

Stormwater Stakeholder Advisory Group
Enforcement Work Group
Monday, June 30, 2015
Final Meeting Notes²

Location: DEQ Piedmont Regional Office
Pink Conference Room
Glen Allen, VA

Start: 3:05 p.m.
End: 5:20 p.m.

EWG Members Present:

Peggy L. Sanner, Chesapeake Bay Foundation
Elizabeth A. Andrews, DEQ
Michael Toalson, HBAV

Chris Pomeroy, Aqua Law
James Golden, DEQ
Melanie Davenport, DEQ

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

Guests and Public Attendees:

Drew Hammond, DEQ
Kathleen O'Connell, DEQ
Christine Watlington, VDOT

I. Agenda Item: Welcome and Overview of Handouts

Discussion: Mark Rubin welcomed all to the meeting and a brief overview of the handouts (Attachment B) was provided.

II. Agenda Item: Penalties

Discussion: The EWG¹ discussed the penalty options as provided in Handout A pages 1 through 7 (Attachment B). For the consolidated VESMA, penalty options were provided for: (i) land disturbing activities that disturb one acre or more of land, or 2,500 square feet or more of land in areas of localities subject to the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq.), or that are part of a larger common plan of development or sale that disturbs one acre or more of land ["i-sites"]; and (ii) land disturbing activities that disturb 10,000 square feet of land up to one acre in areas that are not subject to the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq.) and are not part of a larger common plan of development or sale that disturbs one acre or more of land ["ii-sites"].

The EWG noted that for the i-sites, the penalties as used today should remain the same. For the ii-sites, there were concerns about increasing the penalty amount as these are small sites of less than one acre and some noted that these small sites should not be subject to penalty amounts of the larger i-sites. Others noted that the penalty needs to be a compliance tool and the penalty should be set so that the cost to comply is less than it would be to pay a penalty for non-compliance. Based on the discussion, the EWG suggested that the SAG should provide their input on: (i) the per day per violation penalty amount for the ii-sites; (ii) the penalty cap for the ii-sites; and, (iii) the need or not for unilateral order authority for localities within the VESMA. The EWG then discussed penalty provisions of the SWCL and Title 10.1. It was recommended not to modify or review the DEQ authorities under Title 10.1 as well as the SWCL provisions under § 62.1-44.15 and -44.32. During this discussion, it was proposed to increase the ii-site penalty from the ESCL's current \$1,000 to \$5,000 with a cap increase from \$10,000 to \$50,000, with a court cap as well. The EWG will continue to reconsider the penalty amounts once input from the SAG is provided. The penalty amounts as provided in the CBPA were then discussed. It was noted that in § 62.1-44.15:74.E.1 and E.2, the penalties listed are different. The EWG proposed revisions to these subdivisions of the CBPA to make subdivision E.2 consistent with E.1 under § 62.1-44.15:74.

III. Agenda Item: Program Review

Discussion: The EWG discussed the consolidated § 62.1-44.15:38 regarding program review as provided in Handout A, page 7 (Attachment B). Some of the issues noted in this section:

- Different language is used to note issues of non-compliance. Some of the sections refer to "deficiencies" and others specify non-compliance as items found to be "inconsistent with" the article. This should be reviewed and the same wording to specify an issue of alleged non-compliance should be used in all of the articles as to do otherwise may give some people an idea that there are different standards of compliance.
- The penalty amount specified in subsection B of § 62.1-44.15:38 should be a "per day per violation" amount to make it

¹ Acronym list is provided in Attachment A

² Finalized 11/16/15

consistent with the others.

V. Agenda Item: SubFund Proposal

Discussion: A proposal to create a subfund under the SWMF for penalties collected in violation of the VESMA should be created to provide assistance to localities with stormwater related infrastructure, rather than the penalties going into the SWMF and being used to fund the program. The proposal was discussed and overall the EWG agreed to the proposal for a subfund. This will be added to the VESMA's fund section for the SAG's consideration.

It was decided that the EWG will need to meet again after the next SAG meeting and that the EWG will be reviewing consolidated language for the new VESMA from sections 15:37 to the end, except the fee provisions will be reviewed by the IWG.

The meeting was then adjourned.

Attachment A List of Acronyms

Acronyms:

CBPA – Chesapeake Bay Preservation Act
DEQ – Department of Environmental Quality
E&SC – 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)
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
VSMF – Virginia Stormwater Management Fund
VSMP – Virginia Stormwater Management Program
WWG – Wordsmithing Work Group (a subgroup of the SAG)

Attachment B Handouts



Enforcement
Workgroup 6-30-15 hz
Handout A



EWG edits from
6-15-15 for 6-30-15 M
Handout B