

Meeting Minutes  
Friday, February 20, 2015

Stormwater Stakeholder Advisory Group (SAG)  
DEQ Central Office  
629 E. Main Street, Richmond, VA  
2<sup>nd</sup> Floor Conference Rooms

Members Present: Michael L. Toalson, Philip F. Abraham, Adrienne Kotula, Rick Parrish, Larry J. Land, Joe Lerch, Whitney Katchmark, L. Eldon James, Jr., Chris Pomeroy, Katie Frazier, M. Ann Neil Cosby, Austin R. Mitchell, Jimmy Edmonds, Glenn Telfer, Peter J. Rigby, Douglas Beisch, Elizabeth A. Andrews, Melanie Davenport, James Golden, Peggy F. Sanner, John Olenik (alternate for Bart Thrasher) and Mark E. Rubin (facilitator).

Members Absent: Bart Thrasher.

Other Attendees: David Paylor, Nader Mahmoudpour, Joan Salvati, Lisa Hardy, Drew Hammond, Roy Van Houten, Fred Cunningham, Cindy Berndt, Chris French, and Gary Graham.

Meeting convened: 1:04 p.m.

Adjourned: 4:56 p.m.

1. Introductions/Overview [Mark Rubin]. The attendees were welcomed, they introduced themselves, and the meeting agenda was reviewed. Meeting materials (Attachments 1 - 3) were available at the rear of the conference room. Members were asked to send emails to Mark Rubin or Gary Graham ([gary.graham@deg.virginia.gov](mailto:gary.graham@deg.virginia.gov)) for dissemination to the group instead of directly to individual members to avoid any possibility of a “public meeting” under FOIA occurring without public notice. Some principles of facilitation advocacy and interest-based negotiation were presented and were discussed in contrast with adversarial negotiation. (Reference "Getting to Yes: Negotiating Agreement Without Giving In" by Roger Fisher and William L. Ury, Penguin Group, 1981.)
2. Establish Draft Ground Rules [Mark Rubin]. The ground rules handout was reviewed (Attachment 1 as handed out). Some concerns were expressed by members of the group as follows:
  - a. The mission statement needs editing to ensure that the law and its implementation is also efficient. Response: the mission statement will be revised.

- b. How many members are needed for consensus? Response: All of the members except for two must either support the proposal, be able to live with the proposal, or have reservations but not oppose the proposal. Dissent from two non-DEQ members will still be considered consensus, but the dissenters may add their reasons for dissent to the report.
  - c. What happens if consensus is not reached during the decision-making process; will the report still go to the Governor and legislative chairs? Response: Yes, the report will proceed even without consensus. It just will not be represented as a consensus report.
  - d. The Agreement section says that the members must agree to support a consensus report. Some members are responsible to a board that must meet to decide on supporting the proposal. Some of these boards don't meet until well after the goal for submission to the Governor (September) and they may decide at that time not to support the proposal. Also, many members represent only a portion of their stakeholder type. Response: Members are obligated to make their best effort to support (or at least to not oppose) the proposal once consensus is reached. Also, members only speak for their organization and not for stakeholders that they don't represent.
3. Welcoming Remarks [David Paylor]: The group was thanked for participating and the goal for the group was described. The group was reminded not to become distracted with regulatory issues and was encouraged to do what is in the interests of the Commonwealth, not just what is in the interest of their respective stakeholder group.
4. Future Meeting Schedule [Mark Rubin]: Future meetings of the Stormwater SAG will be held at the DEQ Piedmont Regional Office here in Richmond.

**Decision:** The group reached consensus on the following dates and times for future meetings of the Stormwater SAG:

- a. Monday, March 16, 2015, 9 am – 3 pm.
- b. Friday, April 17, 2015, 10 am – 5 pm.
- c. Monday, May 11, 2015, 10 am – 5 pm.
- d. Monday, June 8, 2015, 10 am – 5 pm.
- e. Monday, July 13, 2015, 10 am – 5 pm.
- f. Monday, August 24, 2015, 10 am – 5 pm.
- g. Friday, September 11, 2015, 10 am – 5 pm.

Small group work will probably be done at the DEQ Central Office, will be half-days, and will require at least five days prior notice to DEQ so that public notice may be posted on the Virginia Regulatory Town Hall at least three business days before the meeting. All small workgroup meetings will be open to the public. Members please contact Gary Graham by email or at (804) 698-4103 to schedule a small workgroup meeting.

5. Presentation by DEQ [Elizabeth Andrews and Melanie Davenport]: Stormwater Management, Erosion & Sediment Control, and the Chesapeake Bay Preservation Act. (Attachment 4). A concern was expressed that members may be asked to present this information to our respective boards. Can an electronic copy of this PowerPoint presentation be emailed to members? Response: A copy of the slides will be posted with the minutes and the PowerPoint file will be forwarded to members.
6. List of Issues [Mark Rubin]:
  - a. The Overarching Issues identified through conversations with individual group members and during the first group session are:
    - i. Structure of the statutes.
      1. Need to identify requirements, including overlaps and differences, preferably in PowerPoint. Look at consistency between them and see if they are combinable.
      2. In terms of organizing, look at time as an organizing principle and then think of other organizing principles.
    - ii. Who does what.
    - iii. Thresholds for regulation. Do we combine them or keep them separate?
      1. Not changing the thresholds.
      2. Staying mindful of the intent of each Act.
      3. Considering how the thresholds are regulated and administered, e.g. exemptions.

Regulatory issues are relegated to the Parking Lot and will not be part of the discussion.
  - b. With respect to the overarching issues, some concerns were expressed by members of the group as follows:
    - i. The group needs to be sure that the program is paid for, so "Fees" need to be added to the overarching issues. Response: Issue #4 will be Fees.
    - ii. Members want DEQ to lay out the requirements of each Act side-by-side so the group can choose what to talk about. Response: DEQ will produce such a comparison and send it out a few days before the next meeting.
    - iii. A straw-man for proposed legislation would not be useful, since it is likely to limit discussions and predispose the group to a particular path. Response: Then DEQ will not produce a straw-man to work from.
    - iv. The group also needs to consider the impacts of any changes on localities.
    - v. The members will need a copy of the statutes to work from. Response: DEQ will distribute electronic copies of the statutes or disseminate a link to the statutes before the next meeting.
  - c. Small Work Group Issues identified through conversations with individual group members are:
    - i. Fees and statutory issues.
    - ii. Enforcement.
    - iii. Consistency.

- iv. Nutrient Trading.
  - v. Best Management Practices (BMPs).
  - d. With respect to the small work group issues, some concerns were expressed by members of the group as follows:
    - i. The members don't have the list of overarching issues and sub-issues to consider for assignment to work groups. It would be helpful to have all the issues together to consider. Response: DEQ will put together the entire list of issues and distribute them to members.
    - ii. The construction permit program needs to be discussed as it relates to federal requirements. Response: It will be added to the list of issues.
    - iii. Clarification of existing requirements is one of the goals, so it should be added to the list of issues to be addressed. Response: It will be added to the list of workgroup issues.
    - iv. Implementation of existing requirements also needs to be looked at. Response: It will be added to the list of workgroup issues.
7. Prepare for Next Meeting: [Mark Rubin]:
- a. The next meeting will be at the DEQ Piedmont Regional Office at 4949-A Cox Road, Glen Allen, Virginia (804) 527-5020, on Monday, March 16<sup>th</sup> beginning at 9:00 am.
  - b. Summary of assignments:
    - i. [DEQ] A side-by-side comparison of the requirements of the 3 statutes identifying unclear or problematic requirements.
    - ii. [DEQ] A revised set of Ground Rules.
    - iii. [DEQ] An electronic copy of the meeting presentation.
    - iv. [DEQ] An electronic copy of the 3 statutes (or links to copies).

Attachments:

1. DRAFT Ground Rules (as handed out).
2. Stakeholder Group Request letters (Delegate Scott and Senator Hanger).
3. Stormwater Contact Information (as handed out).
4. Presentation Slides.

STORMWATER STAKEHOLDERS ADVISORY GROUP  
DRAFT GROUND RULES

**MISSION STATEMENT**

The Stormwater Stakeholders Advisory Group will develop draft consensus legislation to coordinate, streamline and simplify the law of the Commonwealth of Virginia regarding the regulation of stormwater. The goal is to make the law clear, consistent and understandable for local and state regulators and those whose activities are regulated by the law. The intent is to neither increase nor decrease the environmental protections currently existing in the law of Virginia.

Every effort will be made to develop a consensus draft of legislation by the end of summer 2015, so that it can be reported to the Governor and the chairs of the Senate and House natural resources committees in time for consideration for introduction in the 2016 session of the General Assembly of Virginia.

**PARTICIPATION**

The Group is comprised of members with experience in stormwater management issues and is representative of environmental organizations, the regulated community, agriculture, and local government as well as regional, engineering and state regulatory agency interests.

If a Group member becomes unavailable or otherwise unable to serve, the representatives of the interests similar to those of the unavailable member shall jointly determine whether that member should be replaced. If the decision is to seek a replacement, those members with similar interests shall make a recommendation for a replacement to the facilitator.

Group meetings will be open to the public and public notice will be provided on the Virginia Regulatory Town Hall website of the date, time and location of Group meetings. During Group meetings, one chair will be left open at the negotiating table where a member of the public can sit temporarily to present information or comment on any given topic. Members of the public will be encouraged to communicate their concerns through a member of the Group who represents their interests but the open chair is available if the member of the public feels it necessary to address the Group directly to add information that has not been considered. Members of the Group will not ask members of the public to sit at the table with them during discussions, in order to ensure that representation remains balanced in the Group.

Smaller work groups may be designated by the Group to address specific issues or to make recommendations to the full Group. Public notice will be provided for such work group meetings; if three or more members of the Group will be present it will be open to the public. Work groups are not authorized to make decisions for the Group as a whole.

The Group by consensus may invite experts to address the Group, as appropriate.

## **DECISION MAKING**

The Group will make every effort to reach unanimity on all issues related to the proposed legislation, meaning that there is no dissent by any member. However, if the facilitator determines that additional discussions are not likely to lead to unanimous consent, the Group will consider consensus to have been reached when there is no dissent by more than two non-DEQ members. Consensus will not be considered to have been reached if there is dissent by DEQ.

Upon the request of a dissenter to the legislation, DEQ will include the dissenter's reasons for dissenting in any report provided to the Governor and the chairs of the natural resources committees.

During the course of the facilitation, the facilitator may propose a test for consensus on any given issue or on the entire proposal utilizing a 4 level scale to determine gradients of agreement. The scale to be used is as follows:

1. I fully agree and support the proposal.
2. I can live with the decision. It is okay and I can support it.
3. I have reservations but will not oppose the proposal.
4. I think there are major problems with the proposal and am unable to live with it or support it. More work is needed.

If consensus is not present, the Group's discussion continues to determine if the interests of those who could not support the proposal can be met.

Decision making authority rests with the Group members. Other individuals who attend the Group meetings will not have the right to dissent or vote.

## **AGREEMENT**

If the Group develops a final consensus legislative proposal, DEQ agrees to report it to the Governor and chairs of the Senate and House natural resources committees and Group members agree to support the legislation as it was presented to the Governor in the legislative process.

In the event that amendments are offered to the bill during the executive branch review or the legislative process, Group members agree to reconvene as quickly as possible to review the proposed amendments and submit comments to DEQ and the patron of the legislation for consideration. Group members may speak as individuals to any such amendments.

If a Group member dissents from the final consensus draft, such Group member may express the dissent during any future legislative process.

## **GROUP MEETINGS**

The facilitator will prepare an agenda for each meeting in consultation with members of the Group and distribute it to the Group prior to each meeting along with any documents that may be proposed for discussion.

The facilitator will draft meeting summaries to maintain a clear and reliable record of tentative and final agreements reached during the process. Such summaries will be provided to Group members for their comments and corrections in the event of inaccuracies.

## **OBLIGATIONS OF GROUP MEMBERS**

Group members will communicate their interests and concerns to each other and be accountable for points of disagreement. They will present proposals and counterproposals which will be designed to address points of disagreement. Members will not block consensus unless they have serious reservations with the approach or solution proposed for consensus.

Group members will attend regularly scheduled Group meetings and any meetings of smaller work groups for which they sign up. They will come to such meetings prepared for the subject matter of the meetings.

Members shall act in good faith and in a respectful manner in all aspects of these discussions whether during meetings or during communications with others, including the media outside of meetings. They shall also keep the long term interests of the Commonwealth in mind as they participate in the process. If an article appears in the media that misquotes or inaccurately represents an individual's position, that individual should inform the Group members of it.

Members will maintain contact with constituencies throughout the process to obtain feedback on proposals and to provide information about tentative agreements reached.

Any member may withdraw from the process at any time by notifying the facilitator in writing.

## **MEETING FACILITATION**

Facilitation services will be provided by the Virginia Center for Consensus Building located at Virginia Commonwealth University. The facilitator will support the deliberative process and help to ensure that the process runs smoothly by helping the members resolve their differences and achieve consensus. The facilitator will render such services in a neutral manner.

CEIVED

SENATE OF VIRGINIA

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DEQ- OD

EMMETT W. HANGER, JR.

2.1, SENATORIAL DISTRICT  
ALL OF AUGUSTA, GREENE, AND  
MADISON COUNTIES; ALL OF THE CITIES OF  
STAUNTON AND WAYNESBORO; AND PART OF  
CULPEPER AND ROCKINGHAM COUNTIES  
POST OFFICE D0% 2  
MT. SOLON, VIRGINIA 220.13



COMMITTEE ASSIGNMENTS:  
AGRICULTURE, CONSERVATION AND  
NATURAL RESOURCES  
FINANCE  
LOCAL GOVERNMENT  
REHABILITATION AND SOCIAL SERVICES

October 29, 2014

David K. Paylor, Director  
Department of Environmental Quality  
629 E. Main Street  
Richmond, Virginia 23219

Dear Director Paylor,

As Chairman of the Senate Standing Committee on Agriculture, Conservation and Natural Resources I am requesting that DEQ put together a group of stakeholders to consider ways to streamline the Stormwater Management, Erosion and Sediment Control, and Chesapeake Bay Preservation Act programs. With the goal of achieving greater efficiency and consistency throughout the Commonwealth, I believe a thorough review of the scope and interaction between these three important programs should be conducted.

My House counterpart, Delegate Ed Scott, and I are in agreement and believe greater clarity and consistency between the programs will result in improved compliance and therefore better protection of our state waters. We would hope, if it is determined that changes are necessary or recommended, legislation would be proposed for the 2016 Session of the General Assembly.

Thank you for your attention to this request and for your continued efforts on the behalf of our Commonwealth's environment.

Best wishes!

Sincerely,

Emmett W. Hanger, Jr.

EWH/hwh





EDWARD T. "ED" SCOTT  
205 SOUTH MAIN STREET, SUITE 203  
CULPEPER, VIRGINIA 22701  
THIRTIETH DISTRICT

COMMONWEALTH OF VIRGINIA  
HOUSE OF DELEGATES  
RICHMOND

RECEIVED

NOV 04 '14

DEQ - OD

COMMITTEE ASSIGNMENTS:  
AGRICULTURE, CHESAPEAKE AND  
NATURAL RESOURCES (CHAIRMAN)  
TRANSPORTATION  
APPROPRIATIONS  
SCIENCE AND TECHNOLOGY

October 29, 2014

David K. Paylor, Director  
Department of Environmental Quality  
629 E. Main Street  
Richmond, Virginia 23219


Dear Director Paylor,

Now that the administration of the Stormwater Management, Erosion and Sediment Control, and Chesapeake Bay Preservation Act programs has been transferred to the Department of Environmental Quality, and implementation of the new stormwater management regulations has begun via the new Construction General Permit and stormwater programs in localities, this seems like an excellent opportunity to review the scope and interaction between these three important programs.

As chairman of the Agriculture, Chesapeake and Natural Resources Committee, I am requesting DEQ to form a group of stakeholders to consider ways to streamline the programs in order to achieve greater efficiency and consistency throughout the Commonwealth. I believe that greater clarity and consistency between the programs will result in improved compliance and therefore better protection of our state waters. I would hope that the timing would be such that, if it is determined that changes are necessary or recommended, legislation could be proposed during the 2016 Session of the General Assembly.

Thank you for your thoughtful consideration of this request, and for your continued efforts to protect our Commonwealth's environment.

Sincerely,

  
Edward T. "Ed" Scott  
Delegate, 30th District

ETS:jhp  
cc: Senator Emmett W. Hanger, Jr.

## STORMWATER CONTACT INFO

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Bart Thrasher	VDOT	<a href="mailto:BA.Thrasher@vdot.virginia.gov">BA.Thrasher@vdot.virginia.gov</a>	804-786-5869
Peggy F. Sanner	Chesapeake Bay Fdn	<a href="mailto:PSanner@cbf.org">PSanner@cbf.org</a>	804-780-1392
Adrienne Kotula	James River Assn	<a href="mailto:akotula@jrava.org">akotula@jrava.org</a>	804-788-8811
			x206
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L. Eldon James, Jr.	Rappahannock River	<a href="mailto:Eldon@EldonJamesAssociates.com">Eldon@EldonJamesAssociates.com</a>	540-907-2008
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			x202
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Melanie Davenport	DEQ	<a href="mailto:Melanie.Davenport@deq.virginia.gov">Melanie.Davenport@deq.virginia.gov</a>	804-698-4038
James Golden	DEQ	<a href="mailto:James.Golden@deq.virginia.gov">James.Golden@deq.virginia.gov</a>	804-698-4220
Mark E. Rubin	Facilitator	<a href="mailto:merubin@vcu.edu">merubin@vcu.edu</a>	804-241-9890

# Stormwater Management, Erosion & Sediment Control, and the Chesapeake Bay Preservation Act

Stormwater SAG Meeting  
February 20, 2015



# Our Focus

*We are going to examine 3 LAWS (not regulations, not permits) – i.e., the overarching framework and the interplay between these laws:*

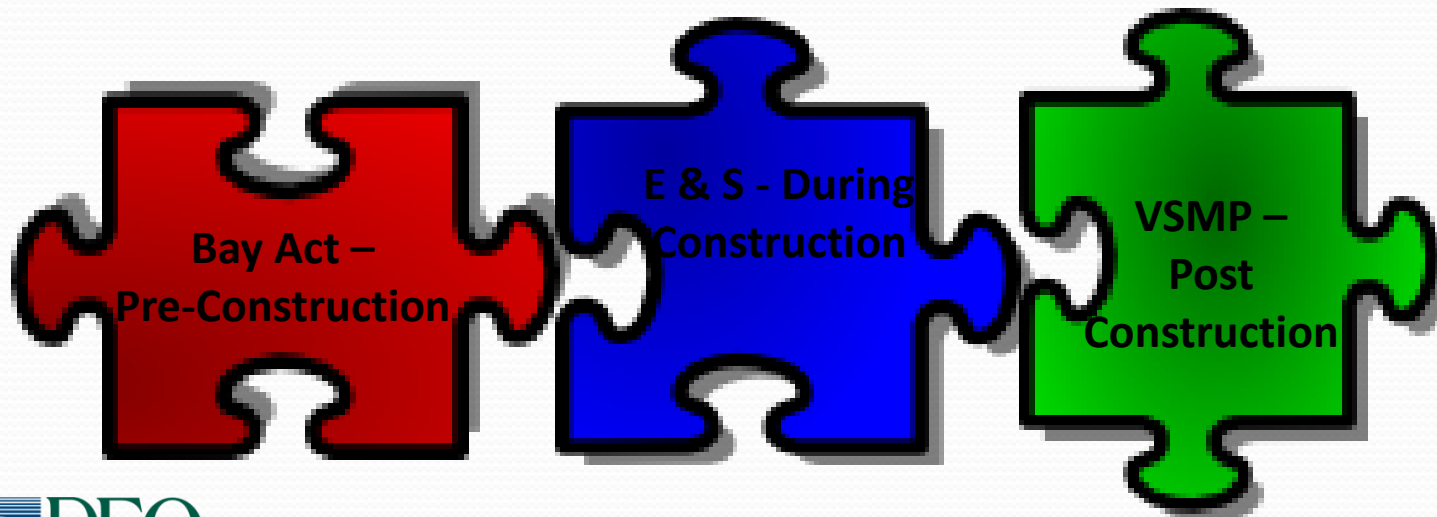
- Stormwater Management Act, Va. Code § 62.1-44.15:24 *et seq.*
- Erosion & Sediment Control Law, Va. Code § 62.1-44.15:51 *et seq.*
- Chesapeake Bay Preservation Act, Va. Code § 62.1-44.15:67 *et seq.*

# History – How We Got Here

- **1973 - E&SC Law** adopted by General Assembly; administered by DCR
- **1988 – CBPA** adopted by General Assembly; administered by CBLAB/CBLAD
- **1989 – SWMA** adopted by General Assembly; voluntary program for localities as of 7/1/90; state agencies required to comply as of Jan. 1, 1991
- **2004** - SWCB/DEQ issued point source permits; BCR/DCR administered the voluntary stormwater programs; CBLAB/CBLAD administered the CBPA; SWCB/DCR administered E&SC Law – So the GA transferred the MS4 Individual Permits & GP and the Construction GP from DEQ to DCR, moved CBLAD to DCR, & required CBPA & MS4 localities to adopt VSMPs
- **2012 – “Integration Bill”** - attempt to better integrate SWMA, E&SC Law, and stormwater/E&SC requirements of CBPA; required all localities to adopt VSMPs
- **2013 – E&SC, SWMA, CBPA, MS4 permits, Construction GP** transferred to DEQ
- **2014 – SWMA** revised; only MS4s required to adopt VSMPs; others opt in

# Bay Act, E&SC Law, SWMA - How they work together

1. Bay Act addresses land use and therefore reduces the source of pollutants entering waters
2. E&SC controls pollutants during construction
3. Stormwater requirements address post-construction run-off



# Chesapeake Bay Preservation Act

Applies to localities in “Tidewater Virginia”; east of I-95. Required elements:

1. Chesapeake Bay Preservation Area map
  2. Local ordinance provisions containing 10 performance criteria for the use, development and redevelopment of land
  3. Comprehensive Plan elements incorporating water quality protection
  4. Zoning ordinance containing water quality protection
  5. Subdivision ordinance containing water quality protection
  6. Adequate Plan of Development Review process
- Primarily a land use law. Localities required by regulations to have E&SC and SWM programs for land disturbance of 2,500 sq. ft. or more; but in the Act itself, there are only 2 references to those programs, which were added during the 2012 integration effort (§ 62.1-44.15:71, §62.1-44.15:27.K.)

# 84 Bay Act Localities

17 Cities  
29 Counties  
38 Towns





# Erosion & Sediment Control Law

- Applies to disturbed land areas of 10,000 sq. ft. or more, or 2,500 sq. ft. in CBPA localities.
- 19 Minimum Standards – all except one (“MS19”) address erosion prevention *during* construction.
- The MS specify criteria, techniques and methods that all programs must abide by.
- The MS achieve minimum consistency across the state – implemented by all localities, in their ordinances. But localities also may adopt more stringent requirements.

# Stormwater Management Act

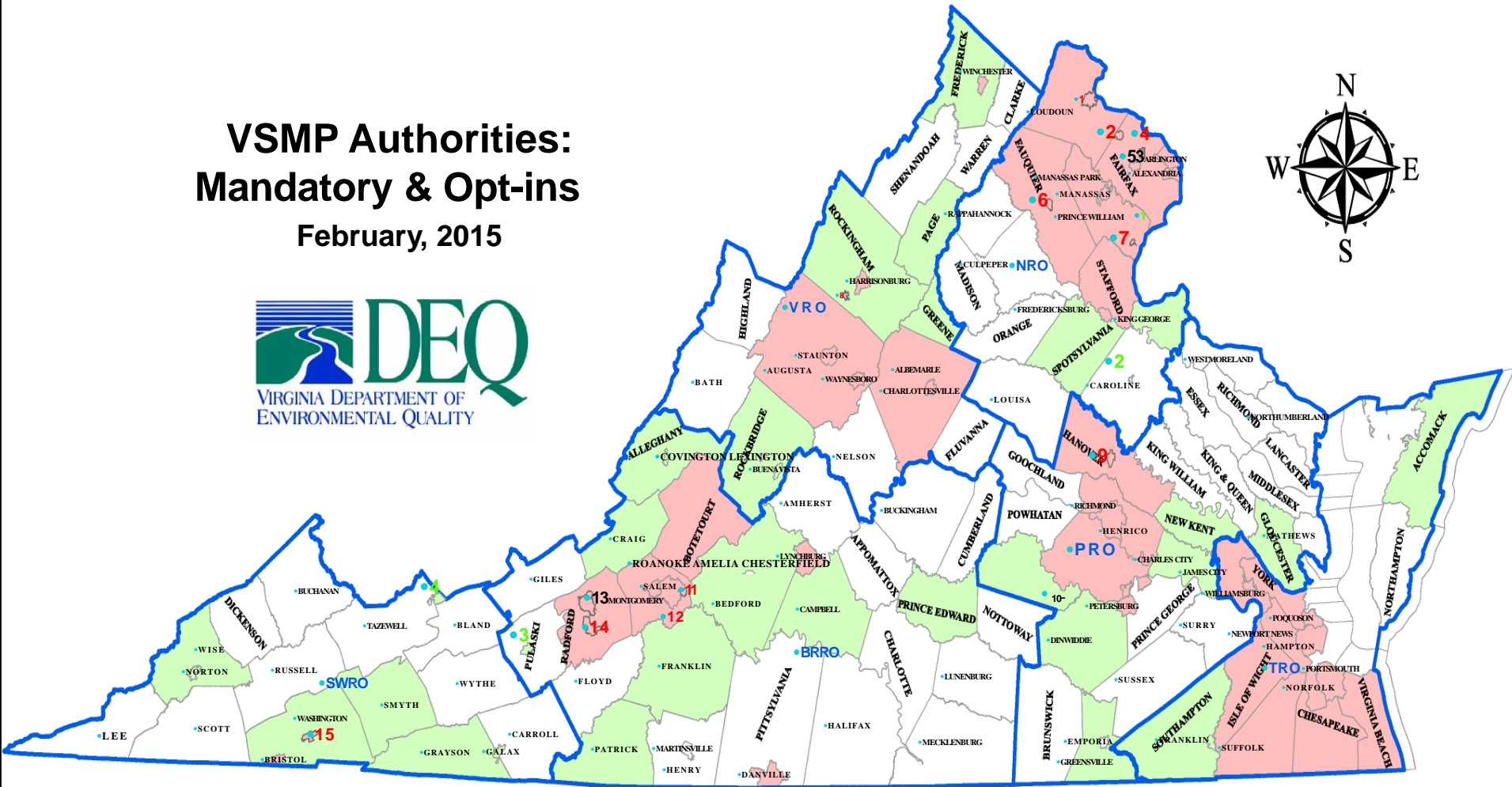
- MS4 localities must adopt VSMPs; others can opt in, except CBPA localities must regulate post-construction stormwater for “CBPA land disturbing activities” (2,500 sq. ft. up to 1 acre).
- Regulations set forth requirements for water quality (“Runoff Reduction Method”) and water quantity (“Energy Balance Method” and flooding criteria), as required by § 62.1-44.15:28.A: “The Board is authorized to adopt regulations that specify minimum technical criteria and administrative procedures for Virginia Stormwater Management Programs. The regulations shall: ... 2. Establish minimum design criteria for measures to control nonpoint source pollution and localized flooding, and incorporate the stormwater management regulations adopted pursuant to the Erosion and Sediment Control Law ... as they relate to the prevention of stream channel erosion. These criteria shall be periodically modified as required in order to reflect current engineering methods.”
- Localities that have adopted VSMPs may adopt more stringent ordinances.
- Act also contains requirements re: the Construction GP and MS4 permits.

# What is an MS4?

- “Municipal Separate Storm Sewer System” means a storm water conveyance or system of conveyances that is owned by a state, city, town, or other public entity that discharges to surface waters.
- An MS4 includes roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains.
- Discharges from MS4s are regulated under the Clean Water Act as point source discharges.
- MS4 permits issued by DEQ are VPDES Permits.

# VSMP Authorities: Mandatory & Opt-ins

February, 2015



- Mandatory Towns & Cities:
- 1 - Leesburg
- 2 - Herndon
- 3 - Vienna
- 4 - Falls Church
- 5 - Fairfax
- 6 - Warrenton
- 7 - Dumfries
- 8 - Bridgewater
- 9 - Ashland
- 10 - Colonial Heights
- 11 - Vinton
- 12 - Roanoke
- 13 - Blacksburg
- 14 - Christiansburg
- 15 - Abingdon

- Opt-in Towns:
- 1 - Occoquan
- 2 - Bowling Green
- 3 - Pulaski
- 4 - Bluefield

• Note: Opt-out totals include counties and cities that did not adopt a local VSMP.

**VSMP**  
DEQ Regional Offices

- 55 Opt-out
- 35 Opt-in
- 58 Mandatory

# General Permit for the Discharge of Stormwater During Construction Activities (Construction GP)

- VPDES permit administered by DEQ. Required by federal Clean Water Act for all non-exempt land disturbing activities of 1 acre or greater.
- Permit coverage fees set in state regulation.
- 5-year term; current GP effective July 1, 2014.
- Requires compliance with Erosion and Sediment Control Law and attendant regulations and stormwater management regulations, including post-construction stormwater controls.
- This is a federally mandated permit, derived from separate authority than VA's water quality & quantity requirements established by the SWMA and VSMP regulations.

# Chesapeake Bay TMDL WIP

In our Watershed Implementation Plans (Phase I & II), Virginia committed to:

- Have no net increase in post-development pollutant loads above the average loads from previous land uses (forest, cropland, pasture and hay) for new development, and a reduction in pollutant loads from redevelopment.
- Implement new stormwater management regulations statewide in 2014, including a revised P discharge limit of .41 lbs./ac./yr. and water quantity requirements
- Reissue MS4 permits consistent with the Bay TMDL & WIP over 3 permit cycles

# SWMA vs. E&SC Law:

## Establishing VSMPs & VESCPs

### Stormwater Management Act

- VSMPs shall be adopted by a locality that operates a regulated MS4.
- Any other locality may “opt in” and decide to adopt a VSMP.
- A Chesapeake Bay Preservation Act locality regulates post-construction stormwater for land disturbance of 2,500 sq. ft. up to 1 acre, but does not have to adopt a VSMP.
- Any town, including one that operates a regulated MS4, in a county that has adopted a VSMP may decide to become subject to the county's VSMP.
- As of Jan. 2015, 93 localities have adopted VSMPs. DEQ operates VSMPs for the rest (55).

§ 62.1-44.15:27 (as amended, 2014)

### Erosion & Sediment Control Law

- Counties and cities shall adopt and administer a VESCP.
- Any town in a county that has adopted a VESCP may adopt its own program or shall become subject to the county program.

§ 62.1-44.15:54

# *SWMA vs. E&SC Law:*

## Threshold for land-disturbing activities

### Stormwater Management Act

- 1 acre or more of land area disturbed (Construction GP coverage required); or
- 2,500 square feet or more but less than 1 acre in Chesapeake Bay Preservation Act localities

§ 62.1-44.15:34

### Erosion & Sediment Control Law

- 10,000 square feet or more of land area disturbed; or
- 2,500 square feet or more in all Chesapeake Bay Preservation Act localities

§ 62.1-44.15:51



# SWMA vs. E&SC Law: Exemptions

## Stormwater Management Act

- 8 including single-family residences separately built, disturbing less than 1 acre, and not part of a larger common plan of development or sale
- Permitted surface or deep mining operations or oil and gas operations
- Agriculture

§ 62.1-44.15:34

## Erosion & Sediment Control Law

- 12 including minor land disturbing activities such as home gardens, landscaping, individual service connections
- Underground utility lines and septic systems
- Mining, oil drilling, repair of railroad facilities
- Agriculture

§ 62.1-44.15:51

# SWMA vs. E&SC Law:

## Plan Review

### Stormwater Management Act

- Must submit to VSMP authority a permit application that includes a Registration Statement (if required) and a stormwater management plan.
- VSMP authority reviews the plan within 60 days after determining the application is complete, and may either issue project approval or denial. Must provide written rationale for a denial.
- VSMP authority shall act on any permit application that has been previously disapproved within 45 days after the application has been revised, resubmitted and deemed complete.

§ 62.1-44.15:34

### Erosion & Sediment Control Law

- Must submit an erosion and sediment control plan to the VESCP authority.
- VESCP authority must obtain evidence of VSMP permit coverage, where it is required, prior to approval.
- VESCP authority grants written approval within 60 days after receipt of acceptable plan, or sends written notice of disapproval within 45 days if plan is determined inadequate. The VESCP authority shall act on any disapproved E&SC plan within 45 days after the plan has been revised, resubmitted and deemed adequate.

§ 62.1-44.15:55

# SWMA vs. E&SC Law:

## Additional conditions for approval

### Stormwater Management Act

- A VSMP authority may require an applicant (excluding state and federal entities) to submit a reasonable performance bond prior to issuance of any approval.
- For SFR, can use agreement in lieu of a plan.

§ 62.1-44.15:34

### Erosion & Sediment Control Law

- Prior to engaging in land disturbing activity, the person responsible for carrying out an approved E&SC plan shall provide to the VESCP authority the name of an individual holding a certificate of competence, as provided by §62.1-44.15:52, who will be in charge of and responsible for carrying out the land-disturbing activity.
- For SFR, can use agreement in lieu of a plan.

§ 62.1-44.15:55

# SWMA vs. E&SC Law: Maintenance & Inspections

## Stormwater Management Act

- VSMP authority periodically inspects the installation of BMPs, and may require monitoring & reports from the person responsible for meeting the permit conditions
- VSMP authority can conduct investigations as necessary to carry out responsibilities
- If VSMP authority finds non-compliance, Notice is served by mail with confirmation of delivery or by delivery to the site. The Notice shall specify needed corrective measures and a deadline for compliance.
- Continued noncompliance can result in a Stop Work Order, or revocation of local VSMP permit or Construction GP coverage, plus enforcement.

§ 62.1-44.15:37

## Erosion & Sediment Control Law

- VESCP authority periodically inspects the land-disturbing activity, with prior notice, and requires that an individual holding a certificate of competence be responsible for carrying out the activity; may require monitoring and reports from the person responsible for carrying out the plan
- If VESCP authority finds a failure to comply with plan, a Notice to Comply is served by mail with confirmation of delivery or by physical delivery to the site. The Notice shall specify needed corrective measures and a deadline for compliance.
- Continued noncompliance can result in a Stop Work Order, or permit revocation, plus enforcement.

§ 62.1-44.15:58

# SWMA vs. E&SC Law:

## Stop Work Orders Stormwater Management Act

- Upon finding a failure to comply with a permit condition within a specified time frame, or the lack of an approved plan or required permit, the VSMP authority or DEQ may issue a Stop Work Order.
- Stop Work Orders are issued in accordance with local procedures if issued by a locality, or after a hearing pursuant to the Va. Administrative Process Act, § 2.2-4000 et seq., if issued by DEQ.
- A VSMP authority can issue an emergency order without notice or hearing if violation is grossly affecting or presents imminent and substantial danger of causing harmful erosion or sediment deposition in waters or otherwise substantially impacting water quality, with opportunity for notice and hearing later.
- Can be enforced via injunction or mandamus, plus civil penalty.

§ 62.1-44.15:37

## Erosion & Sediment Control Law

- Upon issuance of an inspection report finding a violation in conjunction with or after Notice to Comply, or if land-disturbing activities have begun without an approved plan, a VESCP authority or DEQ may issue Stop Work Order.
- Where noncompliance causes or is in imminent danger of causing harmful erosion or sediment deposition in waters, or where land-disturbing activities have begun without an approved E&SC plan or required permits, the Stop Work Order may be issued whether or not a Notice to Comply was issued.
- Stop work orders remain in effect for 7 days, pending an application for relief from a court. If still no compliance, DEQ or VESCP authority may issue another Order requiring all work be stopped. Can be enforced via injunction or mandamus, plus civil penalty.

§ 62.1-44.15:58; *see also* § 62.1-44.15:64

# SWMA vs. E&SC Law: Enforcement

## Stormwater Management Act

- Notices to Comply and Stop Work Orders - § 62.1-44.15:37
- Special orders and emergency special orders - § 62.1-44.15:25
- Consent special orders and civil charges - §§ 62.1-44.15:25 and 62.1-44.15:48
- Injunction or mandamus plus civil penalty for noncompliance therewith - § 62.1-44.15:42, § 62.1-44.15:48
- Civil penalty not to exceed \$32,500 for each violation, with each day of violation constituting a separate offense (CWA) - §62.1-44.15:48
- Willful or negligent violations – misdemeanor. Knowing violations or knowingly making false statements on forms or knowingly rendering any monitoring device or method inaccurate – felony. § 62.1-44.15:48
- Violation of MS4 stormwater ordinance – Class 1 misdemeanor - § 62.1-44.15:49

## Erosion & Sediment Control Law

- Notices to Comply and Stop Work Orders – § 62.1-44.15:58
- Consent special orders and civil charges - § 62.1-44.15:63
- Injunction or mandamus plus civil penalty for noncompliance – § 62.1-44.15:58, § 62.1-44.15:63, § 62.1-44.15:64
- A VESCP authority may adopt an ordinance providing for a civil penalty of not less than \$100 nor more than \$1,000. Each day of violation shall constitute a separate offense. Such penalties are also available to the SWCB - § 62.1-44.15:54
- Violators may also be liable to the VESCP authority or DEQ in a civil action for damages - § 62.1-44.15:63
- Violators of §§ 62.1-44.15:55, 62.1-44.15:56 or 62.1-44.15:58 - misdemeanor. § 62.1-44.15:63

# SWMA vs. E&SC Law:

## Annual Standards & Specifications

### Stormwater Management Act

- State entities and linear projects shall, & federal entities may, annually submit standards and specifications for DEQ approval
  - Must describe how land disturbing activities will be conducted
  - Must be consistent with E&SC Law and Construction GP
  - Shall include technical criteria to meet SWM requirements; provisions for plan design & approval, and construction inspection and enforcement; provisions for long-term maintenance of BMPs; etc.

Linear projects include electric transmission, natural gas, & telephone utility lines and pipelines; water and sewer lines; and railroad tracks and other related structures.

§ 62.1-44.15:31

### Erosion & Sediment Control Law

- State agencies shall submit annual standards and specifications or E&SC plans for a project to DEQ for approval. § 62.1-44.15:56.
- Utilities (electric, natural gas, telephone), natural gas pipeline companies and railroads may annually file standards and specifications with DEQ. § 62.1-44.15:55.
- In both cases, the standards and specifications must be consistent with the SWMA and regulations, and DEQ has 60 days to review and approve them. §§ 62.1-44.15:55, 62.1-44.15:56.

# SWMA vs. E&SC Law: Fees

## Stormwater Management Act

- Permit fee schedule set in state regulations to cover all costs associated with the implementation of a VSMP for land disturbing activities of 1 acre or more. No more than 30% of total revenue generated by collected statewide fees shall be remitted to DEQ.
  - The fee schedule shall include a reduced fee for CPBA land disturbing activities.
  - VSMP authorities may reduce or increase fees after SWCB approval.

§ 62.1-44.15:28

- DEQ assesses administrative charges to cover costs of reviewing annual standards & specifications for state, federal, and linear projects.

§ 62.1-44.15:31

## Erosion & Sediment Control Law

- The SWCB may charge a fee to cover the costs associated with standard and specification review and approval.
- § 62.1-44.15:55.
- VESCP authorities may charge applicants a reasonable fee to defray the cost of program administration, established after a public hearing.
    - Fees may be in addition to any fee charged for administration of a VSMP although payment of fees may be consolidated.

§ 62.1-44.15:54



# References to the VSMP in the Erosion & Sediment Control Law

- “Each approved VESCP operated by a county, city, or town shall **include provisions for the integration of the VESCP with Virginia stormwater management . . .** prior to authorizing a land-disturbing activity in order to make the submission and approval of plans, issuance of permits, payment of fees, and coordination of inspection and enforcement activities more convenient and efficient both for the local governments and those responsible for compliance with the programs.” § 62.1-44.15:54.
- “The Board shall approve VESCP authorities and shall periodically conduct a comprehensive program compliance review and evaluation to ensure that all VESCPs operating under the jurisdiction of this article meet minimum standards of effectiveness in controlling soil erosion, sediment deposition, and nonagricultural runoff . . . **Such reviews where applicable shall be coordinated with those being implemented in accordance with the Stormwater Management Act (§ 62.1-44.15:24 et seq.)** and associated regulations and the Chesapeake Bay Preservation Act ... and associated regulations.” § 62.1-44.15:52.
- “Any VESCP authority that administers an erosion and sediment control program may charge applicants a reasonable fee to defray the cost of program administration. Such fee may be in addition to any fee charged for administration of a Virginia Stormwater Management Program, although payment of fees may be consolidated in order to provide greater convenience and efficiency for those responsible for compliance with the programs.” § 62.1-44.15:54.

# References to the VESCP in the SWMA

- “Each locality that administers an approved VSMP shall, by ordinance, establish a **VSMP that shall be administered in conjunction with a local MS4 program and a local erosion and sediment control program** if required pursuant to the Erosion and Sediment Control Law ..., and which shall include the following: 3. **Provisions for the integration of the VSMP with local erosion and sediment control**, flood insurance, flood plain management, and other programs requiring compliance prior to authorizing construction in order to make the submission and approval of plans, issuance of permits, payment of fees, and coordination of inspection and enforcement activities more convenient and efficient both for the local governments and those responsible for compliance with the programs.” § 62.1-44.15:27(E)(3).
- “The Board is authorized to adopt regulations that specify minimum technical criteria and administrative procedures for Virginia Stormwater Management Programs. The regulations shall . . . [e]stablish minimum design criteria for measures to control nonpoint source pollution and localized flooding, and **incorporate the stormwater management regulations adopted pursuant to the Erosion and Sediment Control Law ...**, as they relate to the prevention of stream channel erosion.” § 62.1-44.15:28(A)(2).
- “The Department shall perform random site inspections or inspections in response to a complaint to assure compliance with this article, the Erosion and Sediment Control Law ..., and regulations adopted thereunder.” § 62.1-44.15:31(C).

# Parallel Clauses

- Cooperation with federal and state agencies: SWMA § 62.1-44.15:50; E&SC § 62.1-44.15:61
- Authorization for more stringent ordinances: SWMA §62.1-44.15:33; E&SC § 62.1-44.15:65
- Right of entry: SWMA § 62.1-44.15:39; E&SC § 62.1-44.15:60