

Ossipee Aquifer Steering Committee Meeting
May 14, 2010
Huntress House, Effingham, NH
10am-12pm

In attendance:

Pierce Rigrod, NHDES
Bob Morency, RCAP Solutions
Stephanie Dulac, Assistant Planner LRPC
Dave Jeffers, Regional Planner LRPC
Blair Folts, GMCG Executive Director
Tara Schroeder, GMCG Program Director
Mia Akaogi, GMCG Water Quality Program Specialist
Al Levesque, Effingham Conservation Commission
Kamal Nath, Effingham Conservation Commission
David Little, Tamworth Planning Board
Ned Beecher, Tamworth Conservation Commission
Tim Miner, Sandwich Planning Board
Susan Slack, Effingham and GMCG
John Shipman, Freedom and OWC
Anne Cunningham, Freedom Planning Board

The meeting began at 10:00am. Introductions were made followed by a quick review of the agenda for the meeting.

Recap of the April meeting minutes (see handout). Tara recapped April meeting highlights. Also gave heads-up about Effingham PB APO workshop tonight, May 14th 6:30 pm at Town Office. Tara mentioned help needed at Duncan Lake BMP project June 1-3; GMCG is partnering w/ Ossipee Park & Rec Dept.

Handouts:

- Meeting agenda
- April 9, 2010 OASC meeting minutes
- GPO Ordinance in matrix form for comments by town
- Road Salt BMP workshop summary, April 29, 2010
- Aquifer Ordinance Timeline 2010-2011
- Major Points of the GPO, Jan 27, 2010
- DES Model GPO Questions & Answers, May 14, 2010

April 29th BMP Workshop Debriefing & 2010 Fall Workshop (see handout): Mia gave a brief overview of the presentations at the Road Salt BMPs and Aquifer Protection workshop on April 29th which included Jay Buckley, Steve Whitman, and Pat Santuso. She discussed the data collected by GMCG and why creating and following BMPs are important to the Ossipee Watershed. All 6 watershed towns were represented and the Road Agent from Freedom attended. The upcoming fall workshop was discussed and Blair discussed that to boost attendance by road agents that they will hold the event during working hours. Miner discussed Sandwich's policy of no salt except in difficult areas- they use sand as much as possible. Beecher mentioned salt use in Tamworth has gone down in recent years even though more building. Rigrod pointed out difficulty in using just sand because it doesn't melt ice. Shipman said he is collecting the Winter

Maintenance Plans from all 6 towns and has collected salt application data from all towns and from the NHDOT Maintenance District 3 for State roads in our watershed. Nath will pursue data and plan and road contractor name from Effingham, which is still needed. Shipman volunteered to go to DOT Maint. Distr. 3 office and invite/encourage them to come to fall workshop.

Aquifer Protection Ordinance Clarification & Questions- Pierce Rigrod

Pierce went through the APO Q&A handout (see Appendix 1) which had 13 questions submitted from the various towns.

- Pierce discussed that APO and this type of ordinance does work and have some sort like this in 90 NH communities. Authority and enforcement are always the big issue, which inspections being the questions- who, how, actions to take, “marketing” of ordinance, etc.
- Discussed how to approach business owners for inspections
 - Environmental approach: Are you for clean water? Can you help us insure that?
 - Isn't this more regulation? No- just establishes local authority- the APO
 - I'm grandfathered, so don't need to comply- Actually all business must follow State regulations, even if updated. We are here to provide 'house-keeping' review of recent regulatory changes
 - Economic approach: Would you like to minimize your risk from not being able to sell your property? Would you like to minimize your risk from being a “Principal Responsible Party (PRP)” in case there is contamination at you or an adjacent property?
 - Pierce suggested we get a couple of good examples in NH to tell land owners what can happen if you don't follow BMP's. Dave encouraged us to bring any local cases forward.
- Pierce went through Q&A prepared by LRPC- see Attachment 1 with annotated notes from this meeting.
- Pierce ran through enforcement:
 - Do inspection under authority of APO and confirm compliance
 - If not in compliance send letter to business owner
 - If no compliance, then call DES- they will send letter and call owner to stress compliance
 - If still no compliance, DES may visit site based on severity of problem. DES has limited resources to respond so must prioritize inspections base on level of risk- they will inspect high risk situations; may or may not visit lower risk sites
- Group discussed risks at private home owner sites, and it was stressed that the law and this APO cannot apply to home owners- only to businesses. Also discussed education materials/brochures available to give to homeowners

Summary of where Town Planning Boards are now:

- **Freedom:** Actively pursuing APO and working on this spring summer
- **Sandwich:** Actively working on APO, but not sure, based on other conflicting activities whether or not is will be ready for march 2011 vote
- **Tamworth:** Actively working on APO and expect to have it ready
- **Madison:** They have an APO which follows State model pretty well. May update in next year. They are not in LRPC's region, but are part of our process thru Jay Buckley, PB.

- **Effingham:** Meeting on May 14th will assess status of their work on APO. Update: The planning board seemed interested but wouldn't commit yet to working on the ordinance for March. They want to read through it first and decide at their next meeting on June 3 at 6:30. Bill Piekut, who is the Selectmen's rep to the PB, spoke in favor of it. One or two other members commented that with a model ordinance to work with, it wouldn't be too hard to get an ordinance ready for March voting. Susan Slack volunteered to work on a committee to help draft the ordinance.
- **Ossipee:** have some zoning ordinances that approach aquifer protection but not complete nor do they follow State model. PB, through Roger, is pursuing this and Blair asked LRPC to call and give them as much help as they will accept. A follow up meeting with the PB was requested once a draft and larger map of the aquifer overlay district were complete.

The next meeting of the OASC will be a work session in Effingham at the Municipal Building on Friday, June 11th, from 1-3pm. Steve Whitman and LRPC will assist town planners with natural resource ordinance drafting and successful strategies for ordinance adoption. This is an opportunity to work on drafting ordinances with professional planners, with emphasis on the Aquifer Protection Ordinance.

Attachment 1

DES Model Groundwater Protection Ordinance Questions and Answers

(Additional minute notes added in *italicized bullets*)

What portions of the DES Groundwater Protection Ordinance have been changed? What are the explanations for the changes?

Mostly the prohibited uses are inherently risky and selection is mostly based on DES experience with site remediation and studies/statistics related to various uses.

* LRPC created a handout, based on a conversation with Pierce at DES, that outlines the major changes to the model ordinance and presented it at the April OASC meeting. Additional copies of the handout are available.

- *Most of the changes are 'housekeeping' to stay current with recent regulations, such as reflecting new Source Water Protection manual, blasting BMP's, etc.*
- *Business owners must follow state regulations even if non-conforming pre-existing use*
- *If expanding business, they are not grandfathered*
- *Request from attendees: can we match state regulations with model ordinance? LRPC said that they would work on that*

Will the GPO be able to function as a stand-alone ordinance in communities such as Tamworth where there is currently no zoning?

The model is written as a stand-alone ordinance.

Commercial, retail, and residential uses are not defined in Tamworth as there isn't town zoning. How would we distinguish between any of those uses?

A definition of any of those uses could be added to the ordinance.

- *LRPC can offer definitions, if requested*
- *Add definitions within the ordinance itself*
- *May need additional definitions, such as 'cottage industry'*

Can you clarify why the state chose the prohibited uses in the list (i.e. gas stations)?

Gas stations are included as petroleum facilities constitute the largest number of "sites" that pose or have contributed to groundwater contamination. The other prohibited uses on the list also represent uses DES has experience in having to remediate, or the use is inherently risky.

- *See Chapter 485-c list in Groundwater Protection Act*
- *We can stress the preservation of our 'high quality' waters*

What are the incentives for all the towns to include all of the prohibited uses on the list, as well as suggest other commonly added prohibited uses?

The rationale/incentive for the communities to accept all of the prohibited uses on the list is to maintain a regional consistency in protection. The identified prohibited uses are on the list as they are inherently risky and pose a threat to groundwater sources. Including them in the ordinance is in the public's best interest. This is true in terms of protecting health, the environment as well as the economic value of maintaining a clean water supply.

- *The incentive is maintaining economic and environmental health of our watershed*

What is the best approach for these towns as far as agreeing on prohibited uses list?

For the Tri-Town Project, representatives from each PB and CC met regularly to discuss ideas and concerns as they developed a regional ordinance that met all of the communities' needs. Through these meetings they reached a consensus on what to include in their ordinance.

Can you clarify how/if the ordinance gives towns more control and ability to enforce BMPs for preexisting non-conforming uses, and how/where the state comes into the picture if businesses do not follow BMPs?

BMPs as listed in the performance standard section of the model are the same or very similar to state regulations under Env-Wq 401, which the town has no authority to enforce. Adoption of the ordinance under the planning authority, gives towns and their designated agent (building official, health officer or BOS) the authority to inspect and enforce a version of these BMPs.

- *See additional comments in notes- Pierce ran group through the inspection process*

Why would preexisting non-conforming businesses support the adoption of this ordinance?

All businesses that use regulated substances in containers =>5 gallons are subject to Env-Wq 401 BMPs, which are enforced by the state. Following the BMPs reduces big private and community liability, cost and stigma of contaminated groundwater. It is truly an economic advantage to have clear groundwater. Long-term water security and sustainability is a key concept to this ordinance. Maintaining local control over the preexisting non-conforming uses is also a benefit to local businesses and authorities.

- *Towns need a good economic rationale to explain to citizens and business owners*

Does the BMP inspection training and the ordinance w/ BMP inspection program give authority and control to local officials to enforce BMPs or are they encouraging them only to the point where they report the PCS to DES and then the state needs to step in?

Reporting to DES is up to the local official and typically depends upon whether or not they have the resources to enforce and the severity or risk to the public.

- *See RSA Chapter 31:39 – Power of Towns to make bylaws*
- *It's up to Town as to whom to appoint to do inspections*
- *See further discussion in minutes- the inspection process and how to approach business owners.*
- *Keep in mind that this process helps landowners and the town limit its liability and potential costs for clean-up.*
- *Well formed outreach and education is important in this process*
- *Can Towns get a bonus (reduction) in their insurance if they have an ordinance and inspection process? Something to check on.*

What happens when a business is noncompliant? Can a health officer shut a business down or require compliance?

When a health officer (or other designated local authority) deems something a nuisance that will harm public health or the environment, they can remove the nuisance forcibly, if necessary. A cease and desist order may be issued by the local official given that authority by the community to enforce local codes. See RSA 125:5 & RSA 147:4

Who conducts inspections? How often should they do them and what is entailed?

In the model, DES recommends one inspection at least every three years by the local building inspector, health officer, or other designated local authority. Towns do not have to conduct these inspections but can retain the language in the model to allow the designated agent the authority to inspect at reasonable times to ensure the BMPs in the performance standards are followed.

The inspection can be relatively simple and quick, particularly if it's a small business with a few containers of gas, oil or related substances. DES provides training and guidance materials.

Can businesses self-certify BMP compliance?

There is nothing that precludes a town from allowing businesses to “self-certify” however allowing self-certification removes an objective third party from the enforcement process.

How could the ordinance give the town the ability to perform inspections at home-based businesses?

Guidance on home occupations is given on page 5 of the model. If there is a concern with these industries, they can be defined in the ordinance and subject to the same performance standards if they use regulated substances in regulated containers =>5 gallons.

- *The ordinance needs to define what a home-based business is and set parameters for this definition-*