

1 **Project 3931 - none**

2 **STATE WATER CONTROL BOARD**

3 **Chapter 870 Amendments for Fees and Grandfathering**

4

5 **9VAC25-870-47. Applicability of other laws and regulations; time limits on applicability of**
6 **approved design criteria.**

7 A. Nothing in this chapter shall be construed as limiting the applicability of other laws and
8 regulations, including, but not limited to, the CWA, Virginia Stormwater Management Act,
9 Virginia Erosion and Sediment Control Law, and the Chesapeake Bay Preservation Act, except
10 as provided in § 62.1-44.15:27 K of the Code of Virginia, and all applicable regulations adopted
11 in accordance with those laws, or the rights of other federal agencies, state agencies, or local
12 governments to impose more stringent technical criteria or other requirements as allowed by
13 law.

14 ~~B. Beginning with the General Permit for Discharges of Stormwater from Construction~~
15 ~~Activities issued July 1, 2009, all land-disturbing activities that receive general permit coverage~~
16 ~~shall be conducted in accordance with the Part II B or Part II C technical criteria in place at the~~
17 ~~time of initial state permit coverage and shall remain subject to those criteria for an additional~~
18 ~~two permit cycles, except as provided for in subsection D of 9VAC25-870-48. After the two~~
19 ~~additional state permit cycles have passed, or should state permit coverage not be maintained,~~
20 ~~portions of the project not under construction shall become subject to any new technical criteria~~
21 ~~adopted since original state permit coverage was issued. For land-disturbing projects issued~~
22 ~~coverage under the July 1, 2009 state permit and for which coverage was maintained, such~~
23 ~~projects shall remain subject to the technical criteria of Part II C for an additional two state~~
24 ~~permits. Land-disturbing activities that obtain an initial state permit or commence land~~
25 ~~disturbance prior to July 1, 2014 shall be conducted in accordance with the Part II C technical~~

1 criteria of this chapter. Such projects shall remain subject to the Part II C technical criteria for
2 two additional state permit cycles. After such time, portions of the project not under construction
3 shall become subject to any new technical criteria adopted by the board.

4 C. Land-disturbing activities that obtain an initial state permit on or after July 1, 2014 shall
5 be conducted in accordance with the Part II B technical criteria of this chapter, except as
6 provided for in section 48 of this chapter. Land-disturbing activities conducted in accordance
7 with the Part II B technical criteria shall remain subject to the Part II B technical criteria for two
8 additional state permit cycles. After such time, portions of the project not under construction
9 shall become subject to any new technical criteria adopted by the board.

10 D. Nothing in this section shall preclude an operator from constructing to a more stringent
11 standard at his discretion.

12 **9VAC25-870-48. Grandfathering.**

13 ~~A. Until June 30, 2019, any Any land-disturbing activity for which a currently valid proffered~~
14 ~~or conditional zoning plan, preliminary or final subdivision plat, preliminary or final site plan or~~
15 ~~zoning with a plan of development, or any document determined by the locality as being~~
16 ~~equivalent thereto, was approved by a locality prior to July 1, 2012, and for which no coverage~~
17 ~~under the General Permit for Discharges of Stormwater from Construction Activities has been~~
18 ~~issued prior to July 1, 2014, shall be considered grandfathered by the VSMP authority and shall~~
19 ~~not be subject to the technical criteria of Part II B, but shall be subject to the technical criteria of~~
20 ~~Part II C for those areas that were included in the approval, provided that the VSMP authority~~
21 ~~finds that such proffered or conditional zoning plan, preliminary or final subdivision plat,~~
22 ~~preliminary or final site plan or zoning with a plan of development, or any document determined~~
23 ~~by the locality as being equivalent thereto, (i) provides for a layout and (ii) the resulting land-~~
24 ~~disturbing activity will be compliant with the requirements of Part II C. In the event that the~~
25 ~~locality approved document is subsequently modified or amended in a manner such that there is~~

1 ~~no increase over the previously approved plat or plan in the amount of phosphorus leaving each~~
2 ~~point of discharge of the land disturbing activity through stormwater runoff, and such that there~~
3 ~~is no increase over the previously approved plat or plan in the volume or rate of runoff, the~~
4 ~~grandfathering shall continue as before. shall be considered grandfathered by the VSMP~~
5 authority and shall be subject to the Part II C technical criteria of this chapter provided:

6 1. A proffered conditional zoning plan, proffered plan of development, preliminary or final
7 subdivision plat, preliminary or final site plan, or any document determined by the locality
8 to be equivalent thereto (i) was approved by the locality prior to July 1, 2012, (ii)
9 provided a layout as defined in 9VAC25-870-10, (iii) will comply with the Part II C
10 technical criteria of this chapter, and (iv) has not been subsequently modified or
11 amended in a manner resulting in an increase in the amount of phosphorus leaving each
12 point of discharge or the volume or rate of runoff;

13 2. A state permit has not been issued prior to July 1, 2014; and

14 3. Land disturbance did not commence prior to July 1, 2014.

15 B. ~~Until June 30, 2019, for locality~~Locality, state, and federal projects ~~for which there shall~~
16 be considered grandfathered by the VSMP authority and shall be subject to the Part II C
17 technical criteria of this chapter provided:

18 1. There has been an obligation of locality, state, or federal funding, in whole or in part,
19 prior to July 1, 2012, or ~~for which~~ the department has approved a stormwater
20 management plan prior to July 1, 2012, ~~such projects shall be considered grandfathered~~
21 ~~by the VSMP authority and shall not be subject to the technical criteria of Part II B, but~~
22 ~~shall be subject to the technical criteria of Part II C for those areas that were included in~~
23 ~~the approval.~~

24 2. A state permit has not been issued prior to July 1, 2014; and

1 3. Land disturbance did not commence prior to July 1, 2014.

2 C. ~~For land-disturbing~~ Land disturbing activities grandfathered under subsections A and B of
3 this section, ~~construction must be completed by June 30, 2019, or~~ shall remain subject to the
4 Part II C technical criteria of this chapter for one additional state permit cycle. After such time,
5 portions of the project not under construction shall become subject to ~~the~~ any new technical
6 criteria of ~~Part II B~~ adopted by the board.

7 D. In cases where governmental bonding or public debt financing has been issued for a
8 project prior to July 1, 2012, such project shall be subject to the technical criteria of Part II C.

9 E. Nothing in this section shall preclude an operator from constructing to a more stringent
10 standard at his discretion.

11 **9VAC25-870-55. Stormwater management plans.**

12 A. A stormwater management plan shall be developed and submitted to the VSMP authority.
13 The stormwater management plan shall be implemented as approved or modified by the VSMP
14 authority and shall be developed in accordance with the following:

15 1. A stormwater management plan for a land-disturbing activity shall apply the
16 stormwater management technical criteria set forth in this part to the entire land-
17 disturbing activity. Individual lots in new residential, commercial, or industrial
18 developments shall not be considered separate land-disturbing activities.

19 2. A stormwater management plan shall consider all sources of surface runoff and all
20 sources of subsurface and groundwater flows converted to surface runoff.

21 B. A complete stormwater management plan shall include the following elements:

- 1 1. Information on the type of and location of stormwater discharges, information on the
2 features to which stormwater is being discharged including surface waters or karst
3 features if present, and predevelopment and postdevelopment drainage areas;
- 4 2. Contact information including the name, address, telephone number, and email
5 address of the owner and the tax reference number and parcel number of the property or
6 properties affected;
- 7 3. A narrative that includes a description of current site conditions and final site
8 conditions or if allowed by the VSMP authority, the information provided and
9 documented during the review process that addresses the current and final site
10 conditions;
- 11 4. A general description of the proposed stormwater management facilities and the
12 mechanism through which the facilities will be operated and maintained after
13 construction is complete;
- 14 5. Information on the proposed stormwater management facilities, including (i) the type
15 of facilities; (ii) location, including geographic coordinates; (iii) acres treated; and (iv) the
16 surface waters or karst features into which the facility will discharge;
- 17 6. Hydrologic and hydraulic computations, including runoff characteristics;
- 18 7. Documentation and calculations verifying compliance with the water quality and
19 quantity requirements of these regulations;
- 20 8. A map or maps of the site that depicts the topography of the site and includes:
 - 21 a. All contributing drainage areas;
 - 22 b. Existing streams, ponds, culverts, ditches, wetlands, other water bodies, and
23 floodplains;

- 1 c. Soil types, geologic formations if karst features are present in the area, forest
2 cover, and other vegetative areas;
- 3 d. Current land use including existing structures, roads, and locations of known
4 utilities and easements;
- 5 e. Sufficient information on adjoining parcels to assess the impacts of stormwater
6 from the site on these parcels;
- 7 f. The limits of clearing and grading, and the proposed drainage patterns on the site;
- 8 g. Proposed buildings, roads, parking areas, utilities, and stormwater management
9 facilities; and
- 10 h. Proposed land use with tabulation of the percentage of surface area to be adapted
11 to various uses, including but not limited to planned locations of utilities, roads, and
12 easements;
- 13 9. If an operator intends to meet the requirements established in 9VAC25-870-63 or
14 9VAC25-870-66 through the use of off-site compliance options, where applicable, then a
15 letter of availability from the off-site provider must be included; and
- 16 10. If payment of a fee is required with the stormwater management plan submission by
17 the VSMP authority, the fee and the required fee form in accordance with Part XIII must
18 have been submitted.
- 19 C. Elements of the stormwater management plans that include activities regulated under
20 Chapter 4 (§ 54.1-400 et seq.) of Title 54.1 of the Code of Virginia shall be appropriately sealed
21 and signed by a professional registered in the Commonwealth of Virginia pursuant to Article 1
22 (§ 54.1-400 et seq.) of Chapter 4 of Title 54.1 of the Code of Virginia.

1 D. A construction record drawing for permanent stormwater management facilities shall be
2 submitted to the VSMP authority in accordance with 9VAC25-870-108 and 9VAC25-870-112.
3 The construction record drawing shall be appropriately sealed and signed by a professional
4 registered in the Commonwealth of Virginia, certifying that the stormwater management facilities
5 have been constructed in accordance with the approved plan.

6 **9VAC25-870-760. Method of payment.**

7 A. Fees shall be collected utilizing, where practicable, an online payment system. Until such
8 system is operational, fees, as applicable, shall be, at the discretion of the department,
9 submitted electronically or be paid by check, draft or postal money order payable to:

10 1. The Treasurer of Virginia, for a MS4 individual or general permit or for a coverage
11 issued by the department under the General Permit for Discharges of Stormwater from
12 Construction Activities or Individual Permit for Discharges of Stormwater from
13 Construction Activities, and must be in U.S. currency, except that agencies and
14 institutions of the Commonwealth of Virginia may submit Interagency Transfers for the
15 amount of the fee. The Department of Environmental Quality may provide a means to
16 pay fees electronically. Fees not submitted electronically shall be sent to the Virginia
17 Department of Environmental Quality.

18 2. The VSMP authority, for VSMP operational costs of the VSMP authority under the
19 General Permit for Discharges of Stormwater From Construction Activities, and must be
20 in U.S. currency.

21 B. When fees are collected electronically pursuant to this part through credit cards, business
22 transaction costs associated with processing such payments may be additionally assessed.

23 C. Nothing in this Part shall prohibit the department and a VSMP authority from entering into
24 an agreement whereby the total fee to be paid by the applicant for coverage under the General

1 Permit for Discharges of Stormwater from Construction Activities is payable to the VSMP
2 authority and the VSMP authority transmits the department portion set forth in 9VAC25-870-820
3 to the department on a schedule set forth by the department.

4 D. Required information for state permits or state permit coverage: All applicants, unless
5 otherwise specified by the department, shall submit the following information along with the fee
6 payment or utilize the department Permit Application Fee Form:

7 1. Applicant name, address and daytime phone number.

8 ~~2. Applicant Federal Identification Number (FIN), if applicable.~~

9 ~~3.2.~~ The name of the facility/activity, and the facility/activity location.

10 ~~4.3.~~ The type of state permit applied for.

11 ~~5.4.~~ Whether the application is for a new state permit issuance, state permit reissuance,
12 state permit maintenance, or state permit modification.

13 ~~6.5.~~ The amount of fee submitted.

14 ~~7.6.~~ The existing state permit number, if applicable.

15 ~~8.7~~ Other information as required by the VSMP authority.

16 **9VAC25-870-820. Fees for an individual permit or coverage under the General Permit for**
17 **Discharges of Stormwater from Construction Activities.**

18 The following fees apply, until June 30, 2014, to coverage under the General Permit for
19 Discharges of Stormwater from Construction Activities issued by the department prior to a
20 VSMP authority being approved by the board in the area where the applicable land-disturbing
21 activity is located, or where the department has issued an individual permit or coverage under
22 the General Permit for Discharges of Stormwater from Construction Activities for a state or
23 federal agency ~~for which it has approved annual standards and specifications.~~

General / Stormwater Management - Phase I Land Clearing ("Large" Construction Activity - Sites or common plans of development equal to or greater than five acres)	\$750
General / Stormwater Management - Phase II Land Clearing ("Small" Construction Activity - Sites or common plans of development equal to or greater than one acre and less than five acres)	\$450
General / Stormwater Management - Small Construction Activity/Land Clearing (Sites within designated areas of Chesapeake Bay Act localities with land disturbance acreage equal to or greater than 2,500 square feet and less than one acre) (Fee valid until July 1, 2014)	\$200
<u>Individual Permit for Discharges of Stormwater from Construction Activities</u>	<u>\$15,000</u>

1 The following total fees to be paid by applicant apply to (i) any operator seeking coverage
2 under ~~the~~ a July 1, 2014 General Permit for Discharges of Stormwater from Construction
3 Activities ~~for~~ or (ii) on or after July 1, 2014 to any operator seeking coverage under a General
4 Permit for Discharges of Stormwater from Construction Activities, a state or federal agency that
5 does not file annual standards and specifications or an individual permit issued by the board ~~or~~
6 coverage under the ~~General Permit for Discharges of Stormwater from Construction Activities~~
7 issued by the board. ~~For~~ On and after approval by the board of a VSMP authority for coverage
8 under the General Permit for Discharges of Stormwater from Construction Activities, no more
9 than 50% of the ~~base~~ total fee to be paid by applicant set out in this part shall be due at the time
10 that a stormwater management plan or an initial stormwater management plan is submitted for
11 review in accordance with 9VAC25-870-108. The remaining ~~base~~ total fee to be paid by
12 applicant balance shall be due prior to the issuance of coverage under the General Permit for
13 Discharges of Stormwater from Construction Activities.

14 When a site or sites are purchased for development within a previously permitted common
15 plan of development or sale, the applicant shall be subject to fees ("total fee to be paid by

- 1 applicant" column) in accordance with the disturbed acreage of their site or sites according to
- 2 the following table.

Fee type	Total fee to be paid by applicant (includes both VSMP authority and department portions where applicable)	Department portion of "total fee to be paid by applicant" (based on 28% of total fee paid *)
Chesapeake Bay Preservation Act Land-Disturbing Activity (not subject to General Permit coverage; sites within designated areas of Chesapeake Bay Act localities with land-disturbance acreage equal to or greater than 2,500 square feet and less than 1 acre)	\$290	\$0
General / Stormwater Management - Small Construction Activity/Land Clearing (Areas within common plans of development or sale with land-disturbance acreage less than one acre)	\$290	\$81
General / Stormwater Management - Small Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than one acre and less than five acres)	\$2,700	\$756
General / Stormwater Management - Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than five acres and less than 10 acres)	\$3,400	\$952
General / Stormwater Management - Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than 10 acres and less than 50 acres)	\$4,500	\$1,260
General / Stormwater Management - Large Construction Activity/Land Clearing (Sites or areas within	\$6,100	\$1,708

common plans of development or sale with land-disturbance acreage equal to or greater than 50 acres and less than 100 acres)		
General / Stormwater Management - Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than 100 acres)	\$9,600	\$2,688
Individual Permit for Discharges of Stormwater from Construction Activities (This will be administered by the department)	\$15,000	\$15,000
* If the project is completely administered by the department such as may be the case for a state or federal project or projects covered by individual permits, the entire applicant fee shall be paid to the department.		

- 1 The following fees apply, on or after July 1, 2014 to coverage under the General Permit for
- 2 Discharges of Stormwater from Construction Activities issued by the board for a state or federal
- 3 agency that has annual standards and specifications approved by the board.

<u>General / Stormwater Management - Phase I Land Clearing ("Large" Construction Activity - Sites or common plans of development equal to or greater than five acres)</u>	<u>\$750</u>
<u>General / Stormwater Management - Phase II Land Clearing ("Small" Construction Activity - Sites or common plans of development equal to or greater than one acre and less than five acres)</u>	<u>\$450</u>

- 4 **9VAC25-870-825. Fees for the modification or transfer of individual permits or of**
- 5 **registration statements for the General Permit for Discharges of Stormwater from**
- 6 **Construction Activities.**

- 7 The following fees apply to modification or transfer of individual permits or of registration
- 8 statements for the General Permit for Discharges of Stormwater from Construction Activities
- 9 issued by the board. If the state permit modifications result in changes to stormwater
- 10 management plans that require additional review by the VSMP authority, such reviews shall be
- 11 subject to the fees set out in this section. The fee assessed shall be based on the total disturbed

1 acreage of the site. In addition to the state permit modification fee, modifications resulting in an
 2 increase in total disturbed acreage shall pay the difference in the initial state permit fee paid and
 3 the state permit fee that would have applied for the total disturbed acreage in 9VAC25-870-820.
 4 No modification or transfer fee shall be required until such board-approved programs exist.
 5 These fees shall only be effective when assessed by a VSMP authority, including the
 6 department when acting in that capacity, that has been approved by the board. No modification
 7 fee shall be required for the General Permit for Discharges of Stormwater from Construction
 8 Activities for a state or federal agency that is administering a project in accordance with
 9 approved annual standards and specifications but shall apply to all other state or federal agency
 10 projects.

General / Stormwater Management – Small Construction Activity/Land Clearing (Areas within common plans of development or sale with land disturbance acreage less than one acre)	\$20
General / Stormwater Management – Small Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land- disturbance acreage equal to or greater than one and less than five acres)	\$200
General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land- disturbance acreage equal to or greater than five acres and less than 10 acres)	\$250
General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land- disturbance acreage equal to or greater than 10 acres and less than 50 acres)	\$300
General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land- disturbance acreage equal to or greater than 50 acres and less than 100 acres)	\$450
General / Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land- disturbance acreage equal to or greater than 100 acres)	\$700
Individual Permit for Discharges of Stormwater from Construction Activities	\$5,000