

# **Nutrient Scientific Advisory Board Meeting #45 Minutes**

**Friday, December 2nd, 2016**

**TJCOG- 4307 Emperor Blvd, Suite 110, Durham, NC 27703**

**9:30 am -12:00 pm**

## **Attendees**

Members: Josh Johnson, Andy McDaniel, Brian Jacobson, Sally Hoyt, Forrest Westall, Sandi Wilbur, Allison Weakley, Eric Kulz, Michelle Woolfolk, David Phlegar, Michael Layne, Sarah Waickowski.

Non-Members: Andy Sachs (facilitator), John Huisman, Patrick Beggs, Trish D'Arconte, Jim Hawhee, Alix Matos, Teresa Andrews, Haywood Phthisic; Sushama Pradham, Brian Burkhardt (Chatham), Joey Hester; Fred Royal, Jamie Smedsmo, Robert Patterson, Dianna Hales.

## **Agenda Topics**

- Draft Buffer Restoration in Developed Areas Credit Document
- Draft Remediating Illicit Discharges Credit Document

## **Materials**

- Meeting Plan
- Draft Buffer Restoration in Developed Areas Credit Document
- Draft Remediating Illicit Discharges Credit Document

## **General Updates**

September meeting notes were sent out just a few days before the meeting. The board decided to hold off on approving the September meeting notes until the next meeting in order to allow more time for their review.

## **Draft Buffer Restoration in Developed Areas Credit Document**

John Huisman (DWR) presented an overview of the Buffer Restoration Credit Document. The practice document establishes nutrient reduction credit for buffer restoration in developed areas and includes design criteria and recommendations, implementation specifications, and nutrient credit assignments. The initial draft of the document was developed by the UNRBA through their contract with CARDNO but given the regulatory implications with other buffer programs DWR has made significant revisions to the proposed credit methodology and draft document. The practice allows for crediting buffer restoration projects in developed areas along perennial, intermittent and ephemeral streams. Credit would be allowed for buffers between 20' and 200'. Design criteria are drawn from existing buffer protection and mitigation requirements with additional input from literature and subject matter experts. Credit is calculated using JSNAT to calculate site loading and applying a fixed % reduction efficiency based on buffer width. The percent reduction efficiencies are consistent with the current crediting approach used in the NLEW tool for agriculture accounting. Nutrient credit is discounted when restoration is done on incised streams or ephemeral channels. A diffused flow level spreader option is provided. The long-term management requirements – conservation easements, annual monitoring and inspections, were also reviewed.

## Questions & Comments

- A board member asked for clarification on how the credits proposed in the document compare to the current credit DMS and banks get. John explained that the crediting for DMS and private banks is higher, but they are based on the assumption that the restoration projects are occurring on agriculture land. This credit document establishes credit for restoration on developed areas. This approach is not intended to replace the current accounting for DMS and private banks.
- As a follow-up a board member pointed out that DMS has done restoration projects on urban lands. This point was noted and DWR will look into verifying where such projects took place and what credit was provided.
- Comment was made by a board member that the document does not define what an ephemeral stream is and additional clarification should be included. Concern was raised that it is not clear what would be excluded from consideration. A tighter definition of ephemeral stream is needed to ensure that projects are not being done on channels that would not produce the benefit credited.
- Question was asked by a board member regarding the requirement for a permanent conservation easement. Securing an easement on certain projects may be challenging. Are there other types of land restrictions that can be used as alternatives? Also is it possible that the easement or land restriction not be permanent in nature. Instead have credit based off 5-year inspection / renewal. Provide credit for as long as the restoration project is protected and functioning, but allow entities the flexibility of not permanently tying up the land. Suggestion was made that DWR should follow-up with DMS to discuss alternatives to conservation easements that they currently allow.
- A board member shared that the contiguous forest requirement is not consistent with the existing buffer mitigation requirements. It will be very challenging to find buffer restoration sites in developed areas that don't include sewer easements. DWR will look into current requirements addressing contiguous forest.
- An overall concern expressed by several board members was that this practice document appears to set a "high hurdle" for local governments to implement these types of restoration projects, but provides less credit than if done by DMS or private banks. Several shared that they felt that this practice should have looser requirements or if the current requirements remain in place that the practice be given the same amount of credit as DMS and private bank restoration projects. DWR noted this concern and will look into ways to add flexibility to the practice requirements.

## **Draft Remedying Illicit Discharges Credit Document**

Alix from Matos from Cardno, contractor for the Upper Neuse River Basin Association, presented an overview of the Draft Remedying Illicit Discharges Credit Document that is scheduled to be submitted to DEQ to go out for public comment in January 2017. The credit document provides nutrient reduction credits for remedying illicit discharges towards compliance with Existing Development Rules. The practice includes the identification, remediation, and prevention of any discharge to a surface water body or stormwater system that is not composed entirely of stormwater. Most common sources of discharge are gray water discharges or industrial and commercial pollutant discharges. The credit for this practice is based on the reduction or elimination of nutrient loading relative to the baseline period requires programs to prevent future discharges. An overview of the types of illicit discharges, credit eligibility requirements, data required, credit method, and example calculations was provided.

### Question & Comments

- A board stated that they want to address exfiltration but don't know how to go about doing it. Will the credit document explain ways to identify leakage or provide references to studies with leakage rates? Alix Matos explained that they document is not prescriptive when it comes to exfiltration and leaves methodology for identifying leakage and determining rates up to the local government engineers implementing the practice. The local government can choose how best to approach those issues.
  
- A board member pointed out that most local governments have system-wide collection programs that include details and plans to replace sewer lines. Local governments use different methods to estimate what needs to be replaced and when. To use this practice for credit local government engineers will figure out the best way that works for them in their specific situations and provide their own justifications for the methodology they propose to use.
  
- Question was asked by a board member concerning the prerequisites and requirements outlined on page 2 of the document. Concern was raised about how a local government would justify that the illicit discharge was likely present during the baseline period for the applicable nutrient strategy – information that is needed for the remedy to be eligible for credit. The concern here was the impression that the document seems to require the owner of the discharge to admit fault. Alix clarified that this requirement is not intended to assign blame, but merely a needed piece of information for local governments to justify that the discharge was likely a problem during the baseline. Several board members who work for local governments pointed out that this type of information would be available through interactions with homeowners and business owners as they implement their illicit discharge detection ordinances so establishing when the illicit discharge took place should not present a problem.

- A board member asked for clarification about the requirement to have a program to prevent future loads. Would a facility wide pollution prevention program qualify? DWR explained that the credit document does allow for existing regulatory frameworks (such as ordinances and MS4 NPDES permit requirements) that prevent illicit dischargers to satisfy this requirement, but if there is no existing regulatory framework in place a specific program will need to be developed. The program would need to identify likely dischargers or types of discharge sources and provide outreach specific to the individual sources that provides guidelines for reducing current and preventing future discharges.
  
- Next steps:. NSAB to provide comments on the draft document to Cardno by December 21st. The document will then be presented to the Path Forward Committee of the UNRBA for approval to be submitted to DEQ in January 2017 so it can go out for public comment.

### **Wrap Up**

No additional discussion following the two presentations. Meeting adjourned.

### **Future Meeting Dates**

- Unless specifically rescheduled, the first Friday of each month, 9:30 - 12:00 at TJCOG.