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REVIEW COMMITTEE

EQB/SCC JOINT HEARING

* * * * *

RE: Nutrient Management Program Amendments (7-390)
and Concentrated Animal Feeding Operations
(CAFOs) and Other Livestock Agricultural
Operations Program Amendments (7-391)

* * * * *

BEFORE: Ted Kuckuck, State Conservation Commission
Chair

Richard Fox, DEP

Michele Tate, DEP

Douglas Goodlander, SCC

HEARING: Thursday, October 14, 2004
6:00 p.m.

LOCATION: Ramada Inn
191 United Road
DuBois, PA 15801

COPY

WITNESSES: Pam Barnes, Chris R. Hoffman,
Caressa Crone, Larry Hutchins

Reporter: Jacqueline L. Hazlett

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NONE OFFERED

P R O C E E D I N G S

CHAIR:

Welcome to the State Conservation Commission and the Environmental Quality Board joint public hearing on two separate but closely related proposed rulemakings, revisions to the State Conservation Commission's regulations under the Nutrient Management Act and revisions to DEP's regulations under the Clean Streams Law. The purpose of this hearing is to formally accept testimony on these two proposed rulemakings.

My name is Edward Kuckuck, better known as Ted. I'm a member of the Pennsylvania State Conservation Commission and I'm representing the Commission tonight. Richard Fox is here representing the Environmental Quality Board as alternate for EQB member Senator Raphael Musto. As the Commission and Environmental Quality Board representatives here this evening, we call this hearing to order at 6:00 p.m.

With me today from the Department of Environmental Protection is Don Fieska (phonetic) from the Division of Conservation Districts and Nutrient Management and Michele Tate, Executive Policy Specialist.

1 Also from the State Conservation
2 Commission are Carl Brown, the Executive Secretary to
3 the Commission, Doug Goodlander, Bill Clouser and Ross
4 Horner, and another state commission member is
5 expected here a little later on.

6 On August 7th, 2004, the Environmental
7 Quality Board and the State Conservation Commission
8 published these proposed regulations for public review
9 and comment in the Pennsylvania Bulletin. In
10 addition, notice of this hearing has been published in
11 newspapers across the state. We are here tonight to
12 formally accept your comments on these proposed
13 regulation revisions.

14 Two public information meetings were held
15 to discuss the proposed rulemakings and to answer
16 questions. The public information meetings were held
17 on September 13, 2004 at the Holiday Inn, 5401 Carlisle
18 Pike, Mechanicsburg, PA and on September 16, 2004 at
19 the Ramada Inn, 191 United Road, DuBois, PA.

20 The State Conservation Commission's
21 Nutrient Management proposed rulemaking changes
22 existing regulations affecting concentrated animal
23 operations, also known as CAOs, based on advances in
24 the sciences of agronomics and manure management, as
25 well as emerging issues of concern relating to the

1 regulation of livestock agriculture. Currently, 840
2 operations meet the definition of a concentrated
3 animal operation regulated under the Commission's
4 existing nutrient management regulations and an
5 additional 1,100 farms have voluntarily complied with
6 the requirements.

7 At this time, I'll turn it over to Mr.
8 Fox.

9 MR. FOX:

10 Thank you, Ted. As Ted said, my name is
11 Richard Fox and I'm here representing the
12 Environmental Quality Board and as an alternate for
13 Senator Musto. The Environmental Quality Board
14 regulations affect all farms that store manure or
15 apply it to their land. They also regulate the
16 largest farms in Pennsylvania, concentrated animal
17 feeding operations, or CAFOs. The primary purpose of
18 the proposed CAFO rulemaking is to allow the
19 Commonwealth to maintain delegation of the Federal
20 National Pollutant Discharge Elimination System, or
21 NPDES, CAFO program. These regulations are
22 administered by the Department of Environmental
23 Protection under the Clean Streams Law.

24 This is the second of two public hearings
25 for the purpose of accepting comments on the proposed

1 rulemakings. In order to give everyone an equal
2 opportunity to comment on these two proposals, the
3 following ground rules are established.

4 Number one, the witnesses who have
5 preregistered to testify at this hearing will be
6 called first. After hearing from these witnesses,
7 other interested parties present will be provided an
8 opportunity to testify as time allows.

9 Oral testimony is limited to ten minutes
10 for each witness.

11 Organizations are requested to designate
12 one witness to present testimony on its behalf.

13 Each witness is asked to submit three
14 written copies of the testimony to aid in transcribing
15 the hearing. And if you could hand me your copies
16 prior to presenting your testimony, I'd appreciate it.

17 Number five, please state your name,
18 address and affiliation for the record prior to
19 presenting your testimony and specify if your comments
20 relate to Nutrient Management, CAFO/All Farms or both
21 proposed revisions.

22 Your help in spelling names and terms
23 that may not be generally familiar to everybody is
24 appreciated so that the transcript can be as accurate
25 as possible.

1 And the Environmental Quality Board
2 members or State Conservation Commission members and
3 department staff may find it necessary to question
4 witnesses to help them further understand the
5 testimony provided. However, the witnesses may not
6 question the Environmental Quality Board or the State
7 Conservation Commission as the purpose of the hearing
8 is to receive comments on the proposed revisions.

9 Interested persons may submit written
10 comments in addition to or in place of oral testimony
11 presented here. The Environmental Quality Board and
12 the State Conservation Commission must receive all
13 comments by November 5, 2004. The comments should be
14 addressed to the Environmental Quality Board, Post
15 Office Box 8477, Harrisburg, PA, 17105-8477 or to the
16 State Conservation Commission at Agricultural
17 Building, Room 405, 2301 North Cameron Street,
18 Harrisburg, PA, 17110.

19 Comments submitted by fax will not be
20 accepted. Interested persons may also submit a
21 summary of their comments to the Environmental Quality
22 Board or the State Conservation Commission. The
23 summary may not exceed one page in length and must
24 also be received by November 5th, 2004. The one-page
25 summary will be provided to each member of the

1 Environmental Quality Board or the State Conservation
2 Commission in the agenda packet and will be
3 distributed prior to the meeting at which the final
4 regulations would be considered.

5 Comments may also be submitted by email
6 to the Environmental Quality Board at RegComments,
7 that's one word, @state.pa.us or to the State
8 Conservation Commission at ag-scc@state.pa.us. and
9 must also be received by November 5th, 2004. A
10 subject heading of the proposed rulemaking, Nutrient
11 Management, CAFO/All Farms or both and a return name
12 and address must be included in each transmission. If
13 the sender does not receive an acknowledgement of
14 electronic comments within two working days, the
15 comments should be retransmitted to ensure receipt.

16 All comments received at tonight's
17 hearing, as well as those received in writing or
18 electronically by November 5, 2004 will be considered
19 by the Department and the Commission in the
20 finalization of these regulations.

21 Anyone who's interested in a transcript
22 of this hearing may contact the reporter here this
23 evening to arrange to purchase a copy of the
24 transcript. Ted, I turn it back to you.

25 CHAIR:

1 Thank you, sir. I'll now call the first
2 witness, P.J. Barnes, from Lawrenceville,
3 Pennsylvania.

4 MS. BARNES:

5 P.J. Barnes, Rural Route One, Box 177,
6 Lawrenceville, Pennsylvania, 16929. I am speaking on
7 behalf of the small/medium farms. My husband and I
8 are dairy farm owners. We milk 90 head of animals at
9 present. As of next week, we will be milking 160. We
10 just expanded our operation. With this expansion of
11 our operation, that moves us one step closer to
12 becoming a compliant animal feeding operation. With
13 these new proposed regulations, that puts a pinch, not
14 only in our pocketbooks but on our operation.

15 I am generally supportive of the proposed
16 regulations before us contained in the Animal Feeding
17 Operation and Nutrient Management regulations package.
18 Many of these regulations are necessary to bring
19 Pennsylvania into compliance with recent changes and
20 federal regulatory requirements for animal feeding
21 operations. Other regulations attempt to keep
22 Pennsylvania in the forefront in maintaining
23 environmental quality on animal farms. However, I do
24 have serious concerns about the two proposed
25 regulations that have been included in the regulatory

1 package. While the stated purpose of both the
2 proposed CAFO regulations and the Nutrient Management
3 regulations is to update the regulations on larger
4 farms, two of the proposed regulations have the impact
5 to impose requirements on virtually any size farm in
6 the State of Pennsylvania.

7 The increase in the number of
8 Pennsylvania farms that was subject to regulation as a
9 result of the addition of Section 91.36(a)(7) and
10 Section 91.36 (b)(2) is the proposed regulatory
11 package is substantial. While it was originally
12 estimated that approximately 1,500 farms would be
13 affected with these regulations that has changed
14 dramatically to indicate that an additional 10,000
15 farms would be subject to regulation by DEP as a
16 result of these inclusions, of the two regulatory
17 provisions.

18 I object to the vague wording and scope
19 of proposed Section 91.36(a)(7) which states that the
20 Department may require a water quality management
21 permit for any manure storage facility. As an
22 expanding dairy, we are looking to store more manure.
23 So this hits close to home for us with the
24 understanding that we are required to go through more
25 permitting process just to keep in operation. The

1 Department may require this water quality management
2 permit for any manure storage facility based on
3 relevant criteria such as proximity to special
4 protection waters or impaired waters under Chapter 93
5 for the risk of pollution. The State proposed
6 regulation is to regulate larger animal operations.
7 But this provision goes well beyond the stated purpose
8 and it also gives the Department the authority to
9 require any farmer having a manure storage facility to
10 obtain a water management permit. That does not
11 specify whether it's a large or small farm, it's any
12 farm. Moreover, the provisions failed to define what
13 constitutes relevant criteria.

14 Proposed Section 91.36 (b)(2) would give
15 the Department authority to place any setback
16 requirements on manure application from streams and
17 impose any requirements for vegetative buffer areas
18 near streams that DEP would at any time in the future
19 deem appropriate.

20 On our farm if these setbacks are
21 imposed, we lose 16 percent of farmable ground to
22 these regulations. When you consider smaller farms,
23 that's a pretty substantial amount.

24 I object to the Department of
25 Environmental Protection being given carte blanche to

1 impose setback buffer requirements that have yet to be
2 specified. Furthermore, I object to the fact that the
3 proposed regulations contains no language that would
4 limit the Department's authority to impose setback
5 buffer requirements on small and medium-sized farms
6 which we fall into.

7 Finally, I do not think that statewide
8 mandatory setbacks and buffer requirements are deemed
9 appropriate. Under the proposed regulations a farmer
10 cannot land apply manure, litter or processed
11 wastewater within 100 feet of surface waters or
12 potential conduits to surface waters. The requirement
13 could prove unduly burdensome for farmers such as
14 myself running a small to medium-sized farm operation.

15 Under a statewide mandatory setback
16 requirement, for every mile of stream running through
17 my property I will be unable to land apply manure to
18 approximately 24.25 acres of ground. When you
19 consider that small farms may be anywhere from 20
20 acres up to 40 acres, that's over half of your land
21 that you will lose to application. In order to
22 fertilize these acres, I will be forced to purchase
23 commercial fertilizer thereby incurring additional
24 costs.

25 Moreover, I will have to find other

1 ground on which to apply my own manure. In many areas
2 of the state there is very little land available for
3 manure application. Finding additional ground is not
4 only problematic but the acreage we see is declining
5 on a yearly basis.

6 Subjecting small and medium-sized farms
7 to mandatory setback and buffer requirements could
8 significantly limit our productive value and increase
9 production costs, which could drive our small farms
10 out of business. Many Pennsylvania small or
11 medium-sized farmers will tell you that we cannot
12 simply afford to incur these additional costs.

13 Pennsylvania farmers have had a history
14 of voluntary compliance. I currently hold my Nutrient
15 Management card so that I can write a Nutrient
16 Management plan for our farm so that we do fall in
17 compliance with these regulatory issues.

18 I don't want somebody telling me that I
19 must be in compliance when I'm volunteering my time
20 and making it an issue to become familiar with these
21 setbacks and abide by them on our own. The history is
22 evidenced by the roughly 900 small or medium-sized
23 farms who stepped up to the plate to comply with these
24 same standards. The combined animal nutrient
25 management standards are not bound.

1 I ask that the Environmental Quality
2 Board consider the measures which hundreds of
3 Pennsylvania farmers have voluntarily adopted. As
4 reasonable stewards of the land before the Board
5 mandates that all farmers statewide must comply with
6 strict regulations and could prove unduly burdensome
7 for our small farms.

8 As time goes on it will become even more
9 critical for small and medium-sized farmers to retain
10 flexibility in managing our farms. It puts us at a
11 definite economic disadvantage when competing with
12 farmers from other states who are not so strictly
13 regulated.

14 For these reasons, I'd ask that neither
15 of the proposed regulations be included in the adopted
16 regulatory package. As an alternative, I propose that
17 small and medium-sized farms be offered an initiative
18 to come in voluntary compliance with environmental
19 standards. This option would provide a more realistic
20 and less burdensome opportunity for small and medium-
21 sized farmers to comply with the standards set forth
22 in these proposed regulations.

23 CHAIR:

24 Thank you very much.

25 MS. BARNES:

1 Thank you.

2 MR. FOX:

3 We'll ask our second individual to come
4 forward, that would be Chris Hoffman, testifying on
5 behalf of the Pennsylvania Farm Bureau.

6 As a safety note to those of you who are
7 testifying tonight, the cord to the lectern is easy to
8 trip over up here. So be aware of that before you get
9 tangled up. Chris?

10 MR. HOFFMAN:

11 Chris Hoffman, Pennsylvania Farm Bureau.
12 Address is P.O. Box 8736, Camp Hill, PA, 17001.

13 Good evening, my name is Chris Hoffman.
14 I'm a third generation farmer from McAlisterville,
15 Pennsylvania. My family and I approximately farm 100
16 acres, which most of it is planted in corn and
17 soybeans. We also operate a 1,400 sow farrow to
18 feeder swine facility. I currently serve as vice
19 president of the Juniata County Farm Bureau. I
20 testify this evening on behalf of Pennsylvania Farm
21 Bureau and the 34,600 farm and rural families of the
22 Commonwealth that comprise our organization's
23 membership. Thank you for this opportunity to comment
24 on the proposed CAFO and Nutrient Management
25 regulations which are the subject of the evening's

1 hearing.

2 When you look at the Nutrient Management
3 program in the text of its history, you will see that
4 regulation of large farm operations in the
5 Commonwealth is still a pretty new effort. While the
6 Nutrient Management Act was passed in 1993, it was
7 October of 2000 by the time the regulations were fully
8 in place. As with all new programs, it takes time for
9 people to understand their responsibilities and make
10 adjustments in their day-to-day operations to meet
11 those responsibilities. Individuals involved in
12 enforcements will tell you that the majority of the
13 early Nutrient Management violations were of a
14 technical nature and arose because farmers didn't
15 truly understand their responsibilities in the record
16 keeping and performing other administrative duties.
17 Since farmers have begun to understand these
18 responsibilities, their compliance has greatly
19 improved.

20 I believe it is much more appropriate to
21 measure the regulatory effectiveness of this program,
22 not by what the agencies found --- what they made on
23 their first visits, but rather what the agencies are
24 finding today in subsequent visits. Now that farmers
25 have been made aware of their responsibilities and

1 have had an opportunity to bring our operations into
2 regulatory compliance.

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

15 The proposed Nutrient Management and CAFO
16 regulations will once again keep Pennsylvania at the
17 forefront in maintaining environmental quality on
18 animal farms. As with the original regulations, the
19 newly proposed regulations will bring --- were
20 developed to bring Pennsylvania in compliance with
21 federal regulations as well as reflecting developments
22 in agriculture and technology.

23 Pennsylvania Farm Bureau and other
24 stakeholders participated in discussions leading up to
25 the development of the proposed Nutrient Management

1 Act and the CAFO regulations. For the most part, we
2 are supportive of the changes being proposed.
3 However, we caution that the spirit of flexibility
4 that led to these developments of these proposed
5 regulations must not be lost.

6 Farm Bureau has serious concerns over two
7 proposed regulations included in the regulation
8 package. Proposed 9136(a)(7) would give the
9 Department of Environmental Protection, DEP, virtually
10 unlimited authority to require any farmer who has
11 manure storage facilities to obtain a water management
12 permit based on a vague set of what the Department may
13 determine as relevant criteria.

14 Proposed 9136(b)(2) would give DEP
15 authority to place any setback requirements on manure
16 application from streams and impose any requirements
17 for vegetative buffer areas near streams that DEP
18 would deem appropriate without any criteria to guide
19 or limit the scope of the requirements for setbacks
20 and buffers that DEP would deem appropriate for
21 farmers.

22 We are concerned that no measurable
23 standard is established in either proposed regulations
24 to guide, direct or limit the exercise of DEP's
25 authority to impose permitting or setback requirements

1 on farms other than the CAFO or nutrient animal
2 operations.

3 Moreover, we continue to object to he
4 manner in which the two proposed regulations found
5 their way into the regulatory package. Neither was
6 included in the package presented to DEP's
7 Agricultural Advisory Board and the regulations did
8 not appear anywhere publicly until just before the
9 Environmental Quality Board met to approve the
10 regulation package.

11 These two regulations change the focus of
12 nutrient regulation from large farms to virtually any
13 small or medium-sized farm that uses or stores manure.
14 If accepted, these regulations would have an effect of
15 burdening families who operate small or medium-sized
16 farms with additional costs by limiting productive
17 land use and imposing additional compliance costs.

18 Many farmers who run small to medium-
19 sized operations will tell you now that they can't
20 afford any more regulation. As time goes on, it will
21 become even more critical for such farmers to remain
22 flexible in managing their farms if those farms are to
23 remain economically viable. In light of this, we do
24 not believe that the Department has done enough
25 meaningful analysis regarding the environmental needs

1 of the proposed regulations' expansion of authority
2 and the economic impact such as exercise of authority
3 that it will have on these types of farms that will be
4 subject to additional regulation. Therefore, Farm
5 Bureau recommends that neither of the previously
6 discussed sections be included in the regulations
7 package finally adopted.

8 As I indicated previously, Farm Bureau is
9 generally supportive of the proposed regulations
10 contained in the CAFO and nutrient management
11 regulations package. Many are necessary to bring
12 Pennsylvania into compliance with recent changes in
13 federal regulatory requirements. Others provide
14 consistency with regards to farms regulated under
15 concentrated animal operations under state law and
16 farms regulated as CAFOs under federal law.

17 Several proposed changes to the CAFO
18 regulations are particularly positive and worth
19 noting. The newly proposed regulation incorporates a
20 change in the federal regulations designed to protect
21 surface waters. Under the proposed regulations, a
22 CAFO must either refrain from applying land within 100
23 feet of surface waters or establish a 35-foot buffer
24 --- permanent vegetation buffer. This minimum
25 setback/buffer requirement should reduce the risk of

1 nutrients entering streams while allowing CAFO farmers
2 reasonable flexibility to manage their operation and
3 applying manure.

4 The proposed regulations will also
5 establish more stringent regulatory standards for the
6 exportation and land application of manure produced on
7 large farms. These standards will provide the
8 necessary documents to demonstrate that farmers are
9 indeed exporting manure responsibly. In addition, the
10 proposed regulations will impose on farms receiving
11 manure from larger animal farms the same setbacks and
12 buffer requirements that existed for farms where the
13 manure is produced. The proposed regulation will more
14 define the responsibilities of commercial brokers and
15 haulers who handle manure. Moreover, they will insure
16 that such brokers and haulers have the necessary
17 documents to show that manure is being applied
18 responsibly.

19 I'd like to offer comment on one other
20 change I believe is of major importance in the future
21 of agriculture in the Commonwealth. The proposed
22 regulations would require larger farms to consider and
23 address phosphorus in land management practices and
24 manure application practices that occur on lands
25 receiving manure. Here, a phosphorus index would be

1 used to determine whether an individual field of a
2 high level of phosphorus --- if a high level of
3 phosphorus is found, mandatory conservation practices
4 will be implemented and restrictions will be placed on
5 the quantity of manure that can be applied to the
6 field.

7 While the proposed regulation does not
8 sound unreasonable in concept, we are concerned about
9 the practical consequences that purely phosphorus-
10 based regulations would have on farms. Those with
11 professional expertise in the area of phosphorus
12 indexing have demonstrated that a certain area of the
13 state, a significant portion of land currently being
14 used for manure application will be eliminated from
15 future use if the phosphorus index is immediately
16 imposed.

17 MR. FOX:

18 You're very close to being out of time.

19 MR. HOFFMAN:

20 The end result will likely be that some
21 farmers will have nowhere to go with their manure, or
22 that some farmers will not reasonably be able to bear
23 the costs associated with moving the manure to areas
24 that may be applied. We have heard that several
25 farmers who, after consultation with their nutrient

1 management specialists, have indicated that a blanket
2 application for the phosphorus standard would put them
3 out of business.

4 Section 83.404 would also propose a
5 standard --- establish a standard of staking and land
6 applying of dry manure. As proposed, the standard
7 would limit the time for continued storage of stacked
8 manure on larger farms until the beginning of the
9 following growing season. We believe this standard
10 strikes a reasonable balance between the need to
11 minimize potential environmental risks with the need
12 of flexibility in applying manure where conditions are
13 most favorable.

14 Once again, I would like to thank the
15 Department of Environmental Protection and the State
16 Conservation Commission for the opportunity to provide
17 comments on the proposed changes of the CAFO and the
18 Nutrient Management regulations. Thank you.

19 MR. FOX:

20 I would like to call our third witness,
21 Tom Ed Green.

22 MR. GREEN:

23 I don't need to testify at this time.

24 MR. FOX:

25 Okay. Thank you. That brings us then to

1 our witness number four, Caressa Crone.

2 MS. CRONE:

3 Caressa Crone, C-A-R-E-S-S-A, Crone,
4 C-R-O-N-E, Pine Hurst Acres, 3036 Sunbury Road,
5 Danville, Pennsylvania.

6 My name is Caressa Crone and I offer
7 comments on behalf of our family farm, Pine Hurst
8 Acres, which is located in Northumberland County,
9 Danville, Pennsylvania. We qualify as a CAFO and have
10 a voluntary nutrient management plan on file. As I've
11 stated previously, we are a family farm that takes
12 pride in producing a safe and affordable food supply
13 for the citizens of Pennsylvania. We farm 2,800 acres
14 of corn, soybeans, and wheat in two counties and also
15 care for 4,900 head of hogs on a daily basis. We are
16 environmentalists every day. Our ability to care for
17 the land and waterways will ensure a future for our
18 farm. The regulations that are set will affect not
19 only our future in Pennsylvania, but also the future
20 of my children.

21 I will first address the Nutrient
22 Management Act Regulations. We do not necessarily
23 disagree with the State Conservation Commission's
24 decision to more directly address phosphorus loss in
25 nutrient management plans, nor the choice of the

1 phosphorus index as an effective and flexible tool in
2 which to address this phosphorus loss, but we are very
3 concerned about the financial impact this initiative
4 will have on our industry. Therefore, we are
5 recommending that the Commissions allow for either
6 phosphorus indexing or phosphorus balancing to be used
7 in nutrient management plans called for under the Act
8 and the CAFO program. This will provide additional
9 flexibility to the agricultural community in its
10 efforts to address phosphorus loss. We are defining
11 phosphorus balancing as limiting the amount of
12 phosphorus that will be applied for a given year, to
13 the amount that will be removed by the crop in that
14 given year. Also, for situations where the one-year
15 allowable phosphorus application rate is so low,
16 and/or the nutrient content of the manure is so high,
17 that it cannot be practically applied with manure,
18 such as maybe needing less than two tons of poultry
19 manure per acre. The Commission should allow a farmer
20 to apply a one time application that will meet the
21 crop needs for up to the next three years.

22 If the Commission is not agreeable to
23 allowing phosphorus balancing for all CAOs and CAFOs,
24 we would recommend that the addition of phosphorus
25 balancing be allowed for existing CAOs and CAFOs only,

1 and not for new operations.

2 Also, we are very concerned about how the
3 Commission defines the term, stream or other water
4 body, for its use in the current version of the
5 phosphorus index. The identification of streams or
6 other water bodies as defined for the index on a farm
7 serves a critical role in the calculation of the
8 phosphorus index for a given field. As a way to
9 define exactly what a water body consists of, we feel
10 that it is important to count only named streams as
11 water bodies. If this is not accepted, it is almost
12 impossible to determine where application of the
13 manure will be allowed. This is especially difficult
14 in this state where we have so many miles of
15 waterways.

16 As a footnote, we feel that the
17 phosphorus index will space out operations in
18 Pennsylvania due to the increased land base needed to
19 address the index and the inability to economically
20 transport manure long distances. This will address a
21 number of the watershed carrying capacity concerns
22 that the environmental groups have relating to the
23 placement of agricultural operations within the state.

24 Also, we ask the Commission to possibly
25 require manure exporters to purchase manure

1 application easements from those farms that will be
2 importing their manure. This will ensure that the
3 importing operator will not be able to back out of the
4 arrangement to receive imported manure.

5 The Commission should consider housing a
6 manure distribution specialist at the conservation
7 district whose responsibility is to find importing
8 sites or distribution centers for excess manure
9 produced on existing CAOs or CAFOs.

10 CAFO regulations. The 100 foot setback
11 or 35 foot buffer for all CAFO manure is extreme and
12 difficult for existing farms to address. Farmers have
13 purchased farm land in order to apply manure to these
14 lands, and to now disallow these applications for
15 existing operations without due compensation, could
16 put a significant number of farmers into further
17 financial difficulties. As on overall comment on this
18 requirement, I do not see how CAFO manure is any
19 different from the manure produced on non-CAFO
20 operations. Why are these requirements valid for a
21 CAFO but not other farms? An application of CAFO
22 manure on near-stream areas is no more environmentally
23 sensitive than non-CAFO manure in the same areas. I
24 feel that targeting this requirement to CAFOs is ill
25 conceived.

1 I am also concerned about what areas will
2 be identified as requiring this setback. Would this
3 include roadside ditches, waterways, diversions,
4 intermittent streams, wetland, natural swales, et
5 cetera? These areas can be very hard to define, open
6 to interpretation, and as this setback area is defined
7 liberally, there could be a very significant amount of
8 land falling within this requirement and therefore, a
9 significant impact on the industry's access to land
10 for manure application for small farms versus large
11 farms versus CAFOs. I would recommend that this
12 requirement be eliminated because of the extreme
13 financial hardship that it is expected to impose on
14 existing operations. We can see how the 100 foot/35
15 foot requirement may be able to be accommodated by new
16 operations, but we do not see how an existing
17 operation, formatted to maintain their operation with
18 their given acreage, could handle this requirement
19 without possible significant financial hardship.
20 Therefore, we would recommend as one alternative that
21 the setback requirement be required of new operations,
22 but not in existing ones. Also, as another
23 alternative we would recommend that this requirement
24 be eliminated for near-stream manure applications that
25 are incorporated within 24 hours of application. As a

1 final alternative, if the DEP insists on imposing this
2 requirement in Pennsylvania, we would suggest that it
3 be imposed on all farms, not just CAFOs, since there
4 is no scientific reason why CAFO manure is more
5 damaging in near-stream areas than non-CAFO manure.
6
7 Who is proposed to be designated as a
8 CAFO in Pennsylvania is problematic. Pennsylvania
9 established an industry-accepted definition of a CAFO
10 several years ago, given the program requirement at
11 that time. Given the proposed revised requirements of
12 CAFOs, the state needs to reevaluate who is relevant
13 to be considered a CAFO. Based on the proposal, DEP
14 is proposing to continue to address the types of
15 operations defined as CAFO in Pennsylvania in the past
16 as well as include the operations EPA is newly
17 requiring to be as a CAFO. We would suggest that if
18 the EPA is firmly defining a CAFO under its new
19 regulations, and EPA is firmly requiring DEP to accept
20 this definition of a CAFO for Pennsylvania, we would
21 say the DEP should use the EPA CAFO definition and
22 should not add additional farms to that definition, as
23 they have done in the past. We believe that revising
24 the CAFO definition as proposed will impose an
25 unnecessary increase, financial hardship on our
state's already financially burdened agricultural

1 industry. Seeing that the EPA is not requiring these
2 other operations, those greater than 1,000 animal
3 units due to combined animal types, and 301 to 1,000
4 animal units for CAOs to be defined as CAFO requiring
5 an NPDES permit. If DEP could retain a current,
6 reasonable program standards that the industry has
7 agreed to follow, then the industry could accept the
8 expanded CAFO definition. But if this new
9 setback/buffer requirement will be imposed on CAFOs,
10 as well as phosphorus planning and the new exported
11 manure requirements, we would recommend that DEP limit
12 its CAFO definition to only what EPA requires.

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

22 I encourage the Commission to remember
23 that agribusiness is a large part of Pennsylvania
24 economy. If farmers are regulated out of business,
25 then the agribusinesses and the money they generate

1 will follow, perhaps to another state more receptive
2 to production agriculture.

3 Thank you for the opportunity to provide
4 testimony.

5 CHAIR:

6 Thank you.

7 MR. FOX:

8 At this time I'll call witness number
9 five, Robert Culp.

10 MR. CULP:

11 She's covered most of everything I wanted
12 to say, but if I can make some comments later, I
13 would.

14 MR. FOX:

15 We may throw that open to comments a
16 little later depending on how we do on time.

17 CHAIR:

18 Thank you.

19 MF. FOX:

20 Thank you. Witness number six, James
21 Vogg (phonetic).

22 MR. VOGG:

23 I got nothing to say.

24 CHAIR:

25 Okay. Thank you.

1 MR. FOX:

2 That will take us to witness number
3 seven, Bill Schall (phonetic).

4 MR. SHCALL:

5 I would concur with the lady that spoke
6 before.

7 MR. FOX:

8 Okay. Thank you. Witness number eight,
9 Mark Muir (phonetic).

10 MR. MUIR:

11 No comments at this time.

12 MR. FOX:

13 All right. Thank you. Does anyone else
14 in attendance wish to comment on this proposal?

15 MR. HUTCHINS:

16 Yes.

17 MR. FOX:

18 Yes, sir?

19 MR. HUTCHINS:

20 My name is Larry Hutchins (phonetic). I
21 live in Knoxville, Pennsylvania, R.R. 2 Box 167. My
22 comments are of general nature, because I am very
23 concerned about the degree of regulations that we are
24 under.

25 Forbes Magazine just recently did a study

1 of the business friendliness of states. Pennsylvania
2 was 40th on that list and the two big criteria were
3 taxes and regulations.

4 Now, if our governor really wants to get
5 economy moving, then he has got to stop imposing
6 additional regulation on the leading industry of the
7 state.

8 Secondly, I think that the regulations as
9 we've heard from a number of speakers here, are in
10 effect takings. People are losing the use of their
11 land and there is no compensation in these regulations
12 for the lost income to the land. And if the people of
13 the Commonwealth of Pennsylvania want all of this
14 nice, fresh air and pristine environment, then I think
15 they better start being prepared to pay for it. And I
16 think it's irresponsible of government agencies to
17 keep imposing regulation on people in the farming ---
18 well generally, but particularly, we have a problem
19 with the regulated industry of the state. And I would
20 like the Environmental Quality Board to consider the
21 economic implication of what you're doing, because
22 it's almost as if you were inlaid with the wild lands
23 project to drive everybody out of the central part of
24 Pennsylvania to the people who assume to come up here.
25 Thank you.

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MR. FOX:

Thank you, sir. Is there anyone else who wishes to present testimony at this time? If no other witness is present, on behalf of the State Conservation Commission and the Environmental Quality Board, I thank you for your interest. I hereby adjourn this meeting at 6:42 p.m.

* * * * *

HEARING CONCLUDED AT 6:42 P.M.

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C E R T I F I C A T E

I hereby certify that the
foregoing proceeding 10/14/04 EQB/SCC
was reported by me, that I have read this
transcript on 10/29/04, and I attest
that this transcript is a true and
accurate record of the proceeding.

Jackie Harfett
Court Reporter

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BEFORE THE COMMONWEALTH COURT
OF
PENNSYLVANIA

* * * * *

IN RE: EQB/SCC PUBLIC HEARING ON
NUTRIENT MANAGEMENT PROGRAM AMENDMENTS
(#7-390) and CONCENTRATED ANIMAL
FEEDING OPERATIONS (CAFOs) and OTHER
LIVESTOCK AGRICULTURAL OPERATIONS
PROGRAM AMENDMENTS (#7-391)

* * * * *

BEFORE: Loren Lustig, Member of the
PA State Conservation
Commission
Walter Heine, Member of the
Citizen Advisory Council of
The Environmental Quality
Board

HEARING: Wednesday, October 13, 2004
6:00 p.m.

LOCATION: Holiday Inn
5401 Carlisle Pike
Mechanicsburg, Pennsylvania

COPY

Reporter: Kelly Zanzinger

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WITNESSES: Kimberly Snell-Zarcone,
Walt Peechatka
Donald Robinson
Melinda Downey
Brenda Shambaugh
Robin Mann
Bill Plank
Ken Strock
James Junkin

A P P E A R A N C E S

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LOREN LUSTIG

PRESENT FOR PENNSYLVANIA STATE
CONVERSATION COMMISSION

WALTER HEINE

PRESENT FOR ENVIRONMENT QUALITY
BOARD

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I N D E X (CONTINUED)

CLOSING REMARKS

By Loren Lustig

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CERTIFICATE

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E X H I B I T S

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1 P R O C E E D I N G S

2 -----

3 MR. LUSTIG:

4 Welcome to the State
5 Conversation Commission and the
6 Environmental Quality Board joint
7 public hearing on two separate but
8 closely related proposed rule-makings.
9 Revisions to the Commission's
10 regulations under the Nutrient
11 Management Act and revisions to the
12 Department of Environmental
13 Protection's regulations under the
14 Clean Streams Law.

15 The purpose of this
16 hearing is to formally accept
17 testimony on these two proposed rule-
18 makings. My name is Loren Lustig and
19 I'm a member of the Pennsylvania State
20 Conservation Commission, and I'm
21 representing that commission tonight.
22 Walter Heine is representing the
23 Environmental Quality Board and serves
24 as a member of the Citizen Advisory
25 Council of that Board. He's sitting

1 next to me.

2 As the Commission and
3 Environmental Quality Board
4 representatives here this evening, we
5 call this hearing to order here at
6 6:02 p.m. With me today from the
7 Department of Environmental Protection
8 are the following people: Cedric
9 Karper, Bob Gibson, Don Fiesta
10 representing the Conservation
11 Districts and nutrient management
12 Division. Marjorie Hughes is here as
13 a Regulatory Coordinator. Bobby Jones
14 is here with the nutrient management
15 Advisory Board. From the State
16 Conservation Commission: Doug
17 Goodlander, Bill Clouser, and Karl
18 Brown.

19 On August 7th, 2004, the
20 Environmental Quality Board and the
21 State Conservation Commission
22 published these proposed regulations
23 for public review and comment in the
24 Pennsylvania Bulletin. In addition,
25 notice of this hearing has been

1 published in newspapers across the
2 state. We are here tonight to
3 formally accept your comments on these
4 proposed regulations and revisions.

5 Two public information
6 meetings were held to discuss the
7 proposed rule-makings and answer
8 questions. The public information
9 meetings were held September 13th,
10 2004 here in Mechanicsburg and on
11 September 16th, 2004 in Dubois.

12 The State Conservation
13 Commission nutrient management
14 proposed rule-making changes existing
15 regulations affecting concentrated
16 animal operations based on advances in
17 the sciences of agronomics and manure
18 management, as well as emerging issues
19 of concern relating to the regulation
20 of livestock agriculture. Currently,
21 840 operations meet the definition of
22 a Concentrated Animal Operation
23 regulated under the Commission's
24 existing nutrient management
25 regulations, and an additional 1,100

1 farms have voluntarily complied with
2 these regulations.

3 MR. HEINE:

4 The Environmental
5 Quality Board regulations affect all
6 farms that store manure or apply it to
7 the land. They also regulate the
8 largest farms in Pennsylvania that's
9 concentrated animal feeding
10 operations, which are called CAFOs.
11 The primary purpose of the proposed
12 CAFO rule making is to allow the
13 Commonwealth to maintain delegation of
14 the Federal National Pollutant
15 Discharge Elimination System (NPDES).
16 We all know that name, and that's
17 their CAFO program. These regulations
18 are administered by DEP under the
19 Clean Streams Law.

20 This is the first of two
21 public hearings for the purpose of
22 accepting comments on the proposed
23 rule-makings. In order to give
24 everyone an equal opportunity to
25 comment on the proposals, the

1 following ground rules are
2 established: the witnesses who have
3 pre-registered to testify at this
4 hearing will be called first. After
5 hearing from these witnesses, other*
6 interested parties present will be
7 provided the opportunity to testify as
8 time allows. Oral testimony is
9 limited to ten minutes for each
10 witness, and as you're approaching the
11 ten minutes we'll give you a clue that
12 you have another minute left or so
13 because we want to give everybody an
14 opportunity. Organizations are
15 requested to designate one witness to
16 present testimony on its behalf.

17 Each witness is asked to
18 submit three written copies of the
19 testimony to aid in transcribing the
20 hearing. Please hand me your copies
21 prior to presenting your testimony.
22 Please state your name, address and
23 affiliation for the record prior to
24 presenting your testimony and specify
25 if your comments relate to nutrient

1 management, CAFO or both proposed
2 regulations.

3 Your help in spelling
4 names and terms that may not be
5 generally familiar is appreciated so
6 that the transcript can be as accurate
7 as possible. So all comments received
8 today in the hearing, as well as those
9 received in writing or electronically
10 by November 5th will be considered by
11 the Department and the Commission in
12 the finalization of these regulations.

13 Anyone interested in a
14 transcript of this hearing may contact
15 the reporter here to arrange for the
16 purchase of a copy. Thank you very
17 much.

18 MR. LUSTIG:

19 Please remember that you
20 may submit written documents. Those
21 documents can be as lengthy as you
22 deem appropriate until November 5th.
23 You can submit those documents to the
24 respective and appropriate agency
25 either DEP or the State Conservation

1 Commission. A comment and response
2 document will be forthcoming when we
3 have collected all of the input from
4 the public. I now call the first
5 witness. I call Kimberly Snell-
6 Zarccone, please.

7 MS. SNELL-ZARCONE:

8 Kim Snell-Zarccone,
9 S-N-E-L-L-Z-A-R-C-O-N-E, Penn's
10 Future, P-E-N-N, F-U-T-U-R-E located
11 at 610 North Third Street, Harrisburg,
12 Pennsylvania, 17101. Good evening and
13 thank you for taking this opportunity
14 to receive public comment.

15 My name is Kim Snell-
16 Zarccone and I represent Citizens for
17 Pennsylvania's Future, a public
18 interest organization working to
19 create a just picture for nature
20 community and the economy pride. Penn
21 Future has been actively involved in
22 the processes used to develop both
23 regulatory packages.

24 Penn Future would like
25 to first acknowledge the time and

1 effort taken by both the Department of
2 Environmental Protection, specifically
3 Cedric Karper and Bob Gibson, and the
4 State Conversation Commission,
5 specifically Doug Goodlander in
6 developing these regulations.

7 On behalf of Penn
8 Future, I will be submitting written
9 comment on each regulatory package.
10 However, I would like to take this
11 opportunity to summarize these
12 comments. Penn Future supports the
13 retention of the AEU system to
14 determine whether an agricultural
15 operation is a CAFO. However, Section
16 92.1 of the CAFO regulation fails to
17 include small CAFOs as defined in the
18 federal regulations in Section
19 122.23(b)(9) and (c). Additionally,
20 under Section 92.1 DEP should require
21 any livestock operation that causes
22 the pollution incident to get a CAFO
23 permit. With further respect to the
24 definition of the CAFO in Section 92.1
25 DEP's designation analysis should be

1 required to examine whether an
2 agricultural operation impacts a high
3 quality or exceptional value stream,
4 if an agricultural operation is
5 located in an impaired watershed or an
6 area with limestone geology.

7 Under Section 83.294 (g)
8 the waste disposal practice of
9 spreading manure on frozen or snow-
10 covered ground should be prohibited.
11 Dried manure should not be allowed to
12 be stockpiled uncovered in fields for
13 more than two weeks under Section
14 83.201 and 83.294 (h). Additionally,
15 under 83.294 (e) the potential of
16 liquid manure to pollute streams and
17 groundwater must be evaluated
18 regardless of spreading mechanism.

19 Penn Future supports the
20 Department's proposal in Section 91.36
21 (b)(2) and 92.58 (d)(ii) to adopt a
22 national resource conservation surface
23 guideline to require either a 50-foot
24 vegetative buffer or 100-foot setback.
25 However, such vegetative buffer must

1 not be allowed to be harvestable crop.
2 The definition of setback in Section
3 91.1 and 92.1 must be amended to
4 prohibit manure spreading near
5 sinkholes, drainage tiles,
6 agricultural wellheads and other
7 features that convey water as required
8 under the federal regulations related
9 to setbacks.

10 Additionally, to be
11 consistent with federal regulations,
12 Pennsylvania's nutrient management
13 regulations must require setback of
14 100 feet from sinkholes for manure
15 spreading. In Section 83.294 (f)(1)
16 regardless of whether or not the
17 manure is incorporated into the soil.
18 Finally, neither the State
19 Conservation Commission nor the
20 conservation district should be able
21 to waive that requirement detailed in
22 Section 83.351 (a)(2)(7).

23 Many DEP programs that
24 seek to protect water quality are not
25 integrated into the CAFO nutrient

1 management program. The Department
2 should be required to take allowable
3 stream pollution, loading
4 restrictions, or TMTLs into account
5 when issuing CAFO permits in impaired
6 watersheds. Such permits should
7 address the measures of the CAFO woill
8 employ to ensure livestock facilities
9 do not add to the pollution load.
10 Nutrient management plans delineate
11 measures to protect water quality and
12 high quality, an exceptional value in
13 impaired watershed with pollution
14 loading restrictions.

15 Additionally, the
16 Department should require anti-
17 degradation analysis for agricultural
18 operations in high quality in
19 exceptional value watersheds
20 demonstrating that CAFO will not
21 degrade water quality.

22 Penn Future believes
23 that any manure storage structure
24 capacity of one million gallons or
25 more should be required to obtain

1 water quality management permit under
2 Section 91.36 (a)(3)(2). Under 91.36
3 (a)(3)(1c) manure storage structures
4 near an impaired watershed should be
5 required to obtain a water quality
6 management permit regardless of
7 whether or not the agricultural
8 operation is implementing an approved
9 nutrient management plan.

10 When determining if an
11 operation needs a water quality
12 management permit under Section 91.36
13 (a)(7) DEP should also consider the
14 manure storage structure's potential
15 to pollute based on local geology,
16 cumulative impact of farming
17 operations in the same area, proximity
18 to high quality streams, exceptional
19 value streams, or impaired streams,
20 pollution loading TMTL restrictions.

21 Under Sections
22 92.5(a)(d)(1) and 83.281 (a)(5) the
23 proposed phosphorous index does not
24 provide adequate protection for water
25 resources because it's not considered

1 proximity to an impaired watershed,
2 flooding potential, or leaching
3 potential when determining whether or
4 not fields can safely be used to
5 spread manure without causing
6 phosphorous pollution. Instead of
7 using the phosphorous index, livestock
8 operators should be required to ensure
9 that no more phosphorous is applied to
10 fields than their crops can absorb.
11 The proposed phosphorous index does
12 not impose adequate restrictions on
13 applying phosphorous to fields that
14 already contain too much phosphorous.
15 Restrictions will apply only to those
16 fields with extremely high levels.

17 Penn Future supports
18 Section 83.301 proposal to require a
19 signed agreement between exporters and
20 importers up north. We further
21 support Section 83.301(a)(3) proposal
22 to assign responsibility for proper
23 handling and disposal of manure
24 exporter, if exporter or its employee
25 applies manure at the import site.

1 Penn Future also
2 supports a proposed requirement in
3 Sections 83.301(e)(3) and (g)(1) and
4 (2) for manure importers to either
5 comply with manure spreading setbacks
6 or develop a nutrient management plan.
7 However, under Section 83.301(g)(1)
8 compliance with setbacks alone cannot
9 be used to adequately control
10 phosphorous pollution because it fails
11 to address fields with extremely high
12 phosphorous content. Under Sections
13 83.201, 83.301(a)(2) and (4), 83.301,
14 and 83.301(e)(3) the nutrient
15 management plan advised CAFO facilities
16 exporting manure must include nutrient
17 balance sheet for importing fields for
18 both nitrogen and phosphorous. To
19 ensure full compliance with the CAFO
20 regulations agribusiness corporations
21 that contract with livestock operators
22 or livestock management companies that
23 operate facilities under contract with
24 farmers should be required to cosign
25 CAFO permits.

1 Under Sections 83.261(6)
2 and (7) nutrient management plans
3 should be required to be signed by the
4 farm owner and the farm facility
5 operator. Contributions to the
6 district nutrient management plan
7 approval should be published in the
8 Pennsylvania Bulletin to give the
9 public adequate opportunity to review
10 approved plans before the 30-day
11 appeal period expires.

12 Additionally, under
13 Section 83.342(b) manure application
14 records should be submitted quarterly
15 to the conservation district and
16 available to the public for review.
17 Export manure records should also be
18 submitted quarterly to the
19 conservations district under Section
20 83.343(a)(4).

21 Penn Future supports
22 proposal in Section 83.202(1) to
23 require facilities at the State
24 Conservation Commission or
25 conservation district has determined

1 to meet the nutrient management plan,
2 to address management, or
3 environmental problems, to meet all
4 the requirements of the Nutrient
5 Management Act, and not be considered
6 a volunteer.

7 Studies of CAFO records
8 have shown wide-spread noncompliance
9 with the law. DEP, State Conservation
10 Commission, and the Department of
11 Agriculture must work together to
12 substantially increase oversight and
13 enforcement of all provisions of CAFO
14 permits, the Nutrient Management Act
15 and the Manure Hauler Certification
16 Act.

17 Penn Future believes
18 that these changes will ensure that
19 the CAFO permitting program, and the
20 Nutrient Management Program provide
21 strong protection to the water quality
22 for our community. Thank you.

23 MR. LUSTIG:

24 Thank you. Our second
25 speaker this evening is Walt

1 Peechatka.

2 MR. PEECHATKA:

3 Mr. Lustig, Mr. Heines,
4 good evening. I am Walt Peechatka,
5 spelling, P-E-E-C-H-A-T-K-A. I'm
6 executive vice president of Penn Ag
7 Industries Association headquartered
8 here in Harrisburg. Penn Ag is a
9 trade association representing 600
10 agricultural businesses, primarily
11 those in the supply and service sector
12 who support the individual family
13 farms in Pennsylvania. Our members
14 provide the inputs, the seed that's
15 used, the fertilizer, chemicals to
16 grow the crops, feed and feed
17 ingredients, nutritional services and
18 consulting services to those involved
19 in animal agriculture with a primary
20 emphasis on poultry and swine sector.
21 We also transport the manure from
22 poultry and livestock operations. And
23 some members own and operate poultry
24 and livestock operations. With the
25 limited amount of time available I'm

1 going to make a few general comments
2 that apply to both CAFO and Nutrient
3 Management Act proposed rule-makings.
4 I will then follow with specific
5 comments related to the high priority
6 issues associated with CAFOs and the
7 Nutrient Management Act individually.

8 Before I start, I'd like
9 to commend DEP and the State
10 Conservation Commission for the
11 outstanding work they did on this
12 project. I know it was difficult, so
13 I commend them for a fine job of
14 putting together the proposed rule-
15 making packages.

16 Let me set the stage for
17 my comments this evening by stating
18 that the agribusiness sector, which
19 Penn Ag represents is extremely proud
20 of its environmental record in recent
21 years. Our members have not only met
22 the state requirements of the Nutrient
23 Management Act of 1993 and the federal
24 requirements from EPA, but have
25 exceeded those requirements in many

1 instances.

2 We believe that
3 Pennsylvania leads the nation in its
4 efforts to make agricultural
5 operations compatible with the
6 environment, and we're willing to do
7 more, as long as the requirements are
8 scientifically based and economically
9 feasible.

10 In return, we expect the
11 State Conservation Commission, the
12 Department of Environmental Protection
13 and those multiple conservation
14 districts, which I have been delegated
15 authority under either of these
16 programs, to provide a uniform,
17 consistent, and timely review of plans
18 and applications for permits. Tell us
19 what you want and when we deliver it
20 to you, don't change your requirements
21 and ask for more. We find a moving
22 target an inconsistency of
23 interpretations between regions and
24 conservation districts to be one of
25 the most troubling aspects of the

1 regulatory programs.

2 Finally, all regulators
3 should have the conviction to stand up
4 to those who oppose new or expanded
5 animal operations in this state, and
6 support the agricultural community
7 when all the regulatory requirements
8 have been met. The agricultural
9 community deserves the support of the
10 regulators when agriculture has met
11 all of these regulatory requirements.
12 With those few general comments behind
13 me, let me turn, first of all to
14 comments on CAFOs 25PA.Code.CHS.91 and
15 92.

16 First of all on Chapter
17 91, having definitions for four
18 different types of storage facilities,
19 earthen waste storage pond, manure
20 storage facility, waste storage
21 facility, and waste water impoundment
22 is confusing. We suggest having one
23 definition, which encompasses all
24 types, if possible.

25 Number two; when they

1 asked whether the setback requirements
2 and CAFO regulations are consistent
3 with those in the Clean Streams Law,
4 and where do setback measurements
5 start from the defined bank or the
6 center of the stream?

7 Number three; we have
8 some concerns with the permit review
9 process. Only engineers should review
10 plans and applications for permits
11 prepared by engineers. The changes
12 are required to be incorporated in the
13 application. The engineer that
14 prepared the application is then
15 liable for any negative results that
16 might occur.

17 Number four; we feel
18 that differentiation must be made
19 between indoor or under a barn storage
20 facility and those facilities which
21 are outdoor. Freeboard limits as
22 proposed are appropriate for outdoor
23 facilities, but are not feasible for
24 indoor facilities, since rainwater
25 does not enter the indoor facility.

1 We would then recommend a
2 consideration of a six-inch freeboard
3 for indoor facilities.

4 Our comments on Chapter
5 92, while we feel that the proposed
6 time frames for permit application
7 review are very acceptable, we're
8 concerned that the Department may not
9 be able to maintain that schedule.
10 How will DEP ensure that it reviews
11 the pertinent applications according
12 to the proposed time frames? And what
13 is the appropriate response and
14 redress for the applicant when those
15 time frames are exceeded?

16 Number two, how will the
17 term commence, which is used in
18 Section 92.5 be interpreted? Does it
19 mean start of construction or
20 populating an animal facility with
21 animals?

22 Number three; could the
23 wording for setbacks possibly be
24 modified as to reference the NRCS
25 Technical Guide and its contents?

1 This would eliminate the need to
2 change the regulations every time the
3 technical guide is modified.

4 Now, for our comments on
5 25PA.Code.CH.83, the preamble of the
6 proposed rule making doesn't
7 accurately reflect the increase in
8 cost that will be incurred by the
9 farmer/producer. In addition to the
10 increased cost associated with the
11 preparation of a plan, there will be
12 costs for new practices that must be
13 implemented. With the addition of the
14 phosphorous requirements, fields
15 currently receiving manure may be off
16 limits and the farmer will need to
17 transport manure greater distances,
18 thereby increasing cost of
19 transportation. Also, while the
20 preamble notes an increase opportunity
21 for farmers to market their manure,
22 those possibilities are limited, and
23 are not keeping pace with manure
24 production. In addition, manure from
25 neighboring states is being subsidized

1 and is competing with manure generated
2 here in Pennsylvania.

3 Number two; one of the
4 primary goals of these regulations is
5 to ensure proper and efficient manure
6 application. This goal should not be
7 diminished or missed by placing
8 burdensome documentation requirements
9 on the producer, which might inhibit
10 that process. In instances related to
11 this documentation of manure
12 importers, flexibility must be
13 provided to the producer to amend his
14 plan by contacting the conservation
15 district indicating the need to do so
16 and receive verbal approval. If a
17 modified plan must be approved in
18 writing before adding a new importer,
19 the requirements would be unrealistic,
20 unworkable, and burden the producer.
21 But the new regulations requiring new
22 nutrient levels, and therefore new
23 importers, flexibility must be
24 provided.

25 Number three; some of

1 the proposed rule making have also
2 impacted new requirements under Act 49
3 of 2004, The Commercial Manure Haulers
4 and Brokers Certification Act. It is
5 very important that these proposed
6 rules be consistent with any new
7 requirements placed on manure haulers
8 as a result of Act 49.

9 Once these regulations
10 are finalized and adopted, it is
11 extremely important that a guidance
12 document be provided to the
13 conservation district, from which may
14 be delegated some of the
15 responsibility. There are currently
16 inconsistencies between conservation
17 districts and it is important that
18 they all perform their functions in a
19 consistent and uniform manner. This
20 is essential in order for producers,
21 consultants, and others who operate in
22 more than one district to have a
23 uniform standard, which is applied in
24 all districts.

25 In summary, I've focused

1 my attention on a few of the high
2 priority items, and I will be
3 providing detail --- written comments
4 by the deadline date. We appreciate
5 this opportunity to offer these
6 comments. Thank you.

7 MR. HEINE:

8 Mr. Peechatka, hold on.
9 Penn Future has suggested that the
10 agribusiness groups that you're
11 representing might be co-permitees
12 with the farmer. I presume you don't
13 have that off the top of your head, an
14 opinion as to what your position might
15 be on something like that. It sounds
16 to me like the intent there would be,
17 if a farmer creates a problem and gets
18 in trouble with his permit, that you
19 regulators go back down on the farmer,
20 but on the producer or the agronomy.
21 Do you have any thought on that?

22 MR. PEECHATKA:

23 Obviously, I think that
24 you're right that that is their
25 intention. They tied the two

1 together. Where it has been tried in
2 other states, I think the experience
3 has proven that it's not a workable
4 approach and off the top, I would say
5 we would not be supportive of that
6 approach.

7 MR. HEINE:

8 Okay. Thank you very
9 much.

10 MR. LUSTIG:

11 Thank you. Our next
12 speaker is Mr. Donald Robinson.

13 MR. ROBINSON:

14 Thank you. I'm Donald
15 Robinson, a retired manager from the
16 Lancaster County Conservation
17 District, also an advisory member of
18 the original District Management
19 Advisory Board. Tonight I'm
20 representing the Pennsylvania
21 Association of Conservation Districts,
22 which represent 66 conservation
23 districts across the State of
24 Pennsylvania. The address of the
25 Pennsylvania Association of

1 Conservation District is 25 North
2 Front Street, Harrisburg,
3 Pennsylvania, 17101.

4 First I'll address
5 comments on the Act Six regulations
6 proposed changes. 83.272, which deals
7 with the consistency of nutrient
8 management plan, best management
9 practices with an approved
10 conservation plan. It needs to be
11 noted that not all conservation
12 districts approve conversation plans.
13 Will they now be required to or can
14 someone else approve plan? Your
15 definition of an approved plan should
16 be provided. 83.281(b) deals with
17 maps and area of topography or topo
18 maps. Why are topo maps being
19 required? Present topo map scales are
20 not accurate enough. They're too
21 small, unless they can be related to
22 some aerial photograph.

23 83.291(b)(3)(ii) deals
24 with the testing of nutrient content
25 of manure. Proposed regulations allow

1 manure analysis from another similar
2 operation to be used for new plans
3 without an actual analysis. What is
4 the definition of a similar operation?
5 We can see this working for dry
6 poultry operations, but liquid systems
7 vary much too much to allow that.

8 83.291(e) dealing with
9 soil tests; soil tests are not
10 required to be submitted with a plan.
11 The phosphorous index worksheet will
12 note the phosphorous level from the
13 tests, but the conservation district
14 plan reviewer has no verification
15 unless these tests are either
16 submitted or checked during the site
17 visit. Tests results should be
18 required to be either submitted or
19 require them to be verified when the
20 site visit takes place.

21 83.301, which deals with
22 commercial manure haulers, new plans
23 require --- new plans for a new
24 operation require the planner to list
25 the commercial hauler that's going to

1 be used, if that's what the producer
2 plans to do. Since the first manure
3 might not be hauled from a new
4 operation for over a year from the
5 time the plan is submitted, naming
6 hauler at the time the plan is written
7 could be difficult and impractical.
8 The plan could instead state that a
9 certified hauler from the approved
10 list will be used.

11 Probably the most
12 important one that I would like to
13 emphasize tonight on this set of
14 regulations is 83.311(f) manure
15 storage specifications in the plan.
16 Nutrient planners and reviewers are
17 not all trained or proficient at
18 designing and locating manure storages
19 nor should they decide what type of
20 storage should be used. The DEP
21 manure management manual requires a
22 professional engineer to design and
23 supervise construction. Nutrient
24 management plans can be used to assist
25 in sizing storage and a planner may

1 indicate the desired length of
2 storage. But that should be their
3 limit. The costs of plans to provide
4 this kind of information accurately
5 will skyrocket and can force a farmer
6 to build a type of structure he
7 doesn't want or need or maybe take
8 into consideration future expansion.
9 There are many other ramifications of
10 this that if anyone wants further
11 information I'll be glad to share it.

12 83.342(d)(4) dealing
13 with crop yield records, how are
14 pasture yields estimated? Another
15 question related to pastures, do we
16 use the book value for manure dropped
17 in the pasture or will we sample the
18 manure taken from what is dropped by
19 the animal and then analyze them?

20 83.362 dealing with a
21 three-year plan review and the
22 confirmation of compliance with that
23 plan being in compliance. The annual
24 status reviews that are conducted by
25 the conservation district should be

1 confirming whether they're in
2 compliance every year, not every third
3 year. So this really is not a
4 necessity to be done by a planner.
5 The planner should continue to do any
6 plan amendments necessary.

7 83.404(f)(ii) 100-foot
8 setbacks from wells, does this refer
9 to existing wells, as well as those
10 drilled after a plan is written? If
11 so, doesn't that constitute a form of
12 taking a plan? Some additional
13 concerns not relating to any specific
14 number in the plan there, once final
15 regulations are approved, the
16 districts will need accurate
17 clarification as to exactly which
18 parts of the plan and plan file are
19 public information. A checklist would
20 be an ideal way to handle this. Since
21 district personnel will be verifying
22 the consistency of the conservation
23 plan and the nutrient management plan,
24 what are they expected to do when a
25 farm's out of compliance with Chapter

1 102 by not having a plan or following
2 their plan? What are dairy farmers
3 who depend on their pastures supposed
4 to do if a phosphorous index shows no
5 manure can be applied?

6 Turnover of nutrient
7 management technicians across the
8 state should be a concern to the State
9 Conservation Commission. The time to
10 train and get new technicians
11 certified slows the process to meet
12 deadlines and to effectively
13 administer the program. Adding the
14 complexity of the phosphorous index
15 will only magnify this problem.
16 Conservation districts feel that a
17 concentrated effort to focus on having
18 every farm implement an approved
19 conservation plan would go much
20 further than the phosphorous index to
21 address the phosphorous concerns and
22 meet nutrient reduction goals.

23 Comments on the CAFO
24 regulations, I refer to definitions in
25 91.1 on manure storage facilities and

1 waste storage structures. I think Mr.
2 Peechatka had a comment on this. Do
3 these include constructed stacking
4 areas for semisolid, dry, or
5 ventpacked (phonetic) short-term
6 storage of manure, usually boiler
7 manure for two to three months. These
8 usually have a concrete floor three to
9 five feet high, wood or concrete sides
10 on three sides, and they're there to
11 contain and push up against while
12 loading, and may or may not be covered
13 with a roof. If they are included, do
14 these structures need a professional
15 engineer design and certification? We
16 feel they should not unless they're
17 being cost shared because added costs
18 provides little added environmental
19 protection when correctly sited on an
20 approved nutrient management plan.

21 Setbacks, should --- in
22 the definition of a setback, we feel
23 it should include the words --- well,
24 it should read, conduits to surface or
25 groundwater. That's to include

1 setbacks from wells or sinkholes,
2 which are also there and to help
3 reduce some of the confusion.

4 Vegetated buffer, this
5 is in the definition also. Why do all
6 buffers have to be on the contour?
7 This requirement may exclude thousands
8 of feet of adequately buffered
9 protected streams. It's just not
10 necessary so long as it meets the
11 width.

12 91.35 waste water
13 impoundment. Guidance is needed to
14 know what satisfies the requirement to
15 protect against unauthorized acts of
16 third parties. Is a chain link fence
17 adequate? There needs to be some
18 definition there --- guidance there.

19 91.6(b)(2), define the
20 standards of an appropriate vegetated
21 buffer?

22 92.5(c), which
23 references new or existing operations
24 becoming CAFOs due to loss of land
25 suitable for manure application.

1 Since CAFO designations are not
2 intensity determined, that means
3 animal unit --- animal equipment units
4 per acre, what does this mean?

5 92.5(d)(1) referencing
6 agreements with brokers and required
7 balance sheets or nutrient management
8 plans on imported farms. Plan writers
9 for CAFO farms using brokers may not
10 know who the importing farm will be or
11 if manure will be land applied, this
12 needs to be some clarification there.

13 92.5(d)(2) referencing
14 erosion control plans for plowing and
15 tilling operations. Most of us know
16 what this means, but it should be
17 assumed in this statement that no till
18 operations are included in this.
19 Since some no till operations can
20 exceed Chapter 102 NPDES requirements,
21 this is not made clear as the way it's
22 worded in the proposed regs.

23 92.5(d)(4) referencing
24 PPC plans for pollutants related to
25 CAFO operations. Are agricultural

1 pesticides included in this? If not,
2 Act Six already includes requirements
3 for contingency type plans for manure
4 storages and spills.

5 General comments on CAFO
6 regulations, there are concerns and
7 questions about the 100-foot setbacks
8 or buffers. Buffers and setbacks
9 should be the same. They should be
10 consistent for any approved nutrient
11 management plan regardless of the
12 program. This type of regulation
13 makes things harder for field level
14 people both DEP and district and
15 creates confusion for farmers, manure
16 haulers, plan writers, and the general
17 public. I think Mr. Peechatka also
18 encouraged some uniformity in the two
19 programs. If the regulations do
20 require some kind of setback from
21 manure applications, it needs to be
22 clearly defined how that setback is
23 determined. Tech guide standards are
24 okay, but they oftentimes do not
25 clearly define all the parameters.

1 Are we to assume that they will be
2 using the filter area standard, which
3 is their number 393? This needs to be
4 clarified so there is not a gray area
5 here. Since 100-foot setbacks from
6 surface waters for manure applications
7 do not apply to commercial
8 fertilizers, which are more highly
9 soluble, what have we gained in
10 nutrient control except more expense
11 and trouble for the farmer?

12 The regulations state
13 that a CAFO must have an approved
14 nutrient management plan and it meets
15 Act Six standards. If the farm is not
16 a CAO and it's possible to be CAFO
17 without being a CAO, does that farm
18 automatically then become classified
19 as a volunteer animal operation or
20 does the farmer have the option of not
21 being under Act Six program oversight?
22 Our thoughts are the farmers should
23 have the option. And following on
24 number four, if the operation would
25 not be a CAO or a VAO, who performs

1 the status reviews of the nutrient
2 management plan? Thank you very
3 much.

4 MR. LUSTIG:

5 Thank you, Mr. Robinson.
6 Our next speaker is Melinda Downey.

7 MS. DOWNEY:

8 My name is Melinda
9 Downey, D-O-W-N-E-Y, and I'm here
10 representing Chesapeake Bay
11 Foundation, and our office is located
12 at 614 North Front Street, Harrisburg,
13 Pennsylvania. Good evening members of
14 the Environmental Hearing Board and
15 State Conservation Commission. And
16 thank you for the opportunity to
17 present testimony on behalf of
18 Chesapeake Bay Foundation.

19 Chesapeake Bay
20 Foundation was founded in 1967 and is
21 the largest conservation organization
22 dedicated solely to save the
23 Chesapeake Bay. Our motto, Save the
24 Bay, defines the organization's
25 mission and commitment. Our

1 headquarters are in Annapolis,
2 Maryland, and we have state offices in
3 Maryland, Virginia, and Pennsylvania.
4 CBF works throughout Chesapeake's
5 64,000 square mile watershed to
6 protect and restore the Bay with
7 programs in environmental education,
8 restoration, and protection. CBF is
9 supported by 116,000 active members
10 and has a staff of more than 160 full-
11 time employees.

12 CBF has been working for
13 over 20 years to advocate for
14 conservation programs and to provide
15 technical and financial assistance to
16 farmers to establish riparian buffers,
17 cover crops, rotational grazing, and
18 other conservation practices to reduce
19 nutrient pollution to our rivers and
20 streams. CBF has considerable
21 experience providing technical
22 assistance for conservation programs
23 with eight full-time field staff
24 working directly with the farmers and
25 landowners.

1 Over the past five
2 years, CBF has been involved in over
3 4,000 conservation practices including
4 more than 1200 miles of forested
5 riparian buffers, and 4,000 restored
6 wetlands in Pennsylvania.

7 The nutrient management
8 and concentrated animal feeding
9 operation regulations have an enormous
10 impact on the Commonwealth's rivers
11 and streams, and on down stream waters
12 such as the Chesapeake Bay. DEP
13 estimates that 3,903 miles of the
14 Commonwealth's streams are impaired by
15 agricultural impacts. We look forward
16 to strong nutrient management and CAFO
17 regulations to reduce the nitrogen and
18 phosphorous pollution to these waters,
19 the most significant cause of
20 impairment in Chesapeake Bay.

21 I will first discuss the
22 nutrient management regulation. The
23 proposed regulation addresses our most
24 serious concerns of the previous
25 regulation. We applaud tightening the

1 export loophole and requiring careful
2 planning and tracking of manure that
3 is shipped from one farm to another.
4 We applaud inclusion of horse
5 operation, inclusion of phosphorous
6 index, and the common sense approach
7 that will reduce phosphorous
8 pollution, although we would prefer
9 phosphorous balancing on all fields in
10 the future. We applaud the
11 requirement that animals access to
12 surface water be controlled so that
13 livestock may not directly deposit
14 their manure in the streams. We
15 applaud the prohibition of manure
16 application on bare ground except
17 immediately prior to planting. We
18 applaud the requirement of an erosion
19 and sedimentation control plan. We
20 applaud the requirement that manure
21 may not be applied beyond the soil's
22 water holding capacity.

23 However, the CBF also
24 found significant shortcomings in the
25 proposed nutrient management

1 regulation, and we hope these will be
2 corrected in the final regulations.
3 For land application of manure, the
4 proposed regulation requires a setback
5 of 100 feet or 200 feet on steep
6 slopes, from surface water, only when
7 the ground is frozen, snow covered, or
8 saturated. There is serious potential
9 for water pollution throughout the
10 year. So CBF recommends that these
11 setbacks be required at all times.
12 Setbacks from all surface waters in
13 addition to property lines, water
14 wells, and sink holes should be
15 required for manure storage
16 facilities. Wetlands and intermittent
17 streams are currently excluded
18 although they and downstream waters
19 could suffer devastating effects if
20 inundated by millions of gallons of
21 manure when a manure storage facility
22 fails. This is most likely after a
23 heavy rain when intermittent streams
24 are flowing and wetlands are full.
25 Winter application of manure should be

1 permitted only when there is at least
2 25 percent plant cover and the
3 application rate is the P index
4 application rate or 50 percent of the
5 nitrogen need of the crop, whichever
6 is less.

7 In case of a fire,
8 severe weather or other emergency, a
9 farm may need to temporarily stack
10 manure in fields. CBF wants the
11 regulation clarified so that these
12 temporary stacking areas could only be
13 used for emergency situations, and for
14 no longer than 30 days.

15 Chesapeake Bay
16 Foundation is far more troubled with
17 the concentrated animal feeding
18 operation regulation. It will fall
19 far short of both the federal
20 requirement and the goal of curving
21 the pollution from livestock
22 production in Pennsylvania. The
23 Federal Clean Water Act clearly
24 requires Pennsylvania to require large
25 livestock operations and medium-sized

1 operations that discharge pollution
2 into our waterways to obtain a
3 national pollutant discharge
4 elimination system permit, and
5 maintain the operation according to
6 the permit conditions. However, the
7 proposed regulation covers large
8 operations, but only medium operations
9 that also are regulated under the
10 Nutrient Management Act. This misses
11 the operation that most need to
12 eliminate discharges, and come into
13 compliance with regulations, such as
14 those with livestock and streams,
15 where they may deposit manure
16 directly, stormwater flowing from
17 manure management facilities, and
18 other sources of stream degradation.
19 This may include a smaller number of
20 farms than the proposed definition,
21 but it would include the farms with
22 the greatest potential to pollute our
23 rivers and streams that currently
24 operate without regulatory oversight.

25 The CAFO stakeholder

1 Group convened by DEP recommended an
2 approach the Department of
3 Environmental Protection could have
4 used to address these medium-sized
5 operations with discharges without
6 putting too heavy of a burden on them.
7 There could have been an extended
8 period of time to come into compliance
9 during which time farms could take
10 advantage of voluntary programs to
11 provide financial and technical
12 assistance to eliminate the discharge.
13 Thus avoiding the permit requirement.

14 The proposed regulation
15 CAFO definition includes one non-
16 sensible practice CAFOs. Quote, any
17 agricultural operation with a
18 discharge to surface waters that is
19 authorized by Department permit,
20 limits and conditions, but it does not
21 include unauthorized discharges that
22 are polluting the Commonwealth's
23 waterways. It excludes from CAFO
24 classification, agricultural
25 operations that are operating without

1 necessary permits or are otherwise not
2 authorized by the Department.

3 Without a change in the proposed
4 regulations, agricultural operations
5 polluting local waterways without
6 permits could refuse to get a permit
7 and avoid regulation as a CAFO.

8 In addition the language
9 does not specify which Department
10 permit limits and conditions would
11 result in a classification. In sum,
12 the proposed language is completely
13 irrational and must be amended to
14 include agricultural operations with a
15 discharge regardless of whether they
16 are authorized by any Department
17 permit. The CAFO definition is vague
18 and ambiguous and needs to be re-
19 crafted to avoid violating due
20 process. Vague and ambiguous language
21 is unfair to both citizens and the
22 potentially regulated agricultural
23 community. Since the regulation fails
24 to give adequate notice to both groups
25 of who is covered by the regulation,

1 this uncertainty will only lead to
2 litigation and the need for the
3 paperwork, expenses, and waste of time
4 of regulatory revisions in the future
5 to correct the problematic language.
6 Moreover the regulation itself could
7 be held by a court to be violative of
8 the due process since it is void for
9 vagueness.

10 CBF agrees with basing
11 the CAFO definition on animal
12 equivalent units. The federal
13 regulations only require permits from
14 farms with individual species of
15 livestock over a threshold, such as
16 700 dairy hogs or 2500 hogs. A farm
17 with 690 dairy cows and 2200 hogs
18 would be exempt from the CAFO
19 regulations. However, Pennsylvania's
20 proposed regulation would combine them
21 in the animal equivalent unit
22 calculation, which certainly is worth
23 the confusion to address the many
24 operations with multiple species in
25 Pennsylvania.

1 CBF is also concerned
2 with inadequate enforcement of the
3 Clean Streams Law. The regulation
4 states that DEP has the authority to
5 enforce violations, but it has had
6 this authority for many years without
7 using it effectively. The regulations
8 should state that DEP shall take
9 enforcement action against any
10 agricultural operation in violation of
11 this law and require it to develop and
12 implement a nutrient management plan.
13 The requirement for a 100-foot year
14 round setback or 35-foot vegetative
15 buffer from streams and other water
16 bodies from land application of manure
17 is a giant step in the right
18 direction.

19 However, a 50-foot
20 buffer will capture much more
21 pollution before it enters our streams
22 and downstream waters. The language
23 requiring appropriate vegetative
24 buffers and setbacks is vague. The
25 Pennsylvania Technical Guide Standards

1 for riparian forest buffers and filter
2 strips would provide the necessary
3 clarification.

4 Thank you very much for
5 the opportunity to share our concerns.

6 CBF will be providing extended
7 comments by the noted deadline. CBF
8 looks forward to improved regulations
9 that will reduce nitrogen and
10 phosphorous pollution to the
11 Commonwealth waters and ultimately the
12 Chesapeake Bay.

13 MR. HEINE:

14 Thank you.

15 MR. LUSTIG:

16 Thank you. Our next
17 speaker is Brenda Shambaugh.

18 MS. SHAMBAUGH:

19 My name is Brenda
20 Shambaugh, S-H-A-M-B-A-U-G-H. I'm the
21 Legislative Director for the
22 Pennsylvania State Grange, and our
23 office is located at 1604 North Second
24 Street, Harrisburg, Pennsylvania,
25 17102.

1 Good evening, I am the
2 Legislative Director for the
3 Pennsylvania State Grange. The Grange
4 is a trade association representing
5 20,000 members from rural
6 Pennsylvania. Our membership includes
7 farmers and rural landowners who may
8 be impacted by the proposed nutrient
9 management and concentrated animal
10 feeding operation regulations. I'd
11 like to thank you for the opportunity
12 to express my organization's views
13 concerning these proposals.

14 The Grange Agricultural
15 and Environmental Affairs Committee is
16 continuing to review the proposed
17 nutrient management and the
18 concentrated animal feeding operation
19 regulations, and may have additional
20 comments after our annual convention
21 later this month. My regards this
22 evening are their preliminary thoughts
23 and concerns.

24 In general, farmers are
25 required to operate under more and

1 more regulations. Many of these
2 individuals own small and medium farms
3 without business managers and other
4 staff to complete paperwork and
5 accomplish the additional duties
6 required of them. Farmers cannot farm
7 if they're in their office all day
8 writing reports and filling out forms.
9 These already overworked and underpaid
10 farmers are feeling the pressure of
11 more government intervention and
12 required regulations. However, most
13 farmers are already good stewards of
14 their land. So they understand
15 there's going to be environmental
16 concerns addressed in these
17 regulations. They believe that laws
18 and regulations have to be realistic.
19 We ask that any new requirements bring
20 a minimum of paperwork and reporting.
21 I'd like to emphasize that all farmers
22 should not be required to have a
23 nutrient management plan. They
24 understand the proposed regulations do
25 not specifically require these plans

1 for all farms. But that was the
2 number one statement that I heard from
3 our members when discussing this
4 hearing.

5 Many of our members are
6 small family owned and operated farms.
7 These individuals are concerned that
8 some believe all farmers should be
9 required to develop and implement a
10 nutrient management plan. Because so
11 many of our members recognize the
12 importance of this issue, we felt
13 compelled to state our policy and
14 emphasize our opposition on mandatory
15 nutrient management plans.

16 The Grange is concerned
17 about the minimum property setback
18 requirements for new manure storage
19 facilities or expansions covered in
20 91.36(a)(7) of the proposed CAFO
21 regulations. The term relevant
22 criteria is used in the proposed
23 regulations, which is too open-ended
24 and vague. A similar problem occurs
25 in Section 91.36(b)(2) where the

1 Department of Environmental Protection
2 is given the authority to require
3 setbacks for the spreading of manure
4 around streams. While we approve of a
5 required setback from streams, we
6 believe that the setback should be
7 predetermined at a 100 feet or a
8 vegetative buffer of 35 feet. We
9 recommend that both these section
10 regulations be more specific and not
11 left to the interpretation of the
12 Department of Environmental Protection
13 employees.

14 The nutrient management
15 regulations 83.351 prohibit the
16 Commission or delegated conservation
17 district from waiving manure storage
18 distance restrictions relating to
19 property line setbacks. While that
20 authority be taken away from the
21 conservation districts, a neighboring
22 landowner within the property line
23 setback grange may waive the distance
24 restrictions. It seems that we're
25 taking a sound science approach toward

1 waiving the setback requirements and
2 turning it into an emotional-based
3 decision on whether or not the
4 neighbor approves. In this age of
5 technology and decisions based on
6 sound science, it seems these
7 regulations are going backwards not
8 forwards. We strongly oppose this
9 section of the regulations. The
10 proposed nutrient management
11 regulations require 100-foot setback
12 from active and inactive wells as in
13 83.294. The Grange believes that this
14 requirement should be amended. If a
15 well is inactive, we do not believe
16 the same setbacks should be required
17 as the active wells. Perhaps a
18 compromise would be a 35-foot setback
19 for inactive wells, that way water is
20 protected, but is not an over
21 burdensome requirement for the farmer.

22 Setbacks relating to the
23 spreading of manure discussed in both
24 sets of proposed regulations, in
25 general, the Grange agreed that

1 setbacks should depend on several
2 factors including the slope and
3 contour of the land, the season, and
4 the cultivation practices used on the
5 land. All these activities should be
6 taken into consideration when
7 determining setback requirements. The
8 bottom line is that setbacks cost
9 farmers money. They should be
10 regulated as sparingly as possible.
11 Every time a farmer is told he cannot
12 farm his land, it means less money in
13 his pocket. We accept the 35-foot
14 buffer and the 100-foot setback as I
15 stated earlier, but we also believe
16 that those amounts should be
17 considered as maximums and should not
18 be left to interpretation.

19 Under the proposed
20 nutrient management regulations,
21 nutrient management plans or nutrient
22 balance sheets should be required for
23 farmers who import manure. Also
24 increased record keeping on spreading
25 restrictions will be required for the

1 importing farmer. The Grange is
2 concerned about the negative effect
3 this proposal will have on infrequent
4 importers. These folks will help out
5 a neighboring farmer on limited
6 occasions. They should not have to
7 obtain a nutrient management plan or
8 go through the time consuming
9 paperwork involved in spreading
10 imported manure. They believe that
11 there should be a threshold under
12 which a farmer can import manure and
13 not be covered under these
14 regulations.

15 Again, thank you for
16 allowing the Grange to discuss the
17 proposed nutrient management and CAFO
18 regs. I appreciate the opportunity.

19 MR. HEINE:

20 Thank you.

21 MR. LUSTIG:

22 Thank you. Our next
23 speaker is Robin Mann.

24 MS. MANN:

25 Excuse me. I wonder if

1 Bill Plank could speak for me? He's
2 also with the Sierra Club. Thank you.

3 MR. PLANK:

4 And we will probably
5 submit more detailed written comments.
6 My name is Bill Plank. Robin was the
7 author of the Pennsylvania Sierra
8 Club. The address is 300 North Second
9 Street, Harrisburg. And this is
10 testimony on behalf of the whole ---
11 we have a state chapter.

12 Pennsylvania Chapter of
13 Sierra Club appreciates the proposed
14 regulatory changes represented ---
15 excuse me --- that the proposed
16 regulatory changes represent
17 substantial improvements over existing
18 safeguards and address some of the
19 major shortcomings in Pennsylvania's
20 water quality protection and nutrient
21 management programs. Nevertheless, we
22 are very concerned with the serious
23 deficiencies that remain to be
24 addressed in order to ensure adequate
25 protection of surface water and

1 groundwater.

2 The CAFO regs and the
3 Federal Clean Water Act requires large
4 livestock operations to obtain the
5 NPDES system permit and maintain the
6 operation according to the permit
7 conditions. The EPA affords states
8 the flexibility to implement the rule
9 in the most appropriate manner for
10 each of the state's circumstances.
11 Pennsylvania is preposed to satisfy
12 this program by requiring permits from
13 livestock operations with 1000 animal
14 units or those with 300 to 1000 animal
15 units with a concentration greater
16 than two AEUs per acre that are
17 available for spreading manure.

18 The Sierra Club strongly
19 supports the combining of animal
20 species so that mixed animal
21 operations are covered under the CAFO
22 definition Chapter 92.1. This
23 approach more effectively addresses
24 the range of operation found in
25 pollution reduction. These measures

1 need to be undertaken and/or improved.
2 We're very concerned, however, that
3 the proposed definition fails to
4 incorporate a category of operations
5 that should be included in order to be
6 consistent with the federal rule and
7 to reign in significant source of
8 agricultural pollution, namely,
9 medium-sized operations with
10 discharges. The federal rule
11 specifies that medium operations with
12 discharges must also follow the
13 requirements for applying for permits
14 and meeting permit conditions. This
15 category would include operations of
16 livestock in streams where they may
17 deposit them directly, storm water
18 flowing from the manure management
19 facilities, and other sources of
20 stream degradation. Including these
21 operations within the definition
22 provides an opportunity to require
23 pollution protection from operations
24 that contribute heavy nutrient loads
25 to the Commonwealth waters.

1 We strongly urge DEP to
2 broaden the definition of CAFOs to
3 include the medium-sized discharging
4 operations, and as necessary, to phase
5 in the compliance times for these
6 operations. This approach would
7 recognize and address significant
8 sources of pollution while affording
9 the operations time to take advantage
10 of voluntary programs to provide
11 financial and technical systems to
12 eliminate the discharge, thus avoiding
13 permit requirements.

14 We're also concerned
15 with setback requirements for manure
16 storage facilities for CAFOs as not
17 being sufficiently protective of
18 surface water and groundwater.
19 Proposed revisions under Chapter 91.36
20 should be amended to expressly
21 prohibit installation of or expansion
22 of manure storage facilities in flood
23 plains.

24 In addition, DEP should
25 adopt the Pennsylvania Technical Guide

1 design standard for a 50-foot
2 vegetative buffer as a more proven
3 buffer with --- for land application
4 of manure. DEP should also address
5 the following deficiencies in the
6 proposal: lack of surface or
7 groundwater monitoring requirements,
8 baseline and follow-up monitoring is
9 essential to determine the
10 effectiveness of management practices,
11 bullet number two, potential for
12 cumulative impacts of watersheds
13 already impaired by agriculture. DEP
14 must require individual permits in
15 watersheds that are impaired in
16 addition to EV and HQ streams in order
17 to ensure consistency with the anti-
18 deg requirements.

19 Comments on the Nutrient
20 Management Act changes. The Sierra
21 Club supports many of the improvements
22 proposed for the nutrient management
23 regulations including the inclusion of
24 horse operations, a closing of the
25 export loophole, the phosphorous

1 index, controls on animal access to
2 surface waters, and the prohibition of
3 manure application to bare ground.
4 Nevertheless, we strongly oppose the
5 limitation of manure application
6 setback to times when the ground is
7 frozen, snow covered, or saturated.
8 The setback of 100 feet or 200 feet on
9 steep slopes from surface water should
10 apply at all times, and intermittent
11 streams and wetlands to eliminate the
12 serious potential for water pollution
13 throughout the year.

14 I think we heard a
15 previous speaker talk about wetlands
16 and intermittent streams, and I think
17 the speaker talked about storage
18 failure, but it's also true with land
19 application. If you plan to apply
20 manure and you have, say a 10-year
21 storm or a 20-year storm, those places
22 are already going to be flowing
23 heavily and full of water.

24 We are also concerned
25 about the following deficiencies,

1 which we will address in detail in
2 written comments. The nutrient balance
3 sheets for exporting manure require
4 that the manure be applied to meet the
5 nitrogen and that there be a 150 foot
6 setback from streams unless there's a
7 full nutrient management plan with a P
8 index. However, the nutrient balance
9 sheets should address both N and P.
10 The regulations must provide that
11 where manure is not applied to fields
12 according to a nutrient management
13 plan and if a discharge occurs, the
14 discharge is considered to be a point
15 source of pollution. Operations for
16 the record of previous violations of
17 any portion of Act Six should have
18 revised nutrient management plans
19 within 30 days of the effective date
20 of the new regulations.

21 We also recognize that
22 additional authority must be
23 established to provide additional
24 safeguards against bad acts. We
25 appreciate the opportunity to provide

1 these recommendations.

2 MR. HEINE:

3 Sir, what's the spelling
4 of your last name?

5 MR. PLANK:

6 Plank, P-L-A-N-K.

7 MR. LUSTIG:

8 Thank you. Our next
9 speaker is Kent Strock.

10 MR. STROCK:

11 My name is Kent Strock,
12 that's spelled S-T-R-O-C-K, and I
13 reside at 729 Williamsgrove Road,
14 Mechanicsburg. We operate a small
15 farm about one mile from
16 Mechanicsburg.

17 In general, I would say
18 I'm supportive of the proposed
19 regulations, but there are a couple of
20 concerns that I have. I might say
21 that I'm generally in agreement with
22 the Grange and their comments.

23 There's some objections
24 to proposed 91.36(a)(7), I kind of
25 object to the vague wording and scope

1 of proposed 91.36(a)(7) which requires
2 a water quality management permit for
3 any manure storage facility based on
4 relevant criteria and those relevant
5 criteria have yet to be defined. It
6 appears to me that these have been
7 carte blanche to impose setback buffer
8 requirements that have yet to be
9 specified. Furthermore, I object to
10 the fact that the proposed regulations
11 contain no language that would limit
12 DEP's authority to propose setback
13 buffer requirements on small and
14 medium-sized farms. I do not think
15 that the statewide mandatory setback
16 buffer requirements are necessarily
17 appropriate. Under the proposed
18 regulation a farmer could land apply
19 manure processed for wastewater within
20 100 feet of surface water or potential
21 conduits to surface waters. Now, this
22 requirement could prove unduly
23 burdensome for a farmer such as myself
24 running a small to medium-sized
25 operation. As a side note, our

1 operation is 87 acres, so we would be
2 considered a small operation.

3 Under statewide
4 mandatory setback requirements, for
5 every mile of stream running through
6 my property, I would be unable to land
7 apply manure to approximately 24 and a
8 quarter acres. So if you have a
9 stream running through your property
10 some distance, you are suffering. In
11 order to fertilize 24.25 acres this
12 means a farmer would be forced to
13 purchase commercial fertilizer thereby
14 incurring additional costs. This was
15 recently stated that commercial
16 fertilizer actually constitutes a
17 greater risk than does the application
18 of manure. Finding this additional
19 ground might become particularly
20 problematic for farmers who do not own
21 additional acreage. Subjecting small
22 and medium-sized farms to mandatory
23 setback buffer requirements could
24 significantly limit productive land
25 use and increase production costs,

1 which could drive some small, medium-
2 sized farmers out of operation, out of
3 business.

4 Now, many of
5 Pennsylvania's small/medium-sized
6 farmers are of the opinion that they
7 are over regulated currently.

8 In conclusion,
9 Pennsylvania farmers do have a history
10 of voluntary compliance with
11 environmental protective measures.
12 This history is evidenced by the fact
13 that more than 1,000 small and medium-
14 sized farms have voluntarily stepped
15 up to plate to comply with nutrient
16 management standards even though they
17 were not bound to do so.

18 I would ask the
19 Environmental Quality Board to
20 consider the measures which hundreds
21 of Pennsylvania farmers have
22 voluntarily adopted as responsible
23 stewards of the land before the Board
24 mandates that all farmers statewide
25 must comply with strict regulations.

1 That could prove unduly burdensome for
2 the small to medium-sized farmer.

3 Another problem is the
4 definition of a small or medium-sized
5 farm. Everyone says small, medium-
6 sized, I haven't heard anyone define
7 exactly what a small farm is, what a
8 medium-size farm is, and what a large
9 farm is? So we have a problem there.
10 As time goes on it will be even more
11 critical for a small or medium size
12 farms to retain flexibility managing
13 their farms if they are to remain in
14 operation. Pennsylvania must
15 recognize the fact that our farmers
16 are competing in an international
17 marketplace. Every time small or
18 medium-size Pennsylvania farmers are
19 regulated more strictly than federal
20 law requires, that puts that farmer at
21 an economic disadvantage in competing
22 with farmers from other states who
23 might not be as strictly regulated.

24 For these reasons, I ask
25 that neither of these regulations be

1 included in the adopted regulatory
2 package, and as an alternative, I
3 would propose that small and medium-
4 sized farmers be offered incentives to
5 voluntarily come into compliance with
6 environmental standards. This option
7 might provide a more realistic and
8 less burdensome opportunity for small,
9 medium-sized farmers to comply with
10 the standards set forth in the
11 proposed regulations.

12 I would like to share
13 some facts from the 19 --- excuse me,
14 the 2002 USDA Agricultural Census.
15 These figures speak volumes to the
16 strained financial state of today's
17 family farmers in Pennsylvania and
18 suggests the very real economic
19 dangers such farmers could face as a
20 result of increased regulatory
21 programs. The average size of farms
22 in Pennsylvania is 133 acres. Nearly
23 80 percent of all farms have less than
24 180 acres. Family farms are still the
25 norm in Pennsylvania. Nearly 92

1 percent of all farms are family-owned.
2 Six percent are family partnerships
3 and two percent are family
4 corporations. Corporately owned farms
5 make up less than one half of one
6 percent of all farms in Pennsylvania.

7 The number of farms in Pennsylvania
8 has dropped by 2,117 between 1997 and
9 2002. We've gone from 60,222 farms to
10 58,105. And probably one of the most
11 telling net farm-income decreased by
12 43 percent from 2001 to 2002, over one
13 billion to just short of 611,000,000.

14 Also bear in mind that only 14
15 percent of Pennsylvania's farmers
16 derived their entire income from the
17 farm, 14 percent. Thank you.

18 MR. LUSTIG:

19 Our next speaker is Mr.
20 James Junkin.

21 MR. JUNKIN:

22 Good evening, James
23 Junkin, J-U-N-K-I-N. I'm here this
24 evening to give testimony on behalf of
25 the Pennsylvania Farm Bureau and also

1 myself as a Pennsylvania farmer.
2 Their --- Pennsylvania Farm Bureau's
3 address is 510 South 31st Street, Camp
4 Hill, PA.

5 My family and I are
6 engaged in a production of turkey,
7 cows, and sheep in Franklin County.
8 My farm is regulated as a concentrated
9 animal operation under the State
10 Nutrient Management Act. I currently
11 serve as President of the Franklin
12 County Farm Bureau. I am testifying
13 this evening on behalf of Pennsylvania
14 Farm Bureau and the 34,600 farms and
15 rural families of the Commonwealth
16 that comprise our organization's
17 membership. Thank you for this
18 opportunity to comment on the proposed
19 CAFO and Nutrient Management
20 regulations, which are the subject of
21 this evening's hearing.

22 Before we get into the
23 particulars of the proposed
24 regulations, I think it is important
25 that everyone be mindful of the

1 regulatory history of large animal
2 operations in this Commonwealth. Many
3 consider 1993, the year the Nutrient
4 Management Act was passed, to be the
5 beginning of the regulation of large
6 animal operations. It was however,
7 October 2000 by the time the
8 regulation of large animal operations
9 under the State Nutrient Management
10 Program was fully in place.
11 Regulations to the Act were not
12 promulgated until October 1997. And
13 farms whose animal concentrations met
14 the definition of a concentrated
15 animal operation had three years from
16 the date to develop and implement
17 nutrient management plans and meet the
18 other requirements imposed under the
19 regulations.

20 When you look at the
21 program in the context of its history,
22 most reasonable people would conclude
23 that the regulation of large animal
24 operations in the Commonwealth is
25 still a pretty new effort. As with

1 all new programs, it takes some time
2 for people to understand what their
3 responsibilities are and make
4 adjustments in their day-to-day
5 operations to meet those
6 responsibilities.

7 Individuals involved in
8 enforcement will tell you that a
9 majority of early violations or of a
10 technical nature arose because farmers
11 do not fully understand their
12 responsibilities in keeping records
13 and performing other administrative
14 duties. Since farmers have begun to
15 fully understand these
16 responsibilities, the compliance has
17 improved significantly. I believe it
18 is much more appropriate to measure
19 the regulatory effectiveness of this
20 program, not by what agencies found
21 when they made their first visits to
22 the farm, but rather by what agencies
23 are finding today in sequential
24 visits, now that farmers have been
25 made aware of their responsibilities

1 and have had the opportunity to bring
2 their operations into regulatory
3 compliance.

4 Let's keep in mind the
5 progressive effort Pennsylvania has
6 made in the regulation of larger
7 animal operations. The Nutrient
8 Management Act, which the Farm Bureau
9 supports and is cooperatively working
10 with environmental organizations to
11 enact, was considered a pioneer step
12 in the regulation of environmental
13 quality on animal farms.

14 Many farmers,
15 neighboring and within Pennsylvania
16 had serious reservations about this
17 legislation. But the Act and its
18 regulations have established standards
19 that effectively minimize the risk of
20 pollution without being so rigid as to
21 regulate farmers out of business. The
22 purpose nutrient Management --- the
23 proposed nutrient management and CAFO
24 regulations will once again keep
25 Pennsylvanians ahead of the curve in

1 maintaining environmental quality on
2 animal farms. As with the original
3 regulations, the newly proposed
4 regulations were developed to bring
5 Pennsylvania into compliance with
6 federal requirements, as well as to
7 reflect developments in agricultural
8 technology. The newly proposed
9 regulations reflect an understanding
10 that we must not discriminate between
11 animal production types and that we
12 must provide farm families with a
13 realistic opportunity to achieve
14 compliance.

15 Pennsylvania Farm Bureau
16 and other stakeholders participated in
17 discussions leading up to the
18 development of the proposed nutrient
19 management and CAFO regulations. For
20 the most part, we are supportive of
21 the changes being proposed. However,
22 we caution that the spirit of
23 flexibility that led to the
24 development of these proposed
25 regulations must not be lost. There's

1 a spirit that will ensure the right of
2 our family farmers to adapt their
3 operations in order to meet economic
4 challenges. It is this spirit that
5 will preserve the right of farmers to
6 earn a livelihood in agriculture and
7 not be regulated out of business.

8 The Farm Bureau has
9 serious concerns over two proposed
10 regulations included in this
11 regulations package. While the stated
12 purpose of both the proposed CAFO
13 regulations and the nutrient
14 management regulations is to update
15 the regulation of large animal
16 operation, these two provisions have
17 the potential to impose requirements
18 on virtually any farm that stores or
19 land applies manure. Proposed
20 91.36(a)(7) would give the Department
21 of Environmental Protection virtually
22 unlimited authority to require any
23 farmer that has a manure storage
24 facility to obtain a water management
25 permit based on a vague set of what

1 the Department determines to be
2 relevant criteria.

3 Proposed 91.36(b)(2)
4 would give DEP authority to place any
5 setback requirement on manure
6 application from streams, and impose
7 any requirement for vegetative buffer
8 areas near streams that DEP would deem
9 to be appropriate without any criteria
10 to guide or limit the scope of the
11 requirements for setbacks and buffers
12 that DEP would deem appropriate for
13 farms.

14 We continue to object to
15 the manner in which these two proposed
16 regulations found their way into the
17 regulations package. Neither of these
18 proposed regulations was included in
19 the package presented to DEP's
20 Agriculture Advisory Board. And no
21 meaningful effort was made to alert
22 the Board that regulations of this
23 type would be included in the package.
24 These two regulations do not appear
25 anywhere publicly until just before

1 the Environmental Quality Board met to
2 approve the regulations package. And
3 no measurable standard is established
4 in either of the proposed regulations
5 to guide, direct, or limit the
6 exercise of DEP's authority to impose
7 requirements for permitting or manure
8 applications setbacks on farms other
9 than CAFOs or concentrated animal
10 operations.

11 These two regulations
12 propose to change the focus of the
13 nutrient regulation from large animal
14 operations to virtually all small or
15 medium-sized farms that use or stores
16 manure. These regulations have the
17 effect of burdening families who
18 operate small to medium-sized farms
19 with additional cost by limiting
20 productive land use and imposing
21 additional compliance cost. Many
22 farmers who run small to medium-sized
23 farms will tell you how they can't
24 afford more regulations. As time goes
25 on, it will become even more critical

1 for such farmers to retain flexibility
2 in managing their farms that those
3 farms are to remain economically
4 viable.

5 In light of this, we do
6 not believe that the Department has
7 done enough meaningful analysis
8 regarding the environmental need for
9 the purpose --- for the proposed
10 regulations expansion of authority and
11 the economic impacts such an exercise
12 of authority will have on the types of
13 farms that will be subject to
14 additional regulations. Therefore,
15 Farm Bureau recommends that both these
16 regulations be deleted from the
17 regulation package finally adopted.

18 As I indicated
19 previously, Farm Bureau is generally
20 supportive of the proposed regulations
21 contained in the CAFO and nutrient
22 management regulations package. Many
23 are necessary to bring Pennsylvania
24 into compliance with recent changes in
25 the federal regulatory requirements.

1 Others provide consistency with
2 regards to farms regulated as
3 concentrated animal operations. Under
4 state law and farms regulated as CAFOs
5 under federal law, ultimately, we
6 believe that these regulations will
7 both enhance environmental quality and
8 provide better assurance to the public
9 that farms are operating in an
10 environmentally responsible manner.

11 Several proposed changes
12 to the CAFO regulations are
13 particularly positive and worth
14 noting. The newly proposed
15 regulations incorporated a change in
16 the federal regulations designed to
17 protect surface water. Under the
18 proposed regulations a CAFO must
19 either refrain from land applying
20 manure within a 100 feet of the
21 surface waters or establish a 35-foot
22 permanent vegetative buffer. This
23 minimum setback buffer requirement
24 should reduce the risk of nutrients
25 entering streams while allowing CAFO

1 farmers reasonable flexibility in
2 managing their operations and applying
3 manure.

4 The proposed regulations
5 will also establish more stringent
6 regulatory standards for exportation
7 and land application --- the land
8 application of manure produced on
9 large farms. While I believe the
10 farmers exporting and land applying
11 manure off the farm are not doing so
12 in an environmentally harmful or
13 irresponsible manner, the proposed
14 regulations will provide the necessary
15 documentation to demonstrate that
16 farmers are indeed exporting manure
17 responsibly.

18 In addition, the
19 proposed regulations will impose on
20 farms receiving manure from large
21 animal operations the same setback and
22 buffer requirements that exist on
23 farms where the manure is produced.
24 The proposed regulations will define
25 more clearly the responsibilities of

1 commercial brokers and haulers of the
2 manure. Moreover, they will ensure
3 that such brokers and haulers have the
4 necessary documentation to show that
5 manure's being applied responsibly.*

6 I would like to also
7 comment on one other change I believe
8 to be a major importance to the future
9 of agriculture in the Commonwealth.
10 The proposed regulations will require
11 large animal --- large farms to
12 consider and address phosphorous in
13 the land management practices and
14 manure application practices that
15 occur on lands receiving manure.

16 Here a phosphorous index
17 would be used to determine whether an
18 individual who has a high level of
19 phosphorous. If a phosphorous level
20 is found, mandatory conservation
21 practice will be implemented and
22 restrictions will be placed on the
23 quantity of manure that can be applied
24 to that field.

25 While the proposed

1 regulation does not sound unreasonable
2 in concept, Farm Bureau and many
3 individual farmers have legitimate
4 fears about the practical consequences
5 that regulation of land application
6 based solely on the proposed
7 phosphorous index will have on their
8 ability to continue to farm. Those
9 with professional expertise in the
10 area of phosphorous indexing have
11 demonstrated that in certain areas of
12 the state a significant portion of
13 land being currently used for manure
14 application will be eliminated from
15 future use if the phosphorous index is
16 immediately imposed.

17 The end result will
18 likely be that some farmers will have
19 nowhere to go with their manure, and
20 some farmers will not be reasonably --
21 - will not reasonably be able to bear
22 the cost associated with moving manure
23 to areas where it may be applied. We
24 have heard from several farmers who
25 have, after consultation with their

1 nutrient management specialist, have
2 indicated to us that a blanket
3 application of phosphorous standard
4 could put them out of business. The
5 regulations need to recognize that,
6 even with a thorough understanding of
7 appropriate land conservation and
8 nutrient management practices, many
9 farmers will not be able to comply
10 immediately with the strict
11 application of the phosphorous index
12 standard.

13 Existing farmers must be
14 given a reasonable amount of time to
15 comply with the phosphorous-based
16 regulation and manure application. To
17 help existing farmers manage the
18 transition to phosphorous regulation
19 without causing severe disruption to
20 farm operations, Farm Bureau
21 recommends that strict application and
22 phosphorous indexing standard only
23 apply to farming operations that
24 become CAFOs after the effective date
25 of the regulations. For farms that

1 are considered to be CAFOs or
2 concentrated animal operations, on the
3 date the regulations go into effect,
4 farmers should be allowed to apply
5 manure based on a phosphorous
6 balancing approach. This approach
7 considers manure application on the
8 basis of expected utilization of
9 phosphorous. Phosphorous levels from
10 manure application could be measured
11 by the farm unit or among the farm
12 units in the area as a whole rather
13 than as an individual basis. A
14 phosphorous balancing approach allows
15 manure to be applied on a field to the
16 extent that the level of phosphorous
17 in the manure will be utilized by
18 crops being grown on that field.

19 Farm Bureau recommends
20 that farms that become concentrated
21 animal operations after the effective
22 date of the regulations also be able
23 to use the phosphorous balancing
24 approach in meeting requirements
25 relating to management of phosphorous

1 on the farm. We realize that full
2 compliance with phosphorous
3 regulations will have a significant
4 impact on farmers' financial and
5 personal resources. We sincerely hope
6 that the Federal and State officials
7 will provide sufficient financial and
8 technical assistance to farmers in
9 order to help them comply with
10 phosphorous management standards.

11 I would also like to
12 comment on several other proposed
13 regulations. Proposed changes to
14 Section 83.404 of the nutrient
15 management regulations would impose
16 additional requirements on land
17 application of manure. A minimum
18 standard of 25 percent of plant cover
19 or crop residue will be established
20 for seasonal application of lands
21 receiving manure. In order for a farm
22 to apply manure in the fall to a field
23 with less than 25 percent cover
24 residue, a crop must be planted so its
25 future growth in succeeding months

1 will meet the standard established in
2 the Pennsylvania Technical Guide.

3 Winter application of
4 manure will be prohibited except where
5 the farm has identified in its
6 nutrient management plan. All fields
7 where winter manure application is
8 likely to occur, the plan cover ---
9 the plan ground cover on the winter
10 application sites and procedures to be
11 used on the fields to protect surface
12 and groundwater quality. The proposed
13 regulation will continue the standards
14 for winter application established in
15 the manure management manual.

16 These standards require
17 that manure be applied to fields with
18 the least runoff potential. In order
19 to minimize the effects of mud and
20 snow, manure should be applied to
21 distance or limited access fields and
22 early winter, and then to nearby
23 fields later in the season. The new
24 requirement caused larger farm
25 operations to plan a more effective

1 strategy in controlling adverse
2 effects of winter manure application.
3 While some may say that no manure
4 application should occur during winter
5 months, the imposition of such a
6 restriction is unrealistic for any
7 animal farm operation, whether large
8 or small. Mother nature does not
9 always provide the type of weather
10 pattern that is ideally suited for the
11 management, storage and land
12 application of manure.

13 Farmers prefer to apply
14 manure when conditions are optimal for
15 land application. However, farmers
16 are occasionally forced to apply
17 manure under less than optimal
18 conditions in order to avoid manure
19 storage overflows. The proposed
20 winter manure application requirement
21 will help farmers and regulators
22 better identify the fields best suited
23 to receive manure in such instances.
24 The approach suggested in Section
25 83.404 with respect to seasonal

1 applications and manure provides a
2 reasonable balance between
3 environmental concerns and the
4 realities of manure management on
5 farms.

6 Section 83.404 also
7 proposed to establish a standard for
8 stacking and land application of dry
9 pack manure. As proposed, the
10 standard would limit the time a
11 continuous storage of stacked manure
12 on large farms until the beginning of
13 the following growing season. We
14 believe the standard strikes a
15 reasonable balance between the need to
16 minimize potential environmental risks
17 with the need for flexibility in
18 applying manure when conditions are
19 most favorable.

20 Once again, I would like
21 to thank the Department of
22 Environmental Protection and the State
23 Conservation Commission for the
24 opportunity to provide the comments on
25 the proposed changes to the CAFO and

1 nutrient management regulations.

2 Thank you.

3 MR. LUSTIG:

4 That concludes the
5 speakers who had signed up in advance
6 to present to us. We now have an
7 opportunity for anyone in the audience
8 who wishes to comment on these
9 proposals to come forward and state
10 your name and indeed comment. Anyone
11 from the audience, please?

12 All right. With no
13 other witnesses present and on behalf
14 of the State Conservation Commission
15 and the Environmental Quality Board, I
16 thank you for your interest. I hereby
17 adjourn this meeting at the time,
18 which is currently 7:29. Thank you
19 very much for coming.

20

21

22 * * * * *

23 EQB/SCC PUBLIC HEARING CONCLUDED AT

24 7:29 P.M.

25 * * * * *

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C E R T I F I C A T E

I hereby certify that the
foregoing proceeding 10/13/04 HUGHES
was reported by me, that I have read this
transcript on 11/1/04, and I attest
that this transcript is a true and
accurate record of the proceeding.

Kelly Zamboni
Court Reporter

Original: 2413

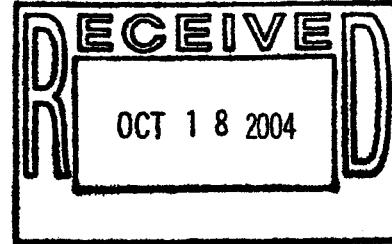
October 13, 2004

State Conservation Commission
2301 North Cameron Street, Suite 405
Harrisburg, PA 17110-9408

RECEIVED

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REGULATORY
REVIEW COMMISSION



Dear ,

Subject: Comments on Nutrient Management Regulations: One-page summary for distribution to State Conservation Commission Members

I have enjoyed the Chesapeake Bay with my family for the last 57 years, and very concerned over the legacy we will leave our grand children. Therefore, my concerns on NMR.

Many of the improvements in the revised Nutrient Management regulation will help reduce the nutrient pollution that is choking almost 4,000 miles of Pennsylvania's streams and the Chesapeake Bay. The revised regulation has improvements that resolve many of the current problems, and they need to be incorporated into the final regulation.

I appreciate the following improvements:

- * Inclusion of horse operations.
- * Tightening of the export "loophole," and requiring careful planning and tracking of manure that is shipped from one farm to another.
- * Inclusion of the phosphorus index.
- * Requirement that animal access to surface water be controlled, so that livestock may not directly deposit their manure in streams.
- * Prohibition of manure application on bare ground.
- * Requirement of an Erosion and Sedimentation Control Plan.

The proposed Nutrient Management regulation, however, has some shortcomings that I urge you to correct:

- * A setback of 100 feet (or 200 feet on steep slopes) from surface water should be throughout the year, not just when the ground is frozen, snow-covered or saturated. Water pollution occurs throughout the year, and the regulation should be changed to require these setbacks at all times.
- * Setbacks from all surface waters, in addition to property lines, water wells and sinkholes, should be required for manure storage facilities. Wetlands, intermittent streams, and downstream waters could suffer devastating effects if inundated by millions of gallons of manure when a manure storage facility fails, most likely after a heavy rain when intermittent streams are flowing and wetlands are full.
- * Temporary manure stacking areas should only be used for emergency situations, and for no longer than 30 days.

Thank you very much, and I look forward to an improved regulation leading to improved water quality.

Sincerely,

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

Hughes, Marjorie

From: Teri Dignazio [oavp@netscape.net]
Sent: Thursday, October 07, 2004 12:30 AM
To: RegComments@state.pa.us
Subject: Water Quality at Risk Right Here:CAFO/Human sewage-my neighborhood.

October 06, 2004

Pennsylvania Department of Environmental Protection
PA

Dear ,

Subject: Comments on proposed CAFO regulation

I know what this is about personally. I witnessed my township change the manure storage zoning to allow an 8000 wean to slaughter operation go in on a farm next door to us. The farmer advertised in public notices one month prior before any public announcement was made in a township meeting. The announcement that was made was as brief as possible 9 words as I recall during the correspondence section. The "unnamed" family was in application for a CAFO and that was the extent of the announcement - no details.

After the meeting I checked the advertisement and yes public comment period was already over at the time they barely announced it in public forum.

The outcome was the Chester Water Authority was pre-empted from making any comment. This farm, surely, has a nutrient management program - but you have to wonder how much run off escapes after land application. The family owns 300 acres and I assume can spread all of it on the land that drains directly into the Octoraro Reservoir. It is amazing to me this geography actually passed all the "rules & regulations". I can only attribute it to political & economic influences in Harrisburg and certainly on the local level. Is this any way to run a protective program?

On the other side of our home there is another barn of 3600. This man only has 45 acres and I believe is allowed to spread 100,000 gallons on his property and then uses export contracts to neighboring farms. The stream his land runs to goes in below the actual reservoir but does empty into the Octoraro. I was able to read the manure export plan and the farm is/was exporting it just up the road to a dairy farm draining to the same Octoraro and the rest of the export was being driven 3 miles away to a farm in Lancaster County directly abutting the west branch of the Chester Water Authority reservoir. Now I ask you isn't this all a bit much?????? Who is running this show???? Doesn't anyone have a map in Harrisburg? Are all CAFO's and their management plans treated independently with no reference to the larger region?

As far as I know these were the first CAFO's to go into my township and both drain to the Reservoir or Octoraro and on to the Chesapeake. I have no problem with the family operations, just am stunned that 12,000 head are next door to each other both spreading manure and exporting it to the Octoraro by one means or another.

As I write today, a developer's coalition quietly announced they have taken an option to purchase 2 farms equaling 120 acres for spray irrigation. These developers intend to give these fields to the Oxford Area Sewer System. The greater public has not seen anything in the paper yet - supposed to come out next week. Mind you this is in on the same valley/roads as the CAFO's. The addition of human waste water-draining to the same Tweed Creek into the Octorao seems unimaginable.....is anybody getting the big picture???????... Where is the visionary regulation body overseeing our little corner of Oxford. We already have 1200 swine and now 120 additional acres of

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human waste is being planned. Tweed Creek is the target stream that OASA's released it's emergency million gallons of untreated sewage into last February & March.

I truly believe my little neighborhood in the W7 watershed is single handly contributing a huge percentage of nitrates to the Chesapeake and who knows what else! Be glad to give everyone a tour.

Now back to the "canned" message.

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

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

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

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

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

2. The definition of CAFO in § 92.1 is vague and ambiguous.

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

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

The nonsensical definition includes one class of CAFOs that is:

"any agricultural operation with a discharge to surface waters that is authorized by Department permit limits and conditions."

It excludes from CAFO classification agricultural operations that are operating without necessary permits, or are otherwise not authorized by the Department. Thus, an agricultural operation could refuse to get a permit and by doing so avoid classification as a CAFO and the regulatory requirements that come with such a classification. In addition, the language does not specify which "Department permit limits and conditions" would result in a classification. In sum,

the proposed language is completely irrational and must be amended to include agricultural operations with discharges regardless of whether they are authorized by any Department permits. In order to eliminate irrational language, comply with the federal rule, and clarify the proposal, DEP needs to recraft the definition of CAFO in § 92.1 to read as follows:

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

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

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

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

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

Sincerely,

Mrs. Teri Dignazio
560 Bethel Rd
Oxford, PA 19363-1138



45

Flanagan, Joann

From: Teri D'Ignazio [owsley@epix.net]
Sent: Friday, October 08, 2004 12:26 AM
To: ag-scc@state.pa.us
Subject: Comments on Nutrient Management Regulation Revisions

October 07, 2004

State Conservation Commission
2301 North Cameron Street, Suite 405
Harrisburg, PA 17110-9408

Dear ,

Subject: Comments on Nutrient Management Regulations: One-page summary for distribution to State Conservation Commission Members
I am personally very concerned with revising the Nutrient Management plan now in effect. I have personally experienced and witnessed a "plan" that does not appear to be protecting our water supply. I have witnessed my township change manure storage zoning to allow an 8000 wean to slaughter operation to go in on a farm next door. At the time the township quietly mentioned the application was received in the correspondence section of a meeting, the advertisement in the newspaper had already run for 30 days. The outcome of this application was Chester Water Authority ended up being pre-empted from making any comment regarding the land application of this operation. I believe the farmer has a "nutrient management plan" which allows him to spread million(s?) gallons of waste on his farm which drains to Leech Run and into the Octoraro Reservoir. To add to the situation a 3600 swine operation is located very near by and can spread 100,000 gallons of waste on 45 acres showing export contracts to farms just above the Octoraro and on the west branch of the Reservoir about 3 miles away in a different county. Doesn't anyone see the big picture in Harrisburg? How is this planning allowed? Currently, a developer coalition has been formed and has taken an option on 120 acres of farmland also draining to Tweed Creek, the Octoraro, Susquehanna, Chesapeake in the same neighborhood. This land is going to be proposed as spray irrigation fields for the Oxford Sewer Authority. Could this possibly be happening. The existing lagoons are out of compliance and have already had had problems with untreated sewage release to Tweed Creek. As a local resident I object to Tweed Creek being used as the conduit of an entire sewage system for this quickly growing region. Enough is enough!!! If these regulations are meant to manage and protect our environment ...when will we have regulations that do just that. Composting, factory farm waste, human sewage has quickly become the product of our region - who is monitoring the big picture? We are in the W-7 Watershed. So far Many of the improvements in the revised Nutrient Management regulation will help reduce the nutrient pollution that is choking almost 4,000 miles of Pennsylvania's streams and the Chesapeake Bay. The revised regulation has improvements that resolve many of the current problems, and they need to be incorporated into the final regulation.

I appreciate the following improvements:

- * Inclusion of horse operations.
- * Tightening of the export "loophole," and requiring careful planning and tracking of manure that is shipped from one farm to another.
- * Inclusion of the phosphorus index.
- * Requirement that animal access to surface water be controlled, so that livestock may not directly deposit their manure in streams.
- * Prohibition of manure application on bare ground.

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* Requirement of an Erosion and Sedimentation Control Plan.

The proposed Nutrient Management regulation, however, has some shortcomings that I urge you to correct:

* A setback of 100 feet (or 200 feet on steep slopes) from surface water should be throughout the year, not just when the ground is frozen, snow-covered or saturated. Water pollution occurs throughout the year, and the regulation should be changed to require these setbacks at all times.

* Setbacks from all surface waters, in addition to property lines, water wells and sinkholes, should be required for manure storage facilities. Wetlands, intermittent streams, and downstream waters could suffer devastating effects if inundated by millions of gallons of manure when a manure storage facility fails, most likely after a heavy rain when intermittent streams are flowing and wetlands are full.

* Temporary manure stacking areas should only be used for emergency situations, and for no longer than 30 days.

Thank you very much, and I look forward to an improved regulation leading to improved water quality.

Sincerely,

Ms. Teri D'Ignazio
560 Bethel Rd
Oxford, PA 19363-1138

**Our Comments on the Proposed CAFO, Concentrated Animal Feeding Regulations
& The Nutrient Management Regulations currently under review and revision.**

(Sent under separate cover to each agency)

From: John & Sandra Mills – 6500 Leonard Drive – Harrisburg, PA 17111 – 717-652-6940
Date: 9/30/2004

To:
CAFO Regulations
Environmental Quality Board
PO Box 8477
Harrisburg, PA 17105-8477

To:
Nutrient Management Regulations
Conservation Commission
Agriculture Building – Room 405
2301 Cameron Street
Harrisburg, PA 17110



To Whom It May Concern:

In brief, our interest in the new regulations has happened because we purchased land and built a retirement home in Huntingdon County in close proximity to Raystown Lake. A 28 mile lake constructed through the Army Corp of Engineers. The lake and surrounding state park and game lands is a beautifully pristine area that welcomes everyone to enjoy the many wonderful and picturesque sights and happenings of this great lake. Camping, boating, fishing and hunting are just a few of the many amenities enjoyed by all Pennsylvanians at Lake Raystown. Very recently a large commercial Hog Farm was installed just adjacent to the lake outside the town of Marklesburg in very close proximity to estuaries that drain directly into the lake. Please Note – It would appear that the Pork Industry has targeted the Huntingdon County area for factory hog farming. There are currently 8 farms already in operation with more on the board for approval. Several of the ones already under operation sit in very close proximity to Raystown Lake. This is a time bomb waiting to go off.

Aside from commenting on all the problems associated with these Hog Farms, for purposes of this commenting period I will restrict to the following:

On CAFO Regulations: We Support:

25 PA Code § 91.38(a)(3)(ii) – Structures with 1 million gallon capacity of manure storage and more should be required to obtain WQM Permit.

25 PA Code § 1.36(a)(3)(i)(C) – Storage structures near an impaired watershed should be required to obtain WQM Permit.

25 PA Code § 91.38(a)(7) and 92.1 – When determining if operation needs WQM Permit DEP should also consider geology, cumulative impacts of farming operations in same areas, high quality or exceptional value lakes, (**LIKE LAKE RAYSTOWN IN HUNDTINGDON COUNTY**), streams, impaired streams, TMDL Restrictions.

Lake Raystown generates massive amounts of income for the county in tourism dollars, provides (through our own taxes -the taxpaying citizens of Pennsylvania,) a treasure that should not be permitted to be compromised by these commercial farming operations in such close proximity to the lake itself. Should a contamination event occur, it is my understanding that the entire lake would be closed and shut down. A massive expense in clean-up operations if one could even be done. The lake could be lost forever.

25 PA Code §92.5a(d)(1)(i) – Operations that conduct plowing and tilling must develop and implement an erosion and sediment control plan to limit runoff. A Flood plan must be in place for the operation.

25 PA Code § 91.36(b)(2) & 25 PA Code § 92.5a(d)(1)(i) – Dry manure should not be allowed to be stockpiled in fields for more than 2 weeks.

Now it is currently listed – until next growing season). In winter fields should not have any land manure applications.

Land that receives manure in the fall months must have cover crop to receive and hold till spring months.

In field stacking of manure must have a listed requirement of setbacks.

No stacking near any watershed area.

No stacking on SNOW COVERED OR FROZENGROUND.

Slope of no greater than 8%.

25 PA Code § 925A(d)(1) – Proposed phosphorus index does not consider proximity to impaired and exceptional quality watersheds.

RAYSTOWN LAKE- Flooding potential, (ESPECIALLY NEAR SMALL TRIBUTARIES – the current hog farm on Rt. 26 is a stone's throw to small water basins and tributaries to Raystown Lake. Also account for leeching potential (geology of surrounding grounds and bedrock – for example shale and limestone) and also use of sludge.

-Must consider net application (phosphorus)-manure to soil – water quality degradation due to existing phosphorus content of soil

-Consideration of plant growth – fishing, etc.- due to phosphorus imbalance..

Must require balancing for phosphorus on ALL FIELDS – Must require phosphorus balancing on land receiving exported manure.

25 PA Code § 91.1 and 92.1 and 25 PA Code § 91.36(b)(2) and 25 PA Code § 95.5(a)(d)(1)(i)– Manure setbacks or vegetated buffer requirements should also apply to these basins, drainage tiles, and other features that convey water.

Where there is sloping (SUCH AS IS THE CASE WITH RAYSTOWN LAKE), large buffers of vegetation and trees should be required along all areas of the lake and small extended water basins, small tributaries, and drainage areas.

Normal setbacks for small streams regarding vegetation should be increased. Setbacks to 50Ft vegetated Buffer.

Miscellaneous Comments on CAFO's:

Public Hearings: There must be listings in the PA Bulletin of all proposed operations. There must also be additional requirements of local municipalities, townships, and Boro's to adequately inform residents of the impending operation and provide listed public hearings. Residents must have an avenue to pursue stopping these large factory operations in their communities (even rural ones) if they wish to band together to do so.

Animal to Land Ratio: We must keep the existing state AND Federal regulations. Mixed livestock would remain accountable under the existing system. Under the new proposals over 1/3 of all PA Farms under existing regulations would not be held accountable due to mixed counts of various livestock (hogs, cows, chicken, etc.)

Antibiotics: Stop the use of antibiotics in our food supply. Stop the ingestion of antibiotics by our livestock animals. It is not necessary to the extent that it is currently practiced.

High Board Area: I am not sure of the exact term for this but it is the area of space between the limit of manure capacity and the ceiling of the manure facility. This must be kept at a bigger ratio.

NPDES CAFO: Regulations must be revised to be consistent with the new federal regulations.

Co-Permitting: To ensure full compliance with the CAFO regulations, agri-business corporations that contract with livestock operators or livestock management companies that operate facilities under contact with farmers should be required to CO-SIGN the CAFO PERMITS. The large factory farm corporations that get these small time farmers to set up these large scale factory farm

operations MUST ALSO BE HELD ACCOUNTABLE – They must also sign the CAFO PERMIT.

Enforcement: Studies show enforcement of the CAFO program has widespread non-compliance. DEP must substantially increase oversight and enforcement of all provisions of CAFO permits.

Education and Funding: We must find a means to help the farmer who will surely be struggling with all of the new mandates and regulations. An agency may have a ton of regulations – but if they are not understood or followed – what good are they? A source of funding for education – information sharing – problem resolution and increased funding for enforcement must be appropriated.

In Both cases we must take steps to adequately protect natural resources and rural communities from factory farm pollution.

We ask that you consider our comments and act in a favorable manner on our recommendations.

Sincerely,

John H. Mills

John & Sandra Mills
6500 Leonard Drive
Harrisburg, PA 17111
717-652-6940

Sandra G. Mills

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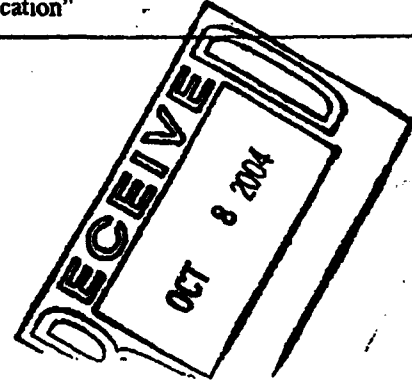


York County Conservation District

Original: 2412 "Conservation • Stewardship • Education"
2413

September 29, 2004

Doug Goodlander
State Conservation Commission
2301 North Cameron Street, Suite 405
Harrisburg, Pa. 17110-9408



Dear Mr. Goodlander,

Attached are comments from the York County Conservation District on the proposed Nutrient Management Act and CAFO program regulations. Conservation District staff, directors and a couple affected farmers contributed to this process. These comments were also forwarded to Don Robinson as part of the PACD comment process. The CAFO related comments will be forwarded as directed to the Environmental Quality Board.

If you have any questions, need clarification, etc feel free to call me at 755-2966 ext.106.

Sincerely,

Mark Flaharty

Mark Flaharty
Ag Resource Conservationist

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STATE CONSERVATION COMMISSION
HARRISBURG, PA

YCCD Comments on Proposed Act 6 Regulation Changes

September 28, 2004

1. Once final regulations are approved the Districts need accurate clarification as to exactly which parts of the nutrient plan and plan file are public information. A checklist or fact sheet is needed to define what is or is not public (for our use and so general public is clear).
2. Comments related to pastures and nutrient planning: Will we use book values or will samples of manure need to be taken from what is applied by the animals. Need to make sure animal concentration area manure is kept separate from pasture amount. How are pastures to be addressed in the conservation plan since pastures are not addressed under Chapter 102 (not plowing and tilling)?
3. Sect. 83.281 (b) (Maps and aerial photographs) Why are topo maps being required? To be of any use they would need to be overlaid onto aerial photographs with field boundaries shown. Present topo map scales are not accurate enough (too small) unless can relate to a photograph.
4. Sect. 83.281 (d) Will sample balance sheet forms for manure importers be designed and provided by SCC? This would simplify the process for everyone involved.
5. Sect. 83.291 (b) (ii) The new regulations allow using manure analysis from another similar operation for new plans without actual analyses. What is the definition of a "similar" operation? We can see this working for dry poultry operations but liquid systems can vary too much.
6. Sect. 83.291 (b) (iii) Annual manure tests will be a large expense for growers with multiple manure types. Since analysis taken on a liquid pit must be taken when the pit is agitated at unloading the results would not be available for the current year anyway. Results are not likely to change significantly unless there are major management changes. A 3 year test to match the soil test requirement would make more sense.
7. Sect. 83.301 (5) New plans are required to list the commercial hauler to be used. Since the first manure may not be hauled from a new operation for over a year from the time the plan is submitted, naming a hauler at the time the plan is written could be difficult and impractical. Plan could instead state that a certified commercial hauler from the approved list will be used.
8. Sect 83.312 (c) A site specific emergency response plan must be verified by plan writer that it exists. What type of information is to be included in this plan and who develops it? Plan writers and farmers need some guidance on these plans.
9. General comment. We are starting to hear comments from CAOs questioning why all farmers do not have to do NMPs. They see smaller operations with cattle in streams, barnlot runoff, no conservation etc. not being regulated and then they have clean operations with nothing getting to stream and they have to follow all these rules and still compete economically. When will the push start to include smaller operations under the Act?
10. Additional resources (staff and funding) will be needed to support increased workload for districts administering the Act 6 program.

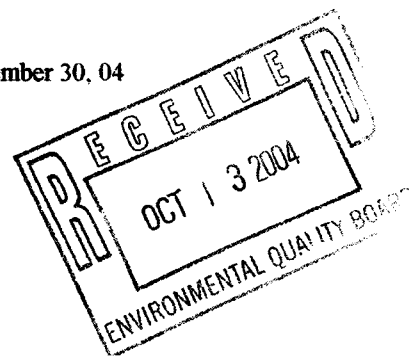
YCCD Comments on Proposed CAFO Changes**8/28/04**

1. There are concerns/questions with the 100 foot setback or buffer. Wasn't the P index developed to address manure applications near the stream? Buffers and setbacks should be the same/consistent for any approved nutrient plan regardless of program. This type of regulation makes things harder for field level people, (both DEP and District) and creates confusion for farmers, manure haulers, plan writers and the general public.
2. If the regulations do require some type of setback for manure application it needs to be clearly defined how determined. Tech Guide standards are okay but does not clearly define parameters for what width, length of buffer. I assume they will be using Filter Area standard (393). Need to keep this from becoming a gray area for everyone involved.
3. The regulations state that a CAFO must have an approved nutrient plan that meets Act 6 rules and regulations. If the farm is not a CAO does the farm automatically become classified as a VAO or does the farmer have the option of not being under Act program oversight. Our thoughts are the farmer should have the option.
4. Following on number 3. If the operation would not be a VAO then who performs the status reviews of the nutrient management plan? The Districts should not be responsible for this. DEP should handle. If DEP wants Districts to do this they should reimburse Districts and not just have this added as another responsibility for Districts in there Act 6 delegation.



To: Environmental Quality Board
Po.Box 8477
Harrisburg Pa. 17105-8477
From: J. F. Kendig
114 Moravian Avenue
Lititz, Pa. 17543

September 30, 04



Subject: State Nutrient Management Rules For Concentrated Animal Operations

Gentlemen:

The following four comments on the proposed State Nutrient Management Rules for CAO's are considered revelant and are offered for your deliberation and appropriate action.

The proposed regulations do not adequately:

1. address theallowable distance from a CAO to the nearest residential community of 500 people or more.
2. address permissible offensive odors from a CAO to a residential community of 500 people or more at a distance of 5 miles under the worst weather inversion conditions.
3. restrict the amount of fecal material and its chemical constituents, biological,pathogenic, and antimicrobial material to reach ground water aquifers supplying residential communities of 500 people or more or any municipalities, boroughs or towns.
4. cover the above three concerns for more than one CAO operating in the same geographical area, ie. Point Source verses Multiple Area Sources.

Your consideration and incorporation of protective safeguards on these four issues will be appreciated by the Citizens of Pennsylvania

Sincerely
J. F. Kendig

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