

THE COMMONWEALTH OF MASSACHUSETTS

EXECUTIVE OFFICE OF ENERGY AND ENVIRONMENTAL AFFAIRS



Department of Agricultural Resources

Farm Technology Review Commission

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FARM TECHNOLOGY REVIEW COMMISSION

DRAFT

Meeting Minutes

Friday, April 29, 2011.

10.00AM to 1.00PM

Appleton Farm, 219 County Road, Ipswich

Commission Members Present:

Gerard Kennedy, Designee, Department of Agricultural Resources

Ed Kunce, Designee, Department of Environmental Protection

Dennis Buckley, Designee, Department of Revenue

Carter Wall, Executive Director, Massachusetts Renewable Energy Trust

James Cooper, Dairy Farmer Licensed as a Producer Dealer

Mark Duffy, Dairy Farmer, Massachusetts Association of Dairy Farmers

Others in attendance:

Gerry Palano

MDAR

Brad Mitchell

Massachusetts Farm
Bureau

Skye Lawrence

Massachusetts Farm
Bureau

ITEM 1: Introductions

Following a short tour of Appleton Farm led by farm manager Wayne Castonguay, Gerard Kennedy called the 14th meeting of the FTRC to order. He stated that the Commission is roughly at a point half way through the three year term and is required to issue a second report on its activities to the Governor and Legislature. He suggested that the Commission should spend the first part of the meeting reviewing the main parts of the report which are outlined in the Executive Summary.

ITEM 2: Review of Annual Report, Progress to Date and Next Steps

The first section which focuses on Taxation and Revenue indicated that the Commission had been actively engaged in the discussion of and advancement of the following issues

- **Letter Rulings on Wind Turbines and Anaerobic Digesters:** The Department of Revenue developed Letter Rulings on Wind Turbines and Anaerobic Digesters respectively. MDAR developed an **Administrative** Law Memo (ALM) on Sales Tax Implications for Anaerobic Digesters. The rulings concluded that the component parts of both projects were largely exempt from sales tax because they were producing electricity to be sold and/or for exclusive use in agricultural production.
- **Taxation Exemptions:** A potentially beneficial approach for the Commission to take may be to propose legislation, or support proposed legislation to secure taxation exemptions for farms involved in agricultural production that are on a par with those for a manufacturing corporation whether the farm is incorporated, or an individual, under Chapter 62, the income tax statute.

While the Commission initiated the discussion around the wind turbine letter ruling it could not take direct credit for it. However, the letter ruling on the Anaerobic Digester was a direct result of discussion that had taken place at early Commission meetings. Furthermore, the idea to develop an investment tax credit stemmed directly from discussions at Commission meetings. The tax credit, which will give farmers who decide not to incorporate the same benefits as those of a manufacturing corporation, has been developed into a bill by Representative Dykema and enjoys the support of the Farm Bureau. The Bill has been filed and the Revenue Committee will examine and model the anticipated costs to the state to support the expansion of the benefit. The credit is non-refundable and applies to anything with a shelf life of 5 years.

Carter Wall asked about the sales tax and income tax implications for income from net metering credits. She indicated that there are significant implications for SREC holders. The current price of the SREC is over \$500 per 1000KW hours. As people build larger solar arrays, which will generate MWs of power and considerable income producers need to be aware of the sales and income tax implications

Regarding sales tax: Dennis Buckley stated that if someone sells electricity to a non-residence sales tax should be charged. If the system was putting electricity directly on to the grid for the utilities to sell, then there would not be a sales tax issue for the producer because the utility would be charging a tax and the producer of the electricity would receive a resale certificate from the utility. He brought up a recent development, particular in the western part of the state, which involves PV solar businesses leasing roof space on commercial buildings from the building owner and selling the power or net metering credits to the owner or to the building occupants. In that case, if they produce electricity and

sell it directly to the person that owns that building – a commercial enterprise- there is a sales tax on that electricity. The producer charges the sales tax.

Regarding income tax: unless specifically excluded in the US Internal Revenue Service tax code, income from the sale of credits would be likely subject to income tax. Unless something is listed as not being income, it is considered to be gross income. Dennis referred to efforts in the western part of the state by developers to create large scale PV systems by leasing space on commercial buildings with large roofs. The developers then sell the electricity generated, or net metering credits, to the owner of the building.

The MA DOR will not issue a ruling or regulation on whether or not something, such as net metering, is income. It will automatically default to the federal tax code. If something is an item of gross income for federal purposes it is an item of income for Massachusetts. There may be deductions or credits afterwards but the item is still considered gross income. A private letter ruling may be requested from the Internal Revenue Service but it is costly to do this.

The Department can certainly play a useful role in making farmers aware that there are tax implications.

Brad Mitchell mentioned that farmers need to be wary about entering into contracts with developers for large scale renewable energy projects such as PV Systems because of the potential to affect the reduced taxation assessments of land that is exclusively used in agriculture through Chapter 61A. And the change will happen when the contract is signed. The approach differs from town to town. The Commission will not have any success trying to convince all of the towns to take a different approach. Unless there is some higher level directive to the towns that states that these renewable energy systems serve a critical national purpose thus deserving more favorable consideration, the best that the Commission can do is to generate awareness on the issue, possibly through an ALM.

Action Item: Generate awareness on potential taxation implications – 61A, property tax, sales tax, income tax- for farmers who develop a commercial activity such as an energy generation systems for their operation.

(NOTE that subsequently, [a Letter Ruling 11-7](#) was issued by DOR on the application of sales tax to purchases of machinery or replacement parts thereof, used directly and exclusively in the furnishing of gas, water, steam or electricity when delivered to consumers through mains, lines or pipes)

Carter Wall questioned the ability of the Commission to make decisions regarding the development of legislation. At what point does the Commission develop, recommend or support legislation?

Action Item: Research with legal counsel on how to propose or suggest legislation.

To support a Bill, the Commission would probably have to vote and send someone to testify or send a letter of support. A problem with hearings is that the notice can go out at the last minute making it difficult to ensure participation. Most agencies send up a package through their general counsel. Carter asked that the DAR counsel research the issue and get back to the Commission.

The second major focus area for the Commission relates to regulatory matters. In particular the Commission devoted a significant amount of time to the issue of slaughterhouses resulting in the following conclusions:

- The slaughter industry is highly seasonal with business peaking in the late Fall.
- Processing capacity and the types of processing services offered at the MA slaughterhouses, not the actual slaughtering process itself, may be a limiting factor.
- USDA regulations are clear and are not insurmountable for most needs.
- Many existing custom slaughtering operations could serve as a potential answer to the need for slaughtering options at the local level if upgraded to USDA status.
- A different slaughter infrastructure, other than just bricks and mortar facilities, might work to meet the needs of some producers.
- The Commission is in agreement that the needs of some producers are currently not being addressed by the existing slaughtering and processing infrastructure in the state

Brad Mitchell mentioned that the issue of access to slaughtering is the primary issue of concern for the Massachusetts Farm Bureau. They are supporting a bill to move oversight of slaughtering to MDAR from MDPH and to create a state meat inspection program within MDAR. The bill is sponsored by Representative Kulik. Several states including Maine, Vermont and Connecticut already have cooperative agreements with USDA to coordinate state and federal oversight of slaughtering and processing operations. He said that Maine doubled the number of slaughtering facilities in the state once the Department of Agriculture took over the responsibility for slaughtering.

Carter Wall asked for clarification on the letter sent by DPH on slaughtering and CSAs. Discussion ensued about the role of DPH with respect to slaughtering and CSAs and the letter developed by DPH on this issue. Greater clarity was needed on the CSA issue and it would help to meet directly rather than through email to discuss. Carter stated that there should be clear guidance and asked if the Commission should make a recommendation that there be a policy developed. Kennedy stated that the report states clearly that there should be clear guidance on the state and federal regulations as they pertain to slaughtering and processing. Carter Wall suggested that the Commission should vote on this formally. Or at least the Commission should send a letter to the stakeholder agencies highlighting the fact that the Commission did make this recommendation in a report to the Governor. It was pointed out that there is representation from DPH on the Commission for this reason.

The Commission agreed that there should be clear guidance to the agricultural community on regulations as they pertain to slaughtering. The recommendations in the report are as follows:

- Within the current regulatory framework there are ways to address the needs of producers but there may have to be a collective, or cooperative, effort on the part of the farmers. Cooperative approaches have proven track record of success in other states. Mobile units may be an option.
- Clear guidance on the state and federal regulations as they pertain to slaughtering and processing should be developed. Education of agricultural community stakeholders on slaughtering issues by USDA, in cooperation with state agencies, is recommended.
- Develop a program – coordinated through a cooperative approach or at the state level- to identify and help upgrade custom slaughterhouses to a USDA inspected slaughtering and processing facility.
- A review of the existing regulations is recommended to ensure that they do not serve as a barrier to local food productions.
- Community Colleges or Agricultural Tech Schools should consider offering high end artisanal butchery classes
- Processing bottlenecks could be met by slaughtering animals at one USDA facility and processing at another USDA facility

Moving on to DEP and the issue of wastewater and waste management. MassDEP and MDAR continue to meet to address the regulatory issues around waste and wastewater management. Indeed a meeting was scheduled for the following week. A parallel effort at MassDEP is the revision of the solid waste regulations. This is moving on a very fast track and MassDEP is trying to ensure that municipalities are up to speed on this by reaching out directly. Major changes are in development with implications for composting and anaerobic digestion. Mark Duffy asked how agricultural operations would be impacted by these proposed changes. Will there be any benefit to developing a digester on a farm? Certainly agricultural net metering is one advantage that farms currently enjoy over other operations. Would the agricultural status of a farm be impacted by developing a digester of a certain size? Would there be any reason for a farm to invest in a digester if it had to compete against much larger operations? Carter Wall encouraged farmers to articulate any concerns they may have directly to MassDEP at the next stakeholder meeting or through their website.

Kennedy stated that MDAR is sitting down with MassDEP to explore the agricultural implications of the revisions to the solid waste management regulations, particularly as they relate to composting.

Regarding Energy matters Gerry Palano mentioned that he was following up on the availability of SREC aggregators and that there is an aggregator list on the [DOER website](#). Regarding efforts to develop a voluntary REC program similar to cow power in Vermont, Carter indicated that she had talked to CET and they were interested but there is work remaining to be done in this area.

Moving on to the Energy section, Carter Wall suggested adding to the first bullet under “bio-fuels, biogas, high efficiency heat” so that bullet now reads:

- **Furthering through funding assistance, project implementation and regulatory framework the farming technologies associated with anaerobic digesters, “green” farm structures, geothermal, biomass, bio-fuels, biogas, high efficiency heat pumps and solar applications:** Through MDAR’s annual Agricultural Energy Grant Program and the MA Farm Energy Program (MFEP), FTRC will continue to prioritize these technology applications. MDAR and MassCEC will work together to assess additional funding opportunities for these technologies that may be created through the MassCEC.

Carter Wall made a motion that:

VOTE: subject to changes discussed at the meeting that the Commission approve the 2011 report and submit to the Legislature and Governor.

The motion was seconded by Ed Kunce and carried unanimously.

Item 3: Mortality Management on Farms

There are challenges to managing routine mortalities on farms. There is much uncertainty particularly at the local level on how to deal with dead animals. According to Brad Mitchell, the only clearly legal way to manage an equine mortality is cremation which costs about \$1,500. This is a particular problem because with the downturn in the economy many people cannot afford to keep horses. Some are being turned loose. There are about 30,000 horses in the state. Horses have a lifespan of 25 to 30 years. Composting appears to be the best solution. Burying animals is a problem because you could contaminate groundwater. In fact recently in Maine this was a problem for a farmer.

On-farm exemptions where they meet certain requirements such as distances from groundwater should be considered. One problem may be barbiturates which are used to euthanize animals and the potential for groundwater or compost to become contaminated.

Carter asked Brad Mitchell about how the mortality issue is managed in other states such as New Jersey. He said that would be something he could look into. He added that the issue is a big problem.

Ed Kunce passed out a draft document which was developed by MassDEP regarding animal mortalities. He mentioned that MassDEP had looked at other states’ approaches to the management of large animals. He said that the draft document on onsite burial is a step forward in trying to identify a way for the onsite burial of animals to be conducted in such a way that it does not present a problem for the farmer or for MassDEP’s regulations. In emergency conditions, such as occurred last winter when there was a large die off of chickens in a power outage, MassDEP will work with stakeholders involved to find a solution.

This document describes three different ways to bury an animal and includes setbacks, depth to groundwater and dealing with large animals. The document does not address a large scale die-off. With DPH not being present at the current meeting it would be good to put this on as an agenda item for the next meeting. MassDEP could discuss with MDAR the specific questions we would like to see and we could have John Fischer could come along for the discussion. It does not take care of every situation but

Brad Mitchell mentioned that composting should be explored as an option. A lot of states are looking at die-offs where composting can present a reasonable option particularly in a disease situation where a farmer may not be able to move the animals offsite.

Carter Wall questioned if this is an issue that is appropriate for the Commission to take up. Kennedy stated that the purview of the Commission relates to addressing barriers to the adoption of technology, with technology being broadly defined. So given that there are regulatory barriers, it seems an appropriate area.

Guidelines around this issue would be helpful. MassDEP and MDAR will continue to meet to discuss this issue.

For the next meeting the Commission recommended meeting in the Berkshires.

Summary of Recommendations

Action Item: Generate awareness on potential taxation implications – 61A, property tax, sales tax, income tax- for farmers who develop a commercial activity such as an energy generation systems for their operation.

Action Item: Research with legal counsel on how to propose or suggest legislation.

Action Item: Continue discussions with MassDEP and MDAR around the issue of mortality management with the goal of developing clear guidance.