



# Delaware Nutrient Management



## Meeting Minutes - August 1, 2017

### The Delaware Nutrient Management Commission

#### **In attendance:**

*Commission Members Present: William Vanderwende, Kenny Blessing, D. Mark Adkins, Jim Elliott, Laura Hill, Kenneth Horeis, Wayne Hudson, Scott Webb, Jessica Inhof*

*Ex-Officios Present: Chris Brosch, Deputy Secretary Kenny Bounds, Heather Hudson, Shawn Garvin*

*Commission Members Absent: Brenna Goggin, Larry Jester, Bud O'Neill, Robert Palmer, Richard Sterling*

*Ex-Officios Absent: Jennifer Singh (representative in attendance)*

*Others Present: Bob Coleman, Clint Gill, Aaron Givens, Julia Moore, Brooke Walls, Amy Shober, Sydney Riggi, Jaime Barrett, Garry Killmon, Catherine Hickey, Shelia Lomax, Harvey O. Thomas Sr., Sally Kopfer, Debbie Absher, Joel Wharton*

***This meeting was properly notified and posted as required by law.***

#### **Call to Order/Welcome:**

Chairman Vanderwende called the meeting to order at 7:00 p.m., welcomed everyone in attendance, and reminded those seeking education credits to sign the sign-in sheet.

#### **Approval of Minutes:**

A motion was heard to approve the minutes of the Full Commission Meeting of March 7, 2017. The minutes were approved by Jim Elliott and seconded by Laura Hill.

#### **Discussion and Action Items:**

##### ***Special Item – Chris Brosch:***

- DNREC sends regrets that they are not represented here as Bryan Ashby is on vacation and Jessica Collins is ill.

##### ***CAFO General Permit 2 Update and requested approval – Chris Brosch***

- DNREC supplied a clean copy of the General Permit 2 for the Commission's review (it was transmitted electronically to the Commission prior to the meeting and included in the Commissioners' folders).
- At the June meeting it was determined that there was a necessity for a conversion factor from Cornish to Broilers to be included in this permit. Subsequent study determined that a 2-to-1 conversion would allow a defensible amount of leeway for an inspector to draw conclusions about the appropriateness of the NM Plan for the capacity of houses when the integrators switch on the growers.
- Also included now is language about what constitutes as a substantial change in crops.
  - The EPA allowed that changing between familiar crops such as corn or soybeans is not going to constitute a substantial change from year to year.
    - But the NM Plan writer must be advised and this should be reflected in an amended plan.
    - If the plan writer says it's not an issue to make the plan change, the departments do not need to be advised.
  - If the amount of acreage in use changes 20% or more, it is considered to be a substantial change and NM needs to be advised, for Public Notice to be issued.

- This is consistent with the non-land side of poultry – if you add a house or stop production in a house, it constitutes as a substantial change and must also be advised to NM.
- Commissioner Blessing voiced a few concerns, but made the point that he would still consent to the permit:
  - In Part 2 of #11, he has a problem with the right of entry of representatives visiting in Region 3. He would like them to be reasonably educated on what they are looking at, from the perspective of Delaware agricultural production. Chris noted later in the conversation that our representative from Philadelphia is in fact certified by our UD educational program and we could author a memo from the Commission asking that this always be the case.
  - Regarding Temporary Staging Areas, the period of 90 days is suggested. He would like to see that increased to 120 days, based on what he has learned from farmers and based on scientific studies. UD has proven that there is no run-off from field staging if it is shaped correctly. The few resulting issues, pot ash and salts, have BMP's to help correct them.
  - Lastly, he still is not in full agreement with the Waters of the State. Chris advised him privately that Waters of the U.S. now goes back to 1980 rulings, and since this is not the final ruling, he reluctantly consents to proceed forward.
- Commissioner Inhof questioned if the State Technical Standards and the CAFO Permit should be the same
  - Chris explained how the two are related:
    - The State Technical Standards are an independent entity from the Permits that we operate our CAFO regulations with. So the State Technical Standards guides all NM Plans in the state and CAFO farms are required to have NM Plans. The CAFO's are required to abide by the more stringent CAFO Regulations. And where those do not advise it will fall back to the State Technical Standards. And in this draft, as well as the CAFO General Permit 1, they point back to the State Technical Standards for guidance, per the suggestion of the EPA.
    - This puts us between a rock and a hard place at this time, however. While we don't have the State Technical Standards that have been through the Administrative Procedure Act approval process, we are getting there.
    - The short answer is with the friendly comments we got on the State Technical Standards, we can increase the number from 90 to 120 days for non-CAFO. But the way the GP1 is written, it is on the books for 90 days and would require a regulatory change to amend that. This GP2 is largely taken from GP1 and right now it states 90 days.
    - Clint Gill questioned if it technically really does apply to GP1, and it was stated that GP1 has a production area, so it has a stockpiling standard, and field staging is what we had the comment on during the Technical Standards 30-day Public Notice period.
    - Commissioner Blessing noted that this was also for land application CAFO's so they would have to stage in a field somewhere, and to return back to the 120 days, it would still be beneficial for the growers if they could clean out in late Oct/Nov, within a 120 day period.
- Commissioner Inhof then asked if we could make this change
  - Chris said the Commission could suggest tonight that from the friendly comment we would like to make an amendment to the permit, or we could sit on it and inject it later as a public comment. His preference would be to make the amendment tonight and be done with it.
  - Chris referred to the document provided in the Commissioner's folders about field staging as backup for this vote as well as for the Technical Standards vote it was intended for.
- Commissioner Blessing made a motion to approve an Amendment to GP2 to change the field staging to limit 120 days, and it was seconded by Commissioner Elliot.
  - Commissioner Adkins reminded the Commission that this is only a recommendation, and doesn't necessarily change a thing.
  - Chris brought up the previous comment about requesting that the inspectors be NMC Certified by UD, and he stated that it could be communicated as a Memo under separate cover on behalf of the Commission. It is not truly germane to the Permit.
- The vote to amend the CAFO General Permit 2 was unanimously approved.
- The motion to approve the Entire CAFO General Permit 2 Draft with the above noted Amendment was motioned by Commissioner Adkins and it was seconded by Commissioner Hill. It was unanimously approved.
- Following this approval by the Commission, we will proceed to Public Notice of the draft on September 1<sup>st</sup>, which will begin the 30-day public comment period. During that 30-day period, there will be a public hearing. Once the

30-day period closes, the comments will be collected and responded to. Once this is complete, it is the final step to get to approval of the final version of the permit.

***Deliberations and vote on proposed changes to regulations incorporating the State Technical Standards – Chris Brosch***

- The State Technical Standards has gone through its 30-day public comment period, having been properly posted on July 1<sup>st</sup>, and there was one last minute friendly comment posted by Dr. Amy Shober of the University of Delaware. She recommended increasing the field staging standard from 90 to 120 days, for the same reasons already addressed in the GP2 discussion above. Her email of recommendation as well as a 1-page document justifying this request was in the Commissioners' folders.
  - Per Terry Hickey (substitute DAG), if we vote to make this change, it is a substantive change and we will have to republish for another 30 days of public comment on the entire package before we will be able to vote on adoption of the regulation. The change would be called out, so that any reviewers could go directly to that section.
    - Commissioner Hill noted that it will provide more flexibility, and stated it would be worth the wait.
    - Chris noted that UD was the only group to comment.
    - Commissioner Adkins noted that the 120 days had been the standard in the past, but was not palatable to the EPA and the 90-day standard had been considered very generous at the time. Today, however, he hopes that the EPA is more comfortable with the state of Delaware and with the additional science to back up the longer timeframe. He agreed it's prudent to go ahead with the 120-days at this point in time.
    - Chris added that the way we have enforced the standard traditionally is to allow farmers who call us to request more time to have up to 140 days anyway. This change would simply be a little less paperwork for those who want more time. Commissioner Blessing did not believe that this option was public knowledge.
  - Commissioner Blessing made the motion to recommend changing from a 90 to 120 day field staging recommendation. Commissioner Hill seconded the motion, and it was unanimously approved.

***Technical Committee briefing on compliance protocols – Commissioner Blessing and Chris Brosch***

- Commissioner Blessing opened by expressing that the Technical Committee meeting held on July 7<sup>th</sup> turned out to be like a think tank on trying to find how to obtain the information needed for the annual reports for the Chesapeake Bay Program and EPA. Different agencies were posed the task of seeing if they could get the information and send it to Chris at NM.
- Chris took over from here, sharing that this effort started a year and a half ago when we heard from the EPA that his reporting of compliance rates in Delaware was not adequate. After several negotiations, we eventually got to where we all wanted to be: to standardize and document the compliance this department performs and to do so with input and consent of the Commission.
  - We understand that an important step in revamping the audit and inspection procedures is to really increase our numbers.
    - At this meeting, the conversation centered on how, with the resources we have today (assuming they don't change), we can get closer to the 20% inspection mark we were asked to meet.
    - In the end, we felt 10% of the farms is a good place from which to draw statistical conclusions about our compliance rate.
    - It was also determined that the NM program could leverage help from our district partners to play an important role in the effort of performing audits.
    - Since the meeting, we have been deliberating with the Sussex Conservation District. There seem to be some things they can do during the plan re-writing to evaluate whether these plans were in compliance and whether they are able to be rewritten. But we need to be cautious because they are not regulatory bodies – they are there for technical assistance – and we don't want to change that.
  - Chris's plan is to draft a list of milestones for how we are going to approach the goal of 10% inspections and audits and how we are going to improve our old methods, which are as old as our program. They have been twisted to fit into our Salesforce database, with lot of options for good changes, but we want to do a few more things with respect to water quality.

- An example from the Technical Committee: introduce a whole farm mass balance to make sure the nutrient demand of the crops on that farm is being adequately met by the nutrients that are recorded in the fertilization records and manure spread records. These are things that belong in a Standard of Procedure, which we will be writing.
  - A spreadsheet will be developed from all the things that came up after the last meeting so there are clear goals and outcomes for them, to get us closer to what we should be doing in terms of compliance estimates. Due dates will be set, but they would adjust as needed in order to fit into Brooke's audit and inspection schedule, as this will be an added responsibility for her.
- Deputy Secretary Bounds added that DDA had a good meeting with the EPA Region 3 representatives.
  - They are working with us cooperatively and there has been some good input. He believes we will get to a good place.
  - The District will be important partners for us in this effort, but he reiterated that they will just help with the collection of data for recording purposes - they must not become regulatory in any way.
- Chris wants to continue the conversation on this internal process at the Technical Committee meetings, then bring the total package to the DNMC when it is complete. The DNMC would have a month to review the products and protocols then plan to vote on them at the following meeting.

***Administrators Report – Chris Brosch and staff***

- Complaints – Bob Coleman reported that since his last report he has received seven informal complaints, for issues including field staging, an untrue accusation of dumping bedding into a ditch, and also his first ever regarding noise. He noted that we have zero jurisdiction over this but he visited the property anyway, which is located about a thousand yards away from the poultry houses, and took a decibel reading. He is still working it, but is afraid that ultimately there may be nothing he can do to help the complainant achieve the total quiet she is seeking. Chris added that this contact later called him to express how impressed she was with how kind and professional Bob was and how he really tried to make it right for her.
- Certifications – As reported, certifications are at 1,804. They are up because UD held certificate training sessions.
- Audits, Inspections, Reporting – Brooke will be assisting in summarizing the results from last fiscal year to report to the EPA in October. It will be brought to the Commission as well. It won't cover too many acres, but it's a step in the right direction.
- CAFO Update – 11 new farms are ready for CAFO Public Notice and they may be in the newspaper in the next few weeks.
- Salesforce Database Update(s): There is nothing new, as we completed the data entry in May.
- Meetings and Training – The most important thing to note is that the Phase 6 Model has entered into its Fatal Flaw section. Chris and Clint have spent many hours in webinars and teleconferences over the past 5-6 weeks. Finally all the data collected over the last 3 years, and algorithms written to match scientifically-based logic, has been incorporated into this Phase 6 Model. On July 28<sup>th</sup> Secretary Scuse signed a letter identifying 3 fatal flaws, all agricultural related. However, Chris would like to get the EPA's response before bringing details to the Commission.
- Financials – All lines on our budget took a little hit with the new fiscal year's budget. The two most affected:
  - Education and Certification has \$40,000 less this year. But the NRCS has stepped in with funding to help for the next 2 years.
  - Agricultural Cover Crops also took a \$40,000 reduction, and again NRCS came to the rescue. They gave \$2Million to the Conservation Districts for this year. Chris was advised that we should give our (paltry) funds to Kent County, as the bulk of this windfall will go to Sussex County.
  - Fiscal Year 2017 is now on the books. It is worth noting that 51,619 tons were relocated in FY2017. Chris doesn't know a true reason why it is down so much. We did adjust our rates dramatically to reflect our fiscal situation, but also the change in fuel over time hadn't been properly adjusted. He has heard from the industry that there IS a scarcity of litter to be moved. In light of this, he feels it would be fair to re-evaluate our relocation rate as we approach the end of the calendar year. He does appreciate that we didn't need to scavenge for funds this year.
  - He asked if anyone has any information to explain the decline, to please let him know.
    - Chairman Vanderwende suggested that windrowing is causing less litter to be produced since you don't totally clean out and add shavings back again. Commissioner Hill noted that you still have to do a cut out, but Commissioner Adkins agreed that there is certainly not as much as if you had to clean out to the ground. And as a farmer, he can keep more in his houses, to use it in spring when he needs to use it. Commissioner Hill advised that she had litter that she had purchased from windrowed houses that had been fully cleaned out, and testing showed there was only a small amount of nutrient content that remained, so it wasn't cost effective. But Commissioner Blessing noted that one upside is the uniformity of that nutrient content due to the mixing.

- Conversation also turned to the high number of new houses being installed, but the density of chickens was questioned, even though the houses are large. And there are many older houses being decommissioned. Commissioner Adkins felt that the expectation is that the pipeline will go down and we won't see what we did recently for a while. The integrators are just working through their previous building commitments.

**Next Meeting:** The next regular Full Commission meeting will be October 3, 2017 at 7:00 pm.

**Adjournment:** Chairman Vanderwende adjourned the meeting at 7:50 pm.

Approved,

B. Vanderwende, Chairman  
Delaware Nutrient Management Commission  
jlm