

**Department of Environmental Protection (DEP)
Agricultural Advisory Board (AAB)**

**October 20, 2022
9:00 AM – 10:30 AM**

Meeting Minutes

Susquehanna Room A and B
Southcentral Regional Office

Welcome & Introductions – Jennifer Reed-Harry, Chairperson

Jay Braund conducted a roll call of members.

Members present:

Lisa Daniels	Kerry Golden
Grant Gulibon	Greg Hostetter
Darwin Nissley	Jennifer Reed-Harry
Matt Royer	Brenda Shambaugh
Peter Vanderstappen	Destiny Zeiders

Jennifer began the discussion by reminding the board that there has not been a quorum for recent meetings. She asked if it is considered a meeting without a quorum. Kerry Golden stated that the board can meet but official business of the board cannot be conducted without a quorum.

Jennifer stated that she is going to make a personal phone call to each member asking if they can commit to meeting for 4 or 5 meetings each year and, if not, are they willing to nominate a replacement who can commit to attending board meetings.

Matt Royer stated he appreciates Jennifer's willingness to broach the issue with members. Darwin Nissley asked if board members can be compensated for their time as an incentive to participate in meetings. Kerry Golden stated that is not an option.

Action on March 24, 2022 and July 18, 2022 Meeting Minutes

No action could be taken on the March 24 and July 18 meeting minutes since there was no quorum.

Legislative Update – Kerry Golden and Destiny Zeiders

Kerry stated there are no updates relevant to the board from the Ag & Rural Affairs committees. The legislative session ends November 30. The House and Senate each have three remaining session days the end of October. There are session days in November after the election but no bills will be voted on. There will be a new chairman for the House Environmental Resources and Energy Committee as Daryl Metcalfe is retiring.

Destiny had no updates to add.

Other Agency Updates – Deputy Greg Hostetter, Peter Vanderstappen and Frank Schneider

Deputy Hostetter mentioned another flock of birds tested positive for Highly Pathogenic Avian Influenza (HPAI). Turkey flocks have been the most affected. Routine inspections have been suspended within the control zones, however, required inspections can still be completed but must meet the biosecurity standards.

Pete commented that Natural Resources Conservation Service (NRCS) is receiving additional funding in 2023. NRCS is working with the State Conservation Commission (SCC) to provide more engineering support. NRCS is establishing urban ag positions in Philadelphia.

Frank commented that the State Conservation Commission (SCC) is working on their Agricultural Conservation Assistance Program (ACAP) funding and rolling out that program. The SCC has recently been restructured with Karl Brown retiring at the end of the year and Doug Wolfgang accepting the Executive Secretary position.

Draft Final-Form Rulemaking – Chapter 93, Water Quality Standards - Dunbar Creek et al. Stream Redesignation – Kristen Schlauderaff, Bureau of Clean Water

The federal Clean Water Act and state Clean Streams Law are the basis for the regulations that protect water quality. Designated uses are the focus of rulemaking. Protected water uses include aquatic life uses and water supply uses. Additional use categories include recreation and fish consumption and special protection.

Waters can qualify as high quality based on water chemistry and biology. To qualify as exceptional value, the surface water must first meet one of the high-quality qualifiers and must meet one or more of the exceptional water value qualifiers which include biology, locational, resource management plan and exceptional ecological significance.

The redesignation process includes evaluations conducted by the Water Quality division and are initiated when a redesignation petition is accepted by the Environmental Quality Board (EQB), a request is received by another regulatory agency such as the Fish and Boat Commission, errors are identified in the code or when routine surveys indicate that a stream may qualify for a different designated use.

The Department of Environmental Protection (DEP) provides public notification by preparing a notice of assessment asking that available technical data be submitted to assist with development of a draft stream evaluation report. The notice is published in the Pennsylvania Bulletin and on DEP's eNotice and website. Letters are also sent to county planning commissions and municipalities.

Stream reports are drafted based on the evaluations of data received from the notice of assessment and forwarded to petitioners, municipal officials, and county planning commissioners for a 30-day review and comment period. The reports are included in a proposed rulemaking and presented to the EQB. If a rulemaking begins, the AAB is informed.

The final rulemaking for the Dunbar Creek et al. stream redesignation is tentatively scheduled to be presented to the EQB the fourth quarter 2022 or first quarter 2023. The rulemaking includes seven streams.

EPA Comments on PAG-12 CAFO General Permit – Jennifer Fulton and Jessica Martinsen

Kerry Golden commented that she is concerned about why the draft permit was published in the *Pennsylvania Bulletin*. She stated that the DEP did not fulfill their statutory obligation to deliver the draft proposal to the AAB before it was published.

Jill Whitcomb stated that the pre-draft as well as the draft was shared with the AAB and the board had the opportunity to review and comment. The Environmental Protection Agency (EPA) also had the chance to review the draft package. The AAB had a 60-day review period where they provided comments. The AAB PAG-12 workgroup also had the opportunity to review the draft revisions based on EPA's comments.

Kerry stated that, under Section 704(b)(1) of the statute, review of any proposed general permit cannot occur unless there is a quorum of the board and a draft cannot be published until a review takes place. Kerry stated there was no formal review of the proposal before it was published and it should be addressed with legal counsel since the statutory obligation was not met.

Jennifer Reed-Harry asked Brian Chalfant if she should continue with the agenda. Brian responded that the DEP's position is that they met the obligations of providing the draft permit to the board with the statutorily required review time. Brian also stated that he would not want to waste the opportunity of having representatives from EPA present at today's meeting and

prepared to discuss their perspectives on the permit. Jill Whitcomb agreed with Brian and stated they would re-evaluate where they stand with everything.

Jennifer Fulton started the discussion by sharing EPA's role in the permit's reissuance process and the comments provided to the DEP on the draft permit. EPA's role is one of oversight and a key component is the review of permits. EPA reviews a state's draft National Pollutant Discharge Elimination System (NPDES) permit to ensure consistency with the requirements of the Clean Water Act and NPDES regulations. EPA's main concern with the draft permit was its consistency with federal regulations for discharges to waters with an approved Total Maximum Daily Load (TMDL). The draft permit included a provision that the DEP may require additional Best Management Practices (BMPs) and controls to protect public health and to protect, maintain and restore water quality in the existing designated uses of waters of the Commonwealth. For operations within the Chesapeake Bay Watershed, this may include additional BMPs listed in Pennsylvania's watershed implementation plan for the Chesapeake Bay TMDL. EPA was unclear how the DEP would evaluate which Concentrated Animal Feeding Operations (CAFOs) would require the additional BMPs or what process the DEP would take to implement that provision in the permit. The DEP worked with the EPA to find options to address the regulatory shortfall in the permit. The requirements contained in the permit look very similar to the 2018 permit. It was important to the DEP that there be minimal added burden to the CAFO operator.

Jennifer Reed-Harry asked if PA is the first of the bay states to have the TMDL inclusion in the general permit. Jennifer and Jessica responded yes. Jennifer commented that in reading the draft permit all the obligation is put on the permit holder. She asked what role the DEP has regarding collection of the TMDL data. She asked if it is possible to extend the current permit for one year to establish a CAFO permit program including TMDLs that is not problematic. Essentially could the new CAFO permit for PA be considered a pilot and can it be postponed to assure existing problems are addressed before moving forward. Brenda Shambaugh agreed that there is uncertainty and many questions that still need answered and she supports Jennifer's suggestion to extend the current permit.

Jill Whitcomb stated that, if the EPA and the DEP are supportive of an administrative extension, any new CAFO operations would have to apply for an individual permit.

Jennifer Reed-Harry asked if there could be a 12- to 16-month extension and if an operator needs a general permit, can they get the old permit? Sean Furjanic said that is not possible. The general permit has been extended for existing operators but the EPA's interpretation is, if a new operator is added to an administratively extended general permit, it is considered a modification and modifications cannot be made to expired permits.

Grant Gulibon asked what other options were provided in order to meet the TMDL regulatory inclusion. Jessica stated that a couple options included explicitly defining what the additional BMPs were and explaining when specific BMPs would be implemented. Another option, pertaining to the Notice of Intent (NOI), required permittees to summarize all the site-specific

BMPs that have been approved in their required plans and identify those BMPs that align with the ag initiatives and use that information to determine if additional BMPs are needed.

Jill Whitcomb stated that if the board is asking for consideration of an administrative extension, she would like it to be noted formally in some way so it can be taken to EPA for their consideration. Jennifer Reed-Harry asked if the board could put the request in their comment documents. Jill responded yes, it would be an opportunity from an individual perspective and Kerry Golden agreed that individuals can include the request. Jill stated she also recommends providing the reasons why an administrative extension would be appropriate and important to consider.

Kate Bresaw stated the preferred method for making public comments is through the DEP's eComment tool (www.ahs.dep.pa.gov/ecomment). Comments can also be submitted through email (ecomment@pa.gov) and must include the commentor's name and address or via mail to the DEP's Policy Office. Comments submitted by facsimile will not be accepted. Kate also mentioned that, if the permit moves forward as planned, that existing permittees should anticipate submitting their new NOIs by January 1 and March 31. Kate also mentioned that they are hoping to deliver the draft of the Manure Management Manual to the board this winter.

Public Comments

There were no public comments.

Jennifer Reed-Harry mentioned several action items for the next board meeting. They include an administrative recap (i.e., reaching a quorum, board vacancies and Governor's Office appointees), appointing a Chair and Vice-Chair, an update from the SCC on Act 38 and 49, getting a legal opinion on the current published CAFO permit, a 16-month extension to the PAG-12 CAFO general permit and an update on Bay Model reporting (i.e., what agriculture items are reported, what additional items can be reported and how the DEP is reporting this through e-reporting).