

# **Module 3: Overview of the Virginia Stormwater Management Program (VSMP)**

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## Objectives

- Discuss the purpose of the Clean Water Act and its formation of the Environmental Protection Agency and the National Pollutant Discharge Elimination System (NPDES) Permit Program
- Discuss key sections of the Stormwater Management Act (VSMA) and the Stormwater Management Regulations as they pertain to a local VSMP authority and inspections
- Discuss enforcement options authorized by state law
- List and describe the enforcement tools available to a locality VSMP authority and/or DEQ for ensuring compliance with the VSMP.
- 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).

### 3a. Overview of Stormwater Legislations

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#### THE FEDERAL WATER POLLUTION CONTROL ACT (1948)

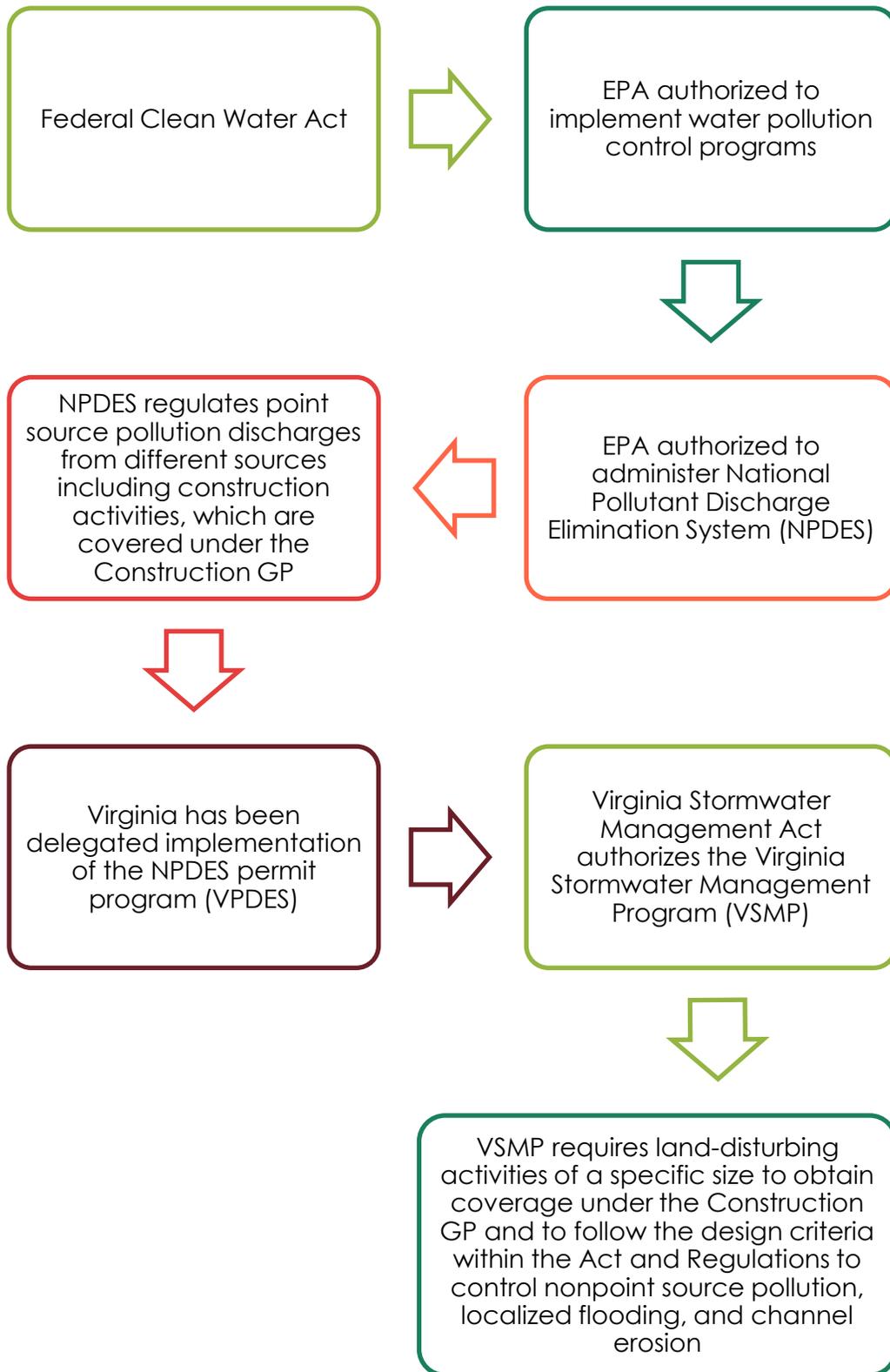
The Federal Water Pollution Control Act of 1948 was the first major US law to address water pollution. The Act was one of the earliest references to clean water as a resource and the importance of protecting water quality through the managed reduction of pollutants flowing into waterways. The Act also set the precedent for a federal authority to regulate water quality.

#### THE CLEAN WATER ACT (1972)

Congress passed major amendments to the Federal Water Pollution Control Act in 1972, creating what we now know as the Clean Water Act. The amendments made a number of changes to strengthen the existing law including:

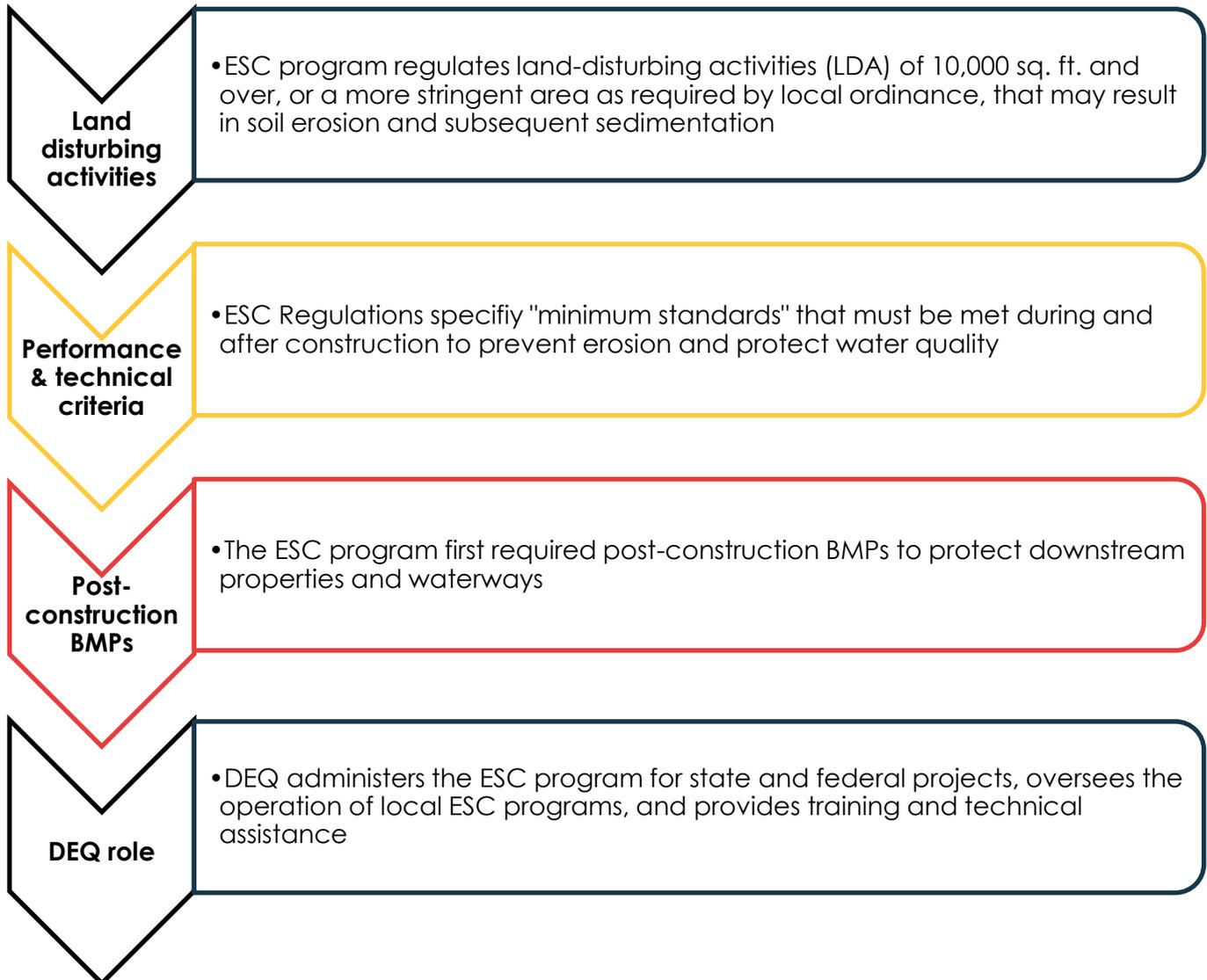
- Consolidated the control of water pollution policy under the administrator of the newly created US Environmental Protection Agency (EPA)
- Established the National Pollutant Discharge Elimination System (NPDES) Permit Program, which in Virginia is administered by the Virginia Pollutant Discharge Elimination System (VPDES), to control water pollution by regulating point sources that discharge pollutants
- Stormwater discharges from land disturbing activities are permitted under the Construction General Permit (GP) through NPDES





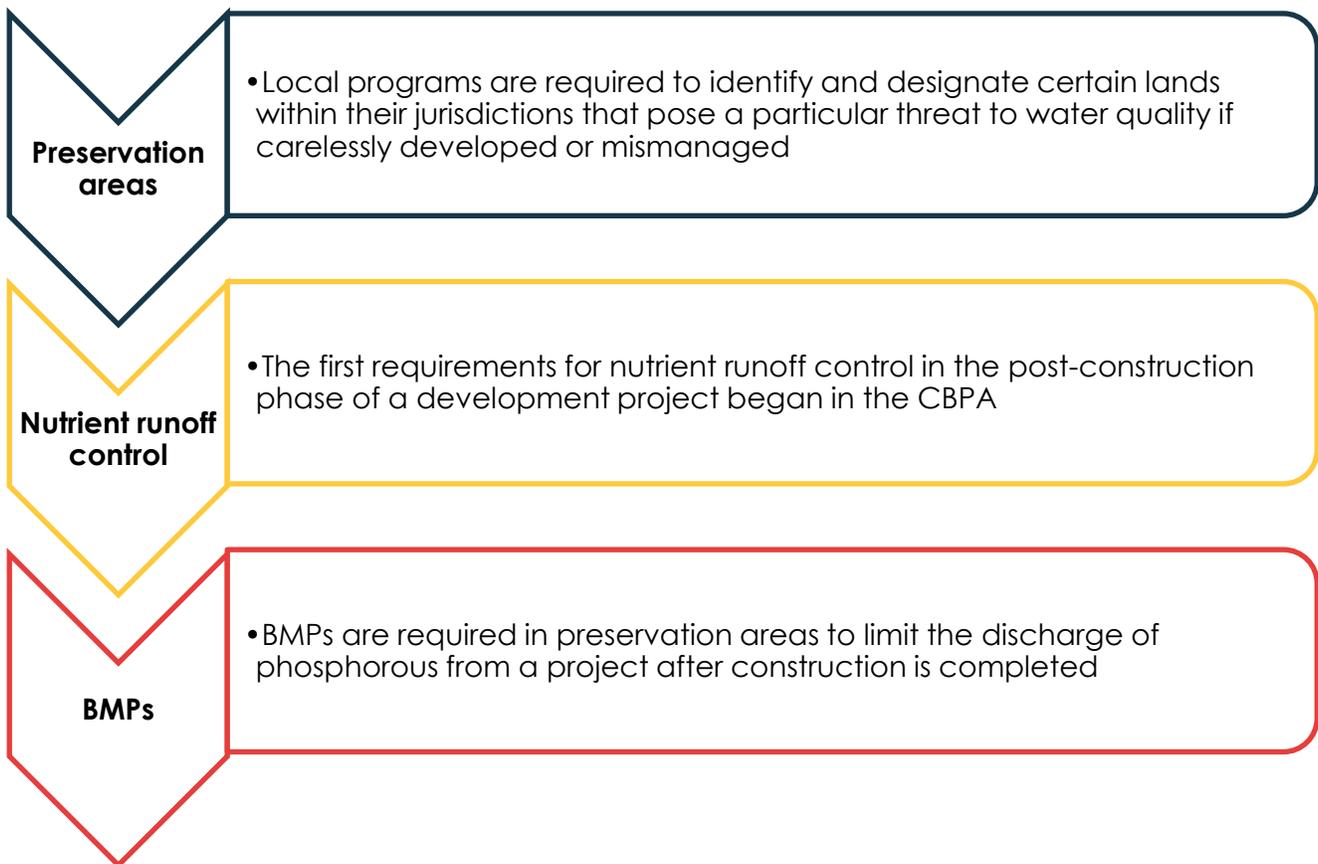
## VIRGINIA EROSION AND SEDIMENT CONTROL LAW

The Virginia Erosion and Sediment Control (ESC) Law was first passed in 1973. Not solely an environmental protection law, the original law was passed “to prevent the unreasonable degradation of properties, stream channels, waters, and other natural resources.”



## CHESAPEAKE BAY PRESERVATION ACT

Chesapeake Bay Preservation Act (CBPA) was passed in 1988 with the expressed purpose of protecting “the public interest in the Chesapeake Bay, its tributaries, and other state waters.” To accomplish this purpose the CBPA requires that certain regions of the state, where improperly managed land use could have a detrimental effect on the waters of the Chesapeake Bay, establish programs administered by local governments that protect water quality.



## 3b. Virginia Stormwater Management Program

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### **LOCAL PROGRAM 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 locality must integrate the VSMP with local erosion and sediment control, flood insurance, flood plain management, and other programs requiring compliance before authorizing construction.

Other requirements of the locality are:

- Be consistent with the Virginia Stormwater Management Program Regulations;
- Be at least as stringent as the provisions in the Construction GP; and
- 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.

The locality VSMP must also adopt an ordinance for the administration and enforcement of the program.



### **Enforcement**

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

#### **Informal and formal administrative enforcement procedures**

(9VAC25-870-116)

Each locality VSMP will have its own enforcement program and procedures. The enforcement program must include components of the following informal and formal administrative enforcement procedures in a 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.

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*NOTE:*

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

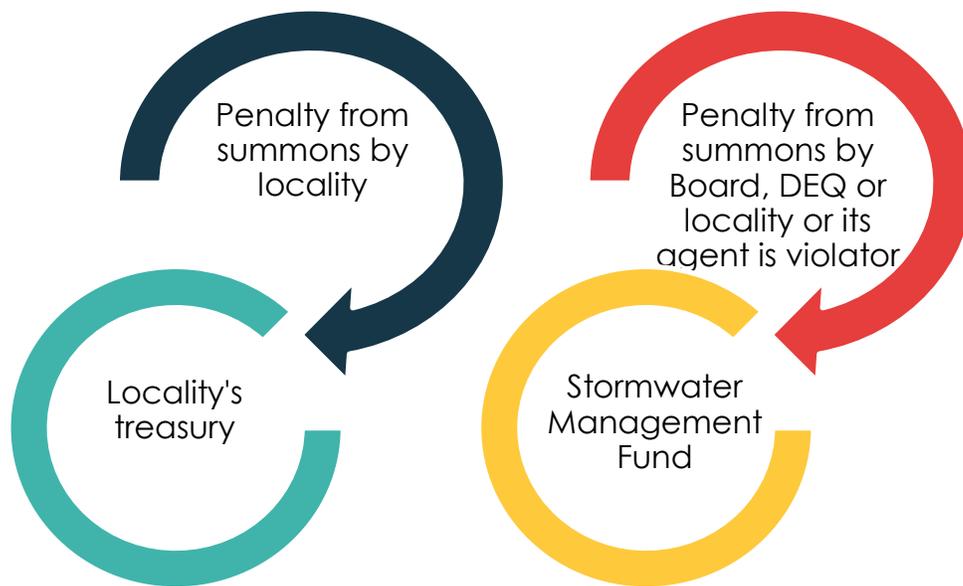
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Violations for which a penalty may be imposed include, but are not limited to:

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

<b>Misdemeanor</b>		
<b>Behavior</b>	<b>Punishment for individuals</b>	<b>Punishment for non-individuals</b>
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
<b>Felony</b>		
<b>Behavior</b>	<b>Punishment for individuals</b>	<b>Punishment for non-individuals</b>
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.



### 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.

*NOTE:*

As the inspector, it’s important to know if your locality has more stringent requirements.

### 3c. Requirements for Non-Locality VSMP authorities

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

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

- 1 Accept registration statements and conduct plan review, plan approval, inspections, and enforcement
- 2 Require submission and approval of erosion and sediment control plans and stormwater management plans
- 3 Ensure compliance with the stormwater pollution prevention plan, stormwater management plan, and pollution prevention plan
- 4 Require inspections and monitoring of construction activities by the operator for compliance with local ordinances
- 5 Require long-term inspection and maintenance of stormwater management facilities
- 6 Follow reporting and recordkeeping requirements

### 3d. Annual Standards and Specifications

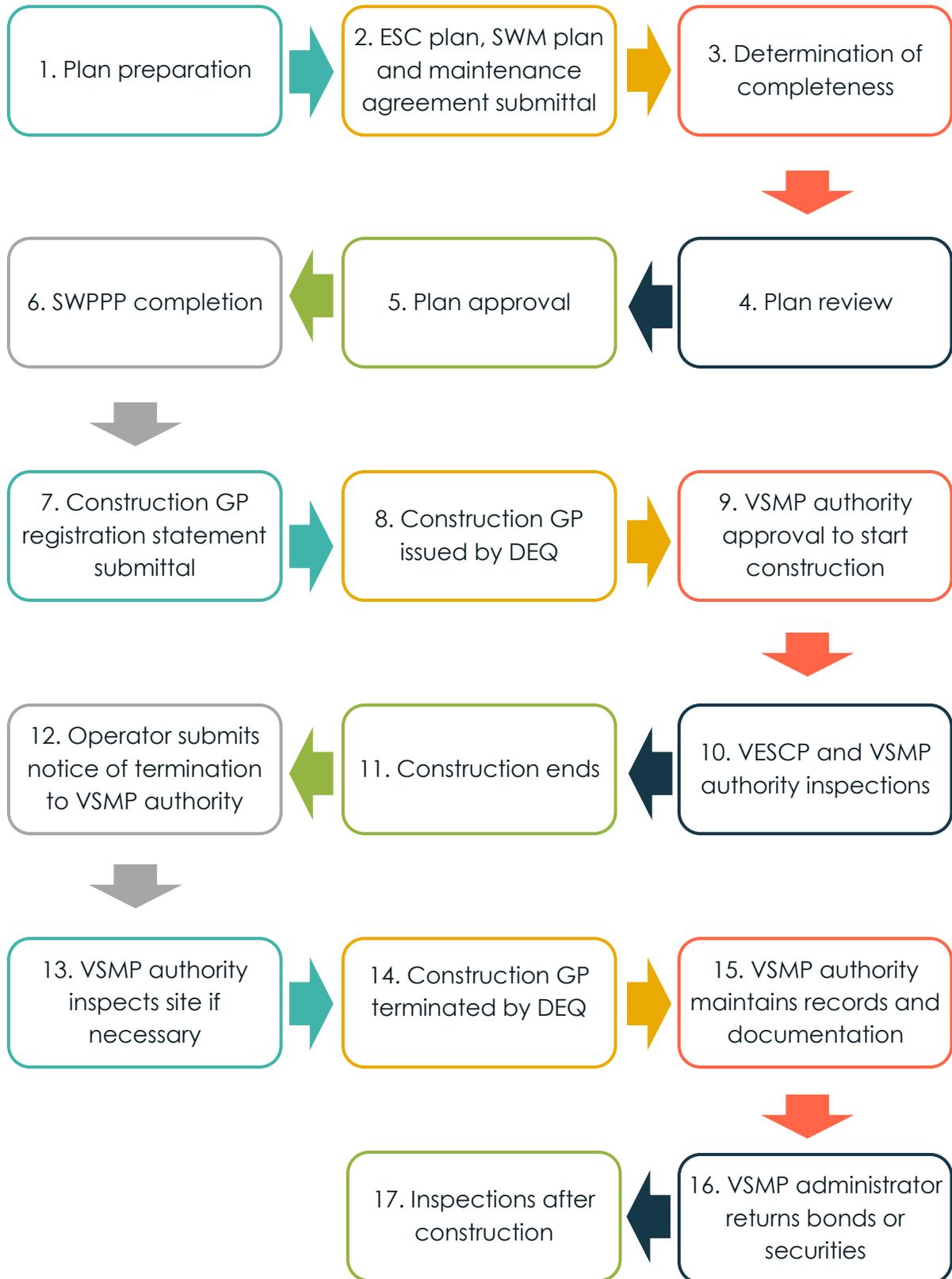
(§62.1-44.15:31)

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 do so. Where required, Construction GP coverage must be obtained before that start of land disturbance.

<b>Annual Standards and Specifications</b>			
<b>What</b>	<b>Who must submit</b>	<b>Who may submit</b>	<b>Coverage under the state general permit</b>
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	Must be obtained before the start of LDA ≥ 1 acre
<b>Must Include</b>			
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		
<b>DEQ Inspections</b>			
DEQ must perform random site inspections or inspections in response to a complaint	DEQ may take enforcement action		
<b>Administrative Charge</b>			
DEQ must assess an administrative charge to cover the costs of services rendered			

### 3e. The VSMP Process

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## Step 1: Plan preparation

(9VAC25-870-54)

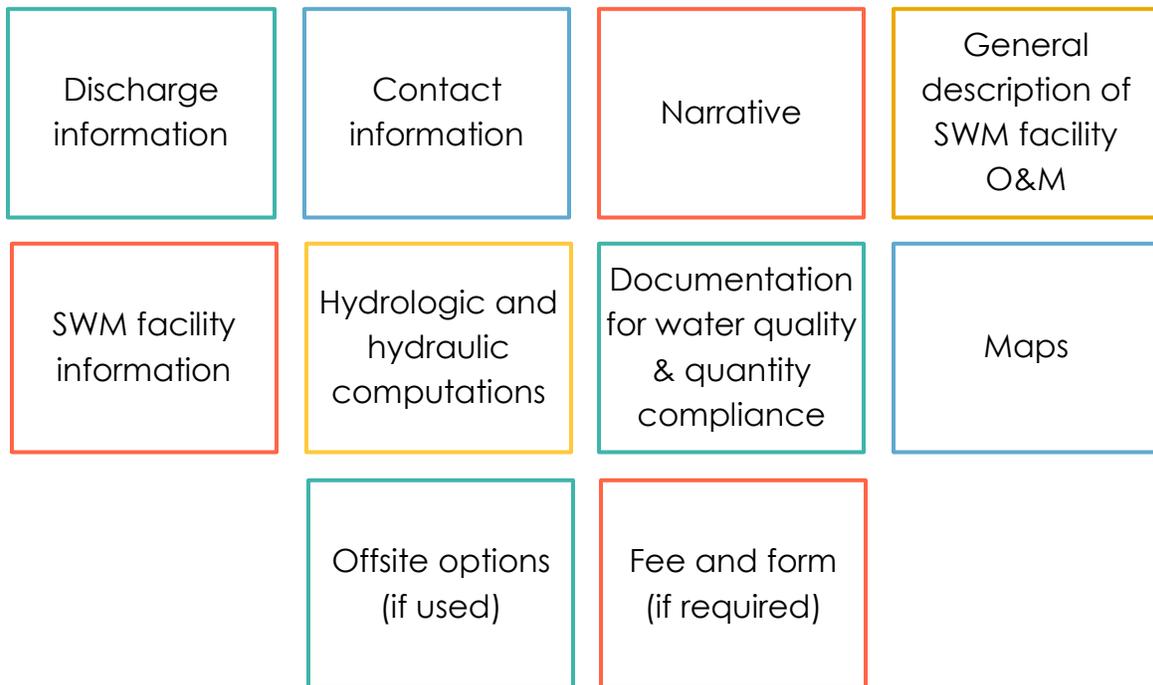
The first step an operator must take toward receiving approval to start land disturbance is to prepare an erosion and sediment control plan and a stormwater management plan.

### Stormwater management (SWM) plan

(9VAC25-870-55)

The stormwater management plan must be approved by the VSMP authority ***before*** the start of land disturbance. The plan outlines how stormwater leaving a site after construction will meet the necessary water quality and quantity technical criteria.

SWM plan contents:



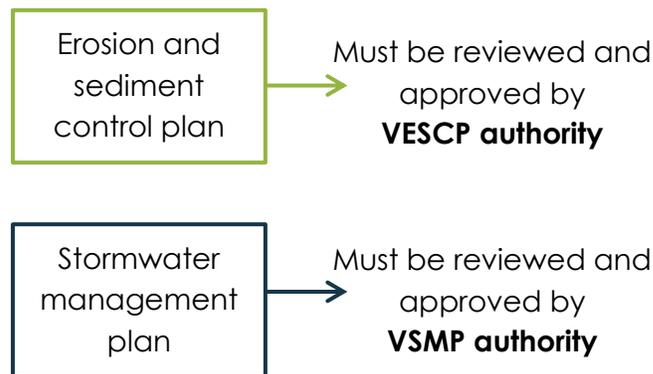
1. Information on the type of and location of stormwater discharges, information on the features to which stormwater is being discharged including:
  - Surface waters or karst features if present; and
  - Pre-development and post-development drainage areas.
2. Contact information including:

- Name, address, telephone number, and email address of the owner, and
  - Tax reference number and parcel number of the property or properties affected.
3. Narrative including:
- Description of current site conditions and final site conditions, or
  - If allowed by the VSMP authority, the information provided and documented during the review process that address the current and final site conditions.
4. General description of the proposed stormwater management facilities and the mechanisms through which the facilities will be operated and maintained after construction is complete.
5. Information on the proposed stormwater management facilities including:
- Type of facilities,
  - Location, including geographic coordinates,
  - Acres treated, and
  - Surface waters or karst features into which the facility will discharge.
6. Hydrologic and hydraulic computations, including runoff characteristics.
7. Documentation and calculations verifying compliance with the water quality and quantity requirements of the Regulations.
8. Map(s) of the site that depict the topography of the site and includes:
- All contributing drainage areas,
  - Existing streams, ponds, culverts, ditches, wetlands, other water bodies, and floodplains,
  - Soil types, karst features if present, forest cover, and other vegetative areas,
  - Current land use including existing structures, roads, and locations of known utilities and easements,
  - Sufficient information on adjoining parcels to assess the impacts of stormwater from the site on these parcels,

- Limits of clearing and grading, and the proposed drainage patterns on the site,
  - Proposed buildings, roads, parking areas, utilities, and stormwater management facilities, and
  - Proposed land use with tabulation of the percentage of surface area to be adapted to various uses, including but not limited to planned locations of utilities, roads, and easements.
9. Letter of availability from the off-site provider if using off-site compliance options.
  10. Fee and form if required.

**Step 2: ESC and SWM plan submittal**

The operator must submit the erosion and sediment control plan to the Virginia Erosion and Sediment Control (VESCP) authority for review and approval and the stormwater management plan to the VSMP authority for review and approval.



**Step 3: Determination of completeness**

The VSMP authority has 15 days to determine the completeness of a stormwater management plan in accordance with 9VAC25-870-55 and to notify the applicant of its determination. If the application is not complete, the VSMP authority must notify the applicant in writing or electronically of the reason(s).

## Step 4 & 5: Plan review and approval

If a plan is complete and the applicant has been notified within 15 days of submission, the VSMP authority (plan reviewer) has 60 days from the time of notification to review the plan.

## Step 6: Stormwater Pollution Prevention Plan (SWPPP) completion

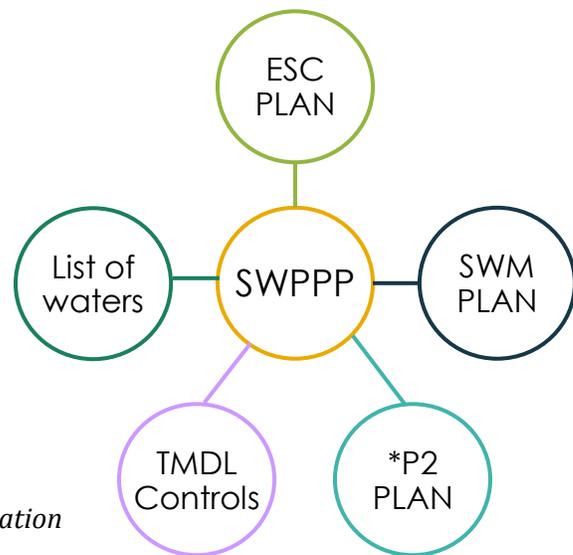
(9VAC25-870-54, 9VAC25-880-70 PART I and PART II)

In addition to having an approved erosion and sediment control plan and an approved stormwater management plan, the operator must develop a pollution prevention (P2) plan, a description of any additional control measures necessary to address a TMDL (if required), and when applicable a list of the impaired water(s), approved TMDL(s), pollutant(s) of concern, and exceptional water(s) as part of the stormwater pollution prevention plan (SWPPP).

Stormwater pollution prevention plan (SWPPP)

1. Approved erosion and sediment control (ESC) plan
2. Approved Stormwater management (SWM) plan
3. Pollution prevention (P2) plan\*
4. Description of any additional control measures necessary to address a TMDL (if required)
5. List of impaired water(s), approved TMDL(s), pollutant(s) of concern, and exceptional water(s) (if applicable)

*\*The P2 plan is not required for Chesapeake Bay Preservation Act land-disturbing activities.*



## **Pollution prevention (P2) plan**

(9VAC25-870-56, 9VAC25-880-70 PART II)

The P2 plan is part of the SWPPP and it must address potential pollutant-generating activities that may reasonably be expected to affect the quality of stormwater discharges from a construction activity, including any support activity. The P2 plan is discussed in greater detail in Module 4.

## **Step 7: Construction GP registration statement submittal**

For projects greater than or equal to one acre, the operator must submit a complete and accurate registration statement and pay any required permit fees. By signing the registration statement, the operator is certifying they have prepared a SWPPP with the required plan approvals.

The registration statement can be downloaded from:

<http://deq.virginia.gov/programs/water/stormwatermanagement/vsmppermits/constructiongeneralpermit.aspx>

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### *NOTE:*

Instructions for using DEQ's GIS Mapping Application to obtain the HUC, receiving waters, and latitude and longitude can be found at:

<http://www.deq.virginia.gov/Programs/Water/StormwaterManagement/VSMPPermits/ConstructionGeneralPermit.aspx>

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## **Step 8: Construction GP issued by DEQ**

Once the VSMP authority determines an operator is ready for permit coverage, the registration statement information is entered into the Construction GP System and then DEQ issues coverage under the Construction GP by sending a Notice of Coverage Letter and copy of the Construction GP to the operator.

## **Step 9: VSMP authority approval to start construction**

A locality VSMP authority may only approve the start of land-disturbance ***after*** DEQ has issued the Construction GP. When the Construction GP is not required, authorization may be given

after the required plans have been approved, initial terms of the long-term maintenance agreement have been submitted (as required), and any local fees have been paid (§62.1-44.15:27, 62.1-44.15:34).

### **Step 10: VESCP and VSMP authority inspections**

(9VAC25-870-114)

During construction, the VSMP authority (inspector) must periodically inspect the land-disturbing activity for:

- Compliance with the approved erosion and sediment control plan
- Compliance with the approved stormwater management plan
- Development, updating, and implementation of a pollution prevention plan; and
- Development and implementation of any additional control measures necessary to address a TMDL

The inspectors and program administrator work together to carry out enforcement actions that may become necessary should the work not proceed in accordance with the approved plan.

### **Step 11: Construction ends**

Before the operator can submit a notice of termination to the VSMP authority, the Construction GP (9VAC25-880-60) requires them to meet certain permit termination requirements, which are discussed more in Module 5.

### **Step 12: Operator submits notice of termination to VSMP authority**

Notice of termination, with the permit registration number, should be submitted no later than 30 days after meeting the permit termination conditions.

### **Step 13: VSMP authority inspects site if necessary and confirms maintenance agreements have been recorded**

The VSMP authority may inspect a site to determine whether the operator has met the proper permit termination requirements (discussed in Module 5). Once the VSMP authority determines the following, they enter the notice of termination into the Construction GP System:

#### Permit termination checklist

- Permit termination requirements met
- DEQ Notice of Termination form completed
  - Confirmation long-term maintenance agreement(s) recorded in local land records (when applicable)
  - Information on permanent control measures recorded (when applicable)
- Construction record drawing(s) for permanent stormwater management facilities submitted to VSMP authority (when applicable)
- Notice of Termination information entered into Construction General Permit System

#### **Step 14: Construction GP terminated by DEQ**

#### **Step 15: VSMP authority assembles and maintains records and documentation**

Once construction is complete, the program administrator will assemble and maintain the required records and documentation including certified project record drawings (“as-built”), inspection and enforcement records, and registration statements (9VAC 25-870-126).

On a fiscal basis (July 1 to June 30), administrators will report to DEQ by October 1 of each year information on any exceptions granted, enforcement actions, and specifics pertaining to the BMPs installed over the course of the year.

#### **Step 16: VSMP administrator returns bonds or securities**

Within 60 days of completing the requirements of the Construction GP, the VSMP authority returns or terminates any bonds or securities provided by the operator at the onset of the project.

**Step 17: Inspections after construction**

(9VAC25-870-114)

The VSMP authority (inspector) must inspect stormwater management facilities at least once every five years to ensure they are being adequately maintained as designed.

### 3f. Single-Family Detached Residential Structures

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Single-family detached residential structures that disturb equal to or greater than one acre of land require coverage under the Construction GP. However, there are some differences that set these land disturbing activities apart from the rest.

#### **Registration Statement**

(§ 62.1-44.15:28)

Operators of single-family detached residential structures that disturb equal to or greater than one acre of land are ***not required to submit a registration statement***. Instead, operators need to download the coverage letter for single-family detached residential structures from: [www.deq.virginia.gov/Programs/Water/StormwaterManagement/VSMPPermits/ConstructionGeneralPermit.aspx](http://www.deq.virginia.gov/Programs/Water/StormwaterManagement/VSMPPermits/ConstructionGeneralPermit.aspx).

As an inspector, you should see the single-family notice of coverage letter posted at the main entrance of the construction site. You will not see the registration statement in the SWPPP documentation.

#### **Agreement in lieu of a stormwater management plan**

(§62.1-44.15:24)

Instead of requiring the owner or permittee of a single family residence to submit a stormwater management plan, a VSMP authority ***may*** execute a contract with the owner that specifies methods that must be implemented to comply with the requirements of the VSMP. The agreement in lieu of a stormwater management plan can be downloaded from: <http://deq.virginia.gov/programs/water/stormwatermanagement/vsmppermits/constructiongeneralpermit.aspx>

As an inspector, you may find an agreement in lieu of a stormwater management plan in the SWPPP documentation.

#### **Long-term maintenance agreements, post-construction inspections and construction record drawings**

(9VAC25-870-108, 9VAC25-870-112, 9VAC25-870-114)

The VSMP authority does not have to require long-term maintenance agreements for stormwater management facilities designed to treat stormwater runoff primarily from an

individual residential lot on which they are located, provided it is demonstrated to the satisfaction of the VSMP authority that future maintenance of such facilities will be addressed through an enforceable mechanism at the discretion of the VSMP authority. Such facilities are ***not*** subject to the requirement for an inspection to be conducted by the VSMP authority. Additionally, VSMP authorities may choose not to require construction record drawings for stormwater management facilities that are not required to have maintenance agreements.

### 3g. Reports and Record Keeping

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#### FISCAL YEAR REPORTING TO DEQ

(9VAC 25-870-126)

By October 1 of each year, VSMP authorities must submit the following information from the previous fiscal year (July 1 to June 30) to DEQ:

- Information on each permanent management facility completed
  - Type of stormwater management facility
  - Geographic coordinates
  - Acres treated
  - Surface waters or karst features into which the facility will discharge
- Number and type of enforcement actions taken
- Number of exceptions granted



#### RECORD KEEPING

(9VAC 25-870-126)

A VSMP authority must keep records in accordance with the following:

- Project records, including approved stormwater management plans, shall be kept for **three** years after state permit termination or project completion;
- Stormwater management facility inspection records shall be documented and retained for at least **five** years from the date of inspection;
- Construction record drawings shall be maintained ***in perpetuity*** or until a stormwater management **facility is removed**; and
- All registration statements submitted in accordance with 9VAC25-870-59 shall be documented and retained for **at least three years** from the date of project completion or state permit termination.

### 3h. Program Reviews

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#### REQUIREMENTS

(§ 62.1-44.15:38, 9VAC25-870-144)

DEQ is required to conduct a program review once every five years. The review must be coordinated with the entity's other program reviews.

The review will consist of the following:

- Consultation with the VSMP administrator or designee;
- Review of the local ordinance(s) and other applicable documents;
- Review of a subset of the plans approved by the VSMP authority for consistency of application including exceptions granted and calculations or other documentation that demonstrates that required nutrient reductions are achieved using appropriate onsite and off-site compliance options;
- Review of the funding and staffing plan developed in accordance with 9VAC25-870-148;
- Review of inspection of regulated activities; and
- Review of enforcement actions and an accounting of amounts recovered through enforcement actions where applicable.

If deficiencies are found, the Department shall provide results and compliance recommendations to the Board in the form a corrective action plan and schedule within 120 days of the completion of a review. The VSMP authority has either 30 days from receiving the corrective action agreement or an additional period that has been granted to complete implementation of the corrective action.

If the VSMP has not implemented the necessary compliance actions identified by the Board within 30 days following receipt of the corrective action agreement, or such additional period as is granted to complete the implementation of the corrective action, then the Board shall have the authority to:

1. Issue a special order to any VSMP imposing a civil penalty not to exceed \$5,000 per day with the maximum amount not to exceed \$20,000 per violation for noncompliance with

the requirements of this article and its regulations, to be paid into the state treasury and deposited in the Virginia Stormwater Management Fund established by § 62.1-44.15:29 or

2. Revoke its approval of the VSMP. The Administrative Process Act (§ 2.2-4000 et seq.) shall govern the activities and proceedings of the Board under this article and the judicial review thereof.

## 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?

# Knowledge Check Answers

## Module 3

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).*