

Pennsylvania Farm Bureau

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October 31, 2007

Mr. Karl Brown
Executive Secretary
State Conservation Commission
Agriculture Building, Room 405
2301 North Cameron Street
Harrisburg, PA 17110

RE: Comment on Proposed Rulemaking on Facility Odor Management
(37 Pa.B. 4780)

Sent via e-mail: scc-odor-regs@state.pa.us

Dear Mr. Brown:

Pennsylvania Farm Bureau (PFB) appreciates this opportunity to submit comments relative to the proposed rulemaking referenced above. PFB is Pennsylvania's largest general statewide farm organization, representing more than 42,000 farm and rural families throughout the Commonwealth. As Pennsylvania's largest farm organization, we represent both the small and large-scale farmer, and no doubt, many of our members will be directly affected by the proposed rulemaking.

GENERAL COMMENTS

PFB supports the progressive effort the State Conservation Commission has made in regulating facility odor management for larger animal operations. We acknowledge the Commission's efforts to solicit input from the agricultural community through the Nutrient Management Advisory Board, public hearings and the formal comment process. We appreciate the consideration the Commission has shown regarding what farmers can be expected to undertake, both economically and practically. Finally, we commend the Commission for the flexibility contained in the proposed rulemaking. A flexible approach to facility odor management will allow farmers to make good use of the best management practices (BMPs) that are most suitable for their specific operations at a given time, while minimizing potential offsite odor impacts.

COMMENTS BY SECTION

Section 83.702. Scope. and Section 83.703. Purpose.

Pennsylvania's final Facility Odor Management Regulations, as established under Act 38 of 2005, must reflect the goal of Pennsylvania's Odor Management Program—to manage odors from newly constructed and expanded Concentrated Animal Operations (CAOs) and Concentrated Animal Feeding Operations (CAFOs).

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The regulations must acknowledge that odor management at these facilities does not equate to the complete elimination of odors. We commend the proposed rulemaking for recognizing that odors are, by nature, subjective—and for recognizing that the complete elimination of odors from CAO and CAFO facilities would be unrealistic and cost-prohibitive for Pennsylvania's farmers.

FINANCIAL ASSISTANCE FOR PLAN DEVELOPMENT AND IMPLEMENTATION

Section 83.711. Applicant eligibility. *And* Section 83.721. Applicant eligibility.

Pennsylvania Farm Bureau urges the Commission to support farmers' efforts to develop odor management plans and requests that the final regulations provide for funding to support the development of odor management plans for existing farm operations. As noted in the proposed rulemaking, plan development costs are estimated at over \$1,000, not including the cost of implementing the plan and its best management practices (costs described as "extremely variable" that could range upward of \$15,000). To this extent, odor management plans constitute a significant expense for farmers facing plan development and implementation. Any resources dedicated to helping address this potentially unexpected expense will be greatly appreciated by the farm community. Also, in the coming months and years, many farmers will need to expand their operations to remain viable. Such expansions likely will take many farms from non-CAO, non-CAFO status to that of a CAO or CAFO. It is imperative that the regulations not disqualify these farmers from being eligible to receive funds to develop an odor management plan.

DELEGATION TO LOCAL AGENCIES

Section 83.731. Delegation to local agencies.

Due to the subjective nature of odors and the community pressure delegation likely would place on local agency staff, Pennsylvania Farm Bureau urges the Commission not to delegate administrative and/or enforcement authority. We recommend that Pennsylvania's odor management program be carried out at the state level, especially during the initial phase.

ODOR MANAGEMENT PLANS

83.742. Identification of Construction Activities.

Pennsylvania Farm Bureau believes it is essential that certain activities be excluded from "construction" activities that would require development of an odor management plan. These non-construction activities include: Replacement of existing equipment at an existing animal housing facility; 2) Replacement of an existing animal housing facility in existence as of the date of the proposed rulemaking's adoption; 3) Improving manure storage integrity with less than or equal to a 15% increase in storage volume; and 4) Adding treatment technology, such as solids separation and composting, and their associated facilities to ag operations in existence as of the time of the proposed rulemaking's adoption.

The regulations must not require farmers whose facilities have been damaged through fires, floods, tornados and other disasters outside of the farmer's control to create an odor management plan upon rebuilding these facilities. Similarly, replacing existing equipment and improving manure storage integrity and technology must not be treated as construction that would require a farmer to develop an odor management plan. To treat

such equipment replacement and manure storage facility upgrades as drivers for odor management plan development would serve as a disincentive for farmers to make environmentally-sound improvements to their operations. We believe that where the footprint of an operation remains essentially the same, activities such as the ones described above should not require development of an odor management plan. To require plan development in these instances would be particularly unfair, costly and burdensome to the farmer with an existing operation who has experienced increased development around his farm and is now faced with implementing costly BMPs to reduce potential odor impacts to new adjoining landowners.

CONTENT REQUIREMENTS FOR ALL PLANS

Section 83.751. Content of plans.

Pennsylvania Farm Bureau supports the provision stating that the CAO or CAFO operator shall be involved in the development of the plan. This provision allows a farmer to choose the specific management practice(s) that he believes are best-suited for his operation. We believe this flexibility will encourage a sense of ownership among farmers engaged in odor management planning.

MANAGING ODORS

Section 83.771. Managing Odors.

Pennsylvania Farm Bureau commends the Commission for the proposed rulemaking's practical and reasonable approach to odor management, specifically the acknowledgement that: "The plans are not required to completely eliminate the potential for impacts from the offsite migration of odors associated with agricultural operations." We believe that the proposed rulemaking fulfills the requirements of Act 38 by ensuring that appropriate attention is given to minimizing the potential effects that odors generated on new and expanding CAO and CAFO facilities on existing adjoining landowners at the time an odor management plan is being developed.

We support the proposed Odor Management Guidance's focus on appropriate facility siting through the use of an odor site index. As proposed, the odor site index would not require farms with little potential to cause odor impacts for existing adjoining landowners to carry out the same odor management practices required of farms with a greater potential to cause such impacts. We believe this approach is fair and reasonable, both for farmers and for existing adjoining landowners. And, by considering whether a farm is enrolled in Pennsylvania's Farmland Protection Program, an ag security area, or zoned for agriculture, the index protects the ability of farmers to operate and expand their farms in areas that have been designated specifically for agricultural use.

Regarding odor BMPs, we recommend that the final rulemaking provide for those rare instances where an operation may have little or no potential to cause odor impacts for existing adjacent landowners. Where this is the case, we recommend that no odor management BMPs be required. Similarly, we recommend flexibility in the final rulemaking, so as to allow farmers and plan developers the means to address specific odor sources on a given farm in a way that is both effective and economically feasible for that particular operation. Due to operational differences that exist from farm to farm, the subjective nature of odors and the evolving science of odor management, we maintain that a one-size-fits-all approach to facility odor management must be avoided. *See Section 83.781 Identification of Odor BMPs, below.*

Regarding the proposed three-year deadline for plan implementation, we recommend that the deadline be tolled if construction on a new or expanded facility does not commence within three years of the date of plan approval. By focusing on "construction," as opposed to "use" of a new or expanded facility, the rulemaking would avoid penalizing a farmer awaiting permit approval from local or state authorities by allowing the farmer to base his plan on the world surrounding his operation at the time the plan is approved, not two or three years later when additional landowners may have moved onto adjoining properties. We further recommend that this provision be revised to authorize the Commission to extend the plan implementation deadline beyond three years where, despite a showing of good faith efforts, a farmer is unable to obtain the permits and approvals necessary to begin construction within the three-year deadline.

Section 83.781 Identification of Odor BMPs.

Pennsylvania Farm Bureau supports the Level I and Level II odor best management practice (BMP) concept proposed in the Draft Odor Management Guidance. We believe that some facilities may be able to satisfy odor management requirements simply by implementing the Level 1 BMPs commonly considered industry standards. Regarding Level II BMPs, we do not believe there can be any strict value assigned to the effectiveness of a given odor management practice on a given operation, nor do we believe that there is a set number of Level II BMPs appropriate to address a particular odor site index score on a given operation. For instance, there exists no one BMP that will be right for *all* facilities with an odor site index value of 100. Accordingly, any determination regarding what and how many Level II odor BMPs are necessary for a particular farm will require a specific review of the site to ensure that all the proper characteristics of the farm and its surrounding area are taken into account. Finally, we recommend revising the second sentence of the Draft Odor Management Guidance, Section 2(c) to reflect that, in some instances, only one Level II odor BMP may be needed to address the potential for offsite odor impacts.

RECORDKEEPING AND INFORMATION REQUIREMENTS

Section 83.791. General recordkeeping requirements. *And* Section 83.792. Recordkeeping relating to Odor BMPs.

Pennsylvania Farm Bureau requests that recordkeeping requirements for facility odor management be practical. While we recognize that many odor management BMPs may require daily implementation, daily recordkeeping is unrealistic and would impose an unnecessary burden on the regulated farm community. We recommend that any specific recordkeeping requirements in the final rulemaking take the form of a checklist and/or a statement attesting that the itemized BMPs are being carried out on a daily, regular or as-needed basis (as applicable).

PLAN AMENDMENTS AND TRANSFERS

Section 83.811. Plan Amendments.

Pennsylvania Farm Bureau requests that the final rulemaking clarify the level of operational management system change needed to trigger an amendment to a farmer's odor management plan. Further, we ask that this section be revised to allow a farmer who is not making any significant operational changes to his farm but who wants to substitute one Level II BMP for a different Level II BMP to submit a plan amendment reflecting this change *without* having to re-run the odor site index and file a formal plan amendment. This approach would parallel that of Pennsylvania's Nutrient Management Program regarding plan amendments.

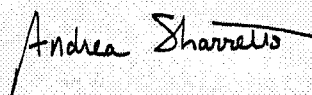
Such flexibility would benefit both farmers and adjoining landowners when, in the future, new BMPs become available that would allow farmers to better manage odor, possibly at a lower cost. Furthermore, if a farmer were required to re-run the odor site index before switching one Level II BMP for another, the added cost and burden likely would serve as a disincentive to the farmer exploring new BMPs.

CONCLUSION

Act 38 instructs that odor management plans need only include reasonably available technology, practices, standards and strategies to manage odor impacts; and that the practical and economic feasibility of installation and operation should be considered, along with the potential impacts from the facilities. We believe the proposed rulemaking and accompanying Draft Odor Management Guidance accomplish these goals. Similarly, we believe they provide the flexibility necessary to address the evolving science of odor management.

Again, we thank you for the opportunity to offer these comments.

Sincerely,

A handwritten signature in black ink that reads "Andrea Sharretts". The signature is written in a cursive style with a horizontal line extending from the end.

Andrea L. Sharretts
Natural Resources Director

Cc: IRRC

Representative Michael Hanna, Chairman, House Agriculture and Rural Affairs Committee
Representative Art Hershey, Minority Chairman, House Agriculture and Rural Affairs Committee
Senator Michael Brubaker, Majority Chairman, Senate Agriculture and Rural Affairs Committee
Senator Michael O'Pake, Minority Chairman, Senate Agriculture and Rural Affairs Committee

