

**DIVISION OF WATER QUALITY
WATERKEEPER ALLIANCE PETITION STAKEHOLDER MEETING**

MINUTES

Date: July 31, 2008
Time: 10:00 a.m.
Location: DENR Training Room, 2728 Capital Blvd, Raleigh

Moderator: Kim Colson, NC DWQ

Handouts: Minutes/notes from July 8, 2008
Draft Rules, dated 7/27/2008

- Passed around sign-in sheet.
- Reviewed July 8, 2008 meeting notes.
- Today's agenda – to go through the most recent rule language.
- 1310.b.1 – Division will select sampling locations.
 - Up to three locations per site.
 - One is to be a background site
 - Definition of "site" – is a site the whole permitted facility or per farm unit or per field?
 - Generally there is one farm site per permit, but there may be more based on some the farm complexes. Would be evaluated on case-by-case basis. For Example: some complexes are grouped close together and share many, many fields – this might be considered one "site". Other complexes have several farm units that are spaced far apart – this may constitute more than one "site".
- 1310.b.2 – 3 sampling events at each location per year
 - Original petition asked for sampling every land application event.
 - Any consideration to a ratio? One sample for every X many events; instead of an established min/max number of samples.
 - With all the various application equipment on some farms, ratio would need to be based on volume applied rather than number of events on one given field.

Question – how long is plan valid? Plan is required for active COC and Permit with provisions further in the rule to allow for modification/elimination of monitoring.

Question – some are still unclear on the objective of the monitoring. A clear objective is important to coming up with a good sampling scheme design.

In the Petition – the intent was stated to assure that the NMP's are working effectively and to detect discharges that have been otherwise unreported/unknown. This is to be for knowledge, not enforcement.

Question – what is the planned utility of the data set. How will it be used?

- Concentration data
- Need good background. Need to have data from tile flow on field with same soils with no animal waste to get real ambient conditions.
- What are we comparing data to? Need to look at these operations relative to standard ag practices.
- Kim – this is an open question. We don't know what to expect from the data, as there is no body of data at this point. So we can't yet draw conclusions on performance. We do not see us setting thresholds on nutrient values. With the collection of data, we hope to get enough information to make inferences and future management decisions.

Question – just swine? No, all permitted animal operations.

Question – How do you track the source of the Nitrogen?

Question – has there been any consideration of the cost to the Division? What about the fiscal note? No work has been done on the fiscal note to date. It seemed pre-mature to start analysis for the fiscal note when we are not sure what the final rule will look like.

- 1310.b.1 – up to three locations. Does this mean there can be zero?
 - Kim - Yes, if no representative downstream location can be sited, there may not be a need.
 - Ryke – some sites have no surface waters to sample.
- 1310.b.2 – sampling scheme
 - b.2.A – after application of waste
 - b.2.B – after application of waste and a rainfall of X amount. (representative rainfall)
 - Ryke – a 0.5 inch rainfall is the threshold for sedimentation rules
 - Steve – tile flow may depend more on the water table. For example, just has 1.5” rain at Lizzie site, and there is no flow from the drains. But a 0.25” may cause flow in winter months.
 - Consider numbers will depend on flow rate? The background site, if carefully selected, will pick this up as well.
 - WKA – suggest a rainfall of 0.5” or more within 48 hrs of end of land application to capture the flow and its constituents
 - Deanna – the hydrology is much more complicated
 - Seems you’d want to get the first flow event whether it’s 24 hrs or a week after the application, it’s still the first flow.
 - Sampling for storm water events, isn’t that the first flush?
 - Anne – this should not be sampling of storm water. We’ve been talking about a rainfall that causes drain flow, and what is a representative rainfall if there are not tiles present?
 - Kim – clearly the representative rainfall amount will vary looking at the facility location. The Division envisions a bit of policy development to go along with the rule.
 - Keith – this is something that would have to be determined in consideration of many factors.
 - Ryke – still see a need to have a minimum number that would trigger monitoring. Suggest that we consider a numeric value.
 - Sampling flow from a tile – take it from the outfall of the pipe? What if pipe outlet is submerged? Access and safety issues.
 - b.2.D. if no water is at the sampling location, wait to take sample at first flow.
- 1310.b.3 - sampling parameters
 - fecal
 - any type? How to determine source?
 - Kim – rule written to test for total fecal. We don’t see doing multiple fecal samples. It’s not appropriate to specify too much in the rule that may not be needed
 - To identify the source of the N – can add stable isotope testing, but this will cost much more. May be better to be specific/careful on locations.
 - Should be able to filter out the noise with good site selection.
 - Anne – Language for the division to document the site conditions – other activities, adjacent operations, other potential sources
 - This information should be captured in the permitting and site selection activities rather than in the rule. Perhaps there can be some working to the effect of “Division would be careful to consider....”
 - Ryke – UST has same issue. UST requires owners to do leak detection, but a hit doesn’t make it a violation. After monitor detects something, this it is the Division that determines whose is it. This is compliance monitoring not source tracking.
 - Fecal samples – big problem to get to a lab. Also flow conditions play factor in fecal results. To get a good sample, flow must be appropriate – critical to good sampling. It is not the Division’s protocol to sample within 24 hrs of a rainfall event when sampling for fecal.

- WKA – fecal is key to see if we are talking about commercial fertilizers or animal wastes.
- Robert Evans – BOD5 is better to determine origin of nutrients (waste or not) and a trigger to come back to site. Fecal is the least conclusive of these parameters.
- Is BOD5 a viable substitute for fecal?
 - Heather – BOD would be good to add, but not drop fecal.
 - Rick – fecal is key to indicate animals. Again, can do isotope testing if there's a question of the source. For most sites, labs are close enough that timing is not a problem. These constituents as a package would give DWQ enough information to proceed. Fecal is needed to show action. There is some wildlife but most will fit in the fecal monitoring.
- So is BOD a better indicator of animals?
 - Deanna – better indicator of source
 - Sample process time for BOD makes it harder to take corrective action when there is a "hit". 5-day processing.
- Current constituents list – NH₃, NO₃, Total P, and Fecal
 - Last time talked about TKN; it was left out because we don't expect to see a lot of organic N in surface waters.
 - WKA – need whole suite of constituents to know what is going on.
 - Tommy – Fecal is the only parameter with a water quality standard. This sampling scheme doesn't get to that standard.
 - Steve – must know the background and flow. Can have a lower concentration but more mass depending on flow.
 - Tim Hall – none is valid without inflow information. Does this change farm management? Now most of the waste is going on hay/pasture land. How can you tell the difference between normal pasture and pumped on pasture without a direct comparison?
 - Kim – therefore the Division will select the sites carefully. The inspectors know the sites and would use their experience.
 - Keith – This will not be some computer person in a cubical that kicks out a letter. If the data shows a trend, we'll work with the owner/staff, look at WUP, etc.
 - Less concerned with the Division than with others using the data without proper point of reference.
 - Kim – we are comfortable with the expertise in the agency, we find data useful and is our charge. We will talk to our analysts to study BOD vs fecal.
 - Consider handling requirements/protocols.
 - Lamonte – has 10 sources on his property that are both in and out of his control.
 - This is common and the Division can work through it in location selection.

BREAK

- .1310.b.5 – farms without surface waters
 - number of locations may be reduced to only representative locations
 - no water to sample, then don't
 - b.5 could be in b.6. They were originally together, but broke out b.6 to separate criteria from a procedural request.
 - Farm site. The definition becomes critical as does representative location.
 - All property of the owner? In the permit?
 - Questions to answer now or later.
 - Some farms may need to share a only few fields but are under one permit. If the two were far apart, we would view it as two sites. If they were close together, it would be one site. We may try to qualify.

- Absent a coalition, monitoring done by permit. So, 2 farms on common stream have two plans.
- Note: swine permits do have a definition of animal feeding operations it them and may help with farm site definition.
- Is a definition necessary? Prefer to have a working definition and this be dealt with in policy and implementation.
- b.5 is unclear. Are the first and second sentences together or should they be separated?
 - Make second sentence b.6. So then you would have b. 5, 6, and 7
 - WKA – suggest first sentence of b.5 move to b.6 and leave the rest.
 - Kim – can add a reference to b.5 for criteria to request reduction.
 - Heather – key is the functioning of the BMP's in the WUP, and just having BMP's in place does not exempt facility from monitoring. How the CAWMP functions includes the BMP's.
 - WKA – prefer that DWQ checks on the BMP's rather than the NRCS cost share – it is not getting done by them (goal is 10% checked per year.)
 - Kim – There is permit language about maintaining BMP's. Inspectors would need to look at these as well. We see the Division taking an active role to be sure that BMP's are maintained. If something is changed onsite (BMP's not maintained, for example) the rules allow the Division to change the monitoring requirements.
 - So: changes to b.5
 - second sentence is new b.6
 - add reference to criteria in new b.7
 - new b.7 add reference to BMP criteria
 - reword it to make section more active.
 - WKA – suggests instead of “including elimination of ...” add words that if violation occurs then the Division will revisit monitoring
 - What is enough to be considered historical data?
 - Data from a sister farm
 - Could be years of monitoring data from the same site with little/no changes
 - Similar format to other Division programs
 - WKA – prefer not to compare other sites. Different soils, hydrology, management, pig types,...
 - Concerns that there is enough data to make a decision with three events sampled per year for only a year or two.
 - This section gives the Division a chance to look at the whole picture with care. The Division would come back and require more events if previously reduced. In other programs, it took years to get historical data to request a reduction.
- Monitoring coalitions
 - Added some language.
 - Point out it must be based on the same criteria as sampling on per farm basis
 - At least one location from each member farm
 - Not limited to representative locations – can expand sampling as desired.
 - Typically coalitions function as a separate entity.
 - Heather – could be a logistical problem. Would need communication/coordination of land application events.
 - Vernon – language refers to active permits. What about inactives? Do these apply to farms that have no animals on them but still hold a permit?
 - Permits are either active or rescinded.
 - The presence/absence of animals and waste application activities.
 - A farm could request relief under b.6 (the new b.7)
 - Ryke – if a violation and under a coalition, farm should revert back to individual sampling? Can I submit suggested language? yes.
 - It's set up under a legal agreement between the Division and each Coalition. Provisions for missed sampling? – unsure

- We don't want to say that ANY violation would cause a farm to revert to individual sampling.
- d.4.D – allows the Division to check monitoring plans. If the coalition drops the ball, then what does a farmer do?
 - Kim – we see it as being written into the agreement with the coalition to layout what happens then. d.4.D is specific to ground water only, but similar language in b.
 - Keith – we can look at rephrasing C, but typically MOA's give the Division broad authority.
- 1311.c still in rough format. Will do some work to make it sync up with .1310.
 - Last time there seemed to be a question on focus – artificially drained and the coastal plain.
 - The intent is to work through the list 1-10 in (c) and then look at the value of the work and data to date in making a decision on whether to continue.
 - Will generally work on a watershed basis with some language to capture other sites as needed.
 - WKA – timeline is still not in here. Can't let that go. At the very least, there should be a report on progress annually.
 - Kim – we can ask the EMC if they want annual reporting. This should be simple to do. A hard deadline would be tough. We would not want to set an arbitrary deadline that is either unrealistic or restrains the Division from making assessments.
 - Question: 1311.a and b submission of plan hinges on the Division selecting the sampling sites?
 - Yes, this is part of the syncing up that we need to do.
 - Perhaps the Division notifies the permittee that in X days the Division will designate the sample locations. Would allow owner input.
 - Shift burden of developing the plan to the Division and selecting locations.
 - Ryke – then a deadline is even more critical. Workload in the Division if they do it all. There are staffing/funding issues that always come up. Is this in the budget planning for the future? Other priorities could bump these activities. Easy to see this taking 10 years if no deadline is in the rule. Maybe someone with interests in seeing that monitoring doesn't happen.
 - Keith – feels like this is a task we can handle. Most of the load will be in the central office with help from the inspectors in the regional offices. There will be some training. DWQ is capable to do this in a reasonable time.
 - Kim – a deadline in the rule doesn't change budgeting. Also having the parameters and sampling scheme in the rule, makes writing plans very easy. Not having to determine them for each farm will make it go faster. There will be accountability if we have reporting to the EMC. This is a priority for the Division, but getting resources can't be written into a rule.
 - Perhaps if the responsibility is on the permittee, the process would go faster.
 - The original petition wasn't a plan basis, but a flat requirement.
 - With staff making a minimum of two site visits (inspections) a year already, and the central office staff, it's something we can do. Would be open to annual EMC report.
 - Rational for list of watersheds?
 - Break the load into manageable units
 - Start with the impaired watersheds
 - Based on comments in previous meetings on the priority of coastal plain and drained sites. We used that: ex. The lower Cape Fear.
 - For facilities in the Neuse basin it says "including". Consider striking "including" and just leave it as "in"
 - Announcement: Public notice for Performance Standards to be published 8/1/08. Public comment period starts then and runs to 9/30/08. Public hearings 8/26-Kenansville at James Sprunt Comm. College and 8/27-Archdale, Ground Floor Hearing Room. Both at 7:00 PM

ADJOURN