

Original: 2412 191  
Original: 2413 135

RECEIVED

2004 NOV 15 PM 3:44

DEPARTMENT OF ENVIRONMENTAL PROTECTION  
REGULATORY REVIEW COMMISSION

November 2, 2004

RECEIVED  
NOV 5 2004

Karl Brown  
Executive Secretary  
State Conservation Commission  
Agriculture Building, Room 405  
2301 North Cameron Street  
Harrisburg, PA 17110

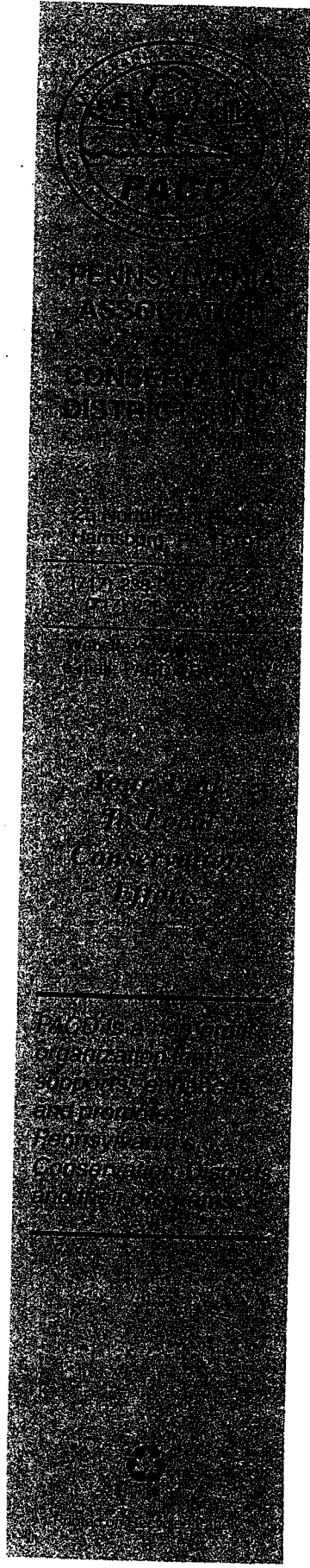
Dear Karl:

Enclosed are the Pennsylvania Association of Conservation District's comments on the proposed revisions to the CAFO and Act 6 regulations. Please feel free to contact me with any questions at (717) 238-7223 or [susan-marquart@pacd.org](mailto:susan-marquart@pacd.org).

Sincerely,



Susan Marquart  
Executive Director





**Pennsylvania Association of Conservation Districts  
Comments on Proposed Act 6 Regulation Changes**

1. 83.201 Definitions:  
*Nutrient Balance Sheet* – refers only to N. Will there be any need for one balanced on P?  
*Pastures* – manure nutrient deposits by animals alone may not exceed amounts utilized by the crop if soil residual values are not included. Including pasture soil residual values as well as manure nutrients may render pastures unusable.
2. 83.272 (Consistency of NMP BMPs with an approved Conservation Plan management practices) A complete Conservation Plan may have wildlife, woodlot management, or other practices or BMPs that have no relation to nutrient management. Section should be more specific. Also, not all Districts approve conservation plans, will they now be required to or can someone else approve plans?
3. 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 they can be related to a photograph.
4. 83.281 (d) (Agreements with importers and brokers) Will sample balance sheet forms for manure importers be designed and provided by SCC? This would simplify the process for everyone involved.
5. 83.291 (a) (Addresses of each type of nutrient sources) Permitted biosolids sources often include multiple treatment plants and some years farm operators have no idea in advance if they will receive applications or from what plant(s) they will come.
6. 83.291 (b)(3)(ii) (Testing nutrient content of manure) Proposed regulations allow manure analysis from other similar operations 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.
7. 83.291 (b)(3)(iii) Annual manure tests will be a large expense for growers with multiple manure types. Since analysis from a liquid pit are usually taken when pit is agitated at unloading the results would not be available for the current application. Some pits under buildings are not impacted by rain fall amounts and, along with dry poultry manures, are more consistent. Can less expensive requirements be considered?
8. 83.291 (e) (Soil Tests) Soil tests are not required to be submitted with the plan. P Index worksheet will note the P level from the test but the reviewer has no verification unless soil tests are checked during the site visit. Test results should be submitted or required to be verified.
9. 83.293 (b)(i) (Phosphorus Index) Apply phosphorus index on all areas where nutrients will be applied. Does applied and “deposited by livestock” mean the same thing? Does this apply to pastures and animal concentration areas?
10. 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 hauler from the approved list will be used.

11. 83.311(a) (Direct discharges to surface waters) Writers and reviewers should not ignore discharges to road ditches or other conveyances that flow readily to surface waters, even though they may be some distance away.
12. 83.311 (f) (Manure storage specifications in Plan) Nutrient management planners and reviewers are not all trained or proficient at designing and locating manure storages nor should they decide what type of storage should be used. DEP Manure Manual requires a PE to design and supervise construction. Nutrient management plans can be used to assist in sizing storages and a planner may indicate a desired length of storage but that should be their limit. Cost of plans to provide this kind of information accurately will skyrocket and could force a farmer to build a type of structure he does not want or need or fail to take in consideration future expansion.
13. 83.312 (c) (Emergency response plan) 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. Are these the same as contingency plans?
14. 83.342 (b)(4) (Crop yield record keeping) How are pasture yields estimated? Another question related to pastures – Do we use book values or will samples of manure need to be taken from what is dropped by animals and analyzed?
15. 83.362 (3 year plan review and confirmation of compliance) The annual status review conducted by the conservation district should be confirming compliance every year, this does not need to be done by the planner. Planner should continue to do any plan amendments necessary.
16. 83.404 (f)(ii) (100' setbacks from wells) Does this refer to existing wells as well as those drilled after a plan is written? If so, doesn't that constitute a form of "taking of land"?

#### **ADDITIONAL CONCERNS:**

1. Once final regulations are approved, Districts need accurate clarification as to exactly which parts of the 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. Districts have been hearing comments from CAOs and others questioning why all farmers do not have to have NMPs. They see smaller operations with cattle in streams, barnyard runoff, no conservation etc. not being regulated while large operations with clean operations and nothing getting into the streams having to follow all the rules and still compete economically. When will the push start to include smaller operations?
3. Since District personnel will be verifying the consistency of the conservation plan and NMP, what are they expected to do when a farm is out of compliance with Chapter 102 by not having a plan or following their plan?
4. What are dairy farmers who depend on their pastures supposed to do if a P Index shows that no manure can be applied?
5. There is a lack of trained and certified conservation planners and a backlog of farms waiting to be planned in many counties.
6. New conservation plans are going to call for more BMPs to be installed. Act 6 and other funding sources are not adequate to meet current demands for BMPs.

7. The original NM Advisory Board felt that anything that hindered moving excess manure to farms that needed more nutrients was to be avoided. What options will a CAO have if he can find no one to take his manure because of increased burdens on importers?
8. Additional resources (staff and funding) will be needed to support increased workload for Districts administering the Act 6 program and supporting activities such as BMP design and installation, conservation planning, and possible compliance assistance.
9. Turnover of nutrient management technicians across the state should be of concern to the SCC. The time to train and get new technicians certified slow down the process to meet deadlines and to effectively administer the program. Adding the complexity of the P-Index will only magnify this problem. Cross-training in the Districts is a solution for those with personnel to do so but many are short staffed as it is.
10. As District staff are being called on to administer more and more regulatory type programs, their relationship and trust with the farming community, built over years of "friendly" assistance, is being strained in many counties. DEP has never enjoyed a real positive relationship with the farming community. Has any thought been given to using PDA staff, who have developed a good reputation of dealing with agricultural regulatory issues for decades, being the frontline field presence in Act 6 compliance?
11. A concentrated effort to focus on having every farm implement an approved conservation plan would go much further than a P-Index to address phosphorus concerns and meet Bay nutrient reduction goals.

**Pennsylvania Association of Conservation Districts  
Comments on Proposed CAFO Regulation Changes**

91.1 Definitions:

Manure Storage Facility: (and Waste Storage Structures) – do these include constructed stacking areas for semi-solid, dry or bedded pack short-term storage of manure (usually broiler litter for 2-3 months)? These usually have concrete floors, 3-5 foot high wood or concrete sides on three sides to contain and to push against while loading and may or may not be covered with a roof. If they are included, do these structures need PE design and certification? We feel they should not (unless cost-shared) because added cost provides little added environmental protection when correctly sited on an approved nutrient management plan.

Setback: Should read “conduits to surface *or* groundwater” (to include setbacks from wells or sinkholes) (also found in 92.1)

Vegetated buffer: Why do all buffers have to be on the contour? This requirement may exclude thousands of feet of adequately buffer protected streams. Should also have minimum width standards included either here or in 91.36 (b) (2).

91.35 Wastewater Impoundments. Guidance is needed to know what satisfies the requirement to protect against unauthorized acts of third parties. Is a chain link fence adequate?

91.36 (b)(2) Define standards of an appropriate vegetative buffer.

92.5 (c) (Referencing new or existing operations becoming a CAFO due to loss of land suitable for manure application) Since CAFOs designations are not intensity determined (i.e. AEU/A), what does this mean?

92.5 (d) (1) (Referencing agreements with brokers and required nutrient balance sheets or nutrient management plans on importing farms) Plan writers for CAFO farms using brokers may not know who the importing farms will be or if manure will be land applied.

92.5 (d) (2) (Referencing erosion control plans for plowing and tilling operations) It should be assumed in this statement that no-till operations are included since some no-till operations can exceed Chapter 102 E&S requirements. This is not made clear as worded in proposed regs.

92.5 (d) (4) (Referencing PPC plans for pollutants related to CAFO operations) Are agricultural pesticides included in this? If not, Act 6 already includes requirement for contingency plans.

**GENERAL COMMENTS:**

1. There are concerns/questions about the 100 foot setbacks or buffers. 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 the 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 width or length of buffer. Are we to assume they will be using

Filter Area standard (393)? Need to keep this from being a gray area for everyone involved.

3. Since 100 foot setbacks from surface waters for manure applications do not apply to commercial fertilizers (which are more highly soluble), what have we gained in nutrient control except more expense and trouble for the farmer?
4. The regulations state that a CAFO must have an approved nutrient management plan that meets Act 6 standards. If the farm is not a CAO does it automatically become classified a VAO or does the farmer have the option of not being under Act 6 program oversight. Our thoughts are the farmer should have the option.
5. Following on number 4. If the operation would not be a CAO or VAO, who performs the status reviews of the nutrient management plan? DEP should handle this. If they want Districts to do it, there needs to be a plan to reimburse them, not just add it as another responsibility in the Act 6 delegation agreement.





**Flanagan, Joann**

---

**From:** Seri Kern [jmariser@crosslink.net]  
**Sent:** Friday, November 05, 2004 4:20 PM  
**To:** ag-scc@state.pa.us  
**Subject:** Comments on Nutrient Management Regulation Revisions

November 05, 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  
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.

It must be emphasized, however, that these regulations are meaningless without enforcement. Pennsylvania has a strong need to improve its enforcement record.

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,

Mrs. Seri Kern  
2402 Rock Hill Church Rd  
Everett, PA 15537-3505

Original: 2413

RECEIVED

2004 NOV 16 AM 9:05

REGULATORY  
REVIEW COMMISSION

153

Kar-Dale-Acres  
243 Healy Road  
Shinglehouse, PA 16748  
814-698-2515

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

To the State Conservation Commission:

Thank you for the opportunity for allowing we, the people of Pennsylvania to be a part of this decision-making process. The following is a few comments that we wished to make concerning the proposed revisions to the Nutrient Management Act regulations.

This comment pertains to *Section §83.201, Definitions* and also, *§83.262*. In my opinion, the proposed clarification (eight or more AEU's) on the number of AEU's that define a Concentrated Animal Facility (CAO) does not make sense. Why only regulate larger concentrations? The proposal also calls for the inclusion of a broader definition of livestock which is fine, but why not include the smaller farms as well? The regulation should be the same for all farms – large and small.

This comment pertains to *Section: §83.294. Nutrient application procedures (CAO)*. The proposal for this section implies that manure may not be spread on ground with no cover crop, i.e. no spreading on cornfields in the winter with less than 25% cover crop planted there. In Potter County, cover crops simply cannot grow well in harvested corn fields because of the extremely short growing season. Once the corn has been taken off, the weather takes a turn for the worse – thus, allowing no time for cover crops to grow (not even to minimum 25%). For farms that do not have the means to afford a manure waste facility, this means that they would have to find other places to spread their manure – resulting in less than fertile soil in corn plots, and no place to put their manure.

This comment pertains to *Section: §83.293. Determination of nutrient application rates (CAO)*. The calculation of nitrogen and phosphorus balances in the soil should be reasonable. However, many farms already have carefully planned nutrient application plans. As for chemical fertilizers – applicators are required to earn credits for a permit, thus receiving an education about the subject in the process. Your average citizen caring for his or her lawn uses the same types of chemicals in their garden, lawn, etc, but they are not required to have a permit. For these people, it's as easy as going to the nearest Wal-Mart to purchase the herbicides or pesticides that they need. The argument here is that they use only a fraction of the amount large farms do. However, what about all of this persons' neighbors – especially suburban areas where the lawns are all beautiful, but just a bit too beautiful to be natural. All counted together, these lawns make up a significant number of acres. In these areas where the well manicured lawns meet perfectly with beautifully paved driveways and streets, guess where the runoff goes. It runs directly into the storm sewers and then directly into the river – bypassing all forms of natural filtration. This problem should be taken into account because simply regulating nutrient application of farms will not make NPK (nitrogen, phosphorus, and potassium) problems disappear. Industrial waste, human wastewater plants, and urban waste are just a few that contribute to our state's water pollution. Some are necessary evils, but they should not be left unaccountable because of that fact.

Flanagan, Joann

From: Holly M. Fishel [hfishel@psats.org]  
Sent: Friday, November 05, 2004 3:28 PM  
To: ag-scc@state.pa.us  
Subject: Proposed Rulemaking on Nutrient Management

RECEIVED

2004 NOV 16 AM 9:06

UNIVERSITY OF PENNSYLVANIA  
STATE CONSERVATION COMMISSION

Hard copy to follow.

November 4, 2004  
State Conservation Commission  
Agriculture Building  
Room 405  
2301 North Cameron Street  
Harrisburg, PA 17110

Dear Commissioners:

We are writing to you on behalf of the 1,456 townships represented by the Association to comment on the Proposed Rulemaking on Nutrient Management that was published in the August 7, 2004 issue of the Pennsylvania Bulletin. Concentrated animal operations have become controversial facilities in many townships across the Commonwealth and township officials are concerned that these facilities be properly regulated to reduce the risk of pollution and other negative impacts on the community.

We understand that this proposed rulemaking is due in part to Governor Rendell's directive in his veto message for HB 1222 and would attempt to reduce the concerns over animal feeding operations that are leading to the adoption of municipal ordinances.

We believe that this proposed regulation is a step in the right direction. The regulation would expand the types of facilities that must meet the program's requirements, as well as to establish more stringent standards to protect water quality, a major concern of our members.

However, it is essential that sufficient enforcement be provided for these regulations or they will do little to correct the real and perceived problems caused by these facilities. Without sufficient enforcement, this regulation will do little to address the concerns of communities across the Commonwealth. The Commission must have the resources to fully enforce these regulations, include the imposition of necessary fines and the ability to require violators to clean up environmental damage that they have caused at their own expense, not with taxpayer funds. Without adequate staffing resources, how can we be sure that these regulations will be fully enforced?

This regulation would require nutrient management plans to include additional information such as the application rates of manure application equipment, descriptions of all land that will be used for land application of manure, agreements with manure exporters and brokers, and use of the phosphorus index. We believe that this is an appropriate addition to protect the Commonwealth's waters and to close loopholes caused by the exporting of manure by these operations.

We support language in these regulations to require inclusion of all types of nutrients applied to farmland to be taken into consideration when preparing a nutrient management plan, including chemical fertilizers applied during the planned manure application period, application rates, type of manure, and planned manure incorporation time. Manure incorporation time is important and should be

required in a reasonable period of time, such as 24 hours. In some cases the manure is not incorporated or is left laying on the fields for some time, causing a risk of water pollution if the manure runs into water sources and a significant cause of odor, thereby reducing the community's quality of life.

We support language in these regulations requiring testing for both phosphorus and nitrogen content of the soil and that manure application be in compliance with these tests. This is necessary to manage and alleviate degradation of streams that is caused by agricultural runoff.

We support additional restrictions on manure application, such as not applying liquid manure at rates exceeding the soil's water holding capacity within the root zone. We also support the manure application setback of 100 feet from all active drinking water sources and the new setback from inactive open drinking water wells.

Section 83.311 includes language to address existing inadequate manure management practices. Subsection (e) adds a requirement to size, locate, implement, and manage animal concentration areas to eliminate the discharge of polluted stormwater from these areas to surface water and groundwater. Would this take into account municipal zoning and subdivision and land development ordinances? Also, the facilities would be required to minimize the size of animal concentrations and the amount of clean water entering the animal concentration area and would include a requirement for the use of BMPs, instead of the current recommendation. We support these provisions.

Section 83.341 requires additional record keeping and soil testing, includes dates of application, and includes record keeping for exported manure, such as where and when it is land applied. We believe these record-keeping requirements will help eliminate loopholes in the current system.

While these regulations do address water quality, they do not address odor, the number one concern that we hear from our members about CAOs and CAFOs. Odor issues can have a direct effect on community's quality of life and best management practices should be required to reduce the potential effects that odor from a CAO can have on a community.

Thank you for the opportunity to comment on these documents. We would like to work with the Commission on these issues and to resolve the concerns of our members. If you would like to discuss this issue further, please contact me at the Association's office.

Sincerely,

Elam M. Herr  
Assistant

Executive Director

Pennsylvania State Association of Township Supervisors  
4855

Woodland Drive

Enola,

PA 17025

eherr@psats.org

cc: Robert Nyce

Holly M. (Hood) Fishel  
Research Analyst

Pennsylvania State Association of  
Township Supervisors  
Phone: (717) 763-0930  
Fax: (717) 763-9732  
hfishel@psats.org  
www.psats.org



Original: 2412

Original: 2413



RECEIVED

2004 NOV 15 PM 3:44

REGULATORY  
REVIEW COMMISSION  
November 5, 2004

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

**Re: Proposed Rulemaking regarding Pa. Code Chapter 83, Nutrient Management regulations, as published in 34 Pa. Bull. 4361**

To Whom It May Concern:

These comments are submitted on behalf of the Pennsylvania Chapter of the Sierra Club. The Pennsylvania Chapter has a longstanding interest in promoting the protection of the Commonwealth's streams, lakes, rivers and other waters from pollution. We have serious concerns about the continuing impairment of Pennsylvania's waters, and downstream waters, by agricultural sources. We see the revision of the Nutrient Management regulations as an important ingredient in addressing agricultural pollution.

In general, the proposed regulatory changes represent a significant improvement over existing regulations and would address a number of its well-known weaknesses. We appreciate that horse operations are included in the regulation for the first time. We support the requirement for careful planning, tracking and handling of manure that is shipped from one farm to another. We support the provision, where included, for nutrient management plans to address phosphorus, and not just nitrogen as previously. The control of animal access to surface water, so that livestock may not directly deposit their manure in streams, is an important improvement. The prohibition on manure application to bare ground is, also, an important new safeguard. And we recognize that the requirements that CAFOs and other qualifying operations must meet regarding manure management, to satisfy new federal requirements, are incorporated, in part, in the proposed revised CAFO regulations.

There remain, nevertheless, some serious weaknesses in the proposed regulation that must be addressed if Pennsylvania is going to effectively control the nutrient pollution of our streams and downstream waters including the Chesapeake Bay.

**Controlling phosphorus pollution:** The approach to limiting the application of phosphorus does not adequately satisfy the federal requirements for nutrient balancing, and would not lead to adequate reduction in the over-application of phosphorus to agricultural land. First, the phosphorus index, as defined in 83.201 and incorporated in nutrient management planning in § 83.281(c), is not effectively implemented. There are

inadequate provisions for applying the index to limit manure application. In addition, the threshold 200 ppm of phosphorus in the P index is far above crop needs. The addition of phosphorus to cropland should provide the nutrients needed for optimal plant growth, based on soil tests for specific crops on specific land areas. An excessively high threshold of phosphorus, as proposed, would promote the continued over-application of phosphorus on land where the soil content is already excessive, or high. The economic incentives to over-apply manure, as an inexpensive waste disposal method, need to be counteracted by effective limits based on agronomic needs. A phosphorus balancing approach would be more effective, limiting phosphorus application on a larger scope of farms where the level of P is already very high.

In addition, Section 83.301 should be modified to require that nutrient management plans for importing of manure should include balance sheets for phosphorus as well as nitrogen. Very large amounts of manure are exported and land applied in Pennsylvania. The provisions in § 83.292 and § 83.294 have the effect of requiring that concentrated animal operations determine what levels of nitrogen and phosphorus are needed for crop production, and then ignore the phosphorus requirements by basing nutrient management planning on nitrogen alone, except where the P index is triggered, i.e., on land where P is already very high. Elsewhere, the application based on nitrogen will result in over-application of P. A balancing approach for phosphorus, as well as nitrogen, should be applied to all importing fields.

**Setback requirement:** When applying manure to land, a setback of 100 feet (or 200 feet on steep slopes) from surface water is only required when the ground is frozen, snow-covered or saturated, although there is serious potential for runoff from setback areas throughout the year. It is our understanding that there is little scientific basis for limiting the use of setbacks to certain portions of the year, as the setbacks offer significant pollutant capture throughout the year. Sections 83.294(f) should be changed to make the manure application setbacks apply year round. In addition, the setback should apply to sinkholes at all times. In addition, manure application should be prohibited immediately prior to and during precipitation events, in order to reduce the runoff and leaching of pathogens as well as nutrients.

**Manure storage on fields:** Under proposed Section 83.294(h), operations are permitted to stockpile dry manure uncovered, as long as they apply it before the next growing season. Runoff from uncovered manure piles is a known source of nutrient pollution, and must be more effectively addressed. In addition, runoff from manure piles can transport pathogens to groundwater and surface water through leaching and contact with drainage tiles. The ability of pathogens to survive in manure piles is discussed extensively in a technical analysis by the Minnesota Planning Agency Environmental Quality Board conducted in 2001 on animal agriculture effects on soil [See MPAEQB, "Final Generic Environmental Impact Statement on Animal Agriculture, Sept. 14, 2002. Available at: [www.eqb.state.mn.us/geis/](http://www.eqb.state.mn.us/geis/)] We strongly urge the SCC to require that dry manure not be stored uncovered in fields for longer than 2 weeks. This requirement will also prevent operations from unintentionally becoming discharging operations subject to CAFO



permitting requirements, as a result of precipitation events saturating and transporting the manure.

**Manure storage facilities:** Under revisions proposed for Section 83.351, setbacks for manure storage facilities would not apply to intermittent streams or wetlands. In addition, the SCC or Conservation Districts would have the authority to waive setback requirements. These provisions are invitations to serious pollution problems. Section 83.351 must be changed to require setbacks for manure storage facilities from all surface waters, including wetlands and intermittent streams, as well as from all conduits to surface waters. In addition, the provision allowing the SCC or a Conservation District to waive the setback requirements should be stricken.

Finally, there are no requirements for surface or ground water monitoring, neither for the baseline or for follow up to determine the success of management practices. Nevertheless, some management practices might turn out to be ineffective in preventing nutrient loadings, or have limited effect in certain topographic and other conditions. Monitoring of ground water and downgradient surface water should be required as part of all nutrient management plans approved for CAFOs, to verify that there are no manure releases or impacts to water quality.

We appreciate the opportunity to submit the above comments. Please contact Robin Mann, 610-527-4598, with any questions.

Sincerely yours,



Phil Coleman, Chair  
Sierra Club, Pennsylvania Chapter  
Box 606  
Harrisburg, PA 17108

## APPENDIX A

November 5, 2004

Environmental Quality Board  
Rachel Carson Office Building, 15<sup>th</sup> Floor  
400 Market Street  
Harrisburg, PA 17105-2301

**Re: Proposed Rulemaking regarding 25 PA. Code Chapters 91 and 92, as published in 34 Pa. Bull. 4353**

To Whom it May Concern:

The following comments are submitted on behalf of the Pennsylvania Chapter of the Sierra Club on the subject of the proposed changes to the regulations under §§ 91 and 92 regarding Concentrated Animal Feeding Operations and Other Agricultural Operations, and the associated changes to Chapter 83, Subchapter D.

A top national priority of the 700,000-member Sierra Club is to secure regulations that protect the environment from pollution caused by Concentrated Animal Feeding Operations (CAFOs). Longer term, we seek the transitioning of the nation's livestock production to sustainable agricultural methods that will more fully protect our natural and human environment from agricultural pollution and sustain the quality of life in our rural communities.

The Pennsylvania Chapter of the Sierra Club strongly believes that Pennsylvania must adopt and implement safeguards that are sufficient to fully protect the Commonwealth's air and water quality and the health of its citizens from CAFO pollution. Establishing effective controls on pollution from CAFOs is vital to achieving the overall objectives of eliminating agriculture-based impairment of the Commonwealth's waters and achieving Pennsylvania's share of the nutrient pollution reductions required to restore the Chesapeake Bay.

We appreciate many of the proposed changes to §§ 91 and 92, and associated changes to § 83 Nutrient Management regulations, to bring Pennsylvania's CAFO requirements into consistency with the new federal regulations. Nevertheless, we are very concerned that,

in certain respects, the proposal fails to meet the minimum requirements under the federal regulations. And additional shortcomings in the proposal would undermine the effectiveness of the regulations, and should be addressed.

**Definition of CAFOs [25 Pa.Code § 92.1]**

The federal regulations require large livestock operations to obtain a Clean Water Act discharge (NPDES) permit and to maintain the operation according to the permit. In the revisions to Section 92.1, Pennsylvania proposes to satisfy the federal rules by defining as CAFOs: those livestock operations with greater than 1,000 Animal Equivalent Units (1 AEU = 1,000 lb. live animal weight); those concentrated animal operations with more than 300 AEUs; any agricultural operation with an authorized discharge to surface waters; any agricultural operation defined as a large CAFO under the federal definition [40 CFR 122.23(b)(4)]; and any other agricultural operation designated as a CAFO by the Department based on risk to surface waters.

We support the Department's proposal to use the AEU basis for defining CAFOs. EPA's guidelines only require permits for operations with individual species of livestock numbering over a threshold. However, there are many large-scale operations with multiple species in Pennsylvania. And DEP is correctly recognizing these operations as a significant source of potential pollution by including mixed animal operations in the definitions in §§ 91.1 and 92.1.

We also support the Department's incorporation of poultry and horse operations within the CAFO definition. The Department is appropriately recognizing the need to apply the CAFO program manure storage and management controls to these livestock operations.

We are very concerned, however, that the proposed definition would exclude from the definition of CAFOs those medium-sized operations [300 to 1,000 AEUs] that are below the threshold level of density of animals, but are nevertheless causing unauthorized discharges of manure pollution to surface waters. This would include operations with livestock in streams where they may deposit manure directly, stormwater flowing from manure management facilities, and other sources of stream degradation. DEP's proposal would require a CAFO permit of only those medium operations that are already subject to permit requirements. It appears that an operation with a discharge could simply fail to obtain a permit. DEP has argued that the §92.1 definition of CAFOs affords the Department the authority to require permits of these operations where necessary. We seriously question whether the Department would exercise that authority effectively, going forward, as it has had the discretionary authority to regulate such operations as CAFOs in the past, and has failed to do so. Excluding the whole category of medium-sized operations that are not concentrated and are discharging pollution without a permit ignores the fact that they are a significant contributor to the nutrient loads to the Commonwealth's waters. It is also inconsistent with the federal requirements. We urge

the Department to include in the §92.1 definition those medium-sized operations that are discharging manure and/or wastewater to surface waters.

In addition, greater specificity should be provided as to the risk factors that would trigger the discretionary designation of CAFOs. The EQB should direct DEP to specify that operations cited near impaired and Special Protection waters, on karst soils, and near waters subject to Total Maximum Daily Loads (TMDLs) are to be designated as CAFOs.

Under §§ 92.1 and 91.36, DEP is also proposing to carve out special provisions for livestock operations that install manure management technology that produces energy. Where the manure digester or other technology involves a discharge of treated wastewater to surface waters, DEP would treat the facility as subject to the less stringent CAFO permitting requirements, and not to require an NPDES permit for industrial wastewater discharge. This exemption from federal permitting requirements for industrial wastewater discharges is totally unacceptable. It violates the requirement under the federal regulations that specifies that only stormwater discharges from CAFOs are exempt from NPDES permits. The CAFO permit is, otherwise, a non-discharge permit. CAFOs are industrial operations and wastewater discharges from manure processing facilities operated by CAFOs should be subject to NPDES effluent guidelines and the full water quality protection requirements under the Clean Water Act.

#### **Permit requirements for CAFOs**

DEP is proposing to incorporate new requirements into §§ 91.36 and 92.5 to satisfy the requirements for manure storage and management under the new federal CAFO rule. We are concerned that in several respects, the proposed requirements fail to satisfy the minimum federal requirements and/or are not sufficiently protective of the Commonwealth's waters.

**Manure storage facilities:** Under a consolidated Section 91.36, on Pollution Control and Prevention, DEP is proposing to require only some livestock operations with manure storage facilities of more than 1 million gallons of liquid or semisolid manure to have a water quality management permit for the storage structure. Manure storage facilities holding from 1 to 2.5 million gallons of manure would be let off the hook, unless the storage facility is earthen, is located upgradient of a high quality or exceptional value stream, or is upgradient from a stream impacted by agricultural activity that is not implementing a Nutrient Management Plan, or unless DEP uses the discretion proposed in Section 91.36a(7) to require the permit.

There are several concerns with this approach. First, according to PennFuture's analysis in comments submitted on this proposal, the volume of manure generated by many operations intended to be incorporated by the federal CAFO regulations is likely to be greater than 1 million gallons within 180 days [Letter of Kimberly Snell-Zarcone to EQB dated Nov. 1, 2004]. Thus, many manure storage facilities with the potential to cause serious harm to downstream waters, or that are already doing so, and that are the subject

of the new federal requirements, would be inappropriately excluded from the water quality management permit requirement. The EQB should direct DEP to require water quality management permits for all manure storage structures with capacity of 1 million gallons and above.

In addition, DEP should be required to apply water quality management permit requirements for smaller storage structures to a larger set of circumstances where the risks of pollution are significant. The threats of leaking and overflowing manure storage facilities below 1 million gallons posed to the water quality of Special Protection waters are not being adequately considered. And DEP's proposal to only require permits for facilities over 1 million gallon capacity near impaired waters where a Nutrient Management Plan is not being implemented is flawed. In fact, the NMP review does not even address manure storage design. We strongly urge that DEP be directed to require water quality management permits for all manure storage facilities sited near impaired and Special Protection waters, regardless of the size of the structures. In addition, DEP should modify § 91.36 to specify setbacks from wetlands and intermittent streams, and to prohibit new and expanding storage structures in floodplains.

**Setback requirements:** DEP has requested comment on whether to adopt the Natural Resource Conservation Service guidelines requiring a 50-foot vegetated buffer or a 100-foot setback as the minimum required setback for CAFOs, in lieu of the 35-foot vegetated buffer and 100-foot setback proposed in Section 92.5a(d)(1)(i). We strongly support the adoption of the 50-foot vegetated buffer requirement for land application of manure from CAFOs, at a minimum. In addition, Sections 91.1 and 92.1 should be modified to specify that the setbacks apply to sinkholes, drainage tiles, ditches and conveyances, and well-heads, in order to protect water quality and to meet the federal requirements related to setbacks. We also recommend that DEP be directed to clarify that the vegetated buffer should be planted in dense, native vegetation, and should not be cropped.

**Closure of export loophole:** We strongly support DEP's proposal to include the requirement under § 92.5a for the nutrient management plans prepared and implemented by CAFOs to include written agreements between importers and brokers related to the land application of manure. As discussed below, the nutrient balancing for those plans should address phosphorus as well as nitrogen.

**Limiting phosphorus pollution:** The new federal CAFO rules require that protocols be established to provide that manure, litter or process wastewater will be applied to land in accordance with site specific conditions that ensure the agricultural utilization of the nutrients in the material. In light of the serious problem that Pennsylvania already faces with phosphorus build-up on some agricultural land and phosphorus transport to surface waters, the need for effective controls on application of phosphorus is critical. DEP proposes to satisfy the federal requirements by specifying, in § 91.36, that all CAFOs must implement a nutrient management plan under Chapter 83, Subchapter D, and modifying Chapter 83 to incorporate a phosphorus index (P- index), and that the plan must include signed agreements for the land application of imported manure subject to nutrient management plans or nutrient balancing.

We have two fundamental concerns with DEP's proposed approach to limiting phosphorus. First, the 200 ppm threshold for the soil phosphorus content trigger for limiting additions is set far above the appropriate agronomic rate. The level should be such as to provide for optimal plant growth and production based on soil tests, for a specific crop on a specific piece of land. Secondly, the federal rules require testing and balancing of nutrients on all land to which manure from CAFOs is applied. Under the proposed changes to Chapter 83, however, importing operations would only be required to balance for nitrogen and to provide a 150-foot application setback to address phosphorus. The setback could be expected to control the transport of phosphorus, however, it would not address phosphorus as a source factor. Much of the phosphorus in animal manure is in organic form, which is water soluble and leaches through soils to groundwater and nearby surface waters. The EQB should direct DEP to require phosphorus, as well as nitrogen, balancing on all land importing CAFO manure.

**Other agricultural operations:** DEP proposes to incorporate pollution control requirements that apply to smaller livestock operations, based on the observations of the CAFO Stakeholder Group that smaller livestock operations are responsible for "causing a substantial portion of pollution problems created by agriculture." These requirements, included in Section 91.36(a) relate to siting and design criteria for manure storage facilities. The proposal to apply water quality protections more broadly to embrace smaller livestock operations is welcome, however, it is difficult to ignore that the Stakeholder Group may have had an agenda, rather than strong evidence, in determining that smaller operations are a significant pollution problem. The focus on pollution from smaller operations seems particularly questionable in light of DEP's failure to even apply the definition of CAFOs to medium-size operations that are discharging to surface waters. DEP's proposal to require water quality management permits for manure storage facilities on smaller operations on a case-by-case basis, in Section 91.36(a)(7), is consistent with the need to protect water quality from agricultural runoff from all sources. We recommend inclusion of the same setback criteria that are recommended above with respect to CAFOs. In addition, Section 91.36(c) should provide that DEP "will", not "may", require an agricultural operation to develop and implement a nutrient management plan where a violation of the Clean Streams Law is found to occur. However, DEP should back up these more broadly applied requirements with an effort to target technical assistance and other funding to the smaller operations and on the basis of Need.

**Additional requirements for CAFO permitting:** The large-scale meat industry is notorious for maximizing their profits by forcing contract growers to shoulder waste disposal costs and pollution liability. To ensure accountability, the agri-business corporations and livestock management companies that contract with growers should be required to co-sign CAFO permits. In addition, 'bad actor' language should be included in the permittee specifications to prevent companies that have a history of environmental violations elsewhere from doing business in Pennsylvania, without the public's knowledge. Finally, financial assurances should be required of CAFO permittees, to cover potential future remediation costs otherwise borne by the host communities.

In addition, the monitoring and reporting requirements under the federal CAFO rule, at 40 CFR § 122.48, are not adequately addressed in the proposed regulations. Detailed monitoring is required for each pollutant representing a threat to water quality, and data should be kept of the mass of each pollutant limited in the permit. At a minimum, regular monitoring of nearby surface waters should be required for the following parameters: nitrogen, phosphorus, fecal coliform, BOD, and sediment. In addition, freeboard level of manure storage facilities should be recorded on a weekly basis, and the storage overflow should be monitored on the same frequency. Evidence of discharges to surface waters from manure storage facility overflows associated with precipitation from less than the 24 hour/25 year storm should trigger prompt enforcement action.

Thank you for the opportunity to submit these comments. Please direct any questions to Robin Mann, 610-527-4598.

Sincerely yours,

Phil Coleman, Chair  
Sierra Club, Pennsylvania Chapter  
Box 606  
Harrisburg, PA 17108





Original: 2412 194

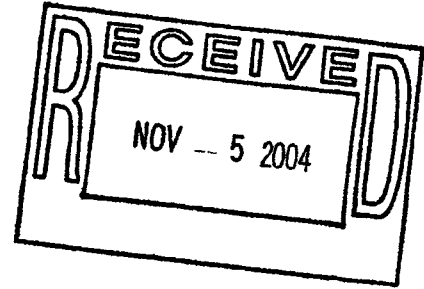
Original: 2413 138

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

RECEIVED

2004 NOV 15 PM 3:44

WATERSHED REGULATORY  
REVIEW COMMISSION



RE: Proposed Changes to Nutrient Management Regulations

First I want to say that I am in general agreement with the decision to more directly address phosphorus loss in nutrient management plans, but I am very concerned about the financial impact this initiative will have on the total ag industry. Therefore, I am recommending that the Commission allow for either phosphorus indexing OR phosphorus balancing to be used in nutrient management plans called for under the act and CAFO program. This will allow additional flexibility to the agricultural community to address phosphorus loss. What I am defining "phosphorus balancing" as limiting the amount of phosphorus that will be applied for a given year, to that amount that will be removed by the crop that given year. There may be situations where the application rate is so low or the nutrient content of the manure so high, that it is impractical to apply the recommended amount, in these cases the commission should allow a one time application that will meet the crop need for up to a three year period. If the commission is not agreeable to allowing phosphorus balancing for all CAOs and CAFOs, I would recommend that phosphorus balancing be allowed for only existing CAOs and CAFOs. I am also concerned about how the commission defines "stream or other water body" for use in the phosphorus index. The identification of streams or other water bodies on a farm is critical in the calculation of the phosphorus index for a given field. As a way to define exactly what a water body consists of, I feel that is important to count only named streams as water bodies. If this is not accepted it is impossible to determine where application of manure is allowed. This is especially difficult in this state where we have so many areas of extensive hills. I talked with my NRCS office and they indicated that any area where water ever stands would be included in the definition as well as any road ditch. As a side note, I feel that the phosphorus index will space out operations in PA due to the increased land base needed to address the index and the inability to economically transport manure long distances. This would address a number of watershed carrying capacity concerns that environmental groups have relating to placement of agricultural operations. We have seen this happen already due to Act 6.

Second, I believe the commission should fund transportation of manure from existing farms that are required to, due to NMA or CAFO programs, export manure from their sites. Do not fund transportation of manure from new facilities. Existing farms based their cash flows on the requirements of a nitrogen based plan and now to impose much more expensive requirements will in some cases put these existing farms out of business due to hauling costs. New operations can factor in the cost of manure hauling in their business plans, whereas existing operations simply cannot generate more money to cover these additional costs. The commission should actively research new uses for manure as well as community collection centers or distribution centers. The commission should house a manure distribution specialist at the conservation district office whose responsibility it is to find importing sites or distribution centers for excess manure produced on existing CAOs and CAFOs.

Third, I want to comment on CAFO regulations. The 100' setback or 35' buffer for all CAFO manure is extreme and difficult for existing farms to address. This requirement will take about 30 acres away from my spreading acreage, which makes me buy fertilizer for that acreage. I do not see how purchased fertilizer is any different from manure-both provide N P K for crops. I do not see how CAFO manure is any different from manure from a smaller operation. In my area, the smaller farms are the ones who use daily hauling and also spread on frozen ground in the winter. If these setbacks are enforced, there will be much less land available for spreading which

will result in additional costs for the operation. I know of several that will be forced out of business because of the additional cost. The setback requirement may work for new operations that can include these additional costs in their business plan. If DEP insists on imposing this requirement in PA, I would suggest that it be imposed on ALL farms that produce manure. There is no scientific reason why CAFO manure is more damaging than non-CAFO manure. I would suggest that DEP designation of CAFOs be the same as EPA. If there is a difference there is much more confusion about regulations. It appears that DEP is simply trying to get more operations under their control.

In conclusion, I would like to make a number of general comments. The accusation that large operations have caused damage to the environment is simply not true. In an article by Bob Van Ginhoven in the April 1993 Pennsylvania Farmer, he makes the point that most of the pollution in the Chesapeake Bay is related to growth in urban population. In fact, if there is damage to our rivers, this has happened over many years and the large animal operations have only come into existence in the last 10 years, so why "blame" the animal operations? In some areas there are no animal operations on waters that are on agricultural damaged waters. I also reference a Feedstuffs June 3, 2003 study that indicates that there was almost no change in several North Carolina watersheds over a 10-year period due to a 10-fold growth in the hog industry. I know of several town sewer plants that simply allow sewage to flow through in times of large in-flow, yet all of this pollution is attributed to agriculture. Since farmers are in a clear minority and not able to attend all of the meetings regarding environmental issues, it is very easy to pin the responsibility for any environmental damage on them. If the real intent is to clean our waters, all sources of contributing pollution will be looked at, but if the desire is to put farmers out of business then there will be continued focus on issues like these proposed regulations. As a last point, I point out that I am a farmer producing hogs and broiler chickens and crop farming, producing corn and soybeans in Union County, PA. I have been farming for 38 years. Please consider these comments if agriculture is to have a future in our state .

Sincerely

James Brubaker  
1530 Buffalo Road  
Lewisburg, PA 17837

cc  
Senator Roger Madigan

Rep Russ Fairchild

162

Original: 2413  
**Flanagan, Joann**

RECEIVED

**From:** Kelly O'Neill - ext. 208 [KONeill@savethebay.cbf.org]  
**Sent:** Friday, November 05, 2004 3:13 PM  
**To:** ag-scc@state.pa.us  
**Cc:** Douglas Goodlander (E-mail)  
**Subject:** NM Comments

2004 NOV 16 AM 9:06

DEPARTMENT OF ENVIRONMENTAL PROTECTION  
REVIEW COMMISSION

Attached are the Chesapeake Bay Foundation's comments on the proposed Nutrient Management regulation.  
<<CBF NM Comments.doc>> <<CBF NM Comments summary.doc>>

Kelly O'Neill  
Agricultural Policy Specialist  
Chesapeake Bay Foundation  
The Old Water Works Building  
614 North Front Street, Suite G  
Harrisburg, PA 17101  
phone: 717-234-5550 ext. 208  
fax: 717-234-9632  
[www.savethebay.cbf.org](http://www.savethebay.cbf.org)





## Summary of Chesapeake Bay Foundations' Comments to State Conservation Commission on Proposed Nutrient Management Regulation

The Chesapeake Bay Foundation applauds many of the improvements in the revised Nutrient Management regulation that will reduce the nutrient pollution choking an estimated 3,903 miles of Pennsylvania's streams and the Chesapeake Bay. The revised regulation resolves many of the current problems, and these advances need to be in the final regulation. We especially appreciate:

- 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 except before planting.
- Inclusion of horse operations.
- Requirement of an Erosion and Sedimentation Control Plan.

The proposed Nutrient Management regulation has some shortcomings that should be corrected:

- A setback of 100 feet (and 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. Setbacks should be increased to 500 feet for High Quality, Exceptional Value, or Agricultural Impaired waters.
- Temporary manure stacking areas should only be used for emergency situations, and for no longer than 30 days.
- Voluntary Agricultural Operations and Concentrated Animal Operations should be subject to the same requirements for Nutrient Management plans, so there is no need for a separate section on VAO plans.
- The Phosphorus Index values should be gradually reduced over 5 years for the various levels of permitted manure application, because the Phosphorus Index currently allows for manure application above the phosphorus crop uptake levels on some fields.
- Financial assistance should be available for management practices that require an initial investment by farmers but little immediate economic benefit, such as cover crops and riparian buffers, as well as for innovative technologies to convert manure to beneficial uses.

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

Pennsylvania Office: The Old WaterWorks Building, 614 N. Front Street, Harrisburg, Pennsylvania 17101, 717.234.5550, fax 717.234.9632

Headquarters Office: Philip Merrill Environmental Center, 6 Herndon Avenue, Annapolis, Maryland 21403, 410.268.8816, fax 410.268.6687

Maryland Office: Philip Merrill Environmental Center, 6 Herndon Avenue, Annapolis, Maryland 21403, 410.268.8833, fax 410.280.3511

Virginia Office: 1108 E. Main Street, Suite 1600, Richmond, Virginia 23219, 804.780.1392, fax 804.648.4011

[www.savethebay.cbfo.org](http://www.savethebay.cbfo.org)

Non-Chlorine Bleached Recycled Paper







## CHESAPEAKE BAY FOUNDATION

Resource Protection  
Environmental Education

### OFFICERS

Wayne A. Mills  
Chairman

T. Gaylon Layfield, III  
Vice Chairman

Burks Lapham  
Secretary

Arnold I. Richman  
Treasurer

William C. Baker  
President

November 5, 2004

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

### EX OFFICIO TRUSTEES

Governor Robert L. Ehrlich, Jr.

Governor Edward G. Rendell

Governor Mark R. Warner

Mayor Anthony Williams

Joanne S. Berkley - Bay Care Chapter

Hal C. B. Claggett - Claggett Trustee

Maurice P. Lynch, PhD - York Chapter

RE: Proposed Nutrient Management Regulation

Dear State Conservation Commission:

### TRUSTEES

Myrtha L. Allen

George W. Brown, Ph.D.

D. Keith Campbell

J. Carter Fox

Robert M. Freeman

Alan R. Griffith

Jack S. Griswold

Michael J. Hanley

Susan Taylor Hansen

Edward M. Holland

Virginia R. Holton

Jennifer B. Horton

H. F. Lenfest

H. Turney McKnight

Donald H. Patterson, Jr.

George G. Phillips

Susan Phillips

Robert M. Pinkard

James E. Rogers

Truman T. Semans

Simon Sidamon-Eristoff

Edmund A. Stanley, Jr.

Thomas H. Stoner

Aileen Bowdoin Train

Michael Watson

James C. Wheat, III

John R. Whitmore

The Chesapeake Bay Foundation appreciates the opportunity to comment on the Proposed Nutrient Management Regulation. This regulation has an enormous impact on the Commonwealth's rivers and streams, and on downstream waters such as the Chesapeake Bay. The DEP estimates that 3,903 miles of the Commonwealth's streams are impaired by agricultural impacts. We look forward to a strong Nutrient Management regulation to reduce the nitrogen and phosphorus pollution, the most significant cause of impairment to these waters and the Chesapeake Bay.

The Chesapeake Bay Foundation (CBF), founded in 1967, is the largest conservation organization dedicated solely to saving the Chesapeake Bay. Our motto, "Save the Bay," defines the organization's mission and commitment. With headquarters in Annapolis, Maryland, and state offices in Maryland, Virginia and Pennsylvania, CBF works throughout the Chesapeake's 64,000-square-mile watershed to protect and restore the Bay with programs in environmental education, restoration and protection. With the support of over 116,000 members, including over 11,000 in Pennsylvania, our staff of scientists, attorneys, educators and policy specialists work to ensure that changes in policy, regulation, and legislation are protective of the quality of the Chesapeake Bay and its watershed.

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

### HONORARY TRUSTEES

Louisa C. Duernling

T. Marshall Duer, Jr.

C. A. Porter Hopkins

Burks Lapham

M. Lee Marston

Charles McC. Mathias

Philip Merrill

Summer Pingree

Marie W. Ridder

Godfrey A. Rockefeller

Russell C. Scott

Michael W. Warner

Matthew J. Ehrhart

Pennsylvania Executive Director

**Pennsylvania Office:** The Old WaterWorks Building, 614 N. Front Street, Harrisburg, Pennsylvania 17101, 717.234.5550, fax 717.234.9632

**Headquarters Office:** Philip Merrill Environmental Center, 6 Herndon Avenue, Annapolis, Maryland 21403, 410.268.8816, fax 410.268.6687

**Maryland Office:** Philip Merrill Environmental Center, 6 Herndon Avenue, Annapolis, Maryland 21403, 410.268.8833, fax 410.280.3513

**Virginia Office:** 1108 E. Main Street, Suite 1600, Richmond, Virginia 23219, 804.780.1392, fax 804.648.4011

[www.savethebay.cbf.org](http://www.savethebay.cbf.org)

Non-Chlorine Bleached Recycled Paper



Pennsylvania.

The Chesapeake Bay Foundation is concerned about nutrient application on all farms. Ideally, all manure, chemical fertilizers, biosolids and other sources of nutrients would be applied according to a Nutrient Management plan. The proposed regulation is a good compromise to address the majority of manure generated in Pennsylvania without presenting too large a barrier to livestock producers or farms importing manure. The regulations must maintain opportunities for farms with excess manure to export it to farms requiring nutrients for crop production.

The success of the efforts to implement the revised regulation and reduce nitrogen and phosphorus pollution depends on a strong program educating the agricultural community about the regulatory changes and various management practices to manage nutrients. Financial assistance is essential to facilitate the adoption of practices such as cover crops and riparian buffers that will capture large quantities of nutrients but provide little immediate economic benefit. Incentives for these practices should be widely available and not be limited to operations in financial distress, so should be separate from the Nutrient Management Plan Implementation Grant Program.

The term “nutrients” is used often throughout the regulations, and it is unclear in many cases whether it refers to manure, nitrogen and phosphorus, nitrogen only, or all macronutrients and micronutrients. § 83.282 (2) specifically refers to chemical fertilizer. For clarification, in most places throughout the regulations, “nutrients” should be replaced with “nitrogen and phosphorus.”

References to specific publications should be replaced with more general references to information sources approved by the Commission, including but not limited to the specific publications currently mentioned. These publications may be discontinued, or improved publications may become available. Examples include:

- *Agronomy Facts 54—Pennsylvania’s Nutrient Management Act: Who Will Be Affected?*, published by the Pennsylvania State University in § 83.262(a)1(i)
- *Recommended Soil Testing Procedures for the Northeastern United States* in § 83.292(e)(1) and 83.402(e)(1)
- Penn State Fact Sheets F254 through F257 and the *NRAES-89 Liquid Manure Application System Design Manual* in § 83.294(d)(2) and § 83.404(d)(2)

Because the Nutrient Management program is designed to protect water quality, there is no need to have differing requirements for Nutrient Management plans from Concentrated Animal Operations and Voluntary Agricultural Operations. We recommend the following changes:

- Deleting §83.391 through 83.491.
- Combining § 83.204(a and b).

If the sections on requirements for VAO plans cannot be deleted for some reason, all of our comments for § 83.281 through §83.381 also apply to § 83.391 through § 83.491.

In many places, we recommend changes to the regulatory language. Recommended additions are underlined, and deletions have ~~strikethroughs~~.



### § 83.201 Definitions

“Animal production facility” is not defined, but is used in § 83.281(a)6(i), and therefore should be defined to clearly specify what is and is not included.

“Biosolid” is used repeatedly throughout the regulation and should be defined to clarify what is and is not included.

Concentrated Animal Operation – It is important to limit the definition to operations greater than a certain size, so very small operations don’t siphon limited State Conservation Commission or Conservation District staff time, as well as cost-share funding or the Nutrient Management Plan Implementation Grant Program, from operations handling much larger quantities of manure. The minimum size to be considered a CAO could be increased from eight animal units to 15 animal units.

Critical runoff problem areas – The definition should not be limited to nonvegetated concentrated water flow areas, but should also include vegetated areas where nutrients may be transported to surface or ground water.

In-field stacking – The definition should be changed to “in-field stacking area” and state: “The area where solid manure is stacked on unimproved cropland areas to be applied to the land as plant nutrients, for a maximum of 180 days.”

Intermittent stream – is included in the definition of surface water but should also be clearly defined, consistent with the definition in the National Pollutant Discharge Elimination System Permitting, Monitoring and Compliance regulation (25 Pa. Code § 92.1), as: “A body of water flowing in a channel or bed composed primarily of substrates associated with flowing water which, during periods of the year, is below the local water table and obtains its flow from both surface runoff and groundwater discharges.”

Livestock – CBF appreciates that the definition now includes horses, which must be included since there is no reason to treat horses differently from other livestock. The regulation should clearly state that the examples aren’t limited to those listed, and poultry should be added to the list of examples.

Nutrient – A sentence should be added to clarify that the regulation’s goal is to improve water quality, and therefore focuses on nitrogen and phosphorus, the nutrients with the most impact on water quality.

Nutrient Balance Sheet – The definition should be clarified to state: “A crop management tool for importing farms developed to protect and maintain water quality by providing the calculation for determining the amount of manure nutrients that can be applied to cropland, hayland and pasture, to meet the nitrogen and phosphorus needs of a given crop management unit, using procedures acceptable to the Commission. The nutrient balance sheet takes into account the type and yield of crop to be grown, the residual nitrogen from various nutrient sources and any planned chemical fertilizer applications.”

Pastures – Crop areas managed for forage production that are harvested by livestock, or a combination of livestock and haying mechanical harvesting, and where animal-management practices ensure that manure all nutrients, including but not limited to those from manure deposited by livestock does do not exceed the amounts utilized by the crop.

Surface waters – This definition is the same as what is used by the USDA Natural Resources Conservation Service and Department of Environmental Protection in their programs, maintaining the compatibility between these and the Nutrient Management program.

Temporary stacking areas – Because the Environmental Protection Agency uses the term “temporary stacking area” for stacking areas that are included in a farm’s day-to-day management (similar to “in-field stacking” above), the name should be changed to “emergency stacking areas” or a similar term to prevent confusion and specify that these are only to be used in contingencies, such as fires or extended periods of inappropriate weather for land application.

Wetland – is included in the definition of surface water but should also be clearly defined, and we recommend the following:

“Wetlands – Areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions, including swamps, marshes, bogs or similar areas,” as stated in 25 Pa. Code § 93.1 and §105.1, and referenced by §105.451 (Identification and delineation of wetlands - Statement of policy) and §105.452 (Status of prior converted cropland - Statement of policy).

§ 83.202 Scope – The added language about operations required to have nutrient management plans improves oversight for manure storage facilities, which could pose significant pollution risks to water quality without this oversight.

§ 83.204(a) – We agree with the added language on applicability of requirements to non-CAOs. Clean Streams Law violators and others who desire the benefits derived from Nutrient Management Plans need to meet the same requirements.

§ 83.207 The Department of Agriculture and the Commission should seek the assistance of the Nutrient Management Advisory Board in developing programs to assist those engaged in production agriculture to comply with the act and this subchapter, for example, with cover crops, alternative manure uses, and certification of manure haulers and brokers.

§ 83.211 Plan Development Incentives Program

(b) CBF agrees that operations producing crops should be eligible to participate in the financial assistance program. Importing farms should be eligible for financial assistance for plan development, especially because CAOs will be exporting larger quantities of manure resulting from Phosphorus Index. Also, new operations should be established to be in compliance with regulations without requiring financial assistance.

(c) We also agree with the exclusion of CAOs that are in violation of any part of the Act from receiving any financial assistance.

(d) We also agree that funding should be available for agricultural operations to update their plans to meet new regulatory requirements.

Section § 83.212 (d) states that the Commission will approve or disapprove each application within 45 days of receipt of required information. However, it does not say what occurs if the application is not approved or disapproved within 45 days.

#### § 83.221 Financial Assistance

(b) CBF agrees that existing CAOs be required to implement additional BMPs to be in compliance with the new regulation should be eligible for assistance.

(c) We also agree that new operations should not be eligible since they should be established to be in compliance with regulations without requiring financial assistance, so that limited funds may be focused on farms that were established prior to nutrient management regulations and face challenges meeting them.

(e) We also agree with the exclusion of CAOs that are in violation of any part of the Act should not receive any financial assistance.

(f) We agree that operations expanding to become a CAO should not be eligible. Like new operations, they should be in compliance without needing financial assistance.

#### § 83.226 Eligible Costs

Funding for alternative manure technologies will help alleviate problems with excess manure. New technologies, such as gasification for energy generation, are essential in areas where livestock is most concentrated and there is insufficient cropland for manure application. Financial assistance for the development of new technologies will help operations that face high capital investments. An analysis process should be devised to assure consistent and equitable review of all alternatives to ensure that the greatest water quality benefits are obtained per dollar spent, with a deadline for when this analysis will be completed.

#### § 83.261 Compliance plans

The regulation should be strengthened by requiring plans, and the language should be changed to: "An agricultural operation found to be in violation of The Clean Streams Law (35 P. S. § 691.1—691.1001) ~~may~~ shall be required to submit a plan..."

#### § 83.261 Time frame for CAO plans

(1-6) We agree with the time frame outlined in the proposed regulation. Operations with already approved plans should meet the new requirements at the time of their three-year review. Two years for existing operations that are newly defined as CAOs under the revised regulation is the minimum. Approved plans are necessary before operations expand and become CAOs, or new CAOs commence operation.

We agree that VAOs that received financial assistance from the State Conservation Commission must maintain the funded practices and current plan for the lifespan of these practices, but should be encouraged to adopt a revised Nutrient Management plan satisfying the new requirements.

We recommend that operations with previous violations of any portion of Act 6 should have revised Nutrient Management plans within 6 months of the effective date of the new regulations.

(7) We agree that operators and specialists who sign plans need to be held responsible for any false information in plans. If they cannot provide accountability, they should not have a role in nutrient management planning.

§ 83.281 Plan must include a description of the farm so that reviewers can assess the plan's ability to prevent nutrient pollution to water.

(a)(5) The watersheds in which the land included in the plan is located. The existence of any waters classified as High Quality or Exceptional Value waters special protection waters, as identified in pursuant to Chapter 93 (relating water quality standards), as well as waters listed as impaired pursuant to § 303(d) of the federal Clean Water Act, 33 U.S.C. § 1313(d) shall also be noted.

The operation's watershed classification is important information that needs to be available to plan reviewers to assess the plan's potential to protect water quality.

Items (a)(6)(i) and (ii) conflict with (a)(7), and are redundant. The possible solution is to change the wording to:

(a)(6) The total acreage of the agricultural operation shall be separated into acres of owned land and acres of rented or leased land. included in the plan. This acreage shall include:

(i) Lands located at or adjacent to the animal production facility, which are owned, rented or leased by the operator of the facility.

(ii) Other owned, rented or leased lands, under the management control of the operator of the facility, that are used for the application, treatment or storage of manure generated at the facility.

~~(a)(7) The total acreage of land of the agricultural operation on which nutrients shall be applied. The total acreage shall be separated into acres of owned land and acres of rented or leased land.~~

(b) and (c) We support the requirement of including maps and photographs, specifying the locations of BMPs, manure storage facilities and stacking areas, as well as the Phosphorus Index spreadsheet and information used to complete it.

(b)(7) The location of proposed or existing emergency temporary stacking areas or in-field stacking locations.

§ 83.291 We agree with revisions in (a) requiring that all nutrient sources must be addressed, and in (b)(3)(i) requiring manure analysis and testing on a regular basis to be able to respond to changes in livestock feeding and management.

(b)(2) We agree with the requirement that all calculations and variables utilized in the development of the Nutrient Management Plan be included in the plan.

In (d), the word "current" should be inserted in front of *Pennsylvania Agronomy Guide*, since these are normally updated either yearly or every other year.

§ 83.292 We agree with revisions that soil be tested at least every three years, that soil test results be included with the Phosphorus Index, and that the plan include a recommendation based on the soil test for nitrogen, and phosphorus and potassium application needed for expected crop yields. Operations need this information to correctly apply nutrients; however plan approval and

enforcement should only be based on the nutrients with the greatest water quality benefit, nitrogen and phosphorus.

### § 83.293

Phosphorus Indexing is a common sense approach that is the absolute minimum, especially following the Environmental Hearing Board ruling stating that nutrient management plans must address phosphorus.

For existing operations that will face challenges in applying manure in areas with high phosphorus levels, CBF recommends that the Phosphorus Index be gradually adopted. In return for this flexibility, we recommend that the Phosphorus Index values be gradually reduced over 5 years for the various levels of permitted manure application because the Phosphorus Index does allow for manure application above the phosphorus crop uptake levels on some fields,:

Level in proposed regulation	Level for existing operations	Level in 5 years	Manure application
0 to 79	0 to 79	0 to 59	To meet nitrogen crop requirement
80 to 99	80 to 129	60 to 79	To meet phosphorus crop removal
100 or greater	130 or greater	80 or greater	No phosphorus can be applied

CBF strongly recommends that new or expanding operations be required to implement the Phosphorus Index according to the proposed regulation.

### § 83.294 Nutrient application procedures

Calibration of manure application equipment is absolutely essential for nutrients to be applied according to plan, but the regulatory language could be clarified to state:

(c) Manure application rates and procedures shall be consistent with the capabilities, including capacity and calibration range, of available application equipment.

(1) For existing operations that apply manure, the plan shall include the practical application rates.

(2) For operations using a commercial manure applicator, only applicators who are trained and certified under Act 49 shall be used.

(3) For proposed operations not using a commercial custom manure applicator, or where this calibration is not feasible at planning time, the operator shall perform this application equipment calibration analysis prior to the first application of manure, or within 1 year of the facility beginning operation, whichever is sooner, and this information shall be maintained on site and included in any necessary amendments to the plan.

(e) CBF agrees with new requirements that liquid manure not be applied beyond the soil's water holding capacity, and that applications of more than 9,000 gallons of manure per acre be limited based on the infiltration rate and water holding capacity of the application area.

(f)(i) should be clarified to say: "Within 100 feet of an existing open sinkhole ~~where surface water flow is toward the sinkhole, unless the manure is mechanically incorporated within 24 hours of application.~~

(f)(iii) should be clarified to say: “Within 100 feet of an inactive open drinking water well, ~~where surface water flow is toward the water well, unless the manure is mechanically incorporated within 24 hours of application.~~”

Areas around sinkholes and wells often serve as conduits to ground water, so setbacks are needed regardless of direction of surface water flow or manure incorporation.

(f)(vii) Within 100 feet of ~~surface waters streams, springs, lakes, ponds, intakes to agricultural drainage systems (such as in-field catch basins, and pipe outlet terraces), or other types of surface water conveyance, unless there is a 35-foot vegetated buffer with no manure application if surface water flow is toward the identified area, and if soil is frozen, snow covered or saturated.~~

(f)(viii) Within 200 feet of ~~surface waters streams, springs, lakes, ponds, intakes to agricultural drainage systems (such as in-field catch basins, and pipe outlet terraces), or other types of surface water conveyance, unless there is a 50-foot vegetated buffer with no manure application, if surface water flow is toward the surface water or conveyance, if the slope is greater than 8% as measured within the 200 feet, and if the soil is frozen, snow covered or saturated.~~

All surface waters, not solely the limited types of surface water listed in the proposed regulation, deserve the protection afforded by setbacks. Runoff and pollution can and do occur throughout the year, not only when the ground is frozen, snow covered or saturated.

(g) Winter application procedures shall follow Commission-approved guidelines, such as those in the *Pennsylvania Technical Guide* and the *Manure Management Manual* that should be revised to specify the following conditions for manure application:

(i) At least 25% plant cover.

(ii) The application rate is the P-index application rate, or 50% of the nitrogen need of the crop, whichever is less.

(h) In-field stacking of dry manure as a part of manure application is permissible if the manure is land applied on the crop management unit ~~within 180 days prior to the beginning of the next growing season.~~ If the stacking occurs for a longer period, then the stack area shall meet Pennsylvania Technical Guide standards for a waste stacking and handling pad. Stacks shall be shaped, to minimize water absorption and impacts from runoff in accordance with the criteria approved by the Commission.

All in-field stacking areas shall be located outside of concentrated water flow areas and areas where manure application is restricted or prohibited based on § 83.294(f) relating to nutrient application procedures.

#### § 83.301 Exported manure

(a)(4) This could be clarified to show how phosphorus will be addressed on importing farms to state: The plan shall include copies of nutrient balance sheets applicable to each crop management unit where the exported manure will be applied. These nutrient balance sheets for importing operations shall include a map identifying the areas where the imported manure will be applied and applicable manure application setbacks relevant to the site, including those identified in § 83.294 (relating to nutrient application procedures). The nutrient balance sheet shall meet one of the following conditions:

- (i) Balanced with crop needs and soil levels for nitrogen, combined with the Phosphorus Index
- (ii) Balanced with crop needs and soil levels for nitrogen, with no manure applied within a 150-foot setback from surface waters or on soils with phosphorus level greater than 150 parts per million.
- (iii) Balanced with crop needs and soil levels for nitrogen and phosphorus.

Nutrient management plans implemented at the importing operations may be used to meet this requirement if they are attached to the plan.

(a)(5) If the CAO will utilize a commercial manure hauler/applicator for the hauling or application of the exported manure, the plan shall list the name of the commercial hauler/applicator that will be used. Only those haulers/applicators that meet the requirements of the Commission following qualifications shall be acceptable in the plan.

(a)(5)(i through iv), (b)(1)(i through iv), and (b)(2) should be replaced by certification under Act 49, the Commercial Manure Hauler and Broker Act.

(f) We agree that the requirements in § 83.301(a through e) are not necessary when importers receive very small quantities of manure, but that sections (1) and (2) should be combined for simplification, with reductions to the minimum quantities. The regulation could state:

(f) The plan is not required to provide the specific plan details as provided in subsections (a) - (e) ~~in these circumstances:~~

(1) — If an importer receives less than the following amounts of manure from the CAO on an annual basis: ~~40~~ 5 tons of solid poultry manure, ~~50~~ 15 tons of solid nonpoultry manure, or ~~25,000~~ 10,000 gallons of liquid manure. In these instances, the plan shall list the name and location of the importing operation, and when and how much manure will be exported to the importing operation, as well as the proposed usage of the imported manure.

(2) — ~~If small quantities of manure, not to exceed 2,000 pounds annually, are expected to be marketed to individuals. In these circumstances, the plan shall describe the total amount of manure planned to be marketed in this manner, and the intended use of the manure.~~

Section (g) should be moved to precede (f) so that the exported manure application setbacks follow other application procedures, rather than the exclusions for operations where nutrient balance sheets are not required.

§ 83.311 Manure Management – CBF agrees with many of the proposed revisions that will significantly decrease manure's impact on water quality.

(a)(2) The uncontrolled flow of storm water into, or across, manure storage facilities, emergency, in-field and permanent manure stacking areas or animal concentration areas.

(e) We agree with the additions requiring that animal concentration areas shall be properly sized, located, implemented and managed, but recommend that the following changes be made:

(1) ~~The size of animal concentration areas shall be minimized~~ sized and designed to minimize water quality impacts.

(6) Animal access to surface water in these areas shall be controlled according to Commission-approved practices.

(g) When emergency temporary manure stacking areas may be necessary for the implementation of the plan, the plan shall identify those areas available for the storage of manure due to unforeseen circumstances such as adverse weather conditions. Manure shall be removed from emergency temporary stacking areas for utilization on cropland or other acceptable uses within 30 days as soon as feasible.

“As soon as feasible” is unreasonably vague and may discourage timely efforts to correct the problem causing the need for emergency stacking areas.

#### § 83.312 Site-specific emergency response plans

(c) The nutrient management plan shall contain a statement from a certified planner that an adequate written site-specific emergency response plan meeting the requirements of this section exists for the CAO, and this will be verified by the Commission or delegated conservation district during the plan review and follow-up inspections.

#### § 83.321 Stormwater Control

The regulatory language should be clarified: (a) In the preparation of a plan, the nutrient management specialist planner, in coordination with the reviewing agency, shall conduct a review ~~of the adequacy~~ of existing stormwater control practices on croplands, haylands and pastures included in the plan to prevent surface and groundwater pollution. The specialist planner may confer with NRCS, conservation district staff or others with expertise with nutrient runoff control. The plan review shall be included in the plan and shall identify critical runoff problem areas.

Nutrient Management planners may not be qualified to evaluate the adequacy of an Erosion and Sedimentation Control plan developed by another party to meet the requirements of Chapter 102. Also, the existence of a plan does not always result in implementation. Therefore, we recommend that the regulation state:

(e) “The plan shall include verification from the specialist planner developing the plan, indicating that a current approved conservation or Erosion and Sediment Control Plan, meeting the requirements of Chapter 102 (relating to erosion and sediment control), exists and is being implemented according to schedule for all plowed or tilled croplands included in the plan. ~~A current conservation plan may be used to meet this requirement, as allowed by Chapter 102.~~”

§ 83.342 Record keeping relating to application of nutrients – The proposed regulation does not state the reason for requiring the maintenance of manure testing results, so we recommend the following language.

(b)(2) Records of manure testing results and testing of other nutrient sources shall be maintained consistent with § 83.291 (relating to determination of available nutrients). Manure testing is required once every year for each manure group, for use in future plan amendments and otherwise as appropriate for plan implementation.

§ 83.351 Manure storage facilities – CBF recommends the following changes to strengthen the proposed regulation to prevent the devastating impacts of manure storage facility failures to water quality.

(a)(1) Although implicit in the requirement that manure storage facilities shall be designed, constructed, located, operated, and maintained according to the *Manure Management*



*Manual* and the *Pennsylvania Technical Guide*, we believe that the regulation should explicitly state that water quality standards, including antidegradation requirements, must be protected.

(a)(2)(both v and vi)( both A and F) Setback should be from all surface waters, including all wetlands (according to 25 Pa. Code § 93.1), not only perennial streams, rivers, springs, lakes, ponds or reservoirs. Water quality impacts from failures of manure storage facilities can be far more devastating than runoff from manure application. Therefore, more, not less, stringent setback requirements are needed.

Also, we recommend the addition to (a)(2)(both v and vi) of (H) Within 500 feet of waters classified as High Quality or Exceptional Value waters pursuant to Chapter 93 (relating water quality standards), as well as waters listed as impaired pursuant to § 303(d) of the federal Clean Water Act, 33 U.S.C. § 1313(d).

(c) “The engineer shall certify that the design complies with the applicable design standards described in the *Manure Management Manual* and the *Pennsylvania Technical Guide*,” is redundant and should be deleted.

§ 83.361 Initial plan review and approval – We recommend clarifying the requirements for approval by including the three items below.

(c) Approvals of NMPs or plan amendments may only be granted if the following situations apply:

- (1) The plans or plan amendments satisfy the requirements of this subchapter.
- (2) A verification of an adequate emergency response plan was developed for this operation that meets the requirements of 83.312
- (3) A verification that a current and implemented to schedule Erosion and Sedimentation plan or conservation plan is available for the operation, that meets the requirements of § 83.321.

#### § 83.362 Plan Implementation

(a) We agree with language that a CAO shall fully implement the plan consistent with the implementation schedule included in the plan.

(c) This section pertaining to plan reviews should be clarified by moving it to a new § 83.363 and changing it to state: “At least every 3 years, the plan shall be reviewed by a commercially or individually certified nutrient management specialist.”

(1) If the agricultural operation is still consistent with the approved plan, including the nutrient content and soil test values, and the accepted reference factors used in the plan, then the specialist shall provide notice of this to the reviewing agency.

(2) A plan amendment shall be submitted to the reviewing agency in accordance with § 83.361(a), if the agricultural operation has changed from that described in the approved plan, as required by § 83.371 (relating to plan amendments).”

§ 83.362 (d) should then be changed to § 83.362 (c) since it belongs with the remaining components of § 83.362.

§ 83.371 CBF agrees with the proposed regulation’s requirement for plan amendments when there are significant changes regarding nutrient sources, exporting arrangements, land use, and crop yields. We recommend the following changes:

The addition of: (a)(10) If the nutrient content, soil test values, or the accepted reference factors are inconsistent with the approved plan.

(b) 83.361 and 83.371 are switched. It should read that plans "shall be submitted to the reviewing agency under § 83.361 (relating to initial plan review and approval).

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

Sincerely,

Kelly M. O'Neill  
Pennsylvania Agricultural Specialist

Flanagan, Joann

RECEIVED

From: Peter Wilmerding [pwilmer@comcast.net] 2004 NOV 16 AM 9: 06  
 Sent: Thursday, November 04, 2004 7:51 PM  
 To: ag-scc@state.pa.us  
 Subject: Comments on Nutrient Management Regulation Revisions

REGULATORY  
VIEW COMMISSION

November 04, 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  
As a property owner and resident of Pennsylvania and an Eastern Shore farm owner with shoreline on an estuary of the Chesapeake Bay, I ask you to continue support of Nutrient Management in Pennsylvania. A relaxation of the standards now in place makes no sense and it is in the interest of all to have cleaner streams in this state that will lead to improved water quality for all who live, work and play in the extraordinary Chesapeake.

I recall the awful effect of Tropical Storm Agnes in the early seventies that changed the Chesapeake Bay almost overnight. Run-off from farms in the Susquahanna river basin turned the Bay into a cloudy, nitrogen-rich body of water that lost most of the grasses in the upper portion, leading to reduced foodstock for wildfowl and poor habitation for striped bass and the blue crab. While fertilized spread on farms contributed to this, so did animal manure spread on the same fields as well as poor fencing of cattle near streams.

You have made progress. Don't fall back! Press on!

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. Peter Wilmerding  
260 Booth Ln  
Haverford, PA 19041-1717

Original: 2412  
2413

103  
123

**Hughes, Marjorie**

**From:** Carissa Itle Westrick [citlewestrick@msn.com]  
**Sent:** Thursday, November 04, 2004 4:54 PM  
**To:** RegComments@state.pa.us  
**Subject:** Proposed Rulemaking: 25 PA Code, Chapters 91 and 92

Please find attached comments to the Proposed Rulemaking for Concentrated Animal Feeding Operations and Other Agricultural Operations (25 PA Code, Chapters 91 and 92).

These comments are the unified position of Dairy One Cooperative, Inc., Dairylea Cooperative, Inc., and the Northeast Council of Dairy Farmers of America.

Please contact me directly if you are unable to receive this attachment.

In a separate e-mail message, I will also forward a one-page summary of these comments for distribution to the Board as well as the unified dairy comments to the Nutrient Management rulemaking for your review.

Thank you for the opportunity to submit these comments.

Carissa Itle Westrick  
604 West Horner Street  
Ebensburg, PA 15931  
[citlewestrick@msn.com](mailto:citlewestrick@msn.com)

RECEIVED  
2004 NOV 10 PM 3:44  
DEPARTMENT OF AGRICULTURE  
REVIEW COMMISSION

**Summary of Comments to Proposed Amendments of 25 PA. Code Chapters 91 and 92**  
*November 4, 2004*

These comments represent the unified position of Dairy One Cooperative, Inc., Dairylea Cooperative, and the Northeast Council of Dairy Farmers of America. Our organizations submit these comments on behalf of over three thousand Pennsylvania dairy farm families.

**Summary of Comments:**

***CAFO Definition***

- CAFOs should be defined as:
  - 1) Livestock or poultry operations meeting the US EPA definition of a medium or large CAFO.
  - 2) Any livestock or poultry operation with a PA DEP permitted discharge.
- To the greatest extent possible, the environmental challenges facing smaller farms should be addressed through voluntary incentive-based programs, rather than by being designated CAFOs.

***Chemical Usage at CAFOs***

- Limit the requirement for PPC plan development to large CAFOs as defined by US EPA.

***Setback and Buffer Requirements***

- Setback requirements for land application of manure at large CAFOs (as defined by US EPA) should be no greater than the federal minimum (100 feet setback or 35 feet of vegetated buffer *or the alternative practices compliance alternative*).
  - Setback and buffer requirement should not apply to all CAFOs, nor should they be applied to all agricultural operations throughout Pennsylvania.
- Smaller CAFOs and other agricultural operations should be encouraged to refer to the Pennsylvania Technical Guide standards for appropriate nutrient management standards (which include vegetated buffers and other conservation practices) for incorporation into comprehensive and site-specific nutrient management plans.

***Manure Storage Permits***

- PA DEP should only require permits of manure storage facilities on large CAFOs as defined by EPA.
- PA DEP should strike Proposed 91.36(a)(7), which would require permits for any manure storage facility based on "relevant criteria."
- Manure storages that are properly designed, operated, and maintained to minimize environmental risk should not require a water quality management permit.

***Manure Transfer Requirements***

- Manure transfer requirements should be no more burdensome than the federal standard:
  - CAFOs should maintain manure transfer records and include a current nutrient analysis with exported manure.

***Economic Impact of Proposed Regulations***

- There must be some effort to quantify costs to farmers of the proposed rules and the resulting environmental benefits to ensure that any regulatory changes are economically justified.

**Dairylea**  
Cooperative Inc. ♦



VIA E-MAIL

November 4, 2004

Environmental Quality Board  
PO Box 8477  
Harrisburg, PA 17105-8477  
RegComments@state.pa.us

RECEIVED  
2004 NOV 10 PM 3:44  
PENNSYLVANIA ENVIRONMENTAL  
QUALITY BOARD  
REGULATORY  
COMMISSION

**RE: Comments on the Proposed Rulemaking by the Pennsylvania Environmental Quality Board to Ammend 25 PA. Code Chapters 91 and 92 regarding Concentrated Animal Feeding Operations and Other Agricultural Operations (34 Pa.B. 4353) (Docket Number 04-1473)**

To Whom It May Concern:

The following comments address the proposed amendments to Pennsylvania regulations (25 Pa. Code Chs. 91 and 92) for Concentrated Animal Feeding Operations (CAFOs) and Other Agricultural Operations, published in the Pennsylvania Bulletin on August 7, 2004.

These comments are the unified position of Dairy One Cooperative, Inc. (Dairy One), Dairylea Cooperative, Inc. (Dairylea), and the Northeast Council of Dairy Farmers of America (Northeast DFA). Our organizations are submitting these comments on behalf of our over three thousand Pennsylvania dairy farmer members.

Although our organizations achieve different missions, we serve an overlapping constituency of dairy farmer owners. Dairy One is an information technology cooperative, created by Dairylea Cooperative and the Northeast Dairy Herd Improvement Association to provide farm management information services to dairy farmer members throughout the Northeast and Mid-Atlantic United States. Dairylea is a farmer-owned agricultural marketing and service organization with more than 2,500 member dairy farms throughout the Northeast. Northeast DFA is the regional arm of Dairy Farmers of America- a national dairy-farmer owned cooperative with 22,924 member dairy farms throughout the country.

Our organizations support Pennsylvania's efforts to maintain delegation authority for the NPDES CAFO permitting program. Because of that, we support the state's efforts to change its CAFO regulations in order to be consistent with new federal regulations. We do not, however, support efforts to use this necessary regulatory revision as a means to widen the scope of the existing state CAFO program.

We are concerned about the effect these proposed CAFO regulations will have on the state's dairy producers. The costs of compliance with the provisions outlined can be significant, and may have the unintended consequence of further accelerating the concentration of the industry and further encouraging the exodus of smaller producers.

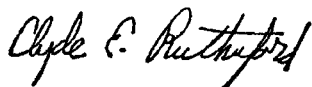
All dairy farms in the state, regardless of size, should be considered to be family farms. In today's political arena, large farms are often vilified based on little more than the number of animals present at the farm. Many family farms, especially farms that provide a living for multiple families, simply must be a certain size in order to ensure that the family can continue to maintain their farming heritage. Animals on these farms are treated with the utmost care, resulting in dairy products of the highest quality.

Dairy producers are inherently interested in maintaining environmental resources for future generations. However, the ability of dairy farmers to maintain a viable business must also be taken into consideration. Producers are willing to comply with science-based, goal-oriented environmental regulations, but they cannot afford to go out of business doing so.

Thank you for the opportunity to submit these comments. Our organizations look forward to working with the Environmental Quality Board to further clarify any of the issues raised in these comments and to provide additional insight as the Board works to develop the final CAFO regulations.

We are also providing comment on the proposed revisions to Pennsylvania's Nutrient Management Act (Act 6) Regulations. Because those comments represent a separate yet related regulatory review, a copy of those comments is also being sent for your information.

Sincerely,



Clyde Rutherford  
President, Dairylea



Lew Gardner  
President, Northeast DFA



Dale Hoover  
President, Dairy One



## **General Remarks**

In the introduction to the proposed revisions, the Environmental Quality Board (the Board) recognizes that "agriculture is an important industry in this Commonwealth, providing livelihood for thousands of citizens and their families. In addition, agricultural lands provide significant aesthetic and environmental benefits...[and agriculture is] an important part of the cultural fabric..."

Apart from these social and societal benefits, the primary goal of the farm families of Pennsylvania is to provide food for the citizens of our state and beyond. Because of advancements in dairy production, our dairy farmers are working more efficiently than ever, producing more milk with fewer cows, and providing our state's citizens with local sources of dairy products of the highest quality.

In order to provide us with a fresh and local supply of dairy products, Pennsylvania's farming families must remain economically viable. Farm families must be able to sustain a living from their farms in order to assure our state's food supply.

These points should be included in the Board's summary of the importance of agriculture to our Commonwealth.

## **CAFO Definition**

The Pennsylvania Department of Environmental Protection (PA DEP) is proposing four categories of CAFOs by definition:

- 1) Concentrated Animal Operations (CAOs), as defined under the PA Nutrient Management Act, with more than 300 Animal Equivalent Units (AEU's).
- 2) Livestock or poultry operations with more than 1,000 AEU's.
- 3) Any livestock or poultry operation with a PA DEP permitted discharge.
- 4) Livestock or poultry operations meeting the EPA definition of a large CAFO.

While numbers one and two above are consistent with Pennsylvania's current regulations, three and four are additional proposed CAFO definitions.

***Concentrated Animal Operations with more than 300 Animal Equivalent Units***  
Pennsylvania has historically chosen to address "medium" and "small" CAFOs by regulating Concentrated Animal Operations (CAOs) (farms with two or more AEU per acre) with more than 300 AEUs. Use of the CAO terminology attempts to target the regulatory program to those farms with relatively limited land base for manure application.

A simplified and more desirable alternative would be to default to using the federal standard for "medium" CAFOs that meet certain identified risk standards. A "medium" dairy CAFO is defined as an Animal Feeding Operation (AFO) that has between 200 and 700 mature dairy cows and meets certain discharge criteria.

US EPA chose to abandon its use of the term "animal unit" (AU) due to the "inconsistent use of this concept across a number of federal programs, which has resulted in confusion in the regulated community" (*Federal Register*, Vol. 66, No. 9, January 12, 2001, pg. 3005). The federal definitions were changed in order to promote consistency and to help to eliminate enforcement confusion at a state level. Changing Pennsylvania's CAFO definitions to be equivalent to those recently promulgated federally would allow for simplified compliance for producers as well as simplified enforcement by regulatory staff.

***Livestock or poultry operations with more than 1,000 AEU's***

An AEU is defined as 1,000 pounds of live animal weight on an annualized basis. This historic definition of a CAFO in Pennsylvania serves to ensure the ability to define as CAFOs farms with mixed animal types and also allows for inclusion of immature animals into the animal number threshold.

The new federal regulations do not account for operations with a combination of mature and immature animals nor for operations with mixed species of animal units, but rather set threshold populations by species in order to meet the CAFO definition. In promulgating the federal CAFO Rule, EPA decided to "eliminate the mixed operation calculation rather than revise it and create a more complicated regulation to implement that would potentially bring smaller farms into regulation" (*Federal Register*, Vol. 66, No. 9, January 12, 2001, pg. 3005). Perhaps it is time that Pennsylvania followed suit.

The federal CAFO Rule defines a large dairy CAFO as having at least 700 mature dairy cows. By federal definition, a "medium" CAFO has at least 200 mature cows and meets certain environmental risk factors. By Pennsylvania definition, a family farm with less than 400 mature dairy cows (assuming an additional 400 immature animals on-site) could be defined a CAFO based solely on farm size and no other environmental considerations. CAFOs should be defined as those Pennsylvania farms meeting the federal definition of large or medium CAFOs.

***Any livestock or poultry operation with a PA DEP permitted discharge***

We support the ability for CAFO discharges that meet certain effluent limitations to be permitted under the CAFO program. We support efforts to encourage technologies that can result in the discharge of clean water that reaches specified treatment standards.

### ***Large CAFOs as defined by US EPA***

In order to be consistent with federal regulations, PA DEP must regulate farms that meet the definition of large CAFOs by federal standards. Throughout the country, dairy farms with more than 700 mature dairy cows are considered to be CAFOs.

#### **Our Position:**

- CAFOs should be defined as:
  - 1) Livestock or poultry operations meeting the US EPA definition of a medium or large CAFO.
  - 2) Any livestock or poultry operation with a PA DEP permitted discharge.

### **CAFOs by Designation**

Under the current federal regulations, Animal Feeding Operations (AFOs) below the size thresholds to be defined as CAFOs can be designated CAFOs if they are determined to be significant contributors of pollution. The Board is proposing to eliminate the language that a small farm can be designated a CAFO if it discharges to surface waters, but instead adds language to remind every operation that it is unlawful to discharge pollutants.

The regulatory motive underlying this proposal is unclear. The Board proposes to emphasize the responsibility of all agricultural operations to prevent the discharge of pollutants to waters of this Commonwealth under the Clean Streams Law (under Proposed Section 91.36(c)). The board "proposes language that gives it the flexibility to include any agricultural operation that requires closer scrutiny under a permit based on certain risk factors."

It would seem as though this same goal is addressed by the federal CAFO designation process. Under federal authority, smaller operations can be designated as CAFOs based on specified risk factors (see proposed definitions under Section 92.1). It is not clear what advantage is gained by the using the proposed regulatory reminder versus the CAFO designation process.

We would like further explanation of the nuances of this regulatory distinction. Stakeholders not versed in regulatory jargon should be able to provide enlightened comment to all proposed elements.

#### **Our Position:**

- To the greatest extent possible, the environmental challenges facing smaller farms should be addressed through voluntary incentive-based programs.

## **Preparedness, Prevention, and Contingency Plan for CAFOs**

Large CAFO's, as defined by US EPA, are federally required to properly handle farm chemicals. We oppose PA DEP's proposal to require CAFOs smaller than 1,000 AEU to develop a Preparedness, Prevention, and Contingency (PPC) plan for farm chemicals. There is no indication that any marginal benefit of having smaller farms comply with these requirements would warrant the additional administrative costs.

The Board notes that "the proposed rulemaking will cause no additional paperwork...for existing CAFOs...", but clearly the inclusion of more farms- particularly smaller farms with perhaps less access to electronic forms- into the regulatory fold would increase the paperwork burden.

### **Our Position:**

- Limit the requirement for PPC plan development to large CAFOs as defined by US EPA.

## **Manure Application Setbacks**

The federal regulations require large CAFOs to maintain a 100-foot manure application setback (or 35 foot vegetated buffers) from any down-gradient surface waters. There is no restriction from growing crops in this setback area, but CAFO manure cannot be applied.

The Board solicits comments on using the NRCS Pennsylvania Technical Guide standard for site-specific vegetated buffers, rather than the prescribed 35-foot vegetated buffer. The Board is soliciting comments to refer to setbacks allowed by the "Pennsylvania Technical Guide", where the current vegetative buffer standard is 50 feet.

In the case of large CAFOs, federal regulations necessitate the aforementioned setback and buffer requirements (see Proposed 92.5a(d)(1)). The federal CAFO Rule includes language that allows for leniency of the prescribed buffer requirement as follows:

**Section 412.4 (c)(5)(ii): Alternative practices compliance alternative.** As a compliance alternative, the CAFO may demonstrate that a setback or buffer is not necessary because implementation of alternative conservation practices or field-specific conditions will provide pollutant reductions equivalent or better than the reductions that would be achieved by the 100-foot setback.

A similar setback compliance alternative for CAFOs should be included in the Pennsylvania regulations.

Smaller operations should be encouraged to consider setbacks or vegetated buffers as part of a producer's comprehensive and site-specific nutrient management plan in accordance with input from their advisors and NRCS in consultation with the Pennsylvania Technical Guide. It is inappropriate to prescribe setback standards for smaller operations.

Additionally, the Board seeks comments on whether and to what extent either of these setback and buffer standards, or others, are appropriate for all CAFOs and for all agricultural operations statewide (see Proposed 91.36(b)(2)). It is inappropriate for PA DEP to apply the buffer and setback requirements to all CAFOs. It is likewise inappropriate for PA DEP to propose that other agricultural operations that apply manure must meet "appropriate" setback requirements.

The proposed rules already suggest that land application of manure must be done in accordance with the "Manure Management Manual for Environmental Protection" and in accordance with appropriate nutrient management plans. There is simply no need to additionally require specified setback requirement from any farms except large CAFOs as defined by US EPA.

If the 100-foot setback was applied, as PA DEP suggests, to essentially all agricultural operations statewide, this would significantly restrict fields available for manure application in most parts of the state. We encourage the Board to consider the full range of costs associated with removing this much land from availability for receipt of manure application. Arbitrarily requiring all farms to meet setback requirements significantly increases compliance costs to producers, while resulting in little to no environmental benefit.

**Our Position:**

- Setback requirements for land application of manure at large CAFOs (as defined by US EPA) should be no greater than the federal minimum (100 feet setback or 35 feet of vegetated buffer *or the alternative practices compliance alternative*).
  - Setback and buffer requirement should not apply to all CAFOs, nor should they be applied to all agricultural operations throughout Pennsylvania.
- Smaller CAFOs and other agricultural operations should be encouraged to refer to the Pennsylvania Technical Guide standards for appropriate nutrient management standards (which include vegetated buffers and other conservation practices) for incorporation into comprehensive and site-specific nutrient management plans.

## **Manure Storage Water Quality Permits**

Proposed amendments at Section 91.36(a) include permit requirements for manure storages at smaller operations than currently permitted.

PA DEP currently requires all CAFOs with more than 1,000 AEU to obtain water quality management permits for manure storage facilities. Under Section 91.36, PA DEP is proposing that any new or expanded operation with a manure storage exceeding 2.5 million gallons be required to obtain a permit (Proposed 91.36(a)(3)(ii)). Additionally, it is proposed that any new manure storage between 1 million and 2.5 million gallons would need a permit if it met certain risk factors (Proposed 91.36(a)(3)(i)). PA DEP is also reserving the right to require a permit from any manure storage facility based on "relevant criteria" (Proposed 91.36(a)(7)).

It should also be noted that in Proposed Section 91.1, the definition of manure storage facility is expanded to include "a group of structures or facilities at one agricultural operation" that contain manure. This means that if the capacity of all manure storages on your farm exceed the aforementioned limitations, permits will be required.

Restrictions on the land application of manure, such as setback requirements and phosphorus-based nutrient management plans, may lead to the need for increased manure storages. It is inappropriate for PA DEP to permit waste storages based on volume when all other CAFO requirements are based on animal numbers. PA DEP should continue to require permits only for manure storage facilities at the largest CAFOs.

It is not necessary for PA DEP to explicitly reserve the right to require a permit from any manure storage facility based on "relevant criteria" (Proposed 91.36(a)(7)). Permit coverage for smaller facilities is already granted under existing Section 91.35(c)(5) if the department "determines that a permit is necessary for effective regulation to ensure that pollution will not result."

We support PA DEP's claim under proposed Section 91.36(a) that "animal manure storage facilities do not require a water quality management permit...if the design and operation of the storage facilities are in accordance with the Department approved manure management practices..." There should be incentive for producers to properly design and maintain manure storage facilities.

### **Our Position:**

- PA DEP should only require permits of manure storage facilities on large CAFOs as defined by EPA.

- PA DEP should strike Proposed 91.36(a)(7), which would require permits for any manure storage facility based on “relevant criteria.”
- Manure storages that are properly designed, operated, and maintained to minimize environmental risk should not require a water quality management permit.

### **Manure transfer**

The federal regulations require CAFOs to maintain manure transfer records and to include a nutrient analysis with exported manure. PA DEP requires CAFOs with more than 1,000 AEU to have nutrient balance sheets and written agreements for exported manure. Proposed Section 92.5(d)(1) would require all CAFOs to have a nutrient management plan that includes written agreements with manure importers and nutrient balance sheets or a nutrient management plan for the importing farms.

The proposal places unnecessary administrative burden on CAFOs. By creating overly-burdensome restrictions on the transfer of CAFO manure, the Board creates a disincentive for manure use that will cause manure recipients to simply obtain their fertilizer nutrients elsewhere. CAFO manure that cannot be exported due to regulatory burden should be considered as yet another cost of these proposed regulations that producers will have to bear.

As a result of pending regulatory changes, CAFO producers will be switching from nitrogen-based to phosphorus-based land application limits at the same time that they must factor in setback requirements. Just as CAFOs may soon find themselves with less land available for manure application, the Board is making it more difficult for producers to maintain a viable market for excess manure.

### **Our Position:**

- Manure transfer requirements should be no more burdensome than the federal standard:
  - CAFOs should maintain manure transfer records and include a current nutrient analysis with exported manure.

### **Cost Estimates**

The federal CAFO Rule was required to include a formal economic analysis in order to prove that the final requirements were economically achievable by industry.

In stark contrast, Pennsylvania's proposed CAFO revisions have not been subject to any economic achievability tests. There is acknowledgement that these regulations will be costly to our state's farm families, but no effort is made to quantify those costs.

The Board notes that the almost 200 farms directly affected by the new CAFO regulations "should not be surprised by the changes." The Board further suggests that the "large poultry and swine integrators have been expecting these changes." While that may be true, there are many small to medium sized farm families throughout the Commonwealth that were not expecting the state to use this opportunity to incorporate new federal standards as an excuse to considerably increase the scope of Pennsylvania's regulatory program. As proposed, these regulations could impact many small family farms- the proposed 1,000 AEU CAFO threshold would regulate dairy farms with less than 400 milking cows (with replacements on-site).

The Board estimates costs for CAFO permits and manure storage permits, but fails to even mention, let alone estimate the costs of operational changes that may include the following:

- More farms defined as CAFOs means more permitting costs for more farmers.
- Proposed changes will cause additional administrative burdens that result in costs to producers. These administrative costs include: requiring PPC plans for all CAFOs, the proposed manure transfer restrictions, and increased nutrient management planning requirements.
- Changes to land application practices may result in less land available for manure application. As a direct result of this rulemaking, farmers may have to purchase additional land or invest in larger manure storages or treatment technologies, all of which are incredibly expensive endeavors.

In the absence of having performed any kind of economic analysis of the proposed regulations, the Board must, at the very least, realize that its proposed regulatory changes will have very real economic impacts for the state's farmers. In a state that faces significant unemployment concerns in most of its rural areas, the Department must take into account the financial burden of increased regulation on its family farmers.

From 1998 to 2003, the most recent five years for which data is available, Pennsylvania lost 38,000 head of dairy cows and 72 million pounds of milk production. The business and economic pressures facing dairy producers are enormous. Overly burdensome environmental regulations will serve to hasten this downward trend. A fair and predictable regulatory climate is necessary in order to encourage investment by producers and their supporting businesses in the future of our state's dairy industry.

Producers are willing to comply with science-based, goal-oriented environmental regulations, but they cannot afford to go out of business doing so.



**Our Position:**

- There must be some effort to quantify costs to farmers of the proposed rules and the resulting environmental benefits to ensure that any regulatory changes are economically justified.



141

**Flanagan, Joann**

RECEIVED

**From:** snyder [snyder@pa.nacdnet.org]  
**Sent:** Thursday, November 04, 2004 2:08 PM  
**To:** ag-scc@state.pa.us  
**Subject:** Nutrient Management Proposed Regulation Changes Comments—Snyder Co. Farmer

2004 NOV 16 AM 9:04  
REGULATORY REVIEW COMMISSION

Dear SCC & EQHB members:

Please accept the enclosed comments from a local farmer in Snyder County. Since he has no computer, he asked if the conservation district could FAX his comments to you for consideration. Since facsimiles are not accepted, I scanned his handwritten two page letter as a PDF document since this method is acceptable.

Thank you for allowing individual farmers to comment on these proposed regulation changes.

Snyder County Conservation District Staff



Comments on new proposals

I have several concerns of how they will effect me.

① Setbacks from streams, etc

Depends on who + how they're defined.

It will take most of my 30 acres of pasture which I depend on for my small herd of beef cows. I depend on this income to pay my spring + fall taxes.

② Nutrients hauled off the farm.

I supply several farmers with poultry litter to fertilize their crops. The paper work involved proposed to document this and the other things involved will be expensive + very cumbersome and I'll be told we don't want to be bothered with all the paper work + expense. Govt. programs such as CREP are taking great amounts of very good cropland from us. Where are we suppose to go with these by-product of the food we produce for you?

Other thoughts:

It's my understanding that the average age of the American farmer is in the upper 50's - I'm in my 50's. I have a son who wants to very much farm. With the continued depressed financial situation of agriculture (My last six year of full time farming, I've averaged just a little over \$7,000 of taxable income per year)

(2)

I have very little encouragement for him to farm.

I wonder who is going to produce this nation's food considering the age of our farmers in the future. Are we going to push our food production off shores as we have our production <sup>of oil</sup> and look at the mess that has us in. I'm sure in the future when our food production is off shore - our children will be fighting wars over that.

Another outcome of these proposed laws will be many more farms will be turned into industrial and housing developments forever lost to food production.

I'm presently a volunteer for nutrient management. If these proposals become law - I'll ~~probably~~ probably no longer be a volunteer. I'll still do the best I can. I live here too.

Sincerely - a Snyder Co. farmer

Original: 2413

155

Flanagan, Joann

---

**From:** Larry Martick [lmartick@acc.pa.net]  
**Sent:** Thursday, November 04, 2004 5:07 PM  
**To:** 'State Conservation Commission'  
**Cc:** 'Brian Sneeringer'; 'Darren Delenick (Darren Delenick)'; 'Bradford County CD'; 'Susan Fox Marquart'  
**Subject:** Comments from the Adams CD on the Proposed Nutrient Management Act Regulations

RECEIVED  
2004 NOV 16 AM 9:05  
STATE CONSERVATION  
COMMISSION





November 3, 2004

Mr. Karl G. Brown, Executive Secretary  
State Conservation Commission  
2301 North Cameron Street, Suite 405  
Harrisburg, PA 17110-9408

Dear State Conservation Commission Members:

On behalf of the Adams County Conservation District, we would like to thank you for the opportunity to submit comments on the proposed regulation amendments to Chapter 83 (Nutrient Management) of Title 25 of the Pennsylvania Code. We are in favor of most of the proposed regulation amendments and look forward to the environmental benefits that they aim to achieve. However, we do have some significant concerns with some of the proposed amendments. Below you will find a list of our approvals, comments, and concerns. It is our hope that we can all work together for better water quality throughout the Commonwealth.

**Section 83.201 definition of a concentrated animal operation (CAO).**

- The definition will now include certain high density horse breeding operations. We applaud the State Conservation Commission for recognizing the potential environmental problems that these types of operations can cause. However, we feel that the definition should be stricter. Excluding horse operations with less than 8 AEU's only solves a portion of the problem that we are having with horse operations. A person that has six horses on two acres can cause as much of an environmental problem as the person with more than 8 AEU's. There shouldn't be a minimum number of AEU's to determine whether or not an operation is regulated if it is causing a water quality problem.

**Sections 83.291 determination of available nutrients (CAO) and 83. 401 determination of available nutrients (VAO) relating to manure testing.**

- Some operations have multiple manure types. Annual manure testing could become very costly to these operations. These operations typically have one or two storages for all the manure on the operation. Can manure samples be taken from these storages instead of each type of manure as long as they are commingling all of their manure? Manure tests for liquid storages are typically taken when the storage is being agitated for spreading. Testing the manure at this time does not coincide with its application. We feel that yearly on farm averages should be used when writing a nutrient management plan.

**Sections 83.292 determination of nutrients needed for crop production (CAO) and 83.402 determination of nutrients needed for crop production (VAO) relating to soil tests.**

- Copies of the actual soil tests need to be submitted with the plan so that the reviewer can verify the phosphorus levels in the P-Index. Documenting the test results in the plan doesn't allow us to verify the phosphorus levels. This should not be a difficult thing to do as most planners submit them when they are requested.

**Sections 83.293 determination of nutrient application rate (CAO) and 83.403 determination of nutrient application rate (VAO) deal with the implementation of the phosphorus index (P-Index).**

- We favor the P-Index in relation to phosphorus balancing. Phosphorus balancing will allow the continued application of nutrients to meet crop needs but will not allow the residual P in the soil to decrease. The use of the P-Index is a good step forward to limiting phosphorus pollution. Our only concerns with the use of the P-Index are end results. If fields are restricted from manure application due to high P-Index levels, is that acreage removed from the land eligible to receive manure used in the CAO calculation? This can cause operations to become CAO's in cases where they have limited land to apply manure to do the P-Index.
- If land is restricted from manure applications due to high P-Index levels, we would like to see a grace period of 12 to 18 months for those who are losing land to find additional land to apply manure.
- Can fields that are restricted due to high P-Index be converted from cropland into pastures that are in well vegetated grass? There is considerable environmental benefit to converting cropland into pasture particularly in fields located near or adjacent to streams. Converting restricted fields into pasture

will allow some operations to maintain their non CAO status, and it is better for the environment than a continually tilled system.

- P-Index results can change from year to year or from plan revision to plan revision. This may cause operations to alternate from a VAO to a CAO. Not only will this confuse the operator but it will also confuse the planners and reviewers as to which section of the regulations they need to follow.
- The P-Index does take into consideration the use of fertilizer when determining the management guidance. However, if the index calculates a very high rating then no nutrients can be applied. Does this include fertilizer applications? If so, it is going to be very difficult to tell an operator to not use starter fertilizer in the spring. Even when soil nutrient levels are in the optimum range, Penn State soil tests still recommend the use of a starter fertilizer. Seeing as how starter fertilizer is used in small amounts and that is taken up quickly by the growing crops, it should not be eliminated due to P-Index results.
- The P-Index needs to be applied on all areas where nutrients will be applied. Do applied and deposited by animals mean the same thing? We feel that applied and deposited do mean the same thing and that the regulations should say so. The regulations should state whether or not pastures and animal concentration areas need to be run through the P-Index.

**Sections 83.294 nutrient application procedures (CAO) and 83.404 nutrient application procedures (VAO).**

- These sections of the regulations only specify the need for a certified manure hauler/broker if the manure is being exported. What happens if an operator is hiring an applicator to spread their manure on their farm? Does the hired applicator have to be certified? We feel that if an applicator is being hired that they should be certified. This will insure that the manure is being applied in accordance with the regulations.

**Sections 83.301 excess manure utilization plans (CAO) and 83.411 alternative manure utilization plans (VAO).**

- These two sections are going to require an importer to have nutrient balance sheets or an approved NMP. This new requirement has the possibility to reduce the number of importers throughout the state. Placing additional burdens on those that are not regulated may cause a loss of importers which may result in a large amount of excess manure on operations that can not utilize it. Requiring a 150 foot setback from surface waters unless there is an approved NMP plan would be sufficient for importing sites.

- These sections are going to require that an operation use a certified manure hauler/broker when exporting manure. Can an exporter not hire a hauler? We are concerned when manure is picked up by the importer or the manure is delivered by the exporter that they will need to be certified. We suggest that in these types of situations there is no need for a certified hauler or broker. Another scenario that could cause potential problems would be if an operation is applying manure to their own land but the land is under the control of a different operation. Would the operation that is applying the manure even though it is their land need to be certified?

**Sections 83.321 storm water control (CAO) and 83.431 storm water runoff control (VAO). These sections are going to require an erosion and sediment control plan meeting the requirements of 25 Pa. Code Chapter 102 or a current conservation plan.**

- Requiring a conservation plan for a nutrient management plan to be approved will cause major delays in plan approval. The list of conservation plans to be written is constantly growing with little manpower to write these plans. Here in Adams County, we have over 250 tracts that need conservation plans. If conservation plans are written by the private sector, who is going to verify these plans as being adequate? The Chapter 102 regulations do not state that a conservation plan is adequate to be used as an E&S plan. If an operation has a conservation plan to be in compliance with the nutrient management regulations would they be out of compliance with Chapter 102?
- Do conservation and/or E&S plans have to be implemented or just written to have a NMP approved? Parts of these plans can take months and in some cases years to implement. It is our recommendation that a conservation plan needs to be written for a NMP to be approved. Another option would be to approve the NMP contingent upon a conservation plan being written within a time frame specified by the SCC/DEP.

### **General Comments**

- There is no difference between CAO, CAFO, and volunteer manure. There shouldn't be different setback requirements for each. Requiring different setbacks for each type of manure will only confuse exporters, importers, brokers, haulers, applicators, and nutrient management specialists. Sound science needs to be used in order to determine the setback distance that is most appropriate for water quality.
- Once the final regulations are approved, Districts need accurate clarification as to exactly which parts of a nutrient management plan is public information. A checklist or fact sheet is needed to define what is and is not public record.

- We recommend that the DEP Manure Management Manual be revised so that it is consistent with the proposed changes to the regulations. Additionally, the Chapter 102 erosion and sediment control regulations and PDA's manure hauler and broker certification, Act 49 will also need to be revised. We suggest that steps are taken to make sure all impacted regulations, manuals (technical and administrative), and fact sheets be consistent and user friendly.
- There needs to be a list of definitions for words such as surface water, streams, and water conveyance that are consistent with other related regulations and laws. It is important that every one using these regulations receive uniform training to assure that consistent decisions are made across the State.

We thank you for the opportunity to consider our comments and concerns. We are happy to be able to continue a dialogue that makes this program practical for the regulated community as well as for those Districts that administer the program on behalf of the SCC. We hope that the SCC will regularly evaluate the program's efforts in hopes that there is a direct correlation between the program's implementation and improved water quality.

Yours in conservation,

Roger Steele, Chairman  
Adams CD Board of Directors

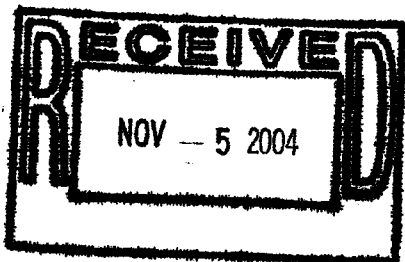
Laurence Martick, District Manager  
Adams CD

CC: Adams County Conservation District Board of Directors  
Susan Marquart, PACD  
Mike Lovegreen, Bradford County Conservation District



**STEVENS & LEE**  
**LAWYERS & CONSULTANTS**

111 North 6th Street  
P.O. Box 679  
Reading, PA 19603-0679  
(610) 478-2000 Fax (610) 376-5610  
www.stevenslee.com



140  
RECEIVED

2004 NOV 16 AM 9:04

REGULATORY  
REVIEW COMMISSION

Direct Dial: (610) 478-2225  
Email: jjm@stevenslee.com  
Direct Fax: (610) 988-0806

November 4, 2004

**VIA FEDERAL EXPRESS**

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

Re: Comment Concerning Proposed Amendments to Nutrient Management Regulations,  
Section 83.201-83.491 ("Proposed Regulations")

Dear Commission:

We represent Prime Agra Corp. and Agtek Enterprises, Inc., both of which operate family farms of 100 tillable acres and 125 tillable acres, respectively. The farms are located in Heidelberg Township, Berks County, Pennsylvania in an Agricultural Security Area, pursuant to the Agricultural Area Security Act. The Commonwealth has agricultural easements over both farms pursuant to the Pennsylvania Agricultural Conservation Easement Purchase Program, which effectively prevents these farms from being developed. In fact, our clients have twice been prevented by the Department of Agriculture and/or the County (acting as administrator of the Program) from taking any acreage out of agricultural production. On one occasion, they were prevented from expanding the farm pond and on another occasion were prevented from subdividing a small portion of a neighbor's property (also in the Easement Program) to widen a farm lane used to move farm equipment between the farms.

Our clients believe that the Proposed Regulations will make it extremely cost prohibitive to maintain and/or expand their farming enterprises. They respectfully request that the Commission not adopt the Proposed Regulations. In the alternative, they request that the Commission exempt the application of the Proposed Regulations to any property that is in the Agricultural Easement Program.

Philadelphia • Reading • Valley Forge • Lehigh Valley • Harrisburg • Lancaster  
Scranton • Wilkes-Barre • Princeton • Cherry Hill • Wilmington

STEVENS & LEE  
LAWYERS & CONSULTANTS

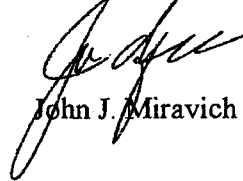
State Conservation Commission  
November 4, 2004  
Page 2

Unlike another farmer who in the face of the Proposed Regulations may decide to exit farming and instead develop his property, our clients are prevented from doing so because they have agreed to an easement over their property preventing development. Now, with all due respect, the Commonwealth by adopting the Proposed Regulations is attempting to change the rules which would make farming -- the only possible use of the land -- unduly burdensome thus preventing the farms from being profitable enterprises.

We would be glad to address any questions the Commission may have. Thank you.

Very truly yours,

STEVENS & LEE



John J. Miravich

JJM:nb



Original: 2412 190

Original: 2413 134

**Flanagan, Joann**

RECEIVED

**From:** Brenda Shambaugh [brenda@pagrange.org]

2004 NOV 15 PM 3:44

**Sent:** Thursday, November 04, 2004 11:27 AM

REGULATORY  
REVIEW COMMISSION

**To:** ag-scc@state.pa.us

**Subject:** PA State Grange comments on proposed nutrient management regs.

To Whom it may concern:

Thank you for the opportunity to express the PA State Grange's comments on the SCC proposed nutrient management regulations. Attached are our original comments and our supplemental comments derived after our 132nd annual convention.

Brenda Shambaugh  
Legislative Director  
PA State Grange  
1604 North Second Street  
Harrisburg, PA 17102  
phone: (717) 234-5001  
fax: (717) 234-7654  
e-mail: [brenda@pagrange.org](mailto:brenda@pagrange.org)



Good evening. My name is Brenda J. Shambaugh and I am the Legislative Director for the Pennsylvania State Grange. The Grange is a trade association representing 20,000 members from rural Pennsylvania. Our membership includes farmers and rural landowners who may be impacted by the proposed Nutrient Management and Concentrated Animal Feeding Operation Regulations. I would like to thank you for the opportunity to express my organization's views concerning these proposals.

The Grange Agricultural and Environmental Affairs Committee is continuing to review the proposed Nutrient Management and Concentrated Animal Feeding Operation Regulations and may have additional comments after our annual convention later this month. My remarks this evening are their preliminary thoughts and concerns.

In general, farmers are required to operate under more and more regulations. Many of these individuals own small and medium farms without business managers and other staff to complete paperwork and accomplish the additional duties required of them. Farmers cannot farm if they are in their office all day writing reports and filling out forms. These already overworked and underpaid farmers are feeling the pressure of more government intervention and required regulations. However, most farmers are already good stewards of their land so they understand some of the environmental concerns addressed in these regulations. But they believe that laws and regulations have to be realistic. We ask that any new requirements bring a minimum of paperwork and recording.

I would like to emphasize that all farmers should not be required to have a nutrient management plan. We understand that the proposed regulations do not specifically require these plans for all farms, but that is the number one statement I heard from our members when discussing this hearing. Many of our members are small family owned and operated farms. These individual are concerned that some believe all farmers should be required to develop and implement a nutrient management plan. Because so many of our members recognized the importance of this issue, we felt compelled to state our policy and emphasize our opposition on mandatory nutrient management plans.

The Grange is concerned about the minimum property setback requirements for new manure storage facilities or expansions covered in 91.36 (a)(7) of the proposed CAFO regulations. The term "relevant criteria" is used in the proposed regulations, which is too open-ended and vague. A similar problem occurs in section 91.36(b)(2) where the Department of Environmental Protection is given the authority to require setbacks for the spreading of manure around streams. While we approve of a required setback from streams, we believe that the setback should be pre-determined at 100 feet or a vegetated buffer at 35 feet. We recommend that both these section of the regulations be more specific and not left to the interpretation of the Department of Environmental Protection employees.

The new Nutrient Management Regulations (83.351) prohibit the Commission or delegated conservation district from waiving manure storage distance restrictions relating to property line setbacks. While that authority would be taken away from the

Conservation Districts, a neighboring landowner within the property line setback area may waive the distance restrictions. It seems that we are taking a sound science approach toward waiving the setback requirements and turning it into an emotional decision based on whether or not the neighbor approves. In this age of technology and decisions based on sound science, it seems these regulations are going backwards, not forwards. We strongly oppose this section of the regulations.

The proposed nutrient management regulations require a one hundred foot setback from active and inactive wells (83.294). The Grange believes that this requirement should be amended. If a well is inactive, we do not believe that the same setback should be required as active wells. Perhaps a compromise would be a 35 foot setback for inactive wells. That way water is protected, but it is not an over-burdensome requirement for farmers.

Setbacks relating to the spreading of manure are discussed in both sets of proposed regulations. In general, the Grange agrees that setbacks should depend on several factors including the slope and contour of the land, the season, and the cultivation practices used on the land. All of these activities should be taken into consideration when determining setback requirements. The bottom line is that setbacks cost farmers money. They should be regulated as sparingly as possible. Every time a farmer is told that he cannot farm his land, it means less money in his pocket. We accept the 35 foot buffer and 100 foot setback as I stated earlier, but we also believe that those amounts should be considered as maximum amounts and should not be left to interpretation.

Under the proposed nutrient management regulations, nutrient management plans or nutrient balance sheets will be required for farmers who import manure. Also, increased record keeping and spreading restrictions will be required for the importing farmer. The Grange is concerned about the negative affect this proposal will have on infrequent importers. These folks will help out a neighboring farmer on limited occasions. They should not have to obtain a nutrient management plan or go through the time consuming paperwork involved in spreading imported manure. We believe that there should be a threshold under which a farmer can import manure and not be covered under these regulations.

Again, thank you for allowing the Grange to discuss the proposed nutrient management and CAFO regulations. I will be happy to answer any questions you may have.

November 4, 2004

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

Comments on Proposed Rulemaking, State Conservation Commission  
25 PA Code CH 83, Nutrient Management

The Pennsylvania State Grange has already testified on the nutrient management regulations on October 13, 2004. (See attached testimony) We would like to applaud the State Conservation Commission again on the Nutrient Management Package. We are generally supportive of the regulations and believe that the Commission has been responsive to the needs of the agricultural community. However, we would like to add the following comments to our testimony:

1. The definition of surface waters is too broad and includes intermittent streams, wetlands, and natural seeps. A more specific definition is needed to determine setback requirements in the regulations.
2. Throughout the regulations consistency is needed when using the term nutrients. Our belief is that the regulations should specifically refer to nitrogen and phosphorus and not nutrients generally.
3. All regulations should be based on sound science, and scientifically developed conservation and nutrient management plans should take precedence over emotion.
4. The new 100-foot setback from private wells should be reconsidered because private wells are sometimes placed on property lines. Farmers should not be hindered because a neighbor places a well at the property line. The setback should be exempt if an adjacent property owner places a new well within 100 feet of a working farm.
5. The 150-foot setback from surface waters should also be reconsidered when discussing importing farms. We do not want to hinder importing farms unnecessarily.
6. Phosphorus-based regulations of nutrients should be phased in so farmers are given a reasonable amount of time to come into compliance. Also, P indexes should not be necessary for pastures.

7. The Commission should provide cost share funds for changes and amendments to update nutrient management plans, all soil and manure testing, for cover crops, and alternative technologies. These funds should be available regardless of debt.
8. Annual manure testing is too excessive. Once a consistent result is determined, farmers should not have to continue testing until changes are made to the farming operation.
9. Since fall cover cropping in the northern tier may be difficult, the regulations should describe other practices that will be accepted for fall applications on low residue fields. Also, any winter manure application requirements should be specifically outlined in regulations.

Thank you again for the opportunity to further delineate our comments on the proposed nutrient management regulations.

Sincerely,

Brenda J. Shambaugh  
Legislative Director  
PA State Grange  
1604 North Second Street  
Harrisburg, PA 17102

(717) 234-5001  
(717) 234-7654 – fax  
[Brenda@pagrange.org](mailto:Brenda@pagrange.org) - e-mail



Robert Kucharski  
39 ~~Old Mill Rd~~ 9351 RT 414  
Liberty PA 16930

169

RECEIVED

Original: 2413

2004 NOV 16 AM 9:06

STATE CONSERVATION COMMISSION  
REVIEW COMMISSION



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

17110-9408 93

