


**COMMONWEALTH OF VIRGINIA
DEPARTMENT OF ENVIRONMENTAL QUALITY
WATER PLANNING DIVISION**

Subject: Guidance Memo No. 16-2002
Administrative and Enforcement Proceedings – Compliance Reviews of a Local Government Program for the Implementation and Enforcement of the Chesapeake Bay Preservation Act and Chesapeake Bay Preservation Area Designation & Management Regulations

To: Melanie Davenport, Director, Water Permitting Division; Jeff Steers, Director of Central Operations; Jeff Reynolds, Director, Enforcement Division; James Golden, Director of Operations

From: Jutta Schneider, Director, Water Planning Division 

Copies: Regional Directors; Angela Jenkins, Director, Policy Division

Date: May 6, 2016

Summary:

This guidance document provides direction for evaluating local government program compliance with Article 2.5 of the State Water Control Law ([Va. Code § 62.1-44.2](#)) *et seq.*, Chesapeake Bay Preservation Act ([§ 62.1-44.15:67](#)) *et seq.*, and the Chesapeake Bay Preservation Area Designation and Management Regulations [9VAC25-830](#) related to land development and water quality protection. It provides guidance on administrative procedures to be followed for Bay Act compliance reviews and referring cases to the Division of Enforcement. This guidance allows the Local Government Assistance Programs staff to consistently review and address program compliance.

Electronic Copy:

An electronic copy of this guidance document in PDF format is available for the general public on DEQ's website at:

<http://www.deq.state.va.us/Programs/Water/ChesapeakeBay/ChesapeakeBayPreservationAct/LocalProgramCompliance.aspx>

Contact Information:

Please contact Joan Salvati, Manager, Local Government Assistance Programs, at (804) 698-4230 or joan.salvati@deq.virginia.gov with any questions regarding the application of this guidance.

Disclaimer:

This document is provided as guidance and, as such, sets forth standard operating procedures for the agency. However, it does not mandate or prohibit any particular action not otherwise required or prohibited by law or regulation. If alternative proposals are made, such proposals will be reviewed and accepted or denied based on their technical adequacy and compliance with appropriate laws and regulations.

I. PURPOSE

This guidance establishes procedures for conducting compliance reviews of a local government program's implementation and enforcement of the Chesapeake Bay Preservation Act and the Chesapeake Bay Preservation Area Designation and Management Regulations, and for providing results of such reviews and the associated compliance recommendations to the local government. It also establishes methods and tools for referring cases to the Division of Enforcement. This guidance allows the Office of Local Government Programs to consistently conduct its program compliance reviews.

II. AUTHORITY

The DEQ's authority to conduct compliance reviews is provided for in the Chesapeake Bay Preservation Act (Va. Code §62.1-44.15:67 *et seq.*) and Chesapeake Bay Preservation Area Designation and Management Regulations (9 VAC 25-830),

Code of Virginia (§62.1-44.15.69(10)) authorizes the State Water Control Board to: "Take administrative and legal actions to ensure compliance by counties, cities and towns with the provisions of this article including proper enforcement and implementation of, and continued compliance with, this article."

Code of Virginia (§62.1-44.15.71) outlines the compliance review process for local government programs under the Chesapeake Bay Preservation Act authority of §62.1-44.15.69(10). This Code section requires the creation of a corrective action agreement should compliance issues be noted during the compliance review and further dictates that the Administrative Process Act (APA, (§ 2.2-4000 *et seq.*)) be followed when compliance issues are found.

9VAC25-830-260. Administrative proceedings: "Subdivision 8 §62.1-44.15:69 and §62.1-44.15:71 of the Act provide that the board shall ensure that local government comprehensive plans, subdivision ordinances and zoning ordinances are in accordance with the provisions of the Act, and that it shall determine such compliance in accordance with the provisions of the Administrative Process Act."

9VAC25-830-270. Legal proceedings: "Subdivision 10 of §62.1-44.15:69 and §62.1-44.15:71 of the Act provide that the board shall take administrative and legal actions to ensure compliance by local governments with the provisions of the Act. Before taking legal action against a local government to ensure compliance, the board shall, unless it finds extraordinary circumstances, initiate a proceeding under the Act and 9VAC25-830-260 to obtain such compliance and give the local government at least 15 days notice of the time and place at which it will decide whether or not to take legal action. If it finds extraordinary circumstances, the board may proceed directly to request the Attorney General to enforce compliance with the Act and this chapter. Administrative actions will be taken pursuant to 9VAC25-830-260."

III. CHESAPEAKE BAY PRESERVATION ACT COMPLIANCE REVIEW - ADMINISTRATIVE PROCEEDINGS-CHARTS A AND B

Compliance Review by DEQ staff – the compliance review is undertaken by DEQ staff in accordance with Chart A – Chesapeake Bay Preservation Act Compliance Review Process (Appendix I) and the Chesapeake Bay Preservation Act Compliance Review Procedures Manual (Appendix II), the Chesapeake Bay Preservation Act Approved Compliance Review Elements (Appendix III) and the Chesapeake Bay Preservation Act Compliance Review Checklists (Appendix IV). These compliance review tools can also be found here:

<http://www.deq.virginia.gov/Programs/Water/ChesapeakeBay/ChesapeakeBayPreservationAct/LocalProgramCompliance.aspx>

There are 31 program elements that form the basis of local compliance reviews. A staff report is finalized when review of the report by the Chesapeake Bay Preservation Act program manager is complete. One of two alternative situations result from a compliance review. One situation is where no compliance deficiencies are noted and the other is where compliance conditions are identified. The following procedures address both situations and are depicted on Chart B. The referenced letter templates are included in Appendix V.

No deficiencies identified (Template 1) – the final staff report is sent to the locality along with a notification letter from the DEQ Chesapeake Bay Preservation Act program manager stating that no deficiencies are noted and including the final agency decision finding the locality compliant with the evaluated program elements. This ends the compliance review for that locality.

Compliance conditions are identified (Template 2) – the final staff report, which includes recommended conditions for compliance and a time frame for the locality to address the conditions, is sent to the locality along with a notification letter and a draft Corrective Action Plan (CAP) listing the recommended conditions. The DEQ Chesapeake Bay Preservation Act program manager signs the notification letter. The DEQ program manager, in consultation with the Water Planning Division Director and the Enforcement Division Director, may determine on a case-by-case basis that a local program should be referred directly to the Notice of Violation (NOV)/CAP step.

Compliance conditions are addressed adequately (Template 3) – the locality addresses the recommended conditions in the timeframe outlined in the staff report. The DEQ liaison will evaluate the actions and documentation provided by the locality to address the conditions and will determine, with the oversight of the DEQ Chesapeake Bay Preservation Act program manager, that the locality has addressed the conditions adequately. At this point, the DEQ program manager will send a notification letter stating that the conditions outlined in the staff report have been addressed and including the final agency decision finding the locality compliant with the evaluated program elements. This ends the compliance review for that locality.

Compliance conditions not addressed adequately (Template 4/Warning Letter) – the locality does not adequately address the recommended conditions in the timeframe outlined in the staff report. The DEQ liaison will evaluate the actions and documentation provided by the locality to address the deficiencies and will determine, with the oversight of the DEQ Chesapeake Bay Preservation Act program manager, that the locality has not adequately addressed the conditions outlined in the staff report. If it is determined by the program manager, in consultation with the Directors of the Water Planning and Enforcement Divisions, that a short extension of the deadline is warranted, a Warning Letter will be sent to the locality formally extending the deadline. If it is determined that no deadline extension is warranted, or if the locality has not met the recommended conditions within the extended timeframe, the matter will be referred to the Enforcement Division. An NOV/CAP will then be sent to the locality by the Enforcement Division.

IV. CHESAPEAKE BAY PRESERVATION ACT COMPLIANCE REVIEW – REFERAL TO ENFORCEMENT DIVISION

Program referred to Enforcement Division – the locality is referred to the Enforcement Division for addressing either significant program deficiencies, or program deficiencies not adequately addressed following transmittal of the staff report. Enforcement activities will be conducted pursuant to Section 62.1-44.15:71 and the Administrative Process Act (APA) and in accordance with the DEQ Enforcement Manual. Program staff will support Enforcement staff in developing NOVs, CAPs or Agreements, any meetings with the locality and any other related activities or correspondence. For information about

DEQ's enforcement process, please refer to the DEQ Enforcement Manual here: <http://www.deq.virginia.gov/Programs/Enforcement/Laws,Regulations,Guidance.aspx>

V. LIST OF APPENDICES

Appendix I – Flow Charts

Chart A – Chesapeake Bay Preservation Act Compliance Review Process – Staff Review

Chart B – Chesapeake Bay Preservation Act Compliance Review Process – Administrative Procedures

Appendix II – [Chesapeake Bay Preservation Act Compliance Review Procedures Manual](#)

Appendix III – [Chesapeake Bay Preservation Act Approved Compliance Review Elements](#)

Appendix IV – [Chesapeake Bay Preservation Act Compliance Review Checklists](#)

Attachment V – Letter Templates

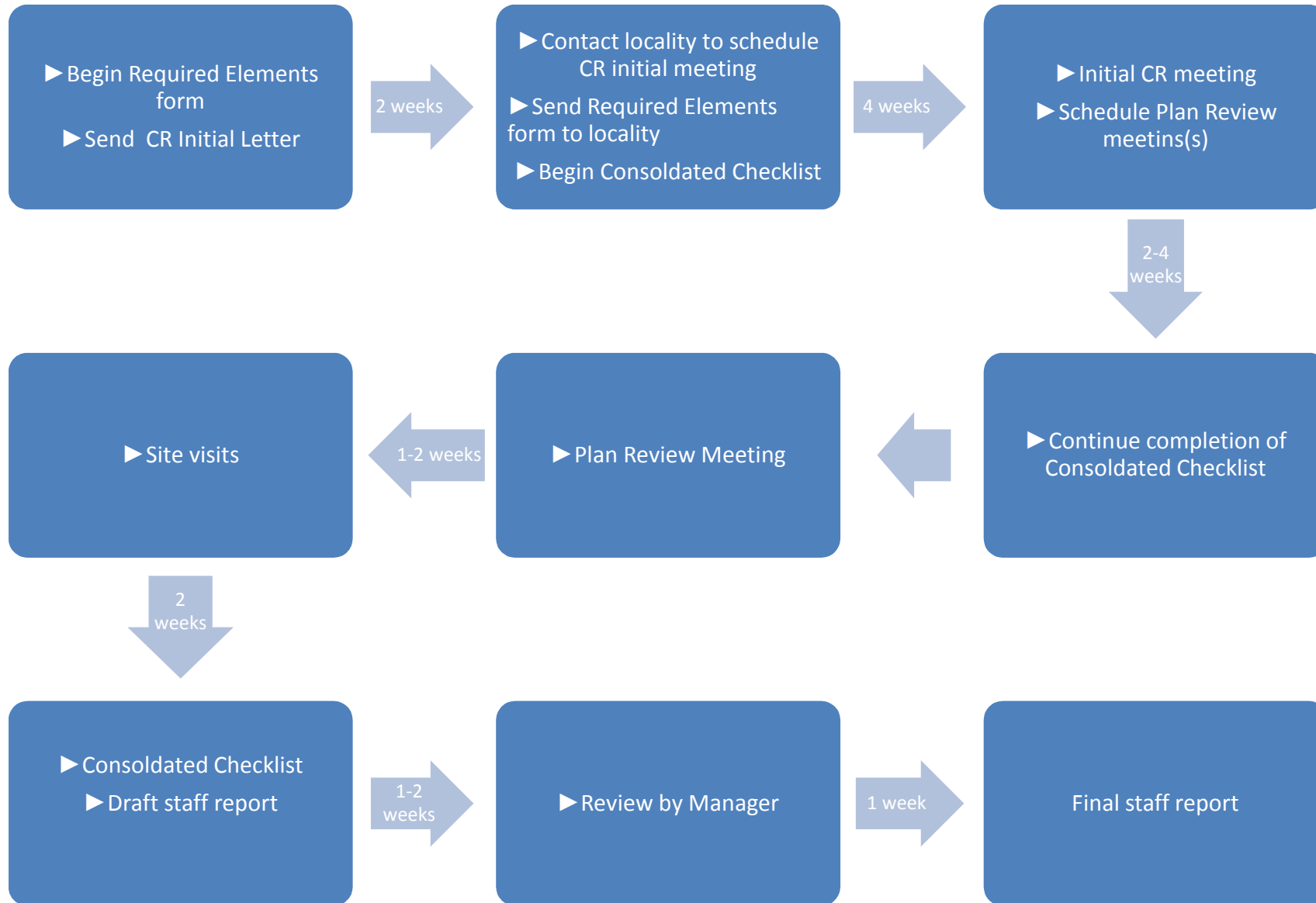
Template 1 – No deficiencies identified

Template 2 – Compliance conditions are identified

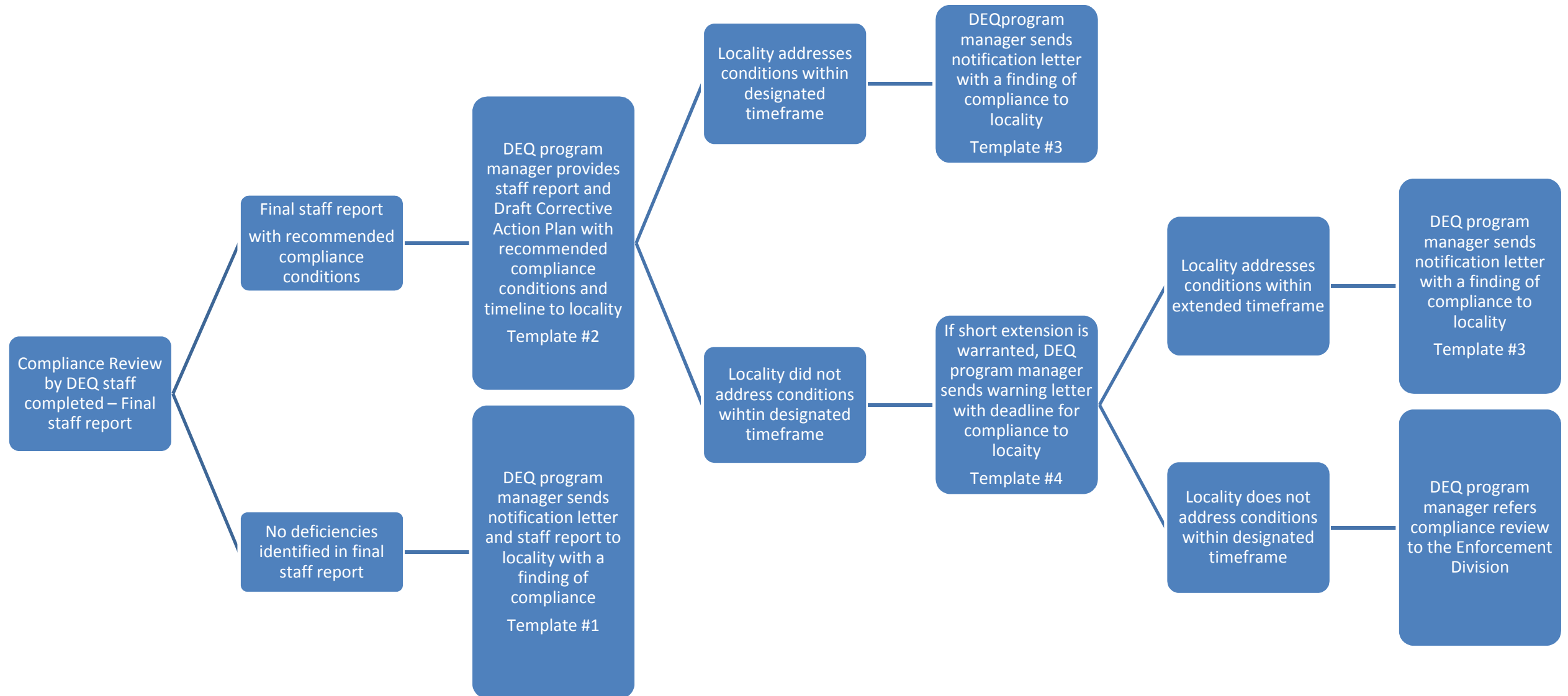
Template 3 – Compliance conditions are addressed adequately

Template 4 – Compliance conditions not addressed adequately – Warning Letter

Chesapeake Bay Preservation Act Compliance Review Process – Chart A



Chesapeake Bay Preservation Act Compliance Review Enforcement Process – Chart B





COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
Street address: 629 East Main Street, Richmond, Virginia 23219
Mailing address: P.O. Box 1105, Richmond, Virginia 23218
www.deq.virginia.gov

Molly Joseph Ward
Secretary of Natural Resources

David K. Paylor
Director

(804) 698-4000
1-800-592-5482

Template #1
Date

CAO Name
Title
Address

Re: **Name of Locality** Chesapeake Bay Preservation Act Program – Compliance Review
Decision

Dear **[Name of Chief Administrative Officer]**:

Pursuant to §§ 62.1-44.15:69 and 62.1-44.15:71 of the Chesapeake Bay Preservation Act and 9 VAC25-830-260 of the Chesapeake Bay Preservation Area Designation and Management Regulations, the Department of Environmental Quality (DEQ) has completed its compliance review of **Name of Locality's** Chesapeake Bay Preservation Act program. The compliance review was conducted from [start date] through [end date] and was conducted in accordance with DEQ's Chesapeake Bay Preservation Act Compliance Evaluations Procedures. (Note: DEQ has not included an assessment of **Name of Locality's** stormwater requirements in this compliance review.)

The results of the DEQ's compliance review are outlined in the attached staff report, dated Month Day Year. Based on a review of all available documentation, annual reports, approved plans and field visits, DEQ has not identified any deficiencies in the **Name of Locality's** implementation of its Chesapeake Bay Preservation Act program.

DEQ, on behalf of the Board, therefore finds¹ that the implementation of **Name of Locality's** Chesapeake Bay Preservation Act program is compliant with the Chesapeake Bay Preservation Act pursuant to §§ 62.1-44.15:69 and 62.1-44.15:71 and the Chesapeake Bay Preservation Area Designation and Management Regulations pursuant to 9 VAC25-830-260. This determination will be valid for a period of five years, or until **Name of Locality's** next scheduled review, unless DEQ finds a pattern of noncompliance during the interim period of time.

¹ As provided by Rule 2A:2 of the Supreme Court of Virginia, you have thirty days from the date of service (the date you actually received this decision or the date it was mailed to you, whichever occurred first) within which to appeal this decision by filing a notice of appeal in accordance with the Rules of the Supreme Court of Virginia with the Director, Department of Environmental Quality. In the event that this decision is served on you by mail, three days are added to that period.

Thank you for your cooperation in implementing the Chesapeake Bay Preservation Act. We look forward to continuing to work with **Name of Locality** in the implementation of its Bay Act program. If you have questions or need additional information, please contact **Liaison** at (804) 698-XXXX or me at (804) 698-XXXX.

Sincerely,

Joan Salvati, Manager
Local Government Assistance Programs

Cc: John Kennedy, Manager, Office of Ecology, DEQ



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Molly Joseph Ward
Secretary of Natural Resources

David K. Paylor
Director

(804) 698-4000
1-800-592-5482

Template #2

Date

CAO Name
Title
Address

RE: **Name of Locality** Chesapeake Bay Preservation Act Program – Compliance Review with Recommended Conditions

Dear **[Name of Chief Administrative Officer]**:

Pursuant to §§ 62.1-44.15:69 and 62.1-44.15:71 of the Chesapeake Bay Preservation Act and 9 VAC25-830-260 of the Chesapeake Bay Preservation Area Designation and Management Regulations, the Department of Environmental Quality (DEQ) on behalf of the State Water Control Board (Board) has conducted a compliance review of **Name of Locality's** Chesapeake Bay Preservation Act program. The compliance review was conducted from [start date] through [end date] and was conducted in accordance with DEQ's Chesapeake Bay Preservation Act Compliance Evaluations Procedures. (Note: DEQ has not included an assessment of **Name of Locality's** stormwater requirements in this compliance review.)

Based on a review of all available documentation, approved plans, annual reports and field visits, DEQ has developed the attached staff report and Draft Corrective Action Plan (Plan). Please note that the staff report and Plan identify **xx** number of conditions for compliance and a timeframe for addressing the conditions. This letter is not intended as a case decision under the Virginia Administrative Process Act, Va. Code 2.2-4000 et seq. DEQ will re-evaluate the **Name of Locality's** Chesapeake Bay Preservation Act program at the end of the timeframe indicated in the staff report. We appreciate the Locality's cooperation in undergoing a compliance review of its local program and look forward to continuing to work to ensure that its Bay Act program is compliant with the Act and its Regulations.

DEQ, on behalf of the Board, will make a final determination of compliance at the end of the timeframe provided in the staff report based upon the submittals and information provided. Please be advised that failure of **Name of Locality** to comply with §§ 62.1-44.15:74 and 62.1-44.15:76 of the Act and the Regulations may subject **Name of Locality** to the compliance and enforcement provisions as set forth in §§ 62.1-44.15:69 and 62.1-44.15:71 of the Act and 9VAC 25-830-260 and -270 of the Regulations.

Please provide a response to this correspondence within 30 days of the date of this letter. If you have questions or need additional information, please contact **Liaison** at (804) 698-XXXX or me at 804-698-4230.

Sincerely,

Joan Salvati
Manager, Local Government Assistance Programs

Cc: John Kennedy, Manager, Office of Ecology, DEQ



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Molly Joseph Ward
Secretary of Natural Resources

David K. Paylor
Director

(804) 698-4000
1-800-592-5482

Template #3
Date

CAO Name
Title
Address

RE: **Name of Locality** Chesapeake Bay Preservation Act Program – Compliance Review Decision

Dear [Name of Chief Administrative Officer]:

Pursuant to §§ 62.1-44.15:69 and 62.1-44.15:71 of the Chesapeake Bay Preservation Act and 9 VAC25-830-260 of the Chesapeake Bay Preservation Area Designation and Management Regulations, the Department of Environmental Quality (DEQ) on behalf of the State Water Control Board (Board) conducted a compliance review of **Name of Locality's** Chesapeake Bay Preservation Act program. The compliance review was conducted from [start date] through [end date] and was conducted in accordance with DEQ's Chesapeake Bay Preservation Act Compliance Evaluations Procedures. (Note: DEQ has not included an assessment of **Name of Locality's** stormwater requirements in this compliance review.) By letter dated Month Day Year, DEQ transmitted the staff report of the review, which identified **xx** number of conditions for compliance as well as a timeframe for addressing the conditions outlined in the report.

Since the timeframe for addressing the conditions outlined in the report concluded on Month Day Year, DEQ has re-evaluated the **Name of Locality** Chesapeake Bay Preservation Act program. Based on this re-evaluation, including documentation provided by **Name of Locality** addressing the conditions identified in the staff report, DEQ has determined that **Name of Locality** has satisfactorily addressed all recommended conditions identified in the staff report in the timeframe specified.

DEQ, on behalf of the Board therefore finds¹ that the implementation of **Name of Locality's** Chesapeake Bay Preservation Act program is now compliant with the Chesapeake

¹ As provided by Rule 2A:2 of the Supreme Court of Virginia, you have thirty days from the date of service (the date you actually received this decision or the date it was mailed to you, whichever occurred first) within which to appeal this decision by filing a notice of appeal in accordance with the Rules of the Supreme Court of Virginia with the Director, Department of Environmental Quality. In the event that this decision is served on you by mail, three days are added to that period.

Bay Preservation Act pursuant to §§ 62.1-44.15:69 and 62.1-44.15:71 and the Chesapeake Bay Preservation Area Designation and Management Regulations 9VAC25-830-260. This determination will be valid for a period of five years, or until **Name of Locality's** next scheduled review, unless DEQ finds a pattern of noncompliance during the interim period of time.

We appreciate your cooperation in this process and look forward to continuing to work to ensure that **Name of Locality's** Bay Act program is compliant with the Act and its Regulations. If you have questions or need additional information, please contact **Liaison** at (804) 698-XXXX or me at (804) 698-XXXX.

Sincerely,

Joan Salvati
Manager, Local Government Assistance Programs

Cc: John Kennedy, Manager, Office of Ecology



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David K. Paylor
Director

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Template #4

Date

CAO Name

Title

Address

WARNING LETTER

RE: **Name of Locality** Chesapeake Bay Preservation Act Program – Compliance Review
Warning Letter No. [x]

Dear [Name of Chief Administrative Officer]:

Pursuant to §§ 62.1-44.15:69 and 62.1-44.15:71 of the Chesapeake Bay Preservation Act and 9 VAC25-830-260 of the Chesapeake Bay Preservation Area Designation and Management Regulations, the Department of Environmental Quality (DEQ) on behalf of the State Water Control Board (Board) completed its compliance review of **Name of Locality's** Chesapeake Bay Preservation Act program. By letter dated **xxxxx**, DEQ transmitted the staff report of the review and draft Corrective Action Plan, which identified **xx** number of conditions for compliance as well as a timeframe for addressing the conditions outlined in the report.

The timeframe for addressing the conditions outlined in the report concluded on **xxxx**, and DEQ has received no documentation that the recommended conditions included in the staff report have been addressed. In light of this fact, DEQ has reason to believe that **Name of Locality** may be in violation of the State Water Control Law and Regulations for failure to implement and enforce the Chesapeake Bay Preservation Act and the Chesapeake Bay Preservation Area Designation and Management Regulations.

In the table below, this letter addresses compliance conditions identified in the staff report and draft Corrective Action Plan that have not been satisfactorily addressed by **Name of Locality**, and also cites compliance requirements of the State Water Control Law and Regulations. Pursuant to Va. Code § 62.1-44.15(8a), this letter is not a case decision under the Virginia Administrative Process Act, Va. Code § 2.2-4000 *et seq.* (APA). DEQ requests that you respond **within 20 days of the date of this letter.**

OBSERVATIONS AND LEGAL REQUIREMENTS

[Insert table from draft CAP showing regulatory reference and conditions included in staff report]

ENFORCEMENT AUTHORITY

Where deficiencies are found following completion of a compliance review of a local government program, Va. Code § 62.1-44.15:71 of the Chesapeake Bay Preservation Act authorizes the State Water Control Board to issue a decision specifying deficiencies, required compliance actions, and a compliance schedule. Va. Code § 62.1-44.15:71 further authorizes the State Water Control Board to issue a special order to a local government imposing a civil penalty up to \$5,000 per day, with a maximum amount of \$20,000 per violation upon a local government's failure to implement compliance actions required by the State Water Control Board. In lieu of issuing a special order, Va. Code § 62.1-44.15:71 also authorizes the Board to take legal action against a local government, as provided by Va. Code § 62.1-44.23 (Enforcement by injunction, etc.) and Va. Code § 62.1-44.32 (Penalties). Also, Va. Code § 10.1-1186 authorizes the Director of DEQ to issue special orders to any person to comply with the State Water Control Law and regulations.

FUTURE ACTIONS

After reviewing this letter, please respond in writing to DEQ **within 20 days of the date of this letter** detailing actions you have taken or will be taking to ensure compliance with state law and regulations. If corrective action will take longer than 90 days to complete, you may be asked to sign a Letter of Agreement or enter into a Consent Order with the Department to formalize the plan and schedule. *It is DEQ policy that appropriate, timely, corrective action undertaken in response to a Warning Letter will avoid adversarial enforcement proceedings and the assessment of civil charges or penalties.*

Please advise us if you dispute any of the observations recited herein or if there is other information of which DEQ should be aware. In the event that discussions with staff do not lead to a satisfactory conclusion concerning the contents of this letter, you may elect to participate in DEQ's Process for Early Dispute Resolution. Also, if informal discussions do not lead to a satisfactory conclusion, you may request in writing that DEQ take all necessary steps to issue a final decision or fact finding under the APA on whether or not a violation has occurred. For further information on the [Process for Early Dispute Resolution](http://www.deq.virginia.gov/Portals/0/DEQ/Enforcement/Guidance/process%20for%20early%20dispute%20resolution%20no8_2005.pdf), please see Agency Policy Statement No. 8-2005 posted on the Department's website under "Programs," "Enforcement," and "Laws, Regulations, & Guidance" (http://www.deq.virginia.gov/Portals/0/DEQ/Enforcement/Guidance/process%20for%20early%20dispute%20resolution%20no8_2005.pdf) for ask the DEQ contact listed below.

Your contact at DEQ in this matter is [**Liaison Name**]. Please direct written materials to [**his/her**] attention. If you have questions or wish to arrange a meeting, you may reach [**him/her**] directly at [(**xxx**) **xxx-xxxx**] or [[Liaison Name](mailto:[Liaison Name]@deq.virginia.gov)]@deq.virginia.gov.

Sincerely,

Joan Salvati
Manager, Local Government Assistance Programs