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*House of Representatives*
COMMONWEALTH OF PENNSYLVANIA
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CHESAPEAKE BAY COMMISSION

December 4, 2007



Mr. Karl G. Brown, Executive Secretary
State Conservation Commission
Suite 407 Agriculture Building
2301 N. Cameron St
Harrisburg, PA 17110

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

Dear Mr. Brown:

As prime the sponsor of HB1646, which was signed into law as Act 38 of 2005, I have followed with great interest the development of the Facility Odor Management regulations required under the Act. Therefore, I am pleased to have this opportunity to offer my comments on the proposed rulemaking at 25 PA Code, Chapter 83 (Facility Odor Management).

As background, when the enabling language in Act 38 was drafted and ultimately agreed to by the General Assembly it embodied several key concepts:

- The goal of an odor management plan (OMP) is to ***manage*** (not ***eliminate***) the impact of odors generated by animal housing and manure management facilities
- As such, the OMP need not (and should not be required to) address any off-site impact from the land application of manure
- The requirement to develop and implement an OMP applies to only three very specific situations:
    - New operations to be regulated as either a CAO or CAFO
    - An existing operation that, due to expansion, would become regulated as either a CAO or a CAFO (in which case the requirement applied only to the new portion of the facility)
    - An existing CAO or CAFO constructing new housing or manure management facilities (again, the requirement would apply only to the new portion of the facility)
- Only the potential ***off-site*** impact of odor associated with new facilities must be addressed in the OMP

Furthermore, the Act gives very specific guidance to the Commission with respect to the factors to be considered when establishing criteria for OMP's. Key among these are:

- Various ***"site-specific"*** factors which preclude a "one size fits all" approach to odor management planning and allows flexibility in planning appropriate to an individual operation
- The requirement to include only ***reasonably available*** technology, practices, standards and strategies
- The requirement that both the practical and ***economic*** feasibility of these technologies and practices must be considered

A review of the proposed rulemaking, using the criteria outlined above as benchmarks, reveals that the Commission has done an exceptional job of reflecting these concepts in the more detailed process embodied in the regulations. In my experience as chairman of both the House of Representatives Agriculture and Rural Affairs and Environmental Resources and Energy committees it has been rare that an agency has so accurately reflected legislative intent in proposed regulations and I commend the Commission for their diligence in producing such a clear and workable proposal.

Nonetheless, as with any proposed regulation, there remain a few areas where I believe the Commission and the regulated community would be well served if greater clarity of the Commission's intent could be added.

- **Sec 83.771(b)(2)**

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

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

  - The language also needs to be more specific with respect to what ***type*** of "approved" land uses should be considered.

Further explanation of the intent of this wording in final form regulations will likely prevent confusion in the future as farm operators and their advisors develop OMP's.

- **Sec. 83.811 Plan amendments**

With respect to plan amendments, the language in this section should be more definitive in several respects:

- The regulations should be clear that filing a plan amendment will not necessitate re-calculation of the odor site index. Or, if there are situations when the Commission feels this would be necessary, the regulations should be clear that the "off-farm" components of the index to be included are the same as when the plan was initially approved.
- An operator should be able to amend an OMP simply to implement a different or additional odor BMP without the entire original OMP being subject to review.

- In Sec. 83.811(b)(3) what parameters will be used and who will determine if "*a change in the operational management system*" might be "*expected to result in an increase in the offsite migration of odors*"?

  83.811(b)(1) and (b)(2) are easily quantifiable "triggers" for a plan amendment. On the other hand (b)(3), as written, is vague and subjective. I recommend that it either be deleted entirely or be expanded to require that any of certain specified operational changes must be evaluated for their impact on offsite odor migration.

With some additional clarification to these areas, and perhaps additional points brought forth by other commentators, I am prepared to fully endorse acceptance of the proposed regulations as the final-form Facility Odor Management regulations. When I advocated that basic odor management requirements be included in Act 38 it was exactly this type of practical, flexible and cost-effective, yet science-based and highly effective approach that I envisioned.

Thank you for your fine effort with this precedent-setting regulatory initiative.

Sincerely,

Art Hershey, Republican Chairman
Agriculture and Rural Affairs Committee
ADH/se

cc: Kim Kaufman, Executive Director
IRRC
333 Market Street, 14th Floor
Harrisburg, PA 17101

Sec. Dennis Wolff, PDAg

Sec. Katie McGinty, DEP