

## **MINUTES**

### **AGRICULTURAL ADVISORY BOARD**

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

**December 17, 2003**

Chairperson Brenda Shambaugh, PA State Grange, called the meeting to order at 10:04 a.m.

#### **Attendance**

##### **Members**

Chairperson Brenda Shambaugh, PA State Grange  
Cathy Curran Myers, PA Department of Environmental Protection  
Dave Irvin, Fruit Producer  
Dave McElhaney, Livestock Producer  
William Wells, Jr., Ornamental Horticulture Industry Representative  
Roxanne Levan, USDA, Farm Service Agency  
Patricia Sueck, PA Association of Conservation Districts  
John Flanagan, Agri-Chemical Manufacturers Representative  
Michael Brendle, Poultry Producer  
Bill Wehry, PA Department of Environmental Protection  
Carl Shaffer, Vegetable Producer  
Tom Williams, Dairy Producer  
Walt Peechatka, PennAg Industries Association  
Noel Soto, USDA, Natural Resources Conservation Service  
Michael Brownback, Sustainable Agriculture Representative  
Dr. Herb Cole, Penn State University  
Marel Raub, PA Farm Bureau  
John Walker, PA Farmers Union

##### **Agencies, Advisors, and Guests**

Janis Dean, DEP, Citizens Advisory Council  
Curtis Kratz, Penn Environmental and Remediation, Inc.  
Kelly O'Neill, Chesapeake Bay Foundation  
David Sheridan, Citizen  
Karl Brown, State Conservation Commission  
Doug Goodlander, State Conservation Commission  
Doug Brennan, DEP, Bureau of Regulatory Counsel  
Cedric Karper, DEP, Bureau of Watershed Management  
Lou Guerra, Jr., DEP, Office of Policy  
Steve Taglang, DEP, Bureau of Watershed Management

John Hines, DEP, Office of Water Planning  
Dean Auchenbach, DEP, Bureau of Watershed Management

### **Action on the Minutes of the August 27, 2003 Meeting**

The minutes were approved as distributed.

### **2004 Board Meeting Dates**

A list of the Board's 2004 meeting dates was distributed. The Board will meet at 10:00 a.m. in room 105 of the Rachel Carson State Office Building in Harrisburg, PA on February 18, April 21, June 16, August 25, October 20, and December 15.

### **Action Item: Provide Agricultural Advisory Board Comments on Draft Concentrated Animal Feeding Operation (CAFO) Regulations**

Cedric Karper, DEP, Bureau of Watershed Management, reviewed the December 10, 2003 draft of the CAFO Regulations and highlighted the revisions made since the Board's August meeting. The Department has eliminated the reference to the term chemical in the Preparedness, Prevention and Contingency Plan requirement. The language of section 91.36 was revised to state that for new or expanded operations, after the effective date of the regulations, with liquid or semi-solid manure storage facilities between the capacity of 1million to 2.5 million gallons a water quality management permit is required if it is either (1) a clay lined earthen waste storage pond, (2) the nearest down gradient stream is classified as a Special Protection water, or (3) the nearest down gradient stream has been assessed and has been determined by the Department to be impaired by nutrients from agricultural activities and the manure storage facility is on an operation which is not implementing a nutrient management plan. Karper also noted that Pennsylvania might have to revise its animal numbers to define a CAFO to meet EPA's approval. The reason is that EPA uses animal numbers as the CAFO threshold while Pennsylvania uses animal density, which is more appropriate for the state. This causes some gaps in CAFO coverage for animal operations. Examples of various types of animal operations were used to illustrate this point. DEP Deputy Secretary Myers noted that the state continues dialogue with EPA regarding this issue.

Chairperson Brenda Shambaugh asked if the Board wished to make formal comments regarding the draft CAFO regulations. After some discussion the Board decided not to make any comments regarding the draft regulations. Shambaugh encouraged Board members to make comments as individuals or through their organizations by the December 27, 2003 comment deadline.

### **Update Report on the Nutrient Management Regulation Revisions**

Doug Goodlander, State Conservation Commission updated Board members on the status of the revisions to the Nutrient Management Regulations. The staff of the State Conservation Commission prepared the draft revisions with input from the Nutrient

Management Advisory Board and an interagency workgroup. The Revisions were provided to the State Conservation Commission at its May 2003 meeting where the Commission reviewed the draft revisions and developed modifications to the draft version. The Commission approved the final revisions in September 2003, and staff are now preparing a regulatory package for the consideration of the Attorney General's Office, the Independent Regulatory Review Committee (IRRC), the PA Bulletin, and the House and Senate Committees. Goodlander then reviewed the major issues addressed in the revisions which include phosphorus (P-index); erosion and sediment control plans; CAO definition (to remain 2 AEUs per acre but to establish a 8 AUE minimum); soil and manure test requirements; Plan Development Incentive Program funding criteria; high rate liquid manure applications (greater than 9,000 gallons at one time); existing manure storage facility requirements; exported manure requirements; Barnyard and animal concentration area requirements; and requirements for the field stacking of manure. Goodlander noted that after approval of the Attorney Generals Office, the regulations would be submitted to the Nutrient Management Advisory Board, the IRRC, and the House and Senate Agriculture and Rural Affairs Committees for formal comments. The regulations will also be advertised in the PA Bulletin for public comments. It is anticipated that the response to the comments received and the development of the final regulations will be completed in the fall 2004.

#### **Update on the Act 220, Water Resources Planning Act**

John Hines, DEP, Office of Water Planning updated Board members on the status of the Water Resources Planning Act. The Act requires the establishment of six regional water committees, a statewide water committee, to identify critical water planning areas, and implementation of a statewide water use registration process for water with drawls of more than 10,000 gallons per day. On October 27, 2003 the six regional water committees meet in Harrisburg in an organizational meeting to elect Chairs, make nominations for the statewide water committee, adopt bylaws and set meeting schedules. The four key work goals of the regional water committees are (1) gather information for the formation of the regulations; (2) begin to frame out the process for identifying critical water planning areas; (3) continue to develop relevant regional issues; and (4) outline the regional components of the state water plan. The state water plan must be completed by March 2008. The Department has mailed over 40,000 letters to the agricultural community, and over 30,000 letters to business and industry regarding the water use registration requirements. Registration of water use will take place from January to March 2004 and can be done by paper forms or on the Internet web system. Hines noted the key to the success of this outreach effort was due to the assistance of partners such as the members of the Agricultural Advisory Board and the organizations they represent.

## **Review of the Draft Revision of Policy for the Consideration of Local Comprehensive Plans and Zoning Ordinances in DEP Review of Permits for Facilities and Infrastructure**

Lou Guerra, Jr. reviewed the draft policy revision regarding the consideration of local comprehensive plans and zoning ordinances in DEP review of permits for facilities and infrastructure. Board members were mailed a copy of the draft policy for review prior to the meeting. Guerra noted the purpose of the policy was to provide direction and guidance to DEP staff, permit applicants and local and county governments for the implementation of Acts 67, 68, and 127 of 2000, in the administration of current DEP programs to avoid or minimize conflict with local land use zoning decisions. Where a conflict is identified, DEP may suspend further review of the application until the conflict has been resolved. The decision to suspend further review of the application will be based on a case-by-case basis and will only be made by the regional director, (or by the bureau director for permits reviewed by Central Office staff, or the district mining manager for mining permits.) It is the responsibility of the Policy Office to review the information submitted by DEP permit staff, consult with the Bureau of Regulatory Counsel, and make a recommendation to the regional director or district mining manager on whether to suspend further review of the application.

Several Board members expressed concern regarding this policy and objected to the subjectivity of it. Marel Raub questioned how a conflict would be determined? Guerra stated the municipality would contact DEP and the Department would then review it. Raub also questioned that if several permits were involved and a conflict only involves one permit would all reviews be suspended or only the review of the permit in conflict? Guerra stated that is the reason the conflicts will be handled on a case-by- case basis. John Flanagan questioned whether agriculture could be exempted from this policy. Roxanne Levan noted that due to the economies of farming a delay during a permit review for a conflict could be very costly to the farmer. Michael Brownback questioned if DEP or the local or county officials have the final say on the decision. Guerra noted that only the Department makes the decision to suspend the technical review. Carl Shaffer made a motion that the Board recommends to the Department that agricultural be exempted from this policy. The motion was seconded by John Flanagan, and after discussion was passed with one dissenting vote cast by John Walker. Patricia Sueck then made a motion that the Board sends a letter to the DEP Secretary regarding the Board's recommendation. The motion was seconded by Dave Irvin and was passed.

## **Report from the Nutrient Trading Committee**

Dr. Herb Cole, Chair of the Nutrient Trading Committee noted the committee meet on December 8, 2003 in Harrisburg. The committee acknowledged that nutrient trading has the potential to provide benefits to the environment, while at the same time allowing transactions to occur in an efficient real world marketplace. The committee developed the following recommendations that they felt were fundamental to the programs success:

1. Trading should occur within local watersheds using as a basis the regions established by Act 220.

2. A pilot program should be developed to evaluate the feasibility of trading in the real world. This would allow identification and resolution of potential problems prior to full scale operational trading.
3. Trading should start with the basic nutrients: nitrogen, phosphorus, and potassium, before any additional pollutant trading should be considered.
4. DEP should be the approving agency. A non-governmental organization should be the brokering entity.
5. Good citizen farmers who are currently doing an excellent job in protecting water quality and the environment should not be penalized by opportunities available to problem producers (i.e., years ago the Commonwealth had a program to pay tuition of people in state prisons to go to college; needless to say the public was outraged.)

In addition to the five recommendations, the committee developed the following questions regarding nutrient trading, which it felt needs to be answered before trading is initiated:

1. We assume trades must result in a net nutrient load reduction in the watershed where the trades take place unless the watershed is not impaired; then zero sum trades may be OK.
2. Who sets reduction targets? DEP, EPA, or another federal agency?
3. Can trading occur from point source to non-point sources? Or must all trades be like-for-like, i.e. non-point source to non-point source?
4. “Who will” and “how will” trading credit values be established?
5. Can trading occur to achieve compliance by an out-of-compliance producer?
6. Who would provide long-term compliance oversight of the previously executed trades? Would this be the broker or another entity?
7. Who sets watershed size in which trades will occur?

Dr. Cole commented that the nutrient trading committee would continue to meet to look at the issue of nutrient trading as this proposal evolves.

#### **Comments/Issues/Concerns from the Board**

Carl Shaffer noted the November 19, 2003 memo from Doug Brennan, DEP, Bureau of Regulatory Counsel, clarifies that the legal answer to the question of whether the Board must provide for legal comments is no. Roxanne Levan stated that she believes the

Board should encourage public comments and must be willing to listen to the public but the chairperson has the right to limit the length of those comments. Carl Shaffer feels the Board needs to hear more comments from the agricultural community. Mike Brendle agreed that public comments should remain at the end of the meeting.

**Public Comment Period**

There were no public comments.

**Adjournment**

There being no further business the meeting was adjourned at 12:12 p.m.

Respectfully submitted,

Dean M. Auchenbach  
DEP Liaison to the Board