

NC Nutrient Scientific Advisory Board Meeting Summary
June 7, 2019 @ TJCOG
9:30 am – 12:00 pm

Attendees

Members / Advisors

Mike Burchell - NCSU BAE
Sally Hoyt - UNC
Josh Johnson - AWCK
Eric Kulz - Cary
Morgan DeWit - Chatham County
J.V. Loperfido - Durham
Grady McCallie - NC Conservation Network
Andy McDaniel - NCDOT
Haywood Phthisic - LNBA
Peter Raabe - American Rivers
Peter Schneider - Greensboro
Forrest Westall - UNRBA
Sandra Wilbur - Durham

DWR Staff www.deq.nc.gov/nps

Patrick Beggs
Trish D'Arconte
Rich Gannon
Jim Hawhee
John Huisman
Kelsey Rowland
Sarah Woolard

Facilitator

Jenny Halsey - TJCOG

Guests

Teresa Andrews - Guilford County
Anne Coan - NC Farm Bureau Federation
Maya Cough-Schulze - TJCOG
Leigh DeForest - TJCOG
Jacob Dorman - Contech ES
Gerald L Featherstone - Haw River
Assembly/CFRA
Diana Hales - Chatham County Commissioner
Joey Hester - NC Division of Soil and Water
Conservation
Alix Matos - Brown and Caldwell
Jannette Morris - TJCOG
Nikki Nikova - NC Conservation Network
Don O'Toole - Durham
Kai Dunston - UNC-CH
Sushama Pradhan - NC DHHS
Jamie Smedsmo - UNC-CH
Emily Sutton - Haw River Assembly
Rahn Sutton - Contech ES
Sarah Waickowski - NCSU
Caroline Watson - American Rivers

Agenda Topics

Discuss possible approaches to stormwater management with respect to upcoming Jordan rule readoption.

Meeting Materials are available online: www.deq.nc.gov/nps

Meeting Summary

Jenny Halsey (TJCOG) opened the meeting with introductions and a review of the agenda.

The April 5, 2019 meeting summary was approved.

The July 5, 2019 meeting is cancelled. Next scheduled meeting is August 2, 2019.

Brainstorming of Jordan Lake Rule Readoption Ideas

The Jordan Lake watershed nutrient rule readoption can start after DEQ receives the NC Policy Collaboratory's reports by December 2019.

The NSAB contains subject matter experts on existing development implementation and presents a good opportunity for idea generation and discussion among professionals well versed in stormwater. A positive facilitated conversation resulted. Flipchart and laptop notes were used to record the meeting. Together those many notes were grouped and developed into the following categories by DWR staff, who believe all the ideas of the meeting are captured here. Questions are listed with no attempt to answer them at this idea generation phase. Two overall process concepts for the discussion were:

1. At this very early stage of the process, everything is on the table for discussion.
2. The conversation is not constrained to nutrient reduction practices.

Public Involvement

- People need to be heard at stakeholder meetings.
- We need to know the developers' concerns.
- We need shared management principles.
- We need to deal with people's concerns up front.

Education

- We need to reach out to the general public about the benefits of watershed management, green infrastructure, land conservation, etc.
- Previous issues with the Jordan rules were those of perception, not reality. There was a message that the rules were going to kill growth and there didn't seem to be a way to turn that message around.
- Stormwater is still not seen by some as something that is a problem, that needs to be treated and managed. It is still a young field and much more education is needed.
- Stormwater fees are considered a rain tax.
- Make the connection between stormwater, receiving streams, drinking water, and the environment in general.
- Communicate more simply, with everyone.
- Involve professional educators
- Like wastewater treatment, people need to understand that stormwater management is forever.
- Keep communication simple.

Costs

- Give local governments some certainty about what to budget for.
- Stormwater is still new. Local governments need to understand that budgeting for stormwater is the new norm and will remain, just like budgeting for wastewater or solid waste.
- Communities need help building these costs into their budget process, they need help understanding and building an NPS nutrient management program.

- The fiscal note for the rule needs to take into account all possible data available to us now.
- It is much more cost effective to treat new development than existing development.

Nutrient Sources

- It is easier to remove nutrients at WWTPs than to retrofit development and the landscape.
- Small WWTPs may be a hidden source of nutrients.
- What are the other hidden sources of nutrients
- Are wildlife impoundments around Jordan Lake a sink or source of nutrients?
- Check Mattamuskeet data on wildlife impoundments and nutrients

Goals

- Cleaner water for the state--not a given lake
- Improve the entire watershed, not just the water in the lake.
- Goalsetting is important
- Regulations should stimulate economic and job growth over a variety of sectors.
- Ecological watershed health is a goal.
- How will DEQ's goals be incorporated into rulemaking?
- Stakeholders needs can hopefully be met within the larger goal of ecosystem health.
- Consider things that are both good for the economy and the environment.
- The political and economic impacts of the rule need to be understood as well as the science is understood.
- Consider the DOT mission statement: Connecting people, products and places safely and efficiently with customer focus, accountability and environmental sensitivity to enhance the economy and vitality of North Carolina. [Editor note - The DEQ mission statement is: Providing science-based environmental stewardship for the health and prosperity of ALL North Carolinians.]
- Are the Chlorophyll A goals helpful for overall ecological watershed health?
- Do we have current tools that increase ecological health, regardless if they reduce nutrients?
- Nutrient management is one component of ecosystem health.
- I like the idea of watershed management instead of lake water quality.
- Anything we do needs to take feasibility into account. If a rule will be impossible to implement for some reason, then it doesn't matter how much it might improve the lake.
- We need to be doing things because they improve the water quality, not just because we get a credit for them.
- We need to get back to watershed management like the rules were meant to accomplish.

Planning process

- Develop a set of nutrient management principles to which everyone will adhere.
- Plan on a smaller scale, use local watershed planning throughout the entire Jordan Lake watershed.
- Identify and incorporate stressors at the local watershed level.
- Local plans would need to be written locally. State could help with local LWP work, direction.
- What if our targets were less stringent and didn't clean up the lake as fast, but were more politically palatable and easier to meet?
- Review the strategies of other parts of the country.
- Local watershed planning has more mbenefits that just nutrient reduction in the lake.
- Local watershed planning gets at the root, but it needs to have regulatory teeth.
- Don't build any more damns
- Develop a framework, instead of specifics.
- Be specific.
- Need local residents involved in solutions.

Flexibility

- Consider minimum requirements with the option for more benefits from improved stormwater management.
- Allow local governments to innovate; don't restrict them.
- Consider voluntary planning and development options that benefit developers when enhanced stormwater management is incorporated.
- Let's make the new rules more of a framework. Spend less time arguing over regulatory minutia.
- Need to be both specific and yet not too specific
- Allow local govts to cooperate together on implementation
- Get credit for coordinated projects outside of jurisdiction.
- Allow credit for projects implemented where they will get the "biggest bang for the buck"
- Credit communities for the work they have already done, for example, since the baseline of the current rules.
- Changing the baseline period will be detrimental to regulated entities that began implementation or the new development or existing development rules prior to a new baseline. For example, non-DOT State and Federal entities have been subject to the new development rule since 2011. Also, some entities have implemented stormwater retrofits to begin to meet the existing development rules, even though they aren't in effect yet. A secondary issue is that the current baseline makes it easier for NPDES MS4 Phase II communities to track the change in their activities, since Phase II came into effect after the current baseline.

Economics

- Show the benefits at the local watershed scale.
- Regulations should stimulate economic and job growth over a variety of sectors.
- Some people may be willing to pay more, if they feel they're getting something beneficial.
- Provide more certainty around the economic numbers, around the cost of the benefits assigned.

- Uncertainty about liability has been an important reason for opposition to implementation of rules. Best available science can't tell us everything. It remains an uncertainty sometimes. May or may not be able to come up with a more accurate goal than before.
- People may be more comfortable with structure that names a commitment of resources on an annual basis, because that takes care of the liability issue.
- We need to look at a triple bottom line approach, meaning economic, social, and environmental issues.
- Upstream and downstream interests need to understand each other's costs and benefits.
- We need up to date cost and value figures on all the benefits.
- Lower watershed may need to pay more if it is receiving greater benefits.
- Change is hard and may be risky.
- Local growth potential steers stormwater control.
- Consider incentives that allow developers to benefit more when they increase water quality protections.

Regulation / obligations

- Regulations should stimulate economic and job growth over a variety of sectors. How does the TMDL affect this? Will it be redone?
- Who carries the burden under the Clean Water Act and rules? Where does the responsibility lie?
- The Jordan TMDL is for 3 things: N+P, TSS, pH
- Current rules are based on 40 mg/L chlorophyll A. 1998 baseline.
- How can this relate to EPA 9 element watershed plans or a statewide watershed plan.
- There are many smaller impaired streams in the watershed.
- What is the obligation? Do you want to return to a certain year in terms of nutrients?
- Projects need to count for multiple regulatory obligations where possible. This will help local governments budget and implement them.
- How can we use the NPDES program permit process to our advantage? They are regularly re-evaluated.
- Why does there seem to be less stress over NPDES requirements than nutrient rules?
- Less than 12% of WWTPs have nutrients levels in their permit.
- DWR has obligations under the Clean Water Act. Federal and State government charges DWR with dealing more effectively with nutrients
- Can we combine CWA regulations with other regulations, needs, and wants?
- Let's get away from the stovepipes or silos of our current rule construct.
- Who bears the burden and needs to change the way they are operating?
- Understand the reason for regulations in relation to current practices not protecting environment.
- Reevaluate the Jordan subwatershed nutrient goals.
- Can we have minimum required targets, with options for advanced targets.
- Rules for local, state, and federal government entities need to mirror one another to keep things simple.

Offsets and trading

- We may run out of available credits in certain watersheds
- Offset payments could be increased to help spread the responsibility and burden out.
- Want to continue to be allowed to work with WWTPs for offsets.
- What can be traded on a broader scale? Within and between jurisdictions.

Collaboration

- Local jurisdictions have innovative ideas.
- We need more collaboration between regulated groups
- Determine what a community needs, match it with the environmental need and optimize the benefits to everyone.
- All stakeholders need to support and commit to the process
- Need interjurisdictional cooperation on projects
- We need integration, versus silos.

Agriculture

- Cattle exclusion practice is good, but it doesn't seem to be implemented as much as it could be. Why is that? Is it because the crediting has not been worked out?
- Agricultural agencies do some work that doesn't get credited.
- When land is purchased from farmers to be used for nutrient management and credits for development, agriculture loses the opportunity to use those credits.
- Do the representatives of the Ag rule have the buy-in of the agricultural community? If so, how did they do it?
- Consider Ag's dwindling credit opportunities.

Science

- Can we consider soil type? Sometimes soil prohibits the ability to meet regulations.
- We need to understand the relationship between the 2 arms of Jordan.
- Don't have stormwater count pounds of nutrient, like point sources do. Figure out a different way.
- Let scientists continue to address the science of practices but not have the rules depend on this.
- Do we need to use N + P. Can something else, like impervious area be used as a surrogate?
- We need the NC Policy Collaboratory's results before finalizing our decisions.

Development Concerns

- New Development rules need to be as efficient and unburdensome as possible.
- Nothing stops development when prices are booming.
- In areas with strong development and a bustling economy, local governments can charge almost any fees they want, but in areas without much development, fees for anything cause strife.
- Land cost and availability more of an issue than regulatory burden.
- Need to get developer voice involved.
- Costs are passed along. Developer to home buyer or developer to local government to tax payer with ability of treating stormwater increasing in price and decreasing in effectiveness.
- We need to ask the home-builders associations about why New D was or is an issue. We need to change the way we're building. Developers have set designs they want to put in place countrywide. It costs money to change a design. National builders may work differently than local builders.
- Uncertainty of onsite costs
- Talk to UNC about experience meeting New D
- To avoid confusion, all New D needs to be the same, whether it is federal, state, local government or private development.
- Easier and cheaper to deal with new projects than deal with them after the fact in the form of retrofitting.
- Don't let New D loads from the past 10 years or so be transferred to Existing D.
- not implementing the new D rules increases the burden to citizens and local governments which could be on the developers. The developers are transferring the actual burden, but instead they could be transferring the cost burden up front.
- prevent additional degradation. New D needs to do no harm.
- Treat redevelopment regardless of whether impervious area is increased.
- Allow developers to treat existing development to help meet the goals.
- Have Durham and Gboro seen builders targeting watersheds because rules are too strict in one watershed than another? Answer from an upper watershed member: Haven't heard this.
- New development needs to not increase degradation in the watershed.

Timing

- The timing may be better now. The Jordan rules came about during a recession.
- What was the objection that froze the current rules?
- Local governments need to have the political will to require stormwater management. Some have.
- Some local governments and state legislators have said stormwater management kills development because that is what they are told by developers.
- Jordan rules fall out was a result of political history with a strong anti-regulatory legislative majority responding to development interests in the Triad.

Updates and Comments

- I appreciate the opportunity to have this discussion. [editor: multiple similar comments]
- Durham's street sweeping nutrient content study is currently sending samples to the lab.
- NCSU is re-evaluating SCM range of values. This will assist the new SCM workgroup.
- We need to consider how the cost of stormwater management impacts housing affordability.
- The Neuse/Tar rules are expected to go to the September EMC with rule revisions.
- If you have contacts in the development community, please pass them on to patrick.beggs@ncdenr.gov / 919-707-3672.

The NSAB will plan to meet October 4, 2019, 9:30 am at TJCOG.