

**Agricultural BMP Committee**  
**\*FINAL\* Meeting Minutes**  
**June 17, 2009; 1:00 p.m.**  
**Arizona Department of Agriculture, Conference Room 206**  
**1688 West Adams Road, Phoenix, AZ 85007**  
**Call-in Number: (800) 746-4352, pin #1828417**

**Committee members present:** Dan Thelander, Wade Accomazzo, Don Butler, Colin Kaltenbach, Alfred Lopez, Kevin Rogers, Will Rousseau, Jim Walworth, and Nancy Wrona

**Committee members absent:** David McKay

**Additional attendees:** Don Gabrielson, Randy Sedlacek, Emily Bonanni, Scott DiBiase, Brett Cameron, Dena Konopka, Corky Martinkovic, Lisa Tomczak, Danielle Dancho, Joe Sigg, Kris Graham Chavez, Robert Shuler, Amanda McGennis, Philip Beslow, Aaron Chavez, Rick Lavis, Bas Aja, Rusty Van Leuven, Frank Schinzel, Ken Hooker, Jonathan Handka

**Welcome**

Chairman Thelander opened the meeting and welcomed everyone present. Chairman Thelander noted that a quorum was present.

**Discussion and Possible Action on Minutes from September 25, 2007, Committee Meeting**

Chairman Thelander started the meeting with the review of the minutes from the September 25, 2007, Agricultural Best Management Practices Committee (hereafter Committee) meeting. The Committee briefly reviewed the minutes. Colin Kaltenbach moved to approve the minutes; seconded by Will Rousseau. Chairman Thelander asked if there was any further discussion on the minutes. Hearing no additional comments Chairman Thelander asked the Committee to approve the minutes; all approved.

**Discussion and Possible Action Regarding Committee Chair Position**

Chairman Thelander asked if the position was a two or three year appointment. Corky Martinkovic, Arizona Department of Environmental Quality, indicated that it was a two year appointment. The position would be active for two years from today. Chairman Thelander asked the Committee for nominations. Kevin Rogers moved that Dan Thelander continue to serve as Chair. Al Lopez seconded the motion. Chairman Thelander noted that was probably

not the correct process for nomination of the Chair position and asked the Committee if there were any other nominations. Mr. Kaltenback moved to cast ballots for the chair position; second by Mr. Rousseau; motion passed. Chairman Thelander asked the Committee to approve the nomination; motion passed to approve Dan Thelander as the BMP Committee Chair.

### **Discussion and Possible Action Regarding Potential Agricultural Legislation**

Chairman Thelander stated that for several months there have been discussions regarding new legislation related to new best management practices (BMPs), new nonattainment areas, etc. and he believes that it would be a good idea to have an overview of the proposed legislative changes and the status in the Arizona Legislature. Chairman Thelander asked Rick Lavis, representative for Arizona Cotton Growers Association, to provide this overview.

Mr. Lavis thanked Chairman Thelander for the opportunity to speak to the Committee. He noted that at the last meeting of the Committee on September 25, 2007, the Committee adopted new rules pertaining to the provisions of SB 1552. Senate Bill 1552 required farmers to choose two BMPs per agricultural category, added five new BMPs to the program, and expanded the area of compliance with the BMP Program to include all of Maricopa County instead of just the PM<sub>10</sub> nonattainment area.

Now, two years later, there is legislation proposing an expansion of the BMP Program. The current program focuses on crop agriculture and is designed to reduce PM<sub>10</sub> emissions from agricultural activities. In the past, animal agricultural operations have thought about taking part in the Program but decided this year to take part in the Program, an action that requires legislative change to the Committee's statutory authority. House Bill 2181 was introduced in the House, heard by Representative Konopnicki's Committee and received a do pass recommendation. The bill would expand the BMP Program to include feedlots and dairies. The bill was amended to include poultry and swine operations. It also includes language that in the event another county or area is designated as nonattainment for PM<sub>10</sub>, the program will extend to that county or area. Mr. Lavis said that it appears Pinal County might become nonattainment for PM<sub>10</sub>. During a meeting in November 2008, the Environmental Protection Agency (EPA) indicated that a designation letter would be sent to the Governor regarding Pinal County. EPA has not sent this letter and there is no indication of when it will be sent since the agency is still awaiting appointment of a new regional administrator.

The proposed legislation, HB 2181, is on hold in the House due to issues relating to the Arizona budget. The agricultural community was successful in including language establishing a preemption with regard to Pinal County so that the Committee would adopt rules impacting the BMP Program in Pinal County.

Another bill moved by the Legislature was Senate Bill 1225. This bill contains the same language as HB 2181. There are issues with this bill such as inclusion of irrigation districts in the BMP program and the inclusion of a county representative on the BMP Committee.

Mr. Lavis concluded by saying he advocated for today's meeting based on the assumption that

there will be changes to the BMP Program and the process will need to begin sooner rather than later. A technical workgroup will need to be formed to evaluate the effectiveness of the existing program and any proposed new BMPs. The workgroup would also have to evaluate the expansion of the program into other nonattainment areas.

Committee Member Will Rousseau asked about the mechanics of how the legislation will impact the existing BMPs by bringing livestock operations into the BMP Program. Bas Aja, Cattleman's Association, responded by saying this process would probably be a little different compared to how the Committee has approached selecting BMPs in the past. They will have to research and analyze what the problem is, the requirements, and what abatement measures could be used. The scope of the analysis will be different in size and shape because of the inherent differences between crop farming and animal operations. Other nonattainment areas in the United States have large animal operations, such as San Joaquin Valley and Imperial Valley in California. Many operators of feedlots are worried about increased creation of dust from their operations and began a pilot program a few months ago to look at practices that might work to reduce emissions. They hope to deliver data to the Committee as to what the abatement values are and what the practices can accomplish. This study is based on information from the monitoring network in Pinal County. They will also provide additional details and documents regarding cost of the practices. The rationale for the livestock community will be to advocate for a scientific and technical analysis that serves the goal of bringing an area into attainment versus being part of the problem.

Committee Member Colin Kaltenback asked Mr. Aja if they are focusing on confined animal feeding operations (CAFOs) or looking at the broader picture. Mr. Aja said that at this time they are concentrating on beef cattle feedlot operations. He thinks that there will be a distinction among dairy and beef cattle operations because they are different animals and will likely have different types of practices. The animals still have the same type of physical movements, but when it comes to feedlots the issue is animals expending the energy gathered all day long through feed and sunlight to cool down in the late evening. Mr. Kaltenback asked that even though they have focused on feedlots, does Mr. Aja envision looking at feedlots for both dairy and cattle operations. Mr. Aja said they will have to consider both dairy and cattle and that those operations will probably have separate programs. They will be similar in nature because in a pen, whether dairy or cattle, the animals move in that pen and make dust; however, the level of what is done to abate that dust might be different. The dairy operations will have their own expertise and experience to bring in to this process.

Chairman Thelander said SB 1225 contains language to have representatives for poultry, swine, feedlots, and dairies on the Committee and potentially a county representative. Mr. Rousseau asked if that would be a representative from Pinal and Maricopa Counties. Mr. Lavis stated that the bill does not specify the county. Chairman Thelander added that the county member most likely would represent county government in general. Mr. Lavis said that the idea was brought to them by the Arizona Association of Counties and thought it would be appropriate to have such a representative on the Committee. Chairman Thelander asked about a member from crop production in Pinal County. Mr. Lavis said that there are no plans for that at this time since Pinal County is not designated as nonattainment. Mr. Lavis explained that adding four members may create concerns in the Legislature because the balance of the Committee could potentially shift.

Mr. Rousseau asked if the original enabling legislation for the BMP Committee says anything about members from a nonattainment area or just from a specific crop category. Mr. Lavis thought that the language did specify members that operate within the nonattainment area. Mr. Rousseau said if Pinal County is designated nonattainment, then the producer could be from Pinal County or Maricopa County.

Mr. Aja said that the Cattlemen's Association is not advocating for members on the Committee from animal operations, there are other individuals in the Legislature asking for that. They support adding a county representative. Mr. Aja said that in order to meet the requirements for an implementation plan for a nonattainment area it does not matter who is on the Committee; what matters is the science, the inventory, the measures, the modeling, and a demonstration that any control measure implemented will work. The Cattlemen's Association is comfortable with whatever technical advisory group the Committee would create to make those decisions. The Cattlemen's Association just wants to make sure that they have a voice on that group.

Mr. Rousseau asked about the chances of the legislation passing this year. Mr. Aja said that there appears to be a lot of support for HB 2181 in the Legislature, even though there is some controversy surrounding the bill. People have the tendency to look differently on feedlot operations than food production operations or construction activities. Mr. Lavis said that agriculture supports the SB 1225 striker bill in the Senate. Depending on how the issues are resolved, the BMP Program will likely have to expand to include animal agriculture in Area A. This is why this process should start early as it will take some time to complete.

Committee Member Nancy Wrona asked Mr. Lavis if he envisions technical workgroups for each type of animal operation. Mr. Lavis said that he had not considered this issue. In 2007, the Technical Workgroup evaluated various crop production activities, but in the current situation he does not know if there should be separate workgroups. Mr. Aja said that he does not think separate workgroups are necessary; he does believe there should be two distinct areas to consider since animal operations commonly have either closed or open systems. These types of systems have different technologies to research regarding abatement strategies. Ms. Wrona said she appreciates Mr. Aja's comments because she does not know much about these different types of systems and the approaches used for the different animals.

Chairman Thelander asked how many swine operations exist in Arizona; Hickman's Farm is the only poultry operation he is aware of. Mr. Aja said that the number of swine operations are limited in the nonattainment area; however, those operations have been looking to expand for several years. The largest swine farm is in Navajo County but has been looking to expand in western Maricopa County, eastern Yuma County, Cochise County, and possibly even southern Pinal County. Mr. Aja said it may be better to focus on the current animal operations in the area. Mr. Aja pointed out there are facilities in areas not under the authority of the program that could be addressed by memoranda of understanding.

Committee Member Kevin Rogers said that when the BMP Program was originally developed they discussed the size of farms that would fall under the program. Mr. Rogers asked Mr. Lavis if that discussion has occurred or if the Committee needs to discuss and address the issue of farm size. Mr. Lavis responded that the issue has not been discussed and referred that question to Mr.

Aja, but recalled that the AgBMP rule contains language that defines the size of a farm as 10 acres for a commercial farm under the BMP Program. The rule could be amended to establish or define the size of farm. Mr. Aja said that most of the operations generally fit the definition of a commercial farm under the BMP Program, but said that from a dust management perspective, cattle operations may have a reason to consider a size below that definition.

Chairman Thelander asked about horse operations because there are a lot more horses than chickens in the area. Mr. Aja responded by saying that there are 39 different horse groups and they have a tendency difficulty in reaching consensus among the groups, and it could be very difficult to get them involved with this program. Mr. Aja said that he has not tried to talk with them.

Mr. Kaltenback said that legislative changes only address dust issues and do not discuss odors so confined animal operations may not be big contributors. Ms. Wrona said the Committee will have to look at the science in order to determine whether a certain animal operation is in or out of the program.

#### **Discussion & Possible Action Regarding Appointing a Technical Workgroup**

Chairman Thelander asked if Mr. Lavis, Mr. Aja, or Ms. Wrona had any suggestions for appointing a new technical workgroup. Mr. Lavis said that he trusts Ms. Wrona will be able to put together a workgroup that will cover all of the bases. He also said that when looking at the court cases sustaining these programs, courts have a great deal of interest in the stakeholder process and how BMP program are created. The workgroup will need to be as inclusive and scientifically based as possible so they can assess the impact of the program per BMP. All of these issues need to be addressed because at the end of the day the Committee will have to adopt a rule, which has to be validated by EPA and ADEQ. One of the good things about the current BMP Program is that it has been thoroughly vetted and he is sure that Mr. Aja will want the new BMPs to be as vetted.

Chairman Thelander said he could not recall how they formally assembled the previous workgroup; was it by recommendation and does the Committee have to formally appoint the members of the technical workgroup? Ms. Wrona said that the Committee would want to reflect the appointments in the minutes along with the Committee's direction to the workgroup. The Senate has set a deadline of June 30, 2010, to adopt the revised rule to cover the new BMPs for beef cattle, dairy, swine, and poultry. If the legislation passes, there is a lot of work to do in a short period of time. All of the scientific analysis has to be done and then there has to be time to complete the rulemaking process.

Mr. Rogers said that he thinks the next step is for ADEQ to work with Natural Resource and Conservation Service (NRCS), review the previous BMP list, and ask industry people for suggestions for members of the new technical workgroup. If the legislation passes, then the Committee will be able to meet and appoint the workgroup and also decide the next course of action. Ms. Wrona said that the last time a technical workgroup was established the Committee invited people to a meeting and had the candidates state their expertise and their availability to be

on the workgroup. Mr. Kaltenback said the Committee had a couple of informal meetings where they brought different people together and from that group reviewed the scientific information. Mr. Rogers said the technical workgroup divided into subgroups to analyze different information. He said that Jeff Schmidt was instrumental in getting the process going. Chairman Thelander said that Mr. Schmidt might be in Florida now.

Chairman Thelander said the legislation will pass or fail by the end of June, and that by the end of the month they could have the technical workgroup assembled. Chairman Thelander asked about the timeline for the rulemaking process after the workgroup provides recommendations to the Committee. Ms. Wrona said that the proposed rule has to be published in the Administrative Register, have 30 days of public comment, have a public hearing, and then develop a responsiveness summary for any comments received. Once that process is complete, the final rule goes to the Governor's Regulatory Review Council (GRRC). GRRC requires a month lead time prior to hearing the rule. Ms. Wrona also stated that the rule should be noticed as a State Implementation Plan (SIP) revision so there does not have to be a separate hearing. Any action on the SIP could be a quick conference call or ADEQ could receive comments informally.

Mr. Rousseau asked, based on the discussion so far, if the Committee had any issues with ADEQ gathering names of individuals with the appropriate technical expertise to form a technical workgroup. Ms. Wrona said that the Committee should consider having an individual from the Department of Agriculture on the workgroup. Chairman Thelander agreed and said with the amount of technical analysis to be accomplished the Committee should hit the ground running if the legislation passes. Mr. Rogers said that a representative from EPA may be desired on the new workgroup. Mr. Rogers stated that there were county representatives as well as a cross section of industry representatives on the original technical workgroup. Mr. Rogers also said that since the Committee will be looking at new BMPs, it might be a good idea to determine if there are any new crop-based BMPs that should be evaluated in order to make sure the program continues to be successful.

Committee Member Jim Walworth asked if there are any BMPs from other regions of the country directed towards feedlots and dairies. Mr. Aja said that San Joaquin Valley has a BMP program for feedlots and believes they followed Maricopa County's model for their program. The biggest difference is that the San Joaquin Valley program has a reporting requirement; all farming operations in the program must report their BMPs. He recalls that they have four categories with a total of nine to twelve BMPs. Mr. Aja continued by saying that the program here would be different, and they are striving for BMPs that will work for real situations. The biggest reduction may come from abatement measures related to the use of moisture binding compounds. What they would like to bring to the table are simple, direct approaches for BMPs.

Chairman Thelander asked for a motion to direct ADEQ to develop a list of potential members for a technical workgroup. Mr. Rogers made a motion to direct ADEQ, the Arizona Department of Agriculture, and the NRCS to review the previous technical workgroup member list and develop a new list of potential members to serve on that workgroup. They would welcome county representatives, industry representatives, University faculty, and other interested parties. The motion was seconded by Mr. Lopez. Chairman Thelander asked if there was additional discussion on the issue and asked Ms. Wrona for a timeline to complete the new BMP

recommendations along with the rulemaking process. Hearing no additional comments, Chairman Thelander asked the Committee to approve the motion; motion passed.

### **Overview of BMP SIP Revision**

Corky Martinkovic, ADEQ, stated that the BMP SIP is in draft form and has been reviewed by management and EPA. ADEQ is in the process of refining the draft SIP, which will be sent to the Committee for review three to four weeks prior to the public comment period.

### **Call to the Public**

Lisa Tomczak, ADEQ, reminded Committee members that their appointments will expire at the end of 2010.

Mr. Rogers commented that at a recent meeting for agricultural producers, he spoke with a farmer who had stopped watering his roads. The farmer stated that when he waters the roads and are subsequently used, there is track-out onto the pavement. Mr. Rogers said he does not like hearing that a producer will stop watering roads because of another consequence, such as receiving fines for track-out. Mr. Rogers said they should continue to work with the regulating community to come up with solutions that will solve both problems. Another farmer told him the river rock that he put the end of his dirt road as part of the track-out control BMP was stolen, possibly by landscapers. Mr. Rogers said that situations like these are detrimental to the BMP Program because producers may stop using their BMPs. He added that farmers are in the middle of harvesting grain, watermelons, carrots, and other vegetables and we need to make sure that we work with the regulating community to ensure they understand agricultural processes. For example, grain needs to be dry when it is harvested and there may be a plume of grain shaft behind the tractor. Mr. Rogers said there appears to be some fear among the producers so we should help the regulators understand the situation in order to work through the issues. Ms. Wrona said that there are some options and it would be appropriate to work with Maricopa County representatives to gain an understanding of what works best. Mr. Rousseau commented that he has not stopped watering roads but is in the process of harvesting and there is water in high traffic areas where 100 to 150 trucks pass per day, which leads to some track-out.

Chairman Thelander asked Dena Konopka, Maricopa County Air Quality Department, if she had any comment on this issue. Ms. Konopka stated that she did not, but Ken Hooker, Compliance Supervisor for Maricopa County Air Quality Department might want to say something about the issue. Mr. Hooker did not have a comment but said it is unfortunate to hear that some farmers have stopped watering their roads. Chairman Thelander remembered when the Committee adopted the use of grizzlies as a BMP to avoid track-out. The main focus was track-out from silage harvesting trucks or when trucks came out of muddy fields. He indicated that he was at the same meeting as Mr. Rogers and that was the first time he heard of farmers having problems with track-out as a result of watering. He does not know if cleaning the track-out on a daily basis will avoid fines. He knows that the jurisdiction stops with the Committee's rules when a farmer enters county roads and are then subject to county rules. All agreed that this would be a good issue for the County to look into.

### **Action Items and Next Steps**

Chairman Thelander asked for a summary of the action items.

- 1) ADEQ will develop a timeline for completion of technical analysis and rulemaking process.
- 2) ADEQ will develop a list of potential members for a new technical workgroup.
- 3) ADEQ will provide Committee members with a copy of the proposed BMP SIP one week prior to the start of the public comment period.

### **Adjournment**

Hearing no additional discussion, Chairman Thelander asked for a motion to adjourn the meeting. Motion made by Mr. Rousseau and seconded by Mr. Butler; motion passed.

Hearing no other discussion, Chairman Thelander adjourned the meeting at 2:35 p.m.