Nutrient Scientific Advisory Board Meeting #28 Minutes

Friday, June 7, 2013
North Durham Reclamation Facility, 1900 E. Club Blvd
9:30 am -12:00 pm

Attendees
Members: John Cox (& Michelle Woolfolk, alt), Trish D'Arconte, Andy McDaniel (& Brian Jacobson, alt), Josh Johnson, David Phlegar, Michael Layne, Matt Flynn, Grady McCallie, Forrest Westall, Peter Raabe (American Rivers)

Non-Members: Andy Sachs (facilitator), Jason Robinson (DWQ), Rich Gannon (DWQ), John Huisman (DWQ), Heather Benson (TJCCOG), Haywood Phthisic (LNBA), Dan McLawhorn (Raleigh), Cy Stober (PTRC), Sandra Wilbur (City of Durham), Melinda Clark (Wake), Kathryn Hobby (Wake), Tom Davis (Orange Co)Donald O'Toole (City of Durham), Steve Berkowitz (NC DHHS), Sally Hoyt (UNC), Fred Royal (Pittsboro); Raleigh Representative, Szu-Ying Chen (American Rivers)

Agenda Topics
- 205J Projects Update
- UNRBA MOA update
- Annual Report Update
- Existing Development Model Program
- Supporting Information for Affected Parties

Materials
- June Meeting Plan
- 205J Subcommittee Minutes for meeting with TetraTech on May 13th.
- 205J Subcommittee Minutes for meeting with Stormwater Solutions & Services on May 13th.
- Existing Development Draft Model Program (5-30-13)

205J Projects Update
Cy Stober of PTRC gave a brief update on the two 205J projects. The Board's subcommittee met with both consultants on May 13th after the last NSAB meeting. Both consultants presented their scope of work and fielded the subcommittee's questions. Further questions and comments on the consultants' scopes are due on June 14th for the Accounting Tool project and June 17th for the Measures project.

UNRBA MOA update
Forrest Westall, President of the Upper Neuse River Basin Association, gave a brief presentation on a project that the UNRBA is currently pursuing to develop credit accounting methods for additional load-reducing measures. The DENR Secretary's office contributed $50,000 to assist in this project, and the association is hoping for a total of $350,000 to go towards the project. The project will decide which of the 60 measures that have been identified in Cardno Entrix reports should be

studied. A Board member suggested soliciting for contributions from Phase 1 communities like Winston Salem and Wilmington.

Annual Report Update

Jason Robinson of DWQ gave a brief update on the NSAB's annual report that is to be submitted to the DENR secretary by July 1st. A draft is not yet available, but one will be distributed to the Board for their review before submission to the Secretary.

Existing Development Model Program

John Huisman of DWQ led the discussion on the draft Falls / Jordan Model Program. This section of the Model Program is the only part that DWQ will request that the EMC approve. DWQ does not plan to seek approval of the "Supporting Information" or "Appendices" sections of the document. Two meetings were held on June 5th and 6th with the affected parties in the Jordan and Falls watersheds to solicit their feedback. A draft will be presented to the EMC in July, and staff will request that the EMC defer approval. Projected subsequent procedural steps described at the May meeting were reiterated.

After the overview, the Board was asked to comment on the draft. As in May, much of the discussion centered around the feasibly assessment portion of the program. The following points were made:

- A Board member asked if a separate section would be added to the program for entities that want to develop their own allocations and reduction needs. Another Board member commented that the Board had been working hard to establish the Jordan Watershed Model that will estimate allocations. The original commenter understood that, but thought that entities should have that option, since load reductions will be site-specific.
- There was discussion about EMC approval. Several people felt the Model program should be split into separate documents for Falls and Jordan.
- Board members expressed concern about having to do site-specific qualitative feasibility studies on all potential retrofit sites.
- Members refined recommendations from May's meeting, suggesting the need for different levels of planning from rough scoping to site-specific, with only the former addressing the entire jurisdiction while the latter is done for only the next 2-3 year window of implementation. Again a watershed spatial approach was advocated. This approach will also give local government a chance to utilize measures in the future that are not available now and would not be included in their plan initially. A Board member also made the observation that DWQ may not have time to review extremely detailed plans.
- DWQ staff asked the Board what details of available finances should reasonably be expected to be included in local programs. Staff explained that they would like to see how affected parties will pay for their programs, instead of giving a hypothetical plan with no explanation of how it will be paid for. Some Board members commented that they're required to develop a 5-year Capital Improvement Plan annually. Others didn't understand why they needed to include potential funding of their programs. Instead, they'll be responsible for implementing what's in their approved local program, and will report annually on their progress. It was also mentioned that many local governments don't know their budget until July 1st of every year. A Board member expressed concern that if all finances have to be

included in the program, some measures may not be included if there isn't definite financing for them. A Board member suggested that finances be discussed, but not necessarily specifically identified.

- A Board member asked about the consequences if an affected party doesn't follow its local program. Staff said there are the standard statutory provisions for civil and criminal penalties and injunctive relief.
- A Board member asked about the criteria that the EMC will use to approve the local programs. Staff explained that criteria for approval of the programs isn't specific in the rule and session law. Board members stated that this is problematic because local government staff will need to be able to tell their elected boards and councils what the consequences will be for noncompliance. A Board member suggested that DWQ develop a document describing the enforcement that local government staff can show their elected leaders. Board members suggested the DWQ Stormwater Permitting Unit weigh in on this.

Supporting Information for Affected Parties

John explained that the supporting information included in the document is intended as guidance for affected entities, and staff will not be requesting that the EMC approve this portion of the document.

The following was discussed by the Board about the Division's measures approval process, which is currently found in the appendix of the model program:

- Some Board members thought it should be approved by the EMC, while others didn't see the need. Some expressed concern that if it's not approved by the EMC, a measure may be approved and used, but then be claimed invalid, potentially by another section in DWQ, because the approval process was never approved.
- Some Board members suggested using this approval process only to establish measures to meet the Jordan and Falls rules. Others saw value in making it statewide.
- A Board member suggested removing the approval process entirely from the document.
- A desire was expressed for adding a description of the approval process that would be conducted for the proposed measures approval process.
- Staff stated that there would probably be a 60-day public comment period associated with approval of the approval process and subsequently for approval of all new measures taken through the process.

The following was discussed about trading, which has a placeholder in the supporting information section, but needs to be completed:

- A specific question was raised about a private sewer collection system, and trading with them for fixing leaky collection systems. Does the town ask the company to fix their system? Is it held against the company? Does the town pay the company? A Board member suggested that a separate document be created that discusses trading since there are so many components to it.
- A member suggested looking at a trading document from Virginia.
- It was recommended to plan for bringing in the attorney general's office for input on draft policies, as the subject is fraught with legal issues.
- A Board member asked about who would be tracking and maintaining all the trades.
- A member suggested looking at DAQ's trading framework.

Potential Future Agenda Items

Updates on the following Items:

- Existing development model program
- Annual report
- Jordan watershed model
- 205J projects

Future Meeting Dates

- Unless specifically rescheduled, the first Friday of each month, 9:30 – 12:00 at TJCOG.
- July 12th