Module 3: VESC Program Elements, Law Overview for Inspectors, Program Reviews

3a. Overview-Roles of VESCP Officials…… 2

3b. Program Statutory requirements, Law overview…… 4

Definitions…… 4

Plan submission and approval…… 7

Annual Specifications…… 7

RLD…… 9

Plan review process…… 10

Changes to an approved ESC plan…… 12

Multi-jurisdictional projects…… 12

Bonds and surety…… 12

Inspections…… 14

More Stringent Requirements …… 14

Right to Enter…… 15

Notice to comply…… 15

Stop work order…… 17

Judicial proceedings…… 20

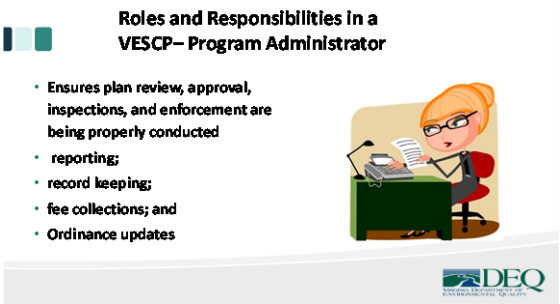
Civil penalties…… 21

3c. Program Review by DEQ …… 24

3a. Overview

The roles of the some program staff varies from locality to locality but the following items are generally what is involved in day to day duties of the positions;

Certified program administrator: an employee or agent of a VESCP authority who holds a certificate of competence from the Board in the area of program administration or is enrolled in the Board's training program for program administration and successfully completes such program within one year after enrollment.



- Ensures plan review and approval, inspections, and enforcement actions are conducted in accordance with the VESCL, regulations, and local ordinances
- Completes reports to be sent to DEQ
- Coordinates enforcement proceedings
- Keeps records, collects fees, and updates local ordinances as needed

Additionally, the Program administrator also makes sure that other positions such as inspectors and plan reviewers are certified.

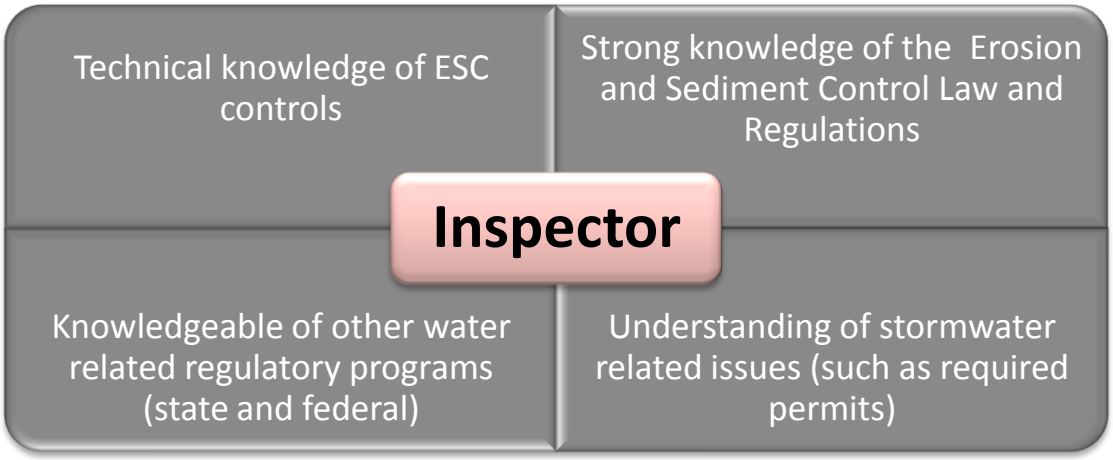
Certified inspector: an employee or agent of a VESCP authority who holds a certificate of competence from the Board in the area of project inspection or is enrolled in the Board's training program for project inspection and successfully completes such program within one year after enrollment

- Conducts regular inspections of active construction sites to ensure proper construction, function, and maintenance of

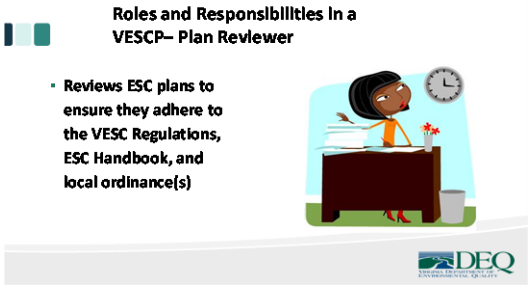
BMPs and other erosion and sediment control measures

- Documents inspections
- Initiates enforcement action when needed
- Ensures compliance to correct deficiencies or violations

Ideally, the ESC Inspector should possess the following skills and knowledge:



Certified plan reviewer: an employee or agent of a VESCP authority who holds a certificate of competence from the Board in the area of plan review, is enrolled in the Board's training program for plan review and successfully completes such program within one year after enrollment, or is licensed as a professional engineer, architect, landscape architect, land surveyor, or professional soil scientist



- Responsible for review of erosion and sediment control plans to ensure plans adhere to the regulations, minimum standards, and local ordinances

Combined administrator: responsible for performing the combined duties of a program administrator, plan reviewer and project inspector of a VESCP authority

3b. Statutory Requirements: Virginia Erosion and Sediment Control Law

The Virginia Erosion and Sediment Control Law (VESCL) authorizes the Virginia Erosion and Sediment Control Program (VESCP) and associated regulations. The regulations explain the technical, operational, and legal details necessary to implement

The Virginia Erosion and Sediment Control Law is Va. Code § 62.1-44.15:51 through § 62.1-44.15:66 and the regulations are 9VAC25-840-10 through 9VAC25-840-110.

Purpose of the Law

As we discussed in Module 1, the stated intent 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"

A good understanding of the law, regulations and local program requirements is essential in operating an effective VESCP.

Definitions

The VESCL and regulations include a list of terms with their legal meanings and how they are to be applied to erosion and sediment control. The following list includes the more pertinent definitions from the law (Va. Code § 62.1-44.15:51).

"Agreement in lieu of plan"

A contract between the plan-approving authority and the owner that specifies conservation measures that must be implemented in the construction of a single-family residence

"Erosion and sediment control plan" or "plan"

A document containing material for the conservation of soil and water resources of a unit or group of units of land. It may include appropriate maps, an appropriate soil and water plan inventory and management information with needed interpretations, and a record of decisions contributing to conservation treatment. The plan shall contain all major conservation decisions

to ensure that the entire unit or units of land will be so treated to achieve the conservation objectives.

"Erosion impact area"

An area of land not associated with current land-disturbing activity but subject to persistent soil erosion resulting in the delivery of sediment onto neighboring properties or into state waters. This definition shall not apply to any lot or parcel of land of 10,000 square feet or less used for residential purposes or to shorelines where the erosion results from wave action or other coastal processes.

"Land-disturbing activity"

Means any man-made change to the land surface that may result in soil erosion from water or wind and the movement of sediments into state waters or onto lands in the Commonwealth, including, but not limited to, clearing, grading, excavating, transporting, and filling of land, except that the term **shall not** include:

- Minor land-disturbing activities such as home gardens and individual home landscaping, repairs, and maintenance work;
- Individual service connections;
- Installation, maintenance, or repair of any underground public utility lines when such activity occurs on an existing hard surfaced road, street, or sidewalk, provided the land-disturbing activity is confined to the area of the road, street, or sidewalk that is hard surfaced;
- Septic tank lines or drainage fields unless included in an overall plan for land-disturbing activity relating to construction of the building to be served by the septic tank system;
- Permitted surface or deep mining operations and projects, or oil and gas operations and projects conducted pursuant to Title 45.1;
- Tilling, planting, or harvesting of agricultural, horticultural, or forest crops, livestock feedlot operations, or as additionally set forth by the Board in regulation, including engineering

operations as follows: construction of terraces, terrace outlets, check dams, de-silting basins, dikes, ponds, ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage, and land irrigation; however, this exception shall not apply to harvesting of forest crops unless the area on which harvesting occurs is reforested artificially or naturally in accordance with the provisions of Chapter 11 (Va. Code § 10.1-1100 et seq.) of Title 10.1 or is converted to bona fide agricultural or improved pasture use as described in subsection B of Va. Code §10.1-1163;

- Repair or rebuilding of the tracks, rights-of-way, bridges, communication facilities, and other related structures and facilities of a railroad company;
- Agricultural engineering operations, including but not limited to the construction of terraces, terrace outlets, check dams, de-silting basins, dikes, ponds not required to comply with the provisions of the Dam Safety Act (§ 10.1-604 et seq.), ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage, and land irrigation;
- Disturbed land areas of less than 10,000 square feet in size or 2,500 square feet in all areas of the jurisdictions designated as subject to the Chesapeake Bay Preservation Area Designation and Management Regulations; however, the governing body of the program authority may reduce this exception to a smaller area of disturbed land or qualify the conditions under which this exception shall apply;
- Installation of fence and sign posts or telephone and electric poles and other kinds of posts or poles;
- Shoreline erosion control projects on tidal waters when all of the land-disturbing activities are within the regulatory authority of and approved by local wetlands boards, the Marine Resources Commission, or the United States Army Corps of Engineers; however, any associated land that is disturbed outside of this exempted area shall remain subject to this article and the regulations adopted pursuant thereto; and
- Emergency work to protect life, limb, or property, and emergency repairs; however, if the land-disturbing activity would have required an approved erosion and sediment control plan, if the activity were not an emergency, then the land area disturbed shall be shaped and stabilized in accordance with the requirements of the VESCP authority.

Plan submission, review and approval

Review of erosion and sediment control plan

(VA Code §62.1-44.15:55)

Before land disturbance can start on a project that does not have DEQ approved annual standards and specifications, the VESCP authority must review and approve an ESC plan or execute an *agreement in lieu of an ESC plan* for the construction of a single-family residence.

(VA Code §62.1-44.15:55.G) states that the responsibility for plan submission and approval belongs to the **owner** of the project.

★As of July 1, 2014, LDAs subject to the Virginia Stormwater Management Act must obtain state permit coverage, if required, and local VSMP authority permit coverage before land disturbing activities can begin.

Annual standards and specifications

(VA Code §62.1-44.15:55)

Electric, natural gas, and telephone utility companies, interstate and intrastate natural gas pipeline companies, and railroad companies must submit annual standards and specifications to DEQ for review and approval, while authorities created pursuant to §15.2-5102 (ex. water, sewer, etc., authorities)may submit annual standards and specifications to DEQ for review and approval.

Virginia Stormwater Management Act includes specific requirements for which entities must submit annual standards and specifications to DEQ and what must be submitted.
See § VA Code 62.1-44.15:31 for more information.

Annual standards and specifications must be consistent with the VESCL and associated regulations and the Virginia Stormwater Management Act and associated regulations. Standards and specifications must be filed **annually** with DEQ. The Department has **60 days** to approve. If no action is taken by DEQ within the 60 days, the standards are deemed approved.

★Land disturbing activities covered under annual standards and specifications do not need individual approval when DEQ approved specifications are followed. Enforcement of the annual specifications for these entities is done by the Board.

Annual Standards and Specifications	
Must submit	**May submit**
Electric companies	Authorities created under §15.2-5102 (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: • Electric transmission lines • Water and sewer lines • Natural gas lines • Telephone utility lines	
Railroad company construction of: • Tracks • Bridges • Other related structures and facilities • Rights-of-way • Communication facilities	

State agency Land Disturbing Activity can either be conducted in accordance with DEQ approved annual standards and specifications, or the agency must submit an ESC plan to DEQ for review and approval before starting land disturbance. Federal entities may also submit annual standards and specifications.

★State agencies or federal entities with DEQ approved annual standards and specifications and that have Board approval to operate as a VESCP authority, can conduct plan review, approval, and inspections of LDAs.

ESC plans for state agencies or federal entities must:

- Be consistent with the requirements of the VESCL and attendant regulations
- Be consistent with the more stringent requirements of a locality's VESCP where the land disturbance will occur, unless the locality has not submitted a copy of its local program requirements to DEQ

DEQ has **60 days** to comment on any standards and specifications or erosion and sediment control plan. As onsite changes occur, the state agency shall submit changes in an ESC plan to the Department.

★The state agency responsible for the LDA must ensure compliance with the approved plan, and DEQ and the Board, where applicable, shall provide project oversight and enforcement as necessary.

Adequate ESC plan

The VESCP authority has **60 days** to review an ESC plan and grant written approval. An adequate ESC plan satisfies the following:

- Requirements of the VESCL and regulations
- Local VESCP requirements
- Person responsible for carrying out the plan certifies they will properly perform the ESC measures included on the ESC plan and will comply with the VESCL

Additionally, before land disturbance can start, the name of the responsible land disturber (RLD) must be provided to VESCP authority. The VESCP authority may waive the RLD requirement for an agreement in lieu of a plan for the construction of a single-family residence. Failure to provide the name of the RLD before starting land disturbance may result in the revocation of the approval of the ESC plan and the person responsible for carrying out the plan shall be subject to the penalties outline in the VESCL.

Responsible land disturber or **RLD** means an individual holding a certificate issued by the department who is responsible for carrying out the land-disturbing activity in accordance with the approved ESC plan. The RLD may be the owner, applicant, permittee, designer, superintendent, project manager, contractor, or any other project or development team member. The RLD must be designated on the ESC plan or permit as a prerequisite for engaging in land disturbance. (9VAC25-850-10)

Comparison of VSMP and VESCP Plan Approval Process

Inadequate ESC plan

The VESCP authority has **45 days** to review an inadequate ESC plan and provide written notice of disapproval stating the specific reason for disapproval, including the modifications, terms, and conditions that will permit approval of the plan.

Resubmitted ESC plan

The VESCP authority has **45 days** to review and approve a revised ESC plan that was previously disapproved and is deemed adequate.

Power and duties of the State Water Control Board

(VA Code § 62.1-44.15:52)

The VESCL authorizes the State Water Control Board to:

- Develop an erosion and sediment control program
- Adopt regulations for the effective control of soil erosion, sediment deposition, and nonagricultural runoff
- Provide technical assistance for VESCP authorities
- Establish minimum standards for program effectiveness
- Approve VESCP authorities
- Conduct periodic program compliance reviews
- Issue certificates of competence

Changes to approved ESC plan

(VA Code §62.1-44.15:55)

The VESCP authority may require changes to an approved ESC plan when:

- Inspections show the plan is inadequate
- Circumstances on the land disturbing activity have changed and the approved ESC plan cannot be carried out and the changes are agreed upon by the VESCP authority and the person responsible for carrying out the plan

Multi-jurisdictional projects

(VA Code §62.1-44.15:55)

When a LDA covers more than one VESCP authority's jurisdiction, one or all of the authorities can request to have DEQ review the ESC plan rather than have the ESC plan submitted to each jurisdiction. DEQ may charge the jurisdiction(s) requesting the review a fee to cover associated costs.

Another alternative for multi-jurisdictional projects if for the VESCP authority with the smaller portion of the project to enter into an agreement with an adjacent VESCP authority regarding all or part of the project's administrative procedures.

Permit(s) issuance

(VA Code §62.1-44.15:57)

Before any agency can issue grading, building, or other permits for activities involving LDAs regulated under the VESCL, the applicant must include an approved ESC plan and certification that the plan will be followed, and evidence of local VSMP authority permit coverage where it is required.

Security for performance

(VA Code §62.1-44.15:57)

Before issuing any permit (grading, building, etc.), the permit issuing agency may require an applicant to submit a reasonable performance bond to ensure that measures could be taken by the agency at the applicant's expense should they fail to initiate or maintain appropriate conservation action (included on approved ESC plan) as a result of their land-disturbing activity. The bond or surety can include a reasonable allowance for estimated administrative costs and inflation, which shall not exceed 25 percent of the estimated cost. If the authority takes corrective action using the bond or surety and it costs more than the security held, they can collect the difference from the permittee.

A VESCP authority may reduce the amount of surety required based on the percentage of stabilization § 62.1-44.15:57

Refund of security:

Within 60 days of achieving adequate stabilization on any project or section of project, the unexpended or unobligated portion must be refunded to the applicant or terminated based upon the percentage of stabilization accomplished in the project or section of project.

Inspections and frequency

(VA Code §62.1-44.15:58 and 9VAC25-840-60)

Regular inspections during all phases of a land disturbing activity are important for ensuring that all ESC measures on the approved plan are installed or maintained correctly.

Inspection documentation is a critical component of any compliance program. Documentation, such as an inspection report, can prove or support an inspector's claims of alleged violations.

In accordance with the VESCP regulations, the VESCP authority must either:

1. Provide for an inspection during or immediately following initial installation of erosion and sediment controls, at least once in every two-week period, within 48 hours following any runoff producing storm event, and at the completion of the project prior to the release of any performance bonds; **or**

1. Establish an alternative inspection program which ensures compliance with the approved erosion and sediment control plan. Any alternative inspection program shall be:
    a. Approved by the board prior to implementation;
    b. Established in writing;
    c. Based on a system of priorities that, at a minimum, address the amount of disturbed project area, site conditions and stage of construction; and
    d. Documented by inspection records

More stringent regulations or ordinances

(VA Code §62.1-44.15:65)

Localities are authorized to adopt ordinances that are more stringent than the minimum state requirements when necessary, provided the more stringent ordinances are based upon factual findings of local or regional comprehensive watershed management studies or findings developed through the implementation of an MS4 permit or a locally adopted watershed management study.

Additionally, the more stringent ordinances must be necessary to:

- Prevent any further degradation to water resources,
- Address total maximum daily load requirements,
- Protect exceptional state waters, or
- 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

Another example would be where an authority has determined a need to reduce the 10,000 square foot threshold for ESC requirements. The VESCL gives a VESP the authority to do so (VA Code §62.1-44.15:51) but before adopting more stringent regulations or ordinances, a public hearing must be held after giving due notice.

Right of Entry

(VA Code §62.1-44.15:60)

DEQ, the VESCP authority or any authorized agent of DEQ or the VESCP authority has the right to enter any property to conduct inspections of the LDA at reasonable times and under reasonable circumstances.

In accordance with a performance bond with surety, cash escrow, letter of credit, any combination thereof, or other legal arrangement, a VESCP authority may also enter any establishment or upon any property for the purpose of initiating or maintaining appropriate actions that are required by the permit conditions associated with a LDA when a permittee, after proper notice, has failed to take acceptable action within the time specified.

Monitoring and reports

(VA Code §62.1-44.15:58)

The VESCP authority may require monitoring and reports from the person responsible for carrying out ESC plan to determine whether the measures required in the plan are effective in controlling erosion and sediment.

Enforcement

Notice to comply

(VA Code §62.1-4462.1-44.15:53.15:58)

After conducting inspections, if the VESCP authority or DEQ determines that there is a failure to comply with the approved ESC plan, or failure to properly install/maintain erosion and sediment control measures specified by inspection reports, a notice to comply may be served upon the permittee or person responsible for carrying out the plan.

The ultimate responsibility for inspections will remain with the VESCP, while the ultimate responsibility for the compliance with the VESCL and VESCR is the responsibility of the owner.

How to serve a notice to comply:

- Mailing with confirmation of delivery to the address specified in the permit application or in the plan certification, or
- Delivery at the site of the land-disturbing activities to the agent or employee supervising such activities

Notice to comply must include:

Measures needed to comply with the ESC plan

Time within which such measures shall be completed

If failure to comply within time specified in notice to comply:

- Permit may be revoked
- VESCP authority, DEQ, or the Board may pursue enforcement action:
    - Penalties, injunctions or other legal actions (§ 62.1-44.15:63)
    - The enforcement options available to a VESCP authority will depend on whether the VESCP authority has adopted an ordinance providing for civil penalties instead of criminal sanctions (instead of prosecution as a misdemeanor)
- VESCP authority or DEQ may issue a stop work order on all **or part** of the land disturbing activity

Stop work order after a DEQ or VESCP authority inspection

(VA Code §62.1-44.15:58)

Reason:

A stop work order may be issued by the VESCP authority or DEQ in the following three scenarios after an inspection report denotes a violation of VA Code §§ 62.1-44.15:55, :56, or :58.

Scenario 1: Failure to comply with an ESC plan (documented in inspection reports), followed by issuance of a notice to comply, and then failure to implement corrective measures within the timeframe stated in the notice to comply

Scenario 2: LDA started without an approved ESC plan or required permits

Scenario 3: Alleged noncompliance is causing or is in imminent danger of causing harmful erosion of lands or sediment deposition in waters within the watersheds of the Commonwealth

As explained below, different procedural steps are required to issue stop work orders for each of these example scenarios.

Steps for issuing a stop work order:

Scenario 1:

When there is a failure to implement corrective measures within the timeframe stated in the notice to comply, the following steps must be taken to issue a stop work order:

1. Issue inspection report denoting potential violation(s)

2. Conduct follow up inspection. If failure to meet original deadline is not met, issue notice to comply with deadlines (in accordance with Administrative Process Act if issued by DEQ)

3. Violator fails to comply with notice to comply

4. Issue stop work order (in accordance with Administrative Process Act if issued by DEQ)

5. Mail stop work order with confirmation of delivery to address specified in permit application or plan certification, or hand delivered at the site of LDA

The LDA must stop on all **or part** of the site until specific corrective measures listed in notice to comply are taken. The stop work order remains in effect for 7 days from the date of service.

Scenario 2:

When the LDA has started without an approved ESC plan or required permits, a notice to comply is not required prior to issuing a stop work order. If issued by DEQ, the stop work order must be issued in accordance with the Administrative Process Act. The stop work order must be mailed with confirmation of delivery to the address specified in the land records of the locality **and** posted on the site where the disturbance is occurring. The LDA must stop on the entire site and the order remains in effect until an ESC plan is approved and required permits are obtained.

Scenario 3:

When the alleged noncompliance is causing or is in **imminent danger** of causing harmful erosion of lands or sediment deposition in waters within the watersheds of the Commonwealth, a notice to comply is not required prior to issuing a stop work order.

Appealing a stop work order

(VA Code §62.1-44.15:58)

The owner may appeal the issuance of a stop work order to the circuit court of the jurisdiction wherein the violation was alleged to have occurred or other appropriate court.

Any person violating, failing, neglecting, or refusing to obey a stop work order issued by DEQ or the VESCP authority may be compelled in a proceeding instituted in the circuit court of the jurisdiction wherein the violation was alleged to have occurred or other appropriate court to obey the stop work order and to comply therewith by injunction, mandamus, or other appropriate remedy.

Lifting a stop work order

(VA Code §62.1-44.15:58)

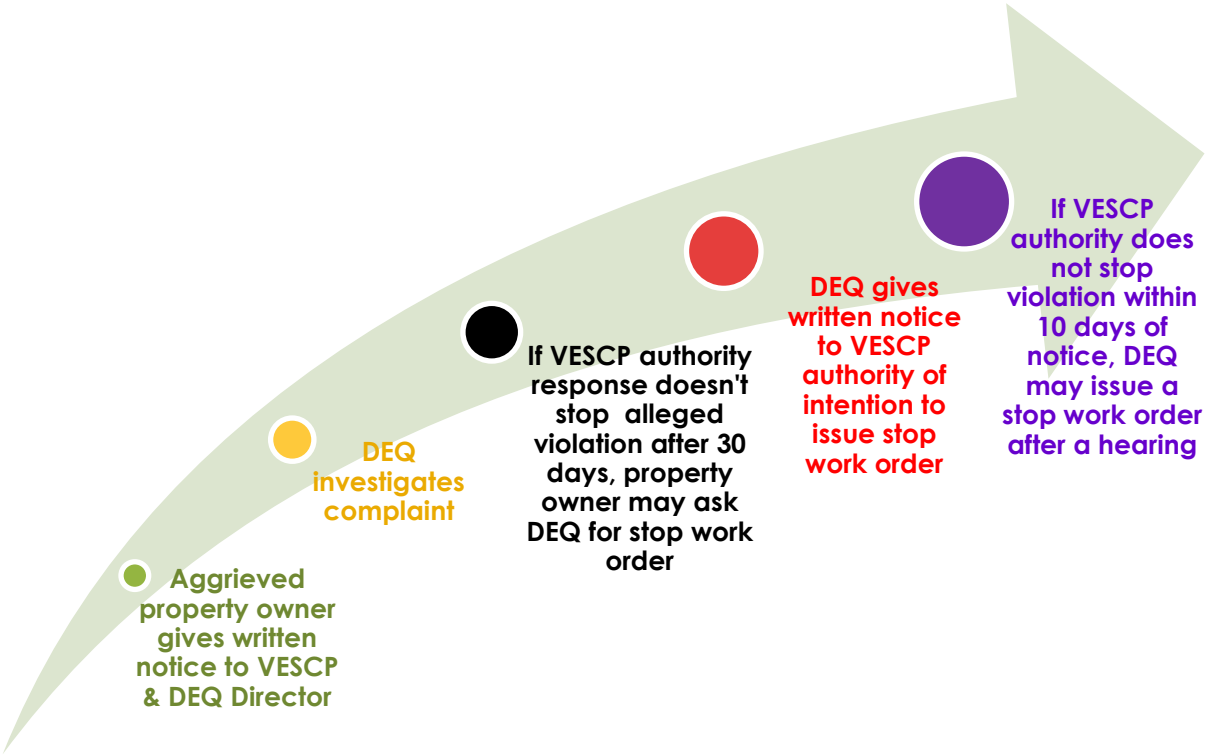
Upon completion and approval of corrective action or obtaining an approved plan or any required permits, the stop work order shall immediately be lifted. Nothing in this section shall prevent DEQ, the Board, or the chief administrative officer or his designee on behalf of the VESCP authority from taking any other action specified in § 62.1-44.15:63 (penalties, injunctions and other legal actions).

Stop work order process when owner of damaged property contacts DEQ

(VA Code §62.1-44.15:64)

The graphic below outlines the procedure that aggrieved property owners need to follow if seeking a stop work order from DEQ for an alleged violation.

Process for aggrieved property owners



★DEQ may issue an emergency stop work order without advance notice or hearing in cases of imminent danger. After issuing an emergency stop work order, DEQ must 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.

If a person who has been issued an order or emergency order is not complying with the terms the Board may institute a proceeding in the appropriate circuit court compelling the person to comply with such order. If the person still does not comply, then they shall be subject, in the discretion of the court, to a civil penalty not to exceed $2,000 for each violation. Any civil penalties assessed by a court shall be paid into the state treasury.

Judicial Appeals

(VA Code §62.1-44.15:62)

A final decision by a county, city, or town, when serving as a VESCP authority, is 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.

Final decisions of the Board, DEQ, or district shall be subject to judicial review in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

Injunctive relief (court ordered)

(VA Code §62.1-44.15:63)

A VESCP authority, DEQ, or the owner of property that has sustained damage or which is in imminent danger of being damaged may apply for injunctive relief to the circuit court wherein the land lies or other appropriate court without having to show that an adequate remedy at law does not exist.

Before applying for injunctive relief, the property owner must notify the following people/entities in writing that a violation of the VESCP has caused, or creates a probability of causing, damage to their property:

The person who has allegedly violated the VESCP

DEQ

VESCP authority

Additionally, before the aggrieved property owner applies for injunctive relief, neither the person who has allegedly violated the VESCP, DEQ, nor the VESCP authority must have taken corrective action within 15 days to eliminate the conditions that have caused, or create the probability of causing, damage to their property.

Injunctive relief is a court order requiring a person to do or cease a specific action.

Erosion and sediment control violations on sites that are also regulated under the Virginia Stormwater Management Act (VSMA) and regulations may be subject to the more severe penalties under the VSMA.

Adopting civil penalties through ordinances or regulation

(VA Code §62.1-44.15:54)

Civil penalties can be assigned by the VESCP for any violation of the following:

VESCL

Regulations

Order of the Board

Program requirements

Permit conditions

Penalty requirements:

- Civil penalty for one violation must be between $100 and $1,000
- Each day of violation is a separate offense
- Total for specific violation over time cannot exceed $10,000

★ Adoption of an ordinance for violations that are subject to a civil penalty replaces criminal sanctions and the prosecution of such violation as a misdemeanor.

Civil penalties

(VA Code §62.1-44.15:54)

Civil penalties are assessed by the court in accordance with the requirements in the following table:

Civil Penalties assessed by the court		
Behavior	**Assessing penalty**	**Penalty**
Violated, failed, neglected or refused to obey any of the following: VESCL Regulations or order of the Board Local VESCP authority order, notice or requirement DEQ order, notice or requirement Permit	Civil penalty = $100 to 1,000 per day, with a max. total of $ 10,000 Court assess civil penalty ($2,000/day)	In accordance with VESCP authority schedule of civil penalties, if adopted (Subsection K of § 62.1-44.15:54, discussed above) Penalties assessed by court paid into treasury of locality where project located If locality or its agent is the violator, penalties paid into state treasury

Civil penalty issued by the court

(VA Code §62.1-44.15:63)

Any person violating or failing, neglecting, or refusing to obey any injunction, mandamus, or other remedy obtained pursuant to this section shall be subject, in the discretion of the court, to a civil penalty not to exceed $2,000 for each violation. A civil action for such violation or failure may be brought by the VESCP authority wherein the land lies or DEQ.

Misdemeanors

(VA Code §62.1-44.15:63)

Violators of the VESCL shall be guilty of a Class 1 misdemeanor (confinement in jail for not more than twelve months and/or a fine of not more than $2,500) unless the VESCP authority has adopted an ordinance for civil penalties (discussed above and in Module 3.b.1).

Commonwealth Attorney/Attorney general

(VA Code §62.1-44.15:63)

Upon request of a VESCP authority, the attorney for the Commonwealth shall take legal action to enforce the provisions of this article. Upon request of the Board, DEQ, or the district, the Attorney General shall take appropriate legal action on behalf of the Board, DEQ, or the district to enforce the provisions of this article.

3c. DEQ Compliance Review of a VESCP

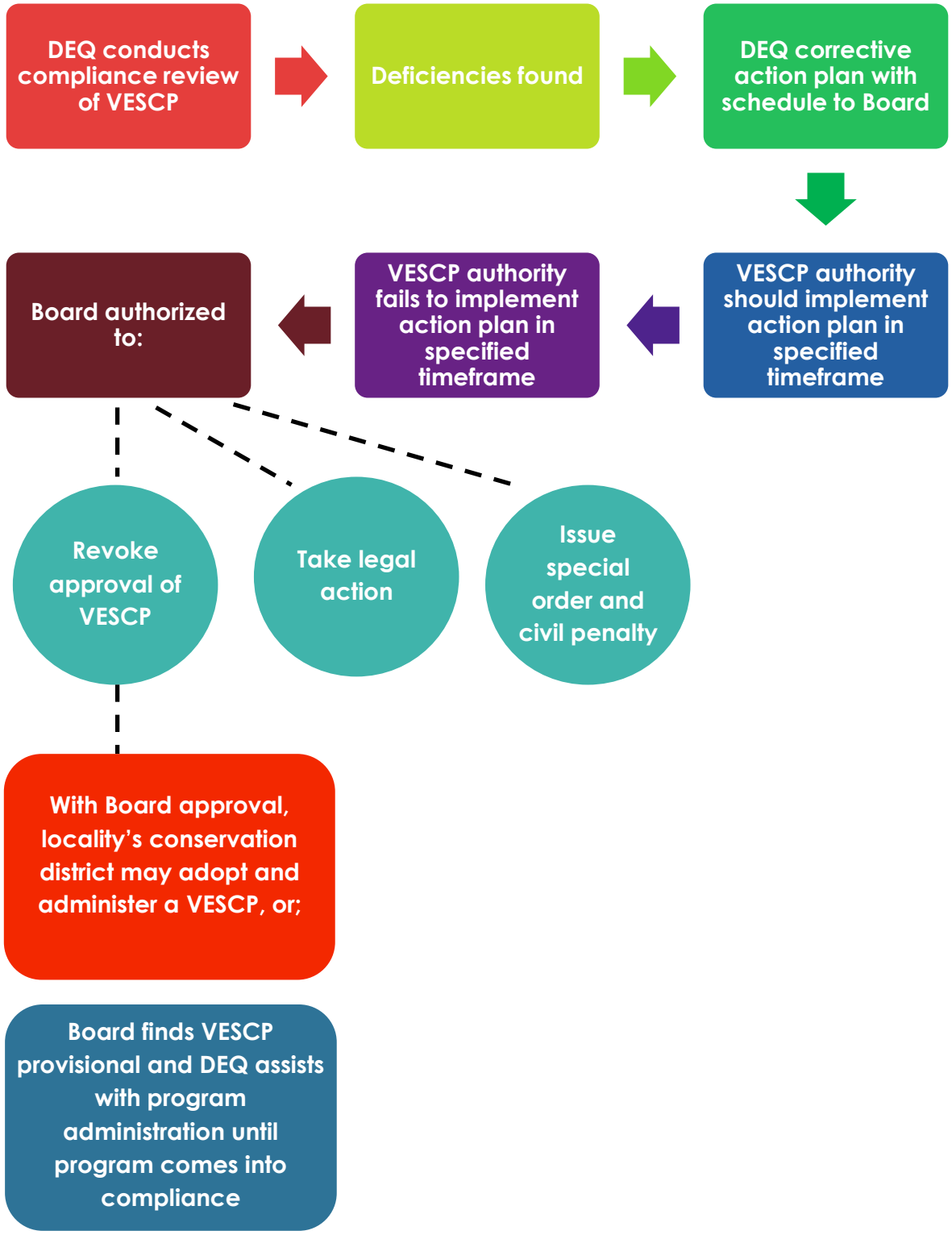
The VESCL requires Board to set a schedule (DEQ) to review and evaluate the effectiveness of VESCPs (VA Code §§62.1-44.15:52 and :54) That schedule is at least once every five years.

After completing a VESCP compliance review where deficiencies are found, DEQ will provide results and compliance recommendations to the Board in the form of a corrective action agreement. The Board will then establish a schedule for the VESCP authority to come in compliance.

If the authority has not implemented the necessary compliance actions within the required timeframe, the Board has the authority to:

- Issue a special order to any VESCP, imposing a civil penalty not to exceed $5,000 per day with the maximum amount not to exceed $20,000 per violation;
- Revoke its approval of the VESCP; or
- Take legal action against the VESCP to ensure compliance

Example compliance review process and Board action for a locality found to have a non-compliant VESCP



Revoked approval of VESCP

(VA Code §62.1-44.15:54)

If the Board revokes the approval of the VESCP of a county, city, or town, and the locality is in a district, the Board will approve the district to take over the program and it will adopt regulations to carry out the program.

If the Board revokes its approval of a VESCP of a district, or of a county, city, or town not in a district, or finds that a local program has not been adopted when required, the Board shall find the VESCP authority provisional, and DEQ will assist with the administration of the program until the Board finds the VESCP authority compliant.

If the Board revokes its approval of a state entity, federal entity, or a linear project subject to annual standards and specifications the Board shall find the VESCP authority provisional, and have the Department assist with the administration of the program until the Board finds the VESCP authority compliant with the requirements of this article and associated regulations.

Reporting to DEQ (VA Code §62.1-44.15:59)

Each VESCP authority shall report to DEQ on a time schedule established by the Department a listing of each LDA for which an ESC plan has been approved by the VESCP.

9VAC25-840-65 goes on to clarify that Department has established the schedule for reporting by an Authority to be at least monthly.