

Pennsylvania's Proposed Chesapeake Bay Agricultural Water Quality Initiative

Goal: Clean Water Within the Chesapeake Bay Watershed and Economically Viable Farms

Objectives:

To help reduce nutrient and sediment loads to levels necessary to restore water quality (achieve attainment of designated uses) in Pennsylvania's portion of the Chesapeake Bay Watershed that are impaired by agriculture activities;

To do so in a manner that strives to maintain the economic viability of Pennsylvania farms and farm families.

To do so in a manner consistent with existing legal agreements among the Chesapeake Bay States, and state and federal laws;

Key components of this initiative include:

- 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;
- A continued focus on the "Core Conservation Practices" including: nutrient management plans; cover crops; streamside buffers; and no-till and low till practices.
- Focus on implementation of existing Pennsylvania regulatory requirements that apply to small and mid-size farms
- 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 base-line 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.

Pennsylvania's Agricultural Water Quality Initiative builds upon the current regulatory authorities by enhancing their implementation through the targeting of existing resources toward systematically restoring water quality within priority watersheds. It maintains the active implementation of the existing statewide DEP CAFO regulatory program and recognizes the need to continue to respond to and address complaints concerning potential pollution at agricultural operations all across the state.

It is also important to recognize the importance and considerable resources of the conservation districts, and their role as the primary agricultural staff (technical and financial assistance) for implementing Pennsylvania's environmental programs. With current budget considerations, there is no expectation that additional staff resources will become available in the near term (1-2 years). However, by targeting our existing resources to continue to provide a strong focus on CAFOs, CAOs and on other farms with potential pollution incidents; and by implementing a new effort to actively assess all farming operations within targeted watersheds, Pennsylvania will be

able to methodically increase compliance by agricultural operations and reduce the nutrients and sediments entering watersheds in the Chesapeake Bay basin.

Continue Existing Regulatory Program

- Continue routine CAFO inspections. The current frequency of one inspection per year will be maintained as long as sufficient resources exist and where annual inspections are necessary. These inspections continue to yield improvements in these larger agricultural operations. If there are violations, they will be corrected either cooperatively or through an enforcement action.
- Continue routine CAO inspections under the Nutrient Management Act. These inspections continue to yield positive program improvement.
- Continue to respond to complaints, with the emphasis on complaints that identify actual pollution (for example manure spills). For spills or other pollution events, require corrective action and a penalty where appropriate. In each case, include development and implementation of a manure management plan and conservation plan for all small farms that are not subject to the Nutrient Management or CAFO program.

Evaluate and Modify Regulatory and Administrative Tools

- 1) Working with partner groups, accelerate development of regulatory and administrative “tools” to better address agricultural compliance. (NOTE: “Partners” in this effort would first include conservation districts, State Conservation Commission (SCC), DEP,PDA, USDA-NRCS, and EPA Region 3. The Ag Advisory Board, Farm Bureau, Chesapeake Bay Foundation and others would be involved as efforts progress and documents are revised.)
 - On-going revisions of Chapter 102 regulations to address “animal heavy use areas” and near stream activities.
 - Update of Chapter 102 Administrative Manual to specifically address agricultural activities under Chapter 102.
 - Update Manure Management Manual and Land Application Supplement to address “workable” manure plan format, phosphorus, buffers, ACAs, incorporation and winter spreading of manure consistent w/ approach taken in nutrient management program.
- 2) Working with the conservation districts and NRCS, re-evaluate our current Chesapeake Bay Implementation Grant program to effectively utilize current technical assistance capabilities and financial resources to enhance the agricultural assessment and compliance initiative.
 - As required, revise Chesapeake Bay Technician’s annual work plans for the 49 conservation district Bay technicians and engineers. These changes would occur with the July 2010-June 2011 contracts.
 - As required, modify funding priorities and resource allocations for Chesapeake Bay “Special Projects.” DEP allocation of Chesapeake Bay BMP funds should be assessed, and if needed, revised to best utilize this consistent/available source of BMP funds. These changes would occur with the July 2010-June 2011 contracts.
- 3) Working with EPA Region 3, cooperatively review Pennsylvania’s existing CAFO regulatory program to ensure that it meets current federal regulations. DEP believes that
(Provided to Ag Workgroup WIP Development: 5-10-10 Mtg)

Pennsylvania's approved CAFO program meets current EPA requirements. However, EPA's analysis may have identified specific issues regarding Pennsylvania's current CAFO program that may require additional review/activities. Discussion of specific issues when identified by EPA will be needed.

Targeted Watershed Approach to Assess and Achieve Agricultural Compliance

This approach will allow DEP and its federal and local partners to focus limited resources in a coordinated and targeted way to increase the likelihood of improving water quality in agricultural impaired watersheds in a shorter period of time.

The targeted watershed approach consists of identifying high priority watersheds for assessment and compliance inspections. Outreach and education activities will be conducted in the selected watersheds to apprise all operations of their regulatory obligations and a general description of the targeted assessment and compliance initiative.

The assessments would be focused on identifying the current status of the operation including baseline compliance for trading, already installed BMPs, operational limitations, areas needing attention, and any regulatory violations of both federal law (NPDES violations) and state law (Chapter 91, 102 etc). The assessment results will be used to develop a strategy to evaluate, identify and prioritize follow up efforts needed to assist with compliance, and to identify and target any necessary enforcement activities where compliance cannot be obtained voluntarily. If there are structural, regulatory or funding impediments, these impediments would be identified and, where appropriate, strategies to overcome the impediments would be implemented.

The proposed assessment and compliance process is described below:

- 1) DEP, working with EPA Region 3, partner groups and the CDs, will select manageable-sized watersheds (e.g. both geographically and number of farming operations) for the assessment and compliance initiative. Targeting considerations will include:
 - Identify agricultural impaired watersheds (Partners: DEP,EPA, CD, PDA)
 - Identify watersheds with a TMDL
 - Target watersheds w/ potential for success considering a manageable size, number and diversity of operations (including consideration of operation type, size and ownership), and strong partner cooperation and involvement. (Partners: DEP, EPA, CD, PDA, SCC)
 - Target watersheds with current watershed plans including: 319, Growing Greener, and County Implementation Plans. (Partners: DEP, EPA, CD, NRCS,)
 - Target watersheds where the maximum available funding can occur (Partners: DEP, NRCS, EPA, CBF, FSA, PDA etc.)

- 2) Develop and implement outreach and assessment tools for use in the assessment and compliance initiative. These tools will be modeled after the approach taken in the NCRO and proposed by EPA Region 3. Outreach efforts will be focused over a finite period of time (6-8 weeks) in advance of the actual assessments. Outreach considerations include:
 - Use and distribution of the Ag Action packet, informational meetings, press releases, direct mailings, private sector involvement CD stakeholder assistance etc. (Partners: DEP, CDs, EPA, PDA, Pa Farm Bureau, CBF etc.)
 - Develop the assessment protocol and assessment form used in the initiative (Partners: DEP, EPA, CD, PDA, other stakeholders)

Other outreach ideas include; EPA region 3 could develop mailers, be partners in workshops, etc. EPA involvement could also emphasize the President's Chesapeake Bay Executive Order and the need for Agricultural Compliance with respect to the Chesapeake Bay. EPA could also offer free private and public water supply testing.

- 3) Prioritize DEP regional, and central office time to complete an agricultural assessment and compliance initiative in the identified watershed(s) in a finite period of time. Conduct assessments of all agricultural facilities in the watershed(s) using the assessment process developed. Assessments would be performed by DEP staff. If non-agricultural activities significantly contributing to water quality degradation are noticed during the assessments, they will be recorded and considered during the assessment evaluation.

Note: EPA staff should not be involved in these initial on-farm assessments.

- 4) Develop a tiered compliance process that encourages voluntary compliance where possible and reserves enforcement tools for uncooperative agricultural operations. The goal of this effort is to get implementation of proper agricultural activities, not to collect fines from agricultural producers. Farmers will be provided the opportunity to comply within a reasonable timeframe, but where compliance cannot be obtained, enforcement efforts will be initiated. This process will be a tiered compliance/enforcement approach that includes an effort to rank violations for priority compliance assistance and possible enforcement. This tiered approach would start with conservation district technical assistance and lead to DEP and/or EPA enforcement activities, based on the severity of the violations, potential for environmental degradation and/or the willingness to comply with regulatory requirements. (Partners: DEP, CDs [voluntary compliance portion only], and EPA)

The compliance strategy will include:

- Focus on attaining baseline compliance for trading (compliance with Chapter 102-E&S requirements, Chapter 91- manure management, Act 38 – Nutrient management, and Chapter 92- Concentrated animal feeding operations) as appropriate.
- General compliance utilizes an escalating tiered approach ranging from notification of concerns, opportunity for voluntary compliance and financial assistance, and last chance for voluntary compliance prior to taking enforcement action. This will be done over a finite timeframe determined by DEP in consultation with the conservation districts.
- Develop a compliance strategy that takes into account enforcement discretion and focuses on taking action on the most egregious violations first.
- Escalated enforcement will be initiated against agricultural operations that have exhibited unwillingness or have ignored opportunities to achieve voluntary compliance. DEP will consider any and all compliance tools available including NOVs, field orders, compliance orders, CO&A's, and requiring permits as CAFOs.

NOTE: DEP will share information with and accept input from EPA regarding escalated enforcement and may request EPA involvement as appropriate.

- 5) Maximize availability of funding opportunities to agricultural operations in the targeted watershed. DEP will designate these targeted watersheds as priority watersheds for Growing Greener and other state funding (NPS PennVest program yet to be developed). In addition, DEP will work with federal partners (EPA 319, NRCS, FSA, EPA-Chesapeake Bay

(Provided to Ag Workgroup WIP Development: 5-10-10 Mtg)

Program) to prioritize to the extent possible these federal funds for use in the priority watersheds. Program partners will work together to maximize staff availability in developing Manure Management Plans, E & S Plans, and designing BMPs to be installed during the same period in the priority watersheds. (Partners: DEP, EPA, PDA, NRCS, FSA, CBF, SCC.)

- 6) Develop a strategy to track implementation of existing and future BMPs, planning, or operational changes at agricultural operations in response to the assessment and compliance initiative in the watershed. Following corrective actions on watershed, consider stream biological surveys on the targeted watershed to assess improvements, calculations of nutrient and sediment reductions realized through the implementation of BMPs. In addition, articles, success stories, watershed tours, could be planned to celebrate the successes of this joint assessment and compliance initiative.(Partners: DEP, EPA, PDA, CDs)

NOTE: EPA could provide assistance in the follow-up biological and water quality monitoring.

Monitor and Evaluate Progress and Effectiveness of the Assessment and Compliance Initiative

As this initiative is implemented, DEP will meet with its key partners (CDs, PDA, SCC, EPA, NRCS and others) on a periodic basis to discuss progress, effectiveness, impediments, and successes. These discussions will be used to make revisions to or enhance the initiative as well as evaluating its use for implementation outside the bay basin or even taking the fundamentals of the process and apply to other sectors. Information gained through this initiative may also help in identifying the need for future regulatory revisions or even statutory revisions to ensure the protection of water quality from agricultural activities.