

MINUTES
Act 73 Working Group on Water Quality Funding
National Life, Catamount Room
Call-In Number: (802) 448-4858
Friday, August 11, 2017
9:00-10:30

Working Group Members: ANR Secretary Julie Moore, Tax Commissioner Kaj Samsom, VLCT Gwynn Zakov, John Grenier of Grenier Engineering, AAFM Diane Bothfeld (by phone), VTrans Sue Scribner

Others: Tax Analyst Andrew Stein, DEC Deputy Commissioner Rebecca Ellis, Vermont Chamber Ashley Romeo-Boles, LCC Jared Carpenter, Rep. David Deen (by phone), Dominic Cloud (by phone), Sen. Chris Bray, Matt Musgrave, Elizabeth Clifford, Mary Borg, Jeff Wennberg

1. Review Agenda. The Working Group reviewed the draft agenda for 8/11/2017. There were no changes to the draft agenda.
2. Minutes from 7/28/2017. The Working Group reviewed the minutes from the 7/28/2017 meeting. The motion to approve the minutes passed unanimously.
3. Review Treasurer's Report cost estimates and updates for 2020-2024.
 - a. Agriculture. AAFM explained the process used in the Treasurer's Report for estimating the agricultural sector's cost of compliance with the TMDLs and Act 64. In May 2015, AAFM launched the [North Lake Farm Survey](#) (NLFS) to quantify the impacts of agriculture on Lake Champlain. AAFM surveyed over 165 farm facilities in the Missisquoi River Basin and St. Albans Bay watershed to determine how much work needed to be done to comply with Act 64's Required Agricultural Practices. Using cost data from USDA, AAFM extrapolated from the North Lake Survey to estimate statewide Act 64 compliance costs.

Over 20 years, AAFM estimated that the Tier 1 cost to comply with the TMDs and Act 64 would be \$527.6 million, or an average cost of \$26 million per year. This does not include AAFM staff costs. In FY18, state and federal funds to agriculture total about \$12 million (roughly \$5 million state capital funds, \$2 million Clean Water Fund and General Fund, \$5 million USDA/NRCS funding outside of the state budget). Based on average costs over 20 years, the agricultural sector should be spending an additional \$14 million on water quality implementation in FY18 to comply with Act 64.

Assuming a spending curve over 20 years, with higher spending in the early years to comply with the RAPs, AAFM estimated that full compliance with Act 64 would cost farms as much as \$41 million in FY18. Based on this spending curve, the agricultural sector should be spending an additional \$29 million on water quality implementation in FY18 to comply with Act 64.

It was asked how much of the funding gap was eligible for capital funding through general obligation bonds. AAFM indicated that approximately \$4 million of the gap is capital eligible.

While farmers could fill in some of the funding gap for water quality implementation, it is unlikely that Vermont farmers could afford to fully fund Act 64 compliance costs. And even if the Legislature were to find additional monies for clean water implementation in the agricultural sector, AAFM would need additional staffing to get money out on the ground. AAFM needs roughly 1 FTE for every \$600,000 that will be granted to farmers. Even at current funding levels, AAFM needs 5 FTEs (1 FTE to track spending for accountability framework; 4 FTEs to provide technical assistance to farmers, which is a precursor to putting money on the ground).

- b. Municipal Infrastructure - Wastewater Treatment Facilities (WWTF). DEC is in the process of updating the estimates in the Treasurer's Report. It is likely that compliance costs for WWTFs over the next 5 years will go down slightly due to optimization techniques, which is cheaper than capital infrastructure. Jeff Wennberg shared a [memo](#) that analyzed municipal infrastructure cost estimated in the Treasurer's Report. It was noted that stormwater costs include private lands, which are estimated to be 85% of non-road developed lands, and that these costs would not likely be borne by municipalities. Several questions were raised:
- i. What is the implementation period for costs that will be considered in the Act 73 Report? It was agreed that the Act 73 Working Group will focus on costs over the next 5 years. With respect to WWTFs and CSOs, the Working Group will focus on real projects, not extrapolations.
 - ii. Will the Act 73 Report consider affordability? It was agreed that local affordability is an important consideration when allocating scarce resources. Some communities may have much Act 64 higher compliance costs than others, and that should be considered when looking at how to fund individual WWTF and CSO projects over the next 5 years. DEC/FED anticipates developing an affordability analysis.
 - iii. Will the Act 73 Report differentiate between loans and grants to municipalities? It was acknowledged that loans are a financing tool, not a revenue source. While financing is an important factor in paying for infrastructure, local municipalities will still need to identify revenues to pay back loans.
 - iv. Will the Act 73 Report consider how to pay for operations and maintenance (O&M) costs associated with WWTFs? It was generally agreed that, while O&M costs are part of life-cycle costs that should be considered in a feasibility analysis, the state does not normally pay for O&M costs associated with municipally-owned WWTFs. The Act 73 Report will therefore focus on infrastructure capital costs.

Municipal Infrastructure - Combined Sewer Overflows (CSOs). It was noted that the Treasurer's 20-year CSO cost of compliance is \$115 million over 20 years. Jeff Wennberg reported that the City of Rutland's recent separation project cost much more than \$2.2 per CSO. Under current rule, City of Rutland believes these costs are highly understated, and that would cost over \$100 million to address the City's four CSOs. It was agreed that the Act 73 Report would analyze WWTFs and CSOs separately, given the many unknowns related to

CSOs. The City of Rutland was invited to suggest legislative or rule changes to reduce the costs or the unknowns in CSO costs.

c. Developed Lands

- i. Developed Lands – Roads. DEC reported that it is in the process of updating the water quality compliance costs for developed lands, and that the estimated costs are likely to go down, for two reasons: (1) The costs in the Treasurer’s Report were based on the draft Lake Champlain TDMLs, not the final Lake Champlain TMDLs. In particular, the EPA’s estimated acreage of roads that will require treatment dropped significantly between the draft and final versions: state paved roads from 1,424 to 742 acres; municipal paved roads from 2,703 to 1,408 acres; and municipal unpaved roads from 9,621 to 7,123. (2) Based on actual cost figures from the last 12 months, the estimated cost of compliance for municipal unpaved roads has been revised from \$11,870 per acre to \$6,142.
- ii. Developed Lands – Non roads. It was further noted that the final EPA TMDLs estimate that 12,786 acres of non-road impervious surface will need to be treated to comply with water quality standards. Based on an average cost of \$30,000 per acre, the total cost of compliance for non-road impervious surface in the Treasurer’s Report was \$360 million over 20 years. Of the 12,786 acres, about 5,000 acres will be regulated under the 3-acre permit, and about 7,000 acres are allocated to compensate for “future growth.” Based on this modeling, it was asked if a change in the stormwater permit threshold for new development, from 1 acre to ½ acre would reduce the need to retrofit 7,000 acres to compensate for “future growth”? And if so, what would be the net savings if the ½ acre legislation passed? DEC’s Watershed Management Division will try to provide a cost estimate.

The Working Group took stock of the fact that the state does not have any funding programs for private developers who will need to comply with Act 64 water quality regulations, primarily the requirement to retrofit existing parcels with more than 3-acres of impervious surface. In some instances private developers may be able to partner with municipalities to develop public-private stormwater projects, which would be eligible for grants and loans from DEC (Ecosystem Restoration Program grants and Clean Water State Revolving Loan Fund loans). DEC will distribute a matrix that shows current subsidy levels for different types of clean water projects.

4. Administrative costs of local stormwater or parcel fee

- a. VLCT [estimates](#) that the combined cost of establishing a new stormwater billing system in each of the state’s 246 municipalities would range anywhere from \$1,760,000 to \$6,775,000.
- b. In response, it was mentioned that placing a stormwater fee as a separate line on existing property tax bills would be cheaper; would be likely to result in higher compliance rates; and could be paid through escrow accounts, resulting in less paperwork for property owners.

5. Potential legislative and rulemaking changes to support cost-effective implementation of water quality projects. The Working Group reviewed several policy ideas that could lead to cost-effective pollution reduction.
 - a. Integrated planning.
 - i. The U.S. EPA allows municipalities to look at costs related to wastewater, CSOs, stormwater-impaired waters through an approach called integrated planning. Municipalities can write a long-term compliance schedule to address upfront those projects that are most critical and most cost-effective. The State of Vermont is working with EPA to assist Burlington with an integrated plan that will be completed in 2018. VTDEC will write permits for Burlington with long-term goals that reflect water quality and affordability. Legislation that supports integrated planning would be helpful.
 - ii. Offsets and impact fees look like they are limited to Lake Champlain basin. Needs to be expanded across the state.
 - b. Stormwater Offsets and Impact Fees in the DEC's Draft Stormwater Rule
 - i. VTDEC is working on a new stormwater rule that will allow for stormwater offsets as long as they are in the same watershed as the project that is subject to the permit.
 - ii. Impact fees will be allowed where the property owner demonstrates that attaining water quality standards is not feasible. It was asked whether there a monetary limit on what is considered "feasible"; more information on the draft stormwater rule will be forthcoming.
 - c. Phosphorus Credit Trading
 - i. Offsets and impact fees are a form of phosphorus credit trading. Under current law, property owners are not allowed to trade across sectors (agriculture, municipal infrastructure, developed lands and natural resources) or across watersheds. However, the new stormwater rule will allow for increased trading within the same sector and watershed.
 - ii. It was commented that municipalities would like to be able to trade across point sources and non-point sources. AAFM reported that the agency recently awarded a grant to pay for a study to look at trading across sectors and watersheds.
6. Next steps
 - VCGI will provide some estimates of the cost and risks to stand up an assessment system based on statewide impervious surface data.
 - ANR, AAFM and VTrans will finalize 5-year projected costs for compliance with Act 64, the TMDLs, and the CSO Rule.
 - Existing funding sources (other than a parcel or impervious surface fee) also need to be explored.

Future Meetings

Friday, August 25 (9:00-10:30)

Early September (Meeting #1 with Advisory Council)

Early October (Meeting #2 with Advisory Council)

Early November (Meeting #3 with Advisory Council)

November 15 – Report Due