STORMWATER STAKEHOLDER ADVISORY GROUP (SAG)
Friday, April 17, 2015
Draft Meeting Notes

Location: DEQ Piedmont Regional Office - Training Room
4949-A Cox Road, Glen Allen, VA

Start: 10:04 am
End: 3:24 pm

SAG Members Present:
Michael L. Toalson, HBAV
Bart Thrasher, VDOT
Peggy F. Sanner, Chesapeake Bay Foundation
Adrienne Kotula, James River Association
Rick Parrish, formerly SELC
Larry J. Land, VACO
Joe Lerch, VML (for the afternoon session)
Whitney Katchmark, HRPDC
L. Eldon James, Jr., RRBC
Chris Pomeroy, Aqua Law
Jimmy Edmonds, Loudoun County
Peter J. Rigby, Paciulli Simmons
Douglas Beisch, Stantec
Katie Frazier, Va. Agribusiness Council
M. Ann Neil Cosby, Sands Anderson
Austin R. Mitchell, Amherst County
Philip F. Abraham, VACRE (for the morning session)
Elizabeth A. Andrews, DEQ
Melanie Davenport, DEQ
James Golden, DEQ

SAG Members Absent:
Glenn Telfer, Draper Aden

Facilitator: Mark Rubin, VCU
Recorder: Debra Harris, DEQ

Guests and Public Attendees:
Kip Mumaw, Ecosystem Services
Jenny Johnson, Joyce Engineering
Christine Watlington, VDOT
Lee Hill, Joyce Engineering
Ian Whitlock, Joyce Engineering
Chris French, Contech
Joe Wood, CBF
Emily Russell, VCN
Sean Simonpiefri, Exact Stormwater Management
Lacey England, NiSource
June Whitehurst, City of Norfolk
John McCutcheon, DEQ
Fred Cunningham, DEQ
Joan Salvati, DEQ
Drew Hammond, DEQ

I. Agenda Item: Welcome & Review Minutes and Developments

Discussion Leader: Mark Rubin, Facilitator
Discussion: Mr. Rubin welcomed everyone to the third meeting of the SAG and reviewed the agenda for the day (Attachment 1). Afterward, the attendees introduced themselves. Mr. Rubin explained that there is an open chair at the table for members of the public to use during a discussion and all attendees were reminded to sign-in.

Mr. Rubin asked for any corrections to the previous meeting minutes provided to the SAG. No corrections were noted; therefore, the previous meeting minutes will be finalized and posted on the Virginia Regulatory Town Hall. The SAG was then asked if there were any new developments and none were noted. Mr. Rubin provided a summary overview of overarching issues.

II. Agenda Item: Brief overview of the documents prepared by DEQ

Discussion Leaders: Elizabeth Andrews and Melanie Davenport, DEQ

April 17 2015 SAG mtg2.pdf

Discussion: Ms. Andrews and Ms. Davenport provided an overview presentation of the materials developed by DEQ for the SAG which were handed out with the agenda. The overview included: (i) the current status of local government land use and

development functions; (ii) the current status of erosion and sedimentation control and stormwater management programs; (iii) an overview of other Bay states' programs; and, (iv) a review of some options for structuring the stormwater management and erosion and sediment control programs, including the "who" could operate them and the "what" the programs could look like.

III. Agenda Item: Resolution of Issues in Matrix

Discussion Leader: Elizabeth Andrews, DEQ
Discussion: Mr. Rubin informed the SAG we will go back through the matrix presented at the previous meeting to determine what needs to be done to resolve the issues noted. There are three questions to be answered regarding each of the statutes:

1. What provisions of the three statutes can be made consistent with each other?
2. Which of the provisions can be moved into the basic provisions of the State Water Control Law?
3. Which provisions can be consolidated into one statute (probably using the Stormwater Management Act as the vehicle)?

Ms. Andrews then led the SAG through the matrix and explained each of the issues highlighted. Additionally, the SAG was asked to bring up any other issues or concerns with the statutes. During the discussions, the SAG noted the following comments:

- "Land disturbing activity" definitions in the Stormwater Management Act (SWMA) and Erosion & Sedimentation Control Law (ESCL) are different. This needs to be clarified and harmonized.
- Agricultural exemptions for land disturbance need to be reviewed and clarified. However, each of the words is meaningful so the SAG needs to be careful on how things are phrased and the effect that may have on the exemptions.
- The SAG needs to understand that there is a difference between exemptions vs. exceptions. This distinction should not be lost if statutes are combined.
- Overall, there needs to be harmonization of the statutes so that they all agree or are consolidated without losing anything.
- A lot of the language in the SWMA is there because DCR did not have the overarching general provisions of the State Water Control Law (SWCL) when it took over administration of the stormwater permitting programs in 2004; therefore, there may be provisions in the SWMA or ESCL that may be moved "up" to the SWCL's general provisions.
- The different thresholds of the different statutes are an issue which needs review and may require that a policy decision is made.
- Those localities that opted out of operating a VSMP under the SWMA wanted out of stormwater management overall but the threshold in the Chesapeake Bay Protection Act (CBPA) has kept them responsible for administration of some stormwater management.

The SAG broke for lunch at 12:00 pm.
The SAG reconvened at 1:10 pm.

After lunch, the matrix discussion continued and all of the issues were assigned for further action by a work group, the SAG, or the DEQ (Attachment 2).

Conclusion: The issues highlighted in the matrix will be handled as summarized in Attachment 2.

IV. Agenda Item: Structure of Potential Legislation

Discussion Leader: Mark Rubin, Facilitator
Discussion: Mr. Rubin went over the possible structure options as provided in the last meeting and asked the SAG for anything additional. The structure options provided for discussion were:

1. Move everything from three statutes to SWCL.
2. Keep the three current statutes (SWMA, ESCL and Chesapeake Bay Preservation Act (CBPA)) and harmonize.
3. Put everything from the three statutes into one statute.
4. Combine the SWMA and ESCL and leave the CBPA alone except to harmonize where necessary.

Another option was also suggested:

5. Combine SWMA and ESCL into one statute, move provisions that can be moved from these two up to the SWCL (e.g., authorities, enforcement, etc.), and leave the CBPA alone except to harmonize.

Based on the discussion of the structure options, the SAG had the following comments:

- Localities and others understand the programs as they are now and we need to be careful about changing them.
- Why have two laws that deal with the same issue in the construction phase? It seems localities would benefit from merging and harmonizing these similar provisions.

- Opt-out local governments would like to have the laws (and the thresholds) streamlined and consolidated.
- If we keep the opt-in and opt-out provisions, will consolidation work?
- Opt-in localities do not want many changes as they have their ordinances in place. Harmonize where you can but do not drastically change the current provisions as these localities have programs up and running and working already.
- Clarify the laws as needed but do not change thresholds because many of the localities already have programs in place based on these thresholds.

Mr. Rubin asked the group to provide their opinion on where to start from for streamlining and clarification of the statutes. It was noted that Options 2 and 5 seemed to be favored over the other three. The SAG discussed these options and a combined option was proposed. This option was to: (i) harmonize the SWMA, ESCL and CBPA; (ii) where possible, move provisions up to the SWCL (e.g., definitions and enforcement); and, (iii) after harmonization, the SAG will revisit the structure question. Mr. Rubin asked if everyone was okay with that option and the SAG agreed.

Conclusion: The SAG recommends that, as a first step, the statutes be harmonized to clarify the requirements and that, where possible, move provisions up to the SWCL. After this exercise, the SAG will revisit the structure question.

V. Agenda Item: Who Does What?

Discussion Leaders: Mark Rubin, Facilitator and Elizabeth Andrews, DEQ

Discussion: Mr. Rubin led a brainstorming session on the possible options of "who does what" in these programs. Ms. Andrews went through slides from the presentation that dealt with the Option. The options provided were for E&S and SW program implementation and administration (see WhoWhat slides for the options presented for discussion).

WhoWhatSlides.pdf

Based on the information presented, the SAG made the following comments:

- It seems the most sensible way of deciding who is to do what, aside from the current way, is to use population density. Population is a better way to determine who does what than construction permitting levels, since that fluctuates with the economy. Localities with greater population also have more of a tax base with more revenue and, therefore, more capability to do more (be the "who").
- Give localities that do not have enough construction activity an option to have an agreement with a near-by locality to do the erosion and sediment (E&S) or stormwater (SW) reviews for them (i.e., similar to how implementation of the requirements of the building code is done).
- The development plan that is submitted to the locality has many of the components for SW management. This is being reviewed now, so why not have the locality do it all?
- Many of the smaller localities (opt-outs) do not look at E&S plans that are stamped by a PE.
- Are there hybrid options to do this work because there are responsibilities beyond just review of plans?
- A "who" option could be for the DEQ to handle all the responsibilities. But that would have a significant fiscal impact.
- Another "who" option (see handout, *DEQ as VSMP Authority*) would be for the locality to do everything on that list except for the SW plan review and approval which would be done by the DEQ.
- In general, the opt-outs have many similar traits such as low populations, rural areas, and minimum construction activity.
- Some localities have opted-in because they want local control of activities.
- Some localities have opted-out because they are unsure of the program and what it will entail of them.
- For a "who" option, maybe look at high-growth localities? Higher population means more tax revenue to provide more resources.
- An advantage of opting in is that it provides one stop shopping which helps to promote construction.
- Fiscal stress is an issue for localities, especially the opt-outs.
- Many of the opt-ins like the program as it is currently because they are the main "who" doing the work.
- The locality responsibilities under ESCL include post-construction stormwater management for water quantity. This requirement may be a duplicative effort with the SWMA so the SAG does need to tackle some of the "who" issues.
- Suggest keeping the opt-in and opt-out option for localities including the mandatory opt-in requirement for MS4s and perhaps look at ways to provide incentives (such as a hybrid opt-in option) for those that are currently opt-outs.
- Isn't the SWMA program just E&S Minimum Standard 20 and MS21?
- Why do you need an E&S permit if you have a Construction General Permit (GP)? The SW plan in the Construction GP covers E&S so why the duplicative effort for the locality to do E&S?

- There is still a need for SW requirements for projects that are exempt from the GP.
- Start with the E&S program and then add on post-construction from the SWMA program.
- Divide laws with anything related to construction in one and post-construction in the other.
- DEQ will always have to issue the Construction GP as issuance is a CWA authority issue.
- Keep the requirement that MS4s be the VSMP authority. For other opt-ins, let them administer all the aspects of the program (except issuance of the GP).
- Compliance will be an issue as DEQ cannot say whether a site is in compliance with a local ordinance.
- There will be a fiscal impact to DEQ for any of the opt-in hybrid options, since the Department would have to review plans for opt-in localities, which is done currently by the opt-ins.
- If SW plans go to DEQ for approval and are also required by opt-ins, you have a dual approval situation. Perhaps, it would be better to let the locality approve with review and recommendation from DEQ?

Conclusion: The SAG liked the idea of retaining the requirement for MS4s to be the VSMP authority and the option for other localities to either opt-in or opt-out, with opt-ins having the choice of asking DEQ to review E&SC plans for compliance with water quantity requirements and SWM plans (including for CBPA land disturbing activities). The group agreed that additional considerations for the "who does what" will need further evaluation, and they need to have further discussion of incentives to make opting in a more attractive choice for localities.

VI. Agenda Item: Work Groups

Discussion Leader: Mark Rubin, Facilitator

Discussion: SAG members volunteered to be on one or more of the work groups. The work groups are the Implementation Work Group, the Nutrient Trading Work Group, the Enforcement Work Group and the Wordsmithing Work Group (Attachment 3). A doodle survey will be sent to the work group members to evaluate their availability for work group meetings prior to the next SAG meeting on May 11th.

The meeting was then adjourned.

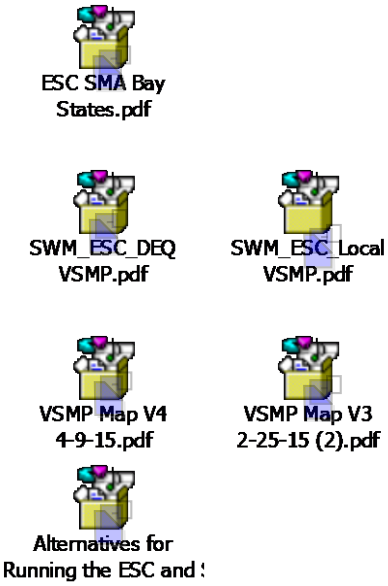
Attachment 1
Agenda and Handouts

STORMWATER SAG AGENDA

APRIL 17, 2015

1. Welcome – reports on any recent developments, review of minutes, etc.
2. Brief overview of the documents prepared by DEQ for this meeting
3. Resolution of Issues raised in matrix provided by DEQ at last meeting –**PLEASE BRING YOUR MATRIX OR HAVE ACCESS TO IT ELECTRONICALLY FOR THIS MEETING –** Questions to be answered:
    a. What provisions of the three statutes can be made consistent with each other?
    b. Which of the harmonized provisions can be moved into the SWCL?
    c. Which provisions can be consolidated into one statute (probably using SWMA as vehicle)?
4. Lunch
5. Finish discussion of matrix issues – what conclusions can we reach about structure of potential legislation based on this discussion
6. Continue the discussion of who does what
    a. Begin with DEQ prepared documents as vehicle for discussion as well as concept articulated by Joe Lerch at the last meeting
    b. Answer the question of what responsibilities localities have that can be shifted to DEQ and whether the opt in and opt out distinctions still make sense
7. Work groups – refine the scope of work, finalize membership, set meeting dates
8. Next steps
9. Adjourn

Handouts:


ESC SMA Bay States.pdf
SWM_ESC_DEQ VSMP.pdf
SWM_ESC_Local VSMP.pdf
VSMP Map V4 4-9-15.pdf
VSMP Map V3 2-25-15 (2).pdf
Alternatives for Running the ESC and

Attachment 2
Matrix Issues Assignments

Wordsmithing Work Group (WWG)
Nutrient Trading Work Group (NWG)
Enforcement Work Group (EWG)
Implementation Work Group (IWG)
Stakeholder Advisory Group (SAG)
Department of Environmental Quality (DEQ)

Subject	*SWMA*	*ESCL*	*CBPA*	*SWCL*
Definitions **WWG** **DEQ to draft clarification (DEQ)** **WWG**	**62.1-44.15:24** **- "Land disturbing activity" defined with *exemptions* referenced in 62.1-44.15:34** **-For clarity, delete "CBPA land disturbing activity" definition and simply state regulatory thresholds in Regulated Activities section?** **- Delete concept of "permit" and simply refer to VSMP approval? Because some localities do not issue a permit.** **- If technical criteria are moved from statute into regs, can omit "Water Quality Volume"** **[Keep in statute, but harmonize with SWM regulations]**	**62.1-44.15:51** **"Land disturbing activity" defined with *exceptions* included**	**62.1-44.15:68**	**62.1-44.3** **If choose to amend SWCL rather than having separate provisions in SWMA or ESCL, need to review definitions such as "owner"**
SWCB Powers & Duties **(Leave as is for now)**	**62.1-44.15:25**	**Included in 62.1-44.15:52; not a separate section**	**62.1-44.15:69**	**62.1-44.15, 62.1-44.15:01**
State Permits **WWG – move to SWCL?**	**62.1-44.15:26** **Can this be addressed by amending 62.1-44.15(5a)?**			**62.1-44.15(5a)**
Establishment of Program **SAG** **(policy decisions?)**	**62.1-44.15:27** **- Subsection A requires CBPA localities to administer SW requirements for CBPA**	**62.1-44.15:54**	**62.1-44.15:74, 76**	

Subject	*SWMA*	*ESCL*	*CBPA*	*SWCL*
	land disturbing activities, even if opt out of being a VSMP authority. Keep as is or revise?			
DEQ	- Delete language re: adoption schedule in 2014? [Yes]			
OTH	-In subsection B, clarify town and county responsibilities [Land and Lerch to discuss]	- see 62.1-44.15:54(A)		
SAG (need more research – do not want to take away ability if needed but how to regulate needs clarifying) *Next Meeting Topic*	- DEQ recommends deleting language in subsection F re: state & federal entities and utilities being able to operate VSMPs (if this is done, need to amend definition of "VSMP Authority" too). [To be discussed again at next meeting after Ms. Cosby does additional research]	- DEQ recommends deleting language in subsection E re: state & federal entities and utilities being able to operate VSMPs.		
DEQ will look at	- Note subsections K (CBPA) & L (ESCL) references			
Development of Regulations	62.1-44.15:28	62.1-44.15:52	62.1-44.15:72	
WWG (harmonize)	- Subsection A(10) conflicts with 62.1-44.15:52(A) of the ESCL because of termination date			
No action needed	- Note subsection B – reference to ESCL and			

Subject	*SWMA*	*ESCL*	*CBPA*	*SWCL*
SAG WWG	CBPA - Should fee be set in state regs or by localities? This section requires them to be in regs - Subsections A(5)(c)&(d) can be deleted. (Yes)	- 62.1-44.15:54(J) authorizes localities to set VESCP fees to cover costs, after a hearing.		
VA Stormwater Management Fund EWG	62.1-44.15:29 Unique to SWMA, although Fund is referenced in ESCL & CBPA, and in 62.1-44.15(8a)			
Education & Training DEQ to draft	62.1-44.15:30	62.1-44.15:52(E)&(F) and 15:53		
Annual Standards & Specifications SAG (include in further discussions on VSMP Authority sections)	62.1-44.15:31 - Does this need to be an annual requirement, or on an as-needed basis? - Should this be "may" rather than "shall"? - No time period for review	62.1-44.15:55(D), -44.15:56 - Does this need to be an annual requirement, or on an as-needed basis? - Should this be "may" rather than "shall"? - 60 days for review (62.1-44.15:55(D) & 56(D)) - Subsection E discusses wetlands; SWMA does not		
Duties of the Dept. DEQ to draft	62.1-44.15:32 DEQ would like to replace subsection B with language from E&SCL 62.1-44.15:55: "A VESCP may enter into an agreement with an adjacent VESCP regarding the administration of multijurisdictional projects whereby the jurisdiction that contains the greater portion of the project shall	62.1-44.15:52(B), (E); 62.1-44.15:55(A) DEQ would like to omit language in 62.1-44.15:55(A) re: submitting plans to DEQ for review.	62.1-44.15:69 (Note: This sets forth duties of the SWCB, not DEQ)	

Subject	*SWMA*	*ESCL*	*CBPA*	*SWCL*
	be responsible for all or part of the administrative procedures."			
Authorization for More Stringent Ordinances SAG	62.1-44.15:33 - Is this process needed? Or should localities be able to adopt more stringent ordinances and just report them to DEQ? Or another process? - Clarify what is meant by "findings developed through the implementation of a MS4 permit" in subsection A - Clarify subsection E	62.1-44.15:65		
Regulated Activities WWG	62.1-44.15:34 - Can subsection B be deleted because no longer needed? - Subsections C3 & 4 are unclear; need to be rewritten. - Move all exemptions to Definitions section, or leave here?	62.1-44.15:55, 57 & 59		
Nutrient Credits NWG	62.1-44.15:35 - Reorganize to address nutrient credits and offsite options separately? - Clarify use of credits for construction vs. MS4 permits (see subsection J) - Clarify subsection C			
Recovery of Administrative Costs WWG	62.1-44.15:36 Delete, based on enactment clause language?			
Monitoring & Reports EWG	62.1-44.15:37	62.1-44.15:58		
Program Review	62.1-44.15:38	62.1-44.15:52(D), 54(F)	62.1-44.15:69(10), 71	

Subject	*SWMA*	*ESCL*	*CBPA*	*SWCL*
DEQ to draft	**Compare this program review process with the ESCL & CBPA; which is preferable?**			
Right of Entry **EWG**	**62.1-44.15:39**	**62.1-44.15:60**		**62.1-44.20** **Does not provide Right of Entry specifically for localities; only "any duly authorized agent" of SWCB**
Information to be Furnished **EWG**	**62.1-44.15:40**			**62.1-44.21** **- Applies to "owner"** **- Does not require info to be provided to localities**
Private Rights, Liability **EWG**	**62.1-44.15:41**			**62.1-44.22**
Enforcement by Injunction **EWG**	**62.1-44.15:42**	**62.1-44.15:58, 63**		**62.1-44.23** **62.1-44.15(8b) – injunction with special order**
Judicial Review **EWG**	**62.1-44.15:43**	**62.1-44.15:62**	**62.1-44.15:71, 74(F)**	**62.1-44.29**
Right to Hearing **EWG**	**62.1-44.15:44**			**62.1-44.25**
Hearings **EWG**	**62.1-44.15:45**			**62.1-44.26, 27**
Appeals **EWG**	**62.1-44.15:46**	**62.1-44.15:62**	**62.1-44.15:71**	**62.1-44.29**
Appeal to Court of Appeals **EWG**	**62.1-44.15:47**			**62.1-44.30**
Penalties, Injunctions **EWG**	**62.1-44.15:48**	**62.1-44.15:63** **- Owner of property that has sustained damage or which is in imminent danger of being damaged may apply for injunction, in addition to DEQ**	**62.1-44.15:74**	**62.1-44.32**

Subject	*SWMA*	*ESCL*	*CBPA*	*SWCL*
		or locality - What does subsection D mean? -Note additional provision in 62.1-44.15:64 – not in SWMA: an aggrieved owner of property sustaining pecuniary damage can complain & DEQ will investigate; can lead to stop work order		
Enforcement Authority of MS4s EWG	62.1-44.15:49 - Unique to SWMA - Necessary? See subsection C; if MS4s remain required to operate VSMPs, can this section be deleted?			
Cooperation with Federal and State Agencies (Same provision; no need to reconcile)	62.1-44.15:50	62.1-44.15:61		
No Limitation on DMME's Authority WWG		62.1-44.15:66 Unique to ESCL		

1

Attachment 3
Work Group Membership

Work Group Membership

Wordsmithing - Abraham, Cosby, Thrasher, Frazier, Pomeroy, Beisch, Kotula

Implementation - Sanner, Cosby, Mitchell, Kotula, Land, Lerch, Edmonds, Beisch, Toalson

Enforcement - Sanner, Golden, Toalson, Pomeroy

Nutrient Trading - Pomeroy, Thrasher, James, Frazier, Katchmark, Davenport, Parrish