

House Bill 1774 Stormwater August 3, 2017 Subcommittee 1 Meeting

Minutes

The House Bill 1774 Stormwater Subcommittee 1 met at 1:00pm on August 3rd, 2017 at the DEQ Piedmont Regional Office to review and consider alternative methods of managing stormwater in rural localities pursuant to HB 1774. Present at the meeting were Workgroup members Russ Baxter (Office of the Secretary of Natural Resources), Doug Beisch (Stantec), Kate Creef as an alternate for Chris Pomeroy (AquaLaw), Melanie Davenport (DEQ), Greg Evans (Dept. of Forestry), Eldon James (RRBC), Ann Jennings (Chesapeake Bay Commission), Adrienne Kotula (JRA), Lewis Lawrence (MPPDC), T.J. Mascia (Resource Environmental Solutions, LLC), Marcie Parker (VDOT), Peggy Sanner (CBF), Shannon Varner (Troutman Sanders).

Also in attendance were Emily Steinhilber (ODU), Carl Hershner (VIMS), Steve Owens (VDOT), Ryan Brown (Kane Jeffries), Chris Swanson (VDOT), Doug Fritz (GKY), Hannah Somers (GKY), Joe Wood (CBF), Brandon Bull (DEQ), Xixi Wang (ODU), and Jaime Bauer (DEQ). The meeting was facilitated by Elizabeth Andrews (VCPC).

Proposal A

- Melanie Davenport began by discussing Regional BMPs, which are an option under existing stormwater management law. BMPs need to be maintained in perpetuity if a locality chooses to use them. There is some flexibility with BMPs, but they are primarily concerned with water quality, and quantity still must be treated on site.
 - o A financing option for this kind of project is organizing a stormwater utility to run it. This could conceivably work, but would be challenging under the current regulatory scheme. The Virginia Beach development of a comprehensive watershed plan was very expensive.
 - o DEQ would have to approve any proposed alternative model-based program.
 - o The group discussed the differences between a comprehensive stormwater management plan versus a regional BMP. Comprehensive stormwater management plans are larger and broader than a regional BMP, though BMPs can be part of a plan.

Proposal B

- Lewis Lawrence then discussed the volume credit trading proposal. His presentation emphasized the economic challenges facing rural localities in the Tidewater area, particularly the difficulties local governments have in addressing the issues of coastal communities. The majority of the areas are in the 5-10% Impervious Cover (IC) range (see Mike Rolband's presentation). Lewie emphasized the large amount of runoff, noting that these communities are faced with a lot of dirty water and not much development. The proposed solution is to clean the excess, unregulated, unpermitted dirty water and develop a program through which higher-developed areas can trade and problems can be solved for both areas (rural areas can perhaps clean the water cheaper than urban areas can). Lewie noted that the proposal would entail expanding the trading area past what is allowed under current law.
 - o The group discussed whether the Chesapeake Bay Program's urban workgroup was going to work on volume, and it was decided that a crediting system has been discussed, but other issues have been top priority.

- The group noted that to the technical memo from the Chesapeake Bay Roadside Ditch Management Team recommends conducting outreach to transportation agencies, but that even if crediting is created for ditch maintenance, funding is still required.
- This project would involve multiple watersheds and would involve treating the water. Lewie noted that the idea is that if water can be captured and a BMP built to treat it, then the liability is captured – the asset can be cleaned and used for a benefit.
- Marcie Parker then discussed roadside ditches in these rural areas, first noting what responsibilities VDOT has with regards to maintenance. She emphasized the Mathews County outfall ditch program, which is for private ditches, not VDOT-maintained ditches. The current revenue sharing program is administered by the County. Cleaning ditches consists of removing brush and accumulated sediment (essentially, returning the ditch to its original condition), but not cutting it any deeper – the purpose is to keep the water moving through the ditch. A permit is not required if there is documentation of the original contour of the ditch and that its contour is maintained.
 - Throughout the Middle Peninsula, Mathews County is the only county with a program for ditch cleanup – the other counties leave it to the private owners to maintain them.
 - Carl pointed out that cleaning ditches essentially removes the capacity for generating water quality benefits, noting that they currently act essentially as water basins. The group noted that open, unlined ditches is an issue; the sediment can be cleaned out but how much of that would have reached the Bay?
 - Marcie noted that counties have received a large number of drainage complaints, but not one citizen has complained about outfall ditches in Mathews County this year.
 - § In Mathews County, citizens have expressed a desire for TMDLs to be developed for the ditches. The group noted that a local TMDL would be administered the same as in the rest of the Chesapeake Bay watershed; the nonpoint sources would still be unregulated.
 - Marcie clarified that roadside ditches run parallel to the road. They carry water along the road until it gets to an outfall ditch. The outfall ditches run perpendicular to the road. They carry water away from the road and toward a larger watercourse.
 - Problems do not just arise from runoff, but also come from sediment that washes in with the tide. In localities, the ditches are so intertwined that problems arise from more than just water that hits the road and runs off. It also comes from water draining from yards and agricultural lands.
 - § The group discussed agricultural runoff and the possibility of funneling agriculture BMP dollars to ditch cleanup.
 - § The group noted that Talbot County, MD is doing a study on roadside ditches as opportunities for retrofit. In particular, it is looking at agricultural sources but not getting funding from the agricultural sector.
 - There was some consideration of redesigning ditches so that they are broader. The group also discussed elimination of ditches, but decided it is difficult to determine

how that it that is a viable option because of the increased sheet flow that would result from not channelizing the runoff.

- The group discussed non-regulated communities. Lewie noted that the water needs to be monetized so it has value. Eldon noted that planners and staff need to be made aware of what the governing body is responsible for doing, but he cautioned against suggesting that those counties become regulated communities.
 - § The issue is going to be demonstrating that practices that would manage water in ditches are cost effective and would be recognized by the Bay Program.
- Lewie linked this to his discussion, emphasizing the importance of the balance between environmental protection and economic development. His program is designed for net benefits for the Bay by cleaning the water in ditches. There is a lot of debris getting into the Bay under the current system and a more holistic approach than just regulating phosphorus would be beneficial. He noted that in non-regulated communities, the water must be monetized in order to solve the problem.
 - There is no ability to drive the economics of the model, which is why both BMPs and offsets for local development are needed.
 - The group noted that calling it “volume credit” might not be accurate because the system consists of pulling the volume in but then treating it and trading sediment or nutrient credits.
 - The group expressed concern that this proposal is a significant divergence from what Virginia has been using thus far in its trading program. In particular, the program thus far has had a strict reliance on staying within a particular watershed – that has been the foundation of that program, as the focus is on protecting local water quality. The protection of local water quality is of major concern. Generally, there has always been a desire to keep trades within the same watershed. The group noted that Virginia has a very successful trading program and expressed concern about what impact trading at such far distances would have on the program.
- The group noted that the state has accomplished its purpose of pollution reduction on the point source side, but needs to shift its focus to the nonpoint side of the equation.

Proposal C

- Eldon James and Greg Evans then outlined the Healthy Watersheds Report. The project was in two phases, based on the impetus that retaining forestland could generate credit under the Bay TDML due to its benefits in meeting water quality goals. Conserving additional forestland could lead to not having to construct a significant number of BMPs. The project does not mean to propose not developing land at all, but rather proposes keeping the forest and developing land differently. Eldon and Greg noted that the government authority to implement the program exists, but incentives need to be put in place for nonregulated localities because of competing basic service needs.
 - The report strives to drive the maintenance of high conservation value forest. Greg emphasized that conservation needs to be incentivized and noted a need to monetize conserved forestland or otherwise demonstrate the value to localities.
 - The group noted that the report is trying to minimize development impacts and offset BMPs – if forest is preserved, smaller BMPs are needed.

- Eldon and Greg noted that the report is in the process of being updated and in a few weeks they will have recommendations that localities can use. It was decided that after that time, Eldon and Greg would bring back some suggestions to the subcommittee.

The group then discussed the three options, determining which they wanted to pursue and what further information they needed.

- The group again noted concern with a volume credit proposal, based on concerns for both the potential of undermining the current nutrient credit trading program and the need to protect local streams. The group discussed not amending the nutrient trading program, and especially leaving the point source trading program out of the discussion. Melanie suggested that, while the regulated entities' trading programs should not be undermined and should be left out of the discussion, there is some potential in this proposal for meeting overall reductions in pollutants from nonregulated land.
 - Carl proposed that the problem is one of scale. He offered as an example that the SWIFT groundwater injection project is on such a large scale that it could change Bay TMDL compliance significantly. He noted that, if a project to capture and treat water from ditches is large enough, and if load reduction is considered on a large enough scale, then environmental desires can be achieved.
 - The group also discussed how such a project would be funded. Doug mentioned a consortium model in Oregon as a potential for a funding model.
 - The group decided to avoid discussing credits and trading but to consider large scale load reduction and look at various ways to fund that.
- The group decided follow-up projects as follows:
 - VIMS and ODU to research potential large scale load reductions that could be achieved by treating ditch water.
 - Melanie and Jaime to provide information on DEQ requirements for approval of a comprehensive stormwater management plan that could generate credits within one watershed.
 - Doug and Ann to research the status of the recommendations in the STAC report on Ditches, what Talbot County, MD has implemented, and the potential treatment of ditches as Agricultural BMPs
- Elizabeth asked if there was any public comment. Hearing none, the group ended its meeting at 3:30.