

**VIRGINIA EROSION AND STORMWATER MANAGEMENT PROGRAM (VESMP)
REGULATORY ADVISORY PANEL (RAP)**

MEETING #1 NOTES – FINAL

TUESDAY, JUNE 18, 2019

DEQ PIEDMONT REGIONAL OFFICE – TRAINING ROOM

Meeting Attendees

| VESMA RAP MEMBERS | |
|---|---|
| Phillip F. Abraham – The VECTRE Corporation | Matthew Knightes, PE - MSA |
| Barbara Brumbaugh – City of Chesapeake | Melanie Mason – City of Alexandria |
| John W. Burke – Montgomery County | Beth McDowell – Westmoreland County |
| Debra Byrd – Goochland County | Lisa Ochsenhirt, Esq. – AquaLaw - VAMSA |
| Andrew C. Clark – Home Builders Association of VA | John Olenik – Virginia Department of Transportation |
| Jen Cobb, PE – Henrico County | Jason Papacosma – Arlington County |
| Jimmy Edmunds, CFM – Loudoun County | Jonet Prevost-White – City of Richmond |
| Dawson Garrod, PE – University of Virginia | Jill Sunderland – Hampton Roads PDC |
| Norman Goulet – Northern VA Regional PDC | Mike Vellines – Virginia Tech |
| Richard Jacobs, PE – Culpeper SWCD | Sandra Williams – KCI Technologies Inc. |
| Anna Killius – James River Association | |

NOTE: RAP Members NOT in Attendance: Patricia Colatosti – Town of Christiansburg; Adrienne Kotula – Chesapeake Bay Commission; Erin Rountree – City of Suffolk; Joe Wilder – Frederick County

| PUBLIC/INTERESTED PARTIES | |
|---|-----------------------------------|
| Seth Edwards – City of Virginia Beach | Bryce Miller - WSSI |
| Sara Freix – VT SID | Brian Parker - VTCA |
| Chris French – BioClean Engineering | Mitch Scott - VTCA |
| Doug Frik - GKY | Hannah Somers - GKY |
| Ashley Hall - Stantec | Chris Swanson - VDOT |
| Kevin Landry – Gloucester County | Jerry Stonefield – Fairfax County |
| Brian Lindsay - VDOT | Shannon Varner – Troutman Sanders |
| David Maruskin – Draper Aden Associates | Mark Williams - KBJW |

| TECHNICAL ADVISORS AND DEQSTAFF | |
|--|--|
| Erin Belt – DEQ | Meghan Hundt – DEQ Training Staff |
| Tamira Cohen – DEQ Training Staff | Melissa MacIntyre – DEQ – Training Staff |
| Melanie Davenport – DEQ | William Norris - DEQ |
| Doug Foran – DEQ Training Staff | Jaime Robb - DEQ |
| David Grandis – OAG | Kristin Sadtler - DEQ |
| Andrew Hammond - DEQ | Matthew Stafford - DEQ |
| Debra Harris - DEQ | Julia Wellman - DEQ |

The meeting convened at 10:00 a.m. and adjourned at 2:17 PM

1. Welcome/Meeting Logistics/Introductions – Jaime Robb – DEQ:

Jaime Robb, manager of the DEQ Office of Stormwater in the Central Office, welcomed members of the VESMP Regulatory Advisory Panel (RAP) and members of the public to the first meeting of the VESMP RAP. She noted that the group has been convened to talk about the subject of stormwater management (SWM) and erosion and sediment control (ESC). Members of this RAP are here to assist the agency in developing regulations to implement the Virginia Erosion and Stormwater Management Act that the General Assembly passed in 2016.

RAP Members; members of the public, and DEQ staff were asked to introduce themselves and to indicate who they were representing at the meeting.

2. DEQ PowerPoint Presentation – Jaime Robb – DEQ:

Jaime briefed the group on the process for the consolidation of the SWM and ESC Program regulations and the charge to and the role of the Regulatory Advisory Panel (RAP). She noted that all the members of the RAP should have received a “RAP Guidelines” document prior to the meeting, which outlined the role of the RAP and what it is tasked to do through this process.

Regulatory Advisory Panel Guidelines:

- **CHARGE TO THE GROUP:** “To develop proposed regulations to implement the consolidation of the VESCP and the VSMP regulations.”
- **Goal of Consensus:** Can live with the decisions reached and recommendations made and will not actively work against them outside of the process.
- **Only RAP members have a seat at the table.**
- **All meetings of the group are public meetings.**
- **Meeting materials are subject to the requirements of the Virginia Freedom of Information Act.**
- **Opportunity for public comment at each meeting.**

Jaime noted that the meetings of the RAP are being recorded for the primary purpose of the accurate compilation of meeting notes but will also be used to make sure that the essence of the discussions are accurately captured so that staff can take that information to develop regulations.

Public comments received during the Notice of Intended Regulatory Action (NOIRA) comment period that ended on March 6, 2019 as well as comments received after the comment period ended were reviewed with the group.

During the comment period the agency received 39 requests to participate on the RAP. Ultimately, agency staff had to make a decision on selection of individuals for this RAP for recommendation to the DEQ Director. The resulting RAP is very heavily weighted towards local government participation. The reason for that decision was that this regulatory effort is mostly administrative in nature. It is going to mostly impact local government partners and other entities that are implementing administrative programs. Understanding that some of the decisions made will ultimately impact those in regulated

communities, some folks from the engineering and the consulting world and industry representatives have also been included on the RAP.

ACTION ITEM: DEQ staff will distribute a copy of the DEQ PowerPoint Presentation to the Members of the RAP and members of the Public and the Interested Parties after the meeting.

3. Why Are We Here? An Overview and History of the VESMA – Melanie Davenport – DEQ:

Melanie Davenport provided an overview of the VESMA legislative history. She noted that in 2011, DEQ's sister agency, the Department of Conservation and Recreation (DCR), adopted new post-construction water quantity and quality requirements based on the protection of local water quality. The regulation also required local governments to implement the stormwater program similar to how they have been implementing the ESC program for many years. The regulations were adopted by the Soil and Water Conservation Board in 2011 after about a 6-year regulatory process with an implementation date of July 1, 2014. July 1, 2014 was chosen to align implementation of the stormwater regulations with the reissuance of the General VPDES Permit for the Discharge of Stormwater from Construction Activities. The long implementation period resulted in review and revision to statute as it pertained to implementation by local governments. Initially, every locality in the Commonwealth would be required to implement the stormwater program.

In 2013, prior to the implementation of the new regulation, the stormwater programs were moved from DCR back to DEQ. Statutory changes were required as a result of the shift of the programs between agencies in order to incorporate the needed authorities into the existing State Water Control Law (SWCL). The Virginia Erosion and Sediment Control Law and the Virginia Stormwater Management Act were essentially dropped into the SWCL without any edits or revisions, which resulted in conflicting language, requirements, and definitions. In addition, during the 2014 General Assembly Session, the concept of letting localities "opt-out" of implementing the stormwater program was presented to and ultimately approved by the General Assembly through legislation. This decision was based on certain localities that did not have the technical resources needed or required to implement the program the fact that these same localities generally had few development projects. It was determined that it did not make sense to try to force all localities to adopt these requirements. The resulting legislation required only those local governments with regulated municipal separate storm sewer systems (MS4) to adopt a local VSMP. All other localities could opt-in or opt-out of implementing a local VSMP.

With the development of the "opt-out" policy, a number of "donut holes" were created. Localities in Tidewater, Virginia (as defined in statute) that have opted out of becoming a local VSMP but are required to implement the Chesapeake Bay Preservation Act still have to apply ESC requirements and post-development quantity and quality technical criteria for any land disturbance greater than 2,500 square feet. For those localities not included in the definition of Tidewater, Virginia and that opted-out of implementing a local VSMP, must still requirement implementation of stormwater requirements that are still triggered under the ESC requirements for projects greater than or equal to 10,000 square feet and less than one acre. All this has resulted in a system that is more complicated than when we started.

DEQ, with the help of the RAP, now has an opportunity through this current regulatory development to address some of the confusing administrative provisions. In the 2016 consolidated legislation, a couple of sections were cleaned up that were really problematic and straighten out some of the confusing and

conflicting language. The challenge during this regulatory process will be to only make regulatory changes that are authorized under the 2016 legislation. There is language in these programs that a number of RAP members and “Interested Parties” don’t like, don’t understand, or wish to change, but if it is not a part of that 2016 legislation, this RAP is not authorized to address it. For example, the post-development technical criteria cannot be revised through this regulatory process.

Melanie expressed her sincere appreciation for everyone being willing to participate in this process. Everyone involved is tasked with ensuring that we are not going beyond the authorization in the consolidated bill. A number of things that are not covered by the statute may be discussed, but some of those items will have to be “parked” for future consideration and action through another regulatory process in the future or for future consideration.

4. VESMP – What’s “In-Scope”/What’s “Out-of-Scope” – Jaime Robb - DEQ:

Items that were considered “In-Scope” as well as those considered “Out-of-Scope” were reviewed:

“In-Scope”:

- Program consolidation per the Virginia Erosion Stormwater Management Act.
- Clarify or eliminate redundant or conflicting programmatic regulations such as exemptions and definitions.

“Out-of-Scope”:

- Updates or modifications of SW technical criteria or ESC minimum standards,
- Substantive changes,
- Guidance, BMP specifications, Virginia Erosion and Sediment Control Handbook

5. Tentative RAP Schedule – Jaime Robb - DEQ:

The Tentative Schedule for this RAP Process includes:

- **June 2019 – November 2019:** Multiple RAP Meetings (One meeting every 4 to 6 weeks);
- **November 2019 – January 2020:** Finalize draft regulations for RAP review;
- **March 2020:** Present draft regulation to the SWCB;
- **April 2020:** Begin 60-Day comment period;
- **May 2020:** Public hearing on proposed amendments;
- **June 2020:** 60-Day comment period ends;
- **June 2020 – August 2010:** Review and respond to public comments;
- **September 2020:** Present final proposed regulations to the SWCB.

6. Impact of 2016 Consolidation Legislation on Regulations – Jaime Robb – DEQ:

As noted in the NOIRA, regulations impacted by this legislation may include:9VAC24-830 – Chesapeake Bay Preservation Area Designation and Management Regulations; 9VAC25-840 – Erosion

and Sediment Control (ESC) Regulations; 9VAC25-850 – Erosion and Sediment Control and Stormwater Certification Regulations; 9VAC25-870 – Virginia Stormwater Management Program (VSMP) Regulation; 9VAC25-880 – General VPDES Permit for Discharges of Stormwater from Construction Activities, and 9VAC25-890 – General VPDES Permit for Discharges of Stormwater from Small Municipal Separate Storm Sewer Systems.

The main regulations impacted are the ESC and VSMP regulations. In addition, the ESC and Stormwater Certification regulation will need to be amended to establish the training and certification requirements for a combined program. Most of the changes to the other regulations will be to update regulatory reference numbers, but the substance will also need to be reviewed to address any conflicts or inconsistency inadvertently created.

Jaime handed out copies of the current sections in 9VAC25-840 – Erosion and Sediment Control Regulations and 9VAC25-870 – VSMP regulation. Staff reviewed these regulations, and using color-coding presented in the handouts, identified the program administration parts of the regulations (green in the handout); the technical requirements of the regulations (blue in the handout); and the permitting (essentially Clean Water Act 402) requirements of the regulations (yellow in the handout).

Jaime informed the group that DEQ staff has been looking at how best to incorporate the VESMA requirements and create a regulatory organization that makes sense and is easy to understand. She handed out a “skeleton of the regulatory sections organized into three “new” regulatory structures: a **VESCP, VSMP, and VESMP Administration Regulation** which includes Standards & Specifications; a **Technical Criteria Regulation** which includes SWM Criteria and ESC Minimum Standards; and a **Stormwater Permit Regulation** which includes Reporting, State Permits, Conditions Applicable to All, Public Involvement, Modifications/Transfers/Terminations, Enforcement and Fees. These different regulation structures combine the various color-coded sections together from the existing regulations as identified in the first handout. The proposal was an alternative to the existing regulatory structure of distinct program regulations for ESC and VSMP, which house technical requirements of the program as well as program administration requirements.

Ultimately there will have to be regulations dictating the implementation of the ESC Program only; VESMP; VSMP only, which would apply for example to DEQ; as well as the VESMP “Lite” where DEQ would assist with some of the technical plan review. DEQ envisions that one “Administrative” regulation would spell out what is required of local governments, DEQ, and Standards and Specifications holders to implement a program.

ACTION ITEM: DEQ staff will provide electronic copies of the meeting handouts to the RAP Members and members of the Interested Public following the meeting.

RAP Discussions:

- Definition Sections: With the structure/skeleton of the regulations that has been presented, there are definition sections in each of the regulation sections. Why are there separate definition sections? That is one of those things that is very confusing – having all of these separate sections that you have to go to get a definition. It would be really helpful to have one

“Definition” Section/Regulation, even if it is lengthy, because that is where some of the conflicts are.

- Jaime mentioned that in the Air Program, they have a regulation that is “definitions” only. So that is an option that we can look at – moving all definitions into a “Definitions Only” regulation. The task will be to look at the definitions included in the statute and move them into the regulations – not sure if all of the known conflicts or confusing language in the existing definitions have been addressed in the statute. One of the definitions that was fixed in the statute was “Land Disturbance” – one consistent definition was adopted as well as one consistent set of exemptions.
- Typically, when you have regulations, you don’t want to define a term that is not used in that regulation. The idea would be if it is not used under the “Program Administration” regulation then you wouldn’t define it in that regulation and if you have something that is defined in a “Technical” regulation it wouldn’t be defined in the “Program Administration” regulation. That is one reason that you would have multiple definition sections.
- We could look at having one “Definitions” regulation and have all of the other regulations have language that points back to that regulation.
- Aren’t we looking at “consolidation” of all the existing regulations impacted by the statute into one regulation with separate sections?
 - That is an option that we can look at, but we would still have to keep the existing regulations because not everyone is going to have a “consolidated” program, for example, the “Opt-Outs” are still going to do just ESC only.
- The whole idea of consolidation is to make it easier to understand. It looks like we are being forced into forcing it into what we have. The least “clunkiness” is having only one regulation.

Jaime provided an overview and clarification of the task at hand. There are regulations and laws that address erosion and sediment control and regulations and laws that address stormwater management. The task we have is to create regulations that consolidate the programs. The existing regulations could be left alone and an entirely new regulation created just for the VESMP. One of the pit-falls that DEQ has identified is that this option ends up with “redundancy”. There are minimum standards in the ESC regulation and technical criteria in the VSMP regulation and now a third regulation would be created that requires taking those requirements and placing them into the new regulation. Then if DEQ needs to make changes to those requirements in one regulation, changes would need to also be made in the other two regulations. Any changes would cascade through the multiple regulations.

Creation of a “mega” regulation that would contain all of the existing requirements and new requirements for all of the impacted regulations was discussed. That is something that the group could consider. Based on the current structure of the VSMP regulation, the mega regulation approach may not make the most sense, because it is already hard enough for folks to find stuff in the regulation now. The thought process in presenting these concepts to the group was the regulation would be based on audience: if I am a VSMP authority or VESCP authority or a VESMP authority what do I need to do or know to be able to administer the program? Not the technical stuff, but what do I need to do for plan review; inspections and reporting? Then if I am a developer what are the expectations for erosion and

sediment control – what are my requirements? What are my expectations for post-development? DEQ staff has looked at a couple of different options/approaches to deal with the changes to the statute.

The proposal was just a starting point for staff and the group to move forward through this process. The idea is to have consistency where possible throughout the regulations – throughout the “consolidation” process. For the sake of DEQ managing these regulations, it is easier for there to be separate regulations. Conceptually, however, a “mega” regulation could be divided into an “administration” section; a “criteria” section; and a “permitting” section. DEQ would rather have separate regulations because of the process for amending regulations. That doesn’t mean if the group thinks that having a “mega” regulation is the way to proceed then we could certainly pursue that approach. The hope is that whichever approach is taken that its implementation for everyone will be “easier”.

RAP Discussions:

- Montgomery County utilizes a “flow chart” that helps direct folks on what they need to do regarding ESC and Stormwater – helps to simplify and identify what they need to do. It is an attempt to simplify what rules need to be followed in the process. Could pulling the requirements into separate sections help simplify the process? Could having a flow chart of this nature help direct folks through the process?
 - If we were to pull out the “Program Administration” requirements from the regulations then someone who just wants a permit would not have to wade through all of those sections.
- Is there a way to do it, instead of “administrative”; “permitting”; and “technical” criteria and the components/sections, to do it by “who is applying”? One set of regulations for the Developer; one set of regulations for VSMP and the expectations for those folks. Focusing on “what is expected of me” if I fall into this category of applicant?
 - That is part of what we were trying to do. Using the color-coded sections in the handouts as a reference: The “Green” highlighted sections represent the program administration parts of the regulations. Whether that is a separate regulation or part of a larger regulation, we were trying to figure out the best option for telling our local partners (local governments) what it is that they need to do. The requirements should be consistent across the regulations and program requirements.
 - Is there any way to do this in “plain” language? Could we write the regulations in more of a conversational tone? There are regulations that have flow charts in them as a mechanism to try to simplify or spell out requirements clearer. Maybe adding a flow chart to the regulations so that folks know where to look for the requirements might help simplify and clarify the process. The process is designed to make the regulatory language as “plain speak” as possible but it is still a regulation and there is certain formatting that is required.
- Maybe the approach should be to have a first Part/section that identifies what is expected if I am a VSMP or one of the other types of program administrators and then Part 2 would be “What is

Required of Me” if I am disturbing land in the Commonwealth and then Part 3 would address any permitting that was required.

- It could be organized in numerous ways. It could be divided into “Administration of Plans”; “Construction” and “Post-Construction” requirements. We have an opportunity through this process to look at different ways of organizing the requirements. We don’t want to go through this process of taking apart and then reassembling the different sections/requirements into a different structure if it doesn’t make it any better.
 - It is easier for the agency to have separate regulations. There is always a fear when a regulation is opened for review or implementation of a change of what else might be “touched” during the process. What is on the table to be touched/addressed during the current process needs to be clearly identified at the start of the process. The focus of any regulatory panel/regulatory process needs to be clearly identified and acknowledged at the beginning of the process. Unless of course the decision has been made that the process needs to include a broader scope.
 - One other thing to consider is that a model ordinance for local governments will also need to be developed. At the end of the day, local governments will have to take the requirements from the regulations and put into their local ordinances. There may be local governments that choose to do a consolidated program; there may be local governments that choose to do a combined lite program where they do the ESC piece and DEQ is still doing the stormwater piece. The thought was that it would be easier to spell out of that out in a model ordinance with references to different regulations though it may be easier to do one regulation with different parts.
- Is the concept of “consistency of enforcement” between the two programs part of this process?
 - To the extent that the statute tried to make it consistent, we will carry that out through this process.
- What about “fees”? Are they off limits in this process?
 - The 2016 legislation had an enactment clause including language related to “fees”. The question from the General Assembly to DEQ was “Are the fees that are currently in effect sufficient to allow the administration of a combined Erosion & Sediment Control and Stormwater Management Program? A query was made to all of the localities regarding “cost and staffing” and what it would take to do this program. A whole lot of information was pulled together and reported to the General Assembly but nothing has been done with it. No fee changes were authorized by the 2016 Legislation.
- How does DEQ handle requests from local governments about changing their local fees?
 - Local Governments have the authority to charge fees greater than what is identified in the VSMP regulation. DEQ Staff is willing to have one-on-one conversations with localities regarding those local fees. DEQ is not going to second guess a locality’s financial needs to implement the program.
- The City of Chesapeake has developed a matrix of every type of project that they could think of and have identified what you are required to comply with in every scenario they could think of.

They developed this matrix for their permitting staff so that they could understand the options and the requirements, instead of depending on their understanding and interpretation of the language. It was suggested that combining this matrix with the Flow-chart from Montgomery County might be a useful exercise.

- The very first word used when we started the discussions was “consolidation”.
 - That essentially refers to “program consolidation” that does not necessarily dictate “regulation consolidation” or what the final regulation(s) will look like.
- People are not understanding the 3 regulations as they currently exist. What is going to happen if we make it a “mega” regulation and make it bigger? We won’t necessarily make it better if we make it bigger.
- Maybe the resulting regulation or regulations can be augmented through the use of flow-charts or matrices. The challenge will be to put as many things, as many scenarios, as we can think of in those flow-charts and matrices but we will have to recognize that we can’t think of every scenario. Dealing with it in the current context let’s at least figure out ways to make it better.
 - That is DEQ’s goal for this process – to make it better.

One of the reasons that the existing regulations are really difficult to read and understand is because they are a mishmash of all of these kinds of provisions. There is a whole lot of stuff about program administration that no permittee/operator needs to read; there is somebody who wants to know “if I am disturbing 90,000 square feet” what do I have to do? DEQ thought that it would be clearer to be able to point these various individuals to smaller chunks of the requirements/regulations and tell them that is all they have to worry about. It is really hard to follow through on even a simple question when there are so many regulations to jump through including the provisions that are scattered throughout the regulation. Program administration is going to be different whether the local government is implementing the consolidated program; or opt-in lite; or just sticking with ESC. So, what is the group’s vision of this “consolidated” regulation?

The proposed skeleton of the regulation that was presented in the handouts was a “re-jig”, a “restructure” of the current regulations to get an idea of what it might look like. Under a “Program Administration” regulation, there could be Section 1: If you are ESC authority only - here is what you have to do; Section 2: If you are VSMP authority only – this is what you have to do; Section 3: If you are a VESMP – this is what you have to do.

Nothing would prohibit a regulation that said: If you are an ESC authority only – this is what you have to do – these are your program elements; If you are a VSMP only authority (DEQ is still a VSMP Only Authority – this is what DEQ does.) – here is what you have to do – these are your program elements; If you are an Opt-In Lite or a VESMP – here is what you have to do – these are your program elements. Would not want to repeat the technical criteria in every one of these categories. The thought is to maybe pull the technical criteria out and place it in its own regulation or section of the regulation and let those other portions or sections refer to it. There are a number of different ways that the technical criteria could be arranged and referenced.

- A comment was made that the technical criteria and the program administration requirements from a main frame perspective needs to be clearly spelled out to make sure that everyone is

doing things the same way. It is very confusing to have all of those things that relate to “this is what DEQ does” (the permitting end) - these need to be separated out from the other program requirements. The regulation still needs to ensure that when DEQ is the VSMP authority that DEQ is doing the same things that any other VESMP Authority is required to do.

Another way that the consolidated program could be organized is into categories of MS4s requirements; opt-in requirements; and opt-in lite requirements with “this is what you do” for each of those categories – identifying the program elements for each of these categories. The evaluation could start with what needs to be done and what program elements need to be included based on “where the project is located and identifying what are the requirements in that locality”. The program requirements that apply to a local government need to be clearly identified.

Polling the Group: The “Permitting” section is the section that deals with application requirements for Clean Water Act 402 construction permits and MS4 permits including conditions applicable to all; permit modifications; and the small MS4 minimum criteria, as well as permit fees – the yellow highlighted sections of the meeting handouts. Are most folks okay with the concept of pulling all of that material out and at least get it away from the VESCP, VSMP, and VESMP programs? There would not be any changes to those sections – it would be a whole-sale cut and paste – many of those requirements are all brought down from federal requirements/regulations. The one component that would need to be reviewed is if any definitions that have been impacted by the consolidation legislation or this regulatory action. One section that is going to require some closer examination is the fee regulation (permitting and annual permit maintenance fees) related to program implementation and how any implications that moving the section would have with regard to the existing VPDES (non-stormwater) fee schedule.

- Seeking to set a standard of rules related to the consensus process: Everyone would raise their hands and indicate a “3” which would mean they agree with the proposal and they are all on board; people who were in the middle and would agree but maybe with some changes would indicate a “2”; and people who were totally against a proposal would be a “1”.

That approach seemed to be acceptable to the group. RAP members were asked to take time during lunch to think about and caucus about the things discussed during the morning session, and DEQ would take a consensus after lunch. The RAP was reminded that the various proposals and options that were presented by staff were not set in stone. It was discussed that all these conversations need to take place with the acknowledgement and recognition that localities don’t always agree because of variables among local governments such as the size of the locality, population density, and how the program is organized. Each may have different ideas of what the program should look like and how it should be structured, and in that case, DEQ will have to try to decide what makes sense.

Jaime asked for input from the annual standard and spec holders on this morning’s discussions:

- Like the proposed structure of having the various components separated into the Program Admin, Technical, and Permitting requirements/regulations.
- Like the concept of having a matrix and/or flow chart to identify options - to identify “the things that you need to do”.

- Like the way that DEQ has laid out the options.
- The requirements need to be clear.

ACTION ITEM: John Burke offered to send the Permit Process Flow Chart that Montgomery County uses for distribution to the RAP and Interested Parties.

ACTION ITEM: Barbara Brumbaugh offered to send the City of Chesapeake’s Matrix for distribution to the RAP and Interested Parties.

ACTION ITEM: Jen Cobb offered to send a copy of a set of questions/guidelines that the County of Henrico has developed to help guide their process for distribution to the RAP and Interested Parties

7. Public Body Rule - Administration Details/Distribution of Information - Debra Harris(DEQ):

Debra Harris with DEQ’s Office of Regulatory Affairs laid out the process that this group has to follow as a Public Body to comply with the requirements of the Freedom of Information Act:

This RAP is considered a “Public Body” for the purposes of the Freedom of Information Act (FOIA). Members were reminded not to hit “Reply to All” when responding to an email. Emails going back and forth between members of a Public Body can be considered a “Public Meeting” – which would require “public notice” and the public must have an opportunity to attend. One-on-one correspondences and conversations are acceptable but when a third person is added to that discussion it is considered a meeting of the RAP. If there is anything members of the RAP wants to share with the group or questions for the group to consider, please send it to Bill Norris. Bill will be responsible for routing that information out to staff and to the members of the RAP and the Interested Parties.

William K. Norris (Bill) – William.norris@deq.virginia.gov – 804.698.4022

8. Break for Lunch – 11:50 AM – 1:10 PM

9. Looking for A Path Forward – Jaime Robb (DEQ):

Jaime welcomed everyone back from lunch and started a discussion on the Organizational Structure – a Path Forward for addressing the Consolidation of the Programs as discussed in the morning session. She reminded folks that, the idea is for a consolidation of the **programs**, which may or may not be consolidation of regulations. As it stands now there is the ESC regulation that address program implementation, administration, and technical requirements – that is for local governments that are just doing ESC; then there is the VSMP that addresses those same things so the local governments are implementing the E&S regulation as well as the VSMP regulation. When the VESMA was approved and DEQ was tasked with this regulatory assignment, it was determined that there are multiple ways that this could be done, but ultimately the idea was to create a combined program. Whether that is combined regulations, separate regulations, or a mega regulation that at the end of the day is what the task is.

RAP Discussions:

- The options discussed earlier of doing flow charts and/or matrices make sense. Generally, the group liked what DEQ had laid out in the meeting handouts. Programmatic wise – if we were to look at it, the programs are more like layers. It looks like every program is going to start with Erosion and Sediment Control as its primary layer or foundation. The Chesapeake Bay Preservation Act regulations are a good model to use for the layered approach. Program wise we should probably start by focusing on ESC administration requirements and get that tweaked out first.
- Dealing with Opt-Out localities in the Piedmont area – even as an ESC authority there are cases where you need stormwater management facilities – so we need to keep in mind that there are going to be sites, less than an acre, that are not going to need a Construction General Permit but they may still have some stormwater management facilities – some ESC only localities may have difficulty grasping the fact that they may need maintenance plans and maintenance agreements for these sites that are less than an acre, so would like to see long-term maintenance for stormwater management facilities for the ESC Program as well as the VSMP and VESMP.
 - This is one of those things that DEQ looked at in its proposed organization, because of MS-19 you end up pulling in stormwater even when it is an ESC-only project. That was one of the considerations that DEQ had given is that rather than telling folks here are all of your ESC requirements and by-the-way you have to go over here and look at these other stormwater requirements. Was there a way to kind of get that in line with one another a little bit better?
- The ESC program is mostly for the land-disturbing activities during construction – that has always been a confusing concept for last 30 or 40 years. MS-19 applies during construction as well as post-construction.
- Looking at what this group is going to be doing in the coming months are we going to be just rearranging the existing sections or are we going to be rewording them? How much editing are we going to be doing with the regulations?
 - We are going to be doing both, potentially – depending on the organizational scheme the group decides to pursue. Ultimately, there would be some rewording of the regulatory requirements. The thought was to figure out our skeleton and organizational structure and then update the wording to fall in line with the consolidation legislation language as needed. Keep in mind that if the group identifies something and we are not quite sure if it fits the current statutory framework please bring it to our attention (email Bill Norris), so that we can keep a running list of those items – even if they get tabled from our current discussions we will have them for next time. So there will be tweaking of language it is not just rearranging.
- Following the layers analogy – we could start with the basic E&S then move up through the other program requirements.

Melanie Davenport referenced a document that was put together by the Coastal Policy Center. The bill

that consolidates the programs was supposed to be effective, July 1st, 2016 or 30 days after DEQ promulgated regulations. The General Assembly changed that effective date and made it 2017, because Delegate Keith Hodges was still trying to figure out the “donut hole”. He convened a work group that the Coastal Policy Center at the Law School at William and Mary to look at the idea and concept of consolidation of the programs. The report generated from this work group contains a “Programmatic Summary Sheet” - A Guide to the Bill.

ACTION ITEM: Melanie Davenport will route a copy of the Coastal Policy Center Report to Bill Norris for distribution to the RAP and Interested Parties.

Drew Hammond referenced section 103 of the VSMP regulation that spells out/lists the required stormwater elements that a CBPA locality must implement in **Item #A.3**. 3. He suggested this would be a good starting point (as an example) for listing ESC, VSMP, and VESMP requirements.

9VAC25-870-103. Requirements for Chesapeake Bay Preservation Act land-disturbing activities.

A. Localities subject to the Chesapeake Bay Preservation Act shall regulate runoff associated with Chesapeake Bay Preservation Act land-disturbing activities in accordance with the following:

1. After June 30, 2014, such land-disturbing activities shall not require completion of a registration statement or require coverage under the General Permit for Discharges of Stormwater from Construction Activities but shall be subject to the technical criteria and program and administrative requirements set out in [9VAC25-870-51](#).

2. A local or VSMP authority permit, as applicable, shall be issued permitting the land-disturbing activity.

3. The locality shall regulate such land-disturbing activities in compliance with the:

a. Program requirements in [9VAC25-870-104](#);

b. Plan review requirements in [9VAC25-870-108](#) with the exception of subsection D of [9VAC25-870-108](#) or as allowed in subsection A of [9VAC25-870-52](#);

c. Long-term stormwater management facility requirements of [9VAC25-870-112](#);

d. Inspection requirements of [9VAC25-870-114](#) with the exception of subdivisions A 3 and A 4 of [9VAC25-870-114](#);

e. Enforcement components of [9VAC25-870-116](#);

f. Hearing requirements of [9VAC25-870-118](#);

g. Exception conditions of [9VAC25-870-122](#) excluding subsection C of [9VAC25-870-122](#) which is not applicable; and

h. Reporting and recordkeeping requirements of [9VAC25-870-126](#) with the exception of subdivision B 3 of [9VAC25-870-126](#).

B. A locality subject to the Chesapeake Bay Preservation Act shall adopt an ordinance that incorporates the components of this section.

C. In accordance with subdivision A 5 of § [62.1-44.15:28](#) of the Code of Virginia, a locality's VSMP authority may collect a permit issuance fee from the applicant of \$290 and an annual maintenance fee of \$50 for such land-disturbing activities.

Statutory Authority

§§ [62.1-44.15:25](#) and [62.1-44.15:28](#) of the Code of Virginia.

Historical Notes

Former [4VAC50-60-103](#) derived from Virginia Register Volume 27, Issue 26, eff. September 13, 2011; amended, Virginia Register Volume 29, Issue 4, eff. November 21, 2012; amended and renumbered, Virginia Register Volume 30, Issue 2, eff. October 23, 2013; amended, Virginia Register Volume 30, Issue 24, eff. July 1, 2014; Volume 35, Issue 4, eff. November 14, 2018.

One of the things that could potentially be done with respect to this effort – whether it is a larger “mega-regulation” or separate regulations or sections, would be to have a beginning section that would say that “if you are implementing an ESC-only program, here are the things that you have to do”; “if you are implementing a stormwater-only program, here are the things you have to do”; “if you are implementing a Combined Program, here are the things you have to do”; and “if you are an annual standard and spec holder, here are the things you have to do”. This general format concept illustrated in this example, could be used as a starting point for the Program Administration piece. This would help flesh out the general requirements that are applicable for all the programs and then provide the details for the specific programs. This could be a potential starting point for development of the skeleton for the structure of the combined program moving forward.

It may be easier to think about from the perspective of buckets for categories of specific program requirements instead of what structure the final combined program/regulation might take. Requirements such as “Plan Review”; “Long-Term Maintenance of Stormwater Facilities”; “Inspection”; “Enforcement”; and “Hearing” are examples of components that will be required in some form across all of the programs.

- A question regarding addressing counties and have towns that are included in their programs and where long-term maintenance is a concern.
 - For programs where DEQ is the VSMP authority, DEQ enters into BMP maintenance agreements with the project owner. Under the VSMP regulation, DEQ, when acting as the VSMP Authority has the same obligations and requirements as any local VSMP authority.

- As far as the towns are concerned, whatever structure we agree on we are going to have to give a nod to towns – we would need to include them in any statement such as “if you are a local government, including towns, ...”

The applicability of the program requirements to different entities will have to be considered and clarified. The options will need to be spelled out in the regulation. The question will be whether to include specific requirements in the individual sections or specific areas of the regulation and then just reference them or include requirements in multiple places throughout the regulations, which would result in repeating the requirements several times.

- Not a fan of duplicating language. Need to minimize duplication.
 - Separate sections for program requirements such as “inspections” and specify which elements in that section are applicable to which program areas and entities.
- Will we be repealing any sections during this process?
 - There is a potential to have to repeal sections.
 - Initially we need to ignore numbers and ignore section names and figure out what we want to do during this process, then we can take that information back to the office and reconfigure it to see what we are going to have to do to make that happen – put it into regulatory format and see what it looks like and the decision on how to proceed will be made
 - We know that there are 3 things that we can’t repeal. We won’t be repealing the Chesapeake Bay Preservation Area Designation and Management Regulations (830), the Construction General Permit regulation (880), and the Small MS4 General Permit regulation (890). There are parts of those regulations that reference back to Sections 870 and 840. Whatever we ultimately end up doing we will have to make changes in those sections but we won’t be repealing them.
 - There may be advantages to repealing Sections 840 and 870.

There is going to have to be an “implementation” period for the consolidation of the programs. Likely 6 months to a year may be needed. DEQ needs feedback from local government representatives on how long it will take to update local ordinances and procedures to line up with any regulatory changes that are taken. Most of the implementation changes that will be required related to “what localities have to do” to sync up to the new model ordinance. There will not be any technical criteria that will need to be taken into consideration. There should not be anything that will require phasing in of requirements like with the 2014 VSMP regulation. There may be the opportunity to remove provisions that are no longer applicable such as some of the grandfathering provisions in the VSMP regulation. The challenge is that grandfathered projects using public bonds are indefinitely grandfathered.

Would a program listing of what is required be helpful to local governments implementing the program?

- It may be helpful to have such a listing of requirements. There are merits to fleshing out the program requirements/program elements clearly for each program entity.

- Spelling out of program administrative requirements/elements for both the program administrator and the land disturber would be useful. These sections could spell out what you need to do depending on what category you fall into. Information indicating that this is “what applies to you” for each category would be helpful, i.e., for program administration this is “what you need to do”.

The group was reminded that the goal for the meeting should be for the group to have a full discussion/conversation about the available options and what might be done and then get an agreement that this is the right path to pursue to meet the statutory requirements. With the understanding that once DEQ starts putting it to paper it could all look ridiculous and the group might have to take a different track.

- Are we still looking at the possibility of having a “consolidated definitions” section?
 - This was a suggestion and is still on the table as an option. If we have multiple sections, we are going to have to have multiple definition sections.
 - We will need to ensure that we incorporate the new/revised definitions from the consolidated law into the regulation or regulations.
 - Definitions are the crux of what we do. We can either lump or slit the definitions.
 - There are some definitions that are only applicable to individual sections and program elements and the intent was to include only the applicable definitions in those sections.
 - The idea would be to include definitions in the individual sections if they apply to that section.

10. Polling the Group – Jaime Robb (DEQ):

Jaime asked the group using a consensus approach if members of the RAP were okay with setting aside the permitting (CWA 402) requirements into a stand-alone section/regulation with the exception of fees to be reviewed by DEQ further.

General Consensus: The group indicated that there were 17 folks who agreed with the proposal to move the permitting requirements into its own section/regulation (Voted a “3”) and 3 folks who agreed with the proposal but had some concerns (Voted a “2”). The General Consensus was to proceed with the concept of a separate “Permitting” section/regulation.

11. Other Ideas and Thoughts Moving Forward/Vision for After the Meeting – Jaime Robb:

Based on the polling of the group, DEQ will move forward with development of a template looking at pulling the permitting requirements out of the other sections of the regulation to present a more streamlined proposal for the group to consider. DEQ will start drafting up what the program language would look like mimicking the Chesapeake Bay Section that Drew referenced – identifying individual/specific program area requirements. It will be more detailed than the materials presented, but not too detailed so that folks can get a feel for the concept without getting overwhelmed with too many details at this stage.

There is still some uncertainty about how the group wants to proceed related to “definitions”. This will ultimately depend on what the framework for the regulations looks like.

- There was still an interest raised about looking into a consolidation of the definitions into its own section/regulation.
- Are there definitions that will have to be revised – the same word but defined differently?
 - Yes, the Consolidated Law document (statute) that was distributed electronically prior to the meeting contains several revised definitions that will need to be incorporated into the consolidated program/regulations.

RAP Discussions:

- How will the concept of “oversight inspections” be handled?
 - The first step will be breaking down what each program category has to do and then creating a section just for inspections. We will also have to identify “applicability” – then decide whether we repeat it in all the sections of try to avoid the duplication/redundancy.
- The concept of “breaking the program requirements” into “buckets instead of trying to look at the entire set of regulations as a whole is a good approach.
- How do we handle concerns that the group has that may or may not be within the scope of the regulatory process?
 - Any suggestions or thoughts for areas needing clarification that you want to share with staff and the rest of the group should be sent to Bill Norris so that he can keep a running list of those ideas and share with the group at the next meeting. Then we can look at them to determine whether they are “in scope or not” and whether they should be addressed during this process or kept for consideration at a later date.
- Could information or revisions be considered to some definitions that might help clarify them further?
 - They cannot be extended or expanded upon but DEQ will consider any clarification suggested by RAP members. If it is determined that the change cannot be made as part of this regulatory process they will be added to the list of items for consideration in future regulatory actions.
- The proposed framework that DEQ is going to lay out, is it going to include references back to the existing Sections 840 and 870? Or is it going to copy that text and put it into one big new regulation?
 - There are multiple different ways to handle the skeleton piece. DEQ will start fleshing out the details of the language and leave out regulatory citations until after a framework is agreed upon. The concept is to get the text written first.

12. Final Thoughts – Jaime Robb (DEQ):

The group discussed a lot of ESC and stormwater requirements. She reminded them of the third component, the Training Certification Regulation, and asked the group while reviewing these regulations, please take a look at the current certification requirements. The DEQ training staff will also be looking at that component and will be suggesting revisions that will need to be considered for that section of the regulations and will be presenting those ideas to the group.

RAP Discussions:

- Is there proposed language available for any revised “training certification” requirements? What is being changed?
 - DEQ training staff will be evaluating the statutory changes in the consolidated program requirements to determine any changes that might be required and will be presenting them to the group for consideration.
 - In general, under the consolidated law it basically created another category of training for “Combined Certification” which will have to be included in the regulations.
- How will implementation of the new requirements be handled?
 - There will need to be some discussions/conversations about implementation. DEQ recognizes that there will need to be some flexibility and there will need to be a delayed implementation so that local governments can go through the process of updating ordinances.
 - When DEQ implemented the 2011 new stormwater regulation, we were being pressed and had to get it done to coincide with July 1, 2014 CGP. There is no external pressure related to any other regulatory action on this current process.
 - It was suggested that members of the RAP start informing their local governments about this regulatory development process and that there will need to be ordinance updates sooner rather than later so that they are aware of the process and the revisions that are being discussed.
- Will DEQ want to review what localities are proposing to adopt as a local ordinance?
 - That is how things have typically been handled in the past. Part of the bigger conversation that DEQ is going to have is what goes into reviewing local ordinances and what that process needs to include and how it should be handled moving forward. The time needed for the local government to develop and adopt a local ordinance will also need to be taken into consideration during this process, so that some reasonable time frame can be agreed upon.

13. Public Comment

An opportunity for members of the public who were in attendance to make any public comment to the group.

- **No Public Comment was offered.**

14. Next Steps – Jaime Robb:

Based on the discussions during the meeting the next meeting topic will continue along the path of organization. DEQ staff will put a little more meat on the skeleton that was presented so that the group will have a better idea on what “program administration” regulation might look like.

DEQ committed to have something to share with the RAP about 2 weeks prior to the next RAP Meeting.

The next meeting of the RAP will be about 4 to 6 weeks out and meetings will run from about 10:00 AM to 3:00/3:30 PM time frame.

ACTION ITEM: Bill Norris will send out a “Doodle Poll” to the RAP Members with options for the next RAP Meeting.

The group briefly discussed the location for the next meeting and the decision was made that having the meetings at the PRO location was preferable to having the meeting at the DEQ Central Office Downtown.

Jaime reminded the group that any materials that they wanted to share with the rest of the group or with staff should be sent to Bill Norris for distribution.

Jaime thanked everyone for their attendance and participation in the meeting.

15. Adjournment

The meeting was adjourned at 2:17 PM