State Conservation Commission
Act 38 Updates

2017 Pennsylvania Inter-Agency Nutrient Management Annual Conference

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Top 10 Planning and Review Issues

- #1 – Re-certification Letter (Triennial Review)
  - Although once SOP, these letters have not been acceptable for several years.
  - With NMPs now written for CMU (not crop group), and soil samples needed for each CMU, large majority of NMPs will need amended.
  - Ref.
    - 83.362 & 83.371
    - NM TM, NMP Submission: Required Appendices & Supplemental Info, pages 4-5
Top 10 Planning and Review Issues

- #2 – “Calculated” spreader calibration vs. Actual spreader calibration

  - Spreader calibration is an EVENT that must be completed in the field using an acceptable calibration method.

  - We continue to see specialists listing unacceptable calibration methods or listing incomplete information or data from the actual calibration event.

  - There are 2 common calibration techniques; the swath (load-area) method is the best method for liquid manure and the tarp (weight-area) method is the best method for solid manure.

  - Actual manure spreader calibration data from the calibration event is required to be included in the NMP. Plan reviewers must verify the calibration data during the NMP review site visit.
Top 10 Planning and Review Issues

- #2 – “Calculated” spreader calibration vs. Actual spreader calibration

- “Boilerplate” or “canned language” in not acceptable. Listing things like “Loads Per Acre” or “calibration method will be completed using….“ is not acceptable.

- Calibration must be completed before plan development unless the operation is new and manure is not yet available or the timing to obtain a representative sample is not available.

- See Agronomy Facts 68 – Manure Spreader Calibration, NMP Summary and Appendix 2 of the NM Technical Manual and/or contact your SCC Regional Coordinator for clarification.
#3 – BMP Implementation Schedule

- This chart is used to list the various stormwater and manure management BMPs required to be implemented on this operation, and when they are to be installed.

- Includes both structural and management practices necessary to implement the submitted NMP and to provide runoff controls in the farmstead and crop fields to protect water quality.

- The structural BMPs outlined in the plan are to be implemented within 3 years.

- The plan map or BMP map is required to provide a pictorial location of where the planned BMPs are to be located (as well as existing BMPs).

- Listing BMPs in the BMP Implementation Schedule that do not address a deficiency. The BMPs listed on this chart come from:
  
  1) the BMPs to address Manure Management Problem Areas (Appendix 6)
  2) the BMPs to address Critical Runoff Problem Areas (Appendix 7)
  3) proposed construction.
#3 – BMP Implementation Schedule

- For new construction on the agricultural operation (new dairy barn, swine barn or poultry house) –
  - **BMPs that are integral for the implementation of the NMP** shall be listed in the chart. Items such as manure storage, manure stacking, mortality composting and those BMPs needed to implement manure management and/or control stormwater issues on the new site, such as roof runoff controls, upslope diversions, etc. shall be listed in the chart.
  - BMPs that are installed as part of the construction, such as Chapter 102 (construction E&S), Chapter 105, or post stormwater construction, are not included in the BMP chart but should be shown on the operator’s map, as they are integral to the operation.

- It is suggested that plan writers refer to “Supplement 20-Common BMPs – Basic O&M Guidelines” and the PATG standards and provide this guidance information to operators that are unfamiliar with their requirements or practices listed in this chart.
Top 10 Planning and Review Issues

- **#4 – Appendix 7: Stormwater Management Section**

  - We continue to see issues with this section of the NMP being improperly completed by specialists using inappropriate statements and trying to address other issues on the operation in this section of the plan.

  - The Stormwater Management section of a NMP is to review of the adequacy of existing runoff control practices on all cropland and pasture included in the plan.

  - Only **CRITICAL RUNOFF PROBLEM AREAS (CRPAs)** on cropland or pasture land should be addressed in this section of the NMP.
    - Farmstead areas (barns, barnyards, silage storage areas, manure storage facilities, etc..) must be evaluated and documented in Appendix 6 – Manure Management.

  - “Boilerplate” or “canned language” is not acceptable.
    - Specific areas evaluated (specific fields or stream corridors) must be described, whether or not any CRPAs were identified and the appropriate BMPs must be listed to address the CRPAs.

  - See Appendix 7 of the NM Technical Manual and/or contact your SCC Regional Coordinator for clarification.
The Manure Management Section is to review all existing manure management practices and locations on the agricultural operation.

The purpose of this on-site review is to evaluate and document the adequacy of manure management areas, conditions and practices to prevent surface or groundwater pollution from storm events up to and including a 25-year, 24-hour storm intensity.

We continue to see specialist using inappropriate statements and trying to address other items on the operation in this section of the NMP.

“Boilerplate” or “canned language” in not acceptable.

Specific areas evaluated must be described along with any inadequate practices and the appropriate BMPs to address them.

See Appendix 6 of the NM Technical Manual and/or contact your SCC Regional Coordinator for clarification.
Top 10 Planning and Review Issues

- #6 – P Index Soil Loss and Runoff Potential
  - We continue to see many NMPs that contain the same soil loss values and runoff potential figures for every field on the operation. This is incorrect and will not be accepted.
  - Soil loss numbers must be taken directly from a current conservation plan or Ag E&S plan for the operation and calculated using the Revised Universal Soil Loss Equation (RUSLE).
    - PA One Stop is acceptable.
  - The Runoff Potential for any given field is based on soil type and drainage class of the dominant soil type for that field.
  - Runoff potential is determined using soils maps along with NRCS County Drainage Class Tables. Tables are on the NM Website.
# Top 10 Planning and Review Issues

- **#7 – Addressing Review Comments**
  - Planners need to either address each technical review comment, or indicate how they believe the current element in the plan conforms to program standards.
  - If comment’s applicability is questioned, this needs resolved with reviewer, not ignored.
  - Not addressing comments:
    - Wastes time
    - Creates distrust with reviewers
    - Puts farmers in jeopardy of being out of compliance for not meeting deadlines
    - With expired plans, unmet deadlines could play into amount of penalty if enforced.
Top 10 Planning and Review Issues

#8 – Waivers

- Two Types of Waiver:
  - Waterbodies
  - Property Line

- Waivers requests from waterbodies and property lines should be submitted with the NMP.

- Not including the waiver could cause a NMP to be deemed admin incomplete.

- Waivers, for waterbodies, can only be granted for existing operations (In existence PRIOR to October 1, 1997).

- Waivers are never granted for public water sources
Top 10 Planning and Review Issues

- **#8 – Waivers**

  - All new operations (in existence AFTER Oct 1, 1997) must meet all the minimum setback requirements from waterbodies – There are NO WAIVERS.

  - If an existing operation adds a new enterprise it must meet all the minimum setback requirements of a new operation. (i.e. an existing dairy adds a swine finishing house)

  - Property Line (neighbor waivers) are only necessary for the construction of manure storages on existing or new operations. These should be facilitated by the commercial NMS and/or the landowner.

  - No waivers from waterbodies can be granted without an on-site visit which should include the SCC regional coordinator.
#8 – BMP Implementation Extensions

- VAOs are not required to acquire a BMP implementation extension unless they are also a CAFO.

- CAOs may request an additional 2 years if both the following specific criteria are met.
  - The operator must show that the cost of their project cannot be financed through available mechanisms meeting the following criteria:
    - Individual substantial capital improvements shall be structural practices costing more than $10,000. AND
    - The operator must submit evidence that 3 viable lending, grant or loan sources would not provide funding.
  - In addition, a sum of 2 million or more is not available for grants or loans from the Nutrient Management Fund at the time the BMPs are scheduled for completion.
Top 10 Planning and Review Issues

- **#8 – BMP Implementation Extensions**
  - BMPs extension requests in the first 2 years of the NMP can be handled through a plan update.
  - BMP extension requests submitted in year 3 must follow the triennial review process and submit a plan amendment. Not implementing a BMP on schedule is 1 of the 12 triggers for submitting a NMP amendment (also a non-compliance item that should be noted on an inspection report).
  - There is no formal approval process for a BMP implementation extension. The Commission or delegated CD will review that the criteria has been met and acknowledge this with written correspondence.
  - NMP Limited Liability Protection is only granted to the extent that the NMP is implemented.
Top 10 Planning and Review Issues

- #9 – Animal Concentration Areas (ACAs)

  - We continue to see problems with ACAs and sensitive areas not being properly identified and addressed.
  - This is often very evident in pastures with ACAs.

  - The evaluation of the adequacy of ACA practices and conditions should consider the ability of the current practices and management to “keep clean water clean and to collect, handle and treat contaminated runoff water before discharging” into surface water or groundwater.

  - Any inadequate practices must be properly documented in Appendix 6 along with the appropriate BMPs to address them.
Top 10 Planning and Review Issues

- #9 – Animal Concentration Areas (ACAs)

- The following practices and conditions related to each identified ACA or “potential ACA” must be evaluated:
  - Location and Sizing
  - Manure Collection (scraping)
  - Upslope and Roof Water Entering ACA
  - Contaminated Runoff Water Leaving ACA
  - Animal Access To Streams

- Refer to Supplement 20: Common Best Management Practices - Basic Operation and Maintenance Guidelines for possible information that can be provided to the operator on how to properly operate/maintain identified ACAs.
Top 10 Planning and Review Issues

- #10 – Use of On-Farm Records (for developing plans)
  - When writing a NMP for an established operation on-farm records must be used when completing Appendix 3.
  - Commercial and Public NM specialists need to see the records.
  - If an existing farm operation is not keeping the appropriate records that is a violation of the Act 38 program and needs to be documented in their status review (inspection report) by the CD.
  - If a CD (is reviewing a plan) receives a plan from an operation that they know has records and calculations are used (in Appendix 3), the plan should be deemed administratively incomplete.
  - Section 83.291(c)(2)(i) in the regulations addresses this issue.
QUESTIONS ??????
Lessons learned from Appealed NMPs / OMPs

- Plan needs to be accurate, current, & consistent with other plans
- A sloppy plan reflects poorly on farmer, invites distrust with anti-Ag neighbors, & causes farmer’s mgmt. ability to be questioned.
- Reviewer & Planner need to know the plan better than those opposing
- Farmer is best served when the planner and reviewer work together to get the plan in the most defendable state before being acted upon.
- Need to be professional
  - Never put anything in print that you would not want the public to see
  - Plan, review comments, emails, hand-written notes
Lessons learned from Appealed NMPs / OMPs

- Review needs to be both thorough and fair
- Review comments need to be well written, being both accurate & definitive
- Always be honest and truthful, do not assume or exaggerate.
- Appeals can take a **VERY LONG** time (many months – multiple years)
- Need to be consistent in the file titles of e-versions of documents
  - A must for doc retrieval and maintaining proper chronology.
  - Appealed plans often require several rewrites & resubmissions
  - ALL docs can be requested under discovery, not just the most recent
- CD is represented by DEP legal Counsel
- NM Adm Manual, Ch. 3, Section X
QUESTIONS ??????
The SCC approved the weights in May 2017.

The revised Standard Animal Weights and groupings table were published in the PA Bulletin on June 3, 2017.

Agronomy Fact Sheet 54 has been updated and published (and is in your packet).
83.262 (a) (1) (i) of the Act 38 regulations state:

Compute the animal weight for the agricultural operation by multiplying the average number of animals on the agricultural operation by the standard animal weight used by the livestock industry in this Commonwealth. The standard weights contained in guidance published by the Commission may be used to meet this requirement. Other animal weights may be used in place of those in the Commission guidance, if there is sufficient documentation to support their use. For those animal types not included in the Commission guidance, the average animal weight for the operation shall be used for this calculation, taking into account, if applicable, the range of animal weights throughout the time the animals are on the operation.
A commercial Nutrient Management Specialist (NMS) must perform a CAO calculation that will be verified by a delegated conservation district or the SCC.

Delegated CD’s can perform “preliminary” or “draft” CAO calculations but when it is determined that an operator is close to the CAO threshold, a commercial NMS needs to be brought in to perform the actual calculation that will then be reviewed by the delegated CD or SCC.
Note: we need to follow the regulations at (83.261. General.)

(1) (iii) For new operations defined as CAOs and commencing before October 1, 2006, a plan shall have been submitted prior to commencement of operations.

(3) Operations that become defined as CAOs after October 1, 2006, due to expansion of an existing operation or loss of rented or leased land. Existing operations that make changes to their operations that result in becoming defined as CAOs for the first time after October 1, 2006, shall meet the following:

- (i) An agricultural operation which becomes a CAO after October 1, 2006, due to loss of land suitable for manure application, shall submit a plan within 6 months after the date which the operation becomes a CAO.

- An agricultural operation which will become a CAO due to expansion of operations by the addition of animals shall obtain approval of the plan prior to the expansion.

(4) New operations. A new operation which will commence after October 1, 2006, and which will be a CAO, shall obtain approval of a plan meeting the requirements of this subchapter prior to the commencement of the operation.
The NEW Standard WEIGHTS will become effective on October 1, 2019 (Start of Crop Year 2020)

It may be necessary to provide two CAO calculations.

1. The 1st CAO calculation will provide the AEU/Ac calculation prior to the release of the new standard weights.
   - If this CAO calculation show a CAO, the operator must follow previous guidance.
2. The 2nd CAO calculation will provide the AEU/Ac with the new standard weights.

Once the operation is confirmed to be a CAO, that CAO will have 2 crop years from that date to have an approved NMP.

- These CAOs will need to have Crop Year 2020 NMPs
- Plan approval before October 1, 2019, so plan should be submitted for review in June/July 2019
- Note this is a 2 year roll out from when SCC approves weights until plan should be submitted for review and 2 1/2 years from weight approval until plan must be approved.
“Roll Out” / Implementation

Existing CAOs and CAFOs

New weights will be brought into the NMP when the NMP is due to be amended.

This amendment may be at the triennial review or sooner, if one of the amendment criteria (“triggers”) are met before the triennial review.

Note that the 10% increase in AEUs “trigger”, for this standard weight update only, is merely for an expansion (addition) of animals and not based off the new standard animal weights until the triennial review time.

This would allow a 3-year phase in period for existing CAOs and CAFOs
The NEW Standard WEIGHTS will become effective on October 1, 2019 (Start of Crop Year 2020)

If the CAFO is also a CAO, they will follow the CAO Guidance:

- The newly defined CAFO will be required to have an approved CAFO permit by the time that the new animal weights become effective (October 1, 2019).

- This requirement will necessitate that the newly defined CAFO submit an administratively complete CAFO permit application by April 1, 2019.
If a newly defined Voluntary Animal Operation (VAO) CAFO, once the operation is confirmed to be a CAFO, using the NEW Standard Animal Weights, that CAFO will have up to 2 crop years to have an approved NMP and CAFO permit.

- The newly defined CAFO will be required to have an approved CAFO permit by the time that the new animal weights become effective (October 1, 2019).
- This requirement will necessitate that the newly defined CAFO submit an administratively complete CAFO permit application by April 1, 2019.
QUESTIONS ?????