

MEETING SUMMARY

EEP / DWQ Nutrient Offset Payment Program Transitioning to an Actual Cost-Based Pricing Method

June 12, 2009

8:45 - 3:00pm

*Wake County Agriculture Services Building
4001 Carya Drive, Room 102*

I. List of Participants and Handouts Distributed at the Meeting

II. Welcome & Orientation

III. Response to Information Requests

IV. Actual Cost Method: Results & Discussion

V. Credit Yield Subcommittee: Review of Recommendations

VI. Deliberation of Remaining Issues/Options

VII. Summary and Next Steps

Reports and presentations are accessible via the NRLI website at: <http://www.ncsu.edu/nrli/decision-making/projects/NOPPStakeholderPage.php>

I. List of Participants & Meeting Handouts

1. Participants were provided with the following handouts:

- a. June 12 Agenda
- b. April 8 Meeting Summary (as needed)
- c. Response to Information Request
 - 1) Nutrient Offset Projects
 - 2) Buffer Restoration Projects
 - 3) Inflation of property values (no handout provided but was discussed using the actual cost method)
- d. Actual Cost Method: Results and Discussion
 - 1) Supplemental Handout: Neuse 01 Nitrogen Rate, Program, Nitrogen Rate, and Program Phosphorus Rate
- e. Actual Cost Method: Discussion of Choices and Policy Issues
- f. Credit Yield Subcommittee: Review of Recommendations

2. Participants who attended the June 12, 2009 meeting:

June 12, 2009 Participants	
Name	Affiliation
Bill Diuguid	NC Division of Water Quality
Rich Gannon	NC Division of Water Quality
John Huisman	NC Division of Water Quality
Nora Dreamer	NC Division of Water Quality
Kristin Miguez	NC Ecosystem Enhancement Program
Suzanne Klimek	NC Ecosystem Enhancement Program
Kelly Williams	NC Ecosystem Enhancement Program
Jim Stanfill	NC Ecosystem Enhancement Program
Eric Ellis	NC Ecosystem Enhancement Program
Bill Gilmore	NC Ecosystem Enhancement Program
Susan Lockwood	NC Ecosystem Enhancement Program
Charles Brown	Town of Cary
Haywood Phthisic	LNBA/NRCA & Johnston County
Jamie Guerrero	Johnston County
Sandi Wilbur	City of Durham
Anne Coan	NC Farm Bureau Federation
Mike Schlegel	Triangle-J Council of Government
Adam Riggsbee	Restoration Systems, Inc.
Barrett Jenkins	Restoration Systems, Inc
Alissa Bierman	Neuse River Keeper Foundation
Joe Rudek	Environmental Defense Fund
John Hutton	Wildlands, Inc
Mike Schlegel	Triangle J Council of Government
Mary Lou Addor	NCSU Natural Resources Leadership Institute
Steve Smutko	NCSU Natural Resources Leadership Institute

II. Welcome and Orientation

Mary Lou Addor, NRLI, opened the meeting with introductions, provided an overview the agenda and meeting process.

Review of Purpose and Scope

The purpose and scope of the stakeholder meetings are to:

- **Purpose:** *Provide guidance to the Ecosystem Enhancement Program in transitioning from a fee-based system to an actual cost system as required by the General Assembly.*
- **Scope:** The focus of the stakeholder recommendations will be on the pricing methodology.

Process Review

1. Roles

- a. Stakeholders: responsible for disclosing interests, needs, actions, and issues in a timely manner and committing to the purpose of the stakeholder process. Stakeholders will be expected to represent the interests of (1) themselves, (2) organizations which they have the authority to represent, or (3) groups of constituents with similar interests.
- b. Facilitators: responsible for helping the group stays on process and on topic, promoting open and balanced discussion, and organizing information for effective use.
- c. EEP: responsible for convening the group, providing basic information about the cost-based pricing method and the nutrient offset payment program generally.
- d. DWQ: responsible for assisting with understanding content and any agency policies that pertain to the formula.

2. Decision Rule

When the group presents proposals for consideration, each stakeholder (1 representative per organization) will designate his or her level of agreement using the following scale:

- Level 1:** Endorsement (I like it)
- Level 2:** Endorsement with a minor point of contention (basically I like it)
- Level 3:** Agreement with reservations (I can live with it)
- Level 4:** Stand Aside (I don't like it but I don't want to hold up the group)
- Level 5:** Block (I will not support the proposal and will act outside the group to meet my interests)

The final report will show at which level individuals or groups supported the final product. The focus for each stakeholder should be on making good decisions for his or her constituency, not simply to reach agreement.

3. Ground Rules

- a. Work the problem, not the person.
- b. Make space for others to contribute
- c. Follow the process
- d. One speaker at a time
- e. Park-off agenda items
- f. Rolling breaks
- g. Cell phones on vibrate

h. Test assumptions/Ask Questions

4. Parking Lot

Topics not considered by the group to be germane to the day's agenda will be listed on a separate flip chart under the heading "Parking Lot." Prior to adjourning each meeting, the facilitators will review parking lot items, and the group will determine how (and possibly when) each item will be handled.

III. RESPONSE TO INFORMATION REQUESTS (Since April 8th meeting)

Request 1: (Neuse 01 Fee)*

Develop a fee that is reflective of the implementation costs associated with Nutrient Offset projects physically located in Neuse 01.

Request 2: (Programmatic Fee)*

Develop a fee that is reflective of the implementation costs associated with Nutrient Offset projects physically located in all other CUs except Neuse 01.

Request 3: (Inflation Rate – Property)*

Acquire and utilize an inflation rate that is reflective of land costs

Request 4: (Nutrient Offset Project List) – Nutrient Stakeholder Page(link?)

List of Nutrient Offset Projects - including the following information: project name, basin, acreage, whether or not individual projects leverage buffers from stream or wetland mitigation sites, date of project implementation/land acquisition, and pounds of offset provided.

Request 5: (Buffer Project List) – Nutrient Stakeholder Page(link?)

List of Riparian Buffer Mitigation Program Buffer Restoration Projects - a list of all Neuse and Tar-Pam buffer restoration projects associated with the Riparian Buffer Mitigation Program (Fund 2982).including: project name, basin, acreage, whether or not individual projects leverage buffers from stream and/or wetland mitigation sites, and the date of project implementation/land acquisition.

** The items were discussed within J. Stanfill's presentation of the Actual Cost Method.*

The Following discussion/action item resulted from this presentation:

Questions were asked about buffer projects with a procurement method of 'direct purchase'. It was explained that direct purchases occurs when one EEP mitigation program purchases unused mitigation credits from another EEP mitigation program. It was further explained that the costs of those credits were set using the fee schedule in place at the time of the transaction. This method of procuring surplus mitigation between programs has been in use for several years after a thorough examination of the benefits and efficiencies achieved from these transactions. Some stakeholders expressed concerns about this procurement method.

The issue of individual project sites yielding multiple types of credits also came up again during this discussion. It was noted that the Credit Yield subcommittee, which has been formed to capture discussion of unresolved items and parking lot issues from this stakeholder group, would further discuss this subject.

Several stakeholders reiterated earlier concerns to EEP about providing program information. For example, ensuring program information is provided on a per fund basis. During this discussion, EEP reiterated its willingness for transparency and emphasized that most of the information requests are currently available, are published quarterly or annually in EEP's reports, and have been provided to other organizations. It is not clear however, what other organizations might be interested in until they directly request information. Hence, an outcome of this discussion is the following action item.

Action Item: Suzanne Klimek will call Adam Riggsbee to discuss what kind of information might be of value to the stakeholder committee or others with similar interests.

IV. PRESENTATION: Actual Cost Method: Results and Discussion

Jim Stanfill presented, "[Transitioning the EEP Nutrient Offset Program to an Actual Cost Method, Result and Discussion.](#)"

Focus is to address:

- a) Review Objectives
- b) Review Proposed Components of ACM
- c) ACM Results and Discussion

Stakeholder Comment/Question: Regarding Falls Lake, new rules are needed very quickly to address degradation in Falls Lake. The legislature may enact something soon. Would it require that the ACM would have to be adjusted through rule-making each time a new area like Falls Lake is added?

Response: The intent is not to have to go through rulemaking to add another area for ACM application. The rules for the management strategy would reference the use of the ACM.

Stakeholder Comment/Question: If the ACM has a base cost and doesn't go negative, then excess money could be generated in the fund. How would it be used?

Response: That money is intended for advancing mitigation. One of the criticisms of in-lieu fee programs is that money is paid, then a project is built. When possible EEP intends to advance mitigation so that mitigation precedes impacts.

Stakeholder Comment/Question: It was noted that the inflation index will now have a separate index for land cost changes. Everything else is based on the construction cost index. The index reflects the cost of land for land contracts and cost of construction for all other contracts. Have you been looked at the Consumer Price Index (CPI) and its possible use? Stakeholder also has question about administrative cost.

Response: Yes, EEP examined the CPI and multiple other indices. The Construction cost index is more reflective of EEP's work as compared to the CPI. In response to question about administration cost, the full administrative costs are included in the ACM.

Stakeholder Comment/Question: What if there was a time like 2006-2007 when EEP procurement was put on hold? If we run into another situation such as that, a 3-year running average includes a two year hiatus. There is a moving window of data, but shrinking data in terms of expenses.

Response: The Method adjusts historical actual cost values to the present values using the inflation indices. The three-year running average should not present an issue because it is not used to estimate costs. The moving window relates only to forecasting the quantity of future payments.

Regulatory/Policy Impact on Rate

Jim Stanfill: The second really major improvement to the ACM is that if you change credit yields on projects, the calculated actual cost rate automatically adjusts. So, if projects yield more or less credit because of a regulatory change, project costs would reflect that and the ACM would adjust the cost per pound to reflect that.

Stakeholder Comment/Question: It was noted that some of the credits associated with projects in Neuse 01 were adjusted downward based on recent technical evaluations. Did that affect the actual cost calculation for this area?

Response: No cost changes have been made to projects that had a downward credit adjustment (i.e. the overall cost has not changed but the cost per credit increased slightly). The actual cost method will adjust the rate appropriately if that occurs. Due to the fact that costs haven't decreased on those few projects and credits have, this did create a slight increase in cost per credit.

Neuse 01 Rate & Program Rate Discussion:

Stakeholder Comment/Question: In the adjustment factor you included administrative costs such as staff and supplies. Does the calculation also include the long-term stewardship of the projects?

Response: Yes, that is a project contract cost.

Stakeholder Comment/Question: Concern was expressed about the potential effects associated with having different rates in an area like Greenville which is in two basins and three HUCs. Different rates could have the effect of driving development away from some areas and toward others.

Inflation of Property Value –

Adjustments to the ACM were made after the last meeting to address how inflation is handled for property costs. All parties indicate no additional discussion is needed.

V. PRESENTATION: Review of the Recommendations from the Credit Yield Subcommittee

Steve Smutko: Requests no debate or discussion – the purpose of this agenda item is to understand previous discussions by the Credit Yield Subcommittee. John Huisman of DWQ discussed:

- 1) What occurred.
- 2) Where it might be heading.
- 3) Next steps.

John Huisman reported in the “[Buffer Nutrient Credit Yield Subcommittee Report](#)” that the Credit Yield Subcommittee held two meetings: one on May 4 and the second meeting on June 4. Two recommendations resulted from the meeting discussions and were presented to the ACM stakeholder committee as:

- a. “Keep the current credit yield calculation in place for now, but use site specific drainage areas contingent upon a review of actual drainage area data for existing projects. Convene a group of technical experts to examine the buffer credit yield calculation issues with the subcommittee members as a separate process.”
- b. “Keep existing credit method for now and move ahead with ACM. Convene experts to sort out issue as separate process.”

The Credit Yield subcommittee plans to meet and continue their discussions about the recommendations and other policy issues of interest.

Stakeholder Comment/Question: Does the credit yield calculation go into the rule? Would prefer that it did not have to be a part of the rule.

Response: This will largely be decided by the Rules Review Commission. But it could take the form of a guidance document or DWQ could publish a “credit yield value” that is changed and published at predictable, regular intervals. This may be discussed at next meeting of the subcommittee which should be this summer.

Action Item: John Huisman and Rich Gannon will reconvene the Credit Yield subcommittee in order to refine the two credit yield recommendations. The subcommittee will also provide a forum for other policy issues that are of concern to several stakeholders. For a list of these items please reference Stanfill presentation on Actual Cost Method- Discussion of Choices and Policy Issues (pg 2) - Nutrient Regulation and Policy.

John and Rich also expect to work with a technical committee comprised of researchers from surrounding universities and some of the stakeholder subcommittee members (unclear if this will be a subcommittee of the policy group). Researchers are interested in the proposed policy and have asked to be brought into the process. Other states look to North Carolina for innovative programs and thus, DWQ, the researchers, and subcommittee members want to ensure that any policy recommendations are based on tested inquiry and assumptions.

VI: Presentation: Actual Cost Method- Discussion of Choices and Policy Issues

Distribution of Handout: “Actual Cost Method: Discussion of Choices and Policy Issues”, James B. Stanfill, Ecosystem Enhancement Program, June 12, 2009.

AREAS OF AGREEMENT:

The ACM committee is in general agreement with respect to the following choices regarding the actual cost method:

1. Utilize inflation to determine actual cost of projects in process.
2. Include use of land inflation index
3. Ensure base price equals actual current costs
4. Tar Pamlico developers are required to minimize both nitrogen and phosphorus. EEP and DWQ agreed to include all Tar-Pamlico nutrients as requirements (not just the nutrient for which payment was originally received).
5. Use 3-year running averages to calculate average expected payments.

KEY ISSUES REMAINING:

1. Use of a rate adjustment factor.
 - o Total program level and nitrogen
 - o Neuse 01
 - o Nitrogen evaluation year and phosphorus program.
2. Geographic Application
3. Frequency of Adjustment
4. Establishment of ACM in Rule

Frequency of adjustment:

- 1) Adjust yearly, check quarterly.
- 2) If new project costs increase rate by >10% or if unencumbered cash reserves drop below the cost to complete existing projects, there would be a new update at the end of the next quarter.

Geographic Application of Rates:

- o Neuse 01 rate coupled with program rate.
- o Neuse rate
- o Nutrient rate
- o Nitrogen rate coupled with program rate.
- o Nitrogen and phosphorous rate.

Program Rates:

1. **Neuse 01 Program Rate**
 - a) Program Nitrogen
 - b) Program Phosphorous
2. **Basin Development Program Rate**
 - a) Program Nitrogen
 - b) Program Phosphorous
3. **Tar-Pamlico Program Rate**
 - a) Neuse Nitrogen
 - b) Tar-Pamlico Phosphorous

Polling of the Three Choices for Consideration

Jim introduced three issues/choices to encourage additional discussion and feedback from the ACM committee. The three issues presented were:

1. Geographic Application of Rate (note: geographic rate application is different from mitigation requirement location)
2. Frequency of Adjustment
3. Establishment of Actual Cost Method in Rule

A description of the three issues is listed below including the general preferences for the proposals from the stakeholder committee.

1. **Geographic Application of Rates:** ACM committee was asked to weigh-in with respect to preferences regarding the geographic application of rates. The first column represents five different rate applications, within a perfect world. The second column offers three different rate applications, in a world impacted by change and uncertainty. Twelve members of the ACM committee weighed-in (voted), representing their organization (example: an organization with 5 people in attendance was not allowed to weigh-in 5 times, only once each time the poll was taken). The results are presented in the lower right hand corner of each box presenting a different rate scenario.

Perfect World Poll	World of Change & Uncertainty
<p>#1 Program N Rate Program P Rate</p> <p>Special Rate Area: Neuse 01 N Rate</p> <p>*other special rate areas may be added later Votes: 1</p>	<p>#1 Program N Rate Program P Rate</p> <p>Special Rate Area: Neuse 01 N Rate</p> <p>*other special rate areas may be added later Votes: 1</p>
<p>#2 Program N Rate Program P Rate</p> <p>*other special rate areas can be added later Votes: 1</p>	<p>#2 Program N Rate Program P Rate</p> <p>*other special rate areas can be added later Votes: 5</p>
<p>#3 Neuse N Rate Tar Pam N Rate Tar Pam P Rate</p> <p>* other special rate areas can be added later Votes: 5</p>	<p>#3 Neuse N Rate Tar Pam N Rate Tar Pam P Rate</p> <p>* other special rate areas can be added later Votes: 6</p>
<p>#4 Program Nutrient Rate & Special Rate Area: Neuse 01 N Rate Votes: 2</p>	
<p>#5 Program Wide with special rate areas Votes: 3</p>	

2. Frequency of Adjustment:

Comments were made that included making sure the frequency of adjustment was short enough to actually recover if costs exceeded the rates, but long enough to provide some stability and predictability in the rates for the development community to plan projects.

<p>2 – year Votes: 2</p>
<p>3 – year</p>

	Votes: 1
4 - year	Votes: 8

3. Establishment of Actual Cost Method in Rule:

Request: To discuss further the Next Steps. Facilitator assured that this would be discussed shortly.

Issues Related to Policy

Discussion around retirement of assets:

During the morning and afternoon session, Jim Stanfill discussed with the ACM committee reasons why EEP cannot retire existing unused mitigation credits. Foremost, none of the current EEP projects are completed and closed out (i.e. all are within the first 8 years of the project cycle). Mitigation credits are not certified complete credits until closeout. Any retirement prior to close out would be premature and could create significant financial and mitigation compliance risk to the program.

Second, EEP does not have the financial resources to consider reducing mitigation credits for donation purposes. Recently, the North Carolina General Assembly took \$800,000 of the program receipts to assist with the state budget shortfall. The current cost of the projects that were identified as potential donations exceeds the receipts collected within this area.

Third, retiring unused credits results in eliminating advanced credits which is a primary goal of the Program. Advanced credits are preferable to producing mitigation after the impact.

Fourth, it is unclear whether or not the Nutrient Offset Program could legally consider donating unused mitigation credits and thus increase the cost of future applicants. EEP is required to produce mitigation at the least cost and donating certified unused credits would result in unnecessary increased costs to customers. This issue is most pronounced in low demand areas which is where the identified credits exist.

Jim and other EEP staff acknowledged that the retirement of assets is an important discussion but not one EEP can move forward on at this time given the current constraints on project obligations and a less than ample receipt base. Stakeholders concerned with this issue seemed to understand/agree with EEP's points made regarding this issue. They were interested in pursuing this conversation at a later point if possible – potentially at a future meeting of the credit yield subcommittee.

Discussion about Nutrient Regulation and Policy:

The committee discussed the nutrient regulation and related policy issues during the day's meeting. John Huisman and Rich Gannon will convene the subcommittee group to discuss these issues in the future. For a list of these items please reference Stanfill's presentation on [Actual Cost Method-Discussion of Choices and Policy Issues](#) - Nutrient Regulation and Policy.

VII: Closing Summary and Next Steps

The following action items were identified during the meeting. It is anticipated follow through will occur via email and publishing of material for stakeholders as well as other interested parties on the NRLI website at: [EEP Nutrient Stakeholder Information](#).

Actions:

1. EEP will seek out reporting preferences from stakeholders.
2. Policy Subcommittee will continue to meet to discuss credit yields and other related issues.

Next Steps:

Plan is to begin to fashion a Rule to incorporate what was discussed today. Rich Gannon, Suzanne Klimek, and John Huisman will talk with the Rules Commission to see if it meets their criteria. Plan is to send draft Rule to stakeholder group for review and feedback in July. It is anticipated that a draft rule will be presented to the Water Quality Committee of the Environmental Management Commission in September.