

WATER RESOURCES ADVISORY COMMITTEE (WRAC)

September 15, 2022 minutes

Call to Order, Introductions and Attendance – Jenifer Christman, Chair

The meeting of the Water Resources Advisory Committee was called to order by Jenifer Christman at 9:30 a.m., virtually via Microsoft Teams and in-person in room 105, Rachel Carson State Office Building, Harrisburg, PA. A roll call was conducted, and of the 16-member committee, 9 were present and 7 were not present.

The following committee members were present:

Myron Arnowitt – Clean Water Action
Alexandra Chiaruttini – The York Water Company
Jenifer Christman – Western Pennsylvania Conservancy
Shirley Clark, Ph.D., P.E. – Pennsylvania State University
Kent Crawford, Ph.D. – USGS (Retired)
John Jackson, Ph.D. – Stroud Water Research Center
Stephen Rhoads – Shell (Retired)
Jeff Shanks – Waste Management
Steven Tambini – Delaware River Basin Commission

The following committee members were not present:

Harry Campbell – Chesapeake Bay Foundation
Andrew Dehoff – Susquehanna River Basin Commission
Matthew Genchur – White Township
Theo Light, Ph.D. – Shippensburg University
Cory Miller – University Area Joint Authority
Dean Miller – Pennsylvania Water Environment Association
Charles Wunz, P.E. – Wunz Associates

Review and Approval of Minutes from July 21, 2022 Meeting – Jenifer Christman, Chair

Stephen Rhoads requested an amendment pertaining to the discussion after Jill Whitcomb's presentation at the July meeting. He asked that the sentence *Stephen Rhoads mentioned a 2021 OMB report showing that PA spent more than \$700 million in state and federal funds over the last three fiscal years on the Chesapeake Bay restoration effort* be added at the beginning to provide clarity around the context of the discussion. Jenifer Christman requested an edit specific to the discussion after Sharon Hill's presentation, noting that she *disagreed* with credits being given for the creation of wetlands from subsidence. Kent Crawford made a motion to approve the minutes as amended, seconded by Shirley Clark. Myron Arnowitt and Steven Tambini stated they should abstain from approving since they were not present at the July meeting. Seven approved, none opposed. Motion carried.

Informational Item: 2023 PAG-12 Update: NPDES General Permit for Operation of Concentrated Animal Feeding Operations (CAFOs) – Kate Bresaw, Bureau of Watershed Restoration and Nonpoint Source Management

Ms. Bresaw presented an overview of the 2023 PAG-12 reissuance, noting a target date of December 24, 2022 for finalization of the reissued PAG-12, which will allow permittees 90 days to file a Notice of Intent (NOI) before the anticipated effective date of April 1, 2023. Modifications have been made to the draft permit documents based on preliminary comments from the United States Environmental Protection Agency (EPA) and are focused on further explanation regarding when and how additional Best Management Practices (BMPs) may be required in Part C(6) of the permit. An additional checklist is now included that identifies BMPs. The key concern EPA expressed was the draft permit's consistency with National Pollutant Discharge Elimination System (NPDES) regulations for discharges to impaired waters with an approved Total Maximum Daily Load (TMDL). To remain covered under the reissued permit, existing permittees should anticipate submitting a new NOI between January 1, 2023 and March 31, 2023, but they will not be required to submit an additional annual fee.

Ms. Bresaw summarized some of the draft proposed changes which include updates to the 25-year/24-hour storm and 100-year/24-hour storm to refer to National Oceanic and Atmospheric Administration (NOAA) Atlas 14-point precipitation frequency estimates. 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 as a result of the 2022 avian flu outbreak.

Kent Crawford commented that the process of obtaining a permit is overwhelming and wondered if it is overwhelming to applicants. Ms. Bresaw responded the process is necessarily complex and guidance is offered to allow permittees to meet the requirements of the permit.

Kent Crawford asked Jenifer Christman if the committee has a plan to provide Ms. Bresaw with comments with a deadline of today. Jenifer responded that she has not personally developed a plan and that if comments are provided, the committee will need to discuss it today. Kent asked Ms. Bresaw how firm today's deadline is. Ms. Bresaw commented that the Department would like to stay on schedule; however, Ms. Bresaw can offer a couple days leeway for comments from WRAC members since the Department is awaiting comments from the Agricultural Advisory Board (AAB) until September 23. Kent offered to review and provide comments. Jenifer asked if any other committee members are willing to provide comments as well. John Jackson responded that, traditionally, specific comments came from individual committee members and asked if Ms. Bresaw is looking for the committee to move forward with a recommendation to proceed with the material as presented. Jenifer responded that the material presented today is informational only. John said a reminder could be sent to individual committee members with a request to provide comment by Monday. Jenifer said she would recirculate the July 25 email and ask that comments be provided to Ms. Bresaw by Tuesday, September 20. Jenifer asked Ms. Bresaw if the PAG-12 permit applications are put together by the operators or by external consultants. Ms. Bresaw responded that PAG-12 permit applications are usually put together by external consultants.

Informational Item: PAG-03: NPDES General Permit for Discharges of Stormwater Associated with Industrial Activity – Maria Schumack, Bureau of Clean Water

Ms. Schumack discussed the redrafted PAG-03 NPDES General Permit. The current PAG-03 general permit was set to expire on September 23, 2021 but has been administratively extended until March 23, 2023. Redraft updates include clarification for when DEP will deny coverage and adding additional language to Part C regarding Best Management Practices (BMPs). Updates in response to public comment include the use of composite samples in place of grab samples and not requiring permittees to implement all BMPs in the stormwater BMPs checklist but they must consider implementation of each BMP. If any BMPs are not implemented, the permittee must include an explanation. The redrafted permit was published on August 20, 2022 with a 30-day public comment period which closes on September 19, 2022.

Jeff Shanks asked if there is any consideration from the DEP to increase the benchmark value for Total Suspended Solids (TSS) from 100 mg/L to 150 mg/L as well as increasing the 3.0 mg/L numeric value for nitrate/nitrite. Ms. Schumack responded that she cannot comment on the DEP's flexibility to change the benchmark for TSS since it had been increased to 150 mg/L and the United States Environmental Protection Agency (EPA) objected to it, characterizing it as anti-backsliding. Ms. Schumack stated that, in this permit term, a more thorough evaluation of each benchmark value will be done and consideration will be made for inclusion in the next PAG-03 general permit term. Ms. Schumack responded that the 3.0 mg/L benchmark value for nitrate/nitrite was based on guidance but that it could be reconsidered if public comments are received; however, there has been no data received that indicates it should be increased.

Stephen Rhoads asked for clarification on the TSS benchmark, specifically if the BMPs included in the checklist are sufficient to get to 100 mg/L. Ms. Schumack responded that this is going to be evaluated in the next permit term. Information will be collected and reviewed on all BMPs installed at facilities and determination will be made if the BMPs are meeting the benchmark values that are in place. Stephen expressed concern that the DEP is setting a standard that they do not know is achievable. Ms. Schumack commented that this benchmark value is included in

the current permit and what DEP is proposing is a reevaluation of the benchmark value in the next PAG-03 permit term.

Shirley Clark commented that she sat on the National Academies' panel that was developing a response to the EPA getting sued over the MSGP. She stated the data they had from several industries indicated the TSS benchmark value of 100 mg/L could be met for most storms. There was a push by the people who sued the EPA to drop the TSS limit to lower than 100 mg/L to which the National Academies' panel said there is not good data without going to extremely expensive measures.

Adam Duh, counsel for DEP's NPDES program in the Bureau of Regulatory Counsel, commented that the TSS benchmark value itself is not an effluent limitation but a measure of efficacy of the BMPs installed at the facility. It would not trigger an immediate violation if the TSS benchmark value was exceeded but rather trigger additional requirements to ensure the efficacy of the BMPs themselves.

Jeff Shanks asked when the revised general permit will be published and also commented that Adam's statement is correct in that there is not a notice of violation associated with a benchmark value but it does require submission of a plan to the DEP for review and approval related to remedial actions that will be taken to get the numbers below the benchmark value. Jeff said this can result in a quasi-assessment monitoring situation in cases where you do not meet the benchmark.

Ms. Schumack responded that there is no hard deadline for publishing the PAG-03 general permit redraft and that the public comment period is open until September 19, 2022. The comments will be reviewed and necessary updates will be made. Ideally, DEP would like to have the redraft published before December 23, 2022 which would allow permittees enough time to submit an NOI before March 23, 2023.

Informational Item: PAG-15: NPDES General Permit Reissuance for Point Source Discharges from the Application of Pesticides – Maria Schumack, Bureau of Clean Water

Ms. Schumack summarized the proposed changes to the PAG-15 general permit which expires on October 28, 2022 and currently provides coverage for 15 facilities statewide. The proposed changes will require all existing permittees to submit a renewal NOI for continued coverage. Additional changes include requiring permittees to submit an amendment NOI with a \$500 fee to request changes in pesticides used or treatment areas and activities conducted below the thresholds where permit coverage is not required will have coverage without submitting a NOI.

Jenifer Christman asked what types of facilities have PAG-15 permits. Ms. Schumack responded that anyone using a pesticide in water or at a water's edge and going above certain thresholds.

General Discussion/Agenda Topics Request – Jenifer Christman, Chair

Myron Arnowitt asked if DEP could provide updates regarding the new and additional federal funding received for clean water projects. Jay Patel with the Municipal Facilities Division in the Bureau of Clean Water commented that his division handles both the Clean Water State Revolving Fund and Drinking Water State Revolving Fund and they would be happy to provide information at a future meeting in coordination with PENNVEST.

Public Comment Period – Jenifer Christman, Chair

No public comments were made.

Adjourn – Jenifer Christman, Chair

John Jackson motioned to adjourn the meeting, seconded by Stephen Rhoads. All approved, none opposed. Motion carried.