

**NYS Soil & Water Conservation Committee**  
1 Winners Circle, Albany, NY 12235 – Telephone (518) 457-3738

**STATE COMMITTEE MEETING**

**December 16, 2003-Utica**

**Present:** D. Hill, G. Proios, R. Aman, C. Yunker, Voting Members; R. Kaplewicz, Executive Director; M. Latham, Assistant Director; B. Steinmuller, Schenectady SWCD; L. Miller, Dutchess SWCD; J. Ten Eyck, E. Svenson, SWCC Staff; R. Lewis, SWCC/NRCS; J. R. Flores, NRCS; R. Zimmerman, D. Smith, NYSDAM; D. Gance, Citizens Campaign for the Environment; G. Chartier, NYSDEC; K. Lewis, A. Barber, NYSCDEA; P. Kaczmarczyk, NYSDOH; P. Black, SUNY-ESF; K. Czymmek, CCE; K. Sukanovich, Cortland SWCD; J. Tauzel, NYFB; C. Schutt, J. Verrigni, Tompkins; S. Maloney, ISPC.

**Call to Order**

D. Hill called the meeting to order at 10:10 a.m. Introductions were made.

**Review/Approval Minutes**

**C. Yunker moved to approve the minutes of the October meeting as presented; seconded by R. Aman. Motion passed; carried.**

**Correspondence**, R. Kaplewicz

R. Kaplewicz advised the Committee of a letter written from R. Moore, First Deputy Commissioner, to J. Swint, NYSDEC, regarding the MOU between the NYSDAM, State Committee, and the DEC for the dedication of EPF funds for the Conservation Reserve Enhancement Program (CREP). R. Kaplewicz read a letter from J. Lieberum, NYSCDEA, to J. Schumacher and D. Lake, SWCC staff, thanking them for their participation in the Conservation Skills Workshop that was held in October. Kaplewicz deferred two letters, to be discussed later in the meeting, one from A. Barber, Cortland County SWCD Manager, to the State Committee, and one from C. Schutt, Tompkins County SWCD, to the State Committee regarding the Round X proposal process. R. Kaplewicz noted the letter written from B. Davis, Cattaraugus County SWCD Manager to R. Kaplewicz thanking him for speaking at the Annual Awards Banquet in Cattaraugus County. R. Kaplewicz summarized an e-mail from the Oswego County SWCD thanking the Committee (in particular, J. Schumacher) for their assistance with the district's budget crisis. It was noted that the district took a \$5,000 cut in its budget. The rising costs of New York State Retirement benefits are further eroding SWCD's budgets.

**Letters & Memos**

1. Letter from DEC to First Deputy Commissioner Ruth Moore, regarding MOU between NYSDA&M, NYSSWCC AND NYSDEC for activities related to CREP from April 1, 2003 - March 31, 2012. Letter dated October 29, 2003.
2. Letter from Jim Lieberum, Chair, 2003 Conservation Skills Workshop, to Don Lake, thanking him for his participation in the Workshop. Letter dated November 5, 2003.
3. Letter from Jim Lieberum, Chair, 2003 Conservation Skills Workshop to John Schumacher thanking him for his participation in the Workshop. Letter dated November 5, 2003.
4. Letter from Amanda Barber, District Manager, Cortland County Soil and Water Conservation District to Ron Kaplewicz and State Committee Members regarding the submission of three proposals under the ANPSACP being deemed ineligible. Letter dated November 25, 2003.
5. Letter from Brian Davis, District Field Manager, Cattaraugus County Soil and Water Conservation District to Ron Kaplewicz, Executive Director, for being keynote speaker at their annual awards banquet. Letter dated November 7, 2003.
6. Memo from John DeHollander to Tioga SWCD, RE: 2004 Budget Request, Memo dated December 1, 2003

**Reports & News Letters**

1. Environmental Law in New York, Mining in a World Without SEQRA, dated March 2003.
2. Bay Journal, The Chesapeake Bay Newspaper, November 2003.
3. Rural Futures, The NYS Legislative Commission on Rural Resources Newsletter, November/December 2003.
4. Waterworks, New York State Federation of Lake Associations, Inc., October 2003.
5. Advisor, Great Lakes Commission, Volume 16, No. 4. July/August 2003.
6. Buffer Notes, USDA, NRCS, September 2003.
7. Enhancing LESA, Ideas for Improving the Use and Capabilities of the Land Evaluation and Site Assessment System.
8. CDEA News, October 2003
9. Minutes of Annual Meeting of the NYS Association of Conservation Districts, October 27, 2003.

10. Soil and Water Conservation Districts in New York State, FYI, November 2003.
11. The New York State Agricultural Society informational and membership form.
12. LEAD, New York, The Empire State Food & Agricultural Leadership Institute, Fall 2003.
13. The Cultivator, New York State Agricultural Society, Fall 2003.
14. Keeping It On the Land, Information for the soil erosion & sediment control community of the Great Lakes region.
15. Catalog of State and Federal Programs Aiding New York's Local Governments, 2003 Edition
16. 2003 Annual Report to the Wyoming County Board of Supervisors, November 2003
17. USDA - Inside Agroforestry, Winter 2003
18. National Urban and Community Forestry Advisory Council 2002 Annual Report
19. Cayuga County SWCD 2002 Annual Report

#### Conferences and Seminars

1. NYSERDA'S 5th Annual Innovations in Agriculture, Wednesday and Thursday, January 28-29, 2004, Empire Room, NYS Fairgrounds in Syracuse, NY  
Agriculture@nyserda.org, www.nyserda.org, 1-866-NYSERDA
2. USDA Agricultural Outlook Forum 2004, February 19-20, 2004, Arlington, VA.
3. USDA, NRCS State Technical Committee Meeting, Thursday, January 22, 2004, 9:30 am - 4:00 pm, Ramada Inn

#### Agricultural Nonpoint Source Abatement and Control Grant Program, B. Steinmuller

##### **STATUS OF ROUNDS I-IX**

Of 313 projects, 138 are active and 175 are complete. All originally funded Round IX projects are active. An additional two projects are being funded through the Bond Act in Suffolk County, and five additional projects were awarded EPF funds. Plans of Work for these Round IX projects are currently being reviewed. There is one pending contract in Round VI and one in Round VII.

##### **ROUND X**

97 Round X proposals were received. 4 proposals were deemed ineligible, 2 did not have board resolutions and 2 were received past the deadline. Of the 93 eligible proposals, 68 were for implementation projects, 12 were for planning activities, and 13 were for evaluation activities.

The following list quantifies the funds requested, match funds, and total project costs:

- ◆ State Funds requested = \$18,482,376.00
- ◆ Federal funds as match = \$2,315,003.00
- ◆ Total Project Costs = \$30,107,608.00

##### **AMENDMENT REQUESTS → MOTIONS NEEDED**

1. Schuyler SWCD – Catherine Creek Watershed Protection Project: Phase III – Round VI – C700042

*Request:* add one farm and additional BMPs

*Reason:* funds available and farm and BMPs recommended

*Previous Amendments:* 1 change in landowners

1 time extension

**G. Proios moved to approve the addition of one landowner and BMPs; seconded by C. Yunker. Motion passed; carried.**

2. Westchester SWCD – Agricultural NPS Pollution Assessment and GIS Mapping within the Croton/Kenisco Watershed – Round VI – C700598

*Request:* time extension from 12/31/03 to 12/31/04

*Reason:* staffing shortage and county hiring freeze has made it difficult to meet the deliverables of this grant.

*Previous Amendments:* 2 time extension

**C. Yunker moved to approve this time extension; seconded by G. Proios. Motion passed; carried.**

## Staff Approved Amendments

1. Schuyler SWCD – Catherine Creek Watershed Protection Project: Phase III – Round VI – C700042  
*Request:* time extension from 12/31/03 to 12/31/04  
*Reason:* additional time needed to complete BMP installation  
*Approved by T. Brace/E. Svenson 12/15/03*
2. Herkimer SWCD – North Winfield Creek and Upper Unadilla River Ag. Planning Project – Round VIII – C700679  
*Request:* time extension from 12/31/03 to 12/31/04  
*Reason:* additional time needed to complete planning activities  
*Approved by J. Schumacher 12/1/03*
3. Niagara SWCD – 12 Mile Creek Agricultural Assessment and Pollution Abatement Project – Round VI C700614  
*Request:* time extension from 12/31/03 to 12/31/04  
*Reason:* additional time needed to complete planning and implementation projects  
*Approved by T. Brace/E. Svenson 12/15/03*
4. Broome SWCD – Eastern Susquehanna River Basin Comprehensive Nutrient Management Planning – Round VII – C700621  
*Request:* time extension from 3/31/03 to 2/28/05  
*Reason:* additional time needed to for CNMP development with Non-CAFO farms  
*Approved by J. Schumacher 11/26/03*
5. Broome SWCD – Intensive Rotational Grazing (IRG) Implementation for the Susquehanna River East & Naticoke Creek Watersheds – Round VII – C700620  
*Request 1:* time extension from 3/31/04 to 2/28/05  
*Reason 1:* additional time needed to complete BMPs  
*Request 2:* replace two landowners with two others  
*Reason 2:* one farm voluntarily withdrew and the other expanded their operation making BMPs inappropriate for new facility  
*Approved by J. Schumacher 12/3/03*
6. Ontario SWCD – Canandaigua Lake Watershed Ag. Program – IV – C700686  
*Request 1:* time extension from 12/31/03 to 12/31/04  
*Reason 1:* additional time needed to complete BMPs  
*Request 2:* replace one landowner with another  
*Reason 2:* landowner has sold operation  
*Request 3:* change BMPs on new participating farm  
*Reason 3:* different BMPs needed on new farm  
*Approved by T. Brace/E. Svenson 12/15/03*
7. Dutchess SWCD – Eight Whole Farm Plans in the Wappinger Creek and Ten Mile River Watersheds – Round VIII - C700629  
*Request 1:* time extension from 12/31/03 to 6/30/04  
*Reason 1:* additional time needed to complete Whole Farm Plans on participating farms  
*Request 2:* replace one landowner with another  
*Reason 2:* farm is up for sale and landowner does not wish to continue in grant  
*Approved by L. Miller/E. Svenson 12/9/03*
8. Columbia SWCD – AEM Tier 1 and 2 in the Roeliff Jansen Kill Watershed – Round VIII – C700677  
*Request:* time extension from 9/30/03 to 9/30/04  
*Reason:* additional time needed to complete planning activities  
*Approved by L. Miller/E. Svenson 12/9/03*

9. Washington SWCD – Halfway Creek Nutrient Management Implementation – Round VIII – C700696  
*Request:* time extension from 11/30/03 to 12/31/04  
*Reason:* additional time needed to implement BMPs  
*Approved by S. Lanthier 11/17/03*
10. Washington SWCD – Wood Creek AEM and Nutrient Management – Round VIII – C700697  
*Request:* time extension from 12/31/03 to 12/31/04  
*Reason:* additional time needed to complete CNMPs  
*Approved by S. Lanthier 11/17/03*
11. Cayuga SWCD – Cayuga/Seneca Counties BMP Implementation Cayuga Lake Watershed – Round VIII – C700058  
*Request:* change BMP system on one farm  
*Reason:* previous system would not work on farm  
*Approved by J. Schumacher 11/4/03*
12. Cayuga SWCD – Fessenden Manure Management Project – Round IX – 5-5  
*Request:* enhance existing plan for manure management system  
*Reason:* enhancements necessary for desired water quality benefits  
*Approved by J. Schumacher 11/28/03*
13. Seneca SWCD – Seneca Lake Watershed Prescribed Grazing Project – Round VIII – C700694  
*Request 1:* time extension from 12/31/03 to 12/31/04  
*Reason 1:* additional time needed to complete BMPs  
*Request 2:* replace on farm for another  
*Reason 2:* landowner is selling farm and does not desire to complete BMPs  
*Approved by T. Brace/E. Svenson 12/9/03*
14. Onondaga SWCD – Otisco Lake Watershed Priority Farm Implementation Project – Round VIII – C700684  
*Request:* time extension from 12/31/03 to 12/31/04  
*Reason:* additional time needed to complete BMPs  
*Approved by J. Schumacher 11/10/03*
15. Tompkins SWCD – E. Susquehanna River Basin Management Intensive Grazing – Round VII – C700658  
*Request:* time extension from 03/31/03 to 2/28/05  
*Reason:* additional time needed to complete BMPs  
*Approved by J. Schumacher 12/15/03*

**Discussion of Round X Issues**, All

R. Kaplewicz started by crediting the SWCC staff for their hard work and dedication in getting all 97 Round X proposals reviewed and recorded before they could go out to the ranking team. Six proposals were deemed ineligible through that initial review process. Cortland County's two proposals were missing a signed checklist of completeness. Monroe County's two proposals were missing official SWCD Board resolutions. Tompkins County's proposals were received past the 4:00 p.m. E.S.T. deadline on November 21, 2003. Kaplewicz advised the Committee that the SWCC staff and Counsel's Office from the Department of Agriculture and Markets met on Tuesday, November 25, 2003, to determine whether or not each District's disqualification warranted a final determination and/or possible reconsideration by the New York State Comptroller's office. The Department's Counsel discussed these proposals with the Comptroller's office. It was determined in Cortland County's case there was room for reconsideration because the RFP never specifically stated that the signed checklist must be sent in with the proposals. In Monroe and Tompkins Counties' cases the Comptroller's office upheld the ruling that the proposals were ineligible due to fatal flaws specifically stated in the RFP. R. Kaplewicz made it clear to the Committee that it was not the intention of the SWCC staff to reject any flawed proposals, but the RFP was specific in the cases of Tompkins and Monroe Counties, and unfortunately there was no room for reconsideration in those cases.

C. Schutt and J. Verrigni from Tompkins County SWCD were present at the meeting to defend their case that was summarized in a letter previously written to the State Committee. C. Schutt, Tompkins County SWCD Manager, thanked the Committee for the opportunity to have their case heard. He told the Committee that the proposals were put in the hands of the United Parcel Service (UPS) early on Thursday, November 20<sup>th</sup>, with a guaranteed delivery on Friday morning, November 21<sup>st</sup>. J. Verrigni, Tompkins County SWCD Technician, was tracking the proposals on Friday and it became apparent that the delivery was held up in Syracuse. J. Verrigni called the SWCC Albany office late on Friday to explain what was happening with the delivery. The SWCC staff told J. Verrigni that the late proposals would be accepted based on the extenuating circumstances. It was determined on Monday, November 24<sup>th</sup> that the RFP presented no latitude to accept late proposals regardless of the information passed to Tompkins County by the staff. C. Schutt told the Committee that the District would have been able to find alternative means to get the proposals to Albany by 4:00 had they been told that the proposals would not be accepted. Kaplewicz advised the Committee that the call from Tompkins County was received in the late afternoon and that it would make it impossible to meet the 4:00 p.m. deadline, thus disputing Tompkins County's claim that the proposal could have been driven to Albany. C. Schutt further explained that UPS takes full blame for the mishandled delivery. Based on UPS's mishandling of the delivery and the inaccurate information given by the SWCC staff member, C. Schutt told the Committee that Tompkins County SWCD deserves reconsideration on the eligibility of their late proposals.

The RFP specifically states, "An original and 12 copies of all proposals submitted in response to this RFP MUST BE RECEIVED by 4:00 p.m. E.S.T. on November 21, 2003 to be considered for 2003-2004 EPF funding. Applicants, and not courier services or other intermediaries, are responsible for the timely submission of proposals. Proposals received after the scheduled date will not be accepted.

R. Kaplewicz restated to the Committee that by the time the phone call from Tompkins County to the Albany office was placed, which according to the Albany office was approximately 3:00 p.m., there was no way that the District would be able to deliver the proposals in a timely manner. He followed by restating that this determination of ineligibility was made by the OSC and Counsel's Office. D. Smith stated that the Comptroller's office determined that there is no way that the ineligible proposals could be accepted based on the strict language used in the RFP, which the State Committee developed and the State Committee approved. R. Kaplewicz advised the Committee that for Round XI the staff will be looking at ways to resolve issues specific to deadlines. For example, a deadline could be established on a Monday by 5:00 p.m. to allow for adequate time to pursue alternate delivery if third party delivery is mishandled.

C. Yunker discussed the merits on both sides of the issue. He understands the rules that guide the staff's decision, but as an individual he is frustrated with bureaucratic procedures that take precedence over substance. C. Yunker stated to the Committee that it should look at substance over procedure. He made it clear that a process is needed but it should not be so rigid that it loses sight of the overall objective, which is to conserve soil and water resources. He encouraged the Committee to give consideration to this fact. He further stated that there are always extenuating circumstances that merit a second look and the Committee has an obligation to provide that oversight.

G. Proios directed a comment to Tompkins County that the letter that was sent by them should not have been copied to outside entities. It should have remained an internal issue. With that being said, he advised the Committee of the importance of having an appeal process within the Committee. He said that the court system should not have to be a final solution in this type of matter and the State Committee needs to be the arbiters in this situation. He stressed C. Yunker's view that the bigger picture needs to be given higher importance.

R. Zimmerman addressed C. Yunker and G. Proios' opinions. He stated that the comments from the voting members were well presented. R. Zimmerman reflected upon the challenges involved with accomplishing the program's goals. He advised the Committee that it should carefully examine opportunities to lessen procedural rigidity for the future. In the present case, the OSC has the final determination whether or not to issue contracts and they may challenge the State Committee should they elect to accept the late proposals. He noted that this is a classic example of a program designed to do the right thing on behalf of the public sector's money. He reiterated the position that this issue offers the opportunity for thoughtful consideration for future policy decisions.

R. Aman asked the Committee what the promise of "guaranteed delivery" means. Is UPS liable in this case? J. Verrigni has had extensive discussions with UPS on this matter. UPS stated to her that paper documents, such as grant proposals, have no value to them and they are not liable for the content of the delivery.

P. Black made a recommendation to approve the proposals stating that no attempt for illegal action was made and Tompkins County's extenuating circumstances warrant that reconsideration.

C. Yunker asked what the ramifications would be if the State Committee voted to let the proposals in. D. Smith advised the Committee that the OSC would not accept that decision and not approve the contracts.

K. Lewis asked what the intention of the law was in writing the deadline for the RFP. Is it to assure a fair ranking process? If so, Tompkins' proposals were received in time to get them out to the rankers without delay.

K. Czymmek noted that people operate on the premise of a deadline. He stated that hand delivering proposals is a poor use of personnel time and resources.

**G. Proios moved to allow the Tompkins County Soil and Water Conservation District's proposals to be ranked based on the extenuating circumstances of mishandled delivery from the United Parcel Service and inaccurate information given from the New York State Soil and Water Conservation Committee staff. If the proposals rank high enough for funding and the Office of the State Comptroller determines the proposals to be ineligible, contracts for those proposals may not be issued by the OSC; Motion was withdrawn by G. Proios.**

E. Svenson addressed her concern that we are all here to protect the environment. It was our intention to accept as many proposals as possible. However, the decision to accept or reject proposals rests in the language of the RFP. The intent of the RFP is to allow the SWCC staff to administer a responsible and accountable program. We now have an opportunity to use this issue as an example for future decisions.

G. Proios said that the Committee has a responsibility to deal with this issue at the present time and then deal with the issue of deadlines in the future.

D. Smith asked the Committee to delay vote on a motion so that she could pursue a remedy with the State Comptroller's Office. Perhaps, these proposals could be considered through a process which requires a resolution from all other Soil and Water Conservation Districts allowing for these proposals to be ranked with the other eligible proposals. K. Lewis believed that every District would pass such a resolution.

D. Smith returned to the meeting after consulting with a staff member from the OSC. The staff member asked why would the other Districts pass a resolution that may cause their proposals to be outranked and potentially not funded. D. Smith noted that it would only take one District to say no, and it would no longer be a solution to the problem at hand. The staff member of the OSC also asked why the State Committee would want to violate its own rule, which is clear in the RFP.

C. Yunker addressed the OSC's comments by stating that the overall goal of the grant program should allow the Committee to override guidance set in the RFP.

G. Proios referred to the State Committee as a policy making body and he believes that it has the power to be an arbiter for this situation. G. Proios reintroduced the motion.

**G. Proios moved to allow the Tompkins County Soil and Water Conservation District's proposals to be ranked based on the extenuating circumstances of mishandled delivery from the United Parcel Service and inaccurate information given by the New York State Soil and Water Conservation Committee staff with the understanding that if the proposals rank high enough for funding and the Office of the State Comptroller determines the proposals to be ineligible, contracts for those proposals may not be issued by the OSC; seconded by C. Yunker.**

R. Kaplewicz advised the Committee and Tompkins County of the ramifications if this motion passes. The proposals will be ranked with the rest of the eligible proposals. If funding allows us to offer contracts to these proposals, the OSC may reject the proposals and contracts would not be executed.

R. Aman expressed the need to be forthright with the Committee's actions on this matter so that the OSC does not reject the entire round.

C. Yunker requested that Ag. and Mkts. Counsel's office represent the State Committee and advocate on its behalf.

D. Smith stated that the Counsel's office has advocated for this Committee in every step of the development of their RFP and the grants program. R. Kaplewicz added that the staff and Counsel's office have worked closely on the RFP which included a strict deadline. The State Committee voting members approved the language in this RFP. He also thanked Counsel's office for all their assistance in matters that impact the Committee.

G. Proios reiterated that the extenuating circumstances warrant an exception in this case.

R. Kaplewicz asked the Committee where this motion would leave Monroe County's ineligible proposals? C. Yunker stated that in his mind Monroe does not have extenuating circumstances.

C. Yunker concluded his thoughts by saying that "crossing every t" should not be more important than doing the right thing. C. Yunker said there are always exceptions.

P. Kaczmarczyk raised the concern that straying from the RFP may open the State Committee to criticism.

G. Chartier mentioned the clause on page 10 of the RFP under Other Considerations which state: The State Committee reserves the right to: "waive or modify minor irregularities in proposals received after prior notification and concurrence of the applicant." D. Smith advised the Committee that this case is not considered a minor irregularity.

Chairmen Hill suspended discussion and brought the motion to a vote.

**Motion passed; carried.**

It was stated by G. Proios that if the proposals, after ranking, are in a position to be funded, a letter should accompany the contract request to OSC that describes the circumstances which warranted the State Committee to reconsider the late proposals from Tompkins County.

**Status of Ethics Commission Determination on Ag. Nonpoint Source Grant Program**, D. Smith

D. Smith advised the Committee of the Ethics Commission's determination of potential conflict's of interest with the State Committee and the Ag. Nonpoint Source Grant Program. She told the Committee that voting members who are also members of SWCD Boards do not have to recuse themselves from approving the ranked list if their counties have submitted a proposal. However, those voting members can not take any action regarding specific SWCD proposals. Voting members must abstain from voting on amendments that change the scope or time frame of contracts specific to their counties. If a voting member wishes to apply for funding on their farm they must abstain from any and all discussions and decisions leading to the development and approval of the RFP. However, they still can approve the ranked list for that round. She also advised the Committee of the Ethic's opinion regarding advisory members' role in ranking proposals. Cornell University and Cornell Cooperative Extension advisory members must not rank any project that involves any Cornell University and Cornell Cooperative Extension employees.

**Presentation on Regional Initiatives with Invasive Species**, S. Maloney

S. Maloney, Executive Director, Invasive Plant Council of New York State, gave a presentation on the mission and goals of the IPC. The IPC's mission is to provide coordination and guidance on the management of invasive plants so as to protect biodiversity in New York State. The IPC carries out that mission by:

- Promoting management projects in the field.
- Compiling and facilitating access to information on invasives.
- Defining policies and goals for invasives management.
- Educating the general public about invasives.
- Holding conferences/forums on invasives and their management.
- Developing an "official" state list of invasive species.
- Developing a list of alternative plants to invasives.

S. Maloney stated that the IPC understands that it will not be able to eradicate invasive plants, but targeting certain areas for protection can mitigate the spread of invasives. Discussion ensued. D. Hill thanked S. Maloney for her informative presentation.

**CAFO Draft Permit**, J. Ten Eyck

**Renewal of the CAFO Permit**

The current CAFO permit is scheduled to expire on June 30, 2004. Work is underway on the renewal of the permit. The renewed permit will contain some of the provisions of the new Federal CAFO Rule issued last spring by EPA. The renewed NY CAFO permit can not be less stringent than the Federal Rule.

Potential changes in the permit being discussed include:

- Replace animal unit and mixed animal calculations with single animal number thresholds. Some examples:

<u>Type</u>	<u>Medium</u>	<u>Large</u>
Mature Dairy Cows	200 – 699	700+
Beef/Heifers/etc.	300 – 999	1000+
Veal calves	300 – 999	1000+
Swine (55 lbs +)	750 – 2499	2500+
Swine (less than 55 lbs)	3000 – 9999	10,000+
Horses	150 – 499	500+
Turkeys	16500 – 54999	55000+
Laying hens/broilers (with liquid manure)	9000 – 29999	30000+

*Example – A dairy would need either a milking herd of 200 (including dry cows) or 300 heifers to potentially be a CAFO. A dairy with 195 milkers and 295 heifers does not meet either animal number threshold.*

This change will mean some existing CAFOs may no longer meet CAFO criteria and will be allowed to stay in or leave permit coverage. As many as 52 current CAFOs could be in this category and have been notified by DEC. In addition, some CAFOs currently considered “large” might be reclassified as “medium” under a renewed permit.

- DEC is considering allowing medium CAFOs to make their own determination as to whether or not they discharge during any precipitation event. AEM Tier 2 Worksheets may be used to help demonstrate the risk of having a discharge from potential medium CAFOs. In the same vein, DEC is also considering allowing potential medium CAFOs who address their discharge, such as eliminating their barnyard or implementing and maintaining BMPs to NRCS standards, to avoid filing a permit.
- The CNMP implementation deadline will almost certainly be pushed back to the end of 2006 adding two years of implementation time. DEC also appears willing to define implementation in such a way as to allow medium CAFOs who show “consistent annual progress” in CNMP implementation to have until 6/30/09 to fully implement their CNMP. conditions identified as “high risk” in the plan will have to be addressed first.
- There will be increased record keeping requirements. Large CAFOs will likely have more stringent requirements than medium CAFOs.
- CAFOs will have to file an Annual Compliance Report with DEC. At this point the report appears to be fairly simple, asking for animal numbers, the amount of manure generated annually, how much is land spread, the amount exported, and documentation of progress in CNMP implementation and BMP O&M. This report may seem like a burden, but the alternative was to have the whole CNMP available for public review.
- CAFOs will be expected to file an “Incident Report” to DEC within 24 hours of a discharge to waters of the US.

These issues are in the discussion stage only. The current CAFO permit is the law until at least 7/1/04. A public comment period will be held to allow for feedback on the final draft of the Renewed Permit. SWCDs will be notified when the final draft is available and the comment period is open.

**Annual Plans of Work**, M. Latham

R. Aman moved to approve the Niagara and Oswego SWCD Annual Plans of Work; seconded by G. Proios. Motion passed; carried.

G. Proios moved to approve the Dutchess and Genesee SWCD Annual Plans of Work; seconded by R. Aman. Motion passed; carried.

**Stormwater Update**, L. Miller

L. Miller gave a Stormwater Subcommittee report. L. Miller advised the Committee that the application period for the Stormwater Specialist positions is now closed. G. Chartier announced that the proposed training schedule for 2004 was sent out for review. There will be multiple opportunities in the following year for training sessions to occur throughout the state.

**Statewide Framework for Livestock Odor Reporting**, J. Ten Eyck

J. Ten Eyck distributed a draft of the Odor Reporting System protocol that the AEM Technical Subcommittee has been working on. The protocol offers guidance on the following procedures:

- Organizing the Reporting System
- Taking a Report
- Processing a Report
- Actions for Extensive or Excessive Reports
- Filling out the Agricultural Odor Report Form

**CREP Update**, E. Svenson

E. Svenson distributed a NYS CREP update. She noted that the CREP signing took place on October 29<sup>th</sup> at Herrington Farms in Troy. Federal Agriculture Secretary Ann Veneman, State Agriculture Commissioner Nathan Rudgers and State Soil and Water Conservation Committee Chairmen Dennis Hill signed the agreement. Four training sessions will be held at sites around the state for District, FSA and NRCS staff.

- January 7 – Millbrook
- January 9 – Ballston Spa
- January 21 – Auburn
- January 22 – Mt. Morris

**Other Reports and Comments**, All

K. Czymmek advised the Committee that he has put together an ad hoc committee to address groundwater pollution issues for agriculture. The committee consists of members from the NYS DOH, NRCS, and a GIS representative. They will be working on guidance for planners to evaluate soil and landscape conditions that may pose a risk for groundwater pollution.

P. Black reported on his efforts with the American Water Resource Association. He also noted that he is working on reformatting the Concepts of Watershed Hydrology C.D.

P. Kaczmarczyk gave a status of the DOH SWAP. He noted that the DOH is working on the last minute details. He added that the information gathered is sensitive and will not be released to the public.

G. Chartier discussed the federal budget for 2004. He added that the EPA budget omnibus-spending bill has not been finalized. The EPA's programs are currently operating under a continuing resolution.

J.R. Flores reported on NRCS efforts. He advised the Committee that the next State Technical Committee meeting will be in Syracuse on January 22<sup>nd</sup>. Flores told the Committee that last year NRCS in NY received \$9.8 million in EQIP funds. For 2004 NY is expecting \$9 to \$12 million in EQIP funds. At the State Technical Committee Flores will hear recommendations from the group on Farm Bill implementation and funding.

D. Smith made a point of clarification that only the Commissioner of the Department of Agriculture and Markets can direct the actions of the Department's Counsel's office.

R. Aman told the Committee that the Chief of NRCS made a visit to AA Dairy. Aman discussed various program issues with the Chief. Aman added that the issue of carbon trading ought to be brought to the forefront of discussion.

Meeting adjourned at 3:40 p.m.

Next meeting will be held on January 6<sup>th</sup> at the Department of Agriculture and Markets, Albany.

