

**THE DRAFT SUMMARY OF THE MEETING OF THE
REGIONAL ENVIRONMENTAL COMMITTEE
May 1, 2014**

1. Summary of the April 3, 2014 Meeting of the Hampton Roads Regional Environmental Committee

The Summary of the April 3, 2014 Meeting of the Hampton Roads Regional Environmental Committee was approved as distributed.

2. Public Comments

There were no public comments.

3. Briefing on the Clean Water Act Definition of the “Waters of the U.S.”

Mr. David Mergen, Chesapeake, gave a presentation to the Committee on proposed changes to the definition of “waters of the United States.” The proposed changes stem from a series of recent Supreme Court cases, specifically *Solid Waste Agency of Northern Cook County (SWANCC) v. U.S. Army Corps of Engineers* (2001) and *Rapanos v. United States* (2006). The SWANCC decision overturned the use of the “migratory bird rule” by the Corps and EPA to assert control over some isolated waters, while the *Rapanos* decision defined “waters of the United States” to have (in part) relative permanent flow; waters with a “significant nexus” to “navigable waters” were also considered to be covered by the Clean Water Act. In response to these rulings, the U.S. Environmental Protection Agency proposed a change to the definition of “waters of the United States” in 2014.

One of the biggest changes is a shift from “other wetlands” to “other waters,” which appears to be driven by the significant nexus test established by *Rapanos*. “Significant nexus” is now defined and appears to include more categories of waters; however, some categories of waters are explicitly excluded from being considered “waters of the U.S.” The definition of tributaries is a major component of the proposal.

Ms. Ellen Roberts, Poquoson, asked about the definition of floodplain in the proposed rule. The definition of floodplain within the rule is not the same as FEMA’s definition.

There appear to be potential issues with prior converted cropland. Jurisdiction under the Clean Water Act over prior converted cropland is determined by EPA.

A committee member proposed adding purpose built stormwater management ponds and other best management practices to the list of exempt artificial lakes or ponds.

Mr. Kevin DuBois, Norfolk, asked if the list of exemptions was set in stone and if sea level rise and other changes in future conditions were accounted for in the proposed rule. There was no discussion of sea level rise in the rule.

Concerning ditches, “uplands” are not defined in the rule. The proposed rule uses the phrase “less than intermittent flow,” while Chesapeake supports using “less than perennial flow.”

Ms. Barbara Brumbaugh, Chesapeake, stated that ditches with perennial flow are considered tributaries.

Jurisdictional ditches are defined in the proposed rule, and include connected BMPs and “treatment trains.”

The proposed rule could have significant impacts on local government. There is the potential for inconsistent application of the rules since they rely on “best professional judgment.”

Comments on the proposed rule are due to EPA by July 21, 2014. Ms. Jenny Tribo, HRPDC, asked the Committee if HRPDC staff should compile regional comments to submit to EPA on behalf of the Commission. She proposed to present draft comments at the June Committee and final comments at the July Committee. The final comments would then be presented to the Commission at its meeting on July 17 for a final vote of approval. She asked that Committee members submit initial comments to her by May 15, 2014.

Ms. Roberts suggested that someone from the U.S. Army Corps of Engineers be invited to speak to the Committee about how the proposed change will affect their work. Ms. Tribo stated she would try to get someone for the June REC meeting.

4. Living Shorelines BMP Panel Report

Mr. Kevin DuBois, Norfolk, briefed the Committee on recommendations of the expert panel on shoreline management for the Chesapeake Bay Program. The panel was needed to update pollutant removal rates based on the best available science. The panel consisted of representatives from local governments, state and federal agencies, the private sector, and academic institutions. The BMP expert panel is the first step in the process. The recommendations will go next to the urban stormwater workgroup, then to the watershed technical group, and then to the water quality goal implementation team. The expert panel had three charges:

- 1) Evaluate how shoreline practices are modeled, review literature, develop pollutant removal, and reporting units
- 2) Provide a definition, geographic boundary, and qualifying conditions
- 3) Recommend reporting, tracking, and verification procedures

Four protocols were developed:

- 1) Prevent erosion and associated sediment and nutrients from entering the Bay (Sediment Prevention)
- 2) Promote denitrification and remove nitrogen (Denitrification)

- 3) Promote accretion and sedimentation that remove sediment and phosphorus (Sedimentation)
- 4) Promote vegetative uptake and associated nutrient removal (Marsh Redfield Ratio)

Each protocol has a formula for determining the amount of credit achieved for the BMP.

The expert panel definition of shoreline management includes all tidal shoreline practices that prevent and/or reduce tidal sediments to the Bay, including both non-structural practices, such as living shorelines, and structural practices, such as bulkheads. The panel also identified several basic qualifying conditions that must be met to get credit. Practices must also be accounted for, verified, and tracked for local governments to get credit. To help ensure accountability, the duration of credit for shoreline management is only five years; BMPs must be re-certified after five years.

Due to concerns about overuse of shoreline management as a BMP, a pollutant load reduction cap was established; each state-basin can only use shoreline management to achieve one-third of its required load reductions. Any state-basin exceeding this cap will be assessed on a case by case basis by the Chesapeake Bay Program.

The expert panel was not unanimous in its recommendations. A dissenting document was included that argues against the first protocol. The concerns expressed in the dissenting document are related to tidal wetland losses, the impacts of hardened shorelines on ecological communities, and the benefits of some sediment erosion.

The panel identified several future research and management needs, including narrowing gaps in the scientific knowledge of shoreline management (erosion rates, practice effectiveness, habitat protection and restoration), a proposed timeline for recommendations and updates, and proposed refinements for the Chesapeake Bay Watershed Model.

The next steps are a preliminary presentation to the Watershed Technical Workgroup on May 8, a formal presentation with a vote by the workgroup on June 5, and a future presentation to the Water Quality Goal Implementation Team to get approval for incorporating shoreline management into the Bay model.

Mr. DuBois advised Committee members to look at the executive summary of the report and the dissenting document and then weigh in on the proposal. Mr. DuBois also suggested that Committee members contact Ms. Sadie Drescher and Mr. Bill Stack at the Center for Watershed Protection with questions and support.

HRPDC staff suggests Committee members contact Virginia's representatives on the Watershed Technical Workgroup and Water Quality Goal Implementation Team, Bill Keeling and James Davis Marin, with their support for the proposal.

Mr. Bill Johnston, Virginia Beach, stated that restoring all shorelines is not realistic. Mr. DuBois agreed, stating that some shoreline stabilization will happen anyway, and that the CBP should be incentivizing living shorelines as opposed to hardened shorelines.

Mr. Tim Hare, CH2MHill, asked about limiting the BMP to urban areas since it is an “urban” workgroup. There was some discussion of this, but “urban” was removed from the workgroup’s name. Also, the original proposal was limited to erosion control but was changed to shoreline management.

Mr. Justin Shafer, Norfolk, asked about credit for past projects. Mr. DuBois stated that the proposal allows for projects constructed in the last five years if they conform to the new standards.

Mr. Weston Young, Hampton, suggested that the region should fight the cap since other BMPs do not work well here due to the high water table. Since the 1/3 cap is a state-basin cap, one possible tactic could be to get the majority of that allocated to Hampton Roads or coastal areas. Ms. Tribo stated that there have been discussions with Mr. Davis Martin about this.

Mr. DuBois stated that overall the experience on the panel was a good one and encouraged Committee members to volunteer for future panels.

5. Sea Level Rise Update

Mr. Ben McFarlane, HRPDC, updated the Committee on developments related to sea level rise and recurrent flooding. The LIDAR contractor is still fixing minor issues and will hopefully deliver the data to VGIN by May 15. HRPDC staff briefed the CAOs in April on the Special Committee on Recurrent Flooding and Sea Level Rise; the CAOs recommended keeping the new committee as only local staff for now and letting the committee identify additional stakeholders to involve. To date, appointees have been received from eleven of sixteen HRPDC localities.

6. Coastal Zone Program Update

Mr. McFarlane updated the Committee on developments related to the Virginia Coastal Zone Management Program. There are two grant opportunities available to Coastal PDCs for FY15: Section 309 grants and PDC Competitive grants. For Section 309 grants, approximately \$138,000 is available, and no match is required. These proposals will build on work done by MPPDC and HRPDC from 2011 to 2014. For the competitive grants, approximately \$140,000 is available, and some match will be required (previous years required between \$1:\$1 and \$1:\$3). Eligible topics include water quality, coastal resiliency, working waterfronts, habitat restoration, and public access. There will likely be limitations on the number of projects each PDC can apply for and the amount of money each PDC can receive.

In the past, the process for developing and selecting proposals for submission to CZM was staff-driven and ad hoc. HRPDC staff is proposing to engage the Committee more in this process. Mr. McFarlane proposed to solicit proposals from REC members and HRPDC staff, with concepts due by May 27. The REC will then discuss and select proposals, based on CZM-provided guidance, at the June REC meeting.

7. Discussion on forming subcommittees

Ms. Tribo stated that the vote on establishing subcommittees would be postponed until the June REC meeting. The presentation on the shoreline management expert panel is an example of the sort of material that would ideally be discussed at subcommittee meetings. A technical subcommittee would also allow for more technical staff to be involved in the process. Ms. Tribo stated that she will send out a more detailed proposal for the June meeting.

8. Status Reports

Ms. Julia Hillegass, HRPDC, announced that the Hampton Roads Watershed Roundtable will meet on May 19 and that a stakeholders meeting for HRPDC's Native Plants grant will be held on May 28.

Ms. Erin Rountree, Suffolk, asked about testing for e-permitting. Ms. Brumbaugh stated that testing for e-permitting would begin next Monday, and she would bring it up at the next stormwater workgroup meeting. E-permitting training for Tidewater will be rescheduled.

9. Other Matters

The next meeting of the Regional Environmental Committee is scheduled for June 5, 2014 at the HRPDC office in Chesapeake, Virginia. Materials will be sent in advance for review.