

THE COMMONWEALTH OF MASSACHUSETTS

EXECUTIVE OFFICE OF ENERGY AND ENVIRONMENTAL AFFAIRS



Department of Agricultural Resources

251 Causeway Street, Suite 500, Boston, MA 02114
617-626-1700 fax: 617-626-1850 www.mass.gov/agr



DEVAL L. PATRICK
Governor

TIMOTHY P. MURRAY
Lieutenant Governor

IAN A. BOWLES
Secretary

SCOTT J. SOARES
Commissioner

FARM TECHNOLOGY REVIEW COMMISSION

Meeting Minutes

Wednesday, January 27, 2010.

9.00 AM to Noon

Massachusetts Technology Collaborative (MTC),
Weiss Conference Center, Room 102, 75 North Drive, Westborough, MA 01581

Commission Members Present:

Gerard Kennedy, Designee, Department of Agricultural Resources
Ed Kunce, Designee, Department of Environmental Protection
Ellen Fitzgibbons, Designee, Department of Public Health
Dennis Buckley, Designee, Department of Revenue
Carter Wall, Executive Director, Renewable Energy Division, Massachusetts Clean Energy Center
James Cooper, Dairy Farmer Licensed as a Producer Dealer
Peter Melnik, Dairy Farmer, Massachusetts Cooperative of Milk Producers Federation
Mark Duffy, Dairy Farmer, Massachusetts Association of Dairy Farmers

Others in attendance:

Gerry Palano	MDAR	Frank DiLuna	
Sean Bowen	MDAR	Brad Mitchell	Farm Bureau
Jessica Burgess	MDAR	Tim Hay	Bigelow Nurseries/ MNLA
Craig Richov	MDAR	Frank Carlson	Carlson Orchards
Kim Foley	MDPH	Jennifer Hashley	Tufts NESFP
Amy Barad	MRET	Scott Hesser	CCCGA

Gerard Kennedy called the meeting to order at 9:15 AM. The members of the Farm Technology Review Commission (FTRC) and the public introduced themselves and were welcomed.

ITEM 1- Presentation: 1. Safeguarding of Personal Information 2. The Conflict of Interest Law

Jessica Burgess, an attorney from the MDAR legal division, delivered a presentation on Executive Order 504 which deals with the safeguarding of personal information. She also presented on the Conflict of Interest Law. Commission members subsequently completed a form which acknowledged their receipt of a copy of the summary of the conflict of interest law. Jessica also stated that the Commissioners need to take an on-line training on the State Ethics law by April 2, 2010. The link for the training is:
http://db.state.ma.us/ethics/quiz_MEthics/index.asp

ITEM 2: Commission Updates

Kennedy stated that there were a number of action items from the first meeting of the FTRC that would be addressed. Included among those action items were several recommendations from the Dairy Task Force report that related to taxation. Dennis Buckley from DOR was asked if he would look into these issues. The specific recommendations and DOR's responses are:

Recommendation 1: Exempt multi-purpose equipment vehicles from sales tax

DOR Response: According to attorneys in the Rules and Regulations bureau within the Division of Local Services this would require a statutory change. This issue is not exclusive to agriculture and also applies to manufacturers. DOR would expect push back from other interest groups to get the same exemption if this were to pass. (Note: This issue is discussed at length later)

Recommendation 2: Allow farms to pay estimated income tax on money actually received on date estimated quarterly payments are due to be filed

DOR Response: Mr. Buckley stated that this is statutory but that there are exemptions in the tax code that farmers may not be aware of. One exemption is that farmers and fishermen are treated differently in the tax law. They are not required to make estimated payments if they want to file and pay their tax return by March 1st of the following year. So there is an exemption to say that they are not required to make estimated payments.

Another provision relates to farmers who prefer to make Estimated Payments. If, when the quarterly payment is due, the farmer has not earned any income, he can pay zero and make it up in the following quarterly estimate. However, in the following quarterly estimate, he is only required to pay 66 2/3% of the prior year's taxes as opposed to 80% (like other taxpayers).

Recommendation 3: Amend MGL C.59 Sec 8A to allow exemptions allowed to other persons

DOR Response: This is a statutory change because the statute defines who is entitled to the exemptions. This exempts items from the personal property tax levied by the cities and towns. Considerable resistance would be expected from the Mass Municipal Association and the 351 cities and towns because such a change would impact on the ability of cities and towns to raise taxes.

Mark Duffy asked if the exemption of multi-purpose equipment applies to all manufacturers. Mr. Buckley responded that it did. He went on to inquire if the process moves forward statutorily, does DOR keep track of how much funding would be lost to towns and how much that number would be for agriculture?

Mr. Buckley went on to say that this applies in situations where a farmer buys a piece of equipment such as a bulldozer for exclusive use in farming. In that case no sales tax is paid. However, if the bulldozer is used for any purpose other than agriculture – clearing snow, for example- an audit by DOR might result in the department declaring that the use of the equipment is not exclusively for use in agriculture. This would likely lead to a penalty and require payment of the original sales tax with interest.

Now if the exemption were modified to apply to equipment that is *primarily used in agriculture* then the farmer could do something other than agriculture with the equipment

According to DOR attorneys, if the Commission proposed to change the law to allow for this exemption, manufacturers would likely follow suit and expect the same exemption. If the Commission were to request the exemption, an economist at DOR would estimate how big of a loss in revenue would result. A state legislator would then need to file the bill.

Gerry Palano asked if the exemption applies to Renewable Energy projects. Mr. Buckley stated that there is a separate exemption for renewable energy projects and that he believes they are exempt from sales tax.

Kennedy asked how the Commission would like to proceed.

Duffy responded that the Commission should explore if there is a possibility to identify certain pieces of equipment that might benefit from the exemption, or if equipment that is used *primarily for agriculture* could benefit. The Commission should continue to explore the possibilities here for an exemption for a specific piece of equipment such as a truck, and the options that exist for the application of the criterion: “*primarily for agricultural use*”.

Mr. Buckley replied that DOR likes bright lines- either something is all exempt or all taxable. He indicated that he would be willing to work with the other farm members to focus the issue to a bright line.

Ed Kunce indicated that if you could develop criteria to say that if a piece of equipment represents a certain percentage of their business, then it might be eligible for this exemption. We are trying to target to small business- ie farming- but there may be other small businesses that could benefit. A broader base might be too big for the Commission to take on but there might be a way to start by establishing criteria for farmers, which may then have applicability to other small businesses. This is a way to reduce resistance from other small businesses and possibly build support for this approach and make it easier to reach the bright line.

Mr. Buckley indicated that he would be happy to bring the issues back to the office to see if there is a way to craft something that meets the farmer’s needs, with the understanding that the equipment that is used in farming exclusively is exempt and that equipment that is used for agricultural purposes and for other functions is not exempt

A discussion ensued with the attendees in which the following points were brought up:

- some people are having trouble getting the sales tax exemption even if the intent is for agricultural use
- nurseries buying a bobcat to do an installation on the nursery are not being treated as exempt from sales tax and the use is being treated as a non-farm use, though the installation would be part of the business.
- does the exemption apply only to food production; are non-food producing sectors covered ?
- dealers may be skeptical of agricultural uses

- a dump truck that is only used on the farm is not exempt even if used only for agriculture. (According to Mr. Buckley this is probably because the farmer went to the RMV and got a farm plate. He indicated that though there is a mechanism to get the sales tax back particularly if the farmer speaks directly to a person.)

In summing up the discussion, Kennedy stated that **Mr. Buckley would continue to explore the criteria that could be used to expand the exemption for agriculture, including equipment purchase that is a percentage of business revenues or primarily for agricultural use.** The industry groups should further define issues around which different various sectors are assessed taxes differently

Mr. Duffy raised the specific issue of a farmer who sells an asset – such as cows- in order to stay in business and incurs capital gains. Kennedy went on to read from a note that capital gains go on a Schedule D. Farm income goes on a schedule F. The federal government allows the deduction of a schedule F loss from a schedule D profit. Massachusetts does not allow this because capital gains are “unearned income”.

So if a business suffers a \$400,000 operating loss and sells an asset (eg. \$100,000 worth of cows) to generate cash flow, the “profit” from the sale will be taxed. What would need to happen to ensure that the losses from a Schedule F can be applied to the profits? Could this issue be examined ?

To get the benefit and not call it a capital asset a farmer could lose money when times are good when selling livestock because now it will be taxed at a higher rate than if it were a capital asset. Changing the statute when times are bad to take this exemption out may hurt farmers in the long run.

Mr Buckley indicated that he would have a staff analyze whether changing the definition of livestock in the tax code would hurt the farmers or benefit them.

Kennedy opened up the meeting to the Commission for any updates of interest that they might have. Carter Wall announced that the Renewable Energy Trust was launching two new solar programs that afternoon. “Commonwealth Solar 2” provides rebates for people building PV systems of 5KW or smaller for residential and commercial purposes. This program is designed in conjunction with the state’s introduction of an SREC market. This will create an ongoing market like the regular REC market. She explained that the Renewable Energy Certificate is provided for every megawatt hour of electricity that is produced that is “green” or from a renewable energy source. The certificate has monetary value because the state’s Renewable Portfolio Standard (RPS) requires utilities to purchase a mandated minimum percentage of their energy from renewable sources on an annual basis, 5% for 2010. In order to meet that criterion, the power providers have to purchase RECs and this creates the market. Now there is a separate carve out for solar through the new SREC market. This separate portfolio standard for solar was created to create a longer-term and more market-responsive source of support to solar installations. There is a floor that has been set by the state for the SRECs of \$300 (\$285 after administrative fees) per SREC which compares to \$30 for regular RECs. That is the floor value and it may go up to \$600 (also set by the state as the compliance payment). The floor value is set by the state to create something financeable. If there was no floor it would be difficult to get a loan because nobody would know what the SRECs are worth. If you sell power and you do not buy SRECs you have to pay the state the compliance payment, a kind of penalty. The SRECs can be produced by MA eligible installations which must be located in MA and feed into the ISO New England region but they have to be qualified in Massachusetts. A power generator in North Dakota would not be eligible, for example. The market is expected to develop quickly due to its lucrative nature. MRET Analysis shows that at the floor value, half the cost of installation should be covered for systems with the average generation for MA.

The other thing being launched today is \$8m in stimulus money from the state energy program through the Department of Energy for larger systems above 5KW up to 200KW. There is quite a bit of demand out there

and the program is expected to go very quickly. These projects will also be eligible for the SRECs in addition to the rebate.

A clarification question from Jennifer Hashley about the mechanism for smaller size systems led to a response from Ms. Wall indicating that there will be a market for aggregators to buy the SRECS due to smaller installations, bundle them and sell them to the utility companies. Larger installations, such as a MW scale installation, would likely sell directly to suppliers. Gerry Palano indicated that systems installed prior to the creation of this SREC market, or that have received funding through the Rural Energy for America Program (REAP), will not be eligible to participate in the SREC market. So the SREC program is intended to provide revenue to newer projects, those installed after 12/31/07, subject to other eligibility requirements (see DOER web site for specifics)

Mr. Duffy questioned how long the \$285 floor value will be around. He stated that farmers are around for the long term and evaluate opportunities, such as the SREC program, by questioning their longevity. Ms. Wall indicated that most people will be selling their SRECs into the market, but that rather than take up the Commissions time with the complicated details she indicated that there is an abundance of information on the DOER website; www.mass.gov/doer

Kennedy acknowledged James Cooper who arrived. Mr. Cooper introduced himself as the Producer Handler representative.

ITEM 3: VOTE: Meeting Minutes

Carter Wall had a clarification to the minutes in which she indicated that she is not the Executive Director of the Massachusetts Technology Collaborative but the Renewable Energy Trust.

Mark Duffy motioned to accept the minutes with the change in Carter Wall's job title. Carter Wall seconded the motion. The motion carried unanimously.

ITEM 4: JOINT PRESENTATION AND DISCUSSION:

1. Existing Massachusetts and other state energy initiatives, Gerry Palano, MDAR
2. Energy Challenges and Possibilities, Carter Wall, MRET

Mr. Palano's presentation is attached (Attachment 1). He launched into his presentation by discussing the Massachusetts Farm Energy Program including technical assistance, audits and incentives, and net metering. He then addressed other non-grant rebates and incentives such as net metering, RECS/ SRECs and tax related incentives such as investment tax credits.

In summing up his presentation he emphasized that, despite all the incentives and grants, the upfront costs remain a challenge for farms. Farms have limited finances and maintaining day to day expenses alone is difficult, let alone, investing in a new capital improvements. Finding the time to pursue the opportunities and programs is problematic. This underscores the importance of the Mass Farm Energy Program in helping farmers go after the funding programs.

He added that the majority of farms in MA are small scale and are needed to sustain agriculture in the state. If aggregated together they generate a significant amount of revenue for the state. However, their profit margins, or needs, may not be as attractive to utility programs. It is therefore important to ensure that these smaller operations are included in these programs. Among his other recommendations are:

- Looking at ways to identify within utility region and load zones farms that are interested in purchasing energy from farms for net metering purposes possibly through forming cooperatives, creating databases.

- The need for new construction assistance for farms that want to build on. A lot of farms are interested in zero net energy buildings. Need for funding to help farms address the issue of planning and constructing green building. He mentioned a grant to a farm in Westport to develop plans for a new zero net energy milking barn.
- Permits and regulations are not always current with new technologies. He indicated that MDAR had been working effectively with MassDEP for Anaerobic Digester permitting pathway. But in many cases we are in a new territory when it comes to some of these technologies. Biomass, other than wood, also needs to be further defined.

Carter Wall then introduced a matrix of ideas (Attachment B) which she characterized as the beginning of a discussion. She stated that she wanted to go on the record that the ideas in the matrix are preliminary and represent a mechanism to get the discussion started. The FTRC was tasked with the responsibility of addressing three main areas when it came to energy issues:

- Possibilities for Group Purchasing;
- Energy Efficiency; and
- Renewable Energy options.

So this matrix represents the universe of issues that the FTRC is to address with respect to energy. She divided up the categories into three potential broad action areas:

1. Education and Outreach Programs
2. Actions that the state could take to help advance some of the ideas
3. Recommendations from the commission such as legislation or regulatory changes

Mr.Kunce suggested that it could be a living matrix that could be updated on an annual basis. Ms. Wall agreed and said that it is a way of organizing the thinking with respect to the tasks that the commission has been assigned in the legislation. She said that the preliminary ideas in the boxes result from various discussions. She went on to address the specific areas:

FTRC Task 1: Possibilities for Group Energy Purchasing:

Currently there is a 10% Farm Energy Discount for agricultural enterprises in statute for electric and natural gas. However, it seems that not everyone is aware of this benefit and that there is definitely a need for more outreach to help get the word out. There are only 1500 or so farms in the Farm Energy Discount Program database. In response to a question from Jennifer Hashley about the criteria that determines eligibility for farms, Gerry Palano stated that there is a form online with multiple criteria such as Farm Plates, Chapter 61A eligibility. See <http://www.mass.gov/agr/admin/farmenergy.htm>

Mr. Duffy stated he gets calls all the time from people selling energy but the problem with this is that if you leave your current distribution company, and go with an independent supplier you lose your 10% discount off the entire bill (distribution and supply). Mr. Palano stated that this is because the 10% discount for supply and distribution is effective only for the distribution companies, not for the independent suppliers. However the 10% discount for the distribution portion of their bill would still be available to the farmer, even if energy supply is purchased through an independent supplier. Furthermore, the 10% discount (distribution and supply) is effective for all municipal light and power plants provided the energy is purchased from the municipal plant.

He went on to say that you can buy your energy from anyone but DPU, the state regulatory agency, has no control over the non-regulated energy providers, i.e. the independent suppliers and brokers. There is no way that DPU can know the nature of the contracts that independent providers have with customers. Two farms could have the exact same energy profile, be identical farms and have two different contracts with an independent provider.

A discussion ensued around whether the discount is off the total energy bill or just the supply side of the bill. There were different understandings expressed. **Carter Wall stated that she would clarify the situation for the commission for the next meeting.**

The 10% discount is an attractive benefit that is not available across all sectors. There are a lot of people who may qualify. She recommended putting out the word to trade associations, for example greenhouses, especially if they are using electric heat or natural gas. So developing outreach materials to help agricultural operations understand this discount would be a valuable exercise. The utility companies will not necessarily market these discounts directly to the agricultural sector so there is a lot of potential for **the FTRC to work with MDAR to help develop materials directly for agricultural enterprises.**

FTRC Task 2: Renewable Energy:

For renewable energy, it was suggested that it would be a good idea to **do a workshop on Anaerobic Digesters for Building Inspectors.** Mr. Kunce suggested the inclusion of Boards of Health. A **workshop on Net Metering** would represent a worthwhile outreach activity also.

Mr. Duffy asked if the Department maintains a list of farms with renewable energy systems currently in place in order to target the outreach. Ms Wall indicated that they maintain a list at the trust. She assured the commission that anyone with a renewable energy system in place would know about net metering. Mr. Duffy stated that it was surprising to him that there were commercial agricultural operations that are unaware of the 10% Group Purchasing Discount for farms. Mr. Palano stated that, in some cases, some of the smaller farms are afraid because they were put on residential meters at one point and would be wary of it because it might require that they have to put on two meters.

Peter Melnik stated that biomass projects appear to be getting a bad rap in the state. There are a lot of unique small and large scale projects that could potentially be affected by the negative perception of biomass. For example, there is a ballot initiative to deny biomass based renewable energy projects, such as his anaerobic digester project, the right to RECs. Mr. Kunce stated that MASSDEP had worked to try to streamline its regulations on biomass projects but found that there is some considerable misunderstanding around the issue, whereby it is seen to be incineration under another name. He recommended reaching out to local Boards of Health to counter the misinformation that is out there that links biomass with contaminants such as dioxin, organics and furans. There is a lot of misinformation, which while it may be well intentioned, can lead to situations such as the current moratorium on woody biomass.

Ms.Wall said that the state needs to get the science out there to fully inform the public about impacts of these projects. Mr.Kunce stated that there are a few conferences in the Fall, such as the Massachusetts Health Officers Association annual meeting in Springfield, which represent an opportunity to educate local Boards of Health around these energy issues. There are probably other groups, such as Building Inspectors, which meet in the Fall. He suggested that we should put a placeholder on the agenda of stakeholder group meetings. **Wall asked if MDAR could work with MASSDEP and MRET to identify opportunities for outreach on energy issues.**

Jessica Burgess mentioned that the Agricultural Commissions Annual Conference on March 20 is coming up and might represent an opportunity for outreach. She said that there will be a panel discussion around Board of Health issues.

Ms. Wall asked who would be a credible voice to speak to the issues such as site locating issues for anaerobic digesters. Brad Mitchell suggested that there might be a panel discussion around this issue. Suggestions were made for someone from a university setting, MTC, a regulator, an attorney, and a farmer.

In highlighting the Tewksbury pig farm, some projects in the Pioneer Valley that have been put on hold, and the multiple issues facing the anaerobic digesters where someone might see it as a way to burn waste, Mr. Kunce

stated that getting the health officers informed is an important issue because it represents the first line of defense in advancing these issues.

Ms. Wall suggested that the Commission should take on anaerobic digesters as a stand-alone topic and identify what the barriers and opportunities are, the educational need and the regulatory issues. Melnik responded that the state has been very pro-active in finding a mechanism to advance his project and he said that once the first one is built, we will be able to more accurately map out how the project will work.

Mr. Palano clarified Mr. Melnik's earlier comment about biomass projects. The DOER put a moratorium on woody biomass. The proposed citizen ballot initiative is on all biomass and is a separate issue which sets very low limits on emissions from the combined heat and power component of a biomass plant whether the biomass is manure, waste, switchgrass, wood or something else.

Brad Mitchell noted that people's stated concerns may not be their real concerns. Where people may state that they are concerned about emissions, the real concern is trucks.

Mr. Melnik described his Anaerobic Digester project which will take commercial food waste and mix it with manure to generate electricity, thereby helping address the state's solid waste management goals.

Ms. Wall suggested that the Commission take the Anaerobic Digester issue as a separate issue. Carve Anaerobic Digesters out of Renewable Energy and look at it with respect to the three categories.

Ellen Fitzgibbons underscored the importance of educating the Boards of Health about state support for many of these energy initiatives.

- **A subgroup will meet to discuss anaerobic digesters as a stand-alone topic and identify what the barriers and opportunities are, the educational need and the regulatory issues.**
- **Ed Kunce to contact the Mass Health Officers Association to gauge the extent of their interest level in hosting a session on energy and agricultural issues at their annual meeting.**

Kennedy also mentioned that, while the focus on the preceding discussion has been outreach to Boards of Health and Anaerobic Digesters, Mr. Palano's presentation had highlighted a number of important recommendations including a loan program and the need to continue funding for the Mass Farm Energy Program and that the Commission should discuss them at the next meeting.

Ms. Wall went on to discuss that, in some cases, you can highlight your source energy by signing up for green power on your utility bill. So there is an opportunity to develop a Green Power option for agricultural energy on utility bills. Duffy indicated that Ag Power would be an appropriate name and emphasized the need to include all forms of agricultural sources. Coming up with a name for this initiative would be helpful. Advertising would be possible at Farmers Markets for people to sign up. Discussion around what the role of the Commission is in advancing this goal of an Ag Power option on utility bills.

- Ms. Wall indicated that she would be happy to put out a Request for Information (RFI) from the Trust to get some ideas on how to proceed.

FTRC Task 3: Energy Efficiency: For energy efficiency programs, Ms. Wall learned that right now the utilities are seeking ideas for pilot programs for their energy efficiency programs. They are keen to support agriculture and recognize that agriculture has specific equipment needs. She recommended that the trade associations solicit input from their member groups as to what kind of energy efficiency programs they would like to see coming out

of the utilities. At the state level, there would be interest in taking the ideas to the utilities. Farm Bureau offered to conduct a survey of its members.

Mr. Duffy asked where the funds are coming from. Ms. Wall indicated that the funds are coming as a result of legislation in 2008 that created “Decoupling”. Because utilities make more money when more power is used, there has been, historically, a disincentive to utility companies to invest in energy efficiency. So the state implemented a two prong change called decoupling where it decoupled the utility revenues from how much power they sell so they remove the disincentive to invest in energy efficiency while also directing the utilities to do cost effective energy efficiency.

So there is a funding coming from the utilities to pay for this cost effective energy efficiency. An example is the Lighting Swap Out programs involving the replacement of inefficient lighting with efficient lighting. If the agricultural industries, such as the nursery sector, can identify efficient technologies that can be utilized across the industry, then this can be brought to the attention of the utilities and a program similar to a lighting swap out program could be proposed.

Mr. Melnik gave the example of the huge fans in his barn that are incredibly energy efficient. However, the rebates that are provided for efficient fans are based on the motor. So if his big fan took the place of 12 small fans, the rebate will only go for the one new motor for the big fan. Can the FTRC work with industry to identify and highlight these new technologies on farms and bring them to the attention of the utilities.

- **MDAR to coordinate with Farm Bureau and member organizations around their needs and the types of energy efficiency programs they would like to see.**

Moving on to the rest of the matrix ,Ms. Wall went on to discuss the lack of data regarding geothermal or biomass thermal heating for greenhouses and indicated that the state could possibly find some funding for a possible pilot funding for geothermal or biomass thermal heating for greenhouses – in conjunction with UMass?

Mr Melnik indicated that there is a huge opportunity for consultants to work with the private sector to put together these projects for farmers. For example, aggregating technical assistance on selling ag power or selling RECs. Ms. Wall indicated that it is important to do this with entities, or through an organization, that people trust. Brad Mitchell mentioned that UMASS-coordinated twilight meetings are a useful way to educate farmers about new technologies and gave the example of trickle irrigation or IPM. Extension is a good resource because they work with the industry groups. It is important to make pathways easy for individuals but also reach out to other sectors of the industry to collaborate.

Gerard Kennedy summed up the proceeding discussion

- Carter Wall to clarify the extent to which the 10% Farm Energy Discount for Group Purchasing applies to energy bills. Does it apply to the supply side only or the total bill ?
- A subgroup will meet to discuss anaerobic digesters as a stand-alone topic and identify what the barriers and opportunities are, the educational need – including a workshop for Building Inspectors and Boards of Health- and the regulatory issues.
- How can the Commission most appropriately advance the goal of an Ag Power option on utility bills?
- Explore pilot funding for a study on geothermal for possible pilot funding for geothermal or biomass thermal heating for greenhouses – in conjunction with UMass?

- Ed Kunce to contact the Mass Health Officers Association to gauge the extent of their interest level in hosting a session on energy and agricultural issues at their annual meeting.
- Can the FTRC work with industry to identify and highlight these new technologies on farms and bring them to the attention of the utilities. MDAR to coordinate with Farm Bureau and member organizations around their needs and the types of energy efficiency programs they would like to see.

ITEM 5: JOINT PRESENTATION AND DISCUSSION:

1. Environmental and regulatory challenges for resource management
2. Overview of existing collaborative approaches to challenging issues
3. Streamlining of review process to accommodate existing and future issues

Gerard Kennedy, Ed Kunce, & Ellen Fitzgibbons

Gerard Kennedy, Ed Kunce and Ellen Fitzgibbons presented an overview of the environmental and regulatory challenges presented for resource management including wastewater management from some agricultural sectors and also processing of agricultural products at the local level for sale (see Attachment C).

Ed Kunce described how MASSDEP regulations had historically been developed by media (air, water, soil) or by activities that need special attention (hazardous waste or solid waste management). Many of the agricultural issues cut across the multiple MASSDEP regulations. One way to address these issues is to change the regulations which can be time consuming. Other approaches can be Memoranda Of Agreement, guidance or regulatory interpretations such as the approach with the MPPU, and for unique projects, a pre-permitting meeting can help to identify the pathway to obviate the need for a regulation or statutory change.

Mr. Kunce went on to say that the benefits of the MOA are that there are multiple stakeholders involved and you can bring them all to the table. The MOA is good for pilot projects as it allows the generation of data and can help to identify the limits of the project. There are currently two MOAs involving MassDEP and MDAR. One relates to the use of vegetated treatment areas between for wastewater generated by milking houses. The other addresses water management and quality on several cranberry bogs drawing water from a lake in Plymouth County. While the MOA provides useful information they can take some time to develop. The Milkhouse MOA took over two years to complete, which is too long. On the other hand, the recent regulatory interpretation of the permitting needs for the anaerobic digester project proceeded smoothly and fairly quickly. The key thing to keep in mind is that if you make the process too streamlined you run the danger of being perceived as not being engaged and people may become suspicious. It is important to be able to say that there is oversight. While it may make it easier in the short term for MASSDEP not to be involved, in the long run it is better off that there is some involvement. So there is a balance.

Regarding manure, when the regulations were developed, there was an original intent to exempt on-site use of manure. However, now the regulations can be interpreted to say that the onsite use of manure requires a groundwater discharge permit. As an interim strategy, MASSDEP is proposing to use enforcement discretion where they say that for the interim period they are going to interpret this regulation in the way that MASSDEP originally intended back in the late 70s or early 80s. When they get a chance to change the regulations they will clarify this to say that the onsite use of manure generated by the farm does not need a groundwater permit.

Carter Wall asked what MASSDEP means by 'on-site'. Mr. Kunce stated that if it is used on site it is like composting. Farmers get to use their materials on site. However, when they start to bring materials in from off-site it gets more challenging. There are limits on the types and quantities of materials that can be brought in from off-site.

He stated that there is a letter which MASSDEP sent out which defines all the needed permits for the anaerobic digester, within the current regulatory framework. And from what he understands, the process did not take that long. It may be a good model.

Also, where it gets tricky for MASSDEP is when additional side-streams are added into the manure. Now it makes sense if the wastewater is re-used because you are conserving water. If the wastewater contains only regular nutrients then MASSDEP is used to dealing with that and is familiar with the use of a nutrient management plan to manage levels of nitrogen, phosphorus and potassium. However, the problem comes when sanitizers are mixed in with the manure, and in this case we do not know what happens to the sanitizers and pollutants when they get into the tank. Chlorine may create disinfectant by-products in environments where there is a lot of nitrogen and carbon, many of which are known to be carcinogenic. We do not understand what happens when you land apply the materials and we think it is a good question to ask. Mr. Kunc said that he understands the skepticism that this approach may receive from some parties. However, it has been an issue in other areas that MassDEP regulates so MassDEP has to ask these questions.

And on some of these things we will probably need to talk about an MOA which will outline the kind of pilot project we would use, who has to be at the table, the kind of data we would need, and the regulatory pathway. **This should be part of the interagency work group with members of the Commission to look at the items for which we have not come up with any guidance and to prioritize the waste streams, or activities, for which there appear to be regulatory barrier. Being sensitive to the resource constraints of the agency, identify which are the ones we should deal with next and which model is the best one to deal with the issue.**

Kennedy went on to introduce the MPPU as one other way to try to address the regulatory barriers presented to mobile poultry processing. Ellen Fitzgibbons then provided an overview of the pilot program for MPPU highlighting the involvement of MDPH, MassDEP, MDAR, the New England Small Farm Institute. She described the unit as being located on a flat bed truck with the necessary processing equipment. She indicated that the pilot program was entering into its third year. There were some regulatory challenges that persist such as the number of people required to run the unit. MDPH has requested that the users are certified in food handling. There have been some temperature control issues. The hope is that this third year of the pilot will allow the remaining challenges to be addressed. A USDA inspector is not required for the unit due to an exemption for small scale poultry processing. The other pilot program that MDPH has initiated is one to allow the sale of shellfish at farmers markets. The pilot was conducted from May to September 2009. There were six participants, two of which were aqua-culturists. MDPH conducted 8 inspections relative to the sale of fish at farmers markets. These inspections were on top of the regulatory requirements that MDPH has for traceability of the fish offered and the requirements for mechanical refrigeration, DPH required a HACCP plan for each participant to be submitted to DPH. Overall the response has been very favorable. Market managers were pleased with the variety and type of products they were able to offer. Currently MDPH under the auspices of the Food Protection Program is generating a draft of how this pilot has proceeded and has hoped to have additional participation in the markets for the coming Summer.

Kennedy mentioned that there was a regulatory group meeting to address appropriate mechanisms for dealing with these issues. Mark Duffy mentioned that it is important to keep the needs of other sectors in focus. Mr. Buckley asked if we classify these aquaculture operations as agriculture. Sean Bowen, the Department's aquaculture specialist, stated that the aquaculture operations are considered to be agriculture under state statute. However, a license is required through the Division of Marine Fisheries to operate.

Kennedy indicated that as we move forward in addressing processing issues, **one area that the sub- group expressed interest in addressing was in looking at the barriers to the implementation of slaughtering facilities on farms**

Jennifer Hashley asked if the Commission was planning to address the issue of forthcoming potential regulations that could affect the processing of leafy greens. Kennedy responded that there is a GAP program within the Department. Ms. Fitzgibbons mentioned that DPH regulations would impact any processing operation.

Peter Melnik expressed that he has a better sense of the mission of the group. He stated that farm technology in the broadest sense is not just dairy but that there are new technologies, which were not thought of ten years ago, which the commission should try to ensure get brought to reality to make MA agriculture viable.

Mark Duffy suggested that the Commission take a look at the Agricultural Innovation Center projects and the grants that were funded and the ones that maybe fell short of funding. He recommended a review of the status of the AIC and that we should evaluate at the next meeting.

Kennedy asked about scheduling the next meeting. Carter Wall asked about the report and the structure of the report. Given that the report is due in April, she said that we should have an idea as to the structure and format of the report by the next meeting. She recommended that we have a draft or outline to react to for the March meeting.

Kennedy entertained a motion from Carter Wall to adjourn the meeting at 12.30 with a second from Ms. Fitzgibbons

SUMMARY OF ACTION ITEMS:

1. Commissioners need to review an on-line presentation on the State Ethics law by April 2, 2010. The link for the training is: http://db.state.ma.us/ethics/quiz_MEthics/index.asp
2. The Commission should continue to explore the possibilities for an exemption from sales tax for a specific piece of equipment such as a truck, including equipment purchase that is a percentage of business revenues or “primarily for agricultural use”. Dennis Buckley indicated that he would be happy to bring the issues of exemptions for multi-purpose farm vehicles from sales tax back to the office to see if there is a way to craft something that meets the farmer’s needs. The industry groups should further define issues around which the various sectors are assessed taxes differently
3. Mr. Buckley indicated that he would have staff analyze whether changing the definition of livestock in the tax code would hurt the farmers or benefit them.
4. Carter Wall to clarify the extent to which the 10% discount for Group Purchasing applies to energy bills. Does it apply to the supply side only or the total bill?
5. A subgroup will meet to discuss anaerobic digesters as a stand-alone topic and identify what the barriers and opportunities are, the educational need and the regulatory issues.
6. MDAR to work with MassDEP and MRET to identify opportunities for outreach on energy issues to local groups such as Building Inspectors and Boards of Health.
7. Ms. Wall to put out a Request for Information (RFI) from the Trust to get some ideas on how to proceed with the idea of an Ag Power option on utility bills?
8. Explore pilot funding for a study on geothermal or biomass thermal heating for greenhouses – in conjunction with UMass?

9. Ed Kunce to contact the Mass Health Officers Association to gauge the extent of their interest level in hosting a session on energy and agricultural issues at their annual meeting.
 10. MDAR to coordinate with Farm Bureau and member organizations around their needs and the types of energy efficiency programs they would like to see. Can the FTRC highlight these new technologies on farms and bring them to the attention of the utilities?
 11. Interagency work group, with members of the Commission, to look at the items for which MassDEP currently does not have any guidance and to prioritize the waste streams, or activities, for which there appear to be regulatory barriers. While being sensitive to the resource constraints of the agency, identify which are the ones we should deal with next and which model is the best one to deal with the issue. Also look at the barriers to the implementation of local slaughtering facilities.
 12. A review of the status of the Agricultural Innovation Center grants by MDAR.
- Attachment A: Energy Presentation (will be included in final minutes)
- Attachment B: Included
- Attachment C: Regulatory Presentation (for inclusion in final minutes)

Attachment B
Possible Energy Actions for Agricultural Enterprises

	Education/Public Outreach	State Programs	Recommended legislative or regulatory changes (DPU/DOER)
Group Energy Purchasing	<ul style="list-style-type: none"> • Advertise 10% rate reduction to farmers through equipment and feed stores, other vendors 	<ul style="list-style-type: none"> • Voluntary REC program to fund "Cow Power" 	n/a
Energy Efficiency	<ul style="list-style-type: none"> • Outreach about recent legislation to trade associations 	<ul style="list-style-type: none"> • Possible pilot funding for geothermal or biomass thermal heating for greenhouses – in conjunction with UMass? • get feedback from equipment vendors about needs and pass on to utilities 	n/a
Renewable Energy	<ul style="list-style-type: none"> • Workshop on agricultural net metering • Workshop on anaerobic digestion for building inspectors 	<ul style="list-style-type: none"> • Work with industry to offer an SREC aggregation for agricultural community • Fund a study of anaerobic digestion capacity/siting 	<ul style="list-style-type: none"> • Work with stakeholders on model siting/permitting regs for anaerobic digestors.