

**VIRGINIA EROSION AND STORMWATER MANAGEMENT PROGRAM
(VESMP)
REGULATORY ADVISORY PANEL (RAP)**

MEETING #4 NOTES – FINAL

WEDNESDAY, NOVEMBER 20, 2019

DEQ PIEDMONT REGIONAL OFFICE – TRAINING ROOM

Meeting Attendees

VESMA RAP MEMBERS	
Barbara Brumbaugh – City of Chesapeake	Whitney Katchmark – Hampton Roads Planning District Commission (Alternate for Jill Sunderland)
John W. Burke – Montgomery County	Adrienne Kotula – Chesapeake Bay Commission
Debra Byrd – Goochland County	Melanie Mason – City of Alexandria
Andrew C. Clark – Home Builders Association of VA	Beth McDowell – Westmoreland County
Jen Cobb, PE – Henrico County	Lisa Ochsenhirt, Esq. – AquaLaw – VAMSA
Patricia Colatosti – Town of Christiansburg	John Olenik – Virginia Department of Transportation
Jimmy Edmunds, CFM – Loudoun County	Jonet Prevost-White – City of Richmond
Dawson Garrod, PE – University of Virginia	Mike Vellines – Virginia Tech
Normand Goulet – Northern VA Regional PDC	Sandra Williams – Atlantic Environmental Solutions, LLC
Richard Jacobs, PE – Culpeper SWCD	

NOTE: RAP Members NOT in Attendance: Phillip F. Abraham – The VECTRE Corporation; Anna Killius – James River Association; Matthew Knightes, PE – MSA; Jason Papacosma – Arlington County; Erin Rountree – City of Suffolk; Jill Sunderland – Hampton Roads Planning District Commission; Joe Wilder – Frederick County

PUBLIC/INTERESTED PARTIES	
Jelani Clement - WGL	Bill Pfeifle – GAI Consultants
Rob Lamhaun - UTCA	Ginny Snead - AMT
Melissa Lindgren – Isle of Wight County	Hannah Somers – GYY & Associates
Bryce H. Miller - WSSI	Jerry Stonefield – Fairfax County
Ryan Miller - WGL	Shannon Varner – Troutman Sanders

TECHNICAL ADVISORS AND DEQ STAFF	
Erin Belt – DEQ	Hannah Jeff – DEQ SW Inspector/Plan Review - TRO
Brandon Bull – DEQ	Debra Harris - DEQ
Tamira Cohen – DEQ Training Staff	William Norris - DEQ
Melanie Davenport – DEQ	Jaime Robb - DEQ
Drew Hammond – DEQ	Kristen Sadtler - DEQ

The meeting convened at 10:04 a.m. and adjourned at 3:00PM

1. Welcome – Jaime Robb – DEQ:

Jaime Robb welcomed members of the VESMP Regulatory Advisory Panel (RAP) and members of the public to the 4th meeting of the VESMP RAP.

2. VESMP RAP #3 – September 30th Meeting Notes – Jaime Robb – DEQ:

Jaime asked for any comments or edits to the VESMP RAP #3 Meeting Notes from the September 30th meeting. No comments or edits to the Meeting Notes were offered during the meeting and the notes were approved.

ACTION ITEM: The notes from the September 30, 2019 meeting of the VESMP RAP will be posted as “Final” to Town Hall.

3. Proposed Certification Regulation Presentation & Discussion – Jaime Robb/Tamira Cohen – DEQ/VESMP RAP:

Jaime Robb noted that there had been some edits incorporated into the Proposed Certification Regulation by the DEQ Office of Training Services after distribution of the materials to the RAP. Copies of this revised edition of the proposed regulation were made available to the meeting attendees.

Tamira Cohen, with DEQ’s Office of Training Services, presented an overview of the proposed Certification Regulation and the OTS edits.

DISCUSSIONS:

DEQ Staff and the RAP discussed the proposed amendments and edits to the definitions in the Certification Regulation: They discussed:

- “Employee or agent of authority” is someone who has taken the certification;
- The language in the Statute and the Regulation speaks to “Who can do what”. They speak to who can review and approve.
- A concern was raised over the proposed changes in terminology in the regulation from that which is common practice within the industry.
- Issues with the proposed edits to definitions related to the Training Program and to certification and “certified” were voiced. It was noted that the reason for the proposed edits was to provide clarity regarding “who has the authority to approve plans on behalf of local governments”.
- The various edited and proposed definitions related to the Training Program were discussed at length by the RAP.
- Staff noted that even though some of the proposed terminology was changed, that from a programmatic perspective nothing has changed.
- Staff reminded the group that the plan is to move all of the definitions into their own separate regulation in order to prevent redundancy.
- “Certified inspector for SWM” definition – the RAP discussed revising the definition to include the phrase “during and after construction” relating to “project inspection”.
- The reference to “anyone” has been changed to “the individual” throughout the regulation.
- The RAP started a discussion of the definition of “Responsible land disturber” or “RLD”. It was noted that this has always been an issue of certification. Staff requested that the RAP consider their concerns regarding “RLD” over lunch and that we would have an opportunity to discuss those thoughts the first thing after lunch.

The RAP continued their discussions on the proposed edits to the Certification Regulation. Their discussions included:

- 9VAC25-850-40 A 1 – 4 needs to include a reference to “VESMP”.
- 9VAC25-850-40 A 5 – 8 include a sentence related to: “This certification also serves as the SWM component required for...”. A similar sentence needs to be included in 9VAC25-850-40 A 1 – 4.
- 9VAC25-850-40 A 9 – 12 is new language that reflects the current practice in the programs – no changes – just a clarification. – It was noted that there is a “comma” missing in 9VAC25-850-40 A 9 following “...SWM by a VESMP authority...”. A question was raised over whether the phrase used throughout these sections should be “is a requirement” or “satisfies the requirement”. It was also suggested that these sections were actually “options” and not “requirements”.
- 9VAC25-850-40 C – Should language be added related to being “employed by an authority” relating to the requirements for “any individual employed as a plan reviewer”.
- 9VAC25-850-40 D – Requirements have not changed except the requirement for submittal of a request in writing has been deleted.
- 9VAC25-850-50 A 1 and 2 – There needs to be a semi-colon and “or” added between A 1 and A 2.
- 9VAC25-850-50 B – Staff noted that an apparent conflict in the regulation was removed by deleting the wording “and will expire on the last day of the month”.
- 9VAC25-850-50 C – It was suggested that the items listed in C should be reorganized to clarify the recertification process and to create a better “flow”. It was suggested that original item “5” be moved to become “1”; “3” should be “2”; “2” should become “3”; “3” should become “4” and “4” should become “5”. The inclusion of the phrase “which may be satisfied” was suggested as a way to clarify the requirements. It was suggested that some clarification is needed in this section.

ACTION ITEM: Staff will provide a “Track Changes” version of the proposed edits to the Certification Regulation as information to the RAP as soon as possible following today’s meeting.

4. Break for Lunch – 11:50 AM – 1:05 PM

5. Responsible Land Disturber “RLD” Discussions – Jaime Robb – DEQ and VESMP RAP:

Jaime Robb welcomed the RAP back to the meeting and provided some information related to the “Responsible Land Disturber” concept. She reviewed the statutory language related to “Responsible Land Disturber” or “RLD” and noted that the term or concept is not officially defined as part of the definition section of the Code and is only described and identified in the text of the law. (62.1-44.15-34 A speaks to “Responsible Land Disturber”.) She asked for input from the group on the materials related to the “RLD” that had been tabled during the group’s initial discussions today.

DISCUSSIONS:

- It was noted that the term “Responsible Land Disturber” is not used in the Erosion and Sediment Control Law – there the phrase is “person responsible for carrying out the plan”.
- The question was raised as to who the “RLD” was supposed to be. The wording of the definition and the regulation does not seem to specify that the individual be “on-site”.
- It was noted that this concept had been discussed a number of years ago and that no consensus was reached then.
- 9VAC25-850-40 B – It was suggested that deletion of the last sentence “The RLD is the individual responsible for carrying out the land-disturbing activity” might eliminate some confusion.
- A question was raised regarding the “person responsible” – Who is that person? Does that individual have the certification? Need to look at the language related to “person responsible” as it exists in statute.
- It was suggested that we may need to consider the use of the terms “for purposes of this...” or “In this situation this means this...” as a way to clarify this concept.
- 9VAC25-850-50 D should be revised to add a comma and the word “and” after item 1 and a semi-colon and the word “or” after 2.

ACTION ITEM: Staff will revisit the definition and use of the term “Responsible Land Disturber” and the phrases “person responsible”; “in charge of” and “responsible for carrying out land disturbing activity”.

6. Continued Certification Regulation Discussions – Jaime Robb - DEQ and VESMP RAP: Jaime Robb continued the review and discussions of the proposed Certifications Regulation.

DISCUSSIONS:

- 9VAC25-850-55 – the phrase “person or persons” has been changed to “individual or individuals”.
- 9VAC25-850-70 – this section has been revised to reduce confusion and to streamline the components.
- 9VAC25-850-80 – this section has been deleted since it dealt entirely with the requirements for a “paper application” being submitted for the exam.
- 9VAC25-850-90 – Two typos were corrected in this section. It was suggested that the wording should be “certification or certificate” instead of just “certification”. Should the term “certificate holder” be added to this section?

ACTION ITEM: Staff will review the notes and recommendations made by the RAP and will continue to make edits to clarify and refine the Certification Regulations and will provide that revised document for review and consideration by the RAP.

7. Next Meeting Selection:

The next meeting of the RAP is scheduled for Tuesday, December 10, 2019. Jaime Robb discussed options for the next meeting of the VESMP RAP taking into consideration the upcoming holidays and the General Assembly Session. She presented several options for the group to consider:

Option 1: Cancel the December 10th meeting and have the staff focus on processing and incorporating the input from the RAP over the last 4 meetings to create draft regulations to send out to the group after Cross-Over with a meeting in the Spring for the RAP to discuss the regulations.

Option 2: Have the meeting on December 10th as originally planned. Jaime noted that if the group does meet in December that staff would not have time to have any revisions to the regulations ready for review by the RAP. The plan would be for the group to focus on a discussion of MS19 – this would be an informational gathering meeting likely with an expanded invited group of attendees to make sure that the MS19 stakeholders were adequately represented.

CONSENSUS: The Consensus of the RAP was to hold the meeting as originally scheduled on Tuesday, December 10, 2019. The focus of the December 10th meeting will be on MS19.

The meeting on the 10th is currently scheduled at the DEQ Piedmont Regional Office. Due to the subject matter of the meeting and the need to include a larger group of participants, the group discussed several options for the location of the meeting, including the Henrico County Fire Training Center; local libraries and a possible location in Goochland. No decision on location was reached.

8. Break – 2:08 – 2:15

9. Definition Discussion – Jaime Robb and VESMP RAP

Jaime Robb introduced and reviewed the “Matrix” of definitions that Andrew Clark had gotten his staff to initially develop by going through the regulations and statutes and listing out all of the different terminology used throughout. It was noted that Andrew Clark provided the original matrix of definitions from the regulations, however, Erin Belt expanded upon that matrix to include definitions from the statute as well as other regulations. This color-coded “matrix” was distributed to the RAP prior to the meetings. Jaime noted that the idea was to incorporate all of the definitions from the Virginia Erosion and Stormwater Management Program (VESMP) Regulations; the VESMP Technical Regulations; the Stormwater Permitting Regulations; and the VESMP Certification Regulations all in one place. It was noted that the terms defined in 9VAC25-880 et seq. of the General VPDES Permit for Discharges of Stormwater from Construction Activities apply to that Chapter and would not be consolidated into the VESMP Definition Regulation.

DISCUSSION:

- The use of the phrase “For purposes of...” as a clarifying term was discussed.
- The use of the phrase “When applicable to...” as a clarifying term was discussed.
- The term “single family detached residential structure” and how “duplexes” would be addressed was discussed. The question was raised as to whether it would be possible to provide a definition of “single family detached residential structure”.

- The question of whether there are opportunities for clarification of the definitions and terms was raised.
- The group was asked whether they could identify any definitions that could be removed. Normally if a term is only used once and can be defined adequately in the section where it is used, it does not have to be defined in a “Definitions” section.

ACTION ITEM: Jaime Robb asked that the group look over the Color-Coded Matrix, especially the “Yellow” colored items which appear to have conflicting definitions among the regulations. She noted that some time would be set aside at the December 10th meeting of the RAP to discuss those conflicting definitions and for the group to provide feedback. She noted that staff had prepared some suggested edits to address those conflicts which were included in the “word” version of the Definition Regulation that was distributed to the group prior to today’s meeting.

ACTION ITEM: The group was asked to provide any suggestions related to the Definitions Section that should be shared with the group prior to the next meeting to Bill Norris for distribution.

10. Public Comment: 2:50 PM – 2:55 PM

An opportunity for members of the public who were in attendance to make any public comment to the group was provided. Jerry Stonefield with Fairfax County reiterated the concern and suggestions that he had made during the course of the meeting on Page 8 of the Certification Regulation related to “Responsible Land Disturber”.

11. Next VESMP RAP Meeting:

The next meeting of the RAP is scheduled for Tuesday, December 10, 2019. The topic for discussion at this meeting will be MS19. Currently this meeting is scheduled for the DEQ Piedmont Regional Office, but due to the subject matter and the probable need for a larger meeting space to accommodate the appropriate stakeholders in the discussion, a larger meeting venue will need to be selected.

ACTION ITEM: Bill Norris will distribute copies of the Meeting Notes from today’s meeting following review by DEQ Project Staff.

12. Adjournment – 3:00 PM

The meeting was adjourned at 3:00 PM