

MEETING MINUTES

AGRICULTURAL ADVISORY BOARD

Wednesday, July 1, 2020

9:00 a.m. to 11:00 a.m.

Skype Meeting (Online)

**To join the meeting and view the presentations,
click on this link: <https://meet.lync.com/pagov/jbraund/J5M2RKL5>
Or call +1 267-332-8737 and enter the conference ID 328160772**

Members on the Call

JV Lamb – PA Grange
John Bell – PA Farm Bureau
Jennifer Reed-Harry – Penn Ag
Brenda Shambaugh – PACD
Kerry Golden – PA House
Destiny Zeiders – PA House
Aneca Atkinson – PA DEP
Greg Hostetter – PDA
Darwin Nissley – Livestock
Walter Moore – Dairy Producer
Peter Vanderstappen – NRCS

9:00 Convene Meeting – Chairperson

Member and Guest Introductions – Members introduce themselves in an effort to establish a quorum. The number of members participating in the meeting did not establish a quorum.

9:10 Overview of Proposed Amendments to PAG-12 – Jay Patel – Bureau of Clean Water

To begin the meeting, Mr. Patel briefly revisited slides from the Agricultural Advisory Board (AAB) meeting in May explaining the purpose of proposed changes to the PAG-12, NPDES General Permit for Concentrated Animal Feeding Operations.

9:30 Discussion

Mr. Patel explained that the primary focus of the discussion was to provide an opportunity for the Board to provide input on the Pre-draft version of the PAG-12 permit which was provided to the Board via email on June 6, 2020.

COMMENTS OF PENNAG INDUSTRIES:

Jennifer Reed-Harry, representing PennAg Industries, provided comments to the Department via email dated, June 18, 2020. Her comments/recommendations and respective meeting discussion were as follows:

Comment No. 1

Under the Authority granted by coverage, item No.1 and No.2. with the proposed removal of No.2 – what does the Department expect to receive as the NOI and Supporting documents (as stated in No 1.)? Please elaborate and provide detailed expectation to ensure both the applicant and the DEP reviewer adhere to the same process. Recommendation: In the event that a timely and complete NOI seeking continued coverage under PAG-12 has been submitted and the Department is unable, through no fault of the permittee, to reissue the permit before the expiration date below, the terms and conditions of this permit will be automatically continued, and this approval of Coverage will remain full effective and enforceable pending the grant or denial of the pending NOI as long as the permittee is and remains in compliance with the terms and conditions of the Approval of Coverage and PAG-12.

Mr. Patel confirmed that the Department intends to require that existing permittees submit a Notice of Intent (NOI) for coverage under the amended general permit following finalization of the amended permit. Upon evaluation of an NOI, DEP will determine if an applicant continues to be eligible for coverage and will provide documentation on its determination to the applicant.

Comment No. 2

Page 10, C: Routine Inspections and Record: No. 1 “...Except where the water lines are associated with facilities housing sheep, lambs, horses or duck”. Why specifically “ducks”? Recommendation: Replace the word ducks with poultry.

Mr. Patel explained that this requirement comes directly from the Federal requirements for the types of CAFOs referenced, so this requirement will need to remain as proposed.

Comment No. 3

Page 11, D Reporting and Related Requirements: 1(d). Failure to submit the CAFO Annual Report by the due date. Please elaborate to clarify how DEP staff will be interpreting the submittal of the NOI and Annual Report for continued permit coverage.

Ms. Reed-Harry clarified that PennAg Industries is concerned that there is the potential for inconsistency in how each NOI will be evaluated by DEP staff. She questioned whether staff utilize guidance on evaluation of NOI so that reviewers are consistent with their approach to review of the PAG-12 NOIs. Mr. Patel explained that each application will be evaluated on a case-by-case basis on the merits of the submission and the revised language will allow DEP to work with operators to be able to comply with the requirement. Concerns were raised regarding not currently having a streamlined process of contacting applicants when their applications are initially received. DEP suggested that applicant send submittals certified. DEP Deputy Secretary Aneca Atkinson assured Ms. Reed-Harry that the DEP would develop a notification process to notify applicants when their application has been received. Ideas suggested included creating a resource account to notify

applicants who submit applications via email as well as tracking mailed-in applications using a spreadsheet.

Comment No. 4

Page 11, D Reporting and Related Requirements: 3.a and 3.d, Annual Installment Payment. These sections reference the submittal of the annual payment and the later references electronic payment. Elaborate on the method of payment deemed acceptable to DEP and what form of receipt will be generated to the permittee/application.

This item was not discussed specifically during the discussion, but it was suggested that DEP will follow up with members on this issue.

Comment No. 5

Request that Department provide NOI Instruction, CAFO Annual Report Instructions, and the CAFO Annual Reporting Form, for review and comment.

DEP acknowledged that the public will be notified of changes to these additional forms during the draft permit public comment period.

COMMENTS OF WALTER MOORE:

Mr. Moore submitted the following comments and the respective meeting discussion was as follows:

Comment No. 1

Page 4 regarding the NOI - what exactly is to be included with the NOI? Will it be due the same time as the Annual reports? I think that is a big ask of the CAFO operators and the plan writers. Could the NOI be simplified to just 6-page application and not include the ACT 14 notifications? I believe you would already have all that info in your files so why create more work/kill more trees sending duplicate paperwork? I would suggest a simplified version of the NOI.

Mr. Patel acknowledged the understanding of the requirement and stated that DEP would consider if it would be able to address the concern.

Comment No. 2

Page 10 - I don't think that any CAFO operations should have to inspect and report their water lines daily. Personally, if we have a water line broken or a cattle water bowl running over we fix it. Adding it to the daily/monthly reporting requirement to me is a waste of everyone's time. If dropping that requirement is not an option then I think it should be required for ALL CAFO operations not a select few? Why should a Dairy CAFO have to do this and an Equine CAFO not have to?

Mr. Moore also questioned why some operations have to do CAFO water line inspections and reports on a daily basis while other operations do not. Mr. Patel explained that the regulations on CAFO inspections were set by the Federal government, not the DEP. If the Federal government would open these regulations for any reason, the DEP would consider commenting on the regulation. Peter Vanderstappen of NRCS provided his understanding that the requirement was based on an issue EPA encountered during an inspection of a poultry facility in Lebanon County.

Comment No.3

Page 11 - d. at the top and e at the bottom. I like the changes but am concerned with the word "may". I think that it is too vague and leaves it open to interpretation. Please consider making it more concrete.

Mr. Patel explained that the use of the word “may” in section 3.e on Page 11 is proposed to allow for the Department to use its discretion in handling the enforcement rather than immediate termination of permit coverage.

COMMENTS OF PENNSYLVANIA FARM BUREAU:

John Bell of the Pennsylvania Farm Bureau provided comments. The comments and subsequent discussion were as follows:

Comment No. 1

PA Farm Bureau is generally supportive of the objectives that PAG-12 is attempting to accomplish. The Department’s use of the annual report as the NOI has subjected CAFOs to addition legal and administrative problems. Challengers are attempting to claim a “right of appeal” to any and all aspects of a CAFO’s general permit each year that the CAFO operator’s PAG-12 permit is “renewed,” despite the CAFO operator’s faithful adherence to the production practices and nutrient management planning and implementation activities identified by the operator under his or her initial PAG-12 filing. The five-year general permit cycles strike a reasonable balance for both the Commonwealth and concerned citizens and for CAFOs and entities subject to the permit. Those concerned are given opportunity to review whether a regulated entity is operating consistently with terms of the permit and pursue administrative and judicial due process if they reasonably believe the entity may not be operating sufficiently within the permit’s terms. And CAFO operators and other regulated persons who comply with the terms of the NOI and accompanying materials initially filed are given reasonable assurance that they may pursue viable business plans consistent with their permit for an extensive period in the future.

Submission of a NOI by 1/1/2021 - we are concerned with the additional work and cost that CAFO operators faithfully adhering to the terms of their initial filing under 2018’s revised PAG-12 may have to do under the Draft PAG-12. Page 4 of the Draft would require “existing operations with coverage under the PAG-12 General Permit as of [Draft PAG-12’s effective date], who wish to remain covered under the PAG-12 General Permit” to “submit an administratively complete and acceptable NOI for PAG-12 General Permit coverage no later than January 1, 2021.”

It should be well understood by the Department that “initial” NOI filings for general permit normally require extensive documentation and analysis to accompany the filing of the NOI “notice.”

We believe the effect of Draft PAG-12’s directive for submission of an “administratively complete and acceptable NOI” is essentially to have all CAFOs operating under the current version of PAG-12 to perform a full resubmission of all documents and analyses for permit that they filed originally in 2018, and become subject once again to “right of appeal” by those who had already been given that opportunity in 2018. We feel it is especially unfair for current permit holders of PAG-12 who have already filed and have not violated the terms and criteria of their PAG-12 since 2018 to be required to perform a comprehensive refiling of documentation and analysis already performed under the holder’s original NOI filing, or become potentially subject to another round of “appeals” on matters that have already been identified under that original filing. Recommendation: CAFOs currently operating under PAG-12 only be required to file an NOI that consists of “notice” and any

material deviations in documentation to what was filed originally under the operator's initial NOI filing. Since potential objectors have already had sufficient opportunity to appeal a CAFO's initial PAG-12 filing, we further recommend that appeal of NOI filed by a CAFO currently operating under PAG-12 be limited to those matters related to deviations required to be identified.

Mr. Bell's reiterated his concerns and generally agreed that discussion of the prior comments sufficiently conveys the concern of the PA Farm Bureau.

Several Board members voiced concerns regarding the timeline of these changes going into effect. The main concern is that there may not be ample time left for applicants to prepare their NOI under the new changes by the time changes are approved and enforced. Allowing applicants enough time to prepare and submit applications remains a priority and Mr. Patel explained that the DEP is going to act as quickly on these changes as possible to avoid this issue.

10:40 Next Step with PAG-12

The Board members voiced their continued support of the steps DEP is taking to make positive changes to PAG-12. Mr. Patel explained that to ensure these changes are final in adequate time, the timeline is key. DEP would like to get a draft out in early August for public comment. The comment period will still be open during the next AAB meeting.

Kerry Golden requested that the DEP sends the members of the Board a list of references regarding the EPA regulations for the CAFO water line inspections.

Kelly O'Neil with the Chesapeake Bay Foundation asked how the DEP determines if a CAFO needs a general or individual permit, especially in watersheds impaired by nutrients, and if there is any consistency across regions. Jay Patel and Sean Furjanic did not have this information on hand but indicated that they will be answering this question outside of the meeting setting.

A sufficient number of Board Members were not available to establish a quorum; however, voting was not necessary during this meeting.

A discussion occurred regarding this format of future meetings. While many Board members would prefer the next meeting be held in a physical location, it was discussed that an in-person meeting is likely not feasible for August due to covid-19. As of now, the next meeting is presumed to be virtual.

10:50 Public Comment

No public comments were presented at this time.

11:00 Adjourn

The meeting was adjourned at 10:02 A.M.