

DRAFT

## **MINUTES**

### **AGRICULTURAL ADVISORY BOARD MEETING**

**June 20, 2012**

DEP Southcentral Regional Office

Susquehanna Room A

Harrisburg, PA

#### **In Attendance – Members**

**Doug Beegle, The Pennsylvania State University**

**Mary Bender, Department of Agriculture**

**Larry Breech, Pa Farmers Union**

**Jennifer Harry, PennAg Industries**

**Kelly Heffner, Department of Environmental Protection**

**Stephen Hershey, Poultry Producer**

**Duane Hobbs, Agriculture Chemicals Manufacturer**

**Greg Hostetter, USDA Farm Service Agency**

**Betsy Huber, Pennsylvania State Grange**

**Keith Masser, Vegetable Producer**

**Robert Maiden, Pennsylvania Association of Conservation Districts**

**William Neilson, Pennsylvania Farm Bureau**

**Gerald Seyler, Grain Producer**

**William Wells Jr. – Ornamental Horticulture**

#### **In Attendance - Agencies, Advisors, and Guests**

**Johan Berger – State Conservation Commission**

**William Fink, Country View Farms**

**Katie Hetherington – PA Landscape and Nursery Association**

**Kim Snell Zarcone, Conservation PA**

**Galen Weibley**

**Tom Bold, Jason Dunham, Sid Freyermuth, Ron Furlan, Sean Gimbel, Kenn Pattison,**

**Frank Schneider, Susan Seighman, Steve Socash, Steve Taglang - Department of**

**Environmental Protection**

The June 20, 2012, meeting of the Agricultural Advisory Board (AAB) was called to order by Chairperson Keith Masser at 10:03a.m.

Chairperson Masser announced that the following members had asked to be excused:

Dave McElhaney, Livestock Producer

Susan Marquart, Natural Resources Conservation Service

Chairperson Masser welcomed Stephen Hershey as the new Poultry Producer representative.

Members of the AAB introduced themselves, as did the various guests.

Minutes from the April 18, 2012 meeting were approved.

**Draft NPDES General Permit for discharges from aquatic animal production facilities (PAG-11) and Draft NPDES general permit for discharges from aquatic animal production facilities to high quality or exceptional value waters (PAG-14)** – Ron Furlan, Bureau of Point and Non-Point Source Management provided an update on the status of the Draft NPDES Permits for aquatic animal production facilities (PAG-11) and (PAG-14).

Mr. Furlan noted that Act-94 of 1998 required the Department to develop NPDES General Permits for aquaculture.

Mr. Furlan mentioned that the development of the two proposed General Permits has occurred over a long period of time and that during the development many meetings were had with advisory groups. Some of the staff and advisory groups consulted would include the Pennsylvania Department of Agriculture (PDA) staff, PDA Aquaculture Committee, the Department of Environmental Protection (DEP) Agricultural Advisory Board (AAB), PennAg Industries and others.

Mr. Furlan reported that the PAG-11 and PAG-14 were published in the Pennsylvania Bulletin on April 21, 2012 for a public comment period that ended on May 21, 2012. Mr. Furlan reported that several comments were received and that the Environmental Protection Agency (EPA) is additionally reviewing and their comment period ends on July 21<sup>st</sup>.

Mr. Furlan expects that after the EPA and public comments are received, reviewed and addressed by DEP, that the final PAG-11 and PAG-14 general permits will be published by the fall of 2012.

## **Concentrated Animal Feeding Operation (CAFO) General Permit Renewal (PAG-12) –**

Kenn Pattison, Bureau of Conservation and Restoration, provided an update on the status of the Renewal of the CAFO General Permit (PAG-12) in response to bring the permit into line with EPA's 2008 Federal CAFO regulations.

Mr. Pattison went over the “major changes” to the PAG-12 and referenced several of the comments that were addressed with the AAB CAFO workgroup on June 12, 2012. Those changes and comments are listed below:

- Termination – The PAG-12 will not automatically terminate if the permittee fails to reapply at the end of their current permit period. The permit will continue in effect unless DEP terminates.
- Animal Equivalent Units (AEUs) -
  - Currently exceeding the AEUs listed in the Nutrient Management Plan (NMP) would represent non-compliance with the permit. Changes will now refer to staying within the parameters of the NMP and will allow the permittee to notify DEP if the permittee proposes to increase AEUs by more than 10% which is similar to the Act-38 regulations.
  - The AEUs definition will include “on an annual basis” language as Dr. Beegle and the AAB CAFO workgroup noted to make it consistent with the Act-38 regulations.
- Definitions – several additional definitions are being required by EPA
  - Animal Feeding Operation (AFO).
  - Small CAFO – The AAB CAFO Workgroup asked that this definition be removed to minimize confusion.
  - Medium CAFO - The AAB CAFO Workgroup asked that this definition be removed to minimize confusion.
- Size of Manure Storage – Manure storages must be sized to ensure adequate storage to meet application times in the NMP. EPA is requiring this and it is perceived to be an attempt to minimize winter spreading. The AAB CAFO workgroup has concerns for over-sizing storages and the cost associated with those structures and questioned if old facilities would need to retrofit to meet the new storage requirements.
- Daily Inspection – Drinking water and cooling water lines were added per EPA comments. The AAB CAFO workgroup would like better clarity on exactly what type of inspections and record keeping would be needed.

- Periodic Inspections – EPA commented that the permit should include inspection of manure application equipment when applying. The AAB CAFO workgroup would like better clarity and has a concern for the meaning on “periodic”.
- Other Record Keeping –
  - Weather – EPA asked that the weather be recorded for the day before, day during, and day after manure applications - The AAB CAFO workgroup thought this was excessive.
  - Mortality – The new permit will require listing mortality management methods and practices.
  - The updated permit will require that a permittee maintain a copy of the manure storage facility design on site.
  - The updated permit will require weekly inspections of manure storage structures (visible cracks, rodent holes, tree and shrub growth, slope failure, tears in liner, or any pollution issue associated with manure storage).
- Annual Reporting – The annual reporting in the updated permit will include the crops planted, crop yields, quantity of manure and/or wastewater applied. The annual reporting year will run from October 1 thru September 30, which is the federal fiscal year, the crop year according to the Act-38 regulations, and the federal water year that is consistent with all other NPDES permits. The submittal date for the annual report would be December 31<sup>st</sup>. Mr. Steve Hershey and the AAB CAFO workgroup commented that the “year” may be a problem for southern areas of the state as many crops may not be harvested by September 30<sup>th</sup> and recommended that the annual reporting period should be the calendar year.
- Non-Compliance Reporting – The update permit will require a non-compliance with the permit conditions notice within 4 hours of becoming aware of the non-compliance and a report submitted to DEP within 5 days. The previous provisions were notice with 5 days and report within 2 weeks. Mr. Pattison acknowledged that there may be a problem with the 5 day reporting period but that requirement is contained within the Chapter 92a regulations for all NPDES permits so we cannot change it.
- Addition of existing regulations – Several restatements of existing regulations were added to aid the permittee.
  - Submittal to DEP of new, amended, or revised NMP within 30 days.
  - Annual review of NMP.

- Mechanical manure application setbacks.
  - Winter application setbacks, when allowed by NMP.
  - Keeping records of quantity of manure exported off site.
  - Providing copies of recent manure analysis to persons receiving exported manure.
  - Manure stockpiling requirements.
  - Yearly manure sampling.
  - Soil sampling every 3 years.
  - If needed, updating Erosion and Sedimentation Control Plan (E&S plan) to include Animal Heavy Use Areas (AHUAs)
- EPA Statement that was included – “Changes to the NMP that are likely to increase the risk of nitrogen and phosphorous transport to surface waters are classified as substantial changes which require an amendment of the NMP with full public notice and comment...”  
The AAB CAFO workgroup commented that this statement is not clearly defined and that the permittee should follow the 10 specific reasons in Chapter 83 on when or why a NMP should be amended.

Mr. Pattison noted that the updated permit is expected to be published in the Pa Bulletin for public comment in August or September 2012.

Mr. William Wells inquired if EPA will be providing an administrative assistant to assist with all the paperwork requirements. Mr. Pattison answered that “draft” reporting forms will be developed and should help keep the permittee keep track of all the reporting requirements. Mr. Hershey comments that reporting is part of the business, good or bad.

Mr. William Neilson inquired if a permittee could use their records from the NMP. Mr. Pattison answered yes but the permittee will be required to keep additional records as well and that it may be more beneficial to use the “draft” CAFO record keeping forms.

Ms. Jennifer Harry acknowledged that EPA is not finished commented on the draft updated permit and that DEP still has some changes to make and that she would like to see the AAB CAFO workgroup continue to meet and that Mr. Hershey be added to the group. Mr. Hershey accepted.

Mr. Neilson asked if the 10% AEU variance was enough to handle normal animal flow on CAFOs and those CAFOs on the AAB and in the audience agreed that it was and that it is consistent with the Act-38 regulations.

**Draft General Permit WMGM042 (Manure Digesters) - Stephen Socash, Bureau of Waste Management, provided an update on the Draft General Permit for Manure Digesters (General**

Permit WMGM042) that was previously discussed with the AAB and a workgroup of the AAB. Mr. Socash explained that the Department received an application from a farm that wants to take municipal waste and add it to their manure digester. Mr. Socash explained that normal farming manure digesters are exempt from General Permits but since this farm will be utilizing municipal waste, it must operate under the Solid Waste Management Act (SWMA), which would require the use of a General Permit.

Mr. Socash reported that the Department received comments from 27 commentators, some from the AAB workgroup that was formed and some after the comment period, from an attorney that was representing a food waste composter, as agricultural manure digesters are a competitor to their business.

Mr. Socash explained the major comments that were received and included:

- Provide exemption for small digesters but that it can't be done because it would be a violation of the SWA.
- Bonding and Insurance – The bonding requirement was removed but municipal waste cannot be stored for more than 7 days on the farm. The insurance requirements could not be removed as they are a requirement of the SWMA.
- Setbacks – The Department tried to meld the Act-38 manure storage setbacks into the General Permit but had to keep the 300 yard setback for schools, parks and playgrounds, and 300 feet from occupied dwellings due to the requirement of the SWA.
- References to Chapter 285 (Storage and Transportation requirements) were reworded to add clarity and Act-90 references were removed
- Added that the processed material after digestion can be managed as manure, versus being treated as a solid waste.
- Still discussing the right of entry provisions and possible modifications, but they are in the SWMA, so probably cannot be removed.

Mr. Socash is optimistic that a final draft of the General Permit WMGM042 and a comment and response document will be completed soon.

Mr. Neilson stated that the 1<sup>st</sup> draft of the general permit would require separate storage facilities for the municipal waste and that it was too costly to build separate and new storage facilities.

Mr. Socash did not believe that the new and separate storage facilities was the case but agreed to research more and provide more clarity into what is and is not required.

Mr. Neilson commented that there is still confusion on the definitions of Pre-Consumer and Post-Consumer waste and that more clarity is need in the definitions and general permit language. Mr.

Socash mentioned that the Department received several comments on this subject and will try to provide more clarity as the general permit will apply to both pre and post consumer food scraps.

**Chapter 105, Dam Safety and Water Management Fees Rulemaking** - Sidney Freyermuth and Tom Bold, Bureau of Waterways Engineering and Wetlands, discussed the Chapter 105 Fees Rulemaking that was previously discussed with the AAB in 2010.

Mr. Freyermuth explained that the fee rulemaking package was put on hold but has now been reopened, but there has been no significant changes from what was reported in 2010. The purpose of the updated fee package is to cover the personnel costs of running the Chapter 105 program based on the time it takes personnel to review and process permits.

Mr. Freyermuth reported that the Department received 29 comments and most general supported the fees.

Mr. Freyermuth reported the proposed fees for the following, which will be reviewed every 3 years:

- Water Obstruction and Encroachment Permit Application Fees - Administrative Filing Fee = \$1,750 plus Applicable Disturbance Review Fees (\$800 for every 0.1 acres of permanent disturbance OR \$400 for every 0.1 acres of temporary disturbance).
- GP-1- Fish Habitat Enhancement Structures - \$50.
- GP-2 – Small Docks and Boat Launching Ramps - \$175.
- GP-3 – Bank Rehabilitation, Bank Protection, and Gravel Bar Removal - \$250.
- GP-4 – Intake and Outfall Structures - \$200.
- GP-5 – Utility Line Stream Crossings - \$250.
- GP-6 – Agricultural Crossings and Ramps - \$50.
- GP-7 – Minor Road Crossings - \$350.
- GP-8 – Temporary Road Crossings - \$175.
- GP-9 – Agricultural Activities - \$50.
- GP-10 – Abandoned Mine Reclamation - \$500.
- GP-11 – Maintenance, Testing, Repair, Rehabilitation, or Replacement of Water Obstructions and Encroachments - \$750 plus disturbance review fee listed above.
- GP-15 – Private Residential Construction in Wetland - \$750 plus disturbance review fee listed above.
- Environmental Assessment for Waived Activities - \$500.

- Major Amendments to Water Obstruction and Encroachment Permit - \$500 plus disturbance review fee listed above.
- Minor Amendment to Water Obstruction and Encroachment Permit - \$250.
- Transfer of Permit with Submerged Lands License Agreement - \$200
- Transfer of Permit without Submerged Lands License Agreement - \$100

Mr. Freyermuth explained that if a conservation district is delegated the authority from the Department for Chapter 105 review and processing, that the conservation district will keep the fee's collected.

Mr. Freyermuth reported that the Department is looking in consolidation of forms, applications, etc. so permit review and issuance can be expedited.

Mr. Freyermuth additionally explained that a conservation district cannot waive the fees but that the conservation district could be a sponsor of a permit application to the Department, since the Department cannot charge a fee to other governmental agencies. Mr. Larry Breech inquired if Local Educational Agencies fall under the waiver of fees for governmental agencies. Mr. Freyermuth could not answer at this time and will follow up with Mr. Breech with a legal opinion.

Mr. Robert Maiden thanked the Department for the work on this fee package and for allowing conservation districts to keep the fee's they collect. It is of his opinion that more conservation Districts will seek delegation for the Chapter 105 program from the Department, which should help to expedite the process.

Mr. Tom Bold discussed the fees for the Dam Safety portion of the Chapter 105 program. The proposed fees are as follows:

*Dam Permit Application Fees for New Dam Construction.*

<u>Hazard Potential Category</u> <u>Size Category</u>	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>
<u>A</u>	<u>\$26,500</u>	<u>\$26,500</u>	<u>\$25,500</u>	<u>\$23,500</u>
<u>B</u>	<u>\$19,000</u>	<u>\$19,000</u>	<u>\$18,500</u>	<u>\$17,000</u>
<u>C</u>	<u>\$10,500</u>	<u>\$10,500</u>	<u>\$10,000</u>	<u>\$8,000</u>

(A) Initial fees are based upon the size and hazard potential category of the final operating stage of the dam.



- (B) Staged construction requires an additional 90% of the appropriate fee for each additional stage beyond the initial stage of work proposed under this permit application, including any closure stage.

*Dam Permit Application Fees for Modification of Existing Dams.*

<u>Size Category</u> \ <u>Hazard Potential Category</u>	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>
<u>A</u>	<u>\$18,500</u>	<u>\$18,500</u>	<u>\$18,500</u>	<u>\$18,000</u>
<u>B</u>	<u>\$12,000</u>	<u>\$12,000</u>	<u>\$12,000</u>	<u>\$11,500</u>
<u>C</u>	<u>\$7,500</u>	<u>\$7,500</u>	<u>\$7,500</u>	<u>\$7,500</u>

- (A) Initial fees are based upon the size and hazard potential category of the final operating stage of the dam.
- (B) Staged construction requires an additional 85% of the appropriate fee for each additional stage beyond the initial stage of work proposed under this permit application, including any closure stage.

*Dam Permit Application Fees for Operation and Maintenance of Existing Dams.*

<u>Size Category</u> \ <u>Hazard Potential Category</u>	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>
<u>A</u>	<u>\$12,500</u>	<u>\$12,500</u>	<u>\$12,000</u>	<u>\$10,000</u>
<u>B</u>	<u>\$10,000</u>	<u>\$10,000</u>	<u>\$9,500</u>	<u>\$8,500</u>
<u>C</u>	<u>\$7,000</u>	<u>\$7,000</u>	<u>\$6,500</u>	<u>\$6,000</u>

*Letter of Amendment or Authorization Review Fees.*

<u>Size Category</u>	<u>Major Project</u>	<u>Minor Project</u>
<u>A</u>	<u>\$14,700</u>	<u>\$1,300</u>
<u>B</u>	<u>\$8,700</u>	<u>\$1,000</u>
<u>C</u>	<u>\$4,400</u>	<u>\$650</u>

- (A) The estimated total construction cost of the project shall be provided to the Department with the submission of the letter of amendment or authorization request.
- (B) A major project is a dam rehabilitation project qualifying for a Letter of Amendment for Dams or a Letter of Authorization for Dams as defined in § 105.1 (relating to definitions) whose total construction costs equals or exceeds \$250,000. If, after completion of the project, the total construction costs do not exceed \$250,000, the Department will refund the difference between major and minor project review fees upon approval of the completion certification as required under § 105.108 (relating to completion, certification and project costs).
- (C) A minor project is a dam rehabilitation project qualifying for a Letter of Amendment for Dams or a Letter of Authorization for Dams as defined in § 105.1 whose total construction costs are less than \$250,000. If, after completion of the project, the total construction costs exceed \$250,000, the difference in review fees between major and minor projects must be submitted to the Department with the completion certification as required in § 105.108.

*Major Dam Design Revision Review Fees Based on Major Dam Design Revision as Defined in § 105.1.*

<u>Size Category</u>	<u>Fee</u>
<u>A</u>	<u>\$4,700</u>
<u>B</u>	<u>\$3,200</u>

<u>C</u>	<u>\$1,700</u>
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*Environmental Assessment Review Fees for Non-Jurisdictional Dams, Letters of Amendment or Letters of Authorization.*

<u>Size Category</u>	<u>Fee</u>
<u>A</u>	<u>\$1,400</u>
<u>B</u>	<u>\$1,000</u>
<u>C</u>	<u>\$900</u>

*Transfer of Dam Permit as Required in § 105.25 (relating to transfer of permits).*

<u>Type of Dam Permit Transfer</u>	<u>Fee</u>
<u>No Proof of Financial Responsibility Required</u>	<u>\$550</u>
<u>Proof of Financial Responsibility Required</u>	<u>\$300</u>

*Annual Dam Registration Fees as Required in § 105.131a (relating to annual dam registration).*

<u>Hazard Potential Category</u> <u>Size Category</u>	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>
<u>A</u>	<u>\$1,500</u>	<u>\$1,500</u>	<u>\$800</u>	<u>\$0</u>
<u>B</u>	<u>\$1,500</u>	<u>\$1,500</u>	<u>\$800</u>	<u>\$0</u>
<u>C</u>	<u>\$1,500</u>	<u>\$1,500</u>	<u>\$800</u>	<u>\$0</u>

- (A) Annual registration fees are due by July 1 of each year.
- (B) If the annual registration fee is not received by July 1, all dams regulated by the Department are subject to a temporary suspension of the dam permit, if applicable, and the owner or operator may be required to drain the reservoir at a rate not to exceed 1 foot per day.
- (C) If the annual registration fee is not received by July 1, dams regulated by the Department qualifying for waiver of permit provisions in § 105.12. (relating to waiver of permit requirements) may be subject to a temporary draining of the reservoir at a rate not to exceed 1 foot per day.
- (D) If annual registration fees are not remitted as specified, interest will accrue on the entire amount from the original date payment was due, at a rate of 12% per annum until payment is remitted.

Chairperson Masser asked when the new fee package will become effective. Mr. Freyermuth expects the fee package to go to the Environmental Quality Board (EQB) on July 17, 2012. If the EQB approves, the Department would be looking at an effective date somewhere around January 1, 2013 and as many forms, applications, etc. need to be cross coordinated and approved.

Chairperson Masser then asked if there will be a transition period or “grandfathering”. Mr. Bold answered that the updated fees will only apply after the effective date and all existing applications, etc. in the “pipeline” will be “grandfathered”.

**Update – Draft “Conservation District Model Agricultural Complaint Response Policy”** - Steve Taglang, Bureau of Conservation and Restoration, provided an update on the status of the Draft “Conservation District Model Agricultural Complaint Response Policy”. The purpose of the policy is to document conservation district follow-up on complaints regarding water pollution from agriculture. The model policy also gives conservation districts confidence that the Department will follow-up on their referrals. It was noted that this policy is for the conservations district that are within the Chesapeake Bay watershed, but districts outside the watershed could also adopt the policy. The model policy would also address a requirement in the Chesapeake Bay Watershed Implementation Plan (WIP).

Mr. Taglang explained that the process to develop the policy started over 3 years ago when DEP asked each conservation district in the Chesapeake Bay watershed to submit their policies and/or procedures in regards to complaint response. The first draft included input from these district

policies, as well as, input from the Agricultural Water Quality Initiative (AgWQI) workgroup. Mr. Taglang reported-the Department released a draft for public comment and received 84 comments from 38 commenters. The comments included:

- “Negative Impact on District relationships with Agriculture”
- “Response time of 1 day is to short”
- “Need relevant inspection reports”
- “Why should district assess availability of financial assistance”
- “Model policy is cumbersome and complex”

Mr. Taglang reported that future steps will be to redraft the document to modify language and structure, as appropriate.—A second draft will be sent out to the AgWQI workgroup and the conservation districts for further review and the Department will-present the final draft to the State Conservation Commission (SCC) in September 2012.

Chairperson Masser asked if any members of the AAB or public had any comments. Mr. Taglang showed and explained the latest publication titled “Pennsylvania Agricultural Environmental Requirements” that will be mailed to everyone on the Pennsylvania National Agriculture Statistic Service (NASS) mailing list. Mr. Taglang also explained that the Department will be providing outreach materials to both the Pennsylvania House and Senate members that serve on the agricultural and environmental committees. Ms. Harry suggested that the materials be sent all House and Senate members.

There being no additional discussions, the meeting was adjourned at 11:30 a.m.