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REVIEW COMMISSION

# Regulatory Analysis Form

(1) Agency

State Conservation Commission

(2) I.D. Number (Governor's Office Use)

7-418

JCD Number:

2634

(3) Short Title

Facility Odor Management Regulations

(4) PA Code Cite

25 Pa. Code, Chapter 83  
Subchapter G

(5) Agency Contact &amp; Telephone Numbers

Primary contact person: Karl J. Dymond, Odor Management Program  
Coordinator, (570) 836-2181Secondary contact person: Douglas A. Goodlander, Director of Nutrient  
Management, (717) 787-8821

(6) Type of Rulemaking (check one)

- ☐ Proposed Rulemaking  
☒ Final Order Adopting Regulation  
☐ Final Order, Proposed Rulemaking Omitted

(7) Is a 120-Day Emergency Certification Attached?

- ☒ No  
☐ Yes: By the Attorney General  
☐ Yes: By the Governor

(8) Briefly explain the regulation in clear and non-technical language.

*This rulemaking provides the Commission with oversight to manage the impact of odors generated from animal housing facilities and manure storage facilities on high-density livestock and poultry operations, referred to as Concentrated Animal Operations (CAO, as defined by the Commission's nutrient Management program), and from Concentrated Animal Feeding Operations (CAFO, as defined by the Department of Environmental Protection). To accomplish this, these regulations provide for the use of an odor management plan which primarily uses an odor site index as a tool to evaluate the potential for offsite impacts from the animal housing and manure storage facilities; the results of which then assist the agricultural operation to choose a location with minimal impact potential. The odor management plan secondarily manages the impact of offsite odors through the use of odor best management practices (for their odor reducing potential) for those facility locations with higher offsite odor potentials.*

*These regulations were developed to allow the Commission to address offsite odor impacts from regulated and volunteer animal operations with minimal negative financial impact on the industry, using current scientific findings relating to the potential to interrupt the processes involved in the perception of offsite odors. These regulations outline the Commission's criteria for addressing offsite odor impacts from animal housing and manure storage facilities on regulated and volunteer animal operations to ensure that they are appropriately and consistently addressed.*

(9) State the statutory authority for the regulation and any relevant state or federal court decisions.

*Section 504(1.1) of the act of July 6, 2005 (Act 38 of 2005) (3 Pa. C.S. §§ 501 - 522 (formerly the Nutrient Management Act, 3 P.S. §§ 1701--1718) (hereinafter referred to as "Act 38"); Section 4 of the Conservation District Law (3 P.S. § 852); Section 503(d) of the Conservation and Natural Resources Act, (71 P.S. §1340.503(d)).*

(10) Is the regulation mandated by any federal or state law or court order, or federal regulation? If yes, cite the specific law, case or regulation, and any deadlines for action.

*Yes. These regulations are required by Act 38 (3 P.S. §§ 501 - 522). The Act requires that standards be developed and adopted for odor management plans in accordance with section 509, under the same process as is used in development of the Commission's nutrient management standards. These standards address planning and effective odor management for new structures or expansions of current structures that house animals or store manure on CAO and CAFO farms. The Act requires the Commission to promulgate regulations within two years of the Act's effective date.*

(11) Explain the compelling public interest that justifies the regulation. What is the problem it addresses?

*These final form regulations are a key component of Pennsylvania's efforts to ensure the industry trend toward higher intensity animal operations referred to as Concentrated Animal Operations (CAOs) and Concentrated Animal Feeding Operations (CAFOs), includes an effort to address the nuisance-type issues of odors generated from animal housing and manure storage facilities. Addressing the impacts from agricultural odors is essential to the agricultural industry and Pennsylvania's citizens, as well as Pennsylvania's many other industries, in order to manage conflicts that occur when the surrounding community is impacted by production agriculture. These conflicts can fracture a community and affect the long-term sustainability of the agricultural industry in Pennsylvania. This program is designed to ensure that agricultural operations address the conflict issues and manage the impact of offsite odors, primarily by locating the facilities where they will have the least offsite impact, and secondarily by using odor best management practices, where necessary, to minimize the impacts from these regulated facilities.*

(12) State the public health, safety, environmental or general welfare risks associated with non-regulation.

*The Commission developed these regulations with the assistance of the Nutrient Management Advisory Board, to help resolve some of the odor-related conflict issues that can occur when the surrounding community is impacted by production agriculture. This is a critical issue in the Commonwealth as these high-intensity animal operations become more commonplace in Pennsylvania and as non-agricultural communities move out to farming areas.*

(13) Describe who will benefit from the regulation. (Quantify the benefits as completely as possible and approximate the number of people who will benefit.)

*These final form regulations will assist the estimated 1,200 CAO agricultural operations and the 340 CAFO operations that will be brought into the program through the final form regulations, if new construction or expansion of facilities occurs on these operations.*

*Farmers (agricultural operations) will benefit because the implementation of an approved odor management plan will help resolve some of the odor conflicts and further enhance the farmers' credibility with their neighbors. Farmers will be provided with preemption of local ordinances and regulations that are in conflict with, or that are more stringent than, the State Conservation Commission's odor management regulations.*

*Likewise, by fully and properly implementing an approved odor management plan, agricultural operations will be provided with a limitation of liability via appropriate consideration as a mitigating factor in any civil action for penalties or damages alleged to have been caused by the odor impacts.*

*The final form regulations provide the ability for farmers to voluntarily participate as well. Those who voluntarily participate in the Commission's odor management program, in order to manage the impacts of offsite odors from their animal housing and manure storage facilities, will capitalize from the similar environmental credibility benefits afforded to CAOs and CAFOs under this regulation.*

*The final form regulations provides for limited financial assistance efforts to further assist the farm community in addressing odor management issues on their operations.*

*Citizens of Pennsylvania will benefit through the use of a new odor management tool that uses current scientific findings to help resolve some of the agricultural odor-related conflicts between production agriculture and their neighbors.*

*Lastly, by providing clear criteria for use by local elected leaders, they will benefit because the Commonwealth is providing a way to balance the legitimate business interests of agriculture with the community concerns of local citizens.*

*This effort is key to the Commonwealth's efforts to provide long-term sustainability for the agricultural industry's legitimate and lawful business interests, and a long-term and integrated effort to address the environmental and community concerns of local citizens and local elected leaders in Pennsylvania.*

**(14) Describe who will be adversely affected by the regulation. (Quantify the adverse effects as completely as possible and approximate the number of people who will be adversely affected.)**

**New CAO/ CAFO farms.**

- 1. The final form regulations will require all new CAOs (regulated under the Commission's nutrient management program (25 PA Code §83, Subchapter D)) and new CAFOs (regulated under the Department of Environmental Protection (25 PA Code §92)) that construct their facilities after the effective date of the regulations to develop and implement an approved odor management plan.*
- 2. The final form regulations will also require existing agricultural operations which are currently, or expand to become, a CAO or CAFO to develop and implement an approved odor management plan if after the effective date of the final regulations they construct new or expand existing animal housing or manure storage facilities.*
- 3. The final form regulations provide for plan amendment criteria that will necessitate operators to make adjustments to their approved odor management plan if the operation expects to make a significant change in the regulated facilities. If this occurs, then those agricultural operations would have the added expense of submitting a new plan, or portion of a plan, in the form of a plan amendment.*

*Due to the Commission's history with the nutrient management program, we anticipate that approximately 25 odor management plans (OMP) per year will be written due to the 3 scenarios given in this category.*

**Existing CAO/ CAFO farms.**

- 1. The final form regulations will affect the current CAO community (1,200 CAOs) and the current CAFO community (340 CAFOs), if they construct manure storage or animal housing facilities after the effective date of these regulations. Support will be provided in the way of educational and technical support provided to these individuals as well as financial assistance for the development of their odor management plans. Financial assistance from the SCC for the implementation of their odor management plans may only occur if it is for a manure storage facility that the Commission required to be constructed under its Nutrient*

#### Management program regulations.

2. Due to the Commission's nutrient management program regulations with an October 1, 2006 effective date, we anticipate newly defined CAO farms coming into the program to primarily be larger-scale horse operations. These larger-scale horse operations may need enhanced manure storage facilities to meet the water quality criteria established for CAOs. After the final form regulations effective date, an estimated 150 operations are expected to be constructing enhanced manure storage facilities over a 3 year time frame (due to the Commission's nutrient management program). We anticipate that 90 of these operations will meet the exemption criteria for manure storage facilities and thus only 60 will need to develop and implement an approved odor management plan (OMP), or in other words, 20 CAO horse operations per year, for 3 years, will need an OMP.
3. Due to the Commission's nutrient management program regulations with an October 1, 2006 effective date, certain CAO poultry farms may need to construct manure storage facilities. We anticipate that after the final form regulations effective date, an estimated 150 operations are expected to be constructing enhanced manure storage facilities over a 4 year time frame (due to the Commission's nutrient management program), and thus are required to develop and implement an approved odor management plan; or in other words, approximately 35 CAO poultry farms per year, for 4 years, will need to develop and implement an approved OMP.
4. Due to the Commission's history with the nutrient management program, we anticipate that approximately 5 CAO dairy/ beef farms per year will construct new or expand existing manure storage or animal housing facilities and thus will need to develop and implement an approved odor management plan.

#### Volunteer Agricultural Operations (VAO).

- The final form regulations may affect any of the 24,000 Pennsylvania farmers that generate manure who wish to voluntarily comply with the provisions of this act. From our discussions with individuals and agricultural groups, and based on the history of the Commission's nutrient management program, (and realizing that during the infancy of this odor management program the Commission and the plan writing community will need to concentrate our efforts on the regulated community), we only anticipate that 5 agricultural operations a year will voluntarily become a VAO and develop and implement an approved odor management plan throughout the first 3 years of the program. Following this initial 3-year program startup, we anticipate 15 new volunteer operations per year developing and implementing odor management plans.

#### Odor Management Specialist.

- The final form regulations will ensure that those individuals or companies that conduct odor management planning for CAOs, CAFOs and volunteer operations, meet the certification requirements to be implemented by the Pennsylvania Department of Agriculture. This certification program will ensure these agricultural odor management professionals are knowledgeable and follow proper scientific and Commission Odor Management Guidance and the record keeping criteria established under the Department of Agriculture's certification program.
- The Commission anticipates that there are individuals currently certified under its Nutrient Management Program as Nutrient Management Specialists that will become certified as Odor Management Specialists as well. We estimate approximately 50 of these current Nutrient Management Specialists will obtain Odor Management Specialist certification. The Pa Department of Agriculture and Penn State will provide training and testing to the industry to meet these requirements.

#### Implementation of the Odor Management Plan (OMP).

- The final form odor management regulations provide for Financial Assistance for Plan Implementation for the very specific case of when the Commission requires an operation to construct a manure storage facility in order to meet nutrient management planning requirements. Agricultural operations may apply for other government cost sharing programs for OMP implementation, i.e., USDA NRCS's EQIP program funding for an Odor Best Management Practice (Odor BMP) such as a windbreak shelter belt.
- The final form regulations provide criteria for an evaluation, the Odor Site Index, and if necessary, for Odor

*BMPs that need to be implemented.*

(15) List the persons, groups or entities that will be required to comply with the regulation. (Approximate the number of people who will be required to comply.)

*The final form regulations will affect any new CAO or CAFO operation constructing new animal housing or manure storage facilities in Pennsylvania after the effective date of the regulations. The final form regulations will also affect any of the existing 1200 CAOs or 340 CAFOs that construct new animal housing or manure storage structures or expand current structures that house animals or store manure. The final form regulations may affect any of the 24,000 Pennsylvania farmers that generate manure who wish to voluntarily comply with the provisions of this act.*

(16) Describe the communications with and input from the public in the development and drafting of the regulation. List the persons and/or groups who were involved, if applicable.

*The State Conservation Commission relied on input from groups and individuals with various backgrounds from all areas of the Commonwealth concerning the effectiveness of the facility odor management regulations and the on-farm practicality and the implementation thereof.*

*The Commission met with various individuals, farm organizations, citizens groups, environmental organizations, agency and interagency agricultural advisory workgroups and industry groups to discuss the various issues considered for the proposed regulation and to extract input from these groups. The regulations presented here are an effort of the Commission to develop a program that incorporates the sometimes conflicting input from these groups to manage agricultural odor impacts in a manner that is cost effective and practical for the agriculture industry.*

*An Interagency Odor Management Workgroup, comprised of staff from DEP, PDA, SCC, PSU, and USDA NRCS, met numerous times over the course of two years to provide important guidance to the Commission concerning the effectiveness of the regulations, identifying potential programmatic conflicts and to help formulate draft regulations for consideration by the Nutrient Management Advisory Board and the State Conservation Commission.*

*A Technical Advisory Workgroup from PSU, USDA NRCS and DEP met numerous times over the course of two years to review scientific findings, extrapolate applicable data, and apply it to agricultural odor nuisance-type issues. This workgroup provided important guidance to the Commission concerning the elements to be considered in, as well as the effectiveness of, the facility odor management regulations.*

*A 12-member Odor Management Committee of the Nutrient Management Advisory Board met routinely over the course of two years providing input to the Commission in the development of the program criteria. This committee was an integral component in this regulation development process. All regulatory criteria and comments from individuals and other groups flowed through this committee. Lengthy and thoughtful discussions resulted from this, with utmost emphasis on program effectiveness and on-farm practicality. The committee formulated draft regulations and discussed the reasoning behind the decision-making processes used in the draft regulations with the Nutrient Management Advisory Board and the State Conservation Commission.*

*The Nutrient Management Advisory Board has reviewed the final form regulations as forwarded by its Odor Management Committee and has approved the final form regulations with a recommendation to forward them to the SCC with the Advisory Board's recommendation for approval. The Nutrient Management Advisory Board is established by the Act to provide public direction to the Commission in the development of program regulations and is comprised of representatives from the poultry and livestock industries, veterinary science, the environmental community, academia, water quality professionals, private non-farmer citizens, and local government.*

(17) Provide a specific estimate of the costs and/or savings to the regulated community associated with compliance, including any legal, accounting or consulting procedures that may be required.

Odor Management Plan Development

New CAO or CAFO operations:

- The final form regulations will require any new CAO or CAFO operations (including existing operations expanding to become a CAO or CAFO) coming into existence and building new animal housing or manure storage facilities after the effective date of the regulations, to develop and implement an approved OMP. We anticipate that there will be approximately 25, per year, new CAO or CAFO operations or existing agricultural operations that expand to become CAOs or CAFOs that will need to develop and implement an approved OMP. The anticipated total cost per odor management plan is \$1120. It is anticipated that six of these operations will qualify for plan development funding from the Commission and 19 will not. The total plan development costs for the 19 new CAOs and CAFOs that will not qualify for planning assistance funding would be \$21,280 per year. For the six operations that will qualify for 75% financial assistance for planning efforts, their cost will be \$1,680 per year (\$1,120 total cost per plan, \$840 cost share amount, \$280 farmer cost per plan).

Existing CAO/ CAFO farms.

1. After the final form regulations effective date, an estimated 150 CAO horse operations are expected to be constructing enhanced manure storage facilities over a 3 year time frame (due to the Commission's nutrient management program). We anticipate that 90 of these operations will meet the exemption criteria for manure storage facilities and thus only 60 will need odor management plans (OMP), or in other words, 20 CAO horse operations per year, for 3 years, will need an OMP. These operations would be eligible for 75% financial assistance for plan development (therefore \$280 farmer cost per plan), bringing the annual cost for these farms to \$5,600.
2. We anticipate that after the final form regulations effective date, an estimated 150 CAO poultry farms are expected to be constructing enhanced manure storage facilities over a 4-year time frame (due to the Commission's nutrient management program), or in other words, approximately 35 CAO poultry farms per year, for 4 years, will need an OMP. Applying the 75% state cost share program, the farmer cost per plan would be \$280 and the total plan development costs for these farmers would then be \$9,800 per year.
3. Due to the Commission's history with the nutrient management program, we anticipate that approximately 5 CAO dairy/ beef farms per year will construct new or expand existing manure storage or animal housing facilities and thus will need an OMP. Applying the 75% state cost share program, the farmer cost per plan would be \$280 and the total plan development costs for these farmers would then be \$1,400 per year.

Volunteer Agricultural Operations (VAO).

- The final form regulations may affect any of the 24,000 Pennsylvania farmers that generate manure who wish to voluntarily comply with the provisions of this act. From our discussions with individuals and agricultural groups that will potentially be regulated under the final form regulations, and based on the history of the Commission's nutrient management program, we anticipate 5 agricultural operations per year voluntarily submitting a plan, for the first 3 years of the program. Following this initial 3-year program startup, we anticipate 15 new volunteer operations per year developing and implementing odor management plans. Applying the 75% state cost share program, the anticipated final farmer cost per plan would be \$280 with a total plan development cost to these farmers of \$1,400 per year for the first 3 years, then \$4,200 per year thereafter.

BMP Reference Documents.

- The Commission will provide information relating to the various Level II Odor BMPs free of charge to the public. This information will be provided in the form of the PA Odor BMP Reference List and will be available within the Commission's Odor Management Program webpage or upon request from the

Commission.

#### Odor Management Plan Implementation

The final form regulations provide for multiple levels of Odor BMPs; we anticipate that there will be no new costs to the regulated community until Level 2 Odor BMPs are required to be implemented and maintained.

Considering the high variability in the costs of the Level 2 Odor BMPs, we have estimated an average of \$15,000 per farm requiring Level 2 Odor BMPs. Please note that each plan uses site specific criteria, and there will be a large variability in the Level 2 odor BMPs proposed to be implemented, with some Level 2 Odor BMPs costing under \$500, and other Level 2 Odor BMPs costing thousands of dollars.

The odor management plan will require the operator to prepare, obtain, and maintain documentation at the agricultural operation verifying the implementation, operation and maintenance of the Odor BMPs. The operator will document on a routine basis, that they are implementing the required Odor BMPs and will document all maintenance performed thereof. The Commission anticipates that there will be no new costs for documenting the implementation, operation and maintenance of the required Odor BMPs.

#### New CAO or CAFO operations:

- We anticipate that 2 agricultural operations per year will be required to implement Level 2 Odor BMPs due to their score in the Odor Site Index. The anticipated farmer cost per plan would be the average cost for implementing a Level 2 Odor BMP which is \$15,000 with the total plan implementation costs for these two farmers of \$30,000 per year.

#### Existing CAO/ CAFO farms:

1. We anticipate that due to their scores on the Odor Site Index, 6 existing CAOs/ CAFOs per year will be required to implement Level 2 Odor BMPs. The Commission is proposing to provide limited financial assistance to help certain agricultural operations implement Odor BMPs. These existing operations would be eligible for this financial assistance. The average cost for implementing a Level 2 Odor BMP is \$15,000. Applying the 80% state cost share program, the anticipated final farmer cost per plan would be \$3,000 (\$15,000 total cost, \$12,000 cost share, \$3,000 farmer cost) with the total plan implementation costs for the farmers of \$18,000 per year.
2. We anticipate that due to their scores in the Odor Site Index, another 9 existing CAOs/ CAFOs per year will be required to implement Level 2 Odor BMPs but will not meet the criteria for Financial Assistance for Plan Implementation. The anticipated farmer cost per plan would be the average cost for implementing a Level 2 Odor BMP which is \$15,000 per year with the total plan implementation costs for these farms of \$135,000 per year.

#### Volunteer Agricultural Operations (VAO).

- We anticipate that an agricultural operation will only choose to become a VAO as long as they are not required to implement any Level 2 Odor BMPs, thus we do not anticipate any costs for plan implementation for VAOs.

(18) Provide a specific estimate of the costs and/or savings to local governments associated with compliance, including any legal, accounting or consulting procedures that may be required.

Local governments in an increasing number of areas of the state are being challenged to provide odor management requirements (often times relating to property line setback requirements) on these high intensity animal operations that Act 38 regulates. In a number of instances these local governments have developed odor management criteria and incorporated these requirements into local ordinances in order to address a public concern in their area. Given the local ordinance preemption clause included in Act 38, the pressure for local government to address these issues should diminish, thus reducing the pressure on them to develop local ordinances and in turn, decreasing their likelihood of litigation concerning the legality of their local ordinance. This will reduce local government legal costs to an extent that cannot be estimated with any degree of certainty.

(19) Provide a specific estimate of the costs and/or savings to state government associated with the implementation of the regulation, including any legal, accounting, or consulting procedures that may be required.

Financial Assistance for Plan Development:

*These final form regulations provide a program to offset the cost of developing an approved Odor Management Plan. This program is only available to farmers whose agricultural operations are in existence as of the effective date of these final form regulations. This funding is similar to the Commission's Plan Development Incentives Program (PDIP) that has provided cost share funding to farmers for the development of nutrient management plans since 1997. This 75% state cost share assistance funding effort is essential to ensure that existing operations are not negatively impacted by these new CAO and CAFO planning requirements.*

*Based on the Commission's experience with the nutrient management program costs, and the projected time to conduct a site assessment for the proposed odor management plan (OMP), we anticipate that the average cost for an OMP to be \$1120 per OMP. Applying the proposed 75% state cost share program, the anticipated final state cost per plan would be \$840 (\$1120 total cost, \$840 cost share, \$280 farmer cost).*

Financial Assistance for Plan Implementation:

*The final form regulations provide for multiple levels of Odor BMPs; we anticipate that there will be no new cost to the state until the regulated community is required to implement and maintain Level 2 Odor BMPs, with the following conditions:*

- 1. The final form facility odor management regulations provide for Financial Assistance for Plan Implementation for the very specific case of when the Commission requires an operation to construct a manure storage facility under the Nutrient Management Program. When this occurs, the Commission is planning to provide funding for the Financial Assistance for Plan Implementation at an 80% state cost share rate. Applying the 80% state cost share rate to the \$15,000 estimated total cost for Level 2 Odor BMPs equates to \$12,000 cost share (\$15,000 total cost, \$12,000 cost share, \$3,000 farmer cost) for eligible farms installing Level 2 Odor BMPs.*
- 2. In accordance with Commission policy, no state cost share funding will be available for any new operations coming into Pennsylvania after the effective date of the regulations. We also anticipate that new CAOs/CAFOs will use the Odor Site Index to site a regulated facility in a location with a lower offsite odor impact potential, and thus, will most likely not require any Level 2 Odor BMPs, and thus these new CAOs and CAFOs will not have new costs for implementing the plan.*

New CAO/ CAFO farms.

Financial Assistance for Plan Development:

- The final form regulations will require any new CAO or CAFO operations coming into existence and building new animal housing or manure storage facilities after the effective date of the regulations to get an odor management plan, however there will be no costs to the State for the 19 new operations due to the Commission policy of not providing state cost share funding for new operations coming into Pennsylvania. For the 6 existing operations that are projected to expand to become a CAO or CAFO following the effective date of the regulations, financial assistance would be available through the Commission for offsetting the cost of plan development. Applying the proposed 75% state cost share program, the anticipated state cost per plan would be \$840 (\$1120 total cost, \$840 cost share, \$280 farmer cost).*

Financial Assistance for Plan Implementation:

- We anticipate that approximately 2 agricultural operations per year will be required to implement a Level 2 Odor BMP, but they will not meet the criteria for any state cost share funding.*



#### Existing CAO/ CAFO farms.

##### Financial Assistance for Plan Development:

1. After the final form regulations effective date, an estimated 150 CAO horse operations are expected to be constructing enhanced manure storage facilities over a 3-year time frame (due to the Commission's nutrient management program). We anticipate that 90 of these operations will meet the exemption criteria for manure storage facilities and thus only 60 will need an OMP, or in other words, 20 CAO horse operations per year, for 3 years, will need an OMP. Applying the 75% state cost share program, the anticipated state cost per plan would be \$840 (\$1120 total cost, \$840 cost share, \$280 farmer cost) and the total cost share cost to the state would be \$16,800 per year.
2. We anticipate that after the final form regulations effective date, an estimated 150 CAO poultry farms are expected to be constructing enhanced manure storage facilities over a 4-year time frame (due to the Commission's nutrient management program), or in other words, approximately 35 CAO poultry farms per year, for 4 years, will need an OMP. Applying the 75% state cost share program, the anticipated state cost would be \$840 per plan, with the total plan development cost share cost to the state of \$29,400 per year.
3. Based on the Commission's history with the nutrient management program, we anticipate that approximately 5 CAO dairy/ beef farms per year will construct new or expand existing manure storage or animal housing facilities and thus will need an OMP. Applying the 75% state cost share program, the anticipated state cost per farm would be \$840 with a total plan development cost share cost to the state of \$1,400 per year.

##### Financial Assistance for Plan Implementation:

4. We anticipate that due to their scores in the Odor Site Index, 15 existing CAOs/ CAFOs per year will need an OMP. We anticipate that 6 existing CAOs/ CAFOs per year will meet the criteria for Financial Assistance for Plan Implementation. The average cost for implementing Level 2 Odor BMPs on a farm is \$15,000. Applying the 80% state cost share program, the anticipated state cost per plan would be \$12,000 with a total plan implementation cost share cost to the state of \$72,000 per year.

##### Volunteer Agricultural Operations (VAO).

- The final form regulations may affect any of the 24,000 Pennsylvania farmers that generate manure who wish to voluntarily comply with the provisions of this act. From our discussions with individuals and agricultural groups that will potentially be regulated from the final form regulations, and based on the history of the Commission's nutrient management program, we anticipate that only 5 agricultural operations will voluntarily submit a plan and become a VAO annually for the initial phase of the program. Following this initial 3-year program startup, we anticipate 15 new volunteer operations per year developing and implementing odor management plans. Applying the 75% state cost share program for plan development, the anticipated state cost per plan would be \$840 with the total plan development cost share cost to the state of \$4,200 annually.
- We anticipate that an agricultural operation will only choose to become a VAO as long as they are not required to implement any Level 2 Odor BMPs, thus we do not anticipate needing any state cost share funding for VAO plan implementation.

##### County Conservation Districts.

State government will not currently need to provide increased funding to county conservation districts even though the Act and these regulations provide for the ability to delegate program authority to the county conservation districts because the Commission does not intend at this time to delegate this program to the districts. The potential does exist that at a future date, the state will need to provide increased funding to county conservation districts in order to provide necessary local administration of the program and oversight of the regulated community in assisting the Commonwealth in its implementation of this program.

##### State Conservation Commission.

The Commission will continue to spend approximately \$60,000 per year for staff wages and expenses.

##### Technical Assistance:

*The Commission will continue to contract with Penn State to provide technical and educational assistance in the development and implementation of this new odor management regulation as well as PDA's Odor Management Specialist Certification Program. This project is funded at \$10,000 per year.*

(20) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

|   | <b>Current FY<br/>Year<br/>(07-08)</b> | <b>FY +1<br/>Year</b> | <b>FY +2<br/>Year</b> | <b>FY +3<br/>Year</b> | <b>FY +4<br/>Year</b> | <b>FY +5<br/>Year</b> |
|---|--|-----------------------|-----------------------|-----------------------|-----------------------|-----------------------|
| <b>SAVINGS:</b>                         | NA                                     | NA                    | NA                    | NA                    | NA                    | NA                    |
| <b>Regulated Community <sup>o</sup></b> | NA                                     | NA                    | NA                    | NA                    | NA                    | NA                    |
| <b>Local Government <sup>1</sup></b>    | NA                                     | NA                    | NA                    | NA                    | NA                    | NA                    |
| <b>State Government</b>                 | NA                                     | NA                    | NA                    | NA                    | NA                    | NA                    |
| <b>Total Savings</b>                    | NA                                     | NA                    | NA                    | NA                    | NA                    | NA                    |
| <b>COSTS:</b>                           | NA                                     | NA                    | NA                    | NA                    | NA                    | NA                    |
| <b>Regulated Community <sup>2</sup></b> | NA                                     | \$157,900             | \$224,160             | \$224,160             | \$224,860             | \$216,460             |
| <b>Local Government</b>                 | NA                                     | NA                    | NA                    | NA                    | NA                    | NA                    |
| <b>State Government <sup>3</sup></b>    | \$70,000                               | \$90,000              | \$201,640             | \$201,640             | \$191,140             | \$178,540             |
| <b>Total Costs</b>                      | \$70,000                               | \$247,900             | \$425,800             | \$425,800             | \$416,000             | \$395,000             |
| <b>REVENUE LOSSES:</b>                  | NA                                     | NA                    | NA                    | NA                    | NA                    | NA                    |
| <b>Regulated Community</b>              | NA                                     | NA                    | NA                    | NA                    | NA                    | NA                    |
| <b>Local Government</b>                 | NA                                     | NA                    | NA                    | NA                    | NA                    | NA                    |
| <b>State Government</b>                 | NA                                     | NA                    | NA                    | NA                    | NA                    | NA                    |
| <b>Total Revenue Losses</b>             | NA                                     | NA                    | NA                    | NA                    | NA                    | NA                    |

(20a) Explain how the cost estimates listed above were derived.

*<sup>o</sup> Savings to the regulated community are not able to be quantified but are expected to be substantial as the final form regulations will trigger the preemption provisions of Act 38. This preemption is enforceable by the Attorney General under other provisions of Act 38, and therefore the regulated community should see a positive impact in reducing their costs associated with litigation with local governments.*

*<sup>1</sup> Savings to local governments are not able to be quantified but are expected to be substantial for the reasons described in item number 18 above.*

*<sup>2</sup> Regulated Community costs included above include\*:*

*New CAO/ CAFO:*

*Plan Development: Approximately 25 agricultural operations fall under this category annually. Six will be eligible for financial assistance through the Commission, and 19 will not.*

*o \$1,680 per year assuming a farmer cost per plan of \$280 for the 6 agricultural operations per year that will be expanding their operations to become a CAO or CAFO. These operations would be eligible for financial*

assistance through the Commission. (Cost per plan: \$1120 total cost, \$840 state cost share, \$280 farmer cost).

- \$21,280 per year to develop an odor management plan, assuming a farmer cost per plan of \$1120 for 19 new CAO/ CAFO farms coming into Pennsylvania. These 19 operations do not meet the criteria for state cost share funding.

Plan Implementation:

- \$30,000 per year assuming 2 new CAO/ CAFO farms that due to their scores in the Odor Site Index, will be required to implement Level 2 Odor BMPs. They do not meet the criteria for state cost share funding. The anticipated farmer cost per plan would be the average cost for implementing a Level 2 Odor BMP which is \$15,000.

Existing CAO/ CAFO:

Plan Development:

- \$5,600 per year over 3 years assuming a farmer cost per plan of \$280 for 20 CAO horse operations per year that will be constructing enhanced manure storage facilities due to the Commission's nutrient management grant program. They meet the criteria for the 75% state cost share program. (Cost per plan: \$1120 total cost, \$840 state cost share, \$280 farmer cost).
- \$9,800 per year over 4 years assuming a farmer cost per plan of \$280 for 35 CAO poultry farms per year that will be constructing enhanced manure storage facilities due to the Commission's nutrient management grant program. They meet the criteria for the 75% state cost share program. (Cost per plan: \$1120 total cost, \$840 state cost share, \$280 farmer cost).
- \$1,400 per year assuming a farmer cost per plan of \$280 for 5 CAO dairy/ beef farms that will be constructing new or expanding existing regulated facilities. They meet the criteria for the 75% state cost share program. (Cost per plan: \$1120 total cost, \$840 state cost share, \$280 farmer cost).

Plan Implementation:

- \$18,000 per year assuming 6 existing CAOs/ CAFOs implement a Level 2 Odor BMP due to their scores in the Odor Site Index. They meet the criteria for the 80% state cost share program. (\$15,000 total cost, \$12,000 cost share, \$3,000 farmer cost).
- \$135,000 per year assuming 9 existing CAOs/ CAFOs implement a Level 2 Odor BMP due to their scores in the Odor Site Index but will not meet the eligibility criteria for cost share. The anticipated farmer cost per plan would be the average cost for implementing a Level 2 Odor BMP which is \$15,000.

Volunteer Agricultural Operations (VAO).

- \$1,400 per year for 3 years assuming a farmer cost per plan of \$280 for 5 agricultural operations that voluntarily submit a plan and become a VAO, then \$4200 per year thereafter for 15 agricultural operations per year that become VAOs. VAOs qualify for the 75% state cost share program. (Cost per plan: \$1120 total cost, \$840 state cost share, \$280 farmer cost).

\*For determining the FY +1 costs for the Regulated Community, the following have been taken into effect:

- We do not anticipate that the regulations will become effective until approximately half way through FY 08-09. Thus, the plan development costs (\$20,580) and the implementation costs (\$91,500) of the final form regulation for FY + 1 are only half of the first yearly projection as described above (\$112,080).
- In addition, the FY + 1 (08-09) approved budget only appropriated \$20,000 to the Commission for grants and loans to farmers with the remainder of the plan development and implementation costs to be incurred by the regulated community.

\*For determining the FY +4 and FY +5 costs for the Regulated Community, the following have been taken into effect:

- Since the plan development and plan implementation workload is based on the compliance deadlines for the various program participants, and since we will begin this program mid-way through the first fiscal year, the final fiscal years in this analysis represent only ½ year funding needs for the various program elements.
- For example, for the Horse CAO plan development projections of 20 CAOs per year for 3 years needing an Odor Management Plan, the projections look like the following: FY +1 = ½ year (10 CAOs), FY +2 = 1 year (20 CAOs), FY +3 = 1 year (20 CAOs), FY +4 = ½ year (10 CAOs).

### *<sup>3</sup> State costs included above include:*

#### *Pennsylvania Department of Agriculture.*

*The PDA will continue to spend approximately \$60,000 per year for staff wages and expenses to develop and implement the program; this funding comes from PDA's General Fund; General Government Operation Appropriation.*

#### *State Conservation Commission.*

*The Commission will continue to contract with Penn State to provide technical and educational assistance in the development and implementation of this new odor management regulation as well as PDA's Odor Management Specialist Certification Program. This project is funded at \$10,000 per year through the Commission's Nutrient Management Fund; Appropriation 20114: Planning, Loans, Grants and Technical Assistance. The Current Fiscal Year amount is \$10,000.*

*The remaining state costs identified below will also come from Nutrient Management Fund; Appropriation 20114: Planning, Loans, Grants and Technical Assistance\*.*

#### *New CAO/ CAFO:*

##### *Plan Development:*

- \$5,040 per year assuming a cost share cost per plan of \$840 for the 6 agricultural operations per year that will be expanding their operations to become a CAO or CAFO. These operations would be eligible for financial assistance through the Commission. (Cost per plan: \$1120 total cost, \$840 state cost share, \$280 farmer cost).
- \$0 per year for the remaining 19 new CAO or CAFO operations that do not qualify for plan development cost share funding.

##### *Plan Implementation:*

- \$0 per year for state costs for new CAOs and CAFOs and existing agricultural operations that expand to become CAOs and CAFOs as these operations do not meet the criteria for state cost share funding for plan implementation..

#### *Existing CAO/ CAFO:*

##### *Financial Assistance for Plan Development and Plan Maintenance:*

- \$16,800 per year over 3 years to cost share the development of plans on 20 CAO horse operations per year that will be constructing enhanced manure storage facilities. (Cost per plan: \$1120 total cost, \$840 state cost share, \$280 farmer cost).
- \$29,400 per year over 4 years to cost share the development of plans on 35 CAO poultry farms per year that will be constructing enhanced manure storage facilities. (Cost per plan: \$1120 total cost, \$840 state cost share, \$280 farmer cost).
- \$4,200 per year to cost share the development of plans on approximately 5 CAO dairy/ beef farms for constructing new or expanding existing regulated facilities. (Cost per plan: \$1120 total cost, \$840 state cost share, \$280 farmer cost).

##### *Financial Assistance for Plan Implementation:*

- \$72,000 per year on 6 existing CAOs/ CAFOs to implement Level 2 Odor BMPs due to their scores in the

*Odor Site Index. (Average implementation cost per plan: \$15,000 total cost, \$12,000 cost share, \$3,000 farmer cost).*

*Volunteer Agricultural Operations (VAO).*

- *\$4,200 per year for 3 years to cost share the development of plans on approximately 5 agricultural operations who voluntarily submit a plan and become a VAO, then \$12,600 per year thereafter for 15 agricultural operations per year that become VAOs. (Cost per plan: \$1120 total cost, \$840 state cost share, \$280 farmer cost).*

*\*We do not anticipate that the regulations will become effective until approximately half way through FY 08-09. Thus, the plan development and implementation costs of the final form regulation for FY + 1 are only half of the first yearly projection and that other half year workload and cost projection is reflected in FY + 4 & FY + 5 as appropriate. In addition, the FY + 1 (08-09) approved budget only appropriated \$20,000 for plan development. The state government costs for FY + 1 total reflects this \$20,000 appropriation for grants and loans to farmers with the remainder of the plan development and implementation costs to be incurred by the regulated community.*

(20b) Provide the past three-year expenditure history for programs affected by the regulation.

| <b>Program</b>  | <b>FY -3<br/>(2004-05)</b>   | <b>FY -2<br/>(2005-06)</b>   | <b>FY -1<br/>(2006-07)</b>   | <b>Current FY<br/>(2007-08)</b>   |
|---|--|--|--|---|
| PDA (NM Fund):<br>Planning, loans,<br>grants, and technical<br>assistance | \$0 (SCC Odor<br>Management<br>portion);<br>\$3,016,000 (total<br>spent) | \$0 (SCC Odor<br>Management<br>portion);<br>\$1,600,000 (total<br>spent) | \$9,460 (SCC Odor<br>Management<br>portion);<br>\$1,861,000 (total<br>spent) | \$10,000 (SCC Odor<br>Management<br>portion);<br>\$1,934,000 (total<br>appropriation) |
| PDA (General Fund):<br>General Government<br>Operations                   | \$0 (SCC OM<br>portion);<br>\$31,017,000 (total<br>spent)                | \$25,000 (SCC OM<br>portion);<br>\$29,451,000 (total<br>spent)           | \$ 60,000 (SCC OM<br>portion);<br>\$29,642,000 (total<br>spent)              | \$60,000 (SCC OM<br>portion);<br>\$29,696,000 (total<br>appropriation)                |

(21) Using the cost-benefit information provided above, explain how the benefits of the regulation outweigh the adverse effects and costs.

*Addressing the impacts from agricultural nuisance-type odors is essential to the agricultural industry and Pennsylvania's citizens, as well as Pennsylvania's many other industries, in order to manage conflicts that occur when the non-farm community encroaches into production agriculture areas of the Commonwealth. This effort is essential in the Commonwealth's efforts to provide long-term sustainability for the agricultural industry's legitimate and lawful business interests, and a long-term and integrated effort to address the environmental and community concerns of local citizens and local elected leaders in Pennsylvania.*

*These proposed regulations accomplish this by ensuring that location, construction and operation of new structures or the expansion of current structures that house animals or store manure on CAO and CAFO farms are conducted appropriately following an approved Odor Management Plan. This Odor Management Plan is developed to identify, address and manage the impacts of offsite odors. This program is designed to ensure that agricultural operations address the odor issues and manage the impact of offsite odors, primarily by locating the facilities where they will have the least impact associated with offsite odors, and secondarily by implementing approved odor best management practices to address areas where the potential for offsite impacts is higher. This is a critical issue in the Commonwealth as these high-intensity animal operations become more commonplace in Pennsylvania and as non-farm communities move out into the rural areas of Pennsylvania.*

*By addressing these conflicts, we anticipate a decrease in litigation, which translates into a reduction in farm*

*and non-farm expenses and therefore an increase in farm profitability.*

*The financial assistance programs offered by the Commission to assist agricultural operations in existence as of the effective date of the final form regulations will minimize the cost of regulatory compliance to this sector of the regulated community. These include programs to assist with plan development, and in certain circumstances, with plan implementation for Odor BMP installation.*

*The expansion of the animal industry is being challenged across the state due to public concern that this growth will have a negative impact on the communities surrounding these farms. The provisions of this final form regulation will further the Commonwealth's efforts to ensure that these operations are managing the animal housing and manure storage facilities in a way that will minimize their potential to cause impacts associated with offsite odors. The criteria established through this regulation addresses this initiative using current scientific findings relating to the potential to interrupt the processes involved in the odor pathway because if the pathway is disrupted there is less potential for perception of odor, and will therefore address the concerns of the public associated with the expansion of the animal industry in Pennsylvania. This will allow farming operations to expand in order to allow for their economic sustainability and therefore the sustainability of the industry in Pennsylvania.*

*The sustainability of the agricultural industry is increasingly dependent on the industry's ability to co-exist with its non-agricultural neighbors. The requirements imposed through these regulations are practical for the industry to implement and will help ensure the ability of the agricultural industry to co-exist with its neighbors and are therefore critical to the long-term sustainability of the agricultural and agricultural tourism industries, which are the two leading industries in Pennsylvania's economy.*

**(22) Describe the non-regulatory alternatives considered and the costs associated with those alternatives. Provide the reasons for their dismissal.**

*These regulations are required under Act 38 of 2005. These regulations represent the efforts of the Commission, in consultation with its many stakeholders to address the requirement to provide regulations to implement the odor management component of the Act.*

*The provisions established under these regulations are targeting only about 3% of the agricultural industry in Pennsylvania. This small portion of the industry, CAOs and CAFOs, is considered to have a higher potential impact relating to offsite odors from their operations, as opposed to operations of a lower animal intensity that are not regulated under this Act. The public is very interested and has often expressed the desire for the state to increase its regulatory pressure on this portion of the animal industry. Until this point, no clear regulatory authority has addressed this issue and this has prompted local municipalities to take on this effort themselves, which has caused very inconsistent, inappropriate and ineffective criteria to be used throughout the state. These regulations are necessary to address the latest in scientific understanding of agricultural odors impacts from animal housing facilities and manure storage facilities and are necessary to ensure that the high intensity animal operations are effective in addressing the impacts from the offsite odors.*

*The remaining non-CAO and non-CAFO portions of the agricultural industry, which represents the vast majority of that industry, are encouraged to voluntarily follow the criteria established under these final form regulations. This is encouraged by providing technical and financial support to these volunteer farmers and also by providing limited liability protection under the Act and the regulations for all farmers that implement an approved odor management plan.*

*Educational efforts are a key component of maximizing the effect of this program, on all farms, in all areas of the state.*

**(23) Describe alternative regulatory schemes considered and the costs associated with those schemes.**

Provide the reasons for their dismissal.

*The Nutrient Management Advisory Board, in consultation with its Odor Management Committee considered numerous options to address managing the impacts of offsite odors from animal housing and manure storage facilities. The Advisory Board spent over two years considering the various options and formulating these regulations. These regulations attempt to provide maximum flexibility to the regulated community to address the agricultural odors from their farms. This flexibility will ensure the industry's ability to meet the goal of the Act of successfully managing the impacts from the agricultural odors.*

(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulation.

*These regulations have no counterpart at the federal level, as this regulation has been developed based on a state statute. These regulations have the potential to affect the federal level regulation of EPA's Concentrated Animal Feeding Operation (CAFO) program under 40 CFR Part 122, as well as having the potential to affect the Commission's CAO program. The federal CAFO program requirements are based on animal numbers and Pennsylvania's Nutrient Management Concentrated Animal Operation (CAO) program requirements are based on animal density. The final form regulations regulates both CAO and CAFO farms (those animal intensive operations most likely to elicit concerns associated with offsite agricultural odors) that:*

- 1. come into existence **and** build associated animal housing and manure storage facilities after the effective date of the final form regulations; or*
- 2. are in existence before the effective date of the final form regulations **and** construct new or expand existing animal housing and manure storage facilities; or*
- 3. start as non-regulated agricultural operations that expand their operations and become newly defined CAOs and/or newly defined CAFOs after the effective date of the final form regulations **and** construct new or expand existing animal housing or manure storage facilities.*

*Pennsylvania's DEP, through delegation with EPA, implements the federal CAFO permitting requirements for CAFO farms in Pennsylvania. DEP has used the Commission's Chapter 83 requirements to serve as the technical criteria for these federally regulated farms for over 4 years. Therefore, it is critical that the Commission's odor management criteria to be consistent with the Commission's nutrient management CAO criteria and DEP's CAFO criteria (as is provided under these regulations) to allow for program coordination and ensure program success in Pennsylvania.*

*The final form regulations include an odor best management practice provision that is consistent with the Pennsylvania USDA NRCS conservation planning standard for Windbreak Shelter Belts. NRCS currently requires Pennsylvania farmers to follow this standard in order to receive federal funding or federal technical assistance for the installation of this best management practice.*

(25) How does this regulation compare with those of other states? Will the regulation put Pennsylvania at a competitive disadvantage with other states?

*Unlike the EPA CAFO regulations that have established base nutrient management program requirements and technical criteria for all states throughout the nation, there is no one single standard for states to address agricultural odors and many states don't address odor at all. States that have attempted to address agricultural odors generally do it in one of two ways: 1) as air emissions that have specified limits and testing requirements, and 2) as agricultural odors with or without limits and testing requirements (generally via dilutions ratio). Most require a plan and multiple states have various mandatory measures such as setback requirements (from a 1/4 mile to 1 mile) and various best management practices (BMP).*

*This proposal follows the intentions of the legislators who enacted Act 38 of 2005; these regulations address*

*agricultural odors as nuisance-type odors that require an odor management plan to manage the impacts of offsite odors from the regulated facilities. These regulations address setbacks not as a requirement but as one of the criteria evaluated under the Odor Site Index (i.e. proximity to neighboring landowners), to be taken into account as we determine the necessity for implementation of odor best management practices. Pennsylvania's odor site index has been developed in close consultation with nationally recognized experts at Penn State to ensure that it will provide the regulated community a tool that is based on current science using a flexible format that will be practical for the farm community to implement.*

*The requirements in these regulations provide additional flexibility for farmers in comparison to programs in the states that require setbacks. In these other states, all regulated farmers are required to have their regulated facilities setback up to 1 mile from a neighboring home, therefore causing extreme restrictions on the agricultural community. In Pennsylvania we are proposing to require an evaluation, preferably using the odor site index, to look at the distance from a regulated facility to a neighboring home, but not requiring a specified setback distance. This distance criterion, along with the rest of the criteria from the index, will help to determine the potential impacts from offsite migration of the odors, and to also determine what odor BMPs are needed, if any. This will provide additional flexibility to the regulated community while still addressing the need to properly manage the agricultural odors from the regulated facilities.*

*The provisions in the final form regulations will provide for a more sustainable agricultural industry in Pennsylvania which is key to making for a strong and competitive industry today and into the future. These provisions will ensure that the farming community can continue to operate economically and meet the requirements of the Act to manage the offsite impacts from the agricultural odors.*

**(26) Will the regulation affect existing or proposed regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.**

*These regulations contain provisions that affect CAO farms required to obtain a Commission approved nutrient management plan (25 Pa. Code. §83.261), possibly requiring them to develop and implement odor management plans meeting the requirements of this Act. These final form regulations will also affect the Commission's financial assistance programs developed to assist animal operations in complying with the law.*

*These regulations contain provisions that affect operations required to obtain a federal NPDES CAFO permit through the Pennsylvania Department of Environmental Protection (25 Pa. Code §§ 92.1, 92.5a), possibly requiring them to develop and implement odor management plans meeting the requirements of this Act.*

*The Pennsylvania Department of Agriculture has developed an Odor Management Specialist certification program under 7 Pa. Code §§ 130b.1 – 130b.51. These final form regulations will affect the activities of those specialists certified under the PDA program.*

*These final form regulations are linked to the other regulatory programs described above, but the regulations in no way diminish, restrict, or are in any way conflict with these other associated regulatory programs.*

**(27) Will any public hearings or informational meetings be scheduled? Please provide the dates, times, and locations, if available.**

*The Commission held two informational meetings soon after the publication of the proposed regulation. The first meeting was held on October 1, 2007, at the Hampton Inn in Dubois, Pennsylvania. The second meeting was held on October 4, 2007, at the Lancaster Farm and Home Center in Lancaster, Pennsylvania. These informational meetings were held at 7:00 p.m. and included an opportunity for questions from the audience.*

*The Commission held two public hearings for the purpose of accepting comments on the proposed regulations. The first hearing was held on October 8, 2007, and the second hearing was held on October 11, 2007. The*



hearings were held at the same locations as the two public meetings. These hearings began at 7:00 pm.

(28) Will the regulation change existing reporting, record keeping, or other paperwork requirements? Describe the changes and attach copies of forms or reports which will be required as a result of implementation, if available.

*The final form regulations will require the same documentation requirements for both voluntary and regulated farms. They must maintain documentation at their operation outlining their Odor BMP implementation and maintenance efforts (as described in the plan) and allow program staff access to the documentation for an annual inspection where these documents will be reviewed to determine compliance status and whether a plan amendment is required. The Commission does not expect this requirement to be a significant hardship on the farms covered under this regulation, nor to require any additional expenses for the regulated community to comply.*

*Unless otherwise specified in the plan, the documents required under these regulations are only required to be retained by the agricultural operation (for at least 3 years); they are not required to be submitted to the Commission or delegated conservation district.*

*The final form regulations require the operation, prior to utilizing a new or expanded regulated facility, to provide the Commission, or a delegated conservation district, with written notification by certified mail of the intent to utilize that facility. The purpose of this is to confirm implementation of the plan, as required by the Act.*

*These regulations provide documentation requirements for when an agricultural operation implements supplemental Odor BMPs (in addition to those already approved in the plan) in the form of a plan update. These plan updates are used to describe these supplemental Odor BMPs and are to be submitted to the Commission or delegated conservation district for inclusion in the approved odor management plan within 30 days after the end of the calendar year in which they are implemented. If an inspection by state authorized program staff was completed during this time frame, the inspection report may be used as documentation for the plan update.*

(29) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

*Many of the special needs of the regulated community are incorporated into the regulations as a result of the participation of the Nutrient Management Advisory Board in developing the proposed regulations. The Board has met for over two years and has been helpful in expressing the needs of the regulated community and finding ways to address those needs through the regulations.*

*These regulations recognize the need for accommodating the variations in agricultural practices across the Commonwealth and addressing the various animal species raised within Pennsylvania. These regulations provide flexibility in addressing the various approaches to the management of potential odor impacts coming from the regulated facilities that may lead to conflicts between the agricultural operation and neighbors, arising from the off-site migration of these odors.*

*The final form regulations provide a tool for evaluating the potential impacts, in the form of the odor site index, which is built around providing flexibility to the producer in their efforts to manage the offsite migration of agricultural odors. Based on the odor site index, the final form regulations provide for varying levels of odor BMPs that are required to be implemented, if any. To provide the maximum amount of flexibility for the farmer as well as to ensure the most appropriate odor BMP is implemented to meet those site specific needs, the regulations provide for the farmer in conjunction with a certified plan writer, to propose what specific odor BMP out of the 2 levels of odor BMPs, they plan to implement. The plan reviewer ensures that the proposed odor BMP is appropriate.*

*The final form regulations apply scientific information on odor management that is current at the time of plan approval. Through the use of supplemental odor BMPs, plan updates and specific odor BMP amendments, the final form regulations provide flexibility for the agricultural operations in using new technological approaches for addressing odor management concerns on the farm as these approaches are refined and found to be effective, without requiring the agricultural operation to amend their entire plan.*

*By providing for plan implementation schedules, these regulations provide flexibility for the farmers in meeting the Act's requirement of fully implementing the plan prior to commencing use of the new or expanded animal housing facility or animal manure facility..*

*These regulations provide for exemption criteria for construction activities on manure storage facilities when the storage construction is being done in order to improve the water quality integrity of the facility, as long as there is not a significant increase (less than or equal to 15%) in storage volume.*

*The farm economy is such that it is difficult for many farmers to generate sufficient income within the business to afford the various environmental protection practices needed on their farms. The Commission is assisting the industry through financial assistance programs to support their plan writing and to a lesser extent, plan implementation efforts.*

**(30) What is the anticipated effective date of the regulation; the date by which compliance with the regulation will be required; and the date by which any required permits, licenses or other approvals must be obtained?**

*The Act requires that the effective date of the regulations is 90 days after the final regulations are published. We anticipate the effective date to be approximately January 1, 2009.*

*CAOs and CAFOs existing as of the effective date of the regulations are required to obtain odor management plan approval prior to construction of, and fully implementing the plan prior to commencing use of, any new or expanded animal housing facility or animal manure storage facility constructed after the effective date of the regulations.*

*Agricultural operations existing as of the effective date of the regulations which increase the number of animals maintained at the operation to become regulated as either a CAO or CAFO, are required to obtain odor management plan approval prior to construction of, and fully implementing the plan prior to commencing use of, any new or expanded animal housing facility or animal manure storage facility built after the effective date of the regulations.*

*Newly proposed CAOs and CAFOs coming into Pennsylvania will be required to fully implement an approved odor management plan prior to commencement of any new or expanded animal housing facility or animal manure storage facility built after the effective date of the regulations.*

**(31) Provide the schedule for continual review of the regulation.**

*The Commission will continually assess this regulation and make revisions when needed to address any valid technical or procedural concerns that may arise.*

**FACE SHEET  
FOR FILING DOCUMENTS  
WITH THE LEGISLATIVE REFERENCE  
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**(Pursuant to Commonwealth Documents Law)**

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(Deputy Attorney General)

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(AGENCY)

DOCUMENT/FISCAL NOTE NO. 7-418

DATE OF ADOPTION: 7/29/08

BY

Joseph R. Powers  
TITLE JOSEPH R. POWERS  
ACTING CHAIRMAN

EXECUTIVE OFFICER CHAIRMAN OR SECRETARY

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BY

Andrew C. Clark  
DATE OF APPROVAL AUG 21 2008

(Deputy General Counsel)  
(~~Chief Counsel - Independent Agency~~)  
(Strike inapplicable title)

☒ Check if applicable. No Attorney General Approval  
or objection within 30 days after submission.

**NOTICE OF FINAL RULEMAKING**

**DEPARTMENT OF ENVIRONMENTAL PROTECTION  
STATE CONSERVATION COMMISSION**

Facility Odor Management

25 Pa. Code, Chapter 83



# **Facility Odor Management Regulations**

**[25 Pa. Code Chapter 83, Subchapter G]**

## **Comment and Response Document**

On September 1, 2007, the State Conservation Commission published notice of a public comment period and public hearings on a proposed rulemaking concerning odor management at certain facilities and agricultural operations (25 *Pa Code*, Chapter 83). The public comment period for the proposed Facility Odor Management regulations closed on October 31, 2007.

Two public hearings were held on the proposed rulemaking as follows:

Monday, October 8, 2007    Hampton Inn  
   1582 Bee Line Highway  
   Dubois, PA 15801  
   7:00 p.m.

Thursday, October 11, 2007 Lancaster County Farm and    Home Center  
   1383 Arcadia Road  
   Lancaster, PA 17601  
   7:00 p.m.

This document summarizes the testimony received during the public hearings and the written comments received from the public during the public comment period. Each public comment is provided with the identifying commentator number for each commentator that made that comment. A list of the commentators, including name, affiliation (if any), and location, can be found at the beginning of this document. In addition, the comments received from the Independent Regulatory Review Commission (IRRC) are summarized and responses provided.

The Commission invited each commentator to prepare a one-page summary of the commentator's comments for distribution to Commission members; however, no such summaries were submitted to the Commission..

The following individuals provided comments:

| <b>ID</b> | <b>Name/Address</b>   | <b>Submitted<br/>one page<br/>Summary</b> | <b>Provided<br/>Testimony</b> |
|-----------|---|---|-------------------------------|
| <b>1.</b> | Rebecca Ranck<br>Environmental Coordinator<br>Wenger's Feed Mill, Inc.<br>Rheems, PA 17570  |   |                               |
| <b>2.</b> | James L. Adams<br>President & Chief Operating Officer<br>The Ag Coalition<br>Harrisburg, PA 17101   |   |                               |
| <b>3.</b> | Lowell Luft<br>York County Conservation District<br>York, PA 17402  |   |                               |
| <b>4.</b> | William C. Fink<br>Environmental Management<br>Specialist<br>Country View Family Farms<br>Harrisburg, PA 17112-2766   |   |                               |
| <b>5.</b> | Kimberly L. Snell-Zarcone, Esquire<br>Staff Attorney, Agriculture Issues<br>Citizens for Pennsylvania's Future<br>(Penn Future)<br>Harrisburg, PA 17101   |   |                               |
| <b>6.</b> | Elam M. Herr<br>Assistant Executive Director<br>Pennsylvania State Association of<br>Township Supervisors<br>Enola, PA 17025  |   |                               |
| <b>7.</b> | Amy M. Bradford<br>Assistant Vice President –<br>Agronomic Products, Manure<br>Haulers/Applicators, Seed and<br>Swine Councils<br>PennAg Industries Association<br>Northwood Office Center<br>Harrisburg, PA 17112-1099 |   |                               |
| <b>8.</b> | Andrea Sharretts<br>Director, Natural Resources<br>Pennsylvania Farm Bureau<br>Camp Hill, PA 17001-8736   |   |                               |

|     |   |  |   |
|-----|---|--|---|
| 9.  | Mark Bricker, Chairman<br>Nutrient Management Advisory<br>Board<br>c/o PA Department of Agriculture<br>Harrisburg, PA 17110 |  |   |
| 10. | Walt Peechatka<br>Senior Advisor<br>PennAg Industries Association   |  | X |
| 11. | Joe Musser<br>Pennsylvania Farm Bureau  |  | X |
| 12. | Gwen Wills<br>Summerville, PA   |  | X |
| 13. | The Honorable Arthur D. Hershey<br>Chair, House Agriculture and<br>Rural Affairs Committee<br>Harrisburg, PA 17120-2013     |  |   |
| 14. | Independent Regulatory Review<br>Commission<br>333 Market Street<br>Harrisburg, PA  |  |   |



# State Conservation Commission

## Regulatory Comments

### General

1. Comments: [We are] confident that the Commission will address the difficult area of facility odor management regulation in a reasonable and responsible manner—One that addresses the concerns of communities but is not unduly burdensome to Pennsylvania agriculture. (11)

The Commission needs to continue the currently proposed balanced approach that is provided through the proposed regulations, ensuring that odor management is assessed and addressed on all regulated farms, by using efforts that can be implemented by the agricultural community. (9)

We support the Commission's approach in the development of the regulations. Throughout the process, a conscious effort was made to reach out to interested parties to solicit their ideas in order to develop a practical program to regulate odor management on farms. (2, 7, 8, 10)

We support the proposed regulations as a reasonable approach to implementing Act 38. (2, 8)

Generally, we believe that the draft regulations are in compliance with the language and intent of Act 38 of 2005. (6)

The overall concept in the guidance and the regulations, that calls for a site-specific assessment which then determines which Best Management Practices (BMPs), if any, would be necessary to manage the odors from a facility seems to be a workable compromise that should allow animal agriculture to remain viable in the Commonwealth. (4)

We strongly support the approach that has been utilized in crafting these regulations. Utilizing odor management practices as standards of performance provides something that is practical, achievable and measurable and eliminates subjectivity. (10)

It is reasonable to ask that new operations, that are significantly going to contribute to the odor issue, be required to implement best management practices that will reduce the amount of odor possibly escaping off the premises of the operation. (1)

Because the Facility Odor Management regulations coincide with the current Nutrient Management regulations, they can easily be completed together and help each other respectively for planning requirements. (1)

Overall, I believe these regulations will aid in helping address air quality issues from an odor standpoint. (1)

In my experience it has been rare that an agency has so accurately reflected legislative intent in proposed regulations and I commend the Commission for their diligence in producing such a clear and workable proposal. (13)

We support the consideration the Commission has shown regarding what farmers can be expected to undertake, both economically and practically, as established in Act 38 of 2005. (8)

A flexible approach to facility odor management will allow farmers to make good use of the best management practices (BMPs) that are most suitable for their specific operations at a given time, while minimizing potential offsite odor impacts. We believe the proposed rulemaking and accompanying Draft Odor Management Guidance accomplish these goals. Similarly, we believe they provide the flexibility necessary to address the evolving science of odor management. (8)

Response: The Commission appreciates these comments in support of the general approach taken in the proposed regulations. The Commission has attempted to address the requirements under Act 38 in a way that is expected to be both practical and effective. We appreciate the excellent input provided by the various agencies, organizations, and individuals who have taken the time to provide their ideas and recommendations to the Commission throughout the regulatory development process.

2. Comment: The Commission should not significantly limit the ability of agriculture to operate in areas where agriculture is an allowable landuse, or there will be no place for agriculture in Pennsylvania. (9)

Response: The Commission has attempted to address the requirements in Act 38 in a manner that is expected to be practical and economically feasible for the agricultural community to implement, yet effective in managing offsite impacts. The Commission has relied on the input from various farmers and farm organizations to help us develop a program that will meet the statute's intent for practicality and economic feasibility for the industry in their efforts to address odor impacts from agricultural operations.

3. Comments: Best management practices are a good way to help the odor issue, but they need to be realistic for the farmer who has to implement and maintain the odor management plan. (1)

We recommend that for those instances where an operation may have little or no potential to cause odor impacts for existing adjacent landowners, no odor management BMPs be required. (8)

Response: Odor Management Plans are tailored to the site-specific conditions. The final form regulation and associated Odor Management Guidance provide for a category of operation where no BMPs will be required due to the low potential for impacts from the operation. As described in §§83.771 – 83.781, Odor BMPs are only required if the evaluation shows that there will be an impact. Moreover, §83.781 provides for different levels of BMPs, depending on the level of odor impacts identified in the evaluation.

As described in §§83.771 – 83.781, the Commission has approved multiple reference sources that provide a number of possible Odor BMPs a farmer may select from to address potential odor issues identified at their operation. In addition, the Commission will also consider any BMPs not listed on the provided reference sources if the BMP can be demonstrated as addressing the odor source identified as a potential problem during the odor management evaluation process.

4. Comment: Odor management needs to ensure that appropriate attention has been given to the potential effect odors generated on the facility may have on existing neighbors at the time the plan is being developed. (9)

Response: The Commission agrees with this comment. The final form regulation and the Commission's Odor Management Guidance document lays out a process where only existing residences, business and public use facilities are considered when performing an odor evaluation for the operation.

5. Comment: While we favor the science-based approach that the department has taken in regard to developing the proposed odor management regulations, we recommend that the underlying "facility odor management" guidance be included as part of these regulations. (6)

Response: The Commission has not included the guidance as part of the regulation. The benefit of guidance is that it can be revised more quickly than regulations, thereby giving the odor management program the ability to readily react to changes in the scientific understanding relating to odor management practices available to use by the industry. The regulations set the standards that must be met, and the guidance establishes one approach to meet those standards. The Commission expects that most odor management planners will opt to follow the guidance.

6. Comment: There needs to be some reasonable safeguards in the regulations that will give opportunities to categorize frivolous complaints so as to protect farmers from undue harassment under this law. (12)

Response: The law authorizing the regulation provides only limited enforcement authority to persons other than the Commission, and does not establish a complaint process. Therefore, the regulation itself does not address any legal process to handle odor complaints.

However, it is the intention of the Commission, when called upon to investigate a complaint, to assess first whether or not the regulations pertain to the agricultural operation in question, and if they do, the Commission will assess if the agricultural operation is implementing and complying with the requirements of the odor management plan and the regulations.

7. Comments: The State Conservation Commission has missed the statutory deadline for promulgating final odor management regulations and should therefore act in an expedited manner to complete all of the remaining steps of the regulatory process. The Commission and the Nutrient Management Advisory Board should call special meetings, instead of waiting for regularly scheduled meetings, whenever doing so would expedite moving the regulations through the legislatively mandated process for final publication. (5)

We want to commend the state conservation commission for its diligence in bringing the proposed rulemaking forward in a timely way. Rulemaking is a slow process. (10)

Response: The Commission has moved as quickly as possible through the regulatory process for this new program. This regulation addresses a highly complex and controversial issue that calls for a significant amount of input from numerous parties to ensure that it is developed as well as possible. Collecting and incorporating this input takes a significant amount of time, which the Commission recognizes as important in the development of this regulation.

### **Municipal Responsibility**

8. Comments: Existing operations may be severely impacted in the implementation of an odor management plan due to the proliferation of non-farming residences built close to their existing farming land use. The Commission should meet with PSATS, Pennsylvania Association of Realtors, Pennsylvania Builders Association and the Ag Committee of the County Commissioner's Association of PA, to discuss the impact that residential development close to farms and farming areas will have on the ability of these farms to meet the odor management obligations of this law, as these farms may need to look to expand to remain viable. The municipality has some shared responsibility relating to the potential conflict between agriculture and their residential neighbors as municipalities allow for urban sprawl out into farming areas, therefore impacting the farm community's ability to continue the operation. (9, 7, 4)

The commission should provide an educational outreach to local municipalities and non-farming residents in agricultural areas explaining that odor can be expected and can not be eliminated from animal agricultural. (4)

Response: The Commission agrees with these comments and will make the effort to actively reach out to each of these entities to help them understand how their efforts, in combination with these new requirements, can help minimize conflicts with agricultural operations in their area.

### **Public Involvement**

9. Comment: The public should be given access to the processes involved in developing and maintaining an odor management plan. Due process requires allowing the public to have notice and an opportunity to comment on a proposed odor management plan. The public should also have notice of approvals of odor management plans. The input that the public provides to the decision makers who approve or disapprove a plan could have an impact on the content of an odor management plan by altering the Odor Site Index score. Public input is very important to ensure that the planner has properly mapped and accounted for all of the land use factors in the Odor Site Index calculation. (5)

Response: The statute does not require public notice and comment for odor management plan approvals. However, the public will have access to proposed plans, and an opportunity to provide comments, during the approval process. The plans will be approved by the Commission, or the local county conservation district. Those approvals will be made at public meetings, and access to the final plan will be allowed prior to the meetings. This is the same process followed for Nutrient Management Plans under Act 38.

In addition, due process is provided under the statute by virtue of the ability to appeal Commission approval of a plan to the Environmental Hearing Board.

### **Definitions (Sections 83.701)**

10. Comments: The term "impact" fails to include two of the major sources of conflict related to agricultural operations, health concerns (e.g. asthma) and diminished property values of neighbors, and therefore fails to fulfill the purpose of ACRE in resolving all of the conflicts between facility operators and their rural neighbors. (5)

It is not clear what is intended by the exclusion of health effects and property values in Paragraph (ii). In the statutory criteria for eligibility for financial assistance, the SCC must consider whether a project will "improve the health, safety or environment of the people...." (3 Pa. C.S.A. § 511(b)(1)) Public health is also mentioned in civil penalties and remedies (3 Pa. C.S.A. § 514(d)). Moreover, what "conflicts" remain after the exclusion of health effects or changes in property value? Why would an odor that caused the health effect of loss of appetite be excluded from impacts? The SCC needs to explain why Paragraph (ii) is appropriate in the definition of "impacts." (14)

By including this exception (definition of impacts – ii), we appreciate the SCC recognizing it should not extend its authority upon something that is perceived as an impact and not scientifically supported. (7)

Response: The statute requires odor management plans that "manage the impact of odors," but does not define the word "impact." The Commission has developed a use of that term that is consistent with the statute, based on consideration of the language

in the statute, and the nature of the science of odor management at agricultural operations in Pennsylvania at the time Act 38 was passed by the Legislature.

There is no clear indication in the statute that odor impacts must include mental and physical health effects, or changes in property values. The statutory references to health and safety in unrelated sections listed by one commenter were provisions contained in the statute when it was the Nutrient Management Act, which addressed water quality impacts from nutrient pollution. Those impacts were well known at the time the Nutrient Management Act was passed. The situation was very different for odors in 2005 when the Legislature added these new provisions to the Nutrient Management Act and created Act 38.

When Act 38 became law in 2005, there was an existing odor management program offered by the Penn State University School of Agriculture. This program, funded by the Pennsylvania Department of Agriculture and the SCC, provided free odor management planning services for new and expanding farms that chose to participate. The program was well-known to the legislature—indeed, the factors and criteria used in § 504(1.1) are very similar to the ones used by the Penn State University voluntary odor management program. Therefore, the Commission believes that the Legislature intended that the odor management requirements under Act 38 would follow the then-existing Penn State program. In addition, the Commission has relied on the experience from this existing Penn State University voluntary odor management program, with their nearly a decade of research that relates specifically to Pennsylvania conditions, to develop the Commission's regulatory odor management program.

The Penn State University voluntary odor management program was developed over several years using data from hundreds of personal interviews by Penn State researchers, who studied the main indicator of “odor impacts”—conflicts between farms and their neighbors. The conflicts were essentially objections raised or asserted by neighbors to the odors from new and expanded operations after they became operational. The Penn State researchers were able to identify the various factors that caused these conflicts, including those that were later contained in §504(1.1)(i) of the statute. Notably, this scientific research did not address mental and physical health effects, or changes in property values.

The Penn State University research also included evaluation of measures which can be taken to minimize these conflicts, such as the location and positioning of new farm buildings and other structures. This aspect of the research supports the second step in managing odor impacts, using “available technology, practices, standards and strategies to manage odor impacts,” as required by §504(1.1)(ii) of the statute. Again, the measures were directed at minimizing the causes for conflicts, not for addressing any health or property value effects.

Therefore, the Commission believes that the final form regulation stays true to the intent of the Legislature when Act 38 was passed. If the Legislature desires to expand

the scope of the odor management program in the future to encompass these other issues, then the Commission will revise these regulations accordingly.

11. Comment: The term “expansion” should be defined in the odor management regulations because its meaning is critical to determining whether a facility must develop an odor management plan. We would suggest that the term expansion could be defined as creating additional space or size for housing animals or volume for storing manure at an already existing facility. (5)

Response: The Commission agrees with this comment. The final form regulations includes a definition for expand and expansion.

12. Comment: The term “erecting” should either be defined in the odor management regulations or removed. We suggest that the term erecting could be defined as raising or setting up a facility. If the Commission cannot adequately define the term erecting, we recommend removing it from Sections 83.741(b)(2)(i) and (ii) as it appears to be synonymous with construction. (5)

Response: In the Act, 3 Pa. C.S.A. §509(a), “erecting” and “constructing” are used interchangeably. Since the words are synonymous, the final form regulations (§§ 83.741(b)(2)(i), 83.741(b)(2)(ii) & 83.741(d)) have been revised to use forms of the verb “construct”.

13. Comment: The definition of the terms “construction” and “construction activities” in the odor management regulations should be revised because their meaning is critical to determining whether a facility must develop an odor management plan and as currently defined the terms can be manipulated to avoid becoming part of the regulated community. If the SCC does not intend the terms to be synonymous, then both terms, “construction” and “construction activity,” should be specifically defined in Section 83.701. We suggest that construction and construction activities should be jointly defined in Section 83.701 as follows:

Construction and construction activities – the act or process of systematically building, forming, assembling or otherwise putting together a facility or parts of a facility.

(a) The terms do not include any of the following, which are related to animal housing facilities:

(1) replacement of existing equipment at an existing animal housing facility,  
or

(2) replacement of an existing animal housing facility in existence as of \_\_\_\_\_ that has been destroyed by fire, flooding, wind, other acts of God, vandalism, or other similar circumstances beyond the operator’s control with a facility that is of similar footprint, size and animal capacity.

(b) The terms do not include any of the following, which are related to manure management facilities:

- (1) improving storage integrity with less than or equal to a 15% increase in storage volume as measured from the storage volume of the facility at the time the odor management plan was approved, or
- (2) adding treatment technology, such as solids separation and composting, and their associated facilities, to agricultural operations in existence as of \_\_\_\_\_ provided that the treatment technology is designed, built and operated consistent with the Commission's current "Odor Management Guidance." (5)

Response: The final form regulation has been revised to include a definition for construction and construction activities. The final form regulation has also been revised to say that the percentage increase will be measured from the current manure storage volume as verified by the approved Nutrient Management Plan. Section 83.742 will be deleted in the final form regulation, since it is incorporated into the definition of construction and construction activities.

#### **Scope & Purpose (Sections 83.702 & .703)**

14. Comment: Pennsylvania's final Facility Odor Management Regulations, as established under Act 38 of 2005, must reflect the goal of Pennsylvania's Odor Management Program—to manage odors from newly constructed and expanded Concentrated Animal Operations (CAOs) and Concentrated Animal Feeding Operations (CAFOs). The regulations must acknowledge that odor management at these facilities does not equate to the complete elimination of odors. We commend the proposed rulemaking for recognizing that odors are, by nature, subjective—and for recognizing that the complete elimination of odors from CAO and CAFO facilities would be unrealistic and cost-prohibitive for Pennsylvania's farmers. (8)

The regulations and guidance need to retain the concept that odor management is the goal of this program, and that the complete elimination of odors on or from these facilities is unrealistic. The process needs to minimize, to the extent that is practical and economically feasible, the potential effect the odors generated on the new facility may have on existing neighbors at the time the plan was developed. (9, 4, 13)

Response: The Commission agrees with these comments. In §83.703(3) and in § 83.771(a), the regulations state that odor management plans are not required to completely eliminate the potential for impacts from the offsite migration of odors associated with agricultural operations.

#### **Financial Assistance for Plan Development and Implementation (Sections 83.711 & .721)**

15. Comment: The regulations should allow for financial assistance for plan development for all existing animal agriculture operations including those that are required to develop an Odor Management Plan due to an expansion. (4, 8, 9)



Response: The Commission agrees with this comment. The final form regulation has been revised to allow the Commission to support plan development for all operations in existence as of the effective date of the regulations. Plan development is key to addressing odor management issues from farming operations and the Commission believes that it is important to support efforts to develop these plans on all farms in the state.

16. Comment: The regulations should allow for financial assistance for Odor BMP installation for all existing animal agriculture operations that are required to develop an Odor Management Plan due to an expansion. (4)

Response: The final form regulation states that when the Commission requires construction of a manure management facility as part of the nutrient management program requirements, an existing (non-expanding) agricultural operation may apply for financial assistance for the implementation of odor management plans. The Commission believes that an operation should be expected to pay for any operational changes and facilities that are necessitated due to a farm expansion.

17. Comment: One of the biggest concerns I see is how much it will cost the farmer from the beginning, getting the plans written, to the end, being implemented, in the three years they have to get the entire plan installed properly. I believe it can be done, but a greater financial assistance has to be present. (1)

Response: The Commission has had this concern in mind throughout the regulatory development process. The Commission believes that we need to support plan development for any existing agricultural operation that agrees to develop a plan, as this is an important initiative for all farmers to implement. The Commission is relying on the private sector to provide planning efforts for participating farmers, as the program does not have sufficient resources to certify and provide publicly funded specialists to provide these efforts. As described previously in this Comment-Response document, the planning process provides flexibility to a farmer to select BMPs or facility locations that can best meet the goals of the farmer and this program, including some BMPs and actions that may cost very little to implement.

#### **Limitation of Liability (Section 83.706)**

18. Comment: Can regulations provide this level of legal relief or should this provision be more properly included in statute? (6)

Response: This provision simply repeats the language in the statute, at 3 Pa. C.S.A. §515 Therefore, no additional liability protection is provided in the regulation.

19. Comments: While the odor management regulations state that they provide liability protection to the regulated community, developing and maintaining an odor management plan does not eliminate liability related to odor issues.

- Because the plan only covers certain facilities on a farming operation, it can only grant liability protection to those parts covered by the plan.
- Additionally, an odor management plan only covers certain odor “impacts,” as discussed above in subsection (II)(A). The plan can therefore only provide liability protection for the impacts that are addressed in the plan (i.e. low level nuisance odor claims). This leaves the operator vulnerable to claims related to egregious nuisance odors (i.e. health claims and diminution of property values).
- Additionally, there is also a constitutional limitation on the amount of liability protection the government can give to one property owner at the expense of another. (5)

Response: This provision in the regulation simply repeats language in the statute, at 3 Pa. C.S.A. §515. Therefore, the regulation does not add to, or subtract from, liability protection provided under Pennsylvania law, including Chapters 3 and 5 of Act 38. The comment does not suggest changes to the regulation, so the Commission declines to respond to the legal conclusions made.

#### **Compliance Assistance and Enforcement (Section 83.707)**

20. Comment: The Commission should add to the regulations, details describing the fines and penalties that the regulated community will face if they violate the regulations or the terms of their odor management plans, as well as who has enforcement authority. (5)

Response: The Commission disagrees with this comment. The statute already details penalties and remedies, in 3 Pa. C.S.A. §§513 – 514.

21. Comment: Program volunteers must be subjected to the same fines and penalties as the regulated community. Volunteers must be held to the requirements of their plans if they choose to include their facilities in the program and benefit from inclusion in the program. (5)

Response: Commission disagrees with the first part of this comment. However, nothing in the final form regulation changes the basic prerequisite for liability protection in Act 38 of 2005, as described in response number 19.

#### **Delegation to Local Agencies (Section 83.731)**

22. Comments: “Local agencies” are defined by state law to be something other than county conservation districts. Therefore, we suggest that this section be re-titled as “Delegation to County Conservation Districts.” (6)

Response: The Commission agrees with this comment. The final form regulation has this new title for this section of the regulations.

23. Comments: We recommend that the Commission not delegate administrative or enforcement authority, so that Pennsylvania's odor management program will be carried out at the state level, especially during the initial phase. (8)

Response: The Commission intends to work through emerging program issues as it initiates implementation of this new Odor Management program. The Commission does not have any plans to delegate its administrative or enforcement authority until at least the initial issues are worked through.

### **Odor Management Plans (Section 83.741)**

#### **Applicability – (b)**

24. Comment: How will this regulation affect existing operations not building new facilities that become subject to a new housing development or multiple new neighbors? (1)

Response: An agricultural operation is not regulated under the Act and these regulations until two criteria are met: 1) the agricultural operation is now, or becomes a Concentrated Animal Operation (CAO) or a Concentrated Animal Feeding Operation (CAFO) and 2) construction of new or expanding animal housing and/or manure storage facilities occur.

Both criteria must be met to trigger the requirement for an Odor Management Plan. Previously existing animal housing facilities and manure storage facilities are not regulated under this regulation.

25. Comment: How will new technologies be accepted and incorporated into the regulations? The new technologies must be affordable for the farmer. (1)

Response: The Commission has worked, and will continue to work closely with various scientists at Penn State, as well as state and federal agencies (such as PDA, DEP and the USDA Natural Resource Conservation Service) to ensure that the regulations truly capture the state of the science to manage odors from livestock operations' housing and manure storage facilities.

The final form regulation has been developed with the assistance and guidance of numerous agriculture industry representatives and the Nutrient Management Advisory Board. This involvement of industry and university professions ensures that the final regulatory package will be practical for implementation by the agricultural industry and that the regulation will accommodate inclusion of the latest industry technology in order have effective odor management plans.

The regulations, in §83.781(e), provide the ability for agricultural operations to implement "supplemental" Odor Best Management Practices in addition to the approved Odor BMPs in the plan, without having to get approval from the Commission. These are additional, as opposed to substitute, BMPs. The Commission

believes that this will facilitate finding new technologies for odor management that are considered affordable from the agricultural operations' perspectives.

Lastly, the regulation allows for planners to propose new BMPs, not included in existing resource documents, to address odor impacts from an operation. These new BMPs, when proposed to the Commission, will be reviewed by the Commission staff and their scientific advisors to determine the relevance and therefore acceptance of these new BMPs.

#### Scope of Plan - (d)

26. Comment: Paragraphs (1) and (2) use the term "facility" in a manner that suggests that the odor management plan need only address the animal units in the "facility" as opposed to doing a plan that accounts for all the animals in the agricultural operation. If the "facility" is an expansion to house 10 pigs, and those 10 pigs makes the operation a CAO or CAFO, must the odor management plan be designed to address the odor only from the 10 pigs in the new "facility" or will it require that the operation address the odor from the total number of animals since the additional animals will cause the operation to become a CAO or CAFO? (6)

Response: Section 509 of Act 38 of 2005, 3 Pa. C.S.A. §509, provides that an odor management plan shall be developed and implemented "only with respect to the new facility or the newly erected or newly constructed portion of the facility" on CAOs or CAFOs. Therefore, the Commission does not have the legal authority to expand the scope of the plan requirement.

#### Qualifications - (h)

27. Comment: Subsection (h) relies upon certification procedures not yet finalized by the Department of Agriculture. For the final regulation, the SCC should include a cross-reference to the Department of Agriculture's final regulation. (14)

Response: The Department of Agriculture published the proposed Odor Management Specialist Certification regulations on October 27, 2007. The Department of Agriculture has completed their efforts to address the comments received and these certification regulations are going through the final review steps and are expected to be published as final in June of 2008. The Commission has provided in their Facility Odor Management regulations, the citation to the Department of Agriculture's certification regulations.

### Identification of Construction Activities (Section 83.742)

28. Comment: We question the need for both paragraphs (1) and (2), when they both address the replacement of existing structures, regardless of the reason for the replacement. We suggest just keeping paragraph (1). (6)

Response: Paragraph (a)(1) refers to replacing equipment within an existing animal housing facility whereas (a)(2) refers to replacing the entire pre-existing animal housing facility. The Commission believes that the regulatory language helps to clarify the scope of construction activities governed by the regulation, and is not redundant.

29. Comment: Paragraph (b)(1) exempts "improving storage integrity with less than or equal to a 15% increase in storage volume." The regulation does not specify how to make the 15% comparison. For example, the regulation could be interpreted to allow multiple 10% improvements as long as a single improvement does not exceed the 15% limit. The regulation should specify how to determine the percentage increase to qualify for the exemption. (14)

Response: The Commission agrees that this issue needed further refinement in the regulations. The final regulation has been revised to state that the measurement of increased volume will be assessed from the current manure storage volume as verified by the approved Nutrient Management Plan. Section 83.742 will be deleted in the final form regulation since it is now incorporated into the definition of construction and construction activities in section 83.701.

30. Comments: It is essential that certain activities be excluded from "construction" activities that would otherwise require development of an odor management plan. These non-construction activities include: 1) Replacement of existing equipment at an existing animal housing facility; 2) Replacement of an existing animal housing facility in existence as of the date of the proposed rulemaking's adoption; 3) Improving manure storage integrity with less than or equal to a 15% increase in storage volume; and 4) Adding treatment technology, such as solids separation and composting, and their associated facilities to ag operations in existence as of the time of the proposed rulemaking's adoption.

- To treat such equipment/facility replacement and manure storage facility upgrades as drivers for odor management plan development would serve as a disincentive for farmers to make environmentally-sound improvements to their operations.
- We believe that where the footprint of an operation remains essentially the same, activities such as the ones described above should not require development of an odor management plan. (8)

Response: The Commission agrees with this comment, as reflected in the final form regulations.

### **Content of Plans (Section 83.751)**

31. Comments: We suggest that the language "and with any local land use ordinances" be added to the end of paragraph (c). (6)

Response: The Commission disagrees with this comment. The comment could allow for a local ordinance to impair the Commission's ability to approve an odor management plan, even if that ordinance was in conflict with the regulations. This is contrary to the intent of Section 519 of Act 38, as well as Chapter 3 of Act 38, which establish and protect the preemption of the state-wide odor management program over certain local laws and regulations.

32. Comments: We support the provision stating that the CAO or CAFO operator shall be involved in the development of the plan. This provision allows a farmer to choose the specific management practice(s) that he believes are best-suited for his operation. (8)

Response: The final form regulation continues to provide this provision.

### **Plan Summary – Identification of Ag Operation (Section 83.761)**

33. Comment: Subparagraph (a)(2)(iii) requires a plan to include a description of land use of the "surrounding area." The scope of the "surrounding area" is not clear. This could be interpreted to require a description of adjacent land use, township land use, county land use, etc. The regulation should specify what land use needs to be described. (14)

Response: This phraseology is taken verbatim from the statute, found in §504(1.1)(i). In the final form regulations, sections 83.761(a)(2)(iii), 83.761(b)(3) have been removed as they were redundant and therefore creating confusion. Sections 83.771(b)(1) and 83.771(b)(2) have been revised to clarify the criteria needed to conduct an evaluation.

The "surrounding land use" criterion is given meaning in 83.771(b)(4), where the types of uses to be considered are listed. Beyond these basic criteria, further details are described in the Commission's Odor Management Guidance, where Surrounding Land Use Factors are described for completing an Odor Site Index. The Guidance is not a requirement, but is available to persons preparing odor management plans.

### **General**

34. Comments: We support the Level I and Level II odor best management practice (BMP) concept proposed in the regulations and Draft Odor Management Guidance. We believe that some facilities may be able to satisfy odor management requirements simply by implementing the Level 1 BMPs commonly considered industry standards. Regarding Level II BMPs, we do not believe there can be any strict value assigned to the effectiveness of a given odor management practice on a given operation, nor do we

believe that there is a set number of Level II BMPs appropriate to address a particular odor site index score on a given operation. (9, 8)

There is no "one-size-fits-all" Odor BMPs that will be right for all facilities with a high Odor Site Index value. The determination of what and how many Level II Odor BMPs are needed for a particular farm requires a management specific review of the site to ensure that all characteristics of the given farm situation and surrounding area are taken into account. (8)

We support the flexibility provided in the three levels (None, Level I, and Level II) of Odor BMP requirements to address various situations across the commonwealth. (4)

Response: The Commission agrees with these comments and the final form regulation continues to provide this flexibility.

35. Comment: The regulations along with the Guidance require Odor BMPs to be both practical and economically feasible. When dealing with a High OSI score, what assurances are there to the producer that the Commonwealth's reviewer will not require Odor Best Management Practices that are neither practical nor economically feasible? (4)

Response: The Commission is necessarily guided by the statute and the regulations when performing reviews of odor management plans.

36. Comments: In the spirit of more openness to public records and information, the Commission should make the information on Level II Odor BMP accessible and free of cost to the public. (2, 4)

The Commission should identify potential level II Odor BMPs for livestock producers, their planners, and state regulators. I have attached several lists of odor practices by species that you may want to consider. (5)

The SCC should make Level 2 BMPs accessible to the public free of cost. It stated its understanding that level 2 BMPs will be maintained on a secure website and will not be available to the general public. We are concerned that pertinent information may not be readily available to the person most affected by the financial impact of the odor management plan. The SCC should explain what information is not publicly available, why it is not available, the projected cost to obtain the information and why the regulation is reasonable. (14)

Response: The Commission agrees with this comment. The regulations list three possible reference sources for Level 2 Odor BMPs. The Commission has restructured these lists to ensure that they are all open and available to the public through the Commission's free website. For individuals that do not have access to the internet, the Commission will provide these BMP lists to the public upon request.

Evaluation – (b)

37. Comment: Paragraph (b)(1) requires an evaluation of the "direction of the prevailing winds." The direction of the prevailing wind is one of the components of the calculation of the Odor Site Index which in turn determines the level of Odor Best Management Practices (BMPs) required. Manipulation or error in determining the direction of the prevailing wind can therefore undermine the effectiveness of the Odor Management Plan. The SCC should explain how the direction of the prevailing wind must be determined. (14)

Response: As per our technical experts at Penn State University, prevailing winds in Pennsylvania are commonly from the West-Northwest. Therefore for the purposes of this program the Commission uses West to Northwest as the prevailing wind direction. The final form regulation has been revised to explicitly indicate that West and Northwest will be presumed to be the prevailing wind direction under the Act 38 Facility Odor Management program.

38. Comments: Paragraph (b)(2) requires consideration of the "land use of the surrounding area" at the time of plan submission. Does this refer to all local land use ordinances currently in effect? (6)

The Commission should further define the scope of land use issues that the evaluation will assess. (9)

The scope of the "surrounding area" is not clear. This could be interpreted to require a description of adjacent land use, township land use, county land use, etc. The regulation should specify what land use needs to be described. We have the same concern with the phrase "surrounding area" in Sections 83.771(b)(1) and (2). (14)

The odor management plan should only need to assess the impact on existing homes, businesses, etc at the time of plan development not the planned land uses. This could be clarified in the regulations by deleting the word "approved" in this sentence. (9, 4, 8)

Farmers must not be expected to re-evaluate their odor management plan where their operation remains consistent but the surrounding land use changes. (11)

The term "approved land use" should be further defined. The Commission needs to further explain both what is intended by the term "approved" and define which land uses will need to be considered in the plan.

- Is "approved" intended to mean merely, for example, approved zoning or that adjoining land is part of a municipal comprehensive plan for a particular use (residential, commercial, etc), whether or not that is the actual current use? If so, then why should an OMP need to address something that *might* or *might not* happen at some undetermined time in the future?



- The language also needs to be more specific with respect to what *type* of “approved” land uses should be considered. (13)

Response: The Commission generally agrees with these comments. See Response #33.

39. Comment: Paragraph (b)(3) states that the number of AEU’s “may” be used for the purposes of calculating the evaluation distance. We suggest this be changed to “shall”. (6)

Response: The Commission agrees with this comment. The final form regulation has been revised to state that AEU’s “shall” be used for determining the evaluation distance used within the program.

40. Comments: Paragraph (b)(5): We support the proposed regulations focus on appropriate facility siting through the use of an odor site index. (7, 8)

We support the regulations relying on proper siting of facilities through the use of an odor site index, and then providing reasonable additional Odor BMP implementation requirements only on those farms that the Odor Site Index demonstrates may have a higher level of impact on their neighbors. (9, 4)

Response: The Commission agrees with this comment, as reflected in the final form regulations.

#### Time period to implement- (d)

41. Comment: The 3 year deadline for implementing the plan should relate to the start of “construction” on the new facility, not “use” of the new facility. The regulations should be revised so the sentence would read: “If construction of the new or expanded facility does not commence ...” (9, 7, 4)

This provision of the regulations should be revised to allow the Commission discretion to extend or toll this 3-year timeframe for situations where the necessary permits and approvals have not been able to be obtained in time to initiate construction prior to the 3-year deadline. (9, 8, 4)

We support the requirement in Section 83.801(f) that an operator get a new plan if the new or expanded facility does not commence construction within three years of the date of plan approval. (5)

Response: The Commission agrees with the concerns expressed in these comments. In the final form regulation section 83.801(f) has been revised to remove the redundant language. In addition, section 83.771(d) has been revised to clarify that an evaluation must be redone (via a new plan) if construction activities of the regulated facility are not started within three years from the date of plan approval. This section

of the regulation has also been revised to allow the Commission to extend the 3-year deadline, not to exceed an additional 2 years, for situations where due to circumstances beyond the reasonable control of the operation, including delays caused by permitting of the facility, the agricultural operation was not able to obtain the necessary permits and approvals in time to initiate construction activities within the 3-year timeframe.

#### **Identification of Odor BMPs (Section 83.781)**

42. Comment: There are two vague phrases in this section. Subsection (b) states BMPs are only required if they are "feasible from a practical and economic perspective." Subparagraph (c)(1)(i) uses the phrase "normal maintenance activities used in the industry in this Commonwealth." These phrases are subjective. The SCC should amend these phrases so that they set a specific standard to be followed by the regulated community and enforced by the SCC. (14)

Response: The phrase "feasible from a practical and economic perspective" comes directly from the Act. The Commission has provided the operator the opportunity in these regulations to select from a significant number of possible BMPs to address odor sources on their operation. The operator can select those BMPs that they would consider practical and economically feasible for their operation. The final form regulation eliminates the phrase "normal maintenance activities used in the industry in this Commonwealth" as this wording has been determined to not provide any additional clarity to the regulations. The regulation now states that the Level I BMPs are intended to mean management-oriented measures, whereas Level 2 BMPs are structurally-oriented and other non-management based measures.

#### **Implementation Schedule (Section 83.782)**

43. Comment: Paragraph (b) states that compliance is assumed if any plantings needed are in place. We suggest that there be some provision to require that compliance be assumed only if any required plantings are maintained in a healthy state to accomplish the filtering capacity they were designed to provide. (6)

Response: The Commission agrees with this comment. Paragraph (b) provides that the planting will be considered fully implemented if that planting satisfies the criteria and standards outlined in the approved odor management plan. In order for the operator to maintain compliance following the startup of the operation, the operator will be required to maintain the plantings in a healthy state consistent with the operation and maintenance provisions of the approved plan.

#### **Documentation (Sections 83.791 & 83.792)**

44. Comments: The record keeping obligations that will be developed for this program need to be practical for the agricultural operation. A number of the proposed odor BMPs are

part of the agricultural operations regular operation and maintenance programs, and to expect extensive daily recordkeeping is unrealistic. (4, 7, 8, 9)

We recommend that any specific recordkeeping requirements in the final rulemaking take the form of a checklist and/or a statement attesting that the itemized BMPs are being carried out on a daily, regular or as-needed basis (as applicable). (8)

We are not sure if this issue can be addressed in the regulations, or if it will need to be addressed in Commission policy. As a regulatory remedy, we recommend deleting section 83.791(b). (9)

These sections require recordkeeping and we note they reasonably allow the records to be kept onsite. However, commentators questioned what records will satisfy the requirements for recordkeeping. They questioned whether records are necessary for level 1 BMPs which are essentially routine maintenance of a farm. We agree that the regulation and Preamble do not contain sufficient information to evaluate what records will be required. We cannot determine what forms are required or the frequency of data entry onto the forms. The SCC should explain the typical recordkeeping envisioned, specify in the regulation the recordkeeping requirements and project the cost of preparing and storing the records. (14)

Response: In the final form regulations, section 83.791(b) has been deleted; the Commission is not requiring use of a Commission generated form. The titles for sections 83.791 and 83.792 have been changed to use the word "documentation" to better reflect that the Commission is not requiring a standard form and that the Commission will accept and require a wide range of formats for this documentation, depending on the BMP being installed. Section 83.792 has been revised to require that the plan identify the types of documentation needed to demonstrate compliance with the plan. Section 83.762(3) has been revised to replace the word "records" with documentation and documentation of plan implementation activities. This documentation will be required for all BMPs installed under an approved Facility Odor Management Plan. The documentation requirement is not expected to create any additional costs on the producer over what they would normally incur as part of their normal business practices. An example of this documentation would include contractor invoices and as-built design sketches relating to the implementation of a Windbreak/Shelterbelt BMP.

45. Comment: The regulations should require record submission and allow public access to submitted records documenting implementation and maintenance of an odor management plan to ensure that odor management plans are not merely "shelved" as has happened in the past with other planning documents that do not require submitting documentation to the regulating authority.
- o The SCC or county conservation district will be inspecting a facility with an odor management plan once a year, so allowing the public to have access to quarterly inspection reports is likely to help identify problems related to implementation

and maintenance of the odor management plan's requirements long before an inspector arrives. (5)

Response: The Commission believes that compliance can be accomplished effectively through the maintenance of documents on site at the operation. Annual inspections by program staff of the approved operations, as well as additional visits in response to any complaints from neighbors, will provide adequate opportunity for program staff to ensure that the operator is complying with the operation and maintenance provisions of the plan.

#### **Initial Plan Review and Approval (Section 83.801)**

46. Comment: The last part of the second sentence in Paragraph (c) should be re-written as follows: "The Commission or a delegated conservation district may confer with experts in odor management... of the local community of the agricultural operation that is being evaluated in which the agricultural operation is located." (6)

Response: The Commission agrees with this comment. The final form regulation has been revised to incorporate this change.

47. Comment: Under 3 Pa. C.S.A. § 509(d) *Plan review and approval*, "[W]ithin 90 days of receipt of an odor management plan or plan amendment, the reviewing agency shall approve or disapprove the plan or plan amendment." The statute also provides that a complete plan can be implemented "if the reviewing agency fails to act within 90 days of submittal." However, Subsection (d) of the regulation states: If the Commission or delegated conservation district does not act on the plan within the 90-day period, the agricultural operation that submitted the plan is authorized to implement the plan. The Commission or delegated conservation district will thereafter have another 90 days to complete review of the plan, beginning on the expiration of the initial 90-day review period. If the Commission or delegated conservation district fails to act within the second 90-day period, it will be deemed approved. (Emphasis added.) This provision adds a second 90-day review period that is not in 3 Pa. C.S.A. § 509(d). The SCC needs to delete this second 90-day period from the regulation or explain the authority of a reviewing agency to review a plan after it does not act on the plan within the initial 90 days. (14)

Response: Following further review, the Commission concurs that the second 90-day review period is not explicitly stated in the Act for Odor Management. The second 90-day review period has been removed from the final form regulation.

#### **Plan Amendments (Section 83.811)**

48. Comments: Since agricultural operations cannot control what development takes place in the area surrounding the facility, the regulations should allow agricultural operations to make plan amendments without having to rerun the Odor Site Index. During the entire

life of the Odor Management Plan, the active Odor Management Plan should rely on data and information developed during the completion of the initial Odor Site Index. (4)

This section of the regulations should be revised to allow a farmer who is not making any operational changes on his farm, to submit a plan amendment just proposing to amend which Level II Odor BMPs they will use, without having to rerun the entire plan, including the Odor Site Index.

- If a farmer is required to rerun the entire plan, and rerun the index for these sorts of revised Odor BMP amendments, it may serve as a disincentive to farmers considering implementation of new or different Odor BMPs that may better address the odor issues found to be associated with the facility. (9)

We recommend that farmers be given the flexibility to switch one approved Level-2 BMP for another without having to re-file a plan amendment or re-run the odor site index. Such flexibility should encourage farmers to implement the most effective odor BMPs for their operation as technology changes and new odor management options become available. (11)

The regulations should be clear that filing a plan amendment will not necessitate recalculation of the odor site index. Or, if there are situations when the Commission feels this would be necessary, the regulations should be clear that the “off-farm” components of the index to be included are the same as when the plan was initially approved. (13)

An operator should be able to amend an OMP simply to implement a different or additional odor BMP without the entire original OMP being subject to review. (13, 7)

Subsection (a) requires a plan amendment, but does not specify the amount of information required. Does the level of detail required in a plan amendment differ from an initial plan? The regulation should specify the information required in a plan amendment. (14)

Commentators are concerned that using a new technology could trigger the need for an amendment. Can a farm operator upgrade equipment without the need for a plan amendment? (14)

Response: A change in Odor BMPs on an operation with an approved plan will require only an amendment to the Odor BMP section of the plan and not require the operator to amend the remainder of the plan including the Odor Site Index. But if the operator has triggered any of the significant operation changes as outlined in Section 83.811(b), a full plan amendment, requiring the rewrite of the entire plan, will be required including rerunning the Odor Site Index for the operation. Also, an operator may implement a new technology for odor control, while continuing to implement their current approved practices, without having to go through the plan amendment process.

The level of detail for a plan amendment is the same as the level of detail for an initial plan submission. The difference is that a plan amendment may not require a revision to the entire plan, but may only require a revision to the portion of the plan being revised (as when proposing to replace one BMP with another, see section 83.811(d) and the response below).

49. Comment: The regulated community should be required to renew or update an odor management plan at designated intervals (we suggest every three years consistent with the nutrient management plan), particularly in light of continued technological advances in odor abatement.

- It is possible for odor management plans to be updated based upon the original Odor Site Index score; therefore, operators would not have to recalculate their Odor Site Index score, but any changes in Level I and Level II BMPs would be required to be implemented by the operator during some review or renewal period. (5)

Response: The Commission disagrees with this comment. The Commission continues to believe that requiring changes to Odor BMPs after approval would not allow the operator to fully consider financial obligations of the program when they are initially planning for a new or expanded operation. The Commission is however facilitating use of newer Odor BMPs by the use of supplemental Odor BMPs, as described in section 83.781(e), as well as in allowing the changing of existing approved Odor BMPs, which will then need to be incorporated into the approved plan through plan updates or plan amendments.

50. Comment: The proposed regulations do not state whether an odor management plan must be followed indefinitely or only until the BMPs are installed. (5)

Response: Odor management plans need to be implemented as long as the operation is subject to the regulations. Section 83.706 provides limitation of liability only if the operator for an agricultural operation is fully and properly implementing and maintaining an approved odor management plan. Section 83.782 requires the odor management plan to contain an implementation schedule that details the timeframes that the Odor BMPs will be implemented. Section 83.762 requires the operator to sign a statement committing to maintaining the Odor BMPs consistent with the operation and maintenance criteria in the plan. Section 83.783 requires the odor management plan to contain an operation and maintenance schedule that details the timeframes and lifespan that the identified operation and maintenance procedures that will be conducted on the operation. Section 83.792 requires the agricultural operation to maintain records that supports the actions taken on implementing those approved schedules. Section 83.783 of the final form regulations have been revised to require that the Odor BMP Operation and Maintenance section of the plan identify the lifespan for each of the BMPs listed on the plan (in addition to the implementation time frames).

51. Comment: Paragraph (b)(1): The Commission should change the language of Section 83.811(b)(1) to read, "a net increase of greater than 10% in AEU's as measured from the AEU's when the odor management plan was approved" consistent with the definition of "significant change" in the nutrient management regulations. This will prevent circumventing the requirement to update the odor management plan through incremental increases in AEU's. (5)

Response: The Commission agrees with the commentator that the regulations need to indicate when the change in AEU's will be evaluated from. The final form regulation incorporates this change in Section 83.811(b)(1) as suggested by the commentator. The Commission continues to believe that a 25% change is most relevant when dealing specifically with odor issues, not 10% as used for considering nutrient issues.

52. Comments: Paragraph (b)(3): What level of change to an operational management system will necessitate an amendment to the Odor Management Plan? This sentence in the regulations is very open ended and does not provide the agricultural industry sufficient direction when an amendment would be necessary. (4, 9, 8)

The other requirements for an amendment to the Odor Management Plan are sufficient to address when operations need to amend their Odor Management Plan. We recommend the elimination of this requirement from the regulations. (4)

We would expect that the requirement to amend the plan when there is a change to the "operational management system" would only relate to wholesale changes to the manure management system used on the operation, creating an increase in odors coming from the site. This needs to be further clarified in the proposed regulations. (9)

What parameters will be used and who will determine if "*a change in the operational management system*" might be "*expected to result in an increase in the offsite migration of odors*"? 83.811(b)(1) and (b)(2) are easily quantifiable "triggers" for a plan amendment. On the other hand (b)(3), as written, is vague and subjective. I recommend that it either be deleted entirely or be expanded to require that any of certain specified operational changes must be evaluated for their impact on offsite odor migration. (13)

Paragraph (b)(3) requires a plan amendment if a change in an operational management system "is expected to result in an increase in the potential for offsite migration of odors." (Emphasis added.) This provision is vague and it is not clear how the farm operator can make the judgments required. Would an odor management specialist have to be consulted similar to Subsection (d)? We recommend amending Paragraph (b)(3) to provide a clear standard. (14)

Response: The Commission agrees with these comments. This amendment trigger has been eliminated from the final form regulations as it does not provide any additional clarity to the regulations that is not already addressed in Sections 83.811(b)(1 and 2).

**Plan Transfers (Section 83.812)**

53. Comment: Paragraph (a) should state that new signatures required by 83.741(i) must be obtained before a plan is transferred to any new operator. (6)

Response: The Commission agrees with this comment and Section 83.812 of the final form regulation has been revised to incorporate this change.



## **Notice of Final Rulemaking**

### **State Conservation Commission**

#### **[25 Pa CODE CH. 83] Facility Odor Management**

#### **Order**

The State Conservation Commission (Commission) promulgates final regulations governing odor management at certain facilities and agricultural operations. These regulations are authorized by the act of July 6, 2005 (Act 38 of 2005)(3 Pa. C.S. §§ 501 - 522 (formerly the Nutrient Management Act, 3 P.S. §§ 1701--1718) (hereinafter referred to as "Act 38").

This final-form regulation was adopted at the Commission's meeting of July 29, 2008.

#### ***A. Effective Date***

These regulations will go into effect 90 days after publication in the *Pennsylvania Bulletin* as final rulemaking.

#### ***B. Contact Person***

For further information, contact Karl G. Brown, Executive Secretary, State Conservation Commission, Suite 407, Agriculture Building, 2301 North Cameron Street, Harrisburg, PA 17110, (717) 787-8821. Persons with a disability may use the AT&T Relay Service by calling (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This final-form regulation is available on the Commission's website:  
<http://www.agriculture.state.pa.us/agriculture/cwp/view.asp?a=3&q=127144>.

#### ***C. Statutory Authority***

These final-form regulations are promulgated under the authority of Section 504(1.1) of Act 38, 3 Pa. C.S.A. §§ 504(1.1), which authorizes the Commission to promulgate regulations establishing practices, technologies, standards, strategies and other requirements for odor management plans; Section 4 of the Conservation District Law (3 P.S. § 852), which authorizes the Commission to promulgate rules and regulations as may be necessary to carry out its functions; and Section 503(d) of the Conservation and Natural Resources Act (71 P.S. § 1340.503(d)), which modified the authority and responsibilities of the Commission, the Department of Environmental Protection (DEP) and the Department of Agriculture.

#### ***D. Background and Introduction***

Act 38 was signed by Governor Rendell on July 6, 2005, and constituted an important part of his initiative to protect Agriculture, Communities and the Rural Environment (ACRE). As part of that initiative, the DEP and the SCC promulgated other regulations implementing Act

38 provisions addressing water quality issues in 2005 – 2006. At the same time, various funding, technical assistance and policy development programs aimed at supporting Pennsylvania agriculture were started and expanded during that same timeframe. Examples are: the SCC's enhanced Plan Development Incentives Program to support phosphorus based nutrient management plan writing, grants for alternative manure utilization and technologies projects, expanded agricultural compliance technical assistance and expanded regulatory oversight over the farm community.

These final-form regulations address the concerns of communities about odors generated at new and expanding agricultural operations. They require odor management plans for manure storage facilities and animal housing facilities at the operations most likely to elicit public concerns from neighbors – concentrated animal operations (CAOs) and concentrated animal feeding operations (CAFOs).

CAOs and CAFOs fall under a very comprehensive set of water quality regulations which have recently been updated to address current environmental issues. CAOs must meet various requirements under 25 Pa. Code Chapter 83, administered by the SCC and delegated county conservation districts. CAFOs must follow permitting requirements under the National Pollutant Discharge Elimination System (NPDES) regulations administered by DEP under 25 Pa. Code Chapter 92. Those regulations address water quality, not odor management.

These final-form odor management regulations were developed in close coordination with several groups. First, the Nutrient Management Advisory Board (NMAB) was highly involved with the development of these regulations. The NMAB represents a wide range of agricultural, academic, governmental, environmental, and private interests. A special NMAB committee was formed and met with SCC staff more than 20 times between 2006 and 2008, providing strong direction and assistance to the SCC staff in developing this regulation. The committee and SCC staff led discussions of the proposed regulations with the full NMAB on April 13, 2006, July 13, 2006, December 5, 2006, February 6, 2007, July 12, 2007, September 5, 2007, October 10, 2007, and April 24, 2008. The NMAB approved this final-form regulation on April 24, 2008, and passed it on to the SCC with their recommendation for SCC approval.

In addition to the extensive involvement of the NMAB, SCC staff has worked closely with a team of experts on odor management at the Pennsylvania State University (PSU). These experts have developed and refined an odor management planning process over the last several years. This process was the one the Legislature had in mind when it passed the odor management provisions of Act 38. Key elements of this process have been incorporated into this proposed regulation and are described in some detail below.

The SCC staff also worked with a third group – an interagency team of agriculture experts from the Department of Agriculture, the USDA Natural Resources Conservation Service (NRCS), county conservation districts, DEP, the Penn State College of Agricultural Sciences and Penn State Extension.

The State Conservation Commission staff provided briefings on the regulations as they were being developed and finalized, to numerous groups representing local government, industry

and the public. The Agriculture Air Quality Task Force also received briefings on the draft regulations during 2006.

Finally, SCC held two public meetings and two public hearings in order to solicit comments on the proposed regulations. The two meetings were held on October 1, 2007 and October 4, 2007 in Dubois and Lancaster, respectively. The two hearings were held on October 8, 2007 and October 11, 2007 in Dubois and Lancaster, respectively.

This final-form regulation incorporates the input from all the parties described above, in addition to the 12 commentators that provided formal comments on the proposed regulations during the 60-day comment period. This final-form regulation follows the format of the nutrient management regulations in Chapter 83, to facilitate comprehension by the regulated community and others familiar with those regulations.

Two key aspects of these regulations bear special mention. First, the regulations are limited in their scope to odors associated with new or expanding manure management and animal housing facilities at CAOs and CAFOs. These regulations do not otherwise apply to existing agricultural operations, and they do not address odor from land application of manure. These limitations reflect the odor management provisions in Act 38.

Second, the odor management plans are not required to eliminate odors. Under Act 38, they only need to include reasonably available technology, practices, standards and strategies to manage odor impacts, considering both the practical and economic feasibility of installation and operation and the potential impacts from the facilities. This aspect of the statute reflects the impracticality of completely eliminating odors associated with agricultural operations, as well as the evolving nature of the science of odor management and of the regulation of odor management. The legislature was obviously cognizant of the subjective nature of odors in rural areas and the difficulties in eliminating and regulating them. The Commission has developed this proposal with that legislative dictate in mind.

#### ***E. Summary of Changes from the Proposed Regulations.***

##### **General**

Clarifying and stylistic changes to the existing regulations are made throughout these revisions. Many changes are intended to address changes requested by the Independent Regulatory Review Commission to conform to the Regulatory Review Act, 71 P.S. §§ 745.1 et seq. Some of these will be described below.

Numerous commentators expressed their support of the Commission's proposal. Commentators expressed that the process outlined in the proposed regulations is a balanced and flexible approach of addressing odor management from animal production operations. The proposal was described by a majority of the commentators as being practical for the farm community to implement.

A majority of the commentators indicated their support of the Commission's position to assess an operation based on the characteristics of the area existing at the time of the plan development. Also they strongly supported the concept of not requiring plan amendments unless the farm is proposing a significant expansion or new construction activity that would be expected to increase the impacts from odors generated from the site. These commentators expressed that a person moving into an area next to an existing animal operation should consider the possible impacts from the farm as they are assessing the area, and not hold the farmer responsible to add additional odor BMPs to address new neighbors moving into the area, unless the farmer is making changes to the farm at the same time.

A commentator expressed the need for the Commission to meet with representatives from the Pennsylvania State Association of Township Supervisors (PSATS) and builders organizations in order to discuss the problems created when residential development is encouraged to take place in close proximity to farming areas. The Commission agrees with this comment and will make the effort to actively reach out to these entities to help them understand how their efforts, in combination with these new requirements, can help minimize conflicts with agricultural operations in their area.

A commentator expressed that the public should be given access to the processes involved in developing and maintaining an odor management plan. The program as developed under these regulations will provide the public with access to proposed plans, and an opportunity to provide comments, during the approval process. The plans will be approved by the Commission, or the local county conservation district. Those approvals will be made at public meetings, and access to the final plan will be allowed prior to the meetings. This is the same process followed for Nutrient Management Plans under Act 38.

### **Definitions (Section 83.701)**

**Impact:** Two commentators expressed some concern relating to the definition of the term "impact" as used in the regulations. The proposed definition excluded the assessment of property values and health effects when assessing the potential impact of an operation on the neighboring landowners. These two commentators questioned why those issues were not included in this definition. One additional commentator expressed support for the Commission's definition of "impact" and supported the lack of any requirement to consider these issues.

The statute requires odor management plans that "manage the impact of odors," but does not define the word "impact." The Commission has developed a use of that term that is consistent with the statute, based on consideration of the language in the statute, and the nature of the science of odor management at agricultural operations in Pennsylvania at the time Act 38 was passed by the Legislature.

There is no clear indication in the statute that odor impacts must include mental and physical health affects, or changes in property values. The statutory references to health and safety in unrelated sections listed by one commenter were provisions contained in the statute when it was the Nutrient Management Act, which addressed solely water quality impacts from nutrient pollution. Those impacts were well known at the time the Nutrient Management Act was

passed. The situation was very different for odors in 2005 when the Legislature added these new provisions to the Nutrient Management Act and created Act 38.

When Act 38 became law in 2005, there was an existing odor management program offered by the Penn State University School of Agriculture. The program was well-known to the legislature—indeed, the factors and criteria used in § 504(1.1) are very similar to the ones used by the Penn State University voluntary odor management program. Therefore, the Commission believes that the Legislature intended that the odor management requirements under Act 38 would follow the then-existing Penn State program.

The Penn State University voluntary odor management program was developed over several years using data from hundreds of personal interviews by Penn State researchers, who studied the main indicator of “odor impacts”—conflicts between farms and their neighbors. The conflicts were essentially objections raised or asserted by neighbors to the odors from new and expanded operations after they became operational. The Penn State researchers were able to identify the various factors that caused these conflicts, including those that were later contained in §504(1.1)(i) of the statute. Notably, this scientific research did not address mental and physical health effects, or changes in property values.

The Penn State University research also included evaluation of measures which can be taken to minimize these conflicts, such as the location and positioning of new farm buildings and other structures. Again, the measures were directed at minimizing the causes for conflicts, not for addressing any health or property value effects.

Therefore, the Commission believes that the final form regulation stays true to the intent of the Legislature when Act 38 was passed. If the Legislature desires to expand the scope of the odor management program in the future to encompass these other issues, then the Commission will revise these regulations accordingly.

**Expansion:** The term expansion was suggested to be defined in the regulation in order to provide consistent implementation of the regulation. The Commission agreed with the comment and included a definition of this term in the final form regulation.

**Construction:** This term was suggested to be included in the definition section of the regulations in order to further program consistency. The Commission agreed with this comment and included this definition. Section 83.742 of the proposed regulations was deleted in the final form regulation, since it is incorporated into the definition of construction and construction activities.

#### **Financial Assistance for Plan Development and Implementation (Sections 83.711 and 83.721)**

**Plan development:** Commentators suggested that the Commission allow for plan development funding for any existing animal operation, including expanding operations. The Commission agreed with this comment and therefore the final form regulation has been revised to allow the Commission to support plan development for all operations in existence as of the

effective date of the regulations. Plan development is key to addressing odor management issues from farming operations and the Commission believes that it is important to support efforts to develop these plans on all farms in the state.

#### **Delegation to Local Agencies (Section 83.731)**

**Titles:** A commentator expressed the confusion that could exist with the title of this section. The title implies that the Commission may delegate to various local agencies, where the statute only permits delegation to properly qualified conservation districts. The Commission agreed with the comment and revised the title to more accurately reflect that only conservation districts will be considered by the Commission for delegation of authority under this new regulation.

#### **Odor Management Plans (Section 83.741)**

**Types of Operations:** The Commission discovered that it failed to include one of the circumstances by which a farm could change its animal density and therefore become a CAO and possibly a CAFO. The final form regulation was revised to include the situation where a farm operation may lose acreage and therefore fall under the CAO and possibly CAFO designation.

#### **Identification of construction activities (Section 83.742)**

**Expanding a manure storage when improving storage integrity:** The proposed regulations stated that when improving the integrity of an existing storage, if the operator does not expand the facility by more than 15% then the activity would not be considered construction for the purposes of planning under the act. A commentator indicated that the Commission should define from what point in time that 15% expansion is to be measured from. The Commission has revised this wording (which now resides in the definition section under "construction") to say that that the percentage increase will be measured from the current manure storage volume as verified by the approved Nutrient Management Plan.

**Replacing a destroyed animal facility:** A commentator expressed support of the Commission's direction to allow replacement of a destroyed animal housing facility with one of similar size. The Commission further clarified this wording by stating that if the replacement building has a similar animal capacity as the one that was destroyed, then this activity would not be considered construction for the purposes of planning under the act.

#### **Content of plans (Section 83.751)\**

**Conformance with local ordinances:** A commentator expressed that the Commission should add wording to this section of the regulations to state that odor management plans need to be consistent with any local land use ordinance. The Commission believes that the incorporation of this comment could allow for a local ordinance to impair the Commission's ability to approve an odor management plan, even if that ordinance was in conflict with the regulations. This is contrary to the intent of Section 519 of Act 38, as well as Chapter 3 of Act 38, which establish

and protect the preemption of the state-wide odor management program over certain local laws and regulations.

#### **Plan Summary – Identification of ag operations and regulated facilities (Section 83.761)**

**Surrounding land use:** Comments were provided which indicated that the readers were confused about the scope of the assessment required by the Commission relating to the “surrounding land use”. In the final form regulations, sections 83.761(a)(2)(iii), 83.761(b)(3) have been removed as they were redundant and therefore creating confusion. Sections 83.771(b)(1) and 83.771(b)(2) have been revised to clarify the criteria needed to conduct an evaluation.

The “surrounding land use” criterion is given meaning in 83.771(b)(4), where the types of uses to be considered are listed. Beyond these basic criteria, further details are described in the Commission’s Odor Management Guidance, where Surrounding Land Use Factors are described for completing an Odor Site Index. The Guidance is not a requirement, but is available to persons preparing odor management plans.

**Prevailing winds:** A commentator questioned how the program was proposing to assess the direction of the prevailing winds during plan development. The prevailing winds text was removed from this section of the regulations but it remains in the Evaluation section of the regulations. As per the technical experts at Penn State University, prevailing winds in Pennsylvania are commonly from the West-Northwest. Therefore for the purposes of this program the Commission uses West to Northwest as the prevailing wind direction. The final form regulation has been revised to explicitly indicate that West and Northwest will be presumed to be the prevailing wind direction under the Act 38 Facility Odor Management program.

#### **Plan Summary – Operator Commitment Statement (Section 83.762)**

**Documentation requirements:** Section 83.762(3) has been revised to replace the word “records” with “documentation” and “documentation of plan implementation activities”, consistent with the revisions made in Section 83.791.

#### **Managing Odors (Section 83.771)**

**Accessibility of BMP information:** Many commentators expressed a concern that some of the information relating to the level II Odor BMPs would only be available if the person requesting that information could pay for the copy right and duplication fees imposed on those documents. The regulations list three possible reference sources for Level 2 Odor BMPs. The Commission has restructured these lists to ensure that they are all open and available to the public through the Commission’s free website. For individuals that do not have access to the internet, the Commission will provide these BMP lists upon request at no charge to the public.

**Use of AEUs to determine evaluation distance:** A commentator indicated that the Commission should specifically identify what criteria will be used for determining evaluation distance for odor management planning purposes. Paragraph (b)(3) was not definitive enough

for the reader to feel comfortable in understanding how the Commission would make this determination. The Commission agreed with this comment and the final form regulation has been revised to state that AEU's "shall" be used for determining the evaluation distance used within the program.

**Time period to implement:** It was obvious through the various comments the Commission received on this topic that many readers were confused about the 3-year lifespan of an approved plan. In the final form regulation section 83.801(f) has been revised to remove the redundant language. In addition, section 83.771(d) has been revised to clarify that an evaluation must be redone (via a new plan) if construction activities on the regulated facility are not started within three years from the date of plan approval. This section of the regulation has also been revised to allow the Commission to extend the 3-year deadline, not to exceed an additional 2 years, for situations where due to circumstances beyond the reasonable control of the operation, including delays caused by permitting of the facility, the agricultural operation was not able to obtain the necessary permits and approvals in time to initiate construction activities within the 3-year timeframe.

#### **Identification of odor BMPs (Section 83.781)**

**Vague language:** A commentator expressed the concern that language used within this section of the regulation was too vague to allow the regulated community to implement the standards, and to allow the Commission to enforce the program. The phrase "feasible from a practical and economic perspective" comes directly from the Act. The Commission has provided the operator the opportunity in these regulations to select from a significant number of possible BMPs to address odor sources on their operation. The operator can select those BMPs that they would consider practical and economically feasible for their operation. The final form regulation eliminates the phrase "normal maintenance activities used in the industry in this Commonwealth" as this wording has been determined to not provide any additional clarity to the regulations. The regulation now states that the Level I BMPs are intended to mean management-oriented measures, whereas Level 2 BMPs are structurally-oriented and other non-management based measures.

#### **Operation and maintenance schedule (Section 83.783)**

**Lifespan of the required BMPs:** A commentator expressed the concern that the regulations do not state whether the odor management plan needs to be followed indefinitely or only until the BMPs are installed. The Commission agreed with this comment and added language into this paragraph to indicate that the plan will need to include the lifespan of the various BMPs required in the plan. The BMPs would then need to be maintained, in accordance with program standards, for the entire lifespan documented in the plan.

#### **General recordkeeping requirements and Recordkeeping relating to odor BMPs (Sections 83.791 and 83.792)**

**Practicality of the recordkeeping requirement:** Several commentators expressed a concern about the scope and practicality of the recordkeeping expectations of the Commission.



Commentators have expressed the variability of records that may be required based on the type of BMPs required. In the final form regulations, section 83.791(b) has been deleted; the Commission is not requiring use of a Commission generated form. The titles for sections 83.791 and 83.792 have been changed to use the word "documentation" to better reflect that the Commission is not requiring a standard form and that the Commission will accept and require a wide range of formats for this documentation, depending on the BMP being installed.

Section 83.792 has been revised to require that the plan identify the types of documentation needed to demonstrate compliance with the plan. This documentation will be required for all BMPs installed under an approved Facility Odor Management Plan. An example of this documentation would include contractor invoices and as-built design sketches relating to the implementation of a Windbreak/Shelterbelt BMP.

**Submission of records for public review:** A commentator suggested the Commission should require in regulations that records required under this program be submitted to the conservation district or Commission so that they would be available for public review. The Commission has included language in 83.792 indicating that the required documentation shall be maintained on site. The Commission believes that compliance can be accomplished effectively through the maintenance of documents on site at the operation. Annual inspections by program staff of the approved operations, as well as additional visits in response to any complaints from neighbors, will provide adequate opportunity for program staff to ensure that the operator is complying with the operation and maintenance provisions of the plan.

#### **Initial plan review and approval (Section 83.801)**

**Nutrient Management Advisory Board review:** A commentator notified the Commission that the second 90-day review period allowed for in the proposed regulations was not authorized in the law. The Commission concurs that the second 90-day review period is not explicitly stated in the Act for Odor Management and therefore the second 90-day review period has been removed from the final form regulation.

The allowance in paragraph (c) for the Commission or the farmer to obtain a formal recommendation on the plan proposal from a committee of the Nutrient Management Advisory Board was also removed in the final form regulation due to the 90-day review restriction. The Commission recognizes that in order to accommodate the initially proposed process of obtaining a recommendation from an outside Committee of the Advisory Board, the plan review activity would take longer than 90 days allowed for this action.

**Lifespan of the approved plan:** The wording relating to this issue was removed from paragraph (f) because it was determined to be redundant since this issue is addressed in its entirety in Section 83.771(d).

### **Plan implementation (Section 83.802)**

**Documentation:** Wording was changed in paragraph (b) from “records” to “plan implementation documentation” to be consistent with the changes made in Sections 83.791 and 83.792.

### **Plan amendments (Section 83.811)**

**Assessing farm expansion for amendment purposes:** A commentator indicated that the proposed regulations did not provide enough clarity in paragraph (b)(1) to explain how incremental changes in animal numbers would affect the amendment trigger. The Commission agrees with the commentator that the regulations need to indicate when the change in AEUs will be evaluated from. The final form regulation incorporates this change in Section 83.811(b)(1) as suggested by the commentator. Also in this paragraph it was suggested that the amendment trigger be revised to 10%, similar to the nutrient management plan amendment trigger. The Commission continues to believe that a 25% change is most relevant when dealing specifically with odor issues, not 10% as used for considering nutrient issues.

**Amendments due to a change in the “operational management system”:** The Commission received extensive comments on this amendment trigger provided in paragraph (b)(3) of the proposed regulation. Commentators are concerned of how this amendment trigger would be evaluated and interpreted by the Commission. The Commission agrees with these comments. This amendment trigger has been eliminated from the final form regulations as it does not provide any additional clarity to the regulations that is not already addressed in Sections 83.811(b)(1 and 2).

**Amendments to revise odor BMPs:** Numerous commentators expressed a concern that the proposed regulations did not facilitate operators changing their plans to implement innovative, more effective BMPs than those originally included in the approved odor management plan. The Commission agreed with these comments. Revised Section 83.811(d) provides an operator with an opportunity to propose a change to the Odor BMPs listed on their approved nutrient management plan through amending only the Odor BMP section of the plan and not require the operator to amend the remainder of the plan including the Odor Site Index. But if the operator has triggered any of the significant operation changes as outlined in Section 83.811(b), a full plan amendment, requiring the rewrite of the entire plan, will be required including rerunning the Odor Site Index for the operation.

### **Plan transfers (Section 83.812)**

**Signatures for plan transfers:** Paragraph (a) was revised consistent with submitted comments in order to clarify that a new operator must sign off on the plan prior to the plan being considered as transferred to the new operator. This signature indicates that the new operator concurs with the information in the plan and agrees to carry out the plan.

## ***F. Benefits, Costs and Paperwork***

### ***1. Benefits***

The main benefit of these regulations is to establish a level of regulatory requirements regarding agricultural odor management that does not currently exist in Pennsylvania's rural communities. It is part of the balanced approach embodied in the Governor's ACRE initiative.

The Commission has developed the final-form regulations in close coordination with various federal, state and local agencies and institutions. These include: the Nutrient Management Advisory Board and the Board's Odor Management Committee, the Pennsylvania State University College of Agriculture, PDA, DEP, the NRCS, various county conservation districts, and Penn State Extension.

Farmers will benefit from these regulations in several ways. First, implementation of an odor management plan approved by the SCC affords important legal protections under Act 38. Second, odor management is an important issue in rural Pennsylvania, and these regulations will help to minimize conflicts between farmers and their neighbors, especially in areas where there is suburban encroachment into rural areas.

### ***2. Costs***

The cost of implementing these final-form regulations will mainly impact the regulated community and the state government. These state government costs are most readily seen in the financial assistance that the Commission is proposing to provide for 1) plan development, and 2) for plan implementation.

Note that CAO and CAFO farms that construct animal housing facilities or manure storage facilities are required to get an odor management plan.

#### **Costs to the regulated community:**

Development of Odor Management Plans: Based on the Commission's experience with the nutrient management program costs, and the projected time to conduct a site assessment for the proposed OMP, the Commission anticipates that the average cost for an OMP will be \$1,120 per OMP.

The Commission anticipates that 90 operations a year will develop odor management plans under this regulation annually. This will equate to a total annual planning cost to the farm community of \$100,800, of which a portion of this will be offset through the Commission's plan development cost share program.

Implementation of Odor Management Plans: The final-form regulations provide for multiple levels of Odor BMPs; anticipates that there will be no new cost to the regulated community until Level 2 Odor BMPs are required to be implemented and maintained. The cost for implementing Level 2 BMPs on a given farm are extremely variable. Based on the Commission's assessment

of the various BMPs that may be installed, and the general costs for installing these BMPs, the Commission has determined an average cost of installing level 2 BMPs on a farm to be \$15,000. Please note that each plan uses site specific criteria, and that there will be large variability in the Level 2 odor BMPs implemented on regulated operations. Some farms needing Level 2 BMPs may only need to expend less than \$500 to implement these BMPs where other farms needing Level 2 BMPs may need to be expend thousands of dollars.

The Commission anticipates that 17 operations a year will develop odor management plans requiring Level 2 BMPs. This will equate to a total annual plan implementation cost to the farm community of \$255,800, of which a portion of this will be offset through the Commission's plan implementation cost share program for certain eligible farms.

Retention of documentation and BMP standards: The Commission has revised the principal reference document to be used for identifying possible level II BMPs. This Odor BMP Reference List will now be made available to the public at no cost, therefore eliminating any possible costs associated with researching the principal odor management BMPs available for use under the program.

The Commission has revised its recordkeeping section in the final form regulations to allow for a wide variety of documentation to verify BMP implementation and maintenance compliance. This documentation is expected to be a part of normal farm operations and is not expected to impose any additional program compliance costs on the regulated community.

### **Costs to the Commonwealth**

Development of Odor Management Plans: The final-form regulations provide for the State, via the Commission, to provide funding for Financial Assistance for Plan Development to offset the cost of developing odor management plans for farmers whose agricultural operations are in existence as of the effective date of these proposed regulations. This funding is similar to the Commission's Plan Development Incentives Program (PDIP) that has provided cost share funding to farmers for the development of nutrient management plans since 1997. This new state cost share program, proposed to fund 75% of the cost of developing an odor management plan, is essential to ensure that farmers are not negatively impacted by these CAO and CAFO planning requirements. Applying the 75% state cost share rate currently proposed for this program, the anticipated government cost per funded plan would be \$840 (\$1120 total cost, \$840 cost share, \$280 farmer cost).

The Commission anticipates that 65 operations will be eligible annually for the Commission's Plan Development Incentives Program. This will equate to a total annual plan development cost share amount from the state of \$54,600.

Implementation of Odor Management Plans: The final-form regulations authorize funding to offset the implementation of odor BMPs on certain participating operations installing manure storage facilities. This new grants program is proposed to provide support at an 80% state cost share rate. At the anticipated average cost for implementing a Level II Odor BMP of \$15,000,

the 80% cost share rate would equate to \$12,000 in state cost share funds per operation receiving this assistance (\$15,000 total cost, \$12,000 cost share, \$3,000 farmer cost).

The Commission anticipates that 6 operations will be eligible (according to the eligibility limitations outlined in the final form regulation) annually for the Commission's cost share program to support odor management plan implementation. This will equate to a total annual plan implementation cost share amount from the state of \$72,000.

State Conservation Commission: The Commission will continue to spend approximately \$60,000 per year for Commission staff wages and expenses.

Technical Assistance: The Commission will continue to contract with Penn State to provide technical and educational assistance in the development and implementation of this new odor management regulation as well as PDA's Odor Management Specialist Certification Program. This project is funded at \$10,000 per year.

### ***3. Paperwork Requirements***

The regulations have been written to minimize paperwork but still maintain program integrity and tracking. Farmers are required to keep records on their farm, but are not required to submit those documents to the Commission.

### ***G. Sunset Review***

The Commission will evaluate the effectiveness of these final-form regulations on an ongoing basis. Therefore, no sunset date is being established for the regulations.

### ***H. Regulatory Review***

Under Section 5(a) of the Regulatory Review Act, (71 P.S. § 745.5(a)), on August 22, 2007, the Commission submitted a copy of the proposed regulations, published at 37 *Pa.B.* 4780 (September 1, 2007), to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Agriculture and Rural Affairs Committee and the Senate Agriculture and Rural Affairs Committee. In addition to submitting the proposed regulations, the Commission provided IRRC and the Committees with a copy of a detailed regulatory analysis form.

Under section 5(c) of the Regulatory Review Act, IRRC and the Committees were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing these final-form regulations, the Commission has considered all comments from IRRC, the Committees and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P.S. § 745.5a(j.2)), on           (blank)          , these final-form regulations were deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on           (blank)           and approved the final-form regulations.

### ***I. Findings of the Commission***

The Commission finds that:

- (1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201 and 1202) and regulations promulgated thereunder at *1 Pennsylvania Code* §§ 7.1 and 7.2.
- (2) A public comment period was provided as required by law, and all comments were considered.
- (3) These regulations do not enlarge the purpose of the proposal published at *37 Pennsylvania Bulletin* 4780 (September 1, 2007).
- (4) These regulations are necessary and appropriate for administration and enforcement of the authorizing laws identified in Section C of this order.

### ***J. Order of the Commission***

The Commission, acting under the authorizing statutes, orders that:

- (a) The regulations of the Commission, 25 Pa. Code Chapter 83, Subchapter G, are amended to read as set forth in Annex A.
- (b) The Chairperson of the Commission shall submit this order and Annex A to the Office of General Counsel and the Office of Attorney General for review and approval as to legality and form, as required by law.
- (d) The Chairperson of the Commission shall submit this order and Annex A to the Independent Regulatory Review Commission and the Senate and House Environmental Resources and Energy Committees as required by the Regulatory Review Act.
- (e) The Chairperson of the Commission shall certify this order and Annex A and deposit them with the Legislative Reference Bureau, as required by law.
- (f) This order shall take effect immediately.

BY:

JOSEPH R. POWERS,  
Acting Chairman  
State Conservation Commission

## **Annex A**

### **TITLE 25. ENVIRONMENTAL PROTECTION**

#### **PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION**

##### **Subpart C. PROTECTION OF NATURAL RESOURCES**

##### **ARTICLE I. LAND RESOURCES**

#### **CHAPTER 83. STATE CONSERVATION COMMISSION**

##### **Subchapter G. FACILITY ODOR MANAGEMENT**

*(Editor's Note: The following chapter is new. It has been printed in regular type to enhance readability.)*

##### **GENERAL PROVISIONS**

Sec.

83.701. Definitions.

83.702. Scope.

83.703. Purpose.

83.704. Relation to Subchapter D (relating to nutrient management regulations).

83.705. Preemption of local ordinances.

83.706. Limitation of liability.

83.707. Compliance assistance and enforcement.

##### **FINANCIAL ASSISTANCE FOR PLAN DEVELOPMENT**

83.711. Applicant eligibility.

##### **FINANCIAL ASSISTANCE FOR PLAN IMPLEMENTATION**

83.721. Applicant eligibility.

##### **DELEGATION TO [LOCAL AGENCIES] CONSERVATION DISTRICTS**

83.731. Delegation to [local agencies] Conservation Districts.

##### **ODOR MANAGEMENT PLANS**

83.741. General.

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## CONTENT REQUIREMENTS FOR ALL PLANS

83.751. Content of plans.

## PLAN SUMMARY INFORMATION

83.761. Identification of agricultural operations and regulated facilities.

83.762. Operator commitment statement.

## MANAGING ODORS

83.771. Managing odors.

## ODOR BMPs

83.781. Identification of Odor BMPs.

83.782. Implementation schedule.

83.783. Operation and maintenance schedule.

## [RECORDKEEPING] DOCUMENTATION [AND INFORMATIONAL] REQUIREMENTS

83.791. General [recordkeeping] documentation requirements.

83.792. [Recordkeeping] Documentation relating to [Odor BMPs] plan implementation.

## PLAN REVIEW AND IMPLEMENTATION

83.801. Initial plan review and approval.

83.802. Plan implementation.

## PLAN AMENDMENTS AND TRANSFERS

83.811. Plan amendments.

83.812. Plan transfers.

## GENERAL PROVISIONS

### **§ 83.701. Definitions.**



The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

*AEU--Animal equivalent unit*--One thousand pounds live weight of livestock or poultry animals, on an annualized basis, regardless of the actual number of individual animals comprising the unit.

*Act*--3 Pa.C.S. §§ 501--522 (relating to nutrient management and odor management).

*Agricultural operations*--The management and use of farming resources for the production of crops, livestock or poultry.

*Animal housing facility*--A roofed structure or facility, or any portion thereof, used for occupation by livestock or poultry.

*CAFO--Concentrated animal feeding operation*--An agricultural operation that meets the criteria established by the Department in regulations under the authority of The Clean Streams Law (35 P. S. §§ 691.1--691.1001), found in Chapter 92 (relating to National Pollutant Discharge Elimination System Permitting, Monitoring and Compliance).

*CAO--Concentrated animal operation*--Agricultural operations with eight or more animal equivalent units where the animal density exceeds two AEUs per acre on an annualized basis.

*Commission*--The State Conservation Commission established by the Conservation District Law (3 P. S. §§ 849--864).

*Conservation district*--A county conservation district established under the Conservation District Law.

*Construction, construction activities* – The act or process of systematically building, forming, assembling or otherwise putting together a facility or parts of a facility.

a. The terms do not include any of the following, when used in relation to the following activities at animal housing facilities:

1) Replacement of existing equipment at an existing animal housing facility, or

2) Replacement of an existing animal housing facility in existence as of (Editor's Note: The blank refers to the effective date of adoption of this proposed rulemaking) that has been destroyed by fire, flooding, wind, or other acts of God, vandalism, or other similar circumstances beyond the operator's control, with a facility that is of similar animal capacity.

b. The terms do not include any of the following, when used in relation to the following activities at manure management facilities:

1) Improving the integrity of an existing manure storage facility with no more than a 15% increase in manure storage volume as measured from the current storage volume documented in the approved nutrient management plan.

2) Adding treatment technology, such as solids separation, anaerobic digestion, and composting, and their associated facilities, on agricultural operations in existence as of (Editor's Note: The blank refers to the effective date of adoption of this proposed rulemaking) effective date of the regulations] provided that the treatment technology is designed, built and operated consistent with the Commission's current "Odor Management Guidance."

Expand, expansion – Creation of additional space of an animal housing facility by increasing the size of an animal housing facility, or increasing the volume of a manure storage facility by increasing the size of the manure storage facility.

*Facility*--Refers to the animal housing facility and manure management facility, or portion of a facility, which are required to be, or are voluntarily subject to this subchapter.

*Farming resources*--The animals, facilities and lands used for the production or raising of crops, livestock or poultry. The lands are limited to those located at the animal facility which are owned by the operator of the facility, and 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.

*Fund*--The Nutrient Management Fund established under section 512 of the act (relating to nutrient management fund).

*Impacts*--

- (i) Conflicts arising from the offsite migration of the odors from agricultural facilities.
- (ii) The term does not include mental or physical health affects, or changes in property values.

*Livestock*--

- (i) Animals raised, stabled, fed or maintained on an agricultural operation with the purpose of generating income or providing work, recreation or transportation.
- (ii) Examples include: dairy cows, beef cattle, goats, sheep, swine and horses.
- (iii) The term does not include aquatic species.

*Manure--*

- (i) Animal excrement, including poultry litter, which is produced at an agricultural operation.
- (ii) The term includes materials such as bedding, washwater and other materials which are commingled with that excrement.

*Manure management facility--*

- (i) A manure storage facility, including a permanent structure or facility, or a portion of a structure or facility, utilized for the primary purpose of containing manure.
- (ii) The term includes liquid manure structures, manure storage ponds, component reception pits and transfer pipes, containment structures built under a confinement building, permanent stacking and composting facilities and manure treatment facilities.
- (iii) The term does not include the animal confinement areas of poultry houses, horse stalls, free stall barns or bedded pack animal housing systems.

*OMP--Odor management plan--Plan--*

- (i) A written site-specific plan identifying the Odor BMPs to be implemented to manage the impact of odors generated from animal housing and manure management facilities located or to be located on the site.
- (ii) The term includes plans approved for VAOs and facilities not required to submit a plan under this subchapter.
- (iii) The term includes plan amendments required under this subchapter, except when otherwise stated.

*Odor BMP--Odor best management practice--*A practice or combination of practices, technologies, standards and strategies to manage the potential for odor impacts[from offsite migration of odors generated]from animal housing facilities and manure management facilities that are subject to this subchapter.

*Odor management specialist--*A person satisfying the certification requirements of the Department of Agriculture's proposed Odor Management Certification Program which will appear in 7 Pa. Code Chapter 130f (relating to odor management certification) upon final rulemaking by the Department of Agriculture.

*Odor Site Index--*The field evaluation methodology developed specifically for this Commonwealth and approved by the Commission, which applies site-specific factors such as proximity to adjoining landowners, land use of the surrounding area, type of structures proposed, species of animals, local topography and direction of the prevailing winds, to determine the potential for odor impacts [from the offsite migration of odors from agricultural operations].

*Offsite migration*--The airborne movement of odors past the property line of an agricultural operation.

*Public use facility*--Public schools, hospitals, public nursing homes/elder care facilities and apartment buildings with greater than four dwelling units.

*VAO*--*Voluntary agricultural operation*--

(i) Any operation that voluntarily agrees to meet the requirements of this subchapter even though it is not otherwise required under the act or this chapter to submit an odor management plan.

(ii) The term includes agricultural operations applying for financial assistance under the act.

### **§ 83.702. Scope.**

This subchapter specifies the criteria and requirements for:

(1) Odor management planning required under the act for certain facilities at CAOs and CAFOs.

(2) Voluntary odor management plans developed for VAOs and facilities not required to submit a plan under this subchapter, that are submitted to the Commission or delegated conservation district for approval under the act.

(3) The construction, location and operation of animal housing facilities and animal manure management facilities, and the expansion of existing facilities, as part of a plan developed under the act.

(4) The awarding of financial assistance under the act for the development and implementation of odor management plans for existing agricultural operations.

### **§ 83.703. Purpose.**

The purposes of this subchapter are as follows:

(1) To provide for the management of odors generated only from animal housing facilities and manure management facilities on certain CAOs and CAFOs, considering the following:

(i) Site-specific factors.

(ii) Reasonably available technology, practices, standards and strategies.

(iii) The practical and economic feasibility of installation and operation of the technology, practices, standards and strategies.

(iv) The potential impacts from the facilities that may lead to conflicts between the agricultural operation and neighbors, arising from the offsite migration of the odors.

(2) To apply scientific information on odor management that is current at the time of plan approval, using the factors in paragraph (1), and recognizing the limitations of that scientific information and the subjective nature of identifying and managing odor impacts from agriculture.

(3) Odor management plans are intended to address the potential for odor impacts [from the offsite migration of odors associated with agricultural operations]. The plans are not required to completely eliminate the potential for odor impacts [from the offsite migration of odors associated with agricultural operations].

(4) To encourage the management of odors generated from any VAOs and facilities, not required to submit a plan under this subchapter, consistent with paragraphs (1)--(3).

#### **§ 83.704. Relation to Subchapter D (relating to nutrient management regulations).**

This subchapter may not be construed as modifying, rescinding or superseding applicable manure management requirements for water quality protection contained in Subchapter D (relating to nutrient management).

#### **§ 83.705. Preemption of local ordinances.**

(a) The act and this subchapter are of Statewide concern and occupy the whole field of regulation regarding odor management to the exclusion of all local regulations.

(b) No ordinance or regulation of a political subdivision or home rule municipality may regulate the management of odors generated from animal housing or manure management facilities regulated by this chapter if the municipal ordinance or regulation is in conflict with this chapter and the regulations or guidelines promulgated under it.

(c) Nothing in the act or this subchapter prevents a political subdivision or home rule municipality from adopting and enforcing ordinances or regulations which are consistent with and no more stringent than the requirements of the act and this subchapter.

(d) A penalty may not be assessed under any valid local ordinance or regulation for any violation for which a penalty has been assessed under the act or this subchapter.

#### **§ 83.706. Limitation of liability.**

If an operator for an agricultural operation is fully and properly implementing and maintaining an odor management plan approved by the Commission or a delegated county conservation district under the act and this subchapter, the implementation shall be given appropriate

consideration as a mitigating factor in any civil action for penalties or damages alleged to have been caused by the odor impacts.

### **§ 83.707. Compliance assistance and enforcement.**

(a) The Department of Agriculture will assist the Commission in developing programs to assist those engaged in production agriculture to comply with the act and this subchapter.

(b) The Department of Agriculture will act as an ombudsman to help resolve issues related to county conservation district implementation of the act and this subchapter for those conservation districts delegated odor management program responsibilities under § 83.731 (relating to delegation to local agencies).

(c) The Commission will be responsible for taking enforcement actions under the act and this subchapter. In the exercise of its enforcement authority, the Commission will be assisted by the staff of the Departments of Agriculture and Environmental Protection.

## **FINANCIAL ASSISTANCE FOR PLAN DEVELOPMENT**

### **§ 83.711. Applicant eligibility.**

[(a) An existing agricultural operations existing as of \_\_\_\_\_ (*Editor's Note: The blank refers to the effective date of adoption of this proposed rulemaking.*) which are subject to this subchapter under § 83.741(b) (relating to [general]applicability) or 83.741(g) (relating to voluntary plans), [as of \_\_\_\_\_ (*Editor's Note: The blank refers to the effective date of adoption of this proposed rulemaking.*)], [are eligible to receive funding under this program][may apply for funding for the development of an odor management plan].

[ (b) Only existing agricultural operations erecting or constructing of new or expanded animal housing facilities, or the construction of new or expanded manure management facilities, as of \_\_\_\_\_ (*Editor's Note: The blank refers to the effective date of adoption of this proposed rulemaking.*), are eligible to receive funding under this program.]

## **FINANCIAL ASSISTANCE FOR PLAN IMPLEMENTATION**

### **§ 83.721. Applicant eligibility.**

An owner of an agricultural operation existing as of \_\_\_\_\_ (*Editor's Note: The blank refers to the effective date of adoption of this proposed rulemaking.*), may apply for financial assistance for the implementation of odor management plans developed under the act only when the Commission requires construction of a manure management facility as part of the nutrient management program requirements, as determined under Subchapter D (relating to nutrient management). The owner shall have legal and financial responsibility for the agricultural operation during the term of the financial assistance provided by the Commission.

## DELEGATION TO [LOCAL AGENCIES] CONSERVATION DISTRICTS

### § 83.731. Delegation to [local agencies] Conservation Districts.

(a) The Commission may by written agreement delegate to a conservation district one or more of its administrative or enforcement authorities under the act.

(b) The delegation of administrative or enforcement authority may be made to a conservation district when the district demonstrates it has or will have an adequate program and sufficient resources to accept and implement the delegation.

(c) To the extent delegated by the agreement, the delegations may include the authority to enforce the act and this subchapter and to exercise other powers and duties otherwise vested in the Commission to implement the act.

(d) A delegation agreement will:

(1) Specify the powers and duties to be performed by the delegated district.

(2) Provide for the commitment of sufficient trained staff and resources to perform the powers and duties to be delegated.

(3) Require the delegated conservation district to maintain records of activities performed under the delegation

## ODOR MANAGEMENT PLANS

### § 83.741. General.

(a) Odor management plans submitted under this subchapter must meet the requirements in §§ 83.741, 83.742, 83.751, 83.761, 83.762, 83.771 and 83.781--83.783.

(b) *Applicability.* Agricultural operations that meet the criteria of paragraphs (1) and (2) shall develop and implement an odor management plan:

(1) *Types of operations.* Operations that meet one of the following:

(i) CAOs and CAFOs existing as of \_\_\_\_\_ (*Editor's Note:* The blank refers to the effective date of adoption of this proposed rulemaking.).

(ii) Agricultural operations existing on \_\_\_\_\_ (*Editor's Note:* The blank refers to the effective date of adoption of this proposed rulemaking.) which, because of an increase, resulting from expansion or construction, in the number of animals maintained at the operation, will become regulated as either a CAO or CAFO.

(iii) Agricultural operations existing on \_\_\_\_\_ (Editor's Note: The blank refers to the effective date of adoption of this proposed rulemaking.) which, because of a decrease in lands available for manure application, will become regulated as either a CAO or CAFO.

([iiii]v) New agricultural operations after \_\_\_\_\_ (Editor's Note: The blank refers to the effective date of adoption of this proposed rulemaking.) which will be regulated as either a CAO or CAFO.

(2) *Types of activities.* Operations that meet one of the following:

(i) [Erecting or c] Constructing a new animal housing facility or a new manure management facility after \_\_\_\_\_ (Editor's Note: The blank refers to the effective date of adoption of this proposed rulemaking.).

(ii) [Erecting or c] Constructing an expansion of an animal housing facility or a manure management facility after \_\_\_\_\_ (Editor's Note: The blank refers to the effective date of adoption of this proposed rulemaking.).

(c) *Transition.* Agricultural operations that initiate facility construction prior to \_\_\_\_\_ (Editor's Note: The blank refers to the effective date of adoption of this proposed rulemaking.), are not required to develop and implement an odor management plan.

(d) *Scope of plan.*

(1) The odor management plan for activities under subsection (b)(2)(i) are only required to be developed and implemented with respect to the new facility.

(2) The odor management plan for activities under subsection (b)(2)(ii) are only required to be developed and implemented with respect to the [newly erected or ]newly constructed portion of the facility.

(e) *Schedule to obtain plan approval.* Operations required to have an odor management plan under this subchapter shall obtain approval of their odor management plan prior to the commencement of construction of new or expanded facilities.

(f) *Implementation of plans.*

(1) Operations required to have an odor management plan under this subchapter shall fully implement the approved plan prior to commencing use of the new or expanded animal housing facility and manure management facility.

(2) A plan is considered fully implemented when the Odor BMPs in the plan are being implemented in compliance with the schedule of Odor BMPs.



(g) *Voluntary plans.* An agricultural operation which is not required to comply with this subchapter may voluntarily submit a plan any time after \_\_\_\_\_ (*Editor's Note:* The blank refers to the effective date of adoption of this proposed rulemaking.).

(h) *Qualifications.* Plans shall be developed by odor management specialists certified in accordance with the Department of Agriculture's proposed odor management certification requirements which will appear in 7 Pa. Code Chapter 130f (relating to odor management certification) upon final rulemaking by the Department of Agriculture. The specialists shall certify that the plans are in accordance with the act and this subchapter.

(i) *Signature requirements.* Plans shall be signed by the operator of the agricultural operation indicating concurrence with the information in the plan and acceptance of responsibilities under the plan. The following signature requirements apply:

(i) For sole proprietorships, the proprietor.

(ii) For partnerships, a general partner.

(iii) For corporations, a vice president, president or authorized representative. The plan must contain an attachment executed by the secretary of the corporation which states that the person signing on behalf of the corporation is authorized to do so.

(j) *Penalties.* Operators and odor management specialists who sign plans may be subject to penalties for any false information contained in the plans.

#### **§ 83.742. [Identification of construction activities]Reserved.**

[(a) *Animal housing facilities.* The following are not considered to be construction activities requiring the development of an odor management plan under this subchapter:

(1) Replacement of existing equipment at an existing animal housing facility.

(2) Replacement of an existing animal housing facility in existence as of \_\_\_\_\_ (*Editor's Note:* The blank refers to the effective date of adoption of this proposed rulemaking.) that has been destroyed under circumstances beyond the operator's control.

(b) *Manure management facilities.* The following are not considered to be construction activities requiring the development of an odor management plan under this subchapter:

(1) Improving storage integrity with less than or equal to a 15% increase in storage volume.

(2) Adding treatment technology, such as solids separation and composting, and their associated facilities, to agricultural operations in existence as of \_\_\_\_\_ (*Editor's Note:* The blank refers to the effective date of adoption of this proposed rulemaking.) provided that the treatment technology is designed, constructed and operated consistent with the Commission's current "Odor Management Guidance."]

## CONTENT REQUIREMENTS FOR ALL PLANS

### § 83.751. Content of plans.

- (a) A plan must follow the standardized plan format provided by the Commission, unless otherwise approved by the Commission.
- (b) The operator shall be involved in the development of the plan.
- (c) The Odor BMPs listed in the plan must be consistent with the management practices listed in other relevant plans required by state regulations administered by the Commission or the Department, such as the nutrient management plan and Agriculture Erosion and Sedimentation Control plan developed for the operation, unless otherwise approved by the Commission or delegated conservation district.

## PLAN SUMMARY INFORMATION

### § 83.761. Identification of agricultural operations and regulated facilities.

(a) *Agricultural operation identification sheet.* The plan must include an agricultural operation identification sheet that contains the following information:

(1) The operator name, address and telephone number, and the address for the regulated facilities if that address is different from the operator's address.

(2) A description of the operation for both the existing and proposed facilities, clearly indicating the regulated facilities or portions thereof, or both, identifying how the odor will be addressed through the plan, including the following:

(i) Animal types and numbers included on the agricultural operation.

(ii) Types of structures proposed.

[ (iii) Land use of the surrounding area.]

(3) The signatures and documentation as required by § 83.741 (relating to general).

(4) The counties and municipalities where land included in the plan is located.

(5) The name, odor management certification program identification number and signature of the odor management specialist that prepared the plan and the date of plan preparation.

(b) *Maps.* The plan must include a topographic map drawn to scale identifying the lands where the facilities that are addressed in the plan are located. The [plan] map must clearly identify the following:

(1) The location and boundaries of the agricultural operation.

(2) The location of the neighboring homes, businesses, churches and public use facilities in the evaluation distances as determined by § 83.771(b)(3) (relating to managing odors).

[ (3) Land use of the surrounding area.]

[(4)3] Local topography.

[ (5) Direction of the prevailing winds.]

[(6)4] The location of proposed and existing animal housing and manure management facilities.

### **§ 83.762. Operator commitment statement.**

The plan must include a statement, signed by the operator, committing to the following:

(1) Implementation of the Odor BMPs.

(2) Maintaining the Odor BMPs consistent with the operation and maintenance criteria contained in the plan.

(3) Keeping [records] documentation of plan implementation activities, as described in the plan, and to allow access by the Commission or delegated conservation district to the [records] documentation needed to determine compliance status.

(4) Allowing access to the agricultural operation by the Commission or delegated conservation district needed for status reviews and inspections for complaints.

(5) Providing operator's biosecurity protocols to the Commission or a delegated conservation district, if requested.

## **MANAGING ODORS**

### **§ 83.771. Managing odors.**

(a) *General.* Odor management plans must address the offsite migration of odors generated from facilities, as described in subsections (b) and (c). Odor management plans are intended to address the potential for odor impacts [from the offsite migration of odors associated with agricultural operations]. The plans are not required to completely eliminate the potential for odor impacts [from the offsite migration of odors associated with agricultural operations].

(b) *Evaluation.* The plans must include an evaluation of the potential [offsite migration of odors] impacts according to the following:

(1) The evaluation must address proximity to [adjoining] neighboring landowners, land use of the surrounding area, type of structures proposed, species of animals, local topography and direction of the prevailing winds, according to the following:

[ (2) The evaluation need only consider the adjoining landowners and approved land use of the surrounding area, existing at the time of the submission of the plan.

(3) The number of AEUs on the agricultural operation may be used as the primary factor in determining the evaluation distance.]

(i) In order to establish the extent of the surrounding area to be included in this evaluation, an evaluation distance from the proposed facility shall be established. The number of AEUs on the agricultural operation shall be used as the primary factor in determining this evaluation distance.

(ii) The types of neighboring land owners and land uses that shall be assessed in this evaluation shall include homes, businesses, churches and public use facilities existing at the time of the submission of the plan.

([4]iii) The geographic center of a facility may be used [when considering] as the starting point for the evaluation distance and for determining proximity to neighboring homes, businesses, churches and public use facilities.

(iv) Prevailing winds are presumed to be coming from the West and Northwest.

([5]2) The criteria and procedures in the current "Odor Management Guidance" (Guidance) issued by the Commission, and in effect at the time of plan submission, may be used to comply with this paragraph, including the use of an Odor Site Index contained in the Guidance. If the criteria and procedures in the Guidance issued by the Commission are not followed, an alternative method must be approved by the Commission.

(c) *Odor BMPs.* Based on the evaluation in subsection (b), the plan must include Odor BMPs that are necessary, if any, to address the potential for offsite migration of odors to meet the purposes of this subchapter, and as described in § 83.781 (relating to identification of Odor BMPs).

(d) *Time period to implement.* If [use] construction activities of the new or expanded facility [does] do not commence within 3 years of the date of plan approval, a new plan shall be submitted and approved prior to construction of the facility subject to this subchapter. The Commission may allow for extensions of the 3-year timeframe, not to exceed an additional 2 years, where the agricultural operation was not able to obtain the necessary permits and approvals in time to initiate construction activities within the 3-year timeframe due to circumstances beyond the reasonable control of the operation.

## ODOR BMPS

### § 83.781. Identification of Odor BMPs.

(a) *General.* A plan must identify all existing and planned Odor BMPs used to address the potential for odor impacts from [the offsite migration of odors generated from] the facilities covered by the plan.

(b) *Odor BMPs.* Odor BMPs are only required if they are necessary to address the potential for impacts [from the offsite migration of odors], and installation and operation of the BMPs are feasible from a practical and economic perspective. The Commission may require the agricultural operation to demonstrate why a particular Odor BMP is not feasible from a practical and economic perspective for the given operation.

(c) *Level of Odor BMPs.*

(1) Based on the evaluation in § 83.771(b) (relating to managing odors), and the criteria in subsection (b), determine the Odor BMPs which need to be included in the plan, if any. If Odor BMPs are needed, the BMPs must meet one of the following levels:

(i) *Level 1 Odor BMPs.* Basic management-oriented Odor BMPs that are applicable to the operation according to the species of animals, such as Dust Management, Moisture Control, and Facility Sanitation, and that manage odors [by normal maintenance activities used in the industry in this Commonwealth]according to the purposes of this subchapter.

(ii) *Level 2 Odor BMPs.* Specialized non-management oriented Odor BMPs that are applicable to the type of operation, such as Windbreak Shelterbelts, Biofilters, and Manure Storage Covers, that are in addition to the Level 1 Odor BMPs, and that manage odors according to the purposes of this subchapter.

(2) The criteria and Odor BMPs contained in the current "Odor Management Guidance" issued by the Commission, and in effect at the time of plan submission, may be used to comply with this subsection. If the criteria and Odor BMPs contained in the current "Odor Management Guidance" issued by the Commission are not followed, an alternative method must be approved by the Commission.

(d) *Description of Odor BMPs.* The plan must list the Odor BMPs, their general construction and implementation criteria, and their operation and maintenance requirements.

(e) *Implementation of supplemental Odor BMPs.* Supplemental Odor BMPs may be implemented in addition to the approved Odor BMPs in the plan, on a temporary or permanent basis, without approval by the Commission or a delegated conservation district.

(1) Plan updates to address operational changes of these supplemental Odor BMPs shall be:

(i) Retained at the operation.

(ii) Submitted to the Commission or delegated conservation district for inclusion in the approved odor management plan within 30 days after the end of the calendar year in which they are implemented.

(2) Inspection reports, as provided for in § 83.802(b) (relating to plan implementation), may be used as documentation for plan updates.

### **§ 83.782. Implementation schedule.**

(a) Odor management plans must contain a schedule that identifies all Odor BMPs with the corresponding time frames that each Odor BMP will be implemented.

(b) Odor BMPs that involve planting of vegetation such as a shelterbelt are considered fully implemented if the planting satisfies the criteria in the odor management plan.

(c) Prior to utilizing a new or expanded facility that is required to implement an odor management plan under this subchapter, the operation must receive written approval from the Commission, or a delegated conservation district, confirming implementation of the plan.

(1) The operation shall provide the Commission, or a delegated conservation district, with written notification provided by certified mail, of the intent to utilize the facility.

(2) If the Commission, or a delegated conservation district, fails to act within 10 business days [on] of the notification to utilize the facility, it will be deemed approved.

### **§ 83.783. Operation and maintenance schedule.**

Odor management plans must contain a schedule that identifies all operation and maintenance procedures, [and] the time frames that the operation and maintenance procedures will be conducted and the lifespan for each Odor BMP listed in the plan.

## **[RECORDKEEPING] DOCUMENTATION [AND INFORMATIONAL] REQUIREMENTS**

### **§ 83.791. General [recordkeeping] documentation requirements.**

[(a) ]Unless otherwise specified in the plan, [records ]documentation required under this subchapter [are]is not required to be submitted to the Commission or delegated conservation district, but shall be retained by the agricultural operation for at least 3 years from the date they are prepared.

[ (b) Records required under this subchapter and the plan shall be maintained on forms provided by the Commission, unless otherwise allowed by the Commission.]

**§ 83.792. [Recordkeeping] Documentation relating to [Odor BMPs] Plan Implementation.**

[ (a) Plans must be supported by the information required in this section and §§ 83.781--83.783 (relating to odor BMPs).

(b) The agricultural operation shall keep and maintain accurate records of the Odor BMPs consistent with implementation and operation and maintenance schedules under §§ 83.781--83.783 (relating to Odor BMPs).]

Written documentation to demonstrate implementation of the OMP shall be appropriate to the types of Odor BMPs required by the plan, including documentation of installation, operation and maintenance activities relating to the approved Odor BMPs consistent with the documentation requirements included in the approved plan, and shall be completed and maintained at the operation.

**PLAN REVIEW AND IMPLEMENTATION**

**§ 83.801. Initial plan review and approval.**

(a) Plans shall be submitted for initial review and approval to the Commission, or alternatively to delegated conservation districts, for agricultural operations located in counties delegated administrative authority under § 83.731 (relating to delegation to local agencies). A person performing the plan review shall be certified in accordance with the Department of Agriculture's proposed odor management certification requirements which will appear in 7 Pa. Code Chapter 130f (relating to odor management certification) upon final rulemaking by the Department of Agriculture.

(b) The Commission or a delegated conservation district will, within 10 days from the date of receipt of the plan, provide notice to the operator indicating whether all of the required plan elements have been received.

(c) The Commission or a delegated conservation district will approve or disapprove the plan or plan amendment within 90 days of receipt of a complete plan or plan amendment. The Commission or a delegated conservation district may confer with experts in odor management, such as those at Pennsylvania State University, Natural Resources Conservation Service, and with others having knowledge of the local community [of in which the agricultural operation [that is being evaluated] is located.] Upon request by the Commission or the agricultural operation, the Commission or delegated conservation district, prior to the Commission acting on the plan, shall request a recommendation on the plan from a technical committee appointed by the Nutrient Management Advisory Board.]

(d) If the Commission or delegated conservation district does not act on the plan within the 90-day period, the agricultural operation that submitted the plan is authorized to implement the plan and the plan will be deemed approved.[The Commission or delegated conservation district will thereafter have another 90 days to complete review of the plan, beginning on the expiration of

the initial 90-day review period. If the Commission or delegated conservation district fails to act within the second 90-day period, it will be deemed approved.]

(e) The notice of determination to disapprove a plan will be provided in writing to the operator submitting the plan, and include an explanation specifically stating the reasons for disapproval. If a plan is disapproved, the operator submitting the plan [for the first time] shall have 90 days after receipt of the notice of disapproval to resubmit a revised plan.

(f) Approvals will be granted only for those plans that satisfy the requirements of this subchapter[, and will be valid for a maximum of 3 years or until construction begins, whichever is sooner].

### **§ 83.802. Plan implementation.**

(a) The plan shall be fully implemented in accordance with the implementation schedule included as part of the approved plan.

(b) Periodic inspections and review of the agricultural operation, the plan and the [records] plan implementation documentation will be conducted by the Commission or a delegated conservation district at least annually to determine the status of the operation's compliance and whether a plan amendment is required.

## **PLAN AMENDMENTS AND TRANSFERS**

### **§ 83.811. Plan amendments.**

(a) A plan amendment is required if the operation expects to make a significant change in any animal housing and manure management facilities subject to this subchapter, prior to those changes being implemented.

(b) Any of the following are presumed to be a significant change in the operation which will require a plan amendment:

(1) A[n] net increase of equal to or greater than 25% in AEUs, as measured from the time of the initial plan approval[ after the plan is approved].

(2) If calculations in the plan as originally submitted are in error, or if figures used in the plan are inconsistent with this subchapter, and adequate justification has not been given in writing for the inconsistency.

[ (3) If there is a change in the operational management system that is expected to result in an increase in the potential for offsite migration of odors under § 83.771 (relating to managing odors).]



(c) Any operation which would be required to submit a plan amendment under subsection (b) may avoid that requirement if it can demonstrate that there will not be an increase in the potential for offsite migration of odors under § 83.771.

(d) Any operation that is required to implement Odor BMPs under §83.781, may submit a plan amendment requesting to change the Odor BMPs that are to be implemented, without conducting a new evaluation of the potential offsite migration of odors as described in §83.771(b) (relating to managing odors), if the following apply.

(i) Supporting documentation is submitted, such as the implementation, operation and maintenance schedule, to demonstrate compliance with § 83.771(c) (relating to managing odors).

(ii) The operation is not making a significant change in the operation as described in subsection (b).

(iii) The operator will continue to implement the original Odor BMPs until the Commission has approved the requested amendment.

[(d)]e A plan amendment under subsection (a) and (d) shall be developed and certified by an odor management specialist and be submitted to the Commission or delegated conservation district for approval under this subchapter.

### **§ 83.812. Plan transfers.**

(a) An approved odor management plan may be transferred to a subsequent owner or operator of an agricultural operation by notification of the transfer to the Commission or a delegated conservation district, unless the transfer results in operational changes requiring a plan amendment under § 83.811 (relating to plan amendments), however, any new signatures required by 83.741(i) must be obtained before a plan is transferred to any new operator.

(b) If the transfer of the approved plan results in operational changes requiring a plan amendment under § 83.811, the plan amendment shall be submitted for approval of the Commission or a delegated conservation district along with, or before, the notification required under subsection (a).





## Pennsylvania Department of Environmental Protection

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**Rachel Carson State Office Building**

**P.O. Box 2063**

**Harrisburg, PA 17105-2063**

August 28, 2008

**Policy Office**

717-783-8727

Kim Kaufman, Executive Director  
Independent Regulatory Review Commission  
14th Floor, 333 Market Street  
Harrisburg, PA 17101

Re: Final Rulemaking: 25 PA Code, Chapter 83 (Facility Odor Management)

Dear Mr. Kaufman:

Pursuant to Section 5.1(a) of the Regulatory Review Act, please find enclosed a final rulemaking for review and comment by the Independent Regulatory Review Commission. The State Conservation Commission approved this final-form rulemaking at its July 29, 2008, meeting.

This final rulemaking is authorized by the Nutrient Management Act (Act 38 of 2005) and addresses the concerns of communities about odors generated at new and expanding agricultural operations by requiring odor management plans for manure storage facilities and animal housing facilities at concentrated animal operations (CAOs) and concentrated animal feeding operations (CAFOs). As a component of an odor management plan, the final rulemaking requires the use of an odor site index as a tool to evaluate the potential for offsite impacts from CAOs and CAFOs; the results of which can assist the agricultural operation to choose a location with minimal impact potential. To reduce odor at facility locations with higher offsite odor potentials, the final rulemaking also calls for the use of odor best management practices.

The regulations were developed in close coordination with several groups, including the Nutrient Management Advisory Board (NMAB); a team of experts on odor management at the Pennsylvania State University, and an interagency team of agriculture experts from the Department of Agriculture, the USDA Natural Resources Conservation Service (NRCS), county conservation districts, the Department of Environmental Protection, the Penn State College of Agricultural Sciences and Penn State Extension.

The proposed rulemaking was published in the *Pennsylvania Bulletin* on September 1, 2007, at 37 *Pa.B.* 4780, with provision for a 60-day public comment period and two public meetings and hearings on October 1, 2007, and October 4, 2007, in Dubois and Lancaster, respectively. During the 60-day public comment period, the Commission received comments from 14 commentators, including the Independent Regulatory Review Commission. Their comments resulted in modifications to the proposal, which are included in the final form rulemaking. On April 24, 2008, the Nutrient Management Advisory Board reviewed and approved the final-form rulemaking.





The Department will provide assistance as necessary to facilitate the Commission's review of this final-form rulemaking under Section 5.1(e) of the Regulatory Review Act. Please contact me at 717-783-8727 if you have any questions or need additional information.

Sincerely,

A handwritten signature in cursive script that reads "Michele L. Tate".

Michele L. Tate  
Regulatory Coordinator

Enclosures





COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
OFFICE OF POLICY

RECEIVED

TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO  
THE REGULATORY REVIEW ACT

2008 AUG 28 PM 12:23

I.D. NUMBER: 7-418

SUBJECT: Facility Odor Management

AGENCY: DEPARTMENT OF ENVIRONMENTAL PROTECTION

INDEPENDENT REGULATORY  
REVIEW COMMISSION

## TYPE OF REGULATION

- ☐ Proposed Regulation
- ☒ Final Regulation
- ☐ Final Regulation with Notice of Proposed Rulemaking Omitted
- ☐ 120-day Emergency Certification of the Attorney General
- ☐ 120-day Emergency Certification of the Governor
- ☐ Delivery of Tolted Regulation
- a. ☐ With Revisions      b. ☐ Without Revisions

## FILING OF REGULATION

DATE

SIGNATURE

DESIGNATION

8-28-08

Majority Chair, HOUSE COMMITTEE ON  
~~ENVIRONMENTAL RESOURCES & ENERGY~~  
Agriculture and Rural Affairs

8-28-08

Minority Chair, HOUSE COMMITTEE ON  
~~ENVIRONMENTAL RESOURCES & ENERGY~~  
Agriculture and Rural Affairs

8-28-08

Majority Chair, SENATE COMMITTEE ON  
~~ENVIRONMENTAL RESOURCES & ENERGY~~  
Agriculture and Rural Affairs

08/28/08

Minority Chair, SENATE COMMITTEE ON  
~~ENVIRONMENTAL RESOURCES & ENERGY~~  
Agriculture and Rural Affairs

8/28/08

INDEPENDENT REGULATORY REVIEW COMMISSION

ATTORNEY GENERAL (for Final Omitted only)

LEGISLATIVE REFERENCE BUREAU (for Proposed only)

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1. *Journal of the American Medical Association*, 1997; 277: 1039-1043.

1. *Journal of the American Medical Association*, 1997; 277: 1001-1005.