

## **Stormwater Implementation Group (SWIG) meeting #1**

May 18, 2005 – 11:00 a.m.

School of Government, UNC-Chapel Hill

### **Opening Remarks**

Richard Whisnant, Associate Professor of Public Law and Government at the School of Government, convened the meeting.

Rick Rowe, Wake County Environmental Services Director presented opening remarks and welcomed the attendees. Wake County is growing at a fast pace, and the County is trying to work together with the 12 municipalities as much as possible to address stormwater quality in a coordinated way. Rick reported that there is a new organization, the Southeast Stormwater Group, which is now forming and trying to work together at a southeastern U.S. regional level to figure out Phase II implementation and related issues. Rick can serve as this group's liaison to the regional stormwater group.

### **Purpose of SWIG meetings**

Richard Whisnant summarized the intent behind the SWIG: to get representatives of Phase II affected communities in the same room to share experiences, discuss what other activities or meetings may be needed for successful implementation, and find ways to work together on implementation.

A principal purpose of the SWIG meetings is for communities to know which other communities are affected and where they are in implementation, so they can compare notes and share their successes and lessons learned.

The SWIG group, Richard pointed out, will attempt to work out reasonable ways to implement the Phase II rules, with the State as a participant. Tough issues may be identified in the group that will not be immediately resolved, but this will help participants and DWQ learn what questions need further attention and resolution.

Future SWIG meetings will likely be structured as follows: a topic will be presented, and a good amount of time will be left for discussion for issues and questions. A website and listserv are planned where communities can find answers to questions frequently raised, and also where "unknowns" that are left outstanding will be identified.

Richard introduced DWQ staff Mike Randall and Bill Diuguid. He then asked all attendees to introduce themselves and say a few words about their role in their jurisdiction and the degree of experience they have in dealing with stormwater issues.

### **Self-Introductions by Attendees**

About 40 individuals were in attendance from approximately 20 counties. Of those present, some were engineers and public works directors having over 10 years directly dealing with stormwater, while others were planners and administrative officials entirely new to the subject. Some indicated that their county was working in concert with local municipalities, or trying to work in sync with existing stormwater programs such as the Tar-Pamlico basin rules.

Bill Diuguid, Phase II Community Planner with DWQ, introduced himself and said that his position was created to help counties and cities implement Phase II.

### **Presentation by Mike Randall**

Mike Randall of DENR (Division of Water Quality, Surface Water Protection Section) introduced himself. He described the state's role in participating in the SWIG meetings: to hear from localities so it can shape the way implementation is handled. DWQ wants to hear feedback from local governments, rather than the agency trying to decide implementation questions "in a vacuum." DWQ would like to identify issues and establish appropriate goals and BMPs that are reasonable for implementation.

DWQ's goal for these meetings is to:

- Give background information about Phase II;
- Discuss the areas covered under the program; and
- Provide local governments with resources that are currently available to help them through the initial stages of implementation.

Through the draft permit process, it has become apparent that counties are encountering some unique issues with implementation that differ from cities' issues. North Carolina, like few other states, is unusual in that counties don't own and operate the road system. The Phase II rules were written with the understanding that counties were owners of roads, the primary stormwater conveyances in many areas. So the rules don't quite operate here as they do in most other states, and this will be the source of some unique issues for counties and DWQ in implementation of Phase II.

Summary of criteria for coverage under Phase I:

- municipal separate storm sewer systems (MS4s) in cities having at least 100,000 population;
- the threshold size of sites was 5 acres or more; and
- in addition to the cities covered, there were 10 categories of industrial activities that had to get permits.

Phase II coverage, on the other hand, applies to:

- municipalities of less than 100,000 population if they are in an "urbanized area" (UA)
  - o UA is determined based on total population and population density
- threshold size of sites covered is 1 acre.

How is Phase II application determined? There are four ways that a place may be covered:

- Automatic designation:
  - o Any place that meets the minimum coverage requirements
- State designation:
  - o DWQ examines any place of 10,000 population to determine coverage, regardless of its location in an “urbanized area” or not
- TMDL designation
  - o “Total maximum daily load” (TMDL) is determined for certain pollutants that affect the use of receiving waters. This is a complex determination and it is not yet known how this process will be worked out.
- Designation by petition
  - o Anyone can petition to have a place designated upon demonstration that it should be.

As to each of the three coverage approaches (other than automatic designation), the process for designation is still being worked out by DWQ:

- The process for state designation is beginning to be developed.
- An approach still needs to be worked out for TMDL designation.
- Forms for designation by petition are beginning to be developed.

Coverage by automatic designation: If the site in question is in any one of the UAs, it is covered. Phase II counties must look at the designated area to determine if Phase II applies.

[ed not: (Kane) LINK TO COVERAGE MAP AT [http://h2o.enr.state.nc.us/su/documents/phase2\\_statewide.pdf](http://h2o.enr.state.nc.us/su/documents/phase2_statewide.pdf) ]

DWQ encourages counties to implement Phase II countywide, but has no authority to require it. At least one county, Wake, is taking a countywide approach because the Neuse River rules apply countywide.

After determining if the site is in a UA, the next questions are:

- Is there an MS4? (An MS4 can include any system that collects and conveys water – such as a parking lot; a ditch; gutters; basins; and so on).
- Is the property at least one acre in size, or part of a common plan that is at least one acre in size?
- [ed note (Whisnant): in addition to the question of whether there is an MS4, size of area served, where it is located, and who owns it, a further level of interpretation that is necessarily for deciding Phase II application on a site by site basis is the question of what constitutes a “discharge” and whether that discharge is into “waters of the United States” or “waters of the State.” This will be the subject of further inquiry and discussion for SWIG and DWQ.]

Phase II includes six “minimum measures” that must be implemented:

- Public participation
- Detection and elimination of illicit discharges
- Construction site runoff controls
- Pollution prevention and good housekeeping
- Post-construction site runoff controls
  - Long-term maintenance
  - Quality and quantity controls

The post-construction minimum measure involves a determination: Is the MS4 in the unincorporated area? If yes, then ask:

- Is it in the UA and not owned/operated by the county?
  - Then implementation of post-construction measure will be implemented by the state, or by the county if it elects to do so.
- Is it in the UA and is owned/operated by the county?
  - Then implementation of post-construction measure will be implemented by the County.

For post-construction “best management practices” (BMPs), DWQ intends to make permits as flexible as possible so localities can select the best BMPs for their area and needs.

Essential steps for Phase II counties include:

- Understanding the MS4s for which the county is responsible, which involves:
  - Inventorying
  - Identifying outfalls and discharges
  - Knowing who is contributing to the MS4
  - Identifying potential pollutant sources
  - Evaluating the potential for reduction of each pollutant source
- Knowing your receiving waters, which involves:
  - Understanding the character, quality, name, and location of waters
  - Knowing the uses of the waters
  - Understanding potential pollutants that affect those uses
  - Identifying waters on the impaired (303)(d) list

Web resources for Phase II implementation include:

[www.ncstormwater.org](http://www.ncstormwater.org) – For information on stormwater topics  
[www.bae.ncsu.edu/stormwater/new/](http://www.bae.ncsu.edu/stormwater/new/) - Directed at standard MS4s, but consistent with non-standard MS4 implementation as well  
[h2o.enr.state.nc.us](http://h2o.enr.state.nc.us) – Has regulatory documents and information.

Tools that DWQ is readying for local governments (ready in July 2005):

Model Ordinance  
 Design Manual  
 Implementation and Assessment Guide

DWQ has a plan of action underway now, and needs the assistance of counties in identifying concerns and issues. The plan of action involves:

- Developing a process for determining how Phase II applies to non-standard MS4s
- Developing a process for determining application of six minimum measures
- For each minimum measure, determining appropriate BMPs and measurable goals
- Developing the Implementation and Assessment Guide

### **Discussion and Questions**

Copies of the latest version of the Phase II Model Ordinance were provided to participants. The latest draft is also available on the web at

<http://www.efc.unc.edu/projects/Stormwater%20Ordinance/stormwater.htm>

Participants' questions included the following.

Q: I notice that there is a section on operation and maintenance of on-site wastewater systems in the Model Ordinance (Section xx-309). Do we have to get involved in that?

A: That section is optional. It was provided for local governments that want to regulate maintenance in addition to the design and installation of on-site systems. The same provisions for long-term maintenance of stormwater practices (which are provided in Section 4 of the Model Ordinance) would be useful for those localities that choose to regulate the maintenance of on-site wastewater treatment systems.

Q: Who will pay to repair or maintain a failing practice in the long term – say, 20 years after its installation? What tools will local governments have to enforce maintenance and hold responsible persons accountable?

A: The Model Ordinance includes some tools to help – see the maintenance and enforcement sections of the ordinance.

Q: Would the county Board of Education need a permit for its MS4?

A: Most likely, yes. If a Board has not applied, it may be in violation. It could be covered separately under its own permit or through a county permit. It could co-permit with the county, or allow the county to run its program.

Q: Our public schools have offered to include curriculum-based education about stormwater in exchange for a reduction in stormwater fees. Is anyone else in NC doing that?

A: Fayetteville and Wilmington are understood to be allowing that approach.

Q: Will the manual on BMP design take into account the soils and topography of different areas of the state?

A: The manual draft is online for perusal. DWQ recognizes that different BMPs may work differently in various regions, and is taking a dynamic and ongoing approach to BMP design and will make revisions to standards if feedback from local governments indicates a need.

Q: Is there a “central repository” for public education and outreach materials, such as brochures and media clips?

A: Chrystal Bartlett with DWQ is a good resource. See the website at [www.ncstormwater.org](http://www.ncstormwater.org).

### **Some unanswered questions**

- In formerly outlying areas that are now in the Urbanized Area, the lots don't have easements or drainage ways. Sometimes the older developments have smaller pipe sizes and the new development has larger pipes. How do you deal with undersized or retrofit situations like these? Do we have to get permission from property owners to implement drainage ways? Are we going to have to buy land or easements?
- Who owns and operates a system that is not accepted or dedicated for public use?
- Does Phase II apply to non-standard MS4s (MS4s such as hospitals, schools, prisons, industrial parks) that discharge to another, permitted MS4?
- Counties are reluctant to get involved in the maintenance of private stormwater control practices. In light of this reluctance, how effective will local government implementation be?
- If a county took on the task of regulating additional area outside the UA, what tasks could it expect DWQ to be willing to take on, with regard to the six minimum measures?
- Enforcement and administration within the ETJs of municipalities may be problematic if cities don't have funding and/or authority to implement measures such as illicit discharge.

### **Future meetings:**

SWIG will continue to meet on the third Wednesday of the month at the School of Government. Future meetings beyond June are contingent on obtaining funding; if funding is available, the meetings will include both cities and counties.

Next month (June) Wake and Mecklenburg County representatives will talk about the counties' processes of mapping and identifying county responsibilities.