

DRAFT

## **MINUTES**

### **AGRICULTURAL ADVISORY BOARD MEETING August 19, 2009**

Pennsylvania Department of Agriculture  
Samuel E. Hayes, Jr. Livestock Evaluation Center  
Pennsylvania Furnace, PA

#### **In Attendance – Members**

**Doug Beegle, Pennsylvania State University**  
**Larry Breech, PA Farmers Union**  
**Rob Davidson, PA Department of Agriculture**  
**Michael Firestine, Agri-business**  
**Barry Frantz, USDA Natural Resources Conservation Service**  
**Jennifer Harry, PennAg Industries**  
**George Hazard, PA Farm Bureau**  
**John Hines, Department of Environmental Protection**  
**Duane Hobbs, Agricultural Chemicals Manufactures**  
**Betsy Huber, PA Grange**  
**Keith Masser, Vegetable Producer**  
**David McElhaney, Livestock Producer**  
**John Peters, Fruit Producer**  
**Brenda Shambaugh, Pennsylvania Association of Conservation Districts**  
**Tom Williams, Dairy Producer**

#### **In Attendance - Agencies, Advisors, and Guests**

**Karl Brown, State Conservation Commission**  
**Morgan Firestine**  
**Lamonte Garber, Chesapeake Bay Foundation**  
**Susan Marquart, PA Association of Conservation Districts**  
**Dale Smith, Mahoning Outdoor Furnaces**  
**Duke Adams, Ronald Davis, Jane Greber, Frank Schneider, Ann E. Smith, Steve Taglang,**  
**Andrew Zemba, Department of Environmental Protection**

The August 19, 2009 meeting of the Agricultural Advisory Board (AAB) was called to order by Chairperson Michael Firestine at 8:04 a.m.

Chairperson Firestine announced that the following member had asked to be excused:

- Michael Brendle, Poultry Producer
- Kristine Crawford, Senate Agriculture and Rural Affairs Committee
- William Wells Jr., Ornamental Horticulture

Chairperson Firestine welcomed the new PA Farm Bureau representative George Hazard. Mr. Hazard serves as the PA Farm Bureau Director of Natural Resources and replaces Joel Rotz, who will still serve as the alternate for the PA Farm Bureau.

Members of the Board introduced themselves, as did the various guests.

Minutes from the June 17, 2009 meeting were approved as written.

**Chapter 123 (Standards for Contaminants) – Particulate Matter Emissions (Outdoor Wood-Fired Boilers)** – Jane Greber and Ron Davis, Bureau of Air Quality, presented information regarding the proposed Chapter 123 outdoor wood-fired boiler (OWB) regulation. The Chapter 123 proposed regulation is scheduled to go before the Environmental Quality Board (EQB) in September.

Using a diagram, Ms. Greber described OWBs and what they are used for. Mr. Davis added that the proposed regulations are for OWB's used for residential purposes and not for agricultural purposes. The Pennsylvania Air Pollution Control Act does not allow for the regulation of air quality emissions where agricultural commodities are produced, except as required by the Clean Air Act. Thus OWB's used for agricultural practices are exempt. Mr. Michael Firestine asked what happens if an agricultural operation used the same OWB for their dairy milk house (or other agricultural building) along with their residence. Mr. Davis answered that he would need to check with legal staff but thought that the OWB, used in this dual role, would not be regulated. *(Note- Legal staff has been consulted on this matter and AAB members will be advised of the answer once received.)* Mr. Firestine also asked what is "clean" wood. Ms Greber answered that "clean" wood is defined in the proposed regulation but generally it is wood that has not be painted, treated, stained, etc. Mr. Firestine then asked if the burning of old fence posts, telephone poles, etc. could be done in the OWB's. Mr. Davis answered that the Department discourages burning these materials and the proposed regulation would not allow burning these items in a regulated OWB.

Mr. Tom Williams asked how the Department determines if there is smoke or steam coming from the smoke stack of the OWB. Mr. Davis answered that field staff goes to smoke school and is trained in making the determination, but typically steam fades and smoke remains.

Ms. Greber stated that the pollutant of concern for the proposed OWB regulation is PM2.5 (also referred to as fine particulates). PM2.5 are tiny particles of particulate matter that can penetrate the deepest part of the lungs and may even get into the bloodstream. She described the health concerns that are linked to PM2.5 exposure and the population that may be susceptible. Mr. Williams asked if there is a way to measure particulate matter emissions. Mr. Davis answered that the Environmental Protection Agency (EPA) does have test methods available for measurements.

Ms. Greber addressed other potential releases of hazardous air pollutants from OWB's, which are not regulated under this proposed regulation. Mr. Williams inquired if these pollutants are released by natural wood decay. Mr. Davis answered that some of the pollutants are released by decay, but at much lower levels. Most of the chemicals mentioned are released at higher levels, compared to decay, due to the combustion process and incomplete combustion. Ms. Greber reminded the AAB, that the department is not regulating the chemicals discussed and not trying to stop the burning of wood.

Ms. Greber discussed that the proposed regulation was initiated for several different reasons to include:

- Older model OWBs emit large quantities of PM (mostly PM2.5) annually
- There are cleaner-burning models now available
- DEP receives numerous citizen complaints about OWB operations - health concerns, odors, smoke, improper fuel, short stack heights and year-round use
- In 2005, PA was 6th in the nation for number of installed OWB with about 12,000 units. The number has grown substantially since then.

- Achieving and maintaining the 1997 and 2006 health based 2-hour PM2.5 National Ambient Air Quality Standard, which was defined by EPA.
- Submission to EPA as a revision to the State Implementation Plan

Mr. Larry Breech asked if the Department does not go forward with this proposed regulation, would EPA come in and do it. Ms. Greber answered that it is a possibility. Mr. Davis added that the Department is trying to be proactive and that if EPA were to regulate OWB's, DEP would have to adopt that regulation.

Ms. Greber mentioned that 8 Mid-Atlantic and New England States have passed or proposed OWB regulations. OWBs are exempt from a federal regulation for indoor woodstoves, but there is a voluntary EPA-initiated program for emission standards. The current Phase 2 OWB models burn 90% cleaner. Currently 7 models, by 5 manufactures, have been certified by EPA and are on the market.

Ms. Greber discussed the provisions of the proposed rulemaking to including new definitions, emission standards, setbacks, written notice and recordkeeping requirements for new OWB's, and stack height and fuel requirements for all OWB's

Ms. Greber also discussed that the proposed regulations would be applicable to a person, manufacturer, supplier or distributor who sells, offers for sale, leases or distributes an OWB for use in the Commonwealth or a person who installs, purchases, receives, leases, owns, uses, or operates an OWB in the Commonwealth

Exemptions would include a person, manufacturer, supplier or distributor that demonstrates that the OWB is intended for shipment outside of the Commonwealth and has taken prudent precautions to ensure that the OWB is not distributed within the Commonwealth.

Mr. George Hazard asked if an individual was to buy an OWB from Ohio, would the purchaser have to follow the proposed regulation. Ms. Greber answered that since the proposed regulations apply to a person, manufacturer, supplier or distributor who sells, offers for sale, leases or distributes an OWB for use in the Commonwealth and to a person who installs, purchases, receives, leases, owns, uses, or operates an OWB in the Commonwealth, the purchaser would be responsible for following the proposed regulation. Mr. Hazard than asked how many manufactures of OWB are in Pennsylvania. Ms. Greber answered there are 3 known manufacturers at this time and possible a fourth very shortly.

Ms. Greber mentioned that the expected results of the proposed regulations include reduction of PM2.5 emissions by 90% for every OWB that is installed after the effective date of the regulation when compared with a conventional OWB model, reduction in citizen complaints, and response to citizen complaints and potential enforcement will be more effective.

Ms. Greber discussed the projected additional costs to the regulated community due to the proposed regulation. Mr. Breech asked how increasing stack height decreases PM2.5 emissions. Mr. Davis answered that it does not decrease the emissions but rather spreads the distribution of the PM2.5 over a greater area, thus decreasing its concentration. Mr. Rob Davidson asked if thought was given to the additional costs of raising a stack rather than just the price of the stack pipe. Mr. Davis answered that, since each situation is unique (site specific), there is no possible way to calculate for each situation.

Ms. Greber advised that enforcement of the proposed regulation will be complaint driven. Ms. Greber also mentioned that Phase 2 OWBs must be certified by EPA as meeting a PM emission limit of 0.32 lbs per million Btu heat output and must be labeled accordingly. The proposed regulations also require written notice, which is signed by the buyer or lessee and the distributor or seller and kept on-site for at least 5-years, advising the buyer of the provisions of the proposed regulation .

Mr. Keith Masser asked if this proposed regulation bans the outdoor burning of garbage. Ms. Greber answered that this proposed regulation is only for OWB's. Deputy Secretary John Hines added that the solid waste deputation would regulate burn barrels. Mr. Dale Smith added that the manufactures are pushing for a national standard and stand behind this proposed regulation because it prohibits the burning of garbage, telephone poles, etc in OWBs .

Mr. Davidson asked if in addition to "clean" wood could the regulation include biofuels, like switch grass or corn. Mr. Davis answered that most of the biofuels are in the development stage and it is hard to put these into the regulations at this time, while the standards are being developed. Mr. Breech added that the proposed regulations should have an economic impact on the agricultural community and forestry as the U.S. looks to import less petroleum in the future.

The AAB members agreed that once this proposed regulation is approved by the Environmental Quality Board (EQB) and published for public comment, they would like another presentation so they could provide written comments.

**Chapter 96.8 (Water Quality Standards Implementation) New Subchapter (Use of Offsets and Tradable Credits from Pollution Reduction Activities in the Chesapeake Bay Watershed)** – Ann E. Smith and Andrew Zemba, Water Planning Office presented on a new subchapter to Chapter 96 that will allow the use of offset and tradable credits, from pollution reduction activities, in the Chesapeake Bay watershed.

Ms. Smith noted that the department issued an interim final policy on Trading of Nutrient and Sediment Reduction Credits in 2005. The final policy was published in the *Pa Bulletin* in 2006. Since that time, the department has worked on outreach and enhancements to the Nutrient Trading program. One of the enhancements that is sought is to include the final policy in Chapter 96, to codify it and provide clear and certain standards for nutrient and sediment credit trading in Pennsylvania. Deputy Secretary Hines added that codifying the policy was a request of the regulated community and that it should provide clarity. It was also noted, that at this time, the new subchapter is for the Chesapeake Bay watershed only. Additional watersheds may be looked at in the future, but not presently.

Ms. Smith noted that the new subchapter was presented to the Water Resources Advisory Committee (WRAC) in June and July of 2009 and will be presented to the EQB in October 2009. Once approved by the EQB, the new subchapter will be published for a 30 day comment period.

Ms. Smith described the subsections that are included in the new subchapter. Enhancements were made to the methodology subsection compared to the final policy. The methodology subsection will also allow for additional enhancements.

In the water quality and Total Maximum Daily Load (TMDL) subsection, Ms. Smith advised that either the requirements of a TMDL or the Chesapeake Bay requirements, whichever is more stringent, would apply.

Mr. Breech commented that the Chicago Climate Exchange (CCX) does carbon credit trading and verifies the credits. He questioned why the department does not use an existing system and try to tie nitrogen and phosphorous credits to carbon credits, thus realizing more revenue from the market place versus the government. Ms. Smith noted that this new subchapter is not specific to credit “stacking” and that the department has no restrictions on “stacking” at this time. Deputy Secretary Hines added that he believes credit “stacking” should be allowed because of the overall improvements in water quality.

Deputy Secretary Hines explained that the department is working with CCX and PennVest to develop a bank and exchange concept. The department also supports legislation that was introduced by Senator Pat Vance.

Ms. Smith mentioned that the final policy had a land conversion piece that was not ideal for farmers. The proposed subchapter removes the ability for credits to be generated from land conversion. Agricultural land that is enrolled in a conservation program, such as CREP, may be eligible to generate credits, in certain circumstances, and the department is working on this piece with the policy office.

Dr. Doug Beegle commented that there are concerns, in the scientific community, with the credit calculation methodology. The methodology of the Chesapeake Bay Model is not appropriate for the use of calculating credits. The local segment where the practice generates credits is quite different from the watershed segments that is used in the current calculations. Deputy Secretary Hines agreed with Dr. Beegle but mentioned that the department needed to find a way to calculate credits. He added that the department will be looking for better calculation methodologies. Deputy Secretary Hines feels that the current methodology is conservative. Dr. Beegle is concerned that the scientific community may not be able to stand behind the current methodology at this time.

Mr. Barry Frantz asked how easy it was for field staff to do calculations. Ms. Smith answered that there are excel spreadsheets available for common agricultural best management practices (BMP's), such as no-till, cover crops, buffers, etc. These spreadsheets can be found on the DEP nutrient trading website. Ms. Smith also mentioned that additional work is needed for new BMP's that are not included in the bay model.

**Chapter 102 (Erosion and Sediment Control and Stormwater) subcommittee report on proposed revisions** – Jennifer Harry, PennAg Industries reported that the AAB Chapter 102 subcommittee meet on July 27. Minutes of the meeting were distributed. At the time of the subcommittee meeting, the proposed Chapter 102 regulation revisions were not yet published in the PA Bulletin, but the subcommittee looked at the latest draft version.

Deputy Secretary Hines announced that the Chapter 102 proposed regulation revisions are expected to be published in the *PA Bulletin* on August 29, 2009 and be open for a 90 day public comment period and 3 EQB public hearings.

The subcommittee will meet again, prior to the October 21st AAB meeting, to discuss the proposed regulation. All AAB members are encouraged to attend and Frank Schneider will send out the meeting time, location, and the proposed regulations, once they are published.

The subcommittee will bring its recommended comments to the AAB at the October meeting. From these recommendations, a formal AAB comment document will be sent to the department.

**Member or Public Comments** – Chairperson Firestine announced that Jennifer Harry had been appointed as a member WRAC, by DEP Secretary John Hanger. Jennifer’s appointment was independent of the discussion that the AAB had in regards to adding an agricultural representation on WRAC.

It was reported that WRAC had some discussions on a member of the AAB being appointed and they felt that it may be a role of the vice-chairperson of the AAB. The WRAC membership also felt that the AAB appointee should be a non-voting member of WRAC, due to the fact that the AAB member could possibly double vote on issues that come before WRAC and the AAB. Mr. Duke Adams advised that WRAC does not allow alternates to be submitted, so one member would need to be appointed, if Secretary Hanger were to appoint an AAB to serve on WRAC.

After discussions, the AAB felt that another agricultural voice on WRAC was a good idea and they would like the department to continue its efforts in getting an AAB member appointed to WRAC. The membership also felt, that for consistency, they rather have an individual AAB member appointed, rather than it being a role of the vice-chairperson, which could change yearly.

Chairperson Michael Firestine asked if any members of the AAB or public had any comments.

Deputy Secretary Hines reported that the department sat down with agricultural interests in regards to the proposed increases in Concentrated Animal Feeding Operations (CAFO) National Pollutant Discharge Elimination System (NPDES) permit fees. This issue was discussed at the June 17, 2009 AAB meeting. Deputy Secretary Hines mentioned that fee’s needed to be increased to cover costs of issuing and inspecting permits. He announced that the department recalculated the fee schedules and that the proposed annual fee was removed and the proposed “front end” fees were increased.

Mr. Karl Brown announced that the Environmental Protection Agency (EPA) Chesapeake Bay Program staff participated in two listening sessions in regards to the implementation of the federal Executive Order regarding a revised effort to restore the Chesapeake Bay and how that effort may impact agricultural operations. Mr. Brown mentioned that the EPA is preparing to release a series of draft reports and recommendations for changes in the CBP efforts. These reports and recommendations will be released on September 9<sup>th</sup> and formal comments will be accepted from November 9<sup>th</sup> until early January.

There being no additional discussions, the meeting was adjourned at 10:02 a.m.