

Building and Development

MEMORANDUM

DATE: April 30, 2014

TO: Reception and Counter Staff

FROM: Jimmy Edmonds, Staff Contact

SUBJECT: **April 30, 2014 and May 7, 2014 Advertisement Text:
Chapter 1096 Codified Ordinance Amendments**

The attached amendments to Chapter 1096 are being advertised on April 30, 2014 and May 7, 2014 in preparation for a Board Business Meeting on May 21, 2014 and will need to be available in the Office of the County Administrator and the Department of Building and Development for public review. A copy of this memo will also be posted to the stormwater management program update webpage at www.loudoun.gov/vsmp. All related Planning Commission and Board documents are also available on this webpage.

Highlighted Text

On March 24, 2014, following the March 12, 2014 Board of Supervisors public hearing, the Governor approved Senate Bill 423, which amended the Virginia Stormwater Management Act. Staff conferred with the County Attorney's Office in drafting necessary revisions to the draft text of Chapter 1096 and presented the draft text to the Facilities Standards Manual Public Review Committee (PRC) on April 2, 2014. The final draft text necessary to address the amendments promulgated by Senate Bill 423 is highlighted in **blue**.

As noted in the March 21, 2014 Transportation and Land Use Committee (TLUC) staff report and provided as Attachment 1 to the TLUC staff report, the amendments highlighted in **grey** were necessary to implement additional revisions recommended by staff from the Virginia Department of Environmental Quality (DEQ) on March 6, 2014. Staff conferred with the County Attorney's Office in drafting the revisions and presented the amendments to FSM PRC on March 19, 2014.

Based on the guidance and feedback received from DEQ to date, Staff is in agreement with the PRC on the revised amendments.

Additional Draft Text Edit

On April 8, 2014, DEQ published draft regulatory amendments to implement the amendments to the Virginia Stormwater Management Act signed by the Governor on March 24, 2014. The State Water Control Board is expected to act on the draft regulatory amendments on June 26-27, 2014.

During the April 2, 2014 PRC Meeting, the PRC noted that the text highlighted in blue in the middle of paragraph 1096.01(d)(4)A seemed redundant with the preceding sentence. At the time, staff noted that the redundancy was the result of separate amendments to the Virginia Stormwater Management Act and the Virginia Stormwater Management Program Regulations and that the text may be reconciled with future regulatory amendments. The draft regulatory amendments recently published by DEQ provide some alternative text that could be

incorporated into 1096.01(d)(4)A to address the redundancy by deleting the sentence highlighted in blue and amending the text as highlighted in yellow below:

(4) Stormwater Management Plan; Contents of Plan; Review of Plan.

- A. The **stormwater management plan**, required in Section 1096.01(d)(2)D.1.(iii) of this Ordinance, shall apply the stormwater management technical criteria set forth in Section 1096.01(d)(6)A of this Ordinance 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 for a residential, commercial, or industrial subdivision shall govern the development of the individual parcels, including those parcels developed under subsequent owners.~~ The stormwater management plan shall also consider all sources of surface runoff and all sources of subsurface and groundwater flows converted to **sub** surface runoff. The stormwater management plan shall include the following information:

Staff is also recommending that the definition for stormwater management plan be amended consistent with the draft regulations, as highlighted in yellow below:

"Stormwater management plan" means a document(s) containing material describing methods for complying with the requirements of Section 1096.01(d)(4) of this Ordinance. **An agreement in lieu of a stormwater management plan as defined in this ordinance shall be considered to meet the requirements of a stormwater management plan.**

Staff intends to discuss these text amendments with the PRC during the May 7, 2014 PRC Meeting.

ATTACHMENT

1. Chapter 1096 of the Codified Ordinances (Board Business Meeting Draft 5/21/14)

CHAPTER 1096
Stormwater Management

- 1096.01 Stormwater Management Program.
- 1096.02 Maintenance of the Stormwater Management System.
- 1096.03 Discharges to the Stormwater Management System.
- 1096.04 ~~Enforcement. Violations.~~
- 1096.05 Hearings and Appeals
- 1096.06 Fees.
- 1096.07 Conflicts.

CROSS REFERENCES

Use of sewers; building sewers and connections - see S.U. & P.S. Ch. 1064

1096.01 STORMWATER MANAGEMENT PROGRAM.

(a) Purpose and Findings.

- ~~(1) The health, safety, and welfare of Loudoun County residents requires the design, development, improvement, operation, maintenance, and oversight of a system of man-made and natural components of stormwater management infrastructure to both limit and manage the volume of stormwater to control flood events and to prevent degradation of the County's waterways and erosion of the County's lands.~~
- (1) The purpose of this Ordinance is to ensure the general health, safety, and welfare of the citizens of Loudoun County and protect the quality and quantity of state waters from the potential harm of unmanaged stormwater, including protection from a land disturbing activity causing unreasonable degradation of properties, water quality, stream channels, and other natural resources, and to establish procedures whereby stormwater requirements related to water quality and quantity shall be administered and enforced.
- (2) Loudoun County is subject to Phase II of the Federal Clean Water Act's National Pollutant Discharge Elimination System (NPDES) permit program for stormwater discharges, administered by the Virginia Department of Environmental Quality through a General Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation for Discharges of Storm Water from Small Municipal Separate Storm Sewer Systems in the Commonwealth of Virginia (9VAC25-890-1 et seq.). In order to comply with ~~VPDES~~Virginia Stormwater Management Program (VSMP) requirements, the County must develop a stormwater management program to reduce pollution from the stormwater drainage system to the maximum extent practicable.
- (3) Properly functioning stormwater management infrastructure provides benefit to all properties within the County by directly protecting properties through control of flooding and standing water, and by reducing the impact of stormwater flows on the County's natural environment.
- ~~(4) The Loudoun County Board of Supervisors is authorized by state law to adopt a program for local stormwater management (Code of Virginia Sections 10.1-603.1 et seq.).~~

(4) This ordinance is adopted pursuant to Section 62.1-44.15:24 et seq. of the Code of Virginia.

~~(b) Establishment of Stormwater Management Program.~~

~~(1) The stormwater management program of Loudoun County is hereby established. The program shall include the design, development, improvement, operation, inspection, maintenance, and oversight of the stormwater management system.~~

~~(2) For the purposes of this chapter, stormwater management system (also referred to as stormwater infrastructure) is defined in Section 1096.01(c).~~

~~(3) The stormwater management system shall be designed, developed, improved, operated, maintained and overseen in accordance with all applicable Federal, State, and local laws, statutes, ordinances, regulations and policies. Applicable local ordinances, regulations and policies include, but are not limited to, the County Zoning Ordinance, Land Subdivision and Development Ordinance, the Facilities Standards Manual, The Virginia Erosion and Sediment Control Handbook, the drainage maintenance policies and programs of the County government, and all effective stormwater maintenance agreements.~~

~~(4) Administrative Authority. The Director shall be responsible for the administration and enforcement of this chapter.~~

~~(5) Right of Entry. The Director may, with proper identification enter, at reasonable times, upon public or private property for the purposes of inspecting and investigating conditions relating to the enforcement of this chapter, but only after obtaining consent of the owner or occupant of the private property to be inspected, which owner or occupant has the authority, under law, to authorize such entry and inspection.~~

~~(6) Inspection Warrant.~~

~~A. If such consent is not obtained, for any reason, including the inability to contact or locate the person with the authority to authorize such inspection, the Director shall obtain, from a County magistrate or judge, a warrant authorizing such entry, inspection or investigation upon such private property upon a showing of probable cause, supported by an affidavit, particularly describing the place, thing or person to be inspected or investigated, and the purpose for which the inspection or investigation is to be made. Probable cause shall be deemed to exist either if reasonable administrative standards for conducting such inspection or investigation are satisfied, with respect to the particular place, thing or person, or if there exists probable cause to believe that there is a condition, object, activity or circumstance which legally justifies such inspection or investigation. The supporting affidavit shall contain either a statement that consent to inspect or investigate has been sought and refused or not received or a description of the circumstances reasonably justifying the failure to seek such consent in order to effectively enforce this chapter.~~

~~B. An inspection warrant shall be effective for the time specified therein, not to exceed ten days, unless extended or renewed by the judicial officer who signed and issued the original warrant, upon a showing that such extension or renewal is in the public interest. Such warrant shall be executed and returned to the judicial officer by whom it was issued within the time~~

~~specified in the warrant or within the extended or renewed time. After the expiration of such time, the warrant, unless executed, shall be void. An inspection pursuant to such warrant may not be made in the absence of the owner, custodian or possessor of the particular place, thing or person unless specifically authorized by the judicial officer upon a showing that such authority is reasonably necessary to effectuate the purpose of this chapter. An inspection pursuant to this warrant shall not be made by means of forcible entry except that the judicial officer may expressly authorize a forcible entry where facts are shown sufficient to create a reasonable suspicion of a violation of any of the provisions of this chapter which, if such violation existed, would be an immediate threat to health or safety, or where facts are shown establishing that reasonable attempts to serve a previous warrant have been unsuccessful. In the case of inspection of a dwelling, prior consent must be sought and refused unless the issuing judicial officer finds that failure to seek consent is justified and that there is a reasonable suspicion of an immediate threat to public health or safety.~~

~~C. Compliance with inspection warrants. No person shall willfully refuse to permit an inspection lawfully authorized by a warrant issued pursuant to this chapter.~~

(b) Administration

(1) Administrator Defined. "Administrator" means the VSMP Authority responsible for administering the VSMP on behalf of Loudoun County.

A. For the purposes of the administration of this Ordinance, the Director of the Department of Building and Development, or their designee, shall be considered to be the Administrator of Section 1096.01(d) et seq., and any enforcement thereof or any hearings or appeals taken pursuant thereto.

B. For the purposes of the administration of this Ordinance, the Director of the Department of General Services, or their designee, shall be considered to be the Administrator of Section 1096.02 et seq. and 1096.03 et seq., and any enforcement thereof or any hearings or appeals taken pursuant thereto.

(2) Towns.

A. Any town lying within Loudoun County ~~that~~which does not operate a Municipal Separate Storm Sewer System Program (MS-4) may decide, but shall not be required, to ~~adopt its own stormwater management program or shall~~ become subject to the ~~County program~~ Virginia Stormwater Management Program (VSMP) established by Loudoun County. If such a town decides not to become subject to Loudoun County's VSMP, such town shall establish its own VSMP or shall become subject to the VSMP operated by the Virginia Department of Environmental Quality.

B. Any town lying within Loudoun County that does operate an MS-4 may

decide, but shall not be required, to become subject to the VSMP established by Loudoun County. If such a town decides not to become subject to Loudoun County's VSMP, such town shall establish its own VSMP.

- (3) Amendments. Any amendments to this Ordinance shall require the concurrence of both the Director of the Department of Building and Development and the Director of General Services, or their respective designees.
- (c) Definitions. ~~As used in this chapter:~~ In addition to the definitions set forth in 9VAC25-870-10 of the Virginia Stormwater Management (VSMP) Regulations, as amended, which are expressly adopted and incorporated herein by reference, the following words and terms used in this Ordinance have the following meanings unless otherwise specified herein.

"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 the 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 Ordinance.

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

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

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

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

"Department" means the Department of Environmental Quality.

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

agricultural or non-silvicultural purposes.

~~(1) "Director" means the Director of the Department of General Services or his designee.~~

~~(2) "Discharge," when used without qualification, means the discharge of a pollutant. "Discharge" means to dispose, deposit, spill, pour, inject, dump, leak or place by any means, or that which is disposed, deposited, spilled, poured, injected, dumped, leaked or placed by any means.~~

~~(3) "Dulles Greenway" means the private toll road and rights-of-way comprising a 14-mile extension of the Dulles Toll Road, connecting Washington Dulles International Airport with Leesburg, Virginia.~~

~~(4) "Facilities Standards Manual", or FSM, means the Loudoun County Facilities Standards Manual, as amended.~~

"General Permit" means the state permit found in 9VAC25-880-70, General Permit for Discharges of Stormwater from Construction Activities, authorizing a category of discharges under the CWA and the Act within a geographical area of the Commonwealth of Virginia.

~~(5) "Illicit discharge" means 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), discharges resulting from fire fighting activities, and discharges identified by and in compliance with 9VAC25-870-400 D.2.c.(3). "Illicit discharge" means any discharge to the stormwater management system that is not composed entirely of stormwater, except discharges pursuant to either a VPDES permit or discharges resulting from fire fighting activities. This definition shall not include the discharges listed in Section 1096.03(a)(2) unless the County identifies such discharges as sources of pollutants to waters of the Commonwealth of Virginia.~~

~~(6) "Industrial discharge" means discharges from any conveyance that is used for collecting and conveying stormwater and which are directly related to industrial uses as defined by the General Virginia Pollutant Discharge Elimination System Permit for Discharges of Storm Water Associated with Industrial Activity (9-VAC 25-151-10 et seq.).~~

"Land disturbance" or "land-disturbing activity" means a man-made change to the land surface that potentially changes its runoff characteristics including clearing, grading, or excavation except that the term shall not include those exemptions specified in Section 1096.01(d)(2)B of this Ordinance.

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

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

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

"Part II C technical criteria" means the technical criteria in 9VAC25-870-93 through 9VAC25-870-99.

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

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

~~(7) "Person" means any individual, firm, corporation, partnership, association, organization or other entity, including governmental entities, or any combination thereof.~~

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

"Regulations" means the Virginia Stormwater Management Program (VSMP) Regulations (9VAC25-870-10 et seq.), as amended.

"Site" means the land or water area where any facility or land-disturbing activity is physically located or conducted, including adjacent land used or preserved in connection with the facility or land-disturbing activity.

"State" means the Commonwealth of Virginia.

"State Board" means the State Water Control Board.

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

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

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

~~(8) "Stormwater" means runoff from rain, snow or other forms of precipitation and surface runoff and drainage.~~

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

"Stormwater hotspot" or "hotspot" means an area where the land use or activities (e.g., gas station, chemical storage facility, industrial facility, etc.) are considered to generate runoff with concentrations of pollutants in excess of those typically found in normal stormwater or have a higher risk of spills, leaks, or illicit dischargers. Specific stormwater hotspots, and their associated treatment options, are provided in the Facilities Standards Manual.

~~(9)~~ — "Stormwater maintenance agreement" means an agreement between a private property owner and the County that establishes mutual responsibilities for maintenance of the stormwater management infrastructure where such infrastructure has uses in addition to stormwater management.

"Stormwater management plan" means a document(s) containing material describing methods for complying with the requirements of Section 1096.01(d)(4) of this Ordinance.

~~(10)~~ — "Stormwater management system" means, for purposes of this ~~chapter~~Ordinance, the series of structural and non-structural stormwater infrastructure established to manage stormwater runoff and drainage. The stormwater management system includes, but is not limited to the following facilities and equipment, storm drains, storm sewers, catch-basins, drop inlets, pipes, open channels and ditches, dry detention facilities, wet detention facilities, and bioretention~~bio-retention~~ facilities.

~~(11) "Stormwater Pollution Prevention Plan" means a plan consisting of steps and activities designed to identify potential sources of stormwater pollution or contamination; and, establishing practices that will prevent or reduce pollutants in stormwater runoff.~~

"Stormwater Pollution Prevention Plan" or "SWPPP" means a document that is prepared in accordance with good engineering practices and that identifies potential sources of pollutants that may reasonably be expected to affect the quality of stormwater discharges from the construction site, and otherwise meets the requirements of this Ordinance. A SWPPP required under a VSMP for construction activities shall identify and require the implementation of control measures, and shall

include, but not be limited to the inclusion of, or the incorporation by reference of an approved erosion and sediment control plan, an approved stormwater management plan, and a pollution prevention plan.

"Subdivision" means the same as defined in Section 1240.05 of the Loudoun County Land Subdivision and Development Ordinance.

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

~~(12)~~ "Virginia Erosion and Sediment Control Handbook" means the technical guide published by the Virginia Department of Conservation and Recreation, Division of Soil and Water Conservation to meet the requirements of the Virginia Erosion and Sediment Law (Code of Virginia Sections 62.1-44.15:51 ~~10.1-560~~ et seq.).

"Virginia Stormwater Management Act" or "Act" means Section 62.1-44.15:24 et seq. of the Code of Virginia.

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

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

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

(d) Virginia Stormwater Management Program (VSMP) Established

(1) Pursuant to Section 62.1-44.15:24 et seq. of the Code of Virginia, Loudoun County hereby establishes a Virginia Stormwater Management Program for land-disturbing activities and adopts the applicable Regulations that specify standards and specifications for VSMPs promulgated by the State Board for the purposes set out in Section 1096.01(a) of this Ordinance.

(2) Virginia Stormwater Management Program (VSMP) Authority Permit

A. Except as provided herein, no person may engage in any land-disturbing activity, and no grading, building or other local permit shall be issued for a property, unless and until a VSMP Authority Permit has been issued by the Administrator in accordance with the provisions of this Ordinance.

B. Exemptions

Notwithstanding any other provisions of this Ordinance, the following activities are exempt from VSMP Authority Permit requirements, unless otherwise required by federal law:

1. Permitted surface or deep mining operations and projects, or oil and gas operations and projects conducted under the provisions of Title 45.1 of the Code of Virginia;
2. Clearing of lands specifically for agricultural purposes and the management, tilling, planting, or harvesting of agricultural, horticultural, or forest crops, livestock feedlot operations, or as additionally set forth by the State Board in regulations, including engineering operations as follows: construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds, ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage, and land irrigation; however, this exception shall not apply to harvesting of forest crops unless the area on which harvesting occurs is reforested artificially or naturally in accordance with the provisions of Chapter 11 (§ 10.1-1100 et seq.) of Title 10.1 of the Code of Virginia or is converted to bona fide agricultural or improved pasture use as described in Subsection B of § 10.1-1163 of Article 9 of Chapter 11 of Title 10.1 of the Code of Virginia;
3. Single-family residences separately built and disturbing less than one acre and not part of a larger common plan of development or sale, including additions or modifications to existing single-family detached residential structures;
4. Land disturbing activities that disturb less than one acre of land area except for activities that are part of a larger common plan of development or sale that is one acre or greater of disturbance;
5. Discharges to a sanitary sewer;
6. Activities under a State or federal reclamation program to return an abandoned property to an agricultural or open land use;

7. Routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original construction of the project. The paving of an existing road with a compacted or impervious surface and reestablishment of existing associated ditches and shoulders shall be deemed routine maintenance if performed in accordance with this Subsection; and
8. Conducting land-disturbing activities in response to a public emergency where the related work requires immediate authorization to avoid imminent endangerment to human health or the environment. In such situations, the Administrator shall be advised of the disturbance within seven days of commencing the land-disturbing activity and compliance with the administrative requirements of 1096.01(d)(2)A is required within 30 days of commencing the land-disturbing activity.

C. Virginia Stormwater Management Program (VSMP) General Permit Requirements:

1. Prior to the submission of a VSMP General Permit registration statement, a Stormwater Pollution Prevention Plan (SWPPP) shall be prepared.

D. Virginia Stormwater Management Program (VSMP) Authority Permit Requirements:

1. No VSMP Authority Permit shall be issued by the Administrator, unless and/or until:
 - (i) A VSMP Authority Permit application, that includes a VSMP General Permit registration statement, has been submitted to and approved by the Administrator. A VSMP General Permit registration statement shall not be required for construction activity involving a single-family detached residential structure, within or outside a common plan of development or sale;
 - (ii) An erosion and sediment control plan prepared in accordance with Chapter 1220 of the Codified Ordinances of Loudoun County has been submitted to and approved by the Administrator;
 - (iii) A stormwater management plan that meets the requirements of Section 1096.01(d)(4)A of this Ordinance has been submitted to and approved by the Administrator, or an agreement in lieu of a stormwater management plan has been executed by the VSMP Authority if applicable, except for land disturbing activities previously covered under the General Permit for Discharges of Stormwater from Construction Activities issued July 1, 2009;

(iv) A pollution prevention plan that meets the requirements of Section 1096.01(d)(5) of this Ordinance has been submitted to the Administrator.

(v) Evidence of VSMP General Permit coverage has been obtained;

(vi) All fees required pursuant to Section 1096.06 have been received, the financial guarantee required by Chapter 1220 of the Codified Ordinances of Loudoun County has been approved, and the performance bond required pursuant to Chapter 8 of the FSM has been executed and filed; and

(vii) The VSMP Authority Permit application and attendant materials and supporting documentation demonstrate that all land clearing, construction, disturbance, land development and drainage will be conducted in accordance with this Chapter.

(3) Stormwater Pollution Prevention Plan; Contents of Plans.

A. The SWPPP shall comply with the requirements and general information set forth in Section 9VAC25-870-54 and Section 9VAC25-880-70, and shall include an approved Stormwater Management Plan, an approved Erosion and Sediment Plan, and a Pollution Prevention Plan. In accordance with the FSM, the SWPPP must identify all “hotspot” uses and the BMP’s and strategies used to mitigate hotspot pollutants.

B. The SWPPP shall be amended by the operator whenever there is a change in design, construction, operation, or maintenance that has a significant effect on the discharge of pollutants to state waters which is not addressed by the existing SWPPP.

C. The SWPPP must be maintained by the operator at a central location onsite. If an onsite location is unavailable, notice of the SWPPP’s location must be posted near the main entrance at the construction site. Operators shall make the SWPPP available for public review in accordance with Section II of the VSMP General Permit, either electronically or in hard copy.

(4) Stormwater Management Plan; Contents of Plan; Review of Plan.

A. The **Sstormwater Mmanagement Pplan**, required in Section 1096.01(d)(2)D.1.(iii) of this Ordinance, shall apply the stormwater management technical criteria set forth in Section 1096.01(d)(6)A of this Ordinance to the entire land-disturbing activity. Individual lots in new residential, commercial, or industrial developments shall not be considered separate land-disturbing activities. **The stormwater management plan for a**

residential, commercial, or industrial subdivision shall govern the development of the individual parcels, including those parcels developed under subsequent owners. The stormwater management plan shall also, consider all sources of surface runoff and all sources of subsurface and groundwater flows converted to subsurface runoff. The stormwater management plan shall include the following information:

1. Information on the type and location of stormwater discharges; information on the features to which stormwater is being discharged including surface waters or karst features, if present, and the pre-development and post-development drainage areas;
2. Contact information including the name, address, and telephone number of the owner and the tax reference number and parcel number of the property or properties affected;
3. A narrative that includes a description of current site conditions and final site conditions;
4. A general description of the proposed stormwater management facilities and the mechanism through which the facilities will be operated and maintained after construction is complete;
5. Information on the proposed stormwater management facilities, including:
 - (i) The type of facilities;
 - (ii) Location, including geographic coordinates;
 - (iii) Acres treated; and
 - (iv) The surface waters or karst features, if present, into which the facility will discharge.
6. Hydrologic and hydraulic computations, including runoff characteristics;
7. Documentation and calculations verifying compliance with the water quality and quantity requirements of Section 1096.01(d)(6)A of this Ordinance and the FSM.
8. A map or maps of the site that depicts the topography of the site and includes:
 - (i) Delineation of all contributing drainage areas with drainage divides and a label denoting the surface area;
 - (ii) Existing streams, ponds, culverts, ditches, wetlands, other water bodies, and floodplains;

- (iii) Soil types, geologic formations if karst features are present in the area, forest cover, and other vegetative areas;
- (iv) Current land use including existing structures, roads, and locations of known utilities and easements;
- (v) Sufficient information on adjoining parcels to assess the impacts of stormwater from the site on these parcels;
- (vi) The limits of clearing and grading, and the proposed drainage patterns on the site;
- (vii) Proposed buildings, roads, parking areas, utilities, and stormwater management facilities;
- (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, open space, and easements;
- (ix) Percentage of site pervious and impervious area; and
- (x) Total disturbed acreage for the site.

B. If an operator intends to meet the water quality and/or quantity requirements set forth in Section 1096.01(d)(6)A of this Ordinance through the use of off-site compliance options, where applicable, then a letter of availability from the off-site provider must be included. Approved off-site options must achieve the necessary nutrient reductions prior to the commencement of the applicant's land-disturbing activity except as otherwise allowed by § 62.1-44.15:35 of the Code of Virginia.

C. Elements of the stormwater management plans that include activities regulated under Chapter 4 (§54.1-400 et seq.) of Title 54.1 of the Code of Virginia shall be appropriately sealed and signed by a professional registered in the Commonwealth of Virginia pursuant to Article 1 (§ 54.1-400 et seq.) of Chapter 4 of Title 54.1 of the Code of Virginia.

D. The Administrator shall review stormwater management plans and shall approve or disapprove a stormwater management plan according to the following:

1. The Administrator shall determine the completeness of a plan in accordance with Section 1096.01(d)(4) of this Ordinance, and shall notify the applicant, in writing, of such determination, within 15 calendar days of receipt. If the plan is deemed to be incomplete, the above written notification shall contain the reasons the plan is deemed incomplete.
2. The Administrator shall have an additional 60 calendar days from the date of the communication of completeness to review the plan, except that if a determination of completeness is not made within the time prescribed in subdivision 1., then plan shall be deemed complete and

the Administrator shall have 60 calendar days from the date of submission to review the plan.

3. The Administrator shall review any plan that has been previously disapproved, within 45 calendar days of the date of resubmission.
4. During the review period, the plan shall be approved or disapproved and the decision communicated in writing to the person responsible for the land-disturbing activity or his designated agent. If the plan is not approved, the reasons for not approving the plan shall be provided in writing. Approval or denial shall be based on the plan's compliance with the requirements of this Ordinance.
5. If a plan meeting all requirements of this Ordinance is submitted and no action is taken within the time provided above in subdivision (2) for review, the plan shall be deemed approved.

E. Approved stormwater plans may be modified as follows:

1. Modifications to an approved stormwater management plan shall be allowed only after review and written approval by the Administrator. The Administrator shall have 60 calendar days to respond in writing either approving or disapproving such request.
2. The Administrator may require that an approved stormwater management plan be amended, within a time prescribed by the Administrator, to address any deficiencies noted during inspection.

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

(5) Pollution Prevention Plan; Contents of Plans.

A. A Pollution Prevention Plan, required by 9VAC25-870-56, shall be developed, implemented, and updated as necessary and must detail the design, installation, implementation, and maintenance of effective pollution prevention measures to minimize the discharge of pollutants. At a minimum, such measures must be designed, installed, implemented, and maintained to:

1. Minimize the discharge of pollutants from equipment and vehicle washing, wheel wash water, and other wash waters. Wash waters must

be treated in a sediment basin or alternative control that provides equivalent or better treatment prior to discharge;

2. Minimize the exposure of building materials, building products, construction wastes, trash, landscape materials, fertilizers, pesticides, herbicides, detergents, sanitary waste, and other materials present on the site to precipitation and to stormwater; and
3. Minimize the discharge of pollutants from spills and leaks and implement chemical spill and leak prevention and response procedures.

B. The pollution prevention plan shall include effective best management practices to prohibit the following discharges:

1. Wastewater from washout of concrete, unless managed by an appropriate control;
2. Wastewater from washout and cleanout of stucco, paint, form release oils, curing compounds, and other construction materials;
3. Fuels, oils, or other pollutants used in vehicle and equipment operation and maintenance; and
4. Soaps or solvents used in vehicle and equipment washing.

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

(6) Technical Criteria for Regulated Land Disturbing Activities; Grandfathering; Exceptions.

A. To protect the quality and quantity of state water from the potential harm of unmanaged stormwater runoff resulting from land-disturbing activities, Loudoun County adopts the minimum technical criteria for regulated land-disturbing activities of the Regulations (Part II B, 9VAC25-870-10 et seq.) as set forth in the Facilities Standards Manual. All land-disturbing activities regulated pursuant to this Ordinance that obtain a VSMP General Permit on or after July 1, 2014, shall be conducted in accordance with the Facilities Standards Manual, except as provided for in Subsection D. of this Section. These requirements of the Facilities Standards Manual criteria shall address the minimum technical requirements of the Regulations (Part II B, 9VAC25-870-10 et seq.) by reference or inclusion and may also include the following:

1. Additional supporting information, methodologies and guidance related to the technical criteria; and
 2. More stringent technical criteria enabled by this Ordinance.
- B. The Administrator may allow the operator to use offsite options to meet phosphorus nutrient reductions as set forth in 9VAC25-870-69.A.
- C. Notwithstanding subsection B., an operator shall be allowed to utilize offsite options to meet phosphorus reductions as set forth in 9VAC25-870-69.B.
- D. Technical Criteria – Grandfathering. *[language based on revisions to 9VAC25-870-48 approved by the State Water Control Board on December 17, 2013, and amendments discussed during the January 15, 2014, Facilities Standards Manual Public Review Committee Meeting, subject to change until adoption by the Board of Supervisors]*
1. Any land-disturbing activity shall be considered grandfathered by the Administrator and shall be subject to the Part II C technical criteria of this Ordinance provided:
 - (i) A proffered plan of development, Special Exception, preliminary plat of subdivision, record plat, construction plans and profiles, site plan, or any document determined by the locality to be the equivalent thereto (i) was approved prior to July 1, 2012 (ii) provided a layout as defined in 9VAC25-870-10, (iii) will comply with the Part IIC technical criteria of this Ordinance, 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;
 - (ii) A VSMP General Permit has not been issued prior to July 1, 2014; and
 - (iii) Land disturbance did not commence prior to July 1, 2014.
 2. Local, state, and federal projects shall be considered grandfathered by the Administrator and shall be subject to the Part II C technical criteria of this Ordinance provided:
 - (i) There has been an obligation of local, state, or federal funding, in whole or in part, prior to July 1, 2012, or

- (ii) The Department has approved a stormwater management plan prior to July 1, 2012,
 - (iii) A VSMP General Permit has not been issued prior to July 1, 2014; and
 - (iv) Land disturbance did not commence prior to July 1, 2014
3. Land disturbing activities grandfathered under subsections 1 and 2, shall remain subject to the Part II C technical criteria 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 State Water Control Board.
 4. In cases where governmental bonding or public debt financing has been issued for a project prior to July 1, 2012, such project shall be subject to the technical requirements of the Part II C technical criteria.
 5. Land disturbing activities that obtain a VSMP General Permit or commence land disturbance prior to July 1, 2014 shall be conducted in accordance with the Part II C technical criteria. 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 State Water Control Board.

E. Technical Criteria – Exceptions.

1. The Administrator may grant exceptions to the technical requirements of Section 1096.01(d)(6)A of this Ordinance or the Part II C technical criteria, provided that (i) the exception is the minimum necessary to afford relief, (ii) reasonable and appropriate conditions are imposed so that the intent of the Act, the Regulations, and this Ordinance are preserved, (iii) granting the exception will not confer any special privileges that are denied in other similar circumstances, and (iv) the exception request is not based upon conditions or circumstances that are self-imposed or self-created. Economic hardship alone is not sufficient reason to grant an exception from the requirements of this Ordinance.
2. Exceptions to the requirement that the land-disturbing activity obtain required VSMP Authority Permit shall not be granted by the Administrator.
3. Exceptions to requirements for phosphorus reductions shall not be allowed unless offsite options otherwise permitted pursuant to

9VAC25-870-69 and Section 1096.01(d)(6) of this Ordinance have been considered and found not available.

F. BMPs

1. The Administrator shall not approve the use of a BMP that is not listed on the Virginia Stormwater BMP Clearinghouse Website.
2. The Administrator may preclude the onsite use of the of a BMP listed on the Virginia Stormwater BMP Clearinghouse website, or require more stringent conditions upon its use, for a specific land-disturbing project based on a review of the stormwater management plan and project site conditions. Such limitations shall be based on site-specific concerns.
 - (i) Any project or site-specific determination purportedly authorized pursuant to this subsection may be appealed to the Department and the Department shall issue a written determination regarding compliance with this section to the requesting party within 90 days of submission. Any such determination, or a failure by the Department to make any such determination within the 90-day period, may be appealed to the State Board.
3. The Administrator may uniformly preclude jurisdiction-wide or otherwise limit geographically the use of a BMP listed on the Virginia Stormwater BMP Clearinghouse website, or apply more stringent conditions to the use of such BMP in accordance with Section 62.1-44.15:33 of the Code of Virginia.

G. Nothing in this Section shall preclude an operator from constructing to a more stringent standard at their discretion.

(7) Monitoring and Inspections During Construction

- A. The Administrator or any duly authorized agent of the Administrator shall inspect the land-disturbing activity during construction for:
 1. Compliance with the approved erosion and sediment control plan;
 2. Compliance with the approved stormwater management plan;
 3. Development, updating, and implementation of a pollution prevention plan; and
 4. Development and implementation of any additional control measures necessary to address a TMDL.

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

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

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

(e) Compliance with County Design Standards: In addition to the technical criteria for regulated land disturbing activities in Section 1096.01(d)(6)A, all new development and redevelopment, which includes stormwater infrastructure, shall comply with the Facilities Standards Manual.

(Ord. 03-15. Passed 10-20-03; Ord. 09-07. Passed 2-9-09.)

1096.02 MAINTENANCE OF THE STORMWATER MANAGEMENT SYSTEM.

It is the intent of this section to provide for the maintenance and repair of the County's stormwater management system to its original design capability.

~~(a) Compliance with County Design Standards. All new development and redevelopment, which includes stormwater infrastructure for water quality and quantity management, shall comply with the water quality and quantity standards of the latest edition of the Facilities Standards Manual.~~

(a) Easements.

(1) All stormwater infrastructure hereafter created shall be located within an appropriate easement in accordance with the Facilities Standards Manual. The deed for such easement shall set forth the long-term responsibility for and maintenance of permanent stormwater management facilities and shall be recorded in the local land records prior to VSMP General Permit termination or earlier as required by the Administrator and shall at a minimum:

A. Be submitted to the 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 Administrator; and

E. Be enforceable by all appropriate governmental parties.

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

(b) Post-Construction Inspection and Maintenance of the Stormwater Management System.

(1) Except as stated in this subparagraph, stormwater infrastructure heretofore or hereafter constructed within appropriately dedicated stormwater easements outside of Virginia Department of Transportation maintained rights-of-way, Dulles International Airport property and rights-of-way, Dulles Greenway property and rights-of-way, and the County's incorporated towns, shall be inspected and maintained by the County to its original design capability. The Administrator shall inspect such stormwater infrastructure at least once every five (5) years.

A. Notwithstanding, responsibility for the inspection, maintenance, repair, and replacement of stormwater facilities and infrastructure heretofore or hereafter constructed and associated with wet ponds/lakes that have uses in addition to stormwater management, as determined by the Administrator, shall remain with the property owner unless, on a case-by-case basis, the County, at its sole discretion, assumes certain inspection and maintenance responsibilities detailed in a stormwater maintenance agreement between the property owner and the County.

B. Notwithstanding, responsibility for maintenance, repair, and replacement of stormwater facilities and infrastructure

1. Associated with manufactured filtration devices and systems or other structural or non-structural stormwater infrastructure not specifically listed in the definition of "Stormwater management system" in Section 1096.01(c)~~(10)~~, and

2. Constructed pursuant to construction plans, site plans, or preliminary subdivision plats depicting the proposed stormwater facilities and infrastructure and approved hereafter,

shall remain with the property owner, and such owner responsibility shall be guaranteed by a Facilities Maintenance Performance Agreement executed by the property owner. The responsibility for the inspection of such facilities and infrastructure shall also remain with the property owner, unless the County has assumed inspection responsibilities under the Facilities Maintenance Performance Agreement. To secure the performance of such Facilities Maintenance Performance Agreement, the property owner shall furnish to the governing body a financial guarantee in the form of a cash escrow, corporate surety bond, or a bank or savings institution's irrevocable letter of credit, which complies with the criteria for acceptable forms of surety or security as specified in the bonding policy set forth in Chapter 8 of the Facilities Standards Manual, with surety satisfactory to the Administrator as to the surety, the amount and the form, in an amount sufficient for and conditioned upon the construction, repair and maintenance of such stormwater facilities and infrastructure in accordance with this ~~Chapter 1096~~Ordinance. On a case-by-case basis, the County, at its sole discretion, may assume certain maintenance responsibilities detailed in a stormwater maintenance agreement between the property owner and the County.

C. Notwithstanding, for stormwater management facilities designed to treat stormwater runoff primarily from an individual residential lot on which they are located for which the Administrator has determined that no easement is required pursuant to Section 1096.02(a)(2) above, responsibility for the inspection, maintenance, repair, and replacement of such stormwater facilities shall remain with the property owner.

~~C~~D. Where the responsibility for the inspection and maintenance of the stormwater infrastructure in (b)(1)A., B., and/or C. above remains with the property owner, such infrastructure shall be maintained to its original design capability, and the property owner shall provide a maintenance plan acceptable to the County and proof of compliance by submitting to the County an ~~annual~~inspection report at least once every five (5) years, prepared by ~~an engineer registered in the Commonwealth of Virginia~~a person who is licensed as a professional engineer, architect, landscape architect, or land surveyor pursuant to Article 1 (§ 54.1-400 et seq.) of Chapter 4 of Title 54.1; a person who works under the direction and oversight of the licensed professional engineer, architect, landscape architect, or land surveyor; or a person who holds an appropriate certificate of competence from the State Board, detailing the condition of the infrastructure and certifying its ability to meet its original design capability or allow the County to inspect the stormwater infrastructure. If any

deficiencies are reported in the ~~engineering inspection~~ report, or are found in the course of a County inspection, the property owner shall be deemed to be in violation of this ~~chapter~~Ordinance and shall be subject to the provisions of Section 1096.04 in addition to the obligations of the owner and the enforcement rights of the County provided in the Facilities Maintenance Performance Agreement and financial guarantee referenced in subparagraph B. hereof.

- ~~DE~~. Nothing herein shall relieve any property owner or developer from the obligations of valid proffers requiring the maintenance of storm drainage or stormwater management facilities except to the extent that the County assumes maintenance thereof pursuant to this ~~chapter~~Ordinance.
- (2) Existing stormwater infrastructure constructed without a stormwater easement dedicated to Loudoun County ~~must~~shall be maintained to its original design capability by the property owner. The property owner shall provide proof of compliance by submitting to the County an ~~annual~~ inspection report at least once every five (5) years, prepared by ~~an engineer registered in the Commonwealth of Virginia~~ a person who is licensed as a professional engineer, architect, landscape architect, or land surveyor pursuant to Article 1 (§ 54.1-400 et seq.) of Chapter 4 of Title 54.1; a person who works under the direction and oversight of the licensed professional engineer, architect, landscape architect, or land surveyor; or a person who holds an appropriate certificate of competence from the State Board, detailing the condition of the infrastructure and certifying its ability to meet its original design capability or allow the County to inspect the stormwater infrastructure. If any deficiencies are detailed in the ~~engineering inspection~~ report, or are found in the course of a County inspection, the property owner shall be deemed to be in violation of this ~~chapter~~Ordinance, subject to the provisions of Section 1096.04.
- (3) The County at its sole discretion may, following a request from the property owner, assume inspection and maintenance responsibility on a case-by-case basis for properties containing existing stormwater infrastructure constructed without a stormwater easement dedicated to Loudoun County, subject to the dedication of an easement for inspection and maintenance purposes acceptable to the County.
- (c) Failure to Inspect or Maintain Private Stormwater Management Facilities. Any property owner whose property includes stormwater infrastructure for which the County has not assumed inspection or maintenance responsibilities that fails to submit evidence of proper inspection or maintenance of said facility as ~~outlined~~required above, or denies the County access to inspect said facility, shall be considered in violation of this ~~chapter~~Ordinance, subject to the provisions of Section 1096.04.

(Ord. 03-15. Passed 10-20-03; Ord. 09-07. Passed 2-9-09.)

1096.03 DISCHARGES TO THE STORMWATER MANAGEMENT SYSTEM.

It is the intent of this section to prohibit the entry into public storm drainage facilities of any

substance, whether solid or liquid, other than stormwater.

(a) Discharges to the Stormwater Management System.

- (1) It shall be unlawful to:
 - A. Cause or allow illicit discharges to the county's stormwater management system;
 - B. Discharge materials other than stormwater to the stormwater management system by spills, dumping or disposal without a VPDES permit;
 - C. Cause or allow industrial discharges into the stormwater management system without a VPDES permit; or
 - D. Violate any condition or provision of this ~~chapter~~[Ordinance](#) or any permit granted for stormwater discharges.

- (2) Subject to the provisions of Section 1096.03(a)(3) of this section, the following activities shall not be unlawful as illicit discharges under this ~~chapter~~[Ordinance](#):
 - A. Water line flushing;
 - B. Landscape irrigation;
 - C. Diverting stream flows or raising groundwater;
 - D. Infiltration of uncontaminated groundwater;
 - E. Pumping of uncontaminated groundwater from potable water sources, foundation drains, irrigation waters, springs or water from crawl spaces or footing drains;
 - F. Flows from riparian habitats and wetlands;
 - G. Air conditioning condensate;
 - H. Lawn watering;
 - I. Individual car washing on residential properties;
 - J. Dechlorinated swimming pool discharges;
 - K. Street washing; and
 - L. Discharges or flows from fire fighting activities.

- (3) If any of the activities listed in Section 1096.03(a)(2) of this section are found by the County to be sources of pollutants to waters of the Commonwealth of Virginia, the Director shall so notify the person performing such activities and shall order that such activities be stopped or conducted in such manner as to avoid the discharge of pollutants into such waters. The failure to comply with any such order shall constitute a violation of this ~~chapter~~[Ordinance](#).

(b) Inspections and Sampling.

- (1) The [Administrator](#) shall have authority to enter onto public and private property to carry out all inspection, surveillance and sampling procedures necessary to determine compliance and noncompliance with the conditions of the County's VPDES permit, and this ~~chapter~~[Ordinance](#), including the prohibition of illicit discharges to the stormwater management system. The [Administrator](#) may sample stormwater outfalls or other components of the stormwater management system as may be appropriate in the administration and enforcement of this

~~chapter~~Ordinance.

- (2) If an illicit discharge as defined herein is detected, it shall be a violation of this ~~chapter~~Ordinance and shall be subject to the provisions of Section 1096.04.
- (3) If deemed necessary to prevent future occurrences of illicit discharge, the Administrator shall have the authority to require a stormwater pollution prevention plan from any person whose discharges cause, or may cause, a violation of this ~~chapter~~Ordinance.

(Ord. 03-15. Passed 10-20-03; Ord. 09-07. Passed 2-9-09.)

1096.04 ~~VIOLATIONS~~ENFORCEMENT.

(a) Right of entry.

- (1) 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 enforcement of this Ordinance.
- (2) In accordance with a performance bond, the Administrator or any duly authorized agent of the Administrator may also enter any establishment or upon any property, public or private, for the purpose of initiating or maintaining appropriate actions that are required by the VSMP Authority Permit conditions associated with a land-disturbing activity when a permittee, after proper notice, has failed to take acceptable action within the time specified.

- (ab) Notice of Violations. ~~—If the County determines that there is an illicit discharge, a failure to maintain a private stormwater management facility in conformance with this chapter, or any other violation of this chapter, notice shall be served upon the property owner of record by registered or certified mail to the address of the property owner of record. The notice shall specify the measures, as appropriate, needed to come into full compliance with this chapter and shall specify the time within which such measures shall be completed. Failure to comply within the time specified shall be deemed to be a violation of this chapter subject to the penalties outlined herein.~~If the Administrator determines that there is an illicit discharge or a failure to maintain a private stormwater management facility in conformance with this Ordinance, or determines that there is a failure to comply with the VSMP Authority Permit conditions, an unauthorized discharge, or any other violation of this Ordinance, notice shall be served upon the permittee or person responsible for carrying out the VSMP Authority 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 VSMP Authority 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 VSMP Authority Permit conditions and shall specify the time within which such measures shall be completed. Upon failure to comply within the time specified, a stop work order may be issued in accordance with Subsection (2) or the VSMP Authority 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 VSMP Authority Permit to cease all land-disturbing activities until the violation of the VSMP Authority Permit has ceased, or an approved plan and required VSMP Authority Permits are obtained, and specified corrective measures have been completed.
- (3) Such orders shall become effective upon service on the person by certified mail, return receipt requested, sent to the last known address of the person as shown on the County's current real estate tax assessment records, or by personal delivery by an agent of the Administrator. However, if the Administrator finds that any such violation is grossly affecting or presents an imminent and substantial danger of causing harmful erosion of lands or sediment deposition in waters within the watersheds of the Commonwealth or otherwise substantially impacting water quality, it may issue, without advance notice or hearing, an emergency order directing such person to cease immediately all land-disturbing activities on the site and shall provide an opportunity for a hearing, after reasonable notice as to the time and place thereof, to such person, to affirm, modify, amend, or cancel such emergency order. If a person who has been issued an order is not complying with the terms thereof, the Administrator may institute a proceeding for an injunction, mandamus, or other appropriate remedy in accordance with Section 1096.04(b).

(bc) Enforcement of ~~Chapter~~ Ordinance; Penalty.

- (1) Criminal penalty. ~~Violation of the provisions of this chapter shall constitute a misdemeanor. Each day that a continuing violation of this chapter is maintained or permitted to remain shall constitute a separate offense. Violators shall be subject to a fine not exceeding one thousand dollars (\$1,000.00) or up to 30 days imprisonment for each violation, or both.~~ Notwithstanding any other civil or equitable remedy provided by this Section or by law, any person who willfully or negligently violates any provision of this Ordinance, any order of the Administrator, any condition of a VSMP Authority 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.
- (2) Civil penalty.

- A. Any person who, intentionally or otherwise, commits any of the acts prohibited by Section 1096.03(a), fails to maintain a private stormwater management facility in conformance with this ~~chapter~~Ordinance, or is otherwise in violation of this ~~chapter~~Ordinance, shall be liable to the County for all costs of maintenance of such facility, and shall also be liable to the County for all costs of testing, containment, cleanup, abatement, removal and disposal of any substance unlawfully discharged into the stormwater management system.
- B. Without limiting the remedies that may be obtained under this section, ~~the County may bring a civil action against any person for violation of this chapter. The action may seek the imposition of a civil penalty of not more than two thousand dollars (\$2,000.00) against the person for each violation. Any person who violates any provision of this Ordinance or who fails, neglects, or refuses to comply with any order of the Administrator, shall be subject to a civil penalty not to exceed \$32,500 for each violation within the discretion of the court. Each day of violation of each requirement shall constitute a separate offense.~~
1. Violations for which a penalty may be imposed under this Subsection shall include but not be limited to the following:
 - (i) No VSMP General Permit registration;
 - (ii) No SWPPP;
 - (iii) Incomplete SWPPP;
 - (iv) SWPPP not available for review;
 - (v) No approved erosion and sediment control plan;
 - (vi) Failure to install stormwater BMPs or erosion and sediment controls;
 - (vii) Stormwater BMPs or erosion and sediment controls improperly installed or maintained;
 - (viii) Operational deficiencies;
 - (ix) Failure to conduct required inspections;
 - (x) Incomplete, improper, or missed inspections; and
 - (xi) Discharges not in compliance with the requirements of Section 9VAC25-880-70 of the VSMP General Permit.
 2. The Administrator may issue a summons for collection of the civil penalty and the action may be prosecuted in the appropriate court.
 3. In imposing a civil penalty pursuant to this Subsection, the court may consider the degree of harm caused by the violation and also the economic benefit to the violator from noncompliance.
 4. Any civil penalties assessed by a court as a result of a summons issued by the Administrator shall be paid into the treasury of Loudoun County to be used for the purpose of minimizing, preventing, managing, or mitigating pollution of the waters of Loudoun County

and abating environmental pollution therein in such manner as the court may, by order, direct.

- C. The County may petition the Circuit Court to enjoin a violation or a threatened violation of this ~~chapter~~Ordinance without the necessity of showing that an adequate remedy at law does not exist.
- D. In lieu of Section 1096.04(b)(2)B., above, with the consent of any person who has violated or failed, neglected or refused to obey the provisions of this ~~chapter~~Ordinance, the County may provide, in an order issued by the Administrator against such person, for the payment of civil charges for violations, in specific sums, not to exceed the limit specified in Section 1096.04(b)(2)B., above. Such civil charges shall be in lieu of any appropriate civil penalty, which could be imposed under Section 1096.04(b)(2)B.
- E. Remedies cumulative. The remedies set forth in this section shall be cumulative, not exclusive, and it shall not be a defense to any action that one or more of the remedies set forth in this section has been sought or granted.

(Ord. 2-21. Passed 6-17-02; Ord. 09-07. Passed 2-9-09.)

1096.05 HEARING AND APPEALS.

(a) Right to Hearing.

- (1) Any permit applicant, permittee, or person subject to the requirements of this Ordinance aggrieved by any action of the Administrator ~~taken without formal hearing, or by inaction of the Administrator,~~ in the administration or enforcement of Section 1096.01 or Section 1096.02, of this Ordinance, or a final decision of the Director in the administration of the Technical Criteria promulgated pursuant Section 1096.01(d)(6) of this Ordinance, may demand in writing a formal hearing by the [Board of Supervisors-designated appeals body], provided ~~that such written demand a petition requesting such hearing~~ is filed with the Administrator within thirty (30) days ~~after notice~~ of such action ~~is given~~ by the Administrator.

~~A. Exception. Any permit applicant, permittee, or person subject to the requirements of this Ordinance aggrieved by an interpretation or decision made by the Administrator in the administration of the Technical Criteria promulgated pursuant Section 1096.01(d)(6) of this Ordinance may appeal such interpretation or decision in accordance with Section 1.200.D. of the FSM.~~

- (2) The hearing held under this Section shall be conducted by a [Board of Supervisors-designated appeals body] that shall consist of at least three (3) members. Such an appeals body shall hear the matter within thirty (30) days

after the ~~written demand petition requesting~~ for a hearing is filed with the Administrator.

~~(3) A verbatim record of the proceedings of such hearings shall be taken and filed with the Administrator. Depositions may be taken and read as in actions at law.~~

~~(4) The [Board designated appeals body] 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.~~

(b) Appeal to Circuit Court.

(1) Any permit applicant, permittee, or person subject to the requirements of this Ordinance aggrieved by the decision of the [Board-designated appeals body], any person subject to the requirements of this Ordinance aggrieved by the decision of the Administrator in an appeal taken pursuant to Section 1096.05(a)(1)A., or any person subject to the requirements of this Ordinance aggrieved by any action of the Administrator in the administration or enforcement of Section 1096.03 of this Ordinance, may within thirty (30) days of such decision or action, as applicable, appeal the decision to the Circuit Court.

1096.06 FEES.

(a) Fees to cover costs associated with implementation of a VSMP related to land disturbing activities and issuance of VSMP General Permit coverage and VSMP Authority Permits shall be established by the Board of Supervisors.

1096.07 CONFLICTS.

(a) Whenever any provision of this Ordinance imposes a greater requirement or a higher standard than is required in any State or Federal statute or other County ordinance or regulation, the provision of this Ordinance shall govern. Whenever any provision of any State or Federal statute or other County ordinance or regulation imposes a greater requirement or a higher standard than is required by this Ordinance, the provision of such State or Federal statute or other County ordinance or regulation shall govern.