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O-2014-006

ORDINANCE NO. O-2014-006

AN ORDINANCE TO ADOPT REGULATIONS RELATED TO STORMWATER MANAGEMENT IN ORDER TO PROTECT WATER QUALITY AND QUANTITY AND TO COMPLY WITH STATE LAW REQUIREMENTS

WHEREAS, the Commonwealth Virginia has placed certain standards, regulations, and requirements on the control and management of stormwater for the benefit of the public; and

WHEREAS, all localities must comply with such regulations and requirements; and

WHEREAS, the Town of Bowling Green has chosen to develop and implement its own Stormwater Management Program and implement such program,

BE IS HEREBY ORDAINED, by the Town Council of the Town of Bowling Green at a Special Meeting held on June 26, 2014, that the Town Code be amended pursuant to the grant of authority contained in Virginia Code Section 62.1-44.15:24 et seq. as follows:

TO AMEND THE BOWLING GREEN TOWN CODE BY AMENDING CHAPTER 3, "LAND USE & BUILDINGS," BY THE ADDITION OF ARTICLE VI, "STORMWATER MANAGEMENT," SECTION 3-600 "PURPOSE AND AUTHORITY," SECTION 3-601 "DEFINITIONS," SECTION 3-602 "STORMWATER PERMIT REQUIREMENT; EXEMPTIONS," SECTION 3-603 "STORMWATER MANAGEMENT PROGRAM ESTABLISHED; SUBMISSION AND APPROVAL OF PLANS; PROHIBITIONS," SECTION 3-604 STORMWATER POLLUTION PREVENTION PLAN; CONTENTS OF PLANS," SECTION 3-605 "STORMWATER MANAGEMENT PLAN; CONTENTS OF PLAN," SECTION 3-606 "REVIEW OF STORMWATER MANAGEMENT PLANS," SECTION 3-607 "TECHNICAL CRITERIA FOR REGULATED LAND DISTURBING ACTIVITIES," SECTION 3-608 "EXCEPTIONS TO TECHNICAL CRITERIA," SECTION 3-609 "LONG-TERM MAINTENANCE OF PERMANENT STORMWATER FACILITIES," SECTION 3-610 "MONITORING AND INSPECTIONS," SECTION 3-611 "HEARINGS," SECTION 3-612 "APPEALS," SECTION 3-613 "ENFORCEMENT," SECTION 3-614 "FEES," SECTION 3-615 "PERFORMANCE BOND," SECTION 3-616 "RECORD KEEPING AND REPORTING," SECTION 3-617 "REPEAL OF CONFLICTING ORDINANCES," AND SECTION 3-618 "SEVERABILITY."

- Vote:
- Glenn McDearmon
- Mary F. Coleman
- Jean M. Davis
- Mark Bissoon
- Jason Satterwhite
- Daniel Webb
- Otis Wright

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**AN ORDINANCE TO ADOPT REGULATIONS RELATED TO
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QUANTITY AND TO COMPLY WITH STATE LAW REQUIREMENTS**

Section 3-600. PURPOSE AND AUTHORITY.

- (a) The purpose of this Ordinance is to ensure the general health, safety, and welfare of the citizens of the Town of Bowling Green, Virginia and protect the quality and quantity of state waters from the potential harm of unmanaged stormwater, including protection from land disturbing activities causing unreasonable degradation of properties, water quality, stream channels, and other natural resources, and to establish procedures whereby stormwater requirements related to water quality and quantity shall be administered and enforced.
- (b) This Ordinance is adopted pursuant to Article 1.1 (§ 10.1-603.2 et seq.) of Chapter 6 of Title 10.1 of the Code of Virginia.
- (c) All approved stormwater management plans shall be binding on all current and subsequent property owners of land to which the approved stormwater management plan pertains.

Section 3-601. DEFINITIONS.

In addition to the definitions set forth in 4VAC50-60-10 of the Virginia Stormwater Management Regulations, as amended, which are expressly adopted and incorporated herein by reference, the following words and terms used in this Ordinance have the following meanings unless otherwise specified herein. Where definitions differ, those incorporated herein shall have precedence.

"*Administrator*" means the Town Manager of the Town of Bowling Green who is authorized to delegate duties and responsibilities set forth in this Ordinance to qualified technical personnel, plan examiners, inspectors, and other employees or third-parties.

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

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

"*Chesapeake Bay Preservation Act Land-Disturbing Activity*" means a land-disturbing activity including clearing, grading, or excavation that results in a land-disturbance equal to or greater than 2,500 square feet and less than one acre in all areas of the Town designated as subject to the Chesapeake Bay Preservation Area Designation and Management Regulations, 9 VAC-10-20-10 et seq., as amended.

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

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

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

"*Council*" means the Town Council of the Town of Bowling Green.

"*Department*" or "*DEQ*" means the Virginia 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.

"*General permit*" means the state permit titled GENERAL PERMIT FOR DISCHARGES OF STORMWATER FROM CONSTRUCTION ACTIVITIES found in Part XIV (4VAC50-60-1100 et seq.) of the Regulations authorizing a category of discharges under the CWA and the Act within a geographical area of the Commonwealth of Virginia.

"*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 3-602 (b) of this Ordinance.

"*Minor modification*" means an amendment to an existing 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 permit modification or amendment does not substantially alter 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.

"*Permittee*" means the person to whom a Stormwater Management Permit is issued.

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

"*Regulations*" means the Virginia Stormwater Management Program (VSMP) Permit Regulations, 4 VAC 50-60, 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*" or "*SWCB*" means the State Water Control Board.

"*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.

"*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 Management 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, where required.

"*Stormwater management plan*" means a document or compilation of documents containing materials meeting the requirements of Section 3-605 of this Ordinance.

"*Stormwater Pollution Prevention Plan*" or "*SWPPP*" means a document or compilation of documents meeting the requirements of Section 3-604 of this Ordinance, and which include at minimum, an approved erosion and sediment control plan, an approved stormwater management plan, and a pollution prevention plan.

"*Subdivision*" means the same as defined in Chapter 3, Article II, Section 3-205, [Subdivision of Land] of the Code of the Town of Bowling Green.

"*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.

"Town" means the Town of Bowling Green.

"Virginia Stormwater Management Act" or "Act" means Article 1.1 (§10.1-603.2 et seq.) of Chapter 6 of Title 10.1 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," "VSMP," or "Stormwater Management Program" means the program established by the Town to manage the quality and quantity of runoff resulting from land-disturbing activities in accordance with state law, and which has been approved by the SWCB.

"Virginia Stormwater Management Program authority" or "VSMP authority" means the Town of Bowling Green.

Section 3-602. STORMWATER PERMIT REQUIREMENT; EXEMPTIONS.

- (a) Except as provided herein, no person may engage in any land-disturbing activity until a Stormwater Management Permit has been issued by the Administrator in accordance with the provisions of this Ordinance.
- (b) Notwithstanding any other provisions of this Ordinance, the following activities are exempt, unless otherwise required by federal law:
 - (1) Permitted surface or deep mining operations and projects, or oil and gas operations and projects conducted under the provisions of 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 2,500 square feet and not part of a larger common plan of development or sale, including additions or modifications to existing single-family detached residential structures;

- (4) Land disturbing activities that disturb less than 2,500 square feet of land area, and which are not part of a larger common plan of development or sale that is one acre or greater of disturbance;
- (5) Discharges to a sanitary sewer or a combined sewer system;
- (6) Activities under a State or federal reclamation program to return an abandoned property to an agricultural or open land use;
- (7) Routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original construction of the project. The paving of an existing road with a compacted or impervious surface and reestablishment of existing associated ditches and shoulders shall be deemed routine maintenance if performed in accordance with this Subsection; 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 requirements of Section 3-607 of this Ordinance is required within 30 days of commencing the land-disturbing activity.
- (9) Neither a registration statement nor payment of the Department's portion of the statewide permit fee established pursuant to the Section establishing the statewide fee schedule shall be required for coverage under the General Permit for Discharges of Stormwater from Construction Activities for construction activity involving a single-family detached residential structure, within or outside a common plan of development or sale.

**Section 3-603. STORMWATER MANAGEMENT PROGRAM ESTABLISHED;
SUBMISSION AND APPROVAL OF PLANS; PROHIBITIONS.**

- (a) Pursuant to § 10.1-603.3 of the Code of Virginia, the Town of Bowling Green hereby establishes a Stormwater Management Program for land-disturbing activities and adopts the applicable Regulations that specify standards and specifications for such programs promulgated by the State Board for the purposes set out in Section 3-600 of this Ordinance. The Council hereby designates the Town Manager of the Town of Bowling Green as the Administrator of the Stormwater Management Program. The program and regulations provided for in this Ordinance shall be made available for public inspection at the Administrator's office.
- (b) No stormwater management permit shall be issued by the Administrator, until the following items have been submitted to and approved by the Administrator as prescribed herein:
 - (1) A permit application that includes a General permit registration statement which, among other things, certifies that a Stormwater Pollution Prevention Plan (SWPPP) has been prepared in accordance with state law;

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- (2) An erosion and sediment control plan or an agreement in lieu of a plan, approved in accordance with the Bowling Green Sediment and Erosion Control ordinance, and:
- (3) A stormwater management plan that meets the requirements of Section 3-605 of this Ordinance.
- (c) Notwithstanding any other provision of this Section, an Applicant seeking to conduct a Chesapeake Bay Preservation Act Land-Disturbing Activity shall not be required to provide the permit application set forth in Section 3-603(b)(1), nor provide evidence of General Permit coverage, which coverage is not required for such activities. Except as otherwise required in this subsection, the Applicant shall not be required to comply with the requirements of Section 3-604 [SWPPP].
- (d) No stormwater management permit shall be issued until evidence of General permit coverage is obtained from DEQ, where required.
- (e) No stormwater management permit shall be issued until the fees required to be paid pursuant to Section 3-614, are received, and a performance bond required pursuant to Section 3-615 of this Ordinance has been received.
- (f) No stormwater management permit shall be issued unless and until the stormwater management permit application and attendant materials and supporting documentation demonstrate that all land clearing, construction, disturbance, land development and drainage will be done according to the approved stormwater management plan.
- (g) No grading, building or other local permit shall be issued for a property unless a stormwater management permit has been issued by the Administrator, and the Applicant provides a certification that all land clearing, construction, disturbance, land development and drainage will be done according to the approved permit conditions. A person shall not conduct any land-disturbing activity until he has submitted a permit application to the VSMP authority that includes a State VSMP permit registration statement, if such statement is required, and, after July 1, 2014, a stormwater management plan or an executed agreement in lieu of a stormwater management plan, and has obtained VSMP authority approval to begin land disturbance. After July 1, 2014, a VSMP authority shall be required to obtain evidence of state VSMP permit coverage where it is required prior to providing approval to begin land disturbance.
- (h) As a condition of permit approval, two (2) copies of a construction record drawing for permanent stormwater management facilities shall be submitted to the Administrator upon completion of construction. 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. Construction record drawings may not be required for stormwater management facilities for which maintenance agreements are not required pursuant to Section 3-609 (b).

Section 3-604. STORMWATER POLLUTION PREVENTION PLAN; CONTENTS OF PLANS.

- (a) The Stormwater Pollution Prevention Plan (SWPPP) that is required to be prepared before a registration statement for General permit coverage may be submitted to DEQ for approval (as referenced in Section 3-603(b)(1)) shall include the content specified by Section 4VAC50-60-54, and any other applicable regulations including, but not limited to i) a stormwater management plan that meets the requirements of this Ordinance, ii) a County-approved Erosion and Sediment Control plan, and iii) a pollution prevention plan that meets the requirements of 4VAC50-60-56.
- (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. The SWPPP shall also be amended by the operator, if an inspection reveals that the SWPPP is inadequate to satisfy applicable regulations
- (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.
- (d) Construction activities that are part of a common plan of development and disturb less than one acre may utilize a SWPPP template provided by DEQ and need not provide a separate stormwater management plan if one has been prepared and implemented for the larger development project, to the extent permitted by state law.

Section 3-605. STORMWATER MANAGEMENT PLAN; CONTENTS OF PLAN.

- (a) The Stormwater Management Plan, required in Section 3-603(b)(3) of this Ordinance, must include the following information:
 - (1) 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;
 - (2) 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 predevelopment and post-development drainage areas;
 - (3) A narrative that includes a description of current site conditions and final site conditions, except that the Town may allow the information that addresses the current and final site conditions to be provided and documented during the review process;
 - (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 3-607 of this Ordinance.
- (8) A map (or maps) of the site that depicts the topography of the site and includes:
- (i) All contributing drainage areas;
 - (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; and
 - (viii) Proposed land use with tabulation of the percentage of surface area to be adapted to various uses, including but not limited to planned locations of utilities, roads, and easements.
- (b) If an operator intends to meet the water quality and/or quantity requirements set forth in Section 3-607 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 § 10.1-603.8:1 of the Code of Virginia.
- (c) Elements of a stormwater management plan 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.

Section 3-606. REVIEW OF STORMWATER MANAGEMENT PLANS.

- (a) The Administrator shall review stormwater management plans and shall approve or disapprove such plans as follows:

- (1) The Administrator shall determine the completeness of a plan in accordance with Section 3-605 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.
- (b) Approved stormwater management plans may be modified as follows:
- (1) Modifications to an approved stormwater management plan shall be allowed only after review and written approval by the Administrator. The Administrator shall 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.
- (c) The Administrator shall require the submission of two (2) copies of construction record drawing for permanent stormwater management facilities once construction is completed. The Administrator may elect not to require construction record drawings for stormwater management facilities for which recorded maintenance agreements are not required pursuant to Section 3-609 (b).

Section 3-607. TECHNICAL CRITERIA FOR REGULATED LAND DISTURBING ACTIVITIES.

- (a) To protect the quality and quantity of state water from the potential harm of unmanaged stormwater runoff resulting from land-disturbing activities, the Town hereby adopts the technical criteria for regulated land-disturbing activities set forth in Part II B of the

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Regulations, as amended, which shall apply to all land-disturbing activities regulated pursuant to this Ordinance, except as expressly set forth in Subsection (b) of this Section.

- (b) Notwithstanding the foregoing, any land-disturbing activity proposed to occur pursuant to i) a plan of development proffered as part of a conditional rezoning and approved by the Town Council; ii) any other plan of development or site plan approved by the Town, including any plan approved pursuant to a rezoning request, a variance request, or a request for a special use permit; iii) an approved final subdivision plat or iv) an approved preliminary plat where the applicant has diligently pursued final plat approval within a reasonable period of time under the circumstances in accordance with § 15.2-2307 of the *Code of Virginia* was approved by the Town prior to July 1, 2012, and for which no coverage under the general permit has been issued prior to July 1, 2014, shall be considered grandfathered and shall not be subject to the technical criteria of Part II B [of the Regulations], but shall be subject to the technical criteria of Part II C [of the Regulations] for those areas that were included in the approval, provided that the Administrator, finds that the following criteria apply:
- (1) The plat includes conceptual drawing(s) sufficient to provide for the specified stormwater management facilities required at the time of approval;
 - (2) The resulting land-disturbing activity will be compliant with the requirements of Part II C [of the Regulations]; and
 - (3) In the event that the approved plat is subsequently modified or amended in a manner such that there is no increase over the previously approved plat in the amount of phosphorus leaving each point of discharge of the land-disturbing activity through stormwater runoff, and such that there is no increase over the previously approved plat or plan in the volume or rate of runoff, the grandfathering shall continue as before.
- (c) For local, state, and federal projects for which there has been an obligation of local, state, or federal funding, in whole or in part, prior to July 1, 2012, or for which the Virginia Department of Conservation of Recreation has approved a stormwater management plan prior to July 1, 2012, such projects shall be considered grandfathered by the Town and shall be subject to the technical requirements of Part II C of the Regulations for those areas that were included in the approval.
- (d) For land-disturbing activities grandfathered under Sections (b) or (c) of this Section, construction must be completed by June 30, 2019, or portions of the project not under construction shall become subject to the technical requirements of Subsection (a) above.
- (e) In cases where governmental bonding or public debt financing has been issued for a project prior to July 1, 2012, such project shall be subject to the technical requirements Part IIC of the Regulations, as adopted by the Town in Subsection (b) of this Section.

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Section 3-608. EXCEPTIONS TO TECHNICAL CRITERIA.

- (a) In approving a Stormwater Management Plan as set forth in Sec. 3-603 of this Ordinance, the Administrator may grant exceptions to the technical requirements of Part II B or Part II C of the Regulations, provided the Administrator finds the following:
 - (1) The exception is the minimum necessary to afford relief;
 - (2) Reasonable and appropriate conditions are imposed so that the intent of the Act, the Regulations, and this Ordinance are preserved;
 - (3) Granting the exception will not confer any special privileges that are denied in other similar circumstances, and;
 - (4) 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.
- (b) Exceptions to the requirement that the land-disturbing activity obtain a required stormwater management permit shall not be given by the Administrator, nor shall the Administrator approve the use of a BMP not found on the Virginia Stormwater BMP Clearinghouse Website, or any other control measure duly approved by the Director of DEQ.
- (c) Exceptions to requirements for phosphorus reductions shall not be allowed unless offsite options otherwise permitted pursuant to 4VAC50-60-69 have been considered and found not available.
- (d) Nothing in this Section shall preclude an operator from constructing to a more stringent standard at the operator's discretion.

Section 3-609. LONG-TERM MAINTENANCE OF PERMANENT STORMWATER FACILITIES.

- (a) The Administrator shall require the provision of long-term responsibility for and maintenance of stormwater management facilities and other techniques specified to manage the quality and quantity of runoff. Such requirements shall be set forth in an instrument recorded in the local land records prior to general permit termination or earlier as required by the Administrator and shall at a minimum:
 - (1) Be submitted to the Administrator and the Town Attorney for review and approval prior to the approval of the stormwater management plan;
 - (2) Recite that they are intended to "run with the land";
 - (3) Provide for all necessary access to the property for purposes of maintenance and regulatory inspections;

- (4) Provide for inspections and maintenance and the submission of inspection and maintenance reports to the Administrator; and
 - (5) Be enforceable by all appropriate governmental parties.
- (b) At the discretion of the Administrator, such recorded instruments 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.
 - (c) If a recorded instrument is not required pursuant to Subsection 3-609 (b), the Administrator shall develop a strategy for addressing maintenance of stormwater management facilities designed to treat stormwater runoff primarily from an individual residential lot on which they are located. Such a strategy may include periodic inspections, homeowner outreach and education, or other method targeted at promoting the long-term maintenance of such facilities. Such facilities shall not be subject to the requirement for an inspection to be conducted by the Administrator.

Section 3-610. MONITORING AND INSPECTIONS.

- (a) The Administrator, or his designated agent, 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 any TMDL.
- (b) The Administrator may require monitoring and reports from the permittee to ensure compliance with the Stormwater Management Permit and to determine whether the measures required in the permit provide effective stormwater management.
- (c) The Administrator, or his designee may, at reasonable times and under reasonable circumstances, enter 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 Ordinance.
- (d) 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 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.

- (e) In accordance with § 10.1-603.12:2 of the Code of Virginia, the Administrator may require every stormwater management permit applicant or permittee, or any such person subject to stormwater management 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 such person's discharge on the quality of state waters, or such other information as may be necessary to accomplish the purposes of this Ordinance.
- (f) Post-construction inspections of stormwater management facilities required by the provisions of this Ordinance shall be conducted pursuant to the adopted and State Board approved inspection program, and shall occur, at minimum at least once every five years except as may otherwise be provided for in Section 3-609. The Town may utilize the inspection reports of the Owner if the inspection is conducted by 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.
- (g) If the Administrator determines that there is a failure to comply with the conditions of a Stormwater Management Permit, notice shall be served upon the permittee or person responsible for carrying out the permit conditions by registered or certified mail to the address specified in the permit application, or by delivery at the site of the development activities to the agent or employee supervising such activities. The notice shall specify the measures needed to comply with the permit conditions and shall specify the time within which such measures shall be completed. Upon failure to comply within the time specified, a stop work order may be issued in accordance with subsection (b) of this Section by the Administrator, or the permit may be revoked. The Administrator may pursue enforcement in accordance with Section 3-613 of this Ordinance.
- (1) If a permittee fails to comply with a notice issued in accordance with subsection (g) above, within the time specified, the Administrator may issue an order requiring the owner, permittee, person responsible for carrying out an approved plan, or the person conducting the land-disturbing activities without an approved plan or required permit to cease all land-disturbing activities until the violation of the permit has ceased, or an approved plan and required permits are obtained, and specified corrective measures have been completed. Such orders shall be issued in accordance with the Town's local enforcement procedures, and shall become effective upon service on the person by certified mail, return receipt requested, sent to his address specified in the land records of the locality, or by personal delivery by an agent of the Town.
- (2) If the Administrator determines 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.

- (3) If a person who has been issued an order is not complying with the terms thereof, the Administrator may institute an injunctive proceeding in accordance with Section 3-613, in addition to any other administrative and/or judicial proceedings initiated.

Section 3-611. HEARINGS

- (a) Any permit applicant or permittee aggrieved by any action of the Town taken without a formal hearing, or by inaction of the Town, may demand in writing a formal hearing by the Council, or such other local appeals board as may be established by law, provided a petition requesting such hearing is filed with the Administrator within 30 days after notice of such action is given by the Administrator.
- (b) The hearings held under this Section shall be conducted by the Council at a regular or special meeting of the Council or by at least one member of the Council designated by the Mayor to conduct such hearings on behalf of the Council, or by the local appeals body, at any other time and place authorized.
- (c) A verbatim record and/or a recording of the proceedings of such hearings shall be taken and filed with the Council or the local appeals body. Depositions may be taken and read as in actions at law.
- (d) The Council or its designated member, or the local appeals body, as the case may be, shall have power to issue subpoenas and subpoenas duces tecum, and at the request of any party shall issue such subpoenas. The failure of a witness without legal excuse to appear or to testify or to produce documents shall be acted upon by the local governing body, or its designated member, whose action may include the procurement of an order of enforcement from the circuit court. Witnesses who are subpoenaed shall receive the same fees and reimbursement for mileage as in civil actions.

Section 3-612. APPEALS.

Any permit applicant or permittee who is aggrieved by a permit or enforcement decision of the Town, is entitled to judicial review thereof, provided an appeal is filed within 30 days from the date of the decision being appealed.

Appeals of decisions rendered by the Town shall include an opportunity for judicial review in the Circuit Court of Caroline County. Unless otherwise provided by law, the Circuit Court shall conduct such review in accordance with the standards established in Section 2.2-4027, Code of Virginia as amended, and the decisions of the Circuit Court shall be subject to review by the Court of Appeals, as in other cases under this portion of the Town Code.

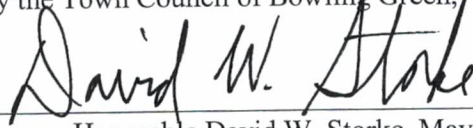
Section 3-613. ENFORCEMENT.

- (a) Any person who violates any provision of this Ordinance or who fails, neglects or refuses to comply with any order of the Town 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.

- (b) Violations for which a penalty may be imposed under this subsection shall include but not be limited to the following:
- (1) Failing to have a general permit registration;
 - (2) Failing to prepare a SWPPP;
 - (3) Having an incomplete SWPPP;
 - (4) Not having a SWPPP available for review as required by law;
 - (5) Failing to have an approved erosion and sediment control plan;
 - (6) Failing to install stormwater BMPs or erosion and sediment controls as required by this Ordinance and/or state law;
 - (7) Having stormwater BMPs or erosion and sediment controls improperly installed or maintained;
 - (8) Operational deficiencies;
 - (9) Failure to conduct required inspections, or having incomplete, improper, or missed inspections.
- (c) The Town may issue a summons for collection of the civil penalty and the action may be prosecuted in the appropriate circuit court. 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.
- (1) With the consent of any person who has violated or failed, neglected or refused to obey any provision of this Ordinance, any condition of a permit or state permit, any regulation or order of the Town, the Town may provide, in an order issued against such person, for the payment of civil charges for violations in specific sums, not to exceed the limit specified in this section. Such civil charges shall be instead of any appropriate civil penalty that could be imposed under this section.
 - (2) Any civil charges collected shall be paid to the locality or state treasury as appropriate pursuant to subsection (d) of this Section.
- (d) Any civil penalties assessed by a court as a result of a summons issued by the Town shall be paid into the treasury of the Town to be used for the purpose of minimizing, preventing, managing, or mitigating pollution of the waters of the locality and abating environmental pollution therein in such manner as the court may, by order, direct.

Adopted this 26th day of June, 2014
By the Town Council of Bowling Green, Virginia

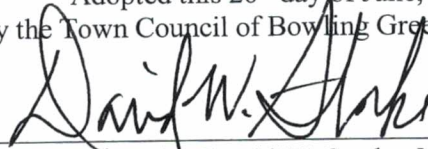


Honorable David W. Storke, Mayor



Stephen H. Manster, Clerk of the Council

Adopted this 26th day of June, 2014
By the Town Council of Bowling Green, Virginia



Honorable David W. Storke, Mayor