



pennsylvania
DEPARTMENT OF ENVIRONMENTAL
PROTECTION



Bureau of Watershed Restoration
and Nonpoint Source Management

PAG-12 Update

NPDES General Permit for Operation of Concentrated Animal Feeding Operations

DEP Agricultural Advisory Board
December 8, 2022

PAG-12 Update Agenda

- Accomplishments to date
- Summary of changes
- Summary of comments received
- Next steps
- Project timeline
- Considerations moving forward

Accomplishments

- AAB voted to develop a PAG-12 workgroup - December 17, 2020
- AAB PAG-12 Workgroup Meetings
 - July 27, 2021 (EPA attending)
 - October 28, 2021 (EPA and DEP attending)
- AAB PAG-12 workgroup written comments delivered to DEP - October 12, 2021
 - Where feasible and appropriate, comments were addressed during the development of the Pre-Draft
- DEP Central Office solicited comments from DEP Regional Offices - October 25, 2021
 - Where feasible and appropriate, comments were addressed during the development of the Pre-Draft
- Pre-draft of the permit delivered to WRAC and AAB via email May 6, 2022
 - No comments received from AAB or WRAC on the Pre-draft.

Accomplishments

- Draft of the permit delivered to EPA June 14, 2022
- Draft of the permit delivered to WRAC & AAB July 25, 2022
 - Changes in the draft were informed by comments received from regional DEP staff after review of the pre-draft
- Preliminary EPA comments on the Draft Permit were delivered to DEP August 11, 2022.
- DEP met with EPA through the month of August to discuss their preliminary comments
 - EPA's primary concern - draft permit's consistency with NPDES regulations for discharges to impaired waters with an approved TMDL
 - Proposed Resolution - modifications to the draft permit primarily focused on further explanation regarding when and how additional BMPs may be required, as stated in Part C.VI. in the permit, and including an additional checklist that identifies BMPs
- EPA comments on the Draft Permit provided to DEP on September 12, 2022

Accomplishments

- DEP met with the AAB PAG-12 workgroup on September 19, 2022 to discuss modifications
- Written comments on the Draft Permit received from AAB and WRAC membership in late September
- EPA presented comments to AAB during October 20, 2022 meeting
- DEP requested that the advisory group post comments publicly
- Draft PAG-12 published in *PA Bulletin* on October 1, 2022
- Public comment period closed on October 31, 2022

PAG-12 Summary of Changes

In addition to retaining the changes made through the October 31, 2020 amendment to the 2018 General Permit, DEP is proposing the following additional (minor) changes for the 2023 General Permit:

- Remove the requirement for existing operations that will become CAFOs as a result of new standard animal weights to apply for NPDES permit coverage no later than April 1, 2019, as this requirement is no longer applicable.
- Remove language in the General Permit concerning possible revocation of coverage or enforcement action in the event a CAFO fails to submit an annual report or pay and annual NOI installment fee because the language is unnecessary (i.e., DEP may take appropriate action for any non-compliance, not just failure to submit reports and fees).
- Clarify that the payment of an annual NOI installment fee is not required if DEP approves a Notice of Termination (NOT) prior to the due date. This is consistent with other general permits.
- Since issuance of the 2018 General Permit, DEP has developed a standardized Notice of Termination (NOT) form. DEP proposes to require use of this form to notify DEP that permit coverage is no longer needed.

PAG-12 Summary of Changes

- The definitions for 25-year/24-hour storm and 100-year/24-hour storm have been updated to refer to National Oceanic and Atmospheric Administration (NOAA) Atlas 14 point precipitation frequency estimates, which replaced the National Weather Service's Technical Paper 40.
- Part B I.D of the General Permit has been updated to include the proposed language below. This language existed in prior versions of PAG-12 and has been useful for facilitating corrective actions in response to DEP inspections.

The permittee shall ensure that activities and facilities, including the production and the land application areas under control of the owner and/or operator, associated with the CAFO operation do not create a danger of pollution, or cause or contribute to pollution of surface waters. In response to its own finding of water quality problems or based upon documented evidence, DEP may, upon written notice, require the permittee to develop and implement additional BMPs or use other control measures to promptly abate the pollution problem and to ensure that the water quality of the receiving water is protected and maintained and to ensure that clean water is diverted, as appropriate, from the production area.

PAG-12 Summary of Changes

- Clarification in Part C I.D.2 and D.3 (relating to winter manure application) that the NMP must contain a determination of adequate manure storage capacity for the winter period and provide sufficient capacity at the start of winter to implement the NMP for liquid and semi-solid manure storage facilities only.
- Clarification is proposed in Part C V.C (Freeboard) of the General Permit that the regulatory freeboard of 12 inches applies to any manure storage facility that is exposed to direct precipitation (in addition to ponds and impoundments) and the regulatory freeboard of 6 inches applies to any manure storage facility that is not exposed to direct precipitation, on operations with less than 1,000 AEUs.
- Clarification is proposed in Part C V.E (Leak Detection and Subsurface Drainage Monitoring) that in addition to monitoring drainage from leak detection systems beneath ponds and impoundments, monitoring must be done for any manure storage facility that is in-ground or below ground and has a leak detection system.
- In Part C V.F (Water Quality Management (WQM) Permits and Engineer Certifications), DEP proposes to clarify that a WQM permit is required to construct any manure storage facility that is exposed to direct precipitation (in addition to ponds and impoundments) and will have a liquid and semi-solid manure storage capacity of between 1 and 2.5 million gallons where the nearest downgradient surface water is classified as a High Quality or Exceptional Value Water or is impaired for nutrients due to agricultural activities.

PAG-12 Summary of Changes

- DEP is planning to remove Part C V.F.3 (relating to prevention of discharges up to the 100-year/24-hour storm for CAFOs with swine, poultry or veal calves) because it is redundant with requirements in Part A of the General Permit.
- DEP is proposing to require the inclusion of operation-specific methods for the management or disposal of mass animal mortalities in an operation's Preparedness, Prevention and Contingency (PPC) Plan or emergency response plan that is required in NMPs. This information would need to be submitted with the NOI to remain covered under PAG-12. This requirement is in response to the 2022 avian flu outbreak and resultant need for the disposal of millions of poultry animals. DEP believes it is appropriate to conduct advanced planning for future possible outbreaks.

PAG-12 – CAFOS Operating in TMDL Watersheds

- Where a CAFO is in a TMDL watershed, to ensure that the CAFO will operate consistent with the the assumptions and requirements of an applicable TMDL, DEP has developed a BMP Checklist for TMDL Waters (3800-PM-BCW0032h). Where a CAFO's production area is located within a watershed that is covered by a TMDL in which one or more sources of the impairment is identified as "agriculture", including the Chesapeake Bay watershed, the applicant must complete the BMP Checklist in order for the NOI to be considered complete.
- PAG-12 includes the following condition in Part C of the general permit to authorize these procedures:

DEP may require additional BMPs and controls to protect public health and to protect, maintain and restore water quality and the existing and designated uses of waters of the Commonwealth. For operations within the Chesapeake Bay watershed, this may include additional BMPs listed in Pennsylvania's Watershed Implementation Plan for the Chesapeake Bay TMDL.

PAG-12 Summary of Comments Received

- Three sets of written comments submitted by AAB Members.
- One set of comments was submitted by a member of WRAC.
- Two sets of written comments from the AAB were also posted publicly.

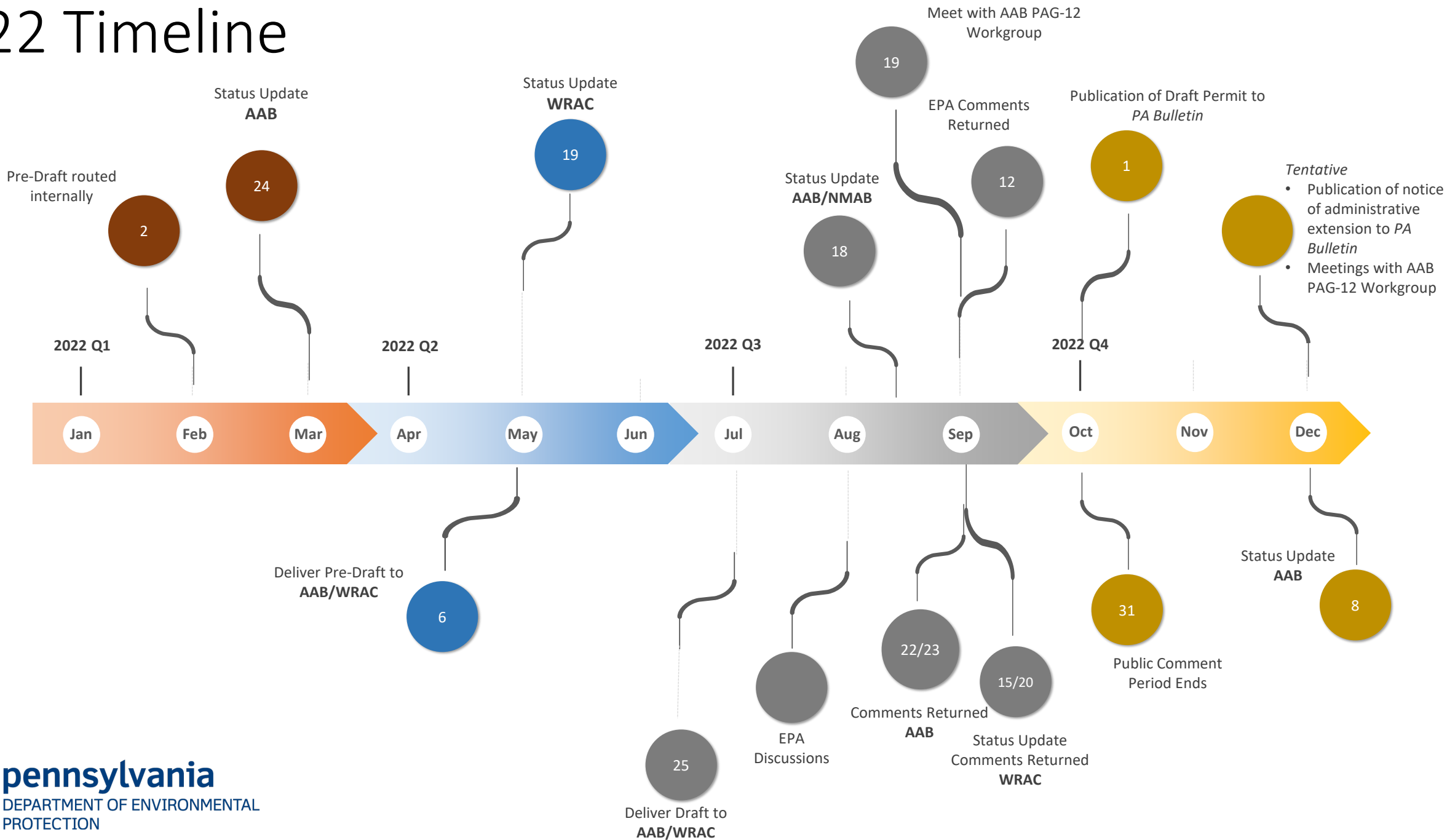
PAG-12 Summary of Comments Received

- Manure storage definitions and rainfall data considerations
- Overall complexity of the NOI package
- Assurance that PAG-12 permit holders are implementing BMPs consistent with the assumptions and requirements of an applicable TMDL.
 - Document collaboration with permit holders and interested individuals
 - Outline guidance and training
 - Further define and clarify terminology, roles and responsibilities, and procedures associated with the BMP Checklist for TMDL Waters.
 - Administratively extend the permit

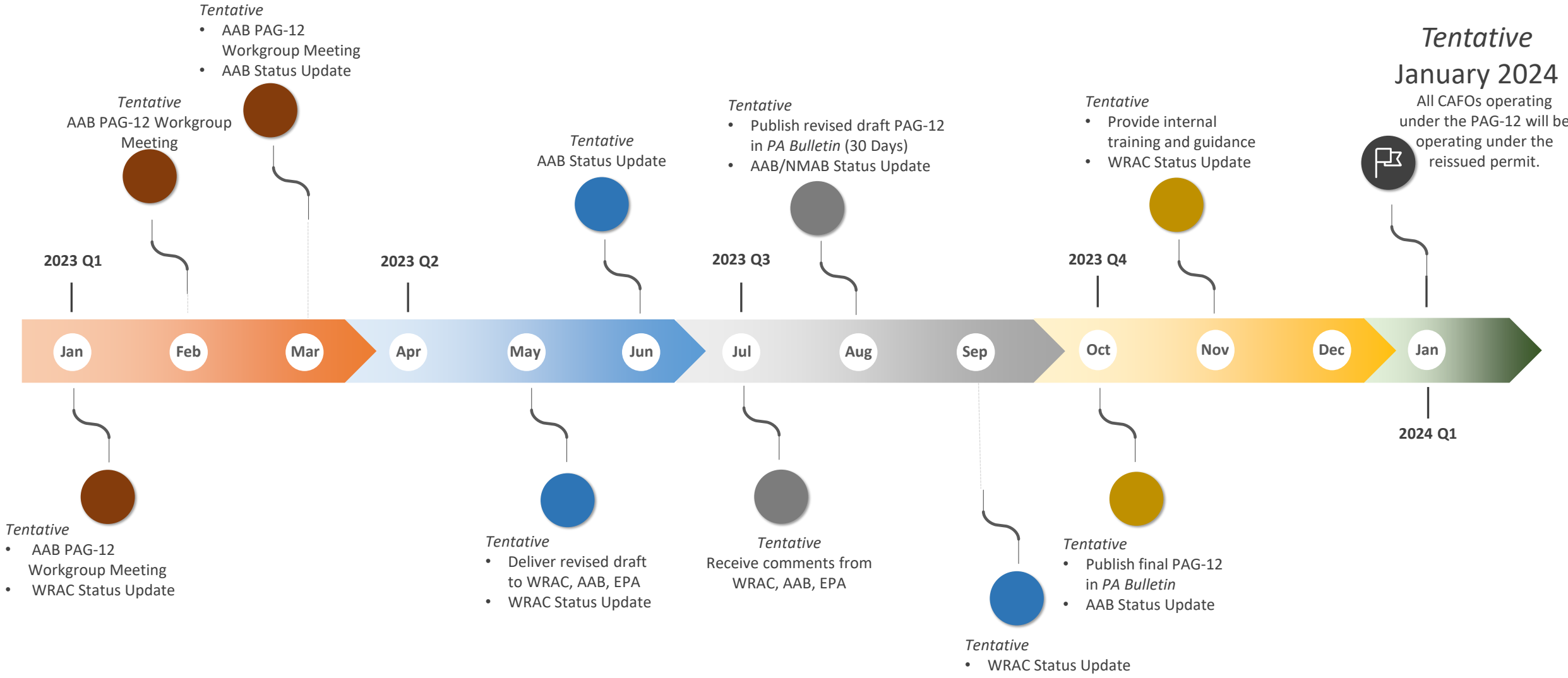
PAG-12 Reissuance – Next Steps

- December 2022: Administratively extend permit to March 31, 2024
- December 2022-April 2023:
 - Consultation meetings with the AAB PAG-12 workgroup & EPA
 - Present status updates to WRAC and AAB
- May 2023: Share revised draft PAG-12 with WRAC, AAB, and EPA
- August 2023: Publish revised draft PAG-12 in *PA Bulletin* with 30-day comment period
- October 2023: Publish final PAG-12 in *PA Bulletin*

2022 Timeline



2023-2024 Timeline



Considerations Moving Forward

- NOI submission for existing permittees will be postponed
- Existing PAG-12 permittees will maintain coverage under the extended permit.
- DEP may not grant coverage under PAG-12 to new facilities until the final permit is reissued in accordance with EPA policy.
 - DEP has consulted with industry representative to better understand the implications for industry expansion.

Summary

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Contact Information

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