

Meeting Minutes June 19, 2006

Attendees:

Keith Ashley, PA Builders	John Brosious, PMAA
Harry Campbell, CBF	Randy Henne, CDM
Randy Hurst, Mette, Evans & Woodside	Mike Kyle, LASA
Tom Mealy, THA	Steve Neidlinger, PCIC
Peggy Miller, HRG	Jodie Reese, CET Engineering
Pete Slack, PMAA	Ralph Watters, Derry Twp

DEP:

Dana Aunkst	Nicki Kasi
Lee McDonnell	Crystal Newcomer

Meeting was called to order at 9:30 am.

Allocation Strategy:

The meeting started with a discussion of expectations for the meeting on Friday, June 23 with Secretary McGinty and other members of the Tributary Strategy Steering Committee. The purpose of the meeting on Friday is to discuss proposed edits to the Workgroup's proposal made by the Secretary and Deputy Secretary Cathy Myers. Basically the proposed edits revolve around a feeling that the strategy has too much of a focus on cost, with a lack of consideration and focus on the use of nutrient trading. Members discussed the purpose of the strategy and the need for edits. Members felt the document was more of a position paper that captures the position and recommendations of the workgroup. DEP edits may be more appropriate to a future document that would serve as an amendment to Pennsylvania's tributary strategy. However, it was agreed to wait and see the proposed edits before coming into any further conclusions.

Priority 2 and 3 Issues Discussion:

Monitoring:

The two monitoring issues identified by the workgroup are:

- Monitoring requirements to verify nutrient credits
- Nutrient credits based on Discharge Monitoring Reports at the end of the year or established at the beginning of the year based on permit limits and flow?

Recommendations to address these issues are:

1. Compliance should be based at the end of the year on a calculation of annual load based on DMR reports for the October through September timeframe. They should not be based on running averages. Monthly loads can be calculated by summing up the daily loads if samples are taken daily or through the calculation of the geometric mean multiplied by the number of days.

2. Monitoring requirements should stay consistent with monitoring already being done.
3. DEP needs to develop technical guidance to describe the framework for monitoring requirements and calculation of nutrient loadings. The guidance needs to emphasize the need for case-by-case variations, where the frequency of monitoring is determined as part of the development of the permit.

Contracts/Trading:

The issues identified by the workgroup related to contracts that would be developed to promote and implement a trading program include:

- Details of contracts between point source entities and others to achieve reductions, tradable credit contracts, compliance with and needed flexibility
- Contract length for trading purposes vs five year, or more, permit for treatment plants
- Who owns the load?
- Inter-municipal agreements
- Ability to purchase long-term credits
- When should credits be applied, the definition of when credits are available and the lifetime of the credits
- Capacity for credits vs compliance
- Enforceability
 - Procurement requirements, issuance of bids, bonding
 - Compliance with state law

The workgroup's recommendations to address these issues are:

1. The time frames for the term limit for credits needs to be variable based on the certification process and the purpose for buying the credits; that is to allow a permittee to buy credits to address a short term deficiency in achieving permit limits, to meet cap load and permit requirements while upgrades to a treatment plant are being constructed, or longer based on the decision not to build at all and meet the permit requirements entirely by buying credits.
2. The bank of credits needs to be big and flexible to meet the goals of the program and to account for year-to-year variations and the elimination of best management practices over time.
3. Credits generated due to the installation of collection system lines to eliminate on-lot systems need to be coordinated and owned by the point source permittee that will be treating the collected wastewater; regardless of whether the collection system is owned by the same permittee or not.
4. Another alternative that should be suggested is for the owners of wastewater treatment systems to purchase conservation easements and "nutrient rights". These sources of credits may be a little more costly upfront, but are guaranteed for a longer term.
5. The permittee needs to be "held harmless" if the permittee enters into a contract with a nonpoint source entity, such as a farmer, to install practices to generate credits needed to meet permit requirements. This is needed to protect the permittee from enforcement and compliance issues should the farmer not install

or maintain the practices needed for the nutrient reductions. The same protection is also needed if the permittee purchases credits from a central bank.

Enforcement/Trading

Enforcement issues identified by the workgroup include:

- Program level
- Honoring of a contract
- DEP enforcement discretion vs. EPA authority and requirements under the Clean Water Act.
- Liability of point source permittee

Recommendations to address these issues are:

1. The buying and selling of credits by point source permittees should be reported and documented through the DMRs. A separate certification process is not needed. The reconciliation and certification of credits should be matched to the permitting year for the calculation of annual loads; that is, October through September.
2. Calculating, certifying and selling credits ahead of time creates a liability for the permittee since these are factored into the permit requirements. Because of this permit liability, most individuals will be unwilling to consider buying credits up front. Certifying and selling generated credits after the fact creates more of an incentive to participate in the trading program. Most plant managers are going to want to keep proposed reductions as a “cushion” for contingencies that may occur throughout the year and would prefer to buy or sell credits as needed as part of the compliance reconciliation at the end of the permit year.
3. All methods for controlling nutrients and meeting effluent limits need to be reflected in the permit, whether it is through the purchase of credits, enhanced treatment or some other method.
4. The timeframe to define sources of credits, complete the assessments needed to certify credits and create the bank of credits may be too long. Wastewater system plant managers and owners are having to make decisions quickly as to whether they should buy credits, or pour concrete.
5. Another aspect is to view trading as a way to expand capacity, rather than as a method to achieve compliance.
6. The following questions and issues need to be answered by DEP and EPA:
 - a. What happens if the permittee provides the money to buy credits as identified in the permit, but there are no credits to purchase? Is the permittee in violation of the permit, since cap loads are not met?
 - b. What enforcement actions will DEP or EPA take if credits are not available for purchase?
 - c. Similarly, if a facility has been granted conditional 537 approval based upon trading, what happens if there are no credits available when it's time to apply for the permit?

Load Elimination and Creation

Issues in this category include:

- How do we handle human activities that may not exist in the future, such as:
 - Elimination of an industrial plant because it goes out of business
 - Septic system goes off line
 - Truck waste or septage
 - Elimination of agricultural activity
- Who owns the credits ... the state, the treatment plant, a separate bank?
- For how long?
- Nutrient bans
- Plant expansion

There was some discussion on how industrial discharges should be treated. The following questions need to be answered:

1. Should direct and indirect discharges be treated the same way and given the same type of growth allowance?
2. Who owns the load from an industrial waste discharger? If an existing industry leaves the watershed, can they keep their nutrient load allocation for the purpose of selling credits?
3. What if an indirect discharge wants to pull its load out of the municipal facility and have it's own discharge?
4. Should credits generated by industrial waste dischargers be kept in separate pool, retired or allow the industry to sell them?

The workgroup also looked at the issues related to the hauling of on-lot septage. There was concern expressed that the nutrient cap loads might force plant to refuse to take septage. Some way of encouraging the taking of septage as a benefit to wastewater treatment plants as a way of cutting down on malfunctioning on-lot septic systems is needed. Other ways of encouraging wastewater treatment plants to continue accepting septage are also needed. At the very least, ways of ensuring the wastewater treatment plant is not penalized for taking septage are needed.

Workgroup members have heard that land conversion can result in the generation of credits. If this is so, members have the following questions:

1. How does this work?
2. Does it depend on whether or not the existing or new land use activities are regulated or not?

Other Issues

Workgroup members also have these additional questions for the Trading Workgroup:

1. To whom can a credit be given? Both the entity and the activity?
2. What does the Nutrient Net registry do?
3. What is the trading timeframe? Is it before the "compliance year" or after?
4. Is there going to be a bank? Who will run it? What is the role of the bank?

Watershed Permit:

The discussion of the watershed permit focused on who the Watershed Permit would regulate and how it would be implemented. Lee McDonnell stated the purpose of the permit is to allow for pollutant load allocation among contributing sources and have it apply at the same time without opening individual permits. It is not planned to include nonpoint sources in the watershed at this point. A question asked by the workgroup was how the permit will benefit point source dischargers in the watershed.

Other Workgroup Activities:

Keith Ashley reported on the Act 537 Planning Subcommittee. The first meeting was held, with a general consensus reached that sections of the regulations do not agree with the Tributary Strategy. Many of the modules also need modified to conform with regulations. The committee wants a formal statement from DEP to provide guidance to local officials on how to operate until final limits are established. The committee is also looking at the issues revolving around tapping fees. Comments and a list of questions for DEP are being developed.

Next meeting:

Aside from the meeting with the Chesapeake Bay Tributary Strategy Steering Committee on June 23, 2006 to discuss the workgroup's Allocation Strategy, no future meetings of the workgroup have been scheduled.