

House Bill 1774 Stormwater September 13, 2017 Subcommittee 1 Meeting

Minutes

The House Bill 1774 Stormwater Workgroup Subcommittee 1 met at 3:00pm on September 6^{13h}, 2017 at the DEQ office in Richmond to review and consider alternative methods of managing stormwater in rural localities pursuant to HB 1774. Present at the meeting were Subcommittee 1 members Melanie Davenport (DEQ), Ann Jennings (Chesapeake Bay Commission), Adrienne Kotula (JRA), Eldon James (RRBC), Greg Evans (DOF), Shannon Varner (Troutman Sanders), Lewie Lawrence (MPPDC), Russ Baxter (Deputy SNR), Chris Swanson (alternate for Marcie Parker, VDOT), and Kate Creef (alternate for Chris Pomeroy, AquaLaw).

Also in attendance were Elizabeth Andrews, Facilitator (VCPC), Jaime Bauer (DEQ), Mark Luckenbach (VIMS), Brandon Bull (DEQ), Carl Hershner (VIMS), Ryan Brown (Kane Jeffries), Steve Owens (VDOT), and Larry Land (VACo).

The minutes from the previous Subcommittee 1 meeting were approved without comment or questions.

PRESENTATION ON DEQ REQUIREMENTS FOR APPROVAL OF A COMPREHENSIVE STORMWATER MANAGEMENT PLAN THAT COULD GENERATE CREDITS WITHIN ONE WATERSHED

Jaime Bauer stated that she and Melanie Davenport looked through the existing regulations for comprehensive stormwater management plans based on some information Richard Street had provided to the Workgroup. Jaime stated that under the regulations, VSMP authorities can put together and submit to DEQ a comprehensive stormwater plan. The plans can apply to water quantity and/or quality. Jaime stated that this is one of the offsite options available in the regulations as they currently stand. DEQ is currently reviewing a couple of these plans. The 1999 Virginia Stormwater Management Handbook incorporates three guidelines for creating a comprehensive stormwater management plan: (1) taking inventory, (2) planning, and (3) implementation. These are defined further on the handout provided by Jaime. Some of the technical experts at DEQ identified some additional requirements that are not in the Handbook; these are underlined in the handout.

Jaime stated that this approach will probably not make things simpler for localities. This is in part because localities are required to be VSMP authorities in order to adopt one. Further, these localities must still conduct water quantity analyses under this approach, and it has been discussed at previous meetings that this would be difficult for localities.

Jaime proposed some possibilities to address this issue, including having a third party prepare comprehensive stormwater management plans or perhaps some sort of resource sharing amongst the localities. Another possibility would be for localities to pay a fee in order for some state agency to take care of the plans for the localities.

Lewie Lawrence asked what type of projects this would apply to: those within the donut hole, those with land disturbance over an acre, or to all projects? Melanie stated that the currently

existing program is being utilized by VSMP authorities to meet MS4 permit requirements and to achieve phosphorous reductions for new construction.

Jeff Corbin asked at what point a locality can know whether or not this is a good idea; his main concern was that a locality may undertake such a program and only then realize that it was not economically feasible. Jaime stated that these programs work better for localities with more active development, as opposed to the more rural localities. For localities with little ongoing development, such a program would likely not be cost effective.

Jaime stated that Virginia Beach looked into such a program for flood protection and as a part of their Bay Action Plan for their MS4 permit. Elizabeth asked Lewie for his thoughts on the utility of a comprehensive stormwater management plan for a rural locality in Tidewater. Lewie stated that it would be hard to maximize utility from such a program because it is based on development, and the rural localities do not have enough development to justify the cost. Russ added that this program works for the more developed areas of Virginia Beach. Elizabeth asked the group how it would like to proceed on this issue. The group agreed not to pursue this proposal.

PRESENTATION ON THE TALBOT COUNTY, MARYLAND DITCH RESTORATION PROJECT

Ann Jennings presented on the Talbot County Ditch Restoration Project Final Report. Essentially, high resolution topography was used to target certain ditches in Talbot County, which identified more than a thousand ditch treatment opportunities in the County. Ann stated that they did eight projects throughout Talbot County over the course of three years.

Lewie pointed out that it cost \$700 to remove one pound of phosphorus but that it would sell for \$15,000 on the market (see pg. 16 of the report), which supports his proposal to clean up the water in the ditches to create nutrient credits. Russ pointed out that this is not sustainable. Ann stated that the generation of credits by cleaning up stormwater is already allowed.

Ann stated that these projects were all undertaken on private property in conjunction with landowners. Lewie asked if ditches in Maryland are owned by DOT or the private property owner; Ann was unsure, but stated that they were working with private property owners as well as the localities on all of these projects.

Ann summarized the lessons learned from the report. The first was that roadside ditches significantly alter stormwater, and this was an opportunity to do water quality work. The project also achieved great outcomes at a relatively low cost, but needed to be simple and transparent. Further, according to the report, targeting practices in general were found to work best; farm and landowners are also quite supportive if targeting was done. However, more information is needed on the different design efficiencies (especially for non traditional practices). Finally, outreach and expedited project completion were key. All in all, this was found to be a successful effort.

Jeff pointed out that the cost range of a pound of phosphorous in the credit market varies widely from \$500 to over \$100,000. Ann also stated that it was not pointed out who would be

responsible for maintenance of any created BMPs. Someone asked if there were any perpetual projects included in the report, but Ann stated that this was not a project designed to create credits for sale; the goal was to protect and restore local waters, primarily.

PRESENTATION ON THE OREGON CONSORTIUM TO RESTORE SALMON HABITAT

Elizabeth presented some information about a group mentioned by Doug Beisch at the first Subcommittee 1 meeting, a regional stormwater entity called Clean Water Services. Essentially, in Oregon they are trying to improve water quality at the watershed level. The Clean Water Services and City staff are in charge of the stormwater conveyance system. Elizabeth pointed out that this was just for the Subcommittee's reference since it had been discussed previously, and if members wanted to research it further this could be done, or it could be discussed at the larger Workgroup meeting. Elizabeth stated that the Workgroup could simply recommend an approach such as this. Someone pointed out that this may not be feasible in Virginia because of the level of cooperation between public and private sectors that would be required. The Subcommittee did not request additional research on this group.

PRESENTATION ON THE STATUS OF THE RECOMMENDATIONS IN THE CHESAPEAKE BAY PROGRAM STAC REPORT ON DITCHES

Ryan Brown presented an update on the Chesapeake Bay Roadside Ditch Management Team and the Agricultural Ditch BMP Panel and followed up on the STAC report. Ryan stated that the technical memo basically states that more research is needed, and that the RDM team recommends a crediting approach for the practices detailed in the technical memo by the summer of 2018.

PRESENTATION OF RESEARCH ON ACHIEVING POTENTIAL LARGE SCALE POLLUTANT LOAD REDUCTIONS BY TREATING DITCH WATER IN RURAL TIDEWATER LOCALITIES

Carl Hershner stated for this idea to work, there would need to be enough nutrients that are capturable and treatable, and it must be economically feasible to treat and capture them. VIMS researchers looked at what drained into the ditch network and then started looking at where all of the sub-watersheds were, as this is where the BMPs would be positioned. The bottom line is that this was probably not a realistic proposal. Ultimately, the amount of phosphorous that ends up in those ditches and is capturable and treatable is quite low. Further, only a portion of the water in the ditches flows to a collection point, where it could then be potentially treated for credit reduction. There were hundreds of collection points per county; these are the number of sites that would have to be acquired, retrofitted with a BMP, and then maintained long term - and the majority of those sites were on private property.

Carl then looked at the feasibility of using the Talbot County model. This was significantly more practical in terms of identifying sites that are actually treatable. There are still issues with this approach with respect to sites being located on private property and acquiring

funding for retrofitting. However, most of the loads generated in ditches in rural Tidewater localities are generated from agricultural lands, so it is possible to develop significant reductions in loads at selected sites. To develop this into an internal credit program seems possible, but more research is needed.

VIMS also looked at King and Queen County because it has restricted areas in which the locality is attempting to target economic development. The net effect of building out those areas (from current development level to completely developed) would be possibly another 100 pounds of phosphorous.

Mark Luckenbach pointed out that it might be advantageous to look at the volume in sub-watersheds as well. Carl stated that the researchers at ODU are handling those calculations.

Carl also stated that opportunities for water quality improvement seem to be present with this plan, so targeting load reductions for effectiveness is possible, but issues remain with respect to funding and who carries out such a plan. Carl stated that they are struggling to find a way to monetize this plan in a way that provides a net financial benefit to localities

The group discussed potential funding options, including possible expansion of the Stormwater Local Assistance Fund (SLAF) program. The only issue with this, Jaime said, is the funds can only be used for capital projects. Eldon James stated that for the non-MS4 localities, which would be cleaning up ditch water because it's the right thing to do, without a permit driving them to do so, the structure of SLAF does not add to the encouragement. This is because they are not getting any money for the administration, and the in-kind effort of the locality is not recognized either. Thus, it's hard for staff to convince elected officials to do this. It can also take as much as 2 weeks of staff time to put the application together. Melanie suggested that maybe the state could do this instead. Lewie stated that rural localities must be able to make money off of the implemented program; otherwise they won't do it. Eldon also pointed out that regulation must be re-tooled to address the non-point source side.

PROPOSALS AND HOMEWORK

The group discussed 7 potential funding ideas as follows, with the assigned homework noted:

- 1) An entrepreneur or state agency working with localities pays them for credits; this idea could include the legislature providing funding to a state agency with a locality match via a stormwater utility fee (Shannon Varner to draft proposed language)
- 2) CWA Section 319 grants
- 3) Chesapeake Bay Program develops an assigned efficiency for ditch clean up as an Agricultural BMP under the Bay TMDL; it is included in the VA BMP Clearinghouse; DCR then provides Ag BMP funding (Russ to draft)
- 4) Environmental organizations or localities with grants undertake projects such as the Talbot County, MD example, where ditches are cleaned out and widened, or converted to wetlands with an easement to ensure perpetuity
- 5) The Stormwater Local Assistance Fund (SLAF) program follows what the Bay TMDL program allows; it is restricted to capital projects currently, has no funds for

administration and does not recognize in-kind contributions of localities. The ranking system for deciding which projects to fund also is a challenge, and the cost/lb. often drives that. It could be amended or a new, separate SLAF program could be created for use by non-permitted localities (Melanie and Jaime to draft)

- 6) Natural resources bonds (Greg to research and draft)
- 7) Use of WQIF dollars – could require the Director of DEQ to sign grant agreements as is currently done for point source grants (Russ to draft)

The subcommittee agreed that the assigned persons should send their research to Elizabeth, for consolidation and presentation at the next full Workgroup meeting. This would avoid holding another Subcommittee 1 meeting. All homework assignments are due to Elizabeth by **September 22nd**.

Elizabeth asked for public comment. Hearing none, the meeting was adjourned at 5:15p.m.