

# Module 3

## VESC Program Elements, Law Overview for Inspectors

# Module 3 contents

**3a. Overview-Roles of VESCP Officials**

**3b. Program Statutory requirements, Law  
overview**

**3c. Program Review by DEQ**



# Module 3a. Roles of VESCP staff

## 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

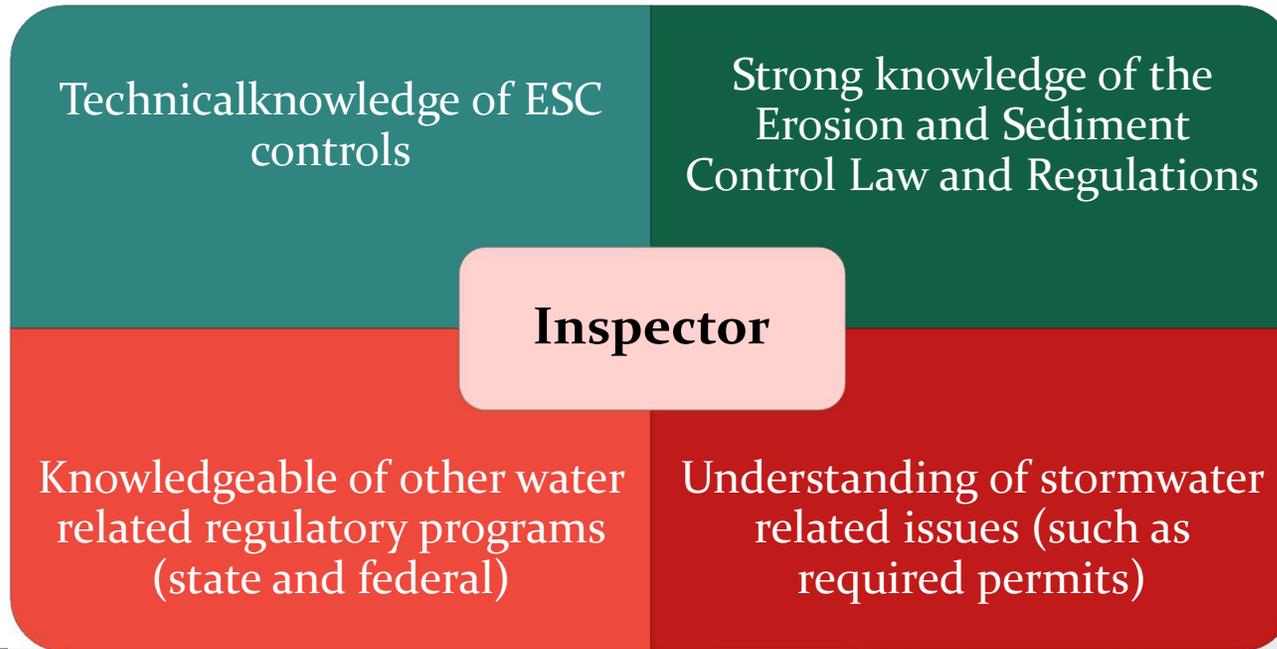


## Roles and Responsibilities in a VЕСP– Inspector

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



The inspector determines if land-disturbing activities are in compliance with the approved plan and the minimum standards, by examining a site for compliance with the program



## Roles and Responsibilities in a VESC– 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



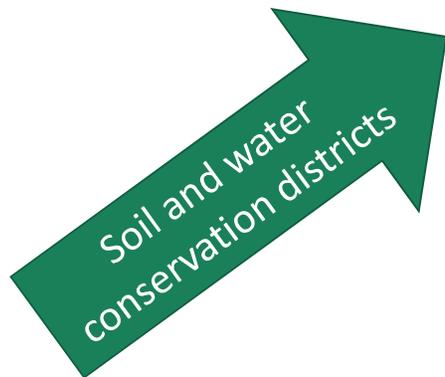
“who may be the same person”

## Assistance with VESCP responsibilities



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

**Detailed in  
62.1-44.15:58-B**



## **Module 3b.**



# **Statutory Requirements: Virginia Erosion and Sediment Control Law**

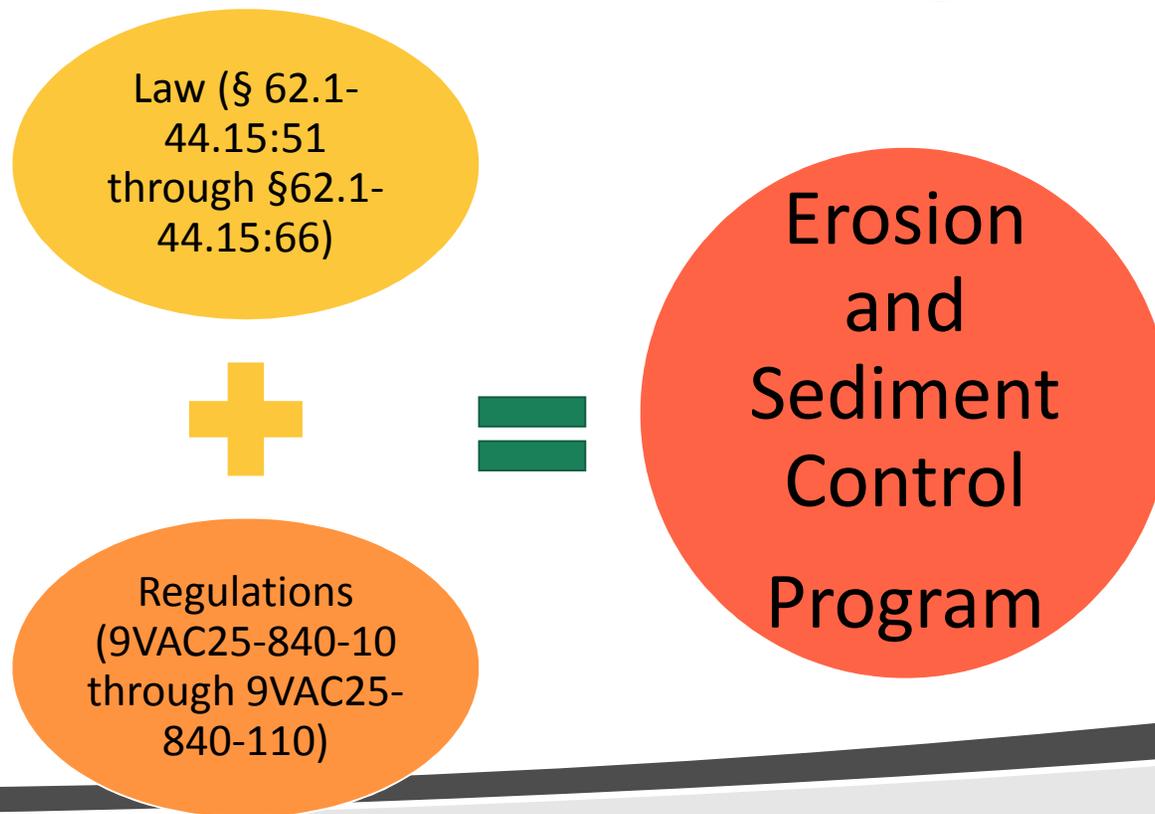


## Purpose of the Law

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”



# Erosion and Sediment Control in Virginia





## 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.**



## **Definitions (Section 62.1-44.15:51.)**

### **Agreement-in-lieu of a plan →**

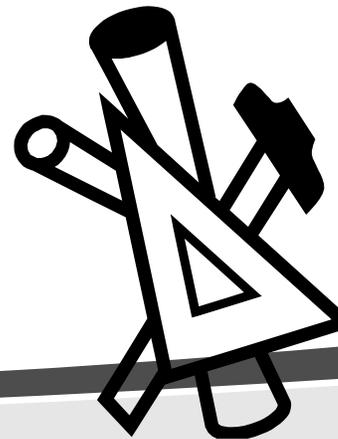
**A contract between plan approving authority and the owner which specifies ESC measures to be implemented in the construction of a single family dwelling**



## 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 ;



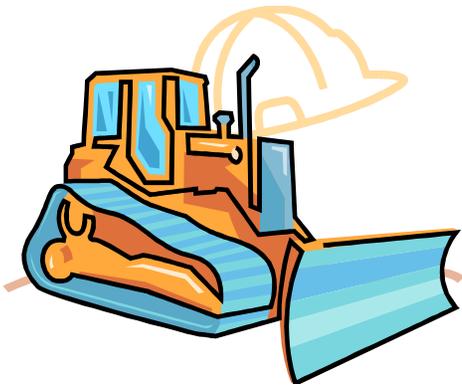
..... clearing



..... grading,



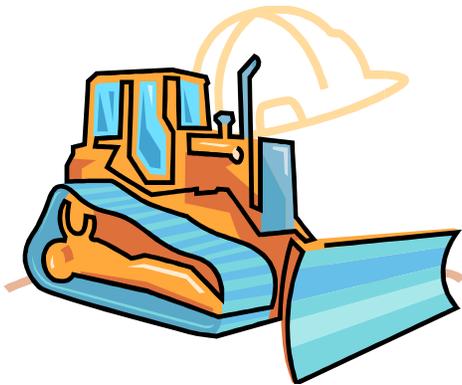
..... excavating,



.....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



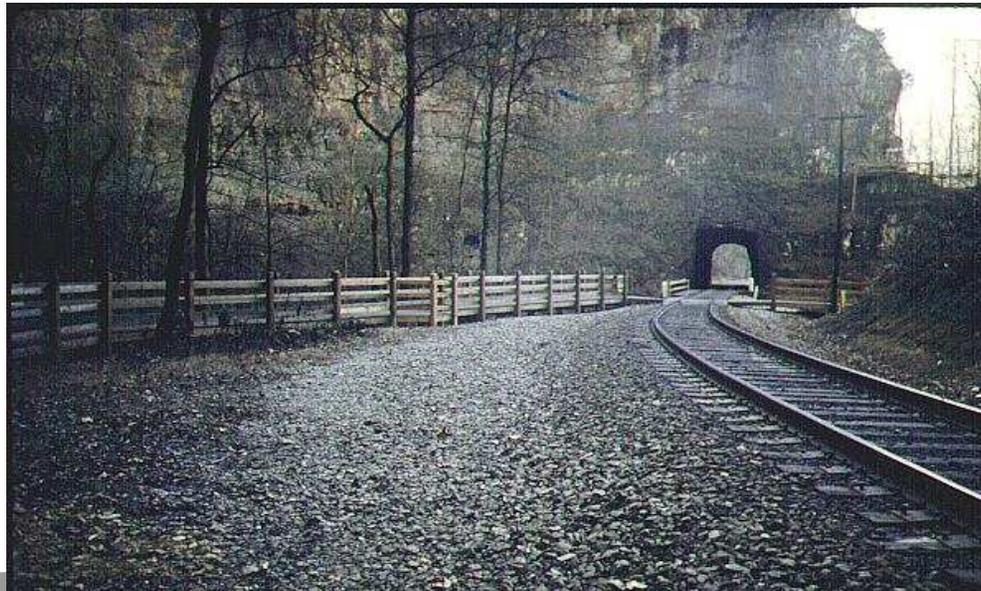
## But shall not include:

- 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



## Approved Plan Required



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



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

# 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 8)**

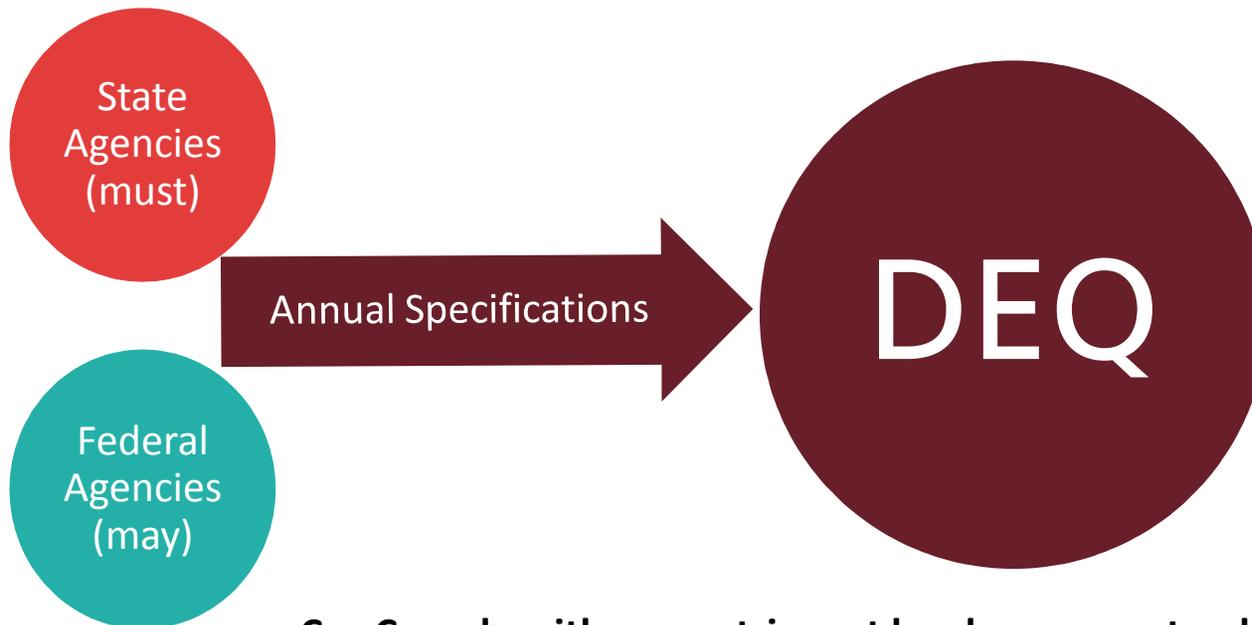
Must submit	May submit
Electric companies	Authorities created under <a href="#">§15.2-5102</a> (ex. water or sewer authority)
Natural gas companies	State and federal entities
Telephone utility companies	
Interstate and intrastate natural gas pipeline companies	Wetland mitigation or stream restoration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

Applies to these activities	
Construction, installation, or maintenance of:	
<ul style="list-style-type: none"> <li>• Electric transmission lines</li> <li>• Water and sewer lines</li> </ul>	<ul style="list-style-type: none"> <li>• Natural gas lines</li> <li>• Telephone utility lines</li> </ul>
Railroad company construction of:	
<ul style="list-style-type: none"> <li>• Tracks</li> <li>• Bridges</li> <li>• Other related structures and facilities</li> </ul>	<ul style="list-style-type: none"> <li>• Rights-of-way</li> <li>• Communication facilities</li> </ul>

# State Agency and Federal Projects



Detailed in 62.1-44.15:56 C



C. Comply with more stringent local program standards.



**An important thing to consider for approval of an ESC plan, it must be....what?**

## What is an Adequate Plan?



- Does the plan meet Minimum Standards in the Erosion and Sediment Control Regulations and the VESCL?
- 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)



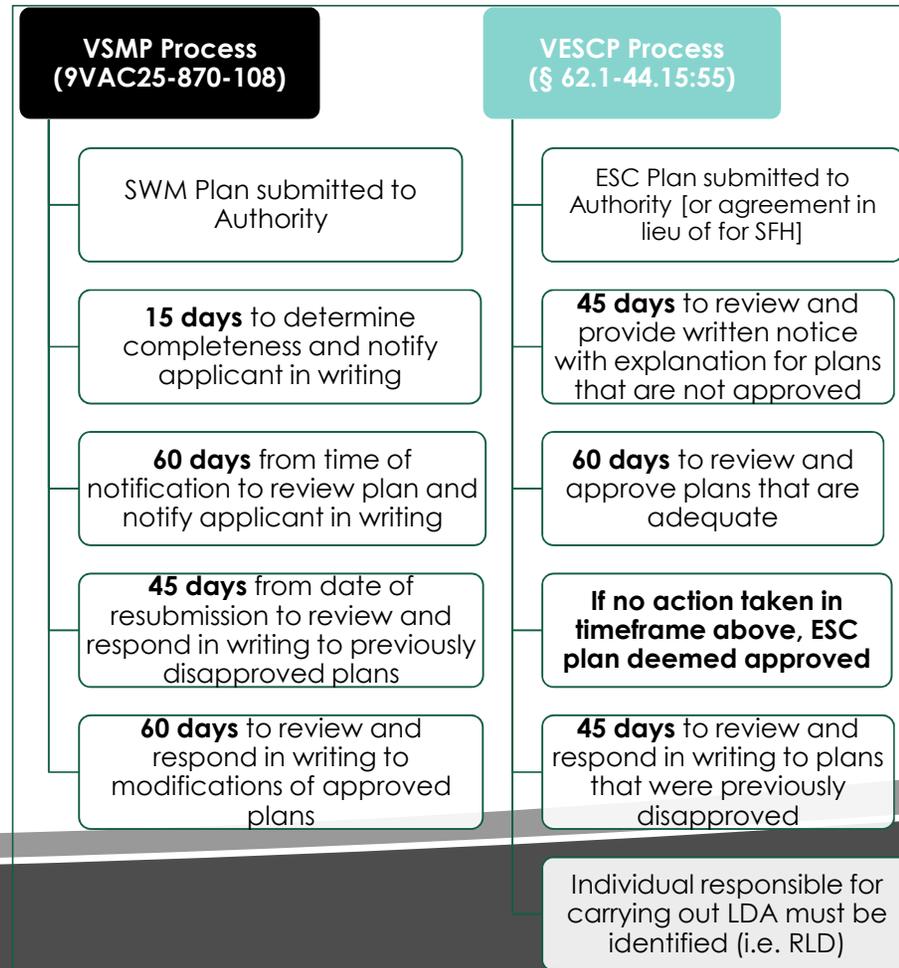
**Detailed in 62.1-  
44.15:55-B**

**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



# Power and duties of the State Water Control Board



Detailed in 62.1-44.15:52

## Power and duties of the State Water Control Board

- 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



# Power and duties of the State Water Control Board



**Detailed in 62.1-  
44.15:52**

## Power and duties of the State Water Control Board

- Provide technical assistance for VESCP authorities
- Establish minimum standards for program effectiveness
- Approve VESCP authorities
- Conduct periodic program compliance reviews
- Issue certificates of competence

## Change of Plan

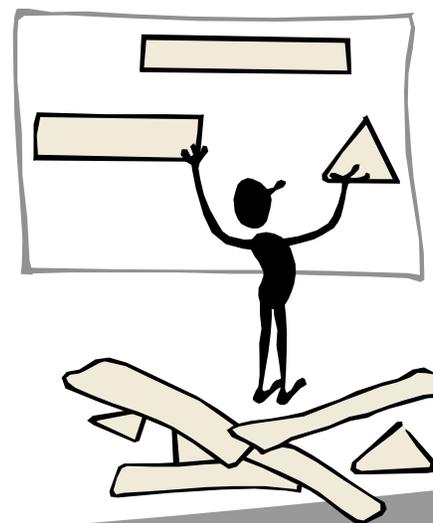


Detailed in 62.1-  
44.15:55-C

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)**
- (G) Identifies the land owner as responsible for plan submittal & approval.**



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



## Permit Issuance



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

**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**

**(G) Identifies the land owner as responsible for plan submittal & approval.**



## Security for performance

Detailed in 62.1-  
44.15:57

- Provides option to require bonds or surety
- Requires return of unused bonds or surety within 60 days of adequate stabilization



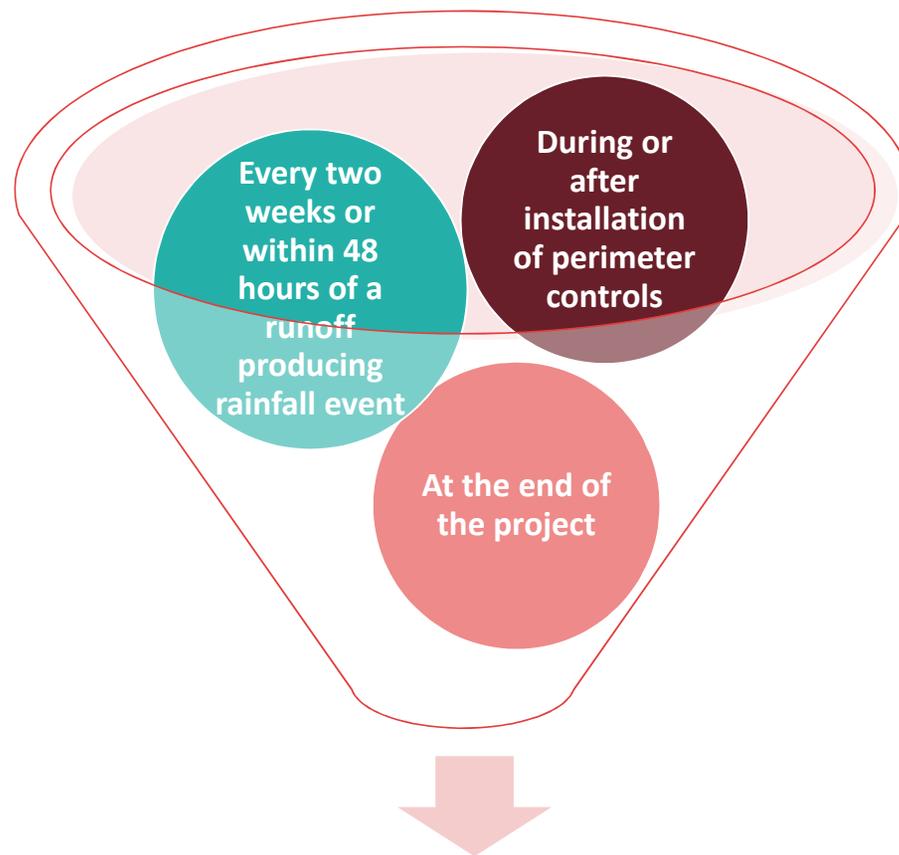
## Inspections



**Detailed in 62.1-  
44.15:58**



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



**Regulations**  
**Detailed in**  
**9VAC25-840-60**

**Inspections**



## Authorization for more stringent standards



**Detailed in  
62.1-44.15:65**

- **Local programs may require more stringent standards**
- **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**



## Right of entry



Detailed in 62.1-  
44.15:60

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





## Monitoring Reports



Detailed in 62.1-  
44.15:58



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



# Erosion and Sediment Control Enforcement

- **The local VESCP authority must have procedures in place to conduct enforcement of the ESC Ordinance**

## Enforcement Overview

- 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

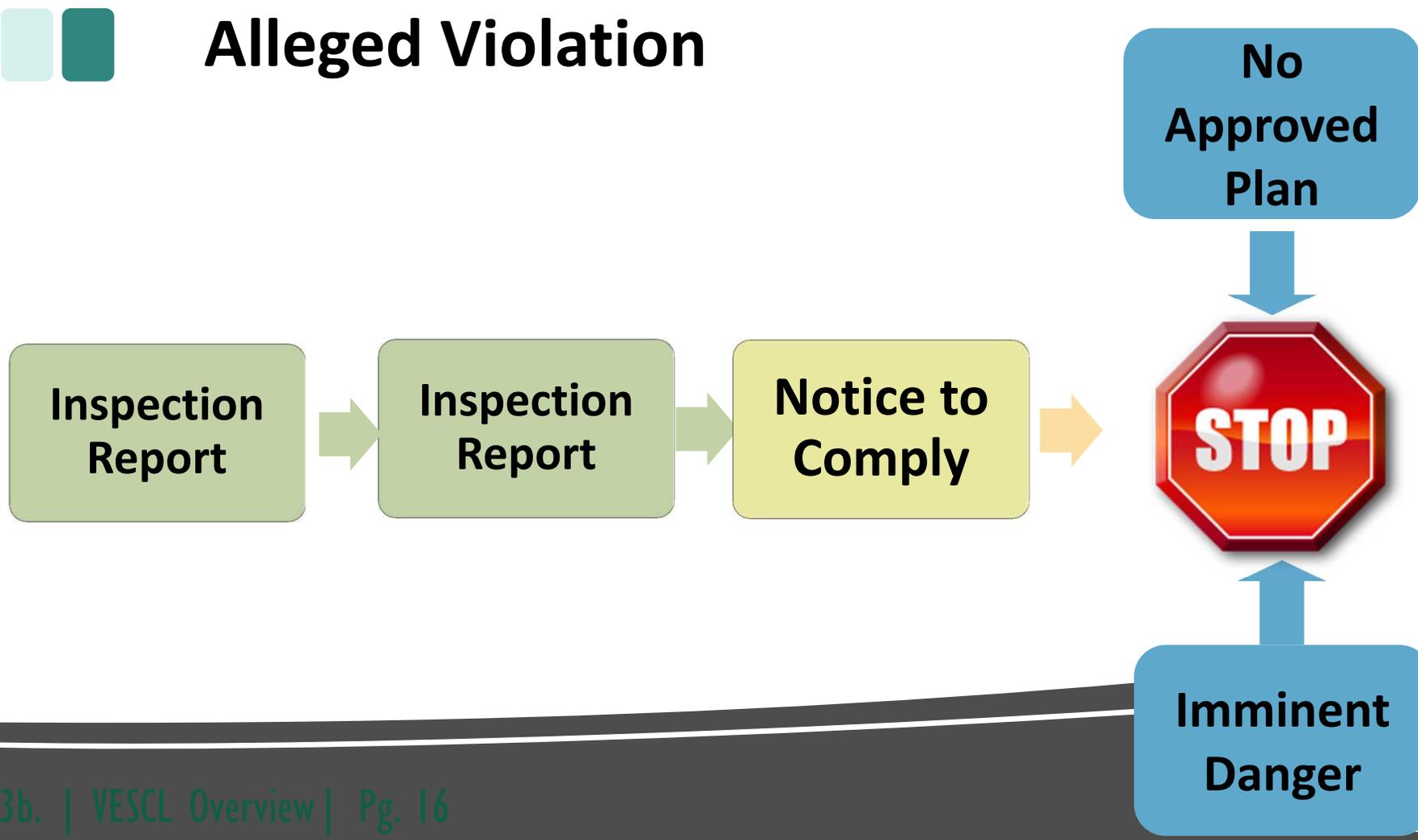
**Allows for other enforcement action to commence...**



**Detailed in 62.1-44.15:58-A & C**



# 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





## Lifting a Stop Work Order



**Detailed in 62.1-  
44.15:58**

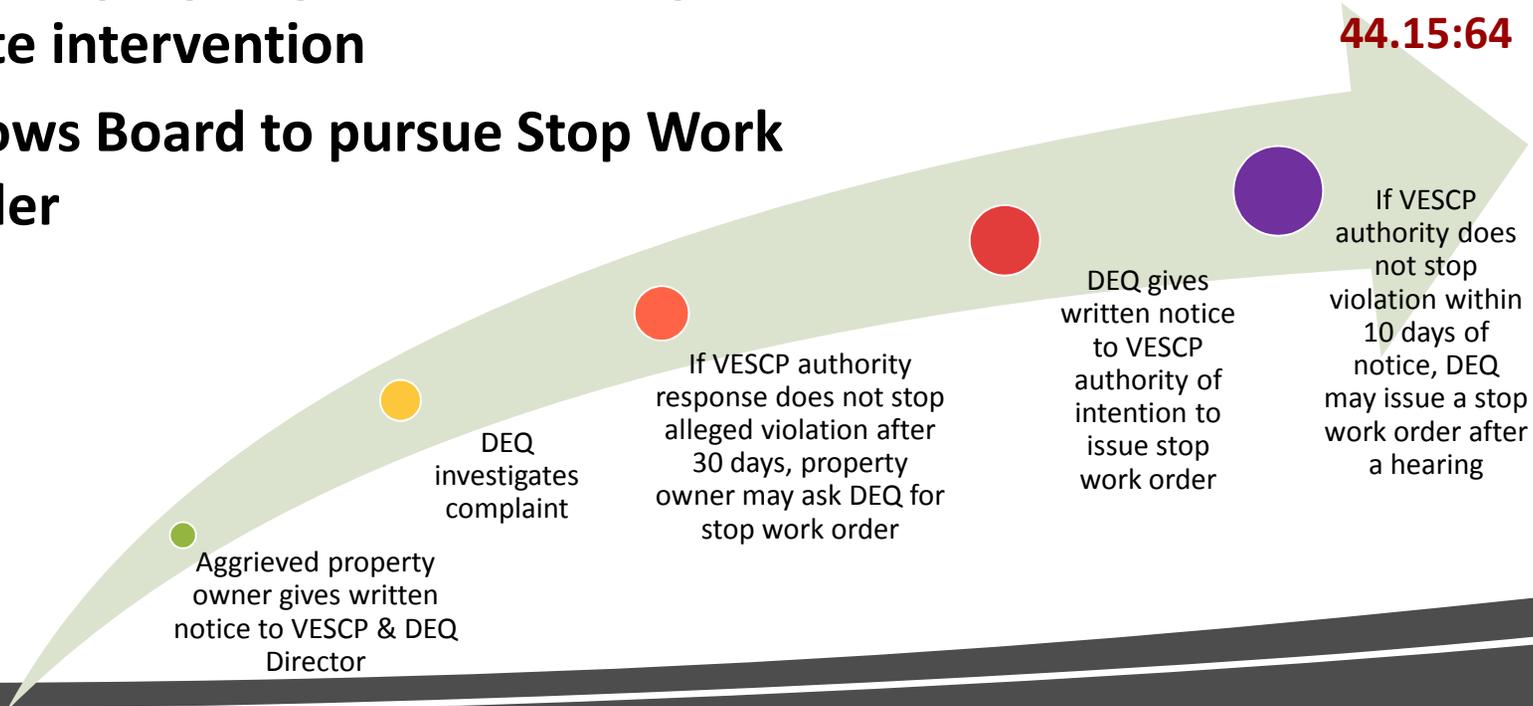
**Upon completion and approval of corrective action or obtaining an approved plan or required permits, the stop work order shall be immediately lifted**

# Stop Work Order By Board



Detailed in 62.1-44.15:64

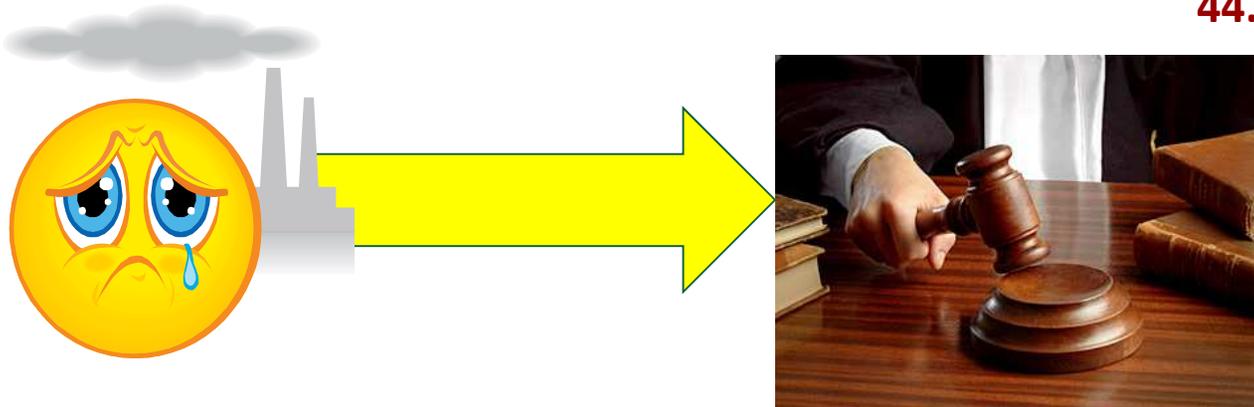
- Allows property owners to request state intervention
- Allows Board to pursue Stop Work Order



# Judicial Appeals



Detailed in 62.1-44.15:62



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

# Injunctive relief (court ordered)



Detailed in  
62.1-44.15:  
63-C



Write letter

No response in 15 days

# Civil Penalties

A VESCP authority may adopt a schedule of civil penalties through your local ordinance or local regulation.



Penalties can be a given for violations of the following:

- VESCL
- Regulations (Minimum Standards)
- Failure to comply with an order of the Board
- Program (VESCP) requirements
- Permit conditions





## Civil Penalties

### Civil Penalty Amounts:

- One violation, between \$100.00 & \$1,000.00
- Each day is a separate offense
- Total maximum cannot exceed \$10,000.00



# Civil Penalties



## Civil Penalties

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	Court may assess a civil penalty of \$2,000/day for each violation.	Subsection K of § <a href="#">62.1-44.15:53</a> .  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 penalties are in lieu of criminal prosecution by the VESCP authority**



## Penalties, injunctions, and other legal actions



Detailed in 62.1-44.15:63

- Violators shall be guilty of a Class 1 misdemeanor





# Module 3c.

DEQ Compliance Review of a VESCP



## Local ESC Programs



Detailed in  
62.1-44.15:54-C



VESCP

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:**

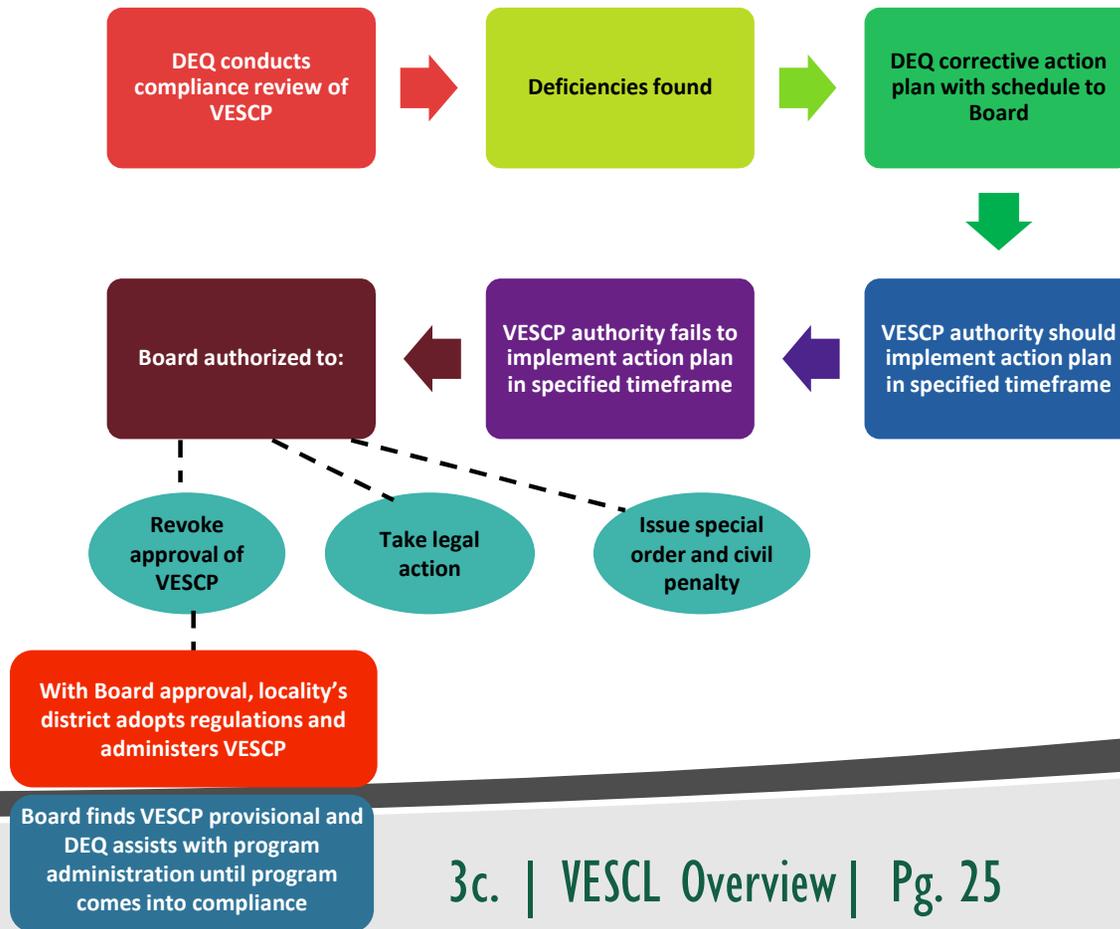
**The Board shall establish a schedule for the VESCP authority to come in compliance.**

**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

# Reporting to DEQ



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



Detailed in  
62.1-44.15:59

VESCP Authority

DEQ

On a schedule established  
by DEQ





## End of Module 3

# QUESTIONS?