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Delaware Nutrient Management

Meeting Minutes – February 5, 2019

The Delaware Nutrient Management Commission

In attendance:

Commission Members Present: Chairman Bill Vanderwende, F. Kenneth Blessing, Mark Adkins, Jim Elliott, Kenneth Horeis, Jon Nichols, Jr., Robert Palmer, Scott Web

Ex-Officios Present: Nutrient Management Program Administrator Chris Brosch, Terry Deputy, Kim Hicks (proxy for Jamie Mack)

Commission Members Absent: Brenna Goggin, Laura Hill, Wayne Hudson, Larry Jester, Bud O'Neill, Richard Sterling

Ex-Officios Absent: Secretary Michael Scuse, Deputy Secretary Kenneth Bounds, Jennifer Singh

Others Present: Bob Coleman, Clint Gill, Aaron Givens, Julia Moore, Brooke Walls, Amanda Fabi, Garry Killmon, Sydney Riggi, Sally Kepfer, Gerhard Maute, Eugene Maute, Ben Johnson

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 last Full Commission Meeting of December 4, 2018. The minutes were moved for approval by Commissioner Elliott and seconded by Commissioner Palmer, resulting in a final vote of unanimous approval.

Discussion and Action Items:

Litter Relocation Cost Share rate discussion and decision: Administrator Brosch

- As Chairman Vanderwende noted in his introduction, this topic was initially discussed at the December 4th meeting. To provide an explanation of specific statistics, Administrator Brosch referred to the brief illustration was worked up with the help of Bob Coleman, from the manure relocation claims. It is just a summary of the statistics for those claims. Ultimately, the estimated increase that would have been required is shown to be \$58,117.81, as compared to last year's claims, if we were to increase the rate per ton mile from \$0.12, which it is currently, to

\$0.14 per ton mile. Last year's claims would have cost us an extra roughly \$60,000, and just for illustration purposes, we wanted to demonstrate for the Commission how those claims shake out in terms of the number of miles for each of those claims. It is a pretty random distribution.

- Of course, there is nothing less than 10 miles in distance because we don't cost share those.
- There is nothing over @118 miles because that reflect the cap for the \$0.12 @\$14.50 per ton.
- Then below that is the distribution in terms of the number of tons in each claim. We have probably a handful of claims that are over 200 tons, but the vast majority of claims are for small hauls of less than 200 tons.

- Administrator Brosch then confirmed, in answer to conversation that ensued, that we no longer offer cost share for the transportation of value added products that litter is being turned in to. He also confirmed that the measure on the table is to keep the program going as it presently does, moving litter from a farm that can't use it to somewhere else.

- Commissioner Blessing noted that since we have the funding, he would motion to adopt the recommendations set before the Commission, increasing the payable rate up to \$0.14 per ton mile and cap it at \$16.50 per ton. The motion was seconded by Commissioner Elliot.

- Commissioner Adkins expressed concern that such an increase would encourage movement of manure out of the state? And are farmers going to run short now that there is less available through the normal chains of distribution? He just doesn't want our farmers in a position where litter is outsourced and then it is not available to them. He understands it's not our aim, but he doesn't want to see us subsidize it leaving the state only for us to have to pay more to get it in.

- Administrator Brosch had no direct answer to this concern, but noted that there is speculation in Maryland with the new rules on Phosphorous applications are going to mean that more manure is going to be available for Delaware farmers. He agreed we don't want to contribute to such a game, and understands that this Commission should incentivize to a greater degree utilization of manure on our farms, as opposed to alternative uses or sending it to other states. Litter is a resource, not a waste, and it would be fair to take that into discussion. An alternative proposal to pay two different rates wasn't prepared. He also agreed as was stated at the table that we have no reason to think an increase in the rate would change the distribution of manure, but we need to realize it could.

- Commissioner Palmer added one caveat that some of the funding does matter. Funds have to be spent in the Chesapeake Bay (CB) Watershed.

- Administrator Brosch reiterated that the purpose of this proposal is to increase the incentive because in the Administrators Report Financial Statement you can see FY18 tonnage following a reduction in 2017 was drastic. We had a 50% reduction of total tons moved from FY16 – FY18. And that is hurting us with our goals and making it look like we can't spend money we've asked for, which is not a good position.

- Questions ensued about rates over the years and it was determined that we were at \$0.14 per ton mile before and at one time were as high as \$0.18 per ton mile.

- Administrator Brosch noted that the maximum during his tenure has been \$0.16 per ton mile, when he first joined the program, and at that point within three months' time we were out of money, both General Fund and Federal Grant dollars. So we've come down to \$0.12 per ton mile as a result of dire financial times, and now we're dealing with the opposite.

- Commissioner Adkins agreed we should go with the proposed \$16.50 per ton cap, but keep an eye on the activity.

- Administrator Brosch responded to conversation reviewing Ray Ellis's visit to the last Commission meeting by reminding the Commissioners that he stated Maryland's maximum rate to be \$18 per ton, and that we could not go any higher than a \$20.00 per ton cap, by our statute. The proposal on the floor is, however, for \$0.14 per ton mile with a maximum of \$16.50 per ton. This amount was a ratio change to follow how we've moved that maximum in the past.

- Chairman Vanderwende asked for any other discussion, then asked for a vote by raising of the right hand. The proposal was unanimously approved.

Equine Environmental Stewardship Award update: Commissioner Horeis, Administrator Brosch

Commissioner Horeis reminded the Commission that discussion at the last two meetings included the option of converting the Annual Environmental Stewardship Award from just poultry to include equine as well:

- He took the opportunity to the Board of the Equine Council for discussion, then discussed it again at length at their last regular council meeting. They agreed to provide \$500.00 toward an Equine Stewardship Award that would award a plaque and roadside sign. They also understood that this would be a rotating award that would come to them every few years or so.
- In the Commissioners' folders is the Press Release and Criteria that would be posted in their newsletter and on their website, to announce and promote the new award, if the commission approves it.
- According to NM records there are 38 farms that are NM certified, and the Equine Council has 43 boarding stables on the list in their yearly directory. However, he knows there are a lot more training centers with more than 8 horses. The equine industry in Delaware is second only to poultry, so there should be more than 100 in the pool to apply for this award.
- Administrator Brosch stated that from an administration standpoint, it's helpful to have this as a plan for the coming year. At the same time, we will try to figure out the logistics about how to rotate to other industries. We will need to find the necessary sponsors for other awards in subsequent years if that is appropriate. We will also look into how to level the playing field with regard to criteria for these other industries, and then work it into a form, because we are of course the government, but we can work to keep it simple. This commitment will buy us some time to do this and still prolong the longevity of the award which is something this department is proud to help facilitate.
- Chairman Vanderwende asked for a motion from the floor. Commissioner Adkins motioned and Commissioner Elliot seconded the motion. Chairman Vanderwende asked for a vote to adopt the Equine Stewardship Award into the Environmental Stewardship Award Program, and the vote in favor was unanimous.

Administrators Report – Administrator Brosch and staff

- Personnel updates – Administrator Brosch
 - Kim Hicks, who was sitting in for Ex-Officio Jamie Mack, was introduced and welcomed. She works at the Department of Health in Environmental Health and Toxicology.
 - The seat vacated by Commissioner Inhof has officially been filled by the Senate pro tempore and Tak Keen, of Keen Consulting, is expected join us on March 5th for his first meeting, representing Consultants. This appointment is for the remainder of Commissioner Inhof's term, after which he will have the option to either get re-appointed or leave the appointment open.
 - Commissioner Sterling will be retiring after his lengthy term of dedicated service, which will result in a search for another Commissioner to fill his seat.
 - The March 5th meeting will probably be Commissioner Goggin's last meeting, so we will be looking to our state's environmental organizations to fill that seat.
- Complaints – Bob Coleman
 - There were 3 informal complaints opened since our last meeting in December. All were routine, either for odor or vultures, and all have been resolved.
 - One old complaint is still open even though it has been resolved. This is because it is still volatile, with neighbors who seem to be feuding with each other. So we expect to get another complaint. In the meantime the farm gets a drive-by about every 3 weeks just to check out the status

- Administrator Brosch explained as a point of clarification that one of the tools we have as investigators and regulators for these complaints is to leave complaints open. That prevents the public from using the Freedom of Information Act (FOIA) to request information about that complaint. If that complaint were to get litigious and find its way into the courts, our findings wouldn't be available in some discovery. So it's one of the tools we actively try to use to protect farmers.
- Audits, Inspections, Reporting – Administrator Brosch. The audit and inspection report reset on January 1st so we've done 6 this year.
- CAFO Update – Administrator Brosch. We have 24 farms currently on Public Notice and will begin batching new farms now that those are on notice. Amanda and Aaron have set up 4 new meetings in March to recruit more farms to fill out a current NOI and apply for permit coverage.
- Salesforce Database Update – Administrator Brosch. Now that 2018 has ended we have begun the 2018 Annual Report synthesis. Brooke processed 350 reports, has 1,218 that are pending, and has received 5 that require follow-up. The due date isn't until March 1st, so we will see these numbers increase.
- Meetings and Training – Administrator Brosch. Most noteworthy for this past month were the two presentations I gave at Ag Week, discussing the Chesapeake Bay Watershed Implementation Plan version III. There were some good questions from the agricultural stakeholders about that draft plan and we are continuing to proceed with developing that written plan for EPA's review.
- Financials / Budget – Administrator Brosch. The updates on the issuing and reimbursement of NMP's and relocated poultry manure tons is listed, as usual.

Questions from the Commission:

- Commissioner Blessing referred back to a discussion at the December meeting, about increasing the rates / allowances for the plan writers, wondering if any more thought had been put into that funding.

- Administrator Brosch responded that he anticipates having this discussion in the coming months and that this topic factored into our decision for Mr. Keen's nomination to replace Commissioner Inhof. The bottom line is we are going to have to find a way to collect ancillary information that is in the NMP's in order to take extra credit in our estimations of pollution reduction activities for CB and the rest of the state. To ask anybody to do that without some reward is going to be a tough sell.

- If we were to enhance our Annual Report that would leave it in the farmers' hands to self-report those activities. Then we would have to include that in our audits and perhaps try to take action against farmers that said they did something and we realize that they didn't, even though to the letter of the law those were just bonus activities. So I am not necessarily in favor of that.
- The alternative is to have the Consultant's report this information and again not have a reward for doing that, but it would certainly be warranted, given the amount of time it is going to take to report that kind of thing.
- So we need to have those conversations with Mr. Keen on behalf of the Consultants and once we have something that looks like a plan, then engage the rest of the Consultant's community to make the decisions that this Commission is going to have to approve. The main method of collecting that, if I'm on the hot seat right now, would be the Annual Report, so we've got basically 10 month's to sort something out for as soon as the next year.
- And at the same time, the Governor already submitted his budget proposal for the legislature to consider. So if we wanted to change the rate that we pay the consultants we'd be cutting our legs out from underneath ourselves to change that rate in exchange for more work from them. And then of course there are folks in the public sector that write these plans at the Conservation Districts and the Program doesn't directly support those personnel. Asking them to do anything additional would present a challenge.

- As one last comment, Administrator Brosch asked that the Commissioners help the Program monitor the field staged manure piles, as they traverse around the state and interact with their neighbors. This is the time last year that as the staff rode around the state we saw many piles of poultry litter that were stacked improperly. Already this year the same has been noticed, and it will be impossible for the program to follow-up on all of them.

- The manure piles should be pushed into a conical shape that is less than 6ft. tall, until it gets knocked down for field spreading.
- Hopefully the department will have some social media information in the near future, as well, to remind farmers to do that.

- Commissioner Blessing asked if there was any encouraging news about the health of the Bays that came out of the Center for Inland Bays Board Meeting that the program attended.

- Administrator Brosch shared that he attended this meeting on behalf of Secretary Scuse, and Terry Deputy attended on behalf of Secretary Garvin, and yes, there was a lot of good news. They have been successful in securing funding for a project that benefits residents as well as agriculturalists of all kinds in the Inland Bays Watershed and it would be perfectly appropriate to invite them to our meeting to give a report. They had no less than 10 things that were newsworthy in the last year and I wouldn't say they paint a poor picture for agriculture at all. Would the Commission like to have a letter of invitation sent?

- Chairman Vanderwende agreed it sounds like it would be a good idea.

Public Comment –

- There were no public comments voiced.

Next Meeting: The next regular Full Commission meeting will be scheduled for March 5, 2019 at 7:00 p.m.

Adjournment: Chairman Vanderwende adjourned the meeting at 7:40 p.m.

Approved,

B. Vanderwende, Chairman
Delaware Nutrient Management Commission
jlm