Pre-Submission Questions and Answers

**Question:** I don't know how many other folks have a misunderstanding with the "Close" date and "Issue" date that is printed on the PA BULLETIN Publication Schedule, but can this please be explained or revised? For example, there is a "close" date listed of Sept 4 which would then publish in the Sept 14 issue. However, I’m told that it actually closed at noon on Sept 3rd. So anything submitted after noon on Sept 3 will now publish on Sept 21. It's kind of confusing...and frustrating. If the actual close date is noon on Tuesday, then can the schedule please reflect this information? And then the holiday posting is even more confusing. Is it possible to explain why the discrepancy in dates and how the "system" works if it doesn't actually follow what is printed? Would it be possible to post a schedule that would have the actual closing dates for regular weeks (with a note at the bottom of the page indicating that the cutoff is noon on that date) and also post the actual close date for the weeks that have a holiday?)

**Answer:** The PA BULLETIN Publication Schedule that is forwarded by DEP to the CDs is published by the DEP Central Office. All DEP RO need to submit their actions by the date and time listed. Submission of CD CAFO NMP activities is sent to the DEP SCRO and their unwritten rule is to have all submissions sent to Resource Account by 11:00 am, so they have the time to compile not only these actions, but all the other actions of the SCRO. **The take home message to have all CAFO Pa Bulletin to the resource account, by 11:00 am on the folder deadline date.**

**Question:** I have growers that would like to keep electronic copies of soil tests, plans, maps etc. As a conservation agency, when is the SCC going to allow records/plans/maps etc. to be stored at electronic copies vs printed forms for inspections?

**Answer:** Records are to be maintained on the operation and available for review, although we don’t require them to be in paper form (they can be electronic). The SCC does offer “draft” record keeping forms for those that don’t have a system in place, but we make it clear that any other form of recording keeping can be used as long as it contains the minimum information that is on the SCC record keeping forms.

**Question:** Here is my question (that I ask every year and get no answer that leaves anyone in the NE happy). We have special CEC’s that we get at these meetings so we MUST go at some point. However, (someone) has absolutely no consideration/respect for the people in the NE to make it even close to a reasonable day to get there and get back. We have made the people in the south happy and the people in the west happy, but we in the NE have a minimum of 4 hours each way plus the time in the meeting. If the meeting is 6 hours, we have at least 14 hours in that day. I know there are a lot of others that feel the same way, and have even said so, but nothing happens. With all the modern technology that we have in this day and age, WHY? We can have people from all around the world “attend” the same meeting and never
leave the office, yet we are held captive to these special CEC’s and we have to travel hither and yon to get them.

**Answer:** The CEC’s offered are SCC sponsored credits, not special CECs, in which you are to receive 5 per certification cycle. The SCC also offers other SCC sponsored CEC throughout a 3-year certification cycle, so attendance at a meeting like this is not mandatory nor required. We are aware of travel times but many other considerations are taken into account when scheduling these meetings such as where the majority of the attendee’s work, accommodations, space, ease of getting there, accessibility, cost, etc.

**Question:** Are reception pits and transfer pipes considered manure storage facilities? In NMP Manual Section III under #1 What is a manure storage facility? "Component reception pit and transfer pipes" are provided as examples of a manure storage facility but under #7 in Section III it says, "manure storage facilities, except reception pits and transfer pipes".

**Answer:** Reception pits and transfer lines are considered as part of the “whole” manure storage facility system. Reception pits and transfer lines are exempt from setbacks. 83.3519(a)(2)(v) states: For operations that were producing livestock or poultry on or before October 1, 1997, facilities, except reception pits and transfer pipes, may not be constructed.... 83.3519(a)(2)(vi) states: For NMP operations that come into existence after October 1, 1997, facilities, except reception pits and transfer pipes, may not be constructed......

**Question:** In the new version of the NBS, the winter matrix requires more information now: distance from water bodies and drainage class. This information is also required in the P Index Transport Factors. However, the numbers corresponding to each category of distance and drainage class are different in the winter matrix than in the P Index which is confusing when completing the spreadsheet. Is it possible to either auto-populate those categories in the Winter Matrix or make the numbers the same?

**Answer:** The same information is still required in the new NBS 5, as was required in the previous NBS Version 4. The difference now is that planners need to select the Distance and Drainage instead of it being converted and auto populated from the P Index values. There was an issue with the distance entry in the P Index and conversion to the distance in the Winter Matrix. A field can be <100 feet (with a 35-ft. buffer) from water and get a P Index contributing distance of 6. The P Index contributing distance is then converted to a 2 in the winter matrix distance from water bodies evaluation criteria. The field example above should really get a winter matrix distance from water bodies evaluation criteria score of 1. The winter matrix doesn’t have the <100ft. with a 35-ft. buffer exemption. Some planner and reviewers were confused how values were automatically converted from the P Index to the Winter Matrix. Another issue adding to the confusion is that the winter matrix has automatic “Poor” recommendations based on a single category. A “1” in any ranking category automatically means a ranking of “Poor” regardless of the final score. Two “2” rankings also mean a ranking of “Poor” regardless of the final score. Finally, another issue is that the P Index and Winter
Matrix consider open sinkholes differently. The Winter Matrix considers open sinkholes and the P Index does not address them. Winter Matrix distance to water criteria – Includes Perennial and Intermittent streams with defined bed and bank, Lakes, Ponds, Open sinkholes, and Active private and public water sources. The issue of evaluation tool scoring, high P Index score = bad vs high Winter Matrix score = good had been discussed previously. They are two different evaluation tools and therefore had different scoring systems.

**Question:** Please expand on the Poultry Access guidance.

a. If evaluating as an ACA but the area is well vegetated and has no bare spots, how would that be documented and what practices would be required?
b. Would App 3 still need to detail number of birds/days/hours using pasture if managing as an ACA?

**Answer:** The Tech Manual directs these areas to be either managed as a pasture or an ACA. If the area is well vegetated with no bare spots, it should be designated as a pasture and meet all the pasture requirements in Appendix 4. This would require soil tests, nutrient balance, etc. If the farmer/planner wants to avoid this level of planning and designate it an ACA or if the area is not well vegetated, then all the requirements of an ACA must be met. It would be treated no different than an exercise lot on a dairy, beef, etc. farm. That would include all roof and upslope water diverted away from the area, adequate collection or treatment of water leaving the area, and removal of deposited manure on a consistent basis.

**Question:** Commercial Vegetable Crop Removal Values

a. So, it is acceptable to use this standard value and not have to reference the AALS Soil Test Recommendations Handbook?
b. Is sweet corn included in the mixed vegetable crop?

**Answer:** The program is now allowing the standard values of 100 lbs. N; 50 lbs. P<sub>2</sub>O<sub>5</sub>; and 215 lbs. K<sub>2</sub>O for all vegetables. If a planner wants to use the AASL Soil Test Recommendations, they still can, but now are not required. For CMUs over 10 acres, the planner should use the crop specific AASL recommendation. For sweet corn, a planner can use the mixed vegetables recommendation or the specific AASL recommendation, if they choose.

**Question:** NBS Manure Analysis

a. If the NMP uses an average, the NBS need to use the average?
b. Or, could the NBS use the most recent analysis?
c. When NBS submitted by brokers are reviewed, how can the reviewer know which is being used if the exporting NMP is not in county?
Answer: It is recommended that if the NMP uses the running manure average that any associated NBS, to known importers, should also use that running average, although it is not specifically required. When NBS are submitted by brokers, it will be hard to determine if the correct values are used, especially if the CAO/CAFO that is exporting the manure in unknown to the review. For these cases, the review should look at if the value used seems reasonable. Note, the plan writer can contact the exporting County CD to request the analysis from the approved NMP on file.

Question: Is the Running Manure Average required or just suggested to be used in a NMP.

Answer: The running manure average is SUGGESTED to be used for NMP and NBS, but it is not a program requirement.

Question: FYI– The Bulletin Update notes a change to App 10, but the referenced statement was not actually removed from the manual.

Answer: This has been corrected.

Question: The regulations do not specifically name starter fertilizer. But in the inspection process writers are being asked to populate the starter column with information. Why are we even concerned in reflecting starter fertilizer rates; when we should look solely at the total commercial fertilizer needs (that captures starter or pop-up additions)?

Answer: We look at and document starter fertilizer and/or liquid N fertilizer that may be applied as a pesticide carrier, as planned fertilizer applications, that will occur regardless of the amount of manure applied. The starter fertilizer column does not include additional supplemental fertilizer applied to meet crop requirements not met by planned manure applications. Another issue with starter P fertilizer and supplemental P fertilizer are their impacts on the P Index. The amount applied and P Index application method of both the “fertilizer P applied regardless of manure” (starter) as well as supplemental P must be considered in the index. Typically, starter P is applied with the planter and placed or injected 2” or more deep; thereby giving it the lowest value. Supplemental P could also be injected but in most cases is surface applied which gives it a higher value depending on time of year that it is applied.

Question: Are soil amendment products considered nutrients and do they have to be a part of an NMP?
**Answer:** Soil amendments can entail a large group of products, such as food processing residuals, bio-solids, composts, etc. In general, if a soil amendment has a nutrient content and claims to have a nutrient value, that soil amendment should be counted in the overall contribution of nutrients to CMUs. If the product is mixed with manure prior to land application the nutrient content will be captured in the manure analysis of the blended mixture of manure and soil amendment. If the material is applied as a standalone product a nutrient analysis would be required of the product and it would be entered as a manure group in Appendix 3 and allocated to CMUs in Appendix 4. Be advised that depending on the product, other permits and approvals may be necessary. See supplement 21 on the Technical Manual.

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**Question:** Manure exported outside the CB region; does that need an NBS for the Importing site?

**Answer:** Yes, all manure exported off Act 38 operations for land application requires NBSs to be developed for the importing operation, by either the plan writer or the manure broker. Exceptions would be if the importing operation already has an approved Act 38 NMP or there is no land application of the manure.

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**Question:** I see the Exporter/Importer Agreement as a legal document between the two entities; to protect both of their interests. Why is an Exporter/Importer Agreement a Plan required element and why is it required as part of the duties of a plan writer?

**Answer:** Section 83.301 of the Act 38 regulations (Excess manure utilization plans) requires the use of these agreement. Specifically, it states “The plan must include signed agreements, on a form acceptable to the Commission, between the NMP operation and each importing operator agreeing to accept the manure from the exporting operation. If the importing operator will be applying manure on lands rented or leased to that importing operator, the agreement must state that the importing operator has the authority to apply manure on the leased or rented lands.” As for this being a required duty of the plan writer, section 83.261 requires all NMPs to be written by certified planners. Depending on the situation, the NMP operator could have a high level of involvement in completing the agreement and acquiring the required signatures but it is the plan writer’s responsibility to ensure that a properly completed agreement is included with the submitted NMP.

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**Question:** Back in the beginning of the NM Program (ACT 6), the Exporter/Importer Agreement was a document created and approved by the SCC to protect both the Manure Generator from being stuck holding the manure and no place to go with it. Why can’t Conservation Districts or the SCC enforce this document? And if not, why is it a required item in the plan approval process?
**Answer:** As for enforcing the document, we are unaware of what the commenter is asking. We are assuming and will answer on why can’t the SCC enforce importing operations or brokers that have a signed agreement and then do not take the manure the exporter has allocated to them. The sample (draft) agreement is a private agreement between the exporter and the importer, thus the SCC doesn’t have enforcement authority. This question can be reversed and one could ask why the SCC couldn’t enforce an exporter that does supply manure to an importer. We hear of these cases much more often. This document is required by section 83.301 of the regulations. The intent of this requirement was to simply make sure the exporter has done their homework in lining up places (importers) to go with their animal operation’s manure. CAO’s are always encouraged to have more import acres lined up under signed agreements than the bare-bones amount necessary to go with their excess manure. In doing so, there is a much greater chance that the exporter is covered, should an importer back out, or for some reason not be able to import manure when the exporter needs to do so. A NMP that has just enough import acres to deal with an exporter’s excess manure is short-sighted and not making the most of this critical planning tool.

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**Question:** The alternative Use designation of manure; i.e., Poultry Litter going for bedding at another Livestock Farm; does that require an NBS or just the alternative use Exporter/Importer agreement?

**Answer:** If the manure will be exported as an alternative use, as described above, the Exporter/Importer Agreement: Manure Used For Other Than Agricultural Land Application is applicable.

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**Question:** Why are CDs mailing duplicate letters with the same information; certified and regular mail?

**Answer:** Depending on the situation, usually 3rd notification letters, CD’s are directed to send letters by both certified mail and regular mail, to add that extra certainty that the letter was received. The SCC is aware of a number of instances where an operator refused to sign for the certified mail so that letter never gets delivered whereas the letter sent by regular mail gets delivered. This guidance is provided by SCC legal and holds up in the court of law for notification.

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**Question:** Once an NMP is approved, including the approved BMPs within the plan, can those approved items be considered non-compliant or not meeting NRCS standard and specification by the NM Specialist for a particular practice within the 3 year NMP lifespan?
Answer: The Practice Standards and Checklist found in the NRCS FOTG can be used to identify shortcomings in practices and used to inform the landowner as to why said BMPs are not adequate. NM specialists can easily point out if a BMP is not installed or if installation was not in the proper location etc. If the NM specialist holds NRCS Job Approval authority for the BMP in question, they may be able to make the non-compliant call. The landowner would need to hire a PE to certify that the BMPs does meet a particular standard. If one has a question, feel free to reach out the SCC regional coordinator for assistance and follow up.

Question: What BMP job approvals are Conservation District NM staff certifications? Can staff make judgement calls on a particular practice’s integrity and/or practice compliance?

Answer: The answer comes down to NRCS Job Approval Authority and whether the NM specialist holds that authority or not. The challenge is on BMPs designed by professionals other than NRCS (PE, TSPs, etc.). The FOTG has guidance and provides reasons why a practice does not meet the standard, but at the end of the day, if the landowner does not support the same conclusion, it goes back to their consultant, typically a PE to make that call, and provide documentation as to why the BMPs meets the standards. If one has a question on a specific situation, feel free to reach out the SCC regional coordinator for assistance and follow up.

Question: Who is responsible for making a call on the integrity of a BMP? What credentials / certifications does that person have to hold in order to make a decision of BMP failure. Who grants these BMP job approvals to the NM staff?

Answer: It comes down to having the appropriate NRCS job approval authority or being a PE. If the NM specialist has worked to have NRCS Job Approval Authority and the projects and work are within the interest of NRCS to access and help them make those determinations, NM Specialist can perform that function. NM specialists also come across projects that may not have NRCS involvement, are out of scope, CAFO projects, or have had work done and approved by outside consulting firms. Those situations may require the landowner to hire a consultant to make that call. For waste storage facilities that responsibility clearly lies with a PE. When an issue with a BMP failure is identified, typically the NRCS area engineer, their designee, DEP engineer staff and/or a private P.E. will be engaged.

Question: Why is it so important for the format of a plan to be protected and unchanged, its calculations securely embedded, and the planning process to be with the highest integrity; yet we are required to be a computer programmer in adjusting spreadsheet formatting, protecting and unprotecting sections, and proper formulation?

Answer: Calculations are protected to ensure calculation integrity and to prevent planners from accidently changing the formulas and not realizing it. All print drivers are slightly
different. That is what (rarely) causes issues like the last column in the NMP Summary Printing on a separate page. That is why it’s recommended to print the Excel planning tools as a PDF to avoid printing issues. The input sheets are the only pages that can be unlocked or locked for planner convenience to copy fields, insert fields, or delete fields. In the future, the spreadsheet developers have plans to make copying, inserting, and deleting rows in the spreadsheet tabs more user friendly without the need to unlock the input sheets

**Question:** Pennsylvania NM Program’s Technical Manual. What is the SCC definition of a Technical Manual?

**Answer:** The *Pennsylvania Act 38 Nutrient Management Program Technical Manual* has been developed in order to provide consistent program guidance, further refining the requirements in the regulations, to be utilized in the development, review, and implementation of Act 38 nutrient management plans. This manual describes how the various decisions are made during plan development, review, and implementation.

**Question:** How does SCC and PDA decide what items are shoehorned into the Tech Manual? How is a subject/item decided if the item is “technical” in nature verses “regulatory” in nature?

**Answer:** The manual is a tool that is used to clarify the regulations and provide NMP development, review and implementation guidance. Every two years the SCC releases a call for items that NMP writers and reviewers would like to be expanded on in the NM TM. Those comments are then reviewed by a committee of representatives from the SCC, PDA, DEP, NRCS and PSU. Each comment is determined to either have merit or not have merit. Those results are then shared with the Nutrient Management Advisory Board for their thoughts and then final approved by the SCC at a public meeting. For version 11 of the NM TM, the SCC received a total of 109 comments and 57 comments were deemed to have merit. This illustrates why the NM TM grows every two years, as more people ask for further clarification of the regulations and policy.

**Question:** Give me some examples of what could trigger opening up the NM regs for addressing a necessary change in the regulation verses a simple addition to the Technical Manual source document referenced within the NM Regulations.

**Answer:** The NM regulations would be opened if the SCC decided that a major provision(s) need changed, deleted, or added. Note that regulations are not opened often, with the last time being the change from Act 6 to Act 38 for the inclusion of Phosphorous planning and more detailed export requirements. Also of note, if the regulations are opened for one area, the entire regulation is open for any interested party to comment, and adverse changes, that were not envisioned, may occur. Regulation changes are a very lengthy and time consuming process. TM revisions were discussed earlier.
**Question:** Tech Manual Statement: The Act 38 plan cannot be approved until the other State confirms the farm receiving the manure has met all of their legal obligations. This confirmation should be in writing. It is the plan writer’s responsibility to get this confirmation and the reviewing entities responsibly to review and confirm. Please provide this detailed information in Appendix 10 of the NMP. Why does the Tech Manual require a NM Plan Writer (non-government agency) to inquire of another state’s governmental agency for one of their farms NM Plans? What is that confirmation to look like; because for instance, in Maryland – the state’s WQIA protects all NMP information from being shared. They can only provide a YES or NO.

**Answer:** This requirement has been removed from the TM

**Question:** How is it possible that the Regulations require an operation that has livestock free roaming from barn to pasture, be REQUIRED to institute a 12 hour in and 12 hour out policy?

**Answer:** This guideline was established to provide some certainty, as each individual plan that had this scenario was using a different time in and time out. The program acknowledges, with the assistance of PSU, that when cattle are fed and watered in the barn, they will spend about 12 hours in the pasture and 12 hours in the barn/ACA. When only feed in provided in the barn, and water is provided in the pasture, cattle will spend more time in the pasture, roughly 18 hours. All of this has an impact on the amount of collected and uncollected manure that must be properly allocated in Appendix 4. If an operator has records to support animal time in a pasture, those numbers can be used, as long as, it was properly documented in the plan in Appendix 10. The reviewer would need to verify with the operator during the site visit.

**Question:** How is the fee/fine structure calculated for NM plan infractions or how are fines assessed for not complying with the NM regulations.

**Answer:** Section 514 of the Act 38 LAW states “§ 514. Civil penalties and remedies. (a) Civil penalty.--In addition to proceeding under any other remedy available at law or in equity for a violation of a provision of this chapter or a rule or regulation adopted, order issued or odor management plan or nutrient management plan approved under this chapter, the commission may assess a civil penalty of not more than $500 for the first day of each offense and $100 for each additional day of continuing violation.

The factors for consideration in determining the amount of the penalty are:

1. The gravity of the violation.
2. The potential harm to the public.
3. The potential effect on the environment.
4. The willfulness of the violation.
(5) Previous violations.
(6) The economic benefit to the violator for failing to comply with this chapter.
Whenever the commission finds that a violation did not cause harm to human health or an adverse effect on the environment, the commission may issue a warning in lieu of assessing a penalty where the owner or operator, upon notice, takes immediate action to resolve the violation and come into compliance.”
SCC staff takes these factors into consideration and present enforcement cases to the SCC for final actions.