

**Virginia Agricultural Resource Management Plan Regulations
West Reading Room, Patrick Henry Building
Richmond, Virginia
Wednesday, June 29, 2011**

MINUTES

RAP Members Present

Paul Bodenshteyn, Ag Systems, Inc.
R.O. Britt, Murphy-Brown
Patrick Cushing, Virginia Grain Producers Association
Daniel Helm, Ecology and Environment, Inc.
Adrienne Kotula, James River Association, for Bill Street
Brad Jarvis, Virginia Tech Cooperative Extension
Ann Jennings, Chesapeake Bay Foundation
Stephanie Martin, Virginia Department of Conservation and Recreation
Kate Norris, Prince William Soil and Water Conservation District
Eric Paulson, Virginia State Dairyman's Association
Jacob Powell, Virginia Conservation Network
Matt Shreckhise, Shreckhise Nurseries
Tom Simpson, Water Stewardship, Inc.
Wilmer Stoneman, Virginia Farm Bureau
Meaghan Terrien, Three Rivers Soil and Water Conservation District
Don Wells, Virginia Association of Soil and Water Conservation Districts
Charles Wootten, Piedmont Soil and Water Conservation District

Staff Present

Brian Benham, Virginia Tech
Diane Beyer, Virginia Department of Conservation and Recreation
Betsy Bowles, Virginia Department of Environmental Quality
Bryan Cawthorn, Virginia Department of Environmental Quality
David Dowling, Virginia Department of Conservation and Recreation
Michael Fletcher, Virginia Department of Conservation and Recreation
Gary Flory, Virginia Department of Environmental Quality
Michael Foreman, Virginia Department of Conservation and Recreation
Mark Hollberg, Virginia Department of Conservation and Recreation
David Johnson, Virginia Department of Conservation and Recreation
Darrell Marshall, Virginia Department of Agriculture and Consumer Services
Matt Poirot, Virginia Department of Forestry
Bob Waring, Virginia Department of Conservation and Recreation
Christine Watlington, Virginia Department of Conservation and Recreation
Chad Wentz, Natural Resources Conservation Service

Others Present

Jack Bricker, Natural Resources Conservation Service
Blaine Delaney, Natural Resources Conservation Service
Megan Jessee, Chesapeake Bay Foundation
David McGuigan, EPA
Peggy Sanner, Chesapeake Bay Foundation
Kelly Shenk, EPA
Jim Tate, Hanover Caroline Soil and Water Conservation District

Welcome and introductory comments

Ms. Martin called the meeting to order and welcomed members and attendees. She thanked members for their willingness to give their time and energy to this process. She said that this was a great opportunity for Virginia.

Ms. Martin said that the intent is to make sure the process is successful and that it works for the agricultural community.

Ms. Martin said that Ms. Watlington would give an overview of the schedule.

Ms. Martin called on Mr. Forman to review the ground rules for the discussion.

Mr. Foreman presented the following ground rules for the RAP participation.

- Take care of your own needs
- Cell phones on “stun”
- Be respectful of each other’s time and comments
- One person speaking at a time
- Engage and participate – we want your best ideas!
- Public (Non-Regulatory Advisory Panel members) participation will be received at the end of this meeting during the public comment period.

Ms. Jennings asked if there would be a need for the group to make formal decisions, and if so, how that would be accomplished.

Mr. Johnson said that most issues would be addressed by consensus.

Director’s remarks

Mr. Johnson gave opening remarks.

Mr. Johnson said that the work of the Regulatory Advisory Panel was very important. He said that the legislation was probably the most important agriculture related bill in the

2011 General Assembly session. He said that the legislation allows individual farmers to implement strategies that work with their farms through a resource management plan developed by state, federal, and private partners.

Mr. Johnson said that it was important to utilize relationships with farmers that already exist. He said that the goal was to drive the regulations toward simplicity. He said that a complicated process would likely fail.

Mr. Johnson said that the process was being developed through the regulatory process, but that the program was voluntary. He said that the intent was to have a consistent look and feel to the program so that a program in Augusta County would be identical to a program in Rappahannock County.

Mr. Johnson said that the idea was that this should be a participatory activity. He said that the process had to have good accountability.

Mr. Johnson noted that the legislation was getting a lot of interest including interest from the USDA and EPA.

Mr. Johnson said that the role of the RAP was to work towards a process that could be verifiable and worthwhile. He said the hope would be to have a voluntary program farmers would want to participate in so that mandatory requirements could be avoided.

Mr. Johnson said that the process would need flexibility. He noted that not all practices apply to all farms. He said that the hope was not to regulate the farming community but to give them flexibility. He said that implementation would be important.

Overview of legislation and regulatory process

Ms. Watlington gave overview of legislation and regulatory process:

2011 Legislative Session

- House Bill 1830 established resource management plans (RMPs)
- Delegate Scott chief patron
- Heavily utilized by Virginia in Chesapeake Bay Phase I Watershed Implementation Plan (WIP)
- Regulations must
 - Be technically achievable
 - Take into consideration the economic impact to the owner or operator

Key Provisions

- Agricultural landowners or operators who fully implement and maintain a RMP shall be deemed fully compliant with any load allocation in a TMDL, requirements of the Chesapeake Bay Phase I WIP, and any applicable state water quality requirements for nutrients and sediment
- Utilizing an RMP does not preclude or prevent the enforcement of required permits or other applicable laws
- Agriculture landowners and operators are eligible for matching grants through the cost-share program for implementing and maintaining a BMP.

Criteria of regulations

- Regulations must include:
 - Determinations of persons qualified to develop RMPs and to perform on-farm assessments
 - Plan approval or review procedures if necessary
 - Allowable implementation timelines and schedules
 - Effective lifespan of RMPs
 - Factors necessitating renewal or new plan development
 - Means to determine full implementation and compliance including reporting and verification
 - Development of a process for on-farm assessment of all reportable best management practices (BMPs)
 - Include BMPs sufficient to address TMDLs and the Chesapeake Bay WIP
 - Specific that all components of a RMP be based on an individual on-farm assessment

Cropland or Specialty Crops

- As needed and based on individual assessment requirements include:
 - Nutrient management plan
 - Forest or grass buffer between cropland and perennial streams
 - Soil conservation plan that achieves a maximum soil loss of “T”
 - Cover crops

Hayland

- As needed and based on individual assessment requirements include:
 - Nutrient management plan
 - Forest or grass buffer between cropland and perennial streams
 - Soil conservation plan that achieves a maximum soil loss of “T”

Pasture

- As needed and based on individual assessment requirements include:
 - Nutrient management plan
 - System that limits or prevents livestock access to perennial streams
 - Pasture management plan or soil and conservation plan that achieves a maximum soil loss of “T”

Regulatory Process

- Abbreviated Administrative Process Act process
- Virginia Soil and Water Conservation Board initiated regulatory action on March 10, 2011
- Legislation requires formation of stakeholder advisory group
- Board proposes regulations; Department of Planning and Budget prepares economic impact statement
- 60 day public comment period with 1 public hearing
- Board adopts final regulation
- 15 days after publication, regulation becomes final

Goal Timeline

- Regulations presented to Board at December 2011 meeting
 - Consensus on regulations by RAP
 - Subcommittees meet, recommendations presented
- Regulations effective July 1, 2012
 - Economic impact by DPB
 - Public comment period – 60 days
 - Final adoption by Board

Identification of key issues

Mr. Foreman led the discussion of identification to identify key issues. Members noted the following concerns:

- Technical assistance will be more than anticipated. To take everything down to “T” will be difficult in many areas of the state.
- There will be need for farm assessments and specific plans that work for each farmer. Must look individually at each farm and situation.
- An incremental approach may be best.
- Need to insure implementation.
- Remember to consider local TMDLs already in existence.
- Will have a big impact on the Bay, but will also be interesting to see how this plays out in non-Bay areas.
- How will this be both implemented and verified?

- There will be a lot of implementation and plan writing. Agree that it must be incremental.
- Careful not to overburden the system.
- Is there an assumption that all farms are polluting?
- How will acceptable buffer zones be defined? Some farms may not be able to expand to include buffer zone.
- This is not intended to be a permit system. Should not be considered as such.
- This is a voluntary program.
- The farmer must be involved. This is not a dictatorial process.
- Process must be scientifically valid and credible.
- Where is the money coming from?
- What happens when a plan is written and the farmer has an issue they cannot afford to address?
- From the field viewpoint, this will be a tremendous workload.
- Concern over the standardized farm assessment.
- Concern about wording of reportable BMPs.
- What will be voluntary? What is not voluntary?
- Who will be in charge?
- If farmer chooses to participate, will there be presumption of compliance?
- The entrance is voluntary, but once farmer is in a different concept.
- Not truly regulatory. Not truly voluntary.
- Hope that farmers will sign up and participate and program works in actually improving water quality and restoring the Bay.
- How will this interact with permits?
- Who writes the plans?
- Voluntary and non cost-share BMPs. How are they equitably addressed?
- Need clarity so that farmers know what to expect.
- Conservation plans are very site specific.
- Important to keep in mind the dollar per reduction.
- When should there be a nutrient management plan and when not?

Following this discussion the RAP took a break.

Key issue subcommittee development (further discussion of issues)

Mr. Foreman said that the structure for this RAP was that subcommittees be formed around issues then those issues would be brought back to the full RAP for the consensus process. He said that staff had identified three major headings for subcommittee discussion

1. Assessment – Who does it? What does it look like?
2. Plan development – Who writes it? What does it look like?
3. Compliance and auditing process – What makes it certifiable? Who does that?

Mr. Foreman asked the RAP to divide into subcommittees based on their issue preference. He said that following the subcommittee discussion the RAP would come back together for further discussion.

The subcommittee reported discussions of the following:

“ON FARM ASSESSMENT” Small Working Group

- Assessment Tools already out there (Chesapeake Bay Preservation Act plans, Hanover-Caroline Soil and Water Conservation District)
- Assessment is key to what goes into a plan – what the needs are for plan
- Identify (some paperwork) that the operator has “no problems”
- Don’t assume every farm is a “polluter”
- Problem identification
- Would assessments have to be re-done over time?
 - New plans first, redo later
- Training and certification for assessors
- Self inventory to start process with 3rd party on-site overview – precursor to formal assessment
 - Simpler, quicker start, trust, low cost
- Credit in “bay model”
 - Baseline for nutrient and sediment reductions
- Is there a “need” for nutrient management plan
- What is a “reportable” BMP?
 - Standardized BMPs
 - Other Effective Tools
 - Meet minimum standard for practice
 - Level of implementation
- Trained assessors
- Periodic re-assessment
- Could be leveraged or used as an evaluation tool for “other things”
 - Danger in this possibly
- Assessors could be:
 - Private cooperators (trained)
 - Soil and Water Conservation District (SWCD) techs
 - Natural Resource Conservation Service (NRCS)
 - Technical service providers
- Assessment is part of RMP
- Can assessment and plans be “charged for”
- Assessment tool for nutrient & sediment reduction

Subcommittee

“Plan Development” Small Working Group

- Who
- What
- Practices
- Lifespan

Who?

- Nutrient Management Planner (DCR certification)
- RUSLE (2) – does it need to be on NRCS unit
- (TSA’s) not required to have USDA unit.
- Train farmers to write own plans. – to be approved by separate entity.
- NRCS – changes in plan status.
- NRCS- changes in plan statue
- Certification/Reviewer – tougher certifications

What’s IN a Plan?

- Chesapeake Bay Preservation Act Maps (5), Nutrient management plan, Erosion and sediment control, Pesticide
 1. Best management practices (sufficient per land use)
 2. Erosion (T)
 3. Nutrient management plan implementation
 4. Timeline for all/each
- Entire agricultural operation/farm
- Whole farm water protection plan.

Lifetime of Plan

- Nutrient management– at least 3 yrs
- Anytime there’s a significant change in operation
- 3-5 year maximum window.
- How do you follow-up?
- No time limit on plan as long as there is no significant change
- Compliance check-ups depending on agricultural uses.
- Common sense vs. “have to”
- Changes in TMDLs will require revisions in a plan

Compliance/ Auditing Implementation Small Working Group

- Make sure planners are qualified / certified
 - a. State agency
 - b. SWCD
 - c. Private TSP
 - d. Nutrient management plans
 - e. RUSLE
- Who does the Planning / Compliance/
 - Same folk
 - Has to be certified
 - 3rd party verification
- Farmer's themselves doing planning?
 - Self assessment
 - Online – program
 - Self certification
- Who approves plan?
 - SWCD Board?
 - DCR?
- Enforcement / Compliance
 - If found non-compliant – what are the consequences?
 - Remove safe harbor?
 - Who? Local SWCD board
 - Remove it when?
- When does plan need to be reviewed?
- Frequency of verification?
 - Clear / simple requirement in the regulation
 - Annual reporting requirements of farmers to state agency
 - Right of entry issues
- Districts to stay out of compliance because of interaction with farmers on other issues

Meeting summary

Mr. Foreman called the group back together. Staff from each subcommittee reported discussions as noted above.

Mr. Foreman turned the meeting back to Ms. Martin.

Ms. Martin thanked members for their participation and hard work. She said that she appreciated that they came prepared for the discussion. She said that staff would summarize the discussion to move forward.

Ms. Martin asked that RAP members identify the subcommittee on which they would like to serve. She asked that members send that preference to Ms. Watlington. Ms. Watlington will coordinate subcommittee meeting dates and locations. It was suggested that members designate an alternate.

Ms. Martin said that the goal was to have the process completed by December. She noted that was an ambitious goal.

Public comment period

There was no public comment.

Next steps

Ms. Martin said that staff would be in touch with members regarding next steps. Those steps will include subcommittee meetings and the next general RAP meeting.

There was no further business and the meeting was adjourned.