

**Virginia Soil and Water Conservation Board**  
**Virginia Agricultural Resource Management Plan Regulations**  
**Regulatory Advisory Panel**  
**VCU Rice Center, Charles City**  
**Wednesday, November 9, 2011**

**Regulatory Advisory Panel Members Present**

Katie Frazier, Virginia Grain Producers Association  
Brad Jarvis, Virginia Tech – Cooperative Extension  
Ann Jennings, Chesapeake Bay Foundation  
Donna Johnson, Virginia Agribusiness Council  
Stephanie Martin, Virginia Department of Conservation and Recreation  
Eric Paulson, Virginia State Dairymen's Association  
Jacob Powell, Virginia Conservation Network  
Tom Simpson, Water Stewardship, Inc.  
Wilmer Stoneman, Virginia Farm Bureau  
Bill Street, James River Association  
Meaghann Terrien Three Rivers Soil and Water Conservation District  
Donald Wells, Virginia Association of Soil and Water Conservation District Directors  
Charlie Wootten, Piedmont Soil and Water Conservation District

**Technical Staff Present**

David Johnson, Virginia Department of Conservation and Recreation  
Travis Hill, Deputy Secretary of Agriculture and Forestry  
Diane Beyer, Virginia Department of Conservation and Recreation  
Betsy Bowles, Department of Environmental Quality  
David Dowling, Virginia Department of Conservation and Recreation  
Michael Fletcher, Virginia Department of Conservation and Recreation  
Michael Foreman, Virginia Department of Conservation and Recreation  
Doug Fritz, Virginia Department of Conservation and Recreation  
Mark Hollberg, Virginia Department of Conservation and Recreation  
Darrell Marshall, Virginia Department of Agriculture and Consumer Services  
Mark Meador, Virginia Department of Conservation and Recreation  
Matt Poirot, Virginia Department of Forestry  
Virginia Snead, Virginia Department of Conservation and Recreation  
Bob Waring, Virginia Department of Conservation and Recreation  
Christine Watlington, Virginia Department of Conservation and Recreation  
Roland Owens, Virginia Department of Conservation and Recreation  
Emily Horsley, Farm Service Agency  
Blaine Delaney, Natural Resources Conservation Service  
Chad Wentz, Natural Resources Conservation Service

### **Others Present**

Ken Carter, Virginia Association of Soil and Water Conservation Districts  
Jim Tate, Hanover Caroline Soil and Water Conservation District  
Steve Werner, Draper Aden Associates  
Adrienne Kotula, James River Association  
Blair Krusz, Virginia Agribusiness Council

### **Welcome and Introductions**

Mr. Foreman called the meeting to order.

Ms. Martin noted that this was the second meeting of the RAP, but that the subcommittees had been proceeding with their work. She thanked members for their commitment and involvement in the process.

Ms. Martin said that Mr. Johnson and Deputy Secretary Hill would each like to make remarks at the beginning of the meeting.

Mr. Johnson said that the work of the committee was extremely important for Virginia and for the Chesapeake Bay TMDL Watershed Implementation Plan (WIP). He said that the nation was looking to Virginia as Virginia is one of two or three states currently working with this issue. He noted that the U.S. Department of Agriculture had a special interest in what Virginia was doing. He said, in this case, Virginia was doing something new.

Mr. Johnson said that the discussions of the committee were important, but that they need to be focused and oriented toward problem solving.

Mr. Johnson noted that at the June meeting he expressed that this had to be a simple process. If it is not simple, the farmers will not participate on a voluntary basis.

Mr. Johnson said that in discussions with stakeholders the key word had been flexibility. He said that the question to be answered was what flexibility means in a regulatory concept. Flexibility may mean that different practices can be applied, as long as they are functionally equivalent.

Mr. Johnson said that this was not a permit program; however, it does call for accountability. He said that DCR would be the administrator but not the implementer of the program. He said that the program would need the resources of the Soil and Water Conservation Districts and private organizations.

Mr. Johnson said that this was an alternative to prescriptive regulations. The purpose is to give farmers an opportunity to voluntarily implement best management practices to

achieve needed nutrient and sediment reductions. The incentive for the farmer is the idea of "safe harbor".

Mr. Johnson said that as far as permit times and how long the permit should last, it would not be on a yearly basis. He said that a three year review may be appropriate.

Ms. Martin said that Mr. Johnson's comments tied into a discussion of the target or goal that a resource management plan must accomplish. She said that the subcommittees felt that the discussion of what was required to be in a plan was something that should be discussed by the entire panel.

Ms. Martin called on Deputy Secretary Hill for additional comments.

Mr. Hill said that the issue was very important to the agricultural community. He said that Virginia had an advantage in having legislation that gives the framework for this program. He encouraged the committee to keep in mind the intent of the General Assembly.

Mr. Hill said that the end goal was to achieve enhanced environmental benefits. Any program introduced needs to also be effective. He said that the question would be how to meld the competing concepts into something the agricultural community can feel comfortable with.

A member said that those who participated in and supported the legislation felt that the vision was that the plan would be a collection of practices that achieve a soil loss goal compliant with the Natural Resources Conservation Service standards and specifications of the nutrient management program plus some other BMPs. He said there was concern that the Department was looking to the BMPs for use in accounting for the TMDL. He noted that the plan was not one of the BMPs.

A member said that the law prescribes certain standards. He asked if there was anything missing from the legislation that needed to be addressed. Mr. Johnson stated that there should be a broad applicability to best management practices (bmps), rather than limiting the options that a farmer may have.

A member asked whether the basic question was whether to go with a list of BMPs or a set of tools which will still help reach a specific goal.

Mr. Johnson said that the question was how to give the most flexibility to the farmer in bmp options. He said that it would not be desirable to change the legislation or regulations every time the practices needed to be revised or to include new bmps.

A member said that it was obvious that Soil and Water Conservation Districts should be heavily involved in this program and asked what that would mean for Districts.

Mr. Johnson said that funding for technical assistance would be increased. He said that there were also opportunities for additional private partnerships.

A member said that those who supported the legislation understood that the program would lead to practices being put on the ground. He said that part of the challenge was that many of the practices were interrelated. He said that he hoped that the committee could get a list of the key issues that need to be resolved.

A member said that it would be good to hear from the subcommittees. He said that the assessment subcommittee developed a comprehensive list of farm resources that were to be evaluated. He said that the committee reached consensus that nutrient management plans need to be included as a bmp within the plan. However, he said that the subcommittee could not reach consensus on some issues.

A member said that there were questions regarding the proper term for the resource management plan target or goal. He said that the numerical targets are difficult to define and to reach. He said that it was difficult to translate the watershed model to a farm model. He said the committee reports might give the panel a foundation for a deeper discussion.

A member said that farmers should not be required to do self inspection but that there should be third party oversight.

A member said that the voluntary assessments and cost share components are the basis for the resource management plan (RMP). The missing piece is what needs to be done to meet the safe harbor.

Ms. Martin asked if the group felt there was an answer to what the target or goal of the RMP should be.

A member said that while she appreciated the director's remarks, she was not sure that there was a sufficient answer.

A member said that it seemed that the committee was stalled on whether the Chesapeake Bay Watershed Model is accurate for a particular farm. He said that there was a need for a system or methodology to calculate the functional equivalency of bmps. He said that having multiple practices that don't get equal credit raises the question of how they should be accounted for. He said there needed to be a system that uses the best science but allows the flexibility to meet the functional equivalent.

A member said that in doing an assessment there was an attempt to look at opportunities to develop a continuous improvement program for a farm. When meeting with the farmer, planners give an estimate for the relevant impact of different practices. He said that if the science is wrong, it is not the fault of the farmer.

A member said that the farmer is not responsible for the accuracy of the program.

A member said that the draft regulations were saying what planners do every day. He said that planners recognize a water quality problem with the farm and make suggestions to address that problem. The farmer must have confidence that someone has determined the practice will do some functional good.

A member expressed that if the process was too complicated, farmers would not want to participate. He said that the bulk of people who will be interested are already working with these existing programs.

A member noted that the legislation basically gives what the General Assembly believes to be the functional equivalent.

A member requested a presentation from NRCS and others regarding conservation planning. He said that it would be helpful to have a basic conservation planning session so that all of the committee members were working with the same knowledge level.

Mr. Johnson said that the goal of the RMP was pollution control and water quality protection. He said that "T" was not a pollution index; rather it is a measure of soil loss and a productivity calculation.

A member asked what other calculations show a measure for soil loss.

A member asked if the science pointed to anything, other than what is listed in the RMP Code of Virginia section, as being achievable for cropland, hay land and pasture.

A member said that it had been discussed that this would not be universal practices. He said that "T" relates to soil loss but does not capture nitrogen and phosphorous. He said also that a nutrient management plan does not ensure meeting the WIP. He said the challenge was to find a tool that allows the farmer to have flexibility.

A member said that the law was very prescriptive regardless of discussions of flexibility. He said it raises the questions of how many farms in Virginia can really meet "T". He said that he would like some insight from NRCS on meeting "T" and how many farms in Virginia can actually meet this standard.

A member said that "T" was selected because it is an aggressive goal. He said that not every farm could meet this standard.

A member said that the WIP is a collection of the practices in the model. He said the practices are now reportable to the planner. He said the WIP is about accounting for practices that have been implemented.

It was noted that "T" is assigned to a soil series. This measures a soil loss tolerance to ensure productivity of that soil. The information regarding which farms would be able to achieve the WIP goals was not available.

A member said that the practices used to get to "T" might meet the goals of the WIP.

It was noted that in Virginia the erosion to the level of "T" in the Shenandoah Valley will have a higher phosphorous rating than the Northern Neck because of the absorbing ability. "T" is the only measure available for measuring soil erosion.

A member said that if "T" is combined with the nutrient management plan then he did not know of another way to show that a farmer is doing the right thing on his land in terms of water quality. The only other potential option would be some type of delivery ration on a field by field basis.

A member said that the focus was on "T" but that the legislation identifies a wide range of practices. It was stated that the discussion of "T" did not come up in the WIP or in the legislation.

A member said that if the RAP was looking at ways to determine the target or goal of an RMP, then there was a need to get better information regarding "T" and how it relates to nitrogen and phosphorous.

A member said that if the level of "T" is wrong it would be helpful to know that. He said that he did not think there was a consistent understanding of what a conservation plan is.

A member said that the discussion began with an assumption that there was a basic level of knowledge. It would also be helpful to review the list of bmps included in the WIP.

At this time the committee recessed for lunch.

Ms. Martin said that prior to lunch the committee had asked for examples of tools. She asked how the group would like to move forward.

Members said that it would be helpful to hear from the committees.

#### *Assessments*

Mr. Jarvis said that the assessment subcommittee focused on the assessment tool but came to no final conclusions. He said that the assessment would be performed by a publicly or privately certified conservation planner.

Components the assessment tool would evaluate would include existing practices on the land, including an inventory of fences, streams, ponds, waterways, and buffering. Voluntary conservation practices would be included.

Mr. Jarvis said that the subcommittee could not reach a conclusion regarding what was reportable in terms of a "functional equivalent" bmp.

Mr. Jarvis said that the subcommittee agreed that every farm should have a nutrient management plan. He said that in one assessment tool there were 14 different worksheets available to cover a wide range of agricultural operations.

Mr. Jarvis said that the committee discussed how long a resource management plan would be effective. He said that the subcommittee determined that would be a discussion for the full RAP. He said that opinions varied from three to ten years.

Ms. Martin referenced the six pilot projects that are part of the voluntary initiative and said that it was unfortunate that their work was not yet complete. She said that the goal is to pull together the best of pilot's assessment tools into one complete assessment tool. She said that the project would not be completed until the end of the fiscal year.

Mr. Jarvis said that another consideration was whether the plan would be written for the farm or the tract. He said the question was what land would the RMP cover.

#### *Compliance*

Mr. Stoneman said that the compliance committee discussed how to verify that a resource management plan had been implemented on the ground. He said that the committee discussed who could grant safe harbor.

Mr. Stoneman said that the subcommittee disagreed on who should handle compliance. Opinions varied as to whether that should be the Soil and Water Conservation Districts, DCR, or the Virginia Soil and Water Conservation Board.

Mr. Stoneman said that the subcommittee developed a flow chart to begin the process of certification. He said that the subcommittee generally decided that this should first go to the local Soil and water Conservation District since this is a familiar entity to the farmer in many cases.

Mr. Stoneman said that the subcommittee talked about how often the farm should be inspected. He said that there was discussion about once a year, once a lifespan or some variation of that. He said that ultimately that may be determined by resources and funding.

#### *Plan Development*

Ms. Frazier said that in some ways the plan development subcommittee duplicated the role of the assessment subcommittee. She said that assessment and plans are interrelated. She said that the subcommittee addressed many of the same issues.

Ms. Frazier said that the subcommittee had a lengthy discussion regarding who the plan would be assigned to. She said that the recommendation was that it would be the operator. If there was an operation utilizing the same resources on several different farm tracks that would be the management unit for the RMP.

Ms. Frazier said that the plan would basically include the assessment, the reduction goal and a complete list of bmps that could be utilized to meet the goal.

A discussion ensued regarding who would be responsible for the plan and who would be granted "safe harbor". Opinions differed as to whether it would be the land owner or the operator.

A member said that ultimately the land owner is responsible for what happens.

A member said that perhaps the "safe harbor" goes to whomever takes the responsibility for implementing the bmps.

It may be worthwhile to keep the options open. A number of land owners are absentee and do not wish to be involved in the day to day operations of the farm. Tenant farmers have power of attorney through the Farm Services Agency.

Ms. Martin reviewed the list of outstanding issues:

- What is the lifespan of the plan?
- What is the plan?
- Safe harbor
- When do you know you've reached the target/goal?
- Landowner vs. operator
- Verification
- Frequency of verification
- What happens if you are not in compliance?
- Who has decision making authority?

Ms. Martin said that there was a need to look at the draft language of the regulations to see if some of these issues were already addressed.

### **Review of the Regulations**

Ms. Watlington reviewed the proposed regulations. A copy of the November 9, 2011 draft is available from DCR.

A member asked if there was an assumed definition of proximity.

Ms. Watlington said that would need to be clarified but that it was implied that the units were close in geographic coordinates.

A member said that a management unit is a collection of one or more fields under the control of the operator. He said that if the lease says that the operator can farm the land, that person has direct operational control.

A member said that the definition of plan writer certification needed to be clarified.

It was noted that the requirement for certification implied that there would be a training program offered by the department.

A member said that this did not mean the nutrient management plan writer, but that this is the resource management plan writer. She suggested the term "resource management planner."

Ms. Martin said that the focus of the next meeting needed to be on the information the RAP needed to make a decision regarding the target or goal of the RMPs. This includes a presentation on RUSLE 2 and "T" and conservation planning. Other examples of tools to determine a target or goal would also be presented.

It was suggested that all comments regarding the draft regulations and additional questions be submitted to Ms. Watlington via email by Friday, December 2<sup>nd</sup>.

The next meeting was set for Friday, December 16 at 9:00 a.m.

The meeting was adjourned.