

DRAFT

MINUTES

AGRICULTURAL ADVISORY BOARD MEETING

April 21, 2010

DEP South Central Regional Office

Susquehanna Room A

Harrisburg, PA

In Attendance – Members

Dr. Doug Beegle, The Pennsylvania State University

Larry Breech, PA Farmers Union

Roy Brubaker, Sustainable Agriculture Producer

Robert Davidson, PA Department of Agriculture

Barry Frantz, Natural Resources Conservation Service

Jennifer Harry, PennAg Industries

Dian Hain, PA House

John Hines, Department of Environmental Protection

Richard Hissong, Dairy Producer

Betsy Huber, PA State Grange

Duane Hobbs, Agricultural Chemical Manufactures

Jay Howes, PA House

Betsy Huber, PA State Grange

Keith Masser, Vegetable Producer

Carl Musser, Poultry Producer

Joel Rotz, PA Farm Bureau

Brenda Shambaugh, PA Association of Conservation Districts

William Wells, Ornamental Horticulture Producer

In Attendance - Agencies, Advisors, and Guests

William Fink, Hatfield

Douglas Goodlander, State Conservation Commission

Grant Gullibon, Pa. Builders Association

Steve Hoffman, IRRC

Larry Martick, Adams County Conservation District

Kelly O'Neil, Chesapeake Bay Foundation

Marel Raub, Chesapeake Bay Commission

Kim Snell-Zarcone, Penn Future

Rich Tallman, Tallman Potatoes

Randy Bordner, Jane Greber, Don Fiesta, Dukes Pepper, Ann (Smith) Roda, Frank Schneider, Tom Starosta, Steve Taglang, Deborah Wehr, Andrew Zemba, Department of Environmental Protection

The April 21, 2010 meeting of the Agricultural Advisory Board (AAB) was called to order by Vice - Chairperson Jennifer Harry at 10:02 a.m.

Vice - Chairperson Harry announced that the following members had asked to be excused:

- David McElhaney, Livestock Producer
- Gerald Seyler, Grain Producer

Vice – Chairperson Harry announced that Chairperson George Hazard has left employment with the Pennsylvania Farm Bureau, thus he is no longer a member of the AAB. Vice – Chairperson Harry will assume the role of Chairperson until the June 16, 2010 AAB meeting, when the AAB will elect a Chairperson to serve until the end of 2010.

Vice – Chairperson Harry announced that there are copies of the Draft Final Chapter 102 Regulations available on the table

Vice – Chairperson Harry announced that the Department received the comments for the Nutrient Trading subcommittee. She additionally announced the subcommittee's comments and minutes of their meeting are available on the table. (Note: the comments and minutes were sent to all AAB members previously).

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

Minutes from the February 17, 2010 meeting were approved as written.

Chapter 123, Standards for Contaminants, Particulate Matter Emissions (Outdoor Wood

Fired Boilers) Final Rulemaking – Jane Greber, Bureau of Air Quality, presented the proposed final draft rulemaking for Outdoor Wood Fired Boilers (OWBs).

Ms. Greber reported that the proposed outdoor wood-fired boiler (OWB) rulemaking was approved by the Environmental Quality Board (EQB) at its meeting on September 15, 2009, for publication for public comment. The public comment period opened October 17, 2009 and closed on February 12, 2010, for a 119-day public comment period. Public hearings were held in five locations.

Ms. Greber reported that approximately 2,000 commentators submitted comments to the Board on the proposed OWB rulemaking. Most of the comments fell into one of three categories:

- Support (538)
- Support a state regulation contingent with revisions being made to the proposed regulation (723)
- Opposed (745)

Ms. Greber mentioned that of the commentators that gave full support, they were concerned about health issues (some write about emergency room visits due to smoke); increased healthcare costs; malodors; smoke; burning of garbage; the inability to enjoy their property; short stacks; and the fact that their rights to clean air are being infringed upon and that local governments have been unable or unwilling to adequately control the operation of OWBs. Many of these commentators support a seasonal prohibition of OWBs.

Ms. Greber mentioned that of the commentators that gave support, also suggested a revised regulation. They objected to the excessive stack heights for new and existing OWBs, opacity requirements for residential OWBs and the seasonal prohibition. However, they clearly stated that they support a state regulation with revisions and would like to see a consistent state emission standard as opposed to a multitude of local ordinances.

Ms. Greber mentioned that of the commentators that were generally against the proposed rulemaking, they held several different opinions regarding the proposed OWB regulation. Many of these commentators stated they understood the need for regulations for nuisance OWBs and in populated areas. The commentators that were opposed to the proposed regulation generally fall

into one of three groups – OWB owners; state senators and representatives; and local government officials. The major reasons given for opposing the proposed regulation are:

- Regulating OWBs should be a local issue.
- Regulating OWBs represents too much government interference.
- The proposed regulation should not include opacity monitoring because opacity monitoring is a subjective measure.
- The proposed regulation establishes setbacks that are excessive and unnecessary for Phase 2 OWBs and would essentially ban the installation of new OWBs except on the largest properties.
- The proposed OWB regulation establishes stack heights that are excessive for both new and existing OWBs.
- The proposed OWB regulation establishes one-size-fits-all, retroactive stack height requirements for existing OWBs. Existing OWBs should be grandfathered unless they are determined to be creating a nuisance.

Other reasons given for opposing the proposed regulation suggested that there are many misconceptions about its intent such as:

- There is not a direct link between health effects and OWB operations.
- OWBs will have to be permitted or registered.
- The Commonwealth will make money as a result of the regulation.
- The proposed regulation will lead to regulating indoor woodstoves, campfires, fireplaces and barbecues.
- OWBs that are used for farming operations, including greenhouse and nurseries, will be subject to the proposed regulation. (Note: The Department appreciates the comments regarding the use of OWBs for agricultural purposes. As per Section 4.1 of the Air Pollution Control Act (APCA), the Environmental Quality Board does not have the authority to adopt rules and regulations relating to air pollution arising from the production of agricultural commodities, unless the regulations are required by the Clean Air Act. Since there are no Clean Air Act requirements, the Department is prohibited from regulating an OWB that is being used exclusively for agricultural activities. This is also the case if an OWB that is being used for both agricultural and residential activities.

However, if the OWB is being used exclusively to heat and/or provide hot water for a residence located on agricultural property, then the proposed regulation would apply.

- Existing and new OWBs will be banned.

Ms. Greber mentioned that other comments received included:

- Fuel requirements. Very few commentators opposed the fuel requirements established for existing (and new) OWBs.
- Although not a provision of the proposed regulation, comments were specifically requested in the Preamble regarding a seasonal prohibition from May 1 through September 30. The majority of the commentators that mentioned this issue opposed the seasonal prohibition. Reasons for this opposition included that the weather is often cold during this timeframe and that OWBs are used to heat hot water year-round.
- Sell-Through exemption. A sell-through exemption for noncomplying OWBs was recommended by the manufacturers' caucus.

Ms. Greber reported that revision to Proposed Regulation includes:

- Added two additional definitions – New Phase 2 OWBs and Non-Phase 2 OWBs.
- Clarified the definition of OWB to exclude OWBs equal to, or greater than, 350,000 BTU/HR.
- Added a real estate exemption – The emission standards and stack height and setback requirements do not apply to a permanently installed OWB that was installed prior to the adoption date of the regulation and is transferred to a new owner as a result of a real estate transaction.
- Removed stack height requirements for existing OWBs.
- Revised stack height requirement for new Phase 2 – Must have a permanently attached stack that extends a minimum of 10 feet above the ground and be installed according to the manufacturer's specifications.
- Revised set back requirements for new Phase 2 OWBs – New OWBs will have to be installed a minimum of 50 feet from the nearest property line instead of 150 feet from the nearest property line.

- Revised the Regulatory Requirements section to read that a person may not use or operate an OWB in this Commonwealth unless it complies with all applicable Commonwealth, county and local laws and regulations.
- Removed the Written Notice and Recordkeeping Requirements.

Mr. William Wells commented that it appears that the people of the Commonwealth do not want this regulation, and that the Department is to work for the people of the Commonwealth. It appears that Harrisburg comes out with too much regulation that the people of the state do not want. Mr. Wells questioned who will enforce this new proposed rulemaking. Ms. Greber answered that the Department field staff will respond to complaints, as enforcement will be complaint driven.

Ms. Brenda Shambaugh questioned how the Department will inform people of the new rulemaking, if approved. Ms. Greber answered that the Department will inform distributors so that when new OWBs are sold, the consumer will be informed. She also mentioned there will be news releases and the rulemaking will be published in the *Pennsylvania Bulletin*.

Chapter 123, Standards for Contaminants, Sulfur Compound Emissions (Low Sulfur Fuel Oil) Proposed Rulemaking – Deborah Wehr, Bureau of Air Quality, presented the proposed rulemaking for Low Sulfur Fuel Oil.

Ms. Wehr reported the reason for the proposed rulemaking can be found in the 1977 Clean Air Act Amendments, which declared a national goal to prevent future visibility impairment and remedy existing impairment in the national parks, wilderness areas, and wildlife refuges. The goal is to reach natural visibility conditions by 2064, with the first milestone in 2018. She additionally reported that the purpose of the rulemaking is to limit sulfur content in commercial fuel oil used in commercial/industrial and residential boilers, furnaces and other heaters. It must be noted that sulfur is the primary chemical pollutant contributing to visibility impairment, especially on the 20% worst days. She mentioned that the proposed rulemaking is planned to go to the EQB in July 2010, with a 60 day public comment period anticipated to start in September 2010.

Ms. Wehr reported the environmental and health benefits of lowering sulfur content in fuel include reduced sulfur dioxide (SO₂) and fine particulate emissions (PM_{2.5}). These reduced emissions

assist in decreasing regional haze and increasing visibility and decreased health effects from PM2.5 exposure.

Ms. Wehr reported on the Mid-Atlantic/Northeast Visibility Union (MANE-VU) that was established in 2000 to help the Northeast states plan for meeting regional haze requirements. MANE-VU evaluated four source categories (electric generating units, cement and lime kilns, industrial/commercial/institutional boilers, and heating oil) for potential sulfur reductions. In 2007 MANE-VU adopted a formal statement agreeing to pursue a regional low sulfur oil strategy. As much as 75% of the total sulfur reductions achieved by this strategy will come from using low-sulfur No. 2 distillate fuel for space heating in residential and commercial sectors.

Ms. Wehr mentioned that there are many consumer benefits with sulfur reductions that include saving money because low sulfur heating oil reduces the rate of fouling of heating equipment and therefore reduces maintenance and cleaner furnaces or boilers burn less fuel oil which in turn saves consumers money on the quantity of fuel purchased.

Ms. Wehr reported the distributors of oil are supportive because they can now compete on “greenness” with natural gas. She reported that highway diesel and most off the road diesel requirements are moving towards ultra low (15 ppm) sulfur diesel. The National Oilheat Research Alliance (NORA) study suggests that supplies of low (500 ppm) and ultra low (15 ppm) distillate should be available to meet the demands of the MANE-VU program. There have been concerns by some refiners about the supply of 15 ppm heating oil in that they do not know if they will be able to keep up with the demand.

Ms. Wehr reported that as the oil market moves towards nearly all 15 ppm, the cost should normalize. NORA estimates the cost of refining 15 ppm at between 5 and 9 cents per gallon more than producing 2,500 ppm oil. It must be noted that forces other than production costs will also play a role in determining the price differential that consumers will pay.

Ms. Wehr reported that changes in 25 Pa Code 123.22 include:

- Lowering the allowable sulfur content of Numbers 2, 4, 5, and 6 commercial fuel oils to be consistent across the state.

- The proposed rulemaking will be applicable to anyone who offers for sale, delivers for use, exchanges in trade, or permits the use of commercial fuel oil in this Commonwealth. The primary burden will be on distributors, not home owners.
- More detailed sampling, testing, record keeping, and reporting requirements were added to allow for checks of the sulfur content of the fuel oil and aid enforcement efforts. These record keeping requirements are in line with the current industry practice.
- Added provisions that ensure ultimate consumers have information that they are buying compliant fuel.

Mr. Larry Breech questioned if Pennsylvania already has a 2% bio-diesel content in place. Ms. Wehr answered that there is a bio-diesel requirement, but it does not include a low sulfur content. Mr. Jay Howes added that the legislature would like to see bio-diesel in home heating oil which would include a low sulfur content. Mr. Howes said the question is whether Pennsylvania has the capacity to make more bio-diesel on the refining capacity side.

Mr. Joel Rotz inquired as to what the refiners are saying about the proposed rulemaking. Ms. Wehr answered that some will need to add capacity and technology, but some already have the capacity and technology in place.

Ms. Shambaugh mentioned that cost will go down due to less maintenance, but the cost per gallon will go up. Ms. Wehr mentioned that there is not a true economic analysis because of the large number of factors that affect the price of oil, but it is true that consumers will buy fewer gallons because of better efficiency and will have less maintenance.

Chapter 92a, National Pollutant Discharge Elimination System Permitting, Monitoring, and Compliance – Summary of Comments Received During Public Notice Period – Tom Starosta, Bureau of Water Standards and Facility Regulation, provided a summary of the comments that were received in regards to the proposed Chapter 92a National Pollutant Discharge Elimination System Permitting, Monitoring, and Compliance rulemaking.

Mr. Starosta reported that agriculture is included in this proposed rulemaking because of the inclusion of Concentrated Animal Feeding Operations (CAFOs) and Concentrated Aquatic Animal Production Facility (CAAPs).

Mr. Starosta reported that comments were received in regards to treatment requirements and permit structure. Specifically, the CAFO definition, the inclusion of CAAPs and Fee structure will not change from the proposed rulemaking.

Mr. Larry Martick questioned if the Pennsylvania CAFO definition needs to match the EPA definition. Mr. Starosta answered that Pennsylvania definition can be at or above the EPA definition.

Vice-Chairperson Harry questioned on the inclusion of pesticides into the Chapter 92a language. Mr. Starosta answered that historically pesticides were not regulated under National Pollution Discharge Elimination System (NPDES) but a recent Federal Court ruling says that EPA must now look at pesticides where they may impact water. Currently, DEP is proposing to add language that if a producer is following the label recommendations, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), they would be covered under a Permit-by-Rule. EPA is looking into this, but they may have to require a General Permit (GP). If a GP will be needed, DEP hopes that the permit will be low maintenance and hopefully no fees associated. DEP does not want to get into a lengthy permit process like we do with end of pipe discharges. Mr. Starosta mentioned that more work needs to be done by both EPA and DEP, but that DEP does not believe more regulations on pesticides are warranted.

Mr. Duane Hoobs questioned how and when we will know when EPA moves forward. Mr. Starosta answered that EPA must have a decision by April 2011.

Ms. Shambaugh questioned why the Pennsylvania Department of Agriculture (PDA) can not run the program. Mr. Starosta answered that DEP is delegated the authority for the NPDES program from EPA, and that the Federal Court ruling was specific that EPA include pesticide provisions in the NPDES program.

Mr. Barry Frantz questioned if all users of pesticides would have to have a GP or Permit-by-Rule. Mr. Starosta answered that he believed that it would only be larger users and not home owners.

Mr. Larry Breech commented that he will now have to tell his members that there is another permit that they will have to acquire. Mr. Starosta answered that DEP did not come up with the pesticides issue, but rather that it was from a Federal Court ruling and that EPA/DEP must follow. Additionally, we are hoping that EPA will allow us to use what we proposed which is that if you are following the label recommendations under FIFRA, there is no additional action or dollars needed.

Mr. Howes commented that if a GP must be issued, it would be a benefit if we could issue the GP when an applicator receives his pesticide applicator's license. Mr. Starosta agreed but said that we need to see how EPA moves forward with guidance.

Ms. Diane Hain questioned if DEP does anything with labeling on pesticides. Mr. Starosta answered that FIFRA handles labeling requirements and DEP has no input.

Vice-Chairperson Harry questioned if producers would be covered from nuisance lawsuits before EPA comes out with final guidance on or about April 2011. Mr. Starosta could not answer. Vice Chairperson Harry asked that Mr. Starosta or EPA come back to the AAB to discuss this issue once we are closer to final guidance (6 to 8 months from now).

Chapter 96.8 (Water Quality Standards Implementation) New Subchapter (Use of Offsets and Tradable Credits from Pollution Reduction Activities in the Chesapeake Bay Watershed) Final Rulemaking – Ann (Smith) Roda, Water Planning Office, presented the proposed final draft Nutrient Trading Rulemaking.

Ms. Roda mentioned that the proposed rulemaking was reviewed with the AAB in August 2009 and then again in February 2010. Additionally Chapter 96.8 was presented and approved by the EQB in November, and the proposed rulemaking was published on February 13, 2010 for a 30 day comment period. Over the 30 day period, 10 sets of comments were collected.

Ms. Roda reported that the majority of the comments came mostly from those in or representing the point source community. Lycoming county submitted comments related to point source and non-point source components of the regulation, and three sets of comments were submitted related

to more non-point source aspects of the rulemaking (AAB subcommittee, PA Farm Bureau and Dr. Beegle).

Ms. Roda reported that the biggest area of the rulemaking that received comments related to the definition and use of the term offset throughout the rulemaking. This will be one area that will be revised in the final version.

Ms. Roda mentioned comments were submitted that the rulemaking did not provide enough stability and certainty, and a few stated that a clear appeal process is needed.

There were a number of comments related to the use of the delivery ratio and reserve ratio when it comes to point source credits and point source trades. The AAB subcommittee comments did not support the use of delivery ratio for the point sources, but the use of the delivery ratio is being handled by the regional offices and the Bureau of Water Standards and Facility Regulation as it relates to the permit language and the submitted Discharge Monitoring Report information.

Ms. Roda reported that a number of comments were submitted related to the methodology section. Many of these comments requested clarification on when the methodology could change and where the information can be found. Another area that received a number of comments related to the definition of baseline for point sources and when credits can be generated and used. Many of these comments seek clarification on local Total Maximum Daily Loads (TMDLs) vs. Chesapeake Bay TMDLs.

Ms. Roda mentioned that clarification has been sought related to the items listed within the certification section of the rulemaking. A few comments also sought clarification on the term compliance point as well as the use of the tradable load. The Builders Association included a recommendation that the rulemaking include a “stormwater BMP offsetting” program.

Ms. Roda reported that a three year clause will be added to the proposed rulemaking. This clause will allow for the regulation to be reviewed every three years to see if revisions or changes are warranted. The clause will “sunset” the reopening of the regulation every three years, which is a good thing, as nutrient trading is evolving.

Ms. Roda reported that the next steps for the rulemaking will be to revise based on the comments collected during the comment period, with the proposed final package to be presented to the Water Resources Advisory Committee (WRAC) on May 11th, and it is anticipated that this package may be on the agenda for EQB for June.

Mr. Larry Martick asked if the proposed rulemaking was only for nutrients or if sediments were still included. Ms. Roda answered that the proposed rulemaking does include sediments but nutrients have been the primary focus of the Departments efforts. Sediments will not be lost from the proposed rulemaking. Mr. Martick then asked how the public is notified of a proposal being submitted or a trade occurring. Ms. Roda answered that all proposals when received and when certified are published in the *Pennsylvania Bulletin*. Additionally, when credits are registered, notice is published in the *Pennsylvania Bulletin*. This information also appears on the Departments Nutrient Trading website. Mr. Martick then inquired if the Department had done away with its work on a watershed wide permit. Deputy Secretary Hines answered that the Department is still looking into the issue of watershed wide permits, but that the process will take time.

Chesapeake Bay Agricultural Water Quality Initiative – John T Hines, Deputy Secretary for Water Management, discussed the Departments agricultural water quality initiative.

Deputy Secretary Hines reported that the initiative will become part of the Departments Watershed Implementation Plan (WIP), under the Chesapeake Bay Program, and that the WIP will be more finite compared to the existing Chesapeake Bay Tributary Strategy.

Deputy Secretary Hines reported that the WIP process will include several committees that include:

- Management Committee
- Urban, Suburban, and Rural Workgroup
- Wastewater Workgroup
- Agricultural Workgroup

Deputy Secretary Hines mentioned that the agricultural compliance initiative, which the agricultural workgroup will be working on will include the following themes:

- Focus on implementation of Pennsylvania’s existing regulatory requirements. This includes the current CAFO requirements and the erosion and sedimentation control and manure management requirements that apply to small and mid-size farms.
- Continue to maintain, and where possible, enhance and target the current base of technical and financial assistance provided to the agricultural community provided through local (conservation districts & non-profits), state (PDA, DEP, DCNR) and federal (NRCS) partners.
- Continued focus on the “Core Conservation Practices” including: nutrient management plans; cover crops; streamside buffers and fencing; and no-till and low-till practices.
- Evaluate and modify regulatory requirements (where necessary), water quality programs and administrative tools, to help maximize attainment of the goal.
- Implement a targeted watershed approach to systematically assess compliance of agricultural operations with existing baseline water quality regulatory requirements, and to implement strategies to achieve greater compliance with these water quality requirements.
- Monitor and evaluate progress and make necessary revisions as appropriate.
- Work to enable and encourage agricultural operations that are found to be meeting baseline water quality requirements to actively participate in nutrient credit trading and other market based ecosystem programs that financially reward farmers for implementing best management practices that benefit the Chesapeake Bay.

Manure Management Manual Revisions – Steve Taglang, Bureau of Watershed Management, gave an update on the proposed revisions to the Manure Management Manual (MMM).

Mr. Taglang reported that DEP has presented the revised MMM Field Application Supplement to the AAB subcommittee at a meeting on March 25th. At the time the focus of the discussion was on the format of the new Manure Management Plan (MMP). The subcommittee suggested that this portion of the supplement was the most important and recommended that it be drafted as a “stand alone” section with a description of the requirements, a format for the MMP, and instructions for developing a plan using the format.

Mr. Taglang mentioned that DEP has revised the draft presented to the subcommittee, and that the revision is being reviewed by DEP with input from other resource agencies prior to providing the revised version to the subcommittee.

Mr. Taglang reported that over the next several months, DEP plans to provide the draft MMM Field Application Supplement to a number of advisory committees to get their informal comments. DEP also plans to provide the draft to conservation districts, federal and state resource agencies and EPA for informal review and comments. DEP plans to bring the draft MMM Field Application Supplement revisions to the AAB in June as a proposed policy. Mr. Taglang mentioned that the draft will go through the official public review process for technical guidance documents after AAB review at the June meeting.

Mr. Howes mentioned that in the vetting process that DEP should have several conservation districts and the nutrient management advisory committee review it. Mr. Taglang agreed and mentioned that DEP planned to “test drive” the document with a few consultants and conservation districts.

Mr. Carl Musser asked how this would affect those with Act-38 Nutrient Management Plans (NMPs). Mr. Taglang answered that the MMM is only for those individuals that use manure and do not need an Act-38 NMP, so it will have no affect on those that already have Act-38 NMPs.

Member or Public Comments –Vice - Chairperson Harry 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 11:45 p.m.