

Stormwater Stakeholder Advisory Group (SAG)

May 11, 2015
Final Meeting Notes²

Location: DEQ Piedmont Regional Office
Training Room
4949-A Cox Road, Glen Allen, VA

Start: 10:15 a.m.
End: 3:35 p.m.

SAG Members Present:

Michael L. Toalson, HBAV
Bart Thrasher, VDOT
Adrienne Kotula, James River Association
Rick Parrish, Private Citizen (formerly SELC)
Whitney Katchmark, HRPDC
L. Eldon James, Jr., Rappahannock River
Chris Pomeroy, Aqua Law
Katie Frazier, Va. Agribusiness Council

Austin R. Mitchell, Amherst County
Philip F. Abraham, VACRE
Larry J. Land, VACO
Joe Lerch, VML
Jimmy Edmonds, Loudoun County
Elizabeth A. Andrews, DEQ
Melanie Davenport, DEQ
James Golden, DEQ

SAG Members Absent:

M. Ann Neil Cosby, Sands Anderson
Glenn Telfer, Draper Aden
Peggy F. Sanner, Chesapeake Bay Foundation
Peter J. Rigby, Paciulli Simmons
Douglas Beisch, Stantec

Facilitator: Mark Rubin, VCU

Recorder: Debra Harris, DEQ

Guests and Public Attendees:

Drew Hammond, DEQ
Fred Cunningham, DEQ
Joan Salvati, DEQ
Joe Wood, CBF
Christine Watlington, VDOT
Lee Hill, Joyce Engineering

John McCutcheon, DEQ
Chris French, Contech
June Whitehurst, Norfolk
Barbara Brumbaugh, City of Chesapeake
Cindy Berndt, DEQ
Kathleen O'Connell

I. Agenda Item: Welcome & Review Minutes and Developments

Discussion Leader: Mark Rubin, Facilitator

Discussion: Mr. Rubin welcomed everyone to the fourth meeting of the SAG¹ and asked each attendee to introduce themselves. Mr. Rubin explained that there is an open chair at the table for members of the public to use during a discussion and all attendees were reminded to sign-in. The agenda for the day (see Attachment B) was reviewed and the SAG was then asked if there were any new developments and none were noted.

II. Agenda Item: Workgroup reports and other small group matters

Discussion Leader: Elizabeth Andrews, DEQ

Discussion: The SAG was reminded that the work groups were tasked with going through their matrix assignments and would work on harmonizing the SWMA, ESCL, and the CBPA provisions. The work groups that had met are the WWG and the EWG. The SAG was reminded that the information presented is not a final recommendation. The work groups will submit their final recommendations for the SAG's consideration once their tasks are completed. Ms. Andrews provided an overview of the EWG and WWG draft documents that were handed out to the SAG (see Attachment B) and summarized the discussions of the work groups for the SAG.

EWG Overview

Ms. Andrews went over the EWG handout (see Attachment B for draft EWG document) and summarized the EWG discussions regarding the enforcement provisions of the articles. Comments noted by the SAG during the overview are provided below.

¹ See List of Acronyms in Attachment A

² 6/8/15 SAG

Virginia Stormwater Management Fund

- Should SW penalties go into the VEERF like the other water programs? If not and the SW penalties continue to go to the Virginia Stormwater Management Fund, what about enforcement orders that address two or more different media violations and how is the department to handle penalties with different funds?
- Ms. Andrews noted that the EWG will be revisiting the fund issue. Part of the issue is that the department does not yet have enough data on enforcement of the VSMP so it is difficult to determine the effect on program funding.

Monitoring & Reports

- The SAG had some comments and raised some questions regarding the stop work order provisions and how it could/if it could be utilized by DEQ.
- DEQ is tied to the APA process while the localities are not and it was noted that the ACOE can also issue stop work orders for sites that are found to be in violation of their permit provisions.
- Part of the issue is that DEQ is the VSMP authority for some localities and, therefore, as the VSMP authority, DEQ may need the ability to issue stop work orders or other similar enforcement mechanism.
- The SAG discussed the “cause” standards for issuance of a stop work order in the SWMA and the ESCL and asked if there was a way to standardize the process.

Information to be Furnished

- The question of whether localities need to have similar provisions in the ESCL for the VESCP authorities was discussed by the SAG. In most cases, localities assume that under their general police powers they have the ability to ask for and obtain information they need for their responsibilities as a VESCP authority. Some commented that the provisions of the SWCL under § 62.1-44:21 should not be amended.

Enforcement by Injunction

- The provisions of § 62.1-44.15:64.H need to be reviewed.
- The APA process under § 62.1-44.15:64 is not a quick process.
- § 62.1-44.15:64 interjects the DEQ into the middle between a locality and an aggrieved adjacent owner.
- Is it possible to cross reference to other protections for the aggrieved party and streamline this provision?
- The DEQ will review this issue along with the injunctions/stop work orders and develop harmonized language if possible.

WWG Overview

Ms. Andrews went over the WWG handout (see Attachment B for draft WWG document) and summarized the WWG discussions for each topic. The SAG had no additional thoughts on the overview provided on the WWG draft document.

III. Agenda Item: Work Group Meetings

Discussion Leader: Mark Rubin, Facilitator

Discussion: The work groups selected meeting dates: (i) the NWG will meet on May 26th at 1:00 pm; (ii) the WWG will meet on May 21st at 2:00 pm; (iii) the EWG will meet on May 22nd at 9:00 am; and, (iv) the IWG will meet on June 3rd at 2:00 pm. All meetings will be at DEQ Central Office in Richmond. During the discussion it was noted that the IWG does not have an assignment from the matrix assignment list and was assigned to evaluate the who/what options including implementation, identifying where there are conflicts and the opt in/opt out issues. Additionally, the issue of co-regulator was discussed and an outline will be drafted for future discussion of the co-regulator issue (Pomeroy).

The SAG broke for lunch at 11:45 a.m. and reconvened at 12:54 p.m.

IV. Agenda Item: Review draft proposals from DEQ that group requested

Discussion Leader: Elizabeth Andrews, DEQ

Discussion: Ms. Andrews lead the SAG through a review and explanation of the strawman document (Attachment B) that DEQ staff were asked to develop for the SAG’s consideration. The SAG discussed the proposed changes to the provisions concerning training and multijurisdictional projects under the SWMA and the ESCL.

During the discussions, the SAG noted concerns over the revisions for the training provisions in the SWMA (§§ 62.1-44.15:27, 44.15:30 & 44.15:32) and the ESCL (§§ 62.1-44.15:52, 44.15:53 & 44.15:55) . Some of the comments noted were:

- There was a concern over changing the DEQ “shalls” to “mays”. Some indicated that this could have possible fiscal impact to the agency’s budget allocation and that localities need assurance that DEQ will provide technical assistance and training.

- Clarification of the language for renewals should be included.
- The DEQ would like to have flexibility in the statutory language regarding third party trainers and research.
- There is concern a “may” would impact the ability for localities to obtain assistance including such items as the SW Handbook and the E&SC Handbook.
- Is there any value to the RLD program? Any measurable successes?
- The RLD program is all that is available right now and it is an on-line program, so why does it need to be deleted? RLD is required by localities to sign for the local permits and for those that do land-disturbance.
- The RLD program is an incentive for those that do the work to have certification/training. Additional information is needed and the RLD issue needs to be discussed further.
- DEQ prefers to regulate the land-disturbing activity not those that do the work. DPOR is the agency that certifies people doing the work for particular professions.
- Should there be a parallel owner/operator concept in E&SC?

Based on the discussion, the SAG suggested the following revisions to the training strawman:

- For § 62.1-44.15:27.C :

C. In support of VSMP authorities, the Department shall:

~~1. Provide assistance grants to localities not currently operating a local stormwater management program to help the localities to establish their VSMP.~~

~~2. Provide technical assistance and training.~~

~~3. Provide qualified services in specified geographic areas to a VSMP to assist localities in the administration of components of their programs. Provide assistance to localities the Department shall actively assist localities in the establishment and administration of their individual or regional programs. and in the selection of a contractor or other entity that may provide support to the locality or regional support to several localities.~~

- For § 62.1-44.15:30 , the “may” should be changed to “shall” in subsection A; and, the phrase “of this certification” should be added to the end of subsection B.
- For § 62.1-44.15:32, DEQ will relook at this section and provide another revision.
- For § 62.1-44.15:52, the SAG suggested moving subsection E and striking subsections B and F.
- For § 62.1-44.15:53, the SAG suggested that DEQ look at the parallel provisions in the SWMA and provide another revision.
- For § 62.1-44.15:55, input from the localities is necessary and further consideration/redraft of this section is needed.

Based on the discussions, the DEQ will relook at the training provisions and provide another revision for the SAG’s consideration.

Ms. Andrews then provided an overview on the proposed changes to the provisions regarding multijurisdictional projects. It was noted that much of this language is prescriptive as there were issues with localities not coming to agreement on these types of projects. The SAG agreed to some of the concepts and suggests subsection H of § 62.1-44.15:27 be revised as follows:

H. A VSMP authority may enter into agreements or contracts with the Department, soil and water conservation districts, adjacent localities, or other public or private entities to carry out or assist with the responsibilities of this article. A VSMP Authority may enter into an agreement with an adjacent VSMP authority regarding the administration of multijurisdictional projects which designates: ~~whereby the jurisdiction that contains the greater portion of the project - who~~ shall be responsible for all or part of the administrative procedures.

Based on the discussions, DEQ will revise the strawman for multijurisdictional projects for further discussion by the SAG.

V. Agenda Item: April 17th Minutes

Discussion Leader: Mark Rubin, Facilitator

Discussion: The SAG was asked if there were any comments on the draft minutes for their April 17, 2015 meeting. There were no comments or revisions suggested; therefore, these minutes will be finalized and posted on Town Hall.

VI. Agenda Item: Discussion of Matrix Issues Left to the Large Group

Discussion Leader: Mark Rubin, Facilitator and Elizabeth Andrews, DEQ

Discussion: Mr. Rubin asked the SAG to go to the agenda under IV. B for discussion of the annual standards and specifications provisions for state and federal agencies. These provisions are found in § 62.1-44.15:31 of the SWMA. Should these be “may” or “shall”? Should the inspections be annual or have other timeframe for periodic inspections? Melanie Davenport provided the background on the concept of annual standards and specifications. The SAG discussed the questions.

For state entities, the provision requires that they submit annual standards and specifications while federal entities “may” submit. The SAG agreed that “may” was appropriate for state entities; however, VDOT prefers to keep the provision a “shall” for them.

Mr. Rubin reminded the SAG that this work needs to be completed by September and that the bulk of the work right now is with the work groups. He then asked the SAG to start thinking in terms of drafting.

The SAG meeting was then adjourned.

Attachment A List of Acronyms

Acronyms:

ACOE – Army Corps of Engineers

CBPA – Chesapeake Bay Preservation Act

DEQ – Department of Environmental Quality

DPOR - Department of Professional and Occupational Regulation

E&SC – erosion and sedimentation control

ESCL – Erosion and Sedimentation Control Law

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

RLD – Responsible Land Disturber

SAG – Stormwater Stakeholder Advisory Group

SWCL – State Water Control Law (in this context the term normally refers to the general provisions)

SWMA – Stormwater Management Act

VSMP – Virginia Stormwater Management Program

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

Attachment B Handouts



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