

**DIVISION OF WATER QUALITY
WATERKEEPER ALLIANCE PETITION STAKEHOLDER MEETING**

MINUTES

Date: August 14, 2008
Time: 10:00 a.m.
Location: DENR Training Room 1H-120, 2728 Capital Blvd, Raleigh

Moderator: Kim Colson, NC DWQ

Handouts: Draft Rules – dated Aug 8, 2008
Minutes/notes from July 31, 2008

- Passed around sign-in sheet.
- July 31, 2008 meeting notes have been posted to the website
- Today is the final stakeholder meeting, and the Division will present the proposed rules to the Water Quality Committee of the EMC in September. Thanks to all who have participated in this valuable process. We have come out of this with a very different, workable, and improved set of rules than where we began.

- .1310.b – WKA has submitted language for the introductory paragraph
 - Wanted to clarify the intent of the Petition in the rule language. Perhaps should use “effectiveness” rather than “validity” as submitted.
- .1310.b.1 – we’ve heard concerns over 3 sampling locations not being enough.
 - 3 sites – this defines the scope of the plan so the owner knows what is expected.
 - “Farm sites” was used to deal with the issue of large complexes, so some permits with multiple/distinct farm sites may have more than three locations
 - We see the rules as a process. Hopefully we have framed the rules in such a way that they function as we get more data in. The language should allow the monitoring to work as intended and be modified as needed.
 - WKA – feels that putting a cap on the number of sites limits the Division. Also, no minimum means there could be zero sites.
 - Kim – initially, yes we are limited, but the rule allows for plan modification to deal with operational changes. It is also possible there may be no sites to do sampling for some facilities. Criteria in .1310.b guide that, but the majority will have 3 locations.
 - This rule does not restrict the Division from conducting investigations.
 - Ryke - .1310.b.1 – does the Division anticipate the permittee making site recommendations? May need clarification.
 - Keith – We anticipate the Division notifying the permittee that in 60 days they will be provided a monitoring plan to implement. The permittee may submit recommendations for locations (accessibility, etc) and the Division would take that into account but not held to it.
- .1310.b.2 – When to sample. There have been some changes since last meeting.
 - Dropped out the rainfall condition due to scheduling complications with labs and contracted sampling. We expect there to be documentation of the most recent rainfall event. The very number of sampling activities should capture flows following rain events through randomness. Will streamline process for implementation.
 - Jeff Odefey – the Petition was always meant to measure levels in flows after rainfall. Cannot count on randomness to get to the data, especially with only three sampling events. Sampling needs to be tied to precipitation. Also need to increase the number of sampling events.
 - Hannah – WKA submitted optional language for sampling. One based on a ratio of the number of application events, and one based on the volume applied. (see WKA letter dated 8/13/08) . Could provide relief to smaller producers.
 - Anne – volumes would differ greatly based on animal type – species and type of operation.

- Jeff – yes, this would take more work. Perhaps ration per application event may be easier to determine. This is to address the differences on the frequency we've faced in the stakeholder process.
- Dewitt – Would need to have an actual schedule if you hope to implement. Consider compliance and inspections, very difficult to track if it is not on a schedule.
- Jane Bernard – using the number of events doesn't give the small farmers a break. They often have smaller fields/pulls and smaller lagoons that need to be sprayed more often.
- Tommy Stevens – agrees with Jane. This would be difficult to track; other programs use scheduled sampling.
- Ryke – not all programs. Some are linked to storm events (stormwater, turbidity, etc)
- Anne – but these are done by the agency, not the permittees. Also, adding more sampling events drives up the costs.
- Kim – what we send to the WQ Committee is a starting point. We can ask for specific input on this issue in the public notice period.
- Keith – did a cost assessment by contacting 7 commercial labs. For 3 locations/event and estimated \$100 for sample pickup/collection, came up with an average of \$375 per sampling event. Variability in sample pickup/collection due to distance, discounts for pickups on a route with others, etc.
- Ryke – perhaps widen windows to take care of weather concerns. i.e. Mar-May and June-Oct
- Kim – we selected the windows to capture distinct periods, but would consider modifying as long as that goal is met.
- Jeff – how does this schedule capture short-circuiting?
- Deanna – short-circuiting will depend on soil type, tillage practice, etc but most of our soils are not prone to short-circuiting.
- Kim – even if you have same cropping, tillage, etc can still have problems. How many non-structured soils would even need tile?
- Robert Evans – most are hydric soils. For these soils, structurally, the heavier clays would likely crack under extreme dry conditions. Most of the issues will be tied to antecedent moisture content.
- Deanna – she'd asked for input from others in the Soil Science Dept, and had a hard time coming up with what soils series would be likely to short circuit. Candor sands (would not need to tile, as it is well drained) or a Cape Fear series
- Rick Dove – sees the issue of sampling and lab time as not difficult. Holding times are all in the do-able range.
- Curtis Barwick – but only if that's all you have to do in a day or are able to spend the money to hire it done.
- Rick – these clustered areas of farms can coordinate sampling and drives costs down
- Operators would have to coordinate spray events, could lead to everyone spraying at one time in a small area when it might not happen otherwise.
- Kim – "after" has not yet been defined. Sampling time we have in mind is within day(s) after instead of hours after.
- Tom Carter – the more complex the plan is, the harder it is to get it done and done right.
- Kraig – regarding costs. Has been dealing with similar quarterly BMP monitoring. To get the data, it takes a service to come repeatedly. It's expensive and time consuming
- Kim – we will consider and perhaps look to public notice/comment for further input.
- Sample Parameters
 - Still kicking around fecal vs. BOD5.
 - If trying to keep costs down, maybe drop total P and pick up BOD as replacement parameter. In looking at some studies, did not see P being an issue coming from under drains.
 - Industry concerns that there is still the holding time issue for fecal.
 - Anne – again, fecal comes from lots of sources (wildlife, septic) and doesn't see it as useful.
 - Kim – in considering other sources is it not true of all these parameters?
 - Dewitt – especially true for fecal. These fields draw wildlife to them, ideal feeding for them.

- Multiple parameters would give clarity to the data. A sound sampling regime can work to identify problems and likely sources. Can reduce costs through monitoring coalitions. Also must recognize there are unmet goals of the Clean Water Act to consider.
- Consistency is important. DWQ samples these parameters when doing an investigation. Also pH is a key constituent. Phosphorous is too important to drop. Perhaps do total N instead of NH3 and NO3?
- Kim – breaking down the nitrogen species gives us a lot of information and should be kept.
- Robert – NH3, fecal, and chloride are the signature constituents that he's found for wastes that have been contained.
 - There is no NO3 in this waste; it must be transformed. We need to look at NO3 for different reasons.
 - There is tremendous scatter in the fecal data – hard to get quality sample, even for an expert, and hard to interpret.
 - Salts in the feed don't break down, so they concentrate in the stored waste.
 - NH3 – indicates animals of some type (humans, pigs, cows)
 - Fecal – the system can't buffer outside influences.
 - For integrity of sample and the data, sample NH3, fecal, and chloride at the same time.
 - The more constituents you have measured narrows you to a source, but need to be realistic.
- Rick – the Division has always sampled fecal and dropping it would be a bad decision. If it's consistently high, then do a stable isotope study if you feel you are not the source. This is not about enforcement but about protecting the quality of the state's waters.
- Kraig – if fecal is included, producers have no choice; they must use a professional service.
- Anne, Dewitt – perhaps to salts first and if they spike, then follow up with fecal.
- If a lab service comes anyway, suggest doing a field conductance. Plus a service will have the sterile fecal bottles and protocols.
- Kim – we don't expect to reach a decision today, but wanted all the input.
- .1310.b.4-7
 - This section has been rearranged. The last part covers how the Division can modify plans base on all the above. This was done to prevent it being implied that once a plan has been reduced that it can't be revisited/increased.
 - Steve – confused by .b.5.
 - Kim – it's there for the case where there may only be 2 good sampling locations. There'd be not need to do a third just for the sake of having it. Also trying to touch on having sample sites in proximity to the facility
 - Perhaps reword it to say “if there are not three...”
 - Hannah – also confused by wording, perhaps tie this to the water quality data.
 - Keith – would it be simpler to move .b.5 to follow .b.1 since this is about site selection? Others agreed. Maybe even make it .b.1.C
 - Hannah – feels that .b.4 and .b.6 should be combined. By moving .b.5 they will follow and perhaps work.
 - Anne – is this so that a reduction can only be done by request by permittee?
 - Yes, needs to be tied to a request, but up to the Division to decide.
 - Anne – the Division may make a reduction on its own vs. only if a request is submitted.
 - Kim – that is why we have two separate conditions.
 - If the Division can strike a whole group, then it will be harder to determine costs
 - Keith – the fiscal note allows to submit the worst case scenario for the economic impact as well as statement concerning possible/likely reductions
 - How many will require ground water monitoring? This will shoot the costs up dramatically.
 - .b.4 – need to specify which NRCS standards apply, those at time of constructions, current standards?
 - Kim – we are more concerned with the operational effectiveness of these BMP's
 - Who determines this? Is .b.4 a default rule for monitoring BMP's?

- Kim – Today we don't know who will determine effectiveness. BMP's in some locations that need to continue to be monitored. Presence of a BMP is not a conclusion for monitoring, but how it is functioning is what we must consider in making decisions regarding reducing monitoring.
- If scaling back monitoring due to BMP's is part of the initial monitoring plan, then it need to be part of .b.1, but if it's for making adjustments later, it makes sense here.
- The intent is to set a baseline for monitoring; any scale back would likely occur after a plan is in place. Will look at these factors at the outset, again at renewal or upon request.
- WKA – issue with the “historical data” needed to make a reduction. Ryke to submit language.
- Hannah – parameters in .b.7 should mirror .d
 - They differ somewhat due to the regulatory framework, 2T and 2L. They work in concert with respect to groundwater. We reference 2L in 2T to link them. Surface monitoring in 2B. 2L and 2B are very, very different.
 - .b.7.D refers to O&M of farm, not a corrective action plan (corrective action plan is defined in 2L)
 - May need to clarify what is meant by .b.7.D
 - .b.7.C parallels what you see in .d.5.B
- .1310.c – Monitoring Coalitions
 - Hannah – this introductory paragraph has broad language that reaches beyond the rule. May need to more .c.1 up into the body of the paragraph.
 - Kim – it was intended to link directly to .1310.b, only – not any and all monitoring rules.
- .1311 – Implementation Schedule
 - Last time we talked about setting a schedule vs. reporting to the EMC. This is still not written into the rule language be the Division fully plans to put this in the proposal to the EMC. It is not typical to include this in the rule, but is more of a directive to the Division. Our intent is to present this to the EMC.
 - Hannah – the benefit to having it in the rule is that it spells out what must be included in the report.
 - Heather – other reporting has fallen away, WKA is looking for accountability.
 - Doesn't the Division provide ERC with enforcement report anyway? Yes, this is a statutory requirement and it specifies what is to be reported.
 - Jeff – the concern of the WKA is that this happens in a timely fashion.
 - Kim – our intent is to report, which will address/make accountable the implementation progress. We did restructure .1311 to provide clarity in that plan. Previously, much was wrapped up in .1311.c, so we broke some out into .d
 - Anne - .1311.d.1 is a word missing? “attributed to by...”? Also check wording of .1311.d.2 for same grammar issue
 - Ted Bush – using attributed to may imply sole source and we don't want to do that.
 - We will rework the wording/grammar on this.
 - Fiscal note includes all of these watersheds? Yes, assumes all ten watersheds will be online in five years for the “worst case” scenario.
 - Language to require documents to be retained onsite and for the reporting? .1310.e lays out reporting requirements.
 - Question - .1311.e water supply wells, are these for human use/drinking only? Does this limit the Director only to drinking water wells? The 2C defines water supply wells to distinguish them from monitoring wells. If a well is supplying water for irrigation, drinking, or car washing, it makes no difference.
 - Intended not to limit beyond the scope of .1310.d
- .1310.d – any issues with this section which only formalized DWQ's existing policy?
 - .d.1 – down-gradient of ground water??
- .1310.a – changes for consistency
 - .a.2 – 2 visual inspections per year is less than what is already required in the general permits (every 120 minutes during application events)
- Overall – we've made a lot of progress. We may present alternatives to the EMC and seek specific comments during the public notice time.

- We must submit all of our information to the EMC by Aug 25 to make the docket. So submit any suggestions to us as early as possible.
- Closing thought?
 - Are draft rules on the web? No, but they will be.
 - Can we get them in Word format?
 - Ted – doing so can cause great confusion. We want to avoid getting in many different versions of the same document that we then must wade through at the last minute to find suggested changes. We don't want to miss something, but we need to work efficiently within this strict timeline.
 - Jeff – this has been an incredible educational experience.
 - Dewitt – as a government entity and a producer, these rules need to be
 - Efficient
 - Useful
 - Justifiable
 - Purposeful
- Adjourn. Reconvene at 1:00 p.m. for the State General Permit Stakeholder Meeting