Module 2

Administering a VESCP

“An overview of the VESCL”

Module 2 contents

2a. Overview-Roles of VESCP Officials

2b. Program Statutory requirements, Law overview

2c. Program Review by DEQ

Module 2a. 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 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

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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"

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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

Soil and water conservation districts

Engineering/ consulting firms

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Module 2b.

Statutory Requirements: Virginia Erosion and Sediment Control Law

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

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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"

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.)

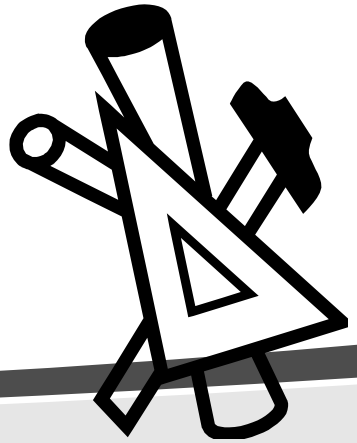
Agreement-in-lieu of a plan ➔

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.)

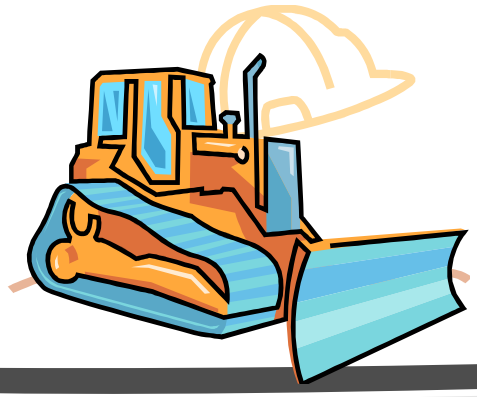
Erosion impact area ➔

- **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.**

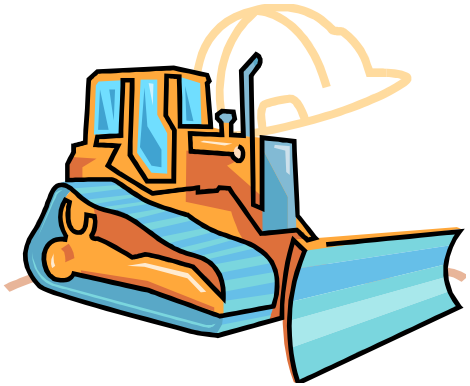
Definitions (Section 62.1-44.15:51.)

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



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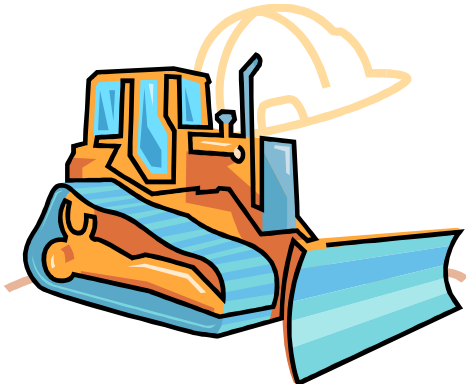
…….. grading,



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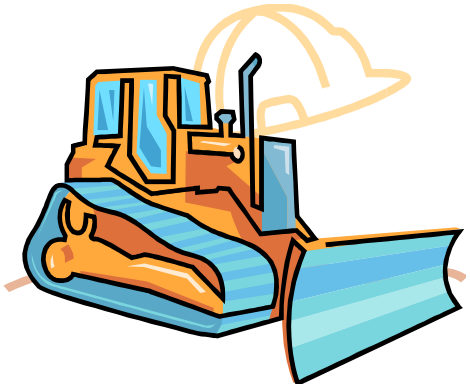
……. excavating,



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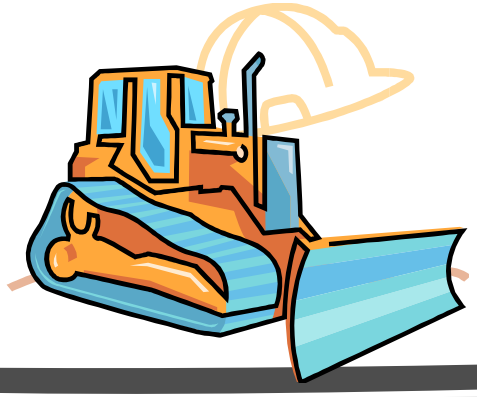
…….transporting,



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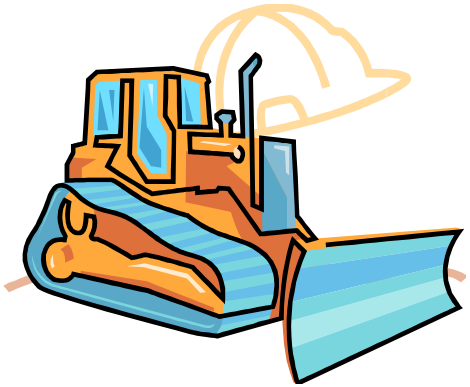
……and filling of land.



But shall <u>not</u> include:

Minor land-disturbing activities such as:

- **home gardens**
- **landscaping**
- **repairs and maintenance work**

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But shall <u>not</u> 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 <u>not</u> include:

Permitted Surface or deep mining

But shall <u>not</u> include:

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

But shall <u>not</u> 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 <u>not</u> include:

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

But shall <u>not</u> include:

Agricultural engineering operations➔

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

But shall <u>not</u> include:

If disturbed land:

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

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But shall <u>not</u> include:

Installation of fence or sign posts

But shall <u>not</u> include:

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

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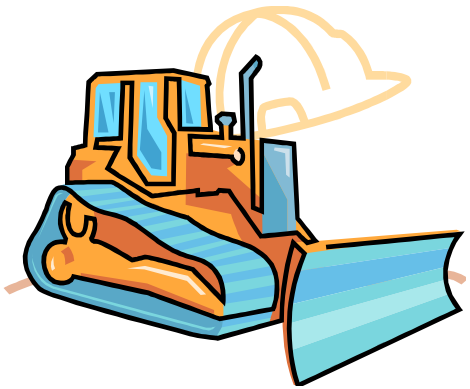
But shall <u>not</u> include:

Emergency work to protect life, limb, or property

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)**

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Annual Standards & Specifications

Detailed in 62.1-44.15:55-D

Annual specifications required for:

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

Operate a VESCP through submittal of annual specifications

- State entities
- Federal entities
- Linear projects

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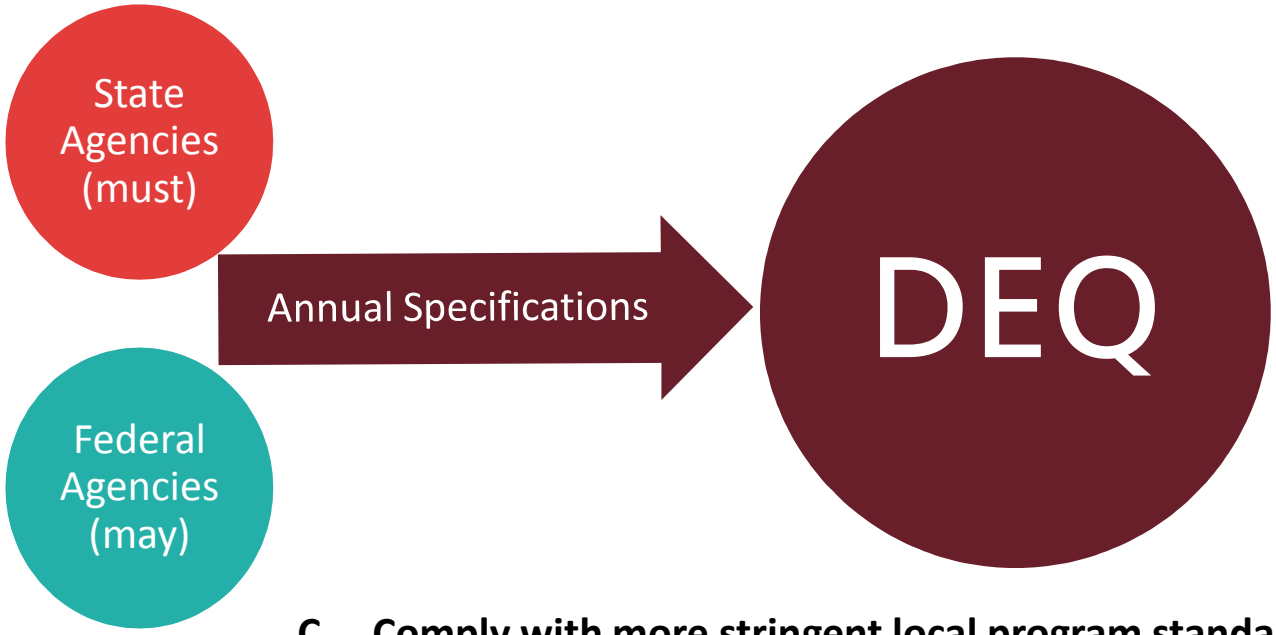
Annual Standards and Specifications
(Page 8)

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	• Natural gas lines
• Water and sewer lines	• Telephone utility lines
Railroad company construction of:	
• Tracks	• Rights-of-way
• Bridges	• Communication facilities
• Other related structures and facilities	

State Agency and Federal Projects

Detailed in 62.1-44.15:56 C



C. Comply with more stringent local program standards.

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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?

Plan Approval Timeline (RLD)

Detailed in 62.1-44.15:55-B

Name of the RLD needs to be provided prior to commencement of a LDA

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

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Approved Plan Timeline

Detailed in 62.1-44.15:55-B

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

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Comparison of VSMP & VESCP Plan Approval

VSMP Process (9VAC25-870-108)	VESCP Process (§ 62.1-44.15:55)
SWM Plan submitted to Authority	ESC Plan submitted to Authority [or agreement in lieu of for SFH]
15 days to determine completeness and notify applicant in writing	**45 days** to review and provide written notice with explanation for plans that are not approved
60 days from time of notification to review plan and notify applicant in writing	**60 days** to review and approve plans that are adequate
45 days from date of resubmission to review and respond in writing to previously disapproved plans	If no action taken in timeframe above, ESC plan deemed approved
60 days to review and respond in writing to modifications of approved plans	**45 days** to review and respond in writing to plans that were previously disapproved
	Individual responsible for carrying out LDA must be identified (i.e. RLD)

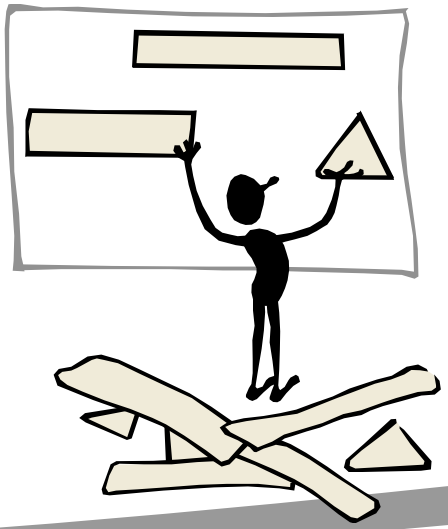
Change of Plan

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)



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Additional Approved Plan Requirements

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

(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 <u>owner</u> as responsible for plan submittal & approval.

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**

Inspections

Detailed in 62.1-44.15:58

Requires inspections of land disturbing activities by program authority.

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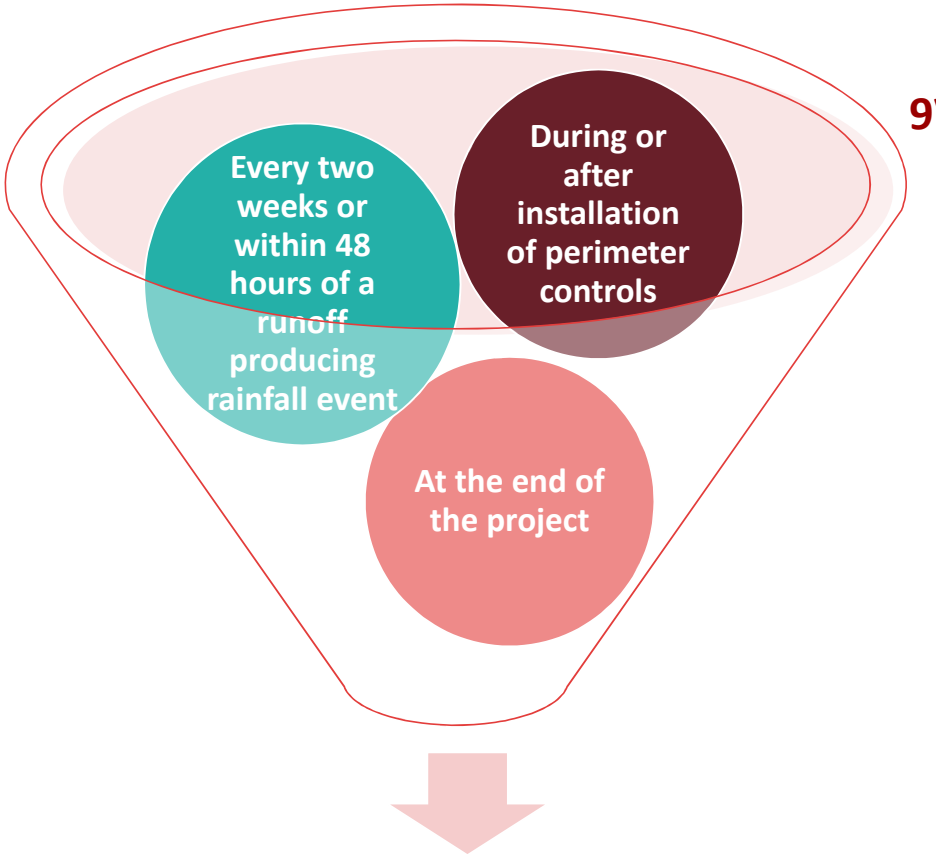
Regulations

Detailed in

9VAC25-840-60



Inspections

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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 defendable or scientific basis**
- **Must go through the public hearing process at the locality**

Scientific basis for more stringent standards

Detailed in 62.1-44.15:65

- 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

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).

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Erosion and Sediment Control Enforcement

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

Enforcement 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...

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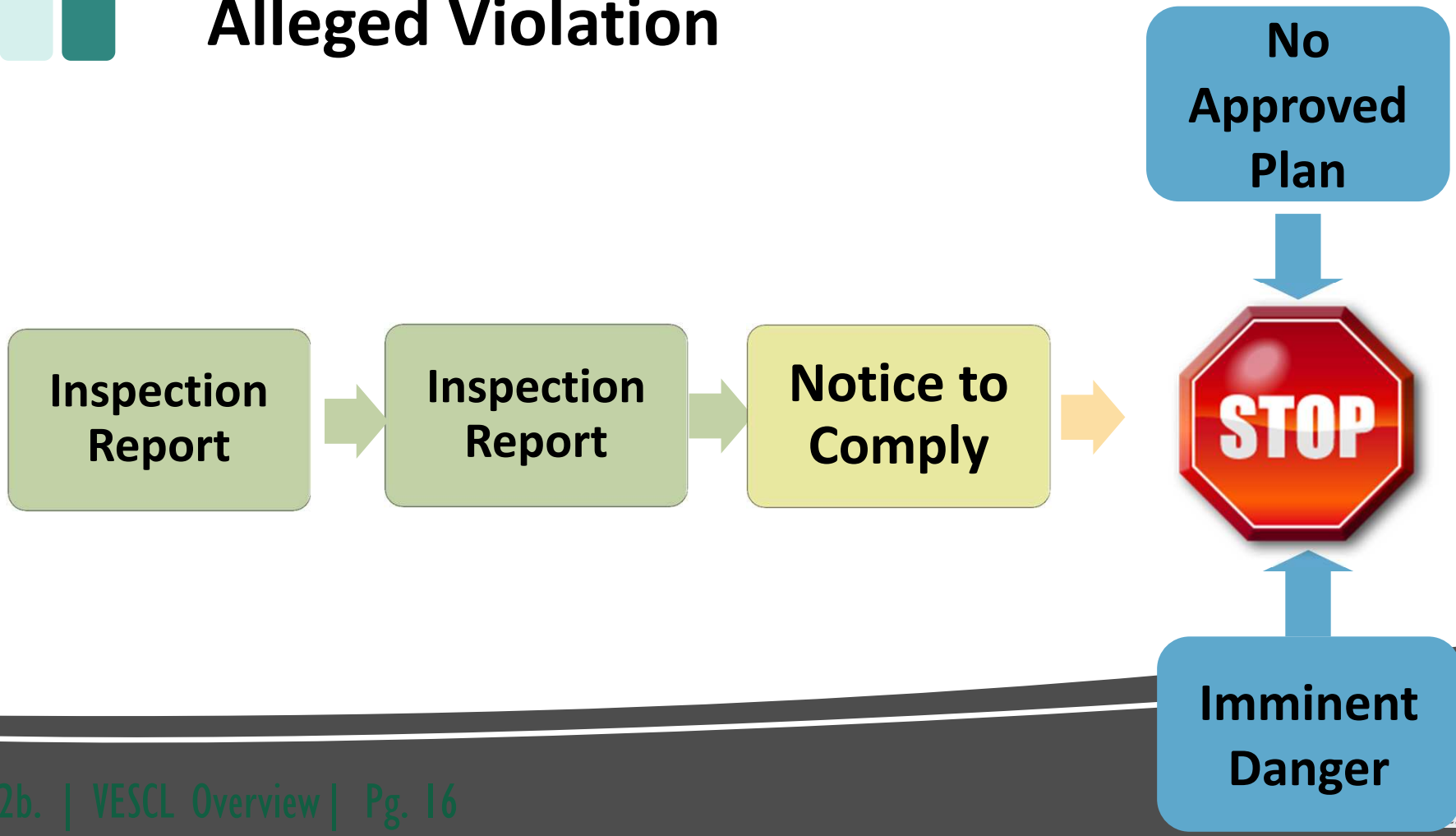
Alleged Violation



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

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Lifting a Stop Work Order

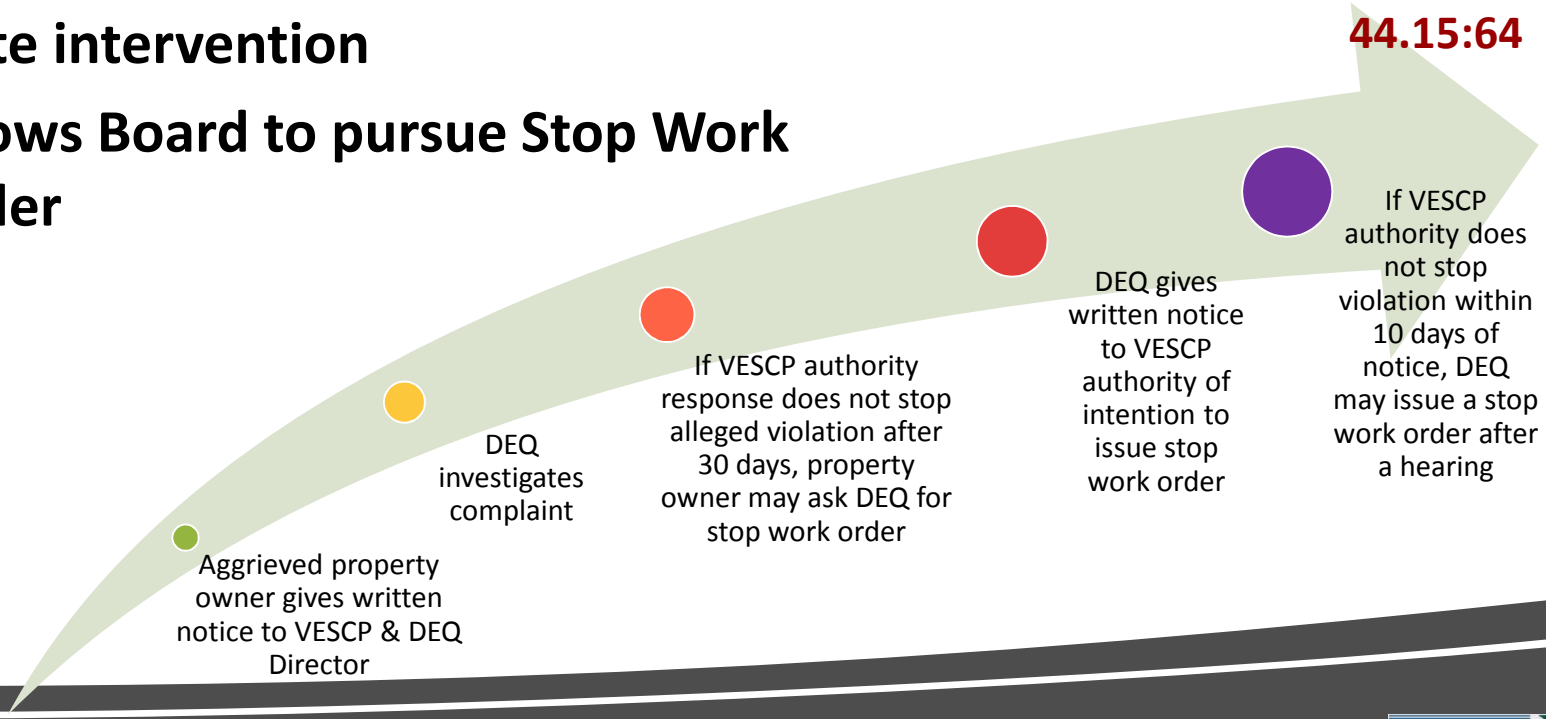
Detailed in 62.1-44.15:58

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

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

Detailed in 62.1-44.15:64



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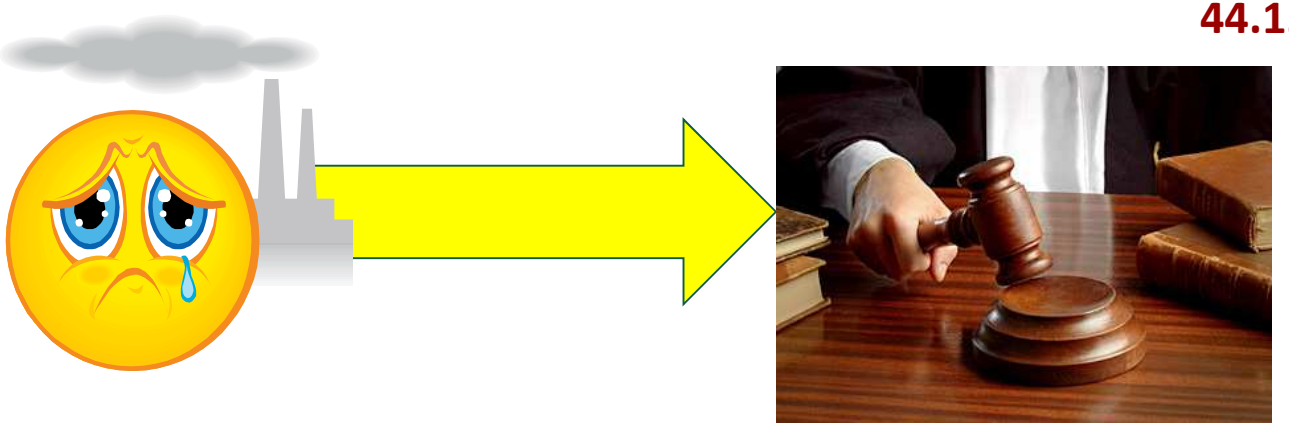
Judicial Appeals

Detailed in 62.1-44.15:62



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

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Injunctive relief (court ordered)

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

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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

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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 § 62.1-44.15:53. 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**

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Penalties, injunctions, and other legal actions

Detailed in 62.1-44.15:63

- **Violators shall be guilty of a Class 1 misdemeanor**

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Module 2c.

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

VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

Local ESC Programs

Detailed in 62.1-44.15:54-F

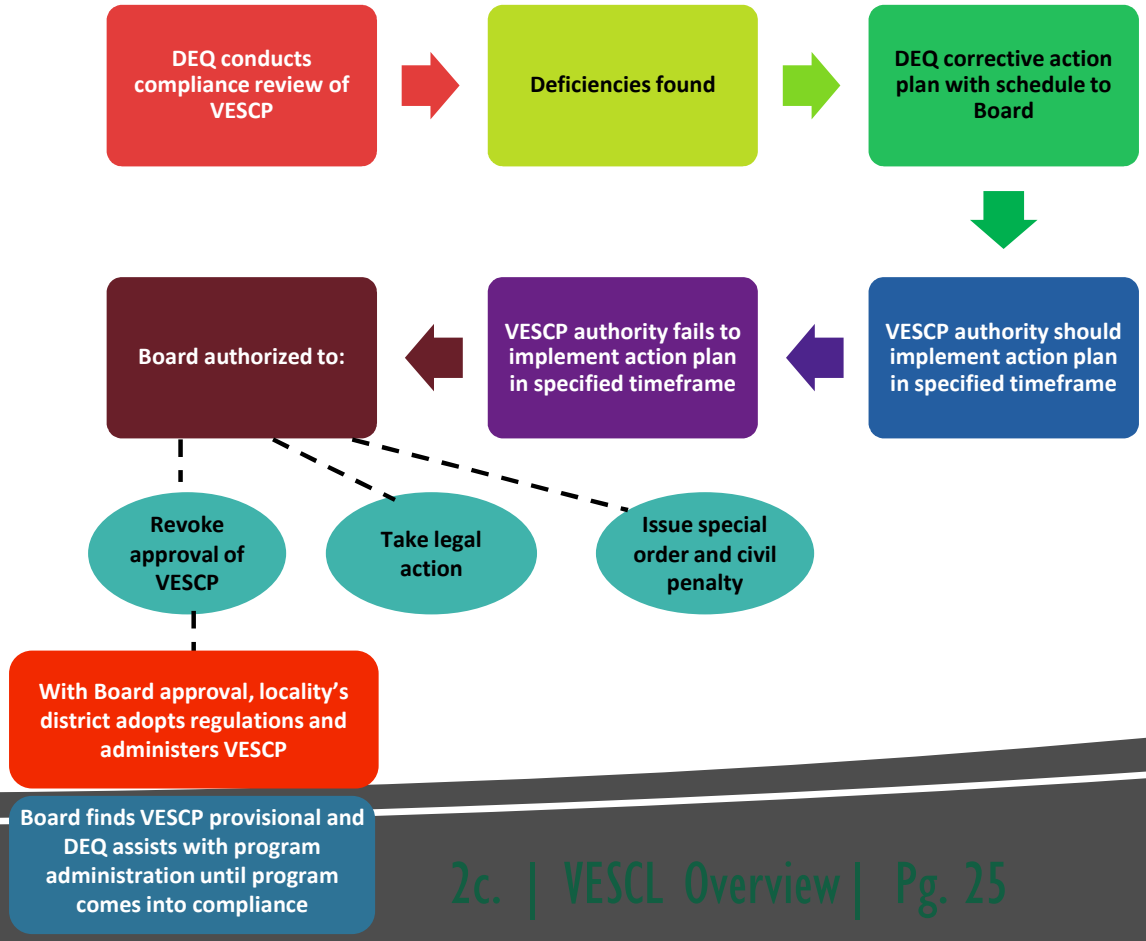
If a compliance review by the Board reveals that the program is inconsistent:

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



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Local ESC Programs

Detailed in 62.1-44.15:54-H

Part H – allows provisional operation of the VESCP

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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

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End of Module 2

QUESTIONS?