

**Department of Environmental Protection (DEP)
Agricultural Advisory Board (AAB) Meeting
October 19, 2023
9:00 AM – 12:00 PM
Meeting Minutes**

Susquehanna Rooms A & B
DEP Southcentral Regional Office
and Microsoft Teams

Welcome & Introductions – Grant Gulibon, Chair

Grant Gulibon, Chair, called the meeting to order. Bob Haines conducted a roll call of AAB members.

It was initially determined that five voting members were present which did not constitute a quorum. It was later determined after the meeting that six voting members were present out of eleven total voting members which would have constituted a quorum. The following is the attendance record for this meeting.

Members present:

Jessica Shirley (in for Bevin Buchheister) *	
Grant Gulibon	Destiny Zeiders
Jennifer Reed-Harry	James Gillis*
Matt Royer	Mark Buckwalter (in for Tim Peters) *
Christopher Uhland	Brenda Shambaugh

Members absent:

Nathan Clark	Lynn Dietrich
William Evans	Kerry Golden
Darwin Nissley	Greg Hostetter*

***Non-Voting Member**

Action on previous AAB Minutes from March 15, 2023, June 22, 2023, July 18, 2023-special meeting, and August 23, 2023 – Grant Gulibon, Chair

No action could be taken on approving previous meeting minutes because there was not a quorum.

It was initially determined that five voting members were present which did not constitute a quorum and therefore no action was taken with approving meeting minutes. It was later determined after the meeting that six voting members were present out of eleven total voting members which would have constituted a quorum and therefore action on approving minutes would have been possible.

Legislative Update

Destiny Zeiders updated the Board on House Bill 295, which realigns product registration and process and tonnage reporting for the Soils and Plants Act and House Bill 156, which addresses technical changes to the Fertilizer Law. Ms. Zeiders stated that she believes the bills will be passed in the next month or so and sent to the Governor for signature.

Brenda Shambaugh asked if Fiscal Code Bill 1300 passed in the House. Ms. Zeiders said it did not. Ms. Shambaugh continued that the bill had dedicated funding for the Clean Streams Act coming from the Game Commission but was stripped out by the House. Ms. Shambaugh stated that PACD supports dedicated funding for the Clean Streams Act for the future but did not make recommendation on where the funding should come from.

Environmental Justice Policy and PennEnviroScreen – Justin Dula, DEP Office of Environmental Justice (OEJ)

Mr. Dula provided the Board with an overview of the DEP Environmental Justice (EJ) Policy draft and included information on the PennEnviroScreen, which is a mapping tool and framework that provides an annually updated snapshot of undue environmental burden on vulnerable communities by combining Pollution Burden and Population Characteristics data in order to identify Environmental Justice (EJ) Areas in accordance with the EJ Policy. Mr. Dula offered to address any questions or comments from the Board.

Brenda Shambaugh asked how the EJ program will affect the operations of the Conservation Districts. Mr. Dula stated that not many trigger permits involve Conservation Districts, but if there were any or if there were any opt-in projects, EJ coordinators would reach out to the respective Conservation District to seek assistance if the project had any EJ concerns.

Jennifer Reed-Harry asked if DEP considers notification at township meetings under Act 14, when building a barn, as acceptable EJ outreach in rural ag communities. Mr. Dula responded that the EJ Policy builds off existing requirements for notifications but also tries to enhance outreach by right sizing it for a given community. Mr. Dula continued that OEJ staff maintain an internal checklist of available outreach methods, e.g., direct mailings, community meeting, phone calls, etc., that can be utilized for a given community. Ms. Reed-Harry asked if she can see the checklist. Mr. Dula responded that the document was designed for internal use only but

may be able to share the list once the Policy is approved. Mr. Dula offered to the Board to provide the OEJ comments or ideas on better outreach methods for rural ag communities.

Grant Gulibon asked about expanding the definition of Environmental Justice (EJ) and wanted to know how DEP will address conflicts between the DEP definition and the federal definition. Mr. Dula responded that DEP built its revised definition of EJ from the updated federal definition but made it more state focused. Mr. Dula continued that in terms of defining EJ areas, EPA includes EJ considerations in their limited number of permitted projects, however DEP with its many permitted projects needed to put some limits on defining EJ areas but has options for opt-in projects. Mr. Gulibon asked about the term “opt-in projects” and stated that his knowledge of opt-in projects is on the regulated community side, but for the EJ Policy, DEP can opt projects in, and he stated that that seems confusing. Mr. Gulibon suggested providing clarity in the policy on who is doing the opting-in.

Mr. Gulibon asked how DEP and the OEJ will handle community organizations that may have different opinions on a project. Mr. Dula responded that the OEJ’s main goal is to bring all competing interest to the table, to work with all sides to make sure their concerns are heard and to facilitate a dialogue, and to work with the applicant trying to obtain a permit to see if mitigating factors can be addressed to satisfy concerns but ultimately DEP is bound by statutory authority and cannot flat-out deny a permit.

Mr. Gulibon stated that his concern with the policy is that organizations like PA Farm Bureau and Penn Ag are already providing community outreach because they want to or are required to do and often go beyond what is required.

Mr. Gulibon asked about specific types of ag projects that might be included as “trigger projects” and would fall under the EJ policy. Mr. Dula explained he’s not able to site specific types of ag projects but wanted to make aware that the OEJ staff analyze all projects for potential EJ concerns and Appendix C of the draft policy provides examples of past ag projects that opted-in, but DEP plans to use to opt-in policy on a case-by-case basis and more as the exception and not the rule. Mr. Dula continued to explain that DEP and the OEJ wants to take a broader view and will assess a permit applicant’s individual project in the context of a larger project.

Mr. Gulibon asked about communications with the Department of Ag regarding the EJ Policy with the expanded reach of the Policy and the mapping tool. Mr. Dula explained that the Department of Ag is part of the Environmental Justice Interagency Council, to include DEP, Department of Ag, PennDOT, Department of Health and others and have been meeting regularly to discuss the policy and the PennEnviroScreen tool amongst other things. Mr. Dula commented that he would not describe this as a broader reach, but more targeting of what the OEJ can do within the existing statutes and regulations.

Mr. Gulibon posed a hypothetical situation where there is a project that DEP has concerns about but the EJ community overwhelmingly supports the projects and DEP is not hearing the

need for enhanced public participation from the community, how would DEP and the OEJ handle that situation. Mr. Dula responded that DEP and the OEJ are neutral arbiters and not about influencing or swaying sentiment about a particular project and the goal is to make sure community members have all necessary information about a project and to make them aware of what DEP's role is in the permitting process.

Mr. Gulibon asked who is responsible for providing technical assistance to an EJ community as stated in the policy. Mr. Dula responded that it could be a state or federal resource, community organization, a non-profit, etc.

Mr. Gulibon wanted to know what DEP's authority is for requiring a public meeting in situations where public meetings are not required. Mr. Dula explained that it depends on the permit and authorizations that DEP has but generally DEP can hold a public meeting at will even if a permit applicant does not attend.

Mr. Gulibon noted that in the policy it is stated that EJ areas would take precedence for inspection, compliance and enforcement efforts above non-EJ areas given limited DEP staffing and resources and submitted that non-EJ areas deserve the same protections and EJ areas and wanted to know how DEP plans to reconcile that issue and minimize the amount of times that takes place. Mr. Dula responded that the goal of DEP is to do all the inspections that it needs to do and the budget has worked towards achieving that goal but when it comes to prioritizing resources this is just one of the factors that goes into that decision and it doesn't necessarily supersede other factors. Mr. Dula gave an example of a facility's compliance history could be another factor.

Mr. Dula reminded the Board that the comment period goes until November 30, 2023 and a link to submit comments is on the main page of the OEJ website.

Aquatic Life Criteria for Copper Proposed Rulemaking – Kristen Schlauderaff, Bureau of Clean Water

Ms. Schlauderaff presented proposed revisions to the aquatic life criteria for copper. Ms. Schlauderaff informed the Board that the Bureau of Clean Water has developed a draft proposed rulemaking that would revise the statewide water quality criteria for copper. The recommendation would replace the current hardness-based aquatic life criteria for copper with the biotic ligand model (BLM), which is a metals bioavailability model for determining copper criteria. Ms. Schlauderaff explained that the recommendation is consistent with the current United States Environmental Protection Agency (EPA) Section 304(a) aquatic life ambient freshwater quality criteria recommendation and provided additional background information on the model. Ms. Schlauderaff reviewed the specific proposed deletions and additions to the regulation language. Ms. Schlauderaff offered to address any questions or comments from the Board.

Grant Gulibon asked about the timetable for this proposed rulemaking. Ms. Schlauderaff informed the Board that the proposal was brought to WRAC in September and after today it is tentatively planned to go to the Environmental Quality Board in the first quarter of 2024.

Proposed Rulemaking Chapter 91.33 – Incidents Causing/Threatening Pollution (Action) – Andrew Hall, Bureau of Clean Water

Mr. Hall informed the Board of the draft proposed rulemaking for notification requirements for Chapter 91.33-Incidents Causing or Threatening Pollution. Mr. Hall reviewed DEP's goals of the draft proposed rulemaking, its history, existing regulation, statutory basis, and draft proposed amendments. Mr. Hall provided some examples of pollution situations where notification may or may not be required and discussed the technical guidance document. Mr. Hall explained that the Policy Office, Bureau of Regulatory Counsel, and Bureau of Clean Water collaborated in development of this rulemaking, which adapts the guidance document that DEP developed on this topic into a rulemaking. Mr. Hall informed the Board that DEP is requesting comments from the AAB on the draft proposed rulemaking.

Kelly O'Neill with Chesapeake Bay Foundation asked if reporting requirements are the same in EJ areas and outside EJ areas. Mr. Hall replied that reporting requirements are the same in all areas.

Grant Gulibon asked what is the percentage of ag-related spills/incidents that were reported compared to other reported spills/incidents over the past several years. Mr. Hall replied that DEP tracks that information as it receives thousands of calls per year for reported spills but thinks that ag-related reports are a smaller percentage. Victor Landis added that DEP gets a fair amount of ag-related calls and provided examples of such spills reported in the past.

Jennifer Reed-Harry asked what guidance DEP would offer if a spill is minor and not in need of being reported but a complaint was filed and how would someone defend their action not to report. Mr. Landis stated that that is the purpose of section a.3 of the proposed rulemaking to consider the factors of when not to report and to document it so when DEP does the complaint investigation there is documented justification.

Mr. Gulibon asked what some of the factors are that a farmer should consider with spill incidents in that gray area of report/not report in order to err on the side of caution. Mr. Landis replied that to err on the side of caution would be to report the spill incident. Mr. Landis continued that the farmer should look at proximity to waterways, groundwater-especially in a karst geology area, volume of the spill, and type of substance spilled. Manyi Liu added to consider active precipitation. Mr. Landis directed the Board to the list of factors to consider in the proposed rulemaking. Mr. Landis emphasized that if the farmer sees the spill entering a stream then the farmer should immediately report.

Adam Duh added that DEP plans to develop a technical guidance document to help offer additional guidance in implementing the regulation.

Mr. Gulibon asked about the timeframe on moving the proposed rulemaking forward. Mr. Landis stated that DEP presented at the Water Resources Advisory Committee (WRAC) and received feedback. Ms. Liu added that DEP will incorporate WRACs feedback and will take it back to WRAC for another review. Mr. Gulibon asked when comments would need to be received by members of the Board if they wanted to submit comments. Mr. Landis and Ms. Liu agreed to have comments to DEP within 30-days and confirmed with Brian Chalfant.

Public Comments – Grant Gulibon, Chair

No public comments.

General Discussion/Agenda Topics Request – Grant Gulibon, Chair

Mr. Gulibon suggested inviting Secretary Negrin with DEP and Secretary Redding with PDA to an upcoming board meeting.

Jennifer Reed-Harry offered having the Board and DEP staff visit a farm if anyone is interested.

Bob Haines reminded Board members that past requested agenda items are being coordinated and have not been forgotten.

Mr. Gulibon reminded the Board that at the December meeting officer elections will take place and encouraged members interested in serving in either role to come forward and make their intentions known.

Adjourn – Grant Gulibon, Chair

Due to lack of a quorum a motion was not made to adjourn the meeting.