

Pennsylvania CAFO Stakeholders Meeting
September 30, 2003
Rachel Carson State Office Building, 12th Floor Conference Room

Introduction: The sixth Pennsylvania CAFO Stakeholders Workgroup meeting for updating the current program to meet the new requirements was convened at 9:05 a.m. After an introduction of participants and an open comment period, the summary of the August 28, 2003 meeting was accepted. Here is a description of the main items covered at this meeting.

CAFO regulations

Chapter 91 Definitions – Agricultural Operations: Permitting of multiple structures at multiple locations was discussed. Concern was expressed that the definition of an agricultural operation needs to be tightened.

Chapter 91 Definitions – Waste Storage Structure: Hank Zygmunt questioned what is meant by “temporary storage” in terms of poultry litter. He pointed out that several states have proposed various time periods up to 180 days for open stacks in fields prior to spreading. He stated that 180 days is too long. Doug Goodlander explained that the State Conservation Commission is proposing regulations that would allow storage until the next planting season. Hank expressed concern and referred to studies that have been done concerning water quality effects of these piles. This will be a topic for future discussion with EPA as we move forward with the reg package.

Hank also asked if “other organic agricultural wastes” was intended to include mortality. The answer was no. A discussion of mortality followed. It was noted that PDA is willing to accept open stacks for mortality composting, as is Penn State. This was described as a common practice in PA. NRCS has a BMP standard for composting of animals that requires exclusion of rainwater and roof runoff from the compost mixture. It was pointed out that regardless of the method of disposal being used, discharges to surface waters would be a violation of the Clean Water Act. Handling of emergencies was also briefly discussed.

§91.36(a)(2)and (3): It was noted that the 2,500,000 gallons storage capacity equates to about a 300 AEU agricultural operation. A hypothetical situation was posed where an existing operation with an existing storage decides to expand to greater than 1000 AEU without expanding the manure storage facility. Would a permit be required under §91.36(a)(2)? Cedric noted that the intent of this section is to prevent operations from avoiding a permit by oversizing their storage, then later increasing their AEU's. He also stated that the 2,500,000 gallons capacity was based on his understanding from the last meeting that this equated to a 1000 AEU operation. For §91.36(a)(3), it was suggested that the section should apply to new or expanded manure storage facilities, rather than new or expanded agricultural operations. It was also pointed out that §91.36(a)(3)(i) should say “total” capacity. There was criticism that this proposal would create unnecessary expenses for the ag community. Hank asked if the State has to go through a cost-benefit analysis of the proposed reg. We do.

§91.36(a)(4): This section was challenged as being poorly written and grammatically incorrect!! After some discussion, the consensus of the group was that if the manures at a new or expanded mixed operation are kept completely separated, then the appropriate

ELGs (25 year and 100 year) should be applied. For any storage facility that has any amount of swine, poultry, or veal manure, the 100 year criteria will apply.

Process Wastewater: Hank suggested that this should be defined in the regulations. Cedric read the definition from Chapter 92 and said that perhaps we should reiterate it in Chapter 91.

ELG Requirements: Hank suggested that the requirements be explicitly stated and clearly defined in the regulations.

Chapter 92 Definitions – CAFO: Concern was expressed regarding designating small operations as CAFOs because of their environmental risk. This was seen as tainting larger operations' image. The idea of citing operations with discharge violations under general NPDES program rather than making them get a CAFO NPDES permit was discussed. The ambiguity of the designation criteria was pointed out. A request was made that this should be elaborated on. ELGs were again brought up by EPA, and it was suggested that Section 92.5a.(e) might be the logical place to insert these requirements.

Chapter 92 Definitions – Vegetated Buffer: The question was raised whether the definition could refer to the PA Technical Guide or the specific NRCS practices: filter strip and riparian forest buffer. Legally, we can't do this in the definition section of the regulation. There is also the issue of whether these practices are consistent with the federal rule. Hank asked for the opportunity to review the tech guide standards.

§92.5a.(d)(4): There was a question as to why the clause on chemical handling was dropped from the regulation. Cedric explained that there was confusion over what was meant by "chemicals". Rather than try to elaborate this in detail, we simplified the regulation by taking out this reference and reverting to the current language in the regulations. The instructions for preparing a PPC plan very clearly explain what is required.

Large Federal CAFOs: Hank asked how we plan to insure that all operations that are large CAFOs by Federal rule are covered under PA's permit program. Cedric alluded to the strategy, where we expressively state that PA has the authority to require these operations to apply for permits. Hank pointed out that we "must" require this from EPA's perspective. He also requested a table or description that makes it clear to the regulated community just who is included in this requirement. There was concern that doing this would really complicate and confuse the public/farm community. This is inconsistent with the direction supported by the workgroup and does not consider priorities in Pennsylvania. It discounts the extended CAFO coverage that our approach provides.

CAFO Strategy

IIIA. 2.: There was a suggestion that the same language should be used for consistency in these two sections. Either documented "ag nutrient or sediment related impairments" or "nutrient or sediment related impairments".

III.D.3. Temporary litter storage: Hank suggested that this requirement should be explicitly enumerated as an element of the NMP.

III.E.1.d. and e.: It was pointed out that we need to close the loophole on numbers to include 500 AEU's.

III.E.2.e.: Revise to reflect changes to the regulations.

IV.A.2.a.: add: "and any agricultural operation with a discharge designed to meet permit limits and conditions".

IV.A.2.c.: This section needs additional clarification. It was suggested that we delete the reference to the Federal threshold numbers.

IV.B.2.: This section could be clearer.

IV.C.3.: This section needs additional clarification. Should the reference be to ag nutrients or sediment related...

IV.E.2.a.: Eliminate the last sentence.

IV.E.2.b.: Eliminate "throughout the state".

IV.E.2.e.: The intent of this requirement was not clear. It refers to a notice of an application for a permit.

IV.E.2.f.: Eliminate "throughout the state".

Public Participation: The question was raised as to whether designated CAFOs with illegal discharges would be required to go through the public participation process when applying for a permit. They would face the same requirements that any CAFO permit applicant would.

V.A.1.: The proposal for FSA to withhold subsidy payments as a compliance strategy was briefly discussed. There was agreement that this is not ready to be included in the strategy without a lot of coordination/discussion. For now, regarding "Compliance", the current Compliance strategy is applicable.

IX.: The trading section was discussed in general terms. The question was raised whether ag to ag trades would be allowed (yes). It was noted that some trades would require coordination with other programs, which should be referenced in this discussion. It was mentioned that the relationship of trading to anti-degradation rule should be brought out. This section will undoubtedly evolve, as the Department continues development of this concept and moves toward setting criteria and rules.

VI.: Land use was discussed. There was a question about the three elements to assess consistency. It was explained that the three elements are: the local zoning ordinance, the municipal plan, and the county plan.

A request was made that the Department's Act 67/68 policy be described in the strategy, rather than just referenced.

VII.: It was suggested that air quality concerns are broader than odor, and that this section should reflect that.

Before closing, the point was made that the regulations do not allow for a method for operations to exempt out of the program, as the “No potential to Discharge” clause in the Federal regs allows. Hank pointed out that if the operation ever receives rain, then it would have a potential to discharge.

The point was again reinforced that the criteria/process for designating a CAFO needs to be made explicitly and clearly in the strategy.

Next Meeting: None scheduled until public comments to draft regulations have been received.

Participants:

Charlie Abdalla, Professor, PSU, College of Ag. Science
Bill Achor, Environmental Coordinator, Wenger’s Feed, Inc.
Dan Alters, Program Manager, DEP NC regional office
Amy Bradford, Penn Ag
Doug Brennan, DEP Reg. Counsel
Alyssa Dodd, PS Coop. Ext.
Marty Ferry, Permits Chief, DEP SC regional office
Don Fiesta, Prof. Geol., DEP Central Office
Team Ag, Inc.
Devin Gerlach, Hostetter Management Co.
Bob Gibson, Section Chief, DEP Central Office
Doug Goodlander, SCC
Jennifer Grimes, Farmer’s Pride, Inc.
Virginia Ishler, PSU, Dairy and Animal Science Dept.
Kim Snell-Zarcone, Penn Future
Tom Juengst, Program Specialist, DEP Central Office
Cedric Karper, Division Chief, DEP Central Office
Christy McAllister, EPA
Lori Mohr, DEP Policy Office
Jedd Moncavage, Team Ag, Inc.
Tim Murphy, Conservation Engineer, USDA-NRCS
Kelly O’Neill, Ag. Policy Analyst, CBF
Walt Peechatka, Penn Ag
Marel Raub, Pa. Farm Bureau
William Rogers, AET Consulting, Inc.
Tom Schmick, DEP NC regional office
Jennifer Weld, USDA-ARS
Hank Zygmunt, EPA