

**Department of Environmental Protection (DEP)**  
**Agricultural Advisory Board (AAB) Special Meeting**  
**July 18, 2023**  
**9:00 AM**  
**Meeting Minutes**

Room 105  
Rachel Carson State Office Building

**Welcome & Introductions – Grant Gulibon, Chair**

Grant Gulibon called the meeting to order. Bob Haines conducted a roll call of members. Due to lack of member attendance a quorum was not met for this meeting.

**Members present:**

Bevin Buchheister*	Nathan Clark
Lynn Dietrich	Grant Gulibon
Tim Peters*	Jennifer Reed-Harry
Matt Royer	Christopher Uhland

**Members absent:**

Rob Amsterdam	William Evans
James Gillis*	Kerry Golden
Greg Hostetter*	Matthew Matter
Darwin Nissley	Brenda Shambaugh
Destiny Zeiders	

\* non-voting members

**Guidance for Developing a Chapter 105 Alternatives Analysis – Andy Klinger, Bureau of Waterways Engineering and Wetlands**

Andy Klinger informed the Board that the Bureau is nearing completion of final edits in response to public comments. Mr. Klinger stated that DEP is prepared to publish this guidance as final technical guidance in the third quarter and that the guidance has been renamed to Guidance for Developing a Chapter 105 Alternatives Analysis. DEP is hopeful this detailed guidance will remove some of the inconsistencies with staff review and result in permit efficiencies. The alternatives analysis is a crucial piece of Chapter 105 permit reviews. The analysis must evaluate alternatives to avoid and minimize impacts. Types of alternatives include site and structure configuration alternatives and site location alternatives.

The title change was done to emphasize that an analysis of alternatives is a developmental process an applicant goes through and should be documented from the initial design phase to the final proposed project. Additional changes include a single new section to clarify how costs may or may not factor into an alternatives demonstration in certain scenarios and clearer guidance on eminent domain. Pollution abatement projects still must demonstrate avoidance and minimization while aquatic resource restoration must summarize impacts under the environmental assessment.

### **Concentrated Animal Feeding Operation (CAFO) PAG-12 Update – Kate Bresaw, Bureau of Watershed Restoration and Nonpoint Source Management**

Ms. Bresaw informed the Board that, through discussions with the workgroup and Environmental Protection Agency (EPA), there is a consensus of a new proposal to address the permit's consistency with National Pollutant Discharge Elimination System (NPDES) regulations for discharges to impaired waters with an approved Total Maximum Daily Load (TMDL) and explain when additional Best Management Practices (BMPs) will be requested on a CAFO consistent with PAG-12 Part C.VI. The proposal is the use of the CAFO Reasonable Potential Analysis (RPA) tool for impaired waters will be used for any CAFO seeking PAG-12 coverage that is located in an impaired watershed due to nutrients and/or sediment, regardless of whether there is an EPA-approved TMDL, including the Chesapeake Bay watershed. The tool is a set of conditions determined by reasonable and professional assumptions which are known to increase the potential for discharges from the CAFO. EPA is generally supportive of the development and use of the tool to determine whether granting general permit coverage to a facility is consistent with the assumptions and requirements of an applicable established TMDL. DEP may not grant coverage under PAG-12 to new facilities until the final permit is reissued in accordance with EPA policy which is tentatively scheduled for January 2024.

Jennifer Reed-Harry acknowledged that she is in favor of publishing the updated permit. Grant Gulibon stated that the board can commit to providing comments by the August 23, 2023 meeting. Lynn Dietrich commented on the installation of large solar operations in Franklin County and asked if the effects of pollution in the construction and installation phases is being monitored. Jill Whitcomb responded to Mr. Dietrich's comment and said the question pertains more to Chapter 102 construction stormwater side and she would take back to DEP. Mr. Gulibon proposed that the topic be a future agenda item with DEP presenting on the issue.

Frank Schneider asked which BMPs are included if there is a high score on the analysis. Ms. Bresaw replied by stating that the BMPs are not explicitly identified; they are more farm-specific based on questions.

Mr. Gulibon presented the scenario that if the permittee makes the investment and implements the BMPs that are recommended in the RPA tool, is there an assurance that the permit will be granted. Jill explained that the RPA tool can also be used by the consultant or the

farmer to run different scenarios, but the commitment to implement the recommended BMPs must be documented in the permittees Ag E&S plan or conservation plan where it can be evaluated.

Kyle Kotzmoyer (HRG) asked if permittees still need to apply for individual permits. Sean Furjanic stated that yes, until the effective date of the reissued PAG-12.

**Public Comments – Grant Gulibon, Chair**

There were no public comments.

**Adjourn – Grant Gulibon, Chair**

The meeting was adjourned without a motion since there was no quorum.