Commonwealth of Virginia

VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

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Stefanie K. Taillon
Acting Secretary of Natural and Historic Resources

Michael S. Rolband, PE, PWD, PWS Emeritus
Director

March 13, 2025

ATTN: Matthew Huston
City Engineer
Department of Community Development
409 South Main Street
Harrisonburg, VA 22801

Re: Ordinance Revision Request for Erosion Control and Stormwater Management
City of Harrisonburg, VA

Transmitted electronically: matthew.huston@harrisonburgva.gov

Dear Mr. Huston,

The Virginia Department of Environmental Quality (DEQ) received an inquiry regarding the City of Harrisonburg, Virginia's (City) recently adopted Ordinance for Erosion Control and Stormwater Management (Title 10 – Chapter 4), specifically the City's definition for "agreement in lieu of a plan." DEQ reviewed the City's definition for conformance with the Virginia Erosion and Stormwater Management Act (VESMA, §§ 62.1-44.15:24 *et seq* of the Code of Virginia) and Virginia Erosion and Stormwater Management (VESM) Regulation (9VAC25-875). The review revealed that the definition in the City's Ordinance is not consistent with the VESMA and VESM Regulation for the reasons described below.

Per§ 62.1-44.15:24 of the Code of Virginia, an *"Agreement in lieu of a plan" means a contract between the VESMP authority or the [State Water Control] Board acting as a VSMP authority and the owner or permittee that specifies methods that shall be implemented to comply with the requirements of this article for the construction of a (i) single-family detached residential structure or (ii) farm building or structure on a parcel of land with a total impervious cover percentage, including the impervious cover from the farm building or structure to be constructed, of less than five percent; such contract may be executed by the VESMP authority in lieu of a soil erosion control and stormwater management plan or by the Board acting as a VSMP authority in lieu of a stormwater management plan.*

The definition of "agreement in lieu of a plan" in the VESM Regulation (9VAC25-875-20) is substantially the same.

From the City's Ordinance under Section 10-4-2, Definitions, *"Agreement in lieu of a plan"* to '*means a contract between the city and the owner or permittee that specifies methods that shall be implemented to*

comply with the requirements of the VESMA and this chapter for the construction of one (1) single-family detached residential structure or one (1) duplex residential structure such contract may be executed by the city in lieu of a soil erosion control and/or stormwater management plan.' (Emphasis added.)

The definitions of "Agreement in Lieu of a Plan" in the VESMA and VESM Regulation do not include *one (1) duplex residential structure*; therefore, the Ordinance Section 10-4-2 is not consistent with the requirements for a locality that administers a Virginia Erosion and Stormwater Management Program (VESMP). See § 62.1-44.15:27 A (any locality that operates a regulated MS4 shall adopt and administer a VESMP consistent with the provisions of this article) and H (each locality that operates a regulated MS4 shall, by ordinance, establish a VESMP consistent with regulations adopted in accordance with this article) of the Code of Virginia.

Per § 62.1-44.15:33 of the Code of Virginia, localities that are serving as VESMP authorities may adopt more stringent soil erosion control or stormwater management ordinances than those necessary to ensure compliance with the State Water Control Board's minimum regulations. The procedure for a locality to adopt, and DEQ to approve, a more stringent ordinance is set out in subsections A and B of § 62.1-44.15:33. If the ordinance does not satisfy the criteria in § 62.1-44.15:33 B, § 62.1-44.15:33 D states the VESMP authority is required to revise the ordinance to reflect the state's minimum standard. Accordingly, until the City's ordinance is revised, the definition of "agreement in lieu of a plan" is considered null and void and replaced with the state's minimum standard VESMA § 62.1-44.15:24 definition.

This letter serves as a notice for the City of Harrisonburg, as the VESMP, authority to revise the applicable ordinance to consistent with the state's minimum standard or a more stringent ordinance as authorized in subsection A of § 62.1-44.15:33 of the Code of Virginia. DEQ requests a response in writing from the City of Harrisonburg within 30 days of receipt of this letter. Include a timeline in the response that indicates how the VESMP authority intends to revise and adopt an ordinance that is consistent with the VESMA and VESM Regulation.

Please note, this notice is not considered part of 9VAC25-875-190 for review and evaluation of VESMPs. However, should DEQ conduct a review of the VESMP authority and the ordinance has not been revised, it will be included as a noted deficiency requiring corrective action.

Sincerely,

April Rhodes

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Cc: Rebeccah W. Rochet, P.E. DEQ - Director of Stormwater Programs
Adam Fletcher, City of Harrisonburg - Director of Community Development