

STATE CONSERVATION COMMISSION

2634

PUBLIC HEARING

\* \* \* \* \*

IN RE: FACILITY ODOR MANAGEMENT PROPOSED RULEMAKING

\* \* \* \* \*

BEFORE: ALVIN MYERS, Commissioner  
DOUG A. GOODLANDER, Nutrient Management  
Program Director  
KARL DYMOND, Odor Management Program  
Coordinator

HEARING: Thursday, October 11, 2007  
7:02 p.m.

LOCATION: Lancaster County Farm and Home Center  
1383 Arcadia Road  
Lancaster, PA 17601

WITNESSES: Walt Peechatka, Joe Musser

INDEPENDENT REGULATORY  
COMMISSION

2007 NOV -1 PM 1:56

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Reporter: Daniel Urie

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OPENING REMARKS

By Commissioner Myers

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STATEMENT

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CLOSING REMARKS

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CERTIFICATE

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

COMMISSIONER MYERS:

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3  
4 Good evening. My name is Alvin Myers.  
5 I'm a Commissioner of the State Conservation  
6 Commission, representing the general public. I call  
7 this meeting to order at 7:02. I have a rather  
8 lengthy little opening I must read in order to get the  
9 legal stuff done. But before I do that, I'd like to  
10 welcome a couple of people. Karl Dymond sitting on my  
11 left is staff for the Conservation Commission. And  
12 Doug Goodlander would be over here. Doug's also on  
13 the staff of Conservation Commission. I'd like to  
14 also welcome Michele Tate from DEP for getting the  
15 facilities lined up for us and all this stuff.

16 I'd like to welcome you to the State  
17 Conservation Commission's public hearing on a proposed  
18 rulemaking to establish a new Subchapter G in 25 Pa.C.  
19 Chapter 83, relating to facility odor management.

20 The purpose of this hearing is for the  
21 Commission to formally accept testimony on the  
22 facility odor management proposed rulemaking. In  
23 addition to this hearing, the Commission conducted a  
24 public hearing on Monday, October 8th, 2007 in DuBois,  
25 Pennsylvania to accept testimony on the proposed

1 rulemaking. Prior to this, on October 4, there was a  
2 public hearing at this place, a public meeting, which  
3 was conducted to give the public the general  
4 information we're going to deal with.

5           The Commission proposed this rulemaking  
6 to address the concerns of the communities in the  
7 Commonwealth about odors generated at certain  
8 agricultural operations as required by Act 38 of 2005.  
9 The proposed rulemaking requires concentrated animal  
10 operations, or CAOs, and concentrated animal feeding  
11 operations, CAFOs, to develop odor management plans  
12 for their new or expanding manure storage facilities  
13 and animal housing facilities prior to construction.

14           The proposed rulemaking would require a  
15 two-step process in the development of an odor  
16 management plan, which would include an evaluation  
17 using various criteria to determine the likely odor  
18 impacts, followed by selection of any necessary odor  
19 management BMPs which may be needed. The regulations  
20 would authorize use of the Odor Site Index developed  
21 by odor management experts from Penn State University  
22 and approved by the Commission to perform this  
23 evaluation, and the use of BMPs from approved sources.  
24 The Odor Site Index and the BMPs are described in the  
25 Commission's proposed draft Odor Management Guidance,

1 which, along with proposed facility odor management  
2 rulemaking, was advertised for public comment in the  
3 September 1, 2007 issue of the Pennsylvania Bulletin.

4           In development of this proposed  
5 rulemaking, the Commission met with various  
6 individuals, farm organizations, citizens' groups,  
7 environmental organizations and agricultural advisory  
8 workgroups and industry groups to discuss the various  
9 issues considered for the proposed regulation and to  
10 gain their input. In addition, a 12-member Odor  
11 Management Committee of the Nutrient Management  
12 Advisory Board met routinely and provided input to the  
13 Commission on the proposed rulemaking. The Nutrient  
14 Management Advisory Board reviewed the proposed  
15 rulemaking and recommended that it be forwarded to the  
16 Commission for approval. The Commission approved the  
17 proposed rulemaking at a March 14th, 2007 meeting.

18           On September 1, 2007, the Commission  
19 published these proposed regulations for public review  
20 and comment in the Bulletin. In addition, notices of  
21 this hearing and the hearing in DuBois were published  
22 in the Lancaster Intelligencer and the DuBois Courier  
23 Express newspapers.

24           In order to give everyone an equal  
25 opportunity to comment as proposed, I would like to

1 establish the following ground rules. One, I will  
2 call upon the witnesses who have pre-registered to  
3 testify at this hearing. After hearing from these  
4 witnesses, I will provide any other interested parties  
5 with the opportunity to testify as time allows. Two,  
6 testimony is limited to five minutes for each witness.  
7 Three, organizations are requested to designate one  
8 witness to present testimony on its behalf. Four,  
9 each witness is asked to submit three written copies  
10 of his or her testimony to aid in the transcribing of  
11 the hearing. Please hand us your copies prior to  
12 presenting your testimony. Five, please state your  
13 name, address and affiliation for the record prior to  
14 presenting your testimony. We would appreciate your  
15 help by spelling names and terms that may not be  
16 generally familiar so the transcript can be as  
17 accurate as possible. Because the purpose of the  
18 hearing is to receive comments on the proposal, the  
19 Commission or program staff may question witnesses in  
20 order to better understand their testimony. However,  
21 since it's to receive comments, the witnesses may not  
22 question the Commission or the Commonwealth agency  
23 staff.

24                   In addition to or in place of oral  
25 testimony presented at today's hearing, interested

1 persons may submit written comments on this proposal.  
2 All comments must be received by the Commission by  
3 October 31st, 2007. Comments should be addressed to  
4 the State Conservation Commission, Agricultural  
5 Building, Room 405, 2301 North Cameron Street,  
6 Harrisburg, Pennsylvania, 17110. Comments submitted  
7 by fax will not be accepted. However, comments may be  
8 submitted to the Commission by e-mail. And you see  
9 the e-mail address on the board. This information is  
10 provided at the front of the room on the board.

11 All comments received at this hearing as  
12 well as written comments received by October 31, 2007  
13 will be considered by the Commission and will be  
14 included in the comment/response document which will  
15 be reviewed by the Commission before it takes final  
16 action on the regulation.

17 Anyone interested in the copy of the  
18 transcript of this hearing may contact the reporter  
19 here this evening to arrange to purchase a copy. I  
20 will now call on the first witness. And the first  
21 witness would be Walt Peechatka from PennAg  
22 Industries. Walt?

23 MR. PEECHATKA:

24 Thank you, Mr. Chairman. I am Walt  
25 Peechatka, spelling, P-E-E-C-H-A-T-K-A. I'm the



1 senior advisor to PennAg Industries Association.  
2 PennAg is a trade association representing  
3 agricultural businesses located in Harrisburg,  
4 Pennsylvania.

5 PennAg appreciates the opportunity to  
6 present brief oral comments on the proposed rulemaking  
7 relating to odors from agricultural operations.  
8 PennAg members own some of the largest poultry and  
9 swine operations in Pennsylvania. It will be the  
10 larger operations which will be primarily responsible  
11 for implementing these new requirements.

12 Allow me to begin by reminding those in  
13 attendance here tonight that the agricultural  
14 community accepted the provisions in Act 38 of 2005  
15 which authorized the development of these regulations.  
16 We did that even though farming and raising livestock  
17 was one of the principal and first land uses as  
18 Pennsylvania was settled and developed over the years.  
19 As our Right to Farm Act states, farmers have a right  
20 to farm, and government is not to infringe on that  
21 right unless there is a public health and safety  
22 issue.

23 Agriculture endorsed the inclusion of  
24 odor provisions in return for other provisions in that  
25 Act which address the issue of local governments

1 adopting illegal ordinances that infringed on a  
2 farmer's right to farm.

3           These ill-advised local ordinances  
4 stymied agriculture and its attempts to grow and be  
5 economically viable for a number of years. The  
6 agricultural community had also spent upwards of  
7 \$400,000 on litigation. Act 38 finally addressed that  
8 problem. This rulemaking and the authority for it are  
9 something that PennAg and the entire agricultural  
10 community agreed to in 2005.

11           With that bit of background, I will now  
12 turn to the regulations and their development. We  
13 want to commend the State Conservation Commission for  
14 its diligence in bringing the proposed rulemaking  
15 forward in a timely way. Rulemaking is a slow and  
16 sometimes painful process, and the Commission was  
17 confronted by allegations, complaints, threatened  
18 litigation for the delay in bringing the rulemaking  
19 forward.

20           We commend the Commission, the Odor  
21 Management Advisory Committee, the Nutrient Management  
22 Advisory Board and all of the partners that worked to  
23 develop workable regulations that agriculture could  
24 live with and which regulatory agencies could  
25 accurately interpret and enforce.

1                   We strongly support the approach that has  
2 been utilized in crafting these regulations.  
3 Utilizing odor management practices as standards of  
4 performance provides something that is practical,  
5 achievable and measurable, and eliminates  
6 subjectivity.

7                   We believe these regulations do the job  
8 they were intended to do. Hopefully they will help  
9 bridge the gap and help foster the relationship  
10 between animal agriculture operations and their  
11 neighbors. Thank you for the opportunity to provide  
12 these brief comments.

13                   COMMISSIONER MYERS:

14                   Thank you, Mr. Peechatka. Any questions,  
15 Mr. Goodlander, Mr. Dymond? Thank you very much. The  
16 next person listed is the Pennsylvania Farm Bureau  
17 with Joe Musser. Joe Musser?

18                   MR. MUSSER:

19                   Good evening. My name is Joe Musser, and  
20 I reside at 13123 Mongul Road, Newburg, Pennsylvania.  
21 My family and I own and operate a third generation  
22 farm in Franklin County. My sons and I farm  
23 approximately 1,000 acres of owned and rented ground,  
24 planted mostly in small grains, alfalfa and corn. I  
25 am a former owner and operator of a 250-head dairy

1 operation and have been involved in farming virtually  
2 all my life. I remain an interested stakeholder in  
3 Pennsylvania's dairy industry, and my current farming  
4 operation is closely linked to the Dream Heifer Farm,  
5 a permitted concentrated animal feeding operation.

6 I serve on the Pennsylvania Farm Bureau's  
7 Natural and Environmental Resources Committee, and  
8 tonight I'm testifying on behalf of Pennsylvania Farm  
9 Bureau and the 42,000 farm and rural families that  
10 make up our organization's membership. Thank you for  
11 the opportunity to comment on the proposed facility  
12 odor management regulations, which are the subject of  
13 tonight's hearing.

14 I'd like to discuss the rulemaking in the  
15 context of the progressive effort the State  
16 Conservation Committee (sic) has made in regulating  
17 large animal operations in Pennsylvania. The Nutrient  
18 Management Act, which Farm Bureau supported and worked  
19 cooperatively to enact, was considered a pioneering  
20 step in protecting environmental quality on farms.  
21 Many farmers had serious questions about the legality  
22 and its regulatory standards for larger animal  
23 operations. However, most would agree that the Act  
24 and its regulations have established standards that  
25 effectively minimize the risk of pollution, without

1 being so rigid as to regulate farmers out of business.

2           Recent revisions to in the Pennsylvania  
3 nutrient management regulations have kept Pennsylvania  
4 ahead of the curve in maintaining environmental  
5 quality on livestock and poultry farms to the best  
6 extent possible. These revisions took into account  
7 that changes of the original regulations were  
8 necessary to reflect development in agriculture and  
9 technology, and that any changes in regulation  
10 requirements must allow farm families to realistically  
11 operate to comply while earning a meaningful  
12 livelihood.

13           Farm Bureau is confident that the  
14 Commission will address the difficult areas of  
15 facility odor management regulations in a reasonable  
16 and responsible manner, one that addresses the  
17 concerns of communities but is not unduly burdensome  
18 to Pennsylvania agriculture.

19           It is important to note that the goal of  
20 Pennsylvania's Odor Management Program is to manage  
21 odor from newly constructed and expanded concentrated  
22 animal operations and concentrated animal feeding  
23 operations. We must not confuse odor management with  
24 the complete elimination of odor from these  
25 facilities. We commend the proposed rulemaking's

1 recognition that odors are, by nature, subjective. To  
2 expect complete odor elimination would be unrealistic  
3 and cost-prohibitive for farmers.

4           We support the proposed rulemaking's  
5 focus on appropriate facility siting and the use of  
6 the Odor Site Index. The rulemaking requires greater  
7 odor management on farms that have a high potential to  
8 cause odor impacts on existing adjoining neighbors, as  
9 opposed to farmers with little potential to cause such  
10 impacts. We believe this is a fair and logical  
11 approach. And in factoring ag zones, ag security area  
12 and farmland preservation designations into the index,  
13 the proposed rulemaking and guidance protects the  
14 ability of farmers to run and expand their operations  
15 in areas that have been specifically designated for  
16 agriculture use.

17           We support clarifying the proposed  
18 rulemaking to state that odor evaluations need only  
19 assess the odor impact on existing adjoining property  
20 owners at the time of the plan submission. Farmers  
21 cannot be expected to anticipate whether communities  
22 might spring up around an existing operation. And  
23 they must not be expected to re-evaluate their odor  
24 management plan when the operation remains constant  
25 but the surrounding land use changes.

1           We applaud the Commission for creating  
2 two levels of BMPs and involving a one fit ---  
3 opposing a one-fit-size-all (sic) approach to odor  
4 management. It is imperative that farmers and plan  
5 writers have the flexibility to choose approved odor  
6 management practices that are practical and efficient  
7 for specific operations. We recommend that farmers be  
8 given the flexibility to switch one approved level two  
9 BMP to another without having to re-file a plan  
10 amendment or rerun the Odor Site Index. Such  
11 flexibility should encourage farmers to implement the  
12 most effective odor BMPs for their operation as  
13 technology changes and new odor management opinions  
14 (sic) become available.

15           We urge the Commission to implement  
16 practical record keeping requirements. While many  
17 odor management BMPs may require daily implementation,  
18 daily record keeping is unrealistic and would impose  
19 an unnecessary burden on the regulatory committee  
20 (sic).

21           In conclusion, Act 38 instructs that odor  
22 management plans need only include reasonable  
23 available technology, practical, standard and  
24 strategic to manage odor impacts, and that the  
25 practical and economical feasibility of installation

1 and operation should be considered along with the  
2 potential impacts from the facilities.

3           We believe the proposed rulemaking and  
4 accompanying odor management guidance accomplish these  
5 goals. We believe they provide a flexible (sic)  
6 necessary to address the evolving science of odor  
7 management. Again, we thank you for the opportunity  
8 to provide comments on the proposed rulemakings.

9           COMMISSIONER MYERS:

10           Thank you. Any questions, Mr.  
11 Goodlander, Mr. Dymond?

12           MR. DYMOND:

13           Not from me.

14           COMMISSIONER MYERS:

15           Thank you, Mr. Musser. That's all of the  
16 people that signed up to testify. Are there anyone in  
17 the room that would like to make some comments or  
18 testify? If not, we're going to keep the record open  
19 for another ten minutes just in case someone shows up  
20 and feels they want to testify. So with that, we're  
21 going to have the --- before we close the books, we're  
22 going to give them another ten minutes if anybody  
23 comes in.

24 RECESS TAKEN

25           COMMISSIONER MYERS:



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On behalf of the Conservation Commission,  
I hereby adjourn the meeting at 7:26 p.m. Thank you  
call for coming. I wish you the best and a safe ride  
home.

\* \* \* \* \*

MEETING CONCLUDED AT 7:26 P.M.

\* \* \* \* \*

