

Stormwater Stakeholder Advisory Group
Enforcement Work Group
Monday, October 5, 2015
Final Meeting Notes¹

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

Start: 10:00 a.m.
End: 12:55 p.m.

EWG Members Present:

Elizabeth A. Andrews, DEQ
Michael Toalson, HBAV

Chris Pomeroy, Aqua Law
James Golden, DEQ

EWG Members Absent:

Peggy L. Sanner, Chesapeake Bay Foundation
Melanie Davenport, DEQ

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

Guests and Public Attendees:
Carla Pool, DEQ

I. Agenda Item: Overview

Discussion: Elizabeth Andrews provided an overview of the issues remaining for the EWG's consideration. Additionally, the EWG was appraised that there was a current draft resolution being circulated among the opt-out VSMP localities asking that the Governor and the DEQ preserve the current opt-out in the law. The proposed ultra-lite VESMP option will be discussed at the next SAG meeting but there is concern about it among some localities, based on the draft resolution circulation.

II. Agenda Item: EWG Strawman Review

Discussion: The EWG discussed the issues pertaining to the draft of the EWG strawman. Edits and comments made to the strawman are included in Attachment B.

- *Section 15:48*

Mike Toalson noted some concern over the proposed ESC penalties. His concern was that as drafted the penalties could be used by localities as a program/staff funding mechanism (the state penalties already were changed in the draft legislation to go into the Stormwater Local Assistance Fund rather than the Stormwater Management Fund). Therefore, the use of penalty monies in 15:48 was limited to stormwater projects as provided in Section 15:29.1. The EWG then discussed the "per order" language of Section 15:48.B.1. There is some confusion when using both the "per order" language and the "same operative set" language that is currently in the statute. The "per order" language was deleted as noted in Attachment B.

- *CBPA*

Section 15:74 of the CBPA will be revised to clarify that penalties paid shall be deposited into the Stormwater Local Assistance Fund.

- *Section 15:37*

Subsection A will be deleted from 15:37 and moved to the VESMA Section 15:27.

- *Section 15:39 & MS4s*

The right of entry provisions of Section 15:39 are necessary in order to give authority to enter a property for investigation or to do work to insure BMP compliance.

The discussion then noted that the authority to issue MS4 permits is in the overarching SWCL. As it is now, there was some concern over the organizational consideration for MS4s. The EWG would like for the DEQ to look at moving the MS4 provisions from the VESMA and up into the SWCL like the other VPDES permit programs. This would require separating the MS4 provisions from the provisions concerning land disturbing activities and moving the MS4 to the SWCL including Section 15:49 and the definitions of "MS4" and "MS4 program". The DEQ will review this possibility as MS4s are tied to the requirement for localities to be a VESMP and cannot be completely separated from the VESMA.

¹Notes finalized 11/2/15

- *RLD Program*

Concern over the elimination of the RLD program was discussed. In addition to the previously noted concern by some localities that want to keep the RLD training, developers have a concern that VESMPs could require more stringent requirements to meet the “qualified” person criteria. Chris Pomeroy provided some issues noted by Virginia Municipal Stormwater Association, such as: (i) the availability of training; (ii) the content of the training and what will be adequate; (iii) who will deliver the training; (iv) there is a question of small sites and if a waiver would be available for them; and (v) how to insure training is uniform from county to county. Based on these concerns and the discussion, James Golden agreed that the DEQ will redraft the VESMA to include the RLD program. The DEQ will put Section 15:55.B language regarding the RLD into the consolidated VESMA. This will include edits to Section 15:27, 15:30 and 15:31 to add an RLD program. During the discussion of the RLD, the DEQ staff clarified that when it takes enforcement action it does not take that action against an RLD. Enforcement action is against the owner/permit holder so adding RLD does not provide any protection from enforcement for the owner/permit holder.

- *Full SAG Meeting*

A consolidated draft of the VESMA which will include the EWGs edits from today will be provided to the SAG for discussion at the 10/19 meeting. Additionally, a separate draft that incorporates the provisions for the ultra-lite option into the VESMA will be developed and provided for the full SAG meeting on 10/19. This separate draft will include what was discussed as the ultra-lite option at the last SAG meeting (but on which there was not a consensus agreement). It was noted that the BMP enforcement issue has not yet been resolved since the DEQ is not sure of its authority as it will not be a party to the BMP maintenance agreements in ultra-lite localities.

The meeting was then adjourned.

Attachment A List of Acronyms

Acronyms:

CBPA – Chesapeake Bay Preservation Act
DEQ – Department of Environmental Quality
ESC – erosion and sedimentation control
ESCL – Erosion and Sedimentation Control Law
EWG – Enforcement Work Group (a subgroup of the SAG)
IWG - Implementation Work Group (a subgroup of the SAG)
LDA – Land Disturbing Approval
NWG – Nutrient Trading Work Group (a subgroup of the SAG)
RLD – Responsible Land Disturber
SAG – Stormwater Advisory Group
SWCL – State Water Control Law
SWMA – Stormwater Management Act
VEERF – Virginia Environmental Emergency Response Fund
VESMA – the consolidated Virginia Erosion and Stormwater Management Act
VESMP – Virginia Erosion and Stormwater Management Program
VSMF – Virginia Stormwater Management Fund
VSMP – Virginia Stormwater Management Program
WWG – Wordsmithing Work Group (a subgroup of the SAG)

Attachment B



EWG

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