

**Hughes, Marjorie**

**From:** Eric Boyce [ericsb274@netzero.net]  
**Sent:** Monday, October 11, 2004 1:05 PM  
**To:** RegComments@state.pa.us  
**Subject:** Water Quality at Risk: comments on proposed CAFO regulation

October 11, 2004

Pennsylvania Department of Environmental Protection  
PA

Dear ,

Subject: Comments on proposed CAFO regulation

The proposed Concentrated Animal Feeding Operation (CAFO) regulation is seriously inadequate at minimizing nutrient pollution and protecting water quality. Pennsylvania already has an estimated 3,903 miles of streams impaired by agricultural impacts, and this regulation holds little potential for correcting this.

1. The proposed regulations fail to require a NPDES permit for medium CAFOs, as required by federal regulation.

The proposed definition of CAFO in § 92.1 is legally problematic because it fails to include certain medium CAFOs, that are required by the federal regulations at 40 CFR § 122.23(a), (b)(2) and (b)(6) to obtain permits. Inexplicably, while the proposed definition in § 92.1 correctly cross-references those facilities that are classified as large CAFOs, it omits the medium-sized facilities that also must be classified as CAFOs.

The federal rule includes specific language regarding "discharges" in the definition of small and medium CAFOs at 40 CFR § 122.23(b)(6)(ii). This provides an opportunity to regulate and enforce operations currently not covered by the Nutrient Management Act, that contribute heavy nutrient loads to the Commonwealth's waters. This definition would include operations with livestock in streams, stormwater flowing from manure management facilities, and other sources of stream degradation. A definition that includes operations with 300 to 1,000 AEU's that must have a Nutrient Management Plan may include more operations than the definition at 40 CFR 122.23(b)(6)(ii), but not those operations with the most serious pollution problems.

In the Chesapeake Bay watershed in Pennsylvania, agricultural operations are the largest source of nitrogen and phosphorous pollution. While many large confined animal operations have been subject to CAFO permit and nutrient management planning requirements, many medium and small size agricultural operations have operated under the regulatory radar. In order to comply with the federal Clean Water Act, to maintain NPDES delegation, and to take a positive step to ensure that major sources of agricultural nutrient pollution in the watershed are addressed, DEP must, as EPA has done, amend the definition of CAFO to include the appropriate medium-sized animal operations into the regulation.

2. The definition of CAFO in § 92.1 is vague and ambiguous. In addition to not satisfying federal CWA requirements, the proposed definition of CAFO in § 92.1 is vague and ambiguous. It is unfair to both citizens, and the potentially regulated agriculture community, since the regulation fails to give adequate notice to both groups of who is covered by the regulation. This uncertainty will only lead to litigation and the need for the paperwork, expenses, and wasted time of regulatory revisions in the future to correct the problematic language. Moreover, the regulation itself could be held by a court to be violative of due process since it is void for vagueness.

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The proposed rule's calculation of Animal Equivalent Units to define CAFOs is appropriate for Pennsylvania's mixed operations. Many operations may not reach any of the species-specific thresholds to be considered a CAFO, but would have more than 300 AEUs and need to be included.

4. The Clean Streams Law must be enforced effectively. § 91.36 (c) should be rewritten to state: 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 SHALL 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 SHALL require the agricultural operation to develop and implement a nutrient management plan under Chapter 83, Subchapter D, for abatement or prevention of the pollution.

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Thank you very much, and I look forward to a strengthened regulation and improved water quality.

Sincerely,

Mr. Eric Boyce  
PO Box 274  
Hatboro, PA 19040-0274

Original: 2412

**Hughes, Marjorie**

(52)

**From:** Louise Hillman [yelo53@epix.net]  
**Sent:** Monday, October 11, 2004 2:06 PM  
**To:** RegComments@state.pa.us  
**Subject:** Water Quality at Risk: comments on proposed CAFO regulation

October 11, 2004

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Sincerely,

Mrs. Louise Hillman  
PO Box 53  
Mansfield, PA 16933-0053

(53)

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**Sent:** Wednesday, October 13, 2004 2:33 PM  
**To:** RegComments@state.pa.us  
**Subject:** Water Quality at Risk: comments on proposed CAFO regulation

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Ms. Ishnee Dupont  
337 N Broad St  
Kennett Square, PA 19348-2905

**Hughes, Marjorie**

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**Sent:** Wednesday, October 13, 2004 2:01 PM  
**To:** RegComments@state.pa.us  
**Subject:** Water Quality at Risk: comments on proposed CAFO regulation

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Sincerely,

Mrs. Barbara Kautz  
500 E Marylyn Ave Apt G110  
State College, PA 16801-6271

55

**Hughes, Marjorie**

---

**From:** Trey Johnston [tj@cc-ri.com]  
**Sent:** Wednesday, October 13, 2004 1:34 PM  
**To:** RegComments@state.pa.us  
**Subject:** Water Quality at Risk: comments on proposed CAFO regulation

October 13, 2004

Pennsylvania Department of Environmental Protection  
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Mr. Trey Johnston  
137 S Penn St  
York, PA 17404-3857

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**Hughes, Marjorie**

**From:** Mark Goncalves [mark.goncalves@siriuscom.com]  
**Sent:** Wednesday, October 13, 2004 10:47 AM  
**To:** RegComments@state.pa.us  
**Subject:** Water Quality at Risk: comments on proposed CAFO regulation

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CAFO--Concentrated animal feeding operation--A CAO with greater than 300 AEUs, any agricultural operation with greater than 1,000 AEUs, any agricultural operation defined as a large CAFO under 40 CFR § 122.23(b)(4) or a medium CAFO under 40 CFR § 122.23(b)(6) (relating to concentrated animal feeding operations (applicable to state NPDES programs, see 123.25)), 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.

The proposed rule's calculation of Animal Equivalent Units to define CAFOs is appropriate for Pennsylvania's mixed operations. Many operations may not reach any of the species-specific thresholds to be considered a CAFO, but would have more than 300 AEUs and need to be included.

4. The Clean Streams Law must be enforced effectively.

§ 91.36 (c) should be rewritten to state: 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 SHALL 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 SHALL require the agricultural operation to develop and implement a nutrient management plan under Chapter 83, Subchapter D, for abatement or prevention of the pollution.

5. The provisions relating to buffers and setbacks are vague.

The requirement for a 100-foot year round setback (or 35-foot vegetative buffer) from streams and other water bodies for land application of manure is a giant step in the right direction. However, a 50-foot buffer would capture much more pollution before it enters our streams and downstream waters. The language requiring "appropriate vegetated buffers and setbacks," is vague. The Pennsylvania Technical Guide standards for Riparian Forest Buffers (391) and Riparian Herbaceous Cover (390) would provide helpful guidance on how these buffers may be designed to capture pollution and protect water quality.

Thank you very much, and I look forward to a strengthened regulation and improved water quality.

Sincerely,

Mr. Mark Goncalves  
1272 Fawnwood Dr  
Lancaster, PA 17601-1774

(57)

**Hughes, Marjorie**

**From:** Kate Esaia [kesaia@comcast.net]  
**Sent:** Tuesday, October 12, 2004 2:25 PM  
**To:** RegComments@state.pa.us  
**Subject:** Water Quality at Risk: comments on proposed CAFO regulation

October 12, 2004

Pennsylvania Department of Environmental Protection  
PA

Dear ,

Subject: Comments on proposed CAFO regulation

The proposed Concentrated Animal Feeding Operation (CAFO) regulation is seriously inadequate at minimizing nutrient pollution and protecting water quality. Pennsylvania already has an estimated 3,903 miles of streams impaired by agricultural impacts, and this regulation holds little potential for correcting this.

1. The proposed regulations fail to require a NPDES permit for medium CAFOs, as required by federal regulation.

The proposed definition of CAFO in § 92.1 is legally problematic because it fails to include certain medium CAFOs, that are required by the federal regulations at 40 CFR § 122.23(a), (b)(2) and (b)(6) to obtain permits. Inexplicably, while the proposed definition in § 92.1 correctly cross-references those facilities that are classified as large CAFOs, it omits the medium-sized facilities that also must be classified as CAFOs.

The federal rule includes specific language regarding "discharges" in the definition of small and medium CAFOs at 40 CFR § 122.23(b)(6)(ii). This provides an opportunity to regulate and enforce operations currently not covered by the Nutrient Management Act, that contribute heavy nutrient loads to the Commonwealth's waters. This definition would include operations with livestock in streams, stormwater flowing from manure management facilities, and other sources of stream degradation. A definition that includes operations with 300 to 1,000 AEU's that must have a Nutrient Management Plan may include more operations than the definition at 40 CFR 122.23(b)(6)(ii), but not those operations with the most serious pollution problems.

In the Chesapeake Bay watershed in Pennsylvania, agricultural operations are the largest source of nitrogen and phosphorous pollution. While many large confined animal operations have been subject to CAFO permit and nutrient management planning requirements, many medium and small size agricultural operations have operated under the regulatory radar. In order to comply with the federal Clean Water Act, to maintain NPDES delegation, and to take a positive step to ensure that major sources of agricultural nutrient pollution in the watershed are addressed, DEP must, as EPA has done, amend the definition of CAFO to include the appropriate medium-sized animal operations into the regulation.

2. The definition of CAFO in § 92.1 is vague and ambiguous.

In addition to not satisfying federal CWA requirements, the proposed definition of CAFO in § 92.1 is vague and ambiguous. It is unfair to both citizens, and the potentially regulated agriculture community, since the regulation fails to give adequate notice to both groups of who is covered by the regulation. This uncertainty will only lead to litigation and the need for the paperwork, expenses, and wasted time of regulatory revisions in the future to correct the problematic language. Moreover, the regulation itself could be held by a court to be violative of due process since it is void for vagueness.

3. The proposed definition of CAFO at § 92.1 irrationally excuses

unauthorized discharges from CAFO classification

The nonsensical definition includes one class of CAFOs that is: "any agricultural operation with a discharge to surface waters that is authorized by Department permit limits and conditions." It excludes from CAFO classification agricultural operations that are operating without necessary permits, or are otherwise not authorized by the Department. Thus, an agricultural operation could refuse to get a permit and by doing so avoid classification as a CAFO and the regulatory requirements that come with such a classification. In addition, the language does not specify which "Department permit limits and conditions" would result in a classification. In sum, the proposed language is completely irrational and must be amended to include agricultural operations with discharges regardless of whether they are authorized by any Department permits. In order to eliminate irrational language, comply with the federal rule, and clarify the proposal, DEP needs to recraft the definition of CAFO in § 92.1 to read as follows:

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The proposed rule's calculation of Animal Equivalent Units to define CAFOs is appropriate for Pennsylvania's mixed operations. Many operations may not reach any of the species-specific thresholds to be considered a CAFO, but would have more than 300 AEUs and need to be included.

4. The Clean Streams Law must be enforced effectively. § 91.36 (c) should be rewritten to state: 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 SHALL 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 SHALL require the agricultural operation to develop and implement a nutrient management plan under Chapter 83, Subchapter D, for abatement or prevention of the pollution.

5. The provisions relating to buffers and setbacks are vague. The requirement for a 100-foot year round setback (or 35-foot vegetative buffer) from streams and other water bodies for land application of manure is a giant step in the right direction. However, a 50-foot buffer would capture much more pollution before it enters our streams and downstream waters. The language requiring "appropriate vegetated buffers and setbacks," is vague. The Pennsylvania Technical Guide standards for Riparian Forest Buffers (391) and Riparian Herbaceous Cover (390) would provide helpful guidance on how these buffers may be designed to capture pollution and protect water quality.

Thank you very much, and I look forward to a strengthened regulation and improved water quality.

Sincerely,

Mrs. Kate Esaia  
404 Joshua Ct  
North Wales, PA 19454-1470

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Original: 2413 195

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EQB/SCC JOINT HEARING

\* \* \* \* \*

REVIEW/COMMISSION

RE: Nutrient Management Program Amendments (7-390)  
and Concentrated Animal Feeding Operations  
(CAFOs) and Other Livestock Agricultural  
Operations Program Amendments (7-391)

\* \* \* \* \*

BEFORE: Ted Kuckuck, State Conservation Commission  
Chair

Richard Fox, DEP

Michele Tate, DEP

Douglas Goodlander, SCC

HEARING: Thursday, October 14, 2004  
6:00 p.m.

LOCATION: Ramada Inn  
191 United Road  
DuBois, PA 15801

COPY

WITNESSES: Pam Barnes, Chris R. Hoffman,  
Caressa Crone, Larry Hutchins

Reporter: Jacqueline L. Hazlett

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NONE OFFERED

## P R O C E E D I N G S

CHAIR:

1  
2 -----  
3  
4 Welcome to the State Conservation  
5 Commission and the Environmental Quality Board joint  
6 public hearing on two separate but closely related  
7 proposed rulemakings, revisions to the State  
8 Conservation Commission's regulations under the  
9 Nutrient Management Act and revisions to DEP's  
10 regulations under the Clean Streams Law. The purpose  
11 of this hearing is to formally accept testimony on  
12 these two proposed rulemakings.

13 My name is Edward Kuckuck, better known  
14 as Ted. I'm a member of the Pennsylvania State  
15 Conservation Commission and I'm representing the  
16 Commission tonight. Richard Fox is here representing  
17 the Environmental Quality Board as alternate for EQB  
18 member Senator Raphael Musto. As the Commission and  
19 Environmental Quality Board representatives here this  
20 evening, we call this hearing to order at 6:00 p.m.

21 With me today from the Department of  
22 Environmental Protection is Don Fieska (phonetic) from  
23 the Division of Conservation Districts and Nutrient  
24 Management and Michele Tate, Executive Policy  
25 Specialist.

1                   Also from the State Conservation  
2 Commission are Carl Brown, the Executive Secretary to  
3 the Commission, Doug Goodlander, Bill Clouser and Ross  
4 Horner, and another state commission member is  
5 expected here a little later on.

6                   On August 7th, 2004, the Environmental  
7 Quality Board and the State Conservation Commission  
8 published these proposed regulations for public review  
9 and comment in the Pennsylvania Bulletin. In  
10 addition, notice of this hearing has been published in  
11 newspapers across the state. We are here tonight to  
12 formally accept your comments on these proposed  
13 regulation revisions.

14                   Two public information meetings were held  
15 to discuss the proposed rulemakings and to answer  
16 questions. The public information meetings were held  
17 on September 13, 2004 at the Holiday Inn, 5401 Carlisle  
18 Pike, Mechanicsburg, PA and on September 16, 2004 at  
19 the Ramada Inn, 191 United Road, DuBois, PA.

20                   The State Conservation Commission's  
21 Nutrient Management proposed rulemaking changes  
22 existing regulations affecting concentrated animal  
23 operations, also known as CAOs, based on advances in  
24 the sciences of agronomics and manure management, as  
25 well as emerging issues of concern relating to the

1 regulation of livestock agriculture. Currently, 840  
2 operations meet the definition of a concentrated  
3 animal operation regulated under the Commission's  
4 existing nutrient management regulations and an  
5 additional 1,100 farms have voluntarily complied with  
6 the requirements.

7                   At this time, I'll turn it over to Mr.  
8 Fox.

9                   MR. FOX:

10                   Thank you, Ted. As Ted said, my name is  
11 Richard Fox and I'm here representing the  
12 Environmental Quality Board and as an alternate for  
13 Senator Musto. The Environmental Quality Board  
14 regulations affect all farms that store manure or  
15 apply it to their land. They also regulate the  
16 largest farms in Pennsylvania, concentrated animal  
17 feeding operations, or CAFOs. The primary purpose of  
18 the proposed CAFO rulemaking is to allow the  
19 Commonwealth to maintain delegation of the Federal  
20 National Pollutant Discharge Elimination System, or  
21 NPDES, CAFO program. These regulations are  
22 administered by the Department of Environmental  
23 Protection under the Clean Streams Law.

24                   This is the second of two public hearings  
25 for the purpose of accepting comments on the proposed

1 rulemakings. In order to give everyone an equal  
2 opportunity to comment on these two proposals, the  
3 following ground rules are established.

4           Number one, the witnesses who have  
5 preregistered to testify at this hearing will be  
6 called first. After hearing from these witnesses,  
7 other interested parties present will be provided an  
8 opportunity to testify as time allows.

9           Oral testimony is limited to ten minutes  
10 for each witness.

11           Organizations are requested to designate  
12 one witness to present testimony on its behalf.

13           Each witness is asked to submit three  
14 written copies of the testimony to aid in transcribing  
15 the hearing. And if you could hand me your copies  
16 prior to presenting your testimony, I'd appreciate it.

17           Number five, please state your name,  
18 address and affiliation for the record prior to  
19 presenting your testimony and specify if your comments  
20 relate to Nutrient Management, CAFO/All Farms or both  
21 proposed revisions.

22           Your help in spelling names and terms  
23 that may not be generally familiar to everybody is  
24 appreciated so that the transcript can be as accurate  
25 as possible.

1                   And the Environmental Quality Board  
2 members or State Conservation Commission members and  
3 department staff may find it necessary to question  
4 witnesses to help them further understand the  
5 testimony provided. However, the witnesses may not  
6 question the Environmental Quality Board or the State  
7 Conservation Commission as the purpose of the hearing  
8 is to receive comments on the proposed revisions.

9                   Interested persons may submit written  
10 comments in addition to or in place of oral testimony  
11 presented here. The Environmental Quality Board and  
12 the State Conservation Commission must receive all  
13 comments by November 5, 2004. The comments should be  
14 addressed to the Environmental Quality Board, Post  
15 Office Box 8477, Harrisburg, PA, 17105-8477 or to the  
16 State Conservation Commission at Agricultural  
17 Building, Room 405, 2301 North Cameron Street,  
18 Harrisburg, PA, 17110.

19                   Comments submitted by fax will not be  
20 accepted. Interested persons may also submit a  
21 summary of their comments to the Environmental Quality  
22 Board or the State Conservation Commission. The  
23 summary may not exceed one page in length and must  
24 also be received by November 5th, 2004. The one-page  
25 summary will be provided to each member of the

1 Environmental Quality Board or the State Conservation  
2 Commission in the agenda packet and will be  
3 distributed prior to the meeting at which the final  
4 regulations would be considered.

5           Comments may also be submitted by email  
6 to the Environmental Quality Board at RegComments,  
7 that's one word, @state.pa.us or to the State  
8 Conservation Commission at ag-scc@state.pa.us. and  
9 must also be received by November 5th, 2004. A  
10 subject heading of the proposed rulemaking, Nutrient  
11 Management, CAFO/All Farms or both and a return name  
12 and address must be included in each transmission. If  
13 the sender does not receive an acknowledgement of  
14 electronic comments within two working days, the  
15 comments should be retransmitted to ensure receipt.

16           All comments received at tonight's  
17 hearing, as well as those received in writing or  
18 electronically by November 5, 2004 will be considered  
19 by the Department and the Commission in the  
20 finalization of these regulations.

21           Anyone who's interested in a transcript  
22 of this hearing may contact the reporter here this  
23 evening to arrange to purchase a copy of the  
24 transcript. Ted, I turn it back to you.

25           CHAIR:

1                   Thank you, sir. I'll now call the first  
2 witness, P.J. Barnes, from Lawrenceville,  
3 Pennsylvania.

4                   MS. BARNES:

5                   P.J. Barnes, Rural Route One, Box 177,  
6 Lawrenceville, Pennsylvania, 16929. I am speaking on  
7 behalf of the small/medium farms. My husband and I  
8 are dairy farm owners. We milk 90 head of animals at  
9 present. As of next week, we will be milking 160. We  
10 just expanded our operation. With this expansion of  
11 our operation, that moves us one step closer to  
12 becoming a compliant animal feeding operation. With  
13 these new proposed regulations, that puts a pinch, not  
14 only in our pocketbooks but on our operation.

15                   I am generally supportive of the proposed  
16 regulations before us contained in the Animal Feeding  
17 Operation and Nutrient Management regulations package.  
18 Many of these regulations are necessary to bring  
19 Pennsylvania into compliance with recent changes and  
20 federal regulatory requirements for animal feeding  
21 operations. Other regulations attempt to keep  
22 Pennsylvania in the forefront in maintaining  
23 environmental quality on animal farms. However, I do  
24 have serious concerns about the two proposed  
25 regulations that have been included in the regulatory

1 package. While the stated purpose of both the  
2 proposed CAFO regulations and the Nutrient Management  
3 regulations is to update the regulations on larger  
4 farms, two of the proposed regulations have the impact  
5 to impose requirements on virtually any size farm in  
6 the State of Pennsylvania.

7           The increase in the number of  
8 Pennsylvania farms that was subject to regulation as a  
9 result of the addition of Section 91.36(a)(7) and  
10 Section 91.36 (b)(2) is the proposed regulatory  
11 package is substantial. While it was originally  
12 estimated that approximately 1,500 farms would be  
13 affected with these regulations that has changed  
14 dramatically to indicate that an additional 10,000  
15 farms would be subject to regulation by DEP as a  
16 result of these inclusions, of the two regulatory  
17 provisions.

18           I object to the vague wording and scope  
19 of proposed Section 91.36(a)(7) which states that the  
20 Department may require a water quality management  
21 permit for any manure storage facility. As an  
22 expanding dairy, we are looking to store more manure.  
23 So this hits close to home for us with the  
24 understanding that we are required to go through more  
25 permitting process just to keep in operation. The

1 Department may require this water quality management  
2 permit for any manure storage facility based on  
3 relevant criteria such as proximity to special  
4 protection waters or impaired waters under Chapter 93  
5 for the risk of pollution. The State proposed  
6 regulation is to regulate larger animal operations.  
7 But this provision goes well beyond the stated purpose  
8 and it also gives the Department the authority to  
9 require any farmer having a manure storage facility to  
10 obtain a water management permit. That does not  
11 specify whether it's a large or small farm, it's any  
12 farm. Moreover, the provisions failed to define what  
13 constitutes relevant criteria.

14           Proposed Section 91.36 (b)(2) would give  
15 the Department authority to place any setback  
16 requirements on manure application from streams and  
17 impose any requirements for vegetative buffer areas  
18 near streams that DEP would at any time in the future  
19 deem appropriate.

20           On our farm if these setbacks are  
21 imposed, we lose 16 percent of farmable ground to  
22 these regulations. When you consider smaller farms,  
23 that's a pretty substantial amount.

24           I object to the Department of  
25 Environmental Protection being given carte blanche to

1 impose setback buffer requirements that have yet to be  
2 specified. Furthermore, I object to the fact that the  
3 proposed regulations contains no language that would  
4 limit the Department's authority to impose setback  
5 buffer requirements on small and medium-sized farms  
6 which we fall into.

7           Finally, I do not think that statewide  
8 mandatory setbacks and buffer requirements are deemed  
9 appropriate. Under the proposed regulations a farmer  
10 cannot land apply manure, litter or processed  
11 wastewater within 100 feet of surface waters or  
12 potential conduits to surface waters. The requirement  
13 could prove unduly burdensome for farmers such as  
14 myself running a small to medium-sized farm operation.

15           Under a statewide mandatory setback  
16 requirement, for every mile of stream running through  
17 my property I will be unable to land apply manure to  
18 approximately 24.25 acres of ground. When you  
19 consider that small farms may be anywhere from 20  
20 acres up to 40 acres, that's over half of your land  
21 that you will lose to application. In order to  
22 fertilize these acres, I will be forced to purchase  
23 commercial fertilizer thereby incurring additional  
24 costs.

25           Moreover, I will have to find other

1 ground on which to apply my own manure. In many areas  
2 of the state there is very little land available for  
3 manure application. Finding additional ground is not  
4 only problematic but the acreage we see is declining  
5 on a yearly basis.

6           Subjecting small and medium-sized farms  
7 to mandatory setback and buffer requirements could  
8 significantly limit our productive value and increase  
9 production costs, which could drive our small farms  
10 out of business. Many Pennsylvania small or  
11 medium-sized farmers will tell you that we cannot  
12 simply afford to incur these additional costs.

13           Pennsylvania farmers have had a history  
14 of voluntary compliance. I currently hold my Nutrient  
15 Management card so that I can write a Nutrient  
16 Management plan for our farm so that we do fall in  
17 compliance with these regulatory issues.

18           I don't want somebody telling me that I  
19 must be in compliance when I'm volunteering my time  
20 and making it an issue to become familiar with these  
21 setbacks and abide by them on our own. The history is  
22 evidenced by the roughly 900 small or medium-sized  
23 farms who stepped up to the plate to comply with these  
24 same standards. The combined animal nutrient  
25 management standards are not bound.

1 I ask that the Environmental Quality  
2 Board consider the measures which hundreds of  
3 Pennsylvania farmers have voluntarily adopted. As  
4 reasonable stewards of the land before the Board  
5 mandates that all farmers statewide must comply with  
6 strict regulations and could prove unduly burdensome  
7 for our small farms.

8 As time goes on it will become even more  
9 critical for small and medium-sized farmers to retain  
10 flexibility in managing our farms. It puts us at a  
11 definite economic disadvantage when competing with  
12 farmers from other states who are not so strictly  
13 regulated.

14 For these reasons, I'd ask that neither  
15 of the proposed regulations be included in the adopted  
16 regulatory package. As an alternative, I propose that  
17 small and medium-sized farms be offered an initiative  
18 to come in voluntary compliance with environmental  
19 standards. This option would provide a more realistic  
20 and less burdensome opportunity for small and medium-  
21 sized farmers to comply with the standards set forth  
22 in these proposed regulations.

23 CHAIR:

24 Thank you very much.

25 MS. BARNES:

1 Thank you.

2 MR. FOX:

3 We'll ask our second individual to come  
4 forward, that would be Chris Hoffman, testifying on  
5 behalf of the Pennsylvania Farm Bureau.

6 As a safety note to those of you who are  
7 testifying tonight, the cord to the lectern is easy to  
8 trip over up here. So be aware of that before you get  
9 tangled up. Chris?

10 MR. HOFFMAN:

11 Chris Hoffman, Pennsylvania Farm Bureau.  
12 Address is P.O. Box 8736, Camp Hill, PA, 17001.

13 Good evening, my name is Chris Hoffman.  
14 I'm a third generation farmer from McAlisterville,  
15 Pennsylvania. My family and I approximately farm 100  
16 acres, which most of it is planted in corn and  
17 soybeans. We also operate a 1,400 sow farrow to  
18 feeder swine facility. I currently serve as vice  
19 president of the Juniata County Farm Bureau. I  
20 testify this evening on behalf of Pennsylvania Farm  
21 Bureau and the 34,600 farm and rural families of the  
22 Commonwealth that comprise our organization's  
23 membership. Thank you for this opportunity to comment  
24 on the proposed CAFO and Nutrient Management  
25 regulations which are the subject of the evening's

1 hearing.

2           When you look at the Nutrient Management  
3 program in the text of its history, you will see that  
4 regulation of large farm operations in the  
5 Commonwealth is still a pretty new effort. While the  
6 Nutrient Management Act was passed in 1993, it was  
7 October of 2000 by the time the regulations were fully  
8 in place. As with all new programs, it takes time for  
9 people to understand their responsibilities and make  
10 adjustments in their day-to-day operations to meet  
11 those responsibilities. Individuals involved in  
12 enforcements will tell you that the majority of the  
13 early Nutrient Management violations were of a  
14 technical nature and arose because farmers didn't  
15 truly understand their responsibilities in the record  
16 keeping and performing other administrative duties.  
17 Since farmers have begun to understand these  
18 responsibilities, their compliance has greatly  
19 improved.

20           I believe it is much more appropriate to  
21 measure the regulatory effectiveness of this program,  
22 not by what the agencies found --- what they made on  
23 their first visits, but rather what the agencies are  
24 finding today in subsequent visits. Now that farmers  
25 have been made aware of their responsibilities and

1 have had an opportunity to bring our operations into  
2 regulatory compliance.

3           Let's keep in mind that the progressive  
4 effort Pennsylvania has made in the regulations of  
5 larger farm operations, the Nutrient Management Act  
6 which the Farm Bureau supported and cooperatively  
7 worked with environmental organizations to enact, was  
8 considering a pioneering step in the regulation of  
9 environmental quality on animal farms. Many farmers  
10 had serious reservations about this legislation. But  
11 the Act and its regulations have established standards  
12 that effectively minimize the risk of pollution  
13 without being so rigid as to regulate farmers out of  
14 business.

15           The proposed Nutrient Management and CAFO  
16 regulations will once again keep Pennsylvania at the  
17 forefront in maintaining environmental quality on  
18 animal farms. As with the original regulations, the  
19 newly proposed regulations will bring --- were  
20 developed to bring Pennsylvania in compliance with  
21 federal regulations as well as reflecting developments  
22 in agriculture and technology.

23           Pennsylvania Farm Bureau and other  
24 stakeholders participated in discussions leading up to  
25 the development of the proposed Nutrient Management

1 Act and the CAFO regulations. For the most part, we  
2 are supportive of the changes being proposed.  
3 However, we caution that the spirit of flexibility  
4 that led to these developments of these proposed  
5 regulations must not be lost.

6 Farm Bureau has serious concerns over two  
7 proposed regulations included in the regulation  
8 package. Proposed 9136(a)(7) would give the  
9 Department of Environmental Protection, DEP, virtually  
10 unlimited authority to require any farmer who has  
11 manure storage facilities to obtain a water management  
12 permit based on a vague set of what the Department may  
13 determine as relevant criteria.

14 Proposed 9136(b)(2) would give DEP  
15 authority to place any setback requirements on manure  
16 application from streams and impose any requirements  
17 for vegetative buffer areas near streams that DEP  
18 would deem appropriate without any criteria to guide  
19 or limit the scope of the requirements for setbacks  
20 and buffers that DEP would deem appropriate for  
21 farmers.

22 We are concerned that no measurable  
23 standard is established in either proposed regulations  
24 to guide, direct or limit the exercise of DEP's  
25 authority to impose permitting or setback requirements

1 on farms other than the CAFO or nutrient animal  
2 operations.

3           Moreover, we continue to object to he  
4 manner in which the two proposed regulations found  
5 their way into the regulatory package. Neither was  
6 included in the package presented to DEP's  
7 Agricultural Advisory Board and the regulations did  
8 not appear anywhere publicly until just before the  
9 Environmental Quality Board met to approve the  
10 regulation package.

11           These two regulations change the focus of  
12 nutrient regulation from large farms to virtually any  
13 small or medium-sized farm that uses or stores manure.  
14 If accepted, these regulations would have an effect of  
15 burdening families who operate small or medium-sized  
16 farms with additional costs by limiting productive  
17 land use and imposing additional compliance costs.

18           Many farmers who run small to medium-  
19 sized operations will tell you now that they can't  
20 afford any more regulation. As time goes on, it will  
21 become even more critical for such farmers to remain  
22 flexible in managing their farms if those farms are to  
23 remain economically viable. In light of this, we do  
24 not believe that the Department has done enough  
25 meaningful analysis regarding the environmental needs

1 of the proposed regulations' expansion of authority  
2 and the economic impact such as exercise of authority  
3 that it will have on these types of farms that will be  
4 subject to additional regulation. Therefore, Farm  
5 Bureau recommends that neither of the previously  
6 discussed sections be included in the regulations  
7 package finally adopted.

8           As I indicated previously, Farm Bureau is  
9 generally supportive of the proposed regulations  
10 contained in the CAFO and nutrient management  
11 regulations package. Many are necessary to bring  
12 Pennsylvania into compliance with recent changes in  
13 federal regulatory requirements. Others provide  
14 consistency with regards to farms regulated under  
15 concentrated animal operations under state law and  
16 farms regulated as CAFOs under federal law.

17           Several proposed changes to the CAFO  
18 regulations are particularly positive and worth  
19 noting. The newly proposed regulation incorporates a  
20 change in the federal regulations designed to protect  
21 surface waters. Under the proposed regulations, a  
22 CAFO must either refrain from applying land within 100  
23 feet of surface waters or establish a 35-foot buffer  
24 --- permanent vegetation buffer. This minimum  
25 setback/buffer requirement should reduce the risk of

1 nutrients entering streams while allowing CAFO farmers  
2 reasonable flexibility to manage their operation and  
3 applying manure.

4           The proposed regulations will also  
5 establish more stringent regulatory standards for the  
6 exportation and land application of manure produced on  
7 large farms. These standards will provide the  
8 necessary documents to demonstrate that farmers are  
9 indeed exporting manure responsibly. In addition, the  
10 proposed regulations will impose on farms receiving  
11 manure from larger animal farms the same setbacks and  
12 buffer requirements that existed for farms where the  
13 manure is produced. The proposed regulation will more  
14 define the responsibilities of commercial brokers and  
15 haulers who handle manure. Moreover, they will insure  
16 that such brokers and haulers have the necessary  
17 documents to show that manure is being applied  
18 responsibly.

19           I'd like to offer comment on one other  
20 change I believe is of major importance in the future  
21 of agriculture in the Commonwealth. The proposed  
22 regulations would require larger farms to consider and  
23 address phosphorus in land management practices and  
24 manure application practices that occur on lands  
25 receiving manure. Here, a phosphorus index would be

1 used to determine whether an individual field of a  
2 high level of phosphorus --- if a high level of  
3 phosphorus is found, mandatory conservation practices  
4 will be implemented and restrictions will be placed on  
5 the quantity of manure that can be applied to the  
6 field.

7                   While the proposed regulation does not  
8 sound unreasonable in concept, we are concerned about  
9 the practical consequences that purely phosphorus-  
10 based regulations would have on farms. Those with  
11 professional expertise in the area of phosphorus  
12 indexing have demonstrated that a certain area of the  
13 state, a significant portion of land currently being  
14 used for manure application will be eliminated from  
15 future use if the phosphorus index is immediately  
16 imposed.

17                   MR. FOX:

18                   You're very close to being out of time.

19                   MR. HOFFMAN:

20                   The end result will likely be that some  
21 farmers will have nowhere to go with their manure, or  
22 that some farmers will not reasonably be able to bear  
23 the costs associated with moving the manure to areas  
24 that may be applied. We have heard that several  
25 farmers who, after consultation with their nutrient

1 management specialists, have indicated that a blanket  
2 application for the phosphorus standard would put them  
3 out of business.

4           Section 83.404 would also propose a  
5 standard --- establish a standard of staking and land  
6 applying of dry manure. As proposed, the standard  
7 would limit the time for continued storage of stacked  
8 manure on larger farms until the beginning of the  
9 following growing season. We believe this standard  
10 strikes a reasonable balance between the need to  
11 minimize potential environmental risks with the need  
12 of flexibility in applying manure where conditions are  
13 most favorable.

14           Once again, I would like to thank the  
15 Department of Environmental Protection and the State  
16 Conservation Commission for the opportunity to provide  
17 comments on the proposed changes of the CAFO and the  
18 Nutrient Management regulations. Thank you.

19           MR. FOX:

20           I would like to call our third witness,  
21 Tom Ed Green.

22           MR. GREEN:

23           I don't need to testify at this time.

24           MR. FOX:

25           Okay. Thank you. That brings us then to

1 our witness number four, Caressa Crone.

2 MS. CRONE:

3 Caressa Crone, C-A-R-E-S-S-A, Crone,  
4 C-R-O-N-E, Pine Hurst Acres, 3036 Sunbury Road,  
5 Danville, Pennsylvania.

6 My name is Caressa Crone and I offer  
7 comments on behalf of our family farm, Pine Hurst  
8 Acres, which is located in Northumberland County,  
9 Danville, Pennsylvania. We qualify as a CAFO and have  
10 a voluntary nutrient management plan on file. As I've  
11 stated previously, we are a family farm that takes  
12 pride in producing a safe and affordable food supply  
13 for the citizens of Pennsylvania. We farm 2,800 acres  
14 of corn, soybeans, and wheat in two counties and also  
15 care for 4,900 head of hogs on a daily basis. We are  
16 environmentalists every day. Our ability to care for  
17 the land and waterways will ensure a future for our  
18 farm. The regulations that are set will affect not  
19 only our future in Pennsylvania, but also the future  
20 of my children.

21 I will first address the Nutrient  
22 Management Act Regulations. We do not necessarily  
23 disagree with the State Conservation Commission's  
24 decision to more directly address phosphorus loss in  
25 nutrient management plans, nor the choice of the

1 phosphorus index as an effective and flexible tool in  
2 which to address this phosphorus loss, but we are very  
3 concerned about the financial impact this initiative  
4 will have on our industry. Therefore, we are  
5 recommending that the Commissions allow for either  
6 phosphorus indexing or phosphorus balancing to be used  
7 in nutrient management plans called for under the Act  
8 and the CAFO program. This will provide additional  
9 flexibility to the agricultural community in its  
10 efforts to address phosphorus loss. We are defining  
11 phosphorus balancing as limiting the amount of  
12 phosphorus that will be applied for a given year, to  
13 the amount that will be removed by the crop in that  
14 given year. Also, for situations where the one-year  
15 allowable phosphorus application rate is so low,  
16 and/or the nutrient content of the manure is so high,  
17 that it cannot be practically applied with manure,  
18 such as maybe needing less than two tons of poultry  
19 manure per acre. The Commission should allow a farmer  
20 to apply a one time application that will meet the  
21 crop needs for up to the next three years.

22                   If the Commission is not agreeable to  
23 allowing phosphorus balancing for all CAOs and CAFOs,  
24 we would recommend that the addition of phosphorus  
25 balancing be allowed for existing CAOs and CAFOs only,

1 and not for new operations.

2           Also, we are very concerned about how the  
3 Commission defines the term, stream or other water  
4 body, for its use in the current version of the  
5 phosphorus index. The identification of streams or  
6 other water bodies as defined for the index on a farm  
7 serves a critical role in the calculation of the  
8 phosphorus index for a given field. As a way to  
9 define exactly what a water body consists of, we feel  
10 that it is important to count only named streams as  
11 water bodies. If this is not accepted, it is almost  
12 impossible to determine where application of the  
13 manure will be allowed. This is especially difficult  
14 in this state where we have so many miles of  
15 waterways.

16           As a footnote, we feel that the  
17 phosphorus index will space out operations in  
18 Pennsylvania due to the increased land base needed to  
19 address the index and the inability to economically  
20 transport manure long distances. This will address a  
21 number of the watershed carrying capacity concerns  
22 that the environmental groups have relating to the  
23 placement of agricultural operations within the state.

24           Also, we ask the Commission to possibly  
25 require manure exporters to purchase manure

1 application easements from those farms that will be  
2 importing their manure. This will ensure that the  
3 importing operator will not be able to back out of the  
4 arrangement to receive imported manure.

5           The Commission should consider housing a  
6 manure distribution specialist at the conservation  
7 district whose responsibility is to find importing  
8 sites or distribution centers for excess manure  
9 produced on existing CAOs or CAFOs.

10           CAFO regulations. The 100 foot setback  
11 or 35 foot buffer for all CAFO manure is extreme and  
12 difficult for existing farms to address. Farmers have  
13 purchased farm land in order to apply manure to these  
14 lands, and to now disallow these applications for  
15 existing operations without due compensation, could  
16 put a significant number of farmers into further  
17 financial difficulties. As on overall comment on this  
18 requirement, I do not see how CAFO manure is any  
19 different from the manure produced on non-CAFO  
20 operations. Why are these requirements valid for a  
21 CAFO but not other farms? An application of CAFO  
22 manure on near-stream areas is no more environmentally  
23 sensitive than non-CAFO manure in the same areas. I  
24 feel that targeting this requirement to CAFOs is ill  
25 conceived.

1 I am also concerned about what areas will  
2 be identified as requiring this setback. Would this  
3 include roadside ditches, waterways, diversions,  
4 intermittent streams, wetland, natural swales, et  
5 cetera? These areas can be very hard to define, open  
6 to interpretation, and as this setback area is defined  
7 liberally, there could be a very significant amount of  
8 land falling within this requirement and therefore, a  
9 significant impact on the industry's access to land  
10 for manure application for small farms versus large  
11 farms versus CAFOs. I would recommend that this  
12 requirement be eliminated because of the extreme  
13 financial hardship that it is expected to impose on  
14 existing operations. We can see how the 100 foot/35  
15 foot requirement may be able to be accommodated by new  
16 operations, but we do not see how an existing  
17 operation, formatted to maintain their operation with  
18 their given acreage, could handle this requirement  
19 without possible significant financial hardship.  
20 Therefore, we would recommend as one alternative that  
21 the setback requirement be required of new operations,  
22 but not in existing ones. Also, as another  
23 alternative we would recommend that this requirement  
24 be eliminated for near-stream manure applications that  
25 are incorporated within 24 hours of application. As a

1 final alternative, if the DEP insists on imposing this  
2 requirement in Pennsylvania, we would suggest that it  
3 be imposed on all farms, not just CAFOs, since there  
4 is no scientific reason why CAFO manure is more  
5 damaging in near-stream areas than non-CAFO manure.

6           Who is proposed to be designated as a  
7 CAFO in Pennsylvania is problematic. Pennsylvania  
8 established an industry-accepted definition of a CAFO  
9 several years ago, given the program requirement at  
10 that time. Given the proposed revised requirements of  
11 CAFOs, the state needs to reevaluate who is relevant  
12 to be considered a CAFO. Based on the proposal, DEP  
13 is proposing to continue to address the types of  
14 operations defined as CAFO in Pennsylvania in the past  
15 as well as include the operations EPA is newly  
16 requiring to be as a CAFO. We would suggest that if  
17 the EPA is firmly defining a CAFO under its new  
18 regulations, and EPA is firmly requiring DEP to accept  
19 this definition of a CAFO for Pennsylvania, we would  
20 say the DEP should use the EPA CAFO definition and  
21 should not add additional farms to that definition, as  
22 they have done in the past. We believe that revising  
23 the CAFO definition as proposed will impose an  
24 unnecessary increase, financial hardship on our  
25 state's already financially burdened agricultural

1 industry. Seeing that the EPA is not requiring these  
2 other operations, those greater than 1,000 animal  
3 units due to combined animal types, and 301 to 1,000  
4 animal units for CAOs to be defined as CAFO requiring  
5 an NPDES permit. If DEP could retain a current,  
6 reasonable program standards that the industry has  
7 agreed to follow, then the industry could accept the  
8 expanded CAFO definition. But if this new  
9 setback/buffer requirement will be imposed on CAFOs,  
10 as well as phosphorus planning and the new exported  
11 manure requirements, we would recommend that DEP limit  
12 its CAFO definition to only what EPA requires.

13 In closing, I want to express that the  
14 farm industry does not have the time to attend  
15 meetings and hearings to provide comments due to the  
16 high workload nature of our jobs, especially at this  
17 time of the year. The lack of attendance at these  
18 meetings should in no way be interpreted as acceptance  
19 of these new criteria, but should be understood as  
20 relating to the lack of time farmers have to attend  
21 meetings.

22 I encourage the Commission to remember  
23 that agribusiness is a large part of Pennsylvania  
24 economy. If farmers are regulated out of business,  
25 then the agribusinesses and the money they generate

1 will follow, perhaps to another state more receptive  
2 to production agriculture.

3 Thank you for the opportunity to provide  
4 testimony.

5 CHAIR:

6 Thank you.

7 MR. FOX:

8 At this time I'll call witness number  
9 five, Robert Culp.

10 MR. CULP:

11 She's covered most of everything I wanted  
12 to say, but if I can make some comments later, I  
13 would.

14 MR. FOX:

15 We may throw that open to comments a  
16 little later depending on how we do on time.

17 CHAIR:

18 Thank you.

19 MF. FOX:

20 Thank you. Witness number six, James  
21 Vogg (phonetic).

22 MR. VOGG:

23 I got nothing to say.

24 CHAIR:

25 Okay. Thank you.

1                   MR. FOX:

2                   That will take us to witness number  
3 seven, Bill Schall (phonetic).

4                   MR. SHCALL:

5                   I would concur with the lady that spoke  
6 before.

7                   MR. FOX:

8                   Okay. Thank you. Witness number eight,  
9 Mark Muir (phonetic).

10                  MR. MUIR:

11                  No comments at this time.

12                  MR. FOX:

13                  All right. Thank you. Does anyone else  
14 in attendance wish to comment on this proposal?

15                  MR. HUTCHINS:

16                  Yes.

17                  MR. FOX:

18                  Yes, sir?

19                  MR. HUTCHINS:

20                  My name is Larry Hutchins (phonetic). I  
21 live in Knoxville, Pennsylvania, R.R. 2 Box 167. My  
22 comments are of general nature, because I am very  
23 concerned about the degree of regulations that we are  
24 under.

25                  Forbes Magazine just recently did a study

1 of the business friendliness of states. Pennsylvania  
2 was 40th on that list and the two big criteria were  
3 taxes and regulations.

4           Now, if our governor really wants to get  
5 economy moving, then he has got to stop imposing  
6 additional regulation on the leading industry of the  
7 state.

8           Secondly, I think that the regulations as  
9 we've heard from a number of speakers here, are in  
10 effect takings. People are losing the use of their  
11 land and there is no compensation in these regulations  
12 for the lost income to the land. And if the people of  
13 the Commonwealth of Pennsylvania want all of this  
14 nice, fresh air and pristine environment, then I think  
15 they better start being prepared to pay for it. And I  
16 think it's irresponsible of government agencies to  
17 keep imposing regulation on people in the farming ---  
18 well generally, but particularly, we have a problem  
19 with the regulated industry of the state. And I would  
20 like the Environmental Quality Board to consider the  
21 economic implication of what you're doing, because  
22 it's almost as if you were inlaid with the wild lands  
23 project to drive everybody out of the central part of  
24 Pennsylvania to the people who assume to come up here.  
25 Thank you.

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MR. FOX:

Thank you, sir. Is there anyone else who wishes to present testimony at this time? If no other witness is present, on behalf of the State Conservation Commission and the Environmental Quality Board, I thank you for your interest. I hereby adjourn this meeting at 6:42 p.m.

\* \* \* \* \*

HEARING CONCLUDED AT 6:42 P.M.

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C E R T I F I C A T E

I hereby certify that the  
foregoing proceeding 10/14/04 EQB/SCC  
was reported by me, that I have read this  
transcript on 10/29/04, and I attest  
that this transcript is a true and  
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Jackie Haylett  
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