

Minutes from Nutrient Trading TAC meeting of August 31, 2005

The meeting was held at the Piedmont Regional Office (PRO), located at 4949-A Cox Road in Glen Allen. The meeting commenced at 9:30 with introductions by Dr. Ellen Gilinsky, Director of DEQ's Water Quality Division. Mike Templeton and Rich Gannon of NCDENR were the featured speakers; Kyle Winter outlined the regulation development process and led a discussion of the sections of the regulation that have been distributed among the TAC to date. A list of the attendees follows: later in the meeting, they split into one of four workgroups, as listed below, to schedule additional conference calls and/or meetings before the next TAC meeting on September 19th.

Workgroup	Attendee	Affiliation
Water Quality Improvement Fund:		
	Alan Pollock	DEQ
	Stuart Wilson	DCR
	Jeff Corbin	Chesapeake Bay Foundation
Point Source/NPS Trading:		
	Rick Linker	DEQ
	Jack Frye	DCR
	Andrew Seligman	EPA
	Ricky Rash	VASWCD
	Paul Howard	Culpeper County
	Bill Street	James River Association
	Paul Bukaveckas	VCU
	Katie Kyger	VA Agribusiness Council
	Wilmer Stoneman	VA Farm Bureau
	Kurt Stephenson	Va. Tech
	Leonard Shabman	Resources for the Future
	Clifford Randall	Va. Tech
Permit Structure:		
	Ellen Gilinsky	DEQ
	Keith Fowler	DEQ
	Tom Faha	DEQ
	Kyle Winter	DEQ
	Jud White	Dominion
	Rick Parrish	Southern Environmental Law Center
	Chris Pomeroy	AquaLaw/VAMWA
	Tom Roberts	Smurfit-Stone
	Tony Nobinger	Philip Morris
Schedule of Compliance:		
	Allan Brockenbrough	DEQ
	Glenn Harvey	Alexandria Sanitary Authority
Other attendees, and their affiliations, are listed below:		
	Mike Templeton	NCDENR
	Rich Gannon	NCDENR
	Joe Tannery	Chesapeake Bay Foundation
	Missy Neff	VA League of Conservation Voters
	John Martin	Citizen (Albemarle County)

Jerry McCormick-Ray	Citizen (Albemarle County)
Scott Reed	EarthSource
Steve Talley	Canaan Valley Institute
Liz Palmer	League of Women Voters
Frank Harksen	Hanover County
Kathy Wilson-Jones	City of Richmond Attorney's Office
Dave Evans	McGuireWoods

Mike Templeton of North Carolina's Department of Environment and Natural Resources then gave a presentation on the Neuse River nutrient trading program (Mr. Templeton's presentation can be reviewed online; more information is available at http://h2o.enr.state.nc.us/nps/Neuse_NSW_Rules.htm)

(the following text covers questions answered by Mr. Templeton during and after the presentation)

Slide 9: Regarding allocations, Mike explained that the WLA for point sources is reserved for individually permitted dischargers of "nitrogen-bearing" wastewaters, the result being that the facilities covered by NCDWQ's wastewater general permits are handled under the nonpoint side of the strategy and the nonpoint LA.

Slide 14: Q_{pmt} represents the maximum permitted flow as of 1995; it should be noted that some facilities have phased limits where their design flow is incrementally raised and can exceed the actual in-the-ground capacity.

Slide 15: Discharge allocation represents pounds of nitrogen released by the facility; estuary allocation represents pounds of nitrogen received at the critical area of the estuary.

Slide 16: Unlike the allocation discussion in Slide 9, there is no de minimis considered for new or expanding facilities. The allocation consists of a payment equal to 30 years of offsets (the life of the proposed treatment works); for example, the payment for a new 1 MGD plant would approach \$7M. For many smaller facilities, land application or pumping the wastewater to a larger facility would be less expensive than building a plant utilizing Best Available Technology from the ground up.

There is no direct trading mechanism between point sources and nonpoint sources. The EEP, which now includes the Wetland Restoration Fund mentioned in the Neuse rules, administers the program for BMP construction and receives the offset fees.

Slide 22: The individual permits contain a condition that a facility is deemed in compliance with its nitrogen limits as long as it is a member of the group compliance association.

Slide 26: The intent is to focus on the root causes of the violation. NC has the option of going after the Association or the individual members.

Other questions:

Andy Seligman: How would this program address an individual facility that causes a hot spot? Would backsliding be an issue?

Mike: Local limits would be developed and would remain in effect irrespective of membership in the Association and the Association's performance as a whole. Violation of these limits would subject the permittee to enforcement apart from the group permit.

Rick Linker: How is the Association put together?

Mike: The association started several years ago as a number of facilities pooling their resources to perform stream monitoring. Once the trading program began, the Association began as a not-for-profit corporation formed by its members and using a fee structure. If the Association meets its limit, facilities exceeding their individual limits are assessed a fee by the Association, not by NC, and the assessment is according to a set schedule.

The association decides how membership is granted or denied, not the DWQ. A facility denied membership remains subject to the nitrogen limit in the individual permit.

To date, there has been one trade consisting of a contract of sale; no point source dischargers have bought allocation from the EEP/WRF yet.

Payments made by the Association to NC for compliance purposes are considered a mitigative payment and not an enforcement penalty; in NC, the state constitution assigns enforcement penalties to the school system, so the mitigative payment is retained for the purpose of environmental protection.

Kyle Winter: Is the resale of allocations permitted?

Mike: Yes; in theory, one could sell an allocation to anyone but the allocation cannot be used until it is incorporated into a valid discharge permit. Permit limits are not synonymous with allocations; the allocation is a potential allowance to discharge, the limit grants actual authorization to discharge.

Rich Gannon of North Carolina's Department of Environment and Natural Resources then gave a presentation on the Neuse River nutrient trading program (Mr. Gannon's presentation can be reviewed online; more information is available at <http://h2o.enr.state.nc.us/nps/tarpam.htm>)

(the following text covers questions answered by Mr. Gannon during and after the presentation)

Wilmer Stoneman: How do you foresee point source-nonpoint source trading on a more open basis (currently, NC serves as the middleman)?

Rich: The issue hasn't come up to a large extent, but I don't foresee problems.

Agricultural activities are strictly regulated, but each county is responsible for compliance within their jurisdiction. DENR identifies BMPs that would achieve a 30% reduction in nitrogen and no increase in phosphorus, and the counties are responsible for implementation.

Ricky Rash: If a point source pays for the offset that is fulfilled by a nonpoint source BMP, is there a mechanism for the farmer to be paid for this?

Rich: Money is paid by the point source into a state fund, the producer receives money for a given project without knowing the money was provided specifically for an offset-related project.

Rick Linker: What if the county fails to meet the nitrogen reduction goals?

Rich: The county will be subject to additional requirements as determined by the environmental management commission.

Alan Pollock – Has the 45% reduction of nitrogen from agricultural activities been exceeded?

Rich: Yes.

(in response to another question) Demographic projections don't include whether growth will be directed to sewer or septic systems.

Jack Frye: Have there been any challenges regarding BMP efficiencies?

Rich: The state is working with NCSU in a continuous refinement process; this is ongoing.

Rich Linker: Doesn't this change the rules that the agricultural community has to work with?

Rich: In the Neuse, several combinations of BMPs were standard, without regard to efficiency. These wouldn't be significantly changed by an efficiency study.

Katie Kyger: What is the cost in getting the nutrient reductions?

Rich: Go to our web page: the BMP implementation figures regarding the cost-share program should be available.

Alan Pollock: Do you see an increase in activity (wanting money for BMP installation) since the rules changed?

Rich: That hasn't been determined. Since the demand for cost-share and grant money has historically exceeded the funding available, we haven't a good idea of how the demand may have changed. The regulations pertaining to animal operations have certainly driven demand up.

Paul Bukaveckas asked about proximate facilities discharging to the same waterbody with different delivery factors and asked whether an equation would permit the calculation of delivery factors on a continuum.

Both DEQ and DENR staff acknowledged that possibility.

Kyle Winter of DEQ's Office of Water Permit Programs outlined the remaining regulatory process and led a discussion on Parts I and II of the draft regulation.

The TAC then separated into the different breakout session groups to schedule additional conference calls prior to the next TAC meeting, scheduled for Monday, September 19th, 2005, at 9:30 AM at the Piedmont Regional Office, 4949-A Cox Road in Glen Allen's Innsbrook business park.