

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

MEETING #2 NOTES – FINAL

TUESDAY, JULY 30, 2019

DEQ PIEDMONT REGIONAL OFFICE – TRAINING ROOM

Meeting Attendees

VESMA RAP MEMBERS	
Phillip F. Abraham – The VECTRE Corporation	Melanie Mason – City of Alexandria
Barbara Brumbaugh – City of Chesapeake	Beth McDowell – Westmoreland County
John W. Burke – Montgomery County	John Olenik – Virginia Department of Transportation
Debra Byrd – Goochland County	Jason Papacosma – Arlington County
Jen Cobb, PE – Henrico County	Jonet Prevost-White – City of Richmond
Erin Rountree – City of Suffolk	Erin Rountree – City of Suffolk
Dawson Garrod, PE – University of Virginia	Jill Sunderland – Hampton Roads PDC
Richard Jacobs, PE – Culpeper SWCD	Mike Vellines – Virginia Tech
Anna Killius – James River Association	Sandra Williams – Atlantic Environmental, LLC

NOTE: RAP Members NOT in Attendance: Andrew C. Clark – Home Builders Association of VA; Patricia Colatosti – Town of Christiansburg; Jimmy Edmunds, CFM – Loudoun County; Normand Goulet – Northern VA Regional PDC; Adrienne Kotula – Chesapeake Bay Commission; Matthew Knightes, PE – MSA; Lisa Ochsenhirt, Esq. – AquaLaw – VAMSA; Joe Wilder – Frederick County

PUBLIC/INTERESTED PARTIES	
Chuck Dietz – Virginia Tech	Jared MacKenzie – Old Castle
Ellen Egen - AquaLaw	Bryce Miller - WSSI
Jim Filson - Dewberry	Megan Ryan - Dewberry
Hannah Gill - Dewberry	Jessica Slagle – Virginia Tech
Rob Lauham - VTCA	Ginny Snead - AMT
Brian Lindsay - VDOT	Michael Heard Snow – Virginia Coastal Policy Center
Melissa Lindgren – Isle of Wight County	Jerry Stonefield – Fairfax County

TECHNICAL ADVISORS AND DEQSTAFF	
Erin Belt – DEQ	Hannah Jeff – DEQ SW Inspector/Plan Review
Tamira Cohen – DEQ Training Staff	Debra Harris - DEQ
Melanie Davenport – DEQ	William Norris - DEQ
David Grandis – OAG	Jaime Robb - DEQ
Andrew Hammond - DEQ	

The meeting convened at 10:04 a.m. and adjourned at 3:33 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 2nd meeting of the VESMP RAP. She asked RAP Members; members of the public and DEQ Staff to introduce themselves. She reminded the group that the meetings were being recorded and asked for everyone to speak up so that the discussions could be captured for inclusion in the meeting notes.

She noted that 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 really relates to how DEQ; Local Governments and those entities with Minimum 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.

2. VESMP RAP #1 - June 18th Meeting Notes – Jaime Robb – DEQ:

Jaime asked for any comments or edits to the VESMP RAP #1 Meeting Notes from the June 18th meeting. No comments or edits were offered and the notes were approved as distributed.

ACTION ITEM: The notes from the June 18, 2019 meeting of the VESMP RAP will be posted as “Final” to Town Hall.

3. VESMP RAP Members Documents – Jaime Robb – DEQ/VESMP RAP Members:

Jaime noted that in addition to the meeting notes a number of documents had been received from RAP Members related to the initial discussions of the RAP at its June 18th meeting had been distributed as information to the group.

Jaime noted that there had been a submittal of information from Lisa Ochsenhirt (AquaLaw/VAMSA) related to regulation organization and from Andrew Clark (Homebuilders Association of Virginia) related to what should be included in the regulation organization. These items will be discussed at a future meeting when these RAP Members can attend. Jaime noted that Andrew Clark had shared an additional item with DEQ Staff that has not been distributed yet to the group related to definitions and a comparison of the definitions in the different regulations that are included in this program consolidation process. This information will be distributed to the group so that no one else will recreate this effort.

ACTION ITEM: Staff will distribute a copy of the definition compilation and comparison that Andrew Clark and his staff have developed.

The information that was shared previously from several RAP Members to staff and then to the VESMP RAP Distribution included submittals from:

- Richard Jacobs – Culpeper SWCD: Greene County VSMP Flow Chart as well as a VESMP Program Cake diagram;
- John Burke – Montgomery County: Montgomery County, Virginia Land Disturbance Permit Process Flow Chart;
- Jen Cobb – Henrico County – Henrico County Environmental Compliance manual – Chapter 3 Charts and Matrices;
- Barbara Brumbaugh – City of Chesapeake – Internal Table/Matrix for Project Type and Regulatory Requirements

RAP Discussions:

- Single Family Home Thresholds – There is no land disturbance threshold associated with the development of a Single-Family Home and issuance of a stormwater construction general permit
- “Agreements in Lieu of” were discussed.
- The thought of using a “flow-chart” and matrices similar to those that have been provided in guidance might be worth developing as guidance

Jaime thanked the members for these submittals. She stated that that these submittals and RAP discussion topics would be discussed further at future meetings including how these concepts can be used to better explain the process and procedures included in the regulatory and permitting process. She noted that it is important for the RAP Members to share local tools that might help make the overall process easier to understand.

4. Program Administration Regulation Presentation & Discussion – Jaime Robb – DEQ/VESMP RAP:

Jaime noted that one of the results of the last meeting of the RAP was for DEQ to take the outline structure that was presented at the initial RAP meeting and to start expanding language to give the RAP a better sense of what DEQ’s vision was for organization associated with consolidated program. The effort that was undertaken for this meeting was to take all of the things associated with and related to the administration of a program by local governments, annual standards and specification holders, and DEQ and group those items together.

Jaime presented the expanded language. The first section, Part I, is a placeholder for definitions. DEQ’s Regulatory staff has determined that it is possible for the RAP to create a definition regulation. However, the regulation would need to be explicit about what definition refers to what program. This effort will likely be one of the last items developed during the RAP process.

ESC

Jaime began discussion of the Program Administration Regulation with “Part II – Purpose, Applicability, and Authority for Erosion and Sediment Control and Stormwater Management Programs”. In development of this document, DEQ tried to mimic the current structure of existing regulations. If you look at any of DEQ’s regulations, you find that you typically have: “What is the purpose of the regulation?”; “What is the applicability?”; “Who does it apply to?” and “Where is the

authority given to the agency to regulate those things?”

Review of “Proposed VESCP, VSMP, and VESMP Program Administration Regulation” document:

- The wording of the “Purpose” section (9VAC25ESC-20) of the “Administration Regulation” was reviewed. It was noted that all section numbers are included strictly as place holders because of the uncertainty of what form and structure the consolidated program regulations will ultimately take.
 - No comments or discussions took place related to the “Purpose” section.
- The proposed wording of the “Applicability” section (9VAC25ESC-30) was reviewed. It was noted that the term “Annual Standards and Specifications” is now just “Standards and Specifications”.
 - One of the things that we want to accomplish during this process is to make it all a little more understandable and easier for someone who is not within our community to maneuver their way through this process. From a definitional point of view, is there any way to clarify the terms, especially VESCP and VESMP? Could we define the new program, the VESMP as the “Consolidated Program” or the “Combined Program”? Could we agree on the use of some “Common Terminology”, a “common language name”, such as, an “Erosion and Sediment Program”, a “Stormwater Program”, a “Combined Program”; to help make these regulations easier to get through – to make them more readable?
 - Consistency is needed.
 - The “applicability” section says that “This chapter is applicable to” and then proceeds to include the “Department in each of the items listed. Wouldn’t it be clearer to just list the “Department” one time? It always applies to the “Department” so why repeat it in each item in the list? Just a thought for streamlining and clarification.
 - Need to have a definition of “Standards and Specifications” or need to include more information on “Standards and Specifications” in a separate section to clarify what that term includes.
- The proposed wording of the Authority section (9VAC25ESC-40) was presented to the group. This text is almost verbatim out of the ESC and Stormwater Regulations.
 - The text seems to only focus on sediment to the exclusion of other pollutants. In the past the idea was that the term “stormwater” encompassed those “other” pollutants. Stormwater is defined in the statute.

ACTION ITEM: DEQ Staff will review the list of definitions to ensure that all of the existing definitions have been included in this compilation of definitions from the various regulations.

- The next section of the “Program Administration Regulation” on the Virginia Erosion and Sediment Control Program (VESCP) (Part III) was presented to the group. It was noted that in this section and throughout the document that all of the text that is “italicized” are either a place-holder or notes from DEQ. Part III is specific to how the ESC program is being

administered and implemented. From a big-picture perspective, nothing should be changing as to how the ESC Programs works. The regulatory language should be really familiar.

- Jaime presented an “outline of requirements” (presented below) that was used in the development of this structure that identifies the different pieces and parts that needed to be considered and included in this and similar program sections. The necessary parts that needed to be addressed included: applicability components; requirements of a program; administration; variances or exceptions; plan review; inspections; long term maintenance of stormwater facilities; reporting and record keeping; and enforcement. The idea is to be able to look in the same place in the different regulations for the equivalent requirements.

Outline of Requirements:

- II. Administrative
 - A. VESCP
 - 1. Applicability
 - 2. Requirements for a program
 - 3. Administration
 - 4. Variances/Exceptions
 - 5. Plan review
 - 6. Inspections
 - 7. Long term Stormwater Management Facility Requirements
 - 8. Reporting and Recordkeeping
 - 9. Enforcement
 - B. VSMP
 - 1. Applicability
 - 2. Requirements for a program
 - 3. Administration
 - 4. Variances/Exceptions
 - 5. Plan review
 - 6. Inspections
 - 7. Long term Stormwater Management Facility Requirements
 - 8. Reporting and Recordkeeping
 - 9. Enforcement
 - C. VESMP
 - 1. Applicability
 - 2. Requirements for a program
 - 3. Administration
 - 4. Variances/Exceptions
 - 5. Plan review
 - 6. Inspections
 - 7. Long term Stormwater Management Facility Requirements
 - 8. Reporting and Recordkeeping
 - 9. Enforcement
 - D. Chesapeake Bay Land Disturbing Activities
 - E. AS&S
 - 1. Applicability

2. Requirements for a program
3. Administration
4. Variances/Exceptions
5. Plan review
6. Inspections
7. Long term Stormwater Management Facility Requirements
8. Reporting and Recordkeeping
9. Enforcement

F. DEQ Program Oversight

- Jaime presented the language for 9VAC25-ESC-50 A:
 - It was suggested that the sections and divisions should be identified in the same way throughout the regulations. Instead of use of “A”; “B”; “C” etc. just label them what they are “Purpose”; “Applicability”, etc. The Registrar does not like the use of “catch phrases” but as long as we are consistent throughout the regulations it is possible. The use of subtitles or catch phrases to clarify the requirements was recommended by the group.
 - It was suggested that DEQ should look at the possibility of shortening the titles of the sections/divisions by possible using the acronyms such as “VESC” instead of spelling out the title (Virginia Erosion and Sediment Control Program) each time.
- The proposed text for 9VAC25-ESC-50 B was presented to the group:
 - Under item B in this section (9VAC25-ESC-50) the ability of a locality to adopt stricter requirements needs to be included.
- The proposed text for 9VAC25-ESC-50 C was presented to the group. The idea is to be able to include a list of plan components in the ESC Regulation similar to what is already provided in the stormwater regulation or the other option is to have this section just refer to the technical regulation which would include those requirements. It was noted that historically the ESC Program has relied on and referred back to the requirements included in the Erosion & Sediment Control Handbook.
 - It would be easier and clearer if you could point back to a regulation instead of a handbook or a handbook revision for the requirements.
 - It was noted that the requirements or expectations would not necessarily change but language would be included that might read “At a minimum a plan should include...”
 - It was suggested that the wording of Item C is confusing and should be reworded to read “Localities administering a VESC shall develop a program that includes the following:” instead of “regulate land disturbing activities in accordance with the following:” This language will have to be looked at closely. We may need to word it in such a way as to reference a local ordinance, such as: “Localities administering a VESC shall have a local ordinance to implement a program that includes...”
- The text of 9VAC25-ESC-50 D related to locality fees to offset the cost of program administration was presented to the group.

- The text of 9VAC25-ESC-50 E related to adoption of a local ordinance was reviewed with the group.
- The text of 9VAC25-ESC-50 F related to program administration agreements between localities and towns was reviewed. It was noted that the citation number provided in the example text is incorrect.
- The text of 9VAC25-ESC-50 G related to erosion impact areas was reviewed.

5. Break – 11:12 AM – 11:24 AM

6. Program Administration Regulation – Presentation – Continued – Jaime Robb – DEQ:

Jaime reconvened the meeting and continued the presentation and discussion on the draft Program Administration Regulation language. The text of 9VAC25-ESC-60. Virginia Erosion and Sediment Control Program administration requirements was reviewed with the group. It was noted that the last sentence in the proposed text of Item C should be a separate Section D that should read” “Where the land-disturbing activity result from the construction of a single-family residence...”.

- Section E – originally Section D – Under construction related to “Responsible Land Disturber (RLD)” was discussed. It was noted that clarification of the term “responsible land disturber” is needed. This is a common term that is used in the erosion and sediment control program but is not defined in State Water Law. It is used and defined only in the current Certification Regulation (9VAC25-850). There is a lot of confusion regarding this term. It needs to be researched and clarified. The term “person responsible for carrying out the plan” was also discussed. It was suggested that this section be moved from this section to either the Plan review requirements or the certification requirements sections. The inclusion of a separate RLD section was also discussed. The concept and responsibilities and requirements for a “responsible land disturber” need to be further researched and clarified – need to provide general applicability and the general requirements for a RLD and for all of those needing certification. The group had a long discussion on certification requirements and plan review requirements related to “qualified” versus “certified” persons and responsible land disturbers.
- Section A should include a reference to the Certification Regulation.
- Section A should be reworded to read: “At a minimum, a VESCP shall provide that (i) an erosion and sediment control plan shall be reviewed and approved by a certified plan reviewer...”

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

8. Certification Thoughts – Jaime Robb/Drew Hammond - DEQ:

Jaime Robb reconvened the group after the lunch break. She asked Drew Hammond to briefly describe

his thoughts on the certification discussions. Drew told the group that he tried to take what was in the law and the regulations related to certifications and compiled a -chart of different scenarios.

- If you are an erosion and sediment control program authority or a stormwater management authority or you end up being one of these entities that is a combined authority or opts to be a combined authority, basically the way the law is written certifications would be required for program personnel such as the program administrator; inspector; plan reviewer; or combined administrator.
- For ESC Plans and ESC Projects, it is not called a certification, it is called a certificate of competence. The phrase “of competence” actually goes away – with the Combined Law that term was stricken. So this is a certificate that specifies the person that is responsible for carrying out the ESC Plan. This is what the Certification Regulations would call a “Responsible Land Disturber”.
- For the Construction General Permit (CGP), it refers to the “Qualified Person or Personnel” for carrying out the self-inspections required under that permit. There is no specific certification or certificate required.

9. Things to Consider – Jaime Robb – DEQ:

Jaime indicated that there were additional items to discuss recognizing that there are likely additional edits that folks want to bring up. There are a couple of things that she would like the group to consider:

- If you are an ESC Authority, does this type of lay-out tell you exactly what you need to do? We would use this same format and structure for the Stormwater Program and for a Combined Program if this spells out requirements adequately. Are we still on the right track? Does this approach make sense?
- Organization for the Technical Regulation needs to be discussed. That would give DEQ further direction for document development to share with the RAP for the next meeting.

RAP Discussions – Lay-Out/Format:

- The proposed format has sections that address: Requirements; Administration Requirements; Plan Review Requirements; Variances/Exceptions; Long-term Requirements; Inspection Requirements; and Reporting and Record Keeping. It is anticipated that this would be the structure moving forward for each of the regulatory programs.
- The group discussed whether the requirements should be repeated in each of the different regulations or whether they should be referenced in some manner to cut down on the verbiage.
- It was suggested that it would be better and more accessible to have all of the information in one concise area.

- Need to continue to look for opportunities to streamline the process and the requirements across the programs, for example; plan review and inspections requirements might be areas to consider for streamlining.
- Need to make sure that we don't lose the benefits that were anticipated through having a "consolidated program".

Jaime noted that we will continue to go down this path/this approach and will be bringing it and future iterations back to the group for review and consideration and course corrections during this process.

RAP Discussions – Technical Requirements/Regulation:

Jaime referred to an initial outline (presented below) that she had put together as an aid in identifying the technical components that needed to be included and reviewed the components that were identified. This is being presented as one option for organizing these components moving forward in this process.

Initial Outline of Technical Requirements – Streamlined Approach:

-
- III. Technical
 - A. Applicability thresholds
 - 1. ESC
 - 2. Post-development stormwater management
 - a) Part II B
 - b) Part II C Time Limits on Applicability
 - c) Part II C Grandfathering
 - B. ESC Minimum Standards
 - C. Post-development SWM Technical Criteria
 - 1. Part II B: Quality and Quantity
 - 2. Water Quality Compliance (BMPs)
 - 3. Offsite Compliance options
 - 4. Design Storms
 - 5. Linear development projects
 - 6. Stormwater management impoundment structures or facilities
 - 7. Comprehensive stormwater management plans
 - 8. Part II C: Quality and Quantity
 - D. Requesting a variance/exception
 - E. ESC Plan
 - F. SWM Plan
 - G. Stormwater Pollution Prevention Plan
 - H. Site inspections
 - I. Long term Stormwater Management Facility Requirements
 - J. Reporting and Recordkeeping
-

Jaime presented a more detailed outline concept (presented below) that identifies each of the technical components in detail for each of the program areas.

Outline of Technical Requirements – “Silo Approach” (Repetitive) – Existing Requirements:

-
- III. Technical

- A. VESCP
 - 1. Applicability thresholds
 - 2. ESC Plan Components
 - 3. Minimum Standards
 - 4. Requesting a variance/exception
 - 5. Site inspections
 - 6. Long term Stormwater Management Facility Requirements
 - 7. Reporting and Recordkeeping
- B. VSMP
 - 1. Applicability thresholds
 - 2. SWM Plan Components
 - 3. Stormwater Pollution Prevention Plan
 - 4. Post Development Stormwater Criteria
 - a) Time Limits on Applicability
 - b) Grandfathering
 - 5. Part II B
 - a) Water Quality Technical Criteria
 - b) Water Quantity Technical Criteria
 - c) Offsite Compliance options
 - d) Design Storms
 - e) Linear development projects
 - f) Stormwater management impoundment structures or facilities
 - g) Comprehensive stormwater management plans
 - 6. Part II C
 - a) Water Quality Technical Criteria
 - b) Water Quantity Technical Criteria
 - 7. Requesting a variance/exception
 - 8. Long term Stormwater Management Facility Requirements
 - 9. Reporting and Recordkeeping
- C. VESCP Minimum Standards + VSMP Technical Criteria
 - 1. Applicability thresholds
 - 2. ESC and SWM Plan Components
 - 3. Stormwater Pollution Prevention Plan
 - 4. Minimum Standards
 - 5. Post Development Stormwater Criteria
 - a) Time Limits on Applicability
 - b) Grandfathering
 - 6. Part II B
 - a) Water Quality Technical Criteria
 - b) Water Quality Compliance
 - c) Water Quantity Technical Criteria
 - d) Offsite Compliance options
 - e) Design Storms
 - f) Linear development projects
 - g) Stormwater management impoundment structures or facilities
 - h) Comprehensive stormwater management plans
 - 7. Part II C

- a) Water Quality Technical Criteria
 - b) Water Quantity Technical Criteria
 8. Requesting a variance/exception
 9. Long term Stormwater Management Facility Requirements
 10. Reporting and Recordkeeping
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Jaime noted that with the technical components there is going to be overlap. There are going to be projects that are just ESC and there are going to be projects that are both ESC and Stormwater Management.

The group discussed the concepts presented in the “Technical Component” outlines.

- Need to target who needs to know the information.
- Regulations have not been “user friendly” in the past – need to try to make them more navigable.
- Need to remember to build more flexibility into the process, especially as it relates to the development of a “model local ordinance”. Need a mechanism that makes sense instead of being prescriptive. Need to provide options and flexibility.
- The idea of developing a check list of requirements to the localities was discussed.
- Clarity is needed.

10. Program Administration Regulation – Further Discussion – Jaime Robb & VESMP RAP:

Jaime went back to the proposed text of the Program Administration Regulation distributed to the group and picked up where the group ended its discussions prior to lunch.

She presented the text of 9VAC25ESC-70 (Virginia Erosion and Sediment Control Program plan review requirements) to the group.

- The language in 9VAC25ESC-70 A appears to be repetitive with language in the administrative requirements section and needs to be looked at for possible revision.
- It was noted that the phrase “criteria, techniques, and methods” is being used to describe “minimum standards” because the language is in the Minimum Standards portion of the regulations right now.
- 9VAC25ESC-70 C refers to a “45-day” period – this was discussed by the group as it appears to be in conflict with the “60-day” period identified in 9VAC25ESC-70 B. This is a case where the ESC Law says one thing and the Consolidated Law says something different. There appears to be a little disconnect with this requirements.
- 9VAC25ESC-70 E refers to “RDL” – this should be “RLD” – Responsible Land Disturber.

The text of 9VAC25ESC-80 (Virginia Erosion and Sediment Control Program variance conditions) was reviewed with the group. Under the Erosion and Sediment Control Program folks can get a

variance from the minimum standards; they can get deviations from the Green Book requirements (Virginia Erosion and Sediment Control Handbook). Under the Stormwater Program folks can request an exception from requirements for post-development stormwater management. And under the world of 402 Clean Water Act Permits a variance has a very specific meaning and it is usually a variance from permit requirements or regulations themselves that are a very drawn out administrative process. In addition, DEQ recognizes that from a local government perspective that the term “variance” is viewed and used differently from the way it is used at DEQ. Given these differences we are looking to clarify the requirements and identify: “If you are going to ask to do something different then here is what you need to do.” “If you are a local government and you are going to consider approving somebody doing something different then this is what you need to evaluate.” The group discussed the concept of a variance – a variance to minimum standards.

- Exception; variance; and deviation is distinct to different programs.
- A variance is some specific modification to a practice or standard – you are not being exempted from getting a permit.
- An exception is an exemption or a waiver from administrative or technical requirements. If you are allowing off-site mitigation, you are granting an exception. Waiving the requirements for long-term maintenance for single-family dwellings is an exception.
- Changes from the Green Book requirements are looked at by DEQ as “deviations”.

Is there a need or desire to call it the same thing, recognizing that the terms may mean different things in the different programs or keep them as separate and distinct terms?

- Variances and exceptions are distinct terms and mean different things. Variances can apply during plan review and in the field while exceptions apply more to plan reviews.
- Under the consolidated program how should these terms be handled? Should we at a minimum true up what needs to be submitted in each instance: for a variance; for an exception? Should we clearly identify what needs to be submitted as justification for the request and why it is there? It should be consistent across all the programs. Here is my case as to why I need to do XYZ.
- It was suggested that instead of putting “variances” and “exceptions” in their own sections that it might track better if they were included in each individual section where they apply.

Under the current ESC regulation that addresses “variances” it speaks to what the VESCP needs to do and also what the applicant needs to do. Maybe it would be better if the bulk of the variance language and requirements be included under the technical requirements and maybe we just include a reference in this section that says that local ESC Authority can approve variances given consideration to those items in Section X.

- It was suggested that language be included under the list of program elements that would say that “Localities need to have a mechanism in place to address “variances”.” “The program needs to have a process to address and evaluate these things listed here.” Item 3 of the proposed 9VAC25ESC-80 needs to include this type of language and reference.

- It was noted that the timeline associated with the approval of “variances” is 10 days or it is automatically disapproved. There is no timeline associated with “exceptions”. This difference may have an impact with a combined program. Need to look at how this is being addressed by different entities.

Staff will attempt to clarify the language associated with “variances” and try to move it over to the technical requirements section and address what the local governments need to do regarding variances. The language in the regulation speaks to a variance being submitted as part of an approved Erosion and Sediment Control Plan. They are approved as part of the plan approval. We need to look at including some flexibility when dealing with variances to minimum standards.

Jaime reviewed the proposed text of 9VAC25ESC-90 (Virginia Erosion and Sediment Control Program long-term stormwater management facility requirements) with the group. This may be duplicative language that will need to be addressed. Terminology and requirements for long-term stormwater management facilities should be consistent for both the ESC and SWM programs.

- 9VAC25ESC-90 A should reference the Erosion and Sediment Control Plan not the stormwater management plan.
- It was noted that ESC doesn’t have a “quality” component. It was suggested that the phrase in 9VAC25-ESC-90 A should read “...manage the quality and quantity of the runoff, as applicable” or some variation to ensure that “the quality component needs to be included and considered as applicable”.
- Under both programs there are requirements for long-term maintenance for any BMPs, so if DEQ is the ESC Authority and the local government is “Opt-Out”, who does the operator enter into the maintenance agreement with? Is it the local government? Or is it DEQ? This would likely be DEQ under this scenario.
- Is there an opportunity to create a section or program that identifies “Conditions applicable to all”? Language indicating that the following are “conditions applicable to all” could be included in an applicability section. Would this simplify the process and cover all the bases? Need to make sure that this type of all-encompassing list (applicable to all) is referenced and included in any checklist that is developed, i.e., compliance with the list of items applicable to all is required.
- A question was raised over the length of time associated with “long-term maintenance”. This refers to maintenance that is required in perpetuity. The idea is that is going to run with the land forever.
- The group discussed the concept of “interim stormwater management facility”; “temporary stormwater management facilities” and facilities that might be modified from what was originally designed and approved. This concept might need to be included but could be addressed on a case-by-case basis. This is usually addressed in the maintenance requirements shown in the approved plan details.

- The group discussed the concept of “right-of-entry” included in 9VAC25ESC-90 A 3. Does this consider the need for an easement? This is not so much an easement but a “right of entry” to the property to inspect and ensure compliance with regulatory requirements.

11. BREAK – 2:45 PM – 2:59 PM

12. Program Administration Regulation – Further Discussion (CONT.) – Jaime Robb & VESMP RAP:

Jaime reconvened the RAP after the break and resumed the presentation of the proposed language for the Program Administration Regulation.

The text of 9VAC25ESC-100 (Virginia Erosion and Sediment Control Program inspection requirements) was reviewed with the group. This language is directly from the ESC Regulation from 9VAC25-840-60. It was noted that the concept of an “alternative inspection program” (AIP) in 9VAC25ESC-100 B 2 is being looked at by staff and any clarifications will be presented to the group. It was noted that the wording in 9VAC25ESC-100 C should be “ensure” instead of “insure”.

- The concept of a Common Plan of Development and addressing a “single-family residence” was discussed by the group. It was suggested that this might be better addressed in the technical requirements.
- Need to also consider the inspection requirements of the locality.

The text of 9VAC25ESC-110 (Reporting and Record Keeping) and 9VAC25ESC-120 (Enforcement Requirements) was reviewed with the group.

13. Next Steps – Final Thoughts – Jaime Robb:

Jaime noted that the materials presented today were the general concepts on the organization of the consolidated program regulations. It is an organization lay-out of what the regulation might look like. In the next communication to the group DEQ will address the changes that the group discussed and translate those concepts and approaches to the next two sections of the Program Administration Regulation. She noted there will likely be some “Under Construction” sections similar to the materials presented to the group today. DEQ will also start to work on the “Technical Regulation” for presentation to the group for the next RAP meeting.

14. RAP Members Closing Thoughts – RAP Members:

- 9VAC25-ESC-50 C: The requirements are listed and clearly identified, the sections after that are not organized in that clear fashion. It was requested that the sections that follow this one should be reorganized in a similar fashion – we should try to be consistent with the format used throughout the document.

- 9VAC25-ESC-90 B: The sentence does not make sense. The language in question is in the current VSMP regulation. The idea of “an enforceable mechanism” was discussed by the group. It was suggested that the wording “at the discretion of the VESCP authority” could be removed from the statement. The question is “who has to demonstrate that it is an enforceable mechanism”? Maybe it should be demonstrated “to the Department”. Staff will take a look at this wording. It was suggested that it might be reworded to read “provided it is demonstrated to the satisfaction of the Department that future maintenance of such facilities will be addressed through an enforceable mechanism with the VESCP authority.”

Jaime noted that she really appreciated how engaged that everyone has been both outside of the meetings and during the meetings and thanked everyone for their input and participation in the process.

15. Public Comment: 3:22 PM – 3:31 PM

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

- Structure of the Regulations: Suggested that when we get into the Combined Regulation that there will need to be lot of repetitive language so that they can be stand-alone instead of having a lot of pointing to a lot of different sections.
- ESC Plan Approval: Requiring evidence of coverage before completion of the plan sets up an impossible situation – the sequence of requirements in this section need to be closely examined to try to eliminate confusion and the creation of circular arguments regarding the timing of approvals and the development of plans. It was noted that the wording for these requirements is directly from the law, and that the language has been revised slightly with the “consolidated law” statute: “require evidence of coverage before land disturbance” was changed to “require evidence of coverage before ESC Plan Approval” in the consolidated language.
- 45-Days – 60-Days: Having to “disapprove” within 45 days, but having 60 days to approve the ESC Control Plan is confusing and really doesn’t make sense – it is impossible to shorten the time frame.
- Permits: Fairfax issues a “land disturbance permit” and under the current Stormwater Law you are required to issue a “stormwater permit”. Where you have both of them you have to issue a “consolidated permit” – both a “land disturbance permit” and a stormwater permit” as well as evidence of coverage. The Consolidated Law redefines permit as “having Construction General Permit coverage”. It was noted that the term under the Consolidated Law is “Authorization to Commence Land Disturbance”. There is not a specific time frame referenced. There can be changes made during plan review in addition to revisions made during construction that impact the timing sequence of approvals and authorizations that need to be taken into consideration.
- Variance and Exceptions: The use of the different terms may be confusing, but because of the law they mean different things so the different terms should be used and not combined into a single concept. Recommend using the different terms.

- Alternative Inspection Plan (AIP): Fairfax has an approved AIP and would like to see it maintained as an option moving forward. Inspection frequency and combined inspections were discussed briefly. It was noted that this discussion might fit into the Inspection Requirement piece in the Consolidated Regulation.
- At the Discretion of the Local ESC Authority – Maintenance Agreement: This is a local option. It should be up to the locality to decide whether they want to do this or not. This should not require department approval; it should be solely at the discretion of the locality.

16. Action Items for Next Meeting/Next Steps – Jaime Robb:

Jaime asked for any closing comments from DEQ staff: A suggestion was made by a member of the DEQ training staff that maybe an approach when we look at the technical requirements that we follow the logic of development – that we have a “During Construction” piece; a “Planning for Post-Construction” piece; and an “Actual Post-Construction” piece. There is always confusion on “What Do I Do When?” If we had that type of clarity right from the start it might make it easier to understand and follow.

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

17. Next Meeting Selection – Doodle Poll:

The next meeting of the RAP will be about 2 months out and meetings will run from about 10:00 AM to 3:00/3:30 PM time frame. Staff has a lot of work to do on the draft language, but will look at some possible dates and get them out to the RAP for consideration in the near future.

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

18. Adjournment – 3:33 PM

The meeting was adjourned at 3:33 PM