

# Regulatory Analysis Form

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(1) Agency

State Conservation Commission

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

7-418

JCD Number:

2634

INDEPENDENT REGULATORY  
REVIEW COMMISSION

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(3) Short Title

Facility Odor Management Regulations

(4) PA Code Cite

25 Pa. Code, Chapter 83  
Subchapter G

(5) Agency Contact & Telephone Numbers

Primary contact person: Karl J. Dymond, Odor Management Program  
Coordinator, (570) 836-2181

Secondary 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 proposed rulemaking will provide 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?

*This proposal is 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 proposed 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.)

*This proposal will assist the 1300 CAO agricultural operations and the 340 CAFO operations that will be brought into the program through the proposed regulations, if new construction or expansion of facilities occurs on these operations.*

*Farmers (agricultural operations) will benefit from this proposal because the implementation of an approved odor management 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, these proposed 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 proposed regulations provide the ability for farmers to voluntarily participate as well. Those who voluntarily participate under the proposed regulations, 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 proposed regulations provides for financial assistance efforts to further assist the farm community in addressing odor management issues on their operations.*

*Citizens of Pennsylvania will benefit from this proposal 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 the non-farm community and production agriculture.*

*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 core 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. This proposal 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. This proposal will also require agricultural operations which are in existence before the effective date of the proposed regulations to develop and implement an approved odor management plan if after the effective date of the final regulations 1) they expand their operations and become newly defined CAOs and/or newly defined CAFOs, and 2) if they construct new or expand existing animal housing or manure storage facilities (both 1 & 2 must be met before an OMP is required).*
- 3. The proposed 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, 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. This proposal will affect the current CAO community (1300 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 will 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 proposed 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 proposed 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 OMP.

#### Volunteer Agricultural Operations (VAO).

- This proposal 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 proposed 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 OMP 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.

- This proposal 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 proposed 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 proposed 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 proposal 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. This proposal will also affect any of the 1300 CAOs or 340 CAFOs that construct new animal housing or manure storage structures or expand current structures that house animals or store manure. This proposal 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 proposed 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 proposal presented here is 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 Nutrient Management Act Workgroup, comprised of staff from DEP, PDA, SCC, PSU, and USDA NRCS, met numerous times over the course of a year to provide important guidance to the Commission concerning the effectiveness of the proposed regulations, identifying potential programmatic conflicts and to help formulate draft proposed 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 a year 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 the proposal, and the effectiveness of the proposed regulations.*

*A 12-member Odor Management Committee of the Nutrient Management Advisory Board met routinely over the course of a year providing input to the Commission in the development of the proposed program criteria. This committee was an integral component in this regulation development process. All proposed 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 proposed 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 this proposal as forwarded by its Odor Management Committee and has approved the proposed 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:

- This proposal will require any new CAO or CAFO operations coming into Pennsylvania 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. The total plan development costs for these new CAOs and CAFOs would then be \$28,000 per year.

##### Existing CAO/ CAFO farms.

1. After the proposed 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 proposed 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).

- This proposal may affect any of the 24,000 Pennsylvania farmers that generate 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 this proposal, 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. The proposed regulations provide for criteria for VAOs obtaining Financial Assistance for Plan Development; they are to be funded second in priority to the regulated community. 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 there after.

#### Odor Management Plan Implementation

The proposed regulations provide for multiple levels of Odor BMPs; we anticipate that there will be no new cost 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.

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 additional 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 additional 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 additional local ordinances and in turn, decreasing their likelihood of litigation concerning the legality of their local ordinances. 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 proposed 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 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 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 proposed 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 proposed 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 CAO or CAFO 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 (except for record keeping requirements).

New CAO/ CAFO farms.

Financial Assistance for Plan Development:

- This proposal will require any new CAO or CAFO operations coming into Pennsylvania after the effective date of the regulations to get an odor management plan, however there will be no costs to the State due to the Commission policy of not providing state cost share funding for new CAO and CAFO operations coming into Pennsylvania or existing agricultural operations that expand to become CAOs or CAFOs.

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 proposed 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 proposed 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).

- This proposal 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 this proposal, 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. The proposed regulations provide for criteria for VAOs getting Financial Assistance for Plan Development; they are to be funded second in priority to the regulated community. 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.

	Current FY Year (06-07)	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
<b>SAVINGS:</b>	NA	NA	NA	NA	NA	NA
<b>Regulated Community °</b>	NA	NA	NA	NA	NA	NA
<b>Local Government <sup>I</sup></b>	NA	NA	NA	NA	NA	NA

State Government	NA	NA	NA	NA	NA	NA
Total Savings	NA	NA	NA	NA	NA	NA
<b>COSTS:</b>	NA	NA	NA	NA	NA	NA
Regulated Community <sup>2</sup>	NA	NA	\$229,200	\$229,200	\$229,200	\$226,400
Local Government	NA	NA	NA	NA	NA	NA
State Government <sup>3</sup>	\$69,460	\$70,000	\$196,600	\$196,600	\$196,600	\$188,200
Total Costs	\$69,460	\$70,000	\$425,800	\$425,800	\$425,800	\$414,600
<b>REVENUE LOSSES:</b>	NA	NA	NA	NA	NA	NA
Regulated Community	NA	NA	NA	NA	NA	NA
Local Government	NA	NA	NA	NA	NA	NA
State Government	NA	NA	NA	NA	NA	NA
Total Revenue Losses	NA	NA	NA	NA	NA	NA

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

<sup>0</sup> Savings to the regulated community are not able to be quantified but are expected to be substantial as the proposed regulations will trigger the preemption provisions of Act 38 when they become final. 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.

- \$28,000 per year assuming a farmer cost per plan of \$1120 for 25 new CAO/ CAFO farms coming into Pennsylvania and/or existing agricultural operations that become CAOs/ CAFOs to develop an OMP. They 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 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 are to be funded second in priority to the regulated community but do qualify for the 75% state cost share program. (Cost per plan: \$1120 total cost, \$840 state cost share, \$280 farmer cost).

3 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 \$9,460.

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

New CAO/ CAFO:

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

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).

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

<b>Program</b>	<b>FY -3 (2003-04)</b>	<b>FY -2 (2004-05)</b>	<b>FY -1 (2005-06)</b>	<b>Current FY (2006-07)</b>
PDA (NM Fund): Planning, loans, grants, and technical assistance	\$0 (SCC Odor Management portion); \$4,852,000 (total appropriation)	\$0 (SCC Odor Management portion); \$3,016,000 (total appropriation)	\$0 (SCC Odor Management portion); \$1,600,000 (total appropriation)	\$9,460 (SCC Odor Management portion); \$1,861,000 (total appropriation)
PDA (General Fund): General Government Operations	\$0 (SCC OM portion); \$30,009,000 (total appropriation)	\$0 (SCC OM portion); \$31,017,000 (total appropriation)	\$25,000 (SCC OM portion); \$29,451,000 (total appropriation)	\$60,000 (SCC OM portion); \$29,642,000 (total 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 proposed 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 proposed 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 revised 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 nonregulatory 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 proposed regulations are the initial efforts of the Commission 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 proposed 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, is encouraged to voluntarily follow the criteria established under the proposed regulations. This is encourage by providing technical and financial support to these volunteer farmers and also by providing limited liability protection under the Act and this proposal 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 considered numerous options to address managing the impacts of offsite odors from animal housing and manure storage facilities. The Advisory Board spent over a year considering the various options and formulating the proposed regulations. This proposal attempts 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 proposed 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. This proposal 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 after the effective date of the proposed regulations; or*
- 2. are in existence before the effective date of the proposed 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 proposed 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 this proposed regulation) to allow for program coordination and ensure program success in Pennsylvania.*

*This proposal includes 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 ¼ 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 proposed 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. This regulation addresses 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 proposed 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 criteria, 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 this proposed regulation 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 in this proposal will ensure the farm 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 nutrient management plan (25 Pa. Code. §83.261), possibly requiring them to develop and implement odor management plans meeting the requirements of this Act. This proposal 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. This proposal will affect the activities of those specialists certified under the PDA program.*

*This regulation is linked to the other regulatory programs described above, but this proposed regulation in no way diminishes, restricts, or are in any way conflicts 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 anticipates holding two informational meetings soon after the publication of the regulation. The arrangements for these meetings are not yet finalized. There is anticipated to be one meeting in the Lancaster Farm and Home Center and the other meeting is anticipated to be held in Dubois, Pennsylvania. These informational meetings will be held from 7:00 p.m. to 9:00 p.m. and will include an opportunity for questions from the audience.*

*The Commission is planning to hold two public hearings for the purpose of accepting comments on this proposal. These arrangements for these hearings are not yet finalized. These hearings are expected to take place*

approximately one month following the public meetings. The hearings will be held at the same locations as the two public meetings. These hearings will begin 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 proposed regulations will require the same record keeping requirements for both voluntary and regulated farms. They must keep records outlining their BMP implementation and maintenance efforts (as described in the plan) at the operation and allow program staff access to the records for an annual inspection where these records 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.*

*Unless otherwise specified in the plan, the records required under the proposed 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 records are to be maintained on forms provided by the Commission, unless otherwise allowed by the Commission. These forms are not yet finalized.*

*The proposed 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.*

*The proposed regulations provide record keeping 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 a year and has been helpful in expressing the needs of the regulated community and finding ways to address those needs through the regulations.*

*The proposed regulations recognize the need for accommodating the variations in agricultural practices across the Commonwealth and addressing the various animal species raised within Pennsylvania. The proposed 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 proposed 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 proposed 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 proposed 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 proposed regulations apply scientific information on odor management that is current at the time of plan approval. Through the use of supplemental odor BMPs and plan updates, the proposed 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 plan, provided that they continue to implement their approved odor BMPs.*

*By providing for plan implementation schedules, the proposed 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.*

*The proposed regulations provide for exemption criteria for construction activities on manure storage facilities when the storage construction integrity is being done in order to improve the environmental protection 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 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 July 31, 2008.*

*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 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 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 the new operation.*

**(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  
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**(Pursuant to Commonwealth Documents Law)**

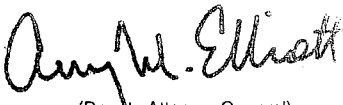
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INDEPENDENT REGULATORY  
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Copy below is hereby approved as to form and legality.  
Attorney General

By:   
(Deputy Attorney General)

AUG 21 2007

DATE OF APPROVAL

☒ Check if applicable  
Copy not approved. Objections attached.

Copy below is hereby certified to be true and  
correct copy of a document issued, prescribed or  
promulgated by:

DEPARTMENT OF ENVIRONMENTAL  
PROTECTION

(AGENCY)

DOCUMENT/FISCAL NOTE NO. 7-418DATE OF ADOPTION: 3/12/07

BY 

TITLE KATHLEEN A MCGINTY  
CHAIRPERSON

EXECUTIVE OFFICER CHAIRMAN OR SECRETARY

Copy below is hereby approved as to form and legality  
Executive or Independent Agencies

BY   
DATE OF APPROVAL

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

JUL 16 2007

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

**NOTICE OF PROPOSED RULEMAKING**

**DEPARTMENT OF ENVIRONMENTAL PROTECTION  
STATE CONSERVATION COMMISSION**

Facility Odor Management

25 Pa. Code, Chapter 83



# Notice of Proposed Rulemaking

## Title 25—ENVIRONMENTAL PROTECTION

### State Conservation Commission

[25 PA. CODE CH. 83]

#### Facility Odor Management

The State Conservation Commission (Commission) proposes to promulgate new 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 proposal was adopted at the Commission's meeting of March 14, 2007.

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

These proposed regulations will go into effect 90 days after publication in the *Pennsylvania Bulletin* as final rulemaking. Final rulemaking will follow a 60 day public comment for this proposed regulation and other review periods pursuant to legal requirements.

#### ***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 proposed 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 proposed 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 proposed 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 proposed 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 proposed 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 11 times during 2006 and 2007, providing strong direction and assistance to the SCC staff in developing this regulatory proposal. 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 and February 6, 2007. The NMAB approved this proposed regulation 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.

Finally, SCC staff has provided briefings on the regulations as they were being developed, 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.

This proposal incorporates the initial concepts approved by the SCC at its July 26, 2006, meeting, put here into regulatory language. In addition, the regulations follow 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 proposed 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 the Proposed Regulations.***

### **General**

The applicability of the proposed regulations is clearly described in §83.741, where the two statutory criteria that must be met are listed – types of operations, and types of activities at those operations. The Commission has been careful to stay within the scope of Act 38 in these regulations, which requires odor management plans address only newly constructed and expanded facilities at CAOs and CAFOs once the regulations go into effect. A transition provision is also included, to address agricultural operations that initiate activities prior to the effective date of the regulations.

Section 83.741 also describes plan implementation requirements. First, plans must be fully implemented prior to commencing use of the regulated facility. Second, "implementation" includes taking all of the steps required in the plan, which in some cases will not immediately provide full odor management benefits (e.g., shelter belts).

In addition, §83.741 allows for voluntary plans by agricultural operations which are not otherwise subject to the odor management regulations. This provision is similar to the nutrient management regulations, promoting voluntary efforts by farmers and also providing certain legal protections to those farmers under Act 38.

Further, §83.741 requires that odor management plans be developed by certified odor management specialists. The Department of Agriculture is developing certification regulations under Act 38 concurrently with these regulations.

Finally, §83.742 clarifies certain circumstances where questions may arise regarding "construction" activities.

### **Definitions**

The proposed regulations incorporate several definitions used in Subchapter D, relating to nutrient management. Several new definitions are added in this proposal, in § 83.701, due to the new subject matter:

*"Facility" and "Animal Housing Facility:"* The proposed regulations are applicable to two types of facilities – manure storage, and animal housing. "Manure storage facility" is already described in Subchapter D, and is repeated here. This required defining "animal housing facility," which is not defined in the Subchapter D regulations. The comprehensive definition of "facility" represents both manure storage and animal housing facilities throughout the regulations.

*"Impacts" and "Off-Site Migration:"* These definitions work together with §§ 83.771 and 83.781, which describe the basic odor management approach in these regulations, as well as §83.703, which describes the purpose of the regulations. The statute requires that odor management plans address odor impacts, but it did not define them, hence the definition here, consistent with other aspects of the odor management provisions of Act 38. The Commission clarifies the statute by using the phrase "off-site migration," since odors remaining on the farm would obviously not have any impacts requiring an odor management plan.

*"Odor Best Management Practice:"* The regulations define this key term in a manner similar to that for nutrient BMPs. Odor BMPs are the measures which may be necessary for the agricultural operation to manage any potential impacts identified from the facilities subject to the regulation.



*“Odor Management Plan:”* This definition repeats the statutory definition, and adds clarifications similar to those for nutrient management plans in Subchapter D regarding volunteers and plan amendments.

*“Odor Management Specialist:”* The regulations define this key term in a manner similar to that for a nutrient management specialist.

*“Odor Site Index:”* This is the preferred method of identifying potential impacts from odors, similar to the Phosphorus Index used in the nutrient management program. The Index is developed and refined by odor experts at the PSU College of Agriculture Sciences. It will be reviewed and approved for use by the SCC in the odor management program under these regulations.

*“Public Use Facility:”* These regulations require special consideration of public use facilities in identifying potential odor impacts, so a definition was needed.

### **Purpose**

These regulations break new ground in Pennsylvania, and address a difficult area of regulation. The Commission wants to make it clear what these regulations will address, and § 83.703 is intended to do that. First, Act 38 clearly requires the SCC to consider certain criteria when developing the odor management program – site specific factors, reasonably available technology, practices, standards and strategies, and the practical and economic feasibility of their installation and operation. These purposes are contained in §83.703(1)(i) – (iii).

Sections §§83.703(1)(iv) – (3) provide additional clarification, based on the current state of the science of agricultural odor management in Pennsylvania, and the language of the statute. The nature of that science is that odor management should contain two basic elements, described in more detail in §§ 83.771 – 83.781. First, odor management requires identifying a *potential* for odor impacts, which is necessarily a largely subjective exercise. Impacts are essentially conflict-based: will these agricultural activities increase the likelihood of odor related conflicts between the farmer and his neighbors? Second, once potential impacts are identified, how can they be *managed*? In most cases, the potential cannot be completely eliminated without violating the practical and economic considerations described above, but it can be managed. These are the concepts underlying the regulatory provisions in §§83.703(1)(iv) – (3), as well as §§ 83.771 – 83.781.

### **Managing Odors**

The core requirements in these regulations are found in §§ 83.771 and 83.781. They require a two-step process, briefly described above in this Preamble. First, an evaluation must be conducted, under §83.771(b). The evaluation must look at the factors specified in Act 38. Several other criteria are allowed to be used, such as the number of animal equivalent units. The regulations then authorize use of the Odor Site Index

developed by PSU odor management experts and approved by the Commission to perform this evaluation. Other evaluation methodologies are allowed, if approved by the SCC. This is the same approach used in the nutrient management regulations, where a Phosphorus Index approved by the SCC is allowed.

If the evaluation identifies a potential for odor impacts, then the second step must be taken – identification of odor BMPs needed to manage the odors, as described in §83.781. This section envisions two levels of odor BMPs, depending on the significance of the potential for odor impacts identified in the evaluation step. The SCC will issue a guidance document listing odor BMPs consistent with this approach, and use of that guidance is authorized by these regulations. The SCC expects to publish notice of the availability of this guidance document for public input, concurrently with the public comment period on these proposed regulations.

### **Plan Contents**

The regulations contain requirements for the contents of odor management plans, along the lines of those contained in the nutrient management regulations. These are contained in §§83.751 (content of plans), 83.761 (identification of agricultural operations and regulated facilities), 83.762 (operator commitment statement) and 83.738 (operation and maintenance schedule). The information required under §83.761, for example, will be used in the evaluation step under §83.711. In order to ensure program consistency throughout the state, the plan must follow a standard format provided by the SCC.

### **Plan Review and Implementation**

The regulations contain parallel provisions to those found in Subchapter D regarding review and implementation of the plan. These are found in §§83.782 (implementation schedule), 83.801 (initial plan review and approval) and 83.802 (plan implementation). Odor management plans developed under this regulation are not required to be updated or amended once approved unless the operation makes a significant change as described in §83.811. While the regulations authorize the Commission to delegate administration of these regulations to county conservation districts, the Commission has no immediate plans to do so.

### **Funding for Plan Development and Implementation**

Financial assistance for odor management plan development and implementation is authorized under certain circumstances through these regulations, under §§83.711 and 83.712. This assistance is limited, given that these regulations generally apply to new and expanding operations, which are not authorized for financial assistance through the Commission.

## **Recordkeeping**

Records regarding the development and implementation of the plan must be kept at the operation, under §§83.791 and 83.792.

## **Amendments and Transfers**

The regulations contain parallel provisions to those found in Subchapter D regarding amendments and transfers, in §§83.811 and 83.812. Changes requiring amendments are listed, such as an increase equal to or greater than 25% in AEU's after plan approval.

## ***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 proposed regulations in close coordination with various federal, state and local agencies and institutions. These include: the Nutrient Management Advisory Board, 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 proposed 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 significant portion of this will be offset through the Commission's plan development cost share program.

**Implementation of Odor Management Plans:** The proposed 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 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 development cost share program for certain eligible farms.

### **Costs to the state government**

**Development of Odor Management Plans:** The proposed 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 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 proposed 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 2 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 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 proposed 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)), the Commission submitted a copy of these proposed regulations on August 22, 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 has provided IRRC and the Committees with a copy of a detailed regulatory analysis form. A copy of this material is available to the public upon request.

If IRRC has any objections to any portion of the proposed regulations, it will notify the Commission within 30 days after close of the public comment period. The notification shall specify the regulatory review criteria which have not been met by that

portion. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the regulations, by the Commission, the General Assembly and the Governor if objections are raised.

### ***I. Public Comment***

*Written comments* – Interested persons are invited to submit comments, suggestions or objections regarding the proposed regulations to the State Conservation Commission, Agriculture Building, Room 405, 2301 North Cameron Street, Harrisburg, PA 17110. Comments submitted by facsimile will not be accepted. Comments, suggestions or objections must be received by the Commission by October 31, 2007. Interested persons may also submit a summary of their comments to the Commission. The summary may not exceed one page in length and must also be received by October 31, 2007. The one-page summary will be provided to each member of the Commission in the agenda packet distributed prior to the meeting at which the final regulations will be considered.

*Electronic Comments* – Comments may be submitted electronically to the Commission at [scc-odor-regs@state.pa.us](mailto:scc-odor-regs@state.pa.us). A subject heading of the proposal must be included in each transmission. Comments submitted electronically must also be received by the Commission by October 31, 2007.

### ***J. Public Meetings and Public Hearings***

The Commission will hold two public meetings to explain the proposed rulemaking and to respond to questions from the audience. The public information meetings will be held from 7:00 p.m. to 9:00 p.m. as follows:

Monday, October 1, 2007	Hampton Inn 1582 Bee Line Highway Dubois, PA 15801
Thursday, October 4, 2007	Lancaster County Farm and Home Center 1383 Arcadia Road Lancaster, PA 17601

The Commission will also hold two public hearings for the purpose of accepting comments on the proposed rulemaking. The hearings will be held at 7 p.m. as follows:

Monday, October 8, 2007	Hampton Inn 1582 Bee Line Highway Dubois, PA 15801
Thursday, October 11, 2007	Lancaster County Farm and Home Center 1383 Arcadia Road Lancaster, PA 17601

Persons wishing to present testimony at a public hearing are requested to contact Karl Dymond at the State Conservation Commission, PDA Region 3 Office, Rte. 92 S, PO Box C, Tunkhannock, PA, 18657, (570) 836-2181, at least one week in advance of the hearing to reserve a time to present testimony. Oral testimony is limited to 5 minutes for each witness. Witnesses are requested to submit three written copies of their oral testimony to the hearing chairperson at the hearing. Organizations are limited to designating one witness to present testimony on their behalf at each hearing.

Persons with a disability who wish to attend a hearing or meeting and require an auxiliary aid, service or other accommodation in order to participate should contact Karl Dymond at (570) 836-2181, or through the Pennsylvania AT&T Relay Service at (800) 654-5984 (TDD users) or (800) 654-5988 (voice users) to discuss how the Commission may accommodate their needs.

DENNIS C. WOLF,  
Chairperson  
State Conservation Commission





**Annex A**

**TITLE 25. ENVIRONMENTAL PROTECTION**

**Subpart C. PROTECTION OF NATURAL RESOURCES**

**ARTICLE 1. LAND RESOURCES**

**CHAPTER 83. STATE CONSERVATION COMMISSION**

**Subchapter G. Facility Odor Management**

**GENERAL PROVISIONS**

Sec.

- 83.701. Definitions.
- 83.702. Scope.
- 83.703. Purpose.
- 83.704. Relation to Subchapter D.
- 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**

- 83.731. Delegation to local agencies.

**ODOR MANAGEMENT PLANS**

- 83.741. General.
- 83.742. Identification of construction activities.

**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 agreement.

### **MANAGING ODORS**

- 83.771. Managing odors.

### **ODOR BEST MANAGEMENT PRACTICES**

- 83.781. Identification of Odor BMPs.  
83.782. Implementation schedule.  
83.783. Operation and maintenance schedule.

### **RECORDKEEPING AND INFORMATIONAL REQUIREMENTS**

- 83.791. General recordkeeping requirements.  
83.792. Recordkeeping relating to Odor BMPs.

### **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.

*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.

*CAFO--Concentrated Animal Feeding Operation*--An agricultural operation that meets the criteria established by the Department of Environmental Protection in regulations under the authority of the Clean Streams Law (35 P. S. § § 691.1--691.1001), found at 25 Pa. Code Chapter 92, (relating to National Pollutant Discharge Elimination System Permitting, Monitoring and Compliance)

*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.

*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*--Conflicts arising from the off-site migration of the odors from agricultural facilities. Impacts do 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*--A manure storage facility, including:

(i) 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.

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

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

*Plan*--*OMP*--*Odor management 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) Except when otherwise stated, the term includes plan amendments required under this subchapter.

*Odor management specialist*—A person satisfying the certification requirements of Department of Agriculture's Odor Management Certification Program in 7 Pa. Code §§ 130 (relating to odor management certification).

*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 impacts from the off-site migration of odors from agricultural operations.

*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 concentrated animal operations (CAO) and concentrated animal feeding operations (CAFO).

(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:

- (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, and
- (iv) The potential impacts from the facilities that may lead to conflicts between the agricultural operation and neighbors, arising from the off-site 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 (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 impacts from the offsite migration of odors associated with agricultural operations. The plans are not required to completely eliminate the potential for 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 (1) - (3).

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

This subchapter shall not be construed as modifying, rescinding or superseding applicable manure management requirements for water quality protection contained in Subchapter D.

**§ 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) No penalty will 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 § 83.721 (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 operation subject to the requirements of this subchapter under § 83.741(b), as of [*Editor's note: effective date of the regulations*], 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: effective date of the regulations*], 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: effective date of the regulations*], 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. 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**

### **§ 83.731. Delegation to local agencies.**

- (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 shall meet all of the requirements in §§ 83.741-- 83.783.



(b) *Applicability.* Agricultural operations that meet the criteria of (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: effective date of the regulations*],  
or

(ii) Agricultural operations existing on [*Editor's note: effective date of the regulations*] 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) New agricultural operations after [*Editor's note: effective date of the regulations*] which will be regulated as either a CAO or CAFO.

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

(i) Erecting or constructing a new animal housing facility or a new manure management facility after [*Editor's note: effective date of the regulations*].

(ii) Erecting or constructing an expansion of an animal housing facility or a manure management facility after [*Editor's note: effective date of the regulations*].

(c) *Transition.* Agricultural operations that initiate facility construction prior to [*Editor's note: effective date of the regulations*], are not required to develop and implement an odor management plan.

(d) *Scope of plan.*

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

(2) The odor management plan for activities under (a)(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.* Any agricultural operation which is not required to comply with this subchapter may voluntarily submit a plan any time after [Editor's note: effective date of the regulations].

(h) *Qualifications.* Plans shall be developed by odor management specialists certified in accordance with the Department of Agriculture's Odor Management Specialist Certification requirements in 7 Pa. Code § § 130\_\_\_ (relating to odor management certification). 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.**

(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: effective date of the regulations] 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: effective date of the regulations*] 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, such as the nutrient management 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 and/or portions thereof, identifying how the odor will be addressed through the plan, including:

- (i) Animal types and numbers included on the agricultural operation.
  - (ii) Type 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 must clearly identify:
- (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).
  - (3) Land use of the surrounding area.
  - (4) Local topography.
  - (5) Direction of the prevailing winds.
  - (6) 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) Implement the Odor BMPs.
- (2) Maintain the Odor BMPs consistent with the operation and maintenance criteria contained in the plan.
- (3) Keep records, as described in the plan, and to allow access by the Commission or delegated conservation district to the records needed to determine compliance status.

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

(5) Provide 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 off-site migration of odors generated from facilities, as described in (b) and (c). Odor management plans are intended to address the potential for impacts from the offsite migration of odors associated with agricultural operations. The plans are not required to completely eliminate the potential for impacts from the offsite migration of odors associated with agricultural operations.

(b) *Evaluation.* The plans must include an evaluation of the potential off-site migration of odors according to the following:

(1) The evaluation must address 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.

(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.

(4) The geographic center of a facility may be used when considering proximity to neighboring homes, businesses, churches and public use facilities.

(5) The criteria and procedures 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 paragraph, including the use of an Odor Site Index contained in the Guidance. If the criteria and procedures in the Odor Management 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 (b), the plan shall include Odor BMPs that are necessary, if any, to address the potential for off-site migration of odors to meet the purposes of this subchapter, and as described in § 83.781.

(d) *Time period to implement.* If use of the new or expanded facility does not commence within three years of the date of plan approval, a new plan must be submitted.

## **ODOR BEST MANAGEMENT PRACTICES**

### **§ 83.781. Identification of Odor BMPs.**

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

(b) BMPs are only required if they are necessary to address the potential for impacts from the off-site migration of odors, and installation and operation of the BMPs are feasible from a practical and economic perspective.

(c) *Level of Odor BMPs.* Based on the evaluation in §83.771(b), and the criteria in (b), determine 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 Odor BMPs that are applicable to the operation according to the species of animals and that manage odors by normal maintenance activities used in the industry in Pennsylvania.

(ii) *Level 2 Odor BMPs.* Specialized Odor BMPs that are applicable to the type of operation that are in addition to the Level 1 Odor BMPs, and that manage odors according to the purposes of this subchapter.

(iii) 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 paragraph. 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 shall list the Odor BMPs, their 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.

(i) Plan updates to address operational changes of these supplemental Odor BMPs shall be (1) retained at the operation and (2) 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.

(ii) 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.**

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

(2) 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.

(3) 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.

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

(ii) If the Commission, or a delegated conservation district, fails to act within ten business days on 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 timeframes that the operation and maintenance procedures will be conducted.

## **RECORDKEEPING AND INFORMATIONAL REQUIREMENTS**

### **§ 83.791. General recordkeeping requirements.**

(a) Unless otherwise specified in the plan, records required under this subchapter are 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.

(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 relating to Odor BMPs.**

(a) Plans must be supported by the information required in this section and §§ 83.781 to 83.783 (relating to odor best management practices).

(b) The agricultural operation shall keep and maintain accurate records of the Odor BMPs consistent with implementation and operation and maintenance schedules §§ 83.781 to 83.783 (relating to odor best management practices).

## **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 odor management specialist certification requirements in 7 Pa. Code §§ 130\_\_\_ (relating to odor management certification).

(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, NRCS, and with others having knowledge of the local community of the agricultural operation that is being evaluated. 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. 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 three 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, shall 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) An increase of equal to or greater than 25% in AEUs 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 the requirements of 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 off-site migration of odors under § 83.771 (relating to management of odors).

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

(d) A plan amendment under subsection (a) shall be developed and certified by an odor management specialist and shall 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).

(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

Rachel Carson State Office Building

P.O. Box 2063

Harrisburg, PA 17105-2063

August 22, 2007

Policy Office

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

717-783-8727

RECEIVED  
AUG 22 PM 3:46  
INDEPENDENT REGULATORY  
REVIEW COMMISSION

Re: Proposed Rulemakings: 25 PA Code, Chapter 83 (Facility Odor Management)

Dear Mr. Kaufmann:

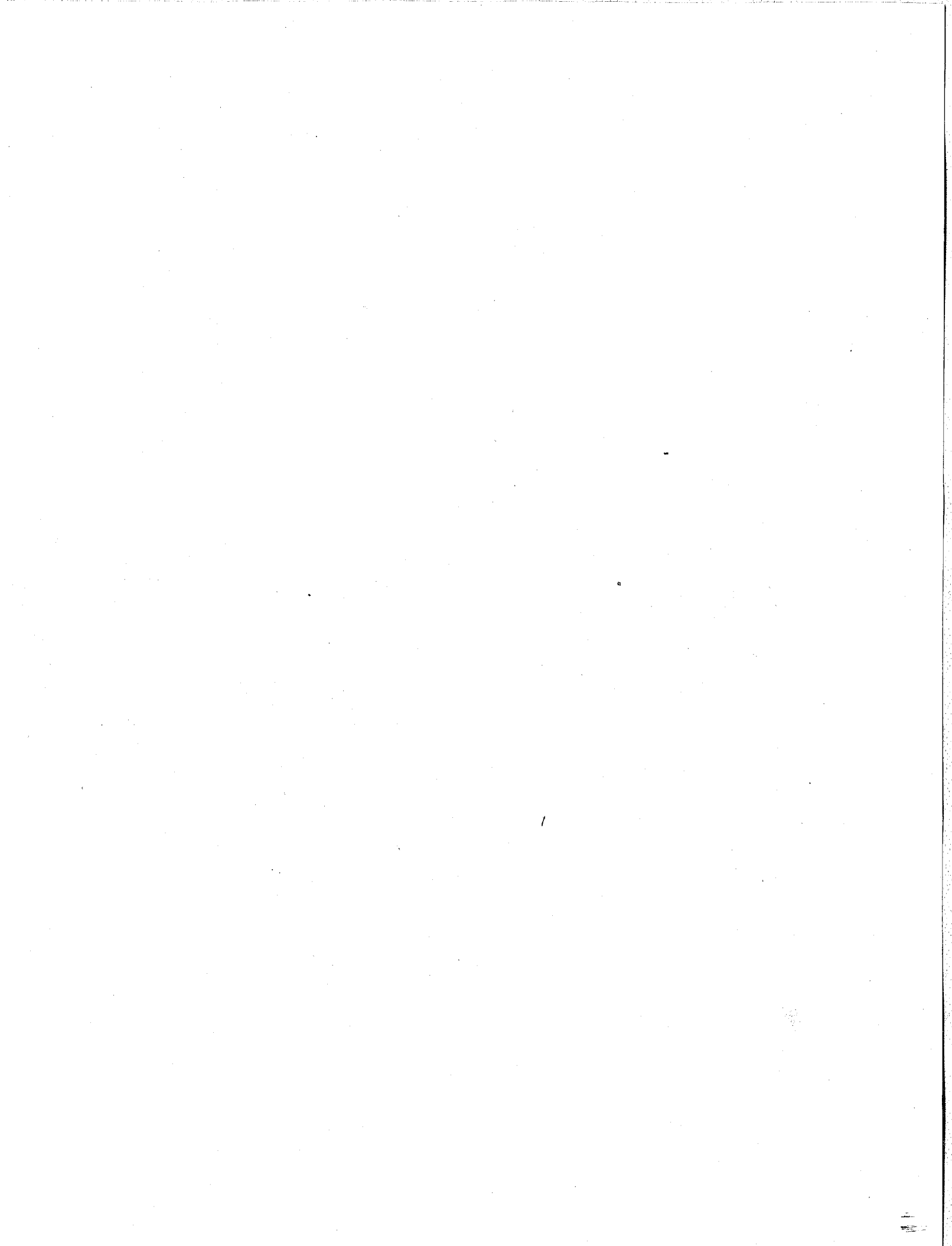
Enclosed is a proposed rulemaking for review and comment by the Independent Regulatory Review Commission (IRRC) pursuant to Section 5(a) of the Regulatory Review Act. The proposal is scheduled for publication as a proposed rulemaking in the *Pennsylvania Bulletin* on September 1, 2007, with a 60-day public comment period. The State Conservation Commission (Commission) adopted the proposed rulemaking on March 14, 2007.

This proposed rulemaking 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 proposed 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 proposed rulemaking also calls for the use of odor best management practices.

The proposed 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 Commission will provide IRRC with the assistance required to facilitate a thorough review of this proposal. Section 5(g) of the Regulatory Review Act provides that IRRC may, within 30 days of the close of the comment period, convey to the agency its comments, recommendations and objections to the proposed regulation. The Commission will consider any comments,





Kim Kaufman, Executive Director

- 2 -

August 22, 2007

recommendations or suggestions submitted by IRRC, as well as the Committees and public commentators, prior to final adoption of this rulemaking.

Please contact me at the number listed on previous page 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

TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO  
THE REGULATORY REVIEW ACT

I.D. NUMBER: 7- 418

SUBJECT: Facility Odor Management

AGENCY: State Conservation Commission

~~DEPARTMENT OF ENVIRONMENTAL PROTECTION~~

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 Tolled Regulation
- a. ☐ With Revisions      b. ☐ Without Revisions

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REVIEW COMMISSION

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
8-22-07	<u>Mayhem Jones</u>	Majority Chair, HOUSE COMMITTEE ON <del>ENVIRONMENTAL RESOURCES &amp; ENERGY</del> Agriculture + Rural Affairs
8-22-07	<u>Cindy Zier</u>	Minority Chair, HOUSE COMMITTEE ON <del>ENVIRONMENTAL RESOURCES &amp; ENERGY</del> Agriculture + Rural Affairs
8-22-07	<u>D. Sellers</u>	Majority Chair, SENATE COMMITTEE ON <del>ENVIRONMENTAL RESOURCES &amp; ENERGY</del> Agriculture + Rural Affairs
8-22-07	<u>Judith M. Eagle</u>	Minority Chair, SENATE COMMITTEE ON <del>ENVIRONMENTAL RESOURCES &amp; ENERGY</del> Agriculture + Rural Affairs
8-22-07	<u>Cheryl Yohin</u>	INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL (for Final Omitted only)
8-22-07	<u>Maya Garces</u>	LEGISLATIVE REFERENCE BUREAU (for Proposed only)

CONFIDENTIAL - SECURITY INFORMATION

Page 10 of 10

CONFIDENTIAL - SECURITY INFORMATION

Page 11 of 11

CONFIDENTIAL - SECURITY INFORMATION