

Module 3: Erosion Law for Inspectors

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Learning Objectives

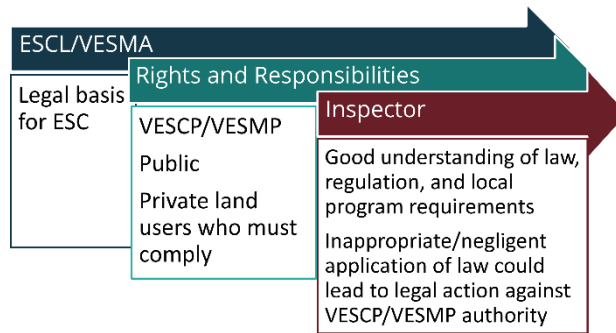
At the end of this module, you will be able to:

- Define a land-disturbing activity (LDA) and erosion impact area
- Explain and assess applicability of the Erosion and Sediment Control Law (ESC Law), the Virginia Erosion and Stormwater Management Act (VESMA), and Regulation to LDAs
- Explain and assess which LDAs are regulated under the erosion program
- Describe the conditions that allow a locality to adopt a more stringent ordinance
- Identify the necessary elements that make an ESC plan adequate
- Explain the process related to and applicability of:
 - Variances
 - Securities for performance
 - Responsible land disturber (RLD)
 - Changes to an approved ESC plan
- Summarize the standards and specifications requirements and identify the entities that are or may be regulated under them
- Discuss the requirements and provisions of an erosion inspection program, including inspection frequency
- Explain the enforcement paths and tools available for managing LDAs
- Recall the components of a DEQ program review

3a. Regulating Land-Disturbing Activities

The Virginia Erosion and Stormwater Act (VESMA) authorizes the Virginia Erosion and Stormwater Management Program (VESMP). The ESC law (ESCL) for Localities Not Administering a VESMP authorizes the Virginia Erosion and Sediment Control Program (VESCP). The Virginia Erosion and Stormwater Management (VESM) Regulation is the associated regulation for both programs and explains the technical, operational, and legal details necessary to implement an erosion program.

A good understanding of the law, regulation, and local program requirements is essential for an inspector. Inappropriate or negligent application of the law could result in legal action against a VESCP or VESMP authority.



Administer VESCP: <ul style="list-style-type: none"> Counties and cities <u>must</u> Towns <u>may</u> 	Administer VESMP: <ul style="list-style-type: none"> MS4 permit localities <u>must</u> Counties, cities, and towns <u>may</u>
Locality VESCP authority: <u>May</u> enter into agreements or contracts with soil and water conservation districts, adjacent localities, or other public or private entities to carry out or assist with plan review, inspections, and enforcement.	Locality VESMP authority: <u>May</u> enter into agreements or contracts with DEQ, soil and water conservation districts, adjacent localities, planning district commissions, or other public or private entities to carry out or assist with plan review and inspections.
Stormwater Management by DEQ	Stormwater Management by Locality

The Virginia ESCL is [§ 62.1-44.15:51](#) through [§ 62.1-44.15:66](#) of the Code of Virginia, and VESMA is [§ 62.1-44.15:24](#) through [§ 62.1-44.15:50](#). The administrative portion of the programmatic regulations for a VESMP is **9VAC25-875-40** through **9VAC25-875-200** and for a VESCP is **9VAC25-875-210** through **9VAC25-875-370**.

<p>Administer VESCP:</p> <ul style="list-style-type: none"> • § 62.1-44.15:51 - 66 Erosion and Sediment Control Law (ESCL) • 9VAC25-875 Virginia Erosion and Stormwater Management Regulation (VESMR) 	<p>Administer VESMP:</p> <ul style="list-style-type: none"> • § 62.1-44.15:24 - 50 Virginia Erosion and Stormwater Management Act (VESMA) • 9VAC25-875 Virginia Erosion and Stormwater Management Regulation (VESMR)
<p>Part III VESMR:</p> <ul style="list-style-type: none"> • Definitions 9VAC25-875-20, 9VAC25-875-210 • Purpose 9VAC25-875-220 • Applicability 9VAC25-875-230 • Criteria for determining status of land-disturbing activity 9VAC25-875-240 • Regulated LDA 9VAC25-875-250 • LDA in the Chesapeake Bay Preservation Areas 9VAC25-875-260 • State Agency LDA 9VAC25-875-270 • Activities not required to comply with ESCL 9VAC25-875-280 • Criteria for programs operated by a VESCP 9VAC25-875-290 • Plan review requirements 9VAC25-875-300 • Plan review coordination for solar projects 9VAC25-875-310 • Long-term maintenance of stormwater management facilities 9VAC25-875-320 • Inspections 9VAC25-875-330 • Enforcement 9VAC25-875-340 • Variances 9VAC25-875-350 • VESCP reporting and record keeping 9VAC25-875-360 • Review and evaluation of VESCPs 9VAC25-875-370 • Part II Criteria for a VSMP 9VAC25-875-200 	<p>Part II VESMR:</p> <ul style="list-style-type: none"> • Definitions 9VAC25-875-20, 9VAC25-875-40 • Purpose 9VAC25-875-50 • Applicability 9VAC25-875-60 • Regulated LDA 9VAC25-875-70 • LDA in the Chesapeake Bay Preservation Areas 9VAC25-875-80 • Activities not required to comply with VESMA 9VAC25-875-90 • Criteria for programs operated by a VESMP 9VAC25-875-100 • Plan review requirements 9VAC25-875-110 • Plan review coordination with the Department (DEQ) 9VAC25-875-120 • Long-term maintenance of stormwater management facilities 9VAC25-875-130 • Inspections 9VAC25-875-140 • Enforcement 9VAC25-875-150 • Hearings 9VAC25-875-160 • Variances and exceptions 9VAC25-875-170 • VESMP reporting and record keeping 9VAC25-875-180 • Review and evaluation of VESMPs 9VAC25-875-190

LAND-DISTURBING ACTIVITY

(§ 62.1-44.15:24, § 62.1-44.15:51) **NOTE: IN INSTANCES WHERE THERE ARE STATUTORY OR REGULATORY CITATIONS THAT DIFFER FROM A VESMP AND A VESCP AUTHORITY, THE VESMP CITATION WILL APPEAR FIRST.**

A *land-disturbing activity (LDA)* is defined as any man-made change to the land surface that may result in soil erosion from water or wind and the movement of sediments into state waters or onto lands in the Commonwealth, including, but not limited to, clearing, grading, excavating, transporting, and filling of land.

Regulated land-disturbing activities

(§ 62.1-44.15:34.E; § 62.1-44.15:55.F.1)

LDAs equal to or greater than **10,000 square feet** are subject to the laws and regulation of the VESCP or VESMP. In a portion designated as a Chesapeake Bay Preservation Area according to the Chesapeake Bay Preservation Act, the regulated land disturbance threshold drops to **2,500 square feet**. LDAs of **an acre** or more in a VESCP locality are subject to the stormwater requirements of VESMA, which will be administered by DEQ as the Virginia Stormwater Management Program (VSMP) authority. LDAs of **an acre** or more in a VESMP locality are subject to the stormwater requirements of VESMA, which are administered by the VESMP.

EXEMPTIONS

(§ 62.1-44.15:34, § 62.1-44.15:55) (9VAC25-875-90, 9VAC25-875-280)

VESMA and the ESC law do not regulate some LDAs. All of the following activities are exempt from VESMA and ESC law and regulation but may be regulated by other agencies or regulations:

- Minor LDAs such as home gardens and individual home landscaping, repairs, and maintenance work;
- Installation, maintenance, or repair of any individual service connections;
- Installation, maintenance, or repair of any underground utility line when such activity occurs on an existing hard surfaced road, street, or sidewalk, provided the LDA is confined to the area of the road, street, or sidewalk that is hard surfaced;
- Installation, maintenance, or repair of any septic tank line or drainage field unless included in an overall plan for an LDA relating to construction of the building to be served by the septic tank system;

- Permitted surface or deep mining operations and projects, or oil and gas operations and projects conducted pursuant to Title 45.2;
- Clearing of lands specifically for bona fide agricultural purposes; the management, tilling, planting, or harvesting of agricultural, horticultural, or forest crops; livestock feedlot operations; agricultural engineering operations, including construction of terraces, terrace outlets, check dams, de-silting basins, dikes, ponds, ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage, and land irrigation; or as additionally set forth by the Board in regulations. However, this exception shall not apply to harvesting of forest crops unless the area on which harvesting occurs is reforested artificially or naturally in accordance with the provisions of Chapter 11 (§ 10.1-1100 et seq.) of Title 10.1 or is converted to bona fide agricultural or improved pasture use as described in subsection B of § 10.1-1163;
- Installation of fence and sign posts or telephone and electric poles and other kinds of posts or poles;
- Shoreline erosion control projects on tidal waters when all of the LDAs are within the regulatory authority of and approved by local wetlands boards, the Marine Resources Commission, or the United States Army Corps of Engineers; however, any associated land that is disturbed outside of this exempted area shall remain subject to the law and regulation;
- LDAs in response to a public emergency where the related work required immediate authorization to avoid imminent endangerment to human health or the environment. The VESMP or VESCP authority shall be advised within seven days of commencing the LDA, and compliance with the administrative requirements is required within 30 days.
- Discharges to a sanitary sewer or a combined sewer system that are not from an LDA; and
- Repair or rebuilding of the tracks, rights-of-way, bridges, communication facilities, and other related structures and facilities of a railroad company.

Additional exemptions for **VESMPs only** ([§ 62.1-44.15:34.G](#)), ([9VAC25-875-90.B](#)):

Notwithstanding any other provision of VESMA, the following activities are required to comply with the soil erosion control requirements but are *not required* to comply with the water quantity and water quality technical criteria, unless otherwise required by federal law:

1. Activities under a state or federal reclamation program to return an abandoned property to an agricultural or open land use;
2. Routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original construction of the project. The paving of an existing road with a compacted or impervious surface and reestablishment of existing associated ditches and shoulders shall be deemed routine maintenance if performed in accordance with this subsection; and
3. Discharges from an LDA to a sanitary sewer or a combined sewer system.



As an inspector...

It is important to note that the program administrator shall determine the validity of a claim of exempt status by a property owner (9VAC25-875-240).

MORE STRINGENT REGULATIONS OR ORDINANCES

[\(§ 62.1-44.15:33, § 62.1-44.15:65\)](#)

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

Additionally, the more stringent ordinances may be necessary to:

- Prevent any further degradation to water resources,
- Address total maximum daily load (TMDL) requirements,
- Protect exceptional state waters, or
- Address specific existing water pollution including:
 - 1) Nutrient and sediment loadings,
 - 2) Stream channel erosion,
 - 3) Depleted groundwater resources, or
 - 4) Excessive localized flooding within the watershed.

For example, a VESMP or VESCP authority may require the detention of larger storm events to address one of the issues listed earlier. Before adopting more stringent regulations or ordinances, a public hearing must be held after giving due notice. The VESMP or VESCP authority must report their more stringent regulations or ordinances to DEQ. This requirement does not apply if the authority reduces the threshold for regulated LDAs.

NOTE: Localities may adopt the Virginia Stormwater Management Handbook (VSWHB) by reference as part of their local ordinance.

EROSION IMPACT AREA

[\(§ 62.1-44.15:24, § 62.1-44.15:51\)](#)

An *erosion impact area* is defined as an area of land **not associated** with a current land-disturbing activity but subject to persistent soil erosion resulting in the delivery of sediment onto neighboring properties or into state waters. This definition shall not apply to any lot or parcel of land of 10,000 square feet or less used for residential purposes or to shorelines where the erosion results from wave action or other coastal processes. In order to prevent further erosion, a VESMP or VESCP authority may require approval of an ESC or erosion control and stormwater management (ESM) plan [\(§ 62.1-44.15:34.C, § 62.1-44.15:55.D\)](#).

An example would be an old borrow pit generating sediment onto an adjacent property after every rain event. When the property owner complains to the VESMP or VESCP authority, the authority may require the borrow pit owner to submit an ESC or ESM plan for approval, in order to help remedy the off-site sedimentation.

3b. Local Ordinances for Chesapeake Bay Preservation Act LDAs

CHESAPEAKE BAY ACT LAND-DISTURBING ACTIVITIES

[\(§62.1-44.15:24, :27, :34\)](#) ([9VAC25-875-70, -80, 9VAC25-875-250, -260](#))

Chesapeake Bay Preservation Act land-disturbing activities (CBPA LDAs) are defined as LDAs ***in Chesapeake Bay Preservation Areas that result in a land disturbance greater than or equal to 2,500 ft.² and less than one acre.*** VESCP and VESMP localities subject to the provisions of the CBPA ([§62.1-44.15:67 et al](#)) must regulate CBPA LDAs.

Chesapeake Bay Preservation Areas are delineated by a local government within Tidewater Virginia that if improperly developed may result in substantial damage to the water quality of the Chesapeake Bay and its tributaries. A Chesapeake Bay Preservation Area includes a Resource Protection Area and a Resource Management Area ([§62.1-44.15:68, 9VAC25-830-40](#)).

However, localities may choose whether or not to require a full plan submittal for single-family residences that are separately built with a land disturbance greater than 2,500 square feet but less than one acre. In addition to compliance with the water quantity criteria (**9VAC25-875-600**), a locality may also require compliance with the water quality criteria (**9VAC25-875-580, 9VAC25-875-590**) for single-family residences that will disturb more than 2,500 square feet in the CBPA. Most localities will choose to accept an agreement in lieu of a plan (discussed in Module 3c) in these instances.

VESCP localities that are subject to the Chesapeake Bay Preservation Act must adopt an ordinance that meets the same requirements as a VESMP for CBPA LDAs in accordance with **9VAC25-875-80**. As an inspector, it's important to realize the following requirements:

- A local land disturbance approval, as applicable, shall be provided for the LDA.
- Inspection requirements of **9VAC25-875-140**, with the exception of subdivisions A 3 and A 4, must be followed by inspecting the LDA at the appropriate frequency during construction for compliance with the approved ESC and Stormwater Management (SWM) plans.
- Long-term stormwater management facility maintenance requirements of **9VAC25-875-130** must be enforced.

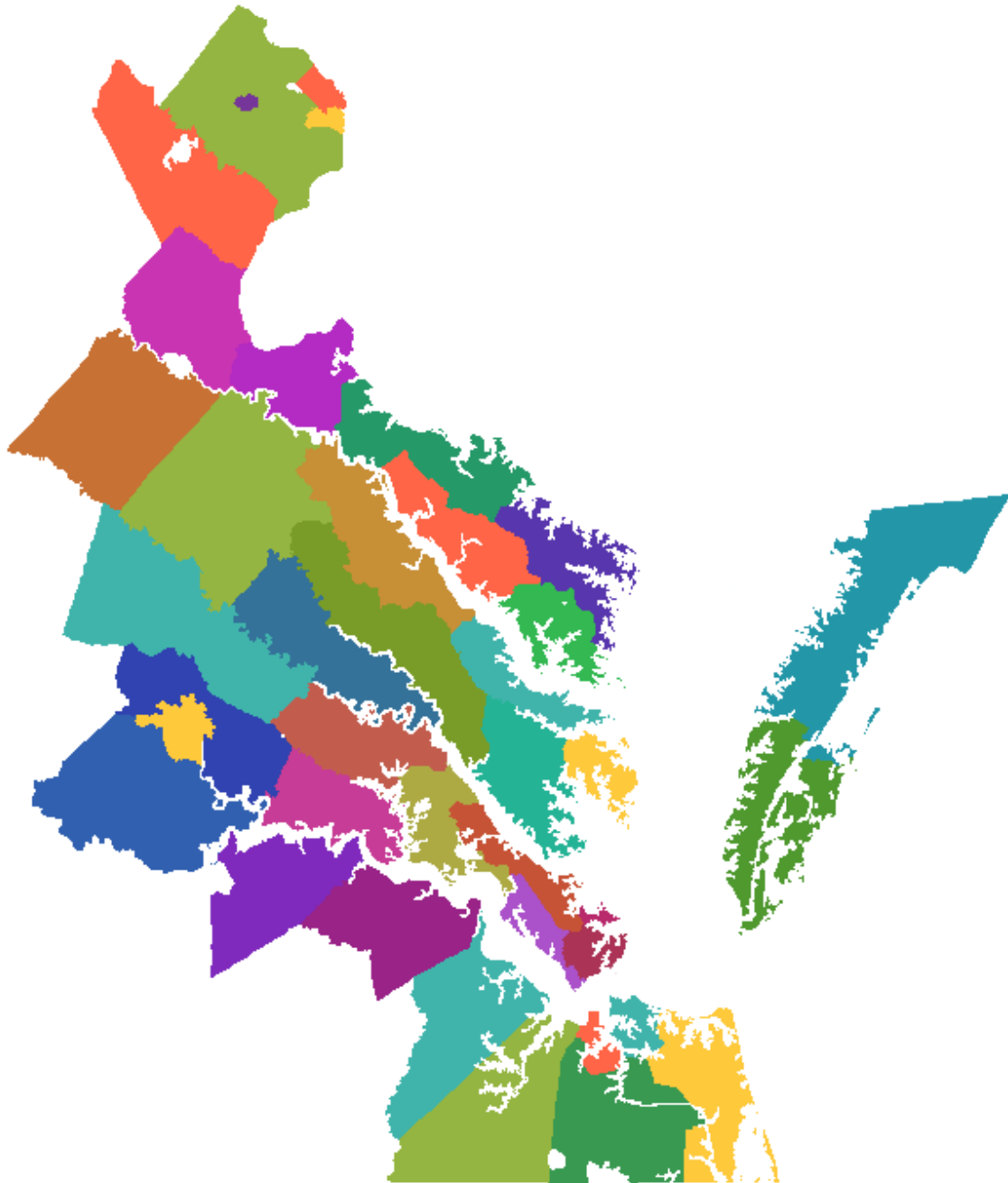
NOTE: At the discretion of the authority, recorded long-term maintenance agreements need not be required for Post-Construction Best Management Practices (P-BMPs) designed to treat stormwater runoff primarily from an **individual residential lot**. It must be demonstrated to the satisfaction of the authority that future maintenance of such P-BMPs will be addressed through an enforceable mechanism.

Such a strategy may include periodic inspections, homeowner outreach and education, or other methods targeted at promoting the long-term maintenance of such P-BMPs. Such facilities shall not be subject to the requirement for an inspection to be conducted by the authority.

Additionally, the authority may choose whether or not to require construction record drawings for P-BMPs not required to have maintenance agreements.

Reminder: For VESCPs, DEQ would review the SWM plan and Construction General Permit (CGP) coverage would be required when the LDA is ≥ 1 acre. VESCPs in the CPBA must follow the requirements of a VESMP on LDAs between 2,500SF to <1 acre due to their proximity to the Bay.

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
Colonial Heights	Newport News	Suffolk
Fairfax	Norfolk	Virginia Beach
Falls Church	Petersburg	Williamsburg
Fredericksburg	Poquoson	

Towns

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

3c. Erosion Plans

(9VAC25-875-20)

An ESC or ESM plan describes the potential of and methods for controlling soil erosion and sedimentation during an LDA. The plan also describes the structural and non-structural practices for minimizing erosion and containing sediment during construction. **NOTE:** There are additional components to an ESM plan related to stormwater management that are discussed in our Stormwater Management Certification courses.

The VSWHB contains the specifications for the installation and maintenance of the Construction Best Management Practices (C-BMPs). The Minimum Standards state when and where the C-BMPs must be used. See Modules 4 and 5 for more information.

AGREEMENT IN LIEU OF A PLAN

(9VAC25-875-20, 9VAC25-875-210)

An *agreement in lieu of a plan* is a contract between the VESMP or VESCP authority and the owner that specifies conservation measures that must be implemented in the construction of a (i) single-family detached residential structure or (ii) farm building or structure on a parcel of land with a total impervious cover percentage, including the impervious cover from the farm building or structure to be constructed, of less than 5.0%. This contract may be executed by the VESMP or VESCP authority in lieu of a formal site plan.

Farm building or structure means a building or structure not used for residential purposes, located on property where farming operations take place, including any building or structure used for agritourism activity and any related impervious surfaces, including roads, driveways, and parking areas; and used primarily for any of the following uses or combination thereof:

1. Storage, handling, production, display, sampling, or sale of agricultural, horticultural, floricultural, or silvicultural products produced in the farm;
2. Sheltering, raising, handling, processing, or sale of agricultural animals or agricultural animal products;
3. Business or office uses relating to the farm operations;

4. Use of farm machinery or equipment or maintenance or storage of vehicles, machinery, or equipment on the farm;
5. Storage or use of supplies and materials used on the farm; or
6. Implementation of best management practices associated with farm operations.

Agritourism activity means any activity carried out on a farm or ranch that allows members of the general public, for recreational, entertainment, or educational purposes, to view or enjoy rural activities, including farming, wineries, ranching, horseback riding, historical, cultural, harvest-your-own activities, or natural activities and attractions. An activity is an agritourism activity whether or not the participant paid to participate in the activity.

An example would be a winery of 50 acres using 2 acres to build a tasting room and parking lot. As long as the existing impervious on site and the new impervious is less than 5% (in this example 2.5 acres) then an agreement in lieu of a plan would be applicable.

The *applicant* is defined as any person submitting an ESC or ESM plan, or an agreement in lieu of a plan, for approval in order to obtain authorization for LDAs to commence. This allows the contractor of a project to pursue the land disturbance approval. However, the responsibility for plan preparation, submission, and obtaining approval belongs to the **owner** of the project ([§ 62.1-44.15:34.A, § 62.1-44.15:55.E](#)).

ADEQUATE PLANS

([§ 62.1-44.15:34, § 62.1-44.15:55](#))

For an ESC or ESM plan to be considered adequate, it must:

- Meet the requirements of VESMA or ESC law and regulation;
- Satisfy the minimum standards of the VESM Regulation;
- Comply with more stringent standards, as required by the locality;
- Include the applicable BMPs from the VSWHB (titled and numbered);
- Contain sufficient information to assure the plan-approving authority that potential problems of erosion and sedimentation have been adequately addressed; and
- Include a plan review checklist, if required by the locality, but is required by DEQ.

NOTE

New and/or proprietary practices may also be used to address potential erosion and sedimentation issues; however, these practices need to be thoroughly described to the satisfaction of the plan-approving authority.

Applicants in a VESCP locality must also certify that they will comply with the ESC law and that the C-BMPs included on the plan will be properly executed. Applicants in a VESMP locality must also certify that they will comply with VESMA and that the C-BMPs included on the plan will be properly executed. A sample plan review checklist is included in Module 4.

VARIANCES

(9VAC25-875-170, 9VAC25-875-350)

The VESMP or VESCP authority may waive or modify any of the requirements that are deemed inappropriate or too restrictive for site conditions by granting a variance. Variance requests must be considered judiciously, and the VESMP or VESCP authority should take a conservative and responsible approach, keeping in mind the need to protect downstream properties and the environment from damage due to soil erosion, sediment deposition, and non-agricultural runoff. Variances should only be approved when they are reasonable and supported by site-specific rationale.

A *variance* may be granted under these two conditions:

1. At time of plan submission, an applicant can request a variance to become a part of the approved ESC or ESM plan.
 - Applicant explains reasoning to the VESMP or VESCP authority in writing.
 - The VESMP or VESCP authority approves or disapproves the variance and documents the variance on plans.
2. During construction, the person responsible for implementing the approved plan can request a variance.
 - Request is made in writing to the VESMP or VESCP authority.
 - The VESMP or VESCP authority approves or disapproves the request in writing.

- If no response from the VESMP or VESCP authority within 10 days, the request is disapproved.
- Applicant may resubmit a variance request with additional documentation.

An example of a variance at plan submission could be allowing a shorter and wider construction entrance and requiring road sweeping twice a day because a 70'x12' construction entrance could not be accomplished on a very small lot.

APPROVAL

[\(§ 62.1-44.15:34.A, § 62.1-44.15:55.A\)](#)

For LDAs in a VESCP authority locality: Before any activities involving LDAs regulated under the ESC law can commence, the applicant must have submitted an ESC plan that has been reviewed and approved, as well as certification that the plan will be followed. If the LDA is subject to VESMA, the applicant must also have a SWM plan approved by DEQ and CGP coverage, if required, before LDAs can begin.

For LDAs in a VESMP authority locality: Before any activities involving LDAs regulated under VESMA can commence, the applicant must have an approved ESM plan and authority land-disturbance approval has been issued. If the LDA is subject to the stormwater requirements of VESMA, the applicant must have an approved plan and CGP coverage, if required, before LDAs can begin.

For example, when a contractor applies for a building permit with a locality's code compliance department, the contractor will need to submit proof of approved ESC (VESCP) and SWM plans (DEQ) or ESM (VESMP) plans and permit coverage, where applicable, before the building permit can be issued.

Security for performance

[\(§ 62.1-44.15:34.A.4, § 62.1-44.15:57\)](#)

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

Refund of security

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

As an inspector...

It is important to work with your plan reviewer to calculate the appropriate surety and forward that amount to the program administrator. You should also be involved in reducing or releasing any sureties.

Responsible land disturber

[\(§ 62.1-44.15:34.A, § 62.1-44.15:55.B\)](#)

Before land disturbance can begin, the name of the responsible land disturber (RLD) must be provided to the VESMP or VESCP authority. *RLD* is defined as an individual holding a certificate issued by DEQ who is responsible for carrying out the LDA in accordance with the approved ESC or ESM plan. The RLD may be the owner, applicant, permittee, designer, superintendent, project manager, contractor, or any other project or development team member (**9VAC25-875-20**). Failure to provide the name of the RLD to the VESCP or VESMP authority before starting land disturbance may result in the revocation of the approved ESC plan or land disturbance approval, and the owner shall be subject to the penalties outlined in the ESC Law or VESMA.

The VESCP or VESMP authority may waive the RLD requirement for an agreement in lieu of a plan. If a violation occurs during the LDA, then the owner shall correct the violation and provide the name of the individual holding a Responsible Land Disturber certificate.

Changes to an approved plan

[\(§ 62.1-44.15:34.B, § 62.1-44.15:55.C\)](#)

The VESCP or VESMP authority may require revisions to an approved ESC or ESM plan when:

- Inspections show the plan is inadequate or
- Circumstances on the LDA have changed and the approved ESC or ESM plan cannot be carried out. The VESCP authority and the person responsible for carrying out the plan must agree upon the changes. The VESMP authority and the owner must agree upon the changes.

3d. Standards and Specifications

[\(§ 62.1-44.15:31\)](#)

Certain entities that perform a significant amount of land disturbance, through multiple jurisdictions on a regular basis, have the ability to file with DEQ, general erosion control and stormwater management standards and specifications that describe how LDAs will be conducted.

The Virginia Department of Transportation (VDOT) **must**, and any other state agency **may**, submit standards and specifications. Linear ventures, such as electric, natural gas, and telephone utility companies; interstate and intrastate natural gas pipeline companies; and railroad companies, **may** submit standards and specifications to DEQ for review and approval. Federal entities and authorities created pursuant to [§ 15.2-5102](#) (ex. water and sewer authorities) **may** submit standards and specifications. Wetland mitigation or stream restoration bank projects **may** submit standards and specifications.

Standards and specifications must be consistent with VESMA and the associated regulation. Approval of standards and specifications by DEQ does not relieve the owner or operator of the duty to comply with any other applicable local ordinances or regulations. Standards and specifications shall be updated **periodically** as required by DEQ, and DEQ has **60 days** to comment.

The entity responsible for the LDA must ensure compliance with the approved plan. DEQ shall provide project oversight and enforcement as necessary.

Entities with DEQ-approved standards and specifications must provide provisions for certified program administrators, inspectors, and plan reviewers, in order to fulfill the requirements of their standards and specifications.

3e. Inspections

[\(§ 62.1-44.15:27, § 62.1-44.15:58\)](#) (9VAC25-875-140, 9VAC25-875-330)

Regular inspections during every phase of an LDA are important for ensuring that all C-BMPs on the approved plan are installed and maintained correctly.

In accordance with the VESM Regulation, the VESCP or VESMP authority must either:

1. Provide for an inspection:
 - during, or immediately following, initial installation of erosion and sediment controls;
 - at least once in every two-week period and within 48 hours following any runoff producing storm event; and
 - at the completion of the project, prior to the release of any performance bonds; or
2. Establish an alternative inspection program that ensures compliance with the approved ESC plan. Any alternative inspection program shall be:
 - a. Approved by DEQ prior to implementation;
 - b. Established in writing;
 - c. Based on a system of priorities that, at a minimum, address the amount of disturbed project area, site conditions, and stage of construction; and
 - d. Documented by inspection records.

NOTE: For a VESMP authority, there are additional inspection requirements in **9VAC-25-875-140** related to the installation of P-BMPs and SWPPP documentation. These items are covered in the Stormwater Management Certification courses.

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

RIGHT OF ENTRY

[\(§ 62.1-44.15:39, § 62.1-44.15:60\)](#)

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

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

MONITORING AND REPORTS

[\(§ 62.1-44.15:27.H.3, § 62.1-44.15:58.A\)](#)

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

The RLD is a requirement specifically for compliance with VESMA and ESC Law. If the project is covered under the CGP, in addition to an RLD, the operator is required to have a person who meets the criteria for qualified personnel as defined by the CGP (who maybe the same as the RLD) conduct inspections and create inspection reports to be kept in the SWPPP documentation.

3f. Enforcement

NOTICE TO COMPLY

[\(§ 62.1-44.15:37.A, § 62.1-44.15:58.A\)](#)

After conducting inspections, if DEQ, the VESCP authority, or the VESMP authority determine that there is a failure to comply with the approved ESC or ESM plan, a minimum standard, the permit conditions, or failure to properly install or maintain C-BMPs specified by inspection reports, a notice to comply may be served upon the owner, permittee, or person responsible for carrying out the plan.

Options to serve a notice to comply:

- Electronically
- Mail with confirmation of delivery to the address specified in the plan, application, or locality's land records
- Deliver at the site to the agent or employee identified by the owner to the authority

Notice to comply must include:

- Measures needed to comply with the approved ESC plan, ESM plan, or CGP conditions
- Time within which such corrective measures shall be completed

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

- The VESCP authority local land disturbance approval or plan approval may be revoked
- VESCP authority, VESMP authority, or DEQ may pursue enforcement action:
 - Penalties, injunctions, or other legal actions ([§ 62.1-44.15:48.B](#), [§ 62.1-44.15:63](#))
 - The enforcement options available to a VESCP authority will depend on whether the VESCP authority has adopted an ordinance providing for civil penalties. A VESMP authority is required to adopt such an ordinance.
- A stop work order may be issued

STOP WORK ORDER

[\(§ 62.1-44.15:37, § 62.1-44.15:58.C\)](#)

A stop work order may be issued by the VESCP authority, the VESMP authority, or DEQ in the following three scenarios after an inspection report denotes a violation of [§ 62.1-44.15:34](#), [:55](#), or [:58](#):

- Scenario 1: Failure to comply with an ESC or ESM plan (documented in inspection reports), followed by issuance of a notice to comply, then failure to implement corrective measures within the timeframe stated in the notice to comply
- Scenario 2: LDA started without an approved ESC or ESM plan or required permits
- Scenario 3: Alleged noncompliance is causing, or is in imminent danger of causing, harmful erosion of lands or sediment deposition in waters within the watersheds of the Commonwealth

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

Steps for issuing a stop work order:

Scenario 1: (VESCPs or VESMPs)

For an LDA where there is an approved ESC or ESM plan and a failure to implement corrective measures within the timeframe stated in the notice to comply, the following steps must be taken to issue a stop work order:

1. After writing an initial inspection report and completing a follow-up inspection, if there is a failure to meet the original deadline, issue a notice to comply, with deadline.
2. After conducting a follow-up notice to comply inspection, if there is a failure to comply with the notice to comply, issue a stop work order.
3. When issuing the stop work order, follow the same three options as for delivering a notice to comply.

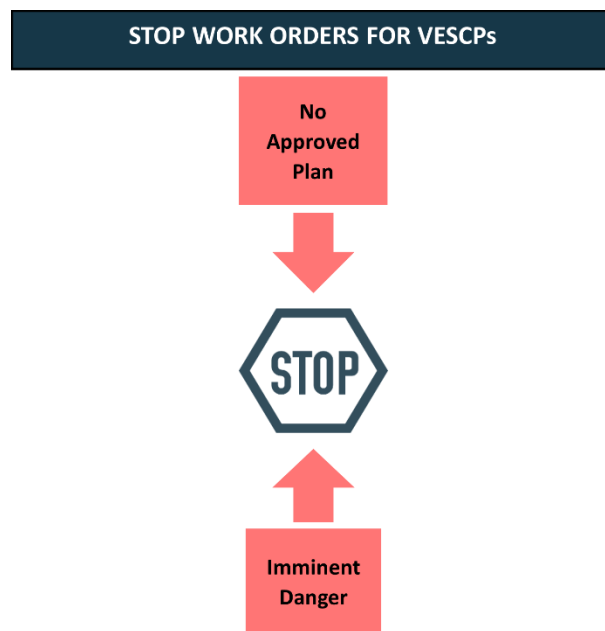
For a VESCP authority-issued or DEQ-issued stop work order, the LDA must stop on **all or part** of the site. For a VESMP authority that has issued a stop work order, the LDA must stop on **all** of the site, until specific corrective measures listed in the notice to comply are taken. The stop

work order remains in effect for seven (7) days from the date of service in a VESCP authority. In a VESMP authority, the stop work order remains in effect until the violations cease. If corrective actions are completed sooner, the stop work order may be lifted.



Scenario 2: (VESCP)

In a VESCP authority, when the LDA has started without an approved ESC plan or required approvals, a notice to comply is not required prior to issuing a stop work order. The stop work order must be transmitted electronically **or** mailed with confirmation of delivery to the address specified in the land records of the locality **and** posted on the site where the disturbance is occurring. The LDA must stop on the entire site, and the order remains in effect until an ESC plan is approved and required approvals are obtained. In a VESMP authority, LDAs under scenario 2 would be addressed by the procedures in either scenario 1 or 3, based on the determination by the authority of whether imminent danger is present.



Scenario 3:

When the alleged noncompliance is causing, or is in imminent danger of causing, harmful erosion of lands or sediment deposition in waters within the watersheds of the Commonwealth, a notice to comply is not required prior to issuing a stop work order. The stop work order remains in effect until a hearing can be offered for the person to whom the order was issued to affirm, modify, amend, or cancel such an order in VESMP localities. If corrective actions are completed sooner, the stop work order may be lifted.

STOP WORK ORDERS FOR VESMPs



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

In cases of imminent danger, DEQ may issue an emergency stop work order without advanced notice or hearing. After issuing an emergency stop work order, DEQ must provide an opportunity for a hearing, after reasonable notice as to the time and place thereof, to such person, to affirm, modify, amend, or cancel such emergency order.

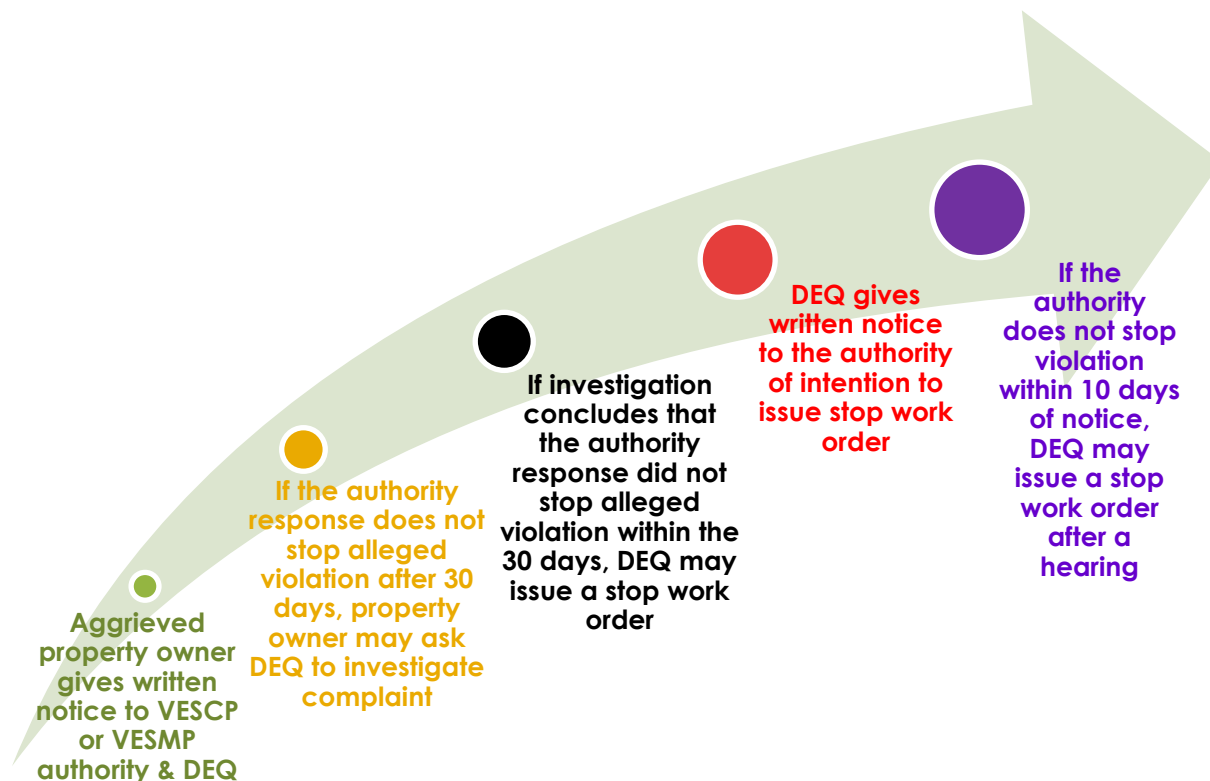
Appealing a stop work order

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

Stop work order process when owner of damaged property contacts DEQ (§ 62.1-44.15:64)

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

Process for Aggrieved Property Owners



If a person who has been issued an order or emergency order is not complying with the terms, DEQ may institute a proceeding in the appropriate circuit court, compelling the person to comply with such order. If the person still does not comply, the person shall be subject, in the discretion of the court, to a civil penalty not to exceed \$2,000 for each violation. Since the state (DEQ) is undertaking the enforcement, any civil penalties assessed by a court are paid into the state treasury ([§ 62.1-44.15:64.F,G](#)).

3g. DEQ Compliance Review

REQUIREMENTS

[\(§ 62.1-44.15\(19\), § 62.1-44.15:52.D: :54\)](#) (9VAC25-875-190, 9VAC25-875-370)

DEQ is required to conduct a program compliance review every five years, or on a more frequent basis if deemed necessary by DEQ. To avoid redundancy and overlap, the review can be coordinated with the authority's other program reviews such as the Chesapeake Bay Program.

The review will consist of the following:

- Consultation with the VESCP/VESMP administrator or designee
- Review of the local ordinance(s) and other applicable documents
- Review of a subset of the plans approved by the VESCP authority for consistency of application, including variances granted
- Review of a subset of the plans approved by the VESMP 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 inspections of regulated activities
- Review of enforcement actions by the VESCP authority
- Review of enforcement actions and an accounting of amounts recovered through enforcement actions, where applicable, by the VESMP authority

If DEQ finds areas that need corrective actions, it will provide a checklist and develop a corrective action agreement for the authority to come into compliance.

As an inspector...

It is important to know that the VESCP authority must maintain a copy of the approved plan, a record of inspections, and a record of enforcement actions for each active land-disturbing activity. Some VESCP authorities may retain documents for longer. VESMP authorities must abide by a specific record retention timeline for their regulated LDAs.



Summary

This module provides the VESCP or VESMP inspector with the information and processes needed to:

- Identify and assess whether or not sites are LDAs, erosion impact areas, or exempt land-disturbing activities under the erosion program
- Apply the basic requirements of an erosion program to regulated LDAs
- Conduct inspections and support the plan review process in accordance with the VESMA or ESCL and VESM Regulation
- Relate the main components of an erosion program to the regulated community. An inspector sufficiently familiar with these components is able to find and compare approved plan elements to site conditions
- Explain the legal rationale for more stringent ordinance requirements
- Use knowledge of the enforcement process to direct site operators and/or owners towards compliance
- Identify which sites are subject to standards and specifications. Knowledge of regulatory oversight for different types of projects, especially when not directly under the inspector, is crucial for issue resolution such as with citizen complaints
- Adhere to record-keeping requirements for each project worked
- Participate in the program review process as required

Knowledge Check Questions

1. What is a land-disturbing activity?
2. What is a regulated land-disturbing activity?
3. What is required before land-disturbing activity on a project can begin?
4. When must erosion inspections be scheduled?
5. List the conditions under which a stop work order could be used?
6. How long does a stop work order issued on an LDA with an approved plan remain in effect?
7. Under what conditions may localities adopt ordinances that are more than state requirements?
8. What must the VESCP authority do following an inspection where it determined there was a failure to comply with the approved ESC plan?
 - a. Revoke the permit
 - b. Require the ESC plan to be resubmitted
 - c. Serve notice upon the permittee or person responsible for carrying out the plan
 - d. Assess a civil penalty

Answers to the Knowledge Check Questions can be found in Appendix I.