

**DRAFT- VESMP / Consolidated Regulations Minutes
Regulatory Panel Advisory (RAP) Meeting #6**

**Friday, July 15, 2022
3rd Floor Conference Room
DEQ Central Office
1111 East Main Street
Richmond, Virginia 23219**

Start – 9:30 AM

Attendees:

- **RAP Members**
 - Adrienne Kotula, Chesapeake Bay Commission
 - Andrew Clark, Home Builders Association of Virginia
 - Anna Killius, James River Association
 - Dawson Garod, University of Virginia
 - Jill Sunderland, Hampton Roads Planning District Commission
 - Joe Wilder, Frederick County
 - Lisa Ochsenhirt, AquaLaw
 - John Burke, Montgomery County
 - Jonet Prevost-White, Town of Dumfries
 - Charles Dietz, Virginia Tech
 - Phillip Abraham, The Vectre Corporation
 - Richard Jacobs, Culpeper Soil and Water Conservation District
 - John Olenick, Virginia Department of Transportation
- **Public**
 - Zach LeMaster, Gentry Locke
 - Speaker Pollard, Williams Mullen
 - Sheila Reeves, Timmons Group
 - Jerry Stonefield, Fairfax County
- **DEQ Staff**
 - Drew Hammond
 - Melanie Davenport
 - Erin Belt
 - Scott Van Der Hyde
 - Nelson Daniel
 - Melissa McIntyre
 - Carla Pool
 - Matthew Pool

Welcome and Background:

Melanie Davenport (Director, Division of Water Permitting) welcomed the RAP members. This was the first RAP meeting in three years, so Melanie provided some historical background about how this regulatory action came to be and changes that have taken place since this action was initiated in 2016 that impacted the consolidated regulatory chapters.

Major changes that were highlighted include using a tiered approach for water quantity technical criteria compliance for Chesapeake Bay Preservation Act land-disturbing activities (9VAC25-870-52) and the passage of Senate Bill 657 (Chapter 256 of the 2022 Acts of Assembly) this past session, which limits the authority of the State Water Control Board to the issuance of regulations and transfers the Board's existing authority to issue permits and orders to the Department of Environmental Quality.

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.

Overview of Regulation Reorganization & Discussion (Facilitated by DEQ)

DEQ staff provided an overview of the draft documents that the RAP received for review prior to the meeting as well as an overview of what will change once the consolidated regulations are promulgated.

- Following promulgation of the new consolidated regulations, three types of local programs will exist for managing erosion and sediment control and stormwater.
 1. All localities will be required to operate an Erosion and Sediment Control Program (ESCP);
 2. Some localities will operate a combined Virginia Erosion and Stormwater Management Program (VESMP); and
 3. Some localities will have be able to operate a VESMP Lite program. Under this program, the localities will operate a VESMP, but coordinate plan review with DEQ.
- After promulgation, only DEQ will serve as a VSMP. DEQ will serve as the VSMP for state and federal projects and for localities that only have an ESC program.
- Localities that operate a VESMP can either merge or separate their individual programs depending on what works best for that locality.

DEQ staff also provided an overview of the proposed structure for the consolidated regulations.

- The overarching goal is to allow the regulations to be navigated based on whether the user is looking for a regulatory section governing the administration of programs or if they are looking for regulations governing the technical requirements for erosion and sediment control and stormwater management.
- To achieve this, DEQ proposes creating separately numbered regulatory chapters for the consolidated Definitions, Certification Regulations, Program Administration Regulations, and the Technical Criteria Regulations. The RAP members expressed support for this proposed structure as a way of making the regulations easier to navigate.

One concern that was raised by RAP members is the timeline for localities to update their local ordinances once the consolidated regulations are adopted.

- The 2016 statute will become effective 30 days after the consolidated regulations are adopted. This may create a tough timeline for localities.

- The RAP voiced support for finding a way to delay implementation to allow for education on the consolidated regulations and allow localities time to update their ordinances. One suggestion was to have the Board delay the effective date of the regulations when they are adopted.
- DEQ requested that RAP members poll their localities to try to determine what length of time it would likely take update their ordinances.

DEQ staff walked the RAP through each of the consolidated regulation chapters to discuss changes that were made and receive feedback. In this meeting, the discussion primarily centered on the Definitions and part of the Program Administration regulations.

- Definitions section discussion:
 - In developing the Definitions regulation, DEQ consolidated the Definition sections of 9VAC25-840, 9VAC25-870, and new definitions introduced in statute. The primary difficulty in developing this consolidated chapter is where the same term is defined differently in the old regulations or in statute. DEQ dealt with this by creating multi-part definitions that allow the words to be defined based on the program they are found in. This approach was supported by RAP members, but they requested doing this as a bulleted list to allow for more clarity.
 - RAP members also had additional definitions that they thought should be added to this chapter, and some clarifying questions about some of the definitions.
 - Additional terms to be defined:
 - “Alternative inspection program:”
 - This term is defined in the current Erosion and Sediment Control Program regulations.
 - “Singer-family detached residential structure:”
 - This terms causes headaches for many localities. One suggestion is to try to pull a definition from another regulation where this term is defined. Another suggestion was to add a clarifying definition that states what this term does not mean
 - “Agent:”
 - It was suggested that this term be added and defined in the certification regulations.
 - Requests for definition clarification:
 - “Agreement in-lieu of a plan:”
 - RAP members were interested in clarifying this term. DEQ cannot change the actual definition of the term, but may be able to add clarifying language in the definitions.
 - Proposed clarifying language was provided to DEQ by one of the RAP members, and is being circulated to the entire RAP.
 - “Pre-development:”
 - This definition has changed from old stormwater management regulation. It is defined in multiple different locations, and DEQ proposed a new definition that is developed from language existing in the body of the old stormwater regulations.
 - RAP members were encouraged to closely look at the Definitions regulation, and provide any additional comments.
- Program Administration discussion

- The RAP began discussing this chapter, but did not get through the entire thing.
- This proposed chapter is intended to include those sections of the broader consolidated regulation that deal with the administration of local programs.
- DEQ discussed the format change to the regulation that now provides a reference list at the beginning of each major section. This is intended to make navigation of the document easier.
- One issue that was discussed arose around the approval of local erosion and sediment control plans for projects where DEQ serves as the stormwater management program authority. The existing Erosion & Sediment Control Law (Va. Code 62.1-44.15:55 A) requires local erosion and sediment control program authorities to obtain evidence of Construction General Permit coverage, where required, prior to providing approval to begin land disturbance. Alternatively, the Construction General Permit (9VAC25-880-10 et seq.) requires local Erosion & Sediment Control Plan approval prior to obtaining coverage under the general permit. This creates a do loop that prevents some projects from moving forward in a timely manner. RAP members expressed a desire to explore ways to fix this problem.
- A second question that was raised related to splitting the variances section between the Program Administration and Technical regulations. This was done to maintain the proposed structure that separates technical requirements and program administration requirements into different chapters. DEQ is open to recombining this section of the RAP feels that the proposed structure creates confusion.

Consensus Check-in

The primary question that DEQ was seeking consensus in answering during this meeting was whether the RAP was comfortable with DEQ moving forward with the consolidated regulations as proposed after a single meeting, or if there was a desire for an additional meeting for further discuss.

- The consensus among RAP members was to have another meeting.

Public Forum

- Members of the public that were present at the meeting were given the opportunity to comment on the proposed consolidated regulations and the RAP discussion. No members of the public wished to comment.

Meeting ended at 3:30PM.

Next Steps

- RAP members will continue reviewing the proposed consolidated regulation chapters to provide feedback, and will poll their localities about what kind of timeline they will need to update their ordinances once the new regulations are adopted.
- DEQ will discuss internally whether to have another RAP meeting to continue discussing the proposed consolidated regulations. Once that determination is made, RAP members will be informed and polled for a meeting date.