

MINUTES

AGRICULTURAL ADVISORY BOARD

**Rachel Carson state Office Building
Room 105, First Floor Conference Room
Harrisburg, PA**

August 27, 2003

Chairperson Brenda Shambaugh, PA State Grange, called the meeting to order at 10:10 a.m.

Attendance

Members

Chairperson Brenda Shambaugh, PA State Grange
Dr. Herb Cole, Penn State University
Larry Breech, PA Farmers Union
Gerald Seyler, Grain Producer
Tom Williams, Dairy Producer
Bill Wehry, PA Department of Agriculture
Patricia Sueck, PA Association of Conservation Districts
Gary Smith, USDA, Natural Resources Conservation Service
Jay Howes, House, Agriculture and Rural Affairs Committee (Rep. Hershey)
Kristin Ebersole, Senate, Agriculture and Rural Affairs Committee (Sen. Waugh)
Walt Peechatka, PennAg Industries Association
Tom Andrews, House, Agriculture and Rural Affairs Committee (Rep. Daley)
Dave McElhaney, Livestock Producer
Dave Irvin, Fruit Producer
William Wells, Jr., Ornamental Horticulture Industry Representative
Roxanne Levan, USDA, Farm Service Agency
Marel Raub, PA Farm Bureau

Agencies, Advisors, and Guests

Steve Taglang, DEP, Bureau of Watershed Management
Lori Mohr, DEP, Office of Policy
Bill Foose, USDA, Farm Service Agency
Denise Cable, Alliance for Community Action
Doug Goodlander, State Conservation Commission
John Berger, PA Department of Agriculture
Tom Juengst, DEP, Bureau of Watershed Management
Bob Gibson, DEP, Bureau of Watershed Management
Doug Brennan, DEP, Bureau of Regulatory Counsel
John Quigley, Penn Future
Don Fiesta, DEP, Bureau of Watershed Management

Kelly O'Neill, Chesapeake Bay Foundation
Shelly DeHoff, Lancaster Conservation District
Curtis Kratz, Penn Environmental & Remediation, Inc.
George Wltmayer, Penn Environmental and Remediation, Inc.
Bill Achor, Wenger's Feed Mill, Inc.
John Hines, DEP, Office of River Basin Cooperation
Cedric Karper, DEP, Bureau of Watershed Management
Dean Auchenbach, DEP, Bureau of Watershed Management

Introduction of Members and Guests

Dean Auchenbach announced that on July 21, 2003 the Governor appointed John Flanagan as the Agricultural Manufacturers Representative to the Board; and David McElhaney was appointed as the Livestock Producer, to replace Sam Elkin who retired. All vacancies have now been filled for the Board. It was also noted the PA Farm Bureau appointed Marel Raub to replace Bill Adams.

Larry Breech objected to the moving of the public comment period to the end of the agenda. He stated his objection is based on the fact that Act 93 of 1998, the PA Sunshine Law, specifies in section 3, what is an agency, section 4, open meetings, and section 10.1, public participation. He also noted DEP has a policy regarding public participation as per an executive summary from the DEP Citizens Advisory Committee. Breech stated that no item may be voted on without a public comment period. Walt Peechatka noted that DEP staff were asked to check on this. Jay Howes noted he serves on several board and commissions where public comment periods are not offered. Lori Mohr stated it's the DEP policy to support full public comments at meetings. Cathy Myers stated that a public comment may not be a legal requirement of the Board, and the Board may organize its agenda's the way it wants to, but should ensure public comments are provided for in its meetings. Bill Wells made a motion that this issue, go to DEP legal counsel for a written opinion. Pat Sueck seconded the motion. Doug Brennan noted that from a purely legal standpoint there was no requirement that the Board provide a public comment period. Bill Wells then withdrew his motion. Chairperson Brenda Shambaugh stated that any public comments would be limited to five minutes. Larry Breech objected to this action and the moving of the public comment period to the end of the meeting and requested the record state his opposition to this matter.

Action on the Minutes of the June 18, 2003 Meeting

The minutes were approved as distributed.

Review and Comment on the Draft Concentrated Animal Feeding Operation (CAFO) Regulations

Bob Gibson, DEP, Bureau of Watershed Management, noted that a stakeholder's workgroup has met since March 2003 to revise the Concentrated Animal Feeding Operation (CAFO) Regulations. Board members were mailed a copy of the draft

regulations prior to the meeting. Gibson then reviewed the proposed changes to the regulations. Major revisions include:

Section 91.36 (a) (3) now requires a Water Quality Permit for any agricultural operation that has a liquid or semi-solid manure storage facility exceeding 1,000,000 gallons capacity. Currently an operation may construct a manure storage facility that exceeds 1,000,000 gallons, but has less than 1,000 AEUs. If the operation expands its AEU to over 1,000 in the future they would not need a water quality permit since it is an existing operation.

Section 91.36 (a) (4) requires all manure storage facilities at new or expanded CAFOs after April 13, 2003, must be designed for the 100-year/24 hour storm.

Section 91.36 9 (a) (6) (c) Discharge of Pollutants Section was added.

Section 92.1, the CAFO definition was revised to eliminate the discharge language, which is covered under Section 91.36.

Livestock definition was added to allow the state to regulate horseracing facilities.

Section 92.5 (b) Poultry operations were added.

Section 92.5 (a) (e) (1) added manure application setbacks of 100 feet from down gradient surface water, or vegetated buffer no less than 35 feet.

Section 92.5 (a) (e) (4) requires a preparedness, prevention, and contingency (PPC) plan for all CAFOs to ensure chemicals are properly handled on-site.

Section 92.5 (a) (f) (5) requires exported manure from CAFOs to have written agreements and nutrient balance sheets.

Brenda Shambaugh questioned whether a manure storage facility of 1000,000 gallons should require a Water Quality permit from DEP. Bill Wells questioned what the definition of chemical is for the PPC plan. Bob Gibson explained that EPA has been unclear on this. Wells recommended the definition of chemicals be included in the regulation definitions.

Bob Gibson noted that EPA is currently reviewing the draft regulations. The state is currently proposing to continue to use the concentrated animal unit (CAO) animal equivalent unit (AEU) calculation rather than animal numbers as required by EPA. It is unsure whether EPA will approve this proposal. The CAFO regulations must be in place by April 2005. Some of the changes in the CAFO regulations will be dependent on revisions to the Nutrient Management regulations.

Board members were asked to provide comments on the draft regulations during the comment review period.

Update Report on the Nutrient Management Regulations

Doug Goodlander, State Conservation Commission, reviewed the proposed changes to the Nutrient Management Regulations. A summary of the internal working draft revisions was provided to Board members along with a timeline for the regulatory development process. Changes that were highlighted include phosphorus, exported manure, conservation plans, horses, bare ground applications, barnyard management, soil and manure testing, and field stacking of manure. Goodlander noted that to date 820 CAOs have nutrient management plans and 950 farmers have developed volunteer plans. Chairperson Shambaugh suggested the fact that nearly 1,000 Pennsylvania farmers have developed voluntary nutrient management plans needs to be publicized. Deputy Secretary Myers noted this is a testament to the conservation commitment of Pennsylvania's farmers.

Walt Peechatka questioned if the 150-foot setback from surface waters for manure application applied to intermittent streams. Goodlander noted that it does not count roadside ditches. Larry Breech questioned what happens to the nutrient management plan if a person you export manure to through a signed agreement drops out. Goodlander noted that if the plan were under review, the importing landowner would be dropped from the plan. Any change in an importing site to an approved plan would require a plan amendment, although no time line is required to find another site. Larry Breech suggested a time line be placed in the regulations to get new manure importing sites. Pat Sueck questioned why the manure application setback was put at 150 feet. Goodlander stated that a Penn State University study found that the area within 150 feet of a stream is the highest hydrological recharge area. Therefore to protect this area a setback of 150 feet was established. Goodlander noted that if the framer does a P-index, it may allow for manure application closer than 150 feet.

Goodlander urged the Board members to support the certification program for manure haulers/brokers. Tom Williams questioned the cost of the certification program. Goodlander noted the cost has not yet been set but will be kept minimal. Brenda Shambaugh questioned if there has been a problem with commercial haulers. Goodlander replied that there have been some problems but it is not common. Jay Howes cautioned against using the term "conservation plan" in the regulations. He stated that term means many things to different people.

Under the regulation revisions, horses, which are currently exempt, would be addressed and included in the animal density calculation. Under the proposal a minimum AEU calculation (such as less than 8 AEU's) will be set to allow for 4-H livestock situations. Jay Howes stated he has problems with exempting people and questioned whether the State Conservation Commission has the legal authority to do so.

Goodlander noted under the timeline the final regulations would be posted in August 2004. A draft of the regulations should be released for public comment by December 2003. Goodlander will continue to update the Board as the regulation changes proceed.

Tom Williams questioned if we have looked at manure as in other countries where it is pelletized and used as an energy source for heating and cooking in homes. Deputy Secretary Myers mentioned the Energy Harvest Grants and the \$5 million that is available for alternative energy sources.

Update on the Conservation Reserve Enhancement Program (CREP)

Bill Foose, USDA, Farm Service Agency, provided Board members an update on the Conservation Reserve Enhancement Program (CREP). CREP is a voluntary program that pays participants to plant trees or establish grass filter strips, riparian forest buffers, vegetation, stream bank fencing, and other conservation practices on environmentally sensitive land. In return the participants receive annual rental payments, cost share assistance, and other financial incentives. The CREP started in 2000 with 20 counties in the lower Susquehanna River basin. The response to the program was great, with 120,000 acres offered (only 100,000 acres could be enrolled) 71,000 acres under contracts, 60,000 plantings under way and 3,900 contracts signed with 3,000 participants, most active farmers. The CREP is now expanded to 100,000 acres in 23 additional counties in the northern part of the state. Sign-up's will begin September 2 for those additional 23 counties.

Foose acknowledged there have been some problems with the CREP program. The landowner/tenant relationships can be a challenge, the drought has hindered the establishment of BMPs, and noxious weeds have become a problem and need to be addressed. There has been criticism of the program for taking productive soils out of production. With the new CREP, soils with a higher erodibility index will get a higher rental payment. Foose noted the Western Pennsylvania Conservancy has developed a CREP for the Ohio River Basin to enroll 65,000 acres. It is anticipated that program will be approved by the end of the year. Foose noted the regular Conservation Reserve Program (CRP) does not work well in PA due to low rental rates. Pat Sueck questioned if the farmers were instructed not to mow. Foose stated that PA allows for mowing 1/3 of the plantings each year but some farmers thought they could not mow at all. There are also time constraints when mowing is not permitted. Tom Williams noted that some municipalities have ordinances regarding mowing and asked how will this be addressed. Foose stated they have not yet encountered that situation but will have to be prepared.

Governors Office Executive Order for Agricultural Land Preservation Policy

Tom Oyler, PA Department of Agriculture, reviewed the Governors Office Executive Order for Agricultural Land Preservation Policy, which was mailed to all Board members prior to the meeting. The order was issued on March 20, 2003 requires all agencies under the Governors jurisdiction to mitigate and protect against the conversion of prime agricultural lands and to adopt policies to carry out the order. Each Commonwealth agency has six months from the date of the order to develop plans of how they will deal with matters that involve the taking of agricultural land. Oyler noted that to date, Pennsylvania has preserved 2,195 farms, preserving over 257,000 acres. There are currently 53 counties with farmland preservation programs, and 51 of them have

preserved farms. Walt Peechatka mentioned that Pennsylvania has spent money to preserve farms but some municipalities have passed ordinances that limit the farmer's ability to expand their operation or to make it profitable. Peechatka questioned if the Department of Community and Economic Development could address this in their policies. Oyler stated he was unsure if DCED has yet adopted their policy. John Hines noted the Inter-Agency Land Use Task Force has been re-established, and that group could discuss those types of issues.

Report from the Nutrient Trading Committee

In response to the Nutrient trading presentation made at the Board's June meeting, a committee was formed, chaired by Dr. Herb Cole to review and provide comments on the proposal. Dr. Cole reported that the Committee met prior to the regular Board meeting and developed more questions than answers. The intent of the committee is to seek and develop materials that will allow them to better understand the benefits and challenges of nutrient trading. The Committee supports the concept of nutrient trading but noted "the devil is in the details." Materials will be provided to the Committee members to further study this proposal.

Comments/Issues/Concerns of the Board

Brenda Shambaugh requested that at a future meeting the Department provide a presentation on methane gas extraction and its affect on agricultural lands.

Public Comment Period

Denise Cable, representing the Alliance for Community Action, addressed the Board regarding the groups concerns over CAFOs. She stated she was disappointed to hear that air quality issues were not addressed in the CAFO regulations. With CAFOs and factory farms you have concentrated manure and this results in air emissions and air quality problems. Cable stated she is aware that agriculture is exempt from air quality regulations but stated that with CAFOs and factory farms and the concentration of large amounts of manure, the Department should address this issue to minimize the impact of these operations on rural communities. She also addressed concerns over the long-term impacts on water quality (impacts on wells) from these operations. She thanked the Board for the opportunity to address her groups concerns.

Adjournment

There being no further business the meeting was adjourned at 1:47 p.m.

Respectfully submitted,

Dean M. Auchenbach
DEP Liaison to the Board