

Regulatory Advisory Committee Meeting

3/27/08

Meeting Notes

RAC Members in attendance:

George	Haggerty	New Castle County Dept. of Land Use
Lee Ann	Walling	DNREC Office of the Secretary
Keith A.	Trostle	DNREC Legal Counsel
Bruce	Jones	Greenstone Engineering (representing ACEC)
Jeff	Bross	Duffield Associates (rep. Clean Water Council)
Charles	Adams	Delaware Association of Surveyors
Donald H.	Mulrine, Jr.	Town of Camden (rep League of Local Govts)
Jessica	Watson	Sussex Conservation District (representing DACD)
John	Casey	Delaware Contractors Association
Vince	Davis	DeIDOT
Jennifer	Volk	DNREC Division of Water Resources
Ernie	Sheppe	Morris Ritchie Associates (rep HBA/DE)
Jennifer	Gochenaur	Delaware Nature Society

Interested Parties in attendance:

C. Scott	Kidner	Representing HBADE & others
Charlotte	Herbert	Delaware Association of Realtors
Sally	Ford	Land Design, Inc.
Jan	Diese	Landmark Engineering
Jared	Adkins	Kent Conservation District
Wendy	Polasko	DeIDOT
Sharon	Cruz	DC Group
Robert	Enright	DNREC DSWC Drainage Program
Mark	DeVore	Division of Facilities Management
John	Gaadt	Gaadt Perspectives, LLC

Staff in attendance:

Elaine	Webb	DNREC Sediment & Stormwater Program
Randell	Greer	DNREC Sediment & Stormwater Program
Jennifer	Campagnini	DNREC Sediment & Stormwater Program
Cheryl	Gmuer	DNREC Sediment & Stormwater Program
David	Twing	DNREC DSWC
Frank	Piorko	DNREC Drainage & Stormwater Section
Robert	Baldwin	DNREC Division of Soil and Water Conservation
Beth	Krumrine	DNREC Sediment & Stormwater Program

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Frank Piorko began the meeting with a synopsis of the regulatory revision process to date. Staff has been working to gather as much public input as possible before the regulatory language is written. Up until now comments have been collected on the outline only; the next step is the first draft of the revised Sediment and Stormwater Regulations.

Subcommittees have involved many individuals on the interested parties list and all subcommittee and RAC meetings are open to the public. Total, 27 hours of subcommittee meetings have been held. Subcommittees are chaired by members of the RAC, and each gave a report of their subcommittees' work. Following the reports, discussion by the RAC followed. Below is a summary of those discussions:

Policies and Procedures

- The PE Code of Ethics would speak to who could sign CCR reports. It is not necessary to prescribe "civil" or "agricultural" engineers as the only ones qualified to sign CCR reports. DAPE should be brought into discussion.
- Requiring CCR to be a third party may not work for DelDOT. Regulations need to provide allowances for non-third party CCRs. For example, if the contractor's own CCR is not performing adequately on a project, then the delegated agency can require the owner to use a third party CCR.
- Dictating contractual arrangements regarding CCRs will require clear regulatory definitions of owner, contractor, construction manager, site contractor, etc.
- Federal regs require weekly self-inspection. Consistency between the state regs and the NPDES regs must be maintained. If CCR reporting is relaxed to less often than weekly, weekly self-inspection must still be provide on the site.
- EPA is issuing effluent limitations; may need to re-think construction inspection items of Section 6.

Maintenance

- Subcommittee has three issues:
 1. There is no requirement for an HOA to exist in Kent or Sussex Counties
 2. In the past stormwater management had been separate from drainage; should drainage be included now?
 3. What do we do about maintaining BMPs currently on the ground as part of an existing development?
- No statewide drainage code exists
- There's not a history of cases where an entire subdivision decides to convert from an open swale road section to a closed drainage system. It happens over time, lot by lot, shortening the time of concentration and increasing discharges.
- Recommendation to attach BMPs to deeds rather than just the sediment and stormwater or record plans.
- If an HOA does not exist or decides to disband, then recordation, deed notation, etc. does not matter. The NCC model of required maintenance corporations rather than HOAs should be the model.

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- If a maintenance activity modifies a BMP (i.e. piping a swale) then the plan would need to go back to the original delegated agency for approval. Even if the maintenance activity disturbance is less than 5,000 square feet as in the case of piping a swale, this is still a Record Plan change and the sediment and stormwater review agency would need to work with the counties/municipalities to enforce requirements for the disturbance as a Record Plan infraction.
- Section 7.3 regarding yearly inspection should be reflective of NPDES MS4 requirements. We should look at NPDES MS4 requirements in our regulations to build consistency throughout the state, even in non-MS4 jurisdictions.

Planning and Land Use

- The angst over the pre-application process has been removed. The requested pre-application information is objective material gleaned from GIS info so it is not as onerous as it may seem. We should review what NCC gets in their pre-exploratory reviews and use their experience.
- A goal of the pre application meeting would be to get developers and designers to preserve natural areas from development and use those areas to serve a stormwater management function for the site.
- The pre application meeting is supported because it will get stormwater management issues out in the open early in the process, as is the case with roads, sewer, etc.
- Necessary easements for discharge points should be included in the regulatory language. NCC has some code language that deals with that.
- Recommendations of Section 5.5 are supported.

Technical

- Goal is to remove subjectivity from the Regulations. CWP (SSP) needs to coordinate with other agencies to avoid conflicting regulations.
- Differing quantity management requirements based upon watershed position is a new idea
- Water quality protection should be on an annualized basis rather than event-based. CWP should be asked to research this idea and provide recommendations. The subcommittee is looking for a quantitative approach to water quality management, not a credit system.

Urban Considerations

- For redevelopment/infill/creep projects, water quality can be addressed through many alternatives, however the potential to overload an already undersized drainage system is real. This goes back to the need for a drainage code.
- Tracking of impervious increase in a watershed or subwatershed is the challenge. How small is too small to track? There is a difference between looking at stormwater management site by site in redevelopment as opposed to a watershed redevelopment project.
- Consider allowance of compact hydrodynamic structures that may not achieve 80% TSS removal for use on redevelopment projects.

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- To address some of the “creep” issues, consider residential lots as being more developed than just a home and driveway in the original design of the drainage and stormwater systems.

Public Comment

- Question: Why annualization of water quality runoff? The current water quality event is capturing 95% of storms.
- Response: The resource protection event is proposed as a larger storm than the current water quality storm because we are looking for enhanced recharge and stream stability. We are looking for a quantifiable what to look at that event.

- Comment: The pre-application process being held pre-PLUS essentially becomes PLUS. Can't we just ask for more information to be provided for the PLUS process rather than adding another step?
- Response: PLUS wants the info from the SIS Findings Report as a better decision-making tool.

- Comment: The pre-application process is a lot for just a rezoning, which is some of what the PLUS reviews are.
- Response: DOE is spending more time on site review before committing to purchase and this has improved the site selection process. Consultants and developers should view the pre-application process as a service rather than another layer of review. A developer wouldn't commit to developing a site if roads and other utilities weren't available to the site; stormwater management and drainage need to be given the same consideration.

Closing comments by Frank Piorko:

We are creating regulations at a state level but implementation of the regulations is at the local agency level. The regs need to work at that local level. The regs need to be written to be broad enough while maintaining the ability to function at the local level.