



DELAWARE NUTRIENT MANAGEMENT

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The Delaware Nutrient Management Commission Minutes of the Full Commission Meeting Held January 10, 2006

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>
C. Solberg	M. Cooke, DAG
R. Baldwin	K. Foskey
B. Schilling	T. Garrahan
B. O'Neill	D. Absher
T. Keen	S. Kepfer
J. Manchester	K. Maciorowski
E. Lewandowski	C. Roberts
C. West	M. Guo
M. Adkins	P. Sample
<i>Commission Members Absent</i>	M. Pielmeier
C. Fifer	
R. Sterling	

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 7:00 p.m. and welcomed everyone in attendance.

Approval of Minutes:

J. Manchester motioned to approve the December 13, 2005 Full Commission meeting minutes with the following correction:

Change “timely incorporation *in* cover crops” to read “timely incorporation *and* cover crops”.

E. Lewandowski seconded the motion, which passed unanimously.

Discussion and Action Items:

Discuss Federal CAFO Regulations Modification:

B. Rohrer provided an update on Concentrated Animal Feeding Operation (CAFO) Regulations. He reported changes made by the United States Environmental Control Agency (USEPA) and dated December 13, 2005 are in response to the February 2 Circuit Court of Appeals ruling. The regulatory modifications reflect an adjustment of deadlines only. He further noted the preamble mentions the duty to apply topic, but regulations only address deadlines as follows:

- Deadline for a CAFO to request permit coverage was Feb. 13, 2006 and the new deadline is March 30, 2007.
- Deadline for implementing the Nutrient Management plan was December 31, 2006 and the new deadline is March 30, 2007.

B. Rohrer reported that the public comment period is open until January 20, 2006. B. Rohrer recommended not formally commenting unless otherwise discussed. B. Vanderwende asked if anyone had any comments or discussion. Hearing none, B. Vanderwende moved to the next agenda item.

Review and act on Research and Demonstration Proposals:

B. Rohrer reported the Planning Subcommittee met to review the Request for Proposals that were submitted research and demonstration. He noted the subcommittee reviewed a total of eight proposals for a total of about \$225,000. Research and demonstration has \$104,000 available. He provided a summary (attached to minutes) of the action the subcommittee took. An outline of the action follows:

- Disapproved: #1, #4, #5 and # 6
- Approved: #2 and #3
- Tabled: #7 and #8 for more detail

Proposal #2 is for \$28,122 and was submitted by the University of Delaware, titled “*Advancing Nutrient Management in Delaware: Accurate Nutrient Budgets and Prioritized Best Management Practices*”. The primary task is to address mass balance as far as the calculations will be modified to calculate the relocation program. The second component is to look at the Best Management Practices (BMPs) to look at the effectiveness and quantify the prioritize BMPs.

Proposal #3 is for \$45,265 and was submitted by Delaware State University. This is a very detailed research project to quantify the effectiveness of application setbacks, cover crops and incorporation of poultry litter. The subcommittee ranked this proposal at number one as far as the Commission's research priorities. B.E. Lewandowski noted the proposal is a two year project. The Planning Subcommittee approved to recommend both proposals to the Commission for approval.

J. Manchester motioned to approve the Planning Subcommittees recommendation for proposals #2 and #3. D. Baker seconded the motion.

B. Vanderwende asked if there was any discussion. T. Keen requested that each proposal be voted on individually.

J. Manchester amended his motion to approve the Planning Subcommittees recommendation for proposal #2. D. Baker seconded the motion. Motion carried with a vote of eight in favor and four against.

J. Manchester motioned to approve the Planning Subcommittees recommendation for proposal #3. D. Baker seconded the motion which passed unanimously.

B. Vanderwende asked when the projects would commence. B. Rohrer stated they will start the spring 2006. As soon as they receive an acceptance letter the project should start.

D. Baker reported the Planning Subcommittee will reconvene again upon the receipt of the revised proposals #7 and #8. The Planning Subcommittee should act on the tabled proposals within the next 30 days.

Act on 12/8/05 hearing recommendations:

B. Rohrer reported a formal hearing convened on December 8, 2005 for S. Shin in reference to a complaint regarding Nutrient Management Certification Regulations. As hearing officer, D. Baker rescued himself from the discussion and left the meeting.

B. Rohrer reported this action item and the following action item are related. The formal complaint involves S. Shin.

The first complaint involves a lawn care company. The Nutrient Management Program is in receipt of a Memorandum of Resolution (MOR) agreeing the lawn care company will attend certification sessions.

The second is in reference to an individual storing litter outside inappropriately. The individual signed an MOR and a Notice of Intent (NOI).

B. Rohrer noted the final complaint is in reference to S. Shin and rescued himself from the discussion and left the meeting.

M. Cooke reported D. Baker's Proposed Order (attached to minutes) recommends S. Shin be found in violation of 3 *Del. C* § 2241 for his failure to be certified as well as in violation of the Commission regulations requiring certification. D. Baker recommends he become certified at his earliest opportunity to avoid any further sanctions by the body. M. Cooke noted that an administrative penalty is not recommended at this time given the circumstances.

M. Cooke stated that D. Baker is concerned that S. Shin has limited English communication skills. D. Baker suggests to the Commission and is not part of his order to develop a list of resources available to Delaware farmers with limited English communication skills that can be given to them with possible translation services or support services when they attend certification sessions. M. Cooke clearly stated this would be a resource given to the farmer and no cost incurred by the Commission.

M. Cooke stated if the Commission chooses to accept the recommendation she has an Order (attached to minutes) prepared that will need to be signed. If the Commission decides not to accept the recommendation M. Cooke will come back at a later date with an Order to be signed.

T. Keen asked if Mr. Shinn was involved in one of the past catastrophic loss. The answer is yes. Had it not been for the catastrophic loss the Commission may not be aware that S. Shin is not certified? M. Cooke answered probably not.

B. Shilling asked if it was not the poultry companies responsibility to assure their growers are certified. B. Vanderwende stated this is an earlier proposal. C. Solberg stated there is very specific contract language which states certification is required. M. Cooke noted the certification regulations run directly to the farmer themselves.

M. Cooke stated a decision needs to be made based on the record before the Commission.

C. West motioned to accept the Hearing Officer's recommendation. C. Larimore seconded the motion.

C. Solberg asked M. Cooke if she had an Order drafted for the purpose of executing the recommendation. M. Cooke answered yes. C. Solberg asked that the Order be read into the record. M. Cooke read the Order into the record.

Concern was raised in reference to #3 of the order. C. West asked if the language could be changed from "should become" to "shall become". M. Cooke stated she could make the revision as long as there is not objection to the change being hand written on the final order.

M. Cooke recommended the following language, "Se K. Shin shall attend the next regularly scheduled certification training for nutrient generators." This place more responsibility on S. Shin for him to become certified.

M. Cooke noted there is a motion on the table that needs to be amended. B. Vanderwende suggested the motion be withdrawn. **C. West withdrew his motion.**

C. Larimore motioned to approve the Order of the DNMC as amended. C. West seconded the motion, which passed unanimously.

T. Keen suggested notifying the individual in charge of Perdue's grow-out the Commission that there is concern there are growers that are not aware of certification. C. West suggested sending a copy of the order with the letter and to all the poultry companies. This letter should ask for their help. Concerned was shared as it appears all growers are not certified. The grower needs to be made aware of this by the integrator.

B. Rohrer and D. Baker returned to the meeting.

B. Vanderwende advised B. Rohrer and D. Baker the concern the Commission shared that there are growers not certified.

T. Keen motioned to notify all the poultry companies of the Commissions concern that this occurred and include a copy of the letter to Mr. Shin about the hearing and state that we expect this not to happen again.

M. Cooke suggested the Order of the DNMC to only accompany the letter to the integrator that Mr. Shin is contracted with. She further suggested sending a letter to the other integrators informing them that a complaint had been found.

B. Vanderwende stated a proper motion is needed.

C. Larimore motioned to send a copy of the complaint to the integrator that Mr. Shin grows for and send another letter to the other integrators to share the problems the Commission's is having and ask for their help. B. O'Neill seconded the motion.

T. Keen's position is the Commission does not need to ask for their help but to tell them. B. Rohrer asked to comment on the discussion. He stated the program intended not to get the poultry companies involved in the situation. The history is that the program was contacted by the poultry company due to a catastrophic mortality event. There were instances in the past when poultry companies were notified about particular farms resulting

in a lost contract. For the protection of the grower it was handled through the program. If the Commission and program cannot fix it, B. Rohrer recommends referring the farm to the company.

C. West stated the intent is to keep the integrators informed that new growers must be told they need to be certified. He further stated he understands the concern B. Rohrer mentioned. C. Solberg stated the provisions of the MOU should be able to be recited without any retribution.

C. Larimore withdrew her motion to send a copy of the complaint to the integrator.

C. Larimore's motioned to send a letter to the integrators indicating the Commission has come across growers who are not certified, referring to the MOU which states they will help the Commission. Also, the letter should state it is of great concern to the Commission. C. West seconded the motion. The motion carried with eleven votes in favor and one abstention.

Act on 12/13/05 and 12/20/05 formal complaints:

B. Rohrer read for the record Memorandum dated January 10, 2006, SUBJECT: December 13 and 20, 2005 Complaints Against Nutrient Management Violations (attached to minutes). Discussion and action follows:

- 1) Mr. Jonas King: The Program Administrator recommends considering the Mandate complaint as resolved and pursue a resolution for the certification and animal waste management requirement.

D. Baker motioned to accept the Program Administrator's recommendation. C. Larimore seconded, which passed unanimously.

- 2) Mr. Robert Oliphant: The Program Administrator recommends considering the Mandate complaint as resolved and pursue a resolution for proper outdoor storage of poultry litter. Further, to schedule a hearing no later than 30-days for the condition of a failed resolution.

C. Larimore motioned to accept the Program Administrator's recommendation. B. O'Neill seconded, which passed unanimously.

- 3) Mr. James Parramore: The Program Administrator recommends considering the complaint as resolved.

D. Baker asked if the Animal Waste Management Plan (AWP) was verified or verbally indicated. B. Rohrer stated Mr. Parramore indicated who updated the AWP but has not verified by visual inspection. Discussion ensued as to how the Nutrient Management Program accepts responses for the Mandate.

C. Larimore motioned to accept the Program Administrator's recommendation. M. Adkins seconded the motion, which passed unanimously.

T. Keen suggested the plan be verified. B. Rohrer stated audits are coming up and Mr. Oliphant and Mr. Parramore are candidates for the audit. B. O'Neill suggested complaints should automatically be audited. B. Rohrer agreed and will make this a priority.

- 4) Happy Lawn™: The Program Administrator recommends pursuing resolution by signing a formal Memorandum of Resolution acknowledging certification requirements and the agreement to become certified by the next available certification session.

B. Rohrer noted there will be further discussion on this topic as part of the Rules & Regulations Subcommittee report as far as the winter application of fertilizer. J. Manchester asked who would become certified. B. Rohrer stated the regulations state someone in the management chain must become certified.

B. O'Neill motioned to accept the Program Administrator's recommendation. R. Baldwin seconded the motion, which passed unanimously.

Subcommittee Reports:

Planning:

D. Baker asked B. Rohrer to provide an update on the Governor's Conference of Ag. B. Rohrer stated the conference has been scheduled for February 17 and asked everyone to mark their calendars. He shared the agenda.

Rules & Regulations:

E. Lewandowski updated the Full Commission as to the discussion which took place at the Rules & Regulations meeting held on January 5, 2006. The subcommittee discussed the mandate specifically how people will be brought into the program who qualify, whether they pick up land, a new business, etc. The issue related is how are individuals tracked and picked up when they lose land and are under an approved three-year agreement. The concern is how to get the individual to pay back monies if owed to the Commission. A lot of ideas were discussed.

Regarding the 2007 Mandate, the suggestion is to continue using the same vehicle used now, by allowing individuals time to come into compliance. The Commission has been operating on three-six months.

With respect to those who have lost land and owe the Commission money, Scenarios that were discussed for those who would not have been mandated are new property owners and businesses. These individuals must receive notice. Once notice is given it needs to be determined the period of time given to the individual or business to come into compliance with Nutrient Management planning.

B. Rohrer mentioned certification is not an issue. The certification regulations address new owners and businesses.

In reference to new owners and businesses, the subcommittee suggested handling those who need to come into compliance by allowing three to six months. With respect to those who have lost land and owe the Commission money the subcommittee suggested crafting language a statement of liability which could be included on the Cost Share Application which will make notification they are responsible to report to the Commission they have lost land and liable for the money.

E. Lewandowski reported B. Rohrer spoke with legal counsel in reference to the 2007 Mandate and asked him to provide an update. B. Rohrer reported new owners and businesses must receive notification and once notified how long they will have to have a plan implemented. He noted under other circumstances six months has been given and therefore advised the same time be applied. B. Rohrer stated the changes need to be done through regulations. The ideal time to accomplish this would be over the summer. This would allow any other items that need to be changed or added to regulations. The effective date would be January 1, 2007. Unless notified there may be grounds for legal grounds for saying they were not notified. It would also bring those into planning for those who bought property or just got into the business.

Individual are notified the summer prior to their deadline which is about six months. The issue is those who do not receive a mandate. M. Cooke stated the Commission needs to address how it will handle those who have

not been mandated. These individuals are either new property owners or were not caught in the mandate cycle. M. Cooke stated the best way to handle this is through regulation.

C. Solberg asked if it was necessary for a legislative language change in order to implement planning. M. Cooke stated if the changes were done through regulations it is enforceable under the law. The law does not go past 2007.

J. Manchester suggested having the Program Administrator and legal counsel draft some language to present at a future meeting.

E. Lewandowski reported the subcommittee discussed how the Commission would address requests for names and addresses in the Certification database. He noted some concern was shared at the meeting. Based on the discussion at the meeting the attached DRAFT 1-10-06 Certification Database Policy (attached to minutes) was written. E. Lewandowski read the document into the record. E. Lewandowski stated the subcommittee is asking the Commission to accept the policy.

C. Larimore motioned to accept the Draft Policy with changes. M. Adkins seconded the motion.

M. Cooke noted this is not an action item on the agenda and therefore could only be discussed. B. Vanderwende stated it must be brought back to the next meeting.

E. Lewandowski presented draft regulatory language for fertilizer handling (attached to minutes) which is presented to the Commission for review. Regulations are being proposed due to the outcome of a recent complaint investigated by the Nutrient Management staff. The Complaint was a pile of fertilizer was not cleaned up properly and was left on the side of the road. After the investigation, the concern arose that fertilizer was being applied during the timeframe of December 1 and February 1 which is against regulations.

M. Cooke as for clarification about the Certification Database Policy, specifically what is proprietary information since the proposed policy is only for names and addresses. E. Lewandowski deferred to D. Baker as this was his concern. D. Baker stated the proposed policy states it may contain proprietary information. It is not clear whether it is proprietary. M. Cooke's concern is proprietary information is specifically covered by the Freedom of Information Act (FOIA) as excluded from the definition of public records. C. Solberg stated proprietary means the same as confidential business information. M. Cooke does not understand how a name and address is going to be classified as confidential business information.

E. Lewandowski stated the Program Administrator was charged with crafting draft language for fertilizer handling. E. Lewandowski read the draft regulations into the records.

J. Manchester as why the draft regulation is limited to commercial fertilizers. E. Lewandowski reported it was discussed to include all fertilizers and for this instance it was suggested to limit it to commercial fertilizers and to include an exemption for agriculture.

C. Solberg does not see justification for an exemption. B. O'Neill stated agriculture should not share this burden. He further stated agriculture has done their share for nutrient management and are very conscience. The regulation is being proposed for those who are applying fertilizers on frozen ground without any regard to the environment. C. Solberg stated the Commission stands behind the 180 day for temporary storage and that is to avoid spreading on frozen ground. C. Solberg stated he could not support an exemption.

The lawn care company reported their contract with their clients state they will apply fertilizer a specified number of times during the contract. Therefore, the fertilizer was applied in order to meet the terms of the

contract. It was agreed that the fertilizer would not do much good at the time it was applied and it was only done to meet the terms of the contract.

Discussion ensued concerning applying nutrients when the ground is not frozen. The Consultant needs the flexibility in the plan to do so.

B. O'Neill stated nutrients should be applied prior to December 1. The turf does not take in the nutrient if applied later. E. Lewandowski stated the draft was done for the purpose of discussion and could be sent back to the subcommittee.

T. Keen suggested omitting commercial fertilizer and keeping the possibility of an exemption in if it can be justified. C. Solberg stated the exemption needs to be agronomically justified. T. Keen also suggested omitting 4.b.

T. Keen asked why the exemption needs to be in writing when the Nutrient Management is notified. Consultants do not have this time.

D. Baker noted the DRAFT 1-10-06 Certification Database Policy had not been resolved. He noted he was responsible for the wording of the second paragraph. D. Baker suggested changing the second paragraph to read: "This information is intended only for use by the Delaware Department of Agriculture (DDA).

M. Cooke stated if the information is released to the DDA and it is released to someone it is unclear as to what actions the Commission would be able to take as a result of the information being shared. C. Solberg asked if a policy could be created should an agency share the information. Therefore, should the information be shared future requests would be denied? M. Cooke suggested using may instead of would. This would allow the Commission to look at each situation as to its own circumstance in order to make a judgment.

J. Manchester referred to a document B. Rohrer shared in reference to work done in Wisconsin. This document states they place on their website particularly in the spring as to when it is time to spread manures. J. Manchester asked if the Commission had discussed doing this in the past. B. Vanderwende noted there are a lot of individuals who do not have computers. C. Larimore noted farmers do not have enough time to check this out.

Administrator's Report:

Complaints: There are seven formal complaints for alleged nutrient management violations.

Budget: Refer to Administrator's Report attached.

Nutrient Management Planning: 364,250 total acreage to date with 41,128 plans (Private) and 10,119 plans (Public) for 2006.

Nutrient Management Relocation: 143,709 total tons relocated to date with 22,327 for 2006.

Certification: 2,185 certifications have been approved.

CAFO Update: Refer to Administrator's Report attached.

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

20% Mandate for 2006: 1,390 were mandated for 2006. There are 581 Non-Respondents.

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

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

Public Comments:

NONE

Next Meeting:

B. Vanderwende noted a Rules & Regulations Subcommittee and a Planning meeting will be scheduled to meet prior to the next Full Commission meeting. The next meeting of the Full Commission is scheduled for February 14, 2006

Adjournment:

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

Approved,

W. Vanderwende, Chairman

WRR/mrp