

Sediment and Stormwater Regulatory Advisory Committee
 Meeting Notes, Page 1
 9/20/17 Tidewater Utilities

RAC Members in attendance:

SAN 2015		
First	Last	Affiliation
Zac	Crouch	ACEC
Dirk	Durstein	Dept. of Justice
William	Freeborn	Delaware Contractors Association
LaTonya	Gilliam	DeIDOT
Doug	Hokuf	New Castle County
Connie	Holland	Office of State Planning Coordination
Bobby	Horsey	David G. Horsey & Sons
Frank	Kea	Secretary Designee - Land Development Consultant
Sarah	Keifer	Kent County
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
Kristen	Travers	Delaware Nature Society
Jessica	Watson	Delaware Assn of Conservation Districts

Interested Parties in attendance:

SAN 2015		
First	Last	Affiliation
Jim	Elliott	Sussex Conservation District
Mike	Falkowski	New Castle County Dept of Land Use
Sally	Ford	Land Design Inc.
Steven	Fortunato	Becker Morgan Group
Scott	Kidner	WRA
Chris	Pfeifer	GMB
Ethan	Robinson	City of Newark
Mark	Strickland	Century Engineering
Matthew	Sturgis	ForeSite Associates, Inc.
Jessica	Verchick	Kent Conservation District

Staff Members in attendance:

SAN 2015		
First	Last	Affiliation
Shawn	Garvin	DNREC Secretary
Matthew	Grabowski	DNREC
Randy	Greer	DNREC
Robert	Palmer	DNREC
Jamie	Rutherford	DNREC
Elaine	Webb	DNREC

The meeting was called to order at 9:05 am by Acting Director Bob Palmer. Following introductions, RAC member Frank Kea asked for Setbacks to be included as a discussion item on the agenda.

Secretary Shawn Garvin introduced himself to the RAC and reviewed the letter they received in August concerning the schedule for adopting revised regulations. Certainty and closure of the process is the ultimate goal. Bob Palmer provided a more detailed review of the proposed schedule. The Technical Subcommittee will continue to meet every two weeks with the RAC convening once per month beginning in February 2018 concluding in two RAC meetings in May 2018 prior to a June 2018 submittal date for the proposed regulations. It is anticipated that the proposed draft regulations will be published on July 1, 2018 and following a September 2018 Public Hearing, the final regulations will tentatively be published January 2019.

Redevelopment was discussed while the Secretary was still present at the meeting. Because it is not a functionally equivalent method or specifically called out in SB253, the redevelopment language that was agreed upon by the RAC in June 2016 is not currently able to be implemented other than through a hardship variance process. The current redevelopment standards are somewhat of a road block for Downtown Development Districts. DNREC staff continues to support the June 2016 proposal. Secretary Garvin is open to looking at the process to move this forward but does need to consider the legal ramifications. The RAC discussed three options including (1) legislative action, (2) developing separate regulations for redevelopment, and (3) continuing with the variance process, understanding that the Secretary cannot commit to blanket approval of variances as variance requests need to show hardship for approval. When this topic was discussed later in the agenda the RAC decided to suggest to the Secretary to pursue legislative action on Redevelopment. This was recognized as the fastest method to resolution given the regulatory revision schedule. The RAC members will pursue this independently with the authors of SB253 and DNREC staff will make the Secretary aware of the RAC decision for moving forward. The June 2016 regulatory language will be used as a basis for legislation.

A brief review of the Technical Subcommittee work since February 2017 was provided to RAC members. Seven sections of proposed 5101 Sediment and Stormwater Regulations were provided to RAC members for concurrence, including wet ponds, afforestation, infiltration practices, bioretention, permeable pavement, rainwater harvesting, and soil investigation procedures.

There were questions about the wet pond piece and how credit for overmanagement beyond 1" of runoff in a 48-hour extended detention wet pond can be used to offset unmanaged areas. The wet pond spec will go back to the Technical Subcommittee for review of this element. ***NOTE: After additional internal review, the staff have determined that the issue raised at the September 20 RAC meeting regarding functional equivalency for extra credit for Wet Ponds for unmanaged areas falls under the Offset provisions of the Regulations, rather than the technical specifications themselves. As such, this issue will be included as part of the Offset discussion that was agreed upon at the RAC meeting. The Technical Subcommittee will be asked to determine whether to forward the Wet Pond spec to the next RAC meeting.***

Some RAC members expressed concern with interpretations and inconsistencies in the infiltration practices, bioretention, and permeable pavement sections. It was recommended that these sections of 5101 be returned to the Technical Subcommittee and that the Technical Subcommittee commit more time to review of the 5101 document rather than just the bold/unbold standards and specifications. Concurrence was reached by the RAC members on the 5101 sections for afforestation, rainwater harvesting, and soil investigation procedures.

Proposed edits to 5101 Section 5.1.5 to reference new Sections 11 and 12 of the regulations was presented to the RAC and will be forwarded to the RAC members for further review. There was a discussion on Section 5.1.5.4 language. It was clarified that local laws can be more restrictive and the language was developed to capture all local laws such as plumbing codes for the Rainwater Harvesting spec. There were also questions from DelDOT regarding their MS4 permit conflict. In addition to 5101 language, RAC members would like a preamble document with the BMP standards and specifications containing a strong legal statement regarding the bold/unbold nomenclature. Dirk Durstein agreed to draft preamble language for this purpose and distribute to the RAC prior to the February 2018 RAC meeting.

Other articles of the Technical Document were reviewed. DNREC staff will take a first cut at pulling regulatory elements out of the Technical Document and inserting into 5101 regulatory language. The Delaware Erosion and Sediment Control Handbook will be adopted in full as an attachment to the regulations and this was concurred by the RAC. Checklists were discussed at length. RAC members agree that checklists should not be regulatory but should reference regulatory elements. Standard notes that appear on checklists should be based on regulatory language. Checklists definitely need to go through a legal review as this is one element that was specifically cited in the Baker case. Dirk Durstein agreed to work with staff in review of the checklists in the Technical Document. Mr. Durstein asked for

the regulated parties on the RAC to share if there are particular sticking points in the checklists that warrant consideration.

Options to further the offset discussion were discussed, including (1) reconvening the DNREC Offset Workgroup, (2) working through the RAC Policies and Procedures Subcommittee, or (3) continuing offset discussions at the RAC. The RAC decided to reconvene the Policies and Procedures subcommittee. The first step will be to have a meeting to discuss the goals and objectives for offsets. The following RAC members agreed to participation on the Policies and Procedures subcommittee: Frank Kea, LaTonya Gilliam, Doug Hokuf, Paul Morrill, Mike Riemann, Hans Medlarz, and Bobby Horsey. Jim Sullivan from DNREC Division of Watershed Stewardship will be pulled in to work with this group and DNREC consultant David Athey will also be asked to participate.

A brief discussion was held on setbacks. DNREC staff has worked with Division of Water's well and septic sections to redefine setbacks from wells and septic for stormwater management facilities. David Athey is working on property line and utility setbacks. This is intended to be a new appendix to the BMP Standards and Specifications and would be included in 5101 Section 12. The concern with setbacks is the inability to meet those setbacks on small sites, which is recognized by DNREC. Concurrence has been reached on some of the specifications which reference the setback appendix that has not been concurred yet, so it is recognized that those references may need to be revisited. Setbacks are tentatively slated to be introduced to the Technical Subcommittee on November 22, 2017.

Going forward, meetings of the RAC, Technical Subcommittee, and Policies and Procedures Subcommittee will be scheduled as much as possible for Wednesday mornings at Tidewater Utilities in Dover. The next Technical Subcommittee meeting has been scheduled for Wednesday, October 11, 2017 beginning at 9am at Tidewater Utilities. ***NOTE: Following internal DNREC review, the staff has scheduled a RAC meeting for Wednesday, December 13, 2017 from 9am-noon at Tidewater Utilities to gain concurrence on the 5101 sections that were returned to the Technical Subcommittee.***