

Chesapeake Bay Agricultural Initial Inspections Training FAQ

Farm IDs

1. Wouldn't it be better for the Central Office (CO) to determine how permit numbers will be issued (for uniformity across the state)?

The Farm ID is not a permit number; it is the unique number assigned to the operation to track a specific inspection activity. The Farm ID consists of a 2-digit county code followed by 5 digits, which was done to create uniformity across the state. Regional offices will coordinate directly with the CCDs in assigning Farm IDs.

2. Will there be a mechanism that recognizes duplicate Farm ID?

The "Preliminary Inspection Log" does not recognize duplicate Farm IDs, however, Central Office will check for duplicate numbers as part of the planning review process. The "Agricultural Bay Inspection Log", which is completed after the inspection is conducted, recognizes duplicate Farm ID entries and will prompt the user to update the existing record if a Farm ID which already exists in the database is entered into the form. It is important that each CCD and Region communicate and coordinate numbering schemes directly. Ultimately, when the Worldview system is launched as the method for inputting and tracking inspections, duplicate Farm IDs will not be allowed by the system.

3. Can an operation have multiple Farm IDs?

Yes, the home farm and each satellite operation can each have a unique Farm ID.

Plans

4. Will initial inspections document Nutrient Management Plans?

Initial Inspections will document Manure Management Plans. Operations regulated under Act 38 that have approved Nutrient Management Plans already receive on-site compliance reviews and will not be inspected using the Initial Inspection SOP.

5. Are farmers or CCDs being asked to provide plans to DEP?

The farmer is responsible for making their plans available to DEP/CCD for review and inspection. The SOP does not direct DEP staff to retain these plans nor does it direct CCDs to collect and provide plans to DEP.

6. Can a standard Ag E&S plan guide be created for individuals to complete a plan on their own?

DEP Central Office has plans to complete a guide similar to the manure management plan workbook for Ag E&S plans. This Ag E&S plan guidance effort is in the preliminary stages.

7. Is PAOneStop fully functional for both MMP and E&S plans?

PAOneStop is currently functional for developing a 102.4(a) compliant Ag E&S Plan and maps for MMP usage. However, an MMP module is under development by Penn State and will be available at a later date. Notification will be provided to stakeholders when the MMP module is available for use.

8. How are mortality compost areas addressed? Are they included in the MMP?

If manure is commingled in the mortality composting process, which is common practice, that material should be included in the MMP and managed as a manure group.

9. Why doesn't the MMP workbook divide available nutrients generated by available acres to determine net nutrient needs?

The net nutrient agronomic need takes into account the specific crops, yields, residual nitrogen, manure amount, application method and timing, which is more accurate than the simple assumption that all manure is applied equally across all acres at the same rate, time, method, etc.

10. Can the letter being sent before inspections begin or the phone call script mention that the Conservation Plan or Ag E&S Plan be updated to meet "T." There are still FSA plans that were written to 2T.

Discussions related to updating older plans still written to 2T would probably be better to discuss in person while completing the plan review

11. SOP p.11 2.b. – "Acceptable" manure application rates - how closely should we look into? Correct tables or attach balance sheet.

Verify the acceptable manure application rates were determined using one of the 3 options given in the Manure Management Plan Guidance (361-0300-003) page 10. Remember that this is an administrative completeness review, so inspectors are making sure that the required elements are contained within the plan, not necessarily that they are accurate or technically adequate. Note: If there was no soil test done in the past 3 years or if the soil test results show phosphorus levels (Mehlich 3-P levels) greater than or equal to 200 ppm, then the operation must use the phosphorus removal charts in the guidance. It is not necessary to verify the rates in their plan match the rates given in the MMP guidance to determine if the plan is Administratively Complete. However, if the inspector has experience with MMPs and recognizes that the rates in the plan are much higher than they should be, the inspector should discuss with the farmer that the plan needs to be updated to reflect the proper rates and note this on the inspection form for potential future follow-up.

12. Are we supposed to photocopy the conservation plans? MMP/NMPs?

DEP is not requiring hard copies of the plans to be kept. The District can determine whether or not they would like a permanent copy of the plans.

13. Will a farmer-written Ag E&S Plan and/or farmer-written MMP be counted in the model?

At this time, a plan completed solely by the farmer does not meet the Bay Program's verification guidance to be counted in the model. Assistance from a certified and/or qualified planner may provide the assurance to the Bay Program that the plan meets the verification guidance standards

14. I assume when MMP is indicated on forms, this would include or represent NMP's, CNMP's, ETC.?

MMP includes any plan that meets PA's regulatory requirements in Chapter 91.

Follow-Up

15. If the inspector determines that the operation has no plans during the initial phone call made to schedule the inspection, do we need to wait until after the 90 day period given to submit plans is up to complete the inspection report? Is the original inspector responsible for following up?

In this hypothetical situation, an inspection report is not required until the plans have been completed when the only contact with the operation was the initial phone call, and the operation made clear that the required plans were not available. Once the plans have been completed, the inspecting agency may elect to follow up with the operation, and complete an initial inspection. If the plan(s) is not administratively complete upon inspection, then a second 90 day period may be given to make revisions (Note that the original 90 days given during the phone call counts as the initial 90 day time

period that would have been given if it were a site visit). The individual who performs the required follow-up is at the inspection agency's discretion.

16. Corrective Actions on Inspection Report say "submission," is it adequate to review submission on own time or is meeting required with farmer?

If the plan was submitted after an onsite visit, then the plan may be reviewed at the office. If the plan was submitted without an onsite visit or in person conversation with the farmer, then a meeting is required.

17. What documentation (i.e., paper trail) is required for additional time given to an operation to submit the required plans beyond the original 90-180 days given at the time of inspection?

Any additional time provided to operations to obtain required plans, in accordance with the SOP, should be entered into the "Agricultural Bay Inspection Log" along with any comments related to the time extension. There is no description of a physical paper trail required in the SOP, but the inspector may choose to keep additional records to aid in tracking and potential enforcement referral.

18. What is the total maximum number of days an operation may have to submit a plan, 180 days maximum, or 180 days in addition to the initial 90 days?

During the initial site visit, 90-180 days may be given to complete the plan. If not completed within that timeframe, the inspector may elect to give an additional 90 days to complete if there has been progress made, for a maximum total of 270 days. (Note that the 15 business days to follow up on plans not submitted after the initial time given during the site visit is wrapped into the 90-day extension).

19. If the inspector finds a violation and gives the operation time to fix the violation (including plan submittal or water quality concerns), does the inspector still give the operation a copy of the report at the visit or when found complete?

The report should either be given to the farmer in person during the visit, or within 10 business days. If the farmer can address any requested items within that 10 business day timeframe, then the inspector may choose to give them that time before providing the copy of the report.

Liability and Privacy

20. Since District employees will be representatives of DEP while conducting initial inspections (including all work pre- and post-inspection that is outlined in the SOP), will inspectors be afforded the same legal protection as DEP employees? What covers districts (Liability) in the contract?

The language in the contracts has been updated to reflect that CCD staff are afforded the same legal protection as DEP staff. Delegation agreements for Chapter 102 and Chapters 83/91 also address this concern. Additionally, the Manure Management Delegation Agreement will have a revision that will explicitly include the term "Inspections."

Section 4(2) of the Conservation District Law states that with respect to the performance of any duties or functions delegated to a conservation district by any department of the Commonwealth pursuant to section 11(2), the Commonwealth will defend and indemnify district directors, associate directors and district employees to the same extent as it defends and indemnifies Commonwealth employees, and such directors, associate directors and employees shall have all immunities afforded by law to Commonwealth employees.

21. What personal liability is associated with Biosecurity?

If an inspector is sued in a civil action or charged with a criminal offense, the inspector may be able to assert the defense of sovereign immunity if the inspector was acting within the scope of his or her

official Commonwealth duties. The Commonwealth and its officials and employees are immune from civil suit or criminal prosecution under the legal doctrines of sovereign and official immunity, except when the General Assembly has specifically waived such immunity. Pa. Const. Art. 1, § 11; 1 Pa.C.S. § 2310. The General Assembly has adopted specific exceptions to sovereign immunity (e.g., vehicle liability; care, custody or control of personal property; dangerous condition of Commonwealth real estate, highways and sidewalks, etc.). 42 Pa.C.S. § 8522. Liability for damage claims can be imposed upon the Commonwealth under these exceptions within the limits set by the General Assembly. 42 Pa.C.S. § 8528.

A Commonwealth employee acting within the scope of his or her official duties may be defended by a Commonwealth attorney. The procedures for reporting of prosecutions and civil suits and for determining employee legal representation is set forth in Management Directive 205.6 (amended) (Defense of Suits Against Commonwealth Employees), available at http://www.oa.pa.gov/Policies/md/Documents/205_6.pdf.

Local agency employees are afforded sovereign and official immunity as well, except as specifically waived by the General Assembly. 42 Pa.C.S. §§ 8541-8542. A local agency employee would need to consult with his or her employer for the specific procedure to follow to obtain legal representation in the event the employee is named in a civil suit or criminal prosecution.

To be eligible for immunity from suit or prosecution, inspectors must perform their official duties in accordance with the law. For example, to avoid prosecution for the criminal offense of agricultural trespasser or agricultural biosecurity area trespasser, the inspector should not engage in activity prohibited under these offenses as described in 18 Pa.C.S. §§ 3503 (b.1) and (b.2). An employee who acts unlawfully will not be considered to be acting within the scope of his or her official duties.

22. Our concerns relate to the fact that we need to make decisions on site related to plans being Admin. Complete and if we mark them in violation, or even WQ concerns.

CCD staff will be protected by the contract language and the delegation agreements. Any uncertainties by CCD staff regarding whether or not a plan is administratively complete can also be discussed with DEP staff.

23. Is there any liability to a district inspector, who may not have as much planning background and may not adequately review or complete the MMP or Ag E&S Admin review to the standard requested?

No. DEP recommends that you work with your staff who already have a planning background and expertise so that you are consistently doing the same thing. You may even want to partner up and do a few inspections with a more experienced technician at first.

24. CCD staff are concerned that some things are left to interpretation. For example, there could be a disagreement over whether a particular situation found on an operation is a WQ concern, pollution event, or no problem at all.

DEP recognizes that it is difficult to provide training for every potential Water Quality Issue that may come up. Any District staff who has concerns or is uncomfortable making a call about how to address a Water Quality Issue is encouraged to contact the Regional DEP Office for advice/assistance.

25. If a farmer gets money from USDA then that is considered public information. Most CNMP or Conservation Plans received funding. Can we clarify with NRCS and get the cloak of secrecy cleared up with them? (There is even a public website that lists payments.)

Section 1619 of the Federal Food, Conservation, and Energy Act (Farm Bill) establishes the specific limitations for disclosure of farm records and the associated information release requirements that must be followed.

26. Do copies of the MMP and Conservations Plans need to be placed into our public files?

The SOP does not currently mandate that DEP/CCD collect, copy, and/or file plans that are reviewed by inspectors. Any plans that are collected and maintained by CCDs/DEP, at their discretion, are subject to the Pennsylvania Right-To-Know Law.

27. Are the actual inspection reports subject to Right-to-Know?

Yes.

28. How do we address privacy issues on farms when practice keeper information will tell DEP and EPA exactly where every BMP is on farms?

Please note that the general public, along with other state and federal agencies, has access to satellite mapping from public websites such as Google and Bing; property information from many Counties is publicly available on their GIS websites; existing satellite mapping allows many BMPs to be seen.

July 8, 2016 Webinar

29. Please provide clarification regarding the information provided from the July 8, 2016 webinar.

The items discussed in the July 8, 2016 webinar will not be instituted in the first inspection cycle, July 1, 2016 – June 30, 2017. The existing SOP is the way that initial agricultural inspections will be conducted for the 2016-2017 fiscal year. Additionally, the existing SOP will continue to be the minimum level of effort required for initial inspections for future inspection cycles. Any updates in future inspection cycles will be included as revisions to the existing SOP.

Preliminary Inspection List and Letter

30. I thought farms with all plans in place counted as an inspection. Why is there an “unnecessary” category?

Farms that are known to have their required plans due to previous contacts with the CCDs or DEP do not require initial inspections. The list of these operations, if readily known, is due to the DEP CO by July 1, 2017. These farms should be identified by selecting the category “unnecessary” on the Preliminary Inspection Log.

31. Most of the farms that had Education and Outreach visits by CCDs most likely now have plans or are in process of getting CNMPs. Therefore, when letters go out to the farm visit universe, will most of them be exempt from needing an initial inspection?

If the operation is in the process of developing plans, then the owner/operator should contact DEP or the CCD upon receipt of the letter and commit to a submittal timeline as provided by the SOP. If the CCD is already aware that the operation has the required administratively complete plans, then the CCD can put that on its list of operations known to have the required plans which should be submitted to DEP by July 1, 2017.

32. In the Preliminary List of Inspections there is a place to note “no crops” but is there a place to note ACAs?

No, the preliminary list only has animal types and “no crops” for those operations without animals. If an operation is known to have an ACA during the planning phase, this may be noted in the “Comments” column.

33. CCDs track Chesapeake Bay nutrient credits based on the Federal Fiscal Year, why are the Chesapeake Bay farm visit lists based on the State fiscal year?

The Initial Inspections are a State initiative, and involve the state funding of Chesapeake Bay Technicians in the districts. These inspections are not related to nutrient credits.

34. Will inspectors be given a “generic” copy of the farmer letter in the likely event they encounter someone who didn’t receive one?

The generic letter sent out to farmer’s in August is available here:

<http://files.dep.state.pa.us/Water/ChesapeakeBayOffice/General%20Bay%20Farm%20Letter.pdf>.

35. Will CCDs get the list of farms that are being sent preinspection letters from DEP?

Yes, a list of farms that were sent the preinspection letter was provided to the CCDs.

36. How will CCDs know where DEP will be conducting their inspections compared to where CCDs will be conducting inspections?

The District and Regional DEP office should be coordinating inspections, whether is utilizing the planning tool “Preliminary List of Inspections” or other methods.

Biosecurity

37. Is there a list of Biosecurity equipment to have on hand?

A list of the basic equipment will be provided on the [Bureau of Clean Water website](#) under “Agricultural Operations” → “Agricultural Compliance” in September 2016.

Future Technology

38. Will the MS4 Program also use the WorldView System?

There are no plans for the MS4 program to use the WorldView System.

39. When are CCDs and DEP getting laptops and software to complete inspection forms on site?

The exact dates for this are unknown, but it is expected they will be available in 2017.

40. How does the Practice Keeper software enter data into the planning spreadsheet and the reporting spreadsheet?

Worldview is working on the statewide Practice Keeper software, and the specifics of data entry for inspection planning and logging have not yet been determined. When the program is rolled out, there will be training conducted that shows how data should be entered into the system.

Inspection Form and General Inspection Questions

41. Please confirm that use of the term “initial inspection” is not a true walk through of the farm operation to determine threats to water quality but merely verification of existence and the administratively complete adequacy of required plans. If this is true, when does a technical, water quality focused inspection occur? (By CCDs or DEP).

The goal of initial inspections is to verify the existence of administratively complete MMPs and/or Ag E&S plans on an operation, and is not a full inspection of the operation; this is not to say that an

inspector may not go above and beyond the SOP, but the SOP states what is minimally required, and the minimal requirements do not include a full walk-through of the farm operation. A follow-up inspection, which will only be conducted by DEP, will consist of a full agricultural inspection according to existing DEP procedures.

42. The total acres of operation on page 1 of the report is not necessarily the acres used to calculate AEU/acre.

Correct. The "Total Acres of Operation" entry on the inspection report is to document the total contiguous acres of common ownership or operation. The AEU/acre calculation, per Agronomy Facts 54, would only include the acreage available for manure application (e.g. cropland, hayland, and pasture).

CCD Related Inspection Questions

43. Why not extend the Bay Technicians Contract for another 6 months (similar to the Watershed Specialist Contract) until this is all worked out? It's hard to sign a "contract" when the content of that "contract" keeps changing.

Thank you for your comment. The contracting process for Bay Technicians is proceeding, as usual, for the normal one year time period.

44. Is there a "contracted" level of the contract (Friday webinar [July 8, 2016 with Alexandra Chiaruttini]) where we just ask to see the plan?

No.

45. Who is certified to do an inspection i.e., intern, hire part-time?

It is to the discretion of the District Board and Conservation District management. However, the inspector should be knowledgeable about the regulations, know how to determine the types of plans that are required, and be capable of determining the required elements of those plans and whether or not they are administratively complete. Also, the person should be knowledgeable about what would constitute a pollution incident and/or water quality concerns. The knowledge and experience needed to conduct the agricultural inspections is more in depth than the educational visits that were conducted by Conservation Districts throughout the past few years.

46. Can the district write/assist with an MMP or Ag E&S plan if the landowner is without either plan or in violation of plans?

Yes, the districts may continue to provide the services of writing and assisting with plan development.

47. "One inspection a week – How hard can that be?" DEP continues to downplay the workload for Districts that this Reboot is going to generate. Districts for the most part do not have "Spare" staff time- they barely keep up with the day to day traffic. Even if a District does not participate they will have to deal with the fallout from the work that this will generate.

Through the 100 education and outreach visits conducted per year, Districts have been informing farmers about their planning requirements. Some districts have reported that they've visited every known farm within their respective counties. The regulatory requirement to have a plan does no good to local water quality if agricultural operations are not completing and implementing them. The workload is necessary to ensure that PA's regulations are being followed. There is recognition that there will most definitely be an increase in requests for assistance; however, agricultural producers have had ample time and opportunity to request this assistance from you and your staff.

48. The impact on the workload is not just the inspections and the preparation for them. It is the additional phone calls, questions from farmers and plan writers. Most Districts already have a backlog of farmers desiring assistance. Dealing with the “fallout” is going to require time - a lot of time! If there is only 1 Bay Technician position this will leave little time to accomplish anything else.

DEP expects 50 inspections per technician, in lieu of the 100 educational site visits that were previously required. Agricultural producers have had time to request planning assistance; if you cannot help them, please provide contact information for private consultants.

49. Inspections will inevitably increase the BMP workload significantly.

DEP hopes that the BMP workload (and implementation) will be significantly increased, so that local water quality will be significantly improved. There are other entities, such as private consultants, who can also assist with design and implementation of BMPs.

50. Since we are so late in getting this Reboot in place – are 50 inspections going to be required this year.

Yes, the contracts have a 50-inspection requirement in them.

51. Any consideration for the fact that Districts and their Technicians already have a full plate and probably have the workload planned for the upcoming months – how do we just drop what we are doing to do these inspections?

DEP trusts that the Districts are capable of adequately planning their workload to incorporate 50 inspections into the time of the year that is best for them. DEP announced the concept of inspections in January 2016, which gave a 6 month lead time to prepare for incorporating inspections into the workload for the July 1, 2016 – June 30, 2017 fiscal year.

52. How do we inspect an operation when the operator works off the farm? Do we get double credit for evening work?

DEP is confident that the conservation districts have been able to work with operators working offsite in the past, and will continue to be able to work with these operations. There is no double credit for evening work.

53. If a District opts out and a farmer wants to bring in his plan for review – what obligation does that District have to review those plans?

DEP cannot determine what assistance a non-participating District would like to provide its farmers. However, the District will not have any obligation to DEP to review a plan in this hypothetical situation.

Other

54. What is envisioned for the program in the next 5 years or so – Will we be making implementation inspections – enforcement?

The focus has currently been on the initial inspections, in which the goal is to have every farm in the Chesapeake Bay Watershed inspected in the next ten years. At some point in the future, implementation inspections may be conducted, but no timeframe has been determined. DEP does not currently expect Conservation Districts to be responsible for enforcement beyond that which is currently part of existing delegation agreements.

55. “Initial” inspection – “Initial” implies that there will be more – what?

Currently, DEP’s efforts are focused on verifying that farmers have the required manure management and/or agricultural erosion and sedimentation control plans (as required by current regulations). Future efforts may make a determination of whether or not plans are technically adequate and/or

implemented. DEP will be able to better plan for future efforts after evaluating the results of the 2016-2017 fiscal year's period of initial inspections. The term "initial" was used to differentiate these inspections from comprehensive whole-farm compliance inspections that DEP staff conduct.

56. Also how does the Penn State Extension survey work affect us and our inspections?

The Penn State Extension work has no effect on the Initial Inspection effort. The information Penn State collected is to verify a BMP survey for individual operations. In addition, this information is confidential and will not be released to PA DEP for individual farms.

57. Are farms going to be visited two or three times?

For an initial inspection, a farm should be visited once, unless a follow-up inspection is required. Follow-up to check on plan status for an operation may consist of a phone call, letter, or an additional visit to the farm. Follow-up for water quality concerns or pollution incidents conducted by PA DEP staff will consist of a more thorough inspection. There may be instances where an operation is visited by Penn State staff regarding the BMP survey that was completed as well as a District or DEP staff person performing the inspection. Since DEP is not being provided the individual information from the Penn State survey, we cannot be sure who will have been contacted by Penn State. However, the inspection and the Penn State survey verification are separate activities.

58. Is this a correct assumption? DEP is prioritizing that these inspections are more important than the implementation of BMPs?

DEP is recognizing that not all farmers are meeting the regulatory requirements of having the necessary plans. The plans are the precursor to implementation of BMPs.

59. Why isn't monitoring being done to get answers as to where most problems are?

There is water quality monitoring conducted over 2 year cycles which determines which waterways are impaired. The 2016 draft report has just been issued and is available here:
<http://www.dep.pa.gov/Business/Water/PointNonPointMgmt/WaterQuality/Integrated%20Water%20Quality%20Report-2016/Pages/default.aspx>.

60. Is there a difference in SOP implementation between contract delegation levels of participation?

For 2016-2017, the existing SOP is the way the initial agricultural inspections are being conducted. Any changes made in the future would include the existing SOP as the minimum effort required.

61. Please more clearly state/give guidance on water quality concerns. DEP needs to tell us how to evaluate these example situations. I still feel like it is too open to opinion + interpretation.

DEP recognizes that it is impossible to provide training and a specific answer for every potential situation that may arise during inspections, since every operation is different. As discussed, the distinctions and procedures on addressing an acute pollution incident and a chronic water quality concern that are provided in the SOP are consistent with the descriptions provided in the CCD Agricultural Complaint Response Policy. CCD should contact the DEP regional office if guidance is needed for specific situations.

62. Who is the BCW point of contact (email) for access refusal and a referral for lack of plan development?

In addition to the DEP contact list distributed during the training sessions, a single DEP email address will be provided for Conservation Districts to submit referrals to DEP.