



DELAWARE NUTRIENT MANAGEMENT

2320 S. DuPont Highway
 Dover, DE 19901
 1-800-282-8685 (DE Only)
 (302) 698-4500



Website: www.state.de.us/deptagri
 Email: nutrient.management@state.de.us
 Fax: (302) 697-6287

The Delaware Nutrient Management Commission Minutes of the Full Commission Meeting Held December 13, 2005

In attendance:

<i>Commission Members Present</i>	<i>Ex-officios Present</i>
W. Vanderwende, Chair	W. Rohrer
D. Baker	G. Llewellyn
C. Larimore	<i>Others Present</i>
R. Sterling	M. Cooke, DAG
C. Solberg	C. Robinson
R. Baldwin	K. Foskey
B. Schilling	L. Jones
B. O'Neill	D. Absher
T. Keen	S. Kepfer
J. Manchester	S. Hollenbeck
M. Adkins	M. Pielmeier
<i>Commission Members Absent</i>	
C. Fifer	
E. Lewandowski	
C. West	

This meeting was properly notified and posted as required by 29 Del. C. §10004 et al.

Minutes:

Call to Order/Welcome:

Chairman William Vanderwende called the meeting to order at 7:05 p.m. and welcomed everyone in attendance.

Approval of Minutes:

B. O'Neill motioned to approve the November 8, 2005 Full Commission meeting minutes. R. Sterling seconded the motion, which passed unanimously.

Discussion and Action Items:

Discuss Mandate Notification Process and Nutrient Management:

B. Rohrer noted the last Full Commission meeting a discussed ensued in reference to how farms are brought into the mandate and how property is transferred to another individual. M. Cooke provided general information and confirmed the Commission is proceeding with the correct standards.

There were two issues or questions that were raised:

- 1) What components of the Nutrient Management law applied to an individual? The Nutrient Management law applies to anyone who has been mandated. This question was raised due to a complaint received by the Nutrient Management office where an individual was storing manure in the production area. The individual had not been mandated. In order to trigger action in the Nutrient Management law an individual needs to be phased in through the system the Commission approved.
- 2) If the property was sold does the responsibility of the Nutrient Management law transfer to the new owner? This has not been addressed specifically; therefore, these individuals would not be responsible for a Nutrient Management plan until 2007.

M. Cooke noted if a farm operation changes hands it is not addressed specifically in the law. This raises a concern especially after 2007. The concern is what happens to new farming operations. The second concern raised is what happens to farming operations when ownership changes. The law does not give guidance after 2007.

M. Cooke recommends for consideration to consider handling these issues through regulations. The Department of Agriculture (DDA) through the Secretary of Agriculture has the authority with the guidance from the Commission to develop and adopt regulations to implement the Nutrient Management Law. This would allow for a mechanism to allow the Commission to give notice to a new owner of property or to the owner of a new farming operation.

It is unknown how it will be known when property ownership changes or when a new farm is created unless there is a problem. The adoption of regulations would allow the Commission to put the owner on notice of nutrient management requirements. Most state agencies do this through the adoption of regulations.

M. Cooke stated the Commission does not have any policies in place currently, however, has the regulatory authority to address the issues. It could lead to enforcement issues without a policy in place.

B. O'Neill asked if a farm is sold to a developer would a Nutrient Management plan be required. B. Rohrer stated a plan would need to be developed if nutrients are applied to greater than 10 acres. Also, if lawn care companies are maintaining the lots, they need to be certified if they maintain 10 acres or more and apply nutrients.

M. Cooke stated her recommendation could be done through regulations not necessarily a statute. This would allow for enforcement measures to be taken. D. Baker noted that in most cases it would be due to the transfer of interest to a family member. In most cases, someone in the farming operation would be certified with the program.

D. Baker stated these issues need to be handled through a subcommittee. T. Keen's agrees and stated his concern is how land is tracked. Each year farmers pick up or loose land they are farming. The concern then becomes that cost share is paid again on the same land. B. Rohrer understands this concern and stated the only way to track this is through the reimbursement program. The database will show a difference in acreage and C. Robinson would then contact the individuals involved to find out why.

M. Cooke stated the law addresses when Nutrient Management plans need to be updated. It further notes that plans are required to be updated upon a 25% or greater increase in facility operations. M. Cooke also noted that regulations have not been adopted to implement this provision.

T. Keen reported there are few plans that are written on the same acreage year after year. B. Rohrer stated this is a good point. B. Rohrer stated the problems come in with the 3-year plans not necessarily for the 1-year plans. T. Keen stated 1-year plans are of concern because of the rate that is paid up front for the plan. One-year

plans are paid at a rate of up to \$1.50 an acre plus \$1.50 an acre for updates and 3-year plans are paid at a rate of \$3.50 an acre. B. Rohrer clarified the rates have changed to one-third and this rate is going into its second year. The payments are equal payments based on the acreage. C. Robinson stated the best option to assure cost share is not paid on the same land is to pay one year at a time. B. Rohrer stated the change in rates he referred to does not address the issue T. Keen has raised.

C. Solberg asked what information is included in the Annual Report. B. Rohrer stated the Annual Report shows total acreage, but does not indicate if land has been transferred. C. Solberg asked if changing the Annual Report would solve the issue. B. Rohrer stated the Application for Planning and Reimbursement would be the best place to indicate property transfer.

T. Keen recommended scrutinizing 3-year plans. B. Vanderwende stated this would require an audit and T. Keen agreed.

B. Vanderwende asked if regulations should be adopted to resolve the concern. T. Keen stated there is a need to determine if a problem exists, but in his opinion it does. C. Robinson reported the cases he found were not serious problems. The problem is not knowing if everything is being found.

B. Rohrer stated reimbursement will be reviewed to see if there is a problem. D. Baker asked if there is time and resources to accomplish this. B. Rohrer stated the records would be reviewed as the program has the data. C. Robinson estimated about 30-40% were 1-year plans last year. This year is unknown at this time.

B. Vanderwende deferred these items to the Rules and Regulations Subcommittee.

Act on Request for Certification Database:

B. Rohrer referred to the DDA Policy Statement for releasing computer generated mailing lists to the public (attached to minutes). He provided an overview of the policy. He noted the DDA charges \$40 for generated or copied lists of names or \$.25 per page, whichever is greater.

A private contractor has been hired by the DDA to put together a comprehensive list of farmers for educational mailings. To do so, a request has been made for the certification database. Past requests made by the public were handled as a FOIA request and the requestor was provided with mailing labels. Even though the private contractor is considered public, the request is for the DDA.

B. Rohrer recommends establishing policy for these types of requests. For inclusion in the established policy he further recommends that state agencies be classified. Currently, when one state agency asks for information from another, it is not considered as a public request. The Commission needs to determine if they would handle these requests in the same fashion or should state agencies be considered as public.

B. Rohrer recommends the Commission consider setting a policy for requested information. M. Cooke stated privacy issues need to be considered when setting the policy.

B. Rohrer noted names of all certification holders are maintained on the website. When the request was received this was provided, but the private contractor indicated she needed addresses and certification database.

B. Vanderwende stated this should be deferred to the Rules and Regulation Subcommittee. D. Baker asked if the policy developed would be different than what the DDA has. B. Rohrer stated the Commission did not develop the DDA policy. It was reiterated that past requests request have been treated as Freedom of Information Act (FOIA) requests.

D. Baker asked if any Commissioners had concerns that requests for information should be handled as sensitive in nature. B. Vanderwende noted there was concern raised when information was requested in the past even though it was requested within the department. C. Larimore noted lists can be sold.

The only information requested is names and addresses of certification holders. B. Rohrer reported there is a little over 2,000 certification holders.

C. Larimore stated a lot of time and hard work went into creating and maintaining the database and the farmers have trusted the Commission with the information. M. Cooke asked if the request was for only the people certified. B. Rohrer stated this was correct. M. Cooke therefore concluded it would not include the complete mailing list of the Nutrient Management Commission.

B. Schilling asked who had requested the list. B. Rohrer reported that A. Kriener, who is contracted by the DDA to accomplish a few projects. One of the projects is to create a comprehensive list of farmers within the state. Pesticides and Forestry has already supplied her list.

C. Solberg noted there is not much difference in the public's investment in the Pesticide application and Nutrient Management certification. If a legitimate request should be made, there is no resistance to make the information available. He further stated he does not see this as much of an issue.

B. Rohrer noted there are two options. The first is to require a FOIA request and bill in the amount of \$40.00 and the second it to establish a policy.

M. Cooke noted that FOIA states it is the responsibility of each agency to establish policies regarding access to public records and the fees that will be charged to obtain it. M. Cooke advocates establishing a policy.

C. Larimore recommends deferring the establishment of a policy to a subcommittee. D. Baker stated no matter what subcommittee these items are deferred to it would eventually return to the Full Commission.

B. Rohrer agreed but noted there is an immediate issue to address. The Commission is in receipt of a written request and there is an obligation to respond to the request.

B. O'Neill stated the information requested is the same as providing mandate lists. Since mandate lists have been provided in the past, this one cannot be denied.

C. Solberg motioned to have the request reduced to writing and handled as a FOIA request. D. Baker seconded the motion, which passed unanimously.

B. Rohrer would like the establishment of a policy deferred to the Rules and Regulations subcommittee for review. This situation has come up three times in the past year. B. Vanderwende agreed and deferred it to the Rules and Regulations subcommittee.

Discussion ensued concerning the details of the project that A. Kriener has been contracted to do.

Discuss and act on DNMC Budget:

C. Larimore reported the Budget subcommittee voted as Program and Education subcommittee to present the budget request to the Full Commission. The request is for \$1,197,600. Also, it is anticipated to receive funding from 319 and the Chesapeake Bay Association (CBA).

D. Baker asked if the budget presented included the additional funding received for research in the 2006 budget. B. Rohrer reported it did not as this was a one time allotment. D. Baker understood additional funding for research would be requested again.

C. Solberg noted Maryland is interested in the stockpiling research for the second year. B. Rohrer will look for additional funding from other sources for the second year.

C. Larimore noted the budget hearing is set for January 16, 2005.

C. Larimore motioned to adopt the budget. D. Baker seconded the motion, which passes unanimously.

Subcommittee Reports:

Technology:

T. Keen provided the following report of the Technology subcommittee:

- Catastrophic Mortality: There is a business that will handle catastrophic losses composting onsite.
- Phosphorus Saturation Ratios (PSRs): Most labs are generating data to produce PSRs, but are not reporting this on soil audit. B. Rohrer was assigned to contact the labs to see how much of problem it would be to have this reported on the lab report.
- Phytase: B. Rohrer was assigned to do follow up work and report back.
- Alum: Discussed as a source of reducing phosphorus in field applications.
- Cover Crop: J. Manchester noted CBA and Inland Bays reported they are not meeting their goals for reducing pollutants. Agriculture is the most cost effective way of decreasing pollutants. The Commission recognizes timely incorporation in cover crops are both good technologies to decrease pollutants. It is J. Manchester's position is the Commission should increase the amount of cover crops and timely incorporation specifically the year when poultry litter is applied to the soil. It has been stated the proper way to follow up is through DNREC and County agencies for funding.

T. Keen asked if Pennsylvania Amish were exempt from nutrient management. B. Rohrer reported they require nutrient management planning if there are two animal units per acre and is not aware of any exemption. T. Keen asked B. Rohrer to research this.

S. Kepfer reported she spoke to Brad of Perdue University about nutrient management because his research mirrors T. Sims research. This is another university that supports what is coming out of the University of Delaware.

Program and Education:

C. Solberg provided the following report of the Program and Education subcommittee:

- Environmental Stewardship Program: Nominee submission deadline is December 15, 2005. Field review will be in January. The Governor's Conference on Ag has been confirmed and scheduled for February 15, 2006.
- Governor's Conference on Ag: Half of the conference is being dedicated to nutrient management. A detail agenda has not been outlined, but should be available soon.

T. Keen stated something should be done to have the agricultural community involved. Last year's conference was not well attended by farmers. C. Larimore noted farmers will not attend unless it will help them. They get up early to do their jobs. C. Solberg stated the agenda needs to be

interesting. B. Rohrer stated they would try to get EPA to attend and be part of the conference. Since it is a nutrient management topic, the hope is to have more farmers attend.

Budget:

Reported earlier.

Administrator's Report:

Complaints: There are three formal complaints for alleged nutrient management violations and four informal complaints received since the September meeting with four unresolved informal complaints.

Budget: Refer to Administrator's Report attached.

Nutrient Management Planning: B. Rohrer reported the numbers are a little low for 2006. C. Robinson reported there are 364,000 unique acres that have been covered through the planning since 2001. About 89,000 acres have not signed up for cost share for 2006. 359,987 total acreage to date with 36,865 plans (Private) for 2006. B. Rohrer reported that L. Jones of DNREC has been awarded a grant to fill a position for a Nutrient Management Planner. The focus will be on maintenance corporations and home owners association to assure that the open spaces are in compliance. L. Jones stated this individual will get information to the appropriate entities and get information back. C. Solberg encourages a multi year approach.

Nutrient Management Relocation: 137,903 total tons relocated to date with 16,521 for 2006.

Certification: 2,227 certifications have been approved. The certification newsletter was discussed (attached to minutes)

CAFO Update: Refer to Administrator's Report attached.

20% Mandate for 2005: 1,355 were mandated for 2005. There are 10 Non-Respondents.

20% Mandate for 2006: 1,390 were mandated for 2006. There are 590 Non-Respondents.

Education/Outreach/DNMC Annual Report: Refer to Administrator's Report attached.

Freedom of Information Act Request: Refer to Administrator's Report attached.

B. Rohrer reported that C. Robinson is leaving Nutrient Management. He has accepted a position with Farm Credit. He will be missed and B. was formally thanked by B. Rohrer. W. Vanderwende commended C. Robinson with a round of applause for his work.

B. Rohrer referred to the 2007 Federal Farm Bill, Concepts for Conservation Report in the Chesapeake Bay Region report (attached to minutes). He encouraged the Commission to review it.

Public Comments:

NONE

Next Meeting:

The next meeting of the Full Commission is scheduled for January 10, 2006.

Adjournment:

Chairman Vanderwende adjourned the meeting at 8:30 p.m.

Approved,

W. Vanderwende, Chairman

WRR/mrp