

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

MINUTES

Date: June 16, 2008
Time: 10:00 a.m.
Location: DENR Training Room, 2728 Capital Blvd, Raleigh

Moderator: Kim Colson, NC DWQ

Handouts: Agenda
Proposed Rules – NCAC 02T.1310 and .1311
Alternate Proposed Rule Language, provided by Waterkeeper Alliance

- Sign-in sheet passed around. Will be posted on website if there are no objections.
- Introductions
- Petition Process Review – events leading up to stakeholder meeting today.
 - Petition filed fall 2007.
 - May EMC Water Quality Committee meeting – presentation by Waterkeeper Alliance, Pork Council, and DWQ
 - Petition for rulemaking recommended to full EMC
 - EMC granted petition, sent to stakeholder process to resolve issues and asked for results to be presented at September 2008 meeting.
 - So, this meeting is to develop those rules

Petition sought rulemaking in 2B, but all agreed that 2T.1300 is the most appropriate section for the new rules. Petition focused on discharges, especially from tile drains and the overall impacts of operations. Staff rule proposal addresses this focus and formalizes some existing policy

- Announcement: Stakeholder Process for State General Permit Renewal scheduled to begin. First two meetings are 7/31 and 8/14 in the afternoon, following Petition Stakeholder Meetings.
- Review of proposed rules - .1310 contains most of the rule language and .1311 contains implementation schedule. Jeff Odefey presented draft rules by the Waterkeeper Alliance, and sought to meld it with the staff proposed rules.

Review of Staff Proposed Rules

- Surface Water Monitor
 - Waster discharge monitoring

Discharge monitoring based on visual inspection with a routine monitoring plan to track long-term impacts. This includes individual monitoring plans and allows for voluntary monitoring coalitions. Groundwater monitoring would be required only for sites where most appropriate.

 - .1310.a.1.A Waste discharge monitoring language deals with surface runoff of waste. Mirrors NPDES language. Details of how to implement should be put in the new permits rather than the rule.
 - .1310.a.1.B Monitoring plan for fields with known subsurface drains discharging to ditches.

Jeff expressed concerned about ditch drains – waste application into ditches. Kim said that this falls under .1310.a.1.A and we (DWQ) would see that as a surface discharge. Deanna Osmond, NCSU, stated that drain tiles and ditches represent different flow regimes and soil characteristics.

 - Discussion concerning “visual observation”. This portion of the rule is geared for the visible discharge of waste. Is looking for the classic pink water sufficient to detect other waters that are high in nutrient? The monitoring plan in next section to address this. Questions arose about addressing the hydrologic differences for various

conditions – drain tile discharge during application, during subsequent rain event, etc. Proposed rule would scale back monitoring when no flow observed in application. Additional concern regarding “short circuit” of waste to drain tiles.

Producers feel that current permit requirements (minimum every 2 hr or continuous monitoring) include visual observation. Operators know where tiles are located and check them as part of the system; this is SOP and do not want another form to have to complete. Producers feel that improperly installed drain tiles or “short circuits” are not cost effective; tiles are a BMP to facilitate uptake of nutrients. Not much new installation of drain tiles; cost share benefits are no longer available for install.

Just looking for pink water is insufficient. Ryke expects that faulty systems with straight discharge of waste through tiles to be rare (and already covered in permit), but do expect the flow from tiles to be high/higher in nutrients. He sees the petition seeking monitoring of the overloading of nutrients not just the discharge event. Need to monitor the normal operations, not just the exceptions. The example of 2003 was mentioned. 2003 had excess rainfall with wet fields and lots of tile flow and still applied waste.

Producers see this as being covered under agricultural storm water exemption as long as the waste was applied according to the WUP. They see row crops using commercial fertilizer as being no different and feel the current permit is clear on discharge monitoring.

The group will need to seek clarification from the Attorney General's office; perhaps Anita LeVeaux can address this at the next meeting.

BREAK

Began after break by have Jeff Odefey walk the group through the rule language proposed by the Waterkeeper Alliance.

- Originally proposed in 2B.505, but took the main elements and placed as a stand alone rule in 2T.
- Calls for ambient monitor. Designed as a blanket, routine monitoring requirement rather than developing individual monitoring plans.
- Does not attempt to set limits or threshold.
- Goal of monitoring is to create feedback of information to identify problem areas.
- Sample any dry weather flow with a maximum number of samples if it comes back clean. May look at initial period of intense sampling and the perhaps scaling back as appropriate. (up to 5 times per month during spray season). Rule language by DWQ calls for two sampling events per year.

After some confusion, it was explained that the Waterkeeper Alliance used the term discharge in their proposed language to mean any/all flow (specifically with respect to tile drains). Discharge, as defined by DWQ, refers to the release of waste or wastewater into waters of the state. Therefore the meaning of “discharge monitoring” differs and by extension results in very different monitoring/sampling requirements in the language presented by the Waterkeeper Alliance and the Proposed Rules.

Does .1310.a.1.C apply only if risk exists to downgradient well? DWQ groundwater monitoring approach proposed in 1.C is a reflection of current policy. This just puts it in the rules, officially.

Need for ag storm water discussion came up again. The Pork Council letter states their desire to improve water quality and the need to look at all sources in a basin/watershed to get overall picture before targeting potential sources. Watershed scale monitoring would simplify individual monitoring and often get better data (better planning and execution). This is idea behind allowing monitoring coalitions, although this is voluntary only.

Back to Staff Proposed Rule:

- Routine Surface Water Sampling
 - .1310.a.2 addresses required number of sampling points and number of samples. Allows adjustments for site specific conditions to get best data. This sampling is routine, scheduled, and not the sampling triggered by waste discharge.
 - .1310.a.3
 - Calls for representative site for sampling, i.e. not every tile, but the outlet ditch
 - Starting point would be the WUP. Frequency a field is used (a backup or used for regular application)
 - Looks at the site conditions to get data that reflects that site only. Perhaps use groundwater monitoring when surface sampling wouldn't be a clear indicator.
 - Monitoring locations should be selected to provide valuable, useful data, not just volumes of data.

Discussion on BMP's.

How would BMP's affect required monitoring? DWQ sees BMP's may reduce some monitoring but does not eliminate.

Need to understand the efficiency of various BMP's. For example, Deanna said there are studies that indicate buffers only give 30% reduction in N regardless of how well it is functioning.

Are BMP's inspected? Yes, but only for those receiving cost share. Some farms install BMP's without cost share, particularly on leased land.

Concerns were expressed about groundwater sampling locations. Monitoring outside the buffer may not represent the actual effect on the stream. If sample station is not adjacent to ditch, you don't get true characterization of the groundwater. However, access to these locations are often difficult.

Discussion on intended use of the data

Producers asked what will it be used for? TMDL estimates? This sampling is costly for farmers. How does the average farmer use this to better his operation? Does it truly represent his contribution? Spot data may not reflect overall picture and therefore ineffective exercise.

Waterkeeper Alliance doesn't expect data to be tied to enforcement limits. Data should help farmers assess performance of BMP, etc and help them make management decisions. (Note: Waterkeeper Alliance proposed language does not reflect this intent.)

- Monitoring Coalitions
 - .1310.b. Monitoring coalitions are intended for ambient monitor only, not discharge monitoring
- Groundwater Monitoring
 - .1310.c. Mirrors the current risk based monitoring requirements.
 - This has only been done at 24 facilities, and 12 facilities are still required to do so.
 - Some provisions are linked to the language in the 2L rules.
- Reporting
 - DWQ proposed annual reporting of data. NPDES has annual certification and all data could be submitted at that time.
 - Waterkeeper Alliance is asking for quarterly to allow for immediate access to data. Could show need for more sampling events.

Notification Requirements

What constitutes a discharge? Would samples that exceed water quality standards trigger the immediate notification?

Thresholds would need to be set. Many of the parameters proposed to be measured do not have water quality standard – they are considered secondary.

Discharge notification is/has always referred to a visible discharge of waste to waters of the state.

- Implementation Plan
 - Routine sampling needs to be prioritized, starting with impaired watersheds/basins.
 - Discharge monitoring (visible discharge of waste) – immediate implementation.
 - Working on a timeline. DWQ feels it best not to insert a timeline in the rule language, but rather in an operational schedule.

Other issues/concerns

- Who should take samples?
- What training would be needed?
- QA/QC considerations. Concerns about the quality of the data (chain of custody, sampling technique/protocol)
- May require sampling be done by professional contractor – expensive.
- Access to needed sampling site by a producer – sample site may not be on his property.
- Difficult to determine representative sample site for several facilities in close proximity – may not be able to link results to a specific operator's activity.
- What about Dairy industry representatives being included in this process? While not specifically on the stakeholder list, Farm Bureau would also be concerned for dairy's interests.

Housekeeping Issues

- Next time we plan to focus on some specific issues that were raised today.
- Plan to post agenda on website.
- Other items to have posted? Keep process transparent and make info available to all.
 - Pork Council Letter
 - Photos?
- Next meeting July 8, 2008 at 10:00 am. Same location.