State Conservation Commission
Act 38 Updates

2019 Pennsylvania Inter-Agency Nutrient Management Annual Conference

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Planning and Review Issues
Maps (NMP and NBS)

- Easily identifiable information is missing.

- Operator Maps must include:
  - farm boundary,
  - field boundaries,
  - field identification,
  - field specific acreage (can be shown on the map or can be included as part of the map legend, which may be a separate page)
  - manure application setbacks and buffers in accordance with 83.294 (f) and (g)
    - there should be identification of the landscape feature that requires the setback, such as an indication of where the stream or sinkhole are, well locations, etc.
    - The map should only show the chosen setback (either 100 foot or a 35 foot buffer).
    - Maps should be clear as to which setback the operator needs to follow. Choosing both setbacks only causes confusion.
  - location of existing and proposed structural BMPs,
  - location of existing or proposed emergency manure stacking areas or in-field manure stacking areas,
  - roads and road names adjacent to and within the operation.
Planning and Review Issues

Maps (NMP and NBS)

- We are seeing maps with the following footnote added:
  - “** Application Buffer / setbacks are approximate, field verification is required prior to land application”

- This footnote is a excellent reminder that field verification and field measurements should always occur.

- One should note that if there happened to be a pollution event, the planner, owner/operator, and hauler / broker could all be liable, if streams, wells, etc. were not properly identified (or identified at all).

- Just having the footnote does not relieve the planner from producing accurate maps.
It is recommended that the operator map also include the following:

- Aerial Photography as an underlay
- Stream, Lake, Pond names, if available
- For operations that contain multiple farms, a county, township, or road map, that shows the location of each individual farm, that make up the larger operation.
Planning and Review Issues

Grouping of Fields (Crop Management Units)

- Inappropriate Groupings still occur in NMP and NBS
- Crop Management Units (CMUs) include:
  - A CMU is defined in the regulations as “The portion of cropland, hayland and pasture, including a field, a portion of a field, or group of fields, on an agricultural operation that has a unique management history (same rotation and manure history), similar production capability, and that will be managed uniformly as a distinct unit.”
  - It is recommended that the NMP be developed on a field-by-field basis. Grouping of fields is permitted in a NMP only if the regulatory requirement defining a CMU above is met.
  - If several fields are grouped into a CMU in Appendix 4, each of those fields must have an identical cropping history, i.e., same crop, same fertilizer applications (rate and analysis), same manure applications (type, rate, and analysis), and the same overall management through each crop year of the crop rotation on the operation. In summary, these fields “will be managed uniformly as a distinct unit.”
Planning and Review Issues

Soil Sampling (Crop Management Units)

- A group of fields planned as a CMU are not required to be managed uniformly in the implementation of the nutrient management plan (previous slide), but, in that case, moving forward could not be grouped on one soil test in the next plan.

- It is recommended that a single soil test sample not represent more than 20 acres. If a single field is larger than 20 acres, a single soil test sample may be used to represent this field. One soil test sample can represent multiple fields grouped in a CMU provided the following conditions are met:
  - The combined acreage of the fields does not exceed 20 acres.
  - The criteria for grouping of fields into a CMU are met.
  - The sample submitted to lab is an aggregate of subsamples from all of the fields.
Planning and Review Issues

Overallocation of Manure

- Although overallocation is allowed, we are seeing NMPs with manure being overallocated by anywhere from 50-300%.
  - We agree that some overallocation is realistic and should occur to cover such issues as weather, field conditions, etc.
  - We question the 50-300% overallocation if it is true planning or covering your “behind” and if the operator realistically knows how to implement a NMP with this much overallocation.
Over allocation of the manure in one or more manure groups in a NMP is permitted as long as the following conditions are met:

- Planned application rates on any one field/CMU from two or more manure groups must be planned as multiple applications so as to ensure that those multiple applications do not exceed the appropriate (nitrogen or phosphorus) balanced rates for that field/CMU.

- Planning different application scenarios for a particular field/CMU is not permitted in the approved plan. For example:
  - Including planned applications rates for multiple manure groups in the plan to allow the operator to choose between them is not allowed. Notes to the operator such as, “Application planned on corn fields for the fall may be moved to the spring and application planned for the spring may be moved to the fall.” are not permitted.
  - Including rates of 4,500 gallons, 6,000 gallons, and 7,500 gallons from one manure group in the plan to allow the operator to choose between them is not allowed.

- The planned application rate should be what the operator realistically plans to utilize.

- When manure is over allocated, there is a high probability that enough manure will not be available during application to cover all the planned fields for that manure group. A standard whole farm note needs included.
We are seeing to many instances of Required Notes missing for NMP summaries

The required Notes include:

Different Scenarios:
- Over 9,000 planned application:
  - A note must be included in the NMP Summary Notes indicating that the planned rate must be applied in separate applications (no more than 9,000 gallons per event) during the same application season with adequate drying time between the applications.
  - In addition, the note must include the specific calibrated rates for each separate application.
- Small qualities of manure:
  - If manure from the small quantity manure group will be applied to cropland, a note for the crop management unit(s) receiving the manure must be included in the NMP summary notes.
- Winter application fields:
  - 25% cover requirement
  - Whether or not the field will be allowed to be used if it is snow or ice covered
  - Additional setbacks proposed to be used for added water quality protection, etc.
- Pasture fields:
  - The animal group(s) using the pasture,
  - The number of animals in that group,
  - The grazing season(s),
  - The amount of hours/day animals are planned to spend on the pasture, and
  - Where the animals are fed and watered in scenarios where grazed animals have unrestricted access to both a barn and/or lot where manure is collected and a pasture.
All NMP, printed as part of NMP spreadsheet will have the following notes:

- “If manure runs out for any field, consult Appendix 4 of the plan for that field. The fertilizer required on any part of the field that does not receive manure can be determined from the ‘Net Nutrients Required’ for that field.”

- “Fall manure applications require at least 25% cover unless the crop management unit is planted to a cover crop in time to allow for appropriate growth to control runoff until the next growing season, or the manure is injected or mechanically incorporated within 5 days using minimal soil disturbance techniques consistent with no-till farming practices.”
Planning and Review Issues

Importer NBS

- We see many exporter / importer agreements that indicate the importer has animals on their operation, yet that manure is not accounted for in the submitted NBS.
  - NBS required under the Program must follow the standardized NBS form and process provided by the Commission. This accounts for all nutrients used on the farm.
  - You may need more than one NBS to address a particular crop group if the importer may be applying other nutrient sources to some of the lands, but not all the land.
We are seeing plan submission deadlines not being met.

This puts your clients in compliance and/or enforcement situations.

Plan Submission:

- Crop years in Act 38 NMP are understood to begin on October 1.
- The NMP must be approved before any manure is applied or transferred (exported), for the crop years identified in the plan.
- If the plan is not approved manure may not be applied or transferred (exported) until plan approval. **Any manure applications or manure transfers (exports) made during a crop year, when there is not an approved plan, are not in compliance with the law.**
- For CAOs and VAOs the plan should be submitted at a minimum 4-5 months prior to the planned 1st manure application or manure transfer (export). For those CAOs and VAOs that plan fall manure application, the plan should be submitted 4-5 months prior to application, so plan submission should be before May/June. For those CAOs and VAOs that do not plan fall manure application, the plan should be submitted 4-5 months prior to spring application, so plan submission should be before October/November.
- For CAFOs, the NMP must be approved before the beginning of the crop year (October 1), to remain in compliance with the CAFO National Pollutant Discharge Elimination System (NPDES) permit. CAFO NMPs should be submitted at a minimum 5-6 months before the start of the crop year the plan is to cover, as to allow time for public noticing and the plan review and approval process.
Planning and Review Issues

Plan Review Deadlines

- We are seeing plan review re-submission deadlines not being met.
  - This puts your clients in compliance and/or enforcement situations.

- Plan Review Re-Submission:
  - Section 83.361(c) of the Act 38 Rules and Regulations indicates “The Commission or a delegated conservation district will approve or disapprove a plan or plan amendment within 90 days of receipt of a complete plan or plan amendment”.
  - While conducting technical reviews, the reviewer should bear in mind that, according to regulations, the district BOD is obligated to make a decision on approval/disapproval within 90 days of the date the plan is received by the district. Extensions of this timeline of up to an additional 90 days are allowable under specific circumstances.
  - Reviewers (Planners) must realize that district BOD meetings usually occur only once a month; therefore, the review process will need to be scheduled so that the recommendations are ready to be presented at a BOD meeting that is scheduled within the 90-day review period. Because of this situation, most plans will need to be presented to the BOD for action before 90 days have actually elapsed.
  - If the conservation district provides its full set of initial plan review comments to the planner, giving the planner at least 30 days to address the comments prior to the first 90-day deadline, the district is expected to act on the plan within 90 days. However, if the district is delayed in providing its complete initial plan comments to the extent that the planner does not have the aforementioned 30-day time period to make any required plan revisions, the district are to request a plan review extension from their SCC Regional Coordinator.
We are seeing NMPs submitted that are obviously incomplete, as a place holder, to get a NMP submitted before the start of the crop year. By doing this the planner is giving themselves an additional 30 days per the adm. incomplete letter.

THIS IS UNACCEPTABLE and if the SCC continues to see this trend, specialist certification actions will be pursued.
Planning and Review Issues

Site Visits

- We are seeing more and more evidence of plan writers obviously not on site to look at things even though they list a date, etc. and sign the NMP saying they completed the visit.

- THIS WILL NOT BE TOLERATED AND THE SCC WILL START TO SEEK CERTIFICATION ACTIONS

- Examples:
  - CAFO swine & beef operation. DEP was recently on site and noticed some pasture acres that were not included in the NMP and there are issues in the pasture that must be addressed with a BMP (stream crossing). The CD met with the operator and during the conversation they told the CD that their plan writer has not been on the farm site for at least 4 years even though their NMP was amended 2 years ago.
  - CAFO operator told the CD that the plan writer was not on site. Numerous review comments, including many comments related to improper mapping of streams and buffers, etc.
  - Many issues in fields that were not addressed in the plan. The plan writer admitted to the CD that he visited farmstead areas but did not evaluate (walk) any fields next to streams.
Lessons Learned:

- 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:

- 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
Spotted Lanternfly
Spotted Lanternfly

- The Spotted Lanternfly (SLF) is an invasive planthopper.
- It was first discovered in PA in Berks County and has spread to other counties in the southeast portion of the Commonwealth.
- This insect has the potential to greatly impact agricultural crops such as grapes, hops, and hardwoods.
- Penn State University, Cooperative Extension, United States Department of Agriculture (USDA), PA Department of Agriculture (PDA) and conservation district have joined forces to control and contain the spread of SLF.
- Businesses & local government also play an important role – provide basic awareness information to employees, customers and visitors on minimizing the possibility of this insect hitching a ride on their vehicles.
Spotted Lanternfly

- Preventative activities in the ‘Quarantine Zone’
  - Inspecting your vehicles, trailers, tractors, or any outdoor items before you move around or out of the quarantine zone is important.
  - If possible, don’t park in tree lines and keep windows rolled up when you park your vehicle.
  - For businesses and organizations a Spotted Lanternfly permit is required for those located or working within the quarantine zone, who move vehicles, products or other conveyances within or out of the zone.
  - See handout materials in your packet
Biosecurity

- Most understand how to implement basic biosecurity measures.
  - Must follow the agricultural biosecurity measures prescribed for the site. If the biosecurity measures at the property are unknown to you, every effort should be made to contact the operator or the person in charge upon arrival.
  - 24 hours (48 to 72 hours preferred) between visits including the vehicle for poultry or swine operations. Note, some integrators may require more time.
  - If contamination of the vehicle was unavoidable or the vehicle is needed for another visit before the 24-time frame, take the vehicle to the carwash for a thorough cleaning inside and out.
  - Put on clean, waterproof boots that can be disinfected or use disposable boot covers. Disinfect rubber boots at the time of arrival and before leaving the site. Plastic boot covers should only be used for and are only suitable for short visits.
  - Do not forget to ask the farmer where you may dispose of your disposable boots when leaving, turn inside out and place in trash.
  - Do not enter livestock facilities, unless absolutely necessary.
  - Avoid animal contact, as well as, the fan exhaust, and all manure, unless absolutely necessary.
  - Visibly check vehicle for “hitch-hiking” pests and other materials. Be sure to remove before leaving. This is especially important if you are traveling in the Spotted Lanternfly quarantine area.
Biosecurity

- Important overarching items for your contemplation.
  - Adhere to the biosecurity protocol requested by farms you plan to visit. This means following all biosecurity protocols as requested, every time.
  - Understand Lines of Separation (LOS), which designate appropriate paths of travel on the farm that prevent people, animals, and materials that are outside (considered contaminated) from crossing the path of those that are entering or in the inside (clean) area.
  - Remember that you and all of your possessions can act as fomites. A fomite is an object or material that can carry and transfer a pathogen such as bacteria, virus, or fungus. In particular organic material, such as manure, can be transported with you if you do not properly clean and disinfect.
  - Act with integrity. Protect your client’s interests. Adhering to their guidelines will provide them with some peace of mind regarding risks and protect your business and client relationships.
Act 49 Update

- Trash haulers that deal with manure.
  - Commercial Manure Hauler Level 1 is needed
    - Application, read manure hauler 1 workbook, complete checklist of understanding and send in annual fee of $10.

- If the operation is a Act 38 CAO, volunteer or a CAFO the trash hauler should be included in the NMP as a certified hauler.
Certification Update

- Remember to check PA Plants often to keep track of your CECs and expiration date.
- If you have a name, address or email change make sure you contact me with the new information so that you receive vital information.
- Reminder do not wait till your last year to try and get your CECs.
Act 39 of 2019 established the ‘Conservation Excellence Grant’ (CEG) program providing:

- **Financial and technical assistance** to ag producers for the installation and implementation of BMPs (planned in a NMP, MMP, Ag E&S or conservation plan)
- **$2.5 million available in 2019-2020**
- **Grants, tax credits and low interest loans** that may be use separately or a combination of the 3 elements (bundled).

Focuses on FA and TA for:

- **Implementation in ‘priority locations’** (i.e. TMDLs or watershed designations at local level)
Pa Farm Bill Initiatives
Conservation Excellence Grant Program

- ‘Priority BMPs’ – plans, stream corridor BMPs; ACAs; waste management systems; cover crops and other BMPs approved by the State Conservation Commission.

- Application approval would be based on
  - ‘priority’ locations (for implementation) & BMPs,
  - status of the applicant’s TA (i.e. plan, I&E; design & permits etc.)
  - Applicant’s “willingness” to “bundle” financial assistance elements (grants, tax credits, loans)

- Commission “piloting” the CEG program in Chesapeake Bay ‘Tier 1’ counties (Lancaster, York) in years 1 & 2.
  - Program will expand to other counties as program develops
Pa Farm Bill Initiatives
Resource Enhancement and Protection (REAP)

- REAP allows farmers and sponsors to earn PA tax credits for installing BMPs on agricultural operations that enhance farm production and protect natural resources.
  - Eligible applicants may receive TCs at 50% or 75% of out-of-pocket project costs for:
    - No-Till Planting equipment, Precision Nutrient Application equipment, Cover Crop Rollers, Inter-seeders, Composting equipment, others (50%)
    - Manure storage systems, composting, silage leachate treatment (50%)
    - Sediment and nutrient runoff practices in crop fields - grassed waterways, terraces, Intensive grazing systems, Riparian buffers, Cover crops and others (50%).
    - Planning - Nutrient/Manure Management Plans, Ag. E&S Plan/Conservation Plans (75%)
    - Animal Concentration Areas (ACA) and barnyard runoff (75%)
- The credits can be used incrementally for up to 15 years to pay PA state income taxes or they can be sold.
Pa Farm Bill Initiatives
Resource Enhancement and Protection (REAP)

- Recently revised in 2019 in conjunction with the PA Farm Bill
  - Increase of tax credit Annual Allocation raised from $10 million to $13 million
  - Cap raised from $150,000 per ag operation lifetime limit to $250,000 per ag operation in a 7-year timeframe
  - Credits can be used via a jointly-filed PA return
  - Up to $3 million of REAP’s $13 million allocation may be reserved for applications from the Chesapeake Bay watershed.
  - Legacy Sediment Projects reimbursement rate increased from 25% to 50%
Pa Farm Bill Initiatives
Resource Enhancement and Protection (REAP)

- Target **specific watersheds** (TMDL) and **specific BMPs** within those watersheds for **higher** tax credit rate – 90%
  - I.e. riparian buffers and buffer maintenance, livestock exclusion from streams, cover crops and soil health BMPs
  - SCC is planning to implement this on **limited basis** (trial run) — York and Lancaster Counties (Tier 1) and perhaps a small watershed with a written TMDL in Western PA
  - **Under development** — planning to make this available to farmers in a few months as part of CEG program for applications from the Chesapeake Bay watershed.

- REAP may be **bundled** with **loan** (commercial, Farm Credit or AgriLink) and **grant** programs (e.g. CEG, EQIP)
Pa Farm Bill Initiatives
Agriculture Linked Investment Program

- Agri-Link is a low interest loan program for the implementation of BMPs that are part of:
  - Nutrient Management or Manure Management Plan
  - Odor Management Plan
  - Ag E&S or conservation plan

- Recently revised in 2019 in conjunction with the PA Farm Bill
  - Provides $500,000 to ‘subsidize’ (reduce) interest rates to provide a ‘low interest’ loan.
  - Increased loan cap and term to $250,000 and 12 years (previously $75,000 and 7 years)
  - Loans can be secured through a commercial lender and Farm Credit lenders (AgChoice and MidAtlantic)

- AgriLink may be bundled with tax credit (REAP) and grant programs (e.g. CEG, EQIP)
QUESTIONS ?????