Nutrient Scientific Advisory Board Meeting #35 Minutes

Friday, April 10, 2014
TJCOG- 4307 Emperor Blvd, Suite 110, Durham, NC 27703
9:30 am -12:00 pm

Attendees
Members: John Cox (& Michelle Woolfolk, alt), Matt Flynn, Sally Hoyt (& Jon Duncan, alt), Bill Hunt, Josh Johnson, Andy McDaniel

Non-Members: Andy Sachs (facilitator), Trevor Clements (Tetra Tech), Amin Davis, Rich Gannon, & John Huisman (DWR); Melinda Clark & Michael Orbon (Wake Co), Alix Matos (Cardno), Dan McLawhorn (Raleigh), Robert Patterson (Morrisville), David Phlegar (Greensboro), Jon Pierson (Contech), Fred Royal (Pittsboro), Cy Stober (PTRC), Mike Schlegel (TJCOG)

Agenda Topics

Presentations and Board Discussion
- Rules Revision Process, Jordan/Falls Content Highlights (DWR)
- Floating Wetlands Guidance (DWR)
- NCDP – SAC/CIC Update (DWR)

Updates – Measures Guidance Documents & Approval (DWR)
- UNRBA Measures Project (Cardno-Entrix)
- DSF
- MSS
- Improved Street Sweeping
- Stream Restoration
- Measures Approval Process
- Proprietary Practice Seeking Nutrient Approval - StormFilter

Materials
- NSAB #38 Meeting Plan
- Concepts for Draft Nutrient Trading Rule Revisions – For April 10, 2015 NSAB Meeting
- Floating Treatment Wetlands Optional Element – NCDENR BMP Manual Insert 4/7/15
- Nutrient Accounting for Floating Wetlands – Revised 4-7-15

Convene
The facilitator Andy Sachs convened the meeting, and the Board members and participants introduced themselves. Rich Gannon with DWR briefly updated group on the Division's activities since the last NSAB meeting held in October 2014 including staffing changes/shortages, determination of J/F ED load allocations, High Rock Lake stakeholder process on hold, and intent to hold more regular monthly meetings in the near future.

Rules Revision Process

Rich began the discussion by informing the group that DWR was the first DENR agency tasked by the Legislature to complete revisions of their existing regulations for this current cycle. Rich then provided the group the following information:

- Significant new requirements for affected parties not anticipated.
- Revisions primarily involve incorporating updated implementation timeframes and other Session Laws requirements.
- DWR will hold a meeting for the nutrient rules in Raleigh on May 19th with a cross-sectional set of statewide, all-rules stakeholders identified by the Division Director. This will be the last of a set of meetings with that group covering all of the Division's rules. Nonpoint Source staff will review and consider all comments received on the nutrient rules and make further changes accordingly.
- Interested parties can choose to request a stakeholder meeting, and DWR can discuss rule revisions at next NSAB meeting.
- DWR will post proposed rule changes on the website below ~30 days before 5/19/15 stakeholder meeting.
  http://portal.ncdenr.org/web/wq/ps/csu/rulesreadoption
- DWR will post a summary of proposed changes to rules governing nutrient management strategies (NMS) on the rules readoption site.
- Not currently a 'hard' deadline for revisions but anticipates due date of late 2016.

Discussion ensued among Board members about whether to devote a significant portion of next month's meeting to discussing the Rules revisions or to have a separate afternoon discussion, as well as what other stakeholders should be invited to this meeting. DWR took this input for further consideration.

Jordan/Falls Rule Revisions Highlights (DWR)

John Huisman of DWR provided the group with an overview of significant revisions to the Goals, Existing and New Development portions of the Falls and Jordan Rules. A summary of these proposed changes can be found within the document '*Jordan Falls Rule Change Highlights*' at the NSAB website http://portal.ncdenr.org/web/wq/nutrient-scientific-advisory-board. John then mentioned that these proposed changes would be mirrored in the State and Federal Agencies portion of the Rules.

Matt Flynn (Cary) asked for clarification on DWR's interpretation of redevelopment per Session Law 2014-90 and if it may create conflict with the Water Supply Rules. Further discussion clarified that DWR NPS Planning Staff had a different interpretation than other state stormwater programs, and this was viewed as problematic. [*Editor's Note*: *In a side conversation with Matt, John agreed to follow up with the DEMLR Stormwater Permitting Unit to discuss their concerns about how DWR is interpreting Session Law 2014-90].*

Rich Gannon then provided the group with a conceptual overview of proposed revisions to the Nutrient Trading Rule. A summary of these proposed revisions can be found within the document *'Concepts for Draft Nutrient Trading Rule Revisions'* at the NSAB website.

Josh Johnson (AWCK) expressed concern about the proposed replacement of the current 30-year maintenance requirement for offset projects with maintenance in perpetuity, and making legal requirements so specific that local governments can't make them part of their model programs.

John Cox mentioned (Durham) mentioned that Chesapeake Bay Program has implemented use of renewable credits for BMP's, requiring recertification every five years.

Alix Matos (Cardno) expressed concern over a provision that would require DWR approval prior to construction. Suggested rewording provision to require DWR approval prior to trading.

Floating Wetlands Guidance (DWR)

John provided the group with an overview of the updated floating wetlands guidance and optional element. Mr. Huisman noted that some of the crediting information will need to be revised once issues with the JFSAT are resolved. These updated documents, '*Nutrient Accounting For Floating Wetlands*' and '*Floating Treatment Wetlands Optional Element'* are located at the NSAB website.

Further discussion by Board members included the following:

- John Cox recommended adding language to this guidance so flow does not short-circuit inlet and outlet structures. For example, a diversion should be installed on a retrofit if necessary.
- Bill Hunt (NCSU) recommended adding a midpoint for vegetative island coverage of pond surface area at 35% for nitrogen reduction, 85% aerial vegetative coverage on any island would demonstrate successful establishment, and assessing successful establishment at 12-18 months instead of three years. David Phlegar (Greensboro) and Josh Johnson concurred with Bill. DWR agreed that adding a creditable midpoint made sense and would revise the document to include that.

NCDP – SAC/CIC Updates

Rich Gannon provided the group with updates concerning the Nutrient Criteria Development Plan (NCDP) and associated Scientific Advisory Council (SAC) and Criteria Implementation Committee (CIC). Rich's provided the group with the link to the Division's website below.
http://portal.ncdenr.org/web/wq/nutrientcriteria

Andy McDaniel (NCDOT) asked Mr. Gannon if he would provide the group with clarification whether nutrient criteria would be applied on a waterbody by waterbody basis. Rich gave his sense that the intent is to evaluate the extent to which the criteria developed for each of the first three waterbodies can be generalized to each of those waterbody types: reservoir, stream, and estuary.

Measures Guidance Documents

DWR and Cardno staff provided the group with updates on the following nutrient reduction measures listed below:

- UNRBA Measures Project: Alix Matos (Cardno) informed the group that internal review for 10 practices currently being considered for crediting should be complete by this Summer and submitted to DWR by this Fall. Rich mentioned that DWR will provide group with a tracking table of current measures with updated status information.
- Discharging Sand Filters (DSF): John Huisman anticipates a Fall 2015 public comment period, followed by this measure being ready for the DENR Director's signature.

- Malfunctioning Septic Systems (MSS): John is working through an EPA grant with Tetra Tech. Workgroup involving health departments will have conference call in a couple of weeks; another workgroup creating standards for a voluntary programmatic approach for LG's.

- Improved Street Sweeping: Amin Davis (DWR) informed group that limited public comments were received on Draft guidance during 10/31-12/1/14 comment period; Cardno also provided DWR comments. DWR plans to incorporate relevant Cardno comments, as well as forthcoming Chesapeake Bay Program (CBP) expert panel recommendations due out next month. John Cox confirmed these recommendations are on target for distribution per recent contact with the CBP.

  Bill Hunt informed the group that results are promising for current research in Triad involving keeping gross solids out of storm systems; NCSU grad student scheduled to defend thesis this July. John Cox has shared results of this study with CBP and mentioned Baltimore Ecosystem Study research has demonstrated that urban areas deliver significant nutrient loads to receiving waters.

- Stream Restoration: Amin informed group that DWR has reviewed the Board's September 2014 comments concerning the Draft guidance, has reached out to internal/external subject- matter experts (SMEs), and is currently finalizing a literature review. Amin will then incorporate updated information into Draft guidance and submit to a limited number of SMEs for review and comment before submitting to NSAB for review.

Measures Guidance Document

Rich informed the group that he obtained comment/guidance from DENR legal counsel and needs to incorporate it into the updated DWR Approval Framework document.

Rich also informed group that DWR is working with Contech on Measures Approval process for their proprietary StormFilter stormwater treatment system and anticipates a decision relatively soon. Bill Hunt recommended that Annette Lucas (DEMLR Stormwater Program) speak to NSAB about the StormFilter practice. Rich agreed to contact Annette.

Wrap Up

The group decided that the Rules Revision process would be the primary topic of discussion for next month's meeting. Rich listed other potential meeting topics such as the Local Governments' Load Estimates, updates on the JFSAT, and the StormFilter approval process.

Future Meeting Dates

- Friday, May 1, 2014 and Friday June 5, 2014
- Unless specifically rescheduled, the first Friday of each month, 9:30 – 12:00 at TJCOG.