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SUBMITTED VIA EMAIL

INDEPENDENT REGULATORY
REVIEW COMMISSION

October 30, 2007

Mr. Karl Brown
State Conservation Commission
Pennsylvania Department of Agriculture Building
2301 North Cameron Street, Suite 407
Harrisburg, PA 17110

RE: Public Comments for Proposed Rulemaking – Facility Odor Management (25 PA Code Chapter 83)

Dear Mr. Brown:

On behalf of the members of PennAg Industries Association, which includes industries that will be directly and secondarily impacted due to the regulations and requirements developed under the addition of Chapter 83, Facility Odor Management, within Act 38 of 2005, we appreciate the opportunity to submit the following comments.

General Comments:

PennAg Industries Association is proud to represent livestock and poultry producers in addition to the agribusinesses that support and serve them. We recognize the purpose of, and how, this rulemaking came to exist. We acknowledge the efforts of the State Conservation Commission (SCC) in utilizing producer input and cooperating with the agricultural industry to ensure these regulations will be successful, all the while maintaining an understanding of what the industry can reasonably undertake both financially and practically. PennAg appreciates that throughout the regulation development process the SCC has recognized the need for site specific plan development in order to achieve the most effective outcomes. Regulation of this type must remain flexible and the necessity to avoid a single format or "cookie cutter" plan structure.

These regulations involve a very perception-based issue that can be supported by a continual increase of established science. There must be flexibility for the producer to utilize best management practices as they are discovered and developed. This allows the producer to take full advantage of the technology that is appropriate and feasible for their operation, while taking into regard positive environmental outcome.

An underlying reason these regulations exist is because of urban sprawl. Municipalities need to be aware of the implications that development and/or zoning changes have on producers and agriculture in their area. The ability to expand, perform agricultural activities and remain in compliance with ordinances and regulations must be fully evaluated before any government entity makes a decision impacting land use in an area. We would suggest that the SCC remain

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communicative with local governments to ensure that the agriculture industry is being thought of during discussions involving planning and zoning.

Comments by Section:

Annex A

TITLE 25. ENVIRONMENTAL PROTECTION

PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION

Subpart C. PROTECTION OF NATURAL RESOURCES

ARTICLE I. LAND RESOURCES

CHAPTER 83. STATE CONSERVATION COMMISSION

Subchapter G. FACILITY ODOR MANAGEMENT

General Provisions

Section 83.701. Definitions.

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

Financial Assistance for Plan Development

Section 83.711. Applicant Eligibility.

We appreciate the inclusion of funding, which acknowledges the reality that these plans will likely cause financial commitment, perhaps even hardship, on existing producers since they may not have expected these additional requirements when they began their operation. Additionally, the establishment of financial assistance supports the reality that in some instances a family farm may need to expand its operation to remain financially viable and sustainable.

Managing Odors

Section 83.771. Managing Odors.

(b)(4) Utilizing the geographic center of a facility is appropriate for providing simplicity and consistency for the planners.

(b)(5) It will be extremely beneficial to producers to have the ability to utilize the Odor Site Index located within the Odor Management Guidelines. This Index, which was developed by Penn State University, has been used successfully by industry on a voluntary basis when siting new construction. Its successfulness proves that it is a proper and effective tool for evaluating a site's relationship with the area around it.

(d) *Time period to implement.* We would suggest that the phrase "If use of ..." be changed to "If construction of ..." Including the term "use" could potentially penalize the producer in instances when processes that are out of their control, such as permit application and approval, takes longer than the defined length of time. The term "construction" still provides an action that can have authoritative repercussions if not satisfied, yet does not create a limitation beyond the control of the producer.

Odor BMPs

Section 83.781. Identification of Odor BMPs.

(c)(1)(i) We commend the SCC for not assigning a specific numerical value to the requirement of Level 1 Odor BMPs. As written, this requirement is recognizing the need for flexibility and conveys an understanding that exact science for odor management is not available and further work and research will need to take place in the field through practice and actual implementation. As levels of classifications are being developed, utilizing a species specific format that would allow identification based on species management or facility type would be beneficial rather than just general species type. The more specific a system can be, the more accurate and efficient plans will be.

Recordkeeping and Informational Requirements

Section 83.791. General Recordkeeping Requirements

(b) We find it unusual that the SCC would require a recordkeeping system and appropriate supplemental materials. Since it is typical that producers have their own recordkeeping system in place, it would be poor utilization of time and duplication of effort to ask them to adhere to a different system, or even in some cases maintain two systems. Ideally, this item should be deleted. Otherwise, it would be beneficial to industry to have an opportunity to review the forms that will be "provided by the Commission" for purposes of complying with this requirement.

Section 83.792. Recordkeeping relating to Odor BMPs.

(b) Recognition must be made that many of the Level One BMPs are already part of standard operating and maintenance procedures for Pennsylvania's animal production industry. Frequency of the recordkeeping validation must remain realistic and not cumbersome. Summary assessment of procedures that occur on a daily (or several times daily) must be permitted.

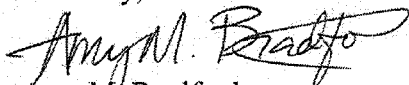
Plan Amendments and Transfers

Section 83.811. Plan Amendments

A more concise definition of what a plan amendment is and what it entails must be developed. Will a plan amendment require the producer to perform an additional site index and therefore develop a whole new plan? This should not be the case and is not the original intent of an amendment. Further scenarios of what might "trigger" a plan amendment need to be established and examined. For example, would the utilization of a new technology not identified in the original plan necessitate a new site index and plan? We believe the answer to this question is No. A technological advancement put in place in order to reduce the environmental impact of an operation should not cause undue burden or responsibility on a producer trying to achieve compliance above and beyond the minimum requirements.

Thank you for the opportunity to submit these comments.

Sincerely,



Amy M. Bradford
Assistant Vice President