

WATER RESOURCES ADVISORY COMMITTEE (WRAC) Meeting

July 20, 2023 9:30 a.m.

Susquehanna Rooms A & B
DEP Southcentral Regional Office
909 Elmerton Avenue, Harrisburg, PA 17110

and

Microsoft Teams

https://teams.microsoft.com/l/meetup-join/19%3ameeting_OWI1MDdkMjgtZDA4Ni00NjJkLWI0NTctYTkwYTkwNDdiMzA3%40thread.v2/0?context=%7b%22Tid%22%3a%22418e2841-0128-4dd5-9b6c-47fc5a9a1bde%22%2c%22Oid%22%3a%22b24d8ba1-e645-4ccd-bbf7-14bcd3de0b76%22%7d

Join by phone

Toll number: +1 267-332-8737
Conference ID: 883 572 916#

Agenda

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

The meeting was called to order by Jenifer Christman at 9:33 a.m. A roll call was conducted, and of the 15-member committee, 11 were present and 4 were not present. A quorum was established.

The following committee members were present:

Myron Arnowitt – Clean Water Action
Harry Campbell – Chesapeake Bay Foundation
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)
Andrew Dehoff – Susquehanna River Basin Commission
Matthew Genchur – White Township
John Jackson, Ph.D. – Stroud Water Research Center
Stephen Rhoads – Shell (Retired)
Charles Wunz, P.E. – Wunz Associates

The following committee members were not present:

Theo Light, Ph.D. – Shippensburg University
Cory Miller – University Area Joint Authority
Dean Miller – Pennsylvania Water Environment Association
Steven Tambini – Delaware River Basin Commission

Review and Approval of Minutes from March 16, 2023 Meeting – Jenifer Christman, Chair

No additions or edits were proposed. John Jackson motioned to approve the minutes seconded by Harry Campbell. All approved, none opposed. Motion carried.

Officer Elections

Kent Crawford nominated Jennifer Christman for Chair. All members in attendance accepted the nomination for Jennifer Christman as Chair.

Kent Crawford nominated Andrew Dehoff as Vice-Chair. All members in attendance accepted the nomination for Andrew as Vice-Chair.

Guidance for Developing a Chapter 105 Alternatives Analysis (Informational) – Andy McDonald, Bureau of Waterways Engineering and Wetlands

Mr. McDonald informed the Committee that the bureau is nearing completion of final edits in response to public comments received. DEP is prepared to publish the final guidance document in the fourth quarter. Detailed guidance has not been developed until now and DEP is hopeful this 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.

Alexandra Chiaruttini asked Mr. McDonald to expand on the term practicable. Mr. McDonald said the term practicable, available and capable of being used is the summary conclusion and there are factors included in the analysis to get to the conclusion of being practicable or not practicable.

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

Ms. Bresaw informed the Committee that based on input through conversations with the Agricultural Advisory Board (AAB) PAG-12 workgroup and Environmental Protection Agency (EPA), the permits would provide a way 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). She explained that in those situations additional Best Management Practices (BMPs) will be requested for a CAFO consistent with Part C.VI. 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 a CAFO. Assessments resulting in a determination of "high" will generally result in a CAFO not being eligible for coverage under PAG-12 or a facility may be eligible if implementation of or a commitment to implement appropriate BMPs to reduce the reasonable potential of water pollution. EPA is 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.

Kent Crawford asked if there will be a significant increase in monitoring and oversight from EPA under the new agreement between EPA and the states and if it will extend to CAFOs. Ms. Bresaw responded, as is stated in EPA press releases and other public documents, there will be increased EPA oversight of animal agriculture. Adam Duh reminded the Committee that DEP is not a party to the settlement agreement and explained that it is EPA's decision on how they are going to move forward with inspections pursuant to what they agreed to in the settlement agreement.

Charles Wunz asked if permittees will be allowed to switch between an individual permit and a PAG-12 permit. Maria Schumack responded that if a permittee qualifies for a general permit they can switch from an individual to a general permit.

Steve Rhoads commented that it would be beneficial to have an update regarding the relationship between EPA and DEP and the various programs that will be affected by the settlement agreement.

Alexandra Chiaruttini asked when the last time was DEP developed a TMDL. Ms. Bresaw responded there is a TMDL team that is continually working on TMDLs and/or creating plans to address impairments within watersheds.

Land Application of Manure, a supplement to Manure Management for Environmental Protection (361-0300-002) Substantive Revision – Kate Bresaw, Bureau of Watershed Restoration and Nonpoint Source Management

Ms. Bresaw informed the Committee that the supplement outlines the plan templates for operations that are not Concentrated Animal Operations (CAOs) or CAFOs. These facilities use the guidance to comply with 25 Pennsylvania Code § 91.36(b). The purpose of the revision is to address the diverse planning needs of the regulated community. The draft includes two standard planning options (Manure Management Plan Short Form and Manure Management Plan Workbook) for non-CAOs and non-CAFOs to meet the requirements under 91.36(b). If the guidelines on the Manure Management Plan Short Form are followed, then the water quality risks associated with the operation are deemed to be minimal and the short form will satisfy the planning requirements under 91.36(b). The Manure Management Plan Workbook now includes an Animals Worksheet and Agricultural Process Wastewater Worksheet. The Animals Worksheet does not change the regulatory threshold of when an Act 38 Nutrient Management Plan may be required but it provides the operator with necessary information to determine if they are approaching the threshold. Revised worksheets include Operation Information, Environmentally Sensitive Areas, Winter Spreading and Manure Management Plan Summary.

Kent Crawford asked if there is a flowchart to explain to the applicant how to navigate the permitting process. Ms. Bresaw responded that non-CAOs and non-CAFOs are not required to be under a permit. The supplement is the plan templates they should use to determine how to apply their manure and agricultural process wastewater.

John Jackson asked if the revisions are designed to reduce the load or to get better compliance/implementation of the manure management plan. Ms. Bresaw responded ideally both. If people are operating without a plan, there is no way to document that they are not over-applying nutrients. If they are over-applying nutrients, this is the workflow that they will use to identify that problem.

Harry Campbell inquired about the status of updates to the phosphorous index. Ms. Bresaw commented it is currently in the works but has no additional updates.

Re-draft of PAG-04 NPDES General Permit for Small Flow Treatment Facilities (SFTFs) (Informational) – Maria Schumack, Bureau of Clean Water

Ms. Schumack presented to the Committee that the permit expired on May 11, 2019 and has been administratively extended until November 11, 2023. No new coverage may be granted during the extension. The draft PAG-04 was published on November 5, 2022 with a 30-day public comment period. It included a requirement

that all existing permittees would submit a renewal Notice of Intent (NOI). After the draft was published, DEP evaluated 25 Pennsylvania Code § 92a.23(c) and determined that a renewal NOI was not needed for SFTFs. The requirement will be removed based on 92a.23(c) in the re-draft.

Overview of Agricultural Conservation Assistance Program (ACAP) (Informational) – Eric Cromer, State Conservation Commission (SCC)

Mr. Cromer informed the Committee that the program was created in the FY 2022-2023 General Fund state budget. The Clean Streams Fund (CSF) was created with an initial appropriation of \$220 million. Seventy percent (\$154 million) of the CSF is dedicated to ACAP and ten percent (\$22 million) is dedicated to the Nutrient Management Fund. The administration of the program includes development of guidelines and criteria, designating eligible BMPs and designating a system for collecting and reporting data. Funds are allocated to counties based on a set of criteria which includes agriculturally impaired stream miles, number of cropland acres, number of farms, number of livestock and poultry and additional criteria established by SCC. Funds can be rolled over to the following year and they must be spent by December 31, 2026. BMPs that are eligible include manure storage, buffers/cover crops, waterways and watering facilities.

Steve Rhoads asked if any of the money has been used yet on projects. Mr. Cromer said there are projects on the ground that are near completion. Two or three conservation districts have submitted for reimbursement.

Jenifer Christman asked if SCC has a map that shows where the funding was allocated as far as percentages. Mr. Cromer responded that the SCC has a map that shows how much funding each region received that can be sent to the board.

Harry Campbell asked Mr. Cromer to expand on the criteria that is used to determine funding allocations for counties. Mr. Cromer explained that the criteria is weighted based on agriculturally impaired stream miles and bay region counties receive 60%-70% of the funding while the remaining 40% goes to non-bay counties.

Steve Rhoads asked why each county was permitted to arbitrarily choose their own cost share basis. He commented that having a statewide standard would make for consistent use of the funding. Mr. Cromer replied the reason is because of competition with other cost share funding.

Charles Wunz asked if the amount of nutrients delivered to Maryland is considered when evaluating a funding request. Mr. Cromer responded that it is considered in the evaluation process.

General Discussion/Agenda Topics Request – Jenifer Christman, Chair

Kent Crawford and Steve Rhoads would like an update on the EPA Chesapeake Bay settlement. Alexandra Chiaruttini requested an update on nutrient trading. Jenifer mentioned an update from the TMDL team would be beneficial. Steve Rhoads agreed and said it would be interesting to hear an update on success and achieving compliance.

Public Comment Period – Jenifer Christman, Chair

No public comments were made.

Adjourn – Jenifer Christman, Chair

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

DRAFT