RAC Members in attendance:

SAN 2015		
First	**Last**	**Affiliation**
Jeff	Bross	Water Infrastructure Advisory Council
Zac	Crouch	ACEC
Dirk	Durstein	Dept. of Justice
Doug	Hokuf	New Castle County
Bobby	Horsey	David G. Horsey & Sons
Lew	Killmer	League of Local Governments
Phil	McGinnis	Delaware Association of Realtors
Hans	Medlarz	Sussex County
Paul	Morrill	Committee of 100
Michael	Riemann	Homebuilders Assn of Delaware
Jessica	Watson	Delaware Assn of Conservation Districts

Interested Parties in attendance:

SAN 2015		
First	**Last**	**Affiliation**
Jared	Adkins	Kent Conservation District
Jim	Elliott	Sussex Conservation District
Sally	Ford	Land Design Inc.
Steven	Fortunato	Becker Morgan Group
Scott	Kidner	WRA
William	Stephens	Stephens Environmental Consulting, Inc.
Jessica	Verchick	Kent Conservation District
Mike	Ward	Kent County

Staff Members in attendance:

SAN 2015		
First	**Last**	**Affiliation**
David	Athey	AECOM
Robert	Palmer	DNREC
Jamie	Rutherford	DNREC
Elaine	Webb	DNREC

The meeting was called to order at 9:05 am by Bob Palmer. Following introductions, the agenda was modified at the request of Bobby Horsey to include a short discussion on the Delaware Erosion and Sediment Control Handbook prior to public comments at the conclusion of the meeting.

5101 Sections for RAC Concurrence

Bobby Horsey, representing the Technical Subcommittee, reviewed the sections of the 5101 regulations proposed for the following BMPs: infiltration practices, bioretention, permeable pavement, vegetated roofs, vegetated channels, wet ponds, and soil investigation procedures. Mike Riemann expressed concern with 11.13.4.3.2 with regard to the outfall protection language in Wet Ponds. The Technical Subcommittee had discussed and concurred to this language but the RAC member still has a concern. Likewise, Mike Riemann expressed concern with 11.8.8.2.2 in Vegetated Channels. Again, the Technical Subcommittee previously discussed and concurred with this language. Bobby Horsey recommended approval by the RAC of all the sections brought forward with the exception of Wet Ponds. Wet Ponds will again be reviewed by the Technical Subcommittee only with regard to 11.13.4.3 Outfall Protection and returned to the RAC at the January meeting. RAC members concurred with Bobby Horsey's recommendation.

Hans Medlarz requested clarification on the 2-foot separation required from groundwater for linear infiltration practices. Both Jessica Watson and Jared Adkins recommended resolution to this concern through the soil investigation procedures and by excluding infiltration for sections of a linear application that do not meet the 2-foot separation requirement.

Jeff Bross questioned the use of "qualified professional" in the context of mounding analyses rather than specifying a licensure requirement. Bob Palmer agreed that the Technical Subcommittee will take look at this language going forward.

Preamble Language

Two separate preamble documents were presented by Elaine Webb. One preamble would be introductory language to the regulations while the second preamble would be introduction to the post construction stormwater BMP standards and specifications explaining the use of bold font for regulatory elements and non-bold for advisory or recommended elements. Dirk Durstein stated that it is important for the RAC to support the preamble language and that this would be especially significant if the regulations were challenged legally. The RAC members agreed to review the two preamble documents supplied to have a further discussion at the next RAC meeting. This item will be included on the January 24, 2018 RAC meeting agenda.

Checklists

A marked up checklist example was presented by Elaine Webb. Randy Greer and Elaine Webb reviewed the checklists and very little contained on the current checklists that are being used for plan review are specifically stated in the regulations; however, both plan reviewers and plan designers wish for the checklists to remain, but to maintain flexibility. Doug Hokuf questioned if there were any accepted engineering standards for plans that could be implemented in place of checklists. Hans Medlarz stated that the DAPE standard is that the plans need to be constructible. Doug Hokuf stated that New Castle County Drainage Code references checklists. Dirk Durstein suggested that a single-line statement in the regulations be added referencing the checklists that would include language that the checklists "may be modified from time to time". Paul Morrill suggested introductory language in the checklist as follows: "The items contained on this checklist are helpful to properly evaluate the constructability of any plan…". It was agreed that the checklist wording needs to be revised to eliminate "shalls" and "musts" to maintain flexibility. DNREC staff will modify checklist wording.

Hans Medlarz questioned the regulatory backing for checklist item 2 from the preliminary plan review checklist distributed. The basis for notification for discharges to downstream properties is contained in 5101 Section 5.1.4. No further discussion is required on this item.

Regulatory Flexibility Act / Regulatory Impact Statement

Dirk Durstein provided an overview of the Regulatory Flexibility Analysis / Regulatory Impact Statement process. The June 2016 version will be made available to the RAC members for review as it is important to have RAC support for the responses. The Regulatory Flexibility Act requires disclosure only and not action with the results of the disclosure made available to the legislators. DNREC should seek input from small business owners and Bob Palmer asked the small business owner and consulting members of the RAC to provide real life examples. Dirk Durstin noted that DNREC has found in completing other RFA/RIS responses that implementation of environmental laws cannot be implemented without a cost to small businesses.

The benchmark date for comparison for the RFA/RIS was discussed. Dirk Durstein stated clearly that the benchmark is not "no regulations" but instead suggested that the 2014 regulations should be the benchmark. Bobby Horsey asked for further consideration of using the 2006 regulations as the benchmark since the court deemed the 2014 regulations invalid. Dirk Durstein stated that the 2014 regulations were not the issue excepting the connection to the Technical Document so he is confident that the 2014 regulations are valid for the RFA/RIS benchmark.

Mike Riemann stated that the regulations are so site specific that some sites are not impacted at all by the change in regulations and others are rendered undevelopable. Prior to the 2014 regulations four example projects were reviewed for a cost analysis so perhaps those projects would be a starting point

now. The cost analysis should include engineering costs, capital costs, land values and operation and maintenance. DNREC will look at the previous example plans and see if they are still valid or if there is any funding to contract out this work again. In addition the RFA needs to address all the projects now covered by standard plans. The RFA form will be made available to RAC members for their input.

Legislative Updates

A proposal to address redevelopment was discussed. Bob Palmer distributed to RAC members a draft of a proposed amendment to Chapter 40 to address redevelopment. This amendment has been drafted by Dirk Durstein and program staff but has not been shared with Secretary Garvin. In addition to addressing redevelopment, a sunset clause has been included to sunset the redevelopment proposal in Chapter 40 once redevelopment has been addressed in the regulations.

Dirk Durstein discussed the part of the proposed bill that he drafted to create an exception for formal adoption of certain elements such as checklists, forms, etc. The language is modeled after Federal and New Jersey provisions that based on his understanding have not been abused in any way. It was stated that this piece would be a highly sensitive issue and that the Department should propose language to require internal review. Dirk Durstein will work revising this language to address the review and adoption process.

The program staff have proposed a part in the draft bill to address an inconsistency in the law with the delegation period moving from 3 years to 5 years. In addition, right of entry onto sites subject to Chapter 40 has been proposed. Currently right of entry is noted on the plans, but on sites that have no plans, such as standard plan sites or violation sites, there is no right of entry note to fall back upon. The right of entry language has been modeled after Chapter 60 language.

Bobby Horsey agreed to meet with Senator Hocker to review the proposed bill once Dirk Durstein has cleaned up the language based upon the RAC discussion.

Policies and Procedures Subcommittee

Hans Medlarz reported on the work of the Policies and Procedures Subcommittee to address offsets. A new stand-alone section of the regulations will be proposed to address offsets at a high level to be enabling language. Hans Medlarz plans to work with a smaller group consisting of Jared Adkins, Doug Hokuf, and Elaine Webb to draft the new section of the regulations. The goal is to have the regulatory language approved by the Policies and Procedures Subcommittee prior to the January 24, 2018 RAC meeting.

Erosion and Sediment Control Handbook

Bobby Horsey has concerns about adopting the Handbook as a whole as a regulation based on the language in the Handbook itself that labels it a "fluid" document. Paul Morrill suggested that the term "Handbook" should be added to the list of eligible documents in the APA portion of the proposed bill to cover the Erosion and Sediment Control Handbook. Doug Hokuf agreed with Bobby Horsey that the Handbook is a fluid document during construction, just as the BMP standards and specifications are fluid during the plan development process.

Additional topics not on the agenda

Elaine Webb reviewed the updated Regulations revision tracking spreadsheet that was distributed to the RAC members. It was noted that the next Technical Subcommittee meeting is Wednesday, 12/20/17 at 9am at which time the Sheet Flow standard and specification and Setbacks will be discussed. Further discussion ensued on setbacks. It was suggested that personnel from DNREC well and septic permitting sections be invited to the Technical Subcommittee discussion about well and septic setbacks. Utility setbacks and stormwater easement restrictions were briefly discussed. In addition to Setbacks and Sheet Flow approximately fifteen minutes will be devoted to the Wet Pond outfall language at the 12/20/17 Technical Subcommittee meeting.

Meeting adjourned at 11:15am