

FINAL Meeting Minutes
Rivanna River Basin Commission
December 17, 2009, 2 – 3:30pm
Albemarle County Office Building - 5th Street Extended

Attendance

Rivanna River Basin Commission Members

Present:

Mr. John Martin, Albemarle County Citizen
Ms. Roberta Savage, Greene County Citizen
Ms. Sally Thomas, Albemarle County Board of Supervisors
Mr. Andy Wilson, Fluvanna County Citizen

Others present:

Ms. Tamara Ambler, RWSA
Mr. Rich Batiuk, EPA, Chesapeake Bay Program, Associate Director for Science
Ms. Rose Brown, RRBC Recording Secretary
Ms. Kristin Carter, UVA
Mr. Bob Koroncai, EPA, Region III
Mr. Tom Damm, Office of Program Support, Water Protection Division, U.S. EPA, Region III
Dan Frisbee, City of Charlottesville
Mr. James Fulcher, citizen
Mr. Mark Graham, Albemarle County
Mr. Greg Harper, Albemarle County
Ms. Ann Malleck, Albemarle County BOS
Ms. Jerry McCormick-Ray, citizen
Ms. Leslie Middleton, RRBC Executive Director
Ms. Liz Palmer, ACSA
Ms. Amie Howell, State and Congressional Liaison, EPA, Region III
Ms. Kristel Riddervold, City of Charlottesville
Mr. Jeff Sitler, UVA
Mr. Leon Szeptycki, RCS
Ms. Jess Wenger, UVA
Ms. Erin Yancey, TJPDC

1. Call to order

Noting that there were more than three Rivanna River Basin Commissioners present, RRBC Vice Chair, Ms. Savage, called the RRBC meeting to order at 2:10pm. She noted, however, that this was to be an informational meeting only and that no business of the RRBC was conducted during this meeting.

Ms. Thomas gave a short summary of the meeting earlier in the day in Richmond with staff from the Environmental Protection Agency (EPA), Virginia DEQ and Virginia DCR, the first meeting

of the Secretary of Natural Resources appointed Stakeholders Advisory Group (SAG) to the Virginia TMDL process. During the meeting, EPA staff answered questions and explained how they will proceed with the Chesapeake Bay TMDL (Total Maximum Daily Load). By June 2010, Virginia will have to make a preliminary allocation how point and non-point source loads will be reduced to meet nutrient and sediment reductions to achieve Bay water quality. By the end of August 2010, EPA expects to publish the draft TMDL, followed by a 60-day comment period. By the end of 2010, there will be a completed TMDL for the Chesapeake Bay. The EPA will shortly issue a letter to the states that will identify potential consequences for states that do not comply. The EPA wants meaningful interchanges with local government, but that is not officially scheduled until Phase Two (2011).

Ms. Middleton added that the EPA has not yet determined some details of this TMDL process. This meeting today is an opportunity for staff and elected officials from this region to talk with EPA staff. Bob Koroncai (EPA Region III, Philadelphia) and Richard Batiuk (EPA Chesapeake Bay Program, Annapolis) have toured the watershed over the last six weeks, discussing the process with citizens and localities. Ms. Middleton and EPA staff presumes that the participants of this meeting have some familiarity with EPA's 37-page TMDL document dated November 4, 2009. If meeting participants need any clarification during the discussion, EPA staff can provide more of an overview.

2. Introductions

Introductions were made.

3. Questions and Answers/Discussion

Ms. Savage: Could you please give a short summary of the TMDL process.

Mr. Koroncai: The Chesapeake Bay is a unique opportunity to do a different kind of TMDL. There is a lot of science to inform this TMDL, and there is also a commitment by the EPA, states and localities to follow through and ensure implementation of the TMDL. The EPA has developed a performance and accountability system, unlike other TMDLs. The Chesapeake Bay TMDL will establish how loads (of nutrients and sediment) are allocated in order to achieve adequate water quality in the Bay, but the watershed implementation plans are also essential. Each Bay state, including Virginia, must address how loads will be distributed across sectors, such as urban, agricultural, etc.; how localities will ensure that these goals are delivered; the current capacity of localities to deal with managing these loads; what changes are necessary to fulfill these commitments; how localities will achieve the necessary capacity; when and how much funding and other resources will be needed; and what legislation or other programs will be created to ensure that commitments are fulfilled. Eventually, sub-allocations down to county or watershed level will be made.

After the TMDL is completed, there will be a 15-year implementation timeline (to 2025), with implementation goals and reevaluation at 2-year intervals. Each state will have to outline how it will move from the current conditions to implementation. Governors will have to report to the EPA every 2 years. The public will hold Governors accountable, and there will be consequences from the EPA if goals are not met. Within a month, the EPA will send a letter listing the

possible consequences of failing to meet the 2-year commitments. Some of the consequences listed in the letter may include: the EPA could tighten requirements on point sources. For example, wastewater loads could be reduced. The EPA could require that additional sources be considered. For example, the EPA might lower CAFO thresholds, forcing permit requirements on smaller animal operations than present requirements. The EPA could require that stormwater regulations be required for more urban and suburban areas. The EPA could limit any new loads caused by new developments. The EPA could make grant reductions.

Ms. Middleton: How will these filter down to local government?

Mr. Batiuk: Localities are urged to take advantage of the scale of this process. Stormwater permittees (MS4s), Conservation Districts, wastewater facilities, and local organizations should all be involved in this process. Each locality has the opportunity to help the state to create a plan, instead of waiting for the state to dictate what localities should do. An accountability system can be created locally. Participants must find a way to raise clean water above the other demands on local and state budgets. The EPA is seeking localities that wish to begin the process early, even though the locality role does not technically begin until Phase 2 of the process.

Mr. Koroncai: There will be some additional state and federal resources. Localities that are helping to develop the implementation plan can help to shape the list of priorities.

Ms. Savage: There are a lot of experienced people on the EPA team, and this TMDL does present an opportunity for localities to be involved. There have not been many severe consequences for violators of TMDLs in the past. How serious will the EPA really be?

Mr. Graham: The county has a lot of experience working with the development community. Most developers do not know about the TMDL process. When developers learned of the recent [Virginia] stormwater regulations, they became heavily involved in the comment process. But no developers or business people are present at this meeting. The concern is that developers and businesses must be involved in watershed implementation plans, but that they have not been well enough engaged.

Mr. Batiuk: The EPA has had discussions with farmers, homeowners associations, homebuilders, and other stakeholders. We agree that these sectors must be more involved. With regards to consequences, the EPA is attempting to improve accountability. The EPA's list of consequences requires that EPA deliver the consequences if a state does not fulfill its commitment.

Mr. Koroncai: The EPA does not want to make false threats. The EPA has objected to many permits, but does not often take over a permit. If the EPA were to revoke a permit in the Bay watershed as part of this TMDL process, this would signal how serious the EPA is about this TMDL. However, taking away a permit is not on the list of consequences, because the EPA does not want to do this. It remains to be seen what the EPA will do if a state does not deliver.

Ms. Thomas: States will be given a load limit. They will decide how that is divided between point and non-point sources, and how to distribute these loads between sectors. Then the

distribution will come down to individual sections of streams. If a locality is interested now, how can that locality help the state to make decisions about individual streams?

Mr. Koroncai: The James River watershed is unique with respect to the Bay. There are other Virginia watersheds that have a larger impact on the Bay and will have to reduce more loads. However, scientists have noted a significant chlorophyll A problem in the James River. James River Watershed allocations may have to be made tighter for this reason. State officials would like to keep point sources at the same permitted level, but this may not be possible; they may have to be lowered. The state will not make the decisions alone; it will consult the 60-person SAG to help make these decisions.

Ms. Thomas: What will happen after the state makes decisions about allocations?

Ms. Riddervold: The City of Charlottesville, Albemarle County, UVA and PVCC all have MS4 permits. The City of Charlottesville recently undertook a TMDL for Moores Creek. Some sectors were under-represented during the TMDL because they were less informed of the process and the consequences. This will be amplified at the larger scale of the Bay TMDL.

Ms. Ambler: The Rivanna Water and Sewer Authority is in the middle of a waste treatment plant upgrade. It is disconcerting to learn that if the state is unable to make its non-point source commitments, then point source requirements could be impacted.

Mr. Sitler: UVA has a small regional permit (from DCR) for non-point source discharge allocations into Meadow Creek and the Rivanna River. UVA is still unclear about how to manage those. This new TMDL will add a new burden.

Mr. Batiuk: With regards to Ms. Thomas's question, the upper James River will have a single allocation. The second phase of the TMDL will involve the level of counties, conservation districts, PDCs, small watersheds, or a combination of all of these.

Mr. Koroncai: The first phase will be at the state level. There will be decisions that will affect localities, such as whether point sources should be reduced, or whether BMP requirements should be changed. Representatives from localities should attend these meetings.

Ms. Thomas: One possibility is that the Rivanna River would be given an allocation and told what water quality must be achieved at the mouth of the Rivanna River where it enters the James River. Then localities in the Rivanna watershed could delegate certain loads to water treatment plants, developers, farmers, etc. The sector decision should not be made at the state level.

Mr. Koroncai: This is a legitimate model for how the TMDL can be carried out.

Ms. Thomas: If landowners can be convinced to install riparian buffers, or other BMPs, what is the exact impact of those BMPs? Some science points to the possibility that the effectiveness of BMPs have been overestimated.

Mr. Batiuk: The effectiveness of BMPs depends on upland land use, makeup of soil, size of

buffer, location of buffer, and other variables. The science is not perfect. There are many conservation practices with different efficiencies, depending on location. Many universities have done studies to examine BMPs and determine the efficiency of each. The science is evolving.

Ms. Malleck: Will there be a reference template that will help localities to choose the most efficient BMPs?

Mr. Batiuk: Yes, the EPA could provide this. The combination of effective BMPs in this basin might be different than in others. If locality representatives can give the EPA a list of certain types of BMPs that are practiced here, the EPA can help show the efficiency of each. By 2025, states must have all practices in place to meet the TMDL. By 2017, each state must be 60% complete in implementing their plans. States should not expect to be able to simply ramp up at the end of the period (right before 2025). There must be contingency plans in place for problems such as natural disasters and timeline changes.

Mr. Martin: Citizens are concerned about water rates. Upgrades to the Moores Creek water treatment plant have increased rates. The new water supply plan will likely increase the rates as well. Citizens are starting to complain about the cost of water, because they do not make the connection between the desire for clean water and the cost of providing clean water. How can localities help people to understand this?

Ms. Palmer: Ms. Thomas's suggestions should be taken seriously. The City of Charlottesville has crumbling sewer lines, as well as septic systems in urban areas. Every community has a different list of similar problems. Communities must be given the ability to choose implementation.

Mr. Koroncai: Can the RRBC or another local group deliver a draft plan for implementation in the Rivanna basin by August 1, 2010?

Mr. Martin: A plan could be drafted, but buy-in from the community will not happen by then.

Ms. Palmer: If there are state and/or federal funds to help implement the plan, it will be easier for the public to accept the plan.

Ms. Savage: It is important to educate the community about the costs and benefits of water, and this could be done by comparing the cost of clean water vs other common purchases such as cable TV, sneakers, or school supplies.

Ms. Riddervold: The City of Charlottesville has tried to implement a stormwater utility fee. This makes a lot of theoretical sense, but cannot practically be implemented in this community at this time. It is very difficult to make residents, businesses and non-profits pay for something that they have never paid for before. There is not an understanding of the consequences.

Mr. Batiuk: If many communities begin discussing this simultaneously, Charlottesville will not be alone, and community buy-in will be easier.

Ms. Malleck: It is difficult to make these changes, but possible. Is there state and federal money available, or will localities have to find full funding?

Mr. Batiuk: There are no specific funds at this time. There are hints of possible funds. To improve the chances of having funds allocated, localities and states must get involved in the TMDL process as early as possible.

Mr. Koroncai: Everyone will be affected by the TMDL and by each other's actions. For example, if a state does not deliver on load commitments because of agriculture non-point sources, the EPA will deliver consequences. Point sources could be reduced, and builders could be affected by those consequences.

Mr. Wilson: The Hardware River is in Implementation Plan phase of its TMDL. When the plan is finished, there will not likely be money to implement the plan.

Mr. Koroncai: If the plan is not implemented, will there be the consequences? There is probably no incentive to find the money. If there were consequences, then funds would be probably be found.

Mr. Batiuk: It may help localities to make allocations in certain areas that make the most local impact. For example, a community could make more allocations on phosphorous because that could help fill a local need such as the Hardware River TMDL.

Mr. Wilson: Will cap and trade be allowed for point sources?

Mr. Koroncai: There is a trading program in Virginia, which is legitimate. It is difficult to implement interstate trading. This may be done in specific areas, such as the Potomac watershed.

Mr. Batiuk: Trading should not be used to hold steady [even] with the loads being discharged. It can be used as a tool, but it should help a locality make a reduction, and/or become a revenue source to make local changes.

Mr. Koroncai: In Pennsylvania, there is trading between point and non-point sources. The non-point source buys reductions from the point source. The point source is ultimately liable for reductions. If the non-point source does not deliver, the point source will be penalized. This system works because under contract law, the point source can then sue the non-point source.

Ms. McCormick-Ray: The EPA is measuring nitrogen and phosphorous. There used to be measurements of pathogens. How and when did this change?

Mr. Koroncai: This depends on the locality. Pathogens are part of the TMDL in some areas. Pathogen criteria are very low near oyster production, for example. The major water quality issues for the whole Chesapeake Bay are sediment, nitrogen and phosphorous. BMPs that are installed to reduce sediment, nitrogen and phosphorous also usually reduce other pollutants such as pathogens. With regards to Ms. Thomas's suggestion, this idea should be conveyed to the

SAG. The process for the TMDL is still being determined. Watershed allocations could be made where that makes sense for the localities, such as in the Rivanna watershed. Other areas of the state could be handled in other ways.

Ms. Middleton: The RRBC is working hard and gathering data. The RRBC and the local community want to be involved in the process as early as possible. Will there be funds to support the TMDL process and will some of the funding go toward local pilot programs?

Mr. Batiuk: Yes, some localities will be supported in their early starts.

4. Adjournment

Ms. Savage noted adjourned the RRBC meeting at 3:36 p.m.