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SENATE BILL NO. 289

Offered January 10, 2024

Prefiled January 9, 2024

A BILL to amend and reenact § 62.1-44.15:28, as it is currently effective and as it shall become effective, of the Code of Virginia, relating to stormwater management regulations; enterprise data center operations.

Patron—Roem

Referred to Committee on Agriculture, Conservation and Natural Resources

Be it enacted by the General Assembly of Virginia:

1. That § 62.1-44.15:28, as it is currently effective and as it shall become effective, of the Code of Virginia is amended and reenacted as follows:

§ 62.1-44.15:28. (Effective until July 1, 2024) Development of regulations.

A. The Board is authorized to adopt regulations that specify minimum technical criteria and administrative procedures for Virginia Stormwater Management Programs. The regulations shall:

1. Establish standards and procedures for administering a VSMP;

2. Establish minimum design criteria for measures to control nonpoint source pollution and localized flooding, and incorporate the stormwater management regulations adopted pursuant to the Erosion and Sediment Control Law (§ 62.1-44.15:51 et seq.), as they relate to the prevention of stream channel erosion. These criteria shall be periodically modified as required in order to reflect current engineering methods;

3. Require the provision of long-term responsibility for and maintenance of stormwater management control devices and other techniques specified to manage the quality and quantity of runoff;

4. Require as a minimum the inclusion in VSMPs of certain administrative procedures that include, but are not limited to, specifying the time period within which a VSMP authority shall grant land-disturbing activity approval, the conditions and processes under which approval shall be granted, the procedures for communicating disapproval, the conditions under which an approval may be changed, and requirements for inspection of approved projects;

5. Establish by regulations a statewide permit fee schedule to cover all costs associated with the implementation of a VSMP related to land-disturbing activities of one acre or greater. Such fee attributes include the costs associated with plan review, VSMP registration statement review, permit issuance, state-coverage verification, inspections, reporting, and compliance activities associated with the land-disturbing activities as well as program oversight costs. The fee schedule shall also include a provision for a reduced fee for land-disturbing activities between 2,500 square feet and up to one acre in Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq.) localities. The fee schedule shall be governed by the following:

a. The revenue generated from the statewide stormwater permit fee shall be collected utilizing, where practicable, an online payment system, and the Department's portion shall be remitted to the State Treasurer for deposit in the Virginia Stormwater Management Fund established pursuant to § 62.1-44.15:29. However, whenever the Board has approved a VSMP, no more than 30 percent of the total revenue generated by the statewide stormwater permit fees collected shall be remitted to the State Treasurer for deposit in the Virginia Stormwater Management Fund, with the balance going to the VSMP authority.

b. Fees collected pursuant to this section shall be in addition to any general fund appropriation made to the Department or other supporting revenue from a VSMP; however, the fees shall be set at a level sufficient for the Department and the VSMP to fully carry out their responsibilities under this article and its attendant regulations and local ordinances or standards and specifications where applicable. When establishing a VSMP, the VSMP authority shall assess the statewide fee schedule and shall have the authority to reduce or increase such fees, and to consolidate such fees with other program-related charges, but in no case shall such fee changes affect the amount established in the regulations as available to the Department for program oversight responsibilities pursuant to subdivision 5 a. A VSMP's portion of the fees shall be used solely to carry out the VSMP's responsibilities under this article and its attendant regulations, ordinances, or annual standards and specifications.

c. Until July 1, 2014, the fee for coverage under the General Permit for Discharges of Stormwater from Construction Activities issued by the Board, or where the Board has issued an individual permit or coverage under the General Permit for Discharges of Stormwater from Construction Activities for an entity for which it has approved annual standards and specifications, shall be \$750 for each large construction activity with sites or common plans of development equal to or greater than five acres and \$450 for each small construction activity with sites or common plans of development equal to or greater than one acre and less than five acres. On and after July 1, 2014, such fees shall only apply where coverage has been issued under the Board's General Permit for Discharges of Stormwater from Construction Activities to a state agency or federal entity

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59 for which it has approved annual standards and specifications. After establishment, such fees may be
60 modified in the future through regulatory actions.

61 d. Until July 1, 2014, the Department is authorized to assess a \$125 reinspection fee for each visit to a
62 project site that was necessary to check on the status of project site items noted to be in noncompliance and
63 documented as such on a prior project inspection.

64 e. In establishing the fee schedule under this subdivision, the Department shall ensure that the VSMP
65 authority portion of the statewide permit fee for coverage under the General Permit for Discharges of
66 Stormwater from Construction Activities for small construction activity involving a single family detached
67 residential structure with a site or area, within or outside a common plan of development or sale, that is equal
68 to or greater than one acre but less than five acres shall be no greater than the VSMP authority portion of the
69 fee for coverage of sites or areas with a land-disturbance acreage of less than one acre within a common plan
70 of development or sale.

71 f. When any fees are collected pursuant to this section by credit cards, business transaction costs
72 associated with processing such payments may be additionally assessed;

73 6. Establish statewide standards for stormwater management from land-disturbing activities of one acre or
74 greater, except as specified otherwise within this article, and allow for the consolidation in the permit of a
75 comprehensive approach to addressing stormwater management and erosion and sediment control, consistent
76 with the provisions of the Erosion and Sediment Control Law (§ 62.1-44.15:51 et seq.) and this article.
77 However, such standards shall also apply to land-disturbing activity exceeding an area of 2,500 square feet in
78 all areas of the jurisdictions designated as subject to the Chesapeake Bay Preservation Area Designation and
79 Management Regulations;

80 7. Establish a procedure by which a stormwater management plan that is approved for a residential,
81 commercial, or industrial subdivision shall govern the development of the individual parcels, including those
82 parcels developed under subsequent owners;

83 8. Notwithstanding the provisions of subdivision 5, establish a procedure by which payment of the
84 Department's portion of the statewide permit fee established pursuant to that subdivision shall not be required
85 for coverage under the General Permit for Discharges of Stormwater from Construction Activities for
86 construction activity involving a single-family detached residential structure, within or outside a common
87 plan of development or sale;

88 9. Provide for the certification and use of a proprietary best management practice only if another state,
89 regional, or national program has verified its nutrient or sediment removal effectiveness and all of such
90 program's established test protocol requirements were met or exceeded. As used in this subdivision and any
91 regulations or guidance adopted pursuant to this subdivision, "certification" means a determination by the
92 Department that a proprietary best management practice is approved for use in accordance with this article;

93 10. Require that VSMPs maintain after-development runoff rate of flow and characteristics that replicate,
94 as nearly as practicable, the existing predevelopment runoff characteristics and site hydrology, or improve
95 upon the contributing share of the existing predevelopment runoff characteristics and site hydrology if stream
96 channel erosion or localized flooding is an existing predevelopment condition. Except where more stringent
97 requirements are necessary to address total maximum daily load requirements or to protect exceptional state
98 waters, any land-disturbing activity that provides for stormwater management shall satisfy the conditions of
99 this subsection if the practices are designed to (i) detain the water quality volume and to release it over 48
100 hours; (ii) detain and release over a 24-hour period the expected rainfall resulting from the one year, 24-hour
101 storm; and (iii) reduce the allowable peak flow rate resulting from the 1.5-year, two-year, and 10-year, 24-
102 hour storms to a level that is less than or equal to the peak flow rate from the site assuming it was in a good
103 forested condition, achieved through multiplication of the forested peak flow rate by a reduction factor that is
104 equal to the runoff volume from the site when it was in a good forested condition divided by the runoff
105 volume from the site in its proposed condition, and shall be exempt from any flow rate capacity and velocity
106 requirements for natural or man-made channels as defined in any regulations promulgated pursuant to this
107 section or any ordinances adopted pursuant to § 62.1-44.15:27 or 62.1-44.15:33;

108 11. Encourage low-impact development designs, regional and watershed approaches, and nonstructural
109 means for controlling stormwater;

110 12. Promote the reclamation and reuse of stormwater for uses other than potable water in order to protect
111 state waters and the public health and to minimize the direct discharge of pollutants into state waters;

112 13. Establish procedures to be followed when a locality that operates a VSMP wishes to transfer
113 administration of the VSMP to the Department;

114 14. Establish a statewide permit fee schedule for stormwater management related to municipal separate
115 storm sewer system permits;

116 15. Provide for the evaluation and potential inclusion of emerging or innovative nonproprietary
117 stormwater control technologies that may prove effective in reducing nonpoint source pollution;

118 16. Require the owner of property that is zoned for residential use and on which is located a privately
119 owned stormwater management facility serving one or more residential properties to record the long-term

120 maintenance and inspection requirements for such facility with the deed for the owner's property;

121 17. Require that all final plan elements, specifications, or calculations whose preparation requires a
122 license under Chapter 4 (§ 54.1-400 et seq.) or 22 (§ 54.1-2200 et seq.) of Title 54.1 be appropriately signed
123 and sealed by a professional who is licensed to engage in practice in the Commonwealth. Nothing in this
124 subdivision shall authorize any person to engage in practice outside his area of professional competence; ~~and~~

125 18. Establish a procedure by which a registration statement shall not be required for coverage under the
126 General Permit for Discharges of Stormwater from Construction Activities for a small construction activity
127 involving a single-family detached residential structure, within or outside a common plan of development or
128 sale; *and*

129 19. *Require any land disturbance related to the construction, expansion, or operation of an enterprise*
130 *data center operation that is located within one mile of any land (i) owned or operated as a unit of the*
131 *National Park Service or (ii) designated as a Virginia State Park or state forest to infiltrate, evaporate, or*
132 *reuse the predicted stormwater runoff volume that exceeds the stormwater runoff volume experienced at such*
133 *site prior to such land disturbance. For purposes of this subdivision, "enterprise data center operation"*
134 *means an operation that (a) physically houses information technology equipment, such as servers, switches,*
135 *routers, data storage devices, or related equipment, and (b) manages and processes digital data and*
136 *information to provide application services or management for data processing, such as web hosting,*
137 *Internet, intranet, telecommunication, and information technology.*

138 B. The Board may integrate and consolidate components of the regulations implementing the Erosion and
139 Sediment Control program and the Chesapeake Bay Preservation Area Designation and Management
140 program with the regulations governing the Virginia Stormwater Management Program (VSMP) Permit
141 program or repeal components so that these programs may be implemented in a consolidated manner that
142 provides greater consistency, understanding, and efficiency for those regulated by and administering a
143 VSMP.

144 **§ 62.1-44.15:28. (Effective July 1, 2024) Development of regulations.**

145 The Board is authorized to adopt regulations that establish requirements for the effective control of soil
146 erosion, sediment deposition, and stormwater, including nonagricultural runoff, that shall be met in any
147 VESMP to prevent the unreasonable degradation of properties, stream channels, waters, and other natural
148 resources, and that specify minimum technical criteria and administrative procedures for VESMPs. The
149 regulations shall:

150 1. Establish standards and procedures for administering a VESMP;

151 2. Establish minimum standards of effectiveness of the VESMP and criteria and procedures for reviewing
152 and evaluating its effectiveness. The minimum standards of program effectiveness established by the Board
153 shall provide that (i) no soil erosion control and stormwater management plan shall be approved until it is
154 reviewed by a plan reviewer certified pursuant to § 62.1-44.15:30, (ii) each inspection of a land-disturbing
155 activity shall be conducted by an inspector certified pursuant to § 62.1-44.15:30, and (iii) each VESMP shall
156 contain a program administrator, a plan reviewer, and an inspector, each of whom is certified pursuant to §
157 62.1-44.15:30 and all of whom may be the same person;

158 3. Be based upon relevant physical and developmental information concerning the watersheds and
159 drainage basins of the Commonwealth, including data relating to land use, soils, hydrology, geology, size of
160 land area being disturbed, proximate water bodies and their characteristics, transportation, and public
161 facilities and services;

162 4. Include any survey of lands and waters as the Board deems appropriate or as any applicable law
163 requires to identify areas, including multijurisdictional and watershed areas, with critical soil erosion and
164 sediment problems;

165 5. Contain conservation standards for various types of soils and land uses, which shall include criteria,
166 techniques, and methods for the control of soil erosion and sediment resulting from land-disturbing activities;

167 6. Establish water quality and water quantity technical criteria. These criteria shall be periodically
168 modified as required in order to reflect current engineering methods;

169 7. Require the provision of long-term responsibility for and maintenance of stormwater management
170 control devices and other techniques specified to manage the quality and quantity of runoff;

171 8. Require as a minimum the inclusion in VESMPs of certain administrative procedures that include, but
172 are not limited to, specifying the time period within which a VESMP authority shall grant land-disturbance
173 approval, the conditions and processes under which such approval shall be granted, the procedures for
174 communicating disapproval, the conditions under which an approval may be changed, and requirements for
175 inspection of approved projects;

176 9. Establish a statewide fee schedule to cover all costs associated with the implementation of a VESMP
177 related to land-disturbing activities where permit coverage is required, and for land-disturbing activities
178 where the Board serves as a VESMP authority or VSMP authority. Such fee attributes include the costs
179 associated with plan review, permit registration statement review, permit issuance, permit coverage
180 verification, inspections, reporting, and compliance activities associated with the land-disturbing activities as

181 well as program oversight costs. The fee schedule shall also include a provision for a reduced fee for a land-
182 disturbing activity that disturbs 2,500 square feet or more but less than one acre in an area of a locality
183 designated as a Chesapeake Bay Preservation Area pursuant to the Chesapeake Bay Preservation Act (§ 62.1-
184 44.15:67 et seq.). The fee schedule shall be governed by the following:

185 a. The revenue generated from the statewide fee shall be collected utilizing, where practicable, an online
186 payment system, and the Department's portion shall be remitted to the State Treasurer for deposit in the
187 Virginia Stormwater Management Fund established pursuant to § 62.1-44.15:29. However, whenever the
188 Board has approved a VESMP, no more than 30 percent of the total revenue generated by the statewide fees
189 collected shall be remitted to the State Treasurer for deposit in the Virginia Stormwater Management Fund,
190 with the balance going to the VESMP authority;

191 b. Fees collected pursuant to this section shall be in addition to any general fund appropriation made to the
192 Department or other supporting revenue from a VESMP; however, the fees shall be set at a level sufficient
193 for the Department, the Board, and the VESMP to fully carry out their responsibilities under this article and
194 local ordinances or standards and specifications where applicable. When establishing a VESMP, the VESMP
195 authority shall assess the statewide fees pursuant to the schedule and shall have the authority to reduce or
196 increase such fees, and to consolidate such fees with other program-related charges, but in no case shall such
197 fee changes affect the amount established in the regulations as available to the Department for program
198 oversight responsibilities pursuant to subdivision a. A VESMP's portion of the fees shall be used solely to
199 carry out the VESMP's responsibilities under this article and associated ordinances;

200 c. In establishing the fee schedule under this subdivision, the Department shall ensure that the VESMP
201 authority portion of the statewide fee for coverage under the General Permit for Discharges of Stormwater
202 from Construction Activities for small construction activity involving a single-family detached residential
203 structure with a site or area, within or outside a common plan of development or sale, that is equal to or
204 greater than one acre but less than five acres shall be no greater than the VESMP authority portion of the fee
205 for coverage of sites or areas with a land-disturbance acreage of less than one acre within a common plan of
206 development or sale;

207 d. When any fees are collected pursuant to this section by credit cards, business transaction costs
208 associated with processing such payments may be additionally assessed;

209 e. Notwithstanding the other provisions of this subdivision 9, establish a procedure by which payment of
210 the Department's portion of the statewide fee established pursuant to this subdivision 9 shall not be required
211 for coverage under the General Permit for Discharges of Stormwater from Construction Activities for
212 construction activity involving a single-family detached residential structure, within or outside a common
213 plan of development or sale;

214 f. Establish a procedure by which a registration statement shall not be required for coverage under the
215 General Permit for Discharges of Stormwater from Construction Activities for a small construction activity
216 involving a single-family detached residential structure, within or outside a common plan of development or
217 sale;

218 10. Establish statewide standards for soil erosion control and stormwater management from land-
219 disturbing activities;

220 11. Establish a procedure by which a soil erosion control and stormwater management plan or stormwater
221 management plan that is approved for a residential, commercial, or industrial subdivision shall govern the
222 development of the individual parcels, including those parcels developed under subsequent owners;

223 12. Provide for the certification and use of a proprietary best management practice only if another state,
224 regional, or national program has verified its nutrient or sediment removal effectiveness and all of such
225 program's established test protocol requirements were met or exceeded. As used in this subdivision and any
226 regulations or guidance adopted pursuant to this subdivision, "certification" means a determination by the
227 Department that a proprietary best management practice is approved for use in accordance with this article;

228 13. Require that VESMPs maintain after-development runoff rate of flow and characteristics that
229 replicate, as nearly as practicable, the existing predevelopment runoff characteristics and site hydrology, or
230 improve upon the contributing share of the existing predevelopment runoff characteristics and site hydrology
231 if stream channel erosion or localized flooding is an existing predevelopment condition.

232 a. Except where more stringent requirements are necessary to address total maximum daily load
233 requirements or to protect exceptional state waters, any land-disturbing activity that was subject to the water
234 quantity requirements that were in effect pursuant to this article prior to July 1, 2014, shall be deemed to
235 satisfy the conditions of this subsection if the practices are designed to (i) detain the water volume equal to
236 the first one-half inch of runoff multiplied by the impervious surface of the land development project and to
237 release it over 48 hours; (ii) detain and release over a 24-hour period the expected rainfall resulting from the
238 one year, 24-hour storm; and (iii) reduce the allowable peak flow rate resulting from the 1.5-year, two-year,
239 and 10-year, 24-hour storms to a level that is less than or equal to the peak flow rate from the site assuming it
240 was in a good forested condition, achieved through multiplication of the forested peak flow rate by a
241 reduction factor that is equal to the runoff volume from the site when it was in a good forested condition

242 divided by the runoff volume from the site in its proposed condition. Any land-disturbing activity that
243 complies with these requirements shall be exempt from any flow rate capacity and velocity requirements for
244 natural or man-made channels as defined in any regulations promulgated pursuant to this section or any
245 ordinances adopted pursuant to § 62.1-44.15:27 or 62.1-44.15:33;

246 b. Any stream restoration or relocation project that incorporates natural channel design concepts is not a
247 man-made channel and shall be exempt from any flow rate capacity and velocity requirements for natural or
248 man-made channels as defined in any regulations promulgated pursuant to this article;

249 14. Encourage low-impact development designs, regional and watershed approaches, and nonstructural
250 means for controlling stormwater;

251 15. Promote the reclamation and reuse of stormwater for uses other than potable water in order to protect
252 state waters and the public health and to minimize the direct discharge of pollutants into state waters;

253 16. Establish procedures to be followed when a locality chooses to change the type of program it
254 administers pursuant to subsection D of § 62.1-44.15:27;

255 17. Establish a statewide permit fee schedule for stormwater management related to MS4 permits;

256 18. Provide for the evaluation and potential inclusion of emerging or innovative nonproprietary
257 stormwater control technologies that may prove effective in reducing nonpoint source pollution;

258 19. Require the owner of property that is zoned for residential use and on which is located a privately
259 owned stormwater management facility serving one or more residential properties to record the long-term
260 maintenance and inspection requirements for such facility with the deed for the owner's property; ~~and~~

261 20. Require that all final plan elements, specifications, or calculations whose preparation requires a
262 license under Chapter 4 (§ 54.1-400 et seq.) or 22 (§ 54.1-2200 et seq.) of Title 54.1 be appropriately signed
263 and sealed by a professional who is licensed to engage in practice in the Commonwealth. Nothing in this
264 subdivision shall authorize any person to engage in practice outside his area of professional competence; *and*

265 21. *Require any land disturbance related to the construction, expansion, or operation of an enterprise*
266 *data center operation that is located within one mile of any land (i) owned or operated as a unit of the*
267 *National Park Service or (ii) designated as a Virginia State Park or state forest to infiltrate, evaporate, or*
268 *reuse the predicted stormwater runoff volume that exceeds the stormwater runoff volume experienced at such*
269 *site prior to such land disturbance. For purposes of this subdivision, "enterprise data center operation"*
270 *means an operation that (a) physically houses information technology equipment, such as servers, switches,*
271 *routers, data storage devices, or related equipment, and (b) manages and processes digital data and*
272 *information to provide application services or management for data processing, such as web hosting,*
273 *Internet, intranet, telecommunication, and information technology.*