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## **MINUTES**

### **AGRICULTURAL ADVISORY BOARD MEETING**

**February 16, 2011**

DEP Southcentral Regional Office

Susquehanna Room A

Harrisburg, PA

#### **In Attendance – Members**

**John Bell, PA Farm Bureau**

**Larry Breech, PA Farmers Union**

**Roy Brubaker, Sustainable Agriculture Producer**

**D. Robert Davidson, PA Department of Agriculture**

**Barry Frantz, Natural Resources Conservation Service**

**Jennifer Reed-Harry, PennAg Industries**

**John Hines, Department of Environmental Protection**

**Richard Hissong, Dairy Producer**

**Jay Howes, PA House - Agriculture and Rural Affairs Committee**

**Betsy Huber, PA State Grange**

**Larry Kehl, PA Farm Service Agency**

**Carl Musser, Poultry Producer**

**Brenda Shambaugh, PACD**

**Jeanne Sullivan, PA House - Agriculture and Rural Affairs Committee**

**Owen Thomas, PA Senate - Agriculture and Rural Affairs Committee**

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

**Karl Brown, State Conservation Commission**

**Jim Brubaker, Nutrient Management Advisory Board**

**Grant Guilbon, PA Builders Association**

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

**Kim Snell Zarcone, Penn Futures**

**Marge Hughes, Dharmendra Kumar, Dukes Pepper, Frank Schneider, Susan Seighman,**

**Steve Taglang, Department of Environmental Protection**

The February 16, 2011, meeting of the Agricultural Advisory Board (AAB) was called to order by Chairperson Jennifer Harry at 10:10 a.m.

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

- Doug Beegle, Pennsylvania State University
- Duane Hobbs, Agriculture Chemicals Manufacturer
- Keith Masser, Vegetable Producer
- Gerald Seyler, Grain Producer
- William Wells Jr. – Ornamental Horticulture

Chairperson Harry welcomed Owen Thomas who will now be the representative for Senator Vogel, Majority Chair - Senate, Agriculture and Rural Affairs Committee

Chairperson Harry welcomed Jeanne Sullivan who will now be the representative for Representative Petrarca, Minority Chair - House, Agriculture and Rural Affairs Committee

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

Minutes from the October 20, 2010, meeting were approved as written.

**Election of Chairperson for 2011**– Chairperson Harry opened the floor for nominations for the position of AAB Chairperson for 2011. Jennifer Reed-Harry was nominated, seconded, and unanimously elected to the position of AAB Chairperson.

**Election of Vice-Chairperson for 2011** - Chairperson Harry opened the floor for nominations for the position of AAB Vice-Chairperson for 2011. Keith Masser was nominated, seconded, and unanimously elected to the position of AAB Chairperson.

**Draft NPDES Pesticides General Permit (PAG-15)** - Dharmendra Kumar, Bureau of Water Standards and Facility Regulation, provided an overview of the draft NPDES Pesticides General Permit (PAG-15).

Mr. Kumar reported that the Pesticides General Permit (PAG-15) is needed due to a 6th circuit court ruling on the National Cotton Council of America vs. EPA case.

In the past, Pesticides discharges were administered by the U.S. Environmental Protection Agency (EPA) through the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C.A. §§ 136—136y). On November 27, 2006, the EPA issued a final rule clarifying that “the application of pesticides directly to water to control pests,” and “the application of pesticides to control pests that are present over, including near, water where a portion of the pesticides will unavoidably be deposited to the water to target the pests” provided that the application is consistent with relevant FIFRA requirements an National Pollution Discharge Elimination System (NPDES) permit was not required. On January 9, 2009, the Sixth Circuit court vacated the EPA’s rule under a plain language reading of the Federal Clean Water Act (CWA) (33 U.S.C.A. §§ 1251—1387). *National Cotton Council of America v. EPA*, 553 F.3d 927 (6th Cir., 2009).

The Court held that the CWA includes “biological pesticides” and “chemical pesticides” with residuals within its definition of “pollutant.” Therefore, an application of chemical pesticides that leaves no residual is not a discharge of a pollutant, and the applicator need not obtain an NPDES permit. However, chemical pesticide residuals are pollutants as applied if they are discharged from a point source for which NPDES permits are required. Biological pesticides, on the other hand, are always considered a pollutant under the CWA regardless of whether the application results in residuals or not, and require an NPDES permit for all discharges from a point source.

In response to the Court’s decision, the EPA proposed a General Permit to cover certain discharges resulting from pesticide applications. Also, states that are authorized to issue NPDES permits will be required to develop their NPDES permits to cover these discharges.

The court mandate requires a NPDES permit for these discharges after April 9, 2011. On December 25, 2010, the PAG-15 was published in the *PA Bulletin* for comments. The comment period ended January 24, 2011, and DEP is in the process of revising the PAG-15 based on the comments that were received. DEP is working to have a general permit (PAG-15) in place prior to April 9, 2011.

The PAG-15 is available to operators who discharge to Waters of this Commonwealth from the application of (1) biological pesticides or (2) chemical pesticides which leave a residue when the pesticide application is for one of the covered uses which include: Mosquito and Other Flying

Insect Control; Aquatic Weeds and Algae Control; Aquatic Nuisance Animal Control; and Forest Canopy Control. It must be noted that Irrigation return flows and agricultural runoff are not covered as these activities are exempted from permit requirements under the Clean Water Act.

Mr. Kumar noted that operators who apply to large treatment areas on an annual basis will be subject to greater requirements in the PAG-15. These larger operators must submit a Notice of Intent (NOI) to DEP for coverage under the General Permit. Smaller operators who do not meet the annual treatment area threshold for NOI submittal are automatically covered by the General Permit and will have fewer requirements. Larger operators are required to submit an NOI if they apply pesticides that result in a discharge to a Water of this Commonwealth and know or reasonably should have known that those activities will exceed one or more of the annual treatment area thresholds which are listed below.

Pesticide Use Patterns	Annual Threshold for NOI Submittal
Mosquito and other flying insects pest control	640 acres of treatment area
Aquatic weeds and algae control In water At water's edge	100 acres of treatment area 20 linear miles of treatment area at water's edge
Aquatic Nuisance Animal Control In water At water's edge	100 acres of treatment area 20 linear miles of treatment area at water's edge
Forest Canopy Pest Control	640 acres of treatment area

Mr. Kumar additionally explained the permit requirements for all operators and the additional requirements for those who need to submit a Notice of Intent (NOI).

Requirements for All Operators include:

- Maintain or have access to a copy of the Pesticide General Permit.
- Minimize pesticide discharge by following label instructions and applying no more than the recommended application rate.
- Perform regular maintenance activities to reduce leaks, spills, or other unintended discharges.
- Maintain pesticide application equipment by calibrating, cleaning, and repairing such equipment on a regular basis.
- Conduct visual spot checks in and around the treatment area for observable adverse effects when feasible (e.g. death or distress of non-target organisms or disruption of wildlife habitat, recreational or municipal water use).

- Report any hazardous condition to DEP and keep records from any such report.
- Additional Requirements for NOI Operators include:
- Implement Integrated Pest Management (IPM) practices which include the establishment of action thresholds or pest densities for when to begin pest management and an evaluation of all possible management tools.
- Prepare a Pesticide Discharge Management Plan (PDMP) for the treatment area which includes the responsibilities of each applicator, an area description, an evaluation of pest control measures, and schedules and procedures for adverse incident and spill prevention, equipment maintenance, and pest surveillance.
- Maintain records from the date on which you determined you will exceed an annual threshold, including any correspondence with DEP, a copy of the NOI, basic pest management information from each treatment area, your PDMP, and annual reports.
- Submit an annual report to DEP on paper or electronically that included treatment area details, pesticide use patterns, pesticides use details, and any adverse incidents as a result of pesticides application details by no later than February 15 of the following year. Also whether the PDMP or control measures were revised.

Executive Deputy Secretary John Hines added that the PAG-15 is a federal requirement under the Clean Water Act and that DEP included many of the requirements of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) regulations. It was noted that proposed general permit (PAG-15) would cover everyone without submitting a Notice of Intent (NOI) except for those operators who know or reasonably should have known that their annual (i.e., calendar year) treatment area thresholds listed above will exceed for one or more of the pesticides use patterns. As everyone discharges (from above mentioned pesticides use patterns) are covered under this general permit would need to have a copy of the PAG-15 DEP is still working on a process to get these requirements completed. It is now being discussed to partner with the Pennsylvania Department of Agriculture (PDA) as part of their Pesticides Applicator License Program.

Mr. Barry Frantz asked what the definition of flying pest was. Mr. Kumar answered that it is up to DEP's discretion and that he will look into providing further definition.

Mr. John Bell commented that DEP needs to give examples of exemptions as it appears that "normal" agriculture pesticide usage under FIFRA is exempt, but that it is not clearly stated.

Mr. Rob Davidson asked if a person would need to treat 20 linear miles or 20 contiguous linear miles to file for the NOI. Mr. Kumar answered that the linear miles would need to be contiguous. Mr. Davidson then asked if an operator would have to treat 640 contiguous acres to file for the NOI. Mr. Kumar answered that a total of more than 640 acres (contiguous or non-contiguous) would trigger the need for a NOI.

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

– Steve Taglang, Bureau of Watershed Management, gave an update on the Manure Management Manual (Appendix 1) Field Application Supplement Revision. Mr. Taglang reported the Clean Streams Law requires those that use manure to follow, at a minimum, the MMM to protect water quality.

Mr. Taglang reported that the new planning standards under development include:

- Nitrogen and Phosphorous application rates
- Manure application setbacks
- Winter manure application restrictions
- Pastures
- Barnyard runoff
- Storage and stacking criteria

Mr. Taglang reported that the Manure Management Manual (MMM) revision was discussed with the AAB in December 2009. In August 2010, a draft was published in the *PA Bulletin* for public comment. DEP is currently reviewing the comments and revising the document off the comments received. The AAB MMM subcommittee met on February 7, 2011, to review revisions and plans to meet again on March 7, 2011, and the first week in April 2011. The revised MMM (Appendix 1) Field Application Supplement revision is proposed to come before the April 20, 2011, AAB meeting for review.

Chairperson Harry noted that education and outreach will be very important on the roll out of the revised MMM. Mr. Taglang agreed and reported that DEP has already been active in education and outreach and asked AAB members to reach out to the respective industries and try to get DEP involved with their industries meetings.

Mr. Jim Brubaker noted that organic farms use a fair amount of tillage and only use manure as a nutrient sources and wondered how they can use commercial fertilizer in near stream areas.

Mr. Taglang answered that DEP has looked into this issue and is still discussing possibilities but riparian buffers could be used to ease the manure application setback limits.

Mr. Larry Kehl inquired into whom enforces the Clean Stream Law and thus the MMM.

Mr. Taglang reported that DEP handles enforcement.

**Pennsylvania Chesapeake Bay Agricultural Water Quality Initiative** – Steve Taglang, Bureau of Watershed Management, provided an update on the proposed Pennsylvania Chesapeake Bay Water Quality Initiative (AgWQI).

Executive Deputy Secretary John Hines briefly went over the history of the Chesapeake Total Maximum Daily Load (TMDL) and the Pennsylvania Phase I Watershed Implementation Plan (WIP). He thanked all the partners that spent considerable time and appreciated their assistance with the WIP efforts.

Mr. Taglang reported that the Pennsylvania Chesapeake Bay Water Quality Initiative (AgWQI) was an appendix to the WIP and that the goal is to have clean water within the Chesapeake Bay Watershed and economically viable farms. Objectives of the AgWQI include reducing nitrogen, phosphorous and sediment loads to levels necessary to restore water quality and being consistent with existing legal agreements among the Chesapeake Bay States, and state and federal laws. Key components include:

- Implementation of existing Pennsylvania regulatory requirements (continue routine Concentrated Animal Operations (CAO) and Concentrated Animal Feeding Operations (CAFO) inspections, respond to and investigate all complaints, utilize new Chesapeake Bay Regulatory and Accountability (CBRAP) staff to increase inspections and conservation district referral follow-up);
- Modify regulatory requirements & administrative tools (recent update of Chapter 102 regulations and technical guidance and ongoing revisions to MMM);
- Strengthen Education and Outreach (training for NRCS and conservation district staff, outreach to agricultural community, 100 site visits by conservation district Chesapeake Bay technicians, voluntary Best Management Practice (BMP) collection as needed, etc.);
- Targeted watershed approach (focus limited resources in high priority watersheds, identify current status of regulatory compliance, assessments to evaluate, identify, and prioritize follow up efforts for technical assistance, BMP implementations, and compliance / enforcement;
- Monitor and evaluate the progress.

Mr. Taglang reported that the proposed timeline for the AgWQI was as follows:

- February 1, 2011—Met with AAB Subcommittee

- April / June 2011—Present Ag WQI to the AAB
- May / July 2011—Present AgWQI to the State Conservation Commission (SCC)
- June / July 2011—Publish the AgWQI in the *PA Bulletin* for a 30 day public comment period
- September 2011—Finalize the AgWQI

Mr. Taglang reported that the AAB is specifically mentioned in the WIP. The WIP noted PennAg Industries' effort to account for and verify the use of phytase in the swine industry and noted the potential opportunity for additional cooperation between DEP and the AAB to provide problem solving in the dairy, beef, vegetable, poultry, crop farm, etc. interests represented on the AAB.

Ms. Kim Snell Zarcone asked if enforcement was going to be "ratcheted up." Mr. Taglang answered that DEP would like to first emphasis education and outreach, and then ramp up enforcement, but that the new DEP CBRAP positions will be compliance oriented staff.

Chairperson Harry asked if any members of the AAB or public had any comments. Jay Howes mentioned that Urban Lawn Fertilizer legislation will most likely be introduced and he would like to see it as a future AAB agenda item, once introduced.

There were no comments from the public.

There being no additional discussions, the meeting was adjourned at 12:05 p.m.