Lake Champlain Phosphorus Initiative

Fifth Meeting of the Agricultural Working Group 3/28/13

This summary reflects a range of views expressed on the issues as discussed during meetings of the Agricultural Working Group (AWG), comprised of members of the Vermont Agricultural Community of producers, technical advisors, state and federal agency personnel and personnel from businesses in the agricultural sector. They do not reflect the formal or public position of any one group of people, organization or coalition. All errors and omissions are the sole responsibility of EMC/CBI.

Attendees: 26

These notes and the presentations that were given will be posted on the Environmental Mediation Center's website: http://www.emcenter.org/lake-champlain-phosphorous-pollution-initiative/

I. *Review of Prior Drafts and Updates*

Group was provided with a legislative update that the House Fish, Wildlife, and Water Resources Committee had not submitted final bills for consideration as of the date of this meeting. Shoreline Bill is preoccupying the committee.

EPA will set numbers for total maximum daily loads "TMDL" and state will provide "reasonable assurances" of measures that will be taken to reach those numbers. Agency of Agriculture and DEC will need to provide regulatory backstops to be taken if goals are not met.

II. *Review Proposed Compliance and Small Farm Regulation and Certification*

Group reviewed two documents previously circulated: Proposed AWG Compliance Recommendations and Proposed AWG Recommendations for Farm Registration. When both those recommendations are in final form the documents will be posted.

Proposed AWG Compliance Recommendations.
Comments on the document:
-An emphasis should be made regarding a more comprehensive marketing and outreach efforts.
-There has been a lot of outreach, technical assistance and information supplied over the years regarding AAPs and the need to comply with the regulations. Yet there is acknowledgement of a continuing lack of understanding on who the regulations applied to and what they required.

-Concerns were raised over the ability of smaller farms to comply with the regulations and frustration over the idea that "ignorance of the regulation" should not be an excuse.
-If the farm is not compliance, there should be enforcement.

Group made agreed upon changes and will circulate to finalize the document.

Farm Registration, Certification or Status Quo

The group discussed a draft documents outlining three ideas.

A. Farms (defined by meeting a threshold amount of nutrients either created on or applied to the land) would be asked to simply register their location, acres and animals.
B. The next option was that to require farms to provide the same basic information and to also certify they were compliant with the AAPs.
C. The last option was to maintain the status quo.

AWG was polled, members could vote one or more times. 11 approved of the idea of registration, 14 approved the idea of certification, 2 were in favor of approving the status quo and 3 abstained.

Concerns were raised over whether a registration system would have utility and whether it was acceptable to ask people to volunteer this information.

-Could the information be found elsewhere?
-Would there be issues with Freedom of Information Act concerns?
-Ideas for where to find the data included:

- Tax return schedule F information (although the tax information is kept highly confidential and not normally available to Agencies);
- Dairy shipping lists; or
- Current use lists

Most MFOs and LFOs provide the information already. While there could be some farmers who would not voluntarily comply, most would not have an issue doing so.

"I see this as an opportunity to step up and say as a group that we see there is a need to be more active in addressing water quality issues. I am proud of the work we have done and its better that we do this ourselves than wait for regulators from the EPA to do it for us."

If the phosphorus pollution in the lake is to be addressed in a cost effective way, having the information to do it would be important.

We can do it or the EPA can do it but it would be better if we had a say. Farmers should take ownership of the process and implement changes that have a lasting impact so we are not revisiting the issues again and again.

Discussion on the difficulty of achieving a balanced system where every farm is held to the same standards but where smaller farmers are not regulated so heavily that they are unable to continue since they will most likely feel a greater impact. Concerns expressed about regulating smaller farms out of business and making Vermont farmers less competitive. Desire to link this to an incentive for smaller farms.

Idea floated to have a gradual step process for this:

1. Awareness of the AAPs
2. Education programs
3. Certification that the farmer is following the AAPs

Could certification/registration be the backstop?

Big issue is the Agency lacks the inspectors so where is the money going to come from? What is the value of regulating or certifying?

What is the purpose of the registration/certification: to make farmers more aware? To aid in further regulation of that farm?

Given the time and money spent on education, farmers should be very aware so if there is a lack of compliance, what is needed is more enforcement.

State vs. Federal Action

-Farmers can either work with the state or the EPA but either way changes will be needed. Concern that EPA actions will be more difficult for local farmers. There is a need to partner with the Agency as an ally. Working with the Agency makes it easier for the farmer to demonstrate that they are in compliance.

Care to be taken on figuring out how to cover not just the initial practice but the costs of sustaining it over time.

The proposal for registration/ certification recommendations to be revised and recirculated consistent with the comments from the AWG on 3/28/13.

III. AAPs

Discussion of history of AAPs and how VT AAPs compare to regulations in other states. Many states do not have such comprehensive regulations.

If that is the case, and if the phosphorus pollution in the lake is still not improving then the issue may not be with the regulations themselves but with ensuring compliance with them.

More violations, more actions will lead to more compliance. People will cooperate for many reasons, some because they want to or need to and some because they are worried about an enforcement action.

Tile drains- unclear whether this practice is beneficial or not—there is a literature review being prepared that looks at several studies of the practice to see where it is effective and where it is not.

Farmers want accurate information—in some cases there may be no need to address a specific practice in the AAPs but instead to get the information out. Then a farm can decide whether the practice is cost effective and will work on the farm. AAPs with flexible options would be more helpful for farms.

Specific Practices Under AAPs

<u>Soil Erosion</u>

Soil Erosion to "T" means that the land remains productive if the Tolerable soil loss is between 3-5 tons of soil loss per year per acre. Currently, LFOs and MFOs are required to manage soil loss to T and the AAPs require that farms maintain erosion levels at 2T, or 6-10 tons of soil loss per year.

The AAPs could be revised to tighten the requirement to "T" on all farms. Usually, helping a farm alter management practices to get to "T" can be done with just a few changes, e.g. planting a cover crop, using crop rotation, etc. There is also NRCS funding available to achieve the needed changes. If the funds are not spent, they have to be returned. Need to encourage more farms to enroll in programs for this kind of work.

Soil loss is both an agronomic tool and a water quality tool because lost soil can impact the lake if the sediment ends up in the waterway carrying nutrients.

Maintaining soil helps farmers keep more land in production, it can be seen as part of a paradigm shift in how land is managed and is part of a larger discussion on education around crop management. It takes effort to change management practices but farmers have the incentive to do so if the changes lead to more productivity.

Discussion of the need to have a broader based engagement process with farms. There are many good individual programs for specific practices but there is a lack of a comprehensive program to look at whole farm management systems so that practices can be implemented to address infrastructure issues at same time or in a more progressive, organized way.

Shift to a grazing based operation is more cost effective for farms. Need to have a plan, nutrient management needs attention to detail. Must take it out and review it frequently.

Gully Erosion and Buffers

Gully erosion is another area that could be addressed with AAPs. Gullies create erosion issues on fields. Currently very little in AAP to address the issue.

Buffers are another issue that could be addressed with AAPs. Current standards are 10 feet along perennial streams and 25 feet at points of run off. MFOs have 25 feet buffer requirement. Could change AAPs to make the 25 foot buffer on all farms.

AWG expressed desire to have regulations that were not "one size fits all" since these kinds of regulatory rules will result in taking a lot of farm land out of production and there is no assurance that on a cost-benefit analysis that doing so will be worth it.

Request for "smart buffers. " A more "common sense" approach to buffers on farms. Having buffers larger at points of run off or where the land abutted a waterway but not where this was not an issue.

Understand the need for a straightforward approach, and the need for easy to implement standards but easy is not necessarily appropriate. Could set the regulation as a general requirement but allow for each farm to submit a plan for a waiver where there was a management plan in place created with technical assistance to demonstrate that the tailored buffer system would be beneficial and address water quality issues. The group agreed that a smart buffer approach (environmentally protective buffer with a waiver system) would maximize the environmental benefits and minimize the impact to the farmer.

Where taking a lot of land out of production, can the farmer be compensation for the loss? How will that farm make up for the loss of crops and feed?

Another issue that was raised is the size of equipment that the farm has and will use in crop management. Larger buffers means smaller area to work with—need to take into account the width of the machinery, how to turn, how to actually work that land with the equipment already on the farm.

Crop Management in the Flood Plain

Spreading in lands in the flood plain. Look at what farmers and municipalities are doing with waste.

Most fertile lands available and taking more out of production will impact farms that rely on being able to plant there. The fall and spring floods are an issue.

Manure injection is an idea but it is not cost effective for many farms. Cover crops work but need to be mindful of root systems and the timing of the spreading and the planting. Could encourage towns to use digester systems to collect the manure and use it to create a municipal benefit. Could ban all row crops in flood plains but this is where the crops grow best. Could ban spreading in flood plain in exchange for spreading on other fields.

If there are regulations to address crop management in flood plains also need to think about what threshold is being used—annual flooding? 25 year flood line? 100 year flood line?

Winter spreading ban is an example of a hard rule that is not necessarily tied to science but is used because it is easy to implement.

AWG requested better data on how many acres were actually affected – how many in flood plain vs. how many acres are not. How many of those acres are used for corn? What would be the real world impact on the farms? How many are small farms with little other land available—if all their land is in the flood plain and there are new regulations, will these regulations force the farm out of business? Is that acceptable? Would there be a way to minimize the impact and keep the farm in business? Could there be an exchange of land to provide more option?

Need to get better information on this issue before making a recommendation. The regs currently on winter spreading ban are not helpful. AWG would like several options for farmers to choose from—could have larger buffers near waterways, could agree to a ban in most places but that it is ok spread in winter on specific fields. Could allow spreading based on soil test, a 7 or lower can spread, otherwise can't, etc.

Like smart buffers, enthusiasm for "smart spreading" program. NY allows spreading where there is a plan in place and the fields have been identified. If you meet the 590 standard, can spread at will.

Small group to discuss this issue and make recommendations to AWG.

IV. Nutrient Management Plans

-Issue is they look good on paper but are they being followed?
-How to scale NMPs to be useful to smaller farms
-Who should be required to have one (e.g. if you ship milk?)

Number of cows in state—about half of all cows are on LFOs and MFOs the rest are on SFOs. Easy to track dairys that ship milk but focusing only on them would exclude farms with other livestock and crop growers that apply nutrients to the land. Could pick different criteria—for example, a threshold measurement of production (e.g. $250,000) and a specific percentage of direct sales to consumers. Could use a criteria like if the farm uses mechanized system of application of nutrients. Need to find a system that makes sense to implement and also broadly accounts for farmers. Penn State created a booklet for farms that may be a helpful template for Vermont to use, and it applies to small farms in that state.

Question about funding, technical assistance and education for farms to create NMPS. Are there enough service providers in place to help farmers? What about funding? Currently there is $150,000 at Agency to help fund NMPs, Agency could shift that funding—use it for smaller farms? Use it to hire two new inspectors?

V. Next Steps

Smaller subcommittee groups will meet by telephone conference call to discuss the issues raised by AAPs (smart buffers, smart spreading) and NMPs. Next AWG meeting is April 10, 2013.