

<b>Regulatory Analysis Form</b>		This space for use by IRRC RECEIVED 2004 JUL 23 PM 1:48 REVIEW COMMISSION	
(1) Agency Department of Environmental Protection		IRRC Number: 2412	
(2) I.D. Number (Governor's Office Use) #7-391			
(3) Short Title CAFOs and Other Livestock Agricultural Operations			
(4) PA Code Cite 25 Pa. Code Chapter 91.1, 91.35, 91.36, 92.1 and 92.5a		(5) Agency Contacts & Telephone Numbers Primary Contact: Sharon Trostle 717-783-8727 Secondary Contact: Michele Tate 717-783-8727	
(6) Type of Rulemaking (Check One) <input checked="" type="checkbox"/> Proposed Rulemaking <input type="checkbox"/> Final Order Adopting Regulation <input type="checkbox"/> Final Order, Proposed Rulemaking Omitted		(7) Is a 120-Day Emergency Certification Attached? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes: By the Attorney General <input type="checkbox"/> Yes: By the Governor	
(8) Briefly explain the regulation in clear and nontechnical language. Large animal production operations are required to obtain an NPDES permit under federal and state regulations. These changes conform current DEP regulations to the revised federal regulations for concentrated animal feeding operations (CAFOs). They also make some substantive and organizational changes to existing regulations regarding all agricultural operations in Pennsylvania.			
(9) State the statutory authority for the regulation and any relevant state or federal court decisions. The statutory authority for the federal rule is the Clean Water Act. The statutory authority for Pennsylvania's CAFO regulations is contained in sections 5(b)(1) and 402 of The Clean Streams Law, 35 P.S. §§ 691.5(b)(1) and 691.402, and section 1920-A of the Administrative Code of 1929, 71 P.S. §510-20.			

## Regulatory Analysis Form

**(10) Is the regulation mandated by any federal or state law or court order, or federal regulation? If yes, cite the specific law, case or regulation, and any deadlines for action.**

Yes. To retain delegation of the CAFO permitting program from EPA, DEP must conform its program to new federal requirements. These proposed changes to existing regulations do that. The Federal CAFO Final Rule was signed by the EPA Administrator on December 15, 2002. The Rule was published in the Federal Register on February 12, 2003. The EPA deadline for regulatory changes for Pennsylvania to adopt the new revisions is April 14, 2005.

**(11) Explain the compelling public interest that justifies the regulation. What is the problem it addresses?**

The most recent (2002) Pennsylvania report on the quality of surface waters listed agriculture as the second leading cause of impairment. Improper management of nutrients such as manure and fertilizers, as well as lack of stormwater runoff controls, are the primary contributing factors to these water quality problems around the Commonwealth. Livestock operations, including large scale operations whose animals generate large amounts of manure, present risks of water pollution. In addition, many of Pennsylvania's agricultural operations are located in the Chesapeake Bay watershed. This requires a special focus on best management practices to protect and restore that important resource.

At the same time, agriculture is an important industry in Pennsylvania, providing livelihood for thousands of citizens and their families. In addition, agricultural lands provide significant aesthetic and environmental benefits to the state. Finally, agriculture is an important part of the cultural fabric of Pennsylvania.

The new regulations will meet the new EPA CAFO regulations that replace the existing 25-year old technology requirements and permitting regulations that do not address today's environmental needs and do not keep pace with growth in the industry. Effective manure management practices required by these regulations will maximize the use of manure as a resource for agriculture while reducing adverse impacts on the environment.

**(12) State the public health, safety, environmental or general welfare risks associated with non-regulation.**

These regulations will enhance the protection of Pennsylvania waters from nutrients produced, stored, and managed by animal feeding operations. The rule will also protect against introduction of pathogens in drinking water, and impairment of Chesapeake Bay water quality. Improperly managed manure has caused acute and chronic water quality problems throughout the United States and is a primary source of surface water quality impairment in Pennsylvania.

## Regulatory Analysis Form

**(13) Describe who will benefit from the regulation. (Quantify the benefits as completely as possible and approximate the number of people who will benefit.)**

Human health and the environment will benefit because agricultural operations, including CAFOs, will be required to effectively manage the manure that they produce. The largest and most concentrated operations are targeted under the CAFO program. The Department estimates that there are a total of 350 CAFOs in Pennsylvania, as defined under these proposed regulations (there are approximately 160 now), mostly in the central parts of the Commonwealth. The population of the Susquehanna River Basin, in particular, will benefit from enhanced water quality and associated economic and recreational benefits. These regulations will also complement Pennsylvania's efforts to meet its commitments to the Chesapeake Bay Program. The CAFO permitting process will also help farmers critically assess the costs and benefits of developing CAFOs before they make substantial financial commitments.

**(14) Describe who will be adversely affected by the regulation. (Quantify the adverse effect as completely as possible and approximate the number of people who will be adversely affected.)**

There will be compliance costs for some agricultural operations around the state, especially existing poultry producers which will be newly regulated as CAFOs, new or expanded operations which will be CAFOs, and some agricultural operations with manure storage capacity greater than 1 million gallons.

In addition to the costs for obtaining a CAFO permit, smaller CAFOs and some agricultural operations will incur expenses to obtain permits for large manure storage facilities.

**(15) List the persons, groups or entities that will be required to comply with the regulation. (Approximate the number of people who will be required to comply.)**

The Department estimates that approximately 190 additional operations (in addition to the current 160 CAFOs) will be directly affected by the new regulations. Most of these will be large poultry operations.

**(16) Describe the communications with and input from the public in the development and drafting of the regulation. List the persons and/or groups who were involved, if applicable.**

EPA began soliciting comments on their regulations about 3 years ago. Fact sheets, reports, and the AFO/CAFO Strategy were widely circulated to both government and industry for review and comment.

DEP formed a CAFO stakeholders workgroup with representation from agricultural, agribusiness, and environmental groups, academia, the State Conservation Commission, Pa. Department of Agriculture, and U.S. Natural Resources Conservation Service to assist with our CAFO program update. The workgroup has held a series of meetings beginning in March 2003. The group has reviewed the new Federal CAFO regulations and has had significant input into the drafting of these revisions to Pennsylvania's regulations.

## Regulatory Analysis Form

(17) Provide a specific estimate of the costs and/or savings to the regulated community associated with compliance, including any legal, accounting or consulting procedures that may be required.

The Department does not have detailed information on the anticipated CAFO compliance costs in Pennsylvania. Using information from EPA on the average costs of obtaining an NPDES CAFO permit, costs are estimated to be no more than the following:

- Existing operation, General permit - \$1,000 to 2,500
- Existing operation, Individual permit - \$1,500 to 3,500
- New or expanded operation - \$10,000 to 15,000

Smaller CAFOs and some agricultural operations will incur expenses to obtain permits for large manure storage facilities. The Department estimates those costs to be up to \$1,500 – 3,500 per storage facility.

To help these livestock operations meet the proposed rule's requirements, Congress increased funding for land and water conservation programs in the 2002 Farm Bill by \$20.9 billion nationwide, bringing total funding for these programs to \$51 billion over the next decade. The Environmental Quality Incentives Program (EQIP) was authorized at \$200 million in 2002 and will ultimately go up to \$1.3 billion in 2007; 60 percent of those funds must go to livestock operations. Pennsylvania's allocation is approximately \$8 – 10 million annually. New technology is also being perfected to aid farmers in meeting these proposed regulations.

Several financial assistance programs are available to livestock producers in Pennsylvania. Federal grants such as EQIP, and the Conservation Reserve Enhancement Program (CREP), are available. State cost share and grant programs such as the Chesapeake Bay Program, Growing Greener and the Nutrient Management Program grants and low interest loans through Agrilink are also available.

Additionally, compliance assistance efforts following the enactment of the new regulations will be in the form of education and outreach by the Conservation Districts, Penn State Extension, and Department trainings and fact sheets.

(18) Provide a specific estimate of the costs and/or savings to local governments associated with compliance, including any legal, accounting or consulting procedures that may be required.

The proposed amendments will effect no costs or savings to local governments.

(19) Provide a specific estimate of the costs and/or savings to state government associated with the implementation of the regulation, including any legal, accounting or consulting procedures that may be required.

Based on the preliminary numbers the new regulations will generate approximately 190 new CAFO permit applications. The additional workload for staff that works on this and other programs simultaneously will be increased. The additional nutrient management plans required as part of the CAFO permit application may also affect the Nutrient Management Act programs resources. No additional funding for state government costs was provided by the Federal government.

### Regulatory Analysis Form

(20) In the table below, provide an estimate of the fiscal savings and cost associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
<b>SAVINGS:</b>	\$	\$	\$	\$	\$	\$
<b>Regulated Community</b>	0	0	0	0	0	0
<b>Local Government</b>	0	0	0	0	0	0
<b>State Government</b>	0	0	0	0	0	0
<b>Total Savings</b>	0	0	0	0	0	0
<b>COSTS:</b>						
<b>Regulated Community</b>	0	190,000.00	190,000.00	0	0	0
<b>Local Government</b>	0	0	0	0	0	0
<b>State Government</b>	0	0	0	0	0	0
<b>Total Costs</b>	0	190,000.00	190,000.00	0	0	0
<b>REVENUE LOSSES:</b>						
<b>Regulated Community</b>	0	0	0	0	0	0
<b>Local Government</b>	0	0	0	0	0	0
<b>State Government</b>	0	0	0	0	0	0
<b>Total Revenue Losses</b>	0	0	0	0	0	0

(20a) Explain how the cost estimates listed above were derived.

DEP estimates that 190 existing operations will be required to obtain CAFO permits under the revised regulations that Pennsylvania is proposing. EPA estimates are higher, however we believe this is because they are counting individual animal types and DEP is combining animal types for a given operation. Most of these will be general permits. The cost estimate range for "General Permit" is \$1,000 to 2,500. Individual permit costs will range from \$1,500 to \$3,500. All existing operations except for those in Special Protection watersheds will be required to obtain a "General Permit". Using \$2,000.00 as the average cost for the permitting of an existing operation, \$380,000.00 will be the amount spent by the industry to comply with the revised regulations. These operations will be staggered in a two-tiered approach for the first and second year the regulations go into effect.

## Regulatory Analysis Form

(20b) Provide the past three-year expenditure history for programs affected by the regulation.

Program	FY-3 (00-01)	FY-2 (01-02)	FY-1 (02-03)	Current FY (03-04)
Env. Program Management (161)	\$41,471,000	\$43,354,000	\$43,780,000	\$43,679,000

(21) Using the cost-benefit information provided above, explain how the benefits of the regulation outweigh the adverse effects and costs.

This program will improve impaired water quality and sustain present non-impaired water bodies. As animal production operations become larger due to economies of scale needed to compete in the market place, greater stress and threat to the environment will follow. All states are required to comply with the Federal regulations.

(22) Describe the no regulatory alternatives considered and the costs associated with those Alternatives. Provide the reasons for their dismissal.

No regulatory alternatives were considered. These proposed regulations originated from the federal Final Rule for CAFOs.

(23) Describe alternative regulatory schemes considered and the costs associated with those schemes. Provide the reasons for their dismissal.

The regulations being proposed are the best compromise between our current program and the new requirements of the Federal program. The linkage with the Nutrient Management Act program will result in cost savings to both the industry and state government, by coordination instead of requiring two separate unrelated programs. An example of this is using AEU instead of the strict animal numbers in the federal guidelines. Pennsylvania has and hopes to continue to use the AEU concept, including all animal types on an operation.

## **Regulatory Analysis Form**

**(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulation.**

Pennsylvania's CAFO program has been tailored to meet Pennsylvania's nutrient management needs. Operations with mixed animal types such as dairy and poultry are common in Pennsylvania. The proposed program will continue to use the "animal equivalent unit (AEU)" concept that was used in the original Federal program. We have successfully coupled the Nutrient Management Act and CAFO programs, which have resulted in minimizing duplication of compliance efforts by the industry and efficient use of department resources. Several of the changes to the Federal program are already included in Pennsylvania's program because of the Nutrient Management Act regulations. In regards to provisions in the proposed regulations which will be more stringent in the future:

- Pennsylvania will continue to require accounting manure generated by all animal types on the operation as included in the original Federal CAFO regulations.
- The Nutrient Management Act has concluded that the higher density operations, with 2,000 pounds or more of animal weight per acre of land suitable for manure application, CAOs, presents the highest risk. We will continue to use the CAOs as defined in the Nutrient Management Act instead of the new federal animal numbers for operations with 300 to 1,000 AEUs. All operations with 1000 or more AEUs will continued to obtain a CAFO permit.

**(25) How does the regulation compare with those of other states? Will the regulation put Pennsylvania at a competitive disadvantage with other states?**

The federal CAFO Final Rule must be implemented by all of the other 49 states. Because of this, the proposed amendments will not put Pennsylvania at a competitive disadvantage with any other state.

**(26) Will the regulation affect existing or proposed regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.**

The proposed amendments will not affect any other existing or proposed regulations under Title 25 of the Pennsylvania Code. The proposed amendments will not affect any other existing or proposed regulations of any other state agency. They are related to proposed changes to Chapter 83 (nutrient management) scheduled to be published by the State Conservation Commission in early 2004.

**(27) Will any public hearings or informational meetings be scheduled? Please provide the dates, times, and locations, if available.**

Two public hearings and two informational meetings will be scheduled for these proposed amendments during a 60-day public comment period.

## Regulatory Analysis Form

(28) Will the regulation change existing reporting, record keeping, or other paperwork requirements? Describe the changes and attach copies of forms or reports that will be required as a result of implementation, if available.

The proposed amendments will cause minor additional paperwork (e.g., reporting forms, record keeping, application forms, letters, public notices, etc.) for CAFO Program in Pennsylvania.

DEP has been actively endorsing electronic data reporting in lieu of conventional paper form reporting to water systems throughout the state. If employed, electronic data reporting would greatly reduce current paperwork requirements.

(29) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

DEP has developed these changes using existing regulations which are well understood by farmers and government employees around the state, instead of simply applying the federal approach. In that regard, the regulations will promote understanding by the regulated community.

(30) What is the anticipated effective date of the regulation; the date by which compliance with the regulation will be required; and the date by which any required permits, licenses or other approvals must be obtained?

The anticipated effective date of the regulations is 90 days following publication of the final regulations, expected in February 2005. Compliance will be expected over a transition period beginning on the effective date of the regulations, and this involves submittal of applications for permits.

(31) Provide the schedule for continual review of the regulation.

The amendments will be reviewed in accordance with the Sunset Review Schedule published by the Department.

**FACE SHEET  
FOR FILING DOCUMENTS  
WITH THE LEGISLATIVE REFERENCE  
BUREAU**

**(Pursuant to Commonwealth Documents Law)**

#2412

2004 JUL 26 PM 2:07

DO NOT WRITE IN THIS SPACE

Copy below is hereby approved as to form and legality.  
Attorney General

By: *Amy M. Elliott*  
(Deputy Attorney General)

**JUL 20 2004**  
DATE OF APPROVAL

Check if applicable  
Copy not approved. Objections attached.

Copy below is hereby certified to be true and  
correct copy of a document issued, prescribed or  
promulgated by:

DEPARTMENT OF ENVIRONMENTAL  
PROTECTION  
ENVIRONMENTAL QUALITY BOARD

(AGENCY)

DOCUMENT/FISCAL NOTE NO. 7-391

DATE OF ADOPTION \_\_\_\_\_

BY: *Kathleen A. McGinty*

TITLE **KATHLEEN A MCGINTY  
CHAIRPERSON**

EXECUTIVE OFFICER CHAIRMAN OR SECRETARY

Copy below is hereby approved as to form and legality  
Executive or Independent Agencies

BY: *David J. DeLo*  
DATE OF APPROVAL 4/26/04

(Deputy General Counsel)  
(~~Chief Counsel - Independent Agency~~)  
(Strike inapplicable title)

Check if applicable. No Attorney General Approval  
or objection within 30 days after submission.

**NOTICE OF PROPOSED RULEMAKING**

**DEPARTMENT OF ENVIRONMENTAL PROTECTION  
ENVIRONMENTAL QUALITY BOARD**

**Concentrated Animal Feeding Operations (CAFOs)  
and Other Livestock Agricultural Operations**

**25 Pa. Code, §§ 91.1, 91.35, 91.36, 92.1 and 92.5a**



Notice of Proposed Rulemaking  
Department of Environmental Protection  
Environmental Quality Board  
(25 Pa. Code Chapters 91 and 92  
General Provisions; National Pollutant Discharge Elimination System Permitting, Monitoring  
and Compliance)

Concentrated Animal Feeding Operations (CAFOs)  
and Other Agricultural Operations

**Preamble**

The Environmental Quality Board (Board) proposes to amend certain sections of 25 Pa. Code, Chapters 91 and 92 that govern agricultural operations (§§ 91.1, 91.35, 91.36, 92.1 and 92.5a). These amendments conform current Department of Environmental Protection (Department) regulations to the revised Federal regulations for (CAFOs). They also make some substantive and organizational changes to existing regulations regarding all agricultural operations in Pennsylvania.

This proposal was adopted by the Board at its meeting of April 20, 2004.

**A. Effective Date**

These amendments will go into effect upon publication in the *Pennsylvania Bulletin* as final rulemaking.

**B. Contact Persons**

For further information, contact Cedric Karper, Chief, Division of Conservation Districts and Nutrient Management, Bureau of Watershed Management, Rachel Carson State Office Building, P.O. Box 8465, Harrisburg, PA 17105-8465, 717-783-7576, or Douglas Brennan, Assistant Counsel, Bureau of Regulatory Counsel, Rachel Carson State Office Building, 400 Market Street, Harrisburg, PA 17101-2301, 717-787-9373. Information regarding submitting comments on this proposal appears in Section I of this preamble. Persons with a disability may use the AT&T Relay Service by calling 1-800-654-5984 (TDD users) or 1-800-654-5988 (voice users). This proposal is available electronically through the Department Web site (<http://www.dep.state.pa.us>).

**C. Statutory Authority**

The proposed rulemaking is being made under the authority of sections 5(b)(1) and 402 of the Clean Streams Law, 35 P.S. §§691.5(b)(1) and 691.402, and section 1920-A of the Administrative Code of 1929, 71 P.S. §510-20.

#### **D. Background and Purpose**

The primary purpose of the proposed regulation is to allow the Commonwealth to maintain delegation of the NPDES CAFO program, which was revised by the Federal government in 2003. The regulations are also intended to implement a regulatory program for livestock operations that reasonably controls the risk to the environment in a sustainable way—with due regard for the economic importance of the industry and other societal benefits—using the input from important stakeholders and relying as much as possible on the existing successful CAFO program. The revisions also strengthen existing requirements in key areas and codify in regulations the Clean Streams Law requirement that smaller agricultural operations protect the quality of the Commonwealth's waters.

These proposed regulations are directly related to and an integral part of Governor Rendell's directive that was issued with his veto of HB 1222. This directive includes development of a comprehensive, progressive plan to address municipal ordinances enacted in conflict with the Right to Farm Law and Nutrient Management Act and the concerns over animal feeding operations that are driving these ordinances. As a result of that directive the definition of CAFO was expanded in this proposal to include all operations defined by federal regulations as large CAFOs and a stream buffer/manure application setback provision was added in Chapter 91. The proposed regulations also include specific setback and buffer requirements for CAFOs. The expanded coverage of the CAFO permitting program and provisions buffers/setbacks respond to local concerns behind the municipal ordinances. A special request for public comment on buffer/setback provisions is included in this publication. This public input will be considered in finalizing the regulations and in shaping the comprehensive, progressive plan requested in the directive.

The most recent (2002) Pennsylvania report on the quality of surface waters listed agriculture as the second leading cause of impairment. Improper management of nutrients such as manure and fertilizers, as well as lack of stormwater runoff controls, are the primary contributing factors to these water quality problems around the Commonwealth. Livestock operations, including large-scale operations whose animals generate large amounts of manure, present risks of water pollution. In addition, many of Pennsylvania's agricultural operations are located in the Chesapeake Bay watershed. This requires a special focus on best management practices to protect and restore that important resource.

At the same time, agriculture is an important industry in Pennsylvania, providing livelihood for thousands of citizens and their families. In addition, agricultural lands provide significant aesthetic and environmental benefits to the state. Finally, agriculture is an important part of the cultural fabric of Pennsylvania.

To address the environmental risks posed by large-scale livestock operations, the Federal Environmental Protection Agency (EPA) promulgated a comprehensive set of revised regulations governing CAFOs in February 2003. These regulations greatly expand existing Federal rules put in place over 20 years ago, to strengthen the existing regulatory program for CAFOs. The rule revises two parts of the Code of Federal Regulations (CFR) - the National Pollutant Discharge Elimination System (NPDES) permitting requirements for CAFOs (40 CFR

Part 122), and the Effluent Limitations Guidelines and Standards (ELGs) for CAFOs (40 CFR Part 412).

The Department already has in place NPDES permit regulations for CAFOs in Pennsylvania, contained in 25 Pa. Code §92.5a (relating to CAFOs). These regulations were previously approved by EPA as part of a delegation agreement to administer the Federal program in Pennsylvania. To maintain delegation of the Federal program, the Department must demonstrate that its regulations meet the new Federal requirements. In the case of Pennsylvania, the existing CAFO regulations, along with regulations under Chapter 83 Subchapter D (relating to Nutrient Management) promulgated by the State Conservation Commission and those in Chapters 91 (relating to General Provisions) and 102 (relating to Erosion and Sediment Control), already contain many of the new Federal requirements. These regulations have been in place for several years and have achieved wide acceptance in the agricultural community as well as various stakeholders such as Department regional offices, the Department of Agriculture, the State Conservation Commission, the Nutrient Management Advisory Board and the county conservation districts.

To develop these proposed regulations revising its current CAFO program, the Department created a CAFO Stakeholder Group in early 2003 to obtain advice from the various interested sectors of the Commonwealth—government, industry, environmental, academia—similar to the group convened in 1999 when the initial CAFO regulations were developed. This group met six times between March and November 2003 to assist the Department in developing these proposed regulations. Much of the content of these proposed regulations reflects input from that stakeholder group.

During the stakeholder meetings, water quality problems associated with Pennsylvania's numerous smaller livestock operations were identified. A variety of strategies were presented and discussed. New §91.36(c) proposed in these regulations emphasizes the responsibility of all agricultural operations to prevent the discharge of pollutants to waters of the Commonwealth under the Clean Streams Law. In addition, these proposed regulations would extend the requirement for permits for manure storage to smaller operations to minimize the risk of impacts to water resources.

The Department has also sought the advice of the Agricultural Advisory Board in developing this regulatory proposal. However, the Agricultural Advisory Board took no position and decided not to submit formal comments on the version reviewed by the Board.

## **Summary of Regulatory Requirements**

The Pennsylvania regulatory scheme for agricultural operations contains several levels of requirements, which increase in stringency as the risk of impacts to water resources increases. These proposed revisions to existing regulations make changes at several of those levels, and are being proposed concurrently with changes proposed by the State Conservation Commission (under Chapter 83), which affect both CAFOs and other agricultural operations.

1. **CAFOs.** The main focus of these proposed regulations is CAFOs—the largest livestock operations in Pennsylvania. The basic requirement for these CAFOs will continue to be to obtain a permit under the Department’s program implementing the Federal National Pollutant Discharge Elimination System (NPDES). The NPDES permit has several fundamental requirements, some of which are new or which contain new elements to conform to the new Federal requirements. These requirements, with the corresponding applicable regulation or law, are:

- Proper construction and operation of manure storage facilities (§91.36(a))
- An erosion and sediment control plan for plowing and tilling (Chapter 102)
- A nutrient management plan addressing stormwater runoff around the farmstead and application of nutrients on croplands (Chapter 83, Subchapter D)
- A preparedness, prevention and contingency plan for chemicals (§92.5a(4))
- Implementation of management controls on the export of manure away from the CAFO (Chapter 83, Subchapter D)
- Compliance with the Pennsylvania Domestic Animals Law when handling animal mortality (3 Pa. C.S.A. §§2301 *et. Seq.*)

a. **Manure Management.** First, all agricultural operations in Pennsylvania must meet construction and operation requirements for manure storage and management. This includes CAFOs. These broad-based requirements are currently described in §§91.35 and 91.36, which are administered by the Department. These proposed regulations consolidate them into one section, §91.36. CAFOs, which have large manure storage facilities, have special permitting requirements above and beyond those of most other livestock operations, and these proposed regulations preserve that extra protection. For poultry operations, these protections are increased in these proposed regulations, consistent with the revised Federal CAFO regulations.

b. **Conservation Practices.** Second, all agricultural operations that conduct plowing and tilling must develop and implement an erosion and sediment control plan to limit runoff, under Chapter 102, also administered by the Department. This applies to CAFOs. These plans are important to the prevention of surface water pollution by phosphorus from manure and other nutrients applied to the land as fertilizer. These regulations would specify that the conservation practices must meet setback and buffer requirements approved by the Department.

c. **Nutrient Management.** Third, the approximately 800 “concentrated animal operations” (many of which are also CAFOs) regulated under Chapter 83 based on their concentration of animals (as opposed to their absolute numbers of animals) must meet a series of requirements related to nutrient management. These requirements include testing of soils and manure for

nitrogen and phosphorus, determination of agronomic needs of the crops based on nitrogen, land application of manure based on those tests and on crop needs, and stormwater runoff controls around the farmstead. These requirements, including the need to have a Nutrient Management Plan approved by the local county conservation district, are also imposed on CAFOs under the existing and proposed regulations. The Nutrient Management Plans are subject to appeal to the Environmental Hearing Board.

The Chapter 83 regulations are promulgated by the State Conservation Commission, and are administered primarily through county conservation districts. These regulations are currently undergoing sweeping revisions in a timeframe similar to these regulations. The State Conservation Commission expects to publish those proposed regulations for public comment in April 2004.

The changes to Chapter 83 are proposed to include new, additional requirements for addressing the impacts on water quality from phosphorus (in addition to nitrogen), and more frequent soil and manure testing of both nitrogen and phosphorus. They also propose to significantly increase the regulation of the export of manure. These changes by the State Conservation Commission are relevant to CAFOs because §92.5a requires all CAFOs to have a Nutrient Management Plan under Chapter 83.

d. *Federal CAFO Requirements.* Finally, Chapter 92 contains the Department's NPDES regulations, and §92.5a governs CAFOs. Section 92.5a incorporates the other requirements already applicable to agricultural operations found in Chapters 83, 91 and 102, and adds special requirements for CAFOs within the Department's NPDES permit program. These proposed regulations make several changes within §92.5a, as well as the related definitions in §92.1, to conform to the new EPA CAFO regulations:

- A revised definition of "CAFO" to expand the scope of these regulations
- A new definition of "livestock" to include horses
- A timetable for poultry operations with dry manure to apply for NPDES CAFO permits
- Setback requirements from water bodies for land application of manure
- Record keeping and reporting requirements that are identified in the NPDES permit and also in the Department's implementation strategy to be published later in 2004
- A preparedness, prevention and contingency plan for chemicals
- Implementation of management controls on the export of manure away from the CAFO
- Compliance with the Pennsylvania Domestic Animals Law when handling animal mortality

The Board seeks comments in particular on two aspects of these changes:

1. The definition of a "CAFO": The Board proposes to change the definition of a CAFO to alter the way in which a discharge to surface waters from the operation would trigger the CAFO requirements. The existing regulations consider any agricultural operation, no matter how small, to be a CAFO if it has a discharge to surface waters. The proposed regulations eliminate that threshold. This change is based on the focus of the CAFO regulations -- large animal operations. For the most part these regulations do not

allow discharges. Smaller operations that have discharges are subject to other, more basic requirements and prohibitions under the Clean Streams Law. The Board believes that the CAFO program should keep its focus on permitting (and monitoring) of these larger operations. The proposal adds new language highlighting the general Clean Streams Law prohibitions against unpermitted discharges to surface waters.

In addition, the Board proposes to add a category of operations that will be a CAFO—operations designated as large CAFOs by the EPA. The purpose of this provision is to satisfy the new Federal definition of a CAFO, which does not use the Pennsylvania approach of “animal equivalent units.”

Further, the Board proposes language that gives it the flexibility to include any agricultural operation that requires closer scrutiny under a permit based on certain risk factors.

Finally, these regulations allow discharges designed to meet specified effluent limitations. This provision will encourage technologies that use manure for energy production. Some of these technologies include a treated wastewater discharge and, with this provision, can be covered under the CAFO rather than the more complex NPDES Industrial Waste permitting process. Public comment is specifically requested on other options that could be employed to further encourage use of manure for energy production.

2. Setback requirements: The Board proposes to adopt new provisions to require manure land application setbacks as stated in the new EPA CAFO regulations—100 feet setback or 35 feet of vegetated buffer. However, the Board is soliciting comments on another option under consideration. Under that option, the setback requirement would refer solely to current setbacks allowed by the Pennsylvania Technical Guide. The Pennsylvania Technical Guide, published by the USDA Natural Resources Conservation Service (NRCS), is an integral part of the regulatory scheme in Pennsylvania. It contains design standards developed by NRCS, with the assistance of cooperating agencies such as the Department, other state and Federal agencies, farm organizations and environmental groups. The current design standard for a vegetated buffer is 50 feet, which is more stringent than the Federal CAFO regulations; however, alternative buffer designs may be developed after scientific evaluation by the NRCS, review by cooperating agencies and approved by the State Conservationist.

The following table summarizes the requirements in the Federal regulations and the associated Pennsylvania regulations that will satisfy those requirements if these proposed rules are finalized:

<b>Issue</b>	<b>EPA – New Rule</b>	<b>DEP/SCC Proposed Revisions</b>
CAFO definition	§122.23(b)(4) and §122.23(b)(6)	§92.1
Nutrient		
Management Plan	§122.42(e)(1) and §412.4(c)(1)	§92.5a(e)(1) and Chapter 83
- manure storage	§122.42(e)(1)(i)	§92.5a(e)(4) and §91.36(a)
- dead animals	§122.42(e)(1)(ii) and §412.37(a)(4)	§92.5a.(e)(3)
- stormwater	§122.42(e)(1)(iii)	§92.5a(e)(1) and Chapter 83

management		
- animal contact with waters of the U.S.	§122.42(e)(1)(iv)	§92.5a(e)(1) and Chapter 83
- chemical handling	§122.42(e)(1)(v)	§92.5a(e)(1)
- conservation practices	§122.42(e)(1)(vi)	§92.5a(e)(1) and Chapters 83 and 102
- testing of manure and soil	§122.42(e)(1)(vii) and §412.4(c)(3)	§92.5a(e)(1) and Chapter 83
- land application protocols	§122.42(e)(1)(viii) and §412(c)(2)	§92.5a(e)(1) and Chapter 83
- record keeping for nutrient management plan	§122.42(e)(1)(ix) and (e)(2), and §412.37(b) and (c)	§92.5a(e)(5)
Manure transfer (export)	§122.42(e)(3)	§92.5a(e)(1), Chapter 83 and §92.5a(d)(1)
Annual report	§122.42(e)(4)	§92.5a(e)(5)
Nitrogen and Phosphorus	§412.4(c)(1)	§92.5a(e)(1) and Chapter 83
Maintenance of land Application equipment	§412.4(c)(4)	§92.5a(e)(1) and Chapter 83
Setback Requirements	§412.4(c)(5)	§92.5a(d)(1)
Discharge prohibition from production areas	§412	§92.5a(e)(4) and §91.36(a)(4)
Voluntary alternative performance standard	§412.31(a)(2)	§92.1
Visual inspections of production area	§412.37(a)(1) and (3)	§92.5a(e)(1) and Chapter 83
Depth markers	§412.37(a)(2)	§92.5a(e)(4) and §91.36(a)

**3. Other Agricultural Operations:** The stakeholder group that assisted the Department in the development of these revisions identified smaller livestock operations as causing a substantial portion of pollution problems created by agriculture. To address this, the proposed changes to §91.36(c) emphasize the responsibility of all agricultural operations to prevent the discharge of pollutants to waters of the Commonwealth under the Clean Streams Law. In addition, these proposed regulations in §91.36(a)(3) and (7) would require permits for liquid or semi-solid manure storage at smaller operations than currently permitted to minimize the risk of impacts to water resources. Section §91.36(a)(3) establishes specific size, type, and location criteria for

new and expanded manure storage facilities. Section §91.36(a)(7) sets the general criteria for other facilities. These facilities would be evaluated on a case-by-case basis, taking site-specific conditions into consideration such as the proximity to Special Protection waters or impaired waters, and considering the risk of pollution based on various factors such as the type of geology, the type of storage structure and the size of the structure. Department staff would perform this evaluation.

Finally, the Board is proposing to add a new §91.36(b)(2), which will establish statewide setback and buffer requirements. The Board seeks comments on this requirement, and in particular on the appropriate standard for water quality protection. As a starting point, the Department's current Manure Management Manual recommends setbacks consistent with the Act 6 nutrient management regulations. These primarily involve proximity to environmentally sensitive areas such as drinking water sources, and, during times of frozen, saturated, or snow covered ground, from streams, lakes, ponds, and other surface water conveyances. In addition, these proposed regulations (Section 92.5a(d)(1)) would require setbacks or buffers for CAFOs that would be consistent with the Federal rule: 100 foot setback from surface water (throughout the year) or a 35 foot wide vegetated buffer, in addition to the requirements of the nutrient management regulations. The Board seeks comments on whether and to what extent either of these setback and buffer standards, or others, would be appropriate for all agricultural operations statewide.

## **E. Benefits, Costs and Compliance**

### **Benefits**

Human health and the environment will benefit because agricultural operations, including CAFOs, will be required to effectively manage the manure that they produce. The largest and most concentrated operations are targeted under the CAFO program. The Department estimates that there will be a total of 350 CAFOs in Pennsylvania, as defined under these proposed regulations (there are approximately 160 now), mostly in the central parts of the Commonwealth. The population of the Susquehanna River Basin, in particular, will benefit from enhanced water quality and associated economic and recreational benefits. These regulations will also complement Pennsylvania's efforts to meet its commitments to the Chesapeake Bay Program and will help to address agricultural nonpoint sources of pollution that are among the most significant sources of water quality impairment in the Commonwealth. The CAFO permitting process will also help farmers critically assess the costs and benefits of developing CAFOs before they make substantial financial commitments.

### **Compliance Costs**

There will be compliance costs for some agricultural operations around the state, especially existing poultry producers that will be newly regulated as CAFOs, new or expanded operations which will be CAFOs, and some agricultural operations with manure storage capacity greater than 1 million gallons.

The approximately 190 operations that are expected to be directly affected by the new CAFO regulations should not be surprised by the changes. EPA began soliciting comments on the proposed Federal rule changes about 3 years ago. Fact sheets, reports, and the Federal AFO/CAFO Strategy were widely circulated to both government and industry for review and comment. The large poultry and swine integrators have been expecting these changes. In addition, Department staff have met with the poultry and swine representatives during the development of the proposed revisions. The technical capacity in the private sector for preparing the permit applications exists, although the timeline established by the Department in §92.5a(c) will dictate the burden placed on these resources.

The Department does not have detailed information on the anticipated CAFO compliance costs in Pennsylvania. Using information from EPA on the average costs of obtaining an NPDES CAFO permit, costs are estimated to be no more than the following:

- Existing operation, General permit - \$1,000 to 2,500
- Existing operation, Individual permit - \$1,500 to 3,500
- New or expanded operation - \$10,000 to 15,000

In addition to the costs for obtaining a CAFO permit, smaller CAFOs and some agricultural operations will incur expenses to obtain permits for large manure storage facilities. The Department estimates those costs to be up to \$1,500 – 3,500 per storage facility.

### **Compliance Assistance Plan**

To help these livestock operations meet the proposed rule's requirements, Congress increased funding for land and water conservation programs in the 2002 Farm Bill by \$20.9 billion nationwide, bringing total funding for these programs to \$51 billion over the next decade. The Environmental Quality Incentives Program (EQIP) was authorized at \$200 million in 2002 and will ultimately go up to \$1.3 billion in 2007; 60 percent of those funds must go to livestock operations. Pennsylvania's allocation is approximately \$8 – 10 million annually. New technology is also being perfected to aid farmers in meeting these proposed regulations.

Several financial assistance programs are available to livestock producers in Pennsylvania. Federal grants such as EQIP, and the Conservation Reserve Enhancement Program (CREP), are available. State cost share and grant programs such as the Chesapeake Bay Program, Growing Greener and the Nutrient Management Program grants and low interest loans through Agrilink are also available.

Additionally, compliance assistance efforts following the enactment of the new regulations will be in the form of education and outreach by the Conservation Districts, Penn State Extension, and Department trainings and fact sheets.

## **Paperwork Requirements**

The proposed amendments will cause no additional paperwork (e.g., reporting forms, record keeping, application forms, letters, public notices, etc.) for existing CAFOs in Pennsylvania.

It should be noted that the Department has been actively endorsing electronic data reporting in lieu of conventional paper form reporting to water systems throughout the state. If employed, electronic data reporting would greatly reduce a CAFO's current paperwork requirements.

## **G. Sunset Review**

These regulations will be reviewed in accordance with the sunset review schedule published by the Department to determine whether the regulations effectively fulfill the goals for which they were intended.

## **H. Regulatory Review**

Under Section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), the Department submitted a copy of the proposed rulemaking on July 28, 2004 to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the Senate and House Environmental Resources and Energy Committees. In addition to submitting the proposed amendments, the Department has provided IRRC and the Committees with a copy of a detailed regulatory analysis form prepared by the Department. A copy of this material is available to the public upon request.

Under Section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed regulations within 30 days of the close of the public comment period. The comments, recommendations or objections shall specify the regulatory review criteria that have not been met. The Act specifies detailed procedures for review of these issues by the Department, the General Assembly and the Governor prior to final publication of the regulations.

## **I. Public Comments**

***Written Comments*** - Interested persons are invited to submit comments, suggestions, or objections regarding the proposed regulation to the Environmental Quality Board, P.O. Box 8477, Harrisburg, PA 17105-8477 (express mail: Rachel Carson State Office Building, 15<sup>th</sup> Floor, 400 Market Street, Harrisburg, PA 17105-2301). Comments submitted by facsimile will not be accepted. Comments, suggestions, or objections must be received by the Board by November 5, 2004. Interested persons may also submit a summary of their comments to the Board. The summary may not exceed one page in length and must also be received by November 5, 2004. The one-page summary will be provided to each member of the Board in the agenda packet distributed prior to the meeting at which the final regulations will be considered.

***Electronic Comments*** - Comments may be submitted electronically to the Board at [RegComments@state.pa.us](mailto:RegComments@state.pa.us) and must also be received by the Board by November 5, 2004. A subject heading of the proposal and a return name and address must be included in each transmission. If an acknowledgement of electronic comments is not received by the sender within two working days, the comments should be retransmitted to ensure receipt.

## **J. Public Meetings and Hearings**

The Department will hold two public informational meetings on this proposal in conjunction with the meetings scheduled for the revised Nutrient Management regulations. The public informational meetings will be held on September 13, 2004 at the Holiday Inn, 5401 Carlisle Pike, Mechanicsburg and September 16, 2004 at the Ramada Inn, 191 United Road, Dubois.

The Environmental Quality Board will hold two public hearings coordinated with the revised Nutrient Management regulations. The hearings will be held at 7 p.m. on October 13, 2004 at the Holiday Inn, 5401 Carlisle Pike, Mechanicsburg and October 14, 2004 at the Ramada Inn, 191 United Road, Dubois.

Persons wishing to present testimony at a public hearing are requested to contact the Environmental Quality Board, P.O. Box 8477, Harrisburg, PA 17105-8477, (717) 787-4526, at least one week in advance of the hearing to reserve a time to present testimony. Oral testimony is limited to ten minutes for each witness. Witnesses are requested to submit three written copies of their oral testimony to the hearing chairperson at the hearing. Organizations are limited to designating one witness to present testimony on their behalf at each hearing.

Persons in need of accommodations as provided for in the American With Disabilities Act of 1990 should contact the Environmental Quality Board at (717) 787-4526 or through the Pennsylvania AT&T Relay Service at 1-800-654-5984 (TDD) to discuss how the Department may accommodate their needs.

BY:

KATHLEEN A. McGINTY  
Chairperson  
Environmental Quality Board



Annex A

CHAPTER 91. GENERAL PROVISIONS

\*\*\*\*\*

§ 91.1. Definitions.

*AEU--Animal equivalent unit*—One thousand pounds live weight of livestock or poultry animals, regardless of the actual number of individual animals comprising the unit, as defined in section 3 of the Nutrient Management Act (3 P. S. § 1703).

\*\*\*\*\*

*Earthen Waste Storage Pond*—A manure storage facility with an earthen structure lined with clay, plastic, concrete or other material acceptable to the Department.

\*\*\*\*\*

*Manure Management Manual*—The guidance manual published by the Department of Environmental Protection that is entitled “Manure Management Manual for Environmental Protection,” including its supplements and amendments. The manual describes approved manure management practices for all agricultural operations as required by 25 Pa. Code § 91.36. (relating to pollution control and prevention at agricultural operations).

\*\*\*\*\*

*Manure Storage Facility*--A permanent structure or facility, a portion of a structure or facility, or a group of structures or facilities at one agricultural operation, utilized for the purpose of containing manure [as defined in § 83.201 (relating to definitions)].

\*\*\*\*\*

**Pennsylvania Technical Guide—The Pennsylvania Soil and Water Conservation Technical Guide, including supplements and amendments, which is the primary technical guide published by the Pennsylvania office of the Natural Resources Conservation Service of the U.S. Department of Agriculture. It contains technical information, including design criteria, about conservation of soil, water, air, plant and animal resources specific to Pennsylvania. It is also referred to as the Field Office Technical Guide in Federal regulations and other documents.**

\*\*\*\*\*

**Setback -- A specified distance from surface waters or potential conduits to surface waters where manure, litter, and process wastewater may not be land applied.**

\*\*\*\*\*

**Vegetated Buffer-- A permanent strip of dense perennial vegetation established parallel to the contours of and perpendicular to the dominant slope of the field for purposes that include slowing water runoff, enhancing water infiltration, and minimizing the risk of any potential pollutants from leaving the field and reaching surface waters.**

**Waste Storage Structure—A manure storage facility that is a fabricated structure for storage of animal wastes or other organic agricultural wastes that is not an earthen waste storage pond.**

\*\*\*\*\*

**§ 91.35. Wastewater impoundments.**

(a) Except as otherwise provided under subsections (c)—([e]d), a person may not operate, maintain or use or permit the operation, maintenance or use of a wastewater impoundment for the production, processing, storage, treatment or disposal of pollutants unless

the wastewater impoundment is structurally sound, impermeable, protected from unauthorized acts of third parties, and is maintained so that a freeboard of at least 2 feet remains at all times. The person owning, operating or possessing a wastewater impoundment has the burden of satisfying the Department that the wastewater impoundment complies with these requirements.

(b) A person owning, operating or in possession of an existing wastewater impoundment containing pollutants, or intending to construct or use a wastewater impoundment, shall promptly submit to the Department a report or plan setting forth the location, size, construction and contents of the wastewater impoundment and other information as the Department may require.

(c) Except when a wastewater impoundment is already approved under an existing permit from the Department, a permit from the Department is required approving the location, construction, use, operation and maintenance of a wastewater impoundment subject to subsection (a) in the following cases:

(1) If a variance is requested from the requirements in subsection (a).

(2) If the capacity of one wastewater impoundment or of two or more interconnected wastewater impoundments exceeds 250,000 gallons.

(3) If the total capacity of polluting substances contained in wastewater impoundments on one tract or related tracts of land exceeds 500,000 gallons.

**[(4) If the impoundment is a new or expanded manure storage facility at an agricultural operation with more than 1,000 animal equivalent units, regardless of the capacity of the impoundment.]**

**[(5)] (4)** If the Department determines that a permit is necessary for effective regulation to insure that pollution will not result from the use, operation or maintenance of the wastewater impoundment.

**[(d) The following types of agricultural operations are not subject to subsections (b) and (c) or the freeboard requirements of subsection (a), but shall provide a 12-inch freeboard for all waste storage ponds as defined in the “Pennsylvania Technical Guide” and a 6-inch freeboard for all waste storage structures at all times:**

**(1) An agricultural operation, which contains less than 1,001 animal equivalent units.**

**(2) An agricultural operation in existence prior to January 29, 2000, and designed in accordance with the “Pennsylvania Technical Guide” and addenda or amendments thereto.]**

**[(e)](d) This section does not apply to:**

**(1) Manure storage facilities at agricultural operations, which are governed by § 91.36 (relating to pollution control and prevention at agricultural operations).**

**(2) Residual waste processing, disposal, treatment, collection, storage or transportation.**

\*\*\*\*\*

**§ 91.36. Pollution control and prevention at agricultural operations.**

**(a) *Animal manure storage facilities.***

**(1) Except as provided in paragraphs (2) and (3), all manure storage facilities shall be designed, constructed, operated and maintained in accordance with the Manure Management Manual and the Pennsylvania Technical Guide. For liquid or semi-solid manure storage facilities constructed after January 29, 2000, the owner or operator shall meet one of the following:**

**(i) The design and construction of the facility shall be certified to meet the Manure Management Manual and Pennsylvania Technical Guide by a registered Professional Engineer.**

**(ii) The owner or operator shall obtain a water quality management permit from the Department for the manure storage facility.**

**(2) In the case of liquid or semi-solid manure storage facilities located at animal operations with over 1,000 AEU's for the first time after January 29, 2000, a water quality management permit is required.**

**(3) For new or expanded agricultural operations after \_\_\_\_\_ (Editor's Note: the blank refers to the effective date of the proposed regulations), the following requirements apply to liquid or semi-solid manure storage facilities:**

**(i) Where the manure storage capacity is between 1 million and 2.5 million gallons, a water quality management permit is required for any manure storage facility that meets one of the following:**

**(A) It is a clay-lined earthen waste storage pond.**

**(B) The nearest downgradient stream is classified as a High Quality or Exceptional Value water pursuant to Chapter 93 (relating to water quality standards).**

**(C) The nearest downgradient stream that has been assessed and has been determined by the Department to be impaired from nutrients from agricultural activities and the manure storage facility is on an agricultural operation that is not implementing a Nutrient Management Plan approved by the State Conservation Commission under Chapter 83, Subchapter D (relating to nutrient management).**

**(ii) Where the manure storage capacity is 2.5 million gallons or more, a water quality management permit is required.**

**(4) All manure storage facilities at CAFOs as defined in Chapter 92 (relating to NPDES permitting, monitoring and compliance) shall be designed, constructed, operated and maintained to prevent discharges to surface waters during a storm event up to and including a 25-year/24-hour storm, except for new or expanded agricultural operations that are CAFOs, that commenced operations after April 13, 2003, and that include swine, poultry or veal calves. The facilities for those swine, poultry or veal calves shall prevent discharges to surface waters during a storm event up to and including a 100-year/24-hour storm.**

**(5) For liquid or semi-solid manure storage facilities, the following minimum freeboard requirements apply and shall be maintained:**

**(i) For agricultural operations with over 1,000 AEUs that were new or expanded operations after January 29, 2000, a minimum 24-inch freeboard.**

**(ii) For all other facilities as follows:**

**(A) Earthen waste storage ponds, a minimum 12-inch freeboard, as described in the Pennsylvania Technical Guide.**

**(B) For all waste storage structures containing animal wastes, a minimum 6-inch freeboard, as described in the Pennsylvania Technical Guide.**

**(6) The requirements in this section are in addition to and do not replace those in Chapter 83, Subchapter D.**

**(7) The Department may require a water quality management permit for any manure storage facility, based on relevant criteria such as proximity to Special Protection waters or impaired waters under Chapter 93, or the risk of pollution.**

**[Except as provided in paragraphs (1) and (2), animal manure storage facilities do not require a water quality management permit from the Department if the design and operation of the storage facilities are in accordance with the Department approved manure management practices as described in the publication entitled “Manure Management for Environmental Protection” and addenda or amendments thereto prepared by the Department, “The Pennsylvania Technical Guide” and addenda and amendments thereto, and when applicable, § 83.351 (relating to minimum standards for the design, construction, location, operation, maintenance and removal from service of manure storage facilities) and each animal manure storage facility is designed to prevent discharges to surface waters during a storm event of less than a 25-year/24-hour storm. In addition, in the case of animal manure storage facilities located at animal operations with over 1,000 animal equivalent units on or before January 29, 2000, a water quality management permit is not required if a registered professional engineer certifies that the design and construction of each manure storage facility is consistent with the “Pennsylvania Technical Guide.”**

**(1) A permit is required under § 91.35 (relating to wastewater impoundments) for the design, construction and operation of any new or expanded animal manure storage facility at an agricultural operation with more than 1,000 animal equivalent units. In addition to the requirements of § 91.35, the permit shall incorporate the requirements of this section.**

**(2) If a person chooses to design or construct manure storage facilities using criteria other than those described in “Manure Management for Environmental Protection” prepared by the Department and the “Pennsylvania Technical Guide” and addenda or amendments to those publications, approval of the Department or a permit under § 91.35 will be required. Operations which are required to or volunteer to submit nutrient management plans shall comply with the nutrient management regulations in Chapter 83 (relating to State Conservation Commission)]**

***(b) Land application of animal manure, litter and process wastewater; setbacks and buffers.***

**(1) The land application of animal manures, litter and process wastewaters [does not] requires a permit or approval from the Department [if] unless the operator can demonstrate that the land application [of manure] is in accordance with the requirements of paragraph (2) and one of the following is satisfied:**

**(i) The land application is in accordance with Department approved [manure management] practices as described in the [publication entitled “] Manure Management Manual [for Environmental Protection” and addenda or amendments thereto prepared by the Department].**

**(ii) For CAOs, the land application is in accordance with an approved nutrient management plan under Chapter 83, Subchapter D.**

**(iii) For CAFOs, the land application is in accordance with a CAFO permit as described in §92.5a (relating to CAFOs) .**

**[If a person chooses to apply animal manure using the criteria other than those described in “Manure Management Manual for Environmental Protection” and addenda**

or amendments thereto prepared by the Department, approval of the Department or a permit will be required. Operations which are required to or volunteer to submit nutrient management plans shall comply with Chapter 83.]

**(2) Appropriate vegetated buffers and setbacks established by the Department must be followed to protect and maintain water quality.**

**(c) Discharge of Pollutants. It is unlawful for agricultural operations to discharge pollutants to waters of the Commonwealth except as allowed by regulations or a permit administered by the Department. The Department is authorized to take an enforcement action against any agricultural operation in violation of this requirement. In addition, when an agricultural operation is found to be in violation of the Clean Streams Law, 35 P.S. § 691.1 et seq., the Department may require the agricultural operation to develop and implement a nutrient management plan under Chapter 83, Subchapter D, for abatement or prevention of the pollution.**

**CHAPTER 92. NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM**  
**PERMITTING, MONITORING AND COMPLIANCE**

\*\*\*\*\*

**§ 92.1. Definitions.**

*Agricultural operation*—The management and use of farming resources for the production of crops, livestock or poultry as defined in section 3 of the Nutrient Management Act (3 P. S. § 1703).

\*\*\*\*\*

*CAFO—Concentrated animal feeding operation*—A CAO with greater than 300 AEUs, any agricultural operation with greater than 1,000 AEUs, **any agricultural operation with a discharge to surface waters that is authorized by Department permit limits and conditions, any agricultural operation defined as a large CAFO under 40 CFR § 122.23(b)(4), or any other agricultural operation designated as a CAFO by the Department based on risk of pollution of surface waters using relevant criteria such as the size, location and management plan of the operation** [or an agricultural operation with a discharge to surface waters during a storm event of less than a 25-year/24-hour storm].

\*\*\*\*\*

*CAO—Concentrated animal operation*—An agricultural operation where the animal density exceeds 2 AEUs per acre, as defined in section 3 of the Nutrient Management Act (3 P. S. § 1703).

\*\*\*\*\*

*Livestock*—**Animals raised, stabled, fed or maintained on an agricultural operation with the purpose of generating income or providing work, recreation or transportation.**

**Examples include: dairy cows, beef cattle, goats, sheep, swine and horses. The term does not include aquatic species.**

\*\*\*\*\*

**Setback-- A specified distance from surface waters or potential conduits to surface waters where manure, litter, and process wastewater may not be land applied.**

\*\*\*\*\*

**Vegetated Buffer—A permanent strip of dense perennial vegetation established parallel to the contours of and perpendicular to the dominant slope of the field for purposes that include slowing water runoff, enhancing water infiltration, and minimizing the risk of any potential pollutants from leaving the field and reaching surface waters.**

\*\*\*\*\*

**§ 92.5a. CAFOs.**

(a) **Except as provided in subsections (b) and (c), [E]each CAFO shall [apply] have applied** for an NPDES permit on the following schedule:

(1) By May 18, 2001, for any CAFO in existence on November 18, 2000, with greater than 1,000 AEUs.

(2) By February 28, 2002, for any other CAFO in existence on November 18, 2000.

(3) Prior to beginning operation, for any new or expanded CAFO that **[begins] began** operation after November 18, 2000 **and before** \_\_\_\_\_ **(Editor's Note: the blank refers to the effective date of the proposed regulations).**

**(b) Poultry operations that are CAFOs, which are in existence on** \_\_\_\_\_ **(Editor's Note: the blank refers to the effective date of the proposed regulations) and that are not**

**using liquid manure handling systems, shall apply for an NPDES permit no later than the following:**

**(1) \_\_\_\_\_ (Editor's Note: the blank refers to the effective date of the proposed regulations plus six months) for operations with 500 or more AEUs.**

**(2) \_\_\_\_\_ (Editor's Note: the blank refers to the effective date of the proposed regulations plus 15 months) for operations with 300 - 499 AEUs.**

**(c) After \_\_\_\_\_ (Editor's Note: the blank refers to the effective date of the proposed regulations), new operations, and existing operations that will become a CAFO due to changes in operations such as additional animals or loss of land suitable for manure application, shall do the following:**

**(1) Apply for an NPDES permit no later than 180 days before the operation commences or changes.**

**(2) Obtain an NPDES permit prior to commencing operations.**

**(d[b]) The NPDES permit application requirements shall include, but not be limited to the following: [for each CAFO shall include conditions requiring the following:]**

**(1) A nutrient management plan meeting the requirements of Chapter 83, Subchapter D (relating to nutrient management) [relating to State Conservation Commission] and approved by the County Conservation District or the State Conservation Commission. The plan must include written agreements with importers or brokers related to the land application of manure, and nutrient balance sheets or a nutrient management plan for the importing farms. The plan must also include one of the following, whichever is more stringent:**

**(i) Buffers and manure application setbacks for the CAFO of no less than 100 feet from downgradient surface water, or vegetated buffer no less than 35 feet in width.**

**(ii) Buffers and setbacks as required by §91.36(b)(2) (relating to pollution control and prevention at agricultural operations).**

(2) An erosion and sediment control plan **for plowing and tilling operations** meeting the requirements of Chapter 102 (relating to erosion and sediment control).

(3) **[For earth disturbances of 5 acres or more, an NPDES permit for stormwater discharges associated with a construction activity meeting the requirements of Chapter 102.] Where required under § 91.36(a), a water quality management permit, permit application, or engineer's certification, as required.**

**(4) A preparedness, prevention and contingency plan for pollutants related to the CAFO operation.**

(e[c]) **[In addition to the requirements of subsection (b), the] NPDES permits for each CAFO [with greater than 1,000 AEUs] shall include, but not be limited to, conditions requiring the following:**

**(1) Compliance with the Nutrient Management Plan, the Preparedness, Prevention and Contingency Plan, and the Erosion and Sediment Control Plan.**

**(2) A separate NPDES permit for stormwater discharges associated with a construction activity meeting the requirements of Chapter 102 for any earth disturbance of one acre or more with a point source discharge to surface waters, or five acres or more regardless of the planned runoff.**

**(3) Compliance with the Pennsylvania Domestic Animals Law, 3 Pa.**

**C.S.A. §§ 2301 et seq.**

**(4) Compliance with § 91.36.**

**(5) Record-keeping and reporting requirements as described in the permit.**

**[(1) A water quality management permit under §91.36(a) (relating to pollution control and prevention at agricultural operations).**

**(2) A preparedness, prevention and contingency plan for chemicals related to the CAFO operation.**

**(3) Written agreements with importers or brokers related to the land application of manure and nutrient balance sheets for all exported manure.]**



Pennsylvania Department of Environmental Protection

Rachel Carson State Office Building

P.O. Box 2063

Harrisburg, PA 17105-2063

July 28, 2004

Policy Office

717-783-8727

Mr. Robert E. Nyce, Executive Director  
Independent Regulatory Review Commission  
14<sup>th</sup> Floor, Harrisstown #2  
333 Market Street  
Harrisburg, PA 17120

RE: Proposed Rulemaking: Concentrated Animal Feeding Operations (CAFOs) and Other Livestock Agricultural Operations (#7-391)

Dear Mr. Nyce:

Enclosed is a copy of a proposed regulation for review and comment by the Independent Regulatory Review Commission pursuant to Section 5(a) of the Regulatory Review Act. This proposal is scheduled for publication as a proposed rulemaking in the *Pennsylvania Bulletin* on August 7, 2004, with a 90-day public comment period. The Environmental Quality Board adopted this proposal at its April 20, 2004 meeting.

This proposal is largely in response to the Federal CAFO Final Rule (effective April 14, 2003) in order to retain primacy under the National Pollutant Discharge Elimination System (NPDES) CAFO permitting program. Its main focus is CAFOs, which are the largest livestock operations in the state. The proposal also includes substantive changes to existing regulations regarding all livestock agricultural operations in Pennsylvania for the purpose of protecting water quality through effective manure management.

The Department will provide the Commission with the assistance required to facilitate a thorough review of this proposal. Section 5(g) of the Regulatory Review Act provides that the Commission may, within 30 days after the close of the public comment period, convey to the agency any comments, recommendations and objections to the proposed regulation. The Department will consider any comments or suggestions made by the Commission, as well as the committees and public commentators received prior to final adoption the regulation.

For additional information, please contact Michele Tate or me at 783-8727.

Sincerely,

Marjorie L. Hughes  
Regulatory Coordinator

Enclosures





**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE  
REGULATORY REVIEW ACT**

I.D. NUMBER: 7-391

SUBJECT: Concentrated Animal Feeding Operations (CAFOs) and Other Livestock Agricultural Operations

AGENCY: DEPARTMENT OF ENVIRONMENTAL PROTECTION

**TYPE OF REGULATION**

- Proposed Regulation
- Final Regulation
- Final Regulation with Notice of Proposed Rulemaking Omitted
- 120-day Emergency Certification of the Attorney General
- 120-day Emergency Certification of the Governor
- Delivery of Tolled Regulation
  - a. With Revisions
  - b. Without Revisions

RECEIVED  
2004 JUL 23 PM 2:07

**FILING OF REGULATION**

DATE	SIGNATURE	DESIGNATION
7/28	<i>Judy Jehu</i>	HOUSE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY
7-28-04	<i>Steve A. Castello</i>	SENATE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY
7/28/04	<i>Quintino McHoye</i>	INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL (for Final Omitted only)
7/28/04	<i>David P. Bickel</i>	LEGISLATIVE REFERENCE BUREAU (for Proposed only)

July 23, 2004

