

House Environmental Resources & Energy Committee
Testimony on DEP Biosolids Permitting
Pennsylvania State Grange
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Majority Chair Metcalfe, Minority Chair Vitali and Members of the House Environmental Resources & Energy Committee, thank you to holding this hearing on potential changes to Department of Environmental Protection (DEP) permitting for biosolids use.

For the record, I am Wayne Campbell, President of the Pennsylvania State Grange. As you may know, the Pennsylvania State Grange is one of, if not the oldest organization that advocates for rural Pennsylvanians, having been founded in 1873.

Need for More Governmental Transparency

One of our consistent themes is the need for transparency in government policy-making. This hearing works towards that goal by having an open discussion on what is a standard practice used by many farms – as vetted and approved by DEP so as to meet standards of environmentally sound use.

Until this hearing, many observers were unaware that DEP was moving forward with changes to the biosolids permitting process. For one thing, it does not appear in the annual list of regulatory changes being proposed by PA agencies. As members of this committee may know, state law requires that this list be published in the PA Bulletin so as to give stakeholders and the public an opportunity to see what regulatory changes may be coming. This list was published in the August 14, 2021 PA Bulletin. DEP and the Environmental Quality Board had a total of 27 proposed or revised regulations. The phrase ‘biosolid permit’ does not appear. There is one proposed regulation from the State Conservation Commission dealing with CAFO, concentrated animal feeding operations. That obviously deals with farm practices but apparently not application of biosolids.

Source:

<http://www.pacodeandbulletin.gov/Display/pabull?file=/secure/pabulletin/data/vol51/51-33/1293.html>.

In researching for this hearing, Pennsylvania State Grange also looked at DEP’s Public Participation portal. That lists proposed rules that are open for public comment. Nothing appears regarding biosolid permit changes.

Also, the DEP portal lists regulations being considered. Biosolid permitting does not appear.

Source:

https://files.dep.state.pa.us/PublicParticipation/Public%20Participation%20Center/PubPartCenterPortalFiles/Environmental%20Quality%20Board/Rolling_Reg_Agenda.pdf.

The point that the Pennsylvania State Grange is making is that this committee is providing public transparency on a topic of vital interest to farmers and surrounding residents. While DEP may be discussing this in an Agriculture Advisory Committee working group, the Department should be more transparent and at least publicly disclosed that this was something on which they were working. The House Environmental Resources and Energy Committee should also know that an internal document in the Agriculture Advisory Board from March 18, 2021 lists a timetable for publishing final general permits for the 4th Quarter of 2021.

CONCERNS AND QUESTIONS FOR DEP

Given uncertainties as to what DEP is actually planning, the Pennsylvania State Grange has several concerns.

- How well is the current permitting process functioning? DEP takes pride in permit approval times. What in DEP's view needs to be changed? Can the problems be quantified?
- Will any of these proposed changes affect PA's Right to Farm law which states that standard farming practices (such as application of biosolids) must not be hindered? Regulatory oversight, yes, but overly restricting conditions of biosolid application, no.
- Any change in DEP permitting must follow the science and not unsubstantiated cries for no biosolids from well-intentioned but misinformed advocates.

DEP PREPARING ANOTHER RULE THAT COULD BE ON A COLLISION COURSE WITH THE BIOSOLID PERMIT APPROVAL PROCESS

In addition, there may be a potential conflict between potential permit changes and PA's Right to Farm law. In 2018, DEP attempted to expand the purview of the Office of Environmental Justice by adding census blocks. This means that before a permit could be approved in project areas where there may be adverse environmental consequences to people in census blocks, DEP may seek to add additional steps including:

- Hearings

- Advertising
- Specific notification requirements

Source:

<https://www.dep.pa.gov/PublicParticipation/OfficeofEnvironmentalJustice/Pages/default.aspx>.

Specifically, the 2018 proposed policy would have expanded areas classified as Environmental Justice Areas (EJAs) by twelve percent (or one-third of all Pennsylvanians) by using US Census blocks. These EJAs are defined as having 20 percent or more residents below the Federal Poverty Line and/or thirty percent population being non-white minorities. Following is a link to a map showing Environmental Justice Areas. Many of these are located in rural parts of PA where farming occurs.

Source:

<https://padep-1.maps.arcgis.com/apps/webappviewer/index.html?id=f31a188de122467691cae93c3339469c>.

The intention is to make sure that people in these areas know about potential environmental risks connected with certain activities requiring DEP-permits. While the intent is worthy, requirements for permits in these Environmental Justice Areas can adversely impact a farmer's Right to Farm.

How Would the Current EJA Added Permit Requirements Work?

Projects needing a specified DEP permit in these census blocks would fall under this Public Participation Program from the Office of Environmental Justice. It includes both initial permits and any upgrades or expansions to the permitted project.

The proposed 2018 Public Participation Program meant that the biosolids permit process will require added steps.

- *Use of electronic, conventional and non-conventional methods of communications to inform community members as to the scope of the project and possible environmental effects.*
- *Notices placed in publications that are widely read by the community in those areas including but not limited to local newspapers, community newsletters, church bulletins, public service announcements, local radio and television*

announcements, notices to local environmental groups, and notices to local community centers.

- *Informational meetings must be scheduled by DEP working with the permit applicant within thirty days after receiving a permit application. The DEP Office of Environmental Justice will assist in setting up the meeting and applicants are encouraged to fully participate in meetings.*

This proposal was withdrawn in 2020 but apparently is back.

In March 2021, DEP conducted two hearings on new Public Participation requirements for various permits.

Here is the timetable for adoption of these policies adding a layer of additional oversight on the permit approval process.

Outreach and Engagement	Summer 2021
Drafting & Finalization	Summer 2021 – Summer 2022
Implementation	Summer 2022

WHAT DOES THIS NEW PUBLIC PARTICIPATION PLAN HAVE TO DO WITH AGRICULTURE?

The major concern is that adding another layer to the permitting process with explicit public involvement, means infringements on normal farming activities. Biosolid application is part of farming. It also is a beneficial practice as shown conclusively by numbers of studies including a report from **by** the PA Legislative Budget and Finance Committee.

Source:

JUN2017 Conservation and Environmental Protection

PA's Program for Beneficial Use of Biosolids (Sewage Sludge) by Lan
Report Highlights

Presentations

Jun 27, 2017

Presentation to the Committee by Philip Durgin, Executive Director

Right to Farm legislation in Pennsylvania means that farmers have a right to farm as long as those activities are “normal” and do not pose a threat to public health or safety. The DEP process of reviewing a permit application means that public health and safety are already addressed. Simply put, if there is a danger, the permit is not approved. DEP is already the watchdog.

By injecting these additional public participation hoops, DEP would invite local oversight over a state-authorized activity. An underlying question is whether localities can adopt policies which conflict with DEP’s science-based evaluation of a permit application.

Permit reviews should be based on science, not on a public hearing where those who scream the loudest influence municipality officials in restricting or delaying significantly the biosolid application.

As you may know, ACRE, the Agricultural Communities and Rural Environment Act, has a specific provision protecting farmers from nuisance lawsuits and local ordinance restrictions and impediments pertaining to biosolid application.

313. Certain local government unit actions prohibited

(a) Adoption and enforcement of unauthorized local ordinances.

A local government unit shall not adopt nor enforce an unauthorized local ordinance.

CONCLUSION

Again, the Pennsylvania State Grange appreciates this opportunity to present testimony.

In addition to the need for more transparency in DEP’s decision-making, there is a serious threat to the integrity of a revised biosolid permit because the DEP Office of Environmental Justice is pursuing its own permit requirements for biosolid application.

- **The DEP permit process for biosolid applications addresses public health and safety. Thus, these “Environmental Justice Areas” are already protected and a public participation requirement is simply not needed.**
- **In addition to adding to the cost of holding hearings and advertising, the result of the DEP Public Participation Program means delays in actually applying the biosolids. Farmers have a timeline and an artificial delay**

caused by the Office of Environmental Justice works against their right to engage in normal farming practices.

- **Public participation can sometimes lead to unfounded hysteria by those who are alarmed by biosolid application even though studies conclusively show beneficial outcomes. Permit approval should be based on science, not volatile public sentiment. Because of alarmist outcries, a local municipality may respond by seeking to ban biosolid application, placing it into direct conflict with state law. Subsequent action by the Office of the Attorney General means more delays and the farmer will be unable to farm using biosolids.**

In our view, revisions in Public Participation Policy put forth by the DEP Office of Environmental Justice (OEJ) must not be allowed to distort the biosolid permit process. Thus, changes in biosolid permitting must clearly specify that this process is exempt from new OEJ policies.