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Commonwealth of Pennsylvania
Nutrient Management Advisory Board

October 30, 2007

Mr. Karl G. Brown
Pa State Conservation Commission
2301 N. Cameron Street, Suite 407
Harrisburg, PA 17110-9408

Dear Mr. Brown:

The Nutrient Management Advisory Board (NMAB), consistent with state statute, has reviewed the proposed Act 38 Facility Odor Management regulations published in the Pennsylvania Bulletin on September 1, 2007. The NMAB has developed the attached set of comments on the proposed regulations and is submitting them for consideration by the State Conservation Commission as it finalizes these revisions.

The attached comments are the result of a thorough and public deliberation process implemented by the NMAB. The NMAB formed a committee that thoroughly reviewed the proposed regulations as directed by the NMAB. The committee reported their draft comments to the full board where these issues were openly debated. The result of this NMAB deliberation is the attached set of Act 38 Facility Odor Management regulation comments formally approved by the NMAB on October 10, 2007.

I would like to preface our comments by thanking the Commission for working with the NMAB in the initial stages of developing this new regulation. We believe that this collaborative relationship between the NMAB and the Commission provides the best opportunity for a successful program now and for the years to come. The NMAB provides an excellent sounding board for the Commission to determine the practicality and effectiveness of proposed regulatory direction being considered by the Commission.

The NMAB looks forward to working with the Commission in the finalization of this regulatory package.

If you have any questions related to the comments provided, please do not hesitate to contact me and we can discuss them further.

Sincerely,

Mr. Mark Bricker, Chairman
Nutrient Management Advisory Board

Attachment

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Nutrient Management Advisory Board Comments on the State Conservation Commission's Proposed Facility Odor Management Regulations

(Approved at the October 10, 2007 Nutrient Management Advisory Board Meeting)

1. The regulations need to retain the concept that odor management is the goal of this program, and that the complete elimination of odors on or from these facilities is unrealistic. Odor management needs to ensure that appropriate attention has been given to the potential effect odors generated on the facility may have on existing neighbors at the time the plan is being developed. The process needs to minimize, to the extent that is practical and economically feasible, the effect the facility odors may have on existing neighbors, as is provided in the proposed regulations and guidance.
 - The regulations need to continue to rely primarily on proper siting of facilities through the use of an odor site index, and then provide reasonable additional Odor BMP implementation requirements on those farmers that the Odor Site Index demonstrates may have a higher level of impact on their neighbors.
 - The Commission should not significantly limit the ability of agriculture to operate in areas where agriculture is an allowable landuse, or there will be no place for agriculture in Pennsylvania. The Commission needs to continue the currently proposed balanced approach that is provided through the proposed regulations, ensuring that odor management is assessed and addressed on all regulated farms, by using efforts that can be implemented by the agricultural community.
2. The Commission should strongly support the efforts of farmers to develop odor management plans for their farms. The regulations need to clearly allow for funding support for the development of an odor management plan for all existing operations, regardless if they are expanding the operation.
 - Many existing operations may need to expand in order to remain viable and retain the farm. The regulations should not hinder these individuals from receiving assistance in the development of an odor management plan addressing the expanding operation.
 - Existing operations may be severely impacted in the implementation of an odor management plan due to the proliferation of non-farming residences built close to their existing farming landuse. The Commission should

meet with PSATS, Pennsylvania Association of Realtors, Pennsylvania Builders Association and the Ag Committee of the County Commissioner's Association of PA, to discuss the impact that residential development close to farms and farming areas will have on the ability of these farms to meet the odor management obligations of this law, as these farms may need to look to expand to remain viable.

- The municipality has some shared responsibility relating to the potential conflict between agriculture and their residential neighbors as municipalities allow for urban sprawl out into farming areas, therefore impacting the farm community's ability to continue the operation.
3. Relating to Section 83.771(b)(2): The odor management plan should only need to assess the impact on existing homes, businesses, etc at the time of plan development. This needs to be clarified in the regulations by deleting the word "approved" in this sentence.
 4. Relating to Section 83.771(b)(2): The Commission should also further define the scope of land use issues that the evaluation will assess.
 5. Relating to Section 83.771(d): The 3 year deadline for implementing the plan should relate to the initiation of "construction" on the new facility, not "use" of the new facility. The regulations should be revised so the sentence would read: "If construction of the new or expanded facility does not commence ..."
 - Also, this provision of the regulations should be revised to allow the Commission discretion to extend this 3-year timeframe for situations where the necessary permits and approvals have not been able to be obtained in time to initiate construction prior to the 3-year deadline.
 6. Relating to Section 83.791: We stress the need for the Commission to make the required record keeping obligations practical for the farmer to comply. A number of these odor BMPs are implemented on a daily basis, and to expect daily recordkeeping is unrealistic. We are not sure if this issue can be addressed in the regulations, or if it will need to be addressed in Commission policy. As a regulatory remedy, we recommend deleting section 83.791(b).
 7. Relating to Section 83.811(b)(3): We question what level of operational management system change will necessitate an amendment to the Odor

Management Plan. This sentence in the regulations is very open ended and does not provide the industry sufficient direction for when an amendment would be necessary. We would expect that this requirement would relate to wholesale changes to the manure management system used on the operation, creating an increase in odors coming from the site. This needs to be further clarified in the proposed regulations.

8. Relating to Section 83.811: This section of the regulations should be revised to allow a farmer who is not making any operational changes on his farm, to submit a plan amendment just amending which Level II Odor BMPs they will use, without having to rerun the entire plan. This would require Commission action on the proposed changes of the Level II Odor BMPs but would not require the farmer to rerun the Odor Site Index when the amendments submitted only request changes to the Level II Odor BMPs used for the site. This would allow a farmer to implement new, possibly more effective Odor BMPs in future years as new practices become available, without making them redo the entire plan and Odor Site Index since they have not expanded or changed any other parts of their operation.

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

9. We support the Level II Odor BMP concept in the Commission's Draft Odor Management Guidance which recognizes that odor concerns associated with the countless variations of farm situations across the state will call for flexibility in determining which Level II Odor BMPs are appropriate in the given situation. There can be no strict value assigned to the effectiveness of a given odor BMP and therefore no set answer of which or how many Level II BMPs are appropriate to address a given Odor Site Index score. We support the manner in which the regulations and odor management guidance call for a site-specific assessment (involving the operator, the certified planner, and the certified plan reviewer) of the proposed facility and surrounding landuse and topography characteristics, and that the site assessment results in the determination of which level 2 BMPs will be necessary to manage the odors associated with the proposed facility.

- There is no "one-size-fits-all" Odor BMPs that will be right for all facilities with an Odor Site Index value of 100 or greater. The

determination of what and how many Level II Odor BMPs are needed for a particular farm requires a management specific review of the site to ensure that all characteristics of the given farm situation and surrounding area are taken into account.

10. In the Draft Odor Management Guidance, Section 1(B): The Commission should revisit the weighting of the Ag Zoning criteria used in the Odor Site Index, to better represent the restrictiveness of the Ag Zoning requirements as it relates to the differing municipal requirements. The Commission should ensure that the categories that the Ag Zoning criteria is used in, are adequate.
11. In the Draft Odor Management Guidance, Section 2(C): Revise the second sentence to read: "The operator should propose to implement one or more level II Odor BMPs ..." The sentence currently reads that more than one Level II Odor BMP would be required, when in reality only one Level II Odor BMP may be needed to address the potential offsite odor impacts.
12. In the Draft Odor Management Guidance, Section 3(B): Due to the evolving nature of how livestock are raised, we recommend removing the species designation from this chart, and therefore just refer to the type of housing or management that the practice addresses. For example, in the first row under "Sanitation" the second column would then say "Floor housed poultry" with the specific animal type (in this case "Broilers, turkey, and some layers") removed.

