

**Virginia Soil and Water Conservation Board
Department of Conservation and Recreation, 600 E. Main Street, Richmond, Virginia
November 21, 2013**

Special Called Meeting

Virginia Soil and Water Conservation Board Members Present

Herbert L. Dunford, Jr. Chair	Daphne W. Jamison, Vice Chair
Joan DuBois	Gary Hornbaker
Stephen Lohr	Raymond L. Simms
David A Johnson, DCR Director, Ex-Officio	
John A. Bricker, NRCS, Ex-Officio	

Virginia Soil and Water Conservation Board Members Not Present

Thomas M. Branin	C. Frank Brickhouse, Jr.
Jerry L. Ingle	Richard A. Street
Wanda J. Thornton	

DCR Staff Present

Scott Ambler	David C. Dowling
Michael R. Fletcher	Darryl Glover
Stephanie Martin	

Others Present

Kendall Tyree, VASWCD
Wilmer Stoneman, Virginia Farm Bureau Federation
Katie Frazier, Virginia Agribusiness Council
Brad Copenhaver, Virginia Agribusiness Council
Katie Hellebush, Virginia Grain Producers Association

Call to Order

Mr. Dunford called the meeting to order and declared a quorum present. He asked Mr. Dowling to present the issue for discussion.

Discussion of suspension of Resource Management Plans Regulations 4VAC50-70-10 et seq.)

Mr. Dowling gave the following prepared remarks.

Virginia Soil and Water Conservation Board

November 21, 2013 Meeting
DCR Board Room, 600 E. Main Street, 24th Floor
Richmond, Virginia
(by David Dowling, Policy and Planning Director)

We greatly appreciate the Board holding this Special Meeting to consider delaying the implementation date of the Resource Management Plans Regulations.

At the Virginia Soil and Water Conservation Board's March 27, 2013 meeting, the Board approved and authorized the filing of the final Resource Management Plans Regulations (4 VAC50-70). As part of the authorizing motion, the Board set a delayed effective date of seven-months from the date of publication of the final regulations to enable the Department to actively work during this time period on necessary implementation actions in preparation for the effective date. The final Resource Management Plans Regulations were published on May 6, 2013 in Volume 29 - Issue 18 of the Virginia Register of Regulations (Action 3677/ Stage 6555) with an effective date of December 6, 2013.

At the March meeting, several of the Board members expressed concern that they thought the Department was being optimistic regarding the implementation date. At that time, the Department indicated its desire to work towards implementation of the regulations prior to 2014. However, although the Department has been making significant progress since that time, we recently have had to conclude that this was a much heavier lift than we anticipated in preparing to implement this significant new program. As we noted in our communications with the Board regarding setting this meeting, we want to make sure that the launch of this program is successful and that it is a quality and beneficial experience for those involved and we do not believe that this can be achieved with a December 6, 2013 effective date. We also want to make sure that the Districts have been fully trained and are prepared to partner in the delivery of this program.

We understand that the Board considering this action creates a level of trepidation with stakeholders. Some within the agricultural community have suggested that the delay could "be considered to be an opportunity for mischief and backsliding" "for which our industry will be unjustly blamed". From the Department's perspective, we want to assure the Board and the stakeholders that the only purpose for today's recommended action is to make sure we are in a position to administratively launch a successful and fully established program that is supportive of the farm community and that advances a successful and professional implementation of this important water quality program. A piece-meal approach to implementation is not a viable alternative. To stakeholders and the Board, we want to state unequivocally that such delay is not being done in the contemplation of any regulatory or legislative actions or with the purpose of harming or changing the program in any manner. As noted previously, this is just to allow the Department and the Board to launch a successful program where well thought out web-based functions have been developed and thoroughly tested with stakeholder assistance and where proper and necessary training and tools have been provided to RMP developers and District personnel.

As we noted in the letter from Director Johnson distributed Tuesday, and included in your packets today, we have made significant progress since bringing the first Resource Management Program Coordinator on board this past June. Since then, we have accomplished the following:

- Developed criteria, application, and guidance for RMP developer certification and re-certification and commenced discussions with web designers for online RMP developer application development.
- Developed a preliminary discussion/ draft format for a Resource Management Plan including potential certification statements and records management requirements for use in stakeholder discussions and web product design.
- Developed plan review checklists for DCR and SWCD's technical review committees.
- Developed draft guidance and forms for site inspection implementation verification.
- Began discussion/ development of proficiency demonstration questions for RMP Developers.
- Developed a program PPT, outreach brochure, and poster display. [SEE BOARD PACKET]
- Conducted SWCD Director/Staff outreach and training (Phase 1 Training – laws and regulations)
- Attended the August 1st Ag Expo, the August 20th VA Tech Southern States Growmaster training meeting with Farm Bureau, and the August 21st VASWCD Employee Association summer training at Graves Mountain Lodge.
- Held coordination meetings with VDACS and DEQ on RMP program elements.
- Developed and circulated an RMP Program FAQ to SWCDs through the VASWCDs. [SEE BOARD PACKET]
- Developed the draft format for the RMP Certificate of Implementation.
- Held discussions on how to best implement FOIA and information privacy procedures during Technical Review Committee (TRC) and SWCD board meetings.
- Produced a draft final RMP webpage.
- Advertised for second RMP staff position. (Recruitment closed 11/18/13)
- Advertised for a Data Analyst position. (Recruitment closes 11/22/13)

However, this still leaves a significant amount of work to be finalized before program implementation can properly and professionally commence. Critical items noted in the timetable that still need to be completed include:

- Fill second RMP staff position.
- Fill Data Analyst position.
- Develop and test online RMP developer application and create public registry of Certified Plan Developers on the website.
- Hold stakeholder meetings to identify content of RMP and soil conservation modules and finalize the scope of work for modules; finalize contract for development of modules; and complete and properly test modules to Ag BMP tracking system.
- Finalize FOIA and data privacy guidance for TRC and SWCD board meetings.
- Conduct SWCD Area by Area technical implementation training. (Phase 2 Training)

- Finalize development of proficiency demonstration questions for RMP developer application.
- Finalize guidance and format for issuance, modification, and revocation of RMP Certificates of Implementation.
- Update New Director Training notebook.
- Develop RMP components of cost-share program in coordination with the Board.
- Begin RMP Developer and SWCD training on RMP and soil conservation modules. (Phase 3 Training)
- Implement stakeholder marketing and outreach strategies.
- Place RMP documentation on website.
- Begin development/review/approval of new Resource Management Plans.

We anticipate being able to fully implement a successful program in the third quarter of 2014. As much of this is dependent on web product development, in addition to the recommended delay of the regulations, we recommend that the Board reassess the timeline and consider a new effective date of the regulations at the first regular meeting in 2014 understanding that the Department on the Board's behalf is going to do everything in its powers to advance product development in a timely fashion.

With that overview of the issue and the Department's recommendation, we are happy to answer any questions, or turn it back to you Mr. Chairman for public comment and Board action. A motion for your consideration is provided on the next page. (See end of minutes for approved motion.)

Mr. Dunford asked for comments from Board members.

Mr. Hornbaker asked what the reaction was from EPA regarding the postponement. He said that he understood that the EPA was following this closely.

Mr. Johnson said that this was not an EPA program. He said that the EPA and the USDA are interested in the program and that they desire that farmers have the option of a program where they feel more comfortable doing pollution control. This is a tool for farmers and that is why both the EPA and USDA are interested.

Mr. Dowling said that the EPA was looking to Virginia for the model program and that DCR wanted to make sure that the best model was in place.

Mr. Hornbaker said that he continued to have the concern that he raised at the March meeting with regard to Nutrient Management Certification. He said that he was concerned that there were not enough Nutrient Management Plan writers to effectively get the desired number of farms to participate.

Ms. Martin said that she had not done another query since the March meeting. However, she said that the Nutrient Management Program offers training classes quarterly and tests twice a year.

Mr. Hornbaker asked if there was funding available to cover the fees.

Mr. Dowling said that DCR hoped to provide some RMP program funding for the Districts this fiscal year. However he noted that the amount was currently unknown and that more would be known after the Governor's budget was released in December. He said that RMPs are considered part of district base funding needs.

Ms. Jamison said that districts were reluctant to move ahead with this because of the uncertainty of the funding.

Mr. Dowling said that an additional \$1.4 million in operational funding had been requested for FY15 which amounted to about \$30,000 per district.

Ms. Jamison said that districts could not hire an employee for \$30,000.

Mr. Dowling said that DCR was working with the best information available at the present time given the information provided by districts through the first essential funding submittal. He said that if it was possible to further rebenchmark the district administrative funding in future budget cycles that could be considered.

Mr. Johnson said that districts would not be expected to develop the program and not be paid for it.

Mr. Dowling said that the Agency wants to be in a position to implement this program right when it does so.

Public Comment

Mr. Dunford called for public comment.

Wilmer Stoneman, Virginia Farm Bureau Federation

Mr. Chairman, Members of the Board, my name is Wilmer Stoneman. I represent the Virginia Farm Bureau Federation.

I'm going to ask you today not to delay implementation.

A little less than four years ago we were challenged by this Administration to not say no to developing and implementing the Watershed Implementation Plan.

We were asked to provide some type of program that farmers would accept and utilize to address water quality.

We developed that program and went to the General Assembly and asked for it and we are prepared to go to the General Assembly and make sure that it is funded properly.

Now, the concern that I have is that we keep talking about a new program and can our staff implement this program. There is nothing new at all about the pieces of this particular program, other than maybe the approval process the district directors need to go through.

The field work is things that have been around for decades. Our soil and water district staff already should know how to do universal soil loss equation and what it means. They already have a Nutrient Management program that is decades old.

All we're talking about is implementing and tying those programs together so that the farmer has a comprehensive look at his farm, the issues that are associated with it, and create some plan that means something to him.

I learned that some twenty-five years ago as a soil and water district employee. I would expect a lot of these tools have not changed other than slight tweaks here and there.

A nutrient management plan is a nutrient management plan. That's two-thirds of what we're talking about doing.

My concern is that if we delay this we are creeping ever so much closer to that 2017 deadline that we were asked to perform. Our necks are on the line.

My fear is that in a few years I'll be testifying in front of State Water Control Board instead of our friends that have been asked to work with us to implement the regulations.

There is nothing magical about implementing these regulations. You can implement it tomorrow. It doesn't mean that the farmer is going to break your door down tomorrow asking for plans.

I say implement the regulations on time. Just don't advertise it. Create your pilot programs. Work on computer programs and keep progressing the ball. My additional fear is that this will be one more time that a voluntary program has stumbled and not provided the water quality benefit we that promised. It may or may not be that particular case. But it begs for that type of comment to be made.

We're staring down the barrel of 2017. You might say that EPA cares nothing about this particular program, and that's probably true. But they do care about implementing nutrient management plans on all farms to a 95 or 90 plus percentile. They care about implementing Best Management Practices to a 90 plus percentile. We believe this program can implement those proper programs.

I'm going to wind up by asking you to implement the program on time. We can work through these issues. We can certainly not lose time helping farmers.

Thank you very much.

Katie Frazier, Virginia Agribusiness Council

Mr. Chairman, I'm Katie Frazier of the Virginia Agribusiness Council.

We learned, a little less than two weeks ago today, that the Department planned to come to you and ask for a delay in the effective date of the regulations. At that point in time I think the phrase was used that you don't want a similar thing to happen like what happened with the Affordable Healthcare Act rollout.

I think that all of us agree that rolling any program out from the Agency that isn't complete is problematic.

As I've thought about this over the past couple of weeks, my question is an effective date of the regulation doesn't mean that you have to fully roll out the regulation.

My question for all of us is not only what are we saying to our farmers but to the Legislature as we're going into the General Assembly Session. To be quite frank, we're going to be asking for increased money for soil and water conservation districts programs and for cost-share.

We are preparing, as a priority issue for our organization, to go ask for additional funding.

I'm also concerned about Mr. Hornbaker's question about the EPA. I think it's a good one in that I think that we send a message as we get closer to 2017 that we're further and further away from meeting our goals.

The EPA doesn't have any control over this program, but they do ultimately hold a hammer over our state. There are some provisions in our Watershed Implementation Plan that gives agriculture producers, unless programs aren't funded, mandates that could come into play. If you have to stand in front of the EPA and say "we promise that it's coming" I have some concerns about that.

I would encourage you, recognizing that you don't want to roll out a program that's not complete, to continue with the current effective date, but perhaps set a delayed implementation deadline of three months. That gives time prior to the new program year of July to roll this out.

My other concern is that if you don't go with that, the concern about delaying a timeline is that I have nothing to take to my farmers to say for sure when they will be effective. We think the third quarter is midway through the program year. That could be July, August or September. We'll be back at the same place again.

I have significant concerns about being able to provide certainty that this program is going forward.

I would encourage you if you need to delay, set an effective date that this will roll out.

The last thing is that I hope you take an active interest in is the needs assessment and I hope that the Ag BMP needs assessment includes money for RMPs and for soil and water conservation district operations. We would like you join us in asking the state to put that report out so that we have a basis to continue to go forward to the General Assembly.

Thank you.

Kendall Tyree, Virginia Association of Soil and Water Conservation Districts

Mr. Chairman, Members of the Board, I'm Kendall Tyree with the state association.

I know many of you and have heard the sentiments from those before me. The State Association has the same comments. However we've worked closely with a number of districts.

So I have to stand before you today and say that a rollout of December 6 would be a significant burden for districts. There has been a lot of talk about training that hasn't happened. A December 6 rollout is unclear what this would mean to districts.

Therefore, I have to stand before you today and say that we should continue to work collaboratively. We are thrilled that those two positions are going to be hired and that our IT committee has been a part of these discussions. But there is a lot of progress that needs to occur before the program is actually rolled out. That's what we're hearing from districts.

I recognize that the idea of having a set date is a concern. While the third quarter is what you have before you, we've been pushed by many to look at July 1, 2014.

Thank you.

Katie Hellebush, Virginia Grain Producers Association

I'm Katie Hellebush with the Virginia Grain Producers Association.

I would just reiterate the comments you have heard before me to support moving forward as much as you can now, to continue within a couple of weeks, and implement as the process is ready.

We all are trying to work together to meet the 2017 goals. We are trying to provide resources to farmers to do so.

I think that clear communication will be critical. But we would also send a message that we are making progress to the goal.

Thank you.

Additional Board Discussion

Ms. DuBois asked for clarification. She said that the sentiment seemed to be that the Board should maintain the December 6 date but not implement the regulations.

Mr. Dowling said that was correct, but that the Agency would not recommend that. He said that once the regulations were effective there were certain timelines the Agency would be required to meet. He said that the Agency would prefer suspending the entire set of regulations and then coming back to the Board at the March meeting to provide an update and for the Board to consider further action at that time.

Ms. DuBois asked if July 1, 2014 was a consensus date for the delay.

Mr. Dowling said that by January, DCR would have additional staff and would know the status of the IT contract. He said that the Agency would have a clearer picture at the March meeting and that he did not know how setting a specific date would be beneficial.

Ms. Jamison asked if the March date was confirmed and whether the Board could have a February meeting. She said that the issue of funding was of major concern.

Mr. Dowling said that a February meeting date would be at the discretion of the Board but that the meeting should not be delayed beyond March. He said that he appreciated the comments from the stakeholders and would like for the Agency to be as responsive as possible.

Mr. Dunford noted that it would be the first part of March before the General Assembly adjourns.

Ms. Jamison asked if DCR would be conducting pilot programs.

Mr. Dowling said that pilot programs had been discussed in earlier communications. He said that there would likely be some RMP testing. He said that DCR wanted to make sure the program was functioning.

Mr. Simms asked if the intent was that the program would be fully implemented in the third quarter of 2014.

Mr. Dowling said that was the suggestion. He said the recommendation was to suspend the regulations and for staff to come back at the first full meeting of the Board in 2014 with an updated recommendation and timeline.

Mr. Hornbaker said that he continued to have a concern regarding the number of certified Nutrient Management Plan writers available. He noted that there were not enough certified plan writers available in Maryland. He said that the need would be great in some areas.

Ms. Martin noted that currently there is Ag BMP cost share money for NMP development.

Mr. Lohr said that as the demand increased, that more people would seek certification.

Ms. Jamison said that a delay in the program would mean a delay in some individuals obtaining their credentials.

Mr. Lohr asked if the administrative change to a new governor could affect the rollout. He asked if the new governor might choose to delay the program.

Mr. Dowling said that he did not believe that a change in the administration would delay the progress of the RMP program. He noted that the regulatory process for the RMP regulations does not require further administrative review. He said that the action rests with the Board.

Mr. Johnson noted that the EPA wants Virginia to move forward with the program. He said that he did not anticipate that the governor-elect would stand in the way.

Mr. Dunford asked if the Board was ready to take action on the suggested motion.

Ms. Jamison said that she would like the Board to consider amending the proposed motion to change the effective date of the regulations to July 1, 2014.

Ms. DuBois said that she was comfortable with the original motion and with waiting for the March meeting for an update regarding the timeline.

Ms. Jamison noted that districts have to have their grant agreements on July 1 to begin the new year.

Mr. Dowling said that based on discussions, the process for developing the applications was a six to seven month time contractual obligation to bring the product forward.

Ms. Martin said that the product may be ready sooner but that staff did not want to promise what could not be guaranteed.

Ms. Jamison asked why the date had been set as December 6, 2013.

Mr. Hornbaker noted that, at that time, the discussion was to have the product ready prior to the Association Annual Meeting in order that there could be workshops and training available. He said that he was hesitant to put the July 1, 2014 date in the motion if the date for completion remained uncertain.

Mr. Dowling said that staff had clearly heard from the Board that a new effective date should be specifically addressed at the March meeting.

MOTION: Mr. Simms moved the following:

Motion to authorize the temporary delay of implementation of the Board's Resource Management Plans Regulations (4VAC50-70-10 et seq.)

The Board authorizes the Director of the Department of Conservation and Recreation and the Departmental Regulatory Coordinator to post to the Regulatory Town Hall and submit to the Virginia Registrar a Notice of Suspension for the final Resource Management Plan Regulations that are set to become effective on December 6, 2013 as published on May 6, 2013 in Volume 29 - Issue 18 of the Virginia Register of Regulations (Action 3677/ Stage 6555).

The Board has reviewed the recommended revised timeline and will reassess the timeline and consider a new effective date of the regulations at the first regular meeting in 2014.

The Board requests that the Director or the Regulatory Coordinator report to the Board on these actions at subsequent Board meetings.

SECOND: Ms. DuBois

DISCUSSION: None

VOTE: Motion carried unanimously

Other Business and Adjournment

There was no further business and the meeting was adjourned.

Respectfully submitted,

Herbert L. Dunford, Jr.
Chair

David A. Johnson
DCR Director