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**Pennsylvania Senate
Pennsylvania House of Representatives
Agriculture & Rural Affairs Committees**



*Senator Mike Waugh, Chairman
Representative Art Hershey, Chairman*

November 5, 2004

Environmental Quality Board
Rachel Carson State Office Building
15th Floor
400 Market Street
Harrisburg, PA 17105-2301

Subject: Proposed Rulemaking, Environmental Quality Board, 25 PA Code, Chapters 91 and 92, Concentrated Animal Feeding Operations and Other Agricultural Operations

To Whom It May Concern:

As the respective Chairmen of the Pennsylvania House of Representatives and Senate Agriculture and Rural Affairs committees, we and our staffs have reviewed the proposed rulemaking to amend sections of 25 PA Code, Chapters 91 and 92 for Concentrated Animal Feeding Operations (CAFOs.) We have also consulted with other committee members having interest and knowledge of this subject. With this in mind, we appreciate the opportunity to comment on Proposed Rulemaking #7-391.

Understanding the fact that the majority of the proposed changes are required to maintain delegation of the National Pollutant Discharge Elimination System (NPDES) by the Federal government to the Department of Environmental Protection (DEP), we commend the Department for working in a proactive manner with various stakeholders, including the agricultural interests most directly impacted by these regulations, to develop a CAFO program that meets all environmental criteria, yet is appropriate to Pennsylvania producers. Owners and operators of CAFOs recognize that they are subject to a higher degree of regulatory oversight than other animal operations in the state and willingly comply with a more stringent regulatory standard.

In that this proposed rulemaking focuses on CAFOs, we question the reason for, and adamantly oppose, provisions included in the proposal that make substantive and organizational changes to existing regulations regarding ALL agricultural operations in the Commonwealth. Specifically, in Section 91.36(a)(7) DEP is given virtually unlimited authority to require any farmer having a manure storage facility to obtain a water management permit based on very general "relevant criteria". We find it completely unacceptable to give this

sort of discretionary power, with the potential to dramatically adversely impact both the management practices and economic viability of an animal operation of ANY SIZE, completely in the hands of the agency. We request that this section be removed in its entirety or, at minimum, very specific guidance be included.

Likewise, Section 91.36(b)(2) proposes to give DEP the authority to place any setback and/or buffer requirements on land application of manure that it deems "appropriate" to protect water quality. Again, this type of discretionary authority over even the smallest and non-CAFO operations, without more specific guidance, is unacceptable. While it is our recommendation that 91.36(b)(2) be deleted in its entirety from the final regulations, at minimum it must be more specific in terms of the exact nature of water sources (streams, all surface water, wells, wetlands, etc.) to be protected by setbacks and buffers.

Related to this is a concern with respect to the definitions of "setback" and "vegetated buffer." Setback includes both "surface waters," a term which in itself is subject to various interpretation, and the term "potential conduits to surface waters." The addition of this second term permits additional subjective interpretation. The definition of "vegetated buffer" implies that these buffers may be field-specific in terms of both the need for them and the width required. In each case, how this requirement is imposed could result in a substantial loss to the farm operator of the use of otherwise productive land, resulting in a negative economic impact

Finally, we question the language in the definition of CAFO established in Section 92.1. We request that the Department more fully explain the intent of the wording "or any other agricultural operation designated as a CAFO by the Department...". Does this allow the Department the discretion to, on a case by case basis, arbitrarily decide which agricultural operations they choose to regulate as CAFOs and which not? If it is the Department's intention to make a subjective determination of this based on their assessment of "risk of pollution of surface waters" using the criteria indicated ("size, location and management plan") then we find it unacceptable. If, however, the intent is to use these factors to establish a specific threshold for designation as a CAFO, then this standard should be specified.

We thank you for the opportunity to provide these comments and recommendations. As you work toward a final regulatory package both we and our committee staffs are available for further discussion of these issues with regard to this proposed rulemaking

Sincerely,

Representative Arthur Hershey
Chairman,
House Agriculture and Rural Affairs

Senator Mike Waugh
Chairman,
Senate Agriculture and Rural Affairs