

2783
 **Pennsylvania Farm Bureau**

510 S. 31st Street • P.O. Box 8736 • Camp Hill, PA 17001-8736 •

Phone (717) 761-2740 • FAX 731-3575 • www.pfb.com

November 24, 2009

Environmental Quality Board
P.O. Box 8477
Harrisburg, PA 17105-8477

RECEIVED

RECEIVED

DEC - 9 REC'D

NOV 30 2009

Dear Board Members:

INDEPENDENT REGULATORY
REVIEW COMMISSION

ENVIRONMENTAL QUALITY BOARD

The Pennsylvania Farm Bureau (PFB) would like to thank you for the opportunity to comment on the proposed amendments to the 25 PA. Code Chapter 102 Erosion and Sediment Control and Stormwater Management regulations. The Pennsylvania Farm Bureau is the Commonwealth's largest farm organization with more than 46,000 farm and rural member families. We are the state affiliate of the American Farm Bureau Federation whose nationwide membership represents the country's largest general farm organization.

PFB and its members are heavily dedicated to improving and preserving the environment and waters of the commonwealth. We are also dedicated to preserving a strong and viable agricultural industry in Pennsylvania. Please consider these comments:

Comment 1:

Section 102.1 (Definitions) – The PFB recommends that all references to Animal Heavy Use Areas should be removed from the proposed regulations. Please see Comment # 5 for clarification. However, in the event that these areas are not removed from the regulations, the “Animal Heavy Use Area” definition should be more clearly defined. PFB request that this definition exclude entrances, pathways and walkways between areas where animals are housed or kept in concentration. The PFB 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 where it is not possible to establish and maintain vegetative cover of a density capable of minimizing accelerated erosion and sedimentation by usual planting methods.

Comment 2:

Section 102.1 (Definitions) – “Point Source” definition needs clarification that this chapter only deals with soil erosion control, sedimentation and stormwater. 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, sedimentation and stormwater and not nutrients or other suspended solids, which are covered under Chapters 91 and 93 regulations. The PFB supports the development of technical guidance. The technical guidance should state that the definition only applies with respect to construction activities regulated under this chapter.

Comment 3:

Section 102.1 (Definitions) – “Soil loss tolerance (T)” definition needs additional clarification. The language of the proposed rulemaking should be changed to note that if an operation meets the “T” standard at the time the E&S plan is developed and implemented, the E&S plan is not required to be updated in the event of a change in the “T” standard. The PFB supports the development of technical guidance that will clarify this point.

Comment 4:

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 storm water management, and does not include measures for management of manure nutrients or control of discharges regulated under Chapters 91 and 93 regulations."

Comment 5:

Section 102.4 (Erosion and sediment control requirements) – 102.4 (a) inclusion of "Animal Heavy Use Areas": The inclusion of Animal Heavy Use Areas in a regulation traditionally used to control erosion from agricultural plowing or tilling activities presents a potential "double jeopardy" situation for many agricultural animal operations in Pennsylvania. The "Animal Heavy Use Areas" defined in this proposed regulation are virtually identical to Animal Concentration Areas (ACAs), which are already defined and regulated by the State Conservation Commission (SCC) through the existing Chapter 83 Nutrient Management Law regulation. While the Chapter 83 regulation are primarily specific to Concentrated Animal Operations (CAOs) and Volunteer Animal Operations (VAOs) under the Nutrient management Law, the Department of Environmental Protection (DEP) also uses this regulation as the nutrient management planning standard for Concentrated Animal Feeding Operations (CAFOs), which are permitted under Chapter 92. ACAs and ACA management are also described in the Manure Management Manual, the existing DEP guidance document for all farms, which is referred to in DEP's Chapter 91 regulation. Therefore, if this Animal Heavy Use Area inclusion in Chapter 102 is allowed to go forward, many Pennsylvania agricultural operations could be cited and penalized under Chapter 102 as well as one of three (3) other Pennsylvania regulations (Chapters 83, 91 or 92) for the very same incident.

Additionally, including this specific reference to Animal Heavy Use Areas along with specific management requirements in the Chapter 102 regulation and future Chapter 102 Technical Manual, would allow for differing and possibly confusing requirements and standards (by different State and Federal Agencies) to address the same localized areas of concern on agricultural animal operations. Furthermore, erosion and sedimentation caused by outdoor animal activities, while extremely important, is generally thought to be a secondary concern. Nutrient pollution is generally considered to be the primary concern with outdoor animal activities. In solving these two types of problems, it is much more efficient to use conservation practices to solve the nutrient concerns presented by these types of areas because, in most if not all cases, if the nutrient concern is addressed and mitigated, the erosion concern will also be mitigated at the same time and with the same practice. These concerns are already addressed in the existing regulations and guidance cited above. The PFB feels that all references to Animal Heavy Use Areas should be removed from the proposed regulations.

Comment 6:

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 7:

Section 102.4 (Erosion and sediment control requirements) - 102.4(a)(4)(ii) The PFB thinks that this language is appropriate.

Comment 8:

Section 102.4 (Erosion and sediment control requirements) - 102.4 (a)(4)(iii) - The second sentence should be deleted. Reference to NRCS design standards do not need to be included in the regulatory language but is best supported in the technical guidance. The PFB supports the development of technical guidance. The technical guidance should reference NRCS design standards include a listing of Best Management Practices (BMPs).

Comment 9:

Section 102.4 (Erosion and sediment control requirements) - 102.4 (b)(5)(xiii) -The PFB thinks that the word "Evaluate" should be changed to "Identify". Paragraph (xiii) should read:

"Identify the potential for thermal impacts to surface waters from the earth disturbance activity and include BMPs to avoid, minimize or mitigate potential pollution from thermal impacts."

The PFB supports the development of technical guidance that will clarify this point.

Comment 10:

Section 102.6 (Permit applications and fees) - 102.6 (b)(2) - The PFB feels that the proposed increase in application fees for NPDES permits-by-rule, General NPDES Permits, Individual NPDES Permits, General E & S Permits and Individual E & S Permits are unacceptable and would greatly burden individual families, farmers, landowners, agribusinesses, and the Commonwealth as a whole. With the increased cost of implementing the proposed regulations for new construction activities, many small scale projects would be additionally burdened by such excessive fees that many projects would not be economically feasible. In the challenging economic state that agriculture and many other industries are facing over the next three to ten years, this is not the time to increase permit applications and fees by 1,000 percent. PFB feels that all permit applications and fees should remain as listed under the current regulations.

Comment 11:

Section 102.14 (Riparian Forest Buffer Requirements) 102.14 (a)(1)(i)- The PFB feels that the proposed widths of 150 feet for riparian forest buffers in the proposed rulemaking are appropriate and any additional widths would be excessive and may have a direct and negative effect on agriculture

Again, Pennsylvania Farm Bureau appreciates the opportunity to provide comments on this document. We hope the EQB takes our comments seriously. Please feel free to contact me at 717-761-2740 ext. 542, gmhazard@pfb.com with any questions or to follow-up on these comments.

Sincerely,



George M. Hazard
Pennsylvania Farm Bureau
Natural Resource Director
510 S. 31st Street
Camp Hill, PA 17001-8736

