

Verna Harrison: CAC comments to STAC Trading Panel – December 2012

Introduction – 1980 Gov Hughes ; Chair LRSC; Asst Sec DNR 24yrs; EX DIR – KCF

I am going to focus my comments on the critical need for improved Verification and Accountability. And conclude with specific suggestions of how STAC can be involved.

Obviously those in this room understand that while in theory, water quality trading sounds like a basic, reasonable construct, there are incredibly complicated issues that have yet to be resolved.

Unfortunately, in the zeal to address the real and compelling problems of how to fund the WIP implementation, the states and a few advocates are rushing to develop trading programs as financing tools - without resolving the basic structural issues that will determine whether trading can stand up to the Clean Water Act's provisions demanding the protection of local water quality.

Later today you will hear a presentation about the Bay Program's activity to improve verification of BMP's. While this work specifically excludes trade verification, the types of "farmer self-certification" concepts that are being considered for nonpoint pollution, raise concern about how the baseline will be constructed on which the trading programs will rest.

As scientists, you are asked why the Bay is not improving at a more rapid rate?

I expound on that question:

- Are we not implementing the "right things?" (or enough of them, in the right areas, etc?) and /or
- If implemented, are BMPs installed and maintained in a way that delivers the nutrient reductions assigned to them? And/or
- Are we actually implementing what we say we are?

I suspect all of the above, but to focus on the last – **“How can we verify that we are actually implementing what is reported?”**

For those of you who are lucky enough not to spend much of your time working on manure (at least that excreted by animals), I want to illustrate the complexity of the verification problem with some examples.

As you all know, there are a wide range of “best management practices” that have been assigned values for their role in reducing nutrient pollution. Our ability to know whether these practices have been implemented range from easy to impossible.

Included among those practices on the positive side are those:

- relatively easy to verify – construction of manure storage sheds, for example;
- ongoing practices – Sewage treatment plant retrofits;
- enforceable practices – activities covered by Stormwater MS4 permits; ETC

Others are currently impossible to verify – implementation of Nutrient Management Plans, for example. These NMP plans recommend the rate, timing,..... for application of manure and fertilizer.

- When a farmer applies manure to reach his N needs, he is applying 4x the amount of P. Thanks to recent science, we now know that the P in manure applied to P saturated soils does not “stick to the soils” but flows into the water.
- There is no provision for mechanized application records. The farmer “self-reports” and the information travels via SCD and state to EPA and is automatically included in the “model” as pollution reduced.
- Occasionally the state sends someone out to verify the implementation. Can’t picture how that is actually verified unless the individual follows the tractor.

In fact, up until a couple of years ago, Md reported that every farm in MD:

- Had a NMP written on it (didn't mention P or N)
- And all were fully implemented.

“SO WHAT?” you ask. Well, one quarter of Md's load is assigned to pollution reduction due to the implementation of these plans.

Finally Md was shamed into changing its reporting to a mere “75% or so” NMP implemented. However, we know that is neither verified nor verifiable.

We also know from the Hudson Farms court action that although— Mr. Hudson reported implementation of his plan annually, he did not have one! Finally got one to get cost share and then badgered the NMP preparer to remove all of the significant environmental provisions ---See attached excerpt from court proceedings. So he is reported in the EPA progress runs as having reduced his share of pollution from this source.

“So what does this have to do with trading?” == Well, Md Dept of Ag intends to include NMP as one of the elements of its trading program.

Additionally, due to Md's reporting of such a high rate of implementation in its baseline, it has to come up with some pretty “novel” things in order to have something to trade.

While these are Md examples, there are problems of equal or greater significance in Pa as recent EPA evaluations describe.

Now to transition to where STAC can help –

The ultimate need is to **DEVELOP CLEAR AND TRANSPARENT GUIDANCE ON HOW TO DETERMINE WHEN A TRADE DOES AND DOES NOT PROTECT LOCAL WATER QUALITY.**

With respect to verification and accountability:

- **Recommend methodologically transparent and sound approaches for verification of trades and offsets that involve the most difficult best management practices. (resist the current pressure to allow the states to continue with the status quo)**
- **Develop mechanisms for holding those that certify credits accountable – certifying and bonding aggregators,**
- **Explore how and where to quickly deploy new NSF funded technology – inexpensive continuous monitoring sensors - being tested by Stroud Research Center – as well as other new technologies.**
- **Review the USDA CIG funded trading demonstration projects**
- **Recommend standard contract provisions that contain water protection measures.**

While we are very concerned about the expense of the plans to implement the TMDL, adopting ill-defined and unverifiable trading schemes will harm water quality and damage the potential for an honest, robust market in the future.

CAC acknowledges that if appropriately constructed, trading can be among the approaches used to advance the WIP. However, it is by no means the only adaptation that can be employed.

While the critical details of nutrient trading are being developed, the states and local jurisdictions should immediately embark on a process to **TARGET** the implementation of practices to those practices and geographical areas that offer

the most consequential impact. Over time, technology, technical assistance, and financing mechanisms – including a fair trading program – will enable us to accomplish our goals.

STAC can provide guidance on this targeting.

In sum, the “final draft CBP Partnership’s BMP Verification Principles” – which do not relate to trading but are still critically important –include

“Principle 3: Public Confidence “Verification protocols incorporate transparency in both the processes of verification and tracking and reporting of the underlying data.”

STAC can help ensure that this transparency is included.

CAC would be very happy to partner with STAC on joint recommendations for EC consideration.

Testimony out of the Hudson Farms/ Perdue Law suit that relates to NMP (Nutrient Management Plans) and Alan Hudson’s CNMP.

Hudson admitted he did not file his NMPs for four years, yet applied for state funding (without a NMP) in order to install BMPs at the chicken houses, so he filed a management plan after the fact.

On Sept. 28 the Assateague Coastal Trust submitted public comments to MDE on the Hudson CNMP, which had been given a stamp of approval by MDE and was up for public comment One of the issues (among many!) was the fact the stormwater management and anti-pollution BMPs made no mention of the poultry growing operation, the swale between the houses, or the pipe to the ditch – all impacted by stormwater runoff.

Why was this missing from his CNMP?? Hudson admitted to redacting information from his CNMP. This is an excerpt from his testimony transcript:

(Jane Barrett – UMD Environmental Law Clinic; Mr Maurer – drafted CNMP with Mr Hudson sent in after applying for funding; Mr Hudson – farmer who asked Mr. Maurer to change his recommendations in the CNMP.)

Q. (Jane Barrett) But you told him [Maurer] that you needed to send [the CNMP] to your lawyers for comment, correct?

A. (Alan Hudson) Yes

Q. And you, in fact, did send it to your lawyers for comment?

A. Yes

Q. And then you got -- you received information back -- you called Mr. Maurer, or he called you, and you had a phone conversation where you relayed the information on the **changes that you wanted in the CNMP, correct?**

A. Probably.

Q. You did do that, didn't you, Mr. Hudson?

A. Yes.

Q. And one of the changes you wanted **removed was the notation that Mr. Maurer had made that in 2011 too much phosphorus had been applied on to some of your fields, correct?**

A. It could have been.

Q. And another change that you asked him to make is Mr. Maurer had recommended what are known as **vegetative environmental buffers, correct?**

A. He could have.

Q. Well, those are the rows of trees that are planted in front of the fans to block emissions, correct? That was in the plan. And you **told him to take that out too?**

A. Yes.

Q. There was also a pipe, a -- that was going to be put in in Ditch 3, correct?

A. Yes.

Q. **And the purpose of the pipe in Ditch 3 was so that you could cover over Ditch 3 and plant vegetative buffers, so that the blow out of the fans would blow on to dirt in this area and not into the ditch, correct?**

A. That's what was in the plan.

Q. And that's what Mr. Maurer proposed, correct?

A. Yes.

Q. You told him to take that out?

A. Yes.

Q. Mr. Maurer also had a reference to dust from the poultry houses coming out. And you told him to take that out as well, didn't you?

A. Yes.

Q. So then Mr. Maurer, in about March of 2012, took all of your revisions, made the revisions and sent them back to you again, didn't he?

A. Yes.