

WATER RESOURCES ADVISORY COMMITTEE
Chapter 105 Ad-hoc Workgroup
Rachel Carson State Office Building
10th Floor Conference Room
Harrisburg, PA

Meeting Minutes
February 20, 2008

Attendance

Members

Dr. Robert P. Brooks, *Penn State University, Cooperative Wetlands Center (CWC)*
Sue Germanio, *PA Coal Association*
Grant Gulibon, *Pennsylvania Builders Association*
Nathan Havens, *PA Game Commission*
Stephen Rhoads, *Pennsylvania Oil & Gas Association*
Matt Royer, *Chesapeake Bay Foundation*
Rick Shannon, *McCormick Taylor*
Thomas Shervinskie, *PA Fish and Boat Commission (PFBC)*
Patricia Strong, *U.S. Army Corps of Engineers- Baltimore District*
Cynthia Tibbott, *U.S. Fish and Wildlife Service*
Toni Zawisa, *PA Department of Transportation (PennDOT)*

Agencies, Advisors, and Guests

Duke Adams, Troy Conrad, Dave Goerman, Jack Hill, Jack Kraeuter, Ken Murin, Frank Payer, and Shelby Reisinger, *PA Department of Environmental Protection (DEP)*
Thomas An, *Sierra Club*
John Arway, Dave Spotts, *PA Fish and Boat Commission*
Brad Gochnauer, *Vortex Environmental*
Tom Johnston, *Skelly & Loy*
Greg Podniesinski and Jeff Wagner, *Pennsylvania Natural Heritage Program (PNHP)*

Call to Order and Attendance

Steve Rhoads

All attendees should have signed in and picked up copies of the handouts.

Review and Approval of January 2008 Minutes

Steve Rhoads (*handout*)

Among the handouts are draft minutes from the January meeting. The group will not review or approve the minutes during the meeting. Ms. Reisinger will email the minutes for review (emailed 02/21/08), giving two (2) weeks to review and provide comments. The final minutes will be distributed and accepted at the May meeting.

Background

Ken Murin

Mr. Murin reminded the members that the workgroup is currently only discussing concepts and not draft language. The hope is that the workgroup can have an open exchange and provide the Program with feedback in order to reach the ultimate goal of reasonable and practicable wetland regulations. Today's meeting will focus on providing additional information from the January meeting.

Mr. Rhoads reminded the workgroup that reaching a consensus on issues is not necessary. The group can clearly outline the issues and provide a list to DEP for their consideration as they begin to develop language.

Mr. Havens asked if the group would eventually be tasked with reviewing and commenting on draft regulations, Mr. Rhoads responded that the group would be reviewing actual language when it is available.

Conceptual Chapter 105 Evaluation CriteriaDave Goerman (*handout*)

Mr. Goerman reviewed the handout provided to the workgroup members outlining how the existing evaluation criteria would be applied to the conceptual wetland classification structure for evaluating unavoidable wetland, High Quality (HQ) wetland, and Exceptional Value (EV) wetland impacts. The handout highlighted the key linkages and provided regulatory citations for quick reference. The current program implementation consists of utilizing the general water dependency test and the adverse impact evaluation criteria sections from the existing Chapter 105 other wetland and EV wetland review criteria respectively. The proposed concepts would then apply the same water dependency test and adverse impact evaluation to the newly proposed HQ wetland classification.

Mr. Rhoads asked if there is any intent from the Program to change the overall impact evaluation criteria. Mr. Goerman responded that there is no intent to change the impact evaluation criteria at this time. Mr. Murin concurred. Mr. Goerman then reminded the workgroup that there are no plans to change the Program's emphasis to avoid and minimize wetland impacts to the maximum extent practicable

Mr. Murin reemphasized that the Program is maintaining consistency with Section 404(b)(1) of the Clean Water Act .

Mr. Rhoads reminded the group that the task at hand is to answer two questions in sequential order: First, how wetlands would be classified in a regulatory context and secondly how proposed impacts would be evaluated within each wetland classification system. Mr. Murin requested that the group provide comment on the conceptual wetland classifications applying the existing impact evaluation criteria since no significant changes have been proposed.

Wetland Community TypesGreg Podniesinski (*PowerPoint presentation*)

Mr. Podniesinski gave a PowerPoint presentation on the wetland vegetative communities so the group has a further understanding of what the Program is proposing.

Mr. Rhoads asked if the Program intends to take these classifications and incorporate them into the wetland classifications, if so, how? Mr. Goerman indicated that is the direction the program is currently considering and noted that S1 communities would be included in the EV classification. Mr. Goerman added that there is

also a national process for community classification. Mr. Rhoads stated that any changes in the classification system will result in ramifications on projects at the ground level. He went on to note that there needs to be a mechanism for oversight of these changes and how they impact projects. Various ideas were discussed as to how this concept could be implemented:

- through PNHP search
- programmatically
- through a key on site

The program has not completed work on how it plans to implement this aspect of the wetland classification concepts. The wetland vegetative community type would likely be identified on a site-by-site basis and not as a programmatic effort. This identification could be accomplished via a wetland communities classification key that Pennsylvania Natural Heritage Program (PNHP) can develop. The current PNHP search results display known locations of these wetland communities.

Ms. Zawisa had concerns over the fact that there seems to be no peer review of the community rankings process, as occurs when species are officially listed, and asked if DEP is defacto listing these wetland vegetative communities? Mr. Goerman responded that even if these communities were to go through the official listing process, DEP would still provide independent verification of the community classification. The current process for establishing community rankings is similar to that used for species listing, except that no Commonwealth agency has jurisdiction over ecological communities and therefore there is no official listing publication.

Mr. Rhoads would like to see the Global Ranks (G-Ranks) affect the State Ranks (S-Ranks). The pros and cons of this topic were discussed and the group generally disagreed with including G-Ranks. DEP is tasked with regulating wetlands in Pennsylvania, not beyond that.

It was noted that many of the wetland vegetative communities would overlap wetlands providing habitat for Threatened and Endangered (T&E) Species, indicating that this conceptual addition to EV wetlands would likely have less of an affect. Mr. Havens agreed that there would be some overlap. Mr. Wagner mentioned that the PNHP has the ability to compare the S-Ranked communities to T&E lists. Mr. Wagner also reminded the group that the S1-S3 ranks represent the rarest types of wetlands in Pennsylvania. As a comparison, Mr. Podniesinski mentioned that most of the peat bogs in the Poconos are usually ranked no higher than S3.

Ms. Zawisa agreed that including S1 communities in the EV classification is appropriate, but that S2 and S3 ranks should not be included as special protection (HQ or EV).

Mr. Conrad explained to the group that the Program is also considering the inclusion of rare and irreplaceable wetlands, which represent a very small amount of wetlands. While most applicants would never encounter these wetland types, identifying their unique importance will aid in their protection.

Mr. Arway indicated that he's in favor of the idea of including the wetland vegetative communities. Mr. Havens seconded the comment and added that most Biologists would be able to identify these communities on site.

Mr. Johnston reminded the group that once people are looking for these wetland vegetative communities, more will be found than are currently known. Mr. Podniesinski replied that the S-Ranks would then change accordingly.

Mr. Goerman also mentioned the need for evaluation criteria for dealing with dual ranked communities (i.e. S1S2).

Issues identified for DEP to consider include:

- Should these communities go through a listing process?
- Which S-ranks should be included?
 - S1 – S4? Or just S1 – S2?
- Workgroup requires the end product to be user friendly
 - Do not want lag time that results from needing to hear back from an agency.

Ambient Monitoring Assessment Protocol

Dr. Robert P. Brooks & Dave Goerman (*PowerPoint presentation*)

Dr. Brooks started with a brief overview of hydrogeomorphic classification of wetlands. He then asked three questions leading up to a wetland assessment:

1. Where are the wetlands?
2. What is their condition?
3. What can we do about it?

He continued on to give an introduction of the three Levels of the wetland assessment protocol:

1. Level 1 is a Landscape Assessment looking at one kilometer landscape circles which is the basis for inventory, assessment, and restoration.
2. Level 2 is a rapid field assessment which looks at stressors on site and develops a stressor score.
3. Level 3 is an intensive field assessment that looks at three categories on site. This level requires five or six people about four hours to complete and would not apply in the overwhelming majority of applications.
 - a. Hydrology
 - b. Biochemistry
 - c. Biodiversity

All three assessment levels are useful independently, but significant value is added when levels are combined. The landscape assessment (Level 1) plus the rapid assessment (Level 2) provide the most efficient level of information for regulatory use.

Mr. Goerman proceeded with the second part of the presentation and focused on how DEP envisions applying the wetland assessment protocol. DEP is evaluating the utilization of the protocol in the following program areas:

1. Ambient Wetland Condition Assessment
 - Clean Water Act Reporting
2. Chapter 105 Regulatory Program
 - Regulatory classification
 - Wetland impact evaluations
 - Compensatory mitigation condition predictor
 - Compensatory mitigation monitoring
3. Non-regulatory Program Use
 - Project prioritization
 - Project condition predictor

Ambient Wetland Condition Assessment

This effort will provide the Commonwealth the ability to report on the condition of natural wetlands within each assessment unit. This program is similar to the effort to report on the condition of streams and lakes within the Commonwealth. The assessment program when implemented will be a five year rotating basin approach covering approximately 20% of the state in any given year. The program had received an EPA grant for the first five year baseline assessment, but due to budgetary cutbacks only received one year of funding. In response to the cutbacks, the Program conducted a pilot during the summer 2006 field season, 200 Level 2 assessments and 13 Level 3 assessments were completed in the South Central assessment unit. Wetlands were divided into subpopulations using land cover as criteria for defining the subpopulations. Final data analysis and reporting will be done during the summer of 2008. The Program intends to expand the use of the assessment methodology into the regulatory program in addition to the ambient wetland monitoring.

Dr. Brooks told the group that many other states have developed wetland assessment protocols. CWC has been working with DEP for approximately 15 years to develop the protocol presented. Both DEP and CWC are active members of The Mid-Atlantic Wetland Workgroup (MAWWG), a gathering of state agencies and their technical advisors focused on assessment protocol development and information sharing in EPA Region 3. MAWWG has been meeting for six years and has proven extremely useful to the participating organizations. The Program believes the methodology is an adaptive and proactive approach compared to the TMDL development process.

Chapter 105 Regulatory Program

The program believes that the protocol provides the opportunity to utilize the wetland condition information within the regulatory program for regulatory classification and impact evaluation. In addition, the protocol will be beneficial for evaluating the adequacy of compensatory replacement plans and for monitoring success. The methodology is also cost effective for DEP and the applicant, and can be easily understood by the public. The methodology is easily applied and rapid, which results in a cost savings to the applicant versus the current narrative requirements in the Environmental Assessment (EA) process.

Non-regulatory Program Use

Similar to the regulatory program, non-regulatory wetland programs could utilize the protocol to rank potential projects based upon their score establishing priorities based upon their program goals and objectives.

Mr. Rhoads asked if the Program plans to include these protocols in regulation. Mr. Murin replied that the Program is considering establishing them in regulation revisions.

Mr. Shannon asked if the Program foresees or intends to use this assessment protocol to replace the existing EA. Mr. Goerman responded that the Program currently would like to move the assessment into the EA and incorporate it into the impact evaluation criteria. Mr. Goerman added that the Program is working towards incorporating the Level 2 assessments into the permitting program within the next two years.

Mr. Havens asked if a poor assessment score had the ability to trump other EV/HQ criteria, essentially lowering the protection of that wetland. The Program responded that under the current concepts, once a wetland is classified as special protection (HQ or EV) the classification level could not be lowered due to a low condition assessment score.

Mr. Shannon suggested including "Department approved methodology" language in the revised regulations, then implementing the assessment via policy at a later date. Mr. Murin reminded the group that we are very early in the regulation revision process and there is a lot of time yet for the assessment and the regulations to develop on parallel tracks.

The Program would like feedback from the group to see if there is enough buy-in to move forward with further development on how to implement the idea. The group would like more information.

Mr. Rhoads thinks it is a good idea to use the assessment to streamline the EA and as a tool for consideration of in-kind compensation, but uncertain if it is a good idea to use in wetland regulatory classification.

Mr. Havens agrees that the assessment is a good idea, but not sure if it should be implemented through regulation.

Ms. Tibbott was unsure about the reliability of consultants doing the assessment. Mr. Conrad responded that the assessment is less subjective than the current process. Mr. Rhoads suggested the Program do the assessments as is done in Chapter 93. Mr. Goerman responded that the Program does not have the resources to undertake such an assessment.

Potential Affect Concepts may have on Resource Protection Level (Data)

Dave Goerman (*Power Point presentation*)

Mr. Goerman provided the group with data on acres of wetlands and miles of stream (WTW, HQ, and EV). He cautioned the group not to focus on the exact acreage numbers, but on the percentages and relative proportion changes of the resource protection levels. Mr. Goerman highlighted that the stream data does not include contributory drainage, and that the wetland data is based on National Wetland Inventory (NWI) maps. He indicated that these two factors alone provide a considerably lower confidence level and that the data is not conclusive, but provides a good indication of protection level change.

PFBC requested to bring their own agency's data and present to the group at the next meeting. Mr. Murin suggested the two agencies work together to analyze stream and wetland data, then present data to the group when completed.

Mr. Rhoads asked if this concept would lead to more or less EV wetlands if adopted. The Program's cursory data indicates that there would be less EV wetlands. However, with the addition of the HQ wetland classification, there would be more wetlands receiving special protection than there is under the current wetland regulations.

Ms. Zawisa asked if stocked WTW versus non-stocked WTW would play a factor in the classification. Mr. Johnston echoed that perhaps this "line" has already been drawn between which WTW should be held to a higher protection based on PFBC management. Mr. Royer disagreed stating that stocking WTW can improve a stream over time.

DEP and PFBC agreed to meet on the issue prior to the May workgroup meeting.

Points of clarification**Private drinking water supply (§ 105.17(1)(iv))**

The Program clarified for the group that this is not a proposed change and is included in the existing Chapter 105 Regulations. A member asked if this would include private water wells? Mr. Goerman responded that it would be a rare situation, but is possible if the wetland contributes to maintaining quality and quantity of water. Mr. Roads mentioned a tie to Chapter 109.

Floodplain of streams tributary thereto

The Program mentioned that tributary language may be removed from regulatory language as stream segments are classified, not entire reaches. Mr. Arway reminded the group that WTW used to be segment based, but were changed to be more consistent with Chapter 105. Mr. Goerman mentions that this conceptual change would make assessment more reach based and not assessing entire watersheds.

Other Business (if time allows)

No other business discussed.

Next Meeting

The workgroup decided not to select a date for the next meeting. Ms. Reisinger will obtain available dates for Room 105 in May 2008 and solicit the workgroup members. Ms. Strong suggested the week of May 12, 2008. The group will continue discussing wetland classification concepts with focus on vegetative communities, wetland assessment, tributaries, and Wild Trout Water data. If the EPA Mitigation Rule has been finalized, Ms. Zawisa suggested a member could provide the group with a summary presentation.

Adjourn

The Water Resources Advisory Committee Chapter 105 Ad-hoc Workgroup meeting adjourned at 2:43pm.