

**Virginia Stormwater Management Program  
Regulatory Advisory Panel Offsets Subcommittee  
Tuesday, January 04, 2011  
Richmond, Virginia**

**Members Present**

Doug Beisch, Subcommittee Chair  
Keith White, Henrico County  
Michael Flagg, Hanover County  
Shannon Varner  
David Hirschman  
Peggy Sanner  
Chris Pomeroy  
Barbara Brumbaugh

**DCR Staff Present**

Christine Watlington  
Michael Fletcher  
Jack Frye  
Elizabeth Andrews, Office of the Attorney General

Mr. Beisch called the meeting to order. He referenced four issue papers distributed prior to the email. Those documents are:

- Issue Paper A – Thresholds for Off-site Compliance
- Issue Paper B – Presumptive MEP
- Issue Paper C – Timing of Off-site Measures
- Issue Paper D – Offsets outside Bay Watershed

Documents are available on the DCR website at the following address:

<http://www.dcr.virginia.gov/lr2d.shtml>

Mr. Frye gave an update on the Bay TMDL status. The TMDL was approved on the 29<sup>th</sup> of December. He said that the document was still being reviewed. He said that one of the key issues was the nutrient credit exchange.

Mr. Frye said that the Commission on Energy and Environment was meeting at the same time as this committee meeting. They will also be discussing the nutrient credit exchange study. He said that the Administration was contemplating legislation but that it may also be handled administratively.

Mr. Beisch turned the discussion to the four issue papers. He said that he was hopeful the subcommittee could come to a consensus on language that could be advanced to the full RAP.

Mr. Beisch presented data compiled from February through August 2010. The data showed that roughly 2/3 of the total number of permits represent about 10 percent of the total land disturbance and presumably the total load.

Mr. Beisch said that from an administrative standpoint the data would suggest that sites under five acres can do onsite reductions or purchase credits.

Mr. Frye said that from a complaint stand point, DCR tends to get more as sites get larger. He said this was probably because there was potential for more significant offsite effects to be recognized.

Mr. Flagg said that he thought the breakpoint of the data made sense in terms of focusing resources.

Mr. Varner noted that the breakpoint was good for the private market as well.

Ms. Sanner asked about the relatively short time period of data. She asked if it would be possible to gather data from a longer period of time.

Ms. Watlington agreed to research additional numbers.

Mr. Frye said that it would be possible to gather the data from the last 2-3 years to see if it was significantly different.

Mr. Beisch asked if there was a consensus on establishing an administrative threshold recognizing that the actual number may change when additional data is reviewed.

Mr. Beisch said that when DCR provides additional data, the language should be reviewed and prepared to advance to the full RAP.

Ms. Watlington said that she had been able to obtain information from 2009 and 2010. There were 9,021 permits. Of that, 5,376 were less than five acres. The land disturbance acreage was a little under 10%. She said that the figures presented by Mr. Beisch would hold. She agreed to send the details to the subcommittee.

Mr. Beisch addressed Issue Paper B – Presumptive MEP. He said that the previous regulatory language referring to the state “buy-down” indicated that trades could occur once a threshold of 0.45 has been satisfied. He said that the current law was modified by HB2168 (2009).

Mr. Varner said that it would be helpful if DCR could provide definitions for the related terms. He asked if DCR could define the terms to say that the MEP is met for sites less than five acres.

Mr. Hirschman said that perhaps the statute could be changed for consistency.

Mr. Beisch said that the committee could suggest language that said that the MEP was met if the disturbance was less than five acres or the removal requirement was less than five lbs.

Mr. Hirschman said that a standard still needed to be set. He noted that a lot of redevelopment sites were less than five acres.

Mr. Flagg said that economics would drive decisions if the criteria were set.

Mr. Beisch said that what was important was to manage the runoff quality more appropriately.

Mr. Hirschman said that there was no guarantee that a nutrient credit would operate as to be beneficial downstream.

Mr. Varner said that the point was that the pollutant load in the stream was not having a negative impact.

Mr. Hirschman said that the argument was that quantity deals with erosion.

Mr. Flagg said that this issue might need further discussion, but that the committee was not prepared to do so at this time.

Mr. Beisch said that the other issue with MEP was defining what was done on site.

Mr. White said that payment was not necessarily an offset.

Mr. Flagg said that until the committee had a discussion of the offsite baseline, the numbers did not matter.

Mr. Beisch said that the concern he was hearing from the committee was that if a supply of credits could not be generated then the discussion was moot.

Ms. Watlington said that it should be noted that at some point offsets may not be confined to just the Chesapeake Bay watershed.

Mr. Hirschman said that the market will find the breakpoint where it makes sense to buy the offset or to do something on site.

Ms. Watlington said there would be some latitude as long as it was part of a comprehensive stormwater management plan.

Mr. Beisch turned to Issue Paper C – Timing of Off-site Measures.

Mr. Beisch said that DCR has a concern as well as other stakeholders that credits must be in place before the offset may be sold. He said this was a challenge to local programs.

Mr. Beisch said that some projects are capital intensive. This would impact capital budgets and potentially place the localities in a bind.

Mr. Flagg said that given that equivalency is the goal there must be an assurance that the offset is going to occur.

Mr. Beisch said that maybe localities did not have to be held to the same standards. He said that maybe private bankers needed more flexibility.

Mr. Flagg said there should be a way to incentivize both private and public.

Ms. Watlington said that offsets must be in place before a permit is terminated.

Mr. Beisch said that he started with the premise that there was an issue that EPA would not allow a temporal loss. He said the language was crafted to provide a bridge to cover the temporal loss.

There was a suggestion of perpetual credits and temporary credits.

Mr. Pomeroy proposed that this discussion be deferred until the expansion study is completed.

Mr. Beisch said that the issue would be tabled pending the study.

At this time the committee recessed for lunch.

Following lunch Mr. Beisch referred to Issue Paper D – Offsets outside Bay Watershed.

Mr. Beisch said that the question came up regarding offsets outside the Bay watershed and the need for a compliance option in the absence of a local program or available nutrient bank. He said that the statute says that the Board may establish an exchange by regulation for portions that do not drain into the Bay.

It was noted that while the nutrient credit exchange is limited to the Bay, the statute provides the authority to set up a parallel exchange.

Mr. Frye said that DCR would prefer to have consistency statewide.

Mr. Varner agreed that there should be equivalent programs.

Mr. Frye said that it does not make sense to have two versions. He noted also that in the Southern Rivers portion there were numerous communities that do not have stormwater programs.

Mr. Frye said that the concept should be that the nutrient levels should be the only fundamental difference.

DCR staff will look at appropriate language.

Mr. Frye said that the hope would be to have a nutrient credit exchange program in place by the time of the new permit.

Mr. Beisch noted that the meeting of the full RAP was scheduled for January 21.

Mr. Beisch said that draft language would be distributed to the committee in time to comment prior to the meeting.

Ms. Watlington noted that RAP members would be receiving reports from all of the subcommittees.

The meeting was adjourned.