

**Stormwater Stakeholder Advisory Group
Enforcement Work Group
Tuesday, August 25, 2015
Final Meeting Notes¹**

Location: DEQ Central Office
2nd Floor Conference Room A
629 E. Main Street, Richmond, VA

Start: 1:10 p.m.
End: 4:35 p.m.

EWG Members Present:

Peggy L. Sanner, Chesapeake Bay Foundation
Elizabeth A. Andrews, DEQ
Michael Toalson, HBAV

Chris Pomeroy, Aqua Law
James Golden, DEQ
Melanie Davenport, DEQ

Facilitator: Mark Rubin, VCU

Recorder: Debra Harris, DEQ

Guests and Public Attendees:

Joan Salvati, DEQ
Jutta Schneider, DEQ
Kathleen O'Connell, DEQ

I. Agenda Item: Welcome

Discussion: Mark Rubin welcomed all to the meeting and briefly outlined the agenda for the afternoon.

II. Agenda Item: Section 62.1 – 44. 15:25

Discussion: The EWG discussed the strawman for the consolidated § 62.1-44.15:25 (Attachment B). The EWG made one clarifying edit to this section as noted in Attachment C.

III. Agenda Item: Section 62.1 – 44. 15:37

Discussion: The EWG discussed the notice to comply process that is provided in the consolidated section § 62.1-44.15:37 and the proposed edits to this section that were provided by Chris Pomeroy in an email (Attachment B). Some concern was noted over what would be “reasonable” time for compliance. The EWG suggested revisions to the strawman language based on the discussions. The revisions are noted in Attachment C.

IV. Agenda Item: Section 62.1 – 44. 15:64

Discussion: The DEQ recommended that the EWG delete Section 15:64 and not include the provision of ESCL Section 15:64 into the consolidated act as the process is not used. The EWG discussed this recommendation. Based on the discussion, this section will be deleted. Peggy Sanner wished to include a process for aggrieved owners in the consolidated act. She will provide suggested clarifying edits for inclusion of the 15:64 process into the VESMA under Section 15:37; however, the damages will be limited to those that affect state waters natural resources. The EWG will review these edit at its next meeting.

The EWG took a break from 2:51 p.m. until 3:00 p.m.

V. Agenda Item: Section 62.1 – 44. 15:46 & 15:48

Discussion: The EWG discussed the provisions of these sections and the recommendations provided in an email from Chris Pomeroy (Attachment B). The process provided in 15:48 was discussed and Chris will run the recommendations by others and provide an edit at the next meeting.

VI. Agenda Item: Section 62.1 – 44. 15:49

Discussion: The EWG discussed why these provisions for MS4s were provided in the SWMA. It apparently was a stop gap authority for MS4s because some would not become MS4s until 2014 and needed to have authorities to set-up the program. It was noted that there was some confusion over adopting an ordinance in accordance with the MS4 permit. Chris Pomeroy will provide edits to this section to clarify the provisions at the next meeting.

The meeting was then adjourned.


¹ Notes finalized 11/2/15

Attachment A List of Acronyms

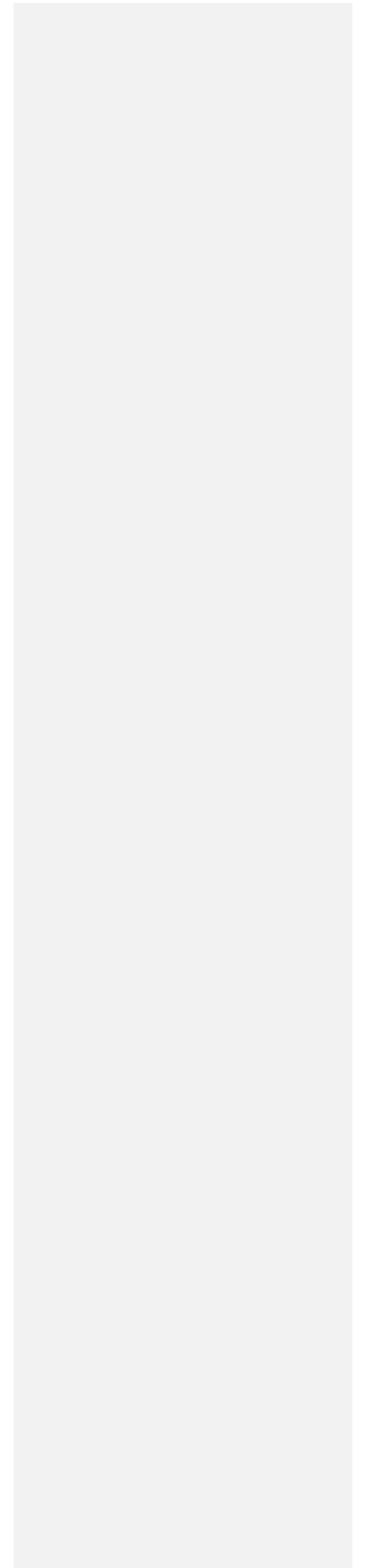
Acronyms:

CBPA – Chesapeake Bay Preservation Act
DEQ – Department of Environmental Quality
E&SC – erosion and sedimentation control
ESCL – Erosion and Sedimentation Control Law
EWG – Enforcement Work Group (a subgroup of the SAG)
IWG - Implementation Work Group (a subgroup of the SAG)
NWG – Nutrient Trading Work Group (a subgroup of the SAG)
RLD – Responsible Land Disturber
SAG – Stormwater Advisory Group
SWCL – State Water Control Law
SWMA – Stormwater Management Act
VEERF – Virginia Environmental Emergency Response Fund
VSMF – Virginia Stormwater Management Fund
VSMP – Virginia Stormwater Management Program
WWG – Wordsmithing Work Group (a subgroup of the SAG)

Attachment B Handouts


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Streamlining Enforcem



Attachment C

Agenda Item II:

§ 62.1-44.15:25. Further powers and duties of the State Water Control Board.

In addition to other powers and duties conferred upon the Board by this chapter, it shall permit, regulate, and control soil erosion and stormwater runoff in the Commonwealth and otherwise act to protect the quality and quantity of state waters from the potential harm of unmanaged stormwater and erosion. It shall be the duty of the Board and it shall have the authority to:

Comment [EWG0825_1]: EWG
8/25 Edit

1. Issue special orders pursuant to § 62.1-44.15(8a) to any owner subject to requirements under this article, except that for land disturbing activities that disturb 10,000 square feet of land up to one acre in areas that are not subject to the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq.) and that are not part of a larger common plan of development or sale that disturbs one acre or more of land, such special orders shall include civil penalties of up to \$5,000 per violation, not to exceed \$50,000 per order. Such civil penalties shall be paid into the state treasury and deposited by the State Treasurer into the Virginia Stormwater Local Assistance Fund established pursuant to § [62.1-44.15:29.1](#).

The provisions of this section notwithstanding, the Board may proceed directly under § [62.1-44.15:48](#) and Article 5 if this chapter for any past violation or violations of any provision of this article or any regulation duly adopted hereunder.

2. With the consent of any owner subject to requirements under this article, the Board may provide, in an order issued by the Board pursuant to § 62.1-44.15(8d) against such owner, for the payment of civil charges for violations in specific sums. Such sums shall not exceed the limit specified in subsection A(1) or B(1), as applicable, of § 62.1-44.15:48. Such civil charges shall be collected in lieu of any appropriate civil penalty that could be imposed pursuant to § [62.1-44.15:48](#) and shall not be subject to the provisions of § [2.2-514](#). Such civil charges shall be paid into the state treasury and deposited by the State Treasurer into the Virginia Stormwater Local Assistance Fund established pursuant to § [62.1-44.15:29.1](#).

Agenda Item III:

§ 62.1-44.15:37. Monitoring, reports, investigations, inspections, and stop work orders.

A. The VESMP authority (i) shall provide for periodic inspections of the installation of stormwater management measures, (ii) may require monitoring and reports from the person responsible for meeting the permit conditions to ensure compliance with the permit and to determine whether the measures required in the permit provide effective stormwater management, and (iii) shall conduct such investigations and perform such other actions as are necessary to carry out the provisions of this article.

Upon failure to comply with the permit conditions or conditions of land disturbance approval, or to obtain an approved plan, permit or land disturbance approval prior to commencing land disturbing activities, a locality serving as the VESMP authority or the Board may serve a notice to comply upon the owner, permittee, or person conducting land disturbing activities without an approved plan, permit or approval. Such notice to comply shall be served by mailing with confirmation of delivery to the address specified in the permit or land disturbance application, if available, or in the land records of the locality or by delivery at the site to a person previously identified by the permittee or to the owner. The notice to comply shall specify the measures needed to comply with the permit or land disturbance approval conditions, or shall identify the plan approval or permit or land disturbance approval needed to comply with this article, and shall specify a reasonable time within which such measures shall be completed. The issuance of a notice to comply by the Board shall not be considered a case decision as defined in § 2.2-4001. Upon failure to comply within the time specified, a stop work order may be issued in accordance with subsection B by the locality serving as the VESMP authority or by the Board, or the land disturbance approval may be revoked by the VESMP authority, or the permit may be revoked by the Board pursuant to 62.1-44.15.

B. Upon failure to comply within the time specified in a notice to comply issued in accordance with subsection A, a locality serving as the VESMP authority or the Board may issue an order requiring the owner, permittee, or person conducting the land-disturbing activities without an approved plan or required permit or land disturbance approval to cease all land-disturbing activities until the violation has ceased, or an approved plan and required permits and approvals are obtained, and specified corrective measures have been completed.

When such orders are issued by the Board, they shall be issued in accordance with the procedures of the Administrative Process Act (§ 2.2-4000 et seq.). Such orders shall become effective upon service on the person in the manner set forth in subsection A. However, where the alleged noncompliance is causing or presents an imminent and substantial danger of causing harmful erosion of lands or sediment deposition in waters within the watersheds of the Commonwealth or otherwise substantially impacting water quality, the locality serving as VESMP authority or the Board may issue, without advance notice or procedures, an emergency order directing such person to cease immediately all land-disturbing activities on the site and shall provide an opportunity for a hearing, after reasonable notice as to the time and place thereof, to such person, to affirm, modify, amend, or cancel such emergency order.

Comment [EWG0825_2]: See Chris's email – EWG agrees that other means are okay as proposed in the email under 1.a and 1.b

Comment [EWG0825_3]: Edit for the other means - DEQ will redraft

Comment [EWG0825_4]: Add - such time to be measured based on the "level" of the risk to the resources. Also add that it is a "violation" until corrected. DEQ to redraft and clarify.

Comment [EWG0825_5]: Edit – should be Board.

Comment [EWG0825_6]: Clarify that in cases of no permit/approval, VESMP may go straight to stop work.

Comment [EWG0825_7]: Delete.

The owner may appeal the issuance of any order to the circuit court of the jurisdiction wherein the violation was alleged to occur or other appropriate court. Upon completion and approval of corrective action or upon obtaining an approved plan or any required permits or approvals, the order shall be lifted immediately.

1989, cc. 467, 499, § 10.1-603.11; 2004, c. 372; 2012, cc. 785, 819. 2013, cc. 756, 793.

Agenda Item V:

§ 62.1-44.15:46. Appeals.

Any permittee or party aggrieved by (i) a permit or permit enforcement decision of the Board under this article, or (ii) a decision of the Board under this article concerning a land disturbing activity in a locality subject to the Chesapeake Bay Preservation Act, (§ [62.1-44.15:67](#) et seq.) , or any person who has participated, in person or by submittal of written comments, in the public comment process related to such a decision of the Board under this article, whether such decision is affirmative or negative, is entitled to judicial review thereof in accordance with § 62.1-44.29. Appeals of other final decisions of the Board under this article shall be subject to judicial review in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.). A final decision by a locality, when serving as a VESMP authority, shall be subject to judicial review, provided that an appeal is filed within 30 days from the date of any written decision adversely affecting the rights, duties, or privileges of the person engaging in or proposing to engage in land-disturbing activities.

1989, cc. 467, 499, § 10.1-603.13; 2004, c. 372; 2012, cc. 785, 819; 2013, cc. 756, 793; 2014, cc. 303, 598.

§ 62.1-44.15:48. Penalties, injunctions, and other legal actions.

A. For land disturbing activities that disturb 2,500 square feet or more of land in areas of localities subject to the Chesapeake Bay Preservation Act (§ [62.1-44.15:67](#) et seq.), or that disturb one acre or more of land anywhere else in the Commonwealth, or that are part of a larger common plan of development or sale that disturbs one acre or more of land:

1. Any person who violates any applicable provision of this article or of any regulation, permit, or standard and specification adopted or approved by the Board hereunder, or who fails, neglects, or refuses to comply with any order of the Board, or a court, issued as herein provided, shall be subject to a civil penalty pursuant to § [62.1-44.32](#).
2. Any person who violates any provision of this article relating to the authority and responsibilities of localities under this article, or any ordinance adopted pursuant to this article, including those adopted pursuant to the conditions of a MS4 permit, or any condition of a local land disturbance approval; or who fails, neglects, or refuses to comply with any order of a locality acting as a VESMP authority or a court, issued as herein provided, shall be subject to a civil penalty not to exceed \$32,500 for each violation within the discretion of the court. Each day of violation of each requirement shall constitute a separate offense. The locality acting as an approved VESMP authority may issue a summons for collection of the civil penalty and the action may be prosecuted in the appropriate court. Any civil penalties assessed by a court as a result of a summons issued by a locality acting as an approved VESMP authority shall be paid into the treasury of the locality wherein the land lies, except where the violator is the locality itself, or its agent. Where the violator is the locality itself, or its agent, the court shall direct the penalty to be paid into the state treasury and deposited by the State Treasurer into the Virginia Stormwater Local Assistance Fund established pursuant to § [62.1-44.15:29](#).1. Such civil penalties paid into the treasury of the locality in which the violation occurred are to be used for the purpose of minimizing, preventing, managing, or mitigating pollution of the waters of the locality and abating environmental pollution therein in such manner as the court may, by order, direct.

B. For land disturbing activities that disturb from 10,000 square feet of land up to one acre in areas that are not subject to the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq.), and are not part of a larger common plan of development or sale that disturbs one acre or more of land:

1. Any person who violates any applicable provision of this article or of any regulation or order of the Board issued pursuant to this article, or any condition of a land disturbance approval issued by the Board, or fails to obtain a require LDA, shall be subject to a civil penalty not to exceed \$5,000 for each violation with a limit of \$50,000 within the discretion of the court in a civil action initiated by the Board. Each day during which the violation is found to have existed shall constitute a separate offense. In no event shall a series of specified violations arising from the same operative set of facts result in civil penalties that exceed a total of \$50,000. The court shall direct the penalty to be paid into the state treasury and deposited by the State Treasurer into the Virginia Stormwater Local Assistance Fund established pursuant to § 62.1-44.15-29.1.

Comment [EWG0825_8]: This sentence does not make sense – 50K for both? Need to clarify.

2. a. The governing body of any locality that is authorized to administer a VESMP may adopt an ordinance providing that violations of any ordinance or provision of its program adopted pursuant to this article, or any condition of a land disturbance approval, shall be subject to a civil penalty. The civil penalty for any one violation shall not be more than \$5,000 for each violation. Each day during which the violation is found to have existed shall constitute a separate offense. In no event shall a series of specified violations arising from the same operative set of facts result in civil penalties that exceed a total of \$50,000.

Comment [EWG0825_9]: Same as #10 above

b. Any person who has violated or failed, neglected, or refused to obey any order, notice, or requirement of a locality serving as a VESMP authority, any condition of a land disturbance approval, or any ordinance adopted pursuant to this article shall, upon a finding of an appropriate court, be assessed a civil penalty. If a locality serving as a VESMP authority has adopted a uniform schedule of civil penalties as set forth in subdivision (a), such assessment shall be in accordance with that schedule. Adoption of such an ordinance providing that violations are subject to a civil penalty shall be in lieu of criminal sanctions and shall preclude the prosecution of such violation as a misdemeanor. The VESMP authority may issue a summons for collection of the civil penalty. Any civil penalties assessed by a court shall be paid into the treasury of the locality wherein the land lies and used pursuant to subdivision A.2, except that where the violator is the locality itself, or its agent, the court shall direct the penalty to be paid into the state treasury and deposited by the State Treasurer into the Virginia Stormwater Local Assistance Fund (§ 62.1-44.15:29.1).

C. Violation of any provision of this article may also include the following sanctions:

Comment [EWG0825_10]: Peggy unsure of deleting above and will review and provide further comments.

1. The Board may seek an injunction, mandamus or other appropriate remedy pursuant to § 62.1-44.23. A locality acting as a VESMP authority may apply to the appropriate court in any jurisdiction wherein the land lies to enjoin a violation or a threatened violation of the provisions of a local ordinance or order or the conditions of a local land disturbance approval.

Comment [EWG0825_11]: Edit

2. With the consent of any person who has violated or failed, neglected, or refused to obey any provision of this article, any condition of a permit or land disturbance approval of the Board, or any regulation or order of the Board, the Board may provide for the payment of civil charges pursuant to § 62.1-44.15:25 in specific sums not to exceed the limits

specified in subdivisions A.1 and B.1 of this section. With the consent of any person who has violated or failed, neglected, or refused to obey any ordinance, any condition of a locality's land disturbance approval, or any order of a locality acting as a VESMP authority, the VESMP authority may provide, in an order issued against such person, for the payment of civil charges for violations in specific sums, not to exceed the limits specified in subdivisions A.2 and B(2) of this section. Such civil charges shall be instead of any appropriate civil penalty that could be imposed under this section. Any civil charges collected by a locality acting as a VESMP authority shall be paid to the locality pursuant to subsection A.2.

Agenda Item VI:

§ 62.1-44.15:49. Enforcement authority of MS4 localities.

Localities shall adopt an ordinance pursuant to the conditions of a MS4 permit that is consistent with this article and that contains provisions as required to comply with a MS4 permit. Such locality may utilize the civil penalty provisions in subsection A2 of § 62.1-44.15:48, the injunctive authority as provided for in subdivision E1 of § 62.1-44.15:48, the civil charges as authorized in subdivision E 2 of § 62.1-44.15:48, and the criminal provisions in § 62.1-44.32 to enforce the ordinance. At the request of another MS4, the locality may apply the penalties provided for in this section to direct or indirect discharges to any MS4 located within its jurisdiction.

Comment [EWG0825_12]: If keeping the last sentence, then for protections keep the first sentence as well.
Chris P. to report back on possible amendments to this section and 15:48 and, specifically, what this clause means.