

March 18, 2021

9:00 AM – 12:30 PM

Department of Environmental Protection (DEP) Agricultural Advisory Board (AAB)

Virtual Meeting

<https://meet.lync.com/pagov/jbraund/1N00ZTKV>

Toll number: +1 267-332-8737

Conference ID: 623434166

Members in Attendance

John Bell – PA Farm Bureau
Jennifer Harry – Penn Ag
Brenda Shambaugh – PACD
Matt Royer – Penn State
Kerry Golden – PA House
Destiney Zeiders – PA House
Cara Laudenslager – PA Senate
Bill Evans – PA Senate
Aneca Atkinson – DEP
Greg Hostetter – PDA
Darwin Nissley – Beef Producer
Chris Uland – Horticulture
Matt Matter – Grain Producer

9:00 AM Welcome & Introduction

9:05 AM Action on previous AAB minutes

No corrections or suggested edits were proposed by any Board members. Matt Matter motioned to approve the meeting minutes from the December 17, 2020 meeting. Walt Moore seconded the motion. The meeting minutes were unanimously approved.

Kerry Golden requested that all members be listed on December's meeting minutes as well as all minutes in the future.

While not listed on the published agenda, John Bell wanted to share with the group a list of members that he had appointed for a PAG-12 workgroup whose focus will be to work on and consider modifications of the next PAG-12 general permit for CAFO operators. Aside from Mr. Bell, the following people were appointed for the PAG-12 workgroup and accepted their appointed positions: Jennifer Reed-Harry, PennAg Industries (Workgroup Chair); Evan Fitzpatrick, Environment Management Specialist for Country View Family Farms; Jacqueline Matter, Certified Nutrient Management Specialist in Juniata County; Kelly O'Neill, Agriculture Policy Analyst for the Chesapeake Bay Foundation; Eric Rosenbaum, Owner of Rosetree Consulting LLC; and Brenda Shambaugh, Executive Director of Pennsylvania Association of Conversation Districts.

9:15 AM Legislative Update

Kerry Golden mentioned Representative Gleim's House Bill 101 which will provide limited civil liability for agritourism activity producers if it passed the House. The bill is not currently with the Senate Agriculture and Rural Affairs Committee. Beyond that, Ms. Golden did not have anything else to share that she thought would be of particular interest to the group.

Both Destiny Zeiders and Cara Laudenslager did not have anything to add to Ms. Golden's legislative update.

Bill Evans mentioned that the \$1.9 trillion stimulus package is currently being sorted through. Agriculture is part of the stimulus package and the hearing is on April 8th at 2:00 pm.

John Bell urged agriculture staffers not to wait for meetings to share important information. If anyone would like to pass along information to Board members sooner than a meeting date, they are more than welcome to present that information to Mr. Bell who will then distribute to Board members.

Brenda Shambaugh asked Ms. Laudenslager and Mr. Evans if they could ask the other Senate members to vote on the confirmations that came out of the Committee for the State Conservation Commission sooner rather than later as they have a large number of vacancies that they would like to fill.

Kelly O'Neill asked if there is a timeline for the fertilizer legislation. Kerry Golden responded that Senator Yaw has introduced Senate Bill 251 which was referred to the Senate Agriculture and Rural Affairs Committee. Ms. Laudenslager confirmed that Senate Bill 251 is currently with the Agriculture and Rural Affairs Committee but could not give a definite timeline on its progress.

9:30 AM PAG-12 – CAFO Permit And PAG-07, PAG-08, and PAG-09 – Biosolids Beneficial Use Permits – Jay Patel

Jay Patel provided the Board members with a PAG-12 update. The final report on the number of timely submissions for Notice of Intent (NOI) was 346 which was about a 98% timely submittal rate. There were only three NOIs that were not submitted, one of which was a recently sold operation; DEP's Southcentral Regional Office has been in touch with the consultant regarding that particular operation. Aside from that, there were only four NOIs that were submitted after the January 1, 2021 submission deadline.

John Bell asked if the four operators that had submitted their NOIs after the January 1, 2021 deadline were going to face any repercussions for late submissions. Jill Whitcomb responded that unfortunately because the NOIs were received after the January 1 submission deadline, the permit coverage for those operators had expired. However, operators who submitted their NOIs late are being handled differently than those operators who failed to submit an NOI at all because DEP has their paperwork. There's a compliance strategy that the regional offices have with these farms. Ms. Whitcomb also said that she does not believe any of the operators that submitted their NOIs late had attempted to reach out to the Department to let anyone know that they were going to be late. Mr. Bell requested further clarification by asking if the four operators in question still had permits that were active or in effect. Ms. Whitcomb responded that the permits are not currently in effect as the coverage had lapsed once the submission deadline date had passed. Ms. Whitcomb said that she believes that both the operators who submitted their NOIs late as well as the operators who did not submit at all are in communication with the Southcentral Regional Office or the region that they are associated with to work through getting their coverage back into effect.

Kerry Golden inquired how long it would take for these seven operators to get their coverage back. Ms. Whitcomb replied that she was not able to answer that question as she was not currently aware of a particular timeline for these operators. She offered to attempt to find this information out from the regions. Mr. Patel said that based on conversations with Southcentral Regional Office staff, operators that do not currently have coverage are of the highest priority. Mr. Patel could also not confirm a timeline for getting these operators' permits back into effect, but he did ascertain that they are receiving the most attention.

Following this discussion, Mr. Patel provided an overview of what biosolids are (i.e. sewage sludge), where they come from, and why they are considered to be a cost-effective source of organic material. Mr. Patel then provided an update on planned revised for DEP's biosolids beneficial use general permits – PAG-07, PAG-08, and PAG-09 – which are the general permits for land application of biosolids. DEP issues both individual and general permits for the beneficial reuse of biosolids. These permits allow the use or reuse of processed municipal waste for any purpose as long as that purpose does not harm or threaten public health, safety, welfare, or the environment.

In general, these permits include standards for general and individual land application of biosolids. The permit standards consist of general requirements for pollutant management practices and operations standards. These permits apply to the person who prepares the sewage sludge that would either be sold, prepared in a bag, or would be a land applied as well as to the person who physically applies the biosolids. PAG-07 allows for the land application of beneficial use of exceptional quality (EQ) biosolids. EQ biosolids must meet very specific and stringent quality standards and therefore are not subject to certain management practices such as certain land application isolation distances. PAG-08 is for the beneficial use of non-exceptional quality (non-EQ) biosolids. Non-EQ biosolids have slightly less strict treatment standards. There must be a submission of a 30-day notice of first land application to DEP or an individual site permit in order to reuse any non-EQ biosolids. PAG-09 is for the beneficial use of residential septage which is liquid or solid material removed from a septic tank. Requirements for residential septage are similar to the non-EQ requirements of PAG-08 with the only difference being that PAG-09 relates to septage and PAG-08 relates to biosolids.

Like the NPDES general permits, DEP issues statewide authorizations for a defined time frame. The PAG-07, PAG-08, and PAG-09 permits have been administratively extended for a number of years and need to be renewed and reissued. The changes DEP has planned for these general permits address some compliance related issues that field staff have encountered in applying these programs over the years. There are also a few new issues relating to biosolids beneficial reuse that need to be addressed moving forward as well.

DEP would like to reorganize the permit contents to be consistent with other Clean Water general permits. DEP is also interested in extending the permit term from five years to ten years to be consistent with the Waste Management regulations as their permits are generally issued for ten years. Another factor DEP would like to change includes requiring the submission of an NOI for permit renewals. As it stands, many existing permits have been issued with a letter stating that the coverage does not expire. This approach is problematic in several respects and DEP is considering how coverage can be periodically revisited in a way that is practical for both the Department and for permittees.

DEP is also proposing the prohibition of mixing other waste with sewage sludge. Some treatment facilities accept hauled-in waste to their facilities. For this hauled-in waste to be considered sewage sludge, the waste must be treated through the entire sewage treatment process. DEP would like to ensure that the permit includes the clarification that hauled-in waste must be incorporated into the head of the plant.

In addition, DEP is proposing to add PFOA and PFOS monitoring requirements to PAG-07 and PAG-08. This proposal will help characterize the quantity of these chemicals in biosolids and help DEP and the regulated community to better understand if there is potential for PFOA and PFOS in land applied biosolids to contribute to pollution of groundwater or surface water, or other risks associated with land application of biosolids that may contain these chemicals.

In order to ensure safe and effective application of land biosolids, DEP is also proposing to incorporate a measure of phosphorus content when managing biosolids land application through these permits. DEP is proposing to add to the biosolids permits land application rate requirements based on the phosphorus-based management (P Index) that both concentrated animal operations and concentrated animal feeding operations utilize for land application of manure. Utilizing the P Index based land application rates of biosolids would help DEP meet the TMDL requirements for the Chesapeake Bay. DEP is considering the proposal of a phased-in approach to require the use of the P Index in the biosolids beneficial use general permits. Under this proposal, existing fields could be used for two years until the P Index requirement would be applicable under the reissued permits. This two-year timeframe would allow land appliers to evaluate existing fields and determine how land application may be impacted and if land application would need to be adjusted or modified moving forward. DEP recognizes that it will take time and resources to evaluate the land application operations based on this requirement. For new fields, DEP would prefer that the P Index requirement be applicable immediately under reissued permits. The reason for the immediate applicability to new fields is so both the land applier and DEP can take samples and further evaluate the phosphorus contents of the soil.

The final proposed change DEP presented was placing a limit on storage amounts to the next growing cycle. This would help address issues during an especially wet years to avoid additional pollution. Field storage of biosolids for land use is temporary and long-term storage is not authorized by these permits unless the storage is designed to minimize the potential for precipitation mixing.

Mr. Patel proceeded to ask if any members of the Board would be interested in putting a workgroup together regarding the proposed changes. DEP is planning to propose the same changes to the Water Resources Advisory Committee next week. The hope is that DEP can gain as many stakeholder opinions and comments as possible so they can obtain viewpoints from a variety of different backgrounds. Once the final drafts are put together and the comments from a 45-day public comment period have been considered and incorporated, DEP is targeting reissuance of the final General Permits in the fourth quarter of 2021. Currently, DEP is aiming for a June or July date to get draft permits prepared and distributed.

Ms. Golden wanted to know why these particular permit revisions are being accelerated as a priority in front of other items of interest that the Board has discussed. Ms. Golden stated her assumption that this is being accelerated is based on the timeline that was presented in comparison to the timeline that was discussed for PAG-12 during the December meeting. Mr. Patel explained how these permits have been extended since 2014 and should have been renewed many years ago. While it may seem as though this process has been accelerated due to DEP not presenting it previously, Mr. Patel assured the Board that this is something that DEP is behind on and requires immediate attention.

Walt Moore commented that when considering manure from cow versus heifers, the manure can have a considerable amount of nutrient variability. Mr. Moore then inquired on what a normal variation of phosphorus content might be in the eyes of DEP. Mr. Patel replied that he did not know of a normal variation on the spot. Kevin McCleary interjected that the normal variation of phosphorus will depend on the treatment process at the treatment plant as well as the treatment process for the biosolids. Mr. McCleary stated that nitrogen content around 2-8% and phosphorus content around 1.5-3% would be the

best estimates of nutrient values that DEP would have right now based on studies conducted by Virginia Tech.

Jennifer Reed-Harry agreed that there should be a workgroup formed as offered by DEP because there is such a large number of farm fields and agricultural fields that are recipients of the land application of biosolids. Ms. Reed-Harry motioned for the establishment of a workgroup under John Bell's leadership consisting of interested people in this discussion but not limited to Board members. Ms. Golden seconded the motion.

Mr. Bell said that due to the AAB meetings only occurring quarterly, the Board may need to get this workgroup in operation on or before the next meeting in June. Mr. Bell also wondered how formal the workgroup needed to be.

Ms. Golden asked Mr. Bell to solicit volunteers from the Board members, stakeholders, or others that were present during the meeting. Mr. Bell responded that in the interest of time and meeting management that he would rather solicit for volunteers after the meeting had concluded. Mr. Bell then shared his email address so that those interested in being a member of the workgroup could email him outside of the meeting.

Ms. Golden called for the question. The motion as previously moved by Ms. Reed-Harry and Ms. Golden was carried and unanimously supported.

10:15 AM Manure Management Manual (MMM) Manure Management Plan (MMP) Guidance (361-0300-002) Revision Process – Kate Bresaw

Jill Whitcomb introduced Kate Bresaw to the Board prior to her presentation. Following her introduction, Ms. Bresaw began by giving an overview of the current Manure Management Manual (MMM). The effective date on the current MMM is October 29, 2011. The MMM has been in use for almost a decade and is used for the planning requirements for the land application of manure and agricultural processed wastewater under 25 Pa. Code § 91.36(b). This document does not apply to CAOs or CAFOs.

Ms. Bresaw proceeded with presenting a timeline of the manual revision that has occurred from 2018 to the present. The next step that needs to be taken includes establishing internal and stakeholder workgroups. The internal workgroup will consist of individuals associated with county conservation districts, DEP and the State Conservation Commission as well as end-users of the manual. The hope is that the stakeholder workgroup will consist of Board members so that they can offer feedback and troubleshoot working drafts. The anticipation is to host 4-6 virtual meetings ideally once per month from early spring to midsummer.

To end her presentation, Ms. Bresaw requested AAB representation in the stakeholder workgroup consisting of approximately four to five members who would be willing to participate as described previously. The goal is to have internal review and public comment by fall or winter of 2021 and to have the final document published in early 2022. Ms. Bresaw stated that they intend to keep this group informed and engaged throughout the entire MMM revision process.

John Bell asked if DEP would have an objection to a less formal process or an evolving process of participation so as to not exclude anyone that is interested in participating in the conversation. This was suggested because some folks who may want to contribute might not be able or willing to be a member of an official workgroup. Ms. Bresaw responded that the Department appreciates any consideration and

feedback from anyone that would be using this document or has any interest in the plans. Essentially, DEP would appreciate any method of receiving feedback; however, Ms. Bresaw did request more clarification in terms of logistics of a floating workgroup with people coming in and out of the conversation throughout the process. Ms. Whitcomb agreed with Ms. Bresaw's comment and reiterated that DEP is open to any type of workgroup process that would result in DEP receiving the feedback that they desire from Board members to ensure that their revisions are going to be useful for the future.

Jennifer Reed-Harry motioned the formation of a small workgroup with members appointed at Mr. Bell's discretion with the intention of members reaching out continuously to their constituents in order to bring more meaningful conversation to the table during workgroup meetings. J.V. Lamb seconded this motion. The motion was carried with unanimous support.

10:45 AM Act 38 Nutrient Management Program and Chapter 91 Manure Management Administrative Manual, Proposed Revisions – Frank Schneider, State Conservation Commission

Frank Schneider presented the comments that were received on the Act 38 Nutrient Management Program and Chapter 91 Manure Management Administrative Manual. Following the open comment period for users of the Administrative Manual in August 2020, State Conservation Commission (SCC) staff received a total of 24 comments/suggestions. Of these comments/suggestions, SCC staff decided that 14 of them had merit and should be examined further. All comments offered can be viewed in PDF attachment Act 38 Nutrient Management Program and Chapter 91 which is available under this meeting's Agendas and Handouts section at:

www.dep.pa.gov/PublicParticipation/AdvisoryCommittees/WaterAdvisory/AAB/Pages/Agendas-and-Handouts.aspx

During the presentation, John Bell noted that Comment 3 is extremely important as he continuously hears from operators that they fear they may put themselves out of compliance if they have not over applied nutrients even if manure and crops have changed from what is written into their approved plans.

Once all comments were outlined, Mr. Schneider said that the SCC staff will revise the Nutrient Management and Manure Management Administrative Manual in accordance with the comments received and the subsequent discussion of those comments. The revised manual will be presented to the joint meeting of the AAB and the Nutrient Management Advisory Board (NMAB) in August 2021 and to the SCC in August and September of 2021. If the revisions are approved, the manual will become effective in October 2021 with training available for their conservation districts in November 2021.

John Bell asked if there is going to be any effort prior to the August meeting for drafts of changes to manual provisions to be circulated and allow comments to be offered. Mr. Schneider said they have not ever done that in the past but that he will discuss with his staff to see if it can be done. Mr. Bell said he thinks it would be helpful in the process for individual understanding of the manual provision changes as well as for transparency. He believes that transparency in discussion leads to education, perspective, and ultimate acceptance. Mr. Schneider agreed and does not believe doing this will be an issue.

11:15 AM Act 38 Nutrient Management Program – Technical Guidance Manual, Proposed Version 12.0 – Frank Schneider, State Conservation Commission

Frank Schneider presented the comments that were received on the Act 38 Nutrient Management Program Technical Guidance Manual. Following the open comment period for users of the Technical Guidance Manual in August 2020, SCC staff received a total of 39 comments/suggestions. Of these comments/suggestions, SCC and partner staff decided that 27 of them had merit and should be examined further. All comments offered can be viewed in PDF attachment Act 38 Nutrient Management Program Technical Guidance Manual Proposed Version 12.0 which is available under this meeting's Agendas and Handouts section at:

www.dep.pa.gov/PublicParticipation/AdvisoryCommittees/WaterAdvisory/AAB/Pages/Agendas-and-Handouts.aspx

Once all comments were outlined, Mr. Schneider said that the SCC staff will revise the Technical Guidance Manual in accordance with the comments received and the discussion of those comments that ensued thereafter. The revised Technical Guidance Manual will be presented to the joint AAB/NMAB in August 2021 and the SCC in August and September of 2021. If the revisions are approved, the manual will become effective in October 2021 with training available for their conservation districts in November 2021.

11:45 AM Pennsylvania's Progress on Water Quality – Jill Whitcomb

Jill Whitcomb provided the Board with an outline of progress as it relates to the Phase 3 Chesapeake Bay Water Implementation Program. To begin, Ms. Whitcomb described the State Team that they have created what consists of Co-chairs who are Secretaries of Environmental Protection, Agriculture, and Conservation and Natural Resources. The members of the State Team are the action leaders from state and federal agencies and external partners. The action leaders meet quarterly via invite only to assess progress and address challenges that are experienced during the Phase 3 WIP implementation process. State Team meetings are held in January and July and are open to the public.

Ms. Whitcomb wanted to make the Board aware that the DEP Chesapeake Bay Office has been reorganized internally for more efficient and effective policy development and execution. In addition to overseeing Chesapeake Bay Watershed efforts, the DEP Chesapeake Bay Office has taken on agriculture compliance activities, watershed support activities, and conservation district support statewide.

The Countywide Action Plans have been in effect since 2019. Phase 1 focused on individual counties in Tiers 1 and 2 between 2019-2020. The Chesapeake Bay Office administered more than \$17 million in state funds to Phase 1 counties. Phase 2 focuses on county clusters in Tiers 3 and 4 which is being implemented in 2021. In January, the Chesapeake Bay Office awarded Coordinator Grants to Phase 2 counties to aid in the development of their Countywide Action Plans.

Ms. Whitcomb then provided an update on agriculture funding, reporting, and tools and training. To view an exhaustive list of these updates, please reference the WIP Progress Report presentation which is available under this meeting's Agendas and Handouts section at:

www.dep.pa.gov/PublicParticipation/AdvisoryCommittees/WaterAdvisory/AAB/Pages/Agendas-and-Handouts.aspx.

To increase transparency and increase communication and engagement with the Phase 3 WIP, the Chesapeake Bay Office had created a monthly e-newsletter called Phase 3 WIP News in June of 2020. The number of subscribers to this newsletter continues to increase. Ms. Whitcomb urged Board members who

have not yet subscribed to the newsletter to do so because this is a key way the Chesapeake Bay Office is sharing progress and updates on a monthly basis.

Moving forward, the Chesapeake Bay Office would like to continue working with multi-agency programs to increase efficiencies and outcomes. While the feedback from stakeholders can sometimes be plentiful and overwhelming, it proves to be invaluable when needing to assess the efficiency of current projects. The Office would also like to accelerate through additional flexible funds for project implementation and staff, focus on on-demand and necessary training for internal and external personnel, and work with state and county partners to share success stories and highlight any progress that has been made.

Jennifer Reed-Harry suggested that an update on the Phase 3 WIP agricultural workgroup be given at the next meeting to highlight where they are in the process of trying to achieve the goals that they've put forth. Ms. Whitcomb mentioned that the Chesapeake Bay Office submits their numeric progress at the end of each calendar year. Afterwards, EPA does their assessment and then provides in the late spring/early summer the outcome of that report. Ms. Whitcomb said she would be happy to provide an update as Ms. Reed-Harry had requested during the next meeting.

John Bell mentioned circulating the progress reporting document to other Board members. While it would still take the Board members some time to review and process the information outlined in the document, he feels it would be a good idea for Board members to be presented with that data. Ms. Whitcomb agreed and thanked Mr. Bell for his efforts. Ms. Whitcomb also asked Mr. Bell if he would be interested in having all Board members automatically subscribed to the Phase 3 WIP News e-newsletter. Mr. Bell responded that he is personally in favor of voluntary subscriptions rather than automatically subscribing members but stressed that he has strongly encouraged all Board members to subscribe themselves.

12:15 PM Public Comments

Trudy Johnston with Material Matters asked if there would be a program for stormwater trading between the municipal government and the farming community. Jay Patel responded that DEP has been in contact with Trudy privately prior to the meeting regarding the potential opportunity for stormwater trading and that specifics could not be shared at this time.

12:30 PM Adjourn

Jennifer Reed-Harry moved to adjourn the meeting. Darwin Nissley seconded that motion. The motion to adjourn the meeting was unanimously approved.