



# **Act 38 Nutrient Management Program and Chapter 91 Manure Management Manual**

Agricultural Advisory Board Meeting  
June 17, 2021

# History – Administrative Manual

- ▶ SCC staff received a total of 24 comments / suggestions.
- ▶ SCC staff reviewed the comments / suggestions and deemed that 14 comments / suggestions had merit.
- ▶ These comments/ suggestion were shared with the NMAB in January 2021 and with the DEP AAB in March 2021
- ▶ The next slides will provide the major updated guidance for review (will not discuss typos, grammar use, etc.)

# Comment 2

## Plan Review and Approval

- ▶ Comment - Allow for full electronic submission of draft NMPs, as well as, addressing review comments to see the plan through the entire review process.
- ▶ Revision - The Act 38 program will accept electronic submissions of the initial Act 38 nutrient management plan and plan amendment submissions, with all sections completed, including signature, developed using the standardized Act 38 computer spreadsheet (Excel and Word) program. It should be noted that when the plan or plan amendment is determined to be in its final form for board action, a hard copy of the entire plan, and all plan maps, will need to be provided to the district or Commission for formal action. The electronic submission allowance is only for the initial submissions of new plans or plan amendments and any follow up plan correction submissions, and these electronic submissions need to be followed up with a hard copy once the plan or plan amendment is determined by the reviewer to be ready for final action. This allowance is not provided for the submission of yearly submissions to the conservation district, for filing in the farmer's approved plan file.

# Comment 3 Compliance

- ▶ Comment - Some type of guidance stating operators are not out of compliance if they have not over applied nutrients even if manure and crops have changed from what is written into the approved plan.
- ▶ Revision – see next slides

# Compliance Status of NMPs that Change Crop, Manure Type, or Application Season

- ▶ Provide guidance to conservation district regarding the compliance status of operators with Nutrient Management Plans that have changed the (1) type of manure applied to fields, (2) the crops that were grown, or (3) season of nutrient application; in regards to the approved NMP.
- ▶ Conservation District may become aware of these situations thru On-Site Status Reviews and the viewing of on-farm records.
- ▶ Operations that change the type of manure applied, changed the crop planned to be grown, or the season of nutrient application will require a Plan Update or Plan Amendment to be submitted and acknowledged / approved by the CD or the SCC. However, until that plan update / amendment is submitted, the operation will **not** be considered out of compliance per Act 38 regulations if there was no over-application of nutrients. This means that the operator must be cautious when swapping out different types of manures, applying the same type of manure to a different crop, or changing the season of nutrient application. Some manures have higher nutrient values versus others. Additionally, crops do not have the same nutrient uptake as others do.
- ▶ Below are some example scenarios:

# Compliance Status of NMPs that Change Crop, Manure Type, or Application Season

## ► Scenario 1:

A dairy operator's NMP planned for dairy heifer solid manure to be applied to a fall planted wheat field. The wheat will be harvested for grain with a yield of 60 bu./acre. The Plan called for the operator to apply 12 tons/acre of dairy heifer solid manure. This gives a positive nitrogen balance of 1 lbs. The operator ran out of heifer manure but still had dairy cow liquid manure to apply. This was not a scenario that was planned for in the NMP, but the operator decided to apply the dairy cow liquid manure regardless. In the Plan, the operator's spreader is only calibrated for 7,000 gal/acre because the liquid manure is only spread onto his corn ground. The operator decides to spread the same amount onto the wheat field in the fall. By switching to a different type of manure with not adjusting the application amount, the operator is now over applying nitrogen by 14 lbs. The operator in this scenario is considered out of compliance because of over-applying nutrients. The operator would have been able to avoid being out of compliance if the spreader is calibrated to apply at a rate of 4,500 gal/acre or below. At a rate of 4,500 gal/acre, the operator will have a nitrogen balance of 0 lbs. needed for the crop yield goal and thus would be considered still in compliance despite spreading a different type of manure to a specified crop.

# Compliance Status of NMPs that Change Crop, Manure Type, or Application Season

## ► Scenario 2:

A chicken broiler operator's NMP planned for broiler manure to be applied to a spring planted corn grain field. The corn grain was planned to have a yield of 200 bu./acre. The Plan called for the operator to apply 3 tons/acre of broiler manure which leaves a balance of 169 lbs. of N still needed. The operator decides to instead plant sorghum for grain in this field with a yield goal of 100 bu./acre. The operator still spreads manure on this field at a rate of 3 ton/acre. This scenario gives a balance of 29 lbs. of N still needed to meet the nutrient goals of the crop. This is a scenario where the operator will still be considered in compliance since there was no over-application of nutrients.

# Compliance Status of NMPs that Change Crop, Manure Type, or Application Season

## ► Scenario 3:

A finishing swine operator's NMP planned for liquid swine manure to be applied in the early fall onto a cover crop that will be burned down in the spring followed by a corn grain crop being planted. The corn grain is planned to have a yield of 160 bu./acre. An application of 5,000 gallons/acre of the swine liquid manure was not able to be applied in the early fall so the operator decided to apply the manure in the winter. Due to this field being within 150 feet of water, this field already had a Phosphorus Index (P-Index) value of 73 for this field receiving manure in the early fall. This allows the operator to manage this field with nitrogen-based manure application rates. With the change in manure application season for this field, it now has a P-Index value of 92 which restricts the manure application rate and changes it to a phosphorus-based application rate of 2,667 gallons/acre. If the operator was to apply the 5,000 gallon/acre of manure in the winter instead of the fall, he would be applying phosphorus beyond the crops phosphorus removal rate and thus would be considered out of compliance for over applying nutrients. This is a scenario where it benefits the operator to contact their plan writer before applying the manure in order to discuss how the operator should proceed.

# Compliance Status of NMPs that Change Crop, Manure Type, or Application Season

- ▶ These three example scenarios point out the importance for the operators to contact their plan writer, the CD, or the SCC when making changes to the type of manure application, different crops that will be grown as compared to their NMP, or if they will be applying manure in a different season as originally planned. By contacting one of the three listed above, the operator will receive the proper assistance with making the anticipated change. This will help to prevent any over-application of nutrients.
- ▶ It should be noted that these types of changes and this specific exception only applies when the operator is making adjustments “on the fly”. The SCC strongly encourages operators to contact their plan writer immediately once a change is decided for the plan to be properly updated / amended. This process can take anywhere from a couple weeks to several months so the operator and plan writer must plan accordingly. In other words, if an operator knows in the fall that they plan to plant a different crop in a specific field in the spring than what is called for in the NMP, then the operator should contact their plan writer in the fall to have the plan updated / amended rather than waiting until the field is about to be planted.

# Compliance Status of NMPs that Change Crop, Manure Type, or Application Season

- ▶ It is important that the operator keeps current and accurate records of the different type of manure applied, the different crop that is grown, and/or if the manure is applied during a different application season. These records should be made available to the reviewing agency when the plan update / amendment is submitted and reviewed for approval or during the annual on-site status review of the operation. If during an annual on-site status review CD staff discover that at least one of the three example scenarios has occurred, then the CD staff should do an initial calculation to determine if there was an over-application of nutrients during the inspection. If this calculation or determination is not able to be completed while on-site during the inspection, then CD staff must make this determination when they return to the office and are encouraged to call the operator with the final determination. CD staff must include in their report that is mailed to the operator the standard letter that accompanies this guidance if the operator is found to have not over-applied nutrients. If the operator did over-apply nutrients, this should be noted on the inspection report and should be included in the standard letter that is sent with the inspection report.

# Comment 4

## CAFO Public Notice Review

### Comments Delay

- ▶ Comment - SCC could update TM and Adm guidance that we would allow “unofficial” comments to be sent to the planner before the 30-public comment period is up to speed up the review process. Letter needs to make it clear to plan writer that these may not be the final set of comments, that more comments may be coming. the record of change, add the CAO withdrawal letter
- ▶ Revision - Districts are allowed to send their formal technical comments to the plan writer before the 30-day public comment time frame has lapsed, but a note must be added to the letter that additional comments may be forthcoming if any are received at the end of the 30-day comment period.

# Comment 6

## Plan Update Notice to BOD

- ▶ Comment - Provide consistent guidance to CD BOD on when NMPs are updated (not amended)
- ▶ Revision – See next Slides

# Plan Updates

## ▶ Plan Updates

- ▶ It is important to remember that there are three (3) different types of NMP Updates that can be submitted as follows:
  - ▶ Simple Update - To address minor operational or computational changes anytime during the 3-year life of the NMP. Examples include growing a different crop or applying a different manure type in a field(s) than was originally planned.
  - ▶ Triennial Review Update – Updates the plan for the next 3 crop years and mainly applies to total export plans using a broker and there is no cropland or pasture on the operation.
  - ▶ Yearly Plan Submissions Update – Updates for crop years 2 & 3 in the subsequent 2 years after a 1-year NMP is reviewed and approved.
- ▶ All NMP updates shall be developed by a Certified Nutrient Management Specialist and submitted to the CD. These updates must be reviewed and acknowledged by a Final Certified CD Reviewer. Provisionally Certified CD Reviewers should contact their SCC Regional Coordinator for guidance regarding NMP updates received at their CD. If errors are found, the CD should send the standardized letter requesting corrections.

# Plan Updates

- ▶ Regardless of the type, once the NMP update has been evaluated by the CD and determined to be complete and accurate, the CD shall place the update in the operators NMP file. Additionally, the CD should send the standardized plan update acknowledgement letter to the operator and planner (additionally DEP if a CAFO). The “Yearly Plan Submission or Plan Update Acknowledgement Letter” can be found in the NM Administrative Manual, Chapter 6 – Supplement 12.
- ▶ The next step in the process after reviewing and acknowledging updates is for the CD to utilize the *NMP Update Report to Board of Directors* form, Chapter 6 – Supplement XX, to inform the BOD of plan updates received and acknowledged during the month. Data from each update is to be entered into the form for the next monthly BOD meeting and can accompany the technician’s monthly report. The purpose of this form is to create a standard approach that all CDs can use to inform their BODs about NMP updates

# Plan Updates

- ▶ Another less preferred option is for the CD to complete the standardized NMP Update Memo, Chapter 6 – Supplement XX. A separate memo would need to be completed for each NMP Update processed.
- ▶ Plan updates require no action by the District's BOD. Do not wait to send the plan update acknowledgement letter to the operator and planner until after the BOD meeting. The plan update acknowledgement letter should be sent as soon as the plan update is evaluated and determined to be complete and accurate.
- ▶ More information about NMP Updates and yearly Plan Submissions can be found in the Nutrient Management Technical Manual, NMP Submissions: Required Appendices and Supplemental Information – Pages 3-6 and Section VI: Plan Amendments and Transfers – Pages 3 & 4.

# Comment 7

## On-site Status Review

- ▶ Comment - Clarify that On-Site Status Reviews are needed every year, including the year that the NMP is being Amended
- ▶ Revision - CAO and CAFO operations -- On-site status reviews shall be made annually, including the year the NMP is being updated or amended, to evaluate if plans are consistent with the operation(s) and to assess plan implementation and BMP maintenance. They will be conducted by the delegated district on all CAOs annually, including the years that NMP is being updated or amended. If notified by DEP regional office staff that an inspection will be performed, Districts are strongly encouraged to coordinate their on-site status review with DEP, as a joint inspection, as scheduling allows.

# Comment 8

## Administrative Incomplete Plans

- ▶ Comment - For admin incomplete plans, the program says to send the incomplete plan back to the operator. The operator doesn't really want an incomplete plan, and I don't want to spend the postage to send it back to them. In my opinion, the admin incomplete letter addressed to the operator tells them what they need to know.
- ▶ Revision - If the plan is not administratively complete, a formal letter will be sent to the operator and planner. The administratively incomplete plan will be discarded by either returning to the planner or operator, or recycling in the trash.

# Comment 10

## CAFO Bulletin Notice Update

- ▶ Comment - Update guidance that CAFO bulletin notices get sent to the Resource Account now versus Kelly Rathon. See record of change for last adm manual
- ▶ Revision - After the CAFO NMP has been determined to be administratively complete the District shall complete CAFO NMP PUBLIC NOTICE SPREADSHEET – APPLICATIONS (Submission) in Chapter 5, Section V and submitted it to [RA-EPSCCWPABULL@pa.gov](mailto:RA-EPSCCWPABULL@pa.gov) ) to advertise this NMP in the PA Bulletin.

# Comment 11

## Update Quarterly Reporting information

- ▶ Comment - Update Quarterly Reporting information and forms now that PracticeKeeper is the repository of much of the information
- ▶ Revision – Updated, to many references to share you instance

# Comment 16

## VAO Withdrawal letter

- ▶ Comment - The Administrative Manual supplies template Act 38 NMP withdrawal letters (Template Letters “6-2 Program CAO Withdrawal” and “6-3 VAO Withdrawal”) for operators to complete. (In the case of a CAO becoming a non-CAO, certified commercial nutrient management specialists also need to complete the withdrawal letter.) For withdrawing CAOs becoming non-CAOs, an effective date is written. However, VAOs seeking to leave the Act 38 program is only given the choice to withdrawal immediately.
- ▶ Please consider alternative first paragraph for the VAO withdrawal template letter
- ▶ Revision – Created a new letter with alternative paragraph

# Comment 18

## Form Letters

- ▶ Comment - Develop form letters for acknowledging NMP transfers. The only form letters currently for plan transfers are for operators to use to request the transfer, not for the District to acknowledge the transfer
- ▶ Revision – Created a new letter

# Comment 20

## Form Letters

- ▶ Comment - Edit the Status Review Follow-up Letter. It currently states, “Thank you for implementing your NMP, and for maintain the records required for your animal operation under Act 38.” Replace “maintain” with “maintaining”.
- ▶ Revision - Revised

# Comment 22

## Form Letters

- ▶ Comment - Edit Letter 4B CAO, as it jumps around in tense and person throughout the letter. For example, it's signed by the District Manager, but at times refers to "my next visit", although it's probably the technician who's doing the visit.
- ▶ Revision - Revised

# Moving Forward

- ▶ SCC Staff will revise the NM/MM Adm Manual per comments received and discussion.
- ▶ Revised Manual will be presented to the NMAB in August 2021 and the SCC in August and September 2021.
- ▶ If revisions are approved, manual will become effective in October 2021, with training in November 2021

Questions ?