

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

MEETING #3 NOTES – FINAL

MONDAY, SEPTEMBER 30, 2019

DEQ PIEDMONT REGIONAL OFFICE – TRAINING ROOM

Meeting Attendees

VESMA RAP MEMBERS	
Barbara Brumbaugh – City of Chesapeake	Adrienne Kotula – Chesapeake Bay Commission
John W. Burke – Montgomery County	Melanie Mason – City of Alexandria
Debra Byrd – Goochland County	Beth McDowell – Westmoreland County
Jen Cobb, PE – Henrico County	Lisa Ochsenhirt, Esq. – AquaLaw – VAMSA
Patricia Colatosti – Town of Christiansburg	John Olenik – Virginia Department of Transportation
Jimmy Edmunds, CFM – Loudoun County	Jonet Prevost-White – City of Richmond
Dawson Garrod, PE – University of Virginia	Erin Rountree – City of Suffolk
Normand Goulet – Northern VA Regional PDC	Jill Sunderland – Hampton Roads PDC
Richard Jacobs, PE – Culpeper SWCD	Mike Vellines – Virginia Tech
Anna Killius – James River Association	Joe Wilder – Frederick County

NOTE: RAP Members NOT in Attendance: Phillip F. Abraham – The VECTRE Corporation; Andrew C. Clark – Home Builders Association of VA; Matthew Knightes, PE – MSA; Jason Papacosma – Arlington County; Sandra Williams – Atlantic Environmental, LLC

PUBLIC/INTERESTED PARTIES	
Chuck Dietz – Virginia Tech	Jason Murnoch - RES
Ron DiFrancesco – Golder	Brian Parker - VTCA
Jim Filson – Dewberry	Mitch Scott - VTCA
Doug Fritz – GKY	Ginny Snead - AMT
Brian Lindsay – VDOT	Jerry Stonefield – Fairfax County
Melissa Lindgren – Isle of Wight County	Shannon Varner – Troutman Sanders
Jared MacKenzie – Old Castle	Mike Wills - WSSI
Shawnee McHenry – Golder	

TECHNICAL ADVISORS AND DEQSTAFF	
Erin Belt – DEQ	Hannah Jeff – DEQ SW Inspector/Plan Review - TRO
Brandon Bull – DEQ	Debra Harris - DEQ
Tamira Cohen – DEQ Training Staff	William Norris - DEQ
Melanie Davenport – DEQ	Jaime Robb - DEQ
Drew Hammond – DEQ	

The meeting convened at 10:04 a.m. and adjourned at 3:19 PM

1. Welcome/Meeting Logistics – Jaime Robb/Melanie Davenport – DEQ:

Jaime Robb welcomed members of the VESMP Regulatory Advisory Panel (RAP) and members of the public to the 3rd meeting of the VESMP RAP. Melanie Davenport informed the group that Jaime has

left the Central Office and is now working out of the Piedmont Regional Office as the Manager of Piedmont's Wetlands and Stormwater Program, but will continue her role leading the RAP.

Jaime asked RAP Members, members of the public, and DEQ Staff to please sign-in so that we can have an accurate record of those attending the meeting. She noted that a draft of the Proposed Technical Regulation that will be discussed today had been distributed in advance of the meeting.

As noted in previous meetings the consolidated regulation is mainly a program administrative regulation process. The authority and direction that was given to DEQ in the statute was for us to create a consolidated Erosion and Sediment Control and Stormwater Management Program. Through this process the agency is looking at a variety of ways to do that through a regulatory organization structure. There are no technical requirements that are changing; no minimum standards for ESC that are changing; record keeping and reporting as it pertains to permits and minimum permit requirements are not changing. This process relates to how DEQ, local governments, and those entities with Annual Standards and Specifications will implement and administer the ESC and Stormwater Programs.

With regard to Public Comment: This is a meeting of the VESMP RAP so the discussions and focus of the meeting will be on the RAP Members during the course of the meeting. There will be an opportunity for comments from members of the public at the end of the meeting – usually about 30 minutes prior to the adjournment of the meeting.

She noted that DEQ was working on the Program Administration Portions of the regulations based on the RAP's previous discussions. In addition to the proposed restructuring of the Technical Regulations the RAP will still need to look at the Certification Regulations and the Definitions section of the proposed consolidated program at a future meeting.

2. Calendar/Future Meeting Schedule – Jaime Robb – DEQ:

Jaime discussed the balance of the meeting schedule with the RAP due to the upcoming holidays and General Assembly session. She proposed that the RAP have a 1-day meeting in November to discuss the Certification portion of the regulatory changes and then have a 2-day meeting in December to wrap up the discussions and work of the RAP.

Discussions:

The group discussed the possibility of meetings in November and December and suggested that maybe instead of a 2-day meeting in December that the RAP have a 2-day meeting in November instead. DEQ staff will be looking at possible dates and locations and will be sending out a Doodle Poll for the group to identify preferences for meeting dates.

ACTION ITEM: Staff will identify a list of possible meeting dates and send out a Doodle Poll to determine the RAP members preference and availability and the possibility of having a 2-day meeting during November or December.

3. VESMP RAP #2 – July 30th Meeting Notes – Jaime Robb – DEQ:

Jaime asked for any comments or edits to the VESMP RAP #2 Meeting Notes from the July 30th meeting. No comments or edits were offered and the notes were approved as distributed.

ACTION ITEM: The notes from the July 30, 2019 meeting of the VESMP RAP will be posted as “Final” to Town Hall.

4. VESMP RAP Members Shared Topics/Documents – Jaime Robb – DEQ/VESMP RAP
Members:

Jaime noted that a couple of the RAP Members had submitted comments prior to the last meeting of the group but were unable to attend to present them to the group. She asked if either Andrew Clark with the Home Builders Association of Virginia or Lisa Ochsenhirt with AquaLaw wanted to present and discuss their comments. Jaime noted that Andrew Clark was not able to attend today’s meeting.

Lisa Ochsenhirt comments included the following:

I am writing in advance of the July 30, 2019 VESMP Regulatory Advisory Panel (RAP) with a few big-picture thoughts for DEQ’s consideration on developing a regulatory structure for a consolidated set of regulations:

“Mega-Reg” or Separate Regulations – From my perspective, it would be preferable to have all of the necessary topics included in one regulation. I know may be the more challenging option, but if the goal is providing localities and developers with clarity (a “one stop shop” for finding the applicable requirements), having one set of consolidated regulations makes sense.

One Definition Section -- Likewise, I would support having one definition section for the regulation (i.e., not including a separate definition section in the various subparts of a regulation). From my brief review, it appears that there are only a few differences between the definitions in Va. Code § 62.1-44.3 (Article 1, General Provisions), Va. Code § 62.1-44.15:24 (Article 2.3, VESMA), and Va. Code § 62.1-44.15:51 (Article 2.4, E&S Control Law for Localities Not Administering a VESMP). I think it is worth trying to consolidate the definition sections for ease of future reference.

Administrative, Technical, Permit Structure, or Other – During the June 18, 2019 RAP meeting, DEQ suggested dividing the regulations into three sections relating to administrative, technical, and permitting requirements. As an alternative for you to consider, I would recommend a regulation that includes these same topics, but in a format that would allow localities to send developers to one section for the answers to key questions. Just as a starting point, Part I could be Definitions and Purpose, Part II could be Administrative Regulations (with requirements for local and state programs, an explanation for how the state will review local programs, and other necessary authorities to implement these programs), Part III could include all of the Technical Regulations (this would be the section localities could bookmark for developers), and Part IV could be forms and illustrative charts.

Layering: Building Regulations from Easiest to Most Complex – Lastly, one concept that I agree with from our first RAP meeting is the idea of building the regulations from easiest to most complex, with a cross-reference in the later sections to the earlier sections (i.e., “Comply with the requirements in section XXX above in addition to the following requirements:”).

Lisa discussed her comments with the group.

Discussions included:

- The possible inclusion of clarifying charts and tables in guidance instead of trying to include in the regulation.
- Figuring out the use of clear language without upsetting the existing program with changes in nomenclature (i.e., Section IIC) in the consolidated program/regulation has been a struggle.
- Definitions should be all in one area – they are currently in multiple places across the regulations. It was suggested that if a term is defined somewhere in the regulations that it should not have to be repeated. The use of the phrase “as defined in another section” with a hyperlink to that section was suggested.

5. Proposed Technical Regulation Presentation & Discussion – Jaime Robb – DEQ/VESMP RAP:

Jaime noted that the majority of the regulatory language in the document is verbatim from the existing regulations. Updates have been made to reflect the use of the term “VESMP” instead of “VSMP” in most cases. Updates have not been made to the regulatory references within subsections so that cross-reference during the RAP’s review will be easier – these are highlighted in the review draft. In addition, bold italicized regulations in parentheses after a section title are the current regulation number. Jaime presented the proposed Technical Regulations language:

Part I – Purpose and Authority:

9VAC25-TEC-10. Purpose. (A concise mix of 840-20; 840-30; 870-20; and 870-46) and 9VAC25-TEC-20. Authority. (Updated 870-40 based on new SWCL – new statute for the combined programs.)

Discussions: No comments were made on the proposed language for Part I.

Part II – Criteria for regulated land-disturbing activities: Jaime noted that this section of the regulations presented the technical applicability requirements of the regulations and could possibly benefit from the use of a table or flow chart illustrating the concept of “if this – then this”. Staff will be looking at the concept of the development of some form of supplemental guidance as part of the process, however, the use of tables in regulations usually is not a workable option. DEQ will develop a summary table of these land disturbance thresholds for use in guidance, not for incorporation into the regulations.

9VAC25-TEC-30. Applicability. (Technical Applicability)

Discussions:

- It was suggested that the #1 language and the #2 language be switched so that the smaller threshold would be listed first and the regulation references would be in order.
- It was noted that the existing language in #1 should read “...not part of a common plan of development or sale...”
- Staff requested input from the RAP as to whether this approach makes sense? Does this clarify things?

- It was noted that the use of lists or bullet points to break down and identify the individual requirements might be easier to follow instead of having a long narrative. It is easier to miss items with long run-on sentences. This concept might also need to be used in other sections of the regulations.
- Staff noted that this Part is the “meat and potatoes” for the regulated community and it needs to be as clear and clean as possible and useable by the regulated community.
- Need to clearly identify the thresholds and the situations where those thresholds apply.
- It was suggested that an effort should be made to minimize having to move back and forth through the regulations.
- It was noted that having a flow chart would be cleaner. It was noted that it is more likely to be a table rather than a flow chart and would likely have to be included as part of a guidance document rather than being included in the regulation.
- It was noted that it is harder to follow when you are having to jump back and forth to identify the criteria or types of projects/activities in the various sections of the regulations.
- Could the types of projects be identified in this section instead of just referencing them in a different section? The concept of having a table to clarify the types of projects and the thresholds in guidance was discussed. This could help clarify the requirements. It was noted that this would need to be a very simplified table.
- Staff is trying to preserve the concept of Part IIB and Part IIC because that is the current terminology for Land disturbing activities – maintaining consistency with existing regulations/requirements. There are multiple components and requirements in IIB and IIC. Staff will look at simplifying to make it easier to understand through the use of a table or some other approach.
- The group discussed the need to consider the concept of “except where that are more stringent local requirements”.

ACTION ITEM: Staff asked for input from the RAP on the identification of concepts related to development of this type of simplified table to identify the various types of projects/activities and the thresholds and requirements.

9VAC25-TEC-40. Applying for ~~state~~ permit coverage. (9VAC25-870-59)

Discussions:

- Staff noted that in the old statute that there was the term “state permit” – the new statute does away with the term “state permit” and just refers to a “permit”. The Consolidated Law made a change that defined permit as any permit issued by DEQ for authorization to conduct land disturbing activities. Staff has made an effort to make these changes throughout the proposed regulation but understands that there are still several instances in the regulations that will need to be changed.
- It was noted that a local government’s “Authorization to disturb land” is not necessarily a “permit”.

- The “permit” definition is specific to DEQ. A locality can identify the “authorization for land disturbance” in any manner it desires.
- The group discussed the concept of “single-family detached residential structures within or outside a common plan of development or sale”.
- A question was raised regarding the need for the term “Code of Virginia” – this is a required notation when dealing with a section reference.

9VAC25-TEC-50. Applicability of Other Laws and Regulations; Time Limits on Applicability of Approved Design Criteria. (9VAC25-870-47)

Discussions:

- Phrase referencing Code of Virginia section deleted – removed from the SWCL.
- 9VAC25-TEC-50 B refers to “an initial state permit” and “two additional state permit cycles”. As noted the term “state” will be deleted to reflect the revised definition in the consolidated law. The term is used in several other portions of this section and will also need to be deleted.
- A question was raised regarding the handling of exceptions and exemptions. Staff noted that exceptions will be addressed in a later section and exemptions are addressed in the Code.

9VAC25-TEC-60. Grandfathering. (9VAC25-870-48)

Discussions:

- The group discussed the concept in 9VAC25-TEC-60 C related to land disturbing activities remaining subject to technical criteria for one additional permit cycle. It was suggested that at some point that this probably should be changed to refer to a standard review period and/or a fixed end-point or date instead of referring to “one additional permit cycle” or “a number of permit terms”.
- It was noted that local zoning regulations usually require a fixed time period (a fixed end date) for plans.
- The phrase allowing for “more stringent standards” at an operator’s discretion found in 60-C was discussed.

Part II A. Erosion and sediment control criteria, techniques, and methods.

9VAC25-TEC-70. Minimum Standards. (9VAC25-840-40)

Discussions:

- The reference should be VESMP not VESCP.
- It was noted that Minimum Standard (MS) 19 has always been a point of discussion – this is under review by staff in consideration of 2018 legislation (HB1306). Staff noted that this criterion is not addressed in the Consolidated Legislation and this will have to be something that will have to be addressed in the future possibly by this same Regulatory Advisory Panel (maybe with additional stakeholders involved) following the completion of the current work of the

VESMP RAP. The group will move forward with the completion of the current work of the RAP and possibly loop back at a later date to address and make changes to MS19.

ACTION ITEM: Staff will investigate utilizing the current VESMP RAP to address possible changes to MS19.

9VAC25-TEC-250. Erosion and sediment control plan requirements. (Part D below is new for ESC). & 9VAC25-TEC-260. Stormwater management plan requirements. (9VAC25-870-55)

Discussions:

- The group felt that this section should be moved from its current location in the proposed regulation to the location following 9VAC25-TEC-70.
- Staff noted that 9VAC25-TEC-250.D is new language and is an attempt to provide a list of the requirements of an erosion and sediment control plan.
- These should be identified as “minimum” requirements. D might need to read: “A complete erosion and sediment control plan shall at a minimum include the following elements:”
- It was noted that the language that has been provided all reads as stormwater management requirements and not erosion and sediment control requirements – there may need to be some wordsmithing needed.
- The addition of language specifying “or as required by local government” might also be needed.
- Since this is a combined program shouldn’t there be a list of minimum requirements for a combined program?
- The requirements for inclusion of a narrative were discussed.
- The need to include a reference for calculation methods used was mentioned.
- It was noted that there are different specifications for different localities.
- A question about addressing “Impervious acreage” was raised. The group discussed that this was possible addressed in the proposed 9VAC-TEC-260 B5. Staff noted that the requirement for a detailed narrative was new language.
- There were discussions related to 9VAC25-TEC-260 C & D regarding who can submit a plan and specific signature requirements. Staff noted that these requirements are currently identified in 9VAC25-870

6. Break for Lunch – 12:00 NOON – 1:17 PM

7. Continued Technical Regulation Discussions – Jaime Robb - DEQ and VESMP RAP:

Jaime Robb reconvened the group after lunch and continued the review and discussions of the proposed Technical Regulation at **Part IIB. Stormwater technical criteria for regulated land-disturbing activities.**

9VAC25-TEC-80. Water quality design criteria requirements (9VAC25-870-63):

Jaime Robb noted that there were no proposed changes in TEC-80 from the existing regulations (9VAC25-870-63).

Discussions:

- A question was raised about the notation in 9VAC25-TEC-80 C related to “upon the completion of the 2017 Chesapeake Bay Phase III Watershed Implementation Plan (WIP)” and whether that reference is accurate. Staff noted that is included as part of what needs to be done once EPA has approved the WIP. From a timing perspective this reference needs to remain as is in the regulation.

9VAC25-TEC-90. Water quality compliance. (9VAC25-870-65):

Jaime noted that this is a copy and paste with no changes from the current VSMP Regulation.

Discussions:

- The RAP members discussed how BMPs are currently presented in the regulations and if changes could be made such as deleting dates, versions, etc. DEQ staff indicated that what is current in the regulations must stay and provides certainty to the regulated community.
- Staff noted that this concept of clarifying these requirements is in the Governor’s Final Executive Order 6 Report. The report speaks to taking the specificity out of the regulations.

ACTION ITEM: Staff will add this question of referencing specific BMPs and versions and the inclusion of reference to the Clearing House and how that might be addressed in the future to the list of things to consider for possible future changes to the regulation.

9VAC25-TEC-100. Water quantity. (9VAC25-870-66):

Jaime noted that this is a copy and paste from 870-66 with no changes being proposed.

9VAC25-TEC-110. Offsite Compliance Options. (9VAC25-870-69):

Jaime noted that DEQ is proposing to make changes to this section of the regulations to reflect the changes in the statute. The new definitions will be moved to the new Definitions Regulation.

DEQ staff explained that the current regulation for offsite nutrient credits, 9VAC25-870-69, does not reflect the language in the current statute. Therefore, the new proposed language will be directly copied from the state for the Consolidation Regulation.

Discussions:

- The group discussed the concept of the achieving “75%” nutrient reductions on site.
- It was noted that with rural sites if they are less than 10 pounds per year, they are automatically buying the credits and not trying to do anything onsite. The law does allow for that – “the VSMP Authority shall allow the use of credits”.
- A question was raised as to whether there should be an “or” between 2a and 2b in the existing 9VAC25-870-69 language. Staff noted that after 2b, the word “or” indicates that any of 2a, 2b, or 2c may be met.

- With regard to “letters of availability” for offsite credits, some credit banks are depleting their phosphorus loads pretty quickly. There have been situations where a letter of availability has been issued but half way through a project, reduction needs changed, and the owner had to buy more credits. In some cases, the owner bought from a different bank because the original bank had been sold out of credits. The issue with folks with less than 10 pounds buying the credits is not just happening in a rural setting, it is everywhere, unless the locality has said “No”.
- The group discussed the concept of “may allow it in whole or in part” and the authority that provides it shall allow the use of credits.
- How is the offsite compliance for water quantity addressed? The group raised a question about how you would allow that option. Staff noted that this would have to be addressed with a comprehensive stormwater management plan. Outside of a comprehensive stormwater management plans, water quantity must be met onsite. It was suggested that some clarifying language might be needed to address this. Staff noted that is language is taken straight from the statute and adding clarifying language to statutory language might be an issue.

ACTION ITEM: Staff will see if DEQ is allowed to add clarifying language to statutory language that is inserted directly into the regulation related to the use of offsite credits for water quantity compliance.

Jaime continued review of the proposed revisions with **9VAC25-TEC-110 C**. Some of the original wording of this section has been left out of the proposed regulation, but does not change the intent or meaning in the law.

Discussions:

- Does this mean that you have to purchase the credits before you have the permit? Staff noted that they are required to purchase the credits prior to commencement of land disturbing activities. Most local governments are requiring that proof of purchase before issuing permit approval. Some localities are just requiring a “letter of availability”.

She reviewed the language presented in **9VAC25-TEC-110 D and E**.

Discussions:

- It was noted that **9VAC25-TEC-110 E** contains a lot more information than contained in the current regulation and is directly copied from the proposed statute.
- Staff noted that we may be able to delete **110 E 2** since it is addressed in the law and really doesn’t affect this audience and is addressed elsewhere (9VAC25-900).
- The group discussed the concept of “perpetual credits”.
- Staff noted that there will need to be some additional work to get this regulation trued up with the current regulations and other regulations under development as well as with the statute.
- It was noted that we might be able to just reference a particular regulation or statute instead of quoting especially if it is not approved yet.
- A question was raised as to whether anyone has actually used E 4? It was suggested that this might be used as a result of an enforcement action or a compliance issue.

9VAC25-TEC-120. Design storms and hydrologic methods. (9VAC25-870-72):

This is language that is verbatim from the VSMP Regulation. There are no proposed changes from the existing regulation.

Discussions:

- It was noted that Item D and E came from VDOT when the Green Book was originally developed. It may be more suited for linear projects.
- The group discussed the use of NOAA Atlas 14. There is work going on to update the curves and methods used – that will not be Atlas 14. NOAA is under a process now where they are looking at climate change scenarios. This is probably something that will have to be addressed at the Clearing House level and through a different discussion mechanism and opportunity.
- Climate change and adaptive regulations development and different methodologies related to addressing design storms and hydrologic methodologies were discussed.
- The question is “How do you write a regulation that needs to be adaptive but all our rules of regulation writing say that it can’t be adaptive? This will require some additional thought and consideration.

ACTION ITEM: Staff will work with stakeholders to identify the challenges and opportunities represented by the work being done with climate change scenarios and the impact on regulations following the completion of the VESMP RAP. Staff noted that they will welcome input from stakeholders on how to address this concern and issue.

9VAC25-TEC-130. Stormwater harvesting. (9VAC25-870-74): Unchanged

This falls more in the VDH arena. They have undertaken some regulatory actions to address this concept.

9VAC25-TEC-140. Linear development projects. (9VAC25-870-76): Unchanged

9VAC25-TEC-150. Stormwater management impoundment structures or facilities. (9VAC25-870-85): Unchanged

Discussions:

- It was suggested that 150 C seems to be out of place in this section. This is unchanged language. This speaks to discharge to state waters and serves as a reminder that karst features also need to be considered when addressing water quality and quantity efficiencies.

Part II C – Stormwater technical criteria for regulated land-disturbing activities in accordance with 9VAC25-TEC-40 and 9VAC25-TEC-50. Basically picked up IIC and dropped it into this technical regulation.

9VAC25-TEC-160. Definitions. (9VAC25-870-93):

Definitions will be moved to the Definitions Regulation.

9VAC25-TEC-170. Applicability. (9VAC25-870-94): Unchanged

9VAC25-TEC-180. General. (9VAC25-870-95): Unchanged

9VAC25-TEC-190. Water Quality. (9VAC25-870-96). Unchanged

9VAC25-TEC-200. Stream Channel Erosion. (9VAC25-870-97). Unchanged

9VAC25-TEC-210. Flooding. (9VAC25-870-98). Unchanged.

Discussions:

- The group briefly discussed the requirement for maintaining the 10-year rate found in TEC-210 B.

9VAC25-TEC-220. Regional (Watershed-Wide) Stormwater Management Plans. (9VAC25-870-99). Unchanged.

Part II D. Variances and Exceptions.

Jaime noted that the topic of variances and exceptions had been discussed at a previous meeting of the RAP. There is some different terminology that will need to be addressed. In the world of Erosion and Sediment Control there are **variances** from the minimum standards; in E&S there are **deviations** from controls or the plans; there are **exemptions** that are part of the Stormwater Management Act; and then there are **exceptions** that are part of the Stormwater Management Regulations. At the state level we look at variances from the regulations. Variances from the minimum standards may have come from the local government side of things implementing E&S. The thought was to try and reconcile some of these different terms. That is not as easy as first thought, so the decision has been made to just create the one section that addresses variances and exceptions; the exemptions from the Storm Water Management Act will continue to live in the Act itself; and deviations will be dealt with more as a policy – it is not part of the E&S Regulation.

9VAC25-TEC-230. Requesting a variance. (9VAC25-840-50). This is directly from the E&S Regulations. No changes.

Discussions:

- Need to reinsert item 3 from 840-50 as 230.3.
- Is there any value in adding a “variance from a minimum standard may be granted”? Would we be skirting the edge of what we are authorized to do to put a little more definition or clarification as to what a variance is? That is essentially what we are proposing by putting in more requirements for an E&S Plan. It is general practice across the board.
- Maybe it could be called a waiver.
- Variance is defined in the E&S Regulations but is in relation to MS4. It is a permitting variance. The existing law talks about “may waive or modify requirements that are deemed inappropriate or too restrictive for the site conditions”.

-
- At the local level, under Zoning Laws, they look at a waiver as something that needs to be approved by the Council, so a variance is something that can be approved administratively. From a state perspective, prefer to keep using the terms and nomenclature as currently used in existing regulations and by the regulated community.

- Any concerns if the term is changed to “a variance from minimum standards”? Would this be outside of our authorization? This may be outside of the current authorization so the recommendation is to leave it as is. It was suggested that it is usually a variance to the measures that you are putting in place in order to meet the minimum standards, it is not a variance to the minimum standards.
- The group discussed the concept of “minimum standards” and “variances”.

9VAC25-TEC-240. Requesting an exception. (9VAC25-870-122). This is directly from the Stormwater Regulations. No changes.

Part III – General administrative criteria for all regulated land-disturbing activities.

9VAC25-TEC-250. Erosion and sediment control plan requirements.

This section and material was moved to Part II as discussed previously and as indicated above.

Discussions:

- The concerns noted regarding “construction record drawings” and signature requirements discussed as part of the stormwater conversations in TEC-260 also need to be addressed for E&S.

9VAC25-TEC-260. Stormwater management plan requirements. (9VAC25-870-55): No changes

Discussions:

- Language has been updated language asking for information related to stormwater management facilities – **Item 260 B5**. Added required information about the conversion to a permanent stormwater management facility.
- This section (**TEC-260**) is probably better suited if moved to above the section addressing Variances & Exceptions to better follow the requirements.
- It was suggested that it might be better if instead of “Stormwater Management Plan Requirements” or “Erosion and Sediment Control Plan Requirements” that we retitle the sections “Plan Requirements for Stormwater Management Plans” and “Plan requirements for Erosion and Sediment Control Plans”? Might be better to be able to refer to the sections as “Plan Requirements”.
- Could the term “permit requirements” be used?
- The group discussed the concept and requirement for a “construction record drawing” as identified in **260 D** and the signature requirements spelled out in **9VAC25-870-108 and 9VAC25-870-112**. Is there a need to specify what is required? The concept as using “as built” surveys was discussed. The need for reasonable assurance was discussed. Staff noted that DPOR has undertaken a Stakeholders Advisory Group process to look at “as built surveys” and “construction record drawings” requirements across all of the Commonwealth’s programs. Staff noted that the RAP could get notifications about the activities of DPOR through signing up for notifications on Town Hall.

ACTION ITEM: Staff will update the RAP on the status of the DPOR Stakeholder Advisory Group process related to this discussion of “as built surveys” and “construction record drawings” when needed.

9VAC25-TEC-270. Long-term stormwater management facilities. (9VAC25-870-112): No changes.

Discussions:

- The title should refer to “Long-term maintenance of stormwater management facilities”.

Part IV – State projects.

9VAC25-TEC-280. Technical criteria and requirements for state projects. (9VAC25-870-160): No changes.

Discussions:

- The technical requirements for localities and timing was discussed. For E&S local requirements apply but for stormwater the thresholds don’t. Staff noted that the thresholds for stormwater do apply to the maximum extent practicable. It is the expectation that state projects need to meet local requirements unless there is some extenuating circumstance. If you are an Annual Standards and Specifications holder, DEQ would expect to have those conversations if something comes up that you couldn’t meet the requirements. In some instances this can be written into the Annual Standards and Specifications to meet the local ordinance. Include the language that “to the maximum extent practicable you will meet the local standards and specifications.
- The group discussed the concepts of an “amount of land disturbance” and “planning area” as they relate to state projects.
- A question about thresholds was raised. DEQ’s expectations is that if a local government has a more stringent ordinance or more stringent requirement the state project follows that more stringent requirement. It has been DEQ’s practice that if a local government has a lower threshold for land disturbance requiring stormwater management that state projects would have to abide by that threshold. That has been DEQ’s interpretation and policy for a number of years.

8. Public Comment: 3:10 PM – 3:15 PM

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

- A concern over the use of the terms “Ordinance” and “Technical Requirements” as it relates to state projects and local requirements was raised. There is a difference between meeting the requirements of an “ordinance” that contains the threshold versus meeting a local governments “technical requirements” which do not include a threshold. The proposed regulation changes the wording from “ordinance” to “technical requirements” which may cause some concerns and may have unintended consequences.

ACTION ITEM: DEQ will look into this question about the change in terms from “ordinance” to “technical requirements” and get back to the group. Before the next meeting DEQ staff will look at the actual wording of the law and provide that information back to the group.

- 9VAC25-TEC-60. Grandfathering (9VAC25-870-48). Still need authorization to approve revisions to grandfathered projects. There is a start date but there is no end date, so they can continue forever. Staff concurred with this interpretation.

9. Next Meeting Selection – Doodle Poll:

The next meeting of the RAP will likely be on our Certification Requirements and Definitions Regulation. That meeting will be scheduled after a Doodle Poll survey for dates in November. At the end of the process, staff will pull together all of the discussions and present it in a complete full regulation version (regulations in one big document) for the RAP to review likely at the December meeting.

Doodle Polls will be sent out to the group to select the next meeting dates for the RAP.

Meeting notes from today’s meeting will be distributed to the group for their review and consideration.

ACTION ITEM: Bill Norris will send out “Doodle Polls” to the RAP Members with options for the next 2 RAP Meeting.

ACTION ITEM: Bill Norris will distribute copies of the Meeting Notes from today’s meeting following review by DEQ Project Staff.

10. Adjournment – 3:19 PM

The meeting was adjourned at 3:19 PM