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.

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

In order to eliminate irrational language, comply with the federal rule, and clarify the proposal, DEP needs to recraft the definition of CAFO in § 92.1 to read as follows:

CAFO—Concentrated animal feeding operation—A CAO with greater than 300 AEUs, any agricultural operation with greater than 1,000 AEUs, any agricultural operation defined as a large CAFO under 40 CFR § 122.23(b)(4) or a medium CAFO under 40 CFR § 122.23(b)(6) (relating to concentrated animal feeding operations [applicable to state NPDES programs, see 123.25]), or any other agricultural operation designated as a CAFO by the Department based on risk of pollution of surface waters using relevant criteria such as the size, location and management plan of the operation.

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

4. The Clean Streams Law must be enforced effectively.

§ 91.36 (c) should be rewritten to state: Discharge of Pollutants. It is unlawful for agricultural operations to discharge pollutants to waters of the Commonwealth except as allowed by regulations or a permit administered by the Department. The Department SHALL take an enforcement action against any agricultural operation in violation of this requirement. In addition, when an agricultural operation is found to be in violation of the Clean Streams Law, 35 P.S. § 691.1 et seq., the Department SHALL require the agricultural operation to develop and implement a nutrient management plan under Chapter 83, Subchapter D, for abatement or prevention of the pollution.

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

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

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

Sincerely,

Mr. Samuel Young
116 Shawnee Rd
Bloomsburg, PA 17815-9401
To Whom It May Concern:

Regarding concerns about the proposed revisions to Pennsylvania’s Nutrient Management Act regulations and CAFO regulations.

I am concerned about the how the Commission defines the term “stream or other body of water” for its use in the current version of the Phosphorus Index. The identification of stream or other bodies (as defined for the index) on a farm serves a critical role in the calculation of the Phosphorus Index for a field. If “only named bodies of water” is not used it will be almost impossible to determine where an application of manure may be spread. If it were left open it would be almost impossible to spread manure on many fields here in the Susquehanna Valley. I look at some of my neighbor’s fields and I see streams, roadside ditches that carry water, swales that were established as conservation practices and carry water. Do only “named streams” count, or is it going to be “any place that water flows”?

I am also concerned about who manure regulations applies to. It should apply to all manure from all farms. Is cattle manure from a 50-cow herd any different from a farm with 150 or 500 cows? Make it apply to all farms.

Another concern relates to the CAFO regulations. The 100-foot setback, or 35-foot buffer also seems extreme. When I look at my neighbors fields and the conservation measures of swales, grassed waterways, streams, roadside ditches etc., the only way manure could be applied and meet the setback requirements would be for the landowner to first use flags to mark out the areas where manure could be applied. When the marking was accomplished, in many areas, only a small part of the field could be used for manure application. Using the above concerns, my observation on 3 nearby farms would indicate that applicators would need many more acres for manure application. The additional acreage needed and the time required placing the flags would require additional costs to the farmer. How is the farmer to bring the soil nutrients up to crop needs where manure cannot be spread? It would require the application of a large amount of commercial chemical fertilizer.

As I read the proposed regulations it would seem to indicate that someone wants to get rid of livestock in Pennsylvania. If we were to rid livestock from the agricultural scene in Pennsylvania, a major contributor would be cut from the largest industry in the state. All the industries that support animal agriculture (equipment – farm implements, services such as insurance, trucking, etc. and those they employ) would be lost and our population would then need to import chicken, pork and dairy products from other areas of the country or the world. I hope that is not the objective of this legislature.
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 individual:  
1. Michael McFadden, 46 Kings Wood Ter., Carlisle, PA 17013-8832  
2. Susan Poff, 1009 Marling Dr., West Chester, PA 19382-2360  
3. Mr. Francis Schlegel, 457 Coldstream Dr., Berwyn, PA 19312-1113  
4. Dr. Terry CoBabe, 5884 State Park Rd., PO Box 202, Point Pleasant, PA 18950-0202  
5. Peter Adams, 132 Cedarbrook Rd., Ardmore, PA 19003-1604  
7. David Whiteman, 134 Windy Ln., Centre Hall, PA 16828-8935  
8. June McKnight, 35 Crosslands Dr., Kennett Square, PA 19348-2009  
10. Michelle Warren, 349 Shasta Dr., York, PA 17402-5038  
11. Harry Brownfield, 11 Fairfax Vlg., Harrisburg, PA 17112-9557  

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,  

[Signature]  
Marjorie L. Hughes  
Regulatory Coordinator  

Enclosures
October 13, 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

Hughes, Marjorie

From: Peter Adams [hamsterskier@comcast.net]
Sent: Wednesday, October 13, 2004 2:57 PM
To: RegComments@state.pa.us
Subject: Water Quality at Risk: comments on proposed CAFO regulation
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
centrated 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. Peter Adams
132 Cedarbrook Rd
Ardmore, PA 19003-1604
Hughes, Marjorie

From: Terry CoBabe [tcobabe@comcast.net]
Sent: Wednesday, October 13, 2004 3:06 PM
To: RegComments@state.pa.us
Subject: Water Quality at Risk: comments on proposed CAFO regulation

October 13, 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
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,

Dr. Terry CoBabe
5864 State Park Rd
PO Box 202
Point Pleasant, PA 18950-0202
October 13, 2004

Pennsylvania Department of Environmental Protection
PA

Dear ,

Subject: Comments on proposed CAFO regulation

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

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,

Mr. Francis Schlegel
457 Coldstream Dr
Berwyn, PA 19312-1113
October 13, 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. Susan Poff
1009 Marlin Dr
West Chester, PA 19382-2360
Dear [Recipient],

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

In order to eliminate irrational language, comply with the federal rule, and clarify the proposal, DEP needs to recraft the definition of CAFO in § 92.1 to read as follows:

**CAFO**—Concentrated animal feeding operation—A CAO with greater than 300 AEUs, any agricultural operation with greater than 1,000 AEUs, any agricultural operation defined as a large CAFO under 40 CFR § 122.23(b)(4) or a medium CAFO under 40 CFR § 122.23(b)(6) (relating to concentrated animal feeding operations (applicable to state NPDES programs, see 123.25)), or any other agricultural operation designated as a CAFO by the Department based on risk of pollution of surface waters using relevant criteria such as the size, location and management plan of the operation.

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

4. The Clean Streams Law must be enforced effectively.

§ 91.36 (c) should be rewritten to state: Discharge of Pollutants. It is unlawful for agricultural operations to discharge pollutants to waters of the Commonwealth except as allowed by regulations or a permit administered by the Department. The Department SHALL take an enforcement action against any agricultural operation in violation of this requirement. In addition, when an agricultural operation is found to be in violation of the Clean Streams Law, 35 P.S. § 691.1 et seq., the Department SHALL require the agricultural operation to develop and implement a nutrient management plan under Chapter 83, Subchapter D, for abatement or prevention of the pollution.

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

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

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

Sincerely,

Mr. Michael McFadden
46 Kingswood Ter
Carlisle, PA 17013-8832
October 13, 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
The nonsensical definition includes one class of CAFOs that is: "any agricultural operation with a discharge to surface waters that is authorized by Department permit limits and conditions." It excludes from CAFO classification agricultural operations that are operating without necessary permits, or are otherwise not authorized by the Department. Thus, an agricultural operation could refuse to get a permit and by doing so avoid classification as a CAFO and the regulatory requirements that come with such a classification. In addition, the language does not specify which "Department permit limits and conditions" would result in a classification. In sum, the proposed language is completely irrational and must be amended to include agricultural operations with discharges regardless of whether they are authorized by any Department permits.

In order to eliminate irrational language, comply with the federal rule, and clarify the proposal, DEP needs to recraft the definition of CAFO in § 92.1 to read as follows:

CAFO--Concentrated animal feeding operation--A CAO with greater than 300 AEUs, any agricultural operation with greater than 1,000 AEUs, any agricultural operation defined as a large CAFO under 40 CFR § 122.23(b)(4) or a medium CAFO under 40 CFR § 122.23(b)(6) (relating to concentrated animal feeding operations (applicable to state NPDES programs, see 123.25)), or any other agricultural operation designated as a CAFO by the Department based on risk of pollution of surface waters using relevant criteria such as the size, location and management plan of the operation.

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

4. The Clean Streams Law must be enforced effectively.

§ 91.36 (c) should be rewritten to state: Discharge of Pollutants. It is unlawful for agricultural operations to discharge pollutants to waters of the Commonwealth except as allowed by regulations or a permit administered by the Department. The Department SHALL take an enforcement action against any agricultural operation in violation of this requirement. In addition, when an agricultural operation is found to be in violation of the Clean Streams Law, 35 P.S. § 691.1 et seq., the Department SHALL require the agricultural operation to develop and implement a nutrient management plan under Chapter 83, Subchapter D, for abatement or prevention of the pollution.

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

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

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

Sincerely,

Mr. Harry Brownfield
11 Fairfax Vlg
Harrisburg, PA 17112-9557
October 13, 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,

Ms. Michelle Warren
349 Shasta Dr
York, PA 17402-5038
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: a) reducing the nutrient pollution, and b) protecting the quality of our water.

An estimated 3,903 miles of Pennsylvania streams are now seriously impaired by agricultural impacts! As such, this regulation is flawed, at best, it has minimal 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,

Mr. Charles Rinehart
240 N Constitution Ave
New Freedom, PA 17349-9014
Hughes, Marjorie

From: June McKnight [jmck35@comcast.net]
Sent: Wednesday, October 13, 2004 4:20 PM
To: RegComments@state.pa.us
Subject: Water Quality at Risk: comments on proposed CAFO regulation

October 13, 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
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. If 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. June McKnight
35 Crosslands Dr
Kennett Square, PA 19348-2009
October 13, 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,

Mr. David Whiteman
134 Windy Ln
Centre Hall, PA 16828-8935
October 13, 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 watersheds are addressed, DEP must, as EPA has done, amend the definition of CAFO to include the appropriate medium-sized animal operations into the regulation.

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

3. The proposed definition of CAFO at § 92.1 irrationally excuses
unauthorized discharges from CAFO classification

The nonsensical definition includes one class of CAFOs that is:
"any agricultural operation with a discharge to surface waters
that is authorized by Department permit limits and conditions."
It excludes from CAFO classification agricultural operations that are
operating without necessary permits, or are otherwise not authorized
by the Department. Thus, an agricultural operation could refuse to
get a permit and by doing so avoid classification as a CAFO and the
regulatory requirements that come with such a classification. In
addition, the language does not specify which "Department permit
limits and conditions" would result in a classification. In sum,
the proposed language is completely irrational and must be amended to
include agricultural operations with discharges regardless of whether
they are authorized by any Department permits.
In order to eliminate irrational language, comply with the federal
rule, and clarify the proposal, DEP needs to recraft the definition of
CAFO in § 92.1 to read as follows:
CAFO—Concentrated animal feeding operation--A CAO with greater than
300 AEUs, any agricultural operation with greater than 1,000 AEUs, any
agricultural operation defined as a large CAFO under 40 CFR §
122.23(b)(4) or a medium CAFO under 40 CFR § 122.23(b)(6) (relating to
concentrated animal feeding operations (applicable to state NPDES
programs, see 123.25)), or any other agricultural operation designated
as a CAFO by the Department based on risk of pollution of surface
waters using relevant criteria such as the size, location and
management plan of the operation.
The proposed rule's calculation of Animal Equivalent Units to define
CAFOs is appropriate for Pennsylvania's mixed operations. Many
operations may not reach any of the species-specific thresholds to be
considered a CAFO, but would have more than 300 AEUs and need to be
included.
4. The Clean Streams Law must be enforced effectively.
§ 91.36 (c) should be rewritten to state: Discharge of Pollutants. It
is unlawful for agricultural operations to discharge pollutants to
waters of the Commonwealth except as allowed by regulations or a
permit administered by the Department. The Department SHALL take an
enforcement action against any agricultural operation in violation of
this requirement. In addition, when an agricultural operation is found
to be in violation of the Clean Streams Law, 35 P.S. § 691.1 et seq.,
the Department SHALL require the agricultural operation to develop and
implement a nutrient management plan under Chapter 83, Subchapter D,
for abatement or prevention of the pollution.
5. The provisions relating to buffers and setbacks are vague.
The requirement for a 100-foot year round setback (or 35-foot
vegetative buffer) from streams and other water bodies for land
application of manure is a giant step in the right direction. However,
a 50-foot buffer would capture much more pollution before it enters
our streams and downstream waters. The language requiring
"appropriate vegetated buffers and setbacks," is vague. The
Pennsylvania Technical Guide standards for Riparian Forest Buffers
(391) and Riparian Herbaceous Cover (390) would provide helpful
guidance on how these buffers may be designed to capture pollution and
protect water quality.
Thank you very much, and I look forward to a strengthened regulation
and improved water quality.

Sincerely,

Mr. David York
216 Greenfield Rd
Lancaster, PA 17601-5817
water table, etc. The farmer should not have to take the full burden of responsibility.

4. There is widespread non-compliance of the rules and we need to put a very strict system of inspection into effect.

Thank you for hearing my views.

Sincerely,

[Signature]

(Pennsylvaniaans for Environmental Protection)
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 individual:

1. Louise Hillman, PO Box 53, Mansfield, PA 16933-0053  
2. Eric Boyce, PO Box 274, Hatboro, PA 19040-0274  
3. Doris Loud, RR 2 Box 150D, Millerton, PA 16936-9533  
4. R. Renee Dolney, 2315 Orlando Pl., Pittsburgh, PA 15235-2768  
5. Richard Kasunic, 118 S. Center Ave., Somerset, PA 15501-2055  
6. Ms. Ishnee Dupont, 337 N Broad St., Kennett Square, PA 19348-2905  
8. Mr. Trey Johnston, 137 S Penn St., York, PA 17404-3857  
9. Mark Goncalves, 1272 Fawnwood Dr., Lancaster, PA 17601-1774  
10. Kate Esaia, 404 Joshua Ct., North Wales, PA 19454-1470

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,

Marjorie L. Hughes  
Regulatory Coordinator

Enclosures
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.

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

3. The proposed definition of CAFO at § 92.1 irrationally excuses
Unauthorized discharges from CAFO classification

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

In order to eliminate irrational language, comply with the federal rule, and clarify the proposal, DEP needs to recraft the definition of CAFO in § 92.1 to read as follows:

CAFO—Concentrated animal feeding operation—A CAO with greater than 300 AEUs, any agricultural operation with greater than 1,000 AEUs, any agricultural operation defined as a large CAFO under 40 CFR § 122.23(b)(4) or a medium CAFO under 40 CFR § 122.23(b)(6) (relating to concentrated animal feeding operations (applicable to state NPDES programs, see 123.25)), or any other agricultural operation designated as a CAFO by the Department based on risk of pollution of surface waters using relevant criteria such as the size, location and management plan of the operation.

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

4. The Clean Streams Law must be enforced effectively.

§ 91.36 (c) should be rewritten to state: Discharge of Pollutants. It is unlawful for agricultural operations to discharge pollutants to waters of the Commonwealth except as allowed by regulations or a permit administered by the Department. The Department SHALL take an enforcement action against any agricultural operation in violation of this requirement. In addition, when an agricultural operation is found to be in violation of the Clean Streams Law, 35 P.S. § 691.1 et seq., the Department SHALL require the agricultural operation to develop and implement a nutrient management plan under Chapter 83, Subchapter D, for abatement or prevention of the pollution.

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

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

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

Sincerely,

Mr. Richard Kasunic
118 S Center Ave
Somerset, PA 15501-2055
October 09, 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 might 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
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. R Renee Dolney
2315 Orlando Pl
Pittsburgh, PA 15235-2768
October 11, 2004

Pennsylvania Department of Environmental Protection
PA

Dear ,

Subject: Comments on proposed CAFO regulation

CAFO regulation will continue to be mismanaged and faulty at best until they are re-classified as INDUSTRIAL. They produce industrial waste. Obviously the corporations who own these things don’t want that. It will cost them more money, but unfortunately, until they are, they’ll cost the state and ultimately, the taxpayers more than they’re worth.

This is a huge and potentially dangerous problem, being that Pennsylvania is already high on the list of polluted states. If we don’t make it right now, we WILL suffer later. They need to be held accountable!!

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,

Ms. Doris Loud
RR 2 Box 150D
Millerton, PA 16936-9533