

## **MINUTES**

### **AGRICULTURAL ADVISORY BOARD MEETING April 15, 2009**

DEP South Central Regional Office  
Susquehanna Room A  
Harrisburg, PA

#### **In Attendance – Members**

**Dana Aunkst, Department of Environmental Protection**  
**Doug Beegle, The Pennsylvania State University**  
**Larry Breech, PA Farmers Union**  
**Michael Firestine, Agri-business**  
**Barry Frantz, USDA Natural Resources Conservation Service**  
**Diane Hain, representing Representative Michael Hanna, PA House**  
**Duane Hobbs, Agricultural Chemicals Manufactures**  
**Jay Howes, representing Representative Sam Rohrer, PA House**  
**Betsy Huber, PA Grange**  
**Jillian Hume, representing Senator Michael Brubaker, PA Senate**  
**Keith Masser, Vegetable Producer**  
**Walt Peechatka, PennAg Industries**  
**Joel Rotz, PA Farm Bureau**  
**Brenda Shambaugh, Pennsylvania Association of Conservation Districts**  
**Bill Wehry, PA Department of Agriculture**  
**William Wells Jr., Ornamental Horticulture**  
**Thomas Williams, Dairy Producer**

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

**Keith Ashley, PA Builder Association**  
**John Bell, PA Farm Bureau**  
**Dan Capstick, USDA National Agricultural Statistics Service**  
**Dan Dostie, USDA Natural Resources Conservation Service**  
**Ron Fodor**  
**Doug Goodlander, State Conservation Commission**  
**Kristina Lilac**  
**Dean Achenbach, Duke Adams, Jim Boswell, Don Fiesta, Dave Reed, Glenn Rider, Frank Schneider, Steve Taglang, Diane Wilson, Department of Environmental Protection**

The April 15, 2009 meeting of the Agricultural Advisory Board (AAB) was called to order by Chairperson Michael Firestine at 10:03 a.m.

Chairperson Firestine announced that the following member had asked to be excused:  
David McElhaney, Livestock Producer

Chairperson Firestine welcomed Acting Deputy Secretary for Water Management, Dana Aunkst. Dana previously served as the Director of the Bureau of Water Standards and Facility Regulation. Dana replaces Deputy Secretary Myers who has been named Special Assistant to the Secretary for Pennsylvania's Recovery, as part of the American Recovery and Reinvestment Act (ARRA).

Chairperson Firestine congratulated Deputy Secretary Myers on her new assignment and thanked her for all her hard work and diligence.

Chairperson Firestine announced that he must leave before the meeting is over and that member Betsy Huber (past chairperson) would preside over the meeting in his absence.

Minutes from the February 18, 2009 meeting were approved as written.

**2007 Census of Agriculture (Pennsylvania)** – Dan Capstick, from the United States Department of Agriculture (USDA) National Agricultural Statistics Service (NASS), provided information on the 2007 Census of Agriculture, with emphasis on Pennsylvania.

Mr. Capstick provided a handout title “2007 Ag Census Highlights – Pennsylvania”. He reported that the official census of Agriculture is reported every 5 years, but NASS provides annual statistics on certain items, as well. It was reported that Pennsylvania had an 80% response rate on the 2007 census mailing and that we ranked 6<sup>th</sup> nationally. Mr. Capstick also reported that for the purpose of NASS data, a farming operation is defined as “any place where \$1,000 or more of agricultural products were produced and sold, or normally would have been sold”. This definition was set in 1974 and can only be changed by Congress.

Mr. Capstick provided information on the NASS mission statement, confidentiality policies, and differences between the federal program and state program. He also mentioned some new initiatives that NASS has undertaken. Mr. Capstick reported that NASS is currently accepting comments on what should be included in the 2012 census of agriculture. Mr. Capstick reported some particular data to include census numbers on crop acreages, livestock, crops grown, etc. He reported that Pennsylvania has seen a 5.1% growth or higher in farms. It was asked if this was due to farm land being divided into smaller operations. Mr. Capstick mentioned that smaller operations were part of the increase but also the inclusion of specialty operations.

**Chapter 105 (Dam Safety and Waterway Management) Proposed Regulations** – Jim Boswell, DEP Bureau of Waterways Engineering, presented the proposed changes to Chapter 105 (Dam Safety and Waterway Management). These changes only deal with the dam portion of the chapter at this time.

Mr. Boswell reviewed the scope of the regulations, in which no changes are proposed, and the purpose of the proposed revisions. The purpose of the proposed revisions are to address findings in the audit of the dam safety program that was performed by the Auditor General’s office, to clarify application, permitting and construction requirements, and to revise outdated sections.

The 1<sup>st</sup> proposed revision (105.20 – Proof of financial responsibility) is to require proof of financial responsibility for the operation and maintenance of all existing high hazard dams. The department may request an increase in the amount of bond, or other legal device, as necessary once every 10 years. Chairperson Firestine asked how the department arrives at the dollar amount for responsibility. Mr. Boswell answered that the department looks at the construction costs and how much it would take to remove the dam. Chairperson Firestine then mentioned that today’s construction costs do not cover future year’s costs. Mr. Boswell mentioned that the proposed changes allow the department to update the financial responsibility every 10 years. It was then asked what if an owner/operator could not cover the cost and Mr. Boswell mentioned that it could lead to an enforcement action. It was mentioned that the wording on the proposed changes is

somewhat confusing because it mentions operation and maintenance but the financial reasonability is for removal of the dam. Mr. Boswell noted that most dams used for agriculture are classified as a significant hazard or low hazard and that roughly only 4 dams, used for irrigation, are classified as high hazard.

Mr. Boswell reviewed the proposed revision to 105.41 (Reports and notices), 105.42 (a) (Terms and conditions of Department permits and approvals), 105.43 (Time limits), 105.81 and 105.82 (Permit applications), 105.88 (Dam Permit Issuance), 105.89 (Letter of Amendment and Letter of Authorization), 105.91 (Classification of dams and reservoirs), 105.97 (Stability of structures), 105.98 (design flood criteria), 105.107 (Final inspection), 105.108 and 105.109 (Completion certification, Project Costs and As-Built plans), and 105.111 (Commencement of storage of water, fluid or semi-fluid).

He also reviewed a proposed revision to 105.134 (Emergency action plan) which explains the requirements and steps for developing an emergency action plan needed to protect the public in an event of a dam hazard emergency. These revisions were developed in coordination with the Pennsylvania Emergency Management Agency (PEMA) and require a permittee or owner to meet with the county emergency management coordinators and for both parties to sign the plan. Mr. William Wells asked if the county Emergency Management Coordinators are qualified and Mr. Boswell answered that they are certified by PEMA.

Chairperson Firestine asked about inspection of dams during construction. Mr. Boswell answered that the department inspects at least every 2 weeks and during critical construction moments, but that the engineer for the permittee should be inspecting every day.

Mr. Tom Williams asked what the goals of the proposed changes were. Mr. Boswell answered that they were to address the findings of the Auditor General's report of the dam safety program. He also reported that "old" dams need to be repaired and/or rehabilitated to the new standards or they must be removed. This decision will be up to the owner of the dam.

**Chapter 102 (Erosion and Sediment Control and Stormwater Management) Proposed Regulations.** – Steve Taglang, DEP Bureau of Watershed Management, presented the proposed changes to Chapter 102 (Erosion and Sediment Control and Stormwater Management), with emphasis on the agricultural portion.

Mr. Taglang started off the presentation by advising the Board that the proposed Chapter 102 regulations are expected to be discussed at a special meeting of the Water Resources Advisory Committee (WRAC) on April 23 and then considered by the Environmental Quality Board (EQB) on June 16. Mr. Taglang suggested that the AAB spend a significant portion of a future meeting going over the details of the proposed revisions. He noted that members could submit comments as an individual, or representing their organization during the official EQB public comment period. Mr. Joel Rotz asked why these regulation revisions are on such a fast track and need to go to the EQB in June. Mr. Taglang mentioned that the regulation process takes roughly 18 months and there is a push to have this regulation package, especially the no-ag portion, completed by the end of the current Governor's Administration.

Mr. Taglang presented new definitions under the proposed changes to Chapter 102. These new definitions include:

*Agricultural plowing and tilling* has been revised to specially include no-till cropping methods. Mr. Walt Peechatka asked why no-till was incorporated here when no-till is a best management practice (BMP). Mr. Taglang agreed that no-till is a BMP and a 100% no-till farm still needed to fall under Chapter 102 requirements. He went on to explain that plowing and tilling are methods to establish crops, the same as no-till, so no-till should fall under this definition for the establishment of crops.

*Agricultural Operation* has been added as a new definition that follows the same language as is in the Nutrient Management Law (Act-38)

*Animal Heavy Use Area* has been added as a new definition and includes area on the farm where animals congregate and create Erosion and Sediment (E&S) problems. Mr. Taglang mentioned that Chapter 91.36 (Pollution Control and Prevention at Agricultural Operations) covers Animal Heavy Use Area, as well, but since conservation districts utilize Chapter 102 for compliance and enforcement, they wanted it included here, as well.

*Conservation Plan* has been revised to include animal heavy use areas and farm lanes. The proposed definition also deletes existing language regarding soil loss tolerance (T), which is given a separate definition, and deletes the language on implementation schedules, which is covered in section 102.4. There was considerable discussion on the inclusion of farm lane language, and by the end of the meeting, it was decided that the AAB would ask for farm lane language to be removed from the draft revised regulations.

*Earth Disturbance* has been revised to include animal heavy use area.

*Soil Loss Tolerance (T)* has been added as a new definition and it defines the maximum amount of soil loss, in tons/acre/year, that a given soil type can tolerate and still permit a high level of crop production to be sustained economically and indefinitely. Mr. Larry Breech asked who defines T and what is acceptable. Mr. Taglang answered that T is defined by the Natural Resources Conservation Service (NRCS) and is also defined in a farms conservation plan and that each different soil has a different T value. Additionally, this definition should clearly define what T is and where T comes from. Mr. Jay Howes commented that the Department should refer T back to the NRCS technical Guide and use the same definition, to avoid confusion. Mr. Walt Peechatka questioned if T only refers to crop production and if animal heavy use areas are held to another standard. Mr. Taglang answered that T covers all soils and standard T calculations are available for crop production (Revised Universal Soil Loss Equation or RUSLE). There are no standard calculations for animal heavy use areas and those calculations are site specific.

Mr. Taglang presented the proposed changes to Section 102.4(a) which did not include any substantive changes from the current regulations, except for the inclusion of animal heavy use areas.

Mr. Taglang's presentation was cut short due to time constraints. Acting Chairperson Betsy Hubler asked any member or guest that was interested, to stay after the meeting to continue to discuss the changes. The AAB approved those staying, as a subcommittee, and to make comments on the proposed changes for the entire AAB. (Note: see information at the end of these minutes regarding discussions after the meeting was adjourned and the subcommittee meet)

**Riparian Forest Buffer Guidance Pre-draft** – Diane Wilson, DEP Bureau of Watershed Management, presented on the draft guidance for riparian forest buffers. The purpose of this guidance is to assist DEP in making riparian forest buffer recommendations for regulatory, voluntary, and grant funded programs. The guidance will also assist outside entities in developing science based guidelines or policies regarding riparian forest buffers.

The Riparian Forest Buffer Initiative is statewide and includes regulatory components, technical assistance, and financial assistance. The regulatory component will encourage the use of riparian forest buffers in current permit decisions for mining, NPDES construction activities, and brown fields. It also includes riparian forest buffer language into the proposed revisions to the Chapter 102 regulations. The technical assistance component includes this technical guidance documents, training, and an update to the Stream ReLeaf Buffer Toolkit. The financial assistance component is utilized for 2009 growing greener applications, conservation partnerships, and the continuation of the Conservation Reserve Enhancement Program (CREP).

Ms. Brenda Shambaugh asked how this guidance looks compared to NRCS guidance. Ms. Wilson answered that there are some differences; the NRCS guidance is general while DEP has tried to be more specific.

Ms. Wilson talked about the recommended composition for existing riparian forest buffers, and that the draft guidance document advises a buffer width of 100 feet (from top of streambank or normal pool elevation of lakes, ponds, or reservoirs) for all streams. Scientific data indicates a significant benefit occurs when buffers are 100 feet or greater. For riparian forest buffers on special protection waters (exceptional value or high quality waters), the buffer width is recommended to be 150 feet.

Mr. Joel Rotz asked where the buffer starts, at the top of the streambank or the edge of the water, as the diagram (picture) of the buffer in the guidance can be confusing. Ms. Wilson answered that the buffer starts at the top of the streambank or top of the slope. She also advised that she will look into revising the diagram (picture) for clarity.

Mr. Walt Peechatka asked about the buffer requirements in Chapter 102.14 (proposed regulations) as to what is voluntary and what is mandated. Ms. Wilson answered that the buffer specifications in 102.14 are standard buffer specifications that will be used for all regulatory components. The buffer requirements would affect agriculture if earth disturbance work was planned in an Exceptional Value watershed or with 100 to 150 feet of a waterbody.

Mr. Barry Frantz asked if PA funding for CREP, which currently requires a 50 foot buffer, was now going to increase to 100 foot buffers for funding. Ms. Wilson answered that CREP funding would remain at a 50 foot buffer.

Mr. Doug Goodlander and Mr. John Bell asked when the proposed buffer guidance would affect agriculture. Individuals doing any earth disturbance work could utilize the guidance as soon as it is finalized, as it is voluntary document. Ms. Wilson explained that the guidance would be utilized when the permit by rule (PBR) option of the Chapter 102 proposed regulations was final. .

**Member or Public Comments** - Acting Chairperson Betsy Huber asked if any members of the AAB or public had any comments. Jay Howes commented that the House of Representatives Agricultural and Rural Affairs Committee is concerned with the department's new policy

regarding oil and gas permit applications Erosion and Sediment Control (E&S) plans. Mr. Howes mentioned that there are concerns on the effects of the new policy on conservation districts and if the policy conflicts with the Conservation District Law.

There being no additional discussions, the meeting was adjourned at 12:50 p.m.

*Note: Several AAB members, guests, and DEP staff meet after the AAB meeting to continue to discuss the proposed Chapter 102 agricultural changes.*

*Those in attendance included:*

**Members**

*Betsy Huber – PA Grange – Acting Chairperson*

*Barry Frantz – NRCS*

*Jay Howes – PA House*

*Walt Peechatka – Penn Ag Industries*

*Joel Rotz – Pa Farm Bureau*

*Brenda Shambaugh – PACD*

*Tom Williams – Dairy Producer*

**Agencies, Advisors, and Guests**

*John Bell – Pa Farm Bureau*

*Dan Dotsie – NRCS*

*Doug Goodlander - SCC*

*Steve Taglang, Frank Schneider, Duke Adams, Don Fiesta – DEP*

*The entire agricultural section of the proposed changes to the Chapter 102 regulations was reviewed. Several comments and/or suggestions were made. Acting Chairperson Betsy Huber advised that a comment letter should be sent to the EQB from the AAB. Frank Schneider will write the letter to be reviewed and signed by Chairperson Michael Firestine. Copies of the letter will be sent to all AAB members.*