

Sediment and Stormwater Regulatory Advisory Committee  
Meeting Notes, Page 1  
2/28/18 Tidewater Utilities

RAC Members in attendance:

SAN 2015		
First	Last	Affiliation
Zac	Crouch	ACEC
Terry	Deputy	Division of Watershed Stewardship
Dirk	Durstein	Dept. of Justice
Doug	Hokuf	New Castle County
Bobby	Horse	David G. Horse & Sons
Sarah	Keifer	Kent County
Hans	Medlarz	Sussex County
Paul	Morrill	Committee of 100
Michael	Riemann	Homebuilders Assn of Delaware
Jessica	Watson	Delaware Assn of Conservation Districts

Interested Parties in attendance:

SAN 2015		
First	Last	Affiliation
Jared	Adkins	Kent Conservation District
Vince	Davis	DelDOT
Jacob	Dorman	Contech Engineered Solutions
Chris	Pfeifer	GMB
Andrew	Prosser	Artesian

Staff Members in attendance:

SAN 2015		
First	Last	Affiliation
David	Athey	AECOM
Matthew	Grabowski	DNREC
Randy	Greer	DNREC
Robert	Palmer	DNREC
Jamie	Rutherford	DNREC
Elaine	Webb	DNREC

The meeting was called to order at 9:03 am by Bob Palmer. Following approval of the agenda, the proposed redevelopment legislation was discussed. Bob Palmer, Terry Deputy, and Bobby Horsey met with legislative representatives concerning a bill that will be introduced in March. The redevelopment language approved by the RAC in June 2016 will be referenced by the proposed bill and will sunset upon adoption of regulations containing the same agreed-upon regulation language. In addition, the bill will propose to clean up the move from 3-year delegation to 5-year delegation. Finally the bill will propose language to exempt some articles of the Technical Document from the APA structure to allow flexibility in implementation. Articles such as the Erosion and Sediment Control Handbook will undergo annual review by the RAC in perpetuity. This is not an effort to reverse the Baker decision but will be applied to a select list of items. To be clear this would be an amendment to Chapter 40, not a modification to the APA.

The summary checklist was reviewed by Bob Palmer and Elaine Webb. Concern regarding adoption of the Delaware Erosion and Sediment Control Handbook as a regulation by reference was shared. The timeline to publish in July 2018 will require the RAC to have concurred on all items by end of May 2018. It is not likely that all BMP standards and specs would undergo thorough review by the Technical Subcommittee based on this schedule. Staff will propose regulatory language for the remaining specs to be reviewed by the RAC without Technical Subcommittee review. Several RAC members expressed concern that adopting by reference would be a detriment and it would be hard to agree on the regulation moving forward without a full review of the Erosion and Sediment Control Handbook and all the BMP Standards and Specifications.

Bobby Horsey provided a report on the revisions to the Wet Pond specification reviewed by the Technical Subcommittee. Section 11.13.4.2 regarding the conveyance at the outlet was updated. In addition Section 11.13.6.4 was updated and 11.13.6.7 was added to address the use of retaining walls within wet ponds. Safety aspects of utilizing retaining walls in wet ponds were discussed as well as the measurement using the Cv elevation. Consensus was reached on the Wet Pond specification.

Elaine Webb reviewed the progress on the Setback appendix. Randy Greer reviewed the progress on the Sheet Flow specification. Both the setback and sheet flow regulatory language is expected to be ready for review by the RAC at the 3/21 meeting.

Elaine Webb reviewed the proposed regulatory language for Standard Plans which had been reviewed by a subcommittee made up of Delegated Agency personnel. There was a discussion about applying the agreed upon definition of forest beyond the standard plan section. Currently "wooded condition" appears in both 5.2 RPv and 5.6 Redevelopment regulatory language. The use of "forest" in these sections will be discussed when these sections are brought forward for review by the RAC. Proposed language addition to 3.7.5 was a concern to RAC members because it would require a detailed plan on a case-by-case basis without references. It was decided to strike the second sentence and add "does not meet the intent of the regulations" similar to what appears in 3.7.7. The use of "Department or Delegated Agency guidance" in the Non-residential Standard Plan and Poultry House Construction

sections was discussed. Dirk Durstein stated that approval could not be denied based on the checklist and checklist content would need to be based on regulation. It was suggested that general language be added to the regulations about minimum plan components such as north arrow and scale bar as required by land use plan approval agencies be included so that those items could be removed from the checklist or included but have a regulatory reference. The proposed Standard Plan regulatory language was concurred by the RAC members with the condition that the edit to 3.7.5 as discussed was included.

Proposed 5101 Section 13.0 for Offsets was reviewed by Hans Medlarz and Bob Palmer. Some grammatical edits to the regulatory language was made on the screen. It was made clear that this offset section uses cubic feet of runoff volume as the credit currency, not nutrients, but this section will enable use of stormwater credits in the MS4 permitting realm in the future. The exchange rate between cubic feet of runoff and pounds of nutrients would need to be determined in the future. Credits generated on a site would need to be recorded on the deed in some way. Hans expressed the need to have the constructed wetland specification and the restoration specification reviewed through the Technical Subcommittee so that the volume credits from those practices could be utilized in an offset program. With DeIDOT abstaining, the RAC reached concurrence on 13.0 Offset Provisions as edited on the screen.

In closing comments Bobby Horsey reminded the group that the baseline mapping was unresolved. The forest definition uses the 2012 maps. He proposes the use of 2017 maps; however, they are not yet available and land use land cover is not being included with these aerals. Language similar to “adjusted annually” used in the fee-in-lieu section should be included with the baseline mapping so that regulations will not need to be updated to update the mapping reference.

Paul Morrill suggested that at the next RAC meeting there should be a discussion about what happens when time runs out for this RAC and not all of the articles have been reviewed. What happens if we do not have an Erosion and Sediment Control Handbook? Doug Hokuf suggested using the “Department or Delegated Agency guidance” terminology when referencing the Handbook. Bobby Horsey raised a concern with using the “guidance” term for the Poultry Construction Standard Plan documents, layouts, and tables. Those documents may need to be compiled and named to be referenced in 3.7.

In public comment, Jacob Dorman from Contech stated that he had a concern about the possibility of not getting to a review of all the specifications, particularly proprietary practices since that is what he represents. He would not want those practices to be off the table just because time ran out on review.

Hearing no more further public comment, the meeting adjourned at 11:15am.