

Non-Point Nutrient Credit Certification Regulatory Advisory Panel (RAP) Meeting

September 25, 2013

Draft Meeting Notes

Location: DEQ Piedmont Regional Office
4909 Cox Road
Glen Allen, VA

Start: 9:35 am

End: 3:33 pm

Meeting Attendees:

<i>RAP MEMBERS*</i>	<i>INTERESTED PARTIES</i>	<i>RAP TECHNICAL SUPPORT</i>
Phil Abraham - Virginia Association of Commercial Real Estate	Andrienne Kotiler	Russ Baxter - DEQ
Scott Blossom (alt. for Doug Beisch, Jr.) - Williamsburg Environmental Group	Noelle Slater - ARCADIS	Josiah Bennett - DEQ
Jack Frye - Chesapeake Bay Commission	Olivia Devereux - DEC	Diane Beyer - DEQ
Brent Fults - Chesapeake Bay Nutrient Land Trust, LLC	TJ Masere - Troutman Sanders	Allan Brockenbrough - DEQ
Taylor Goodman - Balzer and Associates, Inc.	Joe Carroll - EBX	James Davis-Martin - DEQ
Normand Goulet - Northern Virginia Regional Commission		Darryl Glover - DCR
Larry Land - Virginia Association of Counties		Deb Harris - DEQ
Whitney Katchmark - Hampton Roads Planning District Commission		Darrell Marshall - VDACS
Joseph Maroon - Maroon Consulting		Kathleen O'Connell - DEQ
Timothy Mitchell - City of Lynchburg;		Ginny Snead - DEQ
Chris Pomeroy - Virginia Association of Municipal Wastewater Agencies		Neil Zahradka - DEQ
Nikki Rovner - The Nature Conservancy		
Mindy Selman - World Resources Institute		
Tom Simpson - Water Stewardship, Inc		
Wilmer Stoneman - Virginia Farm Bureau Federation		
Shannon Varner - Troutman Sanders LLP		

*RAP Members not in attendance: Steven Herzog - Hanover County; Ann Jennings - Chesapeake Bay Foundation; Joe Lerch - Virginia Municipal League; Adam Meurer - ECS Mid-Atlantic; Kevin Seaford - Virginia Association of Professional Soil Scientists; Jack Storton - Virginia Manufacturers Association; Mike Toalson - Home Builders Association of Virginia; Brian Wagner - Virginia Soil and Water Conservation Districts.

Agenda Item: Welcome & Introductions

Discussion Leader: Ginny Snead

Discussion: Ginny Snead welcomed all of the meeting participants to the 9th meeting of the Nutrient Trading Credit Certification Regulatory Advisory Panel. She asked for introductions of all of the members of the RAP and other meeting attendees and requested that all attendees sign the sign-in sheet so that we could have a record of who was in attendance.

Agenda Item: Local Water Quality (9VAC25-900-80)

Discussion Leader: Allan Brockenbrough, DEQ

Discussion: Allan Brockenbrough presented the revised draft language for local water quality considerations when purchasing nutrient credits where there are impaired waters. This information was presented in Section 80 of the discussion draft of the regulation. This section was revised for clarification based on discussions of the last RAP meeting and as requested in RAP comments. Allan explained the rationale and the requirements for purchasing nutrient credits for use by an activity located within an area with local water quality criteria such as a TMDL. For activities within discharging to impaired waters, a hierarchy using HUCs to determine where credits may be purchased was presented as a solution to this issue. Allan noted that DEQ staff have talked with EPA about this issue and there may be additional language that would allow the permitting authority to restrict trades if needed once the tools are available to use and

do the local water quality based limits. DEQ continues to work with EPA on this language. Allan asked the RAP if they had comments regarding the revised language.

RAP Comments noted:

- This language is too broad and will restrict trading.
- Please send a map be provided for each one of the HUCs to the RAP.
- There should be an upstream restriction for purchasing for activities within a TMDL watershed.
- What if the impairment is not related to nutrients? Not all DO or benthics are nutrient related.
- Please add the 10 digit HUC to the hierarchy for impaired waters.
- Does the WIP matter when we are at this local level?

ACTION ITEM – DEQ – Staff shall continue discussions regarding local water quality in respect to the comments provided during this meeting and will revise Section 80.

ACTION ITEM – DEQ – Deb will distribute to the RAP maps of the 12, 10, and 8 digit HUCs that Brent will send to her.

CONCLUSION: No consensus was reached on the application of local water quality issues as it relates to nutrient trading.

Agenda Item: Watershed Model Run Analysis

Discussion Leader: James Davis-Martin, DEQ

Discussion: James Davis-Martin provided an overview of the watershed model run that was sent to the RAP previously. This model showed good results for the baselines proposed in this regulation which are based on the RMP. The RAP discussed this model run and asked clarifying questions. Olivia Devereux, who did the actual model run, provided some of the criteria that were used. It was noted that for this scenario, it was assumed that all farms will have RMP and have implemented those practices. The nutrient credit regulation requires either the RMP or practice based baseline for agricultural operations.

RAP Comments noted:

- Where will funding come from to allow for the 100% fencing that was used in this model run? Up to 2015 there is funding with no cap, so some monies are available through DCR's cost-share grants.
- Agriculture needs to be held to the same standards as others. Even this model run relies on a number of achievements from Phase 2.
- The trading program will only work for so long and there is only so much need for it.

CONCLUSION: Analysis was run as an informational source for the RAP to consider when reviewing the ag baselines.

Agenda Item: Fees (Part V)

Discussion Leaders: Diane Beyer, DEQ and Debra Harris, DEQ

Discussion: Debra Harris provided an introductory overview of the language and structure of Part V. This part will include the fees necessary for this program to meet the statutory requirements. Diane Beyer introduced the fee schedule and the background on how this was developed. The RAP then discussed this part.

RAP Comments noted:

- Fees should be more in line with each other. There should not be a disparity between term and perpetual credits.
- There should just be one fee, like \$5,000 for every application as the time and effort by the department will not be that different no matter what type of project or credit is generated.
- It was noted that the fees for term did not have a real world basis as the department has not yet processed these type of credit certification applications.
- The fee for term credits seem very low for the amount of work and effort that will be needed by the department.
- The fee should not be based on the market or concern for the market.
- Fees should cover the department's cost for the program.
- Will there be a fee for renewal?
- If department "may" do a site visit, then the site visit costs should not be part of the fee.
- What about the management area? If it is large, would not that be a consideration for the fee if it has a site visit as well?
- By 2017, believe that there will have to be a Bay administrator and model.

- The fees should cover the baseline and management area.

ACTION ITEM – DEQ – Staff will revise fee structures based on RAP discussion. Staff will consider the concept for one overall fee, a per credit fee, the issue with term and perpetual, and a renewal fee.

ACTION ITEM – DEQ – Staff will review 200.C language.

CONCLUSION: No consensus was reached on the fees presented.

RAP broke for lunch at 11:45 a.m.

RAP reconvened at 12:50 p.m.

Agenda Item: Response to RAP Comments

Discussion Leaders: Debra Harris, DEQ

Discussion: Debra Harris went through the comments that have been received by the RAP including the department's response to those comments. The RAP discussed the responses and the comments.

RAP Comments noted:

- The application for nutrient credits should include assurances that the IRT has been notified for wetland banks wishing to submit.
- Liens can be subordinated and that should be checked.
- Please include an option for land conversion financial assurance in order to have 100% release prior to establishment.
- The Forest Stewardship Plan is an issue as it needs to be approved but not all will qualify to be approved.
- 400 stems is a safe-harbor for the initial planting and includes all woody stems including voluntary.
- Invasive plants should be defined.
- The July 1, 2012 date in Section 30.C needs to be changed as that date is now past and we are still using that process.
- Where will the details of the growing season survival be? That level of detail will be in guidance. The performance standards are within the regulation and the guidance will provide details for achieving the regulatory requirements.

ACTION ITEM – DEQ – Staff will consider idea of different management area for perpetual and term NCGEs (see RTC #44).

ACTION ITEM – DEQ – Staff consider "shall" for site visit and "shall" have a TAC for a new process. RAP wants greater assurance.

ACTION ITEM – DEQ – Staff needs to review issues with the FSP used in subsection 130.C.

CONCLUSION: Department response to comments was provided for RAP information. Discussions highlighted sections of the regulations for further consideration.

Agenda Item: Consensus Litmus Test

Discussion Leaders: Ginny Snead, DEQ and Russ Baxter, DEQ

Discussion: Ginny Snead and Russ Baxter took the RAP through each Part of the regulation to determine what major comments/issues remain.

RAP Concerns noted:

- Section 80, Local Water Quality - Feel that it is too restrictive and will not promote trading
- Section 90.C, Public Notification – Want this to be a formal public comment and hearing process.
- Section 90.D, Site Visit and TAC – Would like for the department to always do site visits and to always convene a TAC for a new project type and want language that provides that assurances.
- Section 110.B, Ag Baselines – Issues remain over the use of the RMP as baseline and the use of the 35' buffer.
- Section 110.D, Urban Baseline – Issues remain over urban baseline.
- Section 110. E & F, Land Conversion and Other Baseline - Some still had concerns with how these sections will be implemented and the dates used in E.
- Section 120, Credit Calculation – Issues remain on the calculation process for credits.
- Section 190, Modification Causes – Subdivision E.1.c is concerning. RAP would like assurances that certified credits will stay certified.
- Section 620, Cost Estimate – Add dam safety provisions for consideration in cost estimates.

- Part VI, Financial Assurance – Provide option to use financial assurance for land conversion to receive 100% release of credits sooner.
- Management Area – Many on the RAP are very concerned about the entire concept of management area.

ACTION ITEM – DEQ – Staff will reconsider change to Delivery Factor definition. Why was definition from the statute changed?

ACTION ITEM – DEQ – Staff to discuss RAP comments on subsection 110.B including the RMP issue and 35' buffer.

ACTION ITEM – DEQ – Staff will revise urban baseline language of subsection D.

ACTION ITEM – DEQ – Staff review and need to add clarity for the IRT notification step.

ACTION ITEM – DEQ – Staff will revise based on RAP discussions. 190.E.1.c and E.1.d issues?

ACTION ITEM – DEQ – Staff will review and add dam safety provisions.

ACTION ITEM – DEQ – Staff will decide if an FA option for land conversion to release 100% up front is necessary.

CONCLUSION: Sections of concern for various RAP members were highlighted.

Agenda Item: Public Comment

Discussion: No one from the public chose to provide any additional comments during this agenda item. Joe Carroll, EBX, had previously provided input during a topic discussion.

Agenda Item: RAP General Comments

Discussion Leader: Russ Baxter

Discussion: No additional comments were provided by the RAP. The RAP was reminded to submit their comments to DEQ by 10/7/13 and that the next meeting will be held on October 17, 2013. The meeting was then adjourned.