

Feb. 16, 2005 Meeting

**MINUTES**

**AGRICULTURAL ADVISORY BOARD**

**Rachel Carson State office Building  
Room 105, First Floor Conference Room  
Harrisburg, PA**

**February 16, 2005**

Chairperson Carl Shaffer, Vegetable Producer, called the meeting to order.

**Attendance**

**Members**

Carl Shaffer, Vegetable Producer  
Larry Breech, PA Farmers Union  
Walt Peechatka, PennAg Industries Association  
Doug Beegle, Penn State University  
Mike Brownback, Sustainable Agriculture Representative  
David McElhaney, Livestock Producer  
Andrea Sharretts, PA Farm Bureau  
John Flanagan, Agricultural Chemical Manufacturers Representative  
Michael Firestine, Agri-business  
William D. Wells, Jr., Ornamental Horticulture  
Jay Howes, House, Agriculture and Rural Affairs Committee (Rep. Hershey)  
Kristin Ebersole, Senate, Agriculture and Rural Affairs Committee (Sen. Waugh)  
Brenda Shambaugh, PA State Grange  
Susan Marquart, PA Association of Conservation Districts  
Bill Wehry, PA Department of Agriculture  
Thomas B Williams, Dairy Producer  
Neil McAuliffe, Senate, Agriculture and Rural Affairs Committee (Sen. O’Pake)  
Tim Murphy, USDA, Natural Resources Conservation Service  
Cathy Curran Myers, PA Department of Environmental Protection

**Agencies, Advisors, and Guests**

Chad Forcey, PA Landscape and Nursery Association  
Kim Snell-Zarccone, Penn Future  
Emily Wade, Wenger’s Feed Mill  
Janis Dean, DEP, Citizens Advisory Council  
Louis R. Sallie, PA Farm Bureau  
Jennifer Grimes, Farmers Pride  
Fiona Wilmarth, IRRC  
John Vernon, Hatfield Meats  
Paula Vitz, Capital Associates  
Kelly O’Neil, Chesapeake Bay Foundation  
Charles Abdalla, Penn State University  
Joel Rotz  
Doug Goodlander, State Conservation Commission  
Stuart Gansell, DEP-Bureau of Watershed Management  
Doug Brennan, DEP

**Agencies, Advisors, and Guests (cont'd.)**

Marge Hughes, DEP

Bob Gibson, DEP-Bureau of Watershed Management

Glenn Rider, DEP-Bureau of Watershed Management

Barbara Schell-Magaro, DEP-Bureau of Watershed Management

Steve Taglang, DEP-Bureau of Watershed Management

Mike Pechart, PA Department of Environmental Protection

Dave Reed, DEP-Bureau of Watershed Management

Cedric Karper, DEP-Bureau of Watershed Management

Tom Juengst, DEP-Bureau of Watershed Management

Dean Auchenbach, DEP-SCRO

**Action on the Minutes of the October 20, 2004 Meeting**

The minutes were approved as mailed.

**Recognition of Dean Auchenbach**

Chairperson Carl Shaffer recognized Dean Auchenbach for his 11+ years of service as the DEP liaison to the Agricultural Advisory Board.

**Update on the ACRE Initiative**

Secretary of Legislative Affairs Steven Crawford updated the Board. Sec. Crawford briefly described the history of the initiative, indicating that there was significant controversy, multiple individuals/groups involved and extensive discussions. The Governor's position is that this initiative needs to look at this issue in a comprehensive way. We are now extremely close in the process and believe we have a proposal that will allow farmers to farm in an economic and environmentally protective manner and believe it will provide townships and municipal governments to protect its citizens.

The idea is to keep the farmers and townships out of court. To address this, ACRE proposes to have the ordinance review activities be initially managed by the State Conservation Commission. Farmers may take ordinances considered questionable to a panel of experts - made up of experts from DEP, DCED-Center of Local government Services, and PDA - who will make a recommendation on the local ordinance in question. A farmer or municipal government can challenge this recommendation and appeal to the Agricultural Review Board. The Agricultural Review Board is made up of the Secretaries of Agriculture, Environmental Protection and Community and Economic Development and two citizens appointed by the Governor and approved by the Senate. The Agricultural Review Board will have full *de novo* review - all evidence will be presented to this Agricultural Review Board. A decision of the ARB can be appealed to Commonwealth Court, but the Commonwealth of PA would defend the decision of the Agricultural Review Board. The purpose of this is to limit court costs for farmers, and also to limit the costs to those who would appeal the decision of this Board.

Secretary Crawford noted that the NMA/CAFO regs are part of the ACRE initiative, and comments on these proposals are significant and will be incorporated into the final regulatory proposals.

Secretary Crawford noted the significance of the House action on Green PA, specifically the importance of the ballot initiative to borrow funds for farmland preservation and environmental protections.

Chairperson Carl Shaffer indicated that comments on the initiative are premature at this time, as there is not “hard copy” of the proposal to react to and no questions were allowed of the audience. A copy of the legislative proposal will be sent to the Board when available.

### **Update on Pennsylvania’s Chesapeake Bay Tributary Strategy**

Deputy Secretary Myers presented a brief update on the Chesapeake Bay Tributary Strategy. The thirteen tributary teams are currently working on developing plans to address the strategy, which will include many new activities to reduce sediment and nutrients to the Bay. The Tributary Strategy includes both point and non-point activities, but the Tributary Strategy is a blueprint, not the final list of activities to be undertaken. Deputy Myers referenced two Bay-wide documents, BIG BOOK and “*Cost Effective Strategies for the Bay.*” The “*Cost Effective Strategies for the Bay*” identifies six top choices for best management practices – Wastewater Treatment Plant Upgrades; Diet & Feed Adjustments; Traditional Nutrient Management; Enhanced Nutrient Management; Conservation Tillage; and Cover Crops. Deputy Sec. Myers indicated that one item that is not identified in this report is stormwater and it is expensive. However, Stormwater BMPs are important for other reasons, not just for the Bay, and that DEP will advance stormwater practices, as well as the other BMPs.

Carl Shaffer asked about the funding available for these BMPs. Deputy Secretary Myers indicated that we are looking for additional funds for agricultural BMPs and that existing funds, particularly Growing Greener, will be used to address these BMPs. Mr. Shaffer asked for clarification on the statement that 85% of Chesapeake Bay nutrients and sediment are from agriculture. Deputy Myers indicated that 85% of Pennsylvania’s nitrogen and phosphorus are from non-point sources.

Susan Fox Marquart asked about the additional funds in the Governor’s budget for Chesapeake Bay and if this will be available to conservation districts. Cedric Karper indicated that this new money (\$173,000) has not been earmarked, but that this will go to the Bay program and some of which will be available to conservation districts.

Jay Howes asked if these new effluent standards to be established for Maryland relate to the CAFO regulations. Deputy Secretary Myers indicated that the CAFO regulations will not be directly affected by these standards, the CAFO requirements will be based on PA standards and those CAFOs that have a discharge and require permits will continue to do so.

### **Update on Conservation Reserve Enhancement Program (CREP)**

Glenn Rider presented a PowerPoint presentation on revisions to the CREP program. These revisions were undertaken to focus on the most important practices and stretch Pennsylvania’s limited resources to have the most impact on water quality. Pennsylvania’s CREP will not change greatly, with the federal cost-share and the soil rental rates remaining the same. However, DEP proposes to revise the state cost share incentives. State cost share revisions will focus on edge of stream practices and full state cost-share will remain on buffers and wetlands. No state cost-share will be provided for highly erodible lands (HEL), except where all eligible lands are

enrolled in stream buffers or where functioning riparian buffers exist. Implementation of these revisions will begin on January 1, 2005, but any applicants on the FSA waiting list as of January 1, 2005 will not be affected and may qualify for state cost-share for HEL practices. DEP has met with the CREP partners to discuss these revisions and will meet on February 28 with the full CREP Partnership. DEP is also working with USDA to revise PA's CREP agreement to implement these changes.

Carl Shaffer asked if these revisions have statewide impacts. Glenn Rider noted that these revisions would not impact the original 20 CREP counties, because they have reached the available acreage limits, but the revisions will impact the counties in the northern expansion and Ohio River basin CREP. There is currently no CREP in the Delaware River basin of PA.

### **Update on the Concentrated Animal Feeding Operation (CAFO) and Nutrient Management Regulations**

Cedric Karper noted the deadline for public comments regarding both the CAFO and Nutrient Management regulations closed on November 5, 2004. Approximately 200 commentator's submitted comments regarding the CAFO regulations. DEP has reviewed these comments, is making appropriate changes to the final regulations based on the comments, and is developing a comment/response document. The majority of comments concerned the definition of a CAFO, the Water Quality Part II permit requirements, and the setback and buffer provisions of the regulations. The CAFO regulations will go to the Environmental Quality Board at their May meeting with final publication in the PA Bulletin anticipated in November 2005. Mr. Karper introduced Bob Gibson to review the comment and responses in detail.

Mr. Gibson presented a PowerPoint presentation on some of the key comments and current draft revisions to the CAFO regulations. The timetable for these regulations include this presentation to the AAB (Feb 16); DEP/Governor's Office Review (March 1); EQB Presentation (May 18); IRRC/Legislative Committee Review (June 1); Attorney General Review (August 15); PA Bulletin publication (November). EPA deadlines provide a sense of urgency to complete this process.

Revisions currently under consideration included use of just one definition of Manure Storage Facilities and a reduction to a six-inch freeboard requirement for manure storage under roof. Proposed change will require permits for all manure storage ponds (not just clay-lined) greater than 1 million gallons if they are in a Special Protection watershed or in a watershed impaired by agricultural sources. This change does not require a permit for storage structures in this capacity range. Jay Howes commented that you noted the change to a single definition of manure storage, but that you have established different requirements for different structures. Mr. Gibson commented that these different types of structures are well understood and that this should not create confusion. Mr. Howes asked about the effective dates and would existing facilities be required to meet these standards. Mr. Gibson noted that these are for new and expanding facilities. Walt Peechatka indicated that the manure storage requirements are already well covered in the NRCS standards and Manure Management Manual and there is a significant level of detail in these regulations and that farmers will not be able to comply without hiring technical help. Tom Williams indicated that these regulations will require significant additional costs to dairy farmers to hire engineers and that the department should be aware of this.

Other draft revisions discussed included requirements for water quality management permits in special protection or ag-impaired watershed. The Manure Management Manual would describe

the criteria acceptable to DEP in lieu of obtaining a permit and additional criteria may be imposed through an approved protection/restoration plan. Board requested a map or list of the Special Protection or Ag-impaired waters. Estimate is that about 13,000 farms are found in the Ag-impaired watersheds, with much less in the Special Protection watersheds. Mr. Shaffer asked if these restoration plans could be required for many watersheds and could additional multiple farms be required to obtain permits? Mr. Williams asked that there be extra effort put into obtaining additional funds to pay for these additional BMPs and plans. Mr. Gibson noted that others raised this comment during the public comment period.

Draft revisions were discussed for CAFO Dry Manure Stockpiling. This is an issue for EPA approval of the CAFO program, and would require manure to be covered after 14 days. Discussions with PA poultry industry indicated that this should not be a problem for operations defined as CAFOs.

Draft revisions were discussed for Land Application. Mr. Gibson noted that a permit may be required for farms in Special Protection or ag-impaired watersheds. The Manure Management Manual will describe criteria for setbacks, buffers and other land application practices which can be implemented in lieu of obtaining a permit and that additional criteria may be imposed through an approved protection/restoration plan. Farmers will have the option to follow the requirements from the Manure Management Manual. Mr. Howes and Mr. Shaffer asked for clarification as to who actually exercises this option. Mr. Gibson and Doug Brennan indicated that the farmer would have the option to implement the land application practices described in the Manure Management Manual, but if the farmer did not, then a permit would be required.

Draft revisions were discussed regarding the CAFO definition. CAFO definition will continue to be CAO with > 300 AEUs and any operation with >1000 AEUs. The definition would also include any operation that exceeds the federal "large" CAFO threshold, after discussions of this issue with EPA. Operations with discharges are subject to enforcement under the Clean Streams Law. This includes operations EPA considered "small and medium sized" CAFOs, and DEP has been in discussions with EPA, but they have not signed off on this at this point. Mr. Peechatka disagreed that including illegal discharges, by definition, as CAFOs and puts all CAFOs in a bad light. Deputy Secretary Myers agrees with Mr. Peechatka that, just because there is a discharge, that doesn't necessarily mean there is a CAFO and DEP will clarify this in either the regulatory language or the Preamble.

Mr. Gibson discussed other issues raised by the Agricultural Advisory Board. One concern was that Water Quality Permits are reviewed by non-licensed engineers. Mr. Gibson indicated that while permits may be reviewed by non-professional engineers, these staff are under the responsible charge of a licensed engineer. The Board expressed concern that the permits be reviewed in a timely manner or deemed approved if they are not. Mr. Gibson indicated that DEP does not favor this approach. We will do our best to process these permits in a timely manner and will provide clear guidance and training to the agricultural community, so that permit applications are properly filled out. Pre-application conferences are also an option to help expedite the permitting process. Also, the process is designed to allow legitimate concerns to be raised and corrected. Mr. Gibson indicated that DEP would prepare guidance to ensure consistency and uniformity across the districts/regions.

Mr. Shaffer asked about the timeline for preparation of the regulation. Mr. Gibson indicated that the quicker the Board could get comments to DEP, the more likely comments will be considered. Mr. Shaffer indicated that today might be the only shot at providing additional comments from the entire Board.

Mr. Shaffer recognized Andrea Sharretts, who passed out Farm Bureau comments on the revised CAFO regulations. Farm Bureau's comments addressed Manure Storage Facilities, Stockpiling Manure, Land Application of Animal Manure, Litter and Process Wastewater; Set backs and buffers; and Setbacks and Buffers. Ms. Sharretts asked why the stockpiling of manure was not in the proposed regulations published in the PA Bulletin. Mr. Gibson indicated that this is being addressed in the Chapter 83 regulations, but EPA commented that the time period in those regulations were longer than that required in EPA's CAFO program, and therefore this language needed to be included in the CAFO regulations. Dep. Secretary Myers indicated that EPA's comments are based on compliance with the federal requirements. Mr. Gibson also noted that EPA's comments on manure stacking are based on a number of studies from the scientific literature.

Brenda Shambaugh noted that she agreed with the comments presented by the Farm Bureau and would like these comments included in the comments of the Ag Advisory Board. Ms. Shambaugh moved, and was seconded, that the Farm Bureau's comments be incorporated in the formal comments of the Board. Mr. Peechatka indicated that other comments from the meeting be included in formal comments of AAB to the EQB. Ms. Shambaugh modified the motion to include both Farm bureau comments and all comments from this meeting be submitted to the EQB. Motion was approved, with one dissenting vote. (A copy of the PA Farm Bureau comments is attached to these minutes.)

Larry Breech, PA Farmers Union, commented that 15 days is too long for stockpiled manure to be uncovered. All piles should be covered. Mr. Breech indicated that these piles can impact both surface and ground waters. Mr. Breech disagreed with the comment on stockpiling made by the Farm Bureau, indicating that uncovered manure is an unproductive, wasteful practice and does not capture the full value of the product.

Mr. Peechatka asked how the comments to the regulation would be presented to the EQB. Deputy Secretary Myers indicated that the minutes will reflect discussions at the Board meeting, and these would be summarized for the EQB. Mr. Shaffer indicated, along with Mr. Peechatka, that he would indicate that the Ag Advisory Board is in opposition of these regulations as written.

Mr. Howes indicated he spoke with Rep. Hershey this morning and that Rep. Hershey has significant concerns with the discretion provided to DEP in these regulations. Rep. Hershey expressed concern that State Conservation Commission and Nutrient Management Advisory Board developed guidelines for handling manure and that they can all be trumped by DEP regulations.

Mr. Shaffer asked if it was possible to summarize what requirements EPA mandates and what requirements are being made by DEP. Mr. Gibson indicated that this was already done in the Preamble to the proposed regulations.

### **Update on Nutrient Management Regulation Revisions – Doug Goodlander**

Doug Goodlander, State Conservation Commission, presented a PowerPoint presentation on the revisions to the Nutrient Management regulations. These regulations, developed with the assistance of the Nutrient Management Advisory Board and interagency workgroup, were proposed in August 2004. Over 425 comments were received from 228 commentators. An Interagency workgroup is now drafting recommendations for revisions based on these comments.

These recommendations will go to the Nutrient Management Advisory Board and the State Conservation Commission. Expect to have final approval in October 2005.

Mr. Goodlander's presented the major comment issues. These included: Provide flexibility in addressing phosphorus management on the CAO. The current proposal is to require just the P-index. The interagency workgroup recognizes that these plans are complex and is considering additional timing to address phosphorus management. Additional comments addressed phosphorus management on importing operations. The current proposal requires a 150-foot setback. Comments asked is this enough and do we address phosphorus on the nutrient balance sheet.

Several comments addressed E&S planning requirement. The current proposal requires an E&S plan prior to NMP approval. Revisions are being discussed to clarify that a conservation plan may satisfy the requirement for an agricultural E&S plan.

Many comments indicated the need for further restrictions on winter application of manure. Manure application setbacks from wetlands were also the subject of comments with concerns about identification of wetlands and level of complexity this may add to the process. There were also comments on bare ground application restrictions in the fall and that there are concerns about implementing a cover crop and the practicality of doing so, particularly in the northern tier. Comments were also received about the testing of manure regarding the cost of annual testing and why this is required when manure may not change from year to year.

In addition, comments were received about the field stacking of manure. The Nutrient Management program and CAFO program may not match on this issue. Mr. Goodlander indicated that SCC is aware of differences, but also recognizes the need to develop a practical solution for Pennsylvania farmers.

Mr. Peechatka was concerned that there will be inconsistencies between Nutrient Management regulations and CAFO regulations. Mr. Goodlander indicated that DEP and SCC are working together to minimize these inconsistencies.

#### **State Water Planning, Water Withdrawal and Use Registration/Reporting – Dave Jostenski.**

Due to time constraints, this presentation will be rescheduled for a future meeting.

#### **Comments/ Issues/Concerns of the Board**

William Wells, Jr. indicated that this was a lot of information to digest in a single meeting and that future agenda should be structured to present a more manageable amount of information. Mr. Shaffer, as chair, apologized for the length of the agenda and indicated that he will work with DEP staff to make sure that future agendas are better structured. Mr. Shaffer and Deputy Secretary Myers stated that the timing of certain issues presented to the Board today, particularly ACRE and CAFO regulations, were such that this information needed to be discussed at this meeting, but that consideration of not presenting too much information will be considered in the future.

Mr. Shaffer commented that, with the increase of cost due to regulation on farmers, farmers need to increase acres and number of animals. This leads to large farms. Mr. Shaffer noted that, given the comments about Mt. Holly, its important that Pennsylvania keeps its agricultural infrastructure.

#### **Public Comment Period**

Kim Snell-Zarcone, Citizens for Pennsylvania's Future, made comments to the Board. Ms. Snell-Zarcone objected to not being allowed to ask questions of Secretary Crawford during the ACRE discussion. The ACRE proposal needs to be developed in a public process. Ms. Snell-Zarcone also objected to Carl Shaffer chairing these meetings and representing Farm Bureau issues, as Mr. Shaffer is appointed to the Board as a representative of vegetable growers, and should not be promoting Farm Bureau issues.

#### **Adjournment**

There being no further business the meeting was adjourned at about 1:00 p.m.