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Delaware Nutrient Management

January 7, 2020

The Delaware Nutrient Management Commission

In attendance:

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

Ex-Officios Present: Nutrient Management Program Administrator Chris Brosch, Deputy Secretary Kenneth Bounds, Jamie Mack (DHSS), Terry Deputy (DNREC), DAG Jennifer Singh

Commission Members Absent: Kenneth Horeis, Jim Elliott

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

Others Present: Bob Coleman, Clint Gill, Julia Moore, Aaron Givens, Brooke Walls, Jen Nelson, Sally Kepfer, Gerhard Maute, Eugene Maute, Sydney Riggi, Carol Atkinson, James Atkinson, Jessica Inhof, Victor Green, Terry Baker

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

Call to Order/Welcome:

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 December 3, 2019. The minutes were motioned for approval by Commissioner Vanderwende and seconded by Commissioner Hill, resulting in a final vote of unanimous approval.

Discussion and Action Items:

Administrator Brosch: After the November 5th meeting, Chairman Vanderwende submitted his resignation as Chairman of this Commission to the Governor, and the change was accepted. Commissioner Blessing put his name up for the Chairmanship, and the Governor was also accepting. This change in leadership was finalized after the Notice of Agenda had already been prepared and posted for this meeting, so Acting Chairman Blessing will be running this meeting as such, but in the future will hold the title of Chairman. Commissioner Vanderwende will continue to serve as the representative for the Dairy Farmers.

Administrator Brosch and Deputy Secretary Bounds: Jessica Inhof was awarded her plaque of appreciation for her years of service to the Commission as the designated Consultant representative for that industry. Thank-you's were expressed by all.

Regulation change for fee flexibility; discussion and decision requested – Administrator Brosch and DAG Jennifer Singh

Administrator Brosch: As a follow-up to conversations at our last two meetings where the Commission discussed the ability to waive fees for the two certifications we issue (Commercial Nutrient Handler and Nutrient Consultant), waiving those fees for a “good cause” was sample language that DAG Singh had proposed.

DAG Singh: The only concern with that language was a deluge of “Well, I have a good cause” requests for waiving the fee. This language can be strengthened with examples of what might be a “good cause”.

Administrator Brosch: A good example of this that came before the Commission was for lawn care companies that were willing to participate in the Livable Lawns Program and therefore subject themselves to a higher scrutiny than our regulations currently provide. For the purposes of the Commission, the important element is getting the language changed so we can afford ourselves the opportunity to do that; to codify that in some way that helps keep us on track for making those common-sense adjustments. But we don’t want it so specific. Commissioner Ness agreed.

DAG Singh: In that case, the initial language in the original draft makes perfect sense. This gives the Commission complete discretion to act as seen fit. A vote can be taken tonight, then it will be submitted to the Register of Registrations. Per the Administration Procedures Act, it must be published and allow time for public comments. If none are received in the 30-day timeframe, it will come back to the Commission for a vote. If comments are received, they will need to be reviewed and if substantive changes need to be made it will go back to a new 30-day clock after being re-published.

Commissioner Keen: Then what we are proposing to do here is to give the Commission sole discretion to waive, or choose not to waive, fees?

DAG Singh: Already, under the law, the Commission has discretion as to whether it even imposes a fee at all. But it is permitted to charge fees, in accordance with the Commissions regulations. This keeps it nice and broad.

Commissioner O’Neill: Can it then be considered case-by-case?

DAG Singh: For those who make such a request, yes.

Administrator Brosch committed to bringing it to the Commission as such cases arise. Several Commissioners suggested that when they do, the appropriate Sub-Committee should then perform the initial review.

Chairman Blessing called for a vote to accept the language as written in the draft submitted to the Commission for the regulation change. Commissioner Hill made the motion, and Commissioner Hudson seconded it. All agreed, and the measure was carried.

Freezer Mortality cost-share update and proposal for program efficiency; discussion requested – Victor Clark, Greener Solutions

Mr. Clark provided an update on the Freezer Mortality program:

- It’s been 3 years this Spring since the Commission expanded the Litter Transport Program to include mortality transport.
- As a result, 3.3 million tons of mortality has been recycled.

- Per the Chesapeake Bay Programs Committee, this means the program is helping to divert from land application more than 96 thousand pounds of Nitrogen and more than 16 thousand pounds of Phosphorous.
- This program has proven effective in freeing up mortalities from litter, thus freeing up storage space for litter and the amount of material that would need to be land applied.
- DE is light years ahead of MD in adoption of this practice

Currently, the cost-share program is set up where at the end of the calendar year the handling company (such as Greener Solutions) gives each grower a total invoice for the year, telling how many fees were paid on their behalf and the total amount of nutrient content that was removed from the farm, thereby providing the information the growers need to complete their Annual Report to the Commission. Included with that they provide a total invoice for the year, that the farmers then sign and return to the NM program for reimbursement of 75% of the total.

To improve the efficiency of the program, Greener Solutions is suggesting changing to a model where they make the submissions to DDA for the reimbursement on behalf of all the farmers once a year. Then each farmer wouldn't have to submit their own form to the NM program for processing - it would be just one form from Greener Solutions. And they would adjust the farmers' fees on their quarterly invoices, at the reduced fee of 25% of the actual cost, so they are paying less each quarter and don't have to wait until the year end to get their rebate from the NM program.

Bob Coleman:

- The rationale is understandable, but there is always the possibility that the program will be audited, and it would be cleaner if we had separate paperwork for each farmer that we could produce for the auditors to match with the actual check that DDA issued through the First State Financial system.
- The program has done all it can to make the yearly submission as easy as possible for the farmer – they submit the annual invoice and we send them a check for 75% of the total, usually within 2 weeks after receipt of their submission.
- This is working fine for the program, so there is a hesitancy to try to “fix” what isn't broken.

After no input from the Commission, Chairman Blessing tabled the proposal until it is reviewed further to see if there are any other options, as well, and stated a vote would come afterward.

Administrator Brosch: One thing that may weigh into the deliberation is confirmation that the program is not running out of money for these practices and if that possibility is ever present in any given year, we could be up against it, but with the Federal assistance we get we're not struggling to pay our bills and haven't been for a couple of years.

EPA review of CAFO program implementation; presentation – Aaron Givens

To preface, Administrator Brosch announced that Aaron Givens was the Full-Time candidate chosen for the position advertised in early Fall. He has been working in this capacity since the Monday after Thanksgiving and continues to work hard on the Concentrated Animal Feeding Operations (CAFO) program.

Administrator Brosch: Last month the final draft for the CAFO General Permit 3 (GP3) was provide to the Commissioners, and I would like to get the Commission's decision on that. The Commission is not required to bless the GP3 permit, however it helps the program to do so and if the Commission is ready to do that before the end of the meeting it would be appreciated. It's not on the Agenda, but it is a part of the CAFO discussion, and further

discussion can happen after Aaron shares what the EPA thought during their State Review Framework (SRF) Review.

This Fall the NM program participated in EPA’s program that they conduct on a rolling 5-year basis, which is primarily a DNREC event which includes many of their permitting programs. Since we are the delegated agency for CAFO inspections, we were included.

Aaron Givens shared the following regarding EPA’s final draft report which was received in December:

The State Review Framework (SRF) is an implementation tool that EPA uses to compare inspection procedures from other states in the region to one another. DDA responded with no comment for the proposed changes to our CAFO inspection procedures from the review and will be working with DNREC to implement them once the official SRF report is given to us. DNREC has 120 days after the report is finalized to notify DDA of the changes that are required to be implemented.

From the SRF review, DDA met or exceeded expectations in:

- DDA collected sufficient information and has adequate documentation at a CAFO inspection to adequately determine compliance
- DDA was found to handle and address violations observed at an inspection in an appropriate manner

Areas of Improvement:

CAFO reports reviewed did not have finalization signatures or completion dates. Also, while CAFO inspection reports contained minimum data requirements such as checklists and narratives, the reports would benefit from additional information to provide a clearer understanding of site conditions. The table listed below includes the elements that EPA would like to see added to the CAFO inspection process:

Rec #	Due Date	Recommendation
3		<p>Within 120 days of the effective date of this SRF report, DNREC shall share a list of minimum inspection reporting elements with its delegated CAFO agency. This list shall include at minimum the following requirements:</p> <ol style="list-style-type: none"> 1. completion date of report; 2. final signature; 3. animal type (Dairy, Beef, Swine, Poultry, Ducks, Etc.); 4. number of animals at time of inspection and permit; 5. Permit and Nutrient Management Plan (NMP) effective and expiration dates; 6. date of manure analysis and/or if conducted in the year. 7. checkbox for ‘export only’; 8. number of houses, composters, and sheds; 9. clear cross-references in the narratives when referencing deficiencies noted in the checklist; 10. references to photographs in the narrative; and documentation of records reviewed at the site if they are noted as incomplete to be made as an attachment to the inspection report. <p>At the time of submittal of the End of Year FY2020 CMS, EPA will perform a review of inspection reports from the delegated agencies.</p>

Administrator Brosch: We did send comments to DNREC saying we would like more detail on how to implement some of those elements because in their review, EPA looks to DNREC to give us the guidance. So, we will work with them and just wanted to make everyone aware that is how we are going to proceed .

Chairman Blessing: From what was presented last month, duck was the only animal species used as a change to the wording in the CAFO GP3 permit. That's straightforward. But from what Aaron just said, when it comes to the audit, it seems we are right back to interpretations on what they are seeing with pictures and the like. That could be a cause for concern.

Administrator Brosch: Not to diminish this comment in any way, note that it should have been advised sooner that the SRF review is a review of state programs that EPA delegates, and they do it for every state to which they have delegated programs. The aim is to align states with each other, so it's fair to interpret that these recommendations are deficiencies in DE as compared to other states, not as compared to EPA's expectations. So, to the point of the pictures and them verifying our verification of the implementation, it seems the main angle of that comment was to bring DE in line with the other state's systems.

Several Commissioners agreed that pictures could put a producer in a defensive mode, which is a bit of a concern because that is different than sitting and having a conversation. It could fall to interpretation of the picture – if you see something on the ground, is that manure or something else? The fact that someone else who wasn't on site is also reviewing it is bothersome. It was also questioned if DE must follow the recommendations, or just take them into account.

Administrator Brosch: Helping to document a passing or failing score with photographs is not difficult, and there wasn't any detail to home in on the value or the content of the photos that would be necessary. Their evaluation was just to say, "other states do this, and DE does not".

Chairman Blessing: About the ruling they are supposed to make at the end of January - if the Commission agrees to the wording of the CAFO GP3 as outlined now, if in fact this addition to the audit criteria increases, what leeway will there be if we accept it tonight?

Administrator Brosch: There are two separate things we are talking about here: the SRF information that Aaron presented, and the GP3 which we would like to approve tonight for public notice. When we go to start auditing GP3, are we using the old rules or changes to them based on this review? The Commission doesn't have to decide that last element tonight or probably, in my professional estimation, for the next 12 months. There are many steps that need to occur first, and none of that has to do with the things that make us change our procedures, and that is DNREC telling us how they interpreted EPS's comments. We can invite the DNREC folks involved to come and speak about how they would like to interpret EPA's comments, or I can take some information from them and pass it along. My suggestion would be to take those comments under advisement for later, but separately bless the GP3 language now so we can get that procedure underway.

If the Commission does not approve GP3, DNREC will probably issue it anyway. Under NM Law, the Secretaries of DNREC and DDA hold exclusive authority over CAFO. The Commission is strictly advisory when it comes to permits. When it comes to day-to-day operations, it's virtually the opposite. But it's good to keep the ceremonial blessing going, since we've done it twice already.

Chairman Blessing called for a vote in favor of accepting CAFO GP3 as written. Commissioner Hill made the motion, and Commissioner Adkins seconded it. All agreed and the measure was passed so it can move forward.

Administrators Report – Administrator Brosch and staff

- Complaints – Bob Coleman
 - There was one informal complaint that made this report, and another that will be reflected in the next meeting's report.

- The open one on this report was an odor complaint that has been solved but is being held open for 90 days to be sure there is no recurrence.
 - The complaint not on this report is a “doozie” and will be discussed at the next meeting. NM has no jurisdiction over it, so it’s not our problem, but since it started with Bob it will be carried to the end, as a professional courtesy.
- Certifications – Administrator Brosch. The numbers have updated, due to the late December certification sessions from UD, but the test-takers and passing scores are not reflected here.
- Audits, Inspections, Reporting – Administrator Brosch. The numbers reflect the last 12.5 months of inspections and will reset for the new year. We were behind on inspections, but we hope to catch up with the additional full-time support of Aaron.
- CAFO Update – Administrator Brosch. We remain in a holding pattern for CAFO. We have still no understanding how the most recent Public Notice challenge is playing out between DNREC’s DAG and the usual players that request massive amounts of data via FOIA requests. But in the meantime, we are collecting NMP’s and additional NOI’s for GP1 and GP2 so virtually every chicken farm is being processed in anticipation of when we get a more clear answer of whether additional Public Notices are going to be fruitful and permit coverage will be issued as a result of that. As a reminder from several months ago, our last Public Notice batch had a FOIA request, which we satisfied. DNREC was the lead agency, as it is for most CAFO public comments, but the requestor has alleged we did not fulfill that request. It puts us in a position where we don’t know where we stand now, and therefore we haven’t issued letters of permit coverage. We’ve heard from sufficient sources for me to issue those letters, and I feel confident those farms are covered, so hopefully DNREC will have a discussion with us in the short term about being able to do so. But until we have received clarification on what happens the next time we publish Public Notices, we are not processing the applications we have received. So while work is being done, it will not be reflected in this report until there is more confirmation.
 - Salesforce Database Updates – Administrator Brosch. The 2018 Annual Reports will no longer be listed on the report, but we ended the 2018 season with a 72% response, which includes not just those returned, but also those returned and audited as complete and accurate. At the end of December, we mailed 1,508 2019 Annual Reports. They are due March 1st.
- Meetings and Training – Administrator Brosch
 - The EPA Region 3 DNREC CAFO meeting that we hoped would sort out some of those issues with the Public Notice did not take place. One of the parties planning to attend on behalf of the environmental activists had a sick family member so the meeting was cancelled. The has been no work when it is to be rescheduled.
 - There was a successful meeting about the DE Turf Program in Newark. Commissioner O’Neill and I had a nice discussion with Valann Budischak about opportunities with the Commission for Livable Lawns. But in between meetings we’re going to have to do a bit of legwork to reveal what our future opportunities make the most sense for the Commission, based on the feedback we got from when she gave her presentation at our Commission meeting. The program we attended this day was great – all attendees found a lot of utility in it, other than just getting credits.
 - UD invited three of the candidates for the Turf Extension Agent position we’ve enabled them to open up for 3 years with grant funding we’ve secured from DNREC’s Chesapeake Bay Regional Accountability Program to pay for the position to help jump start our regulatory outreach to the Nursery, Lawn Care and Turf industries.
 - Video interviews were held this week with several candidates and the search committee, which I am on, approved three for second interviews
 - Because this is an Extension position, a portion of that 2nd interview will include a public presentation on “Fertility Recommendations for the Cool Season Grasses”
 - All 3 presentations will be held on January 27th (cross off the 28th from the report)

- The Commissioners are highly encouraged to attend as many presentations as they can, which will be time at 40 minutes each, with 20 minutes of interaction to follow.
 - Timing is during the workday, at the Paradee Center in Dover, and the schedule will be forthcoming.
- Financials / Budget – Administrator Brosch.
 - We are at the halfway point in our Annual FY 20 budget.
 - Manure movement is on par for this time of year for the applications and tons we’ve paid to move.
 - Movement between MD and DE has been pretty much even so far, but this may not be so next year.

Comments from the Commission –

Deputy Secretary Bounds: The Region 3 EPA Administrator will join DDA at Ag Week on Wednesday afternoon. The EPA reached out to us, and there will be a signing of a Memorandum of Understanding between the Department and EPA that day to solidify some positive working relationships we’ve been able to foster with Region 3. The thought behind this is to capture that and memorialize it for the future so those practices we think are positive between us can survive change of administrations. EPA will also have a booth in the Dover Building with a display and staff. The public as well as the Commission are encouraged to attend.

Chairman Blessing: Is there any update on the questionnaire to go with the future Annual Reports?

Administrator Brosch: All the participants who were paid to answer the first draft questionnaire which Jenell and Lindsay presented last month have been provided the next generation of that survey, in order to validate their responses and the language of that survey. Not all have been returned yet, but the next step is to have Dr. Palm-Forster evaluate the second responses and make recommendations on the way those second responses match. This will enhance how we ask the questions so they will be in a way that’s most understandable. At that point we’ll have a draft to share with the Commission that we’d like to send to all our certification holders who participate in the NM process. Or maybe just 10% - it will be left to the experts to advise, based on what happened with those 11 beginning participants. Therefore, it seems that everything is on schedule and proceeding.

Administrator Brosch: A housekeeping note - several appointees have not been assigned to any Sub-Committees. Between meetings there has been discussion about proposals coming to Sub-Committee rather than the full Commission. To do that, we need to fill out the memberships. Chairman Blessing and I plan to meet and make the assignments. If anyone wants to advocate for themselves to be on a specific one, let us know.

Public Comment –

- Sally Kepfer stood to advise she is retiring at the end of February. She has been attending the Commission meetings faithfully since 1999 and enjoyed it. She has 42 years of service and Jayme Arthurs will be taking over her position at the NRCS State office. We wish her the best!

Next Meeting: The next regular Full Commission meeting will be scheduled for March 3, 2020 at 7:00 pm, since there are no requests for future agenda topics at this time. Advice will be sent if there is a need to change this.

Adjournment: Chairman Blessing adjourned the meeting at 8:00 p.m.

Approved,

F. Kenneth Blessing, Chairman
 Delaware Nutrient Management Commission jlm