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Erosion and Sediment Control Basic Course



Module 4.

Virginia Erosion & Sediment Control Program

Module 4a.



Statutory and Regulatory Requirements of a VESCP Authority



Erosion and Sediment Control in Virginia

Law (§ 62.1-44.15:51 through §62.1-44.15:66)



Regulations (9VAC25-840-10 through 9VAC25-840-110)

Erosion and Sediment Control Program

Importance of Understanding the Law

- The ESC Law is the legal basis for the ESC program.
- The Law establishes the rights and responsibilities of: VESCP and the public and private land users who must comply.
- A good understanding of the Law helps to effectively implement local ESC programs.



Importance of Understanding the Law

- **Unless local officials act within the limits of the law, enforcement actions may become unsuccessful.**
- **Negligent or inappropriate application of an ESC program may result in legal action against the locality.**
- **Training local program officials and experience will help improve local program consistency.**

Regulated Activities & Overview of the ESC Law

The stated purpose of the law is “for the effective control of soil erosion, sediment deposition, and non-agricultural runoff to prevent the unreasonable degradation of properties, stream channels, waters and other natural resources”





Definitions (Section 62.1-44.15:51.)

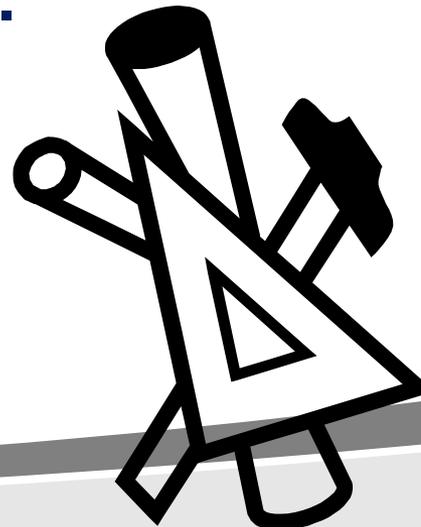
Agreement-in-lieu of a plan →

A contract between plan approving authority and the owner which specifies ESC measures to be implemented in the construction of a single family dwelling

Definitions (Section 62.1-44.15:51.)

Erosion and Sediment Control (ESC) plan →

a document containing conservation practices and policies for controlling erosion on regulated land disturbing activities...





Definitions (Section 62.1-44.15:51.)

Erosion impact area →

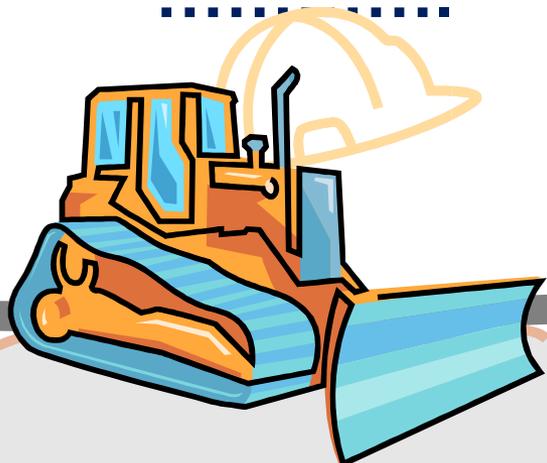
- Area of land not associated with a current land-disturbing activity
-but subject to persistent erosion resulting in delivery of sediment onto neighboring properties or state waters.
- Does not apply to any lot 10,000 square feet or less used for residential purposes or to shoreline erosion as a result of wave action.

Definitions (Section 62.1-44.15:51.)

Land-disturbing activity →

Any man-made change to the land which may result in soil erosion from water or wind and the movement of sediments into state waters or onto state lands including but not limited to

.....



..... clearing



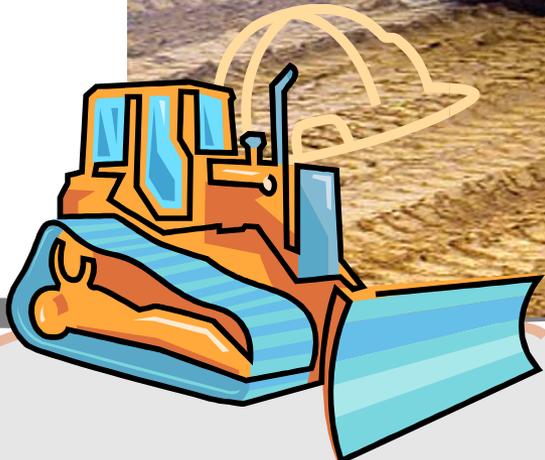
..... grading,



..... excavating,



.....transporting,



.....and filling of land.



But shall not include:

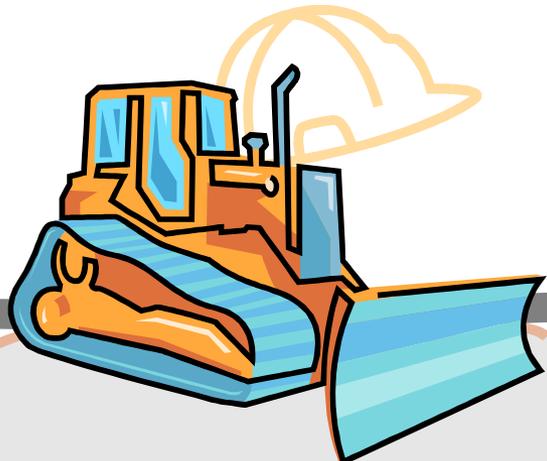
Minor land-disturbing activities such as:

- home gardens
- landscaping
- repairs and maintenance work



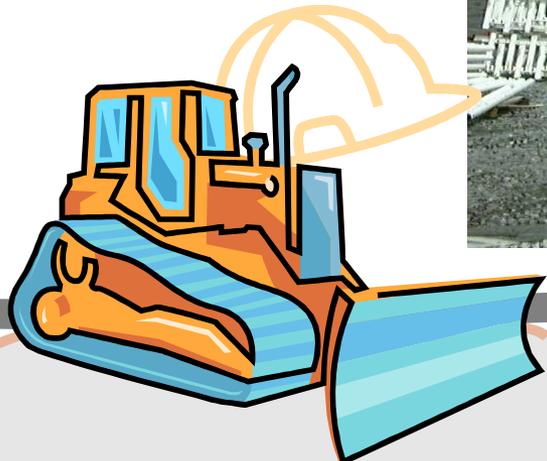
But shall not include:

- Individual Service Connections
- Installation, maintenance or repair of any underground public utility lines on an existing hard surface road, street or sidewalk confined to that area
- Septic tank or drainage field lines unless included in an overall plan



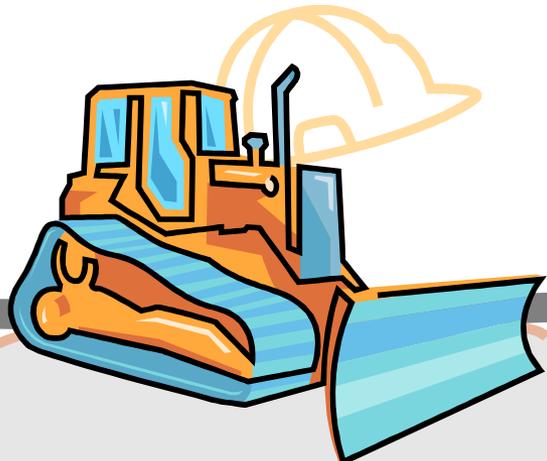
But shall not include:

Permitted Surface or deep mining



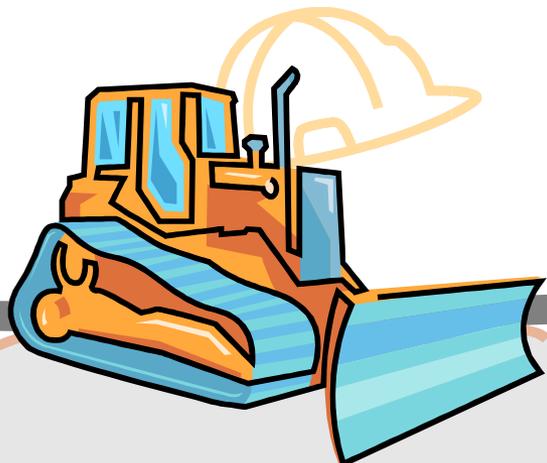
But shall not include:

Permitted exploration or drilling for oil or gas including the well site, roads, feeder lines and off site disposal



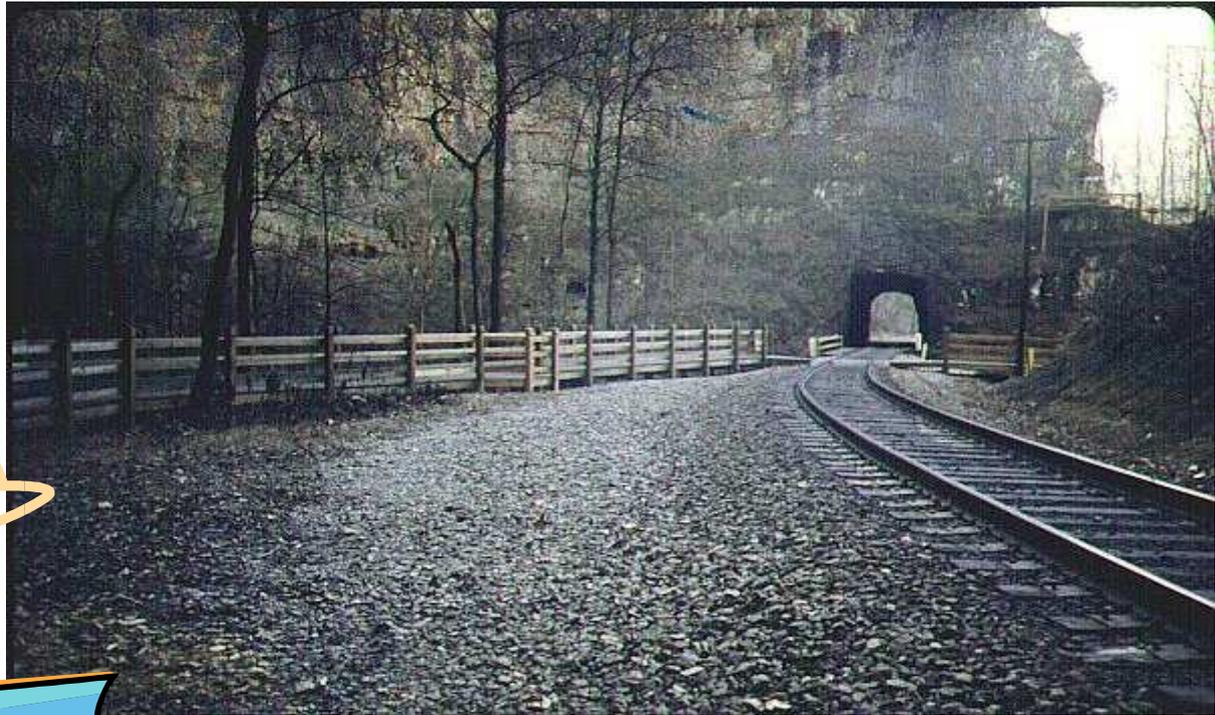
But shall not include:

- Tilling, planting, or harvesting of agricultural or horticultural, or forest crops
- Feed lot operations
- Engineering operations
- As additionally set forth by the Board in regulation



But shall not include:

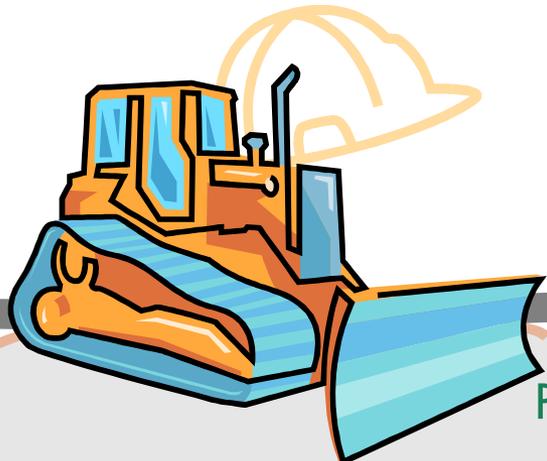
Repairing or rebuilding of tracks, right-of-ways, bridges, etc. of a railroad company



But shall not include:

Agricultural engineering operations →

- Terraces
- De-silting basins
- Contour cultivating
- Irrigation ponds



But shall not include:

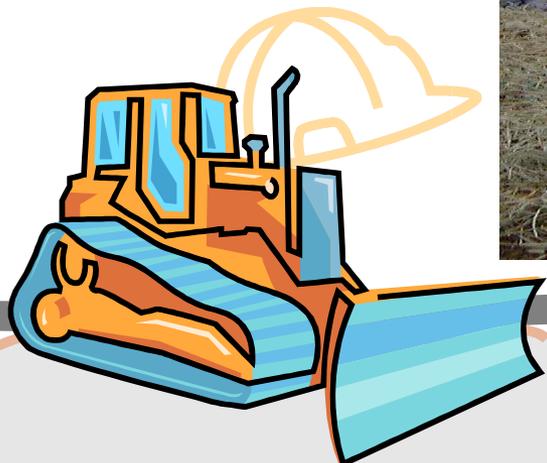
If disturbed land:

- < 10,000 square feet* (outside Chesapeake Bay Preservation Area (CBPA))
- <2,500 square feet (land subject to CPBA)
- *Authorized by law to reduce this amount



But shall not include:

Installation of fence or sign posts



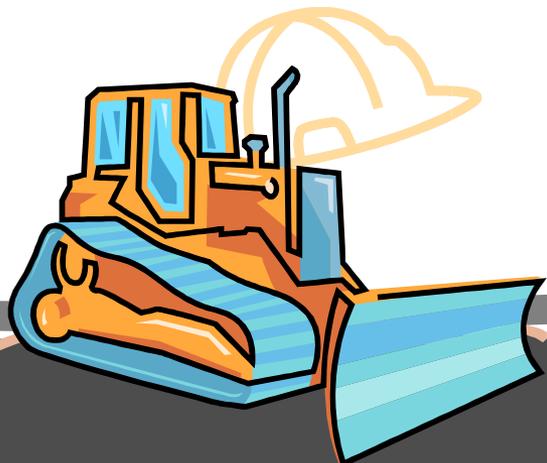
But shall not include:

Shore erosion control projects on tidal waters – when within the regulatory authority of local wetlands boards, COE, VMRC



But shall not include:

Emergency work to protect life, limb, or property -
other approval



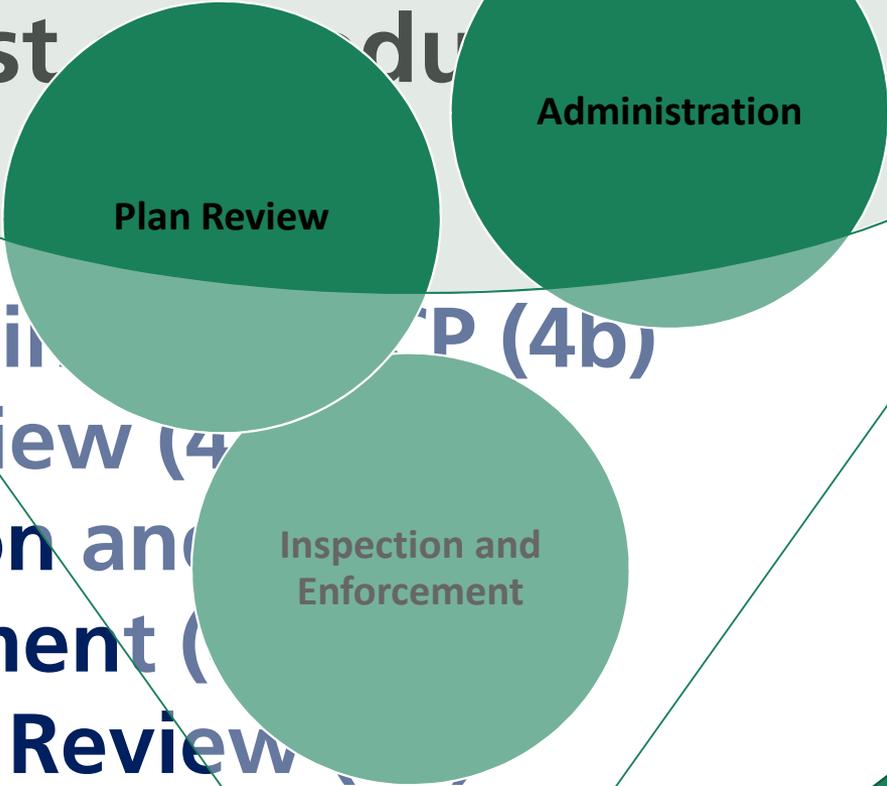


VESCP

An authority approved by the Board to operate a Virginia Erosion and Sediment Control Program ... including:

- a state entity, including the Department;
- a federal entity;
- a district,
- county, city, or town;
- linear projects subject to annual standards and specifications (electric, natural gas, and telephone utility companies, interstate and intrastate natural gas pipeline companies, railroad companies)

The rest of the process



- Establishing the VESCIP (4b)
- Plan Review (4b)
- Inspection and Enforcement (4b)
- Program Review (4b)



VESCIP



Module 4b.



Establishing a Virginia Erosion and Sediment Control Program

Role of State Water Control Board and DEQ

(62.1-44.15:52)



The State Water Control Board

- Develop a program
- Adopt Regulations
- Provide technical assistance
- Adopt Minimum Standards
- Conduct periodic compliance reviews

DEQ

- Administer education and training
- Ensure qualified field inspectors

Who needs to adopt a VESCP?



Must adopt a VESCP

- Counties
- Cities

May adopt a VESCP

- Towns

Operate a VESCP through
submittal of annual
specifications

- State entities
- Federal entities
- Linear projects

(Detailed in 62.1-44.15:54-A)

Note: Currently there are 164 ESC programs

Required VESCP Personnel



VESCPs are required to have the following certified persons on staff:

Program Administrator



Inspector



Plan Reviewer



Detailed in
62.1-44.15:53

Or a combined administrator who may be the same person.

Roles and Responsibilities in a VESCP– Program Administrator

- Ensures plan review, approval, inspections, and enforcement are being properly conducted
- reporting;
- record keeping;
- fee collections; and
- Ordinance updates



Roles and Responsibilities in a VESCP– Inspector

- Conducts periodic inspections of active construction sites to ensure proper installation, construction, and function of BMPs and other ESC measures
- Documentation of inspection
- Enforcement



Roles and Responsibilities in a VESCP– Plan Reviewer

- Reviews ESC plans to ensure they adhere to the VESC Regulations, ESC Handbook, and local ordinance(s)



Roles and Responsibilities in a VESCP– Combined Administrator



“who may be the same person”

Assistance with VESCP responsibilities

Engineering/
consulting firms



Detailed in
62.1-44.15:58-B

The VESCP is authorized to use an outside entity to assist with the administration, plan review and inspection of land disturbing activities.

Soil and water
conservation districts





Authorization for more stringent standards



**Detailed in
62.1-44.15:65**

- Local programs may require more stringent standard except in plan review and permitting
- The more stringent standards need to have a defensible or scientific basis
- Must go through the public hearing process at the locality



Scientific basis for more stringent standards

- Prevent further degradation to water resources
- Address total maximum daily load requirements
- Protect exceptional state waters
- Address specific existing water pollution including:
 1. Nutrient and sediment loadings
 2. Stream channel erosion
 3. Depleted groundwater resources
 4. Excessive localized flooding within the watershed



**Detailed in
62.1-44.15:65**



Civil Penalties



**Detailed in
62.1-44.15:54-K**

Local programs are allowed to adopt an ordinance providing for Civil penalties in lieu of criminal sanctions for violations.

Civil penalty for any one violation with an approved plan shall be \$100 to 1,000 per day , with a max. total of \$ 10,000

Reporting to DEQ



Detailed in
62.1-44.15:59



Listing of all LDA for
which the authority has
approved an ESC plan

VESCP Authority

DEQ

On a schedule
established by DEQ



Annual Standards & Specifications



Annual specifications required for:

- Electric
- telephone companies
- natural gas pipeline companies
- railroad companies

**Detailed in
62.1-44.15:55-D**

Operate a VESCP through
submittal of annual
specifications

State entities
Federal entities
Linear projects

Annual Standards and Specifications (Page 11)

Must submit	May submit
Electric companies	Authorities created under <u>§15.2-5102</u> (ex. water or sewer authority)
Natural gas companies	State and federal entities
Telephone utility companies	
Interstate and intrastate natural gas pipeline companies	Wetland mitigation or stream restoration bank projects
Railroad companies	

Applies to these activities

Construction, installation, or maintenance of:

- | | |
|--|--|
| <ul style="list-style-type: none"> • Electric transmission lines • Water and sewer lines | <ul style="list-style-type: none"> • Natural gas lines • Telephone utility lines |
|--|--|

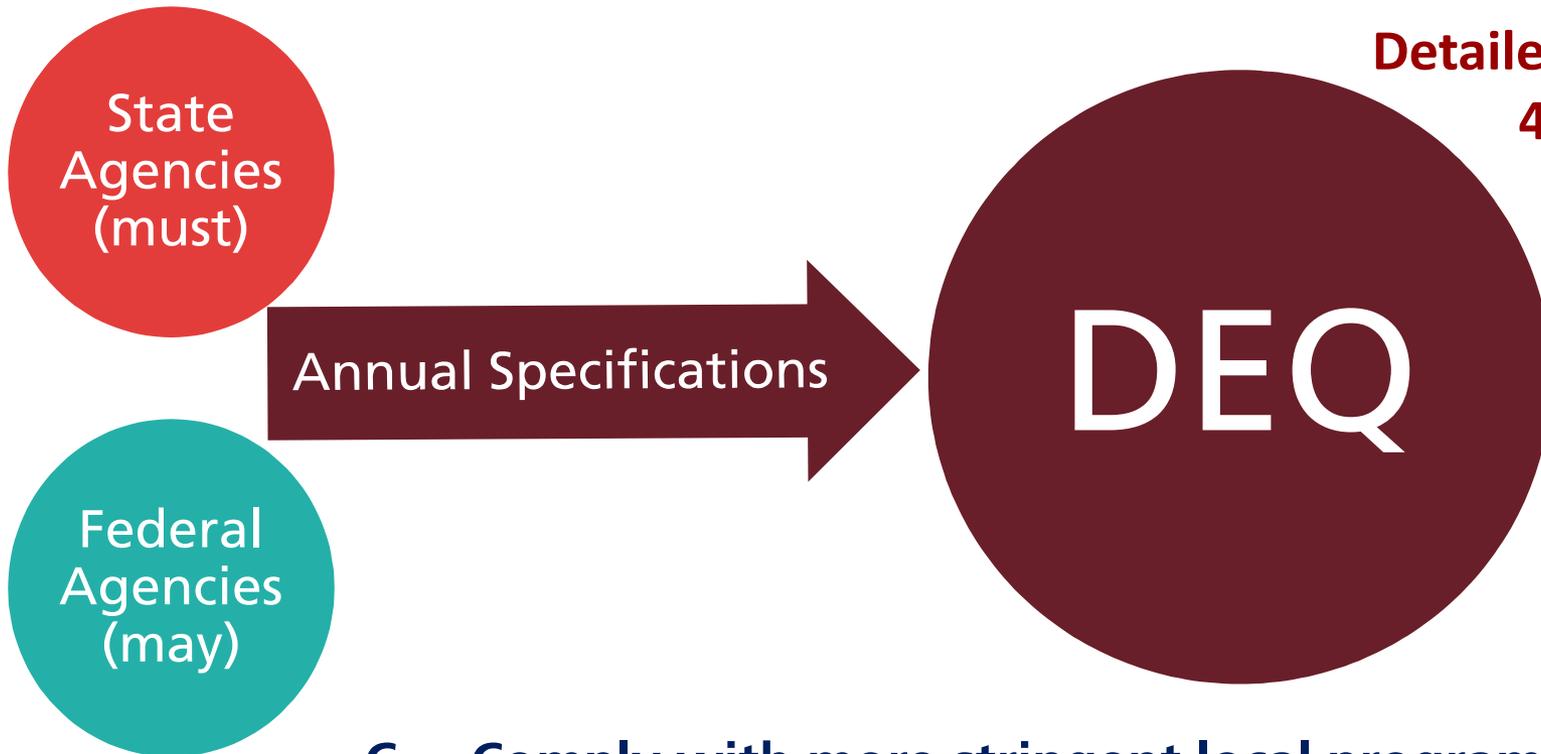
Railroad company construction of:

- | | |
|--|---|
| <ul style="list-style-type: none"> • Tracks • Bridges • Other related structures and facilities | <ul style="list-style-type: none"> • Rights-of-way • Communication facilities |
|--|---|

State Agency and Federal Project



Detailed in 62.1-
44.15:56 C



- C. Comply with more stringent local program standards.

State Agency and Federal Projects



Detailed in 62.1-
44.15:56-D, F & G

- (D) Department has 60 days for plan review**
- (F) State agency is responsible for compliance with approved plan**
- (G) State and federal agencies with standards and specifications are responsible for plan review and inspections with DEQ's oversight, enforcement, compliance review and evaluation.**

Annual Standards & Specifications for Wetland & Stream Mitigation Banks



Detailed in 62.1-
44.15:55-E

File general erosion and sediment control standards and specifications for wetland mitigation or stream restoration banks annually with DEQ for review and approval.





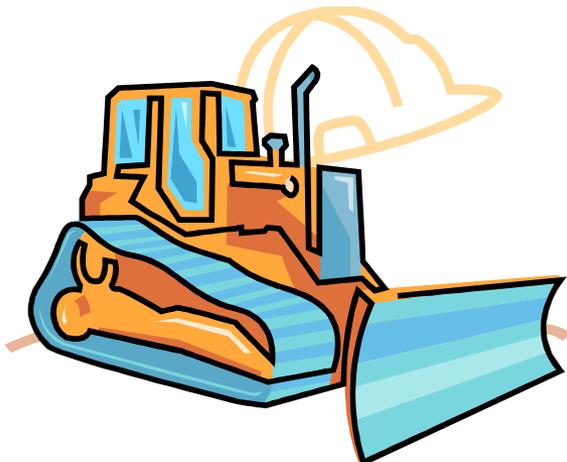
Module 4c.

Plan Review Process

Approved Plan Required



Detailed in 62.1-44.15:55-A



LDA?

First

- Approved ESC plan before starting land disturbing activities
- Evidence of Stormwater Management program coverage (after July 1, 2014)

What is an Adequate Plan?



- Does the plan meet Minimum Standards in the Erosion and Sediment Control Regulations (9VAC25-840-40)
- Does it meet more stringent requirements of VESCP authority (if applicable)
- Are all problems of erosion and sedimentation adequately addressed?

Approved Plan Timeline



Detailed in 62.1-
44.15:55-B



Plan Review

- 60 days
- Provided written comments if inadequate within 45 days
- Review of resubmitted plan in 45 days

Plan Approval Timeline (RLD)



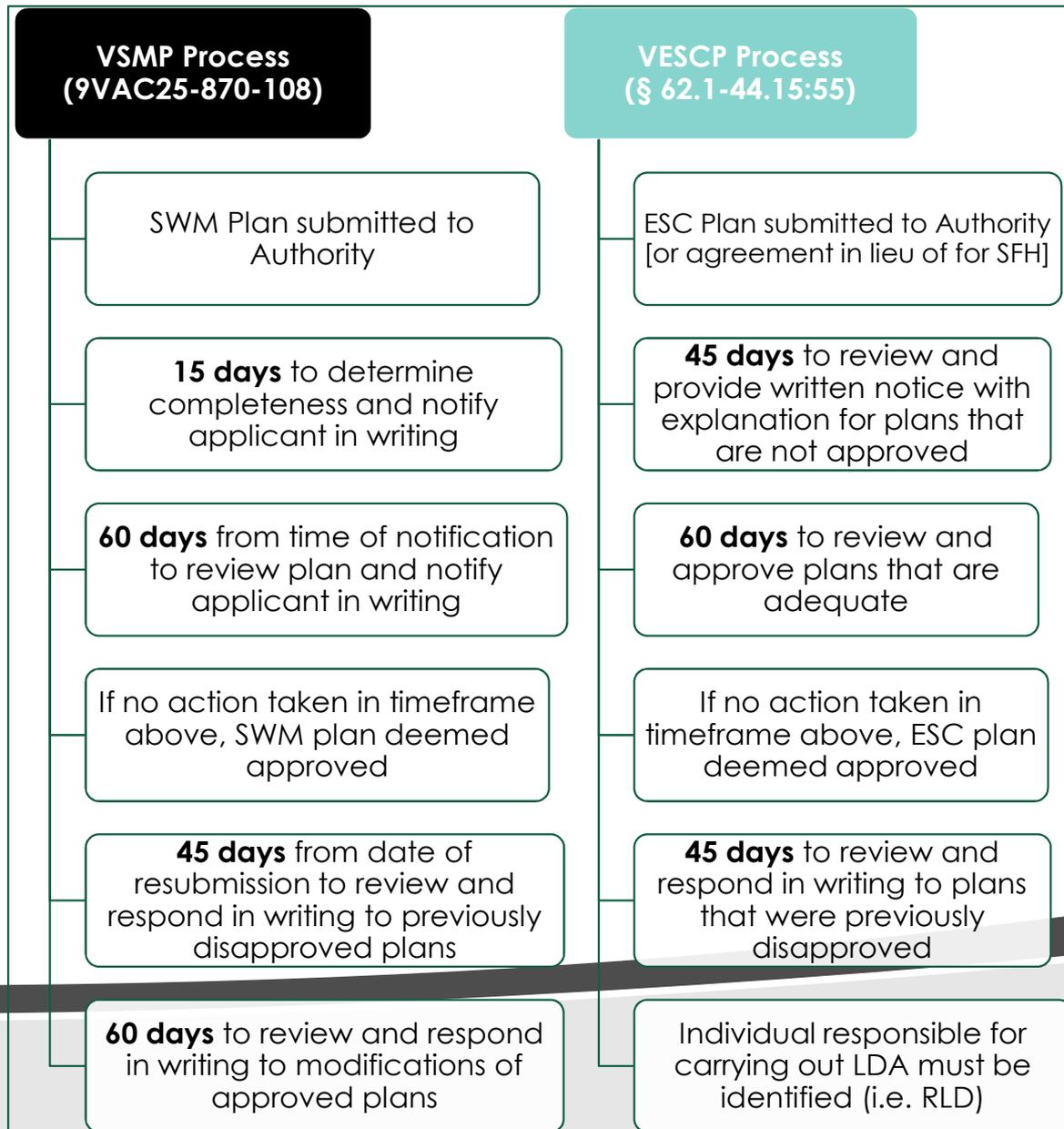
Detailed in 62.1-
44.15:55-B

Name of the RLD needs to be provided at time of plan approval

Option to waive RLD certificate for construction of single-family homes under agreements in lieu of plans



Comparison of VSMP & VESCP Plan Approval



Change of Plan?

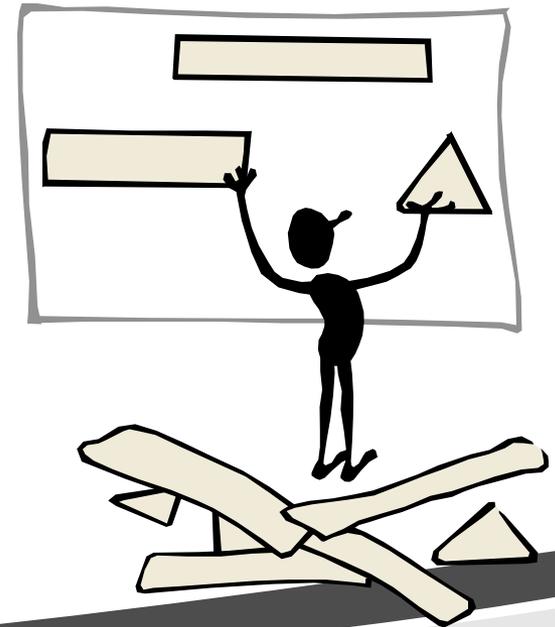


Detailed in 62.1-
44.15:55-C

Plan may be changed when:

1. Inspection reveals inadequacies
2. Change in circumstances

(But all changes need to be consistent with the law, regulations and specifications)



Additional Approved Plan Requirements



- (A) Provides option for submittal of multi-jurisdiction projects (can be done by the Department)**
- (F) Allows local programs to require plan approval for lands identified as “Erosion Impact Area”.**
- (G) Identifies the land owner as responsible for plan submittal & approval.**

Detailed in 62.1-44.15:55-A, F & G



Additional Approved Plan Requirements



Detailed in 62.1-
44.15:57

- Requires an approved plan before issuance of permits for land disturbing activities
- Virginia Stormwater Management state permit coverage required (after July 1, 2014)
- Provides option to require bonds or surety
- Requires return of unused bonds or surety within 60 days of adequate stabilization





Module 4d.

Inspection and Enforcement



Inspections

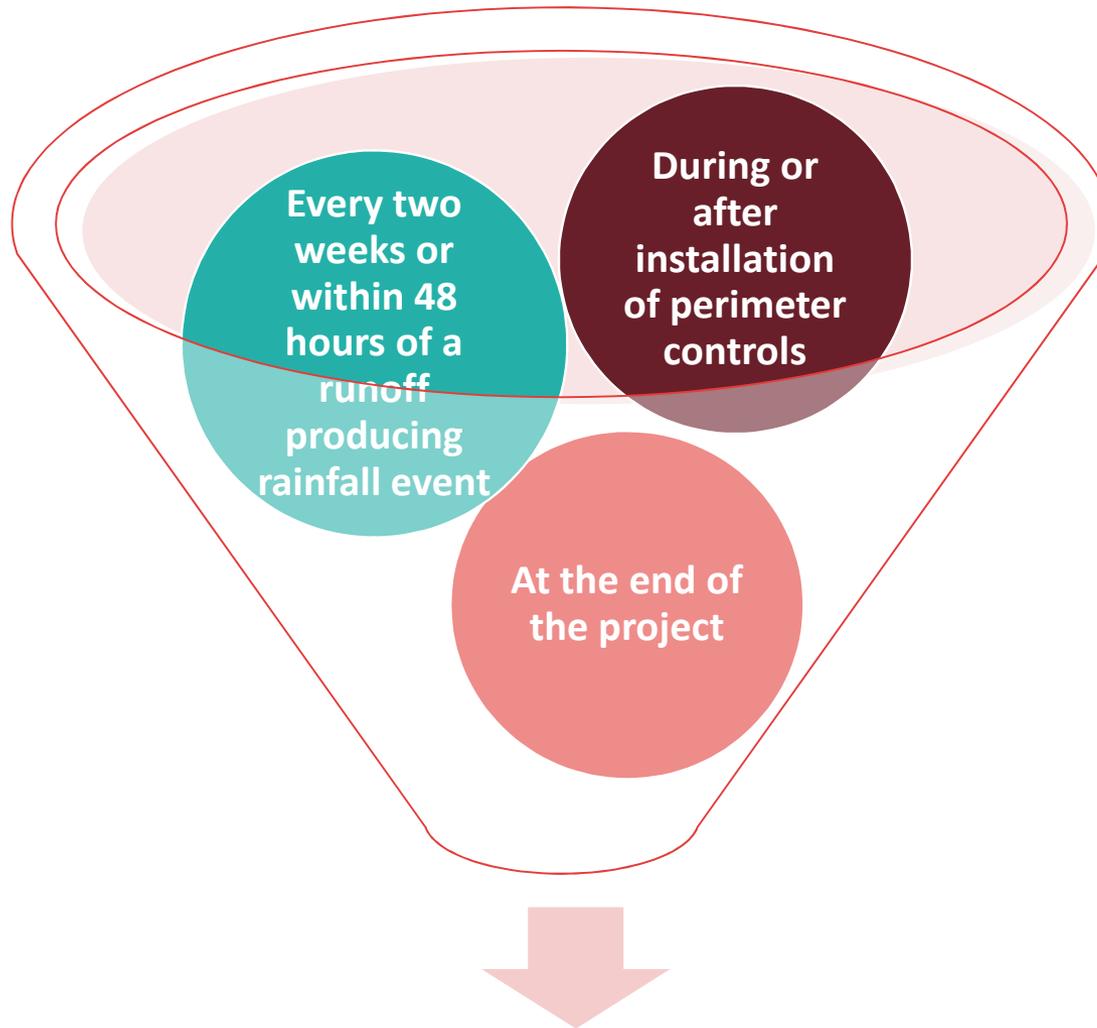


**Detailed in 62.1-
44.15:58**



**Requires inspections of land
disturbing activities by
program authority.**

Regulations
Detailed in
9VAC25-840-60



Right of entry

Provides the right of entry by the Department or VESCP of any property for the inspection and enforcement.



Detailed in 62.1-44.15:60

**PRIVATE
PROPERTY
NO
TRESPASSING**

Monitoring Reports



Detailed in 62.1-
44.15:58



Authority may require monitoring reports from the the person responsible for the project (RLD).

Potential Violation Overview



Detailed in 62.1-44.15:58-A & C

A. "Notice to Comply" procedure

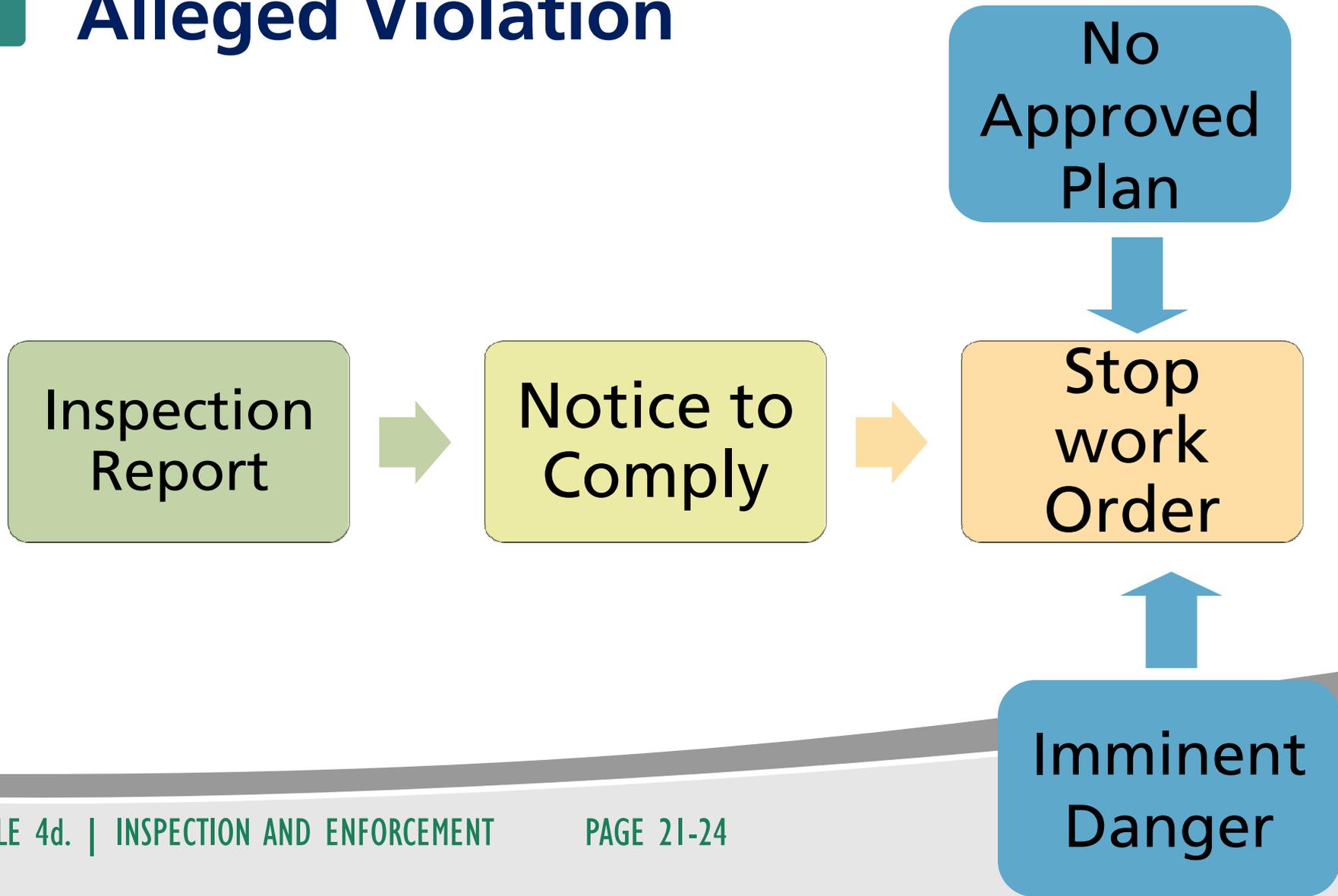
C. "Stop Work Order" procedure

- After notice to comply, unless-
- LDA without an approved plan
- Imminent danger
- Length of time Stop Work is in effect

Allows for other enforcement action to commence...



Alleged Violation



Appealing a Stop Work Order



Detailed in 62.1-
44.15:58

The owner may appeal the issuance of a stop work order to the circuit court





Stop Work Order By Board

- Allows property owners to request state intervention
- Allows Board to pursue Stop Work Order

Detailed in 62.1-44.15:64

Aggrieved property owner gives written notice to VESCP & DEQ Director

DEQ investigates complaint

If VESCP authority response does not stop alleged violation after 30 days, property owner may ask DEQ for stop work order

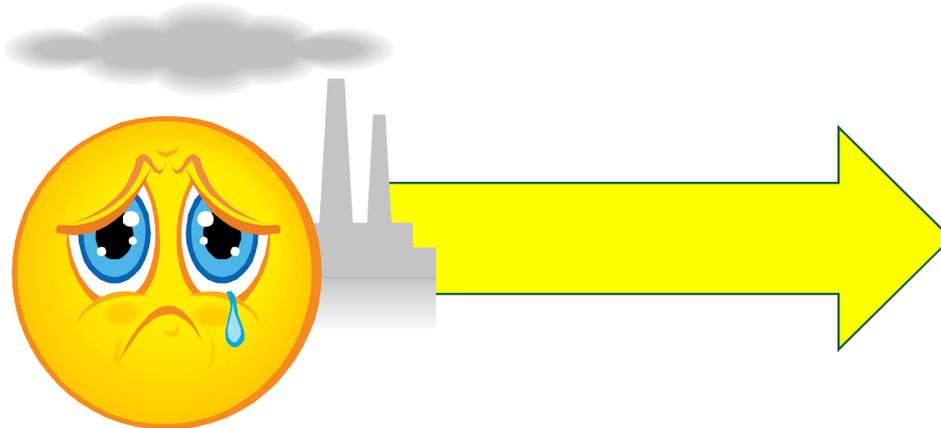
DEQ gives written notice to VESCP authority of intention to issue stop work order

If VESCP authority does not stop violation within 10 days of notice, DEQ may issue a stop work order after a hearing

Judicial Appeals



Detailed in 62.1-
44.15:62



**Final decisions of local and state program
authorities to be judicially appealed**

Penalties, injunctions, and other legal actions



Detailed in 62.1-
44.15:63

- Violators shall be guilty of a Class 1 misdemeanor
- Outlines procedure for administration of civil penalties



Injunctive Process



Detailed in
62.1-44.15:
63-C

Affected
Property Owner

Designated
Land Owner,
VESCP
Authority, DEQ

Circuit Court

Write letter

No response in 15 days?

Civil Penalties



Civil Penalties

Behavior	Assessing penalty	Penalty
<p>Violated, failed, neglected or refused to obey any of the following:</p> <ul style="list-style-type: none"> VESCL Regulations or order of the Board Local VESCP authority order, notice or requirement DEQ order, notice or requirement Permit 	<p>Court may assess a civil penalty of \$2,000/day for each violation.</p>	<p>Subsection K of § 62.1-44.15:53.</p> <p>Penalties assessed by court paid into treasury of locality where project located.</p> <p>If locality or its agent is the violator, penalties paid into state treasury</p>





Module 4e.

DEQ Compliance Review of a VESCP

Local ESC Programs



**Detailed in
62.1-44.15:54-C**



**Part C - Local programs shall
be approved by the Board**



Local ESC Programs



**Detailed in
62.1-44.15:54-F**

If a compliance review by the Board reveals that the program is inconsistent:

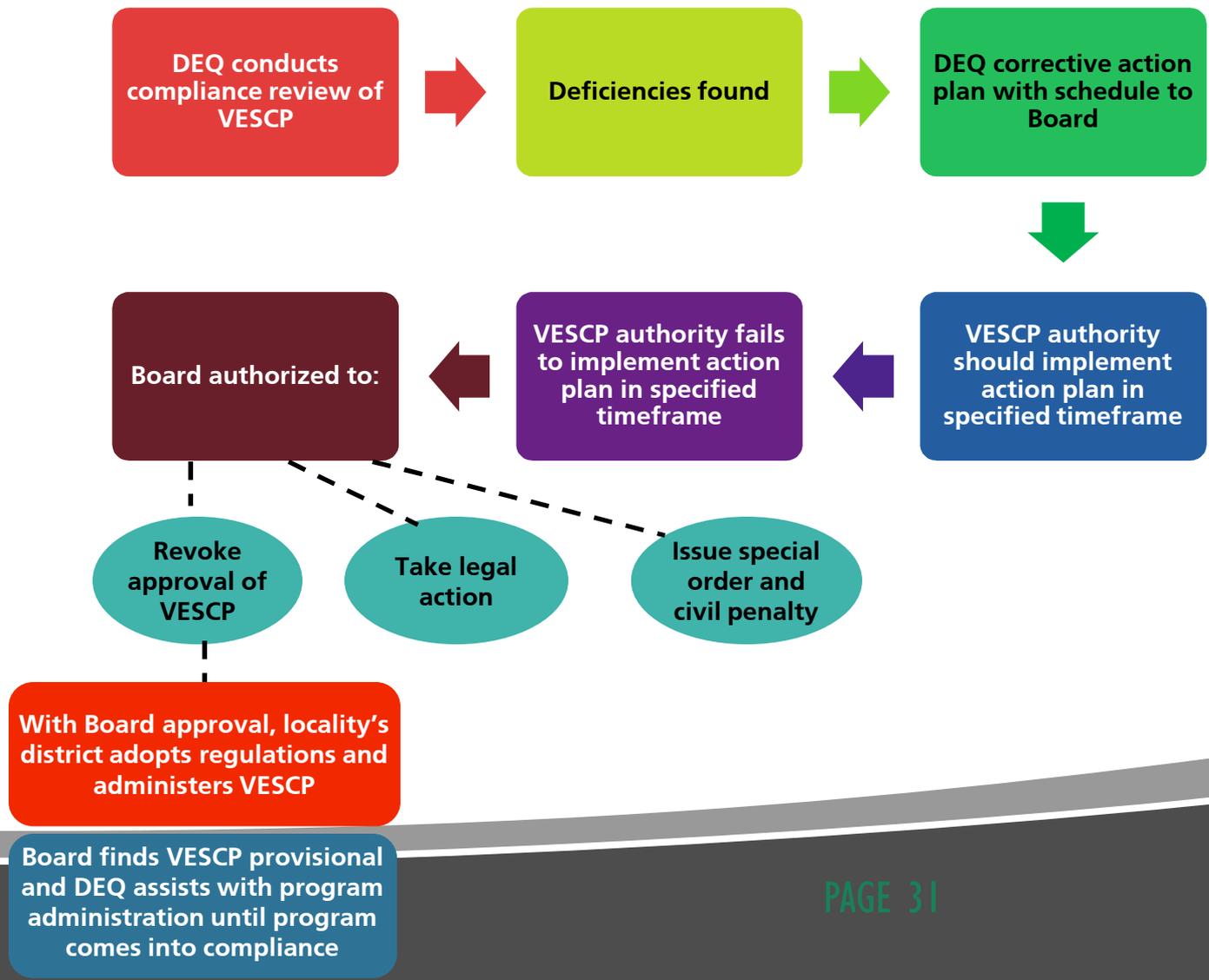
The Board shall establish a schedule for the VESCP authority to come in compliance.

The Board may impose civil penalties, revoke program approval, or take legal action.

Local ESC Programs



**Detailed in
62.1-44.15:54**





Local ESC Programs



**Detailed in
62.1-44.15:54-H**

**Part H – allows provisional operation of the
VESCP**