



**Pennsylvania Senate
Pennsylvania House of
Representatives
Agriculture & Rural Affairs
Committees**



*Senator Mike Waugh, Chairman
Representative Art Hershey, Chairman*

November 4, 2004

Karl G. Brown
Executive Secretary
State Conversation Commission
Room 407
Department of Agriculture
2301 North Cameron Street
Harrisburg, PA 17110

Dear Mr. Brown:

As respective chairs of the House and Senate Agriculture and Rural Affairs committees, we, in consultation with our staff and other members of our committees, offer the following comments on the proposed revisions to the Nutrient Management Act Regulations at 25 Pa. Code, Chapter 83 Subchapter D, #7-390. We commend the Commission for their timely review of the regulations and are generally supportive of the recommended changes, recognizing the broad participation from the potentially impacted interest groups. There are several areas of concern, however, to which we wish to call the Commission's attention.

By far the most significant of the proposed changes is the addition of a phosphorus management requirement. The proposed regulation uses the phosphorus-index as the sole method of addressing phosphorus and as determining factor for manure application; we are concerned that this requirement may have a significantly detrimental impact on many existing Concentrated Animal Operations (CAOs) in the Commonwealth. There is the distinct possibility that a farm management plan developed utilizing a nutrient management plan based upon current regulations will be completely inoperable under the new regulations.

We suggest that the Commission give serious consideration to the following alternatives:

1. Impose the P-index requirements, as outlined in the regulatory proposal, on only new CAOs as of the effective date of the regulations.

2. Allow any CAO, new or existing, the alternative of using either the P-index OR phosphorus balancing (defined as permitting annual application of phosphorus from manure up to the crop uptake level for the year) as a method of addressing phosphorus since, while one might be more appropriate for an individual farm than the other, the effect on water quality will be the same.

3. For existing CAOs with an approved nutrient management plan, permit a phase in of phosphorous management using either the P-index or phosphorus balancing (as defined above).
4. Permit a higher P-index initially, phasing in a lower P-index over a period of years.

A second major concern is that the regulation accurately reflect that the Commission has determined, as required by the Act (3 P.S. Sec. 1704(1)(i)), that phosphorus has defined negative water quality impacts and it is, therefore, within the scope of the Commission's authority to regulate and, conversely, that the Commission has determined that no other nutrients meet the criteria established for regulation. Should the definition of "nutrient" reflect this determination or is it more appropriately addressed elsewhere? Is this determination to address only nitrogen and phosphorus as nutrients of concern accurately reflected throughout the entire body of the proposed regulation?

Section 83.202 of the proposed rulemaking deals with the scope of the regulation. The Preamble indicates that the language in this section was changed to "clarify the relationship between the criteria in these regulations, the DEP regulations under Chapter 92 for 'concentrated animal feeding operations' (CAFOs) and those operations required by DEP to develop a plan to address a Clean Streams law violation." While we understand the intent, we did not find the original language to be lacking in clarity and are very concerned that the proposed new language, which states "...or other agricultural operations directed by the Commission or the Department to follow the CAO criteria..." has the potential for a very subjective and discretionary interpretation. Similar wording is found at 83.204(a), 83.272(a) and possibly other sections in the regulation, magnifying our concern. Unless the Commission has valid reasons to make the change, we recommend the original language of the section be retained.

We have several concerns regarding nutrient application procedures (Sec. 83.294) and the limitations imposed by 83.294(f). The need to protect drinking water sources notwithstanding, the limitations imposed on land application of manure within 100 feet of a drinking water source has the potential to significantly restrict a farmer's use of his own land if neighboring landowners place wells adjacent to the property line. This, in combination with the fact that there is no prohibition against the farmer utilizing chemical fertilizer on the same land, raises questions about the justification of such a limitation and we request that the Commission re-evaluate this restriction.

In addition to the major concerns noted above, we wish to offer for Commission consideration the following comments or questions:

- Given the parallel nature of most requirements, is it necessary to have a separate section for Volunteer Animal Operations (VAOs)?
- Considering that one of the goals of the Nutrient Management Act is more effective distribution of manure, we suggest that provisions be made for incidental export/import of small amounts of manure without the burden of the import/export recordkeeping and nutrient balance sheet requirements. An alternative, on its own or in combination with the above, could be to have the export/import requirements imposed only if the NMP includes the planned export of manure.
- The definition of "surface water" is expansive. How will this be interpreted when calculating distances for setbacks? Additionally, without considerable clarification with regard to what is meant by

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“wetlands”, “seeps”, and “springs” it would appear that such determinations will be extremely difficult to make.

- Why is the term “animal units” (not a defined term) used, rather than AEU, in 83.291(b)(2) and again in 83.401(b)(2)?

Finally, as a general observation, we want to note that we do not believe that the Preamble accurately reflects the increase in costs that will be borne by owners and operators of animal operations in the Commonwealth. The addition of phosphorus requirements alone will increase planning costs and dramatically increase transportation costs necessary for compliance if manure application is limited on certain lands. Numerous other added components, such as the requirement for manure testing, will necessarily increase expenditures. Technical resources and personnel necessary to assist farmers in attaining compliance will be in demand, potentially causing an increase in the cost for their services. It is important that the Commonwealth keep this in mind when considering funding assistance.

Sincerely,

Representative Arthur Hershey
Chairman,
House Agriculture and Rural Affairs

Senator Mike Waugh
Chairman,
Senate Agriculture and Rural Affairs

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