

DRAFT

## **MINUTES**

### **AGRICULTURAL ADVISORY BOARD MEETING**

**June 16, 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**

**John Hines, Department of Environmental Protection**

**Duane Hobbs, Agricultural Chemical Manufactures**

**Betsy Huber, PA State Grange**

**Keith Masser, Vegetable Producer**

**David McElhaney, Livestock Producer**

**Carl Musser, Poultry Producer**

**William Neilson, PA Farm Bureau**

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

**John Bell, PA Farm Bureau**

**Karl Brown, State Conservation Commission**

**William Fink, Hatfield**

**Douglas Goodlander, State Conservation Commission**

**Grant Gullibon, Pa. Builders Association**

**Kelly O'Neil, Chesapeake Bay Foundation**

**Marel Raub, Chesapeake Bay Commission**

**Jennifer Weld, The Pennsylvania State University**

**Kim Snell-Zarcone, Penn Future**

**Tom Bold, Don Fiesta, Sidney Freyermuth, Dukes Pepper, Frank Schneider, Susan Seighman, Jim Spontak, Steve Taglang, Department of Environmental Protection**

The June 16, 2010 meeting of the Agricultural Advisory Board (AAB) was called to order by Vice - Chairperson Jennifer Harry at 10:05 a.m.

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

- Dr. Doug Beegle, The Pennsylvania State University
- Brenda Shambaugh, PACD
- Gerald Seyler, Grain Producer

Vice – Chairperson Harry welcomed William Neilson whom will now be the Pennsylvania Farm Bureau’s representative.

Vice – Chairperson Harry announced that the Chapter 102 (Erosion and Sediment Control) and Chapter 95 (Waste Water Treatment Requirements) proposed Regulation revisions were acted on at the May 19, 2010 Environmental Quality Board (EQB) meeting.

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

Minutes from the April 21, 2010 meeting were approved as written.

**Election of Chairperson for the remainder of 2010** – Vice - Chairperson Harry opened the floor for nominations for the position of AAB Chairperson for the remainder of 2010. Jennifer Harry was nominated, seconded, and unanimously elected to the position of AAB Chairperson.

**Election of Vice Chairperson for the remainder of 2010** - Chairperson Harry opened the floor for nominations for the position of AAB Vice Chairperson, seeing that she was just elected Chairperson, for the remainder of 2010. Keith Masser was nominated, seconded, and unanimously elected to the position of AAB Vice Chairperson.

**Chapter 105, Dam Safety and Waterway Management, Proposed Fee Increase** – Sid Freyermuth, Bureau of Watershed Management, and Tom Bold, Bureau of Waterways

Engineering, presented the proposed regulations for those sections related to fee increases for the Chapter 105, Dam Safety and Waterway Management Regulations.

The purpose of the revisions is to amend the Departments Dam Safety and Waterways Management regulations to update existing fees and include additional fees for activities performed by the Department. The fees were developed to cover the reasonable cost to the Department to administer the Dam Safety and Water Obstruction and Encroachment (WO&E) Programs. The fees for most activities have not been increased since 1991.

Mr. Bold and Mr. Freyermuth detailed the steps to develop the new fees. These steps included an in-depth analysis of the Dam Safety and WO&E Programs day to day workload. The analysis identified specific activities, such as permit application reviews, letter of amendment, letters of authorization, environmental assessment reviews, general and individual WO&E permit reviews, submerged lands license agreement reviews, and more. The next step reviewed the job classification of all staff involved and the time required. The above steps resulted in a preliminary fee for each activity. The total cost of the program was estimated using total salary, benefits, and overhead. The fees proposed for the Dam Safety is estimated to cover the entire program cost. The fees proposed for the WO&E will only staff time associated with permit processing and not the total program costs.

The total number of activities performed was determined from data for the years of 2006, 2007, and 2008. The three year total for each activity was then separated into state, municipal, and private activities. These totals were then averaged to estimate the annual numbers of each activity type and multiplied by the previously calculated preliminary fees.

The results for the 2 step above were added together to provide a preliminary project revenue. The Dam Safety and WO&E project budgets for Fiscal Year 2011-12 was then obtained from the Bureau of Fiscal Management. The previous calculated income revenue from the preliminary fees was, as expected, found to be significantly less than the projected Fiscal Year 2011-12 budget. A multiplier of 1.88 was applied to all preliminary fees to increase the total projected revenue to match the projected budget for Dam Safety.

Mr. Bold and Mr. Freyermuth detailed changes made to Section 105.13 (permit applications), Section 105.131a (annual dam registration), Section 105.35 (charges for use and occupation of submerged lands of this Commonwealth), Section 105.444 (content of General Permits), and Section 105.448 (determination of applicability of General Permit).

Mr. Bold and Mr. Freyermuth showed the current fees and proposed fees for each portion of the Dam Safety or WO&E programs.

Deputy Secretary Hines commented that staff was very critical in performing the fee analysis but with the current economical situation, the Department needs to charge higher fees to cover staff that is needed to implement the program. Deputy Secretary Hines additionally mentioned that these proposed fee increases still need to go to the Environmental Quality Board (EQB) and the public review process and that the increased fees are at least eight months or more away from being finalized.

Mr. Carl Musser asked if budgets get cut by Legislative action. Deputy Secretary Hines answered that the Governor proposes a budget and the Legislature enacts a budget. The agencies need to implement the final budget with the dollars that are provided and reiterated that the proposed fee increases are needed to sustain the program.

Mr. Keith Masser asked if there was a fee for unregulated dams. Mr. Bold answered no.

Mr. Larry Breech asked what types of dams make up the smallest dam category. Mr. Bold answered that small dams have no life hazard associated with them and pay the smallest fees.

Mr. Roy Brubaker asked if agricultural bridges would fall under the GP-6 or GP-7. Mr. Freyermuth answered that they could but it would really depend on the impact of the bridge.

Mr. Masser asked if floating docks fall under the GP-2. Mr. Freyermuth answered that floating docks do fall under the GP-2. Mr. Masser then asked if this requirement was new. Mr. Freyermuth answered that it is not new, that floating docks always needed to have a GP-2, but many did not. Mr. Masser then inquired if an existing floating dock, which was not under a GP-2,

would need to get a GP-2. Mr. Freyermuth said that it appeared they would not until repair or replacement was performed.

Ms. Jennifer Harry inquired if a delegated conservation district could charge additional fees for review of a general permit, on top of the general permit fee. Mr. Freyermuth answered that they may be able to charge additional fees, for PNDI searches, E&S plan reviews, or other related charges, but more work still need to be done on that area before the proposed regulations go before the EQB. Ms. Harry then asked Mr. Barry Frantz if general permit fees could be cost shared under Natural Resource Conservation Service (NRCS) cost share programs. Mr. Frantz answered that fees for permits could not be cost shared.

Mr. Musser mentioned that he has concerns about many projects happening without general permits because people want to by-pass the fee. Mr. Freyermuth answered that compliance/enforcement will probably increase and that the Department still needs to work on this portion of the proposed changed before going to the EQB.

Mr. Frantz mentioned that Federal and State Programs encourage landowners in the Bay watershed to perform streambank stabilization and the proposed \$250 fee will discourage participants. Mr. Freyermuth agreed and mentioned that is one of the reasons the Department would like comments, so the Department can adjust the proposed regulations and make changes.

**Chesapeake Bay Program Watershed Implementation Plan (WIP)** – John T. Hines, Deputy Secretary for Water Management, discussed the Departments Chesapeake Bay Program Watershed Implementation Plan (WIP) process.

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

Each of these workgroups will discuss technology and trading, as they deal with the individual sectors.

He mentioned that the process is in full swing and that it is great to bring everyone, which will be effected, to the table to assist the Department in this process.

Deputy Secretary Hines reported that the “draft” PA Proposed Chesapeake Bay Water Quality Initiative (WQI) 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 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.

The “draft” WQI is open for comments and an AAB subcommittee was formed to formulate comments.

Mr. Rob Davidson pointed out that many local municipalities have the CAFO definition in the local regulations, so if a change is made to the CAFO definition on a federal or state level, it could have a huge local impact.

Mr. Masser mentioned that he meet with EPA Administrator Lisa Jackson and that farmers support the bay clean up, but that it is not feasible to do the clean-up in a decade with the current economic situation, without putting farmers out of business.

**Manure Management Manual Revisions** – Steve Taglang and Don Fiesta, Bureau of Watershed Management, gave an update on the proposed revisions to the Manure Management Manual (MMM) and specifically the Land Application of Manure Supplement.

Mr. Taglang reported that in December 2009, the AAB was given a presentation on proposed changes the MMM and a subcommittee of the AAB was formed to assist the Department in formulating the changes. The AAB subcommittee meet several times and updates were provided to the full AAB in February and April 2010.

Mr. Fiesta reported that the sections of the Land Application of Manure Supplement that had changes included:

- Penn State Agronomy Guide references
- Plan format
- Phosphorus
- Manure Testing
- Manure Management on Environmentally Sensitive Areas
- Winter application restrictions
- Field stacking criteria
- Pasture Management
- Manure storage assessment
- Animal concentration areas (ACAs)

Mr. Fiesta reported that the plan format will contain general information, manure application rates, manure storage and stockpiling information, managing manure in pastures information, and information on Animal Concentration Areas or Animal Heavy Use Areas.

Mr. Fiesta reported that in regards to the manure application and timing of mechanical applications there are three options:

- The 1<sup>st</sup> option is to use manure application charts contained in section 2 of the updated manual. These charts use book values
- The 2<sup>nd</sup> option would be to use Nutrient Balance Worksheets
- The 3<sup>rd</sup> option would be to have a certified nutrient management planner developed a Phosphorous Index (P-Index) plan, which would be the most flexible plan

Mr. Fiesta reported that in regards to soil and manure testing, that testing is encouraged. The changes also require a soil test if the farmer wants to mechanically spread manure within 150 feet of a stream or wants to apply manure to nitrogen based rates.

Mr. Fiesta reported that in regards to Manure Management in environmentally sensitive areas that the changes include:

- Setbacks from waterbodies:
  - 100 feet or a 35 foot buffer if using the P-Index (3<sup>rd</sup> option)
  - 150 feet if not using the P-Index (1<sup>st</sup> or 2<sup>nd</sup> options)
- Setbacks from open sinkholes:
  - 100 feet or a 35 foot buffer
- Setbacks from private and public water supplies:
  - 100 feet
- No manure applications in areas of concentrated flow

Mr. Fiesta reported that in regards to winter manure applications, that there are year round setbacks plus additional winter setbacks that are clearly defined. For winter applications of manure:

- The field conditions must be suitable for manure
  - 40% cover

- less than 15% slope
- Prioritization of fields
- Limited maximum application rates for the season of 5,000 gallons or 20 tons

Mr. Fiesta reported that in regards to managing in-field stacking areas, the manure stacks must be:

- Setback from the stream 150 feet
- Less than 8% slope
- Manure must be dry enough to pile 5 feet high
- Stockpiles must be covered if exposed to weather 120 days or more
- Divert clean water if the stockpile is more than 100 feet from the top of the slope
- Manure stockpiles can only be in the same spot once every 4 years.

Mr. Fiesta reported that in regards to Manure Storage in Structures for liquids and semisolids that they must:

- Meet NRCS Technical Standards
- Storages constructed after 1/29/2000 must be certified by a registered Professional Engineer to meet the MMM or obtain a permit
- There shall be no overtopping or leakage and they must maintain 6 inches to 2 feet of freeboard, depending on the type of storage and category of farm.
- The storage should be checked for cracking or any problems that may lead to leakage
- There must not be any slope failures, deterioration of liners or known local water pollution from the facility

Mr. Fiesta reported that in regards to managing solid manure storage areas that they must:

- Be improved areas used continually for solid manure storage
- Must follow NRCS Technical Standards
- Divert clean water
- Contain and/or treat polluted waters
- Stream setback of 150 feet

Mr. Fiesta reported that in regards to pastures:

- They must be maintained with dense vegetation with minimal bare spots (3 inches of grass height or 80% cover)
- Operations that graze within 150 feet of a stream are to assess the stocking rate of the pasture using either the provided animal stocking arte charts or a pasture nutrient balance calculation worksheet. The 150 foot setback is reduced to 50 feet if that area is a non-grazed permanent vegetative buffer
- Operations that graze outside the 150 foot setback (or 50 foot buffer) do not need to provide any pasture stocking rates assessment in their MMM plan

Mr. Fiesta reported that in regards to Animal Concentration Areas (ACA):

- Must divert clean water around the area
- Water that becomes polluted/commingled with manure/sediment must be treated with a filter strip or contained in a storage
- Animals can not have unlimited access to stream near the ACA
- The size of the ACA or denuded area must be minimized in size.

Mr. Taglang reported that the next steps to the review of the proposed changes would include meeting with and soliciting comments from the AAB, Nutrient Management Advisory Board, Conservation Districts, etc. The proposed changes would also go through the formal DEP Guidance Document Review Process, which includes a publication in the PA Bulletin, a 30 to 90 day comment period, and a comment and response document. Mr. Taglang also reported that several conservation districts will “test drive” the proposed changes.

Mr. Frantz asked if spreading of manure on snow covered ground was allowed. Mr. Fiesta answered yes that application on snow covered ground would be allowed but that there are several additional guidelines that must be followed.

Mr. Roy Brubaker asked is there was a compost application supplement to the MMM. Mr. Taglang answered that there is a compost supplement to the MMM but the subcommittee did not look at making changes to it at this time.

Mr. William Neilson asked if a farmer would be required to fence off 150 feet of his pasture from streams. Mr. Doug Goodlander answered no, that the farmer could graze with the 150 feet of the

stream as long as they went thru the pasture assessment process and perform the recommendations from the assessment process. Mr. Musser asked if the conservation district will perform the assessments. Mr. Goodlander answered that they could but that this document is being developed so a farmer can do it themselves.

Mr. Neilson asked if the farmer keeps the MMM documentation at the farm or submits to a conservation district or DEP. Mr. Fiesta answered that the documentation is to be kept on site and should be able to be produced by the operator when asked to present. This is the same requirement as is need for Agricultural Erosion and Sediment Control Plans under Chapter 102.

Ms. Kim Snell-Zarcone mentioned that the purpose of the MMM is for the farmer to implement, not just a paper exercise, and that implementation of the MMM and record keeping is very important. Ms. Jennifer Weld added that part of the Manure Management Plan summary include record keeping requirements and verification that the farmer is performing what is prescribed in his/her manure management plan. Mr. Duane Hobbs added that recording keeping has come a long way in the agricultural sector.

The AAB unanimously approved for the revised MMM Land Application of Manure Supplement to move through the official DEP Technical Guidance Review/Approval Process.

**Member or Public Comments** –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 11:55 a.m.