their property in a manner not detrimental to other inhabitants of the city and to preserve, where possible, presently existing natural creek channels. It is the further purpose of §4.16 to minimize the adverse effects of stormwater runoff on downstream drainageways within the city.
- B. Article 2.3 (§62.1-44.15:27) of Chapter 3.1 of Title 62.1 of the Code of Virginia establishes the requirement for localities to establish a stormwater management program. §4.16 is adopted pursuant to Chapter 3.1 of Title 62.1 of the Code of Virginia (§62.1-44.15:25 and §62.1-44.15:28 et seq.).

§4.16.2. Performance standards for facilities

Stormwater BMPs, on-site detention facilities, and on-site drainage facilities shall be designed and maintained in such a manner as to minimize economic and environmental costs to the city and its inhabitants in accordance with §4.16.7.

§4.16.3. Performance requirements

Performance requirements for stormwater BMPs, on-site detention facilities, and on-site drainage facilities shall be as specified in §4.16.8.

§4.16.4. Design, construction, inspection and maintenance requirements

Design, construction, inspection and maintenance requirements shall be as defined in the city storm drainage facility specifications as they may be hereafter promulgated by the city engineer and approved by the city council from time to time.

§4.16.5. Usage, improvement and preservation of creeks and channels

- A. Natural creeks and drainage channels may be used where available to route stormwater runoff from the city.
- B. Natural drainage systems will be improved where necessary in accordance with 9VAC25-870-66 of the Regulations. To the maximum degree possible, these improvements shall be made in such a manner as to preserve, enhance or restore the vegetation, including trees, along the creek line so that the aesthetic, environmental and ecological values of the vegetation are not lost to the community.
- C. Land disturbances within resource protection areas or resource management areas may require a water quality impact assessment in accordance with §4.18.8.

§4.16.6. Landowner's duties and responsibilities

A. Stormwater permit requirement; exemptions

1. Except as provided herein, no person may engage in any land-disturbing activity until a VSMP authority permit has been issued in accordance with the provisions of §4.16.
2. A Chesapeake Bay Preservation Act Land-Disturbing Activity shall be subject to an erosion and sediment control plan consistent with the requirements of the Erosion and Sediment Control Ordinance, a stormwater management plan, as outlined under §4.16.6.B, the technical criteria and administrative requirements for land-disturbing activities outlined in §4.16.7, and the requirements for long-term maintenance of control measures outlined under §4.16.8.K.
3. Notwithstanding any other provisions of §4.16, the following activities are exempt, unless otherwise required by federal law:
 - (a) Permitted surface or deep mining operations and projects, or oil and gas operations and projects conducted under the provisions of Title 45.1;
 - (b) 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 in regulations, including engineering operations as follows: construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds, ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage, and land irrigation; however, this exception shall not apply to harvesting of forest crops unless the area on which harvesting occurs is reforested artificially or naturally in accordance with the provisions of Chapter 11 (§ 10.1-1100 et seq.) or is converted to bona fide agricultural or improved pasture use as described in subsection B of § 10.1-1163;
 - (c) Single-family residences separately built and disturbing less than 2,500 square feet and not part of a larger common plan of development or sale, including additions or modifications to existing single-family detached residential structures;
 - (d) Land disturbing activities that disturb less than 2,500 square feet of land area, or activities that are part of a larger common plan of development or sale that is 2,500 square feet or greater of disturbance;
 - (e) Discharges to a sanitary sewer or a combined sewer system;
 - (f) Activities under a state or federal reclamation program to return an abandoned property to an agricultural or open land use;
 - (g) 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 re-establishment of existing associated ditches and shoulders shall be deemed routine maintenance if performed in accordance with this; and
 - (h) Conducting land-disturbing activities in response to a public emergency where the related work requires immediate authorization to avoid imminent endangerment

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to human health or the environment. In such situations, the VSMP administrator shall be advised of the disturbance within seven days of commencing the land-disturbing activity and compliance with the administrative requirements of §4.16.6.B.1(a) is required within 30 days of commencing the land-disturbing activity.

B. Stormwater management plan; contents of plan

1. The stormwater management plan, required in §4.16.7.D, must adhere to the performance standards and performance requirements set forth in §4.16.2 and §4.16.3, respectively, and apply the stormwater management technical criteria set forth in §4.16.8.C to the entire land-disturbing activity. Individual lots in new residential, commercial, or industrial developments, including those developed under subsequent owners, shall not be considered separate land-disturbing activities. The stormwater management plan shall consider all sources of surface runoff and all sources of subsurface and groundwater flows converted to surface runoff, and include the following information:
 - (a) Information on the type and location of stormwater discharges; information on the features to which stormwater is being discharged including surface waters or karst features, if present, and the pre-development and post-development drainage areas;
 - (b) Contact information including the name, address, and telephone number of the owner and the tax reference number and parcel number of the property or properties affected;
 - (c) A narrative that includes a description of current site conditions and final site conditions;
 - (d) A general description of the proposed stormwater management facilities and the mechanism through which the facilities will be operated and maintained after construction is complete;
 - (e) Information on the proposed stormwater management facilities, including:
 - (1) The type of facilities;
 - (2) Location, including geographic coordinates;
 - (3) Acres treated;
 - (4) The surface waters or karst features, if present, into which the facility will discharge;
 - (5) Hydrologic and hydraulic computations, including runoff characteristics;
 - (6) Documentation and calculations verifying compliance with the water quality and quantity requirements of §4.16.8.C;
 - (7) A map or maps of the site that depicts the topography of the site and includes:
 - (i) All contributing drainage areas;

- (ii) Existing drainage facilities and creeks and channels, including all streams, ponds, culverts, ditches, wetlands, other water bodies, and floodplains;
 - (iii) Soil types, geologic formations if karst features are present in the area, forest cover, and other vegetative areas;
 - (iv) Current land use including existing structures, roads, and locations of known utilities and easements;
 - (v) Sufficient information on adjoining parcels to assess the impacts of stormwater from the site on these parcels;
 - (vi) The limits of clearing and grading, and the proposed drainage patterns on the site;
 - (vii) Proposed buildings, roads, parking lots, utilities, and stormwater management facilities; and
 - (viii) Proposed land use with tabulation of the percentage of surface area to be adapted to various uses, including but not limited to planned locations of utilities, roads, and easements.
2. If an operator intends to meet the water quality and/or quantity requirements set forth in §4.16.8.C through the use of off-site compliance options, where applicable, then a letter of availability from the off-site provider must be included. Approved off-site options must achieve the necessary nutrient reductions prior to the commencement of the applicant's land-disturbing activity except as otherwise allowed by § 62.1-44.15:35, Code of Virginia .
 3. Elements of the stormwater management plans that include activities regulated under Chapter 4 (§54.1-400 et seq.) of Title 54.1 of the Code of Virginia shall be appropriately sealed and signed by a professional registered in the state pursuant to Article 1 (§ 54.1-400 et seq.) of Chapter 4 of Title 54.1, Code of Virginia.
 4. A construction record drawing for permanent stormwater management facilities shall be submitted to the VSMP administrator. The construction record drawing shall be appropriately sealed and signed by a professional registered in the state, certifying that the stormwater management facilities have been constructed in accordance with the approved plan.

C. Stormwater pollution prevention plan; contents of plan

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

public review in accordance with Section II of the general permit, either electronically or in hard copy.

D. Pollution prevention plan; contents of plan

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

E. Maintenance of facilities

Maintenance provisions shall be set forth in an instrument recorded in the local land records and facilities shall be maintained by the landowner in accordance with §4.16.8.K.

§4.16.7. City responsibilities

A. City-owned drainage system

The city shall maintain and control natural drainage systems and other facilities constructed by or dedicated to the city. In no event will the city be financially responsible for maintenance of private systems.

B. City-owned drainage system development impacted

The city shall specify, design and construct off-site improvements to the storm drainage system when such improvements are made necessary by changes in land use and when

additional runoff caused by such changed land use cannot be adequately accommodated by facilities designed in accordance with the technical criteria specified in §4.16.8.C. Inadequacy must be sufficiently demonstrated through a request for exception, as specified in 9VAC25-870-57 and in accordance with 9VAC25-870-122. Further, such off-site improvements are to be paid for by those landowners whose land alteration made the improvements necessary.

C. Stormwater management program established; submission and approval of plans; prohibitions

1. Pursuant to §62.1-44.15:27 of the Code of Virginia, The city of Fairfax hereby establishes a Virginia stormwater management program for land-disturbing activities and adopts the applicable regulations that specify standards and specifications for VSMPs promulgated by the State Board for the purposes of §4.16.1. The city of Fairfax hereby designates the Department of Public Works as the VSMP administrator of the Virginia stormwater management program.
2. No VSMP authority permit shall be issued by the VSMP administrator until the following items have been submitted to and approved by the VSMP administrator as prescribed herein:
 - (a) A permit application that includes a general permit registration statement, except for the construction of a single-family detached residential structure within or outside a common plan of development or sale, where no registration statement is required;
 - (b) An erosion and sediment control plan approved in accordance with §4.17; and
 - (c) A stormwater management plan that meets the requirements of §4.16.6.B.
3. No VSMP authority permit shall be issued until evidence of general permit coverage is obtained.
4. No VSMP authority permit shall be issued until the fees required to be paid pursuant to §4.16.7.G, are received, and a reasonable performance bond required pursuant to §4.16.7.H has been submitted.
5. No VSMP authority permit shall be issued unless and until the permit application and attendant materials and supporting documentation demonstrate that all land clearing, construction, disturbance, land development and drainage will be done according to the approved permit.
6. No grading, building or other local permit shall be issued for a property unless a VSMP authority permit has been issued by the VSMP administrator.

D. Review of stormwater management plan

1. The VSMP administrator shall review stormwater management plans and shall approve or disapprove a stormwater management plan according to the following:
 - (a) The VSMP administrator shall determine the completeness of a plan in accordance with §4.16.6.B, and shall notify the applicant, in writing, of such determination, within 15 calendar days of receipt. If the plan is deemed to be incomplete, the above written notification shall contain the reasons the plan is deemed incomplete.

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- (b) The VSMP administrator shall have an additional 60 calendar days from the date of the communication of completeness to review the plan, except that if a determination of completeness is not made within the time prescribed in subsection (a), above, then the plan shall be deemed complete and the VSMP administrator shall have 60 calendar days from the date of submission to review the plan.
 - (c) The VSMP administrator shall review any plan that has been previously disapproved within 45 calendar days of the date of resubmission.
 - (d) During the review period, the plan shall be approved or disapproved and the decision communicated in writing to the person responsible for the land-disturbing activity or his designated agent. If the plan is not approved, the reasons for not approving the plan shall be provided in writing. Approval or denial shall be based on the plan's compliance with the requirements of §4.16.
 - (e) If a plan meeting all requirements of §4.16 is submitted and no action is taken within the time provided above in §4.16.8 for review, the plan shall be deemed approved.
2. Approved stormwater plans may be modified as follows:
- (a) Modifications to an approved stormwater management plan shall be allowed only after review and written approval by the VSMP administrator. The VSMP administrator shall have 60 calendar days to respond in writing either approving or disapproving such request.
 - (b) The VSMP administrator may require that an approved stormwater management plan be amended, within a time prescribed by the VSMP administrator, to address any deficiencies noted during inspection.
 - (c) The VSMP administrator shall require the submission of a construction record drawing for permanent stormwater management facilities. The VSMP administrator may elect not to require construction record drawings for stormwater management facilities for which recorded maintenance agreements are not required pursuant to §4.16.8.K.2.

E. Hearings

1. Any permit applicant or permittee, or person subject to requirements of §4.16 aggrieved by any action of the city of Fairfax taken without a formal hearing, or by inaction of the city of Fairfax, may demand in writing a formal hearing by the city council causing such grievance, provided a petition requesting such hearing is filed with the VSMP administrator within 30 days after notice of such action is given by the VSMP administrator.
2. The hearings held under §4.16 shall be conducted by the city council at a regular or special meeting of the city council.
3. A verbatim record of the proceedings of such hearings shall be taken and filed with the circuit court of the county. Depositions may be taken and read as in actions at law.
4. The circuit court of the county 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 the local governing body, or its designated member, whose action may include the procurement of an order of enforcement from the circuit court. Witnesses who are subpoenaed shall receive the same fees and reimbursement for mileage as in civil actions.

F. Appeals

1. Final decisions of the VSMP administrator under §4.16 may be appealed to the city council, provided an appeal is filed within 30 days from the date of any written decision by the VSMP administrator which adversely affects the rights, duties or privileges of any permit applicant or permittee, or person subject to ordinance requirements.
2. Final decisions of the city council under §4.16 may be subject to review by the circuit court of the county, 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 any permit applicant or permittee, or person subject to ordinance requirements.

G. Fees

1. Issuance of general permit coverage

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 the VSMP Fee Schedule. When a site or sites has been purchased for development within a previously permitted common plan of development or sale, the applicant shall be subject to fees in accordance with the disturbed acreage of their site or sites according to the VSMP Fee Schedule, as specified in §6.2.3.D.

2. Modifications or transfer of permit coverage

Fees for the modification or transfer of registration statements from the general permit issued by the State Board shall be imposed in accordance with the VSMP Fee Schedule, as specified in §6.2.3.D. If the general permit modifications result in changes to stormwater management plans that require additional review by the city of Fairfax, such reviews shall be subject to the fees established in the VSMP Fee Schedule, as specified in §6.2.3.D. 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 the VSMP Fee Schedule, as provided within the permit application package.

3. Annual permit maintenance fee

The following annual permit maintenance fee shall be imposed in accordance with the VSMP Fee Schedule, as specified in §6.2.3.D, 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. General permit coverage maintenance fees shall be paid annually to the city of Fairfax by April 1st of each year. 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.

4. **The fees set forth in subsections 1 through 3, above, shall apply to:**
 - (a) All persons seeking coverage under the general permit.
 - (b) All permittees who request modifications to or transfers of their existing registration statement for coverage under a general permit.
 - (c) 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.
 - (d) Permit and permit coverage maintenance fees, as adopted by the city outlined under subsection 3, above, may apply to each general permit holder.
5. **No general permit application fees will be for:**
 - (a) Minor modifications to general permits as defined in §4.16.6.B. Permit modifications at the request of the permittee resulting in changes to stormwater management plans that require additional review by the VSMP administrator shall not be exempt pursuant to §4.16.
 - (b) General permits modified or amended at the initiative of the department, excluding errors in the registration statement identified by the VSMP administrator or errors related to the acreage of the site.

6. Incomplete payments

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

H. Performance bond

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

I. Illicit discharges

1. It shall be unlawful for any person to discharge to or allow the discharge to the city's municipal separate storm sewer system any substance not composed entirely of stormwater. Unlawful discharges shall include any unauthorized runoff or illicit storm

sewer connections on any property in the city of Fairfax that causes or allows by storm or floodwater the pollution of any state waters.

2. The following activities shall be exempt from §4.16:
 - (a) Discharges authorized by a valid national pollutant discharge elimination system (NPDES) permit, waiver or discharge order, a Virginia pollutant discharge elimination system (VPDES) permit, waiver or discharge order, or a Virginia pollution abatement (VPA) permit;
 - (b) Discharges from firefighting, other life-saving activities or training related to those activities;
 - (c) Discharges specified in writing by the city as necessary for public health and safety;
 - (d) Any activity by a governmental entity in accordance with federal, state, and local regulations and standards for the maintenance or repair of drinking water reservoirs or drinking water treatment or distribution systems;
 - (e) Any activity by the city, its employees and agents, in accordance with federal, state and local regulations and standards, for the maintenance of any component of its stormwater management system;
 - (f) Dye testing, provided verbal notification to the city prior to the time of test;
 - (g) Diverting stream flows or rising groundwater, or infiltration of uncontained groundwater;
 - (h) Pumping of uncontaminated groundwater from potable water sources, foundation drains, irrigation waters, springs, or water from crawl spaces or footing drains;
 - (i) Water line flushing;
 - (j) Landscape irrigation; including watering of lawns;
 - (k) Air conditioning condensate;
 - (l) Individual car washing on residential properties;
 - (m) Swimming pool water provided that it has been de-chlorinated to the satisfaction of the VSMP administrator or designee; and
 - (n) Incidental water from street and parking lot sweeping operations.
3. Exempt activities listed in subsection 1.2, above, that are found to be sources of pollution to state waters, shall be stopped or conducted in such manner as to avoid the discharge of pollutants into such waters, as directed by city of Fairfax. Failure to comply with any such order shall be unlawful and in violation of §4.16.
4. The city of Fairfax shall have authority to carry out all inspection, surveillance, and monitoring procedures necessary to determine compliance or noncompliance with the provisions of §4.16. The city shall notify any person in violation of §4.16 with a written warning notice specifying the particulars of the violation and requesting immediate investigation and resolution of the matter. Nothing in §4.16 shall limit the city from taking emergency action or other enforcement action without issuing a warning notice.

5. The city of Fairfax shall have the authority to require pollution prevention plans from any person whose discharges cause or may cause a violation of a VPDES permit.
6. A willful violation of the provisions of §4.16 shall constitute a Class 1 misdemeanor. Each day that a continuing violation of §4.16 is maintained or permitted to remain shall constitute a separate offense.
7. Any person who commits any act prohibited by §4.16 shall be liable to the city for all costs of testing, containment, cleanup, abatement, removal and disposal of any substance unlawfully discharged into the storm sewer system.
8. Any person who commits any act prohibited by §4.16 shall be subject to a civil penalty in an amount not to exceed \$1,000 for each day that a violation continues. The court assessing such penalty may, at its discretion, order that the penalty be paid into the treasury of the city for the purpose of abating, preventing or mitigating environmental pollution.
9. The remedies set forth in §4.16 shall be cumulative, not exclusive, and it shall not be a defense to any action, civil or criminal, which one or more of the remedies set forth herein has been sought or granted.

§4.16.8. Specifications

A. Purpose

§4.16.8 specifies design, construction, inspection and maintenance requirements for stormwater BMPs, on-site detention facilities, and on-site drainage facilities to be used within the city.

B. Applicability

The design, construction, inspection and maintenance of all stormwater BMPs, on-site detention facilities, and on-site drainage facilities, whether privately or municipally owned, are to be accomplished in accordance with applicable provisions of §4.16.8.

C. Design requirements

1. To protect the quality and quantity of state water from the potential harm of unmanaged stormwater runoff resulting from land-disturbing activities, the city of Fairfax hereby adopts the technical criteria for regulated land-disturbing activities set forth in 9VAC25-870-62, Part II B of the Regulations, as amended, expressly to include 9VAC25-870-63 [water quality design criteria requirements]; 9VAC25-870-65 [water quality compliance]; 9VAC25-870-66 [water quantity]; 9VAC25-870-69 [off site compliance options]; 9VAC25-870-72 [design storms and hydrologic methods]; 9VAC25-870-74 [stormwater harvesting]; 9VAC25-870-76 [linear development project]; 9VAC25-870-85 [stormwater management impoundment structures or facilities]; and 9VAC25-870-92 [comprehensive stormwater management plans], which shall apply to all land-disturbing activities regulated pursuant to §4.16, except as expressly set forth in §4.16.8.C.2.
2. Any land disturbing activity shall be considered grandfathered by the VSMP authority and shall be subject to the Part II C technical criteria (9VAC25-870-93 through 9VAC25-870-99) of the VSMP Regulation provided:

- 7. Nothing in §4.16 shall preclude an operator from constructing to a more stringent standard at their discretion.

D. On-site drainage facilities

1. On-site drainage

On-site drainage shall be adequate to prevent flooding or damage to any structure located on the site.

2. Gutters and inlets

Gutters and inlets shall be adequate to limit the spread of water in the street to half a travel lane plus its gutter, or eight feet.

3. Primary drainage facilities

(a) Where culverts, storm sewers or other enclosed conduits have been approved for use by the director of public works as storm drainage transport they shall, in addition to meeting other requirements, be adequate in the opinion of the director of public works to prevent flood damage to private or public property. Conduits used in conjunction with gutters and inlets shall be adequate to limit the system hydraulic grade line to no higher than one foot below the grade of the gutter.

(b) Where on-site drainage facilities are proposed, the applicant shall make provision or identify for:

- (1) Safety factors;
- (2) Materials; and
- (3) Cleaning, maintenance, inspection.

4. Design storms shall be as specified:

Usage	Design storm
Streets, gutters and inlets	10-year storm
Culverts/storm sewers	100-year storm [1]

[1] In the absence of potentially damaged private or public property the 25-year design storm shall be used as a minimum

E. On-site detention facilities

The design of on-site detention facilities, as may be requested or approved by the VSMP administrator, shall be as set forth in Part II B of the Regulations, 9VAC25-870-66 [water quantity], as specified in §4.16.8.C.

F. Municipal creeks and channels

Where primary channels or other open conduits have been approved for use by the director of public works as storm drainage transports they shall, in addition to meeting other requirements, be adequate in the opinion of the director of public works to prevent flooding outside of any floodplain area designated in this chapter. The design storm for channels to be used for conveyance shall be the 100-year storm.

G. Municipal drainage facility

Design criteria shall be as set forth in §4.16.8.D where applicable.

H. Municipal detention facilities

Design criteria shall be as set forth in §4.16.8.E where applicable.

I. Construction requirements

All construction shall conform to the ASTM standards, the state department of transportation road and bridge specifications, as amended, and the Virginia Uniform Statewide Building Code, as amended.

J. Inspection requirements

Periodic inspections shall be performed by the city to ensure that the facilities are being built in accordance with the plans and specifications.

1. The VSMP administrator, or any duly authorized agent of the VSMP administrator, shall inspect the land-disturbing activity during construction for:
 - (a) Compliance with the approved erosion and sediment control plan;
 - (b) Compliance with the approved stormwater management plan;
 - (c) Development, updating, and implementation of a pollution prevention plan; and
 - (d) Development and implementation of any additional control measures necessary to address a TMDL.
2. The VSMP administrator, or any duly authorized agent of the VSMP administrator, may, at reasonable times and under reasonable circumstances, enter any establishment or any property, public or private, for the purpose of obtaining information or conducting surveys or investigations necessary in the enforcement of the provisions of §4.16.
3. In accordance with a performance bond with surety, cash escrow, letter of credit, any combination thereof, or such other legal arrangement or instrument, the VSMP 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.
4. Pursuant to § 62.1-44.15:40 of the Code of Virginia, the VSMP administrator may require every VSMP authority permit applicant or permittee, or any such person subject to VSMP authority permit requirements under §4.16, 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 §4.16.
5. Post-construction inspections of stormwater management facilities required by the provisions of §4.16 shall be conducted by the VSMP administrator, or any duly authorized agent of the VSMP administrator, pursuant to the city's adopted and State Board approved inspection program, and shall occur, at minimum, at least once every five years except as may otherwise be provided for in §4.16.8.K.

K. Long-term maintenance of permanent stormwater facilities

1. Provisions for long-term responsibility and maintenance of stormwater management facilities and other techniques specified to manage the quality and quantity of runoff are required by the VSMP administrator provisions shall be set forth in an instrument recorded in the local land records prior to general permit termination, or earlier, as may be required by the VSMP administrator and shall at a minimum:
 - (a) Be submitted to the VSMP administrator for review and approval prior to the approval of the stormwater management plan;
 - (b) Be stated to run with the land;
 - (c) Provide for all necessary access to the property for purposes of maintenance and regulatory inspections;
 - (d) Provide for inspections and maintenance and the submission of inspection and maintenance reports to the VSMP administrator; and
 - (e) Be enforceable by all appropriate governmental parties.

2. Natural drainage channels on private property

Where natural drainage channels pass through a landowner's property, it shall be the responsibility of the landowner to maintain the natural channel in a manner that will not be detrimental to other inhabitants of the city. No change shall be made in the contours of any land which affects the course, width or elevation of any floodplain or natural or other drainage channel in any manner which will obstruct, interfere with or change the drainage of such land without providing adequate drainage in connection therewith, as approved by the VSMP administrator. The bounds of the natural stream channel are to be considered as extending to the water level identified for the 100-year storm as defined in Article 9. All natural stream modifications and maintenance are to be accomplished in accordance with the city storm drainage facility specifications as they may be promulgated by the VSMP administrator and approved by the city council from time to time.

3. Maintenance of facilities

- (a) The landowner and his successors in title to the facilities and the site served thereby shall be responsible for the repair, replacement and other maintenance of the facility.
- (b) The landowner and his successors shall perform periodic maintenance on the facilities and such other repairs, replacements or maintenance thereon as may be required by the VSMP administrator.
- (c) The VSMP administrator, his agent or representative, may inspect the facilities from time to time to determine the necessity of repair, replacement or other maintenance thereof.
- (d) If the facilities are determined to be in need of repair, replacement or other maintenance, the VSMP administrator, his agent or representative, shall serve on the landowner a written notice describing the condition of the facilities and specifying the required repairs, replacements or other maintenance to be made to correct such deficiencies.

- (e) Any landowner aggrieved by the determination of the VSMP administrator, his agent or representative, may appeal such determination to the city in accordance with §4.16.7.F.
- (f) Upon refusal or neglect by the landowner or his successors to comply with the repairs, replacements or other maintenance required by the VSMP administrator, the city, through its agents or employees, may repair, replace or otherwise maintain such facilities.
- (g) If the city, through its agents or employees, repairs, replaces or otherwise maintains any facility after complying with the notice requirements of §4.16, the costs or expenses thereof shall be charged to and paid by the landowner and/or his successors and may be collected by the city as taxes and levies are collected.
- (h) Every charge authorized by §4.16 with which the landowner or his successors has been assessed and which remains unpaid shall constitute a lien against the property.

§4.16.9. Enforcement

- A. If the VSMP 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 §4.16.8 or the permit may be revoked by the VSMP administrator.
 - 2. If a permittee fails to comply with a notice issued in accordance with §4.16 within the time specified, the VSMP 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 §6.14. 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 city, or by personal delivery by an agent of the VSMP administrator. However, if the VSMP 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 state or otherwise substantially impacting water quality, it may issue, without advance notice or hearing, an emergency order directing such person to cease immediately all land-disturbing activities on the site and shall provide an opportunity for a hearing, after reasonable notice as to the time and place thereof, to such person, to affirm, modify, amend, or cancel such emergency order. If a person who has been issued an order is not complying with the terms thereof, the

VSMP administrator may institute a proceeding for an injunction, mandamus, or other appropriate remedy in accordance with §4.16.2).

- B. In addition to any other remedy provided by §4.16, if the VSMP administrator determines that there is a failure to comply with the provisions of §4.16, they may initiate such informal and/or formal administrative enforcement procedures in a manner that is consistent with §4.16.9.
- 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 VSMP administrator may be compelled in a proceeding instituted in circuit court of the county by the city to obey same and to comply therewith by injunction, mandamus or other appropriate remedy.
- D. Any person who violates any provision of §4.16 or who fails, neglects, or refuses to comply with any order of the VSMP administrator, shall be subject to a civil penalty not to exceed \$32,500 for each violation within the discretion of the court. Each day of violation of each requirement shall constitute a separate offense.
 - 1. Violations for which a penalty may be imposed under §4.16 shall include but not be limited to the following:
 - (a) No state permit registration;
 - (b) No SWPPP;
 - (c) Incomplete SWPPP;
 - (d) SWPPP not available for review;
 - (e) No approved erosion and sediment control plan;
 - (f) Failure to install stormwater BMPs or erosion and sediment controls;
 - (g) Stormwater BMPs or erosion and sediment controls improperly installed or maintained;
 - (h) Operational deficiencies;
 - (i) Failure to conduct required inspections;
 - (j) Incomplete, improper, or missed inspections; and
 - (k) Discharges not in compliance with the requirements of Section 9VAC25-880-70 of the general permit.
 - 2. The VSMP 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 §4.16, 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 city shall be paid into the treasury of the city to be used for the purpose of minimizing, preventing, managing, or mitigating pollution of the waters of the city and abating environmental pollution therein in such manner as the court may, by order, direct.

- E. Notwithstanding any other civil or equitable remedy provided by this section or by law, any person who willfully or negligently violates any provision of §4.16, any order of the VSMP administrator, any condition of a permit, or any order of a court shall, be guilty of a misdemeanor punishable by confinement in jail for not more than 12 months or a fine of not less than \$2,500 nor more than \$32,500, or both.

§4.16.10. Storm drainage facilities-related definitions

In addition to the definitions set forth in 9VAC25-870-10 of the Virginia Stormwater Management Regulations, as amended, which are expressly adopted and incorporated herein by reference, the following words and terms used in §4.16 have the following meanings unless otherwise specified herein. Where definitions differ, those incorporated herein shall have precedence.

APPLICANT: Any person, including any authorized agent, submitting an application for a permit or requesting issuance of a permit under §4.16.

BEST MANAGEMENT PRACTICE OR BMP: Schedules of activities, prohibitions of practices, including both structural and non-structural practices, maintenance procedures, and other management practices to prevent or reduce the pollution of surface waters and groundwater systems from the impacts of land-disturbing activities.

CHESAPEAKE BAY PRESERVATION ACT LAND-DISTURBING ACTIVITY: A land-disturbing activity including clearing, grading, or excavation that results in a land disturbance equal or greater than 2,500 square feet and less than one acre in all areas of jurisdictions designated as subject to the regulations adopted pursuant to the Chesapeake Bay Preservation Act, Code of Virginia, §62.1-44.15:67, et seq.

COMMON PLAN OF DEVELOPMENT OR SALE: A contiguous area where separate and distinct construction activities may be taking place at different times on difference schedules.

CONTROL MEASURE: 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: 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: The Virginia Department of Environmental Quality.

DESIGN STORM: All possible combinations of particular storm intensity-duration events occurring on the design storm curve.

DEVELOPMENT: All and 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-silviculture purposes.

FACILITY: A stormwater BMP, on-site detention facility, or an on-site drainage facility.

GENERAL PERMIT: A state permit authorizing a category of discharges under the CWA and the Act within a geographical area.

ILLICIT DISCHARGE: Any discharge to a municipal separate storm sewer that is not composed entirely of stormwater, except discharges pursuant to a separate VPDES or state permit (other than the state permit for discharges from the municipal separate storm sewer), and discharges identified by and in compliance with 9VAC25-870-400 and in §4.16

§4.16.10 Storm drainage facilities-related definitions

LAND DISTURBANCE OR LAND-DISTURBING ACTIVITY: 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 §4.16.6.A.

LAYOUT: A conceptual drawing sufficient to provide for the specified stormwater management facilities required at the time of approval.

MAXIMUM PEAK RUNOFF: The largest peak runoff permitted to occur from any of the particular storms on the design storm curve.

METERING: The controlled release of water into the primary drainage system.

MINOR MODIFICATION: 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 DETENTION FACILITIES: City-owned facilities located along primary drainage facilities. Creeks or channels that serve the purpose of reducing peak flow by metered release and by storage of that input flow which exceeds the metered output.

MUNICIPAL SEPARATE STORM SEWER SYSTEM" OR "MS4": All separate storm sewers that are defined as "large" or "medium" or "small" municipal separate storm sewer systems or designated under 9VAC25-870-380.

ON-SITE DETENTION FACILITY: A facility located on a site which serves the purpose of collecting and detaining rainfall falling on the site for controlled release to the primary facilities as a result of land alteration.

OPERATOR: The owner or operator of any facility or activity subject to regulation under §4.16.

PEAK RUNOFF: The largest runoff intensity that will occur from a particular storm intensity-duration event on the design storm curve.

PERMIT OR VSMP AUTHORITY PERMIT: An approval to conduct a land-disturbing activity issued by the VSMP administrator for the initiation of a land-disturbing activity, in accordance with §4.16, and which may only be issued after evidence of general permit coverage has been provided by the Department.

PERMITTEE: The person to whom the VSMP Authority Permit is issued.

PERSON: Any individual, corporation, partnership, association, state, municipality, commission, or political subdivision of a state, governmental body, including federal, state, or local entity as applicable, any interstate body or any other legal entity.

POLLUTION: Such alteration of the physical, chemical or biological properties of any state waters as will or is likely to create a nuisance or render such waters (a) harmful or detrimental or injurious to the public health, safety and welfare, or to the health of animals, fish or aquatic life; (b) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that (i) an alteration of the physical, chemical, or biological property of state waters, or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner

which by itself is not sufficient to cause pollution, but which, in combination with such alteration of or discharge or deposit to state waters by other owners, is sufficient to cause pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii) contributing to the contravention of standards of water quality duly established by the State Water Control Board, are "pollution" for the terms and purposes of this chapter.

PRIMARY CREEKS AND CHANNELS: Natural creeks and open channels located on either private or public property which serve the purpose of collecting rainfall runoff from other sites and routing it from the city to the rivers. A creek or channel shall be considered a primary facility if it accommodates a runoff flow of at least 1.5 times that amount originating from the site on which it is located.

PRIMARY DRAINAGE FACILITIES: Culverts, gutters, enclosed channels, etc., which serve the purpose of collecting rainfall runoff from other sites and routing it to primary creeks and channels. Drainage Facilities shall be considered as primary if they accommodate a flow of at least 1.5 times that amount originating from the site on which they are located.

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

SITE: The land or water area where any facility or land-disturbing activity is physically located or conducted, including adjacent land used or preserved in connection with the facility or land-disturbing activity. Areas channel-ward of mean low water in tidal Virginia shall not be considered part of a site.

STATE: The Commonwealth of Virginia.

STATE BOARD: The State Water Control Board.

STATE PERMIT: 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 State 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: Chapter 3.1 (§62.1-44.2 et seq.) of Title 62.1 of the Code of Virginia.

STATE WATERS: All water, on the surface and under the ground, wholly or partially within or bordering the State or within its jurisdiction, including wetlands.

STORMWATER: Precipitation that is discharged across the land surface or through conveyances to one or more waterways and that may include stormwater runoff, snowmelt runoff, and surface runoff and drainage.

STORMWATER MANAGEMENT PLAN: A document(s) containing material describing methods for complying with the requirements of §4.16.

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

§4.17.1 Monitoring, reports and inspections

SUBDIVISION: Division or re-division of a lot, tract or parcel of land into two or more lots or other division of land. This includes any changes in street or lot lines.

TOTAL MAXIMUM DAILY LOAD OR TMDL: The sum of the individual waste load allocations for point sources, load allocations for nonpoint sources, natural background loading and a margin of safety. TMDLs can be expressed in terms of either mass per time, toxicity, or other appropriate measure. The TMDL process provides for point versus nonpoint source trade-offs.

VIRGINIA STORMWATER MANAGEMENT ACT OR ACT: Article 2.3 (§62.1-44.15:24 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia.

VIRGINIA STORMWATER BMP CLEARINGHOUSE WEBSITE: The website that contains detailed design standards and specifications for control measures that may be used in Virginia to comply with the requirements of the Virginia Stormwater Management Act and associated regulations.

VIRGINIA STORMWATER MANAGEMENT PROGRAM OR VSMP: A program approved by the State Board after September 13, 2011, that has been established by the city of Fairfax 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 §4.16, and evaluation consistent with the requirements of §4.16 and associated regulations.

VIRGINIA STORMWATER MANAGEMENT PROGRAM AUTHORITY OR VSMP AUTHORITY: The authority approved by the State Board after September 13, 2011, to operate a Virginia Stormwater Management Program.

VSMP Administrator: The VSMP authority including the city of Fairfax staff person, department, or assigned designee responsible for administering the VSMP on behalf of the city.

§4.17. EROSION AND SEDIMENT CONTROL

§4.17.1. Monitoring, reports and inspections

The plan-approving authority shall periodically in accordance with section 9VAC-840-60.B of the Virginia Erosion and Sediment Control Regulations inspect land-disturbing activities for compliance with the approved plan and permit. The owner, permittee, or person responsible for carrying out the plan shall be given notice of inspections.

- A.** Monitoring and reports may be required by the plan-approving authority of the owner, permittee, or person responsible for carrying out the plan to ensure compliance with the plan and that the measures required in the plan are effective in controlling erosion and sediment.
- B.** Upon determination of a failure to comply with the plan, the plan-approving authority shall serve notice by certified or registered mail to the address specified in the permit application or by hand delivery to the owner, permittee, or person responsible for carrying out the plan, specifying the measures needed for plan compliance and the time within which the measures must be completed. Failure to comply within the specified time may result in revocation of the permit at which time the notified individual shall be deemed to be in violation of §4.17.
- C.** Regardless of the requirement for notice in §4.17.1.B, above, if land disturbing activities begin without an approved plan, the plan-approving authority may issue an order requiring all land disturbing activities be stopped until an approved plan and required permits are