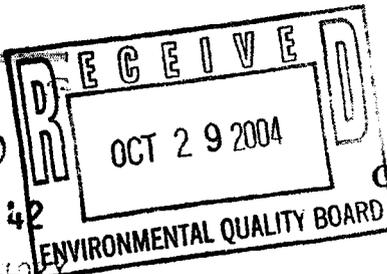


Original: 2412

124

RECEIVED



October 26, 2004

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

Dear board members:

The Environmental Protection Agency's, 40 CFR, Final Rule, February 13, 2003, revised, clarified and strengthened Rules and Regulations regarding CAFO's under the Clean Water Act. It also described, in great detail, the ecological and human health impacts, precipitated by CAFO operations. It is incumbent upon us as Pennsylvanians, in view of the growing concerns and mounting evidence regarding CAFO's, to further strengthen this document to meet the needs of farmers, communities and the environment. I believe this to be the "ultimate goal" proposed by secretaries Wolfe and McGinty in their ACRE Initiative. We must balance corporate growth and farming in Pennsylvania to maintain the reputation we enjoy as a leader in agriculture and environmental stewardship.

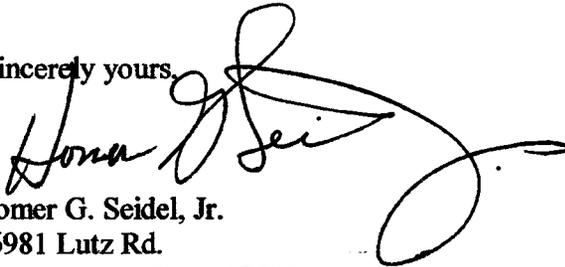
Therefore, we must develop a positive vision and plan for "Sustainable Agriculture"; sustainable farms, communities and society must be economically viable, but they must also be ecologically sound and socially responsible.

Considerations in the proposal and development of new & expanded CAFO's:

- Definition of CAFO changed: For the purpose of definition, a "high density" operation is defined as an animal count exceeding the E.P.A. small animal source threshold(750 animals); Animal counts under 2500 are "unregulated".
- Site Assessment Team: On Farm Assessment Environmental Review (OFAER); mandatory requirement for application and permit to pursue development of a proposed CAFO. Location of facilitySite Regulations/Restrictions/Setbacks and Prevailing Winds Assessment team.
- Water Concerns- new operations must validate, through testing, that they can meet the demands of the community and their needs for the planned operation prior to development.
- Air Quality Issues- What comes out of these barns? How do these emissions affect the community? (Kenneth Kephart, Penn State Agricultural Sciences, "Emerging Issues in Agricultural Air Quality and Odors", 7/27/2004) PA Odor Mgmt. Manual
- Mandatory odor mitigation equipment (BMP) for all new operations, especially Swine and Poultry operations.
- Manure Application Setbacks-75 ft./Vegetated Buffer zones- 50ft.
- Mandatory Nutrient Management Plan for all operations with < than 750 animals.
- Health Concerns – health hazards associated with livestock confinement operations must be addressed and resolved to protect the farmer, community and the environment.

- **Mortality disposal plan**
- **Decommissioning Plan which addresses clean-up& removal of toxic wastes/facility.**
- **Training and certification for all CAFO workers**
- **Bonding for road damage, clean-up of failed/terminated operations, etc.**
- **BMP(Best Management Practices) and farming operations assessment team (OFAER)DEP; biannual and unannounced inspections.**
- **Bad Actor Clause regarding poor stewardship.**
- **Right To Know Clause for neighbors.**
- **Sources from which Agricultural information regarding ,design & development, health & safety issues, biosecurity, and environmental impacts need to be expanded to include not only Penn State Agricultural division but also the CDC, EPA, USDA, DNR and other universities that have done documented research regarding the same.**
- **Moratorium on new and expanded CAFO's; there is a preponderance of factual evidence from credible, documented sources regarding health, environmental and biosecurity issues attributed to CAFO's which need to be addressed.**

Sincerely yours,

A handwritten signature in black ink, appearing to read "Homer G. Seidel, Jr.", with a large, stylized flourish extending to the right.

Homer G. Seidel, Jr.
16981 Lutz Rd.
Stewartstown, PA 17363

Original: 2412 187

Original: 2413 131

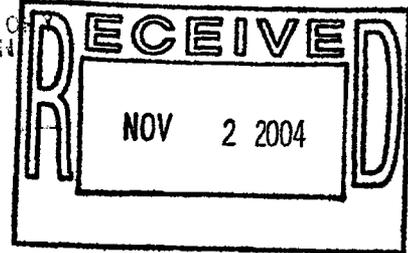
58 Lee Lynn Lane
Huntingdon Valley, PA 19006
October 26, 2004

State Conservation Commission
Agriculture Building
Room 405
2301 North Cameron Street
Harrisburg, PA 17110

RECEIVED

2004 NOV 15 PM 3:44

DEPARTMENT OF ENVIRONMENTAL REGULATION
REVIEW COMMISSION



Re: CAFO Regulations

Why should factory farms be allowed to pollute our air and our water??? Typical family farms produce manure that can be used on fields minimizing pollution. Factory farms are so gigantic that there is no way the manure can all be used. Instead the manure runs into our streams and rivers resulting in dangerous levels of dangerous bacteria and nutrients to encourage the growth of that bacteria. The manure/ bacteria seeps into our ground water contaminating our drinking water. The methane from all these animals degrades our air.

State agricultural policies should be working to decrease the pollution from existing factory farms. They should be supporting sustainable agriculture. Our policies should NOT be supporting the spread of factory farms.

Please let me know what actions you are taking to support sustainable farms and to eliminate pollution from factory farms.

Sincerely,

Karen Eble

Original: 2412

Oct 25, 2004

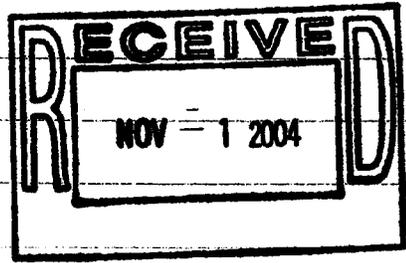
To the Environmental Quality Board

I am pleased to read that you
are improving the cofo's regulations
and I'm in full agreement with this
action

Lawrence E. Brown

RR 3 Box 90A

Col. Xrds. Pa. 16914



2004 NOV 12 PM 3:41
REGULATORY
REVIEW COMMISSION

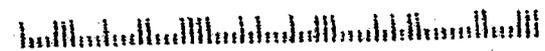
RECEIVED

Lawrence Lowry
RR 3 Box 90A
Columbia Crossroad, PA 16914



Environmental Quality Board
Agricultural Building
Room 405
2301 Cameron St.
Harrisburg, Pa 17110

17110+9405 93



107
127

Original: 2412
2413

Re: Public Comments - Proposed Nutrient Management Changes

At the market price of manufactured fertilizer at \$350.00 per ton - animal manure is by far of greater value to the farmer because the product at their location on the farm without delivery charges therefore leaving \$350.00 per ton to pay bills that occur on the farm. This dollar amount per ton of commercial fertilizer would pay fuel costs for a 100 HP tractor running 9 gallon of fuel per hour to provide 22 to 24 hours of field working time.

In reviewing the DEP proposed regulations on manure handling of taxpayers own properties to survive at farming - I propose that DEP would benefit Pennsylvania agribusiness which needs help in surviving to feed this country with the least costly food in world for a few more years by placing their efforts and ambitions towards helping keep the farmers in business.

As to proposals for DEP/EPA to initiate:

1. A bottle/can bill started to clean up our roadsides.
2. All plastic food containers to be biodegradeable by 2008.
3. DEP/EPA should be taking soil samples if they want to tell farmers what soil ammendments the soil will tolerate.

With 2% of the population being farmers and the average age of 55 with 7 years to go for retirement looks like at the current rate of farmers going out of business and no hope for young farmers to take over - the USA will have to import agricultural products from non-certified farm operations in foreign countries. Untreated human waste for direct fertilizer of food plants in foreign countries, non-certified sprayer applicators of pesticides and herbicides on food supplies imported will lower the safety of our homelands food purchases..

On a more critical point, MTBE - the additive in gasoline to replace lead - 17 states have outlawed it being used. Yet DEP/EPA employees are polluting our water tables by driving to work, on the job driving and personal driving everyday with no regard to their on actions. To correct this problem, we the green energy people of our Commonwealth and the USA as a nation should be turning our state and nation around to be self-sufficient on its own accord by putting into operation ethanol manufacturing plants in all regions of Pennsylvania, thereby making it more feasible to keep local people alive and well by producing non-polluting energy from a renewable source. Ex: 1 bushel of corn yields 3.2 gallon of ethanol and 1 ton of hay can yield 70 to 80 gallons of ethanol.

Suggestion for a new slogan for DEP/EPA on Green Energy.

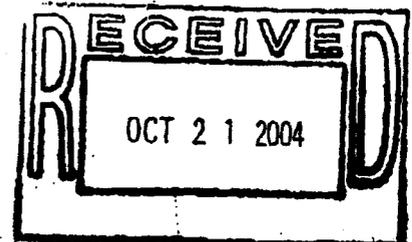
"Don't Pollute - Survive - Rely on Green Energy"

Robert C. Culp
2074 Hobson Drive
Ford City, PA 16226

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2004 NOV 10 PM 3:45

REVIEW COMMISSION



Hughes, Marjorie

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96

From: WBPawn@aol.com

2004 NOV -1 PM 3: 13

Sent: Monday, October 25, 2004 12:22 PM

REGULATORY
REVIEW COMMISSION

To: RegComments@state.pa.us

Subject: Concentrated Animal Feeding Operations Warren Braverman 5870 Marys Circle 17363

Environmental Quality Board
P.O. Box 8477
Harrisburg, Pa 1715-8477

Dear Board Members,

As a citizen of rural Pennsylvania living within 1/2 mile of a proposed 2200 head swine finishing facility I would like to make the following comments regarding the new CAFO regulations currently being reviewed.

I believe in order to balance the health, safety and welfare of our rural residents in Pa. and to protect our water and environment in Pa. the following deficiencies need to be addressed.

Since my experience to date is almost exclusively related to swine the numbers I will be referring to is for swine, different numbers for chickens, turkeys, cows, etc need to be addressed also.

1. Operations with under 2500 swine are for the most part unregulated now or in the new proposal, even though a 2200 head swine finishing barn will create more than 1,000,000 gallons of manure per year they do not even need a Nutrient Management Plan. With the model size facility in the swine industry being 2200 head, how can we possibly do our part in the Chesapeake Bay Tributary Strategy Plan with all of the manure from this size operation going unaccounted? How can we protect area residents from pollution to their wells? **CAFO definitions need to be changed to include these smaller operations and Nutrient management plans for smaller facilities need to be mandatory and all plans need to be implemented and check more thoroughly.**
2. With so much information about the health and safety issues for the workers and nearby residents of these operations coming from major universities like Johns Hopkins, Duke Universities and even Penn State's Agricultural Sciences Dept. as well as the USDA, CDC and other reliable sources, we must find a way through proper siting to balance the needs of the farmers with the protection of the residents living in close proximity to these operations. **Larger setbacks for the manure pits and the confinement buildings need to be put in place. Tree buffers to prevent gases and odors produced in these operations from being blown towards nearby residents need to be implemented. As well Best Management practices for air-quality and odor-mitigation need to be implemented as part of the rule not as voluntary.**
3. When there is a problem with these operations like spills or the closing up of the operation, the local municipality or the state must pay the bill for the cleanup and repair. As well the accelerated damage and wear to the local or state roads done by the much more frequent heavy loads in and out must be paid for by the local municipality or the state. **Bonding for the repair of our roads and or the cleanup that may be needed should also be mandatory.**

Respectfully Yours,

Warren Braverman
5870 Marys Circle

10/27/2004

Stewartstown, Pa.17363

Hughes, Marjorie

From: Susan Wright [minton2@comcast.net]
Sent: Sunday, October 24, 2004 2:35 AM
To: RegComments@state.pa.us
Subject: Revisions to the Concentrated Animal Feeding Operation Regulations

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

October 24, 2004

Re: Revisions to the Concentrated Animal Feeding Operation Regulations

Members of the Environmental Quality Board:

I would like to offer the following comments on the proposed revisions to the Concentrated Feeding Animal Operation (CAFO) regulations.

Definition of a CAFO

- ... Livestock operations that are currently regulated under Pennsylvania's CAFO program must continue to be regulated under the new regulations. In addition, any facility that meets the federal definition of a CAFO should be included, as well as large poultry operations. (25 Pa. Code § 92.1)
- ... DEP should require any livestock operation that causes a pollution incident to get a CAFO permit to ensure that future pollution incidents will be avoided. (25 Pa. Code § 92.1)
- ... DEP should require a livestock operation to obtain a CAFO permit if it might impact high quality or exceptional value streams, if it is located in an impaired stream for which pollution limits have been developed, or in areas where the geology makes it easier for operations handling large amounts of manure to pollute groundwater and streams. (25 Pa. Code § 92.1)
- ... When determining if an operation needs a CAFO permit, DEP should also consider the manure storage structure's potential to pollute based on local geology, cumulative impacts of farming operations in same area, proximity to high quality, exceptional value streams, or impaired streams, pollution loading (TMDL) restrictions. (25 Pa. Code § 92.1)

Setbacks for Manure Spreading

- ... I support DEP's proposal to adopt the National Resource Conservation Service guidelines and require either a 50 foot vegetated buffer between fields where manure is spread and streams or require a 100 foot setback for manure spreading near streams. (25 Pa. Code §§ 91.36(b)(2) and 92.5a(d)(1)(i))
- ... Manure spreading must also be restricted near sinkholes, drainage tiles, agricultural well heads and other features that convey water as required under the federal regulations related to setbacks. (25 Pa. Code §§ 91.1 and 92.1)

Protecting and Restoring Streams

- ... DEP should be required to take allowable stream pollution loading restrictions into account (Total Maximum Daily Loads - TMDLs) 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.
- ... DEP should be required to perform an anti-degradation analysis for CAFO permit applications in high quality and exceptional value

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PA DEPARTMENT OF ENVIRONMENTAL PROTECTION
REGULATORY REVIEW COMMISSION

watersheds to demonstrate that proposed CAFOs will not degrade water quality.

... Manure storage structures with a capacity of one million gallons or more should be required to obtain a Water Quality Management (WQM) Permit. (25 Pa. Code § 91.36(a)(3)(ii))

... Manure storage structures near an impaired watershed should be required to obtain WQM permit regardless of whether or not the agricultural operation is implementing an approved nutrient management plan. (25 Pa. Code § 91.36(a)(3)(i)(C))

... When determining if an operation needs a WQM permit, DEP should also consider the manure storage structure's potential to pollute based on local geology, cumulative impacts of farming operations in same area, proximity to high quality, exceptional value streams, or impaired streams, and pollution loading (TMDL) restrictions. (25 Pa. Code § 91.36(a)(7))

Controlling Phosphorus Pollution

... DEP's 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. (25 Pa. Code § 92.5a(d)(1))

... Instead of using the phosphorus index, livestock operators must be required to ensure no more phosphorus is applied to fields than the crops grown there can absorb.

... Livestock operators must also be required to ensure no more phosphorus is applied to fields to which manure is exported than the crops grown there can absorb.

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.

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.

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

Sincerely,

Susan L. Wright, Esq.
147 Park Avenue
Swarthmore, PA 19081-1536
(610-328-5193)
<mintor2@comcast.net>

Original: 2412
October 25, 2004

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

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2004 NOV 12 PM 3:42
REGULATORY
REVIEW COMMISSION



Dear Board Members,

As a citizen of rural Pennsylvania living within ½ mile of a proposed 2200 head swine finishing facility I would like to make the following comments regarding the new CAFO regulations currently being reviewed.

I believe in order to balance the health, safety and welfare of our rural residents in Pa. and to protect our water and environment in Pa. the following deficiencies need to be addressed.

Since my experience to date is almost exclusively related to swine the numbers I will be referring to is for swine, different numbers for chickens, turkeys, cows, etc need to be addressed also.

1. Operations with under 2500 swine are for the most part unregulated now or in the new proposal, even though a 2200 head swine finishing barn will create more than 1,000,000 gallons of manure per year they do not even need a Nutrient Management Plan. With the model size facility in the swine industry being 2200 head, how can we possibly do our part in the Chesapeake Bay Tributary Strategy Plan with all of the manure from this size operation going unaccounted? How can we protect area residents from pollution to their wells? **CAFO definitions need to be changed to include these smaller operations and Nutrient management plans for smaller facilities need to be mandatory and all plans need to be implemented and operations inspected more thoroughly.**
2. With so much information about the health and safety issues for the workers and nearby residents of these operations coming from major universities like Johns Hopkins, Duke Universities and even Penn State's Agricultural Sciences Dept. as well as the USDA, CDC and other reliable sources, we must find a way through proper sighting to balance the needs of the farmers with the protection of the residents living in close proximity to these operations. **Larger setbacks for the manure pits and the confinement buildings need to be put in place. Tree buffers to prevent gases and odors produced in these operations from being blown towards nearby residents need to be implemented. As well Best Management practices for air-quality and odor-mitigation need to be implemented as part of the rule not as voluntary.**
3. When there is a problem with these operations like spills or the closing up of the operation, the local municipality or the state must pay the bill for the cleanup and repair. As well the accelerated damage and wear to the local or state roads done by the much more frequent heavy loads in and out must be paid for by the local municipality or the state. **Bonding for the repair of our roads and or the cleanup that may be needed should also be mandatory.**

Respectfully Yours,

Warren Braverman
5870 Marys Circle
Stewartstown, Pa. 17363



Original: 2412 List 8

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p.o. box 8477 * harrisburg, pa 17105-8477 (717)787-4526

Environmental Quality Board

October 20, 2004

INDEPENDENT REGULATORY
REVIEW COMMISSION

Mr. Robert E. Nyce, Executive Director
Independent Regulatory Review Commission
14th Floor, Harristown #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:

1. Molly Duffy, 118 Fennerton Rd., Paoli, PA 19301-1107
2. Clarence Appleby, 3365 S Madden Rd., Houstontown, PA 177229-9101
3. Mike Lombardo, 4008 Ferncroft Ln., Bethlehem, PA 18020-7615
4. Charlie Diaco, 113 S 11th St., Akron, PA 17501-1509
5. Samuel Young, 116 Shawnee Rd., Bloomsburg, PA 17815-9401
6. Gregory Dowd, RR 2 Box 360, Mt. Pleasant Mills, PA 17853-9440
7. Brian Pietrandrea, 334 Bascom Ave., Apt 315, Pittsburgh, PA 15214-1130
8. Mrs. Phyl Morello, HC 2, Albrightsville, PA 18210-9802
9. Charles Swigart, 1507 Mifflin St., Huntingdon, PA 16652-2019
10. Amy Woods, 211 Nashville Blvd., Spring Grove, PA 17362-8410

These 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,

Marjorie L. Hughes
Regulatory Coordinator

Enclosures

69

Hughes, Marjorie

RECEIVED

From: Molly Duffy [mfduffy1@yahoo.com]
Sent: Monday, October 18, 2004 4:50 PM
To: RegComments@state.pa.us
Subject: Water Quality at Risk: comments on proposed CAFO regulation

2004 OCT 20 PM 2:37

PA DEPARTMENT OF ENVIRONMENTAL PROTECTION
REGULATORY REVIEW COMMISSION

October 18, 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,

Mrs. Molly Duffy
118 Fennerton Rd
Paoli, PA 19301-1107

70
67

Hughes, Marjorie

From: Clarence Appleby [ctappleby@yahoo.com]
Sent: Saturday, October 16, 2004 7:51 PM
To: RegComments@state.pa.us
Subject: Water Quality at Risk: comments on proposed CAFO regulation

RECEIVED

2004 OCT 20 PM 2:37

REGULATORY REVIEW COMMISSION

October 16, 2004

Pennsylvania Department of Environmental Protection
PA

Dear ,

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

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

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

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

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

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unauthorized discharges from CAFO classification

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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. Clarence Appleby
3365 S Madden Rd
Hustontown, PA 17229-9101

71

Hughes, Marjorie

From: Mike Lombardo [uafd@rcn.com]
Sent: Saturday, October 16, 2004 12:36 PM
To: RegComments@state.pa.us
Subject: Water Quality at Risk: comments on proposed CAFO regulation

RECEIVED

2004 OCT 20 PM 2:37

DEPARTMENT OF REGULATORY
REVIEW COMMISSION

October 16, 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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The nonsensical definition includes one class of CAFOs that is: "any agricultural operation with a discharge to surface waters that is authorized by Department permit limits and conditions." It excludes from CAFO classification agricultural operations that are operating without necessary permits, or are otherwise not authorized by the Department. Thus, an agricultural operation could refuse to get a permit and by doing so avoid classification as a CAFO and the regulatory requirements that come with such a classification. In addition, the language does not specify which "Department permit limits and conditions" would result in a classification. In sum, the proposed language is completely irrational and must be amended to include agricultural operations with discharges regardless of whether they are authorized by any Department permits. In order to eliminate irrational language, comply with the federal rule, and clarify the proposal, DEP needs to recraft the definition of CAFO in § 92.1 to read as follows:

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

Sincerely,

Mr. Mike Lombardo
4008 Ferncroft Ln
Bethlehem, PA 18020-7615

72

Hughes, Marjorie

From: Charlie Diaco [charliediaco@aol.com]
Sent: Friday, October 15, 2004 6:08 PM
To: RegComments@state.pa.us
Subject: Water Quality at Risk: comments on proposed CAFO regulation

RECEIVED
2004 OCT 20 PM 2:37
REGULATORY
REVIEW COMMISSION

October 15, 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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Thank you very much, and I look forward to a strengthened regulation and improved water quality.

Sincerely,

Mr. Charlie Diaco
113 S 11th St
Akron, PA 17501-1509

Original: 2412

Hughes, Marjorie

From: Gregory Dowd [dowdgp@earthlink.net]
Sent: Friday, October 15, 2004 12:35 PM
To: RegComments@state.pa.us
Subject: Water Quality at Risk: comments on proposed CAFO regulation

RECEIVED

2004 OCT 20 PM 2:37

PENNSYLVANIA ENVIRONMENTAL REGULATORY
REVIEW COMMISSION

October 15, 2004

Pennsylvania Department of Environmental Protection
PA

Dear ,

Subject: Comments on proposed CAFO regulation

Rep Adam Harris and Sen Gordnor have been party to the stealth bill under the Motor Vehicle Act to threaten my water supply and overall environment. The Republican law suit against the veto is truly egregious.

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

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

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

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

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

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

Sincerely,

Mr. Gregory Dowd
RR 2 Box 360
Mt Pleasant Mills, PA 17853-9440

Original: 2412

Hughes, Marjorie

75

From: Phyl Morello [fastphyl1@hotmail.com]
Sent: Thursday, October 14, 2004 10:16 AM
To: RegComments@state.pa.us
Subject: Water Quality at Risk: comments on proposed CAFO regulation

RECEIVED

2004 OCT 20 PM 2:37

INDEPENDENT REGULATORY
REVIEW COMMISSION

October 14, 2004

Pennsylvania Department of Environmental Protection
PA

Dear ,

Subject: Comments on proposed CAFO regulation

How can you justify these regulations you have in effect when you really must know about how damaging these regulations are for the water quality in PA? They do not adequately protect our waters or air, for that fact.

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.

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

Sincerely,

Mrs. Phyl Morello
HC 2
Albrightsville, PA 18210-9802

(76)

Hughes, Marjorie

From: Charles Swigart [c.swigart@verizon.net]
Sent: Thursday, October 14, 2004 5:51 AM
To: RegComments@state.pa.us
Subject: Water Quality at Risk: comments on proposed CAFO regulation

RECEIVED

2004 OCT 20 PM 2: 38

INDEPENDENT REGULATORY
REVIEW COMMISSION

October 14, 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.

Huntingdon Borough where I live obtains its water supply from Standing Stone Creek. Many other towns get their drinking water from streams and rivers. We need to protect our streams from high volumes of manure runoff.

Regulations should be clear and should cover all operations which have the potential for overloading our streams and rivers with excess manure runoff.

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. Charles Swigart

1507 Mifflin St
Huntingdon, PA 16652-2019

77

Hughes, Marjorie

RECEIVED

From: Amy Woods [awoods@flashmail.com]
Sent: Thursday, October 14, 2004 6:03 AM
To: RegComments@state.pa.us
Subject: Water Quality at Risk: comments on proposed CAFO regulation

2004 OCT 20 PM 2:37

REGULATORY REVIEW COMMISSION

October 14, 2004

Pennsylvania Department of Environmental Protection
PA

Dear ,

Subject: Comments on proposed CAFO regulation

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

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

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

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

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

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

unauthorized discharges from CAFO classification

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

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,

Mrs. Amy Woods
211 Nashville Blvd
Spring Grove, PA 17362-8410

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Hughes, Marjorie

From: Brian Pietrandrea [bpietrand@yahoo.com]
Sent: Thursday, October 14, 2004 12:56 PM
To: RegComments@state.pa.us
Subject: Water Quality at Risk: comments on proposed CAFO regulation

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REGULATORY REVIEW COMMISSION

October 14, 2004

Pennsylvania Department of Environmental Protection
PA

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Sincerely,

Mr. Brian Pietrandrea
334 Bascom Ave Apt 315
Pittsburgh, PA 15214-1130