

DRAFT Minutes

**VESMP / Consolidated Regulations
Regulatory Panel Advisory (RAP) Meeting #7**

Tuesday, September 13, 2022

**Training Room (Room 1111)
DEQ Piedmont Regional Office
4949-A Cox Road
Glen Allen, Virginia 23060**

Start – 9:30 AM

Attendees:

- RAP Members
 - Adrienne Kotula, Chesapeake Bay Commission
 - Andrew Clark, Home Builders Association of Virginia
 - Anna Killius, James River Association
 - Barbara Brumbaugh, City of Chesapeake
 - Beth McDowell, Westmoreland County
 - Dawson Garod, University of Virginia
 - Jill Sunderland, Hampton Roads Planning District Commission
 - Joe Wilder, Frederick County
 - Lisa Ochsenhirt, AquaLaw
 - John Burke, Montgomery County
 - Charles Dietz, Virginia Tech
 - Phillip Abraham, The Vectre Corporation
 - Richard Jacobs, Culpeper Soil and Water Conservation District
 - Normand Goulet, Northern Virginia Regional PDC
 - Patricia Colatosi, Town of Christiansburg
 - Public
 - Jerry Stonefield, Fairfax County
 - DEQ Staff
 - Drew Hammond
 - Melanie Davenport
 - Scott Van Der Hyde
 - Joseph Crook
 - Nelson Daniel
 - Brandon Bull
 - Melissa McIntyre
 - Matthew Stafford
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Welcome and Introductions:

Melanie Davenport (Director, Division of Water Permitting) welcomed the RAP members and talked briefly about DEQ's objectives to complete the regulations.

Refresher - Guidelines for RAP Discussion

Scott Van Der Hyde (Guidance and Regulations Coordinator) reviewed the rules and guidelines for conduct and discussion during the RAP meeting.

Discussion of Proposed Program Administration Regulation (Morning):

Drew Hammond started by saying that DEQ has not determined whether the consolidated regulations will be in one or more new or existing chapters of the Administrative Code, or if parts of Chapter 870 (9VAC25-870), will move to other chapters within Title 9. DEQ plans to meet with the Registrar about the best way to codify the consolidated regulations. Drew also said DEQ is exploring the possibility of moving the part of Chapter 870 that is related to fees to DEQ's fee regulation (9VAC25-20), and removing sections that duplicate requirements in the Virginia Pollutant Discharge Elimination System (VPDES) Permit regulation (9VAC25-31).

Much of the discussion at the July 15, 2022 RAP meeting focused on the proposed Definitions for the consolidated regulations. This meeting focused primarily on the proposed Program Administration and Technical Regulations. During the morning session, DEQ asked RAP members for their feedback on each section of the proposed Program Administration regulations. Line numbers are in the version of the draft regulations DEQ provided to RAP members prior to the meeting. If a section is not listed, no one commented on it.

DEQ staff and RAP members provided the following comments:

- **Part II-Chesapeake Bay Preservation Act Land Disturbing Activities**
 - *9VAC25-PGA-40. Chesapeake Bay Preservation Act land-disturbing activity.*
 - Does the 2,500 sq/ft threshold need to be referenced in this part of the regulation? Although the threshold is defined in the Chesapeake Bay Preservation Act (CBPA), DEQ will take a look at whether it would be beneficial to include it in the regulatory text. Including it may eliminate potential confusion for opt-out localities.
 - DEQ asked RAP members whether they thought the General VPDES Permit language in Subsection B ("After June 30, 2014, such land-disturbing activities shall not require completion of a registration statement or require coverage ...") was necessary. The language also appears in 9VAC25-PGA-60 A, so members suggested it may not be necessary in both places. The issue is referred to as the "donut hole" and requires Chesapeake Bay Preservation Act localities that opt-out of operating a stormwater program to nevertheless implement stormwater program requirements for land-disturbing activities when the affected area is between 2500 ft sq. and 1 acre. DEQ will need to consider this section and 9VAC25-PGA-60, which is comparable.
 - *9VAC25-PGA-60. Requirements for Chesapeake Bay Preservation Act land-disturbing activities.*
 - Duplicative language (see above) was identified starting at Line 181 (Subsection A). DEQ will take a look at this language to see if there is an opportunity to eliminate duplicative language.

- Overall, RAP members feel that the separate part with CBPA requirements is helpful for them so that they do not have to try to find this language elsewhere in the regulations.
- **Part III- Virginia Erosion and Sediment Control Program (VЕСP)**
 - *9VAC25-PGA-80. VЕСP administration requirements.*
 - Subsection E (lines 285-288) – Add language better defining the circumstances where a developer can use an agreement in lieu of a plan. A RAP member is sending suggested language to DEQ, which DEQ will circulate to the rest of the RAP for review and comment.
 - *9VAC25-PGA-110. VЕСP plan review requirements.*
 - Subsection A –Provide a reference to the erosion and sediment control plan requirements spelled out in 9VAC25-TEC-290.
 - Subsection D (line 345) – This is the issue of the “do-loop” created in statute. DEQ is having internal conversation to try to fix this issue legislatively. As things stand now, there is a problem where one approval authority is waiting on another to provide their approval, but neither has the authority to issue approval before the other.
 - *9VAC25-PGA-160. VЕСP reporting and record keeping requirements.*
 - Add language to this section that is similar to the Stormwater Management (VESMP) reporting and recordkeeping section in Part IV (9VAC26-PGA-260). DEQ will consider the suggestion.
 - *9VAC25-PGA-170. Review and evaluation of VЕСPs: Minimum program standards.*
 - Subsection B (lines 512-519) – Move the subsection to the start of the section. DEQ is assessing this section broadly because of changes in statute that specify the timeline for these reviews: § 62.1-44.15 (19) says every 5 years; § 62.1-44.15:52 D says DEQ shall periodically conduct a comprehensive program compliance review. Using language directly from the statute is one solution DEQ is considering.
- **Part IV- Virginia Erosion and Stormwater Management Program (VESMP)**
 - *9VAC25-PGA-190. VESMP administration requirements*
 - Add language referring to appropriate certifications.
 - *9VAC25-PGA-195. Authorization procedures for Virginia stormwater management programs.*
 - Section title (line 641) – Change the title to reference Virginia “erosion and stormwater management programs.”
 - Subsection A 2 and 3 (line 644) – Is it necessary for an existing, approved VSMP authority to resubmit the funding and staff plan and the policies and procedures if there have been no substantial/material program changes. DEQ is generally supportive of this and will look at options based on requirements in the enabling legislation.
 - *9VAC25-PGA-210. VESMP plan review requirements.*
 - Subsection A (line 698) – A RAP member asked DEQ not to add another acronym and suggested using “soil erosion control and stormwater management plan” instead of “ESM” here and throughout document.
 - Provide a cross reference to stormwater management plan review section (9VAC25-TEC-290) to ensure consistency.
 - *9VAC25-PGA-240. VESMP inspection requirements.*

- Subsection B (line 799) – Add “long-term” in front of stormwater management facility. DEQ will also need to look at the use of “permanent” versus “long-term,” the definition “stormwater management facility,” and other references throughout the regulations to ensure consistency in terms.
 - 9VAC25-PGA-260. *VESMP reporting and recordkeeping requirements.*
 - DEQ needs to review the language in this section, Part III, and the Small MS4 general permit to ensure the reporting and recordkeeping requirements are consistent and within the scope of the enabling legislation.
 - Add language to subsection A.1 to make clear that DEQ is not requesting programs to report data that has already been provided through other documentation.
 - Subsection A 1 (line 892) – Change the word “permanent” to “long-term” to ensure consistency in terms.
 - Subsection B 1 (line 903) – Change “stormwater management plans” to “soil erosion control and stormwater management plans.”
 - 9VAC25-PGA-270. *Comprehensive stormwater management plans.*
 - Subsection 3 (line 933) – Change “accredited” to “credited” to correct a grammatical error.
 - 9VAC25-PGA-280. *ESM plan review coordination with the department or “VESMP Lite.”*
 - Section title (line 939) – Remove “VESMP Lite” from the title.
 - 9VAC25-PGA-285. *Review and evaluation of VESMPs.*
 - Subsection A (line 970) – DEQ is looking at consolidating the plan review and program evaluation sections from several Parts of the Program Administration Regulation to make them consistent and easier to navigate.
- **Part VI- State Agency and Federal Entity Administrative Procedures**
 - 9VAC25-PGA-330. *Maintenance and inspections.*
 - Subsection D (line 1178) – Change language from the “department may require inspections and reports” to “department shall require inspections and reports.”
- **Part VII- Virginia Stormwater Management Plan (VSMP)**
 - Move this Part to immediately follow Part IV so that the three program Parts are all together in the regulation.

Discussion of Proposed Technical Regulation (Afternoon):

During the afternoon session, DEQ asked RAP members for their feedback on each section of the proposed Technical Regulations. Line numbers are in the version of the draft regulations DEQ provided to RAP members prior to the meeting. If a section is not listed, no one commented on it. DEQ staff and RAP members provided the following comments:

- **Part II- Regulated land-disturbing activities**
 - 9VAC25-TEC-30. *Applicability*; 9VAC25-TEC-40. *Activities not required to comply with ESCL*; and 9VAC25-TEC-50. *Activities not required to comply with VESMA.*
 - Would these sections fit better into the Program Administration regulations rather than the Technical regulations.
 - Consider simplifying the three sections into a single section.

- TEC-50 does not mention 1 acre thresholds, but this is mentioned in TEC-30. DEQ suggestion to add lead-in language indicating that requirements apply unless otherwise exempted in TEC-40 and TEC-50.
 - As-written, these sections may not be clear to the regulated community.
 - *9VAC25-TEC-60. Applying for permit coverage.*
 - Consider changing the title of this section to “Applying for a land disturbing authorization.”
 - Subsection B (line 196) – should this section include “VESCP, VSMP, or VESMP authority” to capture opt-out localities? DEQ will need to review the entire Technical regulation to ensure proper use of terms and consistency.
 - Subsections C and D – Consider the relationship between these subsections and the Program Administration regulation (which does not address the responsible land disturber certificate requirement) – should there be a cross-reference in TEC-60 to the PGA or something in the PGA that cites TEC?
 - *9VAC25-TEC-80. Grandfathering.*
 - Subsection A (line 244) – Include both the VESMP and VSMP authority. DEQ will check the Technical regulation to ensure consistency.
- **Part II A- Erosion and sediment control criteria, techniques, and methods.**
 - *9VAC25-TEC-100. Minimum Standards.*
 - Subsection 18 (line 394) – Include both the VESMP and VESCP authority and ensure consistent terminology throughout this part (compare the first paragraph of the section (line 294)).
- **Part II B- Stormwater technical criteria for regulated land-disturbing activities.**
 - Any reference to a VESMP authority, determine whether it should also include a reference to DEQ as the VSMP authority.
 - *9VAC25-TEC-110. Water quality design criteria requirements.*
 - Last paragraph (line 542) – Should the paragraph be subsection “D” instead of an un-labeled paragraph?
 - *9VAC25-TEC-150. Design storms and hydrologic methods.*
 - Subsection A – Update the standard for design storms because U.S. National Oceanic and Atmospheric Administration (NOAA) Atlas 14 is out-of-date.
 - *9VAC25-TEC-180. Stormwater management impoundment structures or facilities.*
 - Address language inconsistency in this section compared to other sections (e.g., “permanent” vs. “long-term” stormwater management impoundment structures or facilities).
 - Subsection C – Consider moving subsection C to section TEC-110 or TEC-130 to improve clarity.
- **Part II C- Stormwater technical criteria for regulating land-disturbing activities in accordance with 9VAC25-TEC-40 and 9VAC25-TEC-50.**
 - *9VAC25-TEC-190. Definitions*
 - DEQ suggested moving the definitions that apply only to this Part into this section rather than in the broader DEF regulation. RAP seemed supportive of DEQ’s suggestion.
- **Part III- General administrative criteria for all regulated land-disturbing activities.**

- *9VAC25-TEC-290. Erosion and sediment control plan requirements.*
 - Subsection B (line 1121) – Add a cross reference to the Program Administration regulations for this subsection.
 - Subsection C (line 1126) – Consider language to account for localities that have more stringent ordinances, and add the 2,500 sq/ft threshold for Chesapeake Bay localities.
 - Subsection D (line 1131) – Ensure the language (“A complete erosion and sediment control plan shall include the following elements...”) is consistent with other sections.
 - Subsection D 4 (Line 1146) – Consider changing “temporary stormwater management facilities” to something like “temporary structural and non-structural erosion and sediment control measures.” (A RAP member also suggested, “a description of the methods which will be used to control erosion and sedimentation on the site.”)
- *9VAC25-TEC-295. Stormwater pollution prevention plan requirements.*
 - This section will need additional work to account for the different potential types of plans. DEQ is considering alternatives to rewrite the section to make it apply more generally.
- *9VAC25-TEC-300. Stormwater management plan requirements.*
 - Revise this section to improve clarity, ensure consistent use of terms (e.g., erosion and stormwater management plan).
- *9VAC25-TEC-305. Pollution prevention plans.*
 - Correct typo - update the title to remove chapter “870.”
- *9VAC25-TEC-310. Long-term stormwater management facilities.*
 - Revise section title to remove “maintenance of” and ensure consistent terminology for “long-term stormwater management facility” throughout.
 - Consider language requiring an engineer certification that the plan will achieve stormwater requirements. (Proposed language to add: “and are functioning in accordance with the approved plans”)
 - Subsection B 5 (line 1387) – DEQ may need to provide additional guidance about who are the “appropriate governmental parties” for enforcement.
- **Part IV- State and Federal projects.**
 - *9VAC25-TEC-320. Technical criteria and requirements for state projects.*
 - Does this section fit into the Technical regulations or the Program Administration regulations? DEQ will consider which location is more appropriate.
 - Subsection A of this section needs to be revised to conform to new statutory language in § 62.1-44.15:34 of the Code of Virginia.
 - The title for this section needs to be updated (*Technical criteria and requirements for state and federal projects.*).

Discussion of Proposed Certification Regulation Chapter

- There was a discussion to clarify which certifications will be required under the consolidated program. Under the consolidated program, people possessing either Erosion and Sediment Control certification or Stormwater Management certification will be able to maintain that certification through its original expiration date. These individuals will be able to perform

inspections (and other roles) under the separate programs as they do now. Moving forward, the certification training curriculum will be updated to reflect the consolidated program, but people will be able to continue getting separate certifications. The exams will continue to be separate for ESC and SWM. People currently possessing dual certifications will maintain that certification on the normal expiration schedule, and will be compliant under VESMP.

Other Comments

- There was a brief discussion about a model ordinance that DEQ intends to develop to assist local governments in implementing the consolidated regulations. RAP members requested an opportunity to review and provide comment.

Public Forum

- DEQ provided an opportunity for any members of the public that were present to comment on the proposed consolidation chapters. A member of the public was present and did not offer any comments.

Next Steps

- DEQ will take the comments provided by the RAP and prepare the proposed chapters for publication.

The meeting ended at 3:45pm.