

**Stormwater Stakeholder Advisory Group**  
**Enforcement Work Group**  
Friday, May 22, 2015  
Final Meeting Notes<sup>2</sup>

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**Location:** DEQ Central Office  
2<sup>nd</sup> Floor Conference Room A  
629 E. Main Street, Richmond, VA

**Start:** 9:08 a.m.  
**End:** 11:52 a.m.

**SAG/EWG Members Present:**

Peggy L. Sanner, Chesapeake Bay Foundation  
Elizabeth A. Andrews, DEQ  
Melanie Davenport, DEQ

Michael Toalson, HBAV  
Chris Pomeroy, Aqua Law

**EWG Members Absent:**

James Golden, DEQ

**Facilitator:** Mark Rubin, VCU  
**Recorder:** Debra Harris, DEQ

**Guests and Public Attendees:**

Joe Wood, Chesapeake Bay Foundation  
Nick Bittner, Chesapeake Bay Foundation  
Will Flory, Chesapeake Bay Foundation

Kathleen O'Connell, DEQ  
John Woodburn, Goochland County  
Christine Watlington, VDOT

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**I. Agenda Item: Welcome and Overview of Handouts**

**Discussion:** Mark Rubin welcomed all to the meeting and asked each attendee to introduce themselves. After the introductions, Mr. Rubin gave a brief overview of the handouts provided (Attachment B).

The process for each topic reviewed will be: (i) review the differences and similarities of the three articles (SWMA, ESCL, and CBPA1); (ii) where possible, harmonize the provisions of the three articles; and, (iii) once harmonized, the SAG will reconsider the structure issue. *[Editorial Note: It is understood and recognized that all three articles are already components within the SWCL, but for ease of reference, overarching provisions of the SWCL are being referenced as the "SWCL" in these notes.]*

**II. Agenda Item: Virginia Stormwater Management Fund**

**Discussion:** The EWG revisited § 62.1-44.15:29 of the SWMA which established the Virginia Stormwater Management Fund. Information on the funds was provided to the EWG (Attachment B – Fund Information). The EWG discussed the options including enforcement penalties credited to the Virginia Environmental Emergency Response Fund and fees (such as permit fees) be credited to the Stormwater Management Fund. Overall, the EWG agrees that the penalties should not go the Stormwater Management Fund and it would be more appropriate for penalties to be credited to the Virginia Environmental Emergency Response Fund.

**III. Agenda Item: Judicial Review**

**Discussion:** The EWG discussed the judicial review provisions of the SWMA (§ 62.1-44.15:43), the ESCL (§ 62.1- 44.15:62), the CBPA (§§ 62.1-44.15:71 & 44.15:74) and the SWCL (§§ 62.1- 44.24 & 44.29). It was noted that there are two different issues. The first is that provisions for the DEQ or the Board are covered under the SWCL while the second issue is that local government provision are not under the SWCL and would need to be reviewed. Based on the discussion, the suggestion considered was to delete § 62.1-44.15:43 as it is covered in the SWCL and to delete subsection B of § 62.1-44.15:62.

**IV. Agenda Item: Appeals**

**Discussion:** The EWG discussed the appeals provisions of the SWMA (§ 62.1-44.15:46), the ESCL (§ 62.1- 44.15:62), the CBPA (§ 62.1-44.15:71) and the SWCL (§ 62.1- 44.29). Based on the discussion, the EWG will revisit but suggests deleting subsection B of § 62.1-44.15.62, as previously noted, and the APA sentence in § 62.1-44.71. Additionally, the definition of "aggrieved" will be researched (Sanner), DEQ will review the provisions under CBPA and the SWCL for harmonizing, and this issue will be revisited. The local decision appeals provisions were also discussed (§§ 62.1-44.15:46, 15:62.A & 15:74) and it was noted that this issue requires input

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<sup>1</sup> See Attachment A - List of Acronyms.

<sup>2</sup> EWG 7/21 Approved

from the local prospective.

**V. Agenda Item: Appeal to the Court of Appeals**

**Discussion:** Based on the discussions, the EWG suggests that § 62.1-44.15:47 of the SWMA be deleted as the exact language appears in the SWCL under § 62.1-44.30

**VI. Agenda Item: Hearings**

**Discussion:** Based on the discussions, the EWG suggests that § 62.1-44.15:44 of the SWMA be deleted as the requirements for a right to a hearing are provided in the SWCL under § 62.1-44.25 and § 62.1-44.15:45 of the SWMA be deleted as the requirements for hearings are provided in the SWCL under §§ 62.1-44.26 & 44.27. However, § 62.1-44.26.A should be clarified to indicate formal hearings “by the Board”.

**VII. Agenda Item: Penalties and Injunctions**

**Discussion:** The EWG discussed the provisions of enforcement by injunction under § 62.1-44.15:48 of the SWMA, § 62.1-44.15:63 of the ESCL, and § 62.1-44.15:74 of the CBPA, and § 62.1-44.32 of the SWCL. DEQ will include § 62.1-44.15:63.C and § 62.1-44.15:64 in their strawman regarding injunctions and stop work orders. The EWG will revisit the penalty issue at its next meeting.

**VIII. Agenda Item: Enforcement Authority of MS4s**

**Discussion:** The EWG discussed the possibility of moving § 62.1-44.15:49 into § 62.1-44.15:48. This will be reviewed and information will be brought to the group (Pomeroy).

The meeting was then adjourned.

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**Attachment A**  
**List of Acronyms**

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**Acronyms:**

CBPA – Chesapeake Bay Preservation Act

DEQ – Department of Environmental Quality

E&S – erosion and sedimentation

ESCL – Erosion and Sedimentation Control Law

EWG – Enforcement Work Group (a subgroup of the SAG)

RLD – Responsible Land Disturber

SAG – Stormwater Advisory Group

SWCL – State Water Control Law

SWMA – Stormwater Management Act

VSMP – Virginia Stormwater Management Program

WWG – Wordsmithing Work Group (a subgroup of the SAG)

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**Attachment B**  
**Handouts**

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EWGMatrixLanguage.  
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DRAFTEWGRecomme  
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FundInfo.pdf