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AGRICULTURAL ADVISORY BOARD

To The Department of Environmental Protection

October 21, 2009

Honorable John Hanger, Chairperson
Environmental Quality Board
Secretary of Department of Environmental Protection
Rachel Carson State Office Building
16th Floor
400 Market St
Harrisburg, Pa 17101-2301

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DEPARTMENT'S OFFICE

Attached are comments that the Department of Environmental Protection's (DEP) Agricultural Advisory Board (AAB) has pertaining to the departments proposed rulemaking for Chapter 102, Erosion and Sediment Control & Stormwater Management.

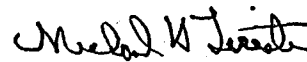
The AAB is authorized and organized pursuant to Act 11 of 1993, the Department of Environmental Resources Agricultural Advisory Board Act, as amended by Act 220 of 2002, Chapter 7, Agricultural Advisory Board.

The purpose of the AAB is to provide advice and expertise to the DEP Secretary regarding the nature of agriculture in the Commonwealth. The board will also have the opportunity to review and provide comment on policies, rules, and regulations of the Pennsylvania Department of Environmental Protection, which have an impact or a potential impact on agriculture or the agricultural community. The board may provide comments on any existing departmental policy or regulation, as well as any regulatory proposal which would affect agriculture.

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Thank you for your consideration. We look forward to working with you as the proposed rulemaking moves forward.

Sincerely,



Michael Firestine
Chairman

Department of Environmental Protection Agricultural Advisory Board

Attachment

cc: **Agricultural Advisory Board Members**
J. Hines
G. Rider
K. Murin
S. Taglang
M. Hughes
F. Schneider

Agricultural Advisory Board (AAB) Comments on Proposed Chapter 102 Rulemaking

The following comments on the proposed Chapter 102 (Erosion and Sediment Control and Stormwater Management) rulemaking were recorded at the AAB meeting on October 21, 2009.

Comment 1:

Section 102.1 (Definitions) – The “Animal Heavy Use Area” definition should be more clearly defined that this chapter is only concerned with erosion and sediment control and not for control of discharges other than sedimentation. The AAB supports the development of technical guidance. The technical guidance should be clear to limit the definitions scope to areas where animals are permanently kept in concentration or kept in concentration for extended periods of time. The definition should not include entrances and pathways, used by animals, to access a keeping area.

Comment 2:

Section 102.1 (Definitions) – “Point Source” definition needs clarification that this chapter only deals with soil erosion control and sedimentation. Since Concentrated Animal Feeding Operations (CAFO’s) are in this definition, the additional language is needed to clarify that this chapter only regulates soil erosion and sedimentation and not nutrients or other suspended solids, which are covered under Chapters 91 and 93. The AAB supports the development of technical guidance. The technical guidance should be clear that the point source definition is for construction activities.

Comment 3:

Section 102.2 (Scope and Purpose) a clarifying statement should be added to this section to recognize the scope of regulation of agricultural operations under Chapter 102 only applies with respect to practices for accelerated soil erosion and sedimentation control and stormwater management, and does not include measures for management of manure or control of discharges regulated under Chapters 91 and 93.”

Comment 4:

Section 102.1 (Definitions) – “Soil loss tolerance (T)” definition needs some additional clarification. The language of the proposed rulemaking should change to note that if an operation meet the “T” standard at the time of E&S plan development, that the E&S plan should not have to be updated, if a change in the “T” standard was made. The AAB supports the development of technical guidance that will clarify this point.

Comment 5:

Section 102.4 (Erosion and sediment control requirements) – 102.4 (a)(4) “cost effective and reasonable BMP” language should be changed to include the same

qualifying language as prescribed in Chapter 83 (Nutrient Management) definitions. The language should read "effective and practicable (given technological, economic and institutional considerations). Paragraph (4) would read:

"The E&S plan shall include effective and practicable (given technological, economic and institutional considerations) BMPs designed to minimize the potential for accelerated erosion and sedimentation from agricultural plowing and tilling activities and animal heavy use areas."

Comment 6

Section 102.4 (Erosion and sediment control requirements) - 102.4 (a)(4)(iii) - The second sentence should be deleted. The AAB supports the development of technical guidance. The technical guidance should include a listing of Best Management Practices (BMPs).

Comment 7:

Section 102.4 (Erosion and sediment control requirements) – 102.4(a)(4)(iii) The AAB thinks that this language is appropriate.

Comment 8:

Section 102.14 (Riparian Forest Buffer Requirements) - The AAB thinks that the proposed widths for riparian forest buffers in the proposed rulemaking are appropriate and any additional widths would be excessive and may have a direct and negative affect on agriculture