

DRAFT

MINUTES

AGRICULTURAL ADVISORY BOARD MEETING June 17, 2009

DEP South Central Regional Office
Susquehanna Room A
Harrisburg, PA

In Attendance – Members

Doug Beegle, Pennsylvania State University
Thomas Fidler, Department of Environmental Protection
Michael Firestine, Agri-business
Barry Frantz, USDA Natural Resources Conservation Service
Jennifer Harry, PennAg Industries
Duane Hobbs, Agricultural Chemicals Manufactures
Betsy Huber, PA Grange
Keith Masser, Vegetable Producer
Joel Rotz, PA Farm Bureau
Gerald Seyler, Grain Producer
Brenda Shambaugh, Pennsylvania Association of Conservation Districts
Bill Wehry, PA Department of Agriculture
William Wells Jr., Ornamental Horticulture

In Attendance - Agencies, Advisors, and Guests

Karl Brown, State Conservation Commission
Patty Davenport, Citizens Advisory Council
Taylor Doebler III
William Fink, Hatfield Quality Meats
Grant Gullibon, Pa Builders
Sarah Miller, Independent Regulatory Review Commission
Kelly O'Neil, Chesapeake Bay Foundation
Kim Snell-Zarcone, Penn Future
Duke Adams, Doug Brennan, Ron Furlan, Frank Schneider, Tom Starosta, Steve Taglang,
Diane Wilson, Department of Environmental Protection

The June 17, 2009 meeting of the Agricultural Advisory Board (AAB) was called to order by Chairperson Michael Firestine at 10:05 a.m.

Chairperson Firestine started the meeting by announcing that June is dairy month and that the dairy industry is struggling right now. He provided milk to all those in attendance and a milk toast was done to salute Pennsylvania dairy farmers.

Chairperson Firestine then turned the floor over to Keith Masser, vegetable producer, who introduced a new potato product to hit the market. Mr. Masser brought samples of the microwave ready to eat potato product and explained the product.

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

- Larry Breech, Pennsylvania Farmers Union

- Michael Brendle, Poultry Producer

Chairperson Firestine welcomed the new Deputy Secretary for Water Management John Hines. John most recently served in a dual capacity as Executive Director of the DEP's Water Planning Office while also functioning as the acting Director of the Bureau of Watershed Management. John previously served as acting Deputy Secretary for Water Management from 2002 – 2003 and the Director of DEP's Policy Office. John replaces Acting Deputy Secretary Dana Aunkst, who has returned to his former position, as the Director of Bureau of Water Standards and Facility Regulation. Chairperson Firestine announced that John is unable to be with us today, as he is committed to a meeting of the Susquehanna River Basin Commission.

Chairperson Firestine then welcomed Deputy Secretary Tom Fidler. Tom is the Deputy Secretary for the Office of Waste, Air, and Radiation Management. Deputy Secretary Fidler originally came from the water program and will be retiring June 19th. Deputy Secretary Fidler thanked the board for having him and stated that the water program is in “good hands” with John Hines as the Deputy Secretary.

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

Minutes from the April 15, 2009 meeting were approved as written.

Chapter 92a (National Pollutant Discharge Elimination System Permitting, Monitoring and Compliance) regulation revision - Concentrated Aquatic Animal Production Facilities and Concentrated Animal Feeding Operations - Thomas Starosta, DEP Bureau of Water Standards and Facility Regulation, provided a presentation on the proposed Chapter 92a regulations and their affect on agriculture. The chapter has been renamed Chapter 92a, from Chapter 92, because of restructuring, renumbering, and to better match the federal regulation.

Several provisions of the proposed Chapter 92a regulations would affect Concentrated Animal Feeding Operations (CAFO's) and Concentrated Aquatic Animal Productions Facilities (CAAP's). Both CAFO's and CAAP's are considered point source discharges in Chapter 92a and they will require National Pollutant Discharge Elimination System (NPDES) permits to operate.

Section 92a.28 (application fees) deals with NPDES application fees for CAFO's and CAAP's. These fees have been revised to reflect DEP's actual cost of issuing NPDES permits and performing inspections of the facilities. The new application fees are as follows:

Application fees for individual NPDES permits:

CAFO < 300 AEU	\$500 for new; \$250 for reissuance
CAFO ≥ 300 < 1,000 AEU	\$1,000 for new; \$500 for reissuance
CAFO ≥ 1,000 AEU	\$3,000 for new; \$1,500 for reissuance
CAAP	\$1,000 for new; \$500 for reissuance
No new fee structure would apply to facilities with coverage under a general permit.	

Section 92a.62 (annual fees) deals with NPDES annual fees for CAFO's and CAAP's. These fees have been revised to reflect DEP's actual cost of performing inspections of the facilities. The new annual fees are as follows:

Annual fees for individual NPDES permits:

CAFO < 300 AEU	\$0
CAFO ≥ 300 < 1,000 AEU	\$500

CAFO \geq 1,000 AEU \$1,500
CAAP \$500

No new fee structure would apply to facilities with coverage under a general permit.

Section 92.50 (CAAP) places some new requirements on CAAP's. It was noted that CAAP's already have stringent effluent limits and the changes in Chapter 92a are trying to take a better approach on regulations that affect CAAP's. The new requirements in Section 92.50 include:

- Each discharger shall prepare and implement a BMP plan that addresses:
 - (1) Solids and excess feed management and removal.
 - (2) Proper facility operation and maintenance.
 - (3) Nonnative species loss prevention.
 - (4) Facility personnel training.
 - (5) Removal, handling and disposal/utilization of hatchery bio-residual solids (sludge).

- Permittee's shall report any investigational/therapeutic drugs usage as follows:

- (1) For investigational/new drugs, the permittee shall provide the department with an oral report within 7 days of initiating application and a New Drug Usage Report shall be filed monthly.
- (2) Changes in or increases in usage rates shall be reported to the department through both oral and written notifications on the Drug Usage Report Form, quarterly.
- (3) Products or chemicals that contain any carcinogenic ingredients are generally prohibited. Limited use of those chemicals may be permitted. To do so, the permittee shall thoroughly investigate the use of alternate chemicals and not only demonstrate to the department that no suitable alternatives are available, but show that any carcinogen in the proposed chemical will not be detectable in the final effluent, even using the most sensitive analytic method available.

Sections 92a.31 and 92a.49 address CAFO application requirements and permit conditions, but no revisions to these requirements are proposed as part of this rulemaking package.

Chairperson Firestine asked what the window of time is to have a NPDES permit issued once you have made application. Mr. Starosta answered that if the application is complete, the time frame is 180 days.

Mr. Karl Brown asked that if you have a 1,000 AEU CAFO, you need to pay an application fee of \$3,000 and then annual fees of \$1,500. He wondered if you would additionally have to pay the \$1,500 reissuance fee every 5th year, when the NPDES permit needs renewed. Mr. Starosta answered that in the reissuance years, you would not need to pay the annual fee, but only the reissuance fee.

Ms. Jennifer Harry asked what the department wanted from the AAB. Mr. Starosta said that the department needs to hear the AAB comments and consider them. Ms. Harry then mention that she did some quick math and seeing that there are roughly 337 CAFO's in Pa and with the medium annual fees (using \$750/year to look at all 3 sized groups), that these CAFO's would collectively be paying roughly \$252,750 a year in annual fees. She them mentioned that this is a big hit to agriculture on fee's alone. Mr. Starosta answered that he did know the exact breakdown

of the size and number of CAFO's, so he could not answer on the total amount of fees that could be collected. He did mention that fee's for the small size CAFO's have decreased. Mr. Starosta added that the state is not using tax dollars to supplement CAFO's and that the fees are structured to cover the departments cost of reviewing and inspecting the CAFO's. Additionally, CAFO's are paying much less in fees than other users of NPDES Permits.

Ms. Kim Snell-Zarcone asked if the department could prepare and provide a department cost breakdown of the actual cost to issue a NPDES permit. Mr. Starosta answered that it is currently not available but it is something that we could pull together. Deputy Secretary Tom Fidler added that fees are not popular but that the department has to sustain our programs that we are required to do. He added that he does not feel these fees are out of line compared to the fees paid by other NPDES permit holders and that the fees have not changed for 25 years. Additionally, the department does try to balance the impact on different sized producers/permit holders.

Ms. Harry mentioned that the Department should take a look at the PA Aquaculture Development Act, because it appears that Chapter 92a is in direct conflict with that Act in regards to permit fees and the use of therapeutic drugs. The Aquaculture Development Act charges a \$100 permit fee and does not control the use of therapeutic drugs. Mr. Starosta answered that the permit under the Aquaculture Development Act is not an NPDES permit, but some other form of permit. He reminded everyone that an NPDES permit is a permit to discharge pollutants to surface waters for point sources, and that under federal definitions CAFO's and CAAP's are point sources. Mr. Starosta also mentioned that the changes to Chapter 92a do not limit the use of therapeutic drugs, unless they contain any carcinogenic ingredients, but rather just requires the permit holder to report there use.

Ms. Harry stated that the Aquaculture industry and PennAg Industry members were not agreeable to Aquaculture being included in the Chapter 92a regulations and that they are opposed to being included in NPDES permitting. Ms. Brenda Shambaugh asked if the department had met with the Aquaculture industry to discuss these issues. Mr. Starosta noted that these proposed regulations went before the Water Resources Advisory Committee (WRAC) but he did not know if agricultural was represented on the committee. He mentioned that the department also met with the PA Fish and Boat Commission whom run many aquaculture facilities. He mentioned that this is the first step to a noticed problem and that this is the smallest step that the department could take.

Chairperson Firestine asked that the department meet with PennAg Industry and the aquaculture industry to discuss these issues. Mr. Bill Wehry asked that Charles Conklin, from the Department of Agriculture be invited as well. Mr. Starosta agreed that a meeting will be scheduled.

Pennsylvania Stream ReLeaf Buffer Toolkit Update – Diane Wilson, DEP Bureau of Watershed Management, provided an update on the stream ReLeaf buffer toolkit.

Ms. Wilson noted that the stream ReLeaf buffer toolkit will be an appendix to the Riparian Forest Buffer Guidance, which was presented at the April AAB meeting. Both documents are in the pre-draft stage at this time and will go thru an approval process similar to other department guidance and will be open for public comment.

Ms. Wilson went over the highlights and purpose of the riparian forest buffer guidance and the benefits of riparian forest buffers. She mentioned that this guidance is separate and independent

from the guidance for the Conservation Reserve Enhancement Program (CREP), since that program has been in existence for some time. She mentioned that the picture/graph that is used in the guidance to show the 3 zones of the recommended composition for newly established riparian forest buffers has not been changed yet, but the comment from April's AAB has not been forgotten. The department does plan to change the picture/graph, to be less confusing.

Ms. Wilson introduced a chart that shows the range of minimum widths for meeting specific riparian forest buffer objectives. The chart shows that scientific research indicates a significant benefit can occur with buffers 100 feet or greater. With the use of this chart, the department is recommending a minimum width of 100 feet for buffers in all watersheds, other than High Quality (HQ) or Exceptional Value (EV). It is recommended that HQ or EV watersheds have a buffer with a minimum width of 150 feet.

Ms. Wilson noted that the departments recommended composition for existing riparian forest buffers would include a minimum 60% uniform canopy cover, that PA noxious weeds or other undesirable species are removed or controlled to the extent possible, and that concentrated flow / accelerated erosion and sedimentation is controlled in the area that is up grade and adjacent to the buffer. Chairperson Firestine mentioned that the control of noxious weeds is a huge problem. Ms. Wilson agreed with him and said that the department is aware of this situation and trying to work to get it under control. Mr. Barry Frantz also agreed with Ms. Wilson and spoke about some of the information (fact sheets, etc.) that is available on the NRCS website. (*Note: This web link was sent by electronic mail to all AAB members on June 18, 2009*). Mr. Frantz also mentioned that Penn State has assisted with some weed identification brochures and fact sheets on how to control weeds. Mr. Frantz and Ms. Wilson also spoke about some measures that NRCS and the department are trying to utilize in the CREP program.

Ms. Wilson went over the tools and benefits of the Pennsylvania Stream ReLeaf Buffer Toolkit to include its purpose, 9 steps to a streamside forest site plan, riparian forest buffer establishment, riparian forest buffer management plans, and riparian forest buffer protection. She stressed that planning and management are of up most importance.

Ms. Wilson finished by saying that this guidance document and buffer toolkit would only affect agriculture, if they are in a voluntary program and that there is nothing regulatory in regards to buffers for agriculture at this time. Additionally, the department would appreciate comments during the public comment period, once the documents have been released.

Ms. Shambaugh asked how the department is going to distribute this guidance and toolkit to small groups, which is the focus. Ms. Wilson answered that the information will be available on line in the department's e-library and that several press releases will probably be used.

Chapter 102 (Erosion and Sediment Control and Stormwater) regulation revision – address changes made from AAB letter to EQB – Steve Taglang, DEP Bureau of Watershed Management, presented on changes that were made to the Chapter 102 regulation package, from comments received by the AAB, before it was submitted to the Environmental Quality Board for review.

Mr. Taglang announced that the EQB had approved the draft regulation revision at their June 16th meeting. The approval was for the regulation revisions to be published for a 90 day comment period and for 3 public hearing. Mr. Taglang did not know what date the revision would be

published by suggested that the AAB look at the revision at their August meeting, since the October meeting may be at the very end or not within the 90 day comment period.

Chairperson Firestine formed the Chapter 102 regulation revision subcommittee to look at the revisions prior to the August AAB meeting and bring recommendations to the AAB at the August meeting. Ms. Shambaugh, PACD, was appointed chairperson of the subcommittee. Mr. Frantz, NRCS, and Ms. Harry, PennAg expressed interest in serving on the subcommittee. Chairperson Firestine advised Frank Schneider, DEP liaison to the AAB, to poll AAB members that were not present to see if they are interested in serving on the subcommittee.

Ms. Shambaugh thanked the department for considering the AAB comments.

Member or Public Comments - Chairperson Michael Firestine asked if any members of the AAB or public had any comments.

Mr. Keith Masser gave a short presentation on the effects of the departments Total Dissolved Solids (TDS) strategy, on his operation. Mr. Masser operation is a family owned potato grower/shipping organization with 8 generations of potato growing history. They farm over 5000 acres, value add and distribute over 5000 trailer loads of fresh potatoes annually and have 150 employees. Recently they have opened Keystone Potato Products which is a dehydration facility to provide an outlet to eastern U.S. potato growers for a greater percentage of their annual crop. The facility provide a local supply of value-added potato products to eastern U.S. buyers, remove chip stock potatoes from the table market, and provides a foundation for new value added potato products. The facility uses reclaimed Landfill Gas to power the operation and treats abandoned mine water before using the water in its facility. In regards to the proposed TDS strategy, Keith is currently under the proposed discharge limits of the strategy, but if he would like to expand this facility it would require him to do end of pipe treatment that would cost an estimated \$750,000.

Mr. Ron Furlan explained the TDS strategy to the AAB. The strategy is part of Chapter 95 (Water Treatment Standards) and is in draft form. The strategy is not currently in the public comment period, but will be soon. Mr. Furlan advised that the draft regulation revisions will be going to the Water Resources Advisory Committee (WRAC) at the June 19, 2009 meeting. Additionally, Mr. Furlan explains that TDS is a big issue in most watersheds and a real problem. At this time, since the strategy is still in draft form, changes can be made and discussed.

One area that was discussed was using a net TDS approach. In this approach, since Keith is treating water before he even uses it, he would be given credit for his discharge that may be above a threshold, since the water he will discharge will be cleaner than the water he took in. This approach has been used by the aquaculture industry with other effluent limits.

Mr. Furlan encouraged AAB members to send in comments, once the strategy is open for public comment.

Mr. Karl Brown mentioned that he looked at the membership of WRAC and did not see any agricultural interest on the membership of the committee. Most AAB members felt that an agricultural interest in WRAC would be a good idea, since some issues, which do not directly affect agriculture but affect agriculture indirectly, are not brought to the AAB but are brought to WRAC.

Chairperson Firestine directed Frank Schneider, DEP liaison to the AAB, to look into what would need to be done to have an agricultural interest appointed to the membership of WRAC.

There being no additional discussions, the meeting was adjourned at 11:50 a.m.