

Module 2: Guidance for the VSMP Inspector (Conducting Effective Inspections)

Module 2 Objectives

After completing this module, you will be able to:

- Develop inspection procedures that emphasize professionalism, coordination, and cooperation to meet the requirements of the Virginia Stormwater Management Program (VSMP) Regulation
- Plan appropriately for an inspection
- Follow appropriate site entry procedures
- Complete accurate and legally defensible inspection reports
- Develop an inspection schedule that meets the requirements of the Virginia Stormwater Management Act and VSMP Regulation
- Provide focused technical information which meets the compliance requirements of the VSMA and VSMP Regulation
- Describe the DEQ enforcement model and components that may be used for VSMP compliance and enforcement processes and strategies.
- Access DEQ enforcement guidance and templates.

Module 2 Content

2a. Guidelines for an Effective Inspection

2b. Inspection Strategy

2c. Documentation

2d. Technical Assistance

2e. Enforcement

2a. Guidelines for an Effective Inspection

The stormwater inspection can be thought of as a process which typically consists of the following components:

- Pre-inspection preparation
- Site entry
- On-site records review
- Site inspection
- Inspection documentation (inspection report)

Pre-inspection preparation

Plan inspections in accordance with an inspection schedule that is based upon inspection frequency and/or inspection type (see Section 2b).

1. Consent to enter the property may be obtained in advance or upon arrival at the site
2. It may be helpful to notify the owner in advance if the inspector wants to make sure that someone will be on site to answer any questions
3. Review available documents:

Construction Inspections	Post-construction Inspections
<ul style="list-style-type: none"> ❖ Permit(s) 	<ul style="list-style-type: none"> ❖ Long-term maintenance agreements (recorded with local land records) ❖ State projects: Long-term maintenance provisions for permanent BMPs with inspection/maintenance schedule included with registration statement
<ul style="list-style-type: none"> ❖ SWPPP <ul style="list-style-type: none"> ▪ Approved erosion and sediment control plan ▪ Approved stormwater management plan ▪ Construction drawings for permanent BMPs ▪ Pollution prevention plan if available ▪ Self-inspection reports 	<ul style="list-style-type: none"> ❖ Construction record drawings for permanent BMPs (retained by VSMP authority) ❖ Self-inspection and maintenance reports
<ul style="list-style-type: none"> 🔗 Previous compliance inspection reports, other enforcement actions 🔗 Correspondence relating to maintenance, downstream problems, etc. 	

4. Make copies of information that may be helpful to consult during the inspection (e.g. past inspection reports with photos and compliance recommendations, pertinent components of the SWPPP and enclosed plans if needed, TMDL requirements in approved plans, long-term maintenance provisions, etc.)
5. Make note of approved plan and revision dates to compare with onsite documents
6. Pack equipment and essentials, including:
 - Copies of inspection forms and any developed checklists (see sample VSMP authority construction inspection checklist and sample BMP construction inspection checklists in Appendix I and sample BMP post-construction inspection checklists on the DEQ website)
 - Logbook for taking other notes
 - Digital camera with date stamp turned on
 - Inspection credentials/identification

Helpful hint!

Carry copies of the EPA Fact Sheet, Stormwater Best Management Practice - Concrete Washout (www.epa.gov/npdes/pubs/concretewashout.pdf). Proper management is a key component of the P2 plan.

7. Always keep safety in mind!



Use safety equipment

- Hard hats
- Reflective vests
- Steel-toes shoes
- Other equipment that may be required (e.g., safety glasses with side shields or hearing protection)
- ANSI 107-2010 class 3 safety garments required for work in public road right of ways



Maintain safety equipment

- Good condition
- Proper working order



Construction on an industrial site or a hazardous waste site

- Special training may be required prior to entering site
- Review Material Safety and Data Sheets (MSDS)
- Consult with the site operator, OSHA or DEQ



Be aware of your surroundings

- Walking hazards (vehicles, ditches, uneven or unstable ground, loose material, such as riprap, wet/slippery conditions such as slopes)
- Overhead hazards
- Blasting operations
- Biological hazards (e.g., plants, insects, poisonous snakes, etc.)



Do not enter confined spaces (ditches, manholes, culverts, trenches)

- Can be extremely dangerous, even fatal
- Special training and equipment are required
- Trench excavations of greater than 5 feet require OSHA health and safety guidelines for safe construction practices



Inform manager or colleague which site(s) are being visited prior to leaving office

- A system of notification should be used to ensure an inspector's location can be tracked

•Take precautions when depth is unknown and/or conditions could change

Standing or Flowing Water



•Precautions and training are required when inspecting elevated surfaces such as vegetated roofs

Heights



Other safety tips:

- Do NOT take unnecessary risks
- Report unsafe conditions to the responsible party and return to inspect another day

Site Entry

Although the VSMP authority has the right of entry during construction activities, consent may be granted in advance or when the inspector arrives at the site. If there is an imminent threat to public health or the environment, more immediate actions may be required (including notification to other local, state, or federal authorities).

Entry requirements

- Enter through the main entrance or any other agreed upon access point
- Upon arrival, request to see the permit holder or person in charge if not previously arranged
- Document names of all persons that are met during the course of the inspection
- Provide identification (credentials)
- Be prepared to provide authority for inspection (provided under the Construction GP and Va. Code [§§ 62.1-44.15:37](#) and [62.1-44.15:39](#) or in the long-term maintenance agreement)
- Notify permit holder or person in charge of the inspection (inspector should be accompanied by facility personnel when possible)

- Inquire about any specific onsite safety issues or requirements (remember safety awareness presented above)

What should I do if denied entry?

If access is refused, inspectors should remain calm, professional and courteous.

Explain that the right of entry for inspections, surveys or investigations is provided under the authority of the Construction General Permit or any long-term maintenance agreement, and the Virginia Stormwater Management Act (Va. Code [§ 62.1-44.15:39](#)).

- ☞ Obtain and document reasons for entry denial (accurate portrayal of their reasons is critical)
- ☞ If possible, determine underlying concerns and mitigate with a thorough explanation (worries may be unfounded and a calm and courteous approach may greatly assist in assuaging concerns)
- ☞ If site entry is still not granted, leave and seek access through other means (e.g., obtain inspection warrant)

Other Useful Tips

- Explain the purpose of the inspection and provide an overview of the inspection process (sequencing including review of documents, tour of the site, exit interview, report preparation and delivery, and any potential follow-up requirements)
- Use clear language
- Ask one question at a time and wait for responses
- Write down responses
- Repeat or rephrase responses to verify information provided
- Listen carefully and actively
- Use acknowledgements or pauses to prompt responses – don't fill in the blanks
- Don't include the answer in a posed question
- Conclude interview/discussion by summarizing and verifying important details

Onsite Document Review

Construction inspections

Once onsite, ask to see a copy of the SWPPP, which must include several components including a signed copy of the registration statement, a copy of the permit, and copies of the self-inspection reports (see below).

Review the SWPPP to ensure it complies with the requirements of the Construction GP. A checklist, like that provided in Appendix 1, may be helpful during the review.

Specific items in the SWPPP to review and record in your notes include:

- The most recent date of the SWPPP and who prepared it
- Primary erosion and sediment controls
- Inspection and maintenance records
- Pollution prevention practices (especially concrete pouring activities and concrete washout practices)
- Method of identifying measurable storm events (location of rain gauges if used)
- Critical areas of protection
- Drainage areas, outfalls, offsite runoff receiving areas
- Self-inspection reports documenting offsite/support areas if part of the construction activity

SWPPP availability:

Construction site personnel: SWPPP, including copies of the signed registration statement, notice of coverage letter, and permit, must be available at a central location for on-site workers

Department, VSMP/VESCP authority, EPA, MS4 operator, local government: SWPPP must be available upon request

If on-site location unavailable when personnel not present, notice of SWPPP location must be posted near main entrance of construction site

Public: SWPPP must be available for public review in an electronic format or in hard copy

Information for public access must be posted near the main entrance of the construction site

If SWPPP is not provided electronically, public access to SWPPP may be arranged upon request at a time and location convenient to the operator

Include in your notes a general narrative of the construction activity (e.g., construction of five single family homes on 2.5 acre parcel). Ask the construction operator to describe the project as you review the SWPPP. Questions you can ask include:

- How large is the project? How long has construction been underway? When do you plan to complete construction?
- Do you store or use hazardous materials or waste fluids on-site? Do you refuel vehicles or equipment on-site?
- Which measures are in place to address a TMDL (e.g. soil stabilization, nutrient application, modified inspection schedule, etc.)?
- Ask to review maintenance records for all appropriate erosion and sediment control measures
- Ask to review any monitoring or reports if required by the VSMP authority
- Review any other useful documentation and correspondence that may be made available during the inspection

Additional Resources:

Useful EPA Guidance Documents General Construction Site Waste Management:

General Construction Site Waste Management

[Cfpub.epa.gov/npdes/stormwater/meuofbmeps/index.cfm?action=browse&Rbutton=detail&bmp=61&minmeasure=4](https://cfpub.epa.gov/npdes/stormwater/meuofbmeps/index.cfm?action=browse&Rbutton=detail&bmp=61&minmeasure=4)

Spill Prevention and Control Plan

[Cfpub.epa.gov/npdes/stormwater/meuofbmeps/index.cfm?action=browse&Rbutton=detail&bmp=62&minmeasure=4](https://cfpub.epa.gov/npdes/stormwater/meuofbmeps/index.cfm?action=browse&Rbutton=detail&bmp=62&minmeasure=4)

Concrete Washout Fact Sheet

www.epa.gov/npdes/pubs/concretewashout.pdf

Post-construction inspections

The VSMP authority has the option of using the self-inspection reports of the BMP owner as part of an inspection program established in accordance with [9VAC25-870-114](#) provided the self inspections were conducted by a licensed professional, someone working under a licensed professional, or a person with a certificate from the Board.

[9VAC25-870-112](#) requires the submission of inspection and maintenance reports to the VSMP authority. The VSMP authority may establish a schedule for the submission of the reports. If not regularly submitted to the VSMP authority, the availability of these inspection reports for onsite review should be planned prior to the inspection. Additionally, any long-term maintenance provisions or standard operating protocols utilized by the BMP owner that are not included in the long-term maintenance agreement should be documented and evaluated in accordance with local requirements.

2b. Inspection Strategy

During construction, the VSMP authority must conduct **periodic** inspections of regulated LDAs (Va. Code [§ 62.1-44.15:37](#); [9VAC25-870-114](#)).

(**Remember:** LDAs must comply with approved ESC and SWM plans, P2 plan, and any additional control measures necessary to address a TMDL). Post-construction inspections must be conducted at a minimum of once every five years, although more frequent inspections may be better suited for oversight of permanent BMP conditions, performance, and maintenance (see Module 4).

Helpful hint!

Consider prioritizing sites discharging to exceptional or impaired waters, sites adjacent to surface waters, large construction sites, or sites with compliance problems.

An effective inspection schedule is dependent on the inspection type:

Comprehensive Inspections	Reconnaissance Inspections
<ul style="list-style-type: none"> ➤ Follow a neutral system ➤ Must address phasing within construction project, but otherwise can be random in nature ➤ See Module 4 for additional details 	<p>Should respond to:</p> <ul style="list-style-type: none"> ➤ Public complaints ➤ Notification of unauthorized discharges and other on-site problems ➤ Known/suspected violations of regulatory requirements ➤ Should be targeted as follow-ups on compliance recommendations from: <ul style="list-style-type: none"> ○ A comprehensive inspection ○ A previous investigation where violations were found
<ul style="list-style-type: none"> ➤ Verify permittee compliance with all applicable regulatory requirements, effluent controls, and compliance schedules or owner compliance with all long-term maintenance provisions 	<ul style="list-style-type: none"> ➤ Expands inspection coverage without overwhelming inspection resource expenditures

An overall comprehensive inspection schedule should be neutral or random in nature, or developed in accordance with established priorities (a neutral system can be developed to ensure objectivity)

- Keep track of pertinent information from the pre-construction meeting (schedule of construction activities including installation of permanent BMPs)
- Keep an open-line of communication with the operator, project engineer and/or owner

- If not required, ask for notice when a new phase or specific phases of construction begin
- Convey the importance of a cooperative approach to help ensure compliance with the construction general permit, long-term maintenance agreement, and all applicable laws and regulations
- Coordinate and communicate with other regulatory oversight authorities, where appropriate, to avoid unnecessary duplication

Pre-construction meeting

Pre-construction meetings with the inspector, permittee, contractor, project engineer, and any other appropriate personnel are a valuable tool for VSMP authorities. These meetings provide an opportunity to review the construction schedule and note when BMPs will be installed so that the inspection schedule correlates with the construction process. Pre-construction meetings also allow the VSMP authority to let the operator know the VSMP authority is available for technical assistance and is serious about compliance with the VSMP and ESC Regulations, Construction GP, and local ordinances.

2c. Documentation

Documentation of comprehensive inspections or reconnaissance inspections (follow-up inspections or investigations), compliance issues, or alleged violations, is critical to any compliance program. Documentation is evidence that can prove or support inspector claims of potential violations. The total body of evidence should tell a story that will reveal the whole truth of what is being considered.

The inspection report is a legal document and primarily consists of:

- Inspection checklist or inspection form
- Photographs
- Description and location of needed corrective actions

Critical aspects of an inspection report:

- Accurate, relevant, comprehensive, and objective information
 - Include only information that is certain, factual, and material
 - Only make conclusions that are directly based on observed facts
 - Include site maps or provide a good description of problem area locations that can be followed by any person reviewing the report
 - Include all relevant information for a comprehensive report
 - Make sure to include observed weather conditions at time of inspection

Tips for photographs:

Record time, date, description, and exact location (use sketch or map)

Incorporate within inspection report

Document compliance and potential non-compliance (on-site and off-site)

- Clear and legible writing or printing
- Citation of permit section numbers for all descriptions of potential violations
- Observed facts should be clearly distinguished from what is reported by the operator or on-site representative
- Photo documentation provides an important visual link to the report narrative and/or checklist and helps clarify the severity of potential violations

- The report/checklist should include references to the photo log
- The quality of inspection reports and photos are key
- Report should be consistent with other reports produced by the VSMP authority

Good documentation practices

Foundation:	Preliminary evidence (of authenticity and relevance) must be sufficient for the admissibility of other evidence (Maintain a logical sequence to lend support to case-specific assertions of facts demonstrating a violation of law)
Authentic:	Evidence must be what it is claimed to be (Dates and locations must be logged when taking photos; Chain of Custody must accompany any samples that are taken)
Relevant:	Evidence must pertain to the issue in question (Relate back to regulation, local ordinance, permit)

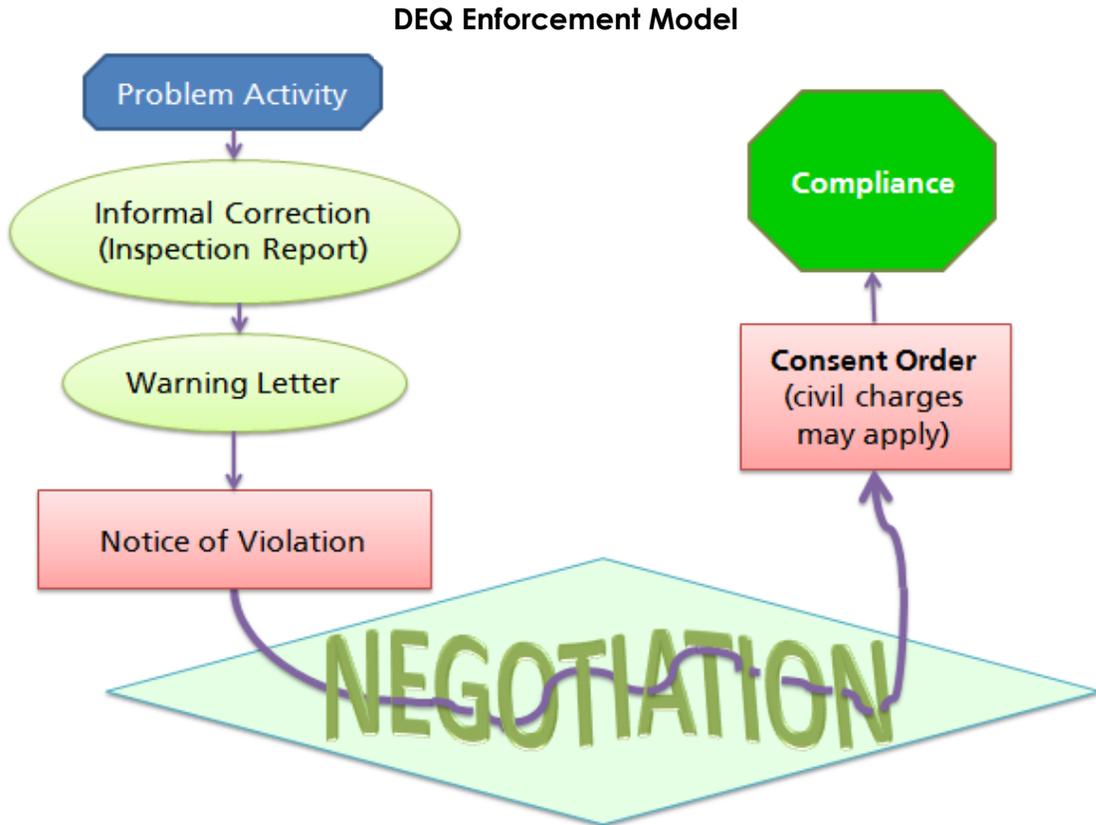
2d. Technical Assistance

Technical assistance is an integral component of a VSMP. Localities can serve as a resource to operators by:

- Discussing potential options based on the locality's geographic location
- Providing fact sheets, websites, standards and specifications, technical bulletins, SWM Handbook sections, and guidance memos that may be available from federal, state, or local resources
- Coordinating or consulting with other VSMP authority staff, DEQ, or other state and federal agencies

Having a program that promotes assistance to permittees provides for better overall program compliance.

2e. Enforcement



The flow chart above is a simplified version of the standard DEQ enforcement model. The chart serves as an example of how compliance/enforcement actions would flow for a typical regulated activity. Different shapes used in the chart provide a visual roadmap for the different levels of compliance and enforcement activity that can be used to progressively handle problem activities or violations. **This chart is to be used solely as an example for the VSMP authority.** Each locality's VSMP authority must establish enforcement procedures in accordance with [9VAC25-870-116](#).



Level 1 Compliance

Inspection reports { IR } and warning letters { WL }, issued by compliance staff, can be thought of as routine components of the compliance process. Warning letters provide opportunity for response and corrections within specified time periods. Failure to make appropriate and timely corrections in response to a warning letter can lead to further enforcement actions and assessment of civil charges or penalties.



Level 2 Enforcement

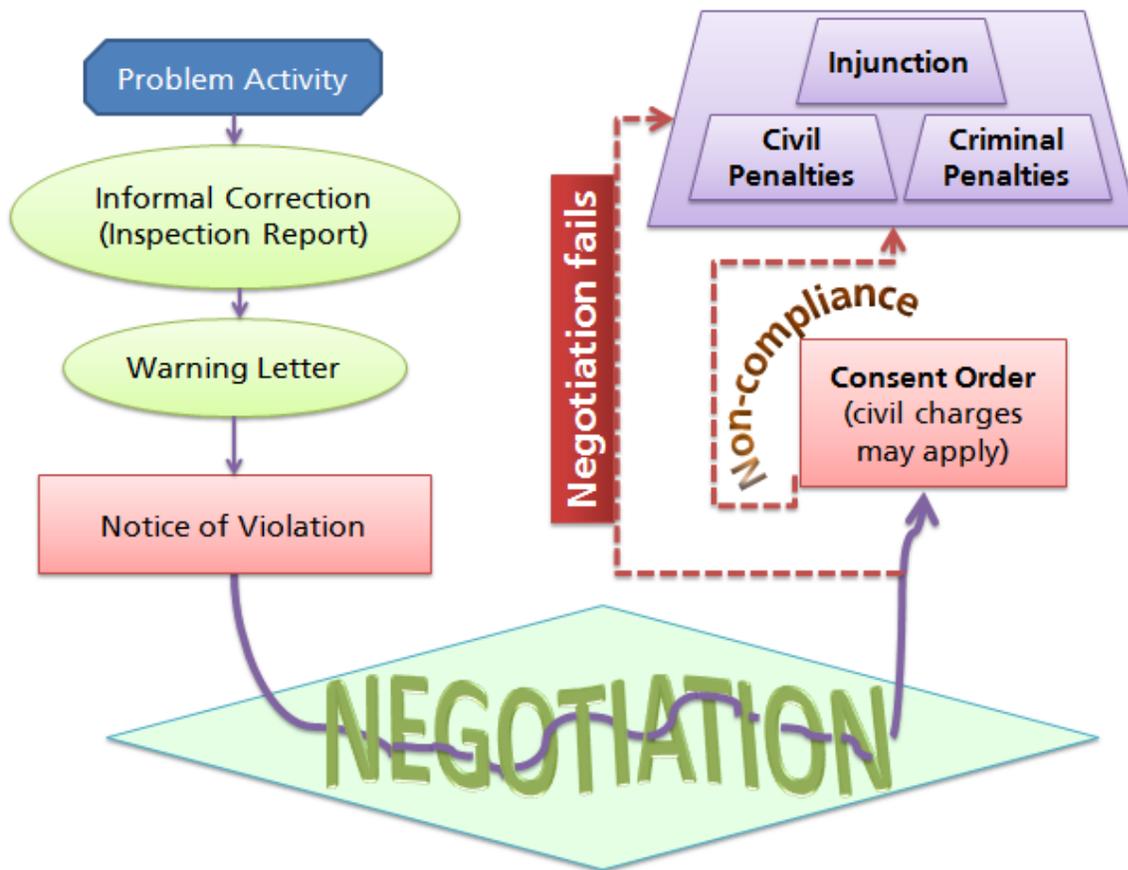
Notices of violations { NOV } are the tools used once alleged violations are considered ongoing, persistent, severe, or of such significance that further enforcement action is deemed appropriate (e.g. continued non-compliance following notifications via inspection reports or warning letters). A notice of violation marks the transition from compliance to enforcement. If alleged violations are confirmed, a notice of violation may be resolved through a consent order { CO }. A consent order is issued with the consent of the responsible party, often after negotiation, and requires the responsible party to perform specific actions to return a site to compliance according to a compliance schedule and/or to pay civil charges.

Remember!

Warning letters and notice of violations are both considered written notifications of *alleged* violations

Level 3 Judicial Enforcement

Injunctions, civil penalties, and/or criminal penalties are remedies that can be obtained through judicial enforcement actions, which are used when other administrative enforcement tools as described in Level 1 and Level 2 are not adequate for achieving appropriate compliance in a timely manner (see flowchart below). Injunctions compel compliance through the courts by “any person violating or failing, neglecting, or refusing to obey any rule, regulation, ordinance, approved standard and specification, order or permit condition issued by the Board, Department, or VSMP authority as authorized to do such, or any provision of [the Stormwater Management Act]”. See Va. Code §§ [62.1-44.15:25](#), [62.1-44.15:42](#), [62.1-44.15:48\(D\)](#), [62.1-44.15:25](#); [9VAC25-870-660\(A\)\(4\)](#). The court may also impose civil penalties up to \$32,500 per day for each violation (Va. Code § [62.1-44.15:48\(A\)](#)).



DEQ Enforcement Model



In addition to the procedures shown above, the Virginia Stormwater Management Act also authorizes VSMP authorities to issue notices to comply if they determine that there has been a failure to comply with permit conditions. Failure to comply with a notice to comply may be addressed with a stop work order issued in accordance with local procedures, revocation of local permits, judicial action, or a consent order.

Additional Resources:

For an overview of DEQ's enforcement procedures, see Chapter 2 of the DEQ Civil Enforcement Manual available at:

<http://www.deq.virginia.gov/Programs/Enforcement/LawsRegulationsGuidance.aspx>

Additionally, a DEQ model construction stormwater warning letter, notice of violation and consent order (documents 2-2E, 2-4F, and 2-15L) are available at:

[http://www.deq.virginia.gov/Portals/0/DEQ/Enforcement/Manual/Chapter2/attachments/Chapter2A-Attachments\(2013-12-2\).pdf](http://www.deq.virginia.gov/Portals/0/DEQ/Enforcement/Manual/Chapter2/attachments/Chapter2A-Attachments(2013-12-2).pdf)

These documents may be useful models for local VSMP authorities, but note that localities will need to amend them for consistency with local ordinances and to specify local enforcement authorities rather than DEQ/State Water Control Board enforcement authorities.

Additional enforcement guidance will be posted to the DEQ website as it becomes available:

<http://www.deq.virginia.gov/Programs/Enforcement/LawsRegulationsGuidance.aspx>