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Mrs. Norman A. Baglini
4103 Battles Lane
Newton Square, Pennsylvania 19073

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OCT 15 2004
ENVIRONMENTAL QUALITY BOARD

Oct 10, 2004

Environmental Quality Board
P.O. Box 8477
Harrisburg, PA 17105-8477

Dear Members of the Quality Board:

I am writing in support of legislative changes that will protect our environment, our agricultural communities and our food supply. I am concerned about the devastating effects of the pollutants which are byproducts of confined animal feeding operations. (CAFO's) Regulations should be comprehensive, should include medium sized CAFO's with direct stream discharge, and should protect the rural communities rather than be lenient on livestock operations.

As an active member of Clean Water Action and a volunteer with the Chester-Ridley-Crum Watershed Association, I am intensely concerned about this problem and hope you will take aggressive action on behalf of our environment.

Sincerely yours
Sidna Rastin

Original: 2412

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REGULATORY
REVIEW COMMISSION

**Nutrient Management and
Concentrated Animal Feeding Operation Testimony**

Presented by

**Melinda Downey
Pennsylvania Communications Coordinator
Chesapeake Bay Foundation**

**To the
Environmental Hearing Board and
State Conservation Commission**

October 13, 2004

Good evening, members of the Environmental Hearing Board and State Conservation Commission. Thank you for the opportunity to present testimony on behalf of the Chesapeake Bay Foundation.

The Chesapeake Bay Foundation (CBF), founded in 1967, is the largest conservation organization dedicated solely to saving the Chesapeake Bay. Our motto, "Save the Bay," defines the organization's mission and commitment. With headquarters in Annapolis, Maryland, and state offices in Maryland, Virginia and Pennsylvania, CBF works throughout the Chesapeake's 64,000-square-mile watershed to protect and restore the Bay with programs in environmental education, restoration and protection. CBF is supported by 116,000 active members and has a staff of more than 160 fulltime employees.

CBF has been working for over twenty years to advocate for conservation programs and to provide technical and financial assistance to farmers to establish riparian buffers, cover crops, rotational grazing, and other conservation practices to reduce nutrient pollution to our rivers and streams. CBF has considerable experience providing technical assistance for conservation programs with eight full-time field staff working directly with farmers and landowners. Over the past five years, CBF has been involved in over 4,000 conservation practices including more than 1200 miles of forested riparian buffers and 4000 restored wetlands in Pennsylvania.

The Nutrient Management and Concentrated Animal Feeding Operation regulations have an enormous impact on the Commonwealth's rivers and streams, and on downstream waters such as the Chesapeake Bay. The DEP estimates that 3,903 miles of the Commonwealth's streams are impaired by agricultural impacts. We look forward to strong Nutrient Management and CAFO

Pennsylvania Office: Old WaterWorks Building, 614 N. Front Street, Harrisburg, Pennsylvania 17101, 717.234.5550, fax 717.234.9632
Headquarters Office: Philip Merrill Environmental Center, 6 Herndon Avenue, Annapolis, Maryland 21403, 410.268.8816, fax 410.268.6687
Maryland Office: Philip Merrill Environmental Center, 6 Herndon Avenue, Annapolis, Maryland 21403, 410. 268.8833, fax 410.280.3513
Virginia Office: 1108 E. Main Street, Suite 1600, Richmond, Virginia 23219, 804.780.1392, fax 804.648.4011

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regulations to reduce the nitrogen and phosphorus pollution to these waters, the most significant cause of impairment in the Chesapeake Bay.

I'll first discuss the Nutrient Management regulation. The proposed regulation addresses our most serious concerns of the previous regulation. We applaud:

- ✓ Tightening of the export "loophole," and requiring careful planning and tracking of manure that is shipped from one farm to another.
- ✓ Inclusion of horse operations.
- ✓ Inclusion of the phosphorus index, a common sense approach that will reduce phosphorus pollution, although we would prefer phosphorus balancing on all fields in the future.
- ✓ Requirement that animal access to surface water be controlled, so that livestock may not directly deposit their manure in streams.
- ✓ Prohibition of manure application on bare ground except immediately prior to planting.
- ✓ Requirement of an Erosion and Sedimentation Control Plan.
- ✓ Requirement that liquid manure not be applied beyond the soil's water holding capacity.

However, CBF also found significant shortcomings in the proposed nutrient management regulation, and we hope that these will be corrected in the final regulation:

- ✓ For land application of manure, the proposed regulation requires a setback of 100 feet (or 200 feet on steep slopes) from surface water only when the ground is frozen, snow-covered or saturated. There is serious potential for water pollution throughout the year so CBF recommends that these setbacks be required at all times.
- ✓ Setbacks from all surface waters, in addition to property lines, water wells and sinkholes, should be required for manure storage facilities. Wetlands and intermittent streams are currently excluded, although they and downstream waters could suffer devastating effects if inundated by millions of gallons of manure when a manure storage facility fails. This is most likely after a heavy rain when intermittent streams are flowing and wetlands are full.
- ✓ Winter application of manure should be permitted only when there is at least 25% plant cover and the application rate is the P-index application rate, or 50% of the nitrogen need of the crop, whichever is less.
- ✓ In case of a fire, severe weather, or other emergency, a farm may need to temporarily stack manure in fields. CBF wants the regulation clarified so that these temporary stacking areas could only be used for emergency situations, and for no longer than 30 days.

The Chesapeake Bay Foundation is far more troubled with the Concentrated Animal Feeding Operation regulation. It will fall far short of both the federal requirements and the goal of curbing pollution from livestock production in Pennsylvania.

The federal Clean Water Act clearly requires Pennsylvania to require large livestock operations and medium-sized operations that discharge pollution into our waterways to obtain a National Pollutant Discharge Elimination System permit and maintain the operation according to the permit conditions. However, the proposed regulation covers large operations but only medium operations that also are regulated under the Nutrient Management Act. This misses the operations that most need to eliminate discharges and come into compliance with the regulation, such as those with livestock in streams where they may deposit manure directly, stormwater flowing from manure management facilities, and other sources of stream degradation. This may include a smaller number of farms than the proposed definition, but it would include the farms with the greatest potential to pollute our rivers and streams, that currently operate without regulatory oversight.

The CAFO Stakeholder Group convened by DEP recommended an approach the Department of Environmental Protection could have used to address these medium-sized operations with discharges, without putting too heavy of a burden on them. There could have been an extended period of time to come into compliance, during which farms could take advantage of voluntary programs to provide financial and technical assistance to eliminate the discharge, thus avoiding the permit requirements.

The proposed regulation's CAFO definition includes one nonsensical class of CAFOs: "any agricultural operation with a discharge to surface waters that is authorized by Department permit limits and conditions," but it does not include unauthorized discharges that are polluting the Commonwealth's waterways. It excludes from CAFO classification agricultural operations that are operating without necessary permits, or are otherwise not authorized by the Department. Without a change in the proposed regulations, agricultural operations polluting local waterways without permits could refuse to get a permit and avoid regulation as a CAFO. 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 a discharge regardless of whether they are authorized by any Department permits.

The CAFO definition is vague and ambiguous and needs to be recrafted to avoid violating due process. Vague and ambiguous language 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.

CBF agrees with basing the CAFO definition on Animal Equivalent Units. The federal regulation only require permits from farms with individual species of livestock over a threshold,

such as 700 dairy cows or 2,500 hogs. A farm with 690 dairy cows and 2,200 hogs would be exempt from the CAFO regulation. However, Pennsylvania's proposed regulation would combine them in the Animal Equivalent Unit calculation, which certainly is worth the confusion to address the many operations with multiple species in Pennsylvania.

CBF is also concerned with the inadequate enforcement of the Clean Streams Law. The regulation states that DEP has the authority to enforce violations, but it has had this authority for many years without using it effectively. The regulations should state that DEP shall take enforcement action against any agricultural operation in violation of this law and require it to develop and implement a nutrient management plan.

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 Filter Strips (393) would provide the necessary clarification.

Thank you very much for the opportunity to share our concerns. The Chesapeake Bay Foundation looks forward to improved regulations that will reduce nitrogen and phosphorus pollution to the Commonwealth's waters and ultimately the Chesapeake Bay.



Environmental Quality Board

October 8, 2004

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

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

Dear Mr. Nyce:

The Environmental Quality Board (EQB) received the enclosed comments regarding the above-referenced proposed rulemaking from the following individual:

1. Robert Peckinpaugh, 11 Spring Meadow Dr., Dowingtown, PA 19335-1340
2. Robert Passow, 310 S Allen St. Apt. 704, State College, PA 16801-4860
3. John Cecil, 8102 Macarthur Rd., Wyndmoor, PA 19038-7520
4. Robert Fyock, 815 Ridgewood Rd., York, PA 17402-1749
5. Ginger North, 102 Queen Ln., Landenberg, PA 19350-1517
6. Wendy Thomas, 337 S Pleasant Ave., Dallastown, PA 17313-2109
7. David Ritter, 143 Peregrine Lane, Hummelstown, PA 17036
8. Christopher Wurm, 102 Queen Ln., Landenberg, PA 19350-1517
9. Michael Rudacelle, 12773 Glessick School Rd., Felton, PA 17322-8273
10. Catherine Hammond, 401 N State Route 934, Annville, PA 17003-8536

The comments were received on the Department's RegComment e-mail account and are enclosed for your review. Please contact me if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads 'Marjorie L. Hughes'.

Marjorie L. Hughes
Regulatory Coordinator

Enclosures

Hughes, Marjorie

From: Catherine Hammond [chammond@palcv.org]
Sent: Friday, October 08, 2004 10:37 AM
To: RegComments@state.pa.us
Subject: Water Quality at Risk: comments on proposed CAFO regulation

October 08, 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 AEUs 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:

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,

Catherine Hammond
401 N State Route 934
Annville, PA 17003-8536

Hughes, Marjorie

From: Michael Rudacille [rudacill@nfdc.net]
Sent: Friday, October 08, 2004 10:10 AM
To: RegComments@state.pa.us
Subject: Water Quality at Risk: comments on proposed CAFO regulation

October 08, 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 AEUs 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:

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.

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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,

Michael Rudacille
12773 Glessick School Rd
Felton, PA 17322-8273

20

Hughes, Marjorie

From: Christopher Wurm [cwurm@comcast.net]
Sent: Thursday, October 07, 2004 5:52 PM
To: RegComments@state.pa.us
Subject: Water Quality at Risk: comments on proposed CAFO regulation

October 07, 2004

Pennsylvania Department of Environmental Protection
PA

Dear ,

Subject: Comments on proposed CAFO regulation

I am very concerned about the health of Pennsylvania's waterways. 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.

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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.

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Sincerely,

Mr. Christopher Wurm
102 Queen Ln
Landenberg, PA 19350-1517

(21)

Hughes, Marjorie

From: David Ritter [david_a_ritter@yahoo.com]
Sent: Thursday, October 07, 2004 4:12 PM
To: RegComments@state.pa.us
Subject: Water Quality at Risk: comments on proposed CAFO regulation

October 07, 2004

Pennsylvania Department of Environmental Protection
PA

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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. David Ritter
143 Peregrine Lane
Hummelstown, PA 17036

22

Hughes, Marjorie

From: Wendy Thomas [wendyt@suscom.net]
Sent: Thursday, October 07, 2004 11:51 AM
To: RegComments@state.pa.us
Subject: Water Quality at Risk: comments on proposed CAFO regulation

October 07, 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 AEUs 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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Thank you very much, and I look forward to a strengthened regulation and improved water quality.

Sincerely,

Mrs. Wendy Thomas
337 S Pleasant Ave
Dallastown, PA 17313-2109

Hughes, Marjorie

From: Robert Fyock [rfyock@msn.com]
Sent: Thursday, October 07, 2004 10:09 AM
To: RegComments@state.pa.us
Subject: Water Quality at Risk: comments on proposed CAFO regulation

October 07, 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.

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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.

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

Sincerely,

Mr. Robert Fyock
815 Ridgewood Rd
York, PA 17402-1749

(24)

Hughes, Marjorie

From: John Cecil [jcecil@surfbirder.com]
Sent: Thursday, October 07, 2004 9:43 AM
To: RegComments@state.pa.us
Subject: Water Quality at Risk: comments on proposed CAFO regulation

October 07, 2004

Pennsylvania Department of Environmental Protection
PA

Dear ,

Subject: Comments on proposed CAFO regulation

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

Sincerely,

Mr. John Cecil
8102 Macarthur Rd
Wyndmoor, PA 19038-7520

25

Hughes, Marjorie

From: robert passow [rhp2@psu.edu]
Sent: Thursday, October 07, 2004 9:33 AM
To: RegComments@state.pa.us
Subject: Water Quality at Risk: comments on proposed CAFO regulation

October 07, 2004

Pennsylvania Department of Environmental Protection
PA

Dear ,

Subject: Comments on proposed CAFO regulation

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

Sincerely,

Mr. robert passow
310 S Allen St Apt 704
State College, PA 16801-4860

26

Hughes, Marjorie

From: Robert Peckinpaugh [rpeckinpaugh@compuserve.com]
Sent: Thursday, October 07, 2004 9:11 AM
To: RegComments@state.pa.us
Subject: Water Quality at Risk: comments on proposed CAFO regulation

October 07, 2004

Pennsylvania Department of Environmental Protection
PA

Dear ,

Subject: Comments on proposed CAFO regulation

As a citizen of Pennsylvania and sailor on the Chesapeake Bay, I believe that 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.

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

Sincerely,

Mr. Robert Peckinpaugh
11 Spring Meadow Dr
Downingtown, PA 19335-1340

(27)

Original: 2412
Hughes, Marjorie

From: Ginger North [ginger@dnsashland.org]
Sent: Thursday, October 07, 2004 11:53 AM
To: RegComments@state.pa.us
Subject: Water Quality at Risk: comments on proposed CAFO regulation

October 07, 2004

Pennsylvania Department of Environmental Protection
PA

Dear ,

Subject: Comments on proposed CAFO regulation

I am very concerned about the quality of Pennsylvania's surface waters. I know that nutrient overloading is a serious threat to the health of Pennsylvania's streams & rivers. 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)(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:

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,

Ms. Ginger North
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