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Tate, Michele

**From:** Holly M. Fishel [hfishel@psats.org]  
**Sent:** Wednesday, October 31, 2007 2:13 PM  
**To:** scc-odor-regs@state.pa.us  
**Subject:** Comments on Proposed Facility Odor Management Regulations

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INDEPENDENT REGULATORY  
REVIEW COMMISSION

October 31, 2007

State Conservation Commission  
Room 405  
Agriculture Building  
2301 North Cameron Street  
Harrisburg, PA 17110

RE: Comments on Proposed Facility Odor Management Regulations

We are writing to submit comments on the Commission's Proposed Facility Odor Management Regulations, which were published in the September 1, 2007 issue of the *Pennsylvania Bulletin*.

Generally, we believe that the draft regulations are in compliance with the language and intent of Act 38 of 2005. However, we do have a few comments and questions concerning the regulations.

While we favor the science-based approach that the department has taken in regard to developing the proposed odor management regulations, we recommend that the underlying "facility odor management" guidance be included as part of these regulations.

Additionally, we have the following specific questions and comments on the regulations:

**Section 83.706. Limitation of Liability**

Can regulations provide this level of legal relief? Or should this provision be more properly included in statute?

**Section 83.731. Delegation to Local Agencies**

"Local agencies" are defined by state law to be something other than county conservation districts. Therefore, we suggest that this section be re-titled as "Delegation to County Conservation Districts."

**Section 83.741 (d). Scope of plan.**

Paragraphs (1) and (2) use the term "facility" in a manner that suggests that the odor management plan need only address the animal units in the "facility" as opposed to doing a plan that accounts for all the animals in the agricultural operation.

In other words, if the "facility" is an expansion to house 10 pigs, and those 10 pigs makes the operation a CAO or CAFO, must the odor management plan be designed to address the odor only from the 10 pigs in the new "facility" or will it require that the operation address the odor from the total number of animals since the additional animals will cause the operation to become a CAO or CAFO?

**Section 83.742. Identification of construction activities.**

We question the need for both paragraphs (1) and (2), when they both address the replacement of existing structures, regardless of the reason for the replacement. We suggest just keeping paragraph (1).

**Section 83.751. Content of plans.**

We suggest that the language "and with any local land use ordinances" be added to the end of paragraph (c).

**Section 83.771. Managing odors.**

Paragraph (b)(1) requires consideration of the "land use of the surrounding area" at the time of plan submission. Does this refer to all local land use ordinances currently in effect?

Paragraph (b)(2) states that the number of AEUs "may" be used for the purposes of calculating the evaluation distance. We suggest this be changed to "shall".

**Section 83.782. Implementation schedule.**

Paragraph (b) states that compliance is assumed if any plantings needed are in place. We suggest that there be some provision to require that compliance be assumed only if any required plantings are maintained in a healthy state to accomplish the filtering capacity they were designed to provide.

**Section 83.801. Initial plan review and approval.**

The last part of the second sentence in Paragraph (c) should be re-written as follows: "The Commission or a delegated conservation district may confer with experts in odor management.... of the local community ~~of the agricultural operation that is being evaluated~~ in which the agricultural operation is located."

**Section 83.812. Plan transfers.**

Paragraph (a) should state that new signatures required by 83.741(i) must be obtained before a plan is transferred to any new operator.

Thank you for the opportunity to comment on these regulations. We request notification when the final-form regulation is delivered to the Independent Regulatory Review Commission.

We appreciate your cooperation regarding this issue.

Sincerely,

Elam M. Herr  
Assistant Executive Director  
Pennsylvania State Association of  
Township Supervisors  
4855 Woodland Drive  
Enola, PA 17025  
Phone: (717) 763-0930  
Fax: (717) 763-9732  
eherr@psats.org  
[www.psats.org](http://www.psats.org)