

October 22, 2020
9:00 AM – 11:30 AM
Department of Environmental Protection (DEP) Agricultural Advisory Board (AAB)
Virtual Meeting

<https://meet.lync.com/pagov/jbraund/87Q5WZMB>

Toll number: +1 267-332-8737
Conference ID: 879261173

Member in Attendance

Michael Firestine
John Bell
Jennifer Reed-Harry
Brenda Shambaugh
Matt Royer
Peter Vanderstappen
Kerry Golden
Destiny Zeiders
Matt Parido
Bill Evans
Joe Adams
Greg Hostetter
Darwin Nissley
Matt Matter

9:00 AM Welcome & Introductions
Announcement of Quorums

9:05 AM Action on previous AAB minutes

Darwin Nissley motioned to approve the August 27th AAB meeting minutes. Matt Matter seconded the motion. The meeting minutes from the August 27th board meeting were unanimously approved. Kerry Golden moved to approve the May 21st AAB meeting minutes. Jennifer Reed-Harry seconded the motion. The meeting minutes from the May 21st board meeting were unanimously approved.

9:15 AM AAB Bylaws Discussion - AAB members

John Bell discussed that the quorum requirements of the bylaws should be revised to clarify the intent of the bylaws and remove a parenthetical reference to a specific number. Mr. Bell explained that the parenthetical number of members that constitute a quorum currently expressed in the bylaws as “(11)” creates a problem whenever the Board does not have a full 20 members. The number in the bylaws is based on the assumption that the Board always has 20 members. Because of this issue, the Board is having trouble during its meetings to present a quorum because the Board currently does not have all 20 members. Mr. Bell shared with the Board his proposed amendment to these bylaws that would clarify that a majority of board members be present, not a specific number. Pursuant to the

bylaws, eight affirmative votes are needed to approve. Jennifer Reed-Harry motioned to approve the amendment to the current bylaws. Matt Matter seconded the motion. No objections were voiced. The amendment to the bylaws was unanimously approved.

9:45 AM Chesapeake Bay Update - Jill Whitcomb (DEP)

Jill Whitcomb first gave a brief review of the Phase 3 WIP implementation strategy. Ms. Whitcomb discussed how action leaders from agency and external parties meet quarterly to assess the progress and address challenges of the Phase 3 WIP. A state team also meets every six months for the sake of transparency with the public so that challenges and successes can be expressed. Ms. Whitcomb also shared an update on the local action that is taking place for country Tiers.

Ms. Whitcomb was excited to share that the DEP/SCC LOU finalized their joint agreement with USGS and NRCS to share data for analysis of reporting overlap. Overlapping of reported data has remained a main topic of discussion in Ms. Whitcomb's recent presentations to the AAB as it has created complications when attempting to analyze data accurately. Ms. Whitcomb said that this is one of the many ways that DEP is implementing the things that were outlined in last year's WIP.

Ms. Whitcomb reviewed the programmatic actions being taken by the Chesapeake Bay Office. While many of the actions are occurring in her office, the Chesapeake Bay Office still looks to other bureaus inside and outside of DEP to ensure that what they are implementing is consistent across the state, not just watershed.

The Best Management Practices (BMP) Data Warehouse that Ms. Whitcomb's office is working on would act as a central hub for data that is collected throughout the state. Ms. Whitcomb briefly explained the purpose for each aspect of the BMP Data Integration map shown in her presentation: BMP Data Warehouse, FieldDoc, PracticeKeeper, BMP Collection Template, and PA Clean Water Tool. The main goal of this BMP Data Warehouse is to provide consistent information among the agencies and the counties. Ms. Whitcomb expressed the importance of making data reporting more real-time and more informative of the work that is being done on the ground.

Ms. Whitcomb then touched upon the Conowingo WIP. The formation of the Conowingo WIP was the best way to move forward with dealing with the additional 6 million pounds of nitrogen due to the unanticipated infill at the Conowingo Dam. The draft Conowingo WIP was released for public comment on October 14th. The public comment period is 60 days and closes December 21st. All comments are to be submitted through the email listed on the press release. The Conowingo WIP is being developed by the Chesapeake Bay Program, not by DEP. Ms. Whitcomb expressed the desire for stakeholder review, engagement, and comment on the Conowingo WIP because it is going to be implemented and should be subject to a "reality check." The Conowingo WIP was not developed the same way that the Phase 3 WIP was developed. Because of this, it is very important for the members of the Board to share the Conowingo WIP draft with their colleagues and also share formal feedback through the comment process.

Ms. Whitcomb ended her presentation with an update on current actions and progress. The Chesapeake Bay Office submitted the 2-year numeric and programmatic milestones to EPA. EPA recommended that DEP focus on BMP that would reduce nitrogen by 60%. Ms. Whitcomb also provided an overview of action items based on if they were (1) completed or on-track, (2) in progress with minor hurdles, or (3) not started or in progress with major hurdles.

Jennifer Reed-Harry asked if it would be appropriate for AAB to form a workgroup to submit comments on the Conowingo WIP. Ms. Whitcomb supported that idea and proposed that a separate meeting be set up outside of the regularly scheduled AAB meetings to discuss the Conowingo WIP comments.

Ms. Reed-Harry also inquired about the P Index and what DEP is planning in relation to the P Index and permitting. Ms. Whitcomb replied that Jennifer Weld gave a presentation on the P Index during the August AAB meeting and deferred to Jay Patel as she is not well versed with the P Index.

John Bell asked to what extent DEP is going to receive and analyze the data that comes from local agencies/individuals and how that data is then going to be transposed to federal agencies in an effort to identify and credit BMPs that are being implemented. Ms. Whitcomb replied that DEP can aggregate the data and share that aggregated data with EPA on a county-wide scale or a sub-watershed scale. DEP does not provide landowner names or practices on specific locations. While DEP does keep personal information such as landowner names to make sure duplicate records are not present, DEP does not share that information elsewhere. The more detail that DEP gathers the better as it helps to ensure that the agency is not double counting data.

Mr. Bell then asked how FieldDoc and PracticeKeeper will get translated into a document that is usable but also protects identity for reporting. Ms. Whitcomb responded by saying that the formation of usable data that also protects personally identifiable information is all done on the IT side using coding and encrypting.

At this point, Mr. Bell revisited the formation of a workgroup concerning the Conowingo WIP and asked how other members felt about appointing a workgroup. Matt Royer was the first to voice his support of forming a workgroup. Mr. Bell motioned to approve the workgroup. Ms. Reed-Harry seconded his motion to support the formation. However, at the time of this discussion the previously present quorum had been lost. As a result, an official vote on the formation of this workgroup could not be conducted.

10:15 AM 91 & 92a Fees Presentation - Jay Patel (DEP)

Jay Patel began by presenting the timeline of the final rulemaking regarding WQM & NPDES permit application and annual fees. Proposed changes included a reduction in fees in categories that were most likely to be sought by small business and agriculture as well as the removal of a proposed automatic increase of fees based on a consumer price index. In addition, DEP suggested adding an exception for financially distressed municipalities.

DEP is planning to finalize the rulemaking for consideration to the Environmental Quality Board with one additional change, which affects general NPDES permits and the NOIs that are submitted for consideration under general NPDES permits. The proposed regulations state that the NOI fee can't exceed the amount of the fees associated with the comparable individual permit. The existing regulation states there is a \$2,500 cap on NOI fees, and the revised final rule would make the cap \$5,000. The fees subject to the cap could be applied over a 5-year period, so the annual installment of the NOI fee could be up to \$1,000. This change does not increase the general permit NOI fees; it will only increase the cap.

Ms. Reed-Harry asked if everyone will now be required to pay \$1,000 per year. Mr. Patel explained that there will be no immediate increase in any general permit fees, this provision simply raises the

maximum NOI fee cap. Each general permit fee is established within the master general permit itself. To increase fees, the general permit itself would need to be subject to draft and public comment periods. Mr. Patel also stated that there is no requirement for DEP to raise fees to the maximum cap, nor is that DEP's intent for most general NPDES permits.

Ms. Reed-Harry wanted clarification as to when the expiration date is of the current NPDES general permit for CAFO operation. Mr. Patel replied that master general CAFO permit is valid until 2023. He further reiterated that this \$5,000 cap applies to all general NPDES permits. This cap change would go into effect overall for Chapter 92a once the final rulemaking is finalized. The change in cap, if any, would only be implemented when the next master permit is created, which would be subject to a draft period and public comment. It generally takes about 2 years for a general permit to go from a proposal to final. DEP is hoping to have a revision for the CAFO general permit drafted well in advance of 2023 so that the new permit can begin on the expiration date of the current CAFO general permit.

10:45 AM Legislative Update

Kerry Golden presented a brief legislative update. There is one session day scheduled for Nov 10th with more to be scheduled for the House and the Senate thereafter with a goal to wrap up the fiscal year budget. There is \$5 billion hole to fill which is going to present great hurdles. The only legislative action update that Ms. Golden shared was regarding Senate Bill 915 which will regulate urban fertilizer and impose new fees on the fertilizer manufacturing industry. The Bill remains with the House Agriculture Committee and there will be no further consideration of that Bill.

11:00 AM Other Updates

Mr. Patel also provided a PAG-12 update. DEP is working through the finalization process of the PAG-12 changes and aiming to be done with the finalization process by the end of October.

Mr. Patel then mentioned how the agricultural workgroup for the Phase 3 WIP had a recommendation of using the P Index and considering phosphorus in regard to the management of biosolids or sewage sludge in terms of beneficial reuse. The Phase 3 WIP generally states that DEP will consider using the P Index when concerning beneficial reuse. Currently, DEP is creating drafts and making revisions prior to presenting the proposal on this issue to the AAB. Mr. Patel could neither confirm nor deny DEP's intent to use the P Index for biosolids beneficial reuse as it is only a consideration right now. DEP is hoping to present this material during the scheduled December AAB meeting.

11:15 AM Open Comment Period and Public Comments

No public comments were volunteered.

11:30 AM Adjournment

Next meeting of AAB is at: 9:00 AM, December 17, 2020 virtual meeting