

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

October 17, 2013
Final Meeting Notes

Location: ODEC Headquarters
4201 Dominion Blvd
Glen Allen, VA

Start: 9:46 am
End: 3:21 pm

Meeting Attendees:

<i>RAP MEMBERS*</i>	<i>INTERESTED PARTIES</i>	<i>RAP TECHNICAL SUPPORT</i>
Jack Frye - Chesapeake Bay Commission	Tom Laughlin - Draper Aden	Josiah Bennett - DEQ
Brent Fults - Chesapeake Bay Nutrient Land Trust, LLC	Katie Helletsush - VGPA	Diane Beyer - DEQ
Taylor Goodman - Balzer and Associates, Inc.	Casey Jensen - CBNLT	Allan Brockenbrough - DEQ
Normand Goulet - Northern Virginia Regional Commission	Andrienne Kotiler - JRA	James Davis-Martin - DEQ
Ann Jennings - Chesapeake Bay Foundation	Jacob Powell - VCN	Deb Harris - DEQ
Larry Land - Virginia Association of Counties	Peggy Sanner - CBF	Kathleen O'Connell - DEQ
Whitney Katchmark - Hampton Roads Planning District Commission	Eric Allen - Watershed Consulting	Ginny Snead - DEQ
Joseph Maroon - VEE		Darrell Marshall - VDACS
Adam Meurer - ECS Mid-Atlantic		Rick Weeks - DCR
Chris Pomeroy - Virginia Association of Municipal Wastewater Agencies		
Nikki Rovner - The Nature Conservancy		
Shannon Varner - Troutman Sanders LLP		

*RAP Members not in attendance: Phil Abraham - Virginia Association of Commercial Real Estate; Scott Blossom (alt. for Doug Beisch, Jr.) - Williamsburg; Steven Herzog - Hanover County; Joe Lerch - Virginia Municipal League; Timothy Mitchell - City of Lynchburg; Kevin Seaford - Virginia Association of Professional Soil Scientists; Mindy Selman - World Resources Institute; Tom Simpson - Water Stewardship, Inc; Wilmer Stoneman - Virginia Farm Bureau Federation; 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 10th 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: Part II – General Information

Discussion Leader: Allan Brockenbrough, DEQ

Discussion: Allan Brockenbrough presented the sections of Part II for consensus review by the RAP and highlighted the changes made based on RAP comments and staff discussions including those changes to the local water criteria of Section 80. Based on this review, the RAP provided comments and noted issues of non-consensus.

Section 60 - RAP comments noted:

- Clarify subdivision I of this section.
- Add additional laws/permits in subdivision I.

Section 80 - RAP comments noted:

- Include and clarify how to deal with contravention for local water quality ("de minimis" issue).
- The local water quality criteria are too restrictive.
- EPA's draft guidance should be reviewed and the local water quality criteria should be "beefed up" accordingly.
- Clarify the language – watershed and directly discharge.

- Clarify what is meant by demonstration.
- Delete e & f for impaired waters.

ACTION ITEM – DEQ – Staff will add clarifying statement and add other appropriate permits/acts (VPA, CB Act, etc) to subsection 60.I

CONCLUSION: RAP agreed to majority of Part II; however, there was no consensus on the issue of local water quality.

Agenda Item: Part III – Administrative and Technical Requirements

Discussion Leader: Ginny Snead, DEQ

Discussion: Ginny Snead presented the sections of Part III for consensus review by the RAP and provided a section by section overview noting any changes made based on RAP comments or staff discussions. Based on this review, the RAP provided comments and noted issues of non-consensus.

Section 90 - RAP Comments noted:

- Change from "may" to "shall" in line 379.
- Tax map should be submitted so that ownership of adjoining parcels can be established.
- Additionality definition should be added back into Part I and additional criteria should be added.
- Public notification should be an opportunity for public comment and hearing process not just a notification.
- Need to provide more certainty to those that are spending money to generate credits.
- The same notification process that is used in the wetland/stream restoration program should be used.
- The department should always do a site visit, so change may to shall. Additionally, when it is a new practice, there should always be a TAC.

RAP broke for lunch at 11:37 a.m.

RAP reconvened for the afternoon at 12:35 p.m.

Section 100 - RAP Comments noted:

- Some are not sure about this concept still.
- How will retirement work when the credits are released in phases? All taken upfront or phased retirement?
- What about local government notification for credit certification?

Section 110 - RAP Comments noted:

- RMP as the agricultural baseline is not enough.
- Baseline should be based on model results against a baseline "load".
- Urban baseline needs further clarification.

Section 120 - RAP Comments noted:

- Clarify language as this should be loads not practices for the urban calculation.

Section 130 - RAP Comments noted:

- Concern with using a Forest Stewardship Plan. Another mechanism or plan should be used.
- How long does DOF need to process a FSP?
- Need to add that no fertilization will be added to any land conversion.
- Do we need a FSP if timbering is not to be used on the land conversion?
- Highly invasive should be the 5% criteria for both Subsections C & D.

ACTION ITEM – DEQ – Subsection 90.A. Add requirement to submit tax map that shows adjacent parcel owners.

ACTION ITEM – DEQ – Subsection 90.A.17. Clarify with regards to subordinated liens.

ACTION ITEM – DEQ – Subsection 90.D. Staff will review for revision to provide assurances that TAC will be convened when a "new" practice is submitted for credits (i.e., not on Clearinghouse or Bay approved).

ACTION ITEM – DEQ – Subsection 110.B. Consider the local TMDL issue for any necessary language revisions.

ACTION ITEM – DEQ – Subsection 120.C. Change practices to loads.

ACTION ITEM – DEQ – Subsection 130.C. Revise for preparation of FSP per RAP discussion and add that no fertilization can be applied to land conversions.

ACTION ITEM – DEQ – Subsection 130.D.1. Add "initial" before density.

ACTION ITEM – DEQ – Subsection 130.G.4. IRT approval is needed, not just notification. Clarify this language.

CONCLUSION: The RAP was in agreement with many sections of Part III, but issues of non-consensus were identified. These issues were: (i) the public notification process; (ii) requirements for DEQ site visits; (iii) establishing criteria for convening a TAC for a new practice evaluation; (iv) the retirement of credits for phased releases; (v) some are very concerned with the RMP baseline for agricultural while others prefer a non-practice based baseline; (vi) issues with the AFO baseline use of the permit; and, (vii) need additional clarification for urban baseline.

The RAP took a break from 1:52 p.m. until 2:01 p.m.

Agenda Item: Part IV – Compliance and Enforcement

Discussion Leader: Kathleen O'Connell, DEQ

Discussion: Kathleen O'Connell presented the sections of Part IV for consensus review by the RAP and provided a section by section overview noting any changes made based on RAP comments or staff discussions. Based on this review, the RAP provided comments and noted issues of non-consensus.

General RAP Comments noted:

- Need certainty that a credit will remain a credit once certified and released.

Section 150 - RAP Comments noted:

- DEQ's inspection schedule for these types of activities should be included.

Section 160 - RAP Comments noted:

- How long will reporting be required for term and for perpetual?

ACTION ITEM – DEQ – Section 160. Discuss reporting issue and if necessary, clarify how long reporting is needed. End of term? What about perpetual credits, until last credit sold?

CONCLUSION: RAP agreed to majority of Part IV; however, there was no consensus on the issue of how to provide assurances for certified credits when baseline/regulatory changes are made and a few on the RAP want to see further requirements regarding the Department's inspection scheduling and criteria.

Agenda Item: Part V - Fees

Discussion Leader: Diane Beyer, DEQ

Discussion: Diane Beyer presented the sections of Part V for consensus review by the RAP and provided a section by section overview noting any changes made based on RAP comments or staff discussions. Based on this review, the RAP provided comments and noted issues of non-consensus. Overall, the RAP had no comments and agreed with the changes made.

CONCLUSION: The RAP agreed with the requirements of Part V and no consensus issues were noted.

Agenda Item: Part VI – Financial Assurance

Discussion Leaders: Josiah Bennett, DEQ

Discussion: Josiah Bennett presented the sections of Part VI for consensus review by the RAP and provided a section by section overview noting any changes made based on RAP comments or staff discussions. Based on this review, the RAP provided comments and noted issues of non-consensus.

RAP Comments noted:

- The requirement for financial assurance is too burdensome.
- Financial assurance should be an assurance for the "buyer" not on the credit generating practice.
- Remove the release requirement for perpetual credits.
- Clarify the insurance section with the language provided.

CONCLUSION: No consensus was reached on the concept of financial assurance as some believe it will be too restrictive for structural BMPs to be able to provide financial assurance and cost effectively generate credits.

Agenda Item: Part I - Terms

Discussion Leaders: Debra Harris, DEQ

Discussion: Debra Harris presented the terms of Part I for consensus review by the RAP. The term of greatest concern was management area and based on RAP comments and staff discussions, this term was revised. Based on this review, the RAP provided comments and noted issues of non-consensus.

RAP Comments noted:

- Additionality should be listed as a term and a clarification sentence added to prohibit additionality should be added to the regulation.
- Management area definition is still too onerous and will not work for the agricultural setting even if the intent is to prevent leakage.

CONCLUSION: RAP agreed to majority of the terms; however, no consensus was reached on the management area definition and concept.

Agenda Item: Overview

Discussion Leaders: Ginny Snead, DEQ

Discussion: Ginny Snead reviewed the non-consensus items for each of the Parts to insure that the agency had correctly identified these topics.

Agenda Item: Public Comment

Discussion: Jacob Powell from VCN provided comment to the RAP. He agreed with many of the concepts and noted that some additional clarifications should be made. The revisions/issues noted were: (i) directly discharging for local water quality; (ii) remove approved TMDL definition; (iii) continue to look at additionality; (iv) transparency in the trades to include public involvement; (v) concerns with the RMP for baseline but not opposed to practice based approach for baseline; and, (vi) for urban baseline the permit should be the baseline and allow trades on the management area.

Agenda Item: RAP General Comments & Thank You

Discussion Leader: Ginny Snead, DEQ

Discussion: No additional comments were provided by the RAP. Ginny Snead thanked the RAP for their time and commitment to this regulatory process. As this concluded the RAP process, the meeting was then adjourned.