

Minutes

Agricultural Advisory Board Meeting

January 27, 2020

DEP South Central Regional Office

909 Elmerton Avenue

Harrisburg, PA, 17110

In Attendance- AAB Members

William Neilson- PA Farm Bureau

Aneca Atkinson- DEP Office of Water Programs

JV Lamb- PA Grange

Darwin Nissley- Livestock

Kerry Golden- PA House

Walter Moore- Dairy

Matt Matter- Crop Farmer

Brenda Shambaugh-PACD

In Attendance (By Phone)-AAB Members

Destiny Zeiders- PA House

Mike Firestone

In Attendance- Agencies, Advisors and Guests

Craig Austin (nominated replacement for Duane Hobbs)

Pete Vanderstappen- NRCS

Jennifer Reed-Harry- PennAg

Josh Lookenbill- DEP Bureau of Clean Water

Dustin Shull- DEP Bureau of Clean Water

Jay Patel- DEP Bureau of Clean Water

Kelly O'Neil- Chesapeake Bay Foundation

Karl Brown- SCC

Frank Schneider- SCC

Matt Royer- PSU

David Hess- PA Environment News

Brian Chalfant- DEP Policy Office

Kara Fetter- DEP Policy Office

Jill Whitcomb- DEP Chesapeake Bay Program Office

Roger Adams- DEP Bureau of Waterways Engineering and Wetlands

Andy Klinger- DEP Bureau of Waterways Engineering and Wetlands

Shelby Freyermuth- DEP Office of Water Programs

Chris Ryder- DEP Office of Chief Counsel

Melanie Donnelly- House of Representatives

Ron Ohrel- Mid-Atlantic Dairy Association

Rich Reisinger- DEP Bureau of Waterways Engineering and Wetlands

Jesse Walker- DEP Office of Chief Counsel

Nathan Crawford- DEP Bureau of Clean Water

Grant Gulibin- PA Farm Bureau

Call to Order, Introductions and Attendance- The meeting of the Agricultural Advisory Board was called to order by JV Lamb at 9:30 AM, at the DEP South Central Regional Office, Susquehanna Room B. The members of the board introduced themselves, as did the other meeting attendees.

Meeting Minutes- It was discussed whether the minutes from the last meeting on November 7, 2019, needed any additions or corrections; there were none. Walter Moore made a motion to approve the minutes and it was seconded by William Neilson. The minutes were approved as presented.

Legislative Update- Jennifer Reed-Harry discussed a ban on a pesticide that she heard might be banned, per House Bill 2091, which would amend the PA Pesticide Control Act. Ms. Reed-Harry wanted to know if anyone had any updates on this, specifically mentioned was paraquat, which is an herbicide that is designed to kill weeds in crops. She asked if anyone had any updates regarding regulations on labeling, licensing, requirements, etc. She said it would be a hit to grain farmers, because what would they be able to use.

Destiny Zeiders said she does not have any updates drafted about this. Ms. Zeiders mentioned that Maryland has a similar bill, that Maryland legislature is not very friendly to agriculture. A discussion regarding organophosphate ensued, which is a class of insecticide that still fits a need for specialty crop

use. The question was brought up whether the EPA approved taking it off their list of approved insecticide products to be used.

Senate Bill 915, which is a fertilizer bill, is scheduled to be considered by the Senate in the next week. Currently there are no plans to approve it moving forward.

Chapter 102 Fee and Program Cost Analysis Report- Nathan Crawford (PA DEP Bureau of Clean Water)- Mr. Crawford spoke about the 3-year regulatory fee and program cost analysis report, set in place for the Chapter 102 program, which oversees erosion and sedimentation control. As part of the 102 regulations, fees established will be evaluated once every 3 years, and a report about the findings will be submitted to the Environmental Quality Board (EQB).

Mr. Crawford noted that, due to existing and projected shortfalls for 102 program implementation by DEP and delegated CCDs, DEP is recommending an increase in Chapter 102 filing and disturbed acreage fees. Mr. Crawford also noted that the statutes and regulations governing CCDs allow each CCD to set other fees as deemed necessary.

It was asked what the farm community will receive from paying increased fees in terms of speed and timeliness of issuing permits to farmers. Mr. Crawford said that e-permitting should decrease the amount of time to review permits. PAG-01 is a new general permit designed for small construction activities, which should allow for quicker reviews of those projects that are eligible.

Mr. Crawford also noted that new standard operating procedures have shortened timeframes for 102 permit application reviews. For example, shortening the timeframe for applicants to respond to deficiencies should help get approvable projects approved faster.

At this point, Mr. Crawford is not certain how much the Chapter 102 fees will need to be increased to address the shortfalls because this was not determined as part of the analysis performed. Any changes to the Chapter 102 fees would go through the appropriate regulatory review processes, including public comment.

Mr. Crawford noted that program costs are increasing primarily due to increases in staff costs. E-permitting will not change program costs. If there is a decrease in time for review, then staff will have more time to help CCDs in the field, perform inspections, etc.

Mr. Crawford noted that DEP will consult AAB about any proposed Chapter 102 fee increases.

Chapter 105 Regulatory Revisions- Andy Klinger (PA DEP Bureau of Waterways Engineering and Wetlands)-

Roger Adams, Director of the Bureau of Waterways Engineering and Wetlands, introduced Andy Klinger, the new Chief of the Division of Wetlands, Encroachment and Training, who has taken over many of the duties formerly handled by Ken Murin. Mr. Klinger then presented the proposed regulation changes to Chapter 105, which aim to clarify existing requirements, to delete or update obsolete requirements and references, to incorporate new or revised definitions, and to correct typographical errors.

Regarding the definition of probable maximum flood (PMF), Mr. Adams confirmed that PMF was tied into data from the National Oceanic and Atmospheric Administration (NOAA) and that, since 1979 when the regulations first came out, NOAA has not been active with providing probable maximum precipitation (PMP) reports to analyze, so DEP did its own PMP analysis. Along with the definition for

PMP, the NOAA data was not referred to although it is still used. But there is a lot more data to rely on now, PMF it is more consistent with the national standard.

An AAB member asked what is considered “regulated waters of this Commonwealth” and Mr. Klinger explained that regulated waters of this Commonwealth are already defined in Chapter 105 including watercourses (e.g., streams) and bodies of water including wetlands, reservoirs, lakes and their floodways.

Mr. Klinger provided some background on the development of this proposed regulation revision. DEP convened a Chapter 105 Agricultural Workgroup that included representatives from select CCDs, NRCS, and the State Conservation Commission (SCC). DEP also met with other state agencies, including the Department of Conservation and Natural Resources (DCNR) and the Pennsylvania Fish and Boat Commission, and a broader group of CCDs. DEP plans to present the proposed rulemaking to other advisory and stakeholder groups, including the SCC, DEP’s Water Resources Advisory Committee, and DEP’s Citizens Advisory Council. In developing the proposed regulations, DEP also met with a group representing major dam owners.

A motion for no further review by AAB before DEP takes the proposed rulemaking to EQB was made by Kerry Golden and seconded by Darwin Nissley. AAB unanimously concurred with DEP taking the proposed Chapter 105 rulemaking to EQB.

Chesapeake Bay Program Update- Jill Whitcomb (Chesapeake Bay Office)- Mrs. Whitcomb announced that she is the new Director of DEP’s Chesapeake Bay Office. Mrs. Whitcomb reviewed DEP’s Chesapeake Bay Agricultural Inspection Program and progress on implementing Pennsylvania’s Phase 3 Chesapeake Bay Watershed Implementation Plan (Phase 3 WIP).

Integrated Report Update- Dustin Shull (Bureau of Clean Water)- Mr. Shull reviewed the draft 2020 Integrated Water Quality Monitoring and Assessment Report.

Chapter 91/92(a) Fee Draft Final Annex A- Jay Patel (Bureau of Clean Water)- Mr. Patel discussed the final rulemaking for Water Quality Management (WQM) and National Pollutant Discharge Elimination System (NPDES) permit applications and fees under 25 Pa. Code Chapters 91 and 92a that DEP plans to take to EQB during the second half of 2020.

Mr. Patel noted that DEP presented information about the proposed rulemaking to AAB in June, October, and August of 2019, and that the proposed rulemaking was approved by EQB and published in the *Pennsylvania Bulletin* on March 30, 2019 for a 45-day public comment period.

Mr. Patel discussed several proposed changes in the final rulemaking that seek to alleviate some of the concerns identified in comments on the proposed rulemaking. In particular, Mr. Patel noted that DEP proposes to substantially reduce the proposed fee increases for several permits that are primarily applied for by small businesses and agricultural operators (e.g., for manure storage and concentrated animal feeding operations) in the final rulemaking. Mr. Patel also highlighted language proposed in the final rulemaking that would exempt financially distressed municipalities from fees under Chapters 91 and 92a.

Mr. Patel also noted that, in response to comments on the proposed rulemaking, DEP proposes in the final rulemaking to remove the provision that authorized DEP to adjust fees every two years to account for inflation.

Mr. Patel explained that, even with the proposed fee increases, DEP's fees will continue to be lower than those of most neighboring and comparable states for similar activities. Comments were made by several AAB members that the proposed reductions in fee increases are good for the agricultural community.

General Discussion- The next proposed meeting dates for 2020 were provided:

- May 21, 2020
- August 27, 2020
- October 22, 2020
- December 17, 2020

Comments/Concerns of the Board-

- Jennifer Reed-Harry inquired about an update from DEP on concentrated animal feeding operations (CAFOs), specifically the four CAFOs that are currently appealing CAFO permits. Ms. Reed-Harry asked about guidance from DEP regarding new CAFOs and how those CAFOs are they being handled in terms of equity. Ms. Reed-Harry also inquired about any potential changes in the CAFO general permit, noting that her members are concerned about the possibility of annual renewals creating an opportunity for appeals.
- Kerry Golden made a motion to re-approve the meeting minutes that had been approved earlier for the August 29, 2019 meeting, as the minutes were previously approved without a quorum present. Ms. Golden noted that 11 people are needed for a quorum. This motion was seconded by Matt Royer and passed.
- A motion was made by Darwin Nissley for future AAB meetings to begin at 9:00 AM rather than 9:30 AM; this motion was seconded and passed.

Public Comment- No comments from the public

A motion was made, seconded, and passed for the meeting to adjourn. The meeting adjourned at 12:20 PM.