



City Portsmouth Policy and Guidance for Accepting Bonds for the VSMP

(Effective Date 10-19-2020)

General Policy

Virginia Stormwater Management Regulations and Virginia Erosion and Sediment Control (ESC) Regulations allow the Virginia Stormwater Management Program Authority (VSMP), in this case the City of Portsmouth, to accept bonds in a format suitable to the VSMP for certain stormwater and ESC items associated with an approved development plan.

While it is not specifically mandated under any statutory requirements, the City may allow an owner, developer or contractor to post a bond to guarantee the permanent stabilization of the entire site and/or satisfactory installation of all required stormwater management facilities in accordance with an approved development plan ("VSMP bond"). All VSMP bonds shall expire not less than one year after issuance. Posting a VSMP bond allows the owner or developer to receive a final inspection under the Building Permit and facilitates issuance of the Certificate of Occupancy. Posting a VSMP bond does not close the land disturbing permit or eliminate the need for site inspections. Inspections will continue until the site is stabilized and/or the stormwater management facilities are approved and accepted. Note that approved development plans include an Agreement in Lieu of an ESC plan, an Agreement in Lieu of a Stormwater Management Plan, ESC plan, site plan or subdivision plan.

Sites where bonds are posted shall achieve permanent stabilization within 60 days of the City accepting the bond. If permanent site stabilization is not achieved and/or all required stormwater management facilities are not satisfactorily installed within 60 days, the owner or developer, or contractor acknowledges (and the bond shall provide) that the City may (but is not obligated to) call the bond and take such actions as the City may deem appropriate in its sole discretion, either directly or through the bond surety, to achieve permanent site stabilization. As a condition of the City accepting the bond, the City shall be deemed to have been granted a right of entry for such purpose.

Limitations Imposed Due to Prior Non-Compliance

Since the VSMP bonding process is completely voluntary and is intended to help projects get through to the final Building Permit Inspection, owners, developers or contractors who are “repeatedly non-compliant” with permitting requirements may be denied the ability to post bonds to the VSMP as described above. For purposes of this policy “repeatedly non-compliant” means that, within the preceding five years, the owner, developer or contractor was involved with more than one “non-compliant project” in Portsmouth. A “non-compliant project” is a project where the applicable VSMP, land disturbance permit, or right of way permit requirements were not strictly followed, resulting in the issuance of at least one notice of non-compliance by the City.

In determining whether to classify an owner, developer or contractor as “repeatedly non-compliant” the City Engineer or his designee shall consider the following factors:

1. The nature of the owner, developer or contractor’s involvement with the non-compliant projects;
2. The extent to which the causes of the non-compliance were intentional, willful or negligent;
3. The extent to which the owner, developer or contractor cooperated with the City to address the non-compliance; and
4. The extent to which the owner, developer or contractor remedied the non-compliance.

Where the City Engineer or his designee determines that an owner, developer or contractor is repeatedly non-compliant, the City may take any of the following actions:

1. Refuse the posting of a VSMP bond by or on behalf of the owner, developer or contractor and require the completion of all site aspects of the approved development plan in accordance with local VSMP regulations prior to receiving a final program inspection; or
2. Require the owner, developer or contractor to post a VSMP bond prior to issuance of a land disturbance permit.

**EROSION AND SEDIMENT CONTROL AND/OR
STORMWATER MANAGEMENT PERFORMANCE BOND**

LDP#: _____

The owner/developer of _____ on this date agrees to posting a bond, letter of credit, or cash in the amount of \$ _____ to guarantee the permanent stabilization of the site and/or satisfactory installation of all required stormwater management facilities in accordance with the Agreement in Lieu of a Stormwater Plan, Erosion and Sediment Control, and/or Stormwater Management Plan within sixty (60) days.

If permanent site stabilization is not achieved and/or all required stormwater management facilities are not satisfactorily installed within sixty (60) days the owner/developer acknowledges that the E & S bond, letter of credit, or cash may be forfeited for use by the City of Portsmouth to achieve said compliance.

Date: _____

By: _____

Print Name: _____

Title: _____

Company Name: _____

Address: _____

Telephone No: _____

Email: _____