

Module 3: Administering a VSMP: Local Ordinances and Documentation Requirements for Non-Localities

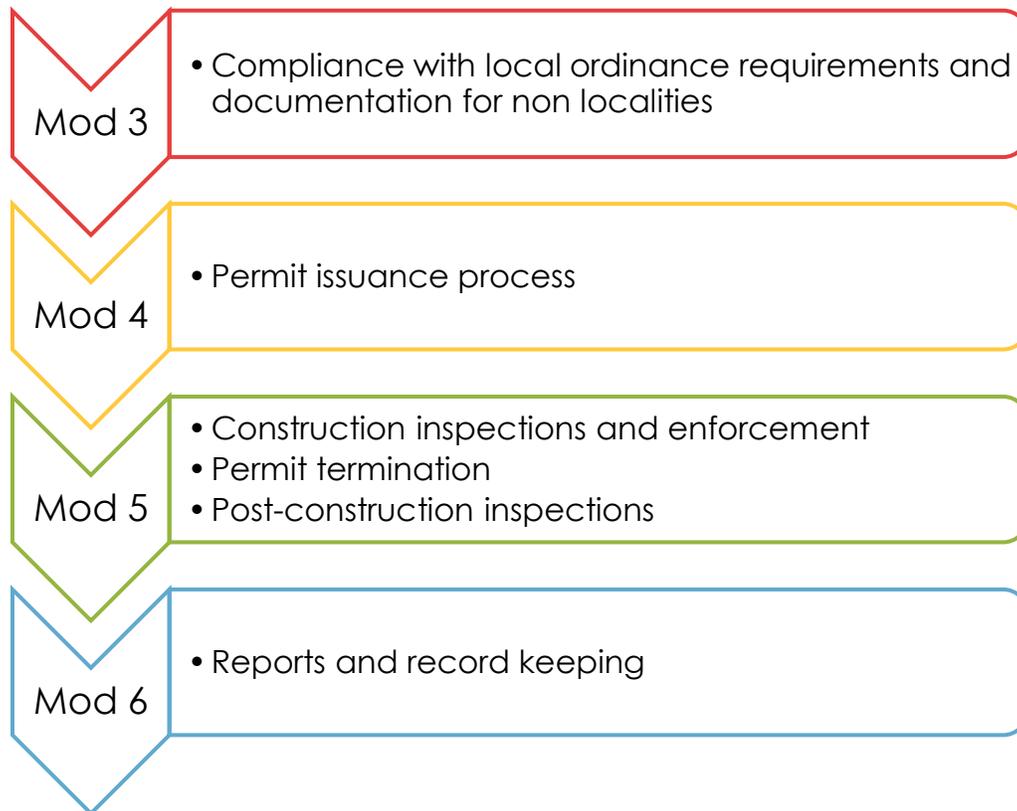
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Objectives

- List the administrative components of a VSMP that falls under the responsibility of the program administrator.
- Detail the VSMP local ordinance requirements.
- List and describe the enforcement tools available to a locality VSMP authority and/or DEQ for ensuring compliance with the VSMP.
- Distinguish between the required and optional elements of a locality VSMP enforcement program.
- Recall the maximum civil penalty that could be issued for violations of a VSMP.
- Recall which violations could be included in a locality's schedule of civil penalties (for which a penalty may be imposed).
- Distinguish between VSMP civil penalty monies collected by DEQ versus those collected by a locality VSMP authority in terms of where the funds are paid into and where they are used.
- Explain what type of VSMP violations are considered criminal and what criminal penalties are available.
- Discuss when and under what conditions localities are authorized to adopt more stringent ordinances and describe how a local VSMP authority would go about doing so.
- Recall when and under what conditions a locality VSMP authority may prohibit a DEQ approved BMP, or require more stringent conditions, and where these determinations can be made.
- Summarize the minimum requirements that must be included within a local ordinance and, via other program documentation, for other VSMP authorities.
- Identify the VSMP requirements for state entities and linear projects.
- Recall the DEQ review period process for a VSMP application.

3a. Overview

The program administrator is responsible for administering a VSMP, including the following:



3b. Ordinances



LOCAL ORDINANCE REQUIREMENTS

(§62.1-44.15:27, §62.1-44.15:49, 9VAC25-870-106, 9VAC25-870-148)

Each locality that administers an approved VSMP must administer a VSMP in conjunction with a local MS4 program (if applicable) and a local erosion and sediment control program (if applicable). The VSMP must:

- Be consistent with the Virginia Stormwater Management Program Regulations;
- Be compatible with the conditions of a MS4 permit (if applicable);
- Be at least as stringent as the provisions in the Construction GP;
- Provide provisions for the long-term responsibility for and maintenance of stormwater management control devices and other techniques for the management of the quality and quantity of stormwater runoff;
- Integrate the VSMP with local erosion and sediment control, flood insurance, flood plain management, and other programs requiring compliance before authorizing construction;
- Provide for the collection, distribution to the state if required, and expenditure of fees;
- Require policies and procedures to obtain and release bonds (if applicable); and
- Procedures for complying with the applicable reporting and recordkeeping requirements in 9VAC25-870-126.

The ordinance must:

- Identify the authority accepting complete registration statements and conducting plan review, plan approval, inspection, and enforcement;
- Require submission and approval of erosion and sediment control plans and stormwater management plans;
- Include requirements to ensure compliance with the stormwater pollution prevention plan (9VAC25-870-54), stormwater management plan (9VAC25-870-55), and pollution prevention plan (9VAC25-870-56);

- Include requirements for inspections and monitoring of construction activities by the operator for compliance with local ordinances;
- Include requirements for long-term inspection and maintenance of stormwater management facilities; and
- Include enforcement procedures and civil penalties.



Enforcement

(§ 62.1-44.15:25, :37, :42, 48, 9VAC25-870-116)

Informal and formal administrative enforcement procedures

(9VAC25-870-116)

A locality's VSMP authority must include components of the following informal and formal administrative enforcement procedures in its local ordinance:

- Verbal warnings and inspection reports;
- Notice of corrective action;
- Consent orders including civil charges in accordance with § 62.1-44.15:48 D 2 ; and
- Notices to comply in accordance with § 62.1-44.15:37.

Civil and criminal judicial enforcement procedures

(9VAC25-870-116)

A locality's VSMP authority must also include enforcement authority and a schedule of civil penalties for enforcement actions in its local ordinance. The maximum penalty the court may issue is **\$32,500** per violation per day. Criminal, misdemeanor, felony charges, and injunctions per § 44.15:42 and 44.15:48(D)(1) are also an option.

NOTE:

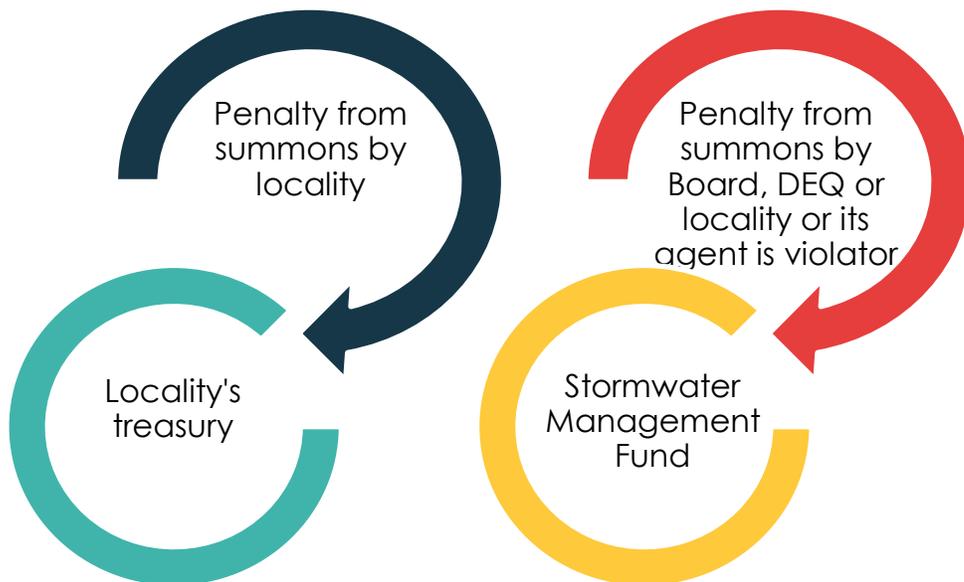
As discussed in Module 1a., DEQ enforces the Construction GP and locality VSMP authorities enforce their local permit.

Violations for which a penalty may be imposed include, but are not limited to:

1. No state permit registration,
2. No SWPPP,
3. Incomplete SWPPP,
4. SWPPP not available for review,
5. No approved erosion and sediment control plan,
6. Failure to install stormwater BMPs or erosion and sediment controls,
7. Stormwater BMPs or erosion and sediment controls improperly installed or maintained,
8. Operational deficiencies,
9. Failure to conduct required inspections, or
10. Incomplete, improper, or missed inspections.

Any civil penalty assessed by a court as a result of a summons issued by a locality VSMP authority shall be paid into the locality's treasury and is to be used for the purpose of minimizing, preventing, managing, or mitigating pollution of the waters of the locality and reducing environmental pollution in such manner as the court may direct.

When the penalties are assessed by the court as a result of a summons by the Board or DEQ, or where the violator is the locality, or its agent, the court will direct the penalty to be paid into the state treasury and deposited into the Stormwater Management Fund.



Notice to comply

(§62.1-44.15:37)

If it is determined by the locality VSMP authority or DEQ that there is a failure to comply with the permit conditions, notice must be served upon the permittee or person responsible for carrying out the permit conditions by registered or certified mail or at the development.

The notice must:

- Specify the measures needed to comply with the permit conditions and
- Specify the time within which such measures shall be completed.

Upon failure to comply within the time specified, the following actions may be taken:

- Stop work order may be issued by the locality VSMP authority;
- The local VSMP authority permit may be revoked by the locality VSMP authority;
- The Construction General Permit may be revoked by the Board; and/or
- The Board or the VSMP authority may take enforcement action.

Stop work order

(§62.1-44.15:37)

If a permittee fails to comply with a notice within the time specified, the VSMP authority or DEQ may issue an order requiring the owner, permittee, person responsible for carrying out an approved plan, or person conducting the LDAs without an approved plan or required permit to cease all land-disturbing activities until the violation of the permit has ceased, or an approved plan and required permits are obtained, and specified corrective measures have been completed.

Such orders ***must*** be issued:

- In accordance with local procedures if issued by a locality VSMP authority; and
- After a hearing held in accordance with the requirements of the Administrative Process Act if issued by DEQ.

Such orders shall become effective upon service on the person by mailing with confirmation of delivery to the address specified in the land records of the locality, or by personal delivery.

If the VSMP authority or DEQ finds that any such violation is ***grossly affecting*** or presents an ***imminent*** and ***substantial danger*** of causing harmful erosion of lands or sediment deposition in waters within the watersheds of the Commonwealth or otherwise substantially impacting water quality, it may issue, without advance notice or hearing, an emergency order directing the activity to cease immediately. DEQ or the VSMP authority must provide an opportunity for a hearing and give reasonable notice as to the time and place. The hearing will affirm, modify, amend, or cancel such emergency order.

Injunctive relief

(§ 62.1-44.15:42)

The Board, DEQ, or VSMP authority may bring an action requesting the court to compel compliance with the Act, rule, Regulation, ordinance, approved standard and specification, order, or permit condition.

Hearings

(§ 62.1-44.15:44, 9VAC25-870-118)

The VSMP authority must ensure that any permit applicant, permittee, or person subject to state permit requirements under the Act aggrieved by any action of the VSMP authority taken without a formal hearing, or by inaction of the VSMP authority, shall have the right to a hearing pursuant to § 62.1-44.15:44 and shall ensure that all hearings held under these Regulations are conducted in a manner consistent with § 62.1-44.26 or as otherwise provided by law. The provisions of the Administrative Process Act (§ 2.2-4000 et seq.) shall not apply to decisions rendered by localities but appeals shall be conducted in accordance with local appeal procedures.

Civil actions

(§ 62.1-44.15:48)

Any person who violates any part of the Act, Regulations, local ordinances, or standards and specifications, or who fails, neglects, or refuses to comply with any order of a locality VSMP authority, DEQ, the Board, or a court, shall be subject to a civil penalty not to exceed ***\$32,500*** for each violation within the discretion of the court. Each day of a violation constitutes a separate offense.

The Board, DEQ, or locality VSMP authority may issue a summons for collection of the civil penalty and the action may be prosecuted in the appropriate court. Actions on behalf of the Board or DEQ are brought by the Virginia Attorney General's Office.

Consent orders

(§ 62.1-44.15:48)

The Board, DEQ, or locality VSMP authority may issue a consent order to any person who has violated or failed, neglected, or refused to obey the Act, an ordinance, a permit condition, a regulation of the Board, or an order of the Board, DEQ or VSMP authority. A consent order may include civil charges up to \$32,500 for each violation instead of a civil penalty.

Criminal actions

(§ 62.1-44.15:48)

Violators who act willfully, negligently, or knowingly may also be subject to the criminal penalties under the Act that are listed in the table on the next page. Criminal actions are prosecuted by the Commonwealth's Attorney in the locality where the criminal act occurred.

Criminal Actions

Misdemeanor		
Behavior	Punishment for individuals	Punishment for non-individuals
Willfully or negligently violates any of the following: Act Regulations or order of the Board Local VSMP authority ordinance or order DEQ order Local VSMP authority permit State permit Order of a court	Jail for up to 12 months and/or a fine between \$2,500 and \$32,500 Each day of violation of each requirement constitutes a separate offense	Fine ≥ \$10,000 Each day of violation of each requirement constitutes a separate offense
Felony		
Behavior	Punishment for individuals	Punishment for non-individuals
Knowingly violates any of the following: Act Regulations or order of the Board Local VSMP authority ordinance or order DEQ order Local VSMP authority permit State permit Order of a court	Imprisonment for 1-3 years, or in the discretion of the jury or the court, confinement in jail for up to 12 months and a fine between \$5,000 and \$50,000 for each violation Each day of violation of each requirement constitutes a separate offense	Fine ≥ \$10,000 Each day of violation of each requirement constitutes a separate offense
Knowingly makes any false statement in any form required by the Act	Each day of violation of each requirement constitutes a separate offense	Each day of violation of each requirement constitutes a separate offense
Knowingly causes any required monitoring device or method to be inaccurate	Each day of violation of each requirement constitutes a separate offense	Each day of violation of each requirement constitutes a separate offense
Knowingly violates a provision of the Act and knows at the time that they are placing another person in imminent danger of death or serious bodily harm	Imprisonment for 2-15 years and/or a fine up to \$250,000 Maximum fine and imprisonment doubled for subsequent convictions of same person	Fine up to the greater of \$1 million or 3x the economic benefit realized by the defendant as a result of the offense Maximum fine and imprisonment doubled for subsequent convictions of same non individual



MORE STRINGENT ORDINANCES

(§62.1-44.15:33)

Localities are authorized to adopt more stringent ordinances provided they are based upon factual findings of local or regional comprehensive watershed management studies or findings and are determined by the locality to be necessary to:

- Prevent further degradation to water resources;
- Address TMDL requirements;
- Protect exceptional state waters; or
- Address specific existing water pollution including nutrient and sediment loadings, stream channel erosion, depleted groundwater resources, or excessive localized flooding within the watershed.



Before adopting more stringent ordinances, a public hearing must be held after due notice is given. Localities must submit a letter report to DEQ within **30 days** after adoption of more stringent ordinances. The letter report must include a summary of why the ordinance is necessary.

An affected landowner or their agent has **90 days** after the adoption of ordinances to request a review of the ordinances by DEQ. The request is submitted to DEQ and a copy of the letter is sent to the locality. The locality must then submit the ordinances and supporting materials to DEQ for determination of whether the requirements of the Act have been met. DEQ must issue a written decision with rationale within **90 days** of submission. The determination or failure to make a determination may be appealed to the Board.

NOTE:

Any provisions of a local stormwater management program in existence before **January 1, 2013**, that contains more stringent provisions than §62.1-44.15:33 shall be exempt from the requirements of this section. However, such provisions shall be reported to the Board at the time of the locality's VSMP approval package.



PROHIBITING BMPS AND MORE STRINGENT BMP REQUIREMENTS

(§62.1-44.15:33)

A locality VSMP authority may prohibit the use of a Board approved best management practice (BMP) or require more stringent conditions for a ***specific land-disturbing project*** based on a review of the stormwater management plan and project site conditions. Prohibitions can be appealed to DEQ.

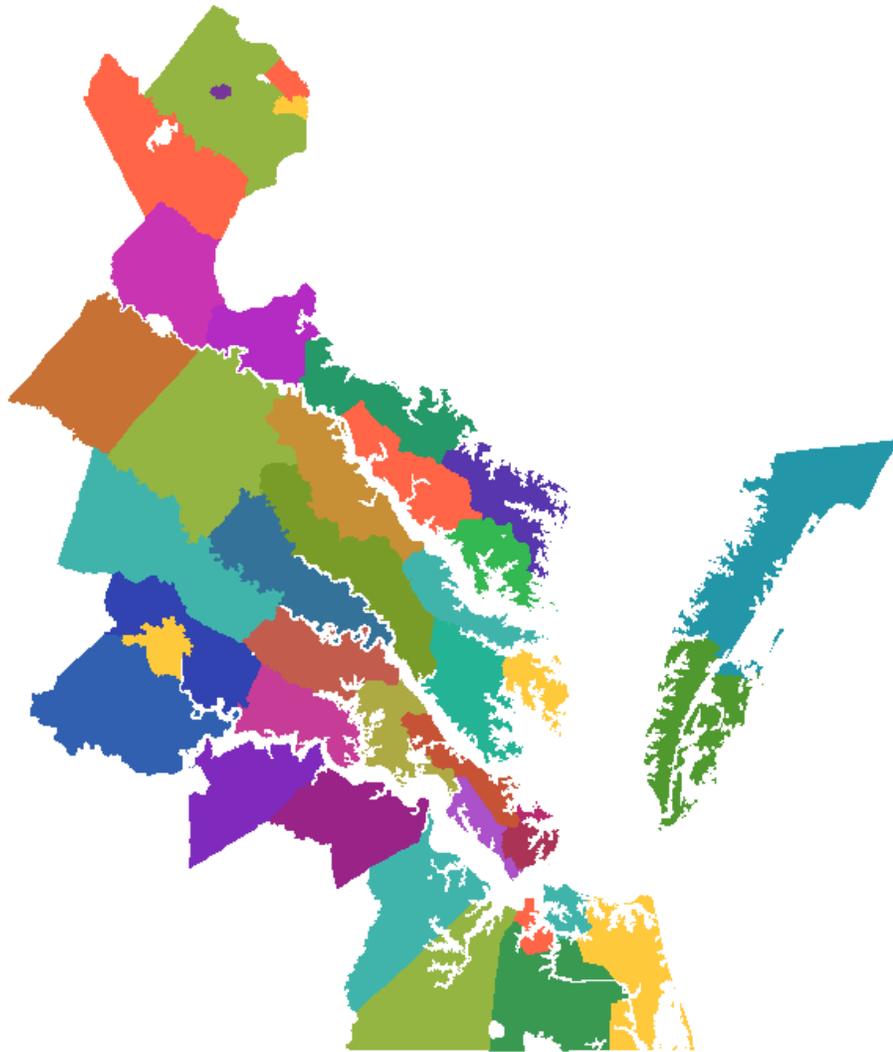
A locality VSMP authority may also prohibit the use of a Board approved BMP or require more stringent conditions ***across its jurisdiction or in a specific geographical area***. An affected landowner or their agent may request to have DEQ review the locality's decision. Within ***90 days*** after adoption, an affected landowner or their agent may submit a request asking DEQ to review the locality's determination.



ORDINANCE REQUIREMENTS FOR CHESAPEAKE BAY PRESERVATION ACT LAND-DISTURBING ACTIVITIES

(§62.1-44.15:24, :27, :34, 9VAC25-870-51, 103)

Runoff associated with Chesapeake Bay Preservation Act land-disturbing activities (greater than or equal to 2,500 ft.² and less than one acre in Chesapeake Bay Preservation Areas) must be regulated by localities subject to the Chesapeake Bay Preservation Act, or in the case of state and federal projects, DEQ. Localities subject to the provisions of the Chesapeake Bay Preservation Act ***may*** regulate single-family residences separately built and disturbing less than one acre where land disturbance exceeds 2,500 square feet (§ 62.1-44.15:34).



Localities subject to the Chesapeake Bay Preservation Act

Localities subject to the Chesapeake Bay Preservation Act

Counties

Accomack	Isle of Wight	Northumberland
Arlington	James City	Prince George
Caroline	King & Queen	Prince William
Charles City	King George	Richmond
Chesterfield	King William	Spotsylvania
Essex	Lancaster	Stafford
Fairfax	Mathews	Surry
Gloucester	Middlesex	Westmoreland
Hanover	New Kent	York
Henrico	Northampton	

Cities

Alexandria	Hampton	Portsmouth
Chesapeake	Hopewell	Richmond
Colonia Heights	Newport News	Suffolk
Fairfax	Norfolk	Virginia Beach
Falls Church	Petersburg	Williamsburg
Fredericksburg	Poquoson	

Towns

Ashland	Haymarket	Quantico
Belle Haven	Herndon	Saxis
Bloxom	Irvington	Smithfield
Bowling Green	Kilmarnock	Surry
Cape Charles	Melfa	Tangier
Cheriton	Montross	Tappahannock
Claremont	Nassawadox	Urbanna
Clifton	Occoquan	Vienna
Colonial Beach	Onancock	Warsaw
Dumfries	Onley	West Point
Eastville	Painter	White Stone
Exmore	Parksley	Windsor
Hallwood	Port Royal	

The localities must adopt an ordinance, and other VSMP authorities shall provide program documentation, that incorporates all of the following components:

- A VSMP authority permit, where applicable, must be issued before the start of the land-disturbing activity (LDA);
- Program and administrative requirements in 9VAC25-870-51:
 - Erosion and sediment control plan
 - Stormwater management plan - 9VAC25-870-55
 - Exceptions can be requested - 9VAC25-870-57
 - Long-term maintenance - 9VAC25-870-58
 - Technical criteria - 9VAC25-870-63, 9VAC25-870-65, 9VAC25-870-66
 - Offsite compliance options - 9VAC25-870-69
 - Design storms and hydrologic methods - 9VAC25-870-72, linear development controls 9VAC25-870-76, stormwater impoundment structures or facilities - 9VAC25-870-85;
- Program requirements in 9VAC25-870-104;
- Plan review requirements in 9VAC25-870-108 (except subsection D, using online reporting system);
- Long-term stormwater management facility requirements in 9VAC25-870-112;
- Inspection requirements in 9VAC25-870-114 (except subdivisions A3 – pollution prevention plan and A4 – additional control measures to address a TMDL);
- Enforcement components in 9VAC25-870-116;
- Hearing requirements in 9VAC25-870-118;
- Exceptions in 9VAC25-870-122 (except subsection C – Construction GP is not applicable); and
- Reporting and recordkeeping requirements in 9VAC25-870-126 (except subdivision B3 – retention of construction record drawings).

3c. Documentation requirements for non-locality VSMP authorities



DOCUMENTATION

(9VAC25-870-106, 9VAC25-870-148)

Non-locality VSMP authorities must provide program documentation that is at least as stringent as the provisions of the Construction GP. Additionally, these entities must provide supporting documentation to DEQ that:

- 1 Identifies the authority accepting registration statements and conducting plan review, plan approval, inspections, and enforcement
- 2 Requires submission and approval of erosion and sediment control plans and stormwater management plans
- 3 Includes requirements to ensure compliance with the stormwater pollution prevention plan, stormwater management plan, and pollution prevention plan
- 4 Includes requirements for inspections and monitoring of construction activities by the operator for compliance with local ordinances
- 5 Includes requirements for long-term inspection and maintenance of stormwater management facilities

3d. Annual Standards and Specifications

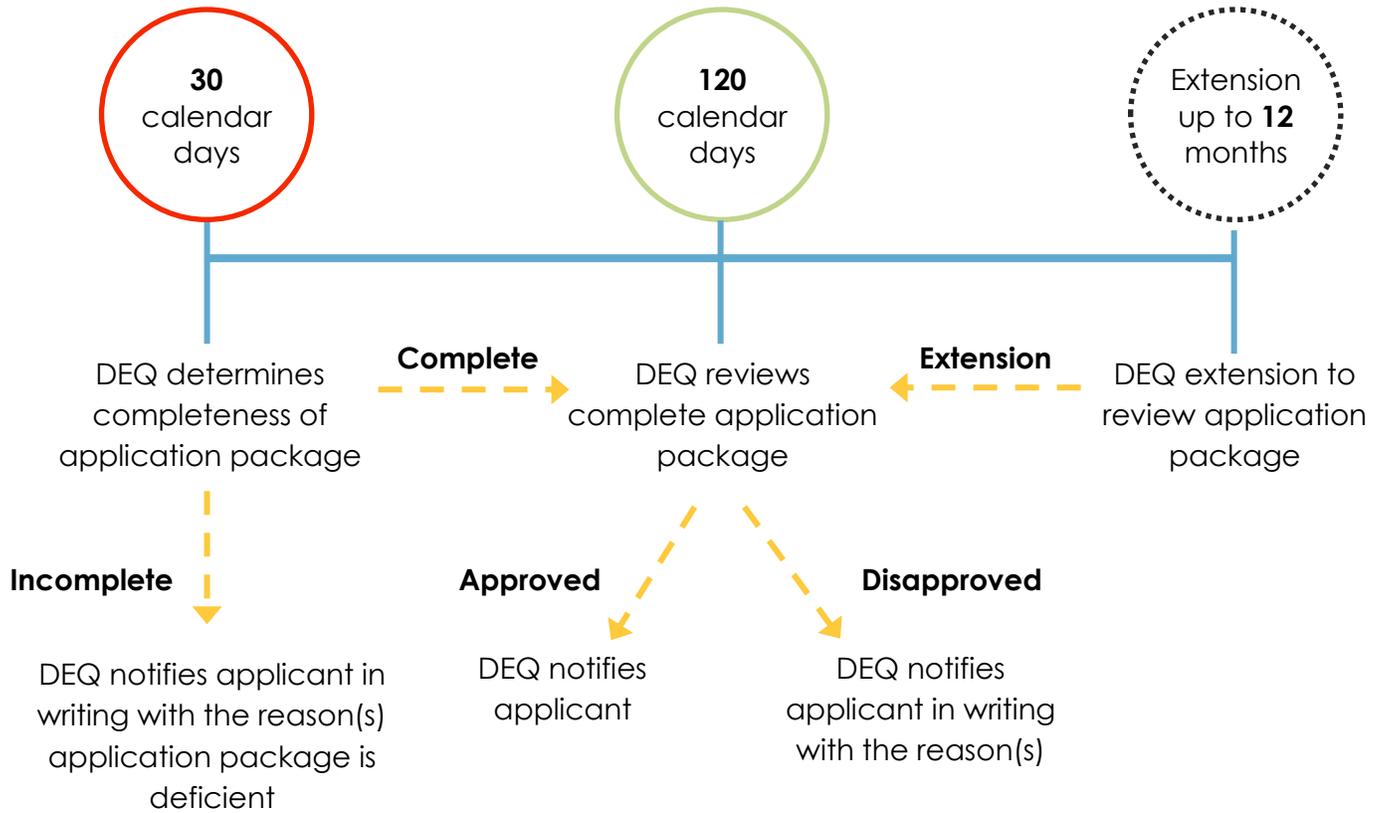
(§62.1-44.15:31)

State entities and the linear projects listed below must annually submit a single set of standards and specifications to DEQ for approval that describes how land-disturbing activities will be conducted. Federal entities are not required to submit, but may decide to so do. Where required, Construction GP coverage must be obtained before that start of land disturbance.

Annual Standards and Specifications			
What	Who must submit	Who may submit	Coverage under the state general permit
Single set of standards and specifications approved by DEQ that describes how LDA must be conducted Must be consistent with the Act, Regulations, Construction GP, and Erosion and Sediment Control Law and Regulations	State entities Linear projects Electric Natural gas Telephone Railroad	Federal entities Authorities	Must be obtained before the start of LDA ≥ 1 acre
Must Include			
Technical criteria laid out in the Act and Regulations	ESC and stormwater management program administration, plan design, review and approval, and construction inspection and enforcement		
Provisions for the long-term responsibility and maintenance of stormwater management control devices and other techniques to manage the quality and quantity of stormwater runoff	Provisions for personnel and contractors to obtain certifications or qualifications for ESC and stormwater management comparable to those required for local government		
Implementation of project tracking and notification system to DEQ of all LDAs	Requirements for documenting onsite changes as they occur		
DEQ Inspections			
DEQ must perform random site inspections or inspections in response to a complaint	DEQ may take enforcement action		
Administrative Charge			
DEQ must assess an administrative charge to cover the costs of services rendered			

3e. State Water Control Board Review of VSMP Application Package

Board/DEQ review of VSMP application package



REVIEW PERIOD (9VAC25-870-150)

Upon receipt of an application package to become a VSMP, the Board or DEQ has **30 calendar days** to determine the completeness of the application package. If an application package is deemed to be incomplete, the Board or DEQ must notify the VSMP authority in writing and include the reasons the application package is deemed deficient.

Upon receipt of a complete application package, the Board or DEQ has **120 calendar days** for the review of the application package, unless an extension of time, not to exceed 12 months unless otherwise specified by the Board, is required by DEQ, provided the VSMP authority applicant has made substantive progress.

During the 120 day review period, the Board or DEQ must either approve or disapprove the application, or notify the locality of a time extension for the review, and communicate its decision to the VSMP authority applicant in writing. If the application is not approved, the reasons for not approving the application must be providing to the applicant in writing.

A locality or otherwise authorized entity not required to adopt a VSMP in accordance with § 62.1-44.15:27 must submit a complete application package for the Board's review pursuant to a schedule set by the Board in accordance with § 62.1-44.15:27 and must adopt a VSMP consistent with the Act and this chapter within the timeframe established pursuant to § 62.1-44.15:27 or otherwise established by the board.

Knowledge Check Questions

Answer the following questions with the reference from the Act and/or Regulations

1. Can the Construction GP contain more stringent requirements than the locality's VSMP permit or ordinance?
2. What plans must a locality's ordinance require to be submitted and approved?
3. List three (3) violations for which a penalty may be imposed.
4. What is the maximum civil penalty the court can assess per violation per day under the Stormwater Management Act?
5. Give an example for when a locality is able to adopt a more stringent ordinance.
6. What is the punishment for an individual convicted of a felony for knowingly making a false statement on a form required by the Stormwater Management Act?
7. Upon receipt of a complete program application package, how long does the State Water Control Board or DEQ have to review the application package?

Knowledge Check Answers

1. Can the Construction GP contain more stringent requirements than the locality's VSMP permit or ordinance?

No (9VAC25-870-106).

2. What plans must a locality's ordinance require to be submitted and approved?

Erosion and sediment control plan and stormwater management plan (9VAC25-870-148).

3. List three (3) violations for which a penalty may be imposed.

Any of the following: (9VAC25-870-116): No state registration statement; no SWPPP; incomplete SWPPP; SWPPP not available for review; no approved erosion and sediment control plan; failure to install stormwater management BMPs or ESCs; stormwater BMPs or erosion and sediment controls improperly installed or maintained; operational deficiencies; failure to conduct required inspections; incomplete, improper, or missed inspections.

4. What is the maximum civil penalty the court can assess per violation per day under the Stormwater Management Act?

\$32,500 (§ 62.1-44.15:48)

5. Give an example for when a locality is able to adopt a more stringent ordinance.

Any of the following: (§ 62.1-44.15:33: The more stringent ordinances are based upon factual findings of local or regional comprehensive watershed management studies or findings developed through the implementation of a MS4 permit or a locally adopted watershed management study and are determined by the locality to be necessary to prevent any further degradation to water resources, to address TMDL requirements, to protect exceptional state waters, or to address specific existing water pollution including nutrient and sediment loadings, stream channel erosion, depleted groundwater resources, or excessive localized flooding within the watershed.

6. What is the punishment for an individual convicted of a felony for knowingly making a false statement on a form required by the Stormwater Management Act?

Imprisonment for 1-3 years, or in the discretion of the jury or the court, confinement in jail for up to 12 months and a fine between \$5,000 and \$50,000 for each violation. Each day of violation of each requirement constitutes a separate offense (§ 62.1-44.15:48).

7. Upon receipt of a complete program application package, how long does the State Water Control Board or DEQ have to review the application package?

120 calendar days unless an extension of time, not to exceed 12 months unless otherwise specified by the Board (9VAC25-870-150).