

WATER RESOURCES ADVISORY COMMITTEE
Chapter 105 Adhoc Workgroup
July 8, 2008

9:00am – 2:00pm
Room 105, RCSOB
Harrisburg, PA

MEETING MINUTES

1. Call to Order and Attendance – Steve Rhoads

- Members
 - Tom Shervinskie, PA Fish and Boat Commission (PFBC)
 - Rob Brooks, PA State University, Cooperative Wetlands Center (CWC)
 - Grant Gulibon, PA Builders Association (PBA)
 - Sue Germanio, PA Coal Association (PCA)
 - Steve Rhoads, PA Oil and Gas Association (POGAM)
 - Nathan Havens, PA Game Commission (PGC)
 - Cindy Tibbott, US Fish and Wildlife Service (USFWS)
 - Matt Royer, Chesapeake Bay Foundation (CBF)
 - Robin Mann, Sierra Club (Sierra)
 - Toni Zawisa, PA Department of Transportation (PennDOT)
- Audience
 - David Spotts, PFBC
 - Mike Bialousz, PFBC
 - Allison Miles, CBF
 - John Gible, US Army Corps of Engineers (USACOE)
 - Brad Gochnauer, Vortex Environmental (Vortex)
 - Ken Murin, PA Department of Environmental Protection (DEP)
 - David Goerman, DEP
 - Shelby Reisinger, DEP
 - Aaron Ward, DEP
 - Duke Adams, DEP
 - Jack Kraeuter, DEP

2. Review and Approval of Minutes – Steve Rhoads

- *February and May meeting minutes still pending.*
- *Final January meeting minutes attached to agenda email, sent by Shelby Reisinger on Tuesday, July 1, 2008.*
 - Group accepted minutes.

3. Wetland Assessment – DEP Staff

- *Follow up from the previous day's field trip.*
 - Group met at SCRO
 - Attendance sheet attached to email distributing these minutes.
 - Reviewed protocol for roughly an hour
 - Visited 3 sites for group to use protocol
 - 1 in East Pennsboro, Cumberland County

- 2 outside of Mt. Holly Springs, Cumberland County
 - Ken Murin gave a quick review of how the Program anticipates using the protocol.
 - Settle litigation
 - Assess wetland condition (similar to 305b report for other waters)
 - Level 1 is a GIS landscape assessment (desktop)
 - Level 2 is a rapid assessment looking at the wetland and its surrounding conditions, invasive species etc (focus of field trip)
 - Level 3 is the detailed assessment
 - Original intent was to develop a protocol that would satisfy 305b reporting for wetlands, but would like to implement it in regulatory and non-regulatory wetland aspects.
- *Open discussion on concept of including wetland assessment protocol in wetland classification.*
 - Steve Rhoads asked if the concept is to use for regulatory wetland classification.
 - Ken Murin responded positively, though still conceptual.
 - Robin Mann asked how this assessment works toward the development of wetland water quality standards? Dave Goerman responded that Level 3 data could be used to develop Tiered Aquatic Life Uses (TALUs). Dave continued explaining that the Program is at a decision making point and needs to decide how the Program wants to group wetlands (example, hydrogeomorphic classification, physiographic provinces, land cover domain) for the TALUs. The Program will continue working with the CWC and the other members of the Mid-Atlantic Wetlands Workgroup (MAWWG).
 - Steve Rhoads asked, and Ken Murin confirmed, that the Program is looking to use the assessment protocol to inform wetland permit decision-making.
 - Including a way to evaluate the success of mitigation wetlands.
 - Dave Goerman mentioned that the wetlands program will probably not be assessing all wetlands in the Commonwealth (as other water programs have done), but will be using a probability-based survey (other water programs are beginning to do this as well).
 - Dave Goerman reminded the group that all wetlands in PA will continue to be protected at the current level. A low condition assessment score cannot lower the level of protection.
 - Rob Brooks clarified that even, for example, degraded wetland systems in urban areas are an important aquatic resource and will not be a "write-off". Dave echoed that some states have gone that direction and that is not our plan, all wetlands will continue to be protected to at least the current level.
 - Nathan Havens asked if the concept uses the Level 2 assessment to classify wetlands as HQ or EV. Dave responded yes, but if someone would like to challenge the classification, they can do a Level 3 assessment.
 - Program staff clarified that the Level 2 assessment is an assessment of wetland condition and Level 3 is a functional assessment. Rob Brooks added that through the HGM classification (which is done at Level 2) there is a suite of functions assumed.
 - Laurel Mueller (a PBA representative) asked if the protocol would be used on wetlands to be impacted and/or wetlands to be avoided. Dave responded that it's anticipated that any wetlands within the project boundary would be assessed. Ken added that wetlands that could receive secondary impacts from the project should be assessed as well.
 - Ken Murin also clarified that during the field view the day before the group was performing the assessment based on its current use (ambient wetland condition assessment), many people had questions regarding the "point" in the wetland. The "point" would not be used during assessments performed for permit related activities. The entire wetland would be assessed.

- Dave Goerman further clarified that the current protocol is for the ambient wetland condition assessment, not for use in the regulatory sense or for permitting decisions. The protocol would be adjusted for use in those contexts.
- Some group members expressed concerns for using protocol as tool for classification (CBF, PGC, PennDOT, PFBC, others?).
 - The large training effort required is one of the reasons for concern.
- Ken Murin mentioned that the entire protocol would not be written into Chapter 105, but reference would be made in regulation and then the protocol would be implemented through guidance.
- Steve Rhoads attempted to summarize the group's thoughts on Level 2 as a tool serving important use for 305(b) reporting, possibly in the Chapter 105 permit decision-making process (i.e. as part of the Environment Assessment (EA)), but not for establishing EV/HQ/other wetland classifications.
 - Classification use could be re-evaluated upon further review of the Level 3 process.
- Tom Shervinskie asked if the Department has a time frame for use of the protocol within regulations. Ken Murin replied that the Program is still very early in the regulation revision process. We are currently working with this group on concepts before beginning to draft language. Once language is drafted, it usually takes about two (2) years. Dave Goerman added that we are currently able to start using the protocol under the current regulations in the EA.
- Rob Brooks to provide Shelby Reisinger the Juniata paper and Level 3 protocol, Shelby to email to group.
 - Shelby emailed documents to work group Thursday, July 10, 2008.
- Steve Rhoads again summarized that the protocol seems to be a good tool for Chapter 105 permitting but at this point may not be appropriate for setting wetland classifications.

4. Potential Affects (Data) – PFBC Staff

- *Data presentation on the effect proposed concepts could potentially have on wetland EV classification using wild trout criteria.*
 - Tom Shervinskie gave a brief background summarizing previous meeting discussions on how changing the linkage between wetlands and wild trout waters could potentially affect the level of wetland protection.
 - Mike Bialousz, PFBC GIS Coordinator, presentation
 - Data used:
 - Base GIS layer of Wild Trout Waters (WTW), Chapter 93 HQ streams, Chapter 93 EV streams and then overlaid appropriate NWI (just PEM, PSS, and PFO) and Hydric Soils layers (including soils with hydric inclusions).
 - All three stream types were also buffered with 100, 200, and 300 feet on either side.
 - Shelby Reisinger distributed to the group on Wednesday, August 20, 2008.
 - Presentation showed a rather large shift in conceptual protection.
 - Less wetland acres would be EV.
 - More wetland acres would receive special protection (HQ + EV).
 - Current regulations include all WTW, the concept presented aims to refine that approach. Some workgroup members do not agree that the WTW qualifier should be changes as the data presented by FBC shows significant number of streams miles and wetland acres would lose EV protection as a result of the change.
 - Rob Brooks suggests running the Level 1 on the same data set to see comparison.
 - Group appears to agree that there are some issues between Chapter 102, Chapter 105, and Chapter 93. The group is uncertain how to address the issues raised by the PFBC presentation, but believe the Program's classification concept as previously presented needs further refinement.

5. **Wrap Up** – Ken Murin & DEP Staff

- *DEP will collect and document each member's comments on the wetland classification concepts.*
 - See handout "Summary Comments on Wetland Classification Concepts"
 - Ken summarizes that the Program will modify the summary comment sheet based on the field trip and meeting, then redistribute to the group for their comments.
 - Steve also summarized that the group generally wants more information and wants draft language.

6. **Other Business** – Ken Murin

- *If needed*
 - None needed

7. **Next Meeting**

- *The next meeting will return focus to wetland compensation, including:*
 - *Compensation concepts presented at January 9, 2008 meeting.*
 - *EPA/ACOE Mitigation Rule in Pennsylvania.*
 - The next meeting will be Monday, September 22 in Room 105 of the RCSOB

8. **Adjourn**

- Meeting adjourned at 12:18pm