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AGRICULTURE

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Delaware Nutrient Management

December 3, 2019

The Delaware Nutrient Management Commission

In attendance:

Commission Members Present: Acting Chairman F. Kenneth Blessing, Chairman Bill Vanderwende, Mark Adkins, Jim Elliott, Laura Hill, Wayne Hudson, Larry Jester, Tak Keen, Garry Killmon, Brenna Ness, Jon Nichols, Jr., Bud O'Neill, Robert Palmer, Scott Webb

Ex-Officios Present: Nutrient Management Program Administrator Chris Brosch, Jamie Mack (DHSS)

Commission Members Absent: Kenneth Horeis

Ex-Officios Absent: DDA Secretary Michael Scuse, DNREC Secretary Shawn Garvin (sent proxy); Jennifer Singh

Others Present: Bob Coleman, Clint Gill, Julia Moore, Aaron Givens, S. Mark Melson, Jen Walls, Hollen Foltz, Sally Kepfer, Lindsay Thompson, Jenell Eck, Dr. Leah Palm-Forster

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

Call to Order/Welcome:

Acting Chairman Blessing 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 October 1, 2019. The minutes were motioned for approval by Commissioner Elliott and seconded by Commissioner Hill, resulting in a final vote of unanimous approval.

Discussion and Action Items:

Administrator Brosch welcomed Chairman Vanderwende back after his last few unavoidable absences and advised the Commission that Acting Chairman Blessing would be conducting the meeting today, as we were unsure what Chairman Vanderwende's availability would be, and leadership needed to be determined a week ago.

***Guest speakers Lindsay Thompson and Jenell Eck, Thompson Ag Consulting and DE-MD 4R Alliance –
Administrator Brosch***

- The visitors were welcomed with an introduction by Administrator Brosch:

- Lindsay Thompson has spoken to the Commission in the past, under the banner of the 4R Alliance.
 - Jennell Eck is a new staff member for Lindsay's Ag Consulting business.
 - Dr. Leah Palm-Forster is a professor at the University of Delaware (UD) and will be consulting with us all on the survey program to be shown this evening. This corresponds to the questionnaire survey in the Commissioners' folders. Ms. Palm-Forster brings much expertise to this project and will speak first.
- Dr. Palm-Forster's credentials include:
 - Professor at UD as an Agricultural Economist for the last 5 years.
 - Most of her research focuses on how we design voluntary conservation programs to work for farmers – how we make them more attractive, to help them and provide support for, adoption of Best Management Practices (BMP's).
 - She works closely with CBEAR - The Center for Behavioral and Experimental Agri-Environmental Research - which is a group of researchers Headquartered at UD and Johns Hopkins University who work in depth on these kinds of issues along with many other researchers across the country.
- Lindsay Thompson spoke on behalf of the DE-MD 4R Alliance:
 - The Alliance was founded by the DE/MD Agribusiness Association in partnership with the Nature Conservancy and has grown into a consortium partnership between academic institutions, agribusinesses, government agencies, soil conservation districts, and academia.
 - 4R means Right Source, Right Time, Right Place and Right Rate.
 - The goal of the Alliance is through research, education and marketing to improve access to an awareness of the 4R practices so they can not only be implemented on every acre on the Delmarva, but also to give farmers recognition among the external stakeholders for the things they are doing, such as those farmers who are included in the 4R Nutrient Stewardship booklet printed by the Alliance. Note that 2 DE farmers are showcased here, sharing how they have incorporated the 4R's into their farm operations. The Commissioners each got a copy.
- Ms. Thompson reviewed the purpose for their visit:
 - The Chesapeake Bay (CB) region is under a total max daily load expectation from the Environmental Protection Agency (EPA). DE, along with the other CB states, is tasked with coming up with Phase 3 Watershed Implementation Plans and as part of that, DE put as a priority to receive credit for the advanced NM practices that our farmers are doing.
 - When the base program updated their NM standards, they modeled it after the 4R's, as a blueprint to help meet the new plan requirements.
 - DE already had our core values of a Phosphorous (P)-based Nutrient Management Plan (NMP), the testing of manure, the testing of the soil, the calibrating of the spreader, and things of that nature. Adding the 4R's opens more opportunity for earning credits:
 - We can now get additional credit against the Bay Model for doing Source, Rate, Placement, and Timing BMP's.
 - What we thought, and heard anecdotally, is that farmers are doing a lot more of these practices in DE than the state is getting credit for in this Bay Model.
 - We want to capture those practices and get credit for what is already going on, so that we don't have to push the farmers to do more.
 - Additionally, we looked at the crosswalk between DE's Regulatory Program and the Bay Model - and we found that some of the BMP's in the Bay Model are already required in DE, so we should be getting credit for those as well.

- To start off an effort to learn how to capture the 4R BMP's the farmers in DE are already doing, Jenell Eck went up and down the Shore in DE, conducting preliminary surveys by interviewing 11 farmers in person and asking them a variety of questions about their 4R practices. Her results:
 - A questionnaire was formulated and provided to the Commissioners in their folders, to ask the questions in a way she felt would be understandable in written form, as a result of asking the farmers in person using different wording to determine which they best understood.
 - She reviewed, with the help of a slide show, data reflecting the results of these visits.
 - Next, she will send questionnaires to those 11 farmers in order to verify she gets the same answers on paper as were given to her verbally.
 - If the answers differ, she will know that maybe that question needs to be asked in a different way.
- To wrap up Ms. Eck asked the Commission to review the survey and provide feedback about the questions, the order in which they are listed, whether they feel certain questions are useful, or maybe if they are not. This would be an additional test for the survey before it is sent out to the 11 farmers.
- After this survey is sent to the 11 farmers and the completed answers have been returned, they will be reviewed and compared to their oral responses, as noted above.
- With the help of Dr. Palm-Forster, the team will come up with a final survey to send to roughly 10% of DE's producers – about 120 farmers.
 - Dr. Palm-Forster will then look at these results from a statistical viewpoint to ensure that the questions being asked are valid and the results we are getting are statistically significant.
 - Then the Commission will be informed of what questions have been better than others and which ones derived the most useful information to be input into the Bay Model for DE's credit.
 - The goal is to narrow the list down in time for the best questions to be approved by the Commission in order to be added to DE's 2020 Annual Report (AR) form.
- Ms. Thompson reduced the oral results to just a few items:
 - 100% of the farmers are split applying nutrients/side dressing on corn
 - 70% of the farmers are using The Pre-sidedress Soil Nitrate Test (PSNT) for optimizing n
 - 10 of the farmers are using an n stabilizer
 - 90% are applying less than the university recommendation on certain acres of their fields.
- Administrator Brosch gave perspective on what DE is currently getting credit for in those timing and rate categories and what it would mean for DE to get credit for 100% or even 90% of their acres practicing NM BMP's:
 - When talking about using PSNT, adjusting the rates below the university regulations, and using precision equipment, to the tune of 90 or 100%, our benchmark for the Watershed Implementation Plan for these 3 enhancements is 60%. We are currently at zero % of the way there.
 - These visitors are here today because we believe adding a questionnaire like this to the back of our AR will virtually satisfy our water quality goals overnight for NM.
 - The big point is that we need to test these to make sure they are reliable, because the results will have to be defended to the CB Program Partnership.
 - The scientific rigor that goes into something like this will be paramount to our success.
 - We feel this is a worthwhile endeavor, and we want to get it right in our 1st year by homing in on the right questions to get reliable answers.
 - It may in many cases double the amount of time a producer has to spend with his AR, but it is safe to assume that would only happen in the first year. Then most of these things won't change for them.

- Additionally, all the data from these questions will have to be verified, but those doing audits will do this in a non-regulatory way, just making sure the operators did what they told us they were doing.
 - Now is the right time to grab this data – and if we get the questionnaire done in the next 12 months - by the 2025 deadline we will be sure our answers are 100% reliable.
- Ms. Thompson noted that MD tried adding some questions to their AIR as an “Innovation Category” that wasn’t required, but it wasn’t too successful because there were no lines of communication to advise they wouldn’t get “dinged” if their audit can’t verify it. Having a communication plan in place in advance through the 4R Alliance, with the assistance of the Department, is important for the farmers, to say to them “It’s all good for you to fill this out – you’re not going to get into trouble for things that are not regulatorily required of you”
- Commissioner Keen noted this to be a different climate, and that DE will stand a better chance at success because of this approach, and Commissioner Hill agreed it is important for the farmers to understand they will not be penalized – and even more so to know why we are going through this process and what they are going to gain in the end, if we meet the 2025 EPA goals.
- Administrator Brosch thinks we are going to get there, and even over-achieve on at least some of the enhancements. Then that will relieve pressure on the others that are loftier.
- Dr. Palm-Forster wants to make sure that we’re designing this survey in a way that provides responses that can be used in the Model to inform the CB Program how much is happening in DE with their NM. When the Commissioners are reviewing the survey, she wants to know if the answers would, from their point of view, be informative.
- Administrator Brosch sees that there are 2 pieces of critical thinking that are definitely needed from the Commissioners:
 - The 1st is as Dr. Palm-Forster said above.
 - The 2nd is to discern if there is anything that is going to incite undesirable emotions such as anger, or the like, about the government asking these questions. We are the government, and they are legally obligated to answer them as soon as we put them on an AR. We don’t have to audit against it so that is something we’ll have to communicate, but that’s the other part. When you read this questionnaire, is there anything you think is important to communicate when this goes out. Two things come to mind:
 - This element of the AR won’t be a regulatory element. It will be checked, but there will not be penalties.
 - It will also be kept confidential and Freedom of Information Act (FOYA) protected.
 - But other than this, we need the Commission’s help to guide this process and help draft the language.
- Administrator Brosch continued:
 - Grant dollars have helped support this project and will also help support piloting these questions to whatever sub-sample we determine is necessary.
 - It would also be valuable for the Commission to incentivize participation maybe with some CEU’s for people that respond to it.
 - But we want to be careful not to target these survey questions to any specific group of farmers because what we did for these 11 farmers was select some of the better performers. These are probably well over-achieving compared to the average condition in our state. That is ok for starters, but we need to branch out.
 - Ms. Thompson explained that they asked their Agri-business partners for suggestions of farmers that they’re working with, mainly because they were to be present at most of the interviews so

that Jenell could get some of those answers where they are having things custom-applied or if they're not quite sure what might be in their tank mix, the Agri-businesses would be there with their records to provide the answers.

- Commissioner Blessing asked if the fertilizer usage report we get from DDA's Ag Chemicals Lab could break down the types of N to validate the percentage of usage on the farms based on the preliminaries. Administrator Brosch said we could ask, but he doesn't think they collect information on inhibitors of any sort because they don't have a guaranteed agronomic effect. We as a department test fertilizers and soil amendments to ensure their efficacy, that they match the label. And those particular products don't have to be effective, though we know that most of them are. We'll follow up to see what opportunities there could be.

Discussion on certification for litter maintenance contractors – Administrator Brosch

- Administrator Brosch started the informal discussion by sharing what the program found in talking to some folks for CAFO permitting, in addition to some who were licensing in one of the 4 levels of NM, and most recently farmers who unfortunately had to deal with mass mortalities on their farm – there seems to be a contingent of contractors out there that perform maintenance of poultry houses that may amount to as little as doing regular crust outs. And officially, the way our law is written, if someone is getting paid to land apply nutrients, they must have a Commercial Nutrient Handler (CNH) certification.
 - It could be interpreted that taking litter from one covered building to another covered building is not land applying anything, but that activity is a risky opportunity for somebody who is not certified.
 - Personally, it is believed that if somebody is getting paid to do a service, that qualifies them to go from a Private Nutrient Handler (PNH) to a CNH status.
 - We don't diligently enforce what handler's certification status our licensees hold, it is mainly left to the honor system, but if somebody calls and asks what type of certification they need if they're doing crust out work on the side or as their main job, we won't say that they don't need a CNH with us.
 - What is the Commissions feedback on this? If something needs to be sent to our Deputy Attorney General to consider for code change, that can be done.
- Discussion ensued, with the final consensus being
 - If manure is staying on the farm, or the production site, it should not be regulated to CNH status – it is the farmers responsibility, not the transporters.
 - When manure has been transported off site, once it is placed at its destination, it is again the responsibility of the farmer/landowner to make sure it is where it belongs, in the correct shape, etc., - not that of the transporter.
 - The letter of the law states that if the transporter is getting paid to move manure offsite and pile it up somewhere else, they should have a CNH certification, and nobody argued that fact. The PNH is when you are doing work on your own land, and when you step outside that it falls to commercial activity.
 - We are not aware of transporters who currently hold CNH certifications – they are all PNH, to our knowledge.
 - Administrator Brosch agreed to draft and send a letter to those we know are moving manure around and getting paid to do it. He'll give them a nice lengthy time to get up to where we think they should be by earning the CNH certification.
 - This guidance will be passed along to Sydney Raggi at UD Extension and the other UD folks doing certification classes so they can coach the new operators about where they need to be.

- Since the Commission is aligned so well, there won't be a need for motions as long as everyone is satisfied with this plan.

Administrators Report – Administrator Brosch and staff

- Addendum #1 – Administrator Brosch
 - In the Commissioners' folders is a short piece of regulatory language District Attorney General Singh promised to get back to us from our last meeting.
 - It is regarding our right to waive fees for certification holders, specifically related to the question about CNH's doing work in the turf arena.
 - She said it would make sense for us to add the language that is underlying toward the end of that piece of language, which she can do with a Public Notice.
 - She's happy to do that whenever we feel inclined to raise a Motion and have that Motion carried for her to execute that change stating we can reserve our right to waive those fees "with Good Cause Shown".
 - She also said she has no problem that we've been doing it already, because it doesn't say we can't. And it does say in the law we can charge UP TO that amount – which includes zero.
 - She would like to be present when such action takes place, to explain what happens after we have approved said Motion.
 - We will put this on hold until our next meeting scheduled in January.
- Addendum #2 – Administrator Brosch
 - Also in the Commissioners folders is our 3rd CAFO. It is exactly as General Permit (GP) 1 and 2, except for 2 definitions within numbers 42 and 46 – and they are related to duck farms, for which we have none and nobody has proposed to build any.
 - But this was guidance that DNREC, through its diligence working with EPA, decided is important to add and get right.
 - It is here for review, and we should offer a decision at a later meeting, unless there is a real pressing interest for a motion tonight.
 - It really is about 4 lines different from GP2, other than the title, which says this permit is for Mixed Operations (farms that have chickens and other animals that are non-poultry included in their NMP) OR farms that have exclusively non-poultry animals.
 - So, this is the catch-all GP, and we found the list of farms could be a lot larger than we originally thought because there are many farms that have what you might even consider a "hobby" number of animals in addition to their poultry that are written into their NMP. That's very diligent, and now they qualify for GP3.
 - This 3rd CAFO will not be on the books until the Commission approves it. After which it will go through the Public Comment period.
 - Since there is no comment at this time, we will ask for a decision at our next meeting scheduled in January. It will be great to get this approved.
- Complaints – Administrator Brosch. There were no informal complaints since our last meeting and there is only 1 active complaint currently.
- Meetings and Training – Administrator Brosch
 - At the DDA Budget Hearing in Dover on the 12th we had 2 items up for consideration on the Governor's budget and both have been looked upon favorably by the Secretary so far as well as the Treasurer:
 - One is an increase in our Travel Budget to \$5,000 in the next Fiscal Year, which is pretty close to our current demands. We pay @\$1,200 for the Commissioners' yearly transportation alone, and our current budget is \$500.

- The other is funding for a Turf, Lawncare and Golf Course inspector. This would be an accompaniment to Aaron and Brooke who do most of our audits on the Ag side. It would be a full-time inspector position and it looks like it could be in the next Fiscal Year's budget.
- The Environmental Stewardship Judging took place on the 22nd.
 - Bob Coleman did an excellent job coordinating the judging and completing all the paperwork.
 - This year we investigated 3 equine farms nominated by the DE Equine Council. These farms were absolutely beautiful, and we can look forward to the photos we will put together for the Press Release.
 - The checks have already been mailed, with the winner being awarded \$1,000 and the two runners-up each awarded \$500.
 - The official presentation will take place at the March Equine Council meeting, where the usual Stewardship Award plaques will be presented to each in recognition of their nominations.
 - Special thanks also go out to Commissioner Horeis, who also did an excellent job by recruiting the farms for this process. This required a significant outlay of time, to get everything organized for the first time and submitted to us. He was injured by one of his own horses just before the judging date, so was unable to attend, and he is recovering still.
- As an update to last month's meeting: the UD Turf Programs meetings on the 6th in Newark will be an opportunity to discuss with the UD folks some opportunities in the turf programs. There is an Agenda with Continuing Education Units attached to it to discuss NM in the Turf arena. Preceding this meeting, Ms. Budischak and I will meet about what opportunities may exist for a more formal collaboration between the NMC and the Livable Lawns Program. A few Commissioners advised it might make sense to formalize the relationship before we consider her proposal about waiving any fees and subjecting our operators to her audits in lieu of our audits, because of the legal implications that could arise. The Commission will get a report on the results.
- Financials / Budget – Administrator Brosch. The highlighted figures are current at this time.

Comments from the Commission -

- Commissioner Hill: Are there any final numbers on Cover Crops?
 - Administrator Brosch said the figures are far from final, but in Sussex County alone they are very confident in a record year and they know they will spend all the funding we are sending to them. To date they are around 60,000 acres registered, compared to last year at this time being around 38,000. New Castle County is also looking at record increases.
 - We have a Cooperative Agreement signed with the DE Association of Conservation Districts (DACD) on behalf of the local Districts, so as soon as they invoice us, we will pay.
 - The funding won't leave the Districts' budgets for the farmers until Spring.
 - But we know that there were significant personnel costs and we afforded them some amount of money for that and we expect it will be taken in short order.
 - We will send the money to the DACD rather than the individual Districts, to make our lives and theirs easier, and the DACD will be the arbiter, at no fee.
- Chairman Vanderwende: After 20 years as Chairman of the DNMC, it is time to step down. It has been enjoyable most of the time, and thanks go out to all who have supported him and the Commission over the years. Due to health issues it is the best thing to do. However, the Commission still needs a Dairy Farmer representative, so he will continue as a Commissioner as long as he is able.

Public Comment –

- There were no public comments voiced.

Next Meeting: The next regular Full Commission meeting will be scheduled for January 7, 2020 and it is anticipated to be at 7pm as usual. Advice will be sent if there is a need to change it.

Adjournment: Acting Chairman Blessing adjourned the meeting at 8:09 p.m.

Approved,

F. Kenneth Blessing, Acting Chairman
Delaware Nutrient Management Commission
jlm