

Meeting Notes

RAC Meeting

May 27, 2010

9am-11:30am

DeIDOT Felton-Farmington Conference Room

Attendees:

First Name	Last Name	Organization Name	Membership Status
Charles	Adams	Delaware Association of Surveyors	Voting Member
Martha	Corrozi Narvaez	Water Resources Agency	Voting Member
Vince	Davis	DeIDOT	Voting Member
Jennifer	Gochenaur Mihills	Delaware Nature Society	Voting Member
George	Haggerty	New Castle County Dept. of Land Use	Voting Member
John	Marinucci	Dept. of Education	Voting Member
Hans	Medlarz	Kent County Dept. of Public Works	Voting Member
Robert	Phillips	State of Delaware Dept. Of Justice	Voting Member
Jennifer	Volk	DNREC Division of Water Resources	Voting Member
Jessica	Watson	Sussex Conservation District (representing DACD)	Voting Member
Robert	Baldwin	DNREC Division of Soil and Water Conservation	Staff
Randell	Greer	DNREC Sediment & Stormwater Program	Staff
Frank	Piorko	DNREC Drainage & Stormwater Section	Staff
Jamie	Rutherford	DNREC Sediment & Stormwater Program	Staff
David	Twing	DNREC DSWC	Staff
Elaine	Webb	DNREC Sediment & Stormwater Program	Staff
Steve	Wright	DNREC Division of Soil & Water Conservation	Staff
Jared	Adkins	Kent Conservation District	Interested Party
Mike	Clar	New Castle County Dept. of Land Use	Interested Party
Kelly	Crumpley	Kent County Planning	Interested Party
Sharon	Cruz	DC Group	Interested Party
Troy W.	Dickerson	George, Miles & Buhr	Interested Party
Kelly	Dinsmore	City of Newark Public Works	Interested Party
Hugo	Dreibelbis	DeIDOT	Interested Party
Jim	Elliott	Sussex Conservation District	Interested Party
Ashton	Garey	Green Stone Engineering	Interested Party
LaTonya	Gilliam	DeIDOT	Interested Party
Roger A.	Gross	Merestone Consultants, Inc.	Interested Party
Mike	Harris	New Castle County Dept. of Special Services	Interested Party
Charlotte	Herbert	Delaware Association of Realtors	Interested Party

Melissa	Koenig	Landmark Engineering Inc.	Interested Party
Ring	Lardner	Davis, Bowen & Friedel, Inc	Interested Party
Steve	Mann	DNREC DWR Surface Water Discharges	Interested Party
Robert	McCleary	DelDOT	Interested Party
Ellie	Mortazavi	New Castle County Special Services	Interested Party
Anne	Mundel	DNREC Sourcewater Protection	Interested Party
Salvador	Palalay	McCormick Taylor Inc	Interested Party
Wendy	Polasko	DelDOT	Interested Party
Mike	Sistek	City of Newark Public Works	Interested Party
Daniel	Speakman	McCrone, Inc.	Interested Party
Dan	Tolbert	AWB Engineers	Interested Party
Kenneth M.	Usab	Morris & ritchie Associates, Inc.	Interested Party
Jennifer	Walls	DNREC Office of the Secretary	Interested Party

Meeting was called to order by Frank Piorko. Following introductions of those in attendance, Randy Greer and Elaine Webb provided an overview of the second draft of the regulations, highlighting significant changes made from the first draft, and discussing how comments received were addressed. Listed below are comments and questions received during the discussion of the second draft, including answers and clarifications where appropriate:

1. *Previous regulations provided for a variance for emergency projects.* Since we will be following the Ch. 60 variance procedure, the Ch. 60 emergency variance procedure will be followed. This is addressed in second draft section 1.5.2.
2. *Will enforcement fines be increased?* The fine amounts are established in law therefore will not be increased; however we are pursuing other methods of enforcement which is currently being reviewed by legal.
3. *Will training be made available to the Delegated Agency reviewers for the proprietary engineering programs being used?* Moving forward with the technical requirements of the regulations, all submittals will have to include a formatted table with inputs that can be entered into non–proprietary programs such as HEC-HMS. A designer can choose any program he or she wishes to develop the inputs, but the reviewers will then be able to take those inputs and enter them into the one program for comparison.
4. *Offset and mitigations programs “may” be established in Section 1.6.3.1 while Sections 5.2.3.4 and 5.6.3.4 state that an offset “shall” be provided.* The offset or mitigation program would have to be established as stated in Section 1 before the alternative to compliance in 5.2.3.4 or 5.6.3.4 would be possible. There are other methods of compliance in Section 5.2.3 and 5.6.3; the offset is just one alternative. Sections 5.2.3.4 and 5.6.3.4 should both say “offset or mitigation” rather than just “offset”.

5. *Who designs or determines compliance with the Standard Plan criteria?* A standard plan is intended to have no design elements therefore a licensed professional need not complete the Standard Plan. The applicant with assistance from the delegated agency may complete the Standard Plan application.
6. *Does the Tax Ditch Maintenance Plan address stream diversion?* No, Tax Ditch Maintenance Plan addresses ditch dipout and placement and treatment of spoil.
7. *Section 3.5.2 allows for 30 days to reject an incomplete plan which is too long.* This was an item discussed during our Value Stream Mapping of the plan review process. We believe the time to return an incomplete application was shorter in the VSM Future State. DNREC will refer to the VSM Future State to address this comment and modify the time period accordingly.
8. *Clarify the first sentence of Section 1.6.2.1 Financial Guarantee to define the elements that are subject to the financial guarantee.* Department will look at this clarification.
9. *Section 1.11 states that all hearings conducted shall be in accordance with the Ch. 60 process. If the delegated agency adopts the regulations into their own code and has their own hearing process, does this mean there needs to be a hearing in accordance with Ch. 60 as well?* This question will require follow-up in the legal review. This follow-up will also address seeking enforcement action under both a local code and state regulations.
10. *The definition of final stabilization references the homebuilder.* This definition of final stabilization is the federal definition and will remain unchanged.
11. *The definition of maintenance should be adjusted to address the removal of invasive aquatic vegetation as minor maintenance rather than major maintenance.* DNREC requests suggestions of modified language for this definition.
12. *The Technical Document is not referenced in the regulations.* Section 5.1 references “Department policy, procedures and guidelines as set forth in accompanying technical documents”; however, this is only referring to Section 5 requirements. The technical documents should be referenced for the entire set of regulations in Section 1 (perhaps 1.7?).
13. *Can TMDL requirements be relaxed for redevelopment?* TMDL requirements cannot be relaxed, especially in the Chesapeake Bay watershed which is why it is so important for our offset program to be reasonable so that EPA will recognize it as a viable program.
14. *Does the redevelopment 20% runoff reduction supercede TMDL reductions?* Runoff reduction will count as a part of the TMDL load reduction. 100% of runoff reduction that is achieved is a load reduction. DNREC will be demonstrating the new DURMM and how the runoff reduction is computed at the 7/7/10 Technical Subcommittee meeting.

15. *Why do we need to do runoff reduction in the Coastal Plain where recharge is not needed to support groundwater?* EPA is requiring runoff reduction on all sites, regardless of location or pre-development land use based upon their guidelines for Federal facilities.
16. *Will the offset and mitigation program be administered by DNREC?* DNREC will provide oversight but the intent is that the program be implemented locally.
17. *Will the Delegated Agency hold the money from the offset program?* All details of the offset and mitigation program remain to be worked out. The major elements will be established by DNREC with local elements added. All offset and mitigation programs will go through a public review and comment period prior to adoption.
18. *Is there a form for legal documentation and a time frame for when the delegated agency can enter into a contract with a third party to assist with program implementation?* DNREC needs to maintain oversight of the local implementation; documentation of third party participation will be an element reviewed at the three-year delegated agency review. Section 9.8 allows for third parties to be used in the maintenance review aspect of program implementation.
19. *Can Section 7 include language to allow for retrofits to meet TMDL requirements?* DNREC is not comfortable with including such language in these regulations. This needs to be a separate discussion.
20. *In the first draft section 7.3.1.2 stated that maintenance reviews would be biennial.* DNREC has taken the frequency of reviews out of the second draft because one time frame does not fit for all delegated agencies and for all BMP types. The Technical Document will specify time frames for maintenance reviews based upon BMP type. The language in the State regs should not be more restrictive than the MS4 permit requirements for review; therefore we left the time frame open.
21. *In Section 6 regarding construction site reviews, what is a "regular" review frequency?* DNREC is specifically not specifying a frequency rate for reviews since the necessity for onsite reviews will vary based upon level of activity on the site and the type of construction.

Following discussion of the second draft, Frank Piorko provided a brief synopsis of the Regulatory Flexibility Act which is currently being revised. The Regulatory Flexibility Act will require DNREC to report on how these proposed regulation changes will affect small businesses.

Throughout the summer DNREC will meet with Focus Groups such as the three counties, large municipalities, legislators, homebuilders, contractors, and groups that have not been following our progress closely so that we can receive comments from them prior to a public hearing.

Workshops will be held in early fall with the public hearing to follow later in the fall. Promulgation date currently is estimated at January-February 2011. Comments on the second draft received from the RAC meeting, focus group meetings and public workshops will be factored into the proposed draft that will be submitted to the registrar prior to the public hearing. There will be another RAC meeting prior to submittal to the registrar.

The Technical Document will accompany the proposed regulations through the public process. Training will be provided following promulgation; DNREC cannot commit to training until we are certain that the regulation will stand. DNREC awaits confirmation on receipt of grant money to develop designer training.