

Annex A

CHAPTER 91. GENERAL PROVISIONS

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§ 91.1. Definitions.

*AEU*--*Animal equivalent unit*—One thousand pounds live weight of livestock or poultry animals, regardless of the actual number of individual animals comprising the unit, as defined in section 3 of the Nutrient Management Act (3 P. S. § 1703).

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*Earthen waste storage pond*—**A manure storage facility with an earthen structure lined with clay, plastic, concrete or other material acceptable to the Department.**

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*Manure Management Manual*—**The guidance manual published by the Department that is entitled "Manure Management Manual for Environmental Protection," including its supplements and amendments. The manual describes approved manure management practices for all agricultural operations as required by § 91.36. (relating to pollution control and prevention at agricultural operations).**

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*Manure Storage Facility*--A permanent structure or facility, a portion of a structure or facility, **or a group of structures or facilities at one agricultural operation,** utilized for the purpose of containing manure as defined in § 83.201 (relating to definitions).

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*Pennsylvania Technical Guide* –

(i) The Pennsylvania Soil and Water Conservation Technical Guide, including supplements and amendments, which is the primary technical guide published by the Pennsylvania office of the Natural Resources Conservation Service of the U.S. Department of Agriculture.

(ii) The Guide contains technical information, including design criteria, about conservation of soil, water, air, plant and animal resources specific to Pennsylvania.

(iii) The Guide is also referred to as the Field Office Technical Guide in Federal regulations and other documents.

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*Setback* -- A specified distance from surface waters or potential conduits to surface waters where manure, litter, and process wastewater may not be land applied.

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*Vegetated buffer*-- A permanent strip of dense perennial vegetation established parallel to the contours of and perpendicular to the dominant slope of the field for purposes that include slowing water runoff, enhancing water infiltration, and minimizing the risk of any potential pollutants from leaving the field and reaching surface waters.

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*Waste storage structure*—A manure storage facility that is a fabricated structure for storage of animal wastes or other organic agricultural wastes that is not an earthen waste storage pond.

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### § 91.35. Wastewater impoundments.

(a) Except as otherwise provided under subsections (c)—(ed), a person may not operate, maintain or use or permit the operation, maintenance or use of a wastewater impoundment for

the production, processing, storage, treatment or disposal of pollutants unless the wastewater impoundment is structurally sound, impermeable, protected from unauthorized acts of third parties, and is maintained so that a freeboard of at least 2 feet remains at all times. The person owning, operating or possessing a wastewater impoundment has the burden of satisfying the Department that the wastewater impoundment complies with these requirements.

(b) A person owning, operating or in possession of an existing wastewater impoundment containing pollutants, or intending to construct or use a wastewater impoundment, shall promptly submit to the Department a report or plan setting forth the location, size, construction and contents of the wastewater impoundment and other information as the Department may require.

(c) Except when a wastewater impoundment is already approved under an existing permit from the Department, a permit from the Department is required approving the location, construction, use, operation and maintenance of a wastewater impoundment subject to subsection (a) in the following cases:

(1) If a variance is requested from the requirements in subsection (a).

(2) If the capacity of one wastewater impoundment or of two or more interconnected wastewater impoundments exceeds 250,000 gallons.

(3) If the total capacity of polluting substances contained in wastewater impoundments on one tract or related tracts of land exceeds 500,000 gallons.

~~(4) If the impoundment is a new or expanded manure storage facility at an agricultural operation with more than 1,000 animal equivalent units, regardless of the capacity of the impoundment.~~

~~(5)~~ **(4)** If the Department determines that a permit is necessary for effective regulation to insure that pollution will not result from the use, operation or maintenance of the wastewater impoundment.

~~(d)~~ The following types of agricultural operations are not subject to subsections ~~(b)~~ and ~~(c)~~ or the freeboard requirements of subsection ~~(a)~~, but shall provide a 12 inch freeboard for all waste storage ponds as defined in the "Pennsylvania Technical Guide" and a 6 inch freeboard for all waste storage structures at all times:

~~(1)~~ An agricultural operation, which contains less than 1,001 animal equivalent units.

~~(2)~~ An agricultural operation in existence prior to January 29, 2000, and designed in accordance with the "Pennsylvania Technical Guide" and addenda or amendments thereto.

~~(e)~~**(d)** This section does not apply to:

**(1) Manure storage facilities at agricultural operations, which are governed by § 91.36 (relating to pollution control and prevention at agricultural operations).**

**(2)** Residual waste processing, disposal, treatment, collection, storage or transportation.

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**§ 91.36. Pollution control and prevention at agricultural operations.**

**(a)** *Animal manure storage facilities.*

**(1) Except as provided in paragraphs (2) and (3), a manure storage facility shall be designed, constructed, operated and maintained in accordance with the Manure Management Manual and the Pennsylvania Technical Guide. For liquid or semi-solid**

manure storage facilities constructed after January 29, 2000, the owner or operator shall meet one of the following:

(i) The design and construction of the facility shall be certified to meet the "Manure Management Manual" and "Pennsylvania Technical Guide" by a registered professional engineer.

(ii) The owner or operator shall obtain a water quality management permit from the Department for the manure storage facility.

(2) In the case of liquid or semi-solid manure storage facilities located at animal operations with over 1,000 AEUs for the first time after January 29, 2000, a water quality management permit is required.

(3) For new or expanded agricultural operations after \_\_\_\_\_ (Editor's Note: The blank refers to the effective date of adoption of this proposal), the following requirements apply to a liquid or semi-solid manure storage facility:

(i) Where the manure storage capacity is between 1 million and 2.5 million gallons, a water quality management permit is required for any manure storage facility that meets one of the following:

(A) It is a clay-lined earthen waste storage pond.

(B) The nearest downgradient stream is classified as a High Quality or Exceptional Value water under to Chapter 93 (relating to water quality standards).

(C) The nearest downgradient stream that has been assessed and has been determined by the Department to be impaired from nutrients from agricultural activities and the manure storage facility is on an agricultural operation that is

not implementing a Nutrient Management Plan approved by the State Conservation Commission under Chapter 83, Subchapter D (relating to nutrient management).

(ii) Where the manure storage capacity is 2.5 million gallons or more, a water quality management permit is required.

(4) A manure storage facility at a CAFO as defined in Chapter 92 (relating to NPDES permitting, monitoring and compliance) shall be designed, constructed, operated and maintained to prevent discharges to surface waters during a storm event up to and including a 25-year/24-hour storm, except for new or expanded agricultural operations that are CAFOs, that commenced operations after April 13, 2003, and that include swine, poultry or veal calves. The facilities for those swine, poultry or veal calves shall prevent discharges to surface waters during a storm event up to and including a 100-year/24-hour storm.

(5) For a liquid or semi-solid manure storage facility, the following minimum freeboard requirements apply and shall be maintained:

(i) For an agricultural operation with over 1,000 AEUs that was a new or expanded operation after January 29, 2000, a minimum 24-inch freeboard.

(ii) For all other facilities as follows:

(A) Earthen waste storage ponds, a minimum 12-inch freeboard, as described in the Pennsylvania Technical Guide.

(B) For all waste storage structures containing animal wastes, a minimum 6-inch freeboard, as described in the Pennsylvania Technical Guide.

(6) The requirements in this section are in addition to and do not replace those in Chapter 83, Subchapter D.

**(7) The Department may require a water quality management permit for any manure storage facility, based on relevant criteria such as proximity to special protection waters or impaired waters under Chapter 93, or the risk of pollution.**

~~Except as provided in paragraphs (1) and (2), animal manure storage facilities do not require a water quality management permit from the Department if the design and operation of the storage facilities are in accordance with the Department approved manure management practices as described in the publication entitled "Manure Management for Environmental Protection" and addenda or amendments thereto prepared by the Department, "The Pennsylvania Technical Guide" and addenda and amendments thereto, and when applicable, § 83.351 (relating to minimum standards for the design, construction, location, operation, maintenance and removal from service of manure storage facilities) and each animal manure storage facility is designed to prevent discharges to surface waters during a storm event of less than a 25-year/24-hour storm. In addition, in the case of animal manure storage facilities located at animal operations with over 1,000 animal equivalent units on or before January 29, 2000, a water quality management permit is not required if a registered professional engineer certifies that the design and construction of each manure storage facility is consistent with the "Pennsylvania Technical Guide."~~

~~(1) — A permit is required under § 91.35 (relating to wastewater impoundments) for the design, construction and operation of any new or expanded animal manure storage facility at an agricultural operation with more than 1,000 animal equivalent units. In addition to the requirements of § 91.35, the permit shall incorporate the requirements of this section.~~

~~(2) — If a person chooses to design or construct manure storage facilities using criteria other than those described in "Manure Management for Environmental Protection" prepared by the Department and the "Pennsylvania Technical Guide" and addenda or~~

~~amendments to those publications, approval of the Department or a permit under § 91.35 will be required. Operations which are required to or volunteer to submit nutrient management plans shall comply with the nutrient management regulations in Chapter 83 (relating to State Conservation Commission).~~

(b) *Land application of animal manure, litter and process wastewater; setbacks and buffers.*

**(1) The land application of animal manures, litter and process wastewaters does not require a permit or approval from the Department if unless the operator can demonstrate that the land application of manure is in accordance with the requirements of paragraph (2) and one of the following is satisfied:**

**(i) The land application is in accordance with** Department approved manure management practices as described in the publication entitled "Manure Management **Manual** for Environmental Protection" and addenda or amendments thereto prepared by the Department.

**(ii) For CAOs, the land application is in accordance with an approved nutrient management plan under Chapter 83, Subchapter D.**

**(iii) For CAFOs, the land application is in accordance with a CAFO permit as described in §92.5a (relating to CAFOs) .**

~~If a person chooses to apply animal manure using the criteria other than those described in "Manure Management Manual for Environmental Protection" and addenda or amendments thereto prepared by the Department, approval of the Department or a permit will be required. Operations which are required to or volunteer to submit nutrient management plans shall comply with Chapter 83.~~

**(2) Appropriate vegetated buffers and setbacks approved by the Department must be followed to protect and maintain water quality.**

**(c) *Discharge of Pollutants.* It is unlawful for agricultural operations to discharge pollutants to waters of this Commonwealth except as allowed by regulations or a permit administered by the Department. The Department is authorized to take an enforcement action against any agricultural operation in violation of this requirement. In addition, when an agricultural operation is found to be in violation of the Clean Streams Law (35 P.S. §§ 691.1-691.1001), the Department may require the agricultural operation to develop and implement a nutrient management plan under Chapter 83, Subchapter D, for abatement or prevention of the pollution.**

**CHAPTER 92. NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM**  
**PERMITTING, MONITORING AND COMPLIANCE**

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**§ 92.1. Definitions.**

*Agricultural operation*—The management and use of farming resources for the production of crops, livestock or poultry as defined in section 3 of the Nutrient Management Act.

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*CAFO—Concentrated animal feeding operation*—A CAO with greater than 300 AEUs, any agricultural operation with greater than 1,000 AEUs, **any agricultural operation with a discharge to surface waters that is authorized by Department permit limits and conditions, any agricultural operation defined as a large CAFO under 40 CFR 122.23(b)(4), (relating to concentrated feeding operations (applicable to state NPDES programs, see 123.25)) or any other agricultural operation designated as a CAFO by the Department based on risk of pollution of surface waters using relevant criteria such as the size, location and management plan of the operation** ~~or an agricultural operation with a discharge to surface waters during a storm event of less than a 25-year/24-hour storm.~~

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*CAO—Concentrated animal operation*—An agricultural operation where the animal density exceeds 2 AEUs per acre, as defined in section 3 of the Nutrient Management Act.

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**Livestock –**

**(i) Animals raised, stabled, fed or maintained on an agricultural operation with the purpose of generating income or providing work, recreation or transportation. Examples include: dairy cows, beef cattle, goats, sheep, swine and horses.**

**(ii) The term does not include aquatic species.**

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**Setback-- A specified distance from surface waters or potential conduits to surface waters where manure, litter, and process wastewater may not be land applied.**

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**Vegetated Buffer --A permanent strip of dense perennial vegetation established parallel to the contours of and perpendicular to the dominant slope of the field for purposes that include slowing water runoff, enhancing water infiltration, and minimizing the risk of any potential pollutants from leaving the field and reaching surface waters.**

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### **§ 92.5a. CAFOs.**

(a) **Except as provided in subsections (b) and (c), Each CAFO shall apply have applied** for an NPDES permit on the following schedule:

(1) By May 18, 2001, for any CAFO in existence on November 18, 2000, with greater than 1,000 AEU's.

(2) By February 28, 2002, for any other CAFO in existence on November 18, 2000.

(3) Prior to beginning operation, for any new or expanded CAFO that ~~begins~~ **began** operation after November 18, 2000 **and before** **(Editor's Note: The blank refers to the effective date of adoption of this proposal).**

**(b) A poultry operation that is a CAFO, which is in existence on \_\_\_\_\_ (Editor's**

**Note: The blank refers to the effective date of adoption of this proposal) and that is not using liquid manure handling systems, shall apply for an NPDES permit no later than the following:**

**(1) \_\_\_\_\_ (Editor's Note: The blank refers to a date 6 months after the effective date of adoption of this proposal) for operations with 500 or more AEUs.**

**(2) \_\_\_\_\_ (Editor's Note: The blank refers to a date 15 months after the effective date of adoption of this proposal) for operations with 300 - 499 AEUs.**

**(c) After \_\_\_\_\_ (Editor's Note: The blank refers to the effective date of adoption of this proposal), a new operation, and an existing operation that will become a CAFO due to changes in operations such as additional animals or loss of land suitable for manure application, shall do the following:**

**(1) Apply for an NPDES permit no later than 180 days before the operation commences or changes.**

**(2) Obtain an NPDES permit prior to commencing operations.**

**(d) The NPDES permit application requirements shall include, but not be limited to, the following: for each CAFO shall include conditions requiring the following:**

**(1) A nutrient management plan meeting the requirements of Chapter 83, Subchapter D (relating to nutrient management) relating to State Conservation Commission and approved by the county conservation district or the State Conservation Commission. The plan must include written agreement with importers or brokers related to the land application of manure, and nutrient balance sheets or a nutrient management plan for the importing farms. The plan must include one of the following, whichever is more stringent:**

**(i) Buffers and manure application setbacks for the CAFO of no less than 100 feet from downgradient surface water, or vegetated buffer no less than 35 feet in width.**

**(ii) Buffers and setbacks as required by §91.36(b)(2) (relating to pollution control and prevention at agricultural operations).**

(2) An erosion and sediment control plan **for plowing and tilling operations** meeting the requirements of Chapter 102 (relating to erosion and sediment control).

(3) ~~For earth disturbances of 5 acres or more, an NPDES permit for stormwater discharges associated with a construction activity meeting the requirements of Chapter 102.~~

**When required under § 91.36(a), a water quality management permit, permit application, or engineer's certification, as required.**

**(4) A preparedness, prevention and contingency plan for pollutants related to the CAFO operation.**

~~(ee) In addition to the requirements of subsection (b), the NPDES permits for each CAFO with greater than 1,000 AEU's shall include, **but not be limited to,** conditions requiring the following:~~

**(1) Compliance with the Nutrient Management Plan, the Preparedness, Prevention and Contingency Plan, and the Erosion and Sediment Control Plan.**

**(2) A separate NPDES permit for stormwater discharges associated with a construction activity meeting the requirements of Chapter 102 for any earth disturbance of 1 acre or more with a point source discharge to surface waters, or 5 acres or more regardless of the planned runoff.**

**(3) Compliance with 3 Pa. C.S. §§ 2301-2389 (relating to the Domestic**

**Animal Law.**

**(4) Compliance with § 91.36.**

**(5) Record-keeping and reporting requirements as described in the permit.**

~~(1) A water quality management permit under §91.36(a) (relating to pollution control and prevention at agricultural operations).~~

~~(2) A preparedness, prevention and contingency plan for chemicals related to the CAFO operation.~~

~~(3) —Written agreements with importers or brokers related to the land application of manure and nutrient balance sheets for all exported manure.~~