

Original: 2412

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INDEPENDENT REGULATORY
REVIEW COMMISSION

10-14-04
EQB/SCC
Hearing
Dubois

(88)

Comments provided by:

Caressa Crone

Pine Hurst Acres

3036 Sunbury Road

Danville, Pennsylvania.

My name is Caressa Crone and I offer comments on behalf of our family farm, Pine Hurst Acres which is located in Northumberland County, Danville, Pennsylvania. As I stated previously, we are a family farm that takes pride in producing a safe and affordable food supply for the citizens of Pennsylvania. We farm 2,800 acres of corn, soybeans, and wheat in two counties and also care for 4,900 head of hogs on a daily basis. We are environmentalists every day, due to the fact that our ability to care for the land and waterways will ensure a future for our farm. The regulations that are set will affect not only our future in Pennsylvania, but also the future of my children.

I will first address the Nutrient Management Act Regulations:

- We do not necessarily disagree with the State Conservation Commission's decision to more directly address phosphorus loss in nutrient management plans, nor the choice of the Phosphorus Index as an effective and flexible tool in which to address this phosphorus loss, but we are very concerned about the financial impact this initiative will have on our industry.

Therefore, we are recommending that the Commission allow for **EITHER phosphorus indexing OR phosphorus balancing** to be used in nutrient management plans called for under the Act and the CAFO program. This will provide additional flexibility to the agricultural community in its efforts to address phosphorus loss. We are defining "phosphorus balancing" as limiting the amount of phosphorus that will be applied for a given year, to that amount that will be removed by the crop that given year. Also, for situations where the one-year allowable phosphorus application rate is so

low (and/or the nutrient content of the manure is so high) that it cannot be practically applied with manure (such as maybe needing less than 2 tons of poultry manure per acre), the Commission should allow a farmer to apply a one time application that will meet the crop needs for up to the next 3 years.

- If the Commission is not agreeable to also allowing phosphorus balancing for ALL CAO's and CAFO's, we would recommend that the addition of phosphorus balancing be allowed for existing CAO's and CAFO's only, and not for new operations.
- Also, we are very concerned about how the Commission defines the term "stream or other water body" for its use in the current version of the Phosphorus Index. The identification of streams or other water bodies (as defined for the index) on a farm serves a critical role in the calculation of the Phosphorus Index for a given field. As a way to define exactly what a water body consists of, we feel that it is important to count only named streams as "water bodies". If this is not accepted, it is almost impossible to determine where application of manure is allowed. This is especially difficult in this state where we have so many miles of waterways.
- *As a footnote:* we feel that the Phosphorus Index will space out operations in Pennsylvania due to the increased land base needed to address the index and the inability to economically transport manure long distances. This will address a number of the watershed carrying capacity concerns that the environmental groups have relating to the placement of agricultural operations.
- Possibly require manure exporters to purchase manure application easements from those farms that will be importing their manure. This will ensure that the importing operator will not be able to back out of the arrangement to receive imported manure.
- The Commission should consider housing a manure distribution specialist at the conservation district who's responsibility is to find importing sites or

distribution centers for excess manure produced on existing CAO's or CAFO's.

CAFO regulations:

- The 100' setback or 35' buffer for all CAFO manure is extreme and difficult for existing farms to address. Farmers have purchased farm land in order to apply manure to these lands, and to now disallow these applications for existing operations, without due compensation, could put a significant number of farmers into further financial difficulties. As an overall comment on this requirement, I do not see how CAFO manure is any different from the manure produced on non-CAFO operations, why are these requirements valid for a CAFO but not other farms? An application of CAFO manure on near-stream areas is no more environmentally sensitive than non-CAFO manure in these same areas. I feel that targeting this requirement to CAFO's is ill conceived.
 - I am also concerned about what areas will be identified as requiring this setback. Would this include roadside ditches, waterways, diversions, intermittent streams, wetland, natural swales, etc.? These areas can be very hard to define (open to interpretation), and as this setback area is defined liberally, there could be a very significant amount of land falling within this requirement and therefore a significant impact on the industry's access to land for manure application. I would **recommend that this requirement be eliminated** because of the extreme financial hardship it is expected to impose on existing operations. We can see how the 100'/35' requirement may be able to be accommodated by new operations, but we do not see how an existing operation, formatted to maintain their operation with their given acreage, could handle this requirement without possible significant financial hardship. Therefore, we would recommend as one alternative that the set

back requirement be required of new operations, but not existing operations. Also, as another alternative we would recommend that this requirement be eliminated for near-stream manure applications that are incorporated within 24 hours of application. As a final alternative, if the DEP insists on imposing this requirement in PA, we would suggest that it be imposed on all farms in PA., not just CAFO's since there is no scientific reason why CAFO manure is more damaging in near-stream areas than is non-CAFO manure.

- Who is proposed to be designated as a CAFO in Pa. is problematic. Pennsylvania established an industry-accepted definition of a CAFO several years ago, given the program requirements at that time. Given the proposed revised requirements of CAFO's, the state needs to reevaluate who is relevant to be considered a CAFO. Based on the proposal, DEP is proposing to continue to address the types of operations defined as CAFO in Pa. in the past, as well as include the operations EPA is newly requiring to be a CAFO. We would suggest that if EPA is firmly defining a CAFO under its new regulations, and EPA is firmly requiring DEP to accept this definition of a CAFO for Pa., we would say the DEP should use the EPA CAFO definition and should not add additional farms to that definition, as they had done in the past. We believe that revising the CAFO definition, as proposed; will impose an unnecessary increased financial hardship on our state's already financially burdened agricultural industry, seeing that EPA is not requiring these other operations (those greater than 1,000 AEUs due to combined animal types, and 301-1,000 AEU CAO's) to be defined as a CAFO requiring an NPDES permit. If DEP could retain the current reasonable program standards that the industry has agreed to follow, then the industry could accept the expanded CAFO definition, but if this new setback/buffer requirement will be imposed on CAFO's (as well as phosphorus planning and new exported manure

requirements), we recommend that DEP limit its CAFO definition to only what EPA requires.

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

I encourage the Commission to remember that agri-business is a large part of Pennsylvania economy. If farmers are regulated out of business then the agri-businesses and the money they generate will follow, perhaps to another state more receptive to production agriculture.

Thank You for the opportunity to provide testimony.



P.J. Barnes
10-14-04
EQB/SCC
Hearing
Dubois

87

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Comments on the Proposed CAFO Regulations by Pam Barnes

REGULATORY
REVIEW COMMISSION
Introduction

- I am generally supportive of the proposed regulations. However, I have concerns over two sections.

Objections to Proposed Section 91.36(a)(7)

- I object to the vague wording and scope of proposed Section 91.36(a)(7), which requires a water quality management permit for any manure storage facility, based on "relevant criteria" that have yet to be defined.

Objections to Proposed Section 91.36(b)(2)

- I object to DEP being given carte blanche to impose setback/buffer requirements that have yet to be specified. Furthermore, I object to the fact that the proposed regulation contains no language that would limit DEP's authority to impose setback/buffer requirements on small and medium-sized farms.
- I do not think that Statewide mandatory setback and buffer requirements are appropriate. Under the proposed regulations, a farmer cannot land apply manure, litter or processed wastewater within 100 feet of surface waters or potential conduits to surface waters. This requirement could prove unduly burdensome for a farmer, such as myself, running a small to medium-sized operation. Under a Statewide mandatory setback requirement, for every mile of stream running through my property, I will be unable to land-apply manure to approximately 24.25 acres of ground. In order to fertilize these 24.25 acres, I will be forced to purchase commercial fertilizer, thereby incurring additional costs. Moreover, I will have to find other ground on which to apply my manure. Finding this additional ground becomes particularly problematic for farmers who do not own a lot of acreage.
- Subjecting small and medium-sized farms to mandatory setback and buffer requirements could significantly limit productive land use and increase production costs, which could drive some small and medium-sized farmers out of operation. Many of Pennsylvania's small and medium-sized farmers will tell you that they simply can't afford any more regulation.

Conclusion

- Pennsylvania farmers have a history of voluntary compliance with environmentally protective measures. This history is evidenced by the more than 1,000 small and medium sized farmers who voluntarily stepped up to the plate to

comply with nutrient management standards, even when they were not bound to do so.

- I ask that the Environmental Quality Board consider the measures which hundreds of Pennsylvania farmers have voluntarily adopted as responsible stewards of the land before the Board mandates that *all* farmers Statewide *must* comply with strict regulations that could prove unduly burdensome for some small and medium-sized farmers.
- As time goes on, it will become even more critical for small and medium-sized farmers to retain flexibility in managing their farms if they are to remain in operation. Pennsylvania must recognize the fact that our farmers are competing in a national marketplace. Every time a small or medium-sized Pennsylvania farm is regulated more strictly than federal law requires, it puts the farmer at an economic disadvantage when competing with farmers from other states who are not so stringently regulated.
- For these reasons, I ask that neither of these proposed regulations be included in the adopted regulatory package. As an alternative, I propose that small and medium-sized farmers be offered incentives to come voluntarily into compliance with environmental standards. This option would provide a more realistic and less burdensome opportunity for small and medium-sized farmers to comply with the standards set forth in the proposed regulations.

10-13-04 EQB/
SCC Training
Mechanics
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RECEIVED Kent Strock: Comments on the Proposed CAFO Regulations:

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REGULATORY
REVIEW COMMISSION

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- For these reasons, I ask that neither of these proposed regulations be included in the adopted regulatory package. As an alternative, I propose that small and medium-sized farmers be offered incentives to come voluntarily into compliance with environmental standards. This option would provide a more realistic and less burdensome opportunity for small and medium-sized farmers to comply with the standards set forth in the proposed regulations.
- In conclusion, I would like to share some facts from the 2002 USDA Agricultural Census. These figures speak to the strained financial state of today's family farmers in Pennsylvania and suggest the very real economic danger such farmers could face as a result of increased regulatory burdens.
 - The average farm size in Pennsylvania is 133 acres, and nearly 80% of all farms have fewer than 180 acres.
 - Family farms are still the norm in Pennsylvania: Nearly 92% of all farms are family-owned, 6% are family partnerships, and 2% are family corporations. Corporately owned farms make up less than one half of one percent (0.3%) of all farms in Pennsylvania.
 - The number of farms in Pennsylvania dropped by 2,117 between 1997 and 2002 (going from 60,222 farms to 58,105 farms).
 - Net farm income decreased by 43% between 2001 and 2002, falling from over \$1 billion to just short of \$611 million.
 - As of 2002, only 14% of all Pennsylvania farmers rely on the farm for their total income.

Original: 2412

Kim Snell-Zarcone
10-13-04 EQB/SCC
Hearing
Mechanicsburg (79)

Good evening and thank you for taking this opportunity to receive public comments. My name is Kim Snell-Zarcone and I represent Citizens for Pennsylvania's Future, a public interest organization working to create a just future where nature, communities and the economy thrive. PennFuture has been actively involved in the processes used to develop both regulatory packages. PennFuture would like to first acknowledge the time and effort taken by both the Department of Environmental Protection, specifically Cedric Karper and Bob Gibson, and the State Conservation Commission, specifically Doug Goodlander, in developing these regulations. On behalf of PennFuture I will be submitting written comments on each regulatory package. However, I would like to take this opportunity to summarize those comments.

Definition of CAFO

PennFuture supports the retention of the AEU system to determine whether an agricultural operation is a CAFO. However, Section 92.1 of the CAFO regulations fails to include small CAFOs as defined in the federal regulations at Section 122.23(b)(9) and (c). Additionally, under Section 92.1, DEP should require any livestock operation that causes a pollution incident to get a CAFO permit. With further respect to the definition of a CAFO in Section 92.1, DEP's designation analysis should be required to examine whether an agricultural operation impacts a high quality or exceptional value stream, if an agricultural operation is located in an impaired watershed, or in areas with limestone geology.

Manure Storage and Disposal

Under Section 83.294(g), the waste disposal practice of spreading manure on frozen or snow-covered ground should be prohibited. Dry manure should not be allowed to be stockpiled uncovered in fields for more than 2 weeks under Sections 83.201 and 83.294(h). Additionally, under Section 83.294(e), the potential of liquid manure to pollute streams and ground water must be evaluated regardless of spreading mechanism.

Setbacks for Manure Spreading

PennFuture supports the Department's proposal in Sections 91.36(b)(2) and 92.5a(d)(1)(i) to adopt the National Resource Conservation Service guidelines to require either a 50 foot vegetated buffer or a 100 foot setback. However, such vegetated buffers must not be allowed to be harvestable crops. The definition of setback in Sections 91.1 and 92.1 must be amended to prohibit manure spreading near sinkholes, drainage tiles, agricultural well heads and other features that convey water as required under the federal regulations related to setbacks. Additionally, to be consistent with federal regulations, Pennsylvania's nutrient management regulations must require a setback of 100 feet from sinkholes for manure spreading in Section 83.294(f)(i) regardless of whether or not the manure is incorporated into the soil. Finally, neither the SCC nor the conservation districts should be able to waive setback requirements detailed in Section 83.351(a)(2)(vii).

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DEPARTMENT OF ENVIRONMENTAL PROTECTION
STATE CONSERVATION COMMISSION

Protecting and Restoring Streams

Many DEP programs that seek to protect water quality are not integrated into the CAFO or Nutrient Management program. The Department should be required to take allowable stream pollution loading restrictions or TMDLs into account when issuing CAFO permits in impaired watersheds. Such permits should address the measures the CAFO will employ to ensure livestock facilities do not add to the pollution load. Nutrient Management Plans must delineate measures to be taken to protect water quality in high quality, exceptional value and impaired watersheds with pollution loading restrictions. Additionally, the Department should require an anti-degradation analysis for agricultural operations in high quality and exceptional value watersheds, demonstrating that the proposed CAFO will not degrade water quality.

PennFuture believes that any manure storage structure with a capacity of one million gallons or more should be required to obtain a Water Quality Management (WQM) Permit under Section 91.36(a)(3)(ii). Under Section 91.36(a)(3)(i)(C), manure storage structures near an impaired watershed should be required to obtain a WQM permit regardless of whether or not the agricultural operation is implementing an approved nutrient management plan. When determining if an operation needs a WQM permit under Section 91.36(a)(7), DEP should also consider the manure storage structure's potential to pollute based on local geology, cumulative impacts of farming operations in the same area, proximity to high quality streams, exceptional value streams, or impaired streams, and pollution loading (TMDL) restrictions.

Controlling Phosphorus Pollution

Under Sections 92.5a(d)(1) and 83.281(a)(5) the proposed phosphorus index does not provide adequate protection for water resources because it does not consider proximity to impaired watersheds, flooding potential, or leaching potential when determining whether or not fields can safely be used to spread manure without causing phosphorus pollution. Instead of using the phosphorus index, livestock operators should be required to ensure that no more phosphorus is applied to fields than the crops grown there can absorb. The proposed phosphorus index does not impose adequate restrictions on applying phosphorus to fields that already contain too much phosphorus - restrictions will apply only to those fields with extremely high levels.

Closing the Manure Export Loophole

PennFuture supports Section 83.301's proposal to require signed agreements between exporters and importers of manure. We further support Section 83.301(a)(3)'s proposal to assign responsibility for proper handling and disposal of manure to the manure exporter if the exporter or its employee applies manure at the import site.

PennFuture also supports the proposed requirement in Sections 83.301(e)(3) and (g)(1) and (2) for manure importers to either comply with manure spreading setbacks or develop nutrient management plans. However, under Section 83.301(g)(1), compliance with

setbacks alone cannot be used to adequately control phosphorus pollution because it fails to address fields with extremely high phosphorus content. Under Sections 83.201, 83.301(a)(2) and (4); 83.301(b)(3), and 83.301(e)(3), the Nutrient Management Plans of livestock facilities exporting manure must include nutrient balance sheets for importing fields for both nitrogen and phosphorus.

Corporate and Agribusiness Accountability

To ensure full compliance with the CAFO regulations, agri-business corporations that contract with livestock operators or livestock management companies that operate facilities under contract with farmers should be required to co-sign CAFO permits. Under Sections 83.261(6) and (7), Nutrient Management Plans should be required to be signed by the farm owner and the facility operator.

Public Notice and Records

Conservation District Nutrient Management Plan approvals should be published in the Pennsylvania Bulletin to give the public adequate opportunity to review approved plans before the 30-day appeal period expires. Additionally, under Section 83.342(b) manure application records should be submitted quarterly to the conservation district and available to the public for review. Exported manure records should also be submitted quarterly to the conservation district under Section 83.343(a)(4).

Accountability

PennFuture supports the proposal in Section 83.202(1) to require a facility that the SCC or a conservation district has determined needs a Nutrient Management Plan to address management or environmental problems to meet all the requirements of the Nutrient Management Act. *and not be considered a volunteer.*

Enforcement

Studies of CAFO records have shown widespread non-compliance with the law. DEP, the State Conservation Commission and the Department of Agriculture must work together to substantially increase oversight and enforcement of all provisions of CAFO permits, the Nutrient Management Act and the Manure Hauler Certification Act.

PennFuture believes that these changes will ensure that the CAFO permitting program provides the strongest protections for water quality in rural communities.

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W. PRAMIC
10-13-04 EQB/SCC
Hearing
Mechanicsburg

October 13, 2004

2004 OCT 20 PM 2: 38

**Testimony on behalf of Pennsylvania Chapter of the Sierra Club
before the Department of Environmental Protection and the State Conservation
Commission regarding the Proposed Rulemakings amending Chapters 91 and 92
relating to Concentrated Animal Feeding Operations and Other Agricultural
Operations and Chapter 83 Implementing the Nutrient Management Act**

The Pennsylvania Chapter of the Sierra Club appreciates that the proposed regulatory changes represent substantial improvements over existing safeguards and address some of the major shortcomings in Pennsylvania's water quality protection and nutrient management programs. Nevertheless, we are very concerned that serious deficiencies remain that must be addressed in order to ensure adequate protection of surface water and groundwater.

Concentrated Animal Feeding Operations

The federal Clean Water Act requires large livestock operations to obtain a National Pollutant Discharge Elimination System permit and maintain the operation according to the permit conditions. The Environmental Protection Agency affords states the flexibility to implement the rule in the most appropriate manner for each state's circumstances. Pennsylvania proposed to satisfy this program by requiring permits from livestock operations with 1,000 Animal Units (1 AU = 1,000 lb. live animal weight), or those with 301-1,000 AUs with a concentration greater than two AUs for each acre available for spreading manure.

The Sierra Club strongly supports the combining of animal species so that mixed animal operations are covered under the CAFO definition in Chapter 92.1. This approach more effectively addresses the range of operations found in Pennsylvania, where pollution reduction measures need to be undertaken and/or improved.

We are very concerned, however, that the proposed definition fails to incorporate a category of operations that should be included, in order to be consistent with the federal rule and to rein in a significant source of agricultural pollution, namely medium size operations with "discharges". The federal rule specifies that medium operations with "discharges" must also follow the requirements for applying for permits and meeting permit conditions. This category would include operations with livestock in streams where they may deposit manure directly, stormwater flowing from manure management facilities, and other sources of stream degradation. Including these operations within the definition provides an opportunity to require pollution protections from operations that contribute heavy nutrient loads to the Commonwealth's waters.

We strongly urge DEP to broaden the definition of CAFOs to include the medium size, discharging operations, and, as necessary, to phase in the compliance times for these operations. This approach would recognize and address a significant source of pollution,

while affording these operations the time to take advantage of voluntary programs to provide financial and technical assistance to eliminate the discharge, thus avoiding the permit requirements.

We are also concerned that the setback requirements for manure storage facilities for CAFOs are not sufficiently protective of surface water and groundwater. Proposed revisions to Chapter 91.36 should be amended to expressly prohibit installation of, or expansion of, manure storage facilities in floodplains.

In addition, DEP should adopt the Pennsylvania Technical Guide design standard for a 50-foot vegetated buffer, as a more proven buffer width for land application of manure.

DEP should also address the following deficiencies in the proposal:

- Lack of surface or ground water monitoring requirements. Baseline and follow up monitoring is essential to determine the effectiveness of management practices.
- Potential for cumulative impacts in watersheds already impaired by agriculture. DEP must require individual permits in watersheds that are impaired, in addition to EV and HQ streams, in order to ensure consistency with anti-degradation requirements.

Nutrient Management Act

The Sierra Club supports many of the improvements proposed for the nutrient management regulations, including: the inclusion of horse operations; the closing of the "export loophole"; the phosphorus index; controls on animal access to surface waters; and the prohibition on manure application to bare ground.

Nevertheless, we strongly oppose the limitation of the manure application setback to times when the ground is frozen, snow-covered or saturated. The setback of 100 feet (or 200 feet on steep slopes) from surface water should apply at all times, and to intermittent streams and wetlands, to eliminate the serious potential for water pollution throughout the year.

We are also concerned about the following deficiencies, which we will address in detail in our written comments:

- The nutrient balance sheets for exported manure require that manure be applied to meet the nitrogen needs and that there be a 150-foot setback from streams, unless there is a full Nutrient Management plan with a P-index. However, the nutrient balance sheets should address both N and P.
- The regulations must provide that where manure is not applied to fields according to a Nutrient Management plan and a discharge occurs, the discharge is considered a point source of pollution.

- Operations with a record of previous violations of any portion of Act 6 should have revised Nutrient Management plans within 30 days of the effective date of the new regulations. We also recognize that additional authority must be established to provide additional safeguards against bad actors.

We appreciate the opportunity to provide these recommendations.

William Plank

~~Robin Mann~~

CAFO Task Force

Sierra Club, Pennsylvania Chapter

266 Beechwood Drive

Rosemont, PA 19010

610-527-4598

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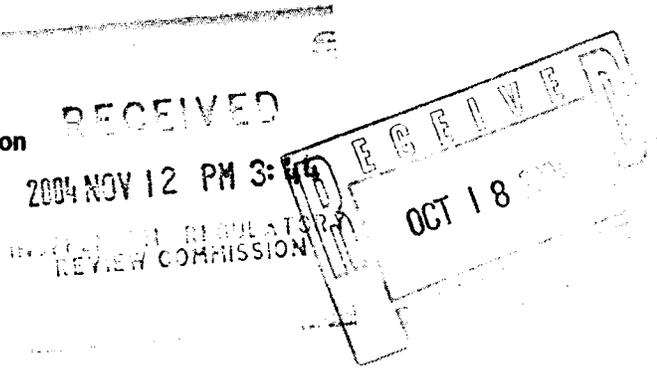
October 13, 2004

Original: 2412

Pennsylvania Department of Environmental Protection
PA

Dear ,

Subject: Comments on proposed CAFO regulation



I have enjoyed the Chesapeake Bay with my family for the last 57 years. Therefore, our concern for stonger CAFO regulation so that the legacy we past to our grand children will improve the quality of the Aby.

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 AEUs that must have a Nutrient Management Plan may include more operations than the definition at 40 CFR 122.23(b)(6)(i), 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:

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.

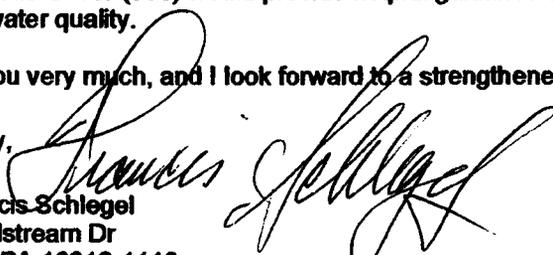
5. The provisions relating to buffers and setbacks are vague.

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. Francis Schlegel
457 Coldstream Dr
Berwyn, PA 19312-1113



PENNSYLVANIA STATE GRANGE

TESTIMONY PRESENTED TO:

ENVIRONMENTAL QUALITY BOARD AND
STATE CONSERVATION COMMISSION

RECEIVED
2004 OCT 20 PM 2:38
REVIEW COMMISSION

TESTIMONY PRESENTED BY:

BRENDA SHAMBAUGH
LEGISLATIVE DIRECTOR

OCTOBER 13, 2004

Conservation Districts, a neighboring landowner within the property line setback area may waive the distance restrictions. It seems that we are taking a sound science approach toward waiving the setback requirements and turning it into an emotional decision based on whether or not the neighbor approves. In this age of technology and decisions based on sound science, it seems these regulations are going backwards, not forwards. We strongly oppose this section of the regulations.

The proposed nutrient management regulations require a one hundred foot setback from active and inactive wells (83.294). The Grange believes that this requirement should be amended. If a well is inactive, we do not believe that the same setback should be required as active wells. Perhaps a compromise would be a 35 foot setback for inactive wells. That way water is protected, but it is not an over-burdensome requirement for farmers.

Setbacks relating to the spreading of manure are discussed in both sets of proposed regulations. In general, the Grange agrees that setbacks should depend on several factors including the slope and contour of the land, the season, and the cultivation practices used on the land. All of these activities should be taken into consideration when determining setback requirements. The bottom line is that setbacks cost farmers money. They should be regulated as sparingly as possible. Every time a farmer is told that he cannot farm his land, it means less money in his pocket. We accept the 35 foot buffer and 100 foot setback as I stated earlier, but we also believe that those amounts should be considered as maximum amounts and should not be left to interpretation.

Under the proposed nutrient management regulations, nutrient management plans or nutrient balance sheets will be required for farmers who import manure. Also, increased record keeping and spreading restrictions will be required for the importing farmer. The Grange is concerned about the negative affect this proposal will have on infrequent importers. These folks will help out a neighboring farmer on limited occasions. They should not have to obtain a nutrient management plan or go through the time consuming paperwork involved in spreading imported manure. We believe that there should be a threshold under which a farmer can import manure and not be covered under these regulations.

Again, thank you for allowing the Grange to discuss the proposed nutrient management and CAFO regulations. I will be happy to answer any questions you may have.

10-13-04 EQB/SCC
Hearing
Mechanicsburg
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**Pa. Assoc. of Conservation District Comments on
Act 6 Regulation Proposed Changes**

Compiled by Donald M. Robinson from comments submitted from conservation districts to PACD.

1. 83.201 Definitions:
Nutrient Balance Sheet – refers only to N. Will there be any need for one balanced on P?
Pastures – manure nutrient deposits by animals alone may not exceed amounts utilized by the crop if soil residual values are not included. Including pasture soil residual values as well as manure nutrients may render pastures unusable.
2. 83.272 (Consistency of NMP BMPs with an approved Conservation Plan management practices) A complete Conservation Plan may have wildlife, woodlot management, or other practices or BMPs that have no relation to nutrient management. Section should be more specific. Also, not all Districts approve conservation plans, will they now be required to or can someone else approve plans?
3. 83.281 (b) (Maps and aerial photographs) Why are topo maps being required? To be of any use they would need to be overlaid onto aerial photographs with field boundaries shown. Present topo map scales are not accurate enough (too small) unless they can be related to a photograph.
4. 83.281 (d) (Agreements with importers and brokers) Will sample balance sheet forms for manure importers be designed and provided by SCC? This would simplify the process for everyone involved.
5. 83.291 (a) (Addresses of each type of nutrient sources) Permitted biosolids sources often include multiple treatment plants and some years farm operators have no idea in advance if they will receive applications or from what plant(s) they will come.
6. 83.291 (b)(3)(ii) (Testing nutrient content of manure) Proposed regs allow manure analysis from another similar operations for new plans without actual analyses. What is the definition of a “similar” operation? We can see this working for dry poultry operations but liquid systems can vary too much.
7. 83.291 (b)(3)(iii) Annual manure tests will be a large expense for growers with multiple manure types. Since analysis from a liquid pit are usually taken when pit is agitated at unloading the results would not be available for the current application. Some pits under buildings are not impacted by rain fall amounts and, along with dry poultry manures, are more consistent. Can less expensive requirements be considered?
8. 83.291 (e) (Soil Tests) Soil tests are not required to be submitted with the plan. P Index worksheet will note the P level from the test but the reviewer has no verification unless soil tests are checked during the site visit. Test results should be submitted or required to be verified.
9. 83.293 (b)(i) (Phosphorus Index) Apply phosphorus index on all areas where nutrients will be applied. Does applied and “deposited by livestock” mean the same thing? Does this apply to pastures and animal concentration areas?
10. 83.301 (5) New plans are required to list the commercial hauler to be used. Since the first

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manure may not be hauled from a new operation for over a year from the time the plan is submitted, naming a hauler at the time the plan is written could be difficult and impractical. Plan could instead state that a certified hauler from the approved list will be used.

11. 83.311(a) (Direct discharges to surface waters) Writers and reviewers should not ignore discharges to road ditches or other conveyances that flow readily to surface waters, even though they may be some distance away.
12. 83.311 (f) (Manure storage specifications in Plan) Nutrient management planners and reviewers are not all trained or proficient at designing and locating manure storages nor should they decide what type of storage should be used. DEP Manure Manual requires a PE to design and supervise construction. Nutrient management plans can be used to assist in sizing storages and a planner may indicate a desired length of storage but that should be their limit. Cost of plans to provide this kind of information accurately will skyrocket and could force a farmer to build a type of structure he does not want or need or fail to take in consideration future expansion.
13. 83.312 (c) (Emergency response plan) A site specific emergency response plan must be verified by plan writer that it exists. What type of information is to be included in this plan and who develops it? Plan writers and farmers need some guidance on these plans. Are these the same as contingency plans?
14. 83.342 (b)(4) (Crop yield record keeping) How are pasture yields estimated? Another question related to pastures – Do we use book values or will samples of manure need to be taken from what is dropped by animals and analyzed?
15. 83.362 (3 year plan review and confirmation of compliance) The annual status review conducted by the conservation district should be confirming compliance every year, this does not need to be done by the planner. Planner should continue to do any plan amendments necessary.
16. 83.404 (f)(ii) (100' setbacks from wells) Does this refer to existing wells as well as those drilled after a plan is written? If so, doesn't that constitute a form of "taking of land"?

ADDITIONAL CONCERNS:

1. Once final regulations are approved, Districts need accurate clarification as to exactly which parts of the plan and plan file are public information. A checklist or fact sheet is needed to define what is or is not public (for our use and so general public is clear).
2. Districts have been hearing comments from CAOs and others questioning why all farmers do not have to have NMPs. They see smaller operations with cattle in streams, barnyard runoff, no conservation etc. not being regulated while large operations with clean operations and nothing getting into the streams having to follow all the rules and still compete economically. When will the push start to include smaller operations?
3. Since District personnel will be verifying the consistency of the conservation plan and NMP, what are they expected to do when a farm is out of compliance with Chapter 102 by not having a plan or following their plan?
4. What are dairy farmers who depend on their pastures supposed to do if a P Index shows that ~~now~~ ^{NO} manure can be applied?
5. There is a lack of trained and certified conservation planners and a backlog of farms waiting to be planned in many counties.
6. New conservation plans are going to call for more BMPs to be installed. Act 6 and other funding sources are not adequate to meet current demands for BMPs.

7. The original NM Advisory Board felt that anything that hindered moving excess manure to farms that needed more nutrients was to be avoided. What options will a CAO have if he can find no one to take his manure because of increased burdens on importers?
8. Additional resources (staff and funding) will be needed to support increased workload for Districts administering the Act 6 program and supporting activities such as BMP design and installation, conservation planning, and possible compliance assistance.
9. Turnover of nutrient management technicians across the state should be of concern to the SCC. The time to train and get new technicians certified slow down the process to meet deadlines and to effectively administer the program. Adding the complexity of the P-Index will only magnify this problem. Cross-training in the Districts is a solution for those with personnel to do so but many are short staffed as it is.
10. As District staff are being called on to administer more and more regulatory type programs, their relationship and trust with the farming community, built over years of "friendly" assistance, is being strained in many counties. DEP has never enjoyed a real positive relationship with the farming community. Has any thought been given to using PDA staff, who have developed a good reputation of dealing with agricultural regulatory issues for decades, being the frontline field presence in Act 6 compliance?
11. A concentrated effort to focus on having every farm implement an approved conservation plan would go much further than a P-Index to address phosphorus concerns and meet Bay nutrient reduction goals.

**Pa. Association of Conservation Districts Comments on
Proposed CAFO Regulation Changes**

Compiled by Donald M. Robinson from Comments submitted from conservation districts to PACD.

91.1 Definitions:

Manure Storage Facility: (and Waste Storage Structures) – do these include constructed stacking areas for semi-solid, dry or bedded pack short-term storage of manure (usually broiler litter for 2-3 months)? These usually have concrete floors, 3-5 foot high wood or concrete sides on three sides to contain and to push against while loading and may or may not be covered with a roof. If they are included, do these structures need PE design and certification? We feel they should not (unless cost-shared) because added cost provides little added environmental protection when correctly sited on an approved nutrient management plan.

Setback: Should read “conduits to surface *or* groundwater” (to include setbacks from wells or sinkholes) (also found in 92.1)

Vegetated buffer: Do all buffers have to be on the contour? This requirement may exclude thousands of feet of adequately buffer protected streams. Should also have minimum width standards included either here or in 91.36 (b) (2).

91.35 Wastewater Impoundments. Guidance is needed to know what satisfies the requirement to protect against unauthorized acts of third parties. Is a chain link fence adequate?

91.36 (b)(2) Define standards of an appropriate vegetative buffer.

92.5 (c) (Referencing new or existing operations becoming a CAFO due to loss of land suitable for manure application) Since CAFOs designations are not intensity determined (i.e. AEU/A), what does this mean?

92.5 (d) (1) (Referencing agreements with brokers and nutrient balance sheets or nutrient management plans on importing farms) Plan writers for CAFO farms using brokers may not know who the importing farms will be or if manure will be land applied.

92.5 (d) (2) (Referencing erosion control plans for plowing and tilling operations) It should be assumed in this statement that no-till operations are included since some no-till operations can exceed Chapter 102 E&S requirements. This is not made clear as worded in proposed regs.

92.5 (d) (4) (Referencing PPC plans for pollutants related to CAFO operations) Are agricultural pesticides included in this? If not, Act 6 already includes requirement for contingency plans.

GENERAL COMMENTS:

1. There are concerns/questions about the 100 foot setbacks or buffers. Wasn't the P index developed to address manure applications near the stream? Buffers and setbacks should be the same/consistent for any approved nutrient plan regardless of the program. This type of regulation makes things harder for field level people (both DEP and District) and creates confusion for farmers, manure haulers, plan writers and the general public.

2. If the regulations do require some type of setback for manure application it needs to be clearly defined how determined. Tech Guide standards are okay but does not clearly define parameters for width or length of buffer. Are we to assume they will be using Filter Area standard (393)? Need to keep this from being a gray area for everyone involved.
3. Since 100 foot setbacks from surface waters for manure applications do not apply to commercial fertilizers (which are more highly soluble), what have we gained in nutrient control except more expense and trouble for the farmer?
4. The regulations state that a CAFO must have an approved nutrient management plan that meets Act 6 standards. If the farm is not a CAO does it automatically become classified a VAO or does the farmer have the option of not being under Act 6 program oversight. Our thoughts are the farmer should have the option.
5. Following on number 4. If the operation would not be a CAO or VAO, who performs the status reviews of the nutrient management plan? DEP should handle this. If they want Districts to do it, there needs to be a plan to reimburse them, not just add it as another responsibility in the Act 6 delegation agreement.

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INDEPENDENT REGULATORY REVIEW COMMISSION

**Testimony
Of
PennAg Industries Association
Walt Peechatka, Executive Vice President
Northwood Office Center
2215 Forest Hills Drive, Suite 39
Harrisburg, PA 17112-1099**

**On
Proposed CAFO and Nutrient Management Act Rulemaking
Wednesday, October 13, 2004
Mechanicsburg, Pennsylvania**

PennAg Industries Association is a trade association representing 600 agricultural businesses, primarily those in the supply and service sector, who support the individual family farms in Pennsylvania. Our members provide the inputs - the seed, fertilizer, and chemicals to grow the crops; the feed and feed ingredients, nutritional services and consulting services to those involved in animal agriculture with a primary emphasis on the poultry and swine sectors; they transport the manure from poultry and livestock operations; and some members own and operate poultry and livestock operations.

With the limited amount of time available I will make a few general comments that apply to both the CAFO and Nutrient Management Act proposed rules and regulations. I will then follow with specific comments related to the high priority issues associated with the CAFO and NMA individually.

Let me set the stage for my comments this evening by stating that the agribusiness sector, which PennAg represents, is extremely proud of its environmental record in recent years. Our members have exceeded state requirements of the Nutrient Management Act and EPA's requirements from EPA, but have exceeded those requirements in many instances.

We believe that the...
to do more...
economically feasible.

In return we expect the State Conservation Commission, the Department of Environmental Protection, and those local Conservation Districts, which have been delegated authority under either of these programs, to provide a uniform, consistent and timely review of plans and applications for permits.

Tell us what you want and when we deliver it to you don't change your requirements and ask for more. We find the "moving target" and inconsistency of interpretations between regions and conservation districts to be the most troubling aspect of these regulatory programs.

Finally, all regulators should have the conviction to stand up - to those who oppose new or expanded animal operations in this state - and support the agricultural community when all of the regulatory requirements have been met. The agricultural community deserves the support of the regulators when agriculture has met all of the regulatory requirements.

With those few general and introductory comments behind me I would now like to provide specific comments on each of the proposed rulemaking packages. First on the proposed rulemaking package for Concentrated Animal Feeding Operations under 25 Pennsylvania Code, Chapters 91 and 92.

Comments on CAFO's, 25 Pennsylvania Code, Chapters 91 and 92.

Chapter 91

1. Having definitions for four different storage facilities (Earthen Waste Storage Pond, Manure Storage Facility, Waste Storage Facility, and Waste Water Impoundment) is confusing. We suggest having one definition which encompasses all types if possible.
2. Is the setback requirement in the CAFO regulations consistent with those in the Clean Streams Law? Where do setback measurements start - from the defined bank, the center of stream?
3. We have some concerns with the permit review process. Only engineers should review applications for permits prepared by engineers. If changes are required and incorporated in the application the engineer that prepared the application is then liable for any negative result that might occur.
4. We feel that differentiation must be made between indoor (under barn) storage facilities and those outdoor manure storage facilities. Freeboard limits as proposed are appropriate for outdoor facilities but not feasible for indoor facilities since rainwater does not enter the indoor facility. We recommend a 6 inch freeboard for indoor facilities.

Chapter 92

1. While we feel that the proposed time frames for permit application review are very acceptable, we are concerned that the Department may not be

able to maintain that schedule. How will DEP insure that it reviews the permit applications according to the proposed time frames? And what is the appropriate response and redress for the applicant when those time frames are exceeded?

2. How will the term "commence", which is used in Section 92.5 (1-2), be interpreted? Does it mean start of construction or "populating" an animal facility with animals?
3. Could the wording for "setbacks" and "buffers" possibly be modified so as to reference the NRCS Technical Guide and its contents? This would eliminate the need to change the regulations every time the Technical Guide is modified.

Comments on 25 Pa. Code, Chapter 83, Subchapter D, Nutrient Management

1. The Preamble of the Proposed Regulations does not accurately reflect the increase in costs that will be incurred by the farmer/producer. In addition to the increased costs associated with the preparation of a plan, there will be costs for new practices that must be implemented. With the addition of phosphorus requirements, fields currently receiving manure may be off limits and the farmer will need to transport manure greater distances thereby increasing costs of transportation. Also, while the Preamble notes an increased opportunity for farmers to market their manure, those possibilities are limited and are not keeping pace with manure production. In addition, manure from neighboring states is being subsidized and is competing with manure generated within Pennsylvania.
2. One of the primary goals of these regulations is to ensure proper and efficient manure application. This goal should not be diminished or missed by placing burdensome documentation requirements on the producer which might inhibit that process. In instances related to documentation of manure importers, flexibility must be provided to the producer to amend his plan by contacting the commissioner, receiving approval from the commissioner, so, and receive verbal approval. It is requested that the commissioner work with the producer to ensure that the requirements are reasonable and do not create an undue burden on the producer. The commissioner should also provide guidance on the new nutrient levels and thresholds that are being provided.
3. Some of the proposed rulemaking will also impact the new requirements under Act 49 of 2004, the Commercial Manure Haulers and Broker Certification Act. It is very important that these proposed rules be

consistent with any new requirements placed on manure haulers as a result of Act 49.

4. Once these regulations are finalized and adopted it is extremely important that a guidance document be provided to Conservation Districts which ~~will~~ ^{may} be delegated some of the responsibility. There are currently inconsistencies between Conservation Districts and it is important that they all perform their functions in a consistent and uniform manner. This is essential in order for producers, consultants and others who operate in more than one district to have a uniform standard which is applied in all districts.

Summary

In the interest of time I have focused my attention on the high priority items of each proposed rulemaking package.

We will be submitting other comments on the two packages before the deadline date in November.

We appreciate the opportunity to offer these brief comments to you for your consideration. Thank you.



Pennsylvania Farm Bureau

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EQB/SCC
Hearing
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Testimony of Chris R. Hoffman
on behalf of Pennsylvania Farm Bureau
to the Environmental Quality Board
and the State Conservation Commission
regarding the Proposed Regulations Amendments
to Chapters 91 and 92
(Concentrated Animal Feeding Operations)
and Chapter 83 (Nutrient Management)
of Title 25 of the *Pennsylvania Code*
October 13, 2004

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STATE OF PENNSYLVANIA
REVIEW COMMISSION

Good evening. My name is Chris Hoffman. I am a third-generation farmer from Mc Alisterville, Pennsylvania. My family and I farm approximately 100 acres, most of which is planted in corn and soybeans. We also operate a 1,400 head farrow to feeder swine facility.

I currently serve as Vice-President of the Juniata County Farm Bureau. I am testifying this evening on behalf of the Pennsylvania Farm Bureau and the 34,600 farm and rural families of the Commonwealth that comprise our organization's membership. Thank you for this opportunity to comment on the proposed CAFO and nutrient management regulations, which are the subjects of this evening's hearing.

When you look at the nutrient management program in the context of its history, you will see that regulation of larger animal operations in the Commonwealth is still a pretty new effort. While the Nutrient Management Act was passed in 1993, it was October of 2000 by the time the regulations were fully in place. As with all new programs, it takes time for people to understand their responsibilities and make adjustments in their day-to-day operations to meet those responsibilities. Individuals involved in enforcement will tell you that the majority of early nutrient management violations were of a technical nature and arose because farmers did not fully understand their responsibilities in keeping records and performing other administrative duties. Since farmers have begun to fully understand these responsibilities, their compliance has improved significantly.

I believe it is much more appropriate to measure the regulatory effectiveness of this program not by what agencies found when they made their first visits to farms, but

rather by what agencies are finding *today* in subsequent visits, now that farmers have been made aware of their responsibilities and have had the opportunity to bring their operations into regulatory compliance.

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

The proposed nutrient management and CAFO regulations will once again keep Pennsylvania at the forefront in maintaining environmental quality on animal farms. As with the original regulations, the newly proposed regulations were developed to bring Pennsylvania into compliance with federal requirements, as well as to reflect developments in agriculture and technology.

Pennsylvania Farm Bureau and other stakeholders participated in discussions leading up to the development of the proposed nutrient management and CAFO regulations. For the most part, we are supportive of the changes being proposed. However, we caution that the spirit of flexibility that led to the development of these proposed regulations must not be lost. Farm Bureau has serious concerns over two proposed regulations included in this regulations package:

- Proposed §91.36(a)(7) would give the Department of Environmental Protection ("DEP") virtually unlimited authority to require any farmer who has a manure storage facility to obtain a water management permit based on a vague set of what the Department may determine to be "relevant criteria."

- Proposed §91.36(b)(2) would give DEP authority to place any setback requirement on manure application from streams and impose any requirement for vegetative buffer areas near streams that DEP would deem to be "appropriate", without any criteria to guide or limit the scope of the requirements for setbacks and buffers that DEP could deem "appropriate" for farms.

We are concerned that no measurable standard is established in either proposed regulation to guide, direct or limit the exercise of DEP's authority to impose permitting or setback requirements on farms other than CAFO's or concentrated animal operations.

Moreover, we continue to object to the manner in which these two proposed regulations found their way into the regulations package. Neither was included in the package presented to DEP's Agricultural Advisory Board, and the regulations did not appear anywhere publicly until just before the Environmental Quality Board met to approve the regulations package.

These two regulations change the focus of nutrient regulation from larger animal farms to virtually any small or medium sized farm that uses or stores manure. If accepted, these regulations will have the effect of burdening families who operate small to medium sized farms with additional costs by limiting productive land use and imposing additional compliance costs.

Many farmers who run small to medium sized operations will tell you now that they can't afford more regulation. As time goes on, it will become even more critical for such farmers to retain flexibility in managing their farms if those farms are to remain economically viable. In light of this, we do not believe the Department has done enough meaningful analysis regarding the environmental need for the proposed regulations' expansion of authority and the economic impact such an exercise of authority will have on the types of farms that will be subject to additional regulation. Therefore, Farm Bureau recommends that neither of the previously discussed sections be include in the regulations package finally adopted.

As I indicated previously, Farm Bureau is generally supportive of the proposed regulations contained in the CAFO and nutrient management regulations packages. Many are necessary to bring Pennsylvania into compliance with recent changes in federal regulatory requirements. Others provide consistency with regard to farms regulated as "concentrated animal operations" under state law and farms regulated as CAFOs under federal law.

Several proposed changes to the CAFO regulations are particularly positive and worth noting. The newly proposed regulations incorporate a change in the federal regulations designed to protect surface waters. Under the proposed regulations, a CAFO must either refrain from land applying manure within 100 feet of surface waters or establish a 35-foot permanent vegetated buffer. This minimum setback/buffer requirement should reduce the risk of nutrients entering streams while allowing CAFO farmers reasonable flexibility in managing their operations and applying manure.

The proposed regulations will also establish more stringent regulatory standards for the exportation and land application of manure produced on large farms. These standards will provide the necessary documentation to demonstrate that farmers are indeed exporting manure responsibly. In addition, the proposed regulations will impose on farms receiving manure from larger animal operations the same setback and buffer requirements that exist for farms where the manure is produced. The proposed regulations will define more clearly the responsibilities of commercial brokers and haulers who handle manure. Moreover, they will insure that such brokers and haulers have the necessary documentation to show that manure is being applied responsibly.

I would like to offer comment on one other change I believe to be of major importance to the future of agriculture in the Commonwealth. The proposed regulations would require larger farms to consider and address phosphorus in land management practices and manure application practices that occur on lands receiving manure. Here, a phosphorus index would be used to determine whether an individual field has a high level of phosphorus. If a high phosphorus level is found, mandatory conservation practices will be implemented and restrictions will be placed on the quantity of manure that can be applied to the field.

While the proposed regulation does not sound unreasonable in concept, we are concerned about the practical consequences that purely phosphorus-based regulation will have on farmers. Those with professional expertise in the area of phosphorus indexing have demonstrated that in certain areas of the state, a significant portion of land currently being used for manure application will be eliminated from future use if the phosphorus index is immediately imposed.

The end result will likely be that some farmers will have nowhere to go with their manure, or that some farmers will not reasonably be able to bear the costs associated with moving the manure to areas where it may be applied. We have heard from several farmers who, after consultation with their nutrient management specialists, have indicated to us that a blanket application of the phosphorus standard could put them out of business.

The regulations need to recognize that even with a thorough understanding of land conservation and nutrient management practices, many farmers will not be able to comply immediately with a strict application of the phosphorus indexing standard.

To help existing farmers manage the transition to phosphorus regulation without causing severe disruption to farm operations, Farm Bureau recommends that strict application of the phosphorus indexing standard only apply to farming operations that become CAFOs after the effective date of the regulations. For farms that are considered to be CAFOs or concentrated animal operations on the date the regulations go into effect, farmers should be allowed to apply manure based on a phosphorus balancing approach. This approach considers manure applications on the basis of expected utilization of phosphorus. Phosphorus levels from manure application would be measured by the farm unit or among farm units in the area as a whole, rather than on an individual field basis. A phosphorus balancing approach allows manure to be applied on a field to the extent that the level of phosphorus in the manure will be utilized by crops being grown on that field.

Farm Bureau recommends that farms that become concentrated animal operations after the effective date of the regulations also be able to use the phosphorus balancing approach in meeting requirements related to the management of phosphorus on their farms. Since we realize that full compliance with phosphorus regulation will have a significant impact on farmers' financial and personal resources, we ask that federal and state officials provide sufficient financial and technical assistance to farmers in order to help them comply with phosphorus management standards.

Finally, I would also like to comment on several other proposed regulations. Proposed changes to Section 83.404 of the nutrient management regulations would impose additional requirements on land application of manure. These new requirements would cause larger farm operations to plan a more effective strategy for controlling adverse effects of winter manure application. While some may say that no manure application should occur during winter months, the imposition of such a restriction is unrealistic for any animal farm operation, whether large or small. Mother nature does not always provide the type of weather pattern that is ideally suited for the management, storage and land application of manure.

Farmers prefer to apply manure when conditions are optimum for land application. However, farmers occasionally are forced to apply manure under less than optimum conditions in order to avoid manure storage overflows. The proposed winter manure application requirement will help farmers and regulators better identify the fields best suited to receive manure in such instances. The approach suggested in Section 83.404 with respect to seasonal applications of manure provides a reasonable balance between environmental concerns and the realities of manure management on farms.

Section 83.404 also proposes to establish a standard for stacking and land application of dry manure. As proposed, the standard would limit the time for continued storage of stacked manure on larger farms until the beginning of the following growing season. We believe this standard strikes a reasonable balance between the need to minimize potential environmental risks with the need for flexibility in applying manure when conditions are most favorable.

Once again, I would like to thank the Department of Environmental Protection and the State Conservation Commission for the opportunity to provide comments on the proposed changes to the CAFO and nutrient management regulations.