

DRAFT

MINUTES

AGRICULTURAL ADVISORY BOARD MEETING

February 17, 2010

DEP South Central Regional Office

Susquehanna Room A

Harrisburg, PA

In Attendance – Members

Larry Breech, PA Farmers Union

Roy Brubaker, Sustainable Agriculture Producer

Robert Davidson, PA Department of Agriculture

Barry Frantz, Natural Resources Conservation Service

Michael Firestine, Agri-business

Jennifer Harry, PennAg Industries

Dian Hain, PA House

George Hazard, PA Farm Bureau

John Hines, Department of Environmental Protection

Richard Hissong, Dairy Producer

Duane Hobbs, Agricultural Chemical Manufactures

Jay Howes, PA House

Betsy Huber, PA State Grange

Keith Masser, Vegetable Producer

Susan Marquart, PA Association of Conservation Districts

Carl Musser, Poultry Producer

John Peters, Fruit Producer

Gerald Seyler, Grain Producer

William Wells, Ornamental Horticulture Producer

In Attendance - Agencies, Advisors, and Guests

Karl Brown, State Conservation Commission

Douglas Goodlander, State Conservation Commission

Grant Gullibon, Pa Builders Association

Kelly O'Neil, Chesapeake Bay Foundation

Jim Smith, IRRC

Kim Snell-Zarcone, Penn Future

Duke Adams, Don Fiesta, Tom Juengst, Dukes Pepper, Glenn Rider, Carl Rohr, Frank Schneider, Susan Seighman, Sabrina Stanwood, Steve Taglang, Department of Environmental Protection

The February 17, 2010 meeting of the Agricultural Advisory Board (AAB) was called to order by Chairperson George Hazard at 10:03 a.m.

Chairperson Hazard announced that the following members had asked to be excused:

- Dr. Doug Beegle, Pennsylvania State University
- Kristen Crawford, Senate Agriculture and Rural Affairs Committee
- David McElhaney, Livestock Producer

Chairperson Hazard welcomed three new Governor Appointments to the AAB. Richard Hissong represents a Dairy Producer, Carl Musser represents a Poultry Producer, and Roy Brubaker represents a Sustainable Agriculture Producer.

Chairperson Hazard asked for a moment of silent reflection on the passing of Amos H. Funk, whom served agriculture in many capacities.

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

Minutes from the December 16, 2009 meeting were approved as written.

Chapter 96.8 (Water Quality Standards Implementation) New Subchapter (Use of Offsets and Tradable Credits from Pollution Reduction Activities in the Chesapeake Bay Watershed)

– Chairperson Hazard reported that the subcommittee was unable to meet, since the proposed rulemaking was not published in the PA Bulletin until February 13, 2010.

Chairperson Hazard asked if the full AAB would have issues with the subcommittee commenting on the proposed rulemaking before the entire AAB meet again. Larry Breech commented that it

would not be appropriate to send correspondence from the entire AAB, without the entire AAB acting on it. He did feel it would be appropriate for the subcommittee to send correspondence identifying that the comments are from only the subcommittee. Jay Howes commented that the subcommittee could send out the correspondence by electronic mail to the full AAB and seek concurrence from a majority of the members.

William Wells made a motion for the subcommittee to meet and send correspondence on the proposed rulemaking. The correspondence would identify that the correspondence was from the subcommittee and it will be sent by electronic mail to all members of the AAB. Gerald Seyler seconded. Motion passed by acclamation.

Chapter 102 (Erosion and Sediment Control and Stormwater) Regulation Revisions – Glenn Rider and Steve Taglang, Bureau of Watershed Management (BWM), presented the final draft proposed rulemaking to the AAB.

Mr. Taglang presented a summary of the proposed rulemaking that included:

- Updated the agricultural soil erosion and sedimentation control, with the addition of animal heavy use area's (AHUA)
- Updated erosion and sedimentation control requirements
- Codification of post construction stormwater management (PCSM) requirements
- Updated permit requirements and fee's
- Riparian forest buffers
- Permit-by-rule (PBR)

Mr. Taglang mentioned that the proposed rulemaking was open for a 90 day public comment period and that three public hearings were held. In all, the department received 1,311 comments with 86% coming from the general public, 8% from industry, 3% from academia, environmental and other non-government organizations, and 3% from governmental, legislative, conservation districts, and attorney's.

Mr. Taglang touched base on the key issues that were raised in the comments that included:

- Definitions (102.1)
- Agriculture (102.4(a))
- Permit requirements (102.5)
- Permit fees (102.6)
- Post construction and stormwater management (PCSM) and operation and maintenance (O&M) (102.8)
- Buffers (102.14)
- PBR (102.15)

Mr. Taglang reported that in regards to agricultural definitions in 102.1, commentators asked for clarification on the definitions to AHUA and Soil Loss Tolerance “T”. It was noted that these definitions will be clarified. Comments also were received on why no-till planting is considered part of agricultural plowing and tilling, since the true meaning behind the word no-till is contradictory. It was noted that no-till is part of the cultivation of crops, thus that is why it is part of the agricultural plowing and tilling definition. Additionally, there were comments on why the implementation of a conservation plan is included in its definition. Mr. Taglang mentioned that the implementation portion of the definition was removed from the existing regulations, but that implementation of a conservation plan will still be required, as it is included in other parts of the proposed rulemaking.

In regards to Section 102.4, Mr. Taglang reported that the department received comments on clarifying the use of “Cost Effective and Reasonable” best management practice (BMP) language. Mr. Taglang noted that the department will retain the language, but it is possible that there will be minor modifications in response to the comments. It was noted that this language is parallel to language that is used in other antidegradation regulations. Comments were also received on clarifying the requirements for 25% cover or less, and Mr. Taglang noted that the department is still working on this issue and will address it in technical guidance. Comments were received that this Chapter should only regulate accelerated erosion and sedimentation and the department believes that this is clear. Mr. Taglang reported that comments were received to clarify or delete AHUA. He reported that AHUA will be retained in the proposed regulation, but the department is working on clarification.

In regards to Section 102.5, Mr. Rider reported that the department received comments on the incorporation of federal requirements for permitting small construction activities, and that the EPA requested that the department delete the language “with a point source discharge to surface waters”. He noted that this language will be removed. It was also noted that this change will help in tying together the federal and state regulations. Mr. Rider also reported that in regards to permit requirements for earth disturbance activities associated with timber harvesting, the department received comments to reduce permit threshold to five acres and to retain and clarify that the permit threshold is 25 acres. Mr. Rider noted that the current permit requirement threshold of 25 acres will be retained.

In regards to Section 102.6, Mr. Rider reported that commentators expressed concern with fee increases and that they recommended either a tiered approach or a fee based approach on project size or disturbed acres. It was noted that the current fees for a General Permit (GP) are \$250 and for an Individual Permit (IP) are \$500. The proposed fees for a GP were \$2,500 and an IP were \$5,000. Mr. Rider reported that the fee schedule has been revised based upon the comments. The newly proposed fee schedule will include an administrative fee plus a fee per disturbed acres. It was noted that the administrative fees would be different for GP and IP. The newly proposed fee schedule for a GP is \$500 administrative fee plus \$100 per disturbed acre. The newly proposed fee schedule for an IP is \$1,500 administrative fee plus \$100 per disturbed acre. It was additionally noted that the goal of the new fee schedule was to provide the funding to run the program without any subsidies. Mr. Karl Brown asked how these proposed fees would affect a conservation districts plan review fees. Mr. Rider answered that a conservation district can still charge fee’s that get them to a point of administering the program, but that they can not charge fee’s past what it costs to administer the program. Mr. Rider also noted that all fees go directly to conservation districts now. Mr. Duke Adams added that some larger conservation districts may need to charge additional fees to meet program costs. Mr. Davidson inquired as to who has oversight on what a conservation district may charge. Mr. Brown answered that the State Conservation Commission (SCC) does this as part of the Conservation District Law.

In regards to Section 102.8, Mr. Rider reported that the department received comments to clarify the technical aspects of PCSM, which focused mainly on O&M. The comments raised concern about long term O&M of PCSM BMPs, and recommended that a third party such as a non-profit organization, conservation district, or corporation could provide service for long term O&M for a

fee. Mr. Rider noted that there will be general modifications in response to the comments, and there will be clarification added to performance standards, and a storm event for compliance. It was also noted, that clarification will be added to the requirements for long term O&M of PCSM BMP's, including reference to various legal instruments and that third party contracts would be appropriate.

Mr. Rider reported that the department received comments to incorporate the new EPA stormwater construction Effluent Limit Guidelines (ELG) or include provisions to meet the ELG. It was noted that the department proposes to incorporate the new federal ELG by reference in Section 102.11.

In regards to Section 102.14, Mr. Rider reported that many comments were received that supported mandatory buffers and many supported the expansion of mandatory buffer widths and applicability, while some comments opposed buffers. Mr. Rider reported that changes to the proposed rulemaking will be as follows:

1. For areas located in an Exceptional Value (EV) and High Quality (HQ) (newly added) watershed, that are meeting their designated use at the time of application, the regulatory requirement will be to maintain and protect a 150 foot riparian buffer when the project site contains, is along or within, 150 feet of a river, stream, creek, lake, pond, or reservoir. Note that this is for a riparian buffer, not a riparian forest buffer (RFB).
2. For areas located in an Exceptional Value (EV) and High Quality (HQ) (newly added) watershed, that are not attaining their designated use at the time of application, the regulatory requirement will be to establish and protect a new RFB when the project site contains, is along or within, 150 feet of a river, stream, creek, lake, pond, or reservoir, where no RFB currently exists.

Mr. Breech asked what comprises a riparian buffer. It was noted that you must maintain what is already present which may include grasses, shrubs, trees, or a combination of those. Mr. Keith Masser asked what the current regulations were in regards to farming along a stream. Mr. Taglang answered that you must have a conservation plan, and that you need to maintain at least 25% cover within 150 feet of the stream or install some additional BMP's. Chairperson Hazard inquired what

it means when an EV or HQ watershed is not attaining its designated use. Mr. Rider answered that the EV or HQ waters are impaired in some way. Mr. Barry Frantz asked what is in the definition of a 150 foot RFB, and Mr. Rider answered that it would be a combination of trees along the waterbody, followed by shrubs, followed by grasses, or a combination of the three that meet the requirements in Section 102.14. Additionally in regards to Section 102.14, the department received recommendations to establish RFBs as a BMP that attains Chapter 93 antidegradation and National Pollutant Discharge and Elimination System requirements. Mr. Rider reported that the regulation will express a legal presumption that voluntary riparian forest buffers will satisfy antidegradation requirements of Chapter 93, related to antidegradation best available combination of technologies (ABACT), and/or non-discharge alternatives when an applicant establishes a new or enhances an existing buffer to meet the RFB width, composition, and other requirements of 102.14, as well as other requirements of the chapter. It was also noted that trading or offset credits, above baseline, will be available where the voluntary RFB is included in a project and meets the requirements of this chapter.

Additional comments in regards to Section 102.14 asked for the inclusion of exceptions or variances for buffers. The department proposes revisions to clarify technical requirements for RFBs, and to propose explicit waiver language to clarify variances to mandatory requirements for RFBs.

In regards to Section 102.15, there was general opposition and minimal support for Permit-By-Rule (PBR), and few comments on ways to improve the proposed PBR. Mr. Rider reported that the department plans to remove PBR from this section of the final rulemaking.

Mr. Rider explained the next steps in the final rulemaking process, and explained that the goal is to go before the Environmental Quality Board (EQB) on June 15, 2010.

Chairperson Hazard commented that with the removal of the point source discharge requirements, if an agricultural operation disturbs one acre of ground, for new building, etc., that they will need to get a GP, at minimum, and if that operation is located in an EV or HQ watershed, they may have some buffer requirements. He noted that this may create an expense to agriculture. Mr. Adams noted that the department has kept the 1 -5 acres with a point source requirement for as

long as it could, however EPA is now insisting that the disturbance threshold for NPDES permits coverage become one acre, so that it is consistent with federal regulations.

Manure Management Manual Revisions – Don Fiesta, BWM, gave an update on the proposed revisions to the Manure Management Manual (MMM).

Mr. Fiesta reported that on January 6, the department, the SCC, and the Natural Resource Conservation Service (NRCS) met with a subcommittee of the AAB to discuss proposed changes to the Field Application Supplement of the MMM. There was general consensus for change in the five following areas:

Pennsylvania State University (PSU) Agronomy Guide – Many of the Tables and Figures from the current version (2001) of the document would be removed and reference made to the PSU Agronomy Guide. This would allow the most recent version of the Agronomy Guide to be the basis for the manure management planning provisions of the supplement.

Plan Format – A revised plan format would be included based on the nutrient balance sheet used by manure haulers and brokers. It would include the Pasture Nutrient Calculator or Pasture Nitrogen Balance Worksheet developed by PSU for farms that practice grazing. Records would be required to be maintained demonstrating compliance with the plan.

Phosphorus – Phosphorus planning would continue to be incorporated as a part of the nutrient balance sheet planning provisions through the existing setback for manure application from surface waters, and the current application rate limitations or restrictions based on phosphorus soil test levels. As an alternative, the farmer could go through the phosphorus index process.

Manure Testing – Manure testing would not be required. Instead, farmers could use the values for manure from the PA Agronomy Guide. However, farmers could conduct manure testing if they chose to do so, and testing would follow the testing procedures established by PSU.

Manure Management on Environmentally Sensitive Areas – The setbacks applicable to agricultural operations regulated under the Act 38 nutrient management program, would be applicable to all agricultural operations.

In addition, Mr. Fiesta reported there was discussion by the subcommittee that ACA/AHUA, winter spreading restrictions, and implementation issues need to be addressed as part of the process for clarifying and updating the standards applicable to farms not regulated under Act 38 or the Concentrated Animal Feeding Operation program. There was also discussion about the need for planning and additional considerations regarding record keeping to document plan implementation. Mr. Fiesta reported these items will be discussed at future meetings. The department plans to have a draft document for comment at the April AAB meeting.

Mr. Frantz asked if the MMM will be implemented similar to the Chapter 102 program. Mr. Fiesta answered that compliance will be complaint driven and no permits will be needed.

Member or Public Comments – Chairperson Hazard reported that the department acknowledged the receipt of the AAB comments on the Chapter 123 (Outdoor Wood-Fired Boilers) proposed rulemaking.

Chairperson Hazard asked if any members of the AAB or public had any comments. There were no comments from the public.

There being no additional discussions, the meeting was adjourned at 11:40 a.m.