

Virginia Pollution Abatement Regulation and General Permit for Poultry Waste
 Management

Technical Advisory Committee Meeting

July 18, 2019 - 9:30 A.M.

Virginia Farm Bureau Federation Office – Auditorium

Meeting Notes from Technical Advisory Committee Meeting

Meeting Attendees

TAC Members	Representing
Tony Banks	Virginia Farm Bureau
Hobey Bauhan	Virginia Poultry Federation
Doug Baxter	Tyson Foods, Inc.
Betsy Bowles	Department of Environmental Quality
Kevin Dunn	Peter Francisco SWCD/ Poultry Grower
Jacki Easter	Poultry Grower/ Poultry Waste Broker
Tim Higgs (for Darrell Marshall) (technical support)	Virginia Department of Agriculture and Consumer Services
Adrienne Kotula	Chesapeake Bay Commission
Seth Mullins (technical support)	Department of Conservation and Recreation
Phillip Musegaas (alternate for Mark Frondorf)	Shenandoah Riverkeeper/ Potomac Riverkeeper Network
Mark Patterson (alternate for Steve Levitsky)	Perdue Foods
James E. Riddell	Poultry Waste End-User/ Agronomist
Kyle Shreve	Virginia Agribusiness Council
Pete Watson	Poultry Grower
Joe Wood	Chesapeake Bay Foundation

Others Present	Representing
Sarah Vogelsong	VA Mercury
Michelle Ashworth	Aqua Law
Hannah Brubach	Environmental Action Center

DEQ Staff Present
Drew Hammond
Craig Nicol
Neil Zahradka

Absent TAC Members

TAC Members	Representing
Holly Porter	Delmarva Poultry Industry, Inc.
Michael Thompson	Poultry Grower

Welcome and Introductions

The meeting was opened at 9:37 AM by Betsy Bowles, the Animal Feeding Operations Program Coordinator for the State and Technical Advisory Committee Lead. Betsy began the meeting by welcoming the group and thanking the committee members for devoting the time to participating in this process.

Betsy introduced Tony Banks with Farm Bureau and thanked Tony for allowing the Committee to use the Farm Bureau facilities and for providing refreshments. Tony Banks provided instructions for meeting space logistics and emergency procedures. Betsy Bowles introduced the DEQ staff and asked the TAC members and members of the public to introduce themselves.

Betsy reviewed the TAC meeting protocols.

Final Call for Comments from TAC Members on (3/25) Meeting Notes

Betsy asked the group if anyone had any comments or revisions on the meeting notes that she had distributed by email prior to today's meeting. No one from the group offered comments or edits.

Watershed Implementation Plan, Credit in the Bay model, Verification of Best Management Practices Presentation

James Davis-Martin delivered a powerpoint presentation related to the Chesapeake Bay WIP. The presentation is attached to these, comments below are specific to the slides from the presentation. A question was raised regarding the methodology used by the CB Program to forecast the 2025 poultry populations. James explained that the Bay Program uses historical trends to forecast, and that improvements to the actual forecasts could be improved by additional data from industry. James explained that the methodology emphasizes more recent census data, but the numbers are not constrained by current poultry industry processing capacity.

Slide 4: represented the top six poultry producing counties. The group discussed the importance of knowing whether litter that is land applied within counties that are not entirely inside or outside the Bay watershed, is actually applied in or out of the watershed, because the Bay model splits the amount proportionally based on land area, not physical locations of the farms or land application area. A request was made to provide the actual Bay model numbers available in each county rather than only a percentage.

Slide 5: James noted that there are opportunities to work with the poultry industry to refine the accounting of Best Management Practices (BMPs) that are implemented voluntarily. James explained that the majority of BMP implementation rates are based on cost-share program data. A question was raised regarding methodologies to capture voluntary practices, including the potential for DEQ inspections to capture data. James indicated DEQ was interested in additional opportunities to capture BMP implementation and verify implementation. The group discussed the challenges associated with verifying practice implementation. James asked if anyone was aware of Virginia growers implementing "mortality freezers". The group indicated there is a company in Delaware which provides the turnkey service, and that it is not yet widely adopted in Virginia. Betsy mentioned there is a producer on the shore that is looking into the practice.

Slide 6: a question was asked regarding the projection of needing to transport 89,000 tons of litter, and James clarified that the goal is based on the 2025 projection of poultry populations.

Thus, the accuracy of the transport need is dependent upon the accuracy of the population estimate.

Slide 7: a question was asked regarding clarifying the last sentence in the draft WIP. Neil Zahradka explained that the reporting requirements should not impede the movement of litter to areas that would benefit from the additional phosphorous available in poultry litter. The group discussed the value of the poultry grower providing litter transfer data to DEQ annually versus only during inspections. A question was asked regarding the proportion of litter transferred by brokers versus directly by growers. A member of the group suggested that the growers would be more likely to provide the data when requested by DEQ rather than having an obligation to report on a certain date every year. DEQ reports data into the model once each year in December for the period beginning in July 1-June 30. Litter transport is a one-year BMP. Once the Bay Program finalizes the progress run, the Bay Program does not update the progress run. Litter transport only counts for the year that it is done.

Questions were asked as to what verification would be needed for the Bay program to accept litter transfer data reported. James explained that in general, a regulatory requirement to provide data is a disincentive to falsify data, thus the regulatory requirement assists in verifying the validity of the data. Drew Hammond noted the similarity with a wastewater plant submitting discharge monitoring reports that becomes part of the Chesapeake Bay nutrient loading data. Betsy Bowles stated that thus far, the grower and broker records that DEQ obtains have been adequate to report the transport data to the Bay Program. Neil Zahradka restated that the grower records would be sufficient to verify destination of litter (i.e transport outside of Bay watershed), if verification of nutrient management practice is desired, additional records may be necessary. Betsy Bowles pointed out that the transport data and the nutrient management practices are two separate BMPs in the Bay model.

James Davis Martin raised the idea if there was an online tool or portal with a log in that could be used to upload your transport data. There was concern for those that do not have a computer or are not technically inclined to upload the data. Several members of the group suggested that it would not be a problem for the growers to submit transfer data electronically on a regular basis.

Joe Wood stated that a 50% reduction in nutrients that we have already received in the model from loads coming from feeding spaces. Joe said that there was substantial credit already given on the feeding spaces. Joe asked James if that sounded right, James stated that he had not looked the numbers. Joe said there are BMPs that are captured through this permit program that are being credited in the model. James agreed that we are capturing many BMPs. James said that he believed Joe's analysis is isolating the feeding spaces and that a lot of the BMPs used on the feeding space do not eliminate the nutrients but only moves the nutrients from the feeding space to the field. Joe made another point that if DEQ could capture and send the BMP data that is already out there to the model more efficiently that would allow us to have a better understanding of where the manure is going and that we could get some credit for that. His third point was that something that Neil said was that even if we were to do that if we do not have the end-user reporting that we would not receive the credit for a piece of that. James said that was not necessarily true, we do not need end-user reporting to know that if (example) someone installed a cover crop through cost-share program. Joe asked Neil to re-explain what he said earlier. Neil said what James is pointing out that essentially we would use the regulatory mechanism to get those BMPs, there are certain things that are required to be done. For the

regulatory requirements, for the end-users there are certain things they have to do (example) there are four options that the end-user has to establish the rate. Neil said as James pointed out that there is a precedent to use the regulatory mechanism to get credit for the [transfer data]. Betsy pointed out that these are two separate items for the model; there is 1- [litter] transport and 2- as James had on his list a number of other BMPs. 1- Transport that is specific to this discussion, this regulation and process and 2- there is the NMP and other BMPs such as waste storage. The verification process cannot be settled here in this process. Betsy further pointed out that currently the data that we already receive from the grower and broker have been sufficient to report to the model and to receive credit for the manure transport.

A comment was made that NMP implementation is covered by DCR's verification program and that additional verification through the regulatory program would not be necessary. Betsy emphasized that what degree of verification would be necessary to get end-user credit for NMP practices will be a negotiation between DEQ (and possibly DCR) and EPA.

Betsy explained that a number of internal DEQ procedures are being evaluated to streamline reporting and data handling to effect timely data receipt and submission to the Bay Program. A question was asked as to whether or not the poultry regulations would need to change in order for DEQ to get the data needed. Betsy explained that the regulation language would need to be revised to change to the reporting frequency from the brokers, but that no regulatory changes would be necessary for DEQ to request data from the growers on a regular basis. Betsy was asked whether the regulation would need to be changed to allow for submittal through an on-line portal. Betsy stated that a change to the language to allow for the submittal through an on-line portal would be beneficial.

A comment was made that it would be a missed opportunity to gather BMP implementation data if the end-users are not required to report their nutrient management practices. Subsequent comments suggested that a large proportion of end-users have NMPs and that use would be verified through the DCR program. Consideration to not discourage the transfer of litter due to reporting requirements was again emphasized by other committee members.

A question was asked as to whether DEQ could get model credit for the end-user practices less than NMP implementation. Betsy noted that discussions with the Bay Program staff in this regard have been discussed.

A comment was made that if the number of end-users utilizing an NMP is high, that perhaps consideration to make it NMP implementation mandatory to receive litter. Betsy emphasized historic regulatory discussions that resulted in the four nutrient management options that strike a balance between encouraging litter utilization by end-users using safe, acceptable agronomic practices and the risk of not moving the litter away from the site of generation.

A comment was made that the value of the economic benefit of using poultry litter has the potential to overcome any disincentives produced by regulatory reporting.

The group discussed the mechanisms to get the most implementation of BMPs, and whether or not regulatory changes are necessary to force the implementation, or if reporting requirements would provide data showing that implementation rates are what they need to be to meet WIP goals.

Betsy provided more background regarding verification discussions with the Chesapeake Bay program, including the potential to inspect a percentage of end-users in order to get credit for the nutrient management and litter storage practices that the regulation requires.

Summary of Inspection Areas and Compliance Data

Betsy provided information related to poultry inspections and compliance, including types of inspections and the most common non-compliance issues found.

A suggestion was made that an annual compliance report would be valuable to the industry to know what DEQ is finding during inspections. Betsy indicated that DEQ occasionally reaches out to the Virginia Poultry Federation and integrators when certain compliance issues are seen repeatedly, and that DEQ shares overall compliance information with growers during the required training sessions.

In response to a question regarding subsequent inspections after DEQ discovers non-compliance, Betsy further elaborated on DEQ's follow-up compliance inspections. She noted that some issues (e.g. recordkeeping) would not require a follow-up inspection once the records are received by the Department.

A question was raised regarding how DEQ determines if a discharge is occurring. Betsy noted that on-site inspections are necessary in this case, and that visualizing the discharge (e.g. leachate from a storage site) or evidence of past discharges (e.g. darker green color downgradient of a storage facility indicative of nutrient enrichment) is part of the evaluation. DEQ may also use sampling when the inspector finds evidence of a discharge.

Betsy provided a handout detailing information collected during inspections. Betsy noted that due to biosecurity concerns and the need to have a facility representative present during the inspection, DEQ will typically contact the owner to schedule the date and time of the inspection.

In response to a question, Betsy summarized the minimum qualifications of DEQ inspectors, including nutrient management planner certification, and noted the long tenure of the majority of animal waste inspectors. She also noted that DEQ provides training as needed to ensure that inspectors are looking for the appropriate issues to ensure compliance with the permits and regulations.

Current VPA GP Storage Requirements

Betsy summarized the poultry waste storage requirements affecting each of the entities in preparation for the temporary stockpiling study topic.

Discuss Temporary Stockpiling of Poultry Litter Study

Betsy summarized the results of the study regarding litter storage, noting that the study evaluated nutrient loss related to different storage conditions in the coastal plain. Management of the pile characteristics were critical to avoiding nutrient loss. A suggestion was made that following proper shaping and locating of the piles could be an option as an alternative to covering the litter pile. A comment was made that the downside to covering with a tarpeline is the condensation that occurs and creates a management challenge due to the additional moisture on the litter. A suggestion was made that location and shaping could be made an option in the first 30 days, and that covering would be required after that. The group discussed what the appropriate setback would be from surface waters for a properly shaped pile. Some

comments were made that the storage setback should be the same as the land application setback.

It was suggested that DEQ provide draft language that would authorize storage of properly shaped and located piles as an alternative to covering. Betsy indicated she would draft the option and present it to the group for evaluation prior to the next meeting.

Summary of Comparison of Other States to Virginia's Requirements Related to Storage, NMPs, Recordkeeping, and Brokers/End-Users/Haulers

Betsy discussed the information provided in the comparison table and asked the group if there were any areas that the group wanted to explore, or if there were any requirements from other states that Virginia should consider adopting. The group responded that it was good information to use as comparison. No one suggested any particular changes based on other states' requirements.

Discuss Poultry Waste Transfer Recordkeeping and Reporting Requirements

Betsy explained the poultry waste transfer information required to be recorded by each of the three entities when transferring 10 tons or more poultry waste in a 365-day period. Betsy stated that DEQ has the authority in the current regulation to obtain these records at any time from each of the entities. The technical regulations are documented in the Poultry Litter Fact Sheet which is required to be provided to the broker and the end-user when the litter transaction occurs. The recipient of the litter is required to sign a certification statement that says they received the litter, the litter analysis and the poultry litter fact sheet.

A question was asked regarding how often or how DEQ used the nearest stream or waterbody information. Betsy indicated that DEQ Water Planning staff has used this information to identify litter transfers into particular named watersheds. The group discussed the difficulty in obtaining accurate data for this requirement. Betsy noted that during the regulatory action to add end-use requirements the language was amended adding "if known" to the waterbody record item. It was noted that this data point may not be very accurate information.

Betsy noted that the excerpts from the regulations specific to the Entity:

Growers

9VAC25-630-50 Part I B 4 d. states: Poultry growers shall maintain the [transfer] records required by Part I B 4 a, b, and c for at least three years after the transaction and shall make them available to department personnel upon request.

Brokers

9VAC25-630-60 D. states: Poultry waste brokers shall submit copies of the records required by subsection C of this section, to the department annually using a form approved by the department. Records for the preceding calendar year shall be submitted to the department not later than February 15. Poultry waste brokers shall maintain the records required by subsection C of this section for at least three years and make them available to department personnel upon request.

End-Users

9VAC25-630-70 A states:

Records regarding poultry waste transfers shall be maintained on site for a period of three years after the transaction. All records shall be made available to department personnel upon request. Records regarding land application of poultry waste shall be maintained on site for a period of three years after the recorded application is made. All records shall be made available to department personnel upon request.

A question was asked as to why the litter broker is the only entity required to report information to DEQ. Betsy noted the balance struck between what data was necessary to track destinations of the transferred litter and assignment of regulatory requirements. Betsy also noted that at the point the regulations were last promulgated, DEQ was conducting annual inspections and there was no need at that time to have the permitted growers report the information. Betsy stated that it is encouraged to have staff request the data from the grower yearly especially if the operation is not inspected yearly. It was further clarified by the member who asked the question that they were not implying they needed reporting from all of them.

Summary of Draft Proposed Revisions to Regulation

Betsy discussed some highlights of the minimum regulatory changes DEQ has identified. Betsy noted that most of the changes were administrative (e.g. effective dates and correcting citations), but also noted the addition of procedures DEQ uses to identify the floodplain, and clarifying housekeeping requirements necessary to avoid discharges (e.g. concrete end pads and ventilation fans). Betsy explained that she created a new subsection to reorganize the existing special conditions to facilitate the permittee to understand better and find the conditions easier. The original subsection has been changed to include only the site conditions and the training requirement and the new subsection is specific to include only the poultry waste transfer and utilization conditions. Betsy also noted the citation changes necessary to ensure nutrient management plan requirements for spreading schedules and those required for end-users are consistent. Betsy asked the members if they had any additional changes to make to the draft proposed language.

A question was asked regarding DEQ's take-away from the discussion of litter transfer recordkeeping. Betsy noted that the only definitive change that she heard from the earlier discussion was to change the timing of the broker reporting to align with Chesapeake Bay Program reporting. A question was asked as to whether or not the bar that James Davis-Martin described regarding the value of a regulatory requirement as being the basis for an accurate record was met if the poultry grower is not required to report the information annually. Neil reiterated that the regulatory requirement exists in the current requirement for poultry growers and end-users are required to maintain certain records regarding litter transfer and utilization records. DEQ currently has the authority to gather the information necessary to close the litter transfer reporting gap.

A comment was made that it would be beneficial to the Department that we get the end-use land application rate method because end-users using a method other than an NMP is not captured by DCR's NMP implementation verification program. Neil emphasized that if the Bay Program made available an option to get credit for the other nutrient management practices, the end-users are currently required to maintain the information in their records and DEQ has

the authority currently to obtain the records if it were found to be useful in meeting Chesapeake Bay WIP goals.

The group further discussed the issues associated with accurately reporting litter movement when records from multiple sources is compared, such as double counting litter movement, and the attention that DEQ will give to these issues as reporting tools are developed.

A comment was made that further emphasized the value of capturing as much data as possible (including voluntary practices) through DEQ inspections that can be used to verify BMP implementation for WIP goals.

Betsy noted that DEQ will further investigate what is necessary to obtain credit for practices that do not meet the definition of full NMP, and internal DEQ practices to gain the transfer information.

Public Participation

Hannah Brubach stated that she would like there to be more opportunity for public review of the NMP, a second set of eyes, during the permit issuance process that the public notification be more broad than just notification of the adjoining landowners.

Next Meeting Location and Date (to be set via DoodlePoll)

Betsy stated that the next meeting date will be determined by using a Doodle Poll again.

Adjourn

Betsy thanked everyone for their time and participation and adjourned the meeting at 4:02 PM.

Action Items:

1. James Martin will produce the actual Bay model numbers related to slide 4 versus the percentages as requested by members of the TAC.
2. Betsy will send the actual numbers (from James) to the TAC members, Alternates and Interested Parties
3. Betsy will provide to the TAC members, Alternates and Interested Parties – a second draft of amendments to the Regulation language to include:
 - a. New options for litter storage, and
 - b. Revisions to broker reporting language (technical regulations)