

DRAFT

MINUTES

AGRICULTURAL ADVISORY BOARD MEETING

October 19, 2011

DEP Southcentral Regional Office

Susquehanna Room A

Harrisburg, PA

In Attendance – Members

Larry Breech, Pennsylvania Farmers Union

Roy Brubaker, Sustainable Agriculture

Michael Firestine, Agribusiness

Kerry Golden, PA House - Agriculture and Rural Affairs Committee

Kelly Heffner, Department of Environmental Protection

Jay Howes, Department of Agriculture

Betsy Huber, Pennsylvania State Grange

Larry Kehl, USDA Farm Service Agency

Keith Masser, Vegetable Producer

Susan Marquart, USDA Natural Resources Conservation Service

William Neilson, Pennsylvania Farm Bureau

Jennifer Reed-Harry, PennAg Industries

Brenda Shambaugh, Pennsylvania Association of Conservation Districts

In Attendance - Agencies, Advisors, and Guests

Korah Abraham – USDA Rural Development

Karl Brown, State Conservation Commission

William Fink, Country View Farms

Doug Goodlander - State Conservation Commission

Grant Gulibon, Pennsylvania Builders

Kelly O'Neil, Chesapeake Bay Foundation

Matt Royer, the Pennsylvania State University

Erin Smith, Pennsylvania Department of Agriculture

Ryan Smoker, Intern – Pa House, Agriculture and Rural Affairs Committee

Sidney Freyermuth, Sean Gimbel, Marge Hughes, Kenn Pattison, Frank Schneider, Susan Seighman, Stephen Socash, Steve Taglang, Cuong Vu- Department of Environmental Protection

The October 19, 2011, meeting of the Agricultural Advisory Board (AAB) was called to order by Chairperson Jennifer Harry at 10: 10a.m.

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

- Dr. Doug Beegle, The Pennsylvania State University
- Duane Hobbs, Ag Chemicals Manufacturer
- William Wells, Ornamental Horticulture

Chairperson Harry welcomed Kerry Golden who will now be representing Representative John Maher, Majority Chair - House, Agriculture and Rural Affairs Committee

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

Minutes from the June 15, 2011 meeting were tabled, due to a lack of a quorum.

The approval of 2012 meetings dates was tabled, due to a lack of a quorum.

Legislative Update – Kerry Golden, PA House, Agriculture and Rural Affairs Committee, discussed Pennsylvania’s new Biosecurity Law. The law was passed on November 23, 2010 and amends Title 13 (agriculture code) and Title 18 (criminal code). The new Biosecurity law makes agricultural Biosecurity area trespass a new type of criminal trespass. Contained within the new Biosecurity law are the following:

- Authority is given to the Pennsylvania Department of Agriculture to establish the definition of an Agricultural Biosecurity Area
- Producers must post notice of the Biosecurity Area
- Government Immunity Provisions
- Producers need to provide or have readily available equipment to meet the provisions of their Biosecurity notice

Ms. Golden reported that persons could be charged with committing this offense if they knowingly or recklessly enter a posted Biosecurity area without performing the reasonable Biosecurity measures for entry that have been identified on the posting by the producer. A violation of this law constitutes a summary offense; however, if damage or death of an animal or plant results from the trespass, the violation constitutes a misdemeanor of the first degree.

Mr. Michael Firestine asked if there are penalties include in the law and Ms. Golden answered that the penalties are include in the criminal code.

Mr. Karl Brown mentioned that if a state employee is charged with a criminal penalty, they cannot receive government immunity and legal assistance from the state. This possesses a possible dilemma with state employees not being able to observe overly restrictive Biosecurity notices. Ms. Golden acknowledged that the law states that producers must provide readily available equipment to meet their Biosecurity notice and that she will discuss further with Mr. Brown.

DEP Reorganization – Deputy Secretary Kelly Heffner discussed the DEP reorganization that was announced on September 20, 2011. The reorganization will facilitate a one on one match between DEP’s central office and the regional offices.

Deputy Secretary Heffner reported that the reorganization will occur in 3 phases with the Oil and Gas Deputate being completed at the end of October, Water Deputate being completed at the end of November, and all other areas by the end of the calendar year.

Deputy Secretary Heffner discussed that Oil and Gas is going from a bureau in DEP current organization to a Deputate with two bureaus in the reorganization. The 2 new bureaus will include Planning and Program Management and District Oil and Gas Operations. Additionally, a Program Integration Office was formed to assist the Deputates with cross program coordination.

Deputy Secretary Heffner reported that in regards to the Water Deputate, in the reorganization, there will be 4 bureaus and 1 office. The new bureaus allow more consistency with correspondence to EPA. Agricultural activities will be in the bureau of Conservation and Restoration and it is thought that this will be the bureau that gets “projects on the ground”.

Concentrated Animal Feeding Operation General Permit Renewal (PAG-12) – Kenn Pattison, Bureau of Watershed Management, provided an overview of the Concentrated Animal Feeding Operation (CAFO) General Permit Renewal (PAG-12).

Mr. Pattison explained that the current PAG-12 was set to expire on September 30, 2011 and that the Department received an extension of the current permit for 18 months. Notice of the extension was published in the PA Bulletin on September 17, 2011. Mr. Pattison stated that DEP believes the permit should be updated, and the AAB formed a workgroup at the June 15, 2011 AAB meeting assist the department in making changes. The first workgroup meeting was held on July 25, 2011, and they provide 18 comments. Mr. Pattison reported that the workgroup will continue to meet.

Mr. Pattison reported that EPA has sent comments on areas that should be updated and he highlighted the major areas that include:

- Permit should be consistent with federal regulations
- Notice of Intent
- Addition of new definitions
- Nutrient Management Plan should be part of the permit, not just referenced as it is currently done
- Public review provisions
- Pretreatment of wastes before discharge which would not be applicable to Pennsylvania since our CAFO permits are not discharge permits

Mr. Pattison reported that the goal is to have the revisions completed in the next year.

Mr. William Neilson asked if the Federal Animal Feeding Operation (AFO) definition, which EPA stated must be included, will lead to smaller operations being classified as CAFOs. Mr. Pattison said that he did not believe that will be the case because DEP still has decision making powers on who is and who is not a CAFO. Mr. Neilson then asked if there will be a public comment period once the permit is updated and Mr. Pattison said it will be open for public comment once completed and notice will be published in the *PA Bulletin*.

Environmental Codes of Conduct for Production Agriculture Document – Chairperson Jennifer Harry, PennAg Industries, discussed the Environmental Codes of Conduct for Production Agriculture document that was developed by PennAg Industries for its members.

Chairperson Harry noted that this document is a companion document to the “Codes of Conduct for Animal Well Being” that PennAg Industries had developed previously.

Chairperson Harry reported that the document provided common sense ideas / solutions for their members in regards to environment, seeing that “perception is reality” in todays society.

Chairperson Harry noted that PennAg Industries will need to add another line that will include that all environmental plans / permits are up to date and easily accessible.

Pennsylvania Chesapeake Bay Agricultural Water Quality Initiative (AgWQI) – Steven Taglang, Bureau of Watershed Management, provided an update on the Pennsylvania Chesapeake Bay Agricultural Water Quality Initiative (AgWQI). Mr. Taglang reviewed the history of the AgWQI that was part of the Pennsylvania Phase I Chesapeake Bay Watershed Implementation Plan (WIP).

Mr. Taglang provided an update on the last AgWQI workgroup meeting that was held on July 26, 2011. During that meeting there was discussion on the following items:

- State Conservation Commission (SCC) Ag Compliance Workgroup
- Education / Outreach / Training to include 100 site visits by conservation districts in Fiscal Year 2011, the Ag E&S Barn sheet that was developed, and the idea of preparing barn sheets and brochures for the Manure Management Manual once its approved.
- Model Compliance Policy development to be used by conservation districts

Mr. Taglang reported that at the AAB meeting in December he will provide an update of the accomplishments, to date, in regards to obligations in the Phase I WIP and that the next meeting of the AgWQI workgroup will be November 17, 2011.

Manure Management Manual (Appendix 1) Field Application Supplement Revision Update

– Deputy Secretary Heffner reported that the updated Manure Management Manual will be published in the *PA Bulletin*, as final technical guidance, on October 29, 2011.

Mr. Taglang reported that the update began “officially” with the December 2009 AAB meeting and that the AAB was briefed six times. Additionally, the AAB formed a Workgroup in January 2010 and that workgroup met six times.

Mr. Taglang reported that in addition to the AAB workgroup, DEP had additional meetings with stakeholders such as the Nutrient Management Advisory Board.

Mr. Taglang stated that the public review began in August of 2010 and that DEP had 164 commentators and that many of the revisions reflect many, but not all, comments. Additionally, the publication of the final technical guidance document on October 29th will require completion of DEP Technical Guidance Document process which includes a comment and response document and mailing of the final Manure Management Manual and comment and response document to all commenters.

Mr. Taglang reported that in regards to Education / Outreach, the SCC Agricultural Ombudsman has been working to develop brochures and other materials. Additionally, county conservation districts within the Chesapeake Bay Watershed will be visiting 100 operations in Fiscal Year 2011 and reaching out to all operations in their county with 5 years. Mr. Taglang also reported that four training sessions will be held for conservation districts and NRCS staff. This training will be similar to “Train the Trainer” sessions. DEP is making available to the conservation districts “mini-grants” in the amount of \$500 to \$1,000 to hold training session on the Manure Management Manual for operations within their counties. In addition, DEP will facilitate multiple level outreaches to Ag community thru such events as Ag Progress Days, etc.

Mr. Taglang mentioned that at this time, it appears the department will receive a second Chesapeake Bay Regulatory and Accountability (CBRAP) grant in the amount of 2.6 million dollars. If the grant is received, the department plans to provide funding to conservation districts to have staff available to assist agricultural operations implement Manure Management Plans.

Mr. Jay Howes noted that all outreach materials that are developed should include that nutrient management and agricultural E&S go “hand in hand” and that both are needed and equally important.

Mr. Neilson asked if training dates will be published and Mr. Taglang said they would once scheduled and verified.

Draft General Permit WMGM042 (Manure Digesters) - Stephen Socash, Bureau of Waste Management, discussed the draft General Permit WMGM042 for manure digesters. It was noted that this is a waste permit, not a water permit which agriculture is accustomed to dealing with. Mr. Socash explained the history of the Solid Waste Act (Act 97 of 1980) which breaks wastes into three categories: Municipal; Residual (includes agricultural waste); and Hazardous.

Mr. Socash reported that agriculture manure digesters are exempt from waste permits if the manure digester is using wastes produced in “normal agricultural operations” or using food processing waste in “normal agricultural operations”. The definition for “normal agricultural operations” includes a provision that the activity cannot cause harm to human health or the environment.

Mr. Socash reported that the draft General Permit WMGM042 for manure digesters was published in the *PA Bulletin* on September 10, 2011 and that public comments will be received until November 10, 2011. The draft General Permit WMGM042 for manure digesters will allow an operator of a manure digester to bring in waste from restaurants, grocery stores, cafeterias, food banks, greases, fats, etc., (Post-consumer waste), which is residual waste not from “normal agricultural operations”. The draft permit does have limits on the amounts of fats, greases, etc. that are contained in the end product that will be land applied to agricultural ground. The draft permit also requires a bond for the operation of the digester that will cover the waste at the “front end” before they are added to the digester, so that if the digester stops working, there is not a large amount of stored products that are abandoned. Mr. Socash noted that a bond waiver may be possible if the operation does not store byproducts before adding them to the digester.

Mr. Neilson asked that if agriculture is exempt from the Solid Waste Act, then why a person would need to get a general permit for a manure digester. Mr. Socash answered that if the person would

only operate the digester with agricultural waste produced from “normal agriculture operations”, they would not need a permit, but if that person wanted to add some other forms of residual or municipal waste they would need the permit. Mr. Socash said they would look at including some clarifying information in regards to this question.

Ms. Susan Marquart mentioned that the USDA NRCS has several concerns that include the 900 foot setbacks, what amount of food waste triggers the need for the permit, etc.

Mr. Jay Howes mentioned that there are some real serious questions from the agricultural community and that he would like to see the AAB form a workgroup to discuss the draft general permit in more detail.

Mr. Korah Abraham noted that USDA Rural Development had concerns that the draft general permit could have economic hardships in regards to meeting the requirements. Mr. Socash reminded the audience that the draft general permit is only needed for the addition of wastes that are not produced under “normal agricultural operations”, like grease, fats, and post-consumer waste.

Mr. Neilson and Mr. Karl Brown both commented that there seems to be much confusion with the term “normal agricultural operation”.

Chairperson Harry formed a workgroup of the AAB to review and provide comments on the draft general permit (*Note: The workgroup will meet on November 2, 2011*)

Draft Revisions to General Permit 8 (Temporary Road Crossings) - Sidney Freyermuth, Bureau of Watershed Management, discussed the revisions to General Permit 8 for temporary road crossings.

Mr. Freyermuth explained that the General Permit 8 (GP8) is a Water Obstruction and Encroachment Permit under Chapter 105 that dictates activities that happen in the Waters of the Commonwealth. He explained that the revisions were driven by the Marcellus Industry that needs to pump water to drill sites.

The proposed revisions include the following:

- Title changed from “Temporary Road Crossings” to “Temporary Crossings and Environmental Testing and Monitoring Activities”.
- Updated definitions
- Attempt to simplify

Mr. Freyermuth reported that agriculture uses the General Permit from time to time and that the GP8 is good for one year, but the time can be extended for up to an additional year.

Mr. Freyermuth stated that the draft revisions to the GP8 is under an internal review and has not been released yet, but that he wanted the AAB to hear them before it was released for public comment, which will hopefully be in November 2011.

Chairperson Harry asked if any members of the AAB or public had any comments.

Ms. Brenda Shambaugh mentioned the Phase II Chesapeake Bay Watershed Implementation Plan (WIP) meetings that are occurring and the great participation from the counties.

Mr. Howes mention that the PA Department of Agriculture has many post flooding questions and answers posted on its website and the website of the State Conservation Commission.

Mr. Matt Royer mentioned the “Forum On The Next Farm Bill Conservation Programs” meeting that Penn State is hosting on October 21, 2011. He made flyers available to all in attendance.

There being no additional discussions, the meeting was adjourned at 12:10 p.m.