



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

Agricultural Advisory Board

July 18, 2023

Josh Shapiro, Governor

Richard Negrin, Secretary

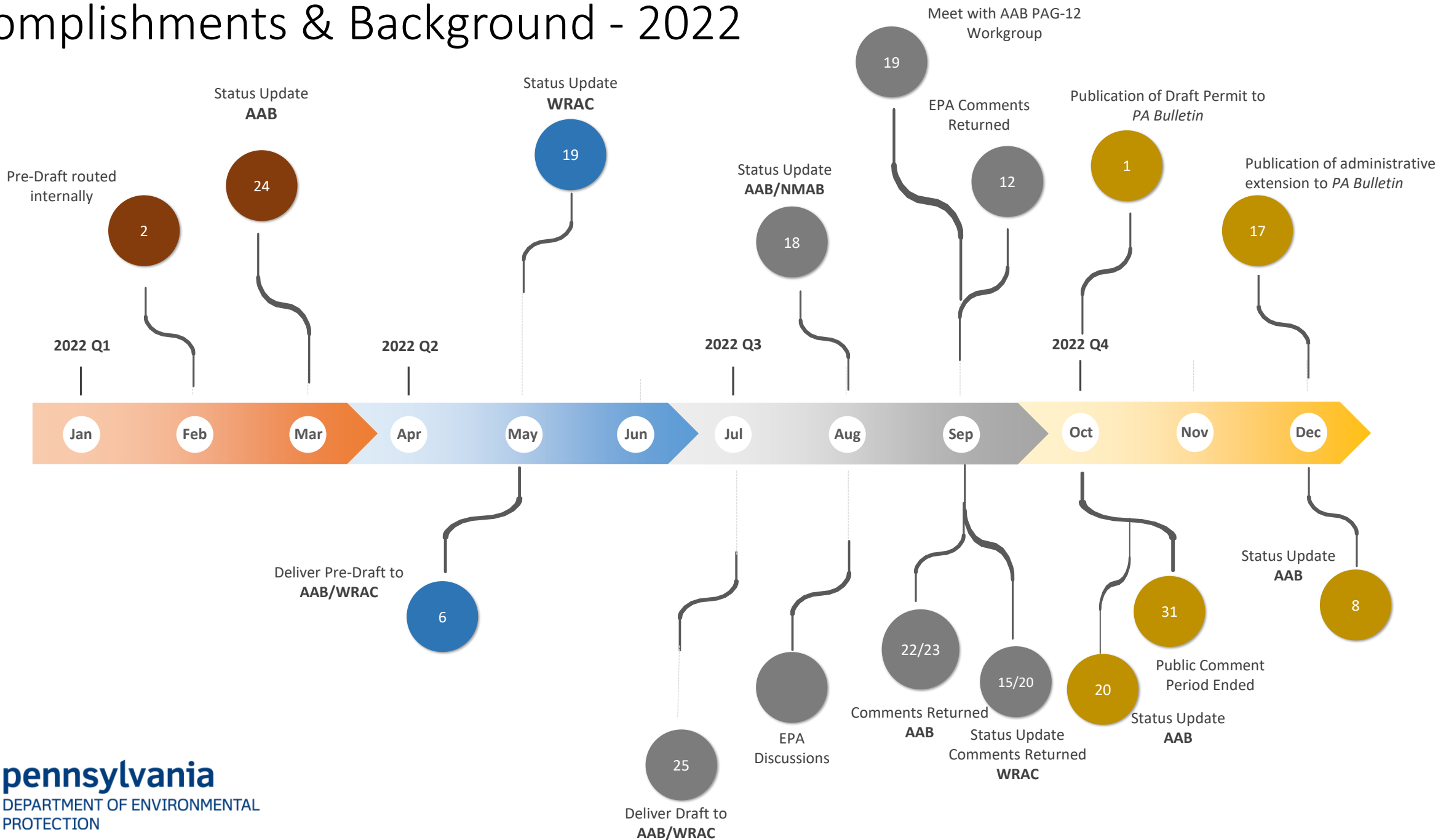
PAG-12 Update Agenda

- Accomplishments & background
- The challenge
 - October 2022 Draft PAG-12
 - Comments received
- Timeline and current proposal
- Considerations

Accomplishments & Background – 2020-2021

- 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 and DEP regional offices provided comments - October 2021

Accomplishments & Background - 2022



The Challenge

From September 12, 2022, EPA Comments on the Draft PAG-12

- DEP will determine that discharges authorized by this general permit will be consistent with the assumptions and requirements of all applicable TMDLs.
- DEP will explain how it makes a determination to require additional BMPs consistent with Part C.VI. of the PAG-12.

The Challenge

From October 2022 Draft PAG-12 Fact Sheet

- 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:

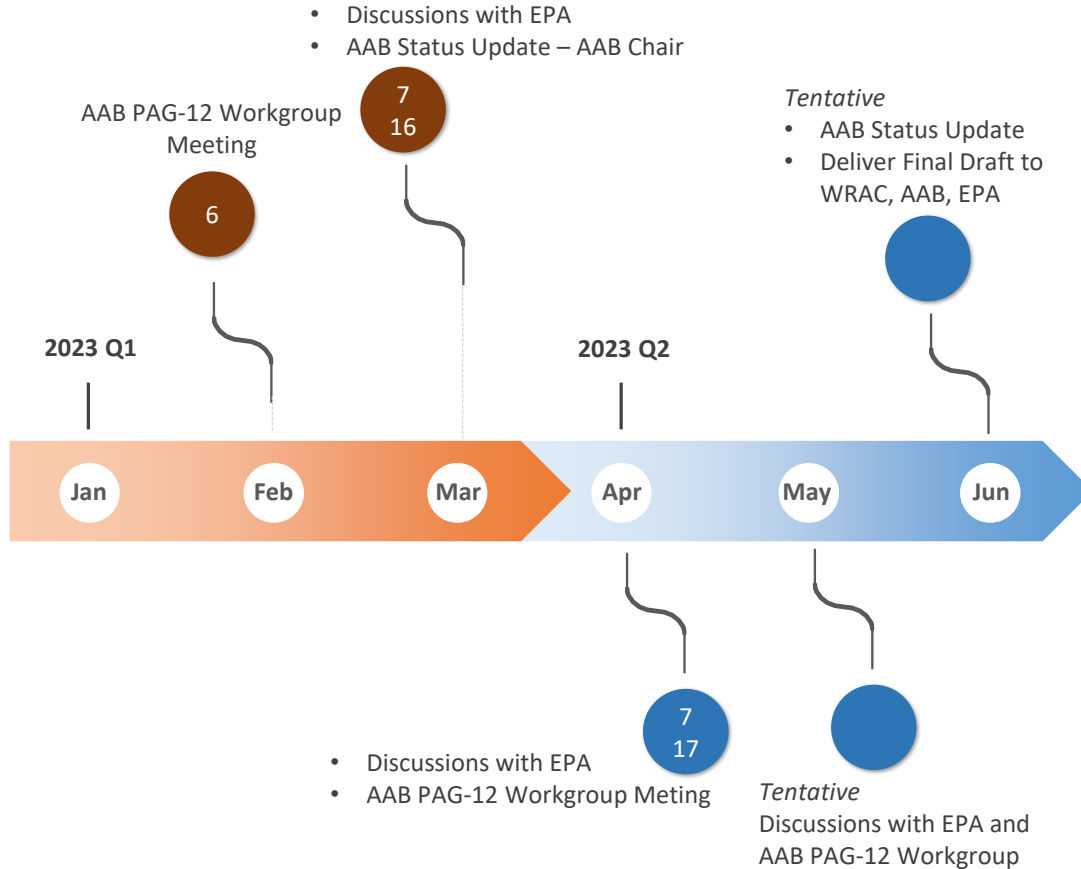
DEP may require additional BMPs and controls to protect public health and to protect, maintain and restore water quality and the existing and designated uses of waters of the Commonwealth. For operations within the Chesapeake Bay watershed, this may include additional BMPs listed in Pennsylvania's Watershed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

The Challenge

From AAB Membership Comments – September/October 2022

- 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.

Timeline



CAFO Reasonable Potential Analysis (RPA) for Impaired Waters

- Intended to assist DEP staff in evaluating the potential for discharges from existing CAFOs to cause or contribute to an impairment.
- Will be used for any CAFO seeking PAG-12 coverage that is located in a watershed that is impaired due to nutrients and/or sediment, regardless of whether there is an EPA-approved TMDL, including the Chesapeake Bay watershed.
- This spreadsheet may also be used to guide decisions for CAFOs seeking individual NPDES permits.

CAFO Reasonable Potential Analysis for Impaired Waters

- Set of conditions determined by reasonable and professional assumptions that are known to increase the potential for discharges from the CAFO.
 - Proximity of the production area to surface water
 - Liquid manure storage facilities are present.
 - Animal concentration areas are present.
 - There is evidence of channelized flow from the production area to surface water.
- The sum of all assigned values is determined.
 - Assessments of "HIGH" will generally result in a finding that the CAFO will not be eligible for PAG-12 coverage, or may be eligible upon implementation of or a commitment to implement certain BMPs that serve to reduce the reasonable potential.

The Challenge

From September 12, 2022, EPA Comments on the Draft PAG-12

- DEP will determine that discharges authorized by this general permit will be consistent with the assumptions and requirements of all applicable TMDLs.
 - EPA is generally supportive of the development and use of this tool to determine whether granting general permit coverage to a facility is consistent with the assumptions and requirements of an applicable established TMDL.
- DEP will explain how it makes a determination to require additional BMPs consistent with Part C.VI. of the PAG-12.
 - As described in the instructions, the RPA will be used to determine that the CAFO may be eligible for coverage under the PAG-12 upon implementation of or a commitment to implement certain BMPs that serve to reduce the reasonable potential.
- **It is the opinion of DEP that the CAFO Reasonable Potential Analysis for Impaired Waters adequately resolves the challenge put forth last summer, and, as such, the BMP Checklist for TMDL Waters will not be included in the Final PAG-12.**

The Challenge

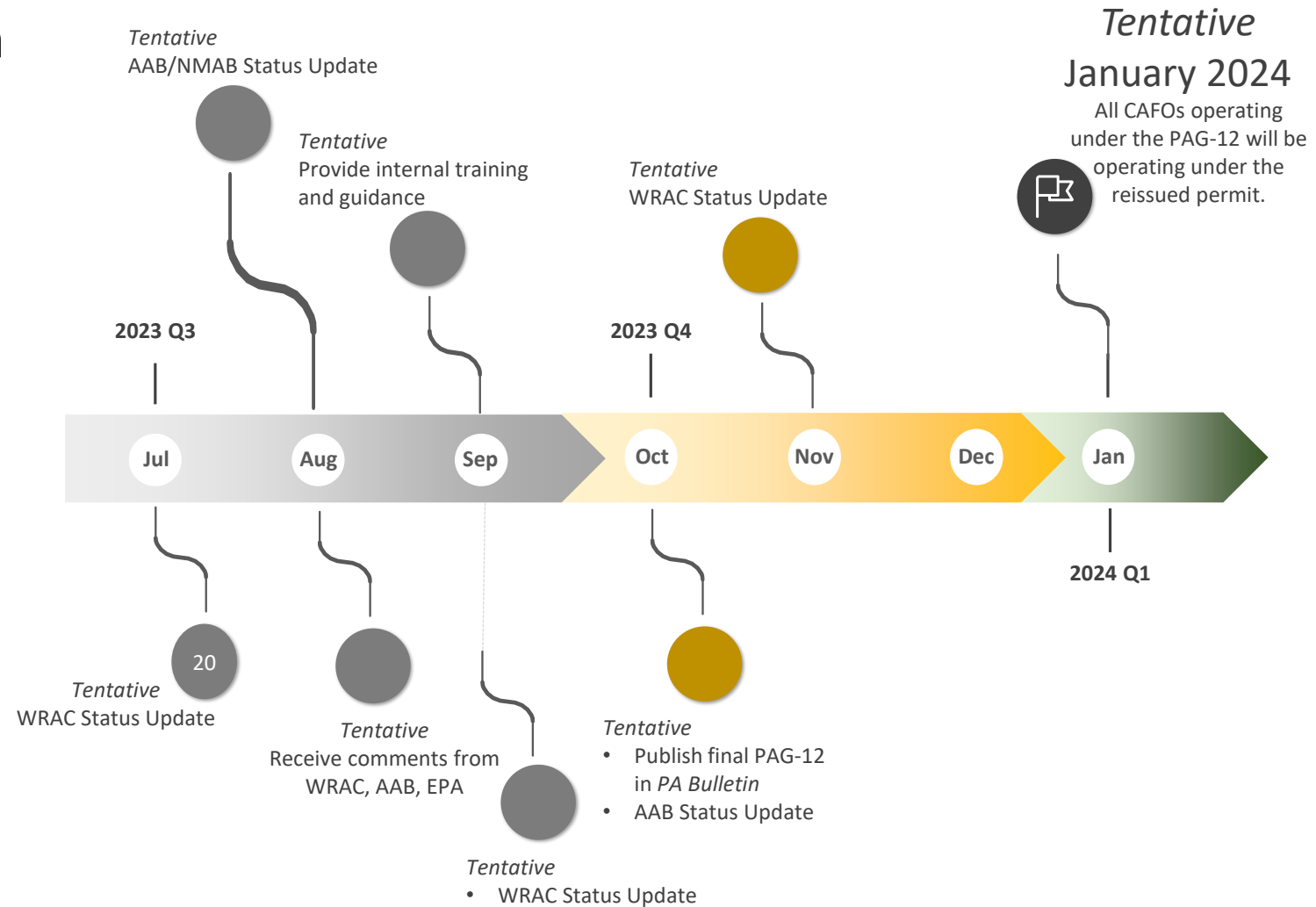
From AAB Membership Comments – September/October 2022

- 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
 - PAG-12 Workgroup meetings winter and spring 2023
 - PAG-12 Workgroup membership written comments received on the RPA – April 2023.
 - Comments were addressed, where feasible, in a subsequent revision of the RPA.
 - Outline guidance and training
 - Proposed Training will be held in late summer/early fall 2023 for regional permits staff.
 - The training will be memorialized in DEP Clean Water Academy and available for on-demand learning.
 - DEP can share a PDF that shows the training content with AAB if requested.
 - Further define and clarify terminology, roles and responsibilities, and procedures associated with the BMP Checklist for TMDL Waters.
 - No longer proposed

Next Steps

- AAB should provide comments on the permit package in August.
- DEP has begun planning for training with the goal to provide training in late summer and early fall.
- Tentative publishing of Final PAG-12 – October 2023.
- Tentative effective date of the reissued PAG-12 – January 2024.

Timeline

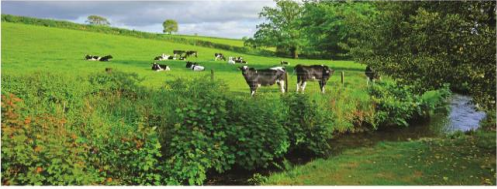


Considerations Moving Forward

- NOI submission for existing permittees
 - Tentatively October 2023 - January 2024
- 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.

Summary

- **Thank you** to all partners in this effort including the AAB PAG-12 Workgroup and EPA.
- DEP and permittees continue to operate under an administratively extended PAG-12
 - DEP is working to expeditiously reissue the permit
- The challenge
- Timeline and current proposal
- Considerations



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