Annex A
TITLE 25. ENVIRONMENTAL PROTECTION
PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION
Subpart C. PROTECTION OF NATURAL RESOURCES
ARTICLE I. LAND RESOURCES
CHAPTER 83. STATE CONSERVATION COMMISSION
Subchapter D. NUTRIENT MANAGEMENT
GENERAL PROVISIONS

§ 83.201. Definitions.

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

AEU--Animal equivalent unit--One thousand pounds live weight of livestock or poultry animals, on an annualized basis, regardless of the actual number of individual animals comprising the unit.

AEU per acre--An animal equivalent unit per acre of cropland or acre of land suitable for application of animal manure.

Act--3 Pa.C.S. §§ 501--522 (relating to nutrient management and odor management).

Act 49--Commercial Manure Hauler and Broker Certification Act (3 P. S. §§ 2010.1--2010.12).

Agent--An entity delegated Commission powers and duties under the authority of section 4(3) of the Conservation District Law (3 P. S. § 852(3)), including a partnership, association, corporation, municipality, municipal authority, political subdivision of this Commonwealth and an agency, department, commission or authority of the Commonwealth.

Agricultural erosion and sediment control plan--A site-specific plan identifying BMPs to minimize accelerated erosion and sedimentation from agricultural runoff, required by Chapter 102 (relating to erosion and sediment control). The agricultural erosion and sediment control components of a conservation plan may meet this requirement, if allowed under Chapter 102.

Agricultural operations--The management and use of farming resources for the production of crops, livestock or poultry.

Animal concentration areas--

(i) Barnyards, feedlots, loafing areas, exercise lots or other similar animal confinement areas that will not maintain a growing crop, or where deposited manure nitrogen is in excess of crop needs.

(ii) The term excludes areas managed as pastures or other cropland.

(iii) The term excludes pasture access ways, if they do not cause direct flow of nutrients to surface water or groundwater.

Animal unit--One thousand pounds live weight of livestock or poultry animals, regardless of the actual number of individual animals comprising the unit.

BMP--Best management practice--A practice or combination of practices determined by the Commission to be effective and practicable (given technological, economic and institutional considerations) to manage nutrients to protect surface water and groundwater taking into account applicable nutrient requirements for crop utilization.

Broker--A person that is not working for or under the control of an agricultural operation and that assumes temporary control or ownership of manure from an NMP operation and arranges for transport to and utilization at an importing operation or other location.

Buffer or *vegetated buffer*--

(i) A permanent strip of dense perennial vegetation established parallel to the contours of, and perpendicular to, the dominant slope of the field.

(ii) There is no mechanical application of manure within the buffer area.

(iii) The purposes include slowing water runoff, enhancing water infiltration and minimizing the risk of any potential nutrients from leaving the field and reaching surface waters.

CAO--Concentrated animal operation--Agricultural operations with eight or more animal equivalent units where the animal density exceeds two AEUs per acre on an annualized basis.

Commercial manure hauler--A person that transports or land-applies manure as a contract agent for an NMP operation or a broker under the direction of the operation or broker.

Commission--The State Conservation Commission established by the Conservation District Law (3 P. S. §§ 849--864).

Concentrated water flow areas--

(i) Natural or manmade areas where stormwater runoff is channeled and conveyed directly to surface water or groundwater.

(ii) The term includes, but is not limited to, ditches, waterways, gullies and swales.

Conservation district--A county conservation district established under the Conservation District Law.

Cooperative Extension--The Penn State Cooperative Extension.

Critical runoff problem areas--

(i) Nonvegetated concentrated water flow areas directly discharging into surface water or groundwater, and areas where runoff containing nutrients that were applied after the growing season discharge directly into surface water or groundwater.

(ii) The term includes gullies and unprotected ditches.

Crop management unit--The portion of cropland, hayland and pasture, including a field, a portion of a field, or group of fields, on an agricultural operation that has a unique management history (same rotation and manure history), similar production capability, and that will be managed uniformly as a distinct unit.

Emergency manure stacking areas--Unimproved areas that are authorized to be used for the storage of solid manure to be applied to the land as plant nutrients, except that these areas are only used as a contingency measure to address situations where the approved manure handling practice as described in the plan is not able to address the manure generated on the operation due to unforeseen circumstances.

Farming resources--The animals, facilities and lands used for the production or raising of crops, livestock or poultry. The lands are limited to those located at the animal facility which are owned by the operator of the facility, and other owned, rented or leased lands under the management control of the operator of the facility that are used for the application, treatment or storage of manure generated at the facility.

Fund--The Nutrient Management Fund established under section 512 of the act (relating to nutrient management fund).

In-field stacking--The practice of stacking solid manure on unimproved cropland, hayland and pasture areas to be applied to the land as plant nutrients.

Intermittent stream--A body of water flowing in a channel or bed composed primarily of substrates associated with flowing water which, during periods of the year, is below the water table and obtains its flow from both surface runoff and groundwater discharges.

Livestock--

(i) Animals raised, stabled, fed or maintained on an agricultural operation with the purpose of generating income or providing work, recreation or transportation.

(ii) Examples include: dairy cows, beef cattle, goats, sheep, swine and horses.

(iii) The term does not include aquatic species.

Manure--

(i) Animal excrement, including poultry litter, which is produced at an agricultural operation.

(ii) The term includes materials such as bedding, washwater and other materials which are commingled with that excrement.

Manure group--A portion of the manure generated on the operation that is distinct due to factors including species, handling practices, manure consistency, anticipated nutrient content or application season.

Manure Management Manual--The guidance manual published by the Department of Environmental Protection 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).

Manure storage facility--

(i) A permanent structure or facility, or portion of a structure or facility, utilized for the primary purpose of containing manure.

(ii) Examples include: liquid manure structures, manure storage ponds, component reception pits and transfer pipes, containment structures built under a confinement building, permanent stacking and composting facilities and manure treatment facilities.

(iii) The term does not include the animal confinement areas of poultry houses, horse stalls, freestall barns or bedded pack animal housing systems.

Mechanically incorporated--The combination of manure with the soil by means of farm tillage or manure injection equipment, including disks and twisted shank chisel plows, to minimize the potential of overland runoff of the manure.

NMP operation--Nutrient management plan operation--CAOs, VAOs and operations required to develop compliance plans under section 506(j) of the act (relating to nutrient management plans).

NRCS--Natural Resources Conservation Service--The Natural Resources Conservation Service of the United States Department of Agriculture, formerly known as the Soil Conservation Service.

National Wetlands Inventory--The inventory of known wetlands prepared by the United States Fish and Wildlife Service and readily available on maps in digital format on the Internet.

Nutrient--A substance or recognized plant nutrient, element or compound which is used or sold for its plant nutritive content or its claimed nutritive value. The term includes, but is not limited to, livestock and poultry manures, compost as fertilizer, commercially manufactured chemical fertilizers, biosolids or combinations thereof. The only nutrient elements of concern under this subchapter, based on their potential to impact the quality of surface waters or groundwater, are nitrogen and phosphorus. Unless the context clearly indicates otherwise, "nutrients" as used in this subchapter means nitrogen and phosphorus.

Nutrient balance sheet--A crop management BMP developed to protect surface and groundwater quality by providing the calculations for determining the appropriate rate, method and timing of manure that can be applied to cropland, hayland and pasture, to meet the purposes of this subchapter.

Nutrient management specialist or specialist--A person satisfying the requirements of the Department of Agriculture's Nutrient Management Certification Program in 7 Pa. Code §§ 130b.1--130b.51 (relating to nutrient management certification).

Pastures--Crop areas managed for forage production that are harvested by livestock, or a combination of livestock and mechanical harvesting.

Pennsylvania Agronomy Guide--The reference book published by Cooperative Extension and updated periodically, used as a practical guide to grain and forage production, soil fertility management, pest management and erosion control, with special reference to Pennsylvania conditions.

Pennsylvania Technical Guide--A primary reference document published by the United States Department of Agriculture's NRCS, entitled *The Pennsylvania Soil and Water Conservation Technical Guide*, which is used by technically trained persons to plan and apply appropriate BMPs.

Perennial stream--A body of water flowing in a channel or bed composed primarily of substrates associated with flowing waters and capable, in the absence of pollution or other manmade stream disturbances, of supporting bottom dwelling aquatic animals.

Permanent manure stacking areas--Designated, improved storage areas that are used for the long term or recurring storage of solid manure.

Phosphorus Index-

(i) The field evaluation methodology developed specifically for this Commonwealth and approved by the Commission, which combines indicators of phosphorus sources and phosphorus transport, to identify areas that have a high vulnerability or risk of phosphorus loss to surface waters.

(ii) This evaluation methodology provides direction on BMPs to address the land application of phosphorus-containing nutrient sources, to protect water quality.

Plan--Nutrient management plan--

(i) A written site-specific plan which meets the requirements in the act, and in §§ 83.271, 83.272 and 83.281--83.381.

(ii) Except when otherwise stated, the term includes plan amendments required under this subchapter.

Soil test level--The level of soil characteristics such as phosphorus, potassium and pH, analyzed using standard industry methods such as those described in the current *Pennsylvania Agronomy Guide*.

Spring--A place where groundwater flows naturally from rock or soil onto the land surface for a total of 183 days or more per year.

Stormwater--Runoff from the surface of the land resulting from rain, snow or ice melt.

VAO--Voluntary agricultural operation--

(i) Any operation that voluntarily agrees to meet the requirements of this subchapter even though it is not otherwise required under the act or this chapter to submit a nutrient management plan.

(ii) The term includes agricultural operations applying for financial assistance under the act.

Winter--December 15 to February 28, or any time the ground is frozen at least 4 inches deep or is snow covered.

§ 83.202. Scope.

This subchapter specifies criteria and requirements for:

(1) Nutrient management plans required under the act for CAOs, VAOs and operations required to develop compliance plans under section 506(j) of the act (relating to nutrient management plans).

(2) The construction, location, design, installation and operation of animal manure storage facilities on NMP operations.

(3) Manure handling in emergency situations when there is an outbreak of a contagious disease that poses a threat to animal or human health.

(4) The awarding of financial assistance under the act for the implementation of plans for existing agricultural operations.

(5) The awarding of incentives for the development of plans under the Plan Development Incentives Program in §§ 83.211--83.216.

§ 83.203. Purpose.

The purposes of this subchapter are to:

(1) Assure the proper utilization and management of nutrients on CAOs, VAOs and operations required to develop compliance plans under section 506(j) of the act (relating to nutrient management plans).

(2) Assure the proper utilization and management of nutrients when manure is exported off of the operations described in paragraph (1).

(3) Protect the quality of surface water and groundwater.

§ 83.204. (Reserved).

§ 83.205. Preemption of local ordinances.

(a) The act and this subchapter are of Statewide concern and occupy the whole field of regulation regarding nutrient management to the exclusion of all local regulations.

(b) After October 1, 1997, no ordinance or regulation of any political subdivision or home rule municipality may prohibit or in any way regulate practices related to the storage, handling or land application of animal manure or nutrients or to the construction, location or operation of facilities used for storage of animal manure or nutrients or practices otherwise regulated by the act or this subchapter if the municipal ordinance is in conflict with the act and this subchapter.

(c) Nothing in the act or this subchapter prevents a political subdivision or home rule municipality from adopting and enforcing ordinances or regulations which are consistent with and no more stringent than the requirements of the act and this subchapter.

(d) No penalty will be assessed under any valid local ordinance or regulation for any violation for which a penalty has been assessed under the act or this subchapter.

§ 83.206. Limitation of liability.

If an operator is fully and properly implementing a plan approved by a delegated county conservation district or the Commission and maintained under the act and this subchapter, the implementation shall be given appropriate consideration as a mitigating factor in any civil action for penalties or damages alleged to have been caused by the management or utilization of nutrients under the implementation.

PLAN DEVELOPMENT AND PLAN MAINTENANCE INCENTIVES PROGRAMS

§ 83.211. Applicant eligibility.

(a) To be eligible to apply for financial assistance for nutrient management plan development or plan maintenance, a person shall meet the following criteria.

(1) In addition to seeking financial assistance for the implementation of a nutrient management plan under §§ 83.221--83.233 (relating to financial assistance), an NMP operation seeking to submit a nutrient management plan for the first time under the act, may apply for funding under the Plan Development Incentives Program for the development of a nutrient management plan by a certified plan writer.

(2) In addition to seeking financial assistance for the implementation of a nutrient management plan under §§ 83.221--83.233, an NMP operation seeking to amend an existing nutrient management plan approved prior to October 1, 2006, may apply for funding under the Plan Development Incentives Program for the development of the amendment to the existing approved plan by a certified nutrient management plan writer.

(3) In addition to seeking financial assistance for the implementation of a nutrient management plan under §§ 83.221--83.233, an NMP operation seeking to update or amend an approved nutrient management plan meeting the requirements of this revised subchapter, may apply for funding under the Plan Maintenance Incentives Program for the development of a nutrient management plan update or amendment by a certified nutrient management plan writer.

(b) Agricultural operations existing as of October 1, 2006, and are or will be producing or utilizing livestock or poultry manure or both on their operation, are eligible to receive funding under this subchapter.

(c) NMP operations that are in violation of the nutrient management plan submission requirements, or any other requirements of an existing nutrient management plan, the act, or this chapter, will not be eligible for funding under the Plan Development Incentives Program or the Plan Maintenance Incentives Program.

(d) NMP operations having an approved plan prior to October 1, 2006, that are in compliance with that plan and the act are eligible to receive funding under the Plan Development Incentives Program to amend the plan to meet the requirements of this revised subchapter.

(e) Only those agricultural operations having an approved nutrient management plan meeting the requirements of this revised subchapter shall be eligible to receive funding under the Plan Maintenance Incentives Program.

§ 83.212. Application procedure.

(a) An application for funding from the Plan Development Incentives Program or Plan Maintenance Incentives Program shall be made on forms developed by the Commission and shall be addressed to the Commission or delegated conservation district.

(b) An application received by the Commission or delegated conservation district will be reviewed for completeness, eligibility and the appropriate level of funding.

(c) If the application is determined to be incomplete, the Commission, or delegated conservation district, will provide the applicant with a written explanation of the reason for the determination, and request the additional information needed to complete the application process.

(d) The Commission or delegated conservation district will approve or disapprove each application submitted. Within 45 days of receipt of the required information, applicants will be notified in writing of actions taken on their applications and their rights to appeal the actions.

(e) If the approval of applications for funding from the Plan Development Incentives Program or Plan Maintenance Incentives Program is delegated to a county conservation district under § 83.241 (relating to delegation to local agencies), actions of conservation districts shall be deemed actions of the Commission unless an applicant aggrieved by an action of a conservation district seeks Commission review of the action within 30 days from actual or constructive notice of the action.

(f) The applicant may appeal a decision of the Commission to the EHB as provided for in section 517 of the act (relating to appealable actions).

§ 83.213. Application prioritization criteria.

(a) The distribution of funding under the Plan Development Incentives Program shall be provided to the extent funds are available based on the following prioritization:

(1) Agricultural operations newly classified as CAOs due to the revised criteria established in this amended subchapter.

(2) CAOs amending a plan approved prior to October 1, 2006, to conform with the revised program criteria.

(3) CAOs coming into existence after October 1, 2006, due to loss of rented acres.

(4) VAOs amending a plan approved prior to October 1, 2006, to conform with the revised program criteria.

(5) VAOs submitting a plan under the act.

(6) Other CAOs coming into existence after October 1, 2006.

(b) The distribution of funding under the Plan Maintenance Incentives Program will be provided to the extent funds are available based on the following prioritization:

(1) CAOs developing plan updates or amendments.

(2) VAOs developing plan updates or amendments.

(3) Other NMP operations developing plan updates or amendments.

§ 83.214. Eligible costs.

(a) Eligible costs considered by the Commission under the Plan Development Incentives Program are those fees incurred for the development of the initial nutrient management plan or the amendment of a nutrient management plan approved prior to October 1, 2006, to conform with the revised program criteria.

(b) Eligible costs considered by the Commission under the Plan Maintenance Incentives Program are those fees incurred for the development of an update or amendment to a nutrient management plan meeting the requirements of this revised subchapter.

(c) Costs of soil and manure tests (not including labor costs) for initial plan development, or for developing the amended or updated plan as described in subsections (a) and (b), are eligible for reimbursement.

§ 83.215. Funding limitations.

(a) The Commission will limit individual awards in the amounts it deems appropriate for the particular classification of operation.

(b) Funding under the Plan Development Incentives Program will be limited to a one-time reimbursement payment for initial plan development costs incurred after the eligible agricultural operator's application has been approved, and as a one-time reimbursement payment for a nutrient management plan amendment of a plan approved prior to October 1, 2006, to conform with the revised program criteria.

(c) Funding under the Plan Maintenance Incentives Program will be limited to one payment annually for updating or amending an approved nutrient management plan meeting the requirements of this revised subchapter.

(d) Funding under both the Plan Development Incentives Program and the Plan Maintenance Incentives Program will not be available for planning efforts initiated prior to approval of the request for participation in the program.

§ 83.216. Implementation and reporting.

(a) The Commission will develop implementation and reporting documents defining the terms and conditions under which funding under each program will be provided and other documents determined to be necessary by the Commission.

(b) Only plans or plan updates and amendments meeting the requirements of this revised subchapter will be eligible for reimbursement under this program.

(c) The recipient of a Plan Development Incentives Program or a Plan Maintenance Incentives Program award shall maintain financial records for 3 years to substantiate reimbursement expenditures covered by this subchapter.

FINANCIAL ASSISTANCE

§ 83.221. Applicant eligibility.

(a) An owner of an agricultural operation existing as of October 1, 2006, may apply for financial assistance for the implementation of plans developed under the act. The owner shall have legal and financial responsibility for the agricultural operation during the term of the financial assistance provided by the Commission.

(b) Existing CAOs required to implement BMPs to conform with the revised criteria of this subchapter are eligible for financial assistance for the implementation of the BMPs.

(c) New agricultural operations coming into existence after October 1, 2006, are not eligible for financial assistance for the implementation of their approved plan, including the BMPs in the plan.

(d) Existing NMP operations having an approved nutrient management plan that are currently or were in violation of the plan submission requirements or any other requirements of this act prior to October 1, 2006, are not eligible for funding under this program.

(e) Existing agricultural operations expanding to become a CAO after October 1, 2006, are not eligible for financial assistance for the implementation of their approved plan, including the BMPs in the plan.

(f) Only those agricultural operations having over eight AEUs are eligible to receive financial assistance for the implementation of their approved plan, including the BMPs in the plan.

§ 83.222. Condition for receipt of financial assistance.

(a) An agricultural operation approved to receive financial assistance under the Chesapeake Bay Nonpoint Source Pollution Abatement Program after October 1, 2006, or otherwise receiving financial assistance under the act for plans, shall agree to develop and implement a plan as a condition for receiving the financial assistance.

(b) A recipient of financial assistance under this subchapter shall be obligated to maintain the BMPs funded by the financial assistance and continue to implement and adhere to the provisions of the plan, the act and this chapter for 10 years following receipt of the funds.

§ 83.224. Project evaluation and prioritization criteria.

(a) Applications for financial assistance will be evaluated in accordance with project evaluation criteria guidelines developed by the Commission.

(b) Applications for financial assistance will be prioritized for consideration as follows:

(1) CAOs in compliance with the act and properly implementing a plan approved prior to October 1, 2006, which, due to the revisions to the regulations, are required to implement additional practices to meet the new criteria.

(2) Existing agricultural operations newly classified as CAOs due to the revised criteria established in this amended subchapter.

(3) Existing agricultural operations that become CAOs after October 1, 2006, due to loss of rented acres.

(4) VAOs having an approved plan as of October 1, 2006.

(5) Other agricultural operations in existence as of October 1, 2006.

§ 83.225. Application procedure.

(a) An application for financial assistance shall be made on forms approved by the Commission and shall be addressed to the Commission or a delegated agent.

(b) An application received by the Commission or delegated agent will be reviewed for completeness and eligibility. An application must include a copy of the approved plan which identifies the proposed BMPs for which financial assistance is being requested.

(c) If the application is determined to be incomplete, the Commission or a delegated agent will provide the applicant with a written explanation of the reasons for the determination, and request the additional information needed to complete the application process.

(d) Within 60 days of receipt of all required information, applicants will be notified in writing of actions taken on their applications and any right to appeal the actions.

(e) The applicant may appeal a decision of the Commission to the EHB as provided for in section 517 of the act (relating to appealable actions).

§ 83.226. Eligible costs for the implementation of an approved plan.

(a) Eligible project costs considered by the Commission shall be the costs necessary to implement the plan and may include the following:

(1) Project design and engineering including plans, specifications, cost estimates, certifications and surveys.

(2) Costs associated with obtaining the financial assistance and may include loan origination or loan application fees, or both, title fees and filing fees.

(3) Project construction, including labor, materials, machinery, equipment and site preparation associated with the project.

(4) Costs associated with the implementation of a cover cropping BMP, in response to the requirement contained under § 83.294(f)(5)(i) (relating to nutrient application procedures).

(5) Other costs the Commission has determined to be necessary.

(b) Funds encumbered or advanced for the project which are not used for eligible costs in the project shall be returned to the fund or account from which they originated for reallocation and use in the implementation of other plans.

(c) The Commission may consider alternative manure technology practices and equipment eligible to receive financial assistance under this subchapter if these practices or equipment are considered to be effective in addressing nutrient management issues on the agricultural operation. Financial assistance funding levels and limitations for these alternative practices and equipment will be established by the Commission. These eligible practices may be approved to service an individual operation or may service more than one operation if approved by the Commission. For multi-partnered projects, all farms providing manure for the project must agree to amend an existing plan or develop and implement a new approved nutrient management plan meeting the provisions of this subchapter.

§ 83.229. Grants.

(a) A grant will be considered when funds have been made available to the Commission and the Commission determines that the financial condition of the recipient is such that the repayment of a loan is unlikely and that the recipient will be financially distressed by the implementation of BMPs without a grant.

(b) The Commission may limit individual grant awards to whatever amount it deems appropriate. The maximum amount of a grant may not exceed those maximum grant limits established by the Commission. An agricultural operation that has received or is approved to receive financial assistance under any local, State, Federal or other financial assistance program may also be eligible for grants under the Nutrient Management Plan Implementation Grant Program up to the grant limit established by the Commission in grants from those combined sources and the Nutrient Management Plan Implementation Grant Program.

(c) A grant will be made subject to the terms and conditions the Commission establishes.

§ 83.231. Funding limitations.

(a) *Total funding limits*. Total assistance provided under loans, grants and loan guarantees for the implementation of a single plan may not exceed those funding limits established by the Commission.

(b) *Partial funding*. The Commission reserves the right to provide funding for only a portion of the total costs of the project or only a portion of the amount requested in a financial assistance application.

(c) *Least cost alternative*. Financial assistance provided may not exceed that amount necessary for the least-cost alternative for each BMP included.

(d) *Limitation*.

(1) Financial assistance will not be made available that might jeopardize or compromise the fund.

(2) Financial assistance will not be available for refinancing.

(3) Financial assistance will not be available for BMPs if construction is initiated prior to submission of an application for financial assistance, unless a letter of no prejudice has been issued by the Commission as provided in subsection (e).

(e) *Letters of no prejudice*. Exceptions to the general prohibition against initiation of construction prior to consideration by the Commission may be made when circumstances require immediate plan implementation to proceed before an application for financial assistance can be submitted to the Commission. Circumstances that would require immediate plan implementation and therefore appropriate for consideration by the Commission for a letter of no prejudice, must relate to acute failures or malfunctions of practices where immediate implementation is necessary to address significant environmental degradation. In this case, a potential applicant may apply to the Commission for a letter of no prejudice wherein the Commission agrees to consider a future application for financial assistance without limitation or prejudice even if project construction has begun at the time of the future application for financial assistance. The application for a letter of no prejudice must set forth, in detail, the exact reason or reasons a letter of no prejudice is necessary and should be granted. The application for and approval of a letter of

no prejudice must occur prior to the start of project construction. If the Commission issues a letter of no prejudice, project construction can begin without jeopardizing or benefiting a future application.

§ 83.232. Implementation and reporting.

(a) The Commission will develop financial assistance documents which will define the terms and conditions under which the financial assistance is offered and specify other documents determined to be necessary by the Commission.

(b) Unless otherwise approved by the Commission, the recipient of financial assistance under this subchapter shall begin construction of the project, in accordance with its approved application within 9 months of the Commission sending notice of approval of a grant or loan application. If the applicant does not begin implementation within the specified time period, does not continue work without unreasonable interruption or does not complete the project within the specified time period in the grant agreement, the financial assistance may be withdrawn by the Commission.

(c) Design and construction of BMPs must conform to the standards found in the *Pennsylvania Technical Guide*. The applicant may not significantly deviate from the scope, design or time schedule for a project unless prior written approval is given by the Commission or delegated agent. The term "scope," as used in this subsection, means the extent of project activities determined by the Commission to be eligible for financial assistance.

(1) A request for significant changes in scope shall be submitted in writing to the Commission for approval. When changes in scope require a plan amendment under the criteria of § 83.371 (relating to plan amendments), the applicant shall provide a copy of the approved plan amendment.

(2) Funding eligibility for a change in scope will be based on the criteria described in § 83.223 (relating to financial assistance eligibility criteria). Consent of the Commission to a change in scope will not be deemed to increase the amount of financial assistance provided without the express approval of the Commission. Funding for changes in the scope of an assistance project will be approved only in the following circumstances:

(i) The change in scope is a result of new or revised requirements, Federal legislation, or a Federal regulation thereunder, State legislation or State regulation thereunder, the act, this subchapter, The Clean Streams Law (35 P. S. §§ 691.1--691.1001) or regulations thereunder.

(ii) The change in scope is necessary to protect the structural or process integrity of the facilities.

(iii) Adverse conditions are identified during the construction of the facilities which could not have been foreseen by the design engineer prior to encountering the condition.

(iv) The change is necessary to relieve emergency conditions occurring during construction of the facilities.

(d) A request for a disbursal of financial assistance must be on forms approved by the Commission, include a statement certifying the project was completed as planned, and be submitted on a schedule approved by the Commission.

(e) The applicant shall maintain project progress and financial records to substantiate expenditures, as well as plan implementation records as outlined in §§ 83.341--83.344 (relating to recordkeeping and informational requirements).

(f) If the applicant fails to comply with this section, the Commission may withdraw the remaining funds allocated to the project, as well as take other action which it is legally entitled to take.

DELEGATION TO LOCAL AGENCIES

§ 83.241. Delegation to local agencies.

(a) The Commission may by written agreement delegate to a conservation district one or more of its administrative or enforcement authorities under the act.

(b) The delegation of administrative or enforcement authority may be made to a conservation district when the district demonstrates it has or will have an adequate program and sufficient resources to accept and implement the delegation.

(c) To the extent delegated by the agreement, the delegations may include the authority to enforce the act and this subchapter and to exercise other powers and duties otherwise vested in the Commission to implement the act.

(d) A delegation agreement will:

(1) Specify the powers and duties to be performed by the delegated district.

(2) Provide for the commitment of sufficient trained staff and resources to perform the powers and duties to be delegated.

(3) Require the delegated conservation district to maintain records of activities performed under the delegation.

(4) Provide for the monitoring and supervision by the Commission of performance by the delegated conservation district of the functions delegated under the agreement.

(e) When the Commission delegates one or more of its powers and duties to a delegated conservation district, the Commission will retain the concurrent power to administer and enforce the act and this subchapter.

COMPLIANCE PLANS

§ 83.251. Compliance plans.

An agricultural operation found to be in violation of The Clean Streams Law (35 P. S. §§ 691.1--691.1001) may be required to submit a plan that meets the requirements of the act and this subchapter within 3 months or notification thereof and to implement the plan in accordance with the schedule as approved.

NUTRIENT MANAGEMENT PLANS

§ 83.261. General.

NMP operations shall meet the plan requirements of §§ 83.251--83.381 according to the following:

(1) *Operations defined as a CAO prior to October 1, 2006*.

(i) For operations defined as CAOs operating as of October 1, 1997, a plan shall have been submitted prior to October 1, 1998.

(ii) For operations which were newly defined as a CAO due to expansion of operations prior to October 1, 2006, a plan shall have been submitted within 3 months of the change in operations which classified them as a CAO.

(iii) For new operations defined as CAOs and commencing before October 1, 2006, a plan shall have been submitted prior to commencement of operations.

(2) *Operations defined as a CAO after October 1, 2006, that were not defined as CAOs prior to that date*. An existing agricultural operation as of October 1, 2006, which did not meet the CAO definition prior to October 1, 2006, but which is defined as a CAO under this subchapter as amended, shall submit a plan by October 1, 2008.

(3) *Operations that become defined as CAOs after October 1, 2006, due to expansion of an existing operation or loss of rented or leased land*. Existing operations that make changes to their operations that result in becoming defined as CAOs for the first time after October 1, 2006, shall meet the following:

(i) An agricultural operation which becomes a CAO after October 1, 2006, due to loss of land suitable for manure application, shall submit a plan within 6 months after the date which the operation becomes a CAO.

(ii) An agricultural operation which will become a CAO due to expansion of operations by the addition of animals shall obtain approval of the plan prior to the expansion.

(4) *New operations*. A new operation which will commence after October 1, 2006, and which will be a CAO, shall obtain approval of a plan meeting the requirements of this subchapter prior to the commencement of the operation.

(5) *Non-CAO operations*. An agricultural operation other than a CAO may voluntarily submit a plan at any time after October 1, 1997.

(6) *Revision of plans approved prior to October 1, 2006*. Operations having an approved plan prior to October 1, 2006, shall comply with the following:

(i) CAOs and operations required to develop compliance plans under section 506(j) of the act (relating to nutrient management plans), shall submit an amended plan to address all of the requirements of this subchapter, including management of phosphorus and exported manure, under the 3-year review requirement of § 83.362 (relating to plan implementation), or by October 1, 2007, whichever is later.

(ii) VAOs shall submit an amended plan on the same schedule as CAOs in subparagraph (i) if they desire to maintain their status as a VAO.

(iii) VAOs that received funding under this subchapter shall implement the plan approved prior to October 1, 2006, and maintain the BMPs installed using that funding for 10 years following implementation of the BMP.

(7) The plan shall be submitted to the Commission or delegated conservation district by the operator who shall sign the plan.

(8) *Qualifications*. Plans shall be developed by nutrient management specialists certified in accordance with the Department of Agriculture's Nutrient Management Specialist Certification requirements in 7 Pa. Code §§ 130b.1--130b.51 (relating to nutrient management certification). The specialists shall certify, by signature, that the plans are in accordance with the act and this subchapter.

(9) *Signature requirements*. Plans shall be signed by the operator of the agricultural operation indicating concurrence with the information in the plan and acceptance of responsibilities under the plan. The following signature requirements apply:

(i) For sole proprietorships, the proprietor.

(ii) For partnerships, a general partner.

(iii) For corporations, a vice president, president or authorized representative. The plan must contain an attachment executed by the secretary of the corporation which states that the person signing on behalf of the corporation is authorized to do so.

(10) *Operations that include rented or leased lands*. For operations that include rented or leased lands, the operator shall sign a statement in the plan indicating the following:

(i) The owners of these lands have been provided notice that a nutrient management plan has been developed which included the owner's lands.

(ii) None of the owners indicated any objection to the application of nutrients to their own lands.

(11) *Penalties*. Operators and specialists who sign plans may be subject to penalties for any false information contained in the plans.

§ 83.262. Identification of CAOs.

(a) *Procedure*. To determine if a particular agricultural operation is a CAO, the number of AEUs per acre on the agricultural operation shall be calculated using the following procedure:

(1) The number of AEUs on the agricultural operation shall be calculated by using the following steps:

(i) Compute the animal weight for the agricultural operation by multiplying the average number of animals on the agricultural operation by the standard animal weight used by the livestock industry in this Commonwealth. The standard weights contained in guidance published by the Commission may be used to meet this requirement. Other animal weights may be used in place of those in the Commission guidance, if there is sufficient documentation to support their use. For those animal types not included in the Commission guidance, the average animal weight for the operation shall be used for this calculation, taking into account, if applicable, the range of animal weights throughout the time the animals are on the operation.

(ii) Annualize the average animal weight per day by multiplying the animal weight derived in subparagraph (i) by the number of days per year that the animals are on the operation, then divide by 365 days.

(iii) Compute the number of AEUs for the particular animal type by dividing the number derived in subparagraph (ii) by 1,000.

(iv) Compute the AEUs for the operation by adding together the number of AEUs for each type of animal to equal the total number of AEUs on the agricultural operation.

(v) Operations having less than eight AEUs are not classified as CAOs regardless of the animal density.

(2) Compute the number of AEUs per acre by dividing the total number of AEUs by the total number of acres of land suitable for the application of manure.

(i) For the sole purpose of determining whether an agricultural operation is a CAO, "land suitable for the application of manure" is land that meets all of the following:

(A) The land is under the management control of the operator.

(B) The land is cropland, hayland or pastureland.

(C) The land is an integral part of the agricultural operation, as demonstrated by title, rental or lease agreements, crop records or information on a form provided by the Commission.

(D) The land is or will be any of the following:

(I) Used for the application of manure generated by the agricultural operation.

(II) Included within the areas where manure may not be applied under § 83.293(c) (relating to determination of nutrient application rates).

(III) Included within the areas where manure may not be mechanically applied under section § 83.294(f) and (g) (relating to nutrient application procedures).

(ii) The term "land suitable for application of manure" does not include farmstead areas or forest land.

(b) *Example of AEU per acre calculation*. An operation has an average number of 10,000 medium broilers with an average weight of 2.3 pounds. During the year there are six flocks with a production period of 43 days per flock. This amounts to 258 days per year that the birds are on the operation. During the remaining down time, no manure is produced. The farmstead is 2 acres. There are 3 acres of woodlands and 7 acres of cropland. The following is the AEU per acre calculation for this operation:

Step 1. 10,000 med. broilers × 2.3 lb. avg. wt. = 23,000 lb. total weight

Step 2. 23,000 lb. total weight × 258 days per year divided by 365 days = 16,257 lbs.

Step 3. 16,257 lbs. divided by 1,000 lbs. per AEU = 16.25 AEUs

Step 4. Total number of AEUs on the agricultural operation is 16.25

Step 5. 16.25 AEUs divided by 7 acres of land suit- able = 2.32 AEUs per acre

CONTENT REQUIREMENTS FOR ALL PLANS

§ 83.272. Content of plans.

(a) Plans developed for CAOs, VAOs and operations required to develop compliance plans under section 506(j) of the act (relating to nutrient management plans) must comply with §§ 83.261 and 83.271--83.381.

(b) A plan must follow the standardized plan format provided by the Commission, unless otherwise approved by the Commission.

(c) The operator shall be involved in the development of the plan.

(d) The BMPs listed in the plan must be consistent with the management practices listed in other relevant plans, such as the agricultural erosion and sediment control plan developed for the operation, unless otherwise approved by the Commission or delegated conservation district.

(e) The only nutrient elements of concern to be addressed by BMPs in the plan, based on their potential to impact the quality of surface water or groundwater, are nitrogen and phosphorus. Unless the context clearly indicates otherwise, "nutrients" as used in this subchapter means nitrogen and phosphorus.

(f) The plan must list potassium crop needs, and potassium application rates, from all nutrient sources, to ensure that adequate soil fertility levels are addressed to meet crop production goals.

PLAN SUMMARY INFORMATION

§ 83.281. Identification of agricultural operations and acreage.

(a) *Agricultural operation identification sheet*. The plan must include an agricultural operation identification sheet which includes the following information:

(1) The operator name, address and telephone number.

(2) A brief description of the operation including:

(i) Animal types and numbers included on the operation.

(ii) The crop rotation planned to be used on the operation.

(iii) The dimensions, capacity and freeboard of any existing manure storage facilities on the operation.

(3) The signatures and documentation as required by § 83.261 (relating to general).

(4) The counties where land included in the plan is located.

(5) The watersheds in which the land included in the plan is located. The existence of any special protection waters, as identified in Chapter 93 (relating to water quality standards), shall also be noted.

(6) The total acreage of the agricultural operation included in the plan. This acreage includes:

(i) Lands located at or adjacent to the animal facility, which are owned by the operator of the facility.

(ii) Other owned, rented or leased lands, under the management control of the operator of the facility, that are used for the application, treatment or storage of manure generated at the facility. The plan must include the names and addresses of owners of the rented and leased lands.

(7) The total acreage of land of the agricultural operation on which nutrients shall be applied. The total acreage shall be separated into acres of owned land and acres of rented or leased land.

(8) The total number of AEUs on the operation, and the number of AEUs per acre on the agricultural operation.

(9) The name, nutrient management certification program identification number and signature of the nutrient management specialist that prepared the plan and the date of plan preparation.

(b) *Maps and aerial photographs*. The plan must include a topographic map drawn to scale identifying the lands included in the agricultural operation, including the land described in subsection (a)(6), and must also contain maps or aerial photographs of sufficient scale which clearly identify:

(1) The location and boundaries of the agricultural operation.

(2) Individual field boundaries under the plan.

(3) Field number and acreage of each field.

(4) The identification of all soil types and slopes on the agricultural operation. An NRCS soil survey map with the soil identification legend will be sufficient to satisfy this requirement. These soil survey maps may be available at the county NRCS office or conservation district office.

(5) The location of areas where manure application is restricted under § 83.294(f) and (g) (relating to nutrient application procedures).

(6) The location of proposed or existing structural BMPs, including manure storage facilities, on the operation.

(7) The location of proposed or existing emergency manure stacking areas or in-field stacking locations.

(8) The names of the roads adjacent to or within the agricultural operation.

(c) *Phosphorus*. The plan must include an appendix containing information and calculations used to comply with § 83.293(c) (relating to determination of nutrient application rates). If the Phosphorus Index is used, the information must include the completed Phosphorus Index spreadsheet or other similar information summary which lists the individual source and transport factor values, as appropriate, and the final Phosphorus Index result, for each individual area evaluated on the operation, as developed under the Phosphorus Index.

(d) *Agreements with importers and brokers*. The plan must include an appendix containing signed exporter/importer and exporter/broker agreements, and nutrient balance sheets and associated maps, for operations where these documents are required under this subchapter.

(e) *Soil test results*. The plan must include an appendix containing a summary of the results of all soil test analyses performed on the operation. The summary must meet the requirements of § 83.292(e)(3) (relating to determination of nutrients needed for crop production).

§ 83.282. Summary of plan.

(a) The plan must contain a summary that includes:

(1) A manure summary table listing:

(i) The total amount of manure planned to be generated on the operation annually.

(ii) The total amount of manure planned to be used on the operation annually.

(iii) The total amount of manure planned to be exported from the operation annually.

(2) A nutrient application summary documenting the planned nutrient applications for each crop management unit listing:

(i) Acres.

(ii) Expected yield.

(iii) Nutrients applied as starter chemical fertilizer.

(iv) Planned manure application period.

(v) Planned manure application rate and type of manure to be applied.

(vi) Planned manure incorporation time.

(vii) Rate of other organic nutrient sources planned to be applied.

(viii) Other nutrients applied through chemical fertilizer.

(ix) Other comments or notes.

(3) General procedures and provisions for the utilization or proper disposal of excess manure.

(b) The summary must include the following information on planned BMPs:

(1) Planned manure management and storage practices, stormwater runoff control practices and other appropriate BMPs necessary to protect the quality of surface water and groundwater.

(2) The schedule for implementation of the planned BMPs.

(3) The locations of planned BMPs on the agricultural operation.

NUTRIENT APPLICATION

§ 83.291. Determination of available nutrients.

(a) The plan must address each type of nutrient source generated or planned to be used on the agricultural operation, including: manure, biosolids, compost, commercial fertilizers and other nutrient sources. Nitrogen and phosphorus are the only nutrient elements of concern to be addressed by BMPs in the plan.

(b) The plan must list potassium crop needs, and potassium application rates, from all nutrient sources, to ensure that adequate soil fertility levels are addressed to meet crop production goals.

(c) The amount and nutrient content of each manure group generated on the agricultural operation shall be documented in the plan as follows:

(1) List the average number of animals for each manure group, on the agricultural operation.

(2) List the amount of manure generated and when it is available for land application on the agricultural operation or for other planned uses.

(i) If actual manure production records are available for the operation, these records shall be used for determining the manure produced on the operation.

(ii) If actual records of manure production do not exist for the operation, the amount of manure produced shall be calculated based on the average number of animal units on the agricultural operation, and the storage capacity of manure storage facilities, if present. The plan must include the calculations or variables used for determining the amount of manure produced on the operation.

(3) Test the nutrient content of manure as follows:

(i) Analytical manure testing results shall be used in the development of the plan. These manure tests must include an analysis of the percent solids, total nitrogen (as N), ammonium nitrogen (as NH_4-N), total phosphate (as P_2O_5) and total potash (as K_2O), for each manure group generated on the operation, and these analytical results shall be recorded in the plan.

(ii) These manure analyses shall be performed using manure sampling and chemical analysis methods which accurately represent the contents of the manure. Methods described in the

Pennsylvania Agronomy Guide may be used to meet this requirement. Other methods shall be approved by the Commission.

(iii) For newly proposed operations, and for manure groups on existing operations where sampling and analysis are not possible prior to initial plan development, the following applies:

(A) The plan must use either standard book values, or analytical results from a similar facility as approved by the Commission or delegated conservation district.

(B) Standard book values contained in the *Pennsylvania Agronomy Guide* may be used to meet this requirement. Other values shall be approved by the Commission.

(C) A similar facility is one that uses similar animal housing, animal groups, feeding practices and wastewater management.

(D) The nutrient content of the manure, as determined in clauses (A)--(C), shall be recorded in the plan.

(E) Samples and chemical analysis of the manure generated on the operation shall be obtained within 1 year of implementation of the approved plan, and the requirements of § 83.371 (relating to plan amendments) shall be followed as applicable.

(iv) The nutrient content of manure deposited on pastures by grazing animals shall be determined using the methods contained in subparagraph (vi).

(v) After approval of the initial plan, manure tests are required to be taken annually for each manure group generated on the operation.

(vi) The testing described in this subsection will not be required for manure groups associated with less than five AEUs of livestock or poultry at an operation. For these small quantity manure groups, the nutrient content of the manure may be determined using standard book values which represent the contents of the manure for the operation. Standard book values contained in the *Pennsylvania Agronomy Guide* may be used to meet this requirement. Other values shall be approved by the Commission or delegated conservation district.

(vii) Testing of manure groups may be consolidated when two or more manure groups on the same operation are produced by the same animal type and are managed in a similar manner.

(d) The nitrogen available from manure shall be based on availability factors which accurately represent the characteristics of the manure. Factors described in the *Pennsylvania Agronomy Guide* may be used to meet this requirement. Other methods shall be approved by the Commission. The plan must include the amount of nitrogen available in the manure, and the planned manure incorporation time used to determine the nitrogen available.

(e) The residual nitrogen from legume crops and previous applications of manure shall be determined using values which represent the common nitrogen residuals from the past crops and

manure applications at the operation. Standard book values contained in the *Pennsylvania Agronomy Guide* may be used to meet this requirement. Other values shall be approved by the Commission. The values shall be recorded in the plan and credited when determining nutrient application rates.

§ 83.292. Determination of nutrients needed for crop production.

(a) The plan must include the acreage and realistic expected crop yields for each crop management unit.

(b) For the development of the initial plan, expected crop yields may not exceed those considered realistic for the soil type and climatic conditions, as set by the operator and the specialist, and approved by the Commission or delegated conservation district. If actual yield records are available during the development of the initial plan, the expected crop yields shall be based on these records.

(c) If after the first 3 years of implementing the plan, the yields do not average at least 80% of the planned expected yield, the plan shall be amended to be consistent with the documented yield levels unless sufficient justification for the use of the higher yields is approved by the Commission or delegated conservation district. The amendment shall be submitted as required under § 83.371 (relating to plan amendments).

(d) When determining expected crop yields for plan amendments, expected crop yields shall be based on documented yield levels achieved for the operation. Expected crop yields higher than historically achieved may be used if sufficient justification is approved by the Commission or delegated conservation district for the use of the higher yields.

(e) When developing the initial plan, soil tests shall be conducted for each crop management unit on the operation, to determine the level of phosphorus (as P), potassium (as K), and soil pH, as follows:

(1) The soil test procedures used must provide accurate test results. The procedures recommended by the Pennsylvania State University and published in *Recommended Soil Testing Procedures for the Northeastern United States*, Bulletin #493, published by the University of Delaware, may be used to meet this requirement. Other procedures shall be approved by the Commission.

(2) Soil tests conducted within the previous 3 years prior to submitting the initial plan are acceptable.

(3) The plan must include an appendix containing a summary of the results of the soil test analyses for each crop management unit showing the following:

(i) Soil test levels for phosphorus and potassium as reported by the laboratory.

(ii) Soil test levels for phosphorus (as P) in parts-per-million (PPM) and potassium (as K) in PPM, after conversion from the test results from the laboratory, as needed.

(iii) Soil test levels for pH.

(iv) The date of the soil tests and the name of the lab performing the tests.

(4) After the approval of the initial plan, soil tests are required for each crop management unit at least every 3 years from the date of the last test.

(f) Based on the soil tests in subsection (e), the plan must include recommendations for the amount of nitrogen (as total N), phosphorus (as P_2O_5) and potassium (as K_2O) necessary for realistic expected crop yields.

(g) If necessary based on the type of crops planned, the recommendations from the initial soil test shall be adjusted to determine the appropriate amount of nutrients necessary to achieve realistic expected crop yields. This adjustment may be satisfied by using the methodologies in the *Soil Test Recommendations Handbook for Agronomic Crops* published by the Pennsylvania State University Agricultural Analytical Services Laboratory. Other methodologies for this adjustment shall be approved by the Commission.

§ 83.293. Determination of nutrient application rates.

(a) *Application rate*. Application rates shall be developed to protect surface water and groundwater using BMPs as described in the plan. The manure application rate shall be the lesser of the following:

(1) A rate equal to or less than the balanced manure application rate based on nitrogen as determined under subsection (b).

(2) The rate as determined under subsection (c).

(b) *Nitrogen*. Land application of manure and other nutrient sources on cropland, hayland and pastures shall be managed to minimize the affects of nitrogen losses from fields. The rate may not exceed the amount of nitrogen necessary to achieve realistic expected crop yields or the amount of nitrogen the crop will utilize for an individual crop year.

(1) The balanced manure application rate based on nitrogen shall be determined by first subtracting the amount of available residual nitrogen and any applied nitrogen, such as nitrogen applied in starter fertilizer, from the amount of nitrogen necessary for realistic expected crop yields, and then dividing that amount by the available nitrogen content of the manure as determined under § 83.291 (relating to determination of available nutrients).

(2) The calculations and variables used for determining the balanced manure application rates based on nitrogen shall be recorded in the plan.

(c) *Phosphorus*. Land application of manure and other nutrient sources on cropland, hayland and pastures shall be managed to minimize the affects of phosphorus losses from fields. Methods for determining and managing the risk of phosphorus loss, and related water quality impacts, must comply with the following:

(1) Determine the risk of phosphorus loss and related water quality impacts based on relevant factors including the following:

(i) Soil phosphorus levels.

(ii) The method, rate and timing of phosphorus application.

(iii) Runoff and soil loss potential for the application area.

(iv) Distance to surface water.

(v) The type of phosphorus source being used.

(2) Based on the risks and impacts determined as described in paragraph (1), establish appropriate BMPs such as methods, rates and timing of application designed to minimize the affects of phosphorus losses from fields. These may be addressed by a range of options, including:

(i) Manure application is limited to nitrogen requirements of the crop, if the application of phosphorus to the soil is not expected to pose an immediate risk of impacts to surface water.

(ii) Phosphorus application is limited to the level of phosphorus removal from the soil by the crop, if the application of phosphorus to the soil would be expected to pose an immediate risk of impacts to a surface water unless the risk is managed by limiting the application based on phosphorus.

(iii) Phosphorus application is completely restricted, if the application of phosphorus to the soil would be expected to pose an immediate risk of impacts to a surface water which cannot be managed by limiting the nutrients based on phosphorus.

(3) For CAOs and VAOs existing on October 1, 2006, the Commission will allow a phase-in period until December 31, 2010, to fully meet the requirements of paragraph (2).

(i) The phase-in shall allow flexibility in controlling phosphorus loss, as long as the phosphorus application rates on any crop management unit where the phase-in is used do not exceed the levels of phosphorus removal from the soil by the crops.

(ii) The phase-in in this paragraph also applies to operations that import manure from NMP operations existing on October 1, 2006.

(4) The phase-in period in paragraph (3) does not apply to the following:

(i) An operation that commences after October 1, 2006.

(ii) An operation that becomes defined as a CAO, due to an increase in animal numbers, after October 1, 2006.

(iii) An operation that increases the total AEUs on the operation by 20% or more after October 1, 2006.

(iv) An operation that adds a new animal type after October 1, 2006.

(v) Fields where the nearest downgradient stream segment which receives runoff from the fields is classified as a special protection water under Chapter 93 (relating to water quality standards).

(5) The criteria and procedures in the current phosphorus application guidance issued by the Commission may be used to comply with paragraphs (1)--(4), including the use of a Phosphorus Index contained in the guidance.

(6) If the criteria and procedures in the phosphorus application guidance issued by the Commission are not followed, an alternative method of meeting paragraphs (1)--(4) will be approved by the Commission.

(7) For pastures which require complete restrictions on phosphorus application as determined under this section, § 83.294(j) (relating to nutrient application procedures) applies.

(d) *General nutrient calculation*. The plan must include calculations for each crop management unit indicating the difference between the amount of nitrogen, phosphorus and potassium necessary for realistic expected crop yields under § 83.292 (relating to determination of nutrients needed for crop production) and the nitrogen, phosphorus and potassium applied through all planned nutrient sources, including, but not limited to, manure, biosolids, starter fertilizer and other fertilizers and residual nitrogen. A nitrogen availability test may be used to determine supplemental nitrogen needs.

§ 83.294. Nutrient application procedures.

(a) *General*. Nutrients shall be applied to fields during times and conditions that will hold the nutrients in place for crop growth, and protect surface water and groundwater using BMPs as described in the plan.

(b) *Timing*. Intended target spreading periods for the application of manure shall be included in the plan.

(c) *Equipment capabilities*. Manure application rates and procedures must be consistent with the capabilities, including capacity and calibration range, of available application equipment.

(1) For existing operations using their own application equipment, the plan must include a statement indicating that the existing equipment has been calibrated to ensure implementation of the application rates described in the plan, and that the equipment has the capacity to meet those application rates. The supporting documentation for this statement shall be available at the operation for inspection by the county conservation district and the Commission.

(2) For proposed operations, or when it is not feasible to calibrate the equipment or verify its capacity at planning time, the operator shall perform this application equipment calibration and capability verification prior to the first application of manure. The statement described in paragraph (1) shall be included in any necessary amendments to the plan. The supporting documentation of this statement shall be available at the operation for inspection by the Commission and delegated county conservation district.

(3) If a commercial manure hauler is used, the hauler shall be responsible for ensuring that the equipment is capable of complying with the application rate contained in the plan.

(d) *Irrigation systems*. If manure will be applied using an irrigation system, the following applies:

(1) Application rates for irrigated liquid manure shall be based on the lesser of the following:

(i) The planned application rates in gallons per acre determined in accordance with § 83.293(a) (relating to determination of nutrient application rates).

(ii) The combination of the following:

(A) The liquid application rate in inches per hour determined to be within infiltration capabilities of the soil.

(B) The liquid application depth in inches not to exceed the soil's water holding capacity within the root zone or any restricting feature at the time of application.

(2) The allowable liquid application rate and application depth shall be based on appropriate factors such as available water holding capacity of the soil, depth of the root zone, depth to a shallow impervious soil layer, soil infiltration rate, soil texture and drainage, vegetation and ground slope. Application BMPs that are consistent with the current versions of Penn State Fact Sheets F254 through F257, as applicable to the type of irrigation system planned to be used on the operation, and the *NRAES-89 Liquid Manure Application System Design Manual*, may be used to comply with this subsection. Other BMPs shall be approved by the Commission.

(3) The plan must include the computations for the application rate (in inches per hour) and application depth (in total inches) of the various application rates, and these applications may not exceed either the infiltration rate or the water holding capacity of the application sites, as listed in the plan.

(e) *Manure application at rates greater than 9,000 gallons per acre*. If liquid or semisolid manure is planned to be applied at rates greater than 9,000 gallons per acre at any one application time, the rates and amounts shall be limited based on the infiltration rate and water holding capacity of the application areas as described in subsection (d). In those instances, the plan must include the computations for the application rates in inches per hour, and in total inches, for the various application areas, and these applications may not be allowed to exceed either the infiltration rate or the water holding capacity of the application sites, as listed in the plan.

(f) *Setbacks and buffers*. Manure may not be mechanically applied in the following situations:

(1) Within 100 feet of the top of the bank of a perennial or intermittent stream with a defined bed and bank, a lake or a pond, unless a permanent vegetated buffer of at least 35 feet in width is used, to prevent manure runoff into the stream, lake or pond.

(2) Within 100 feet of an existing open sinkhole unless a permanent vegetated buffer of at least 35 feet in width is used.

(3) Within 100 feet of active private drinking water sources such as wells and springs.

(4) Within 100 feet of an active public drinking water source, unless other State or Federal laws or regulations require a greater isolation distance.

(5) On crop management units having less than 25% plant cover or crop residue at the time of manure application, unless:

(i) For fall applications, the crop management unit is planted to a cover crop in time to allow for appropriate growth to control runoff until the next growing season, or the manure is injected or mechanically incorporated within 5 days using minimal soil disturbance techniques consistent with no-till farming practices. The *Pennsylvania Technical Guide* contains practices which may be used to satisfy this requirement. Other practices shall be approved by the Commission. The practices must be consistent with those in the agricultural erosion and sediment control plan.

(ii) For applications in the spring or summer, the crop management unit is planted to a crop that growing season.

(iii) For winter applications, the crop management unit is addressed under subsection (g).

(g) *Winter application*. For winter application of manure, the following apply:

(1) The application procedures shall be described in the plan.

(2) The plan must list the following:

(i) The crop management units where winter application is planned or restricted.

(ii) The application procedures that will be utilized at those crop management units.

(iii) The field conditions that must exist for winter application.

(3) Setbacks listed in subsection (f) shall be implemented. In addition, during winter manure may not be mechanically applied in the following situations:

(i) Within 100 feet of an above-ground inlet to an agricultural drainage system, if surface flow is toward the aboveground inlet.

(ii) Within 100 feet of a wetland that is identified on the National Wetlands Inventory Maps, if the following are met:

(A) The wetland is within the 100-year floodplain of an Exceptional Value stream segment.

(B) Surface flow is toward the wetland.

(4) Fields where manure will be applied in winter must have at least 25% residue, or an established cover crop. The BMPs contained in the *Pennsylvania Technical Guide* may be used to satisfy this requirement. Other practices shall be approved by the Commission.

(h) *In-field stacking*. In-field stacking of dry manure as a part of manure application is permissible on an NMP operation, and any importing lands governed by § 83.301 (relating to excess manure utilization plans), if the following requirements are met:

(1) The manure shall be land applied on the crop management unit within 120 days of stacking, or prior to the beginning of the next growing season, whichever is sooner.

(2) The stacks shall be constructed using appropriate BMPS such as:

(i) Placement on appropriate soils.

(ii) Proper consideration of slopes where stacks will be placed.

(iii) Shaping that minimizes absorption of rainfall.

(iv) Proper consideration of the size of the stack.

(v) Use of setbacks

(vi) Rotation of stack locations.

(3) If stacking occurs for a longer period than that described in paragraph (1), the stacks shall either be covered to keep rainwater from entering the stacks, or a waste stacking and handling pad shall be used. The BMPs contained in the *Pennsylvania Technical Guide* may be used to meet this requirement. Other BMPs shall be approved by the Commission.

(4) Locations for in-field stacking of dry manure shall be shown on the farm maps and the nutrient balance sheet maps required by this subchapter.

(i) *Commercial manure haulers*. If a commercial manure hauler will be used for the application of the manure on the agricultural operation, the commercial manure hauler shall meet the requirements of Act 49.

(j) *Pastures requiring phosphorus restrictions*. If a pasture has been determined to require total restriction of phosphorus application under § 83.293(c) (relating to determination of nutrient application rates), the risk of phosphorus loss shall be addressed by the following BMPs in lieu of total restriction of phosphorus application:

(1) Grazing may not be conducted within 50 feet of a perennial or intermittent stream, a lake or a pond.

(2) A prescribed grazing system shall be used to maintain an established stand of forage on the pasture area.

(3) The stocking rate shall be limited to ensure that the level of phosphorus deposited by the animals does not exceed the level of phosphorus removal from the soil by vegetation in the pasture.

(4) BMPs contained in the *Pennsylvania Technical Guide* may be used to meet the requirements in paragraphs (1) and (2). Other BMPs shall be approved by the Commission.

ALTERNATIVE USES FOR EXCESS MANURE

§ 83.301. Excess manure utilization plans.

(a) *General*. If manure will be exported for use off the NMP operation at known agricultural operations for agricultural land application, the following applies:

(1) The plan must include signed agreements, on a form acceptable to the Commission, between the NMP operation and each importing operator agreeing to accept the manure from the exporting operation. If the importing operator will be applying manure on lands rented or leased to that importing operator, the agreement must state that the importing operator has the authority to apply manure on the leased or rented lands.

(2) The importing operator is responsible for the proper handling and application of the imported manure accepted from an exporter, in accordance with subsection (b).

(3) An NMP operation exporting manure shall also be responsible for the proper handling and application of the exported manure if the NMP operation, or an employee or contractor of the operation, applies manure at the importing operation.

(4) The plan must demonstrate how the exported manure will be properly managed. This must be done by use of either nutrient balance sheets or approved nutrient management plans, and signed agreements with importers, under this subchapter.

(b) *Restrictions on land application of exported manure*. The land application of manure exported from an NMP operation must address the risk and impacts of nitrogen and phosphorus loss to waters.

(1) Nitrogen shall be addressed under § 83.293(b) (relating to determination of nutrient application rates).

(2) Phosphorus shall be addressed by one of the following, as selected by the operator:

(i) The rate at which phosphorus is applied may not exceed the level of phosphorus removal from the soil by the planned crop as determined under § 83.293(c), and the manure may not be applied within 150 feet from the top of the bank of an intermittent or perennial stream, a lake or a pond.

(ii) For crop management units with documented soil test levels of phosphorus less than 200 PPM, manure may not be applied within 150 feet from the top of the bank of an intermittent or perennial stream, a lake or a pond.

(iii) Manure application shall be determined in accordance with § 83.293(c).

(iv) Manure application shall follow a nutrient management plan approved by the Commission or delegated conservation district under this subchapter.

(3) The setbacks in § 83.294 (relating to nutrient application procedures) apply to land application of manure exported from an NMP operation.

(c) *Nutrient balance sheets*. The method, rate and timing for any land application under subsection (b)(2)(i)--(iii) shall be described in a nutrient balance sheet. Nutrient balance sheets must include the following:

(1) A map which identifies the crop management units where the manure is planned to be applied, location for field stacking and applicable setbacks under § 83.294 and this section.

(2) Documentation of the selected method used to address nitrogen and phosphorus on the crop management units receiving the imported manure. Acceptable methods are those described in this section.

(3) If options in subsection (b)(2)(i)--(iii) are used, the calculations associated with determining the manure application rate appropriate to the selected nitrogen and phosphorus management option used.

(4) The date when the nutrient balance sheet was developed.

(5) The name and signature of the certified planner or broker that developed the nutrient balance sheet.

(d) *Commercial manure haulers*. If the NMP operation will utilize a commercial manure hauler for the hauling or application of the exported manure, only those haulers that hold a valid and current certification under Act 49 may be used. The plan must include a statement indicating that any commercial manure haulers used for implementation of the plan shall hold a valid and current certification under Act 49.

(e) *Brokers*. If manure will be exported for use off of the NMP operation through a manure broker, the following apply:

(1) The plan must include a signed agreement, on a form acceptable by the Commission, between the operation exporting the manure and each broker agreeing to accept manure from the exporting operation. Brokers are responsible for the proper handling and storage (where applicable) of the manure accepted from the NMP operation. Only brokers that meet the requirements of Act 49 shall be acceptable in the plan.

(2) If the manure accepted by a broker shall be land applied to agricultural operations for crop production, the broker shall be responsible for the following:

(i) Ensuring that nutrient balance sheets exist for the relevant crop management units on the importing operations, and that the importing operator is provided with nutrient balance sheets with respect to that manure.

(ii) Implementing manure application rates and applicable setbacks described in § 83.294, and any nutrient balance sheet and approved nutrient management plans, if the broker will be responsible for land application of the manure.

(iii) Retaining copies of all nutrient balance sheets.

(f) *Other uses of manure away from the operation*. If manure will be exported for use off of the NMP operation for use other than agricultural land application, the plan must include the following information:

(1) The name and general location of the importing agricultural operation.

(2) A brief description of the planned use for the imported manure.

(3) The amount of manure the operator plans to export to the importer annually.

(4) The planned season for the manure export.

(5) A signed agreement between the NMP operation and each importing operation agreeing to accept the manure for this use, on a form acceptable to the Commission.

(g) *Other uses of manure on the operation*. If manure is to be processed or utilized on the NMP operation in a manner other than for agricultural land application, the plan must briefly describe the planned use of the manure, including the amount planned to be processed or utilized annually.

(h) *Use of open advertising systems*. If manure is to be exported for use off of an NMP operation existing on October 1, 1997, by using an open advertising system and the importers cannot be identified at planning time, the following apply:

(1) The plan must describe the proposed marketing scheme, including the estimated amount of manure planned to be marketed annually using an open advertising system.

(2) An operator may only utilize this method of exporting manure if the operator meets the manure broker requirements for certification under Act 49.

(3) Where the marketed manure will be utilized for application to crop fields, the exporting operation shall ensure that nutrient balance sheets exist for the relevant crop management units on the importing operations, and the importing operator is provided with the nutrient balance sheets. These nutrient balance sheets shall be retained by the exporting operation, the importing operation and any commercial manure hauler involved in the exporting of the manure. Nutrient management plans implemented at the importing operations may be used instead of nutrient balance sheets.

(4) The setbacks in § 83.294 apply to land application of manure exported from an NMP operation under this paragraph.

(i) *Exceptions*. The plan is not required to provide the specific exported manure details as provided in subsections (a)--(h) if an importer receives less than the following amounts of manure from the NMP operation on an annual basis:

(1) 5 tons of solid poultry manure.

(2) 25 tons of solid nonpoultry manure.

(3) 10,000 gallons of liquid manure.

MANURE MANAGEMENT

§ 83.311. Manure management.

(a) *Review existing practices*. In the preparation of a plan, the nutrient management specialist shall perform a site visit to conduct a review of the adequacy of existing manure management practices to prevent surface water or groundwater pollution from storm events up to and including a 25-year, 24-hour storm intensity. The specialist may confer with NRCS, conservation district staff or others with expertise with nutrient runoff control. This review shall be documented in the plan by identification of those conditions and areas where there is a potential

for stormwater commingled with manure to directly runoff into surface water as a result of a storm event up to and including a 25-year, 24-hour storm intensity, without sufficient filtration or other appropriate treatment or handling BMPs, such as vegetated buffers. Practices to be evaluated in this review include manure handling, manure collection, barnyard runoff control and manure storage practices. Examples of inadequate manure management practices include the following:

(1) Manure, contaminated water or nutrients leaving manure storage or animal concentration areas, and directly discharging into surface water or groundwater.

(2) The uncontrolled flow of storm water into, or across, manure storage facilities, emergency manure stacking areas or animal concentration areas.

(3) Manure storage facilities overflowing or maintained at levels above design full levels.

(4) Manure storage facilities that are sized for less than the projected manure accumulation based on the expected application periods used in the plan.

(5) Leaking or unstable manure storage facilities.

(6) Manure storage facilities which otherwise do not comply with § 91.36 (relating to pollution control and prevention at agricultural operations).

(b) *Address inadequate practices*. The plan must address any existing inadequate manure management practices as follows:

(1) As part of a plan certification under § 83.261(8)(relating to general), the nutrient management specialist shall ensure that the review required under subsection (a) was undertaken in the preparation of the plan.

(2) The plan must contain a listing of inadequate manure management practices and related conditions and problem areas, and the BMPs planned to correct them to protect surface water and groundwater.

(3) The BMPs shall be selected, designed, constructed and maintained to meet the requirements of this subchapter. When this subchapter does not specifically address an inadequate manure management practice, the BMPs contained in the *Pennsylvania Technical Guide* may be used to comply with this section. Other BMPs shall be approved by the Commission.

(4) The plan submitted for approval is not required to include BMP designs. During the implementation of the approved plan, the operator is responsible for obtaining the necessary BMP designs and associated operation and maintenance plans to implement the BMPs listed in the approved plan. The BMP designs and associated operation and maintenance plans shall be kept on record by the operator as a supplement to the plan.

(c) *Animal concentration areas*. The following applies to animal concentration areas:

(1) These areas shall be sized, located, implemented and managed using BMPs to eliminate the direct discharge of storm water runoff commingled with manure from these areas to surface water and groundwater.

(2) These areas must meet the following requirements which shall be addressed in the plan:

(i) Animal concentration areas shall be sized appropriately to minimize environmental impacts that may be associated with the areas.

(ii) These areas shall be located and managed to eliminate the direct discharge of storm water runoff commingled with manure from a storm event of up to and including a 25-year 24-hour storm intensity, except as allowed in paragraph (5).

(3) Accumulated manure on nonvegetated animal concentration areas shall be collected and land-applied to cropland, or exported from the operation, as described in the plan.

(4) These areas shall be designed, implemented and managed to minimize the amount of clean water entering the animal concentration area.

(5) Storm water runoff commingled with manure from these areas shall be either treated or stored through an appropriate vegetative or other suitable treatment or storage method, which meets the requirements of this subchapter. BMPs for vegetated buffers and other treatment or storage methods contained in the *Pennsylvania Technical Guide* may be used to satisfy this requirement. Other BMPs shall be approved by the Commission.

(6) Animal access to surface water in these areas shall be limited to properly installed stream crossings. BMPs contained in the *Pennsylvania Technical Guide* may be used to meet this requirement. Other BMPs shall be approved by the Commission.

(d) *BMPs*. The following BMPs, as appropriate, shall be used if necessary, and shall be described in the plan, to protect water quality by controlling storm water in the farmstead, including the manure storage and animal concentration areas:

(1) Manure storage facilities including permanent manure stacking areas. The construction of manure storage facilities is not required unless necessary to protect surface water and groundwater. Nutrient management plans that require the construction of a manure storage facility must describe the planned type, dimensions and capacity of the proposed facility, and the location of the proposed facility shall be identified on a plan map.

(2) Diversion of clean water from manure storage facilities and animal concentration areas, unless required for proper operation of the BMP.

(3) Treatment or storage of storm water commingled with manure in the manure storage or animal concentration areas.

(4) Emergency manure stacking areas must be located outside of concentrated water flow areas and areas where manure application is restricted or prohibited based on § 83.294 (f) and (g) (relating to nutrient application procedures).

(5) Other appropriate BMPs acceptable to the Commission, including those described in the *Pennsylvania Technical Guide*.

(e) When emergency manure stacking areas may be necessary for the implementation of the plan, the plan must identify those areas available for the storage of manure due to unforeseen circumstances such as adverse weather conditions. The stacks shall be managed using appropriate BMPs such as placement on appropriate soils, proper consideration of slopes where stacks will be placed and shaping that minimizes absorption of rainfall. The operator shall notify the county conservation district at least 24 hours in advance of the use of an emergency manure stacking area. Manure shall be removed from emergency stacking areas for utilization on cropland or other acceptable uses within 60 days, unless extended by the Commission or a delegated conservation district.

(f) Information contained in other sections of the plan may be used by the specialist when addressing this section.

(g) The siting, design and installation of manure storage facilities shall meet the requirements in § 83.351 (relating to minimum standards for the design, construction, location, operation, maintenance and removal from service of manure storage facilities). The BMPs contained in the *Pennsylvania Technical Guide*, as they relate to water quality protection, may be used to comply with this subsection. Other measures shall be approved by the Commission.

(h) If alternative manure technology practices and equipment are planned to address nutrient management issues related to the operation, the rationale for and expected benefit of the planned alternative practices and equipment shall be described in the plan.

SITE SPECIFIC EMERGENCY RESPONSE PLANS

§ 83.312. Site specific emergency response plans.

(a) NMP operations shall develop and implement a written site-specific emergency response plan addressing actions to be taken in the event of a discharge, leak or spill of materials containing manure. A copy of the plan shall be kept onsite at the operation. The emergency response plan must contain information necessary to meet the notification requirements for reporting discharge, leak or spill events which would result in pollution or create a danger of pollution to surface water or groundwater contained in § 91.33 (relating to incidents causing or threatening pollution).

(b) In the case of a discharge, leak or spill of materials containing manure related to the operation, the operator shall implement the emergency response plan developed for the operation. The operator shall comply with all notification and reporting requirements.

(c) The nutrient management plan must contain a verification from a certified planner that an adequate written site-specific emergency response plan meeting the requirements of this section exists for the operation.

(d) The operator shall provide a copy of the emergency response plan to the local emergency management agency that would assist during a major discharge, leak or spill event.

(e) A BMP-specific contingency plan as required by § 83.351 (relating to the minimum standards for the design, construction, location, operation, maintenance and removal from service of manure storage facilities) shall be included as an addendum to the emergency response plan.

STORMWATER CONTROL

§ 83.321. Stormwater control.

(a) In the preparation of a nutrient management plan under this subchapter, the nutrient management specialist shall conduct a review of the adequacy of existing stormwater control practices on croplands, haylands and pastures included in the plan to prevent nutrient pollution of surface water and groundwater. The specialist may confer with NRCS, conservation district staff or others with expertise with nutrient runoff control. Based on this review, the plan must identify critical runoff problem areas.

(b) The nutrient management plan shall contain a list of specific stormwater control BMPs to address those critical runoff problem areas identified in the review required under subsection (a). This list of stormwater control BMPs may not be in conflict with other relevant plans developed for the operation, such as the agricultural erosion and sediment control plan, unless otherwise approved by the Commission or delegated conservation district.

(c) The plan submitted for approval is not required to include BMP designs. During the implementation of the approved plan, the operator is responsible for obtaining the necessary BMP designs and associated operation and maintenance plans to implement the BMPs listed in the approved plan, and these BMP designs and associated operation and maintenance plans shall be kept on record by the operator as a supplement to the nutrient management plan.

(d) BMPs listed in the plan to address critical runoff problem areas shall be selected, designed, installed, operated and maintained to prevent nutrient pollution of surface water and groundwater. The BMPs contained in the *Pennsylvania Technical Guide* may be used to meet this requirement. Other BMPs shall be approved by the Commission.

(e) For areas on land rented or leased by the operator that have been identified as critical runoff problem areas which will require the installation of BMPs requiring construction activities, the operator shall do one of the following:

(i) Implement the listed BMP.

(ii) Enter into an agreement with the landowner requiring the landowner to implement the BMP.

IMPLEMENTATION SCHEDULE

§ 83.331. Implementation schedule.

A plan must contain a schedule that identifies when the necessary capital improvements and management changes will be made, consistent with the time frames in § 83.362 (relating to plan implementation).

RECORDKEEPING AND INFORMATIONAL REQUIREMENTS

§ 83.341. General recordkeeping requirements.

(a) Unless otherwise specified, records required under this subchapter are not required to be submitted to the Commission or delegated conservation district, but shall be retained by the agricultural operation for at least 3 years.

(b) Records required under this subchapter shall be maintained on forms provided by the Commission, unless otherwise allowed by the Commission.

§ 83.342. Recordkeeping relating to application of nutrients.

(a) Plans must be supported by the information required in this section and §§ 83.343 and 83.344 (relating to alternative manure utilization recordkeeping; and exported manure information packets).

(b) The NMP operation shall keep the following accurate records of the land application of nutrients, crop yields and soil tests on the NMP operation:

(1) Records of soil testing results shall be maintained consistent with § 83.292(e) (relating to determination of nutrients needed for crop production). Soil testing is required once every 3 years for each crop management unit.

(2) Records of manure testing results and testing of other nutrient sources shall be maintained consistent with § 83.291 (relating to determination of available nutrients). Manure testing is required once every year for each manure group, except manure groups associated with less than five AEUs and manure groups representing grazing consistent with § 83.291(c)(3)(iv) and (vi).

(3) Land application of nutrients on NMP operations shall be documented on an annual basis by recording the following information for each source of nutrients:

(i) The locations and number of acres of nutrient application.

(ii) The dates of nutrient application.

(iii) The rate of nutrient application for each crop management unit.

(iv) The number of animals on pasture, the number of days on pasture and the average number of hours per day on pasture.

(4) Approximate annual crop yield levels for each crop management unit.

(5) Annual manure production figures for each manure group.

§ 83.343. Alternative manure utilization record-keeping.

(a) *Recordkeeping for manure exports*. The following recordkeeping requirements apply to manure exported off of the NMP operation:

(1) A manure export sheet shall be used for all manure transfers from the operation.

(2) The Commission or delegated conservation district will make copies of the manure export sheet forms available to the operation.

(3) Computer-generated forms other than the manure export sheet forms provided by the Commission may be used if they contain the same information as, and are reasonably similar in format to, the forms provided by the Commission.

(4) Recordkeeping related to the application of exported manure must comply with the following:

(i) The exporter is responsible for the completion of the manure export sheet, providing a copy to the importer and retaining a copy at the exporting operation.

(ii) When the exporter, or person working under the direction of the exporter, such as an employee or a commercial manure hauler, applies the manure to the land, the exporter is responsible for maintaining records of the actual application dates, application areas (including the observation of any relevant setback restrictions), application methods, and application rates for the exported manure.

(iii) When the manure is exported through a broker, the exporting operation is not responsible for obtaining records of actual application information for importing operations, unless the exporting operator manages the application of the manure. If the broker is responsible for applying the manure, the broker shall retain records of the application of all manure (including date, areas, methods and rates applied) and shall provide a copy of these application records to the importing operation for its records.

(b) *Recordkeeping for alternative manure utilization by means other than manure export*. Operators shall keep annual records of the amount and use of manure utilized in any manner other than through manure transfers.

§ 83.344. Exported manure informational packets.

(a) If manure is exported from an NMP operation, the exporter will provide the importer and any relevant manure hauler or brokers with a completed manure export sheet.

(b) If the manure is to be land applied at an importing operation, the exporter is required, except as provided in subsection (c), to provide the following information to the importer, as supplied by the Commission or its delegated agent:

(1) The relevant sections of the *Manure Management Manual*.

(2) A concise educational publication describing the key concepts of nutrient management.

(3) Additional informational items as supplied by the Commission for this purpose.

(c) If a broker will be responsible for applying the manure at the operation, the broker shall meet the requirements of subsection (b).

(d) The Commission or its delegated agent will provide the materials in subsection (b) for distribution by the exporter. The exporter is only required to provide those items in subsection (b) that have been made available to the exporter by the Commission or its delegated agent.

(e) The exporter is responsible for providing the informational materials described in subsection (b) only if the importer or commercial manure hauler does not already have a current copy of the informational materials.

MINIMUM STANDARDS FOR MANURE STORAGE FACILITIES

§ 83.351. Minimum standards for the design, construction, location, operation, maintenance and removal from service of manure storage facilities.

(a) The minimum standards contained in this section apply to new manure storage facilities and the expansion of existing manure storage facilities, as part of a plan developed for an NMP operation.

(1) Manure storage facilities shall be designed, constructed, located, operated, maintained, and, if no longer used for the storage of manure, removed from service, in a manner that protects surface water and groundwater quality, and prevents the offsite migration of nutrients. Implementation of BMPs contained in the *Pennsylvania Technical Guide* may be used to satisfy this requirement, except if these standards conflict with this subchapter. Other BMPs shall be approved by the Commission.

(2) In addition to complying with paragraph (1), manure storage facilities shall be designed and located in accordance with the following criteria:

(i) Facilities shall comply with the applicable criteria in § 91.36 (relating to pollution control and prevention at agricultural operations).

(ii) Facilities shall comply with the applicable criteria in Chapter 105 (relating to dam safety and waterway management).

(iii) The location and construction of facilities to be placed within a floodplain shall be consistent with local ordinances developed under the Pennsylvania Flood Plain Management Act (32 P. S. §§ 679.101--679.601), which relates to the dangers and damage of floodwaters.

(iv) The sides of facilities located in a floodplain shall be protected from erosion and scouring from a 25 year flood event.

(v) For operations that were producing livestock or poultry on or before October 1, 1997, facilities, except reception pits and transfer pipes, may not be constructed:

(A) Within 100 feet of an intermittent or perennial stream, river, spring, lake, pond or reservoir.

(B) Within 100 feet of a wetland that is identified on the National Wetlands Inventory maps, if the following apply:

(I) The wetland is within the 100-year floodplain of an Exceptional Value stream segment.

(II) Surface flow is toward the wetland.

(C) Within 100 feet of a private water well, or open sinkhole.

(D) Within 100 feet of an active public drinking water well, unless other State or Federal laws or regulations require a greater isolation distance.

(E) Within 100 feet of an active public drinking water source surface intake, unless other State or Federal laws or regulations require a greater isolation distance.

(F) Within 100 feet of a property line, unless the landowners within the 100 feet distance from the facility otherwise agree and execute a waiver in a form acceptable to the Commission.

(G) Within 200 feet of an intermittent or perennial stream, river, spring, lake, pond or reservoir, or any water well, or wetland described in clause (B), if a facility (except permanent stacking and compost facilities) is located on slopes exceeding 8% or a facility has a capacity of 1.5 million gallons or greater.

(H) Within 200 feet of a property line, if a facility (except permanent stacking and compost facilities) is located on slopes exceeding 8% and if the slope is toward the property line, or a facility has a capacity of 1.5 million gallons or greater, unless the landowners within the 200 foot

distance from the facility otherwise agree and execute a waiver in a form acceptable to the Commission.

(vi) For NMP operations that come into existence after October 1, 1997, facilities, except reception pits and transfer pipes, may not be constructed:

(A) Within 100 feet of an intermittent or perennial stream, river, spring, lake, pond or reservoir.

(B) Within 100 feet of a wetland that is identified on the National Wetlands Inventory maps, if the following apply:

(I) The wetland is within the 100-year floodplain of an Exceptional Value stream segment.

(II) Surface flow is toward the wetland.

(C) Within 100 feet of a private water well, or open sinkhole.

(D) Within 100 feet of an active public drinking water well, unless other State or Federal laws or regulations require a greater isolation distance.

(E) Within 100 feet of an active public drinking water source surface intake, unless other State or Federal laws or regulations require a greater isolation distance.

(F) Within 200 feet of a property line, unless the landowners within the 200 foot distance from the facility otherwise agree and execute a waiver in a form acceptable to the Commission.

(G) Within 200 feet of an intermittent or perennial stream, river, spring, lake, pond, reservoir or any water well, or wetland described in clause (B), if a facility (except permanent stacking and compost facilities) is located on slopes exceeding 8% or has a capacity of 1.5 million gallons or greater.

(H) Within 300 feet of a property line, if a facility (except permanent stacking and compost facilities) is located on slopes exceeding 8%, and if the slope is toward the property line, or a facility has a capacity of 1.5 million gallons or greater, unless the landowners within the 300 foot distance from the facility otherwise agree and execute a waiver in a form acceptable to the Commission.

(vii) The Commission or a delegated conservation district may waive the distance restrictions in subparagraph (v)(A)--(C) and (G), if the following can be demonstrated to the satisfaction of the Commission or a delegated conservation district:

(A) The siting restrictions contained in subparagraph (v) would make the placement economically unreasonable or physically impractical.

(B) A site investigation has been conducted which demonstrates that the proposed system will protect water quality and protect against offsite migration of nutrients.

(C) The type, design and contingency plan developed for the facilities meet additional criteria the Commission or delegated conservation district, in consultation with the NRCS, may require to protect water quality, and protect against offsite migration of nutrients.

(D) In the case of a private water well, the well construction meets the criteria that the Commission, in consultation with the NRCS, deems necessary to protect water quality. There will be no waivers granted from the setback requirements for public water wells or sources.

(viii) Manure storage facilities constructed after October 1, 1997, on CAOs that were in existence prior to October 1, 1997, shall meet the applicable criteria established under this section.

(3) The designer of the manure storage facility described in the plan shall address the following:

(i) Verification of the minimum manure storage period and minimum manure storage volume documented in the current plan.

(ii) Determination of the type and dimensions of facilities considering the environmental and space limitations of the site, as well as the operator's preference.

(iii) An onsite investigation to evaluate the site suitability for a facility. The criteria contained in the *Pennsylvania Technical Guide* may be used to satisfy this requirement. Other criteria shall be approved by the Commission.

(b) The repair of an existing manure storage facility that is part of a plan developed for an NMP operation shall be done in a manner that protects surface water and groundwater quality, and prevents the offsite migration of nutrients. Applicable standards in the *Pennsylvania Technical Guide* may be used to meet this requirement. Other standards shall be approved by the Commission. The location standards do not apply to these facility repairs.

(c) The site specific design for the construction, expansion or major repair of a liquid or semisolid manure storage facility covered under the act shall be done or approved by an engineer registered in this Commonwealth. The engineer shall certify that the design protects surface water and groundwater quality, and prevents the offsite migration of nutrients. Compliance with the applicable design standards described in the *Pennsylvania Technical Guide* may be used to meet this requirement. Other standards shall be approved by the Commission.

(d) At least 2 weeks prior to installation of the facility or the repair, the registered engineer shall submit a verification (including a quality assurance inspection plan for construction) to the Commission or delegated conservation district documenting that the design, meeting the requirements of this subsection including applicable setbacks, has been completed. Following completion of the installation or repair, the responsible engineer and construction contractor shall

certify to the Commission or delegated conservation district that construction of the manure storage facility was completed according to the design, construction and location standards.

(e) A written site specific contingency plan, addressing actions to be taken in the event of a manure leak or spill from a manure storage facility covered under the act to protect surface water and groundwater quality, and prevent the offsite migration of nutrients, shall be developed and kept onsite at the operation. The standards contained in the *Pennsylvania Technical Guide* may be used to meet this requirement. Other standards shall be approved by the Commission. In the case of a leak or spill of manure from a manure storage facility covered under the act, the operator is responsible for implementation of the site specific contingency plan developed for the operation. The contingency plan must contain information necessary to meet the notification requirements for reporting leak or spill events which would result in pollution or create a danger of pollution to surface water or groundwater contained in § 91.33 (relating to incidents causing or threatening pollution).

PLAN REVIEW AND IMPLEMENTATION

§ 83.361. Initial plan review and approval.

(a) Plans for NMP operations shall be submitted for initial review and approval to delegated conservation districts, or alternatively to the Commission for NMP operations located in counties not delegated administrative authority under § 83.241 (relating to delegation to local agencies). A person performing the plan review shall be certified in accordance with the Department of Agriculture's nutrient management specialist certification requirements in 7 Pa. Code §§ 130b.1--130b.51 (relating to nutrient management certification).

(b) The Commission or a delegated conservation district will, within 10 days from the date of receipt of the plan, provide notice to the operator indicating whether all of the required plan elements have been received.

(c) The Commission or a delegated conservation district will approve or disapprove the plan or plan amendment within 90 days of receipt of a complete plan or plan amendment.

(d) If the Commission or delegated conservation district does not act on the plan within the 90-day period, the agricultural operation that submitted the plan is authorized to implement the plan. The Commission or delegated conservation district will thereafter have another 90 days to complete review of the plan, beginning on the expiration of the initial 90-day review period. If the Commission or delegated conservation district fails to act within the second 90-day period, it will be deemed approved.

(e) The notice of determination to disapprove a plan will be provided in writing to the operator submitting the plan, and include an explanation specifically stating the reasons for disapproval. If a plan for a CAO is disapproved, the operator submitting the plan for the first time shall have 90 days after receipt of the notice of disapproval to resubmit a revised plan.

(f) Approvals will be granted only for those plans that satisfy the requirements of this subchapter, including verification by the delegated conservation district or the Department of Environmental Protection that the operation has a current agricultural erosion and sediment control plan. For CAOs and VAOs existing on October 1, 2006, this agricultural erosion and sediment control plan verification is not required until October 1, 2009.

§ 83.362. Plan implementation.

(a) An NMP operation shall fully implement the plan consistent with the implementation schedule included as part of the approved plan. Implementation schedules may not extend past 3 years of the date the plan is approved or deemed approved, or for which implementation is otherwise authorized under § 83.361(d) (relating to initial plan review and approval), unless the implementation schedule is extended upon approval of the Commission or delegated conservation district.

(b) Nutrient application rates shall be developed as described in § 83.293 (relating to determination of nutrient application rates) and shall be implemented upon approval of the plan. The operator shall review the approved plan at least annually to ensure that this condition is met.

(c) At least every 3 years, the plan, records and the status of the operation's compliance, shall be reviewed by a nutrient management specialist to determine whether a plan amendment is required, according to the following:

(1) Unless otherwise required by § 83.371 (relating to plan amendments), if the approved plan continues to adequately represent the agricultural operation, including the manure nutrient content and soil test values in the plan, and if the book values used in the approved plan have not changed to the extent that it would affect the application rates used in the plan, no amendment is required. The specialist shall provide notice of this to the reviewing agency.

(2) The phosphorus application determination, including the procedures and criteria for addressing phosphorus contained in § 83.293(c) such as the Phosphorus Index, shall be reevaluated for each crop management unit once every 3 years after initial approval of the plan. A plan amendment is required if there is a change in manure application as a result of this reevaluation.

(3) A plan amendment shall be submitted to the reviewing agency in accordance with § 83.361(a), if the agricultural operation has changed from that described in the approved plan, as required by § 83.371 (relating to plan amendments).

(d) Limited liability protection, as described in § 83.206 (relating to limitation of liability), is afforded to those operators properly implementing an approved plan under this subchapter.

PLAN AMENDMENTS AND TRANSFERS

§ 83.371. Plan amendments.

(a) A plan amendment is required if the operator expects to make significant changes in the management of nutrients from those contained in the approved plan, prior to those changes being implemented. Those significant changes in the management of nutrients which would require a plan amendment are any one of the following:

(1) A net increase of greater than 10% occurs in AEUs per acre.

(2) A change in crop management that results in a reduction of greater than 20% in nitrogen necessary for realistic expected crop yields or the amount the crops will utilize for an individual crop year.

(3) A change in excess manure utilization arrangements as described in the approved plan.

(i) No amendment is required to address the loss of an importer if the loss does not impair the operator's ability to properly manage the manure generated on the operation.

(ii) No amendment is required to address the addition of a new importer if the operator submits the nutrient balance sheet and signed agreement required by this subchapter to the delegated conservation district overseeing the exporting farm, prior to transport. The district shall verify the adequacy of the documentation update the plan file with the new documentation and require formal approval of the new importer through a plan amendment when the plan is subject to the triennial review under § 83.362(c) (relating to plan implementation).

(4) If calculations in the plan as originally submitted are in error, or if figures used in the plan are inconsistent with the requirements of this subchapter, and adequate justification has not been given in writing for the inconsistency.

(5) If a BMP different than that called for in the approved plan, is proposed to address a manure management or stormwater management concern.

(6) If, after the first 3 years of implementing the plan, actual yields are less than 80% of the expected crop yields used in the development of the plan.

(7) If alternative organic nutrient sources will replace or augment nutrient sources described in the plan.

(8) If additional lands are brought into the operation through purchase, lease or renting.

(9) If there is a change in the manure management system that is expected to result in a different nutrient content that requires a change in manure application rates under § 83.293 (relating to determination of nutrient application rates).

(10) If a change in manure application is necessary based on the reevaluation of potential phosphorus loss as part of the triennial review under § 83.362(c) (relating to plan implementation), or a change in manure application is necessary due to the end of the phase-in period under § 83.293(c)(3).

(b) A plan amendment under subsection (a) shall be developed and certified by a nutrient management specialist and shall be submitted to the reviewing agency under subsection (a).

(c) Plan updates to address operational or computation changes other than those described in subsection (a) shall be developed and certified by a commercial or individual nutrient management specialist, retained at the operation and submitted to the district for inclusion in the approved nutrient management plan. A plan amendment shall be submitted under this section to obtain approval of these changes, when the plan is subject to the triennial review under § 83.362(c).

§ 83.373. Plan transfers.

(a) An approved nutrient management plan may be transferred to a subsequent owner or operator of an agricultural operation by notification of the transfer to the Commission or delegated conservation district, unless the transfer results in operational changes requiring a plan amendment under § 83.371 (relating to plan amendments).

(b) If the transfer of the approved plan results in operational changes requiring a plan amendment under § 83.371, the plan amendment shall be submitted for approval of the Commission or a delegated conservation district along with, or before, the notification required under subsection (a).

CONTAGIOUS DISEASE EMERGENCIES

§ 83.381. Manure management in emergency situations.

(a) If there is an outbreak of a contagious disease as regulated by the Department of Agriculture, manure management shall be consistent with requirements in the Department of Agriculture's order of quarantine issued under the Domestic Animal Act (3 P. S. §§ 311--354) and regulations thereunder.

(b) The Department of Agriculture will notify the Commission when a quarantine is imposed on an agricultural operation covered by the act. The Department of Agriculture will supply the Commission and delegated conservation district with a copy of the quarantine document.

(c) Unless otherwise directed by the quarantine, an amended plan shall be developed addressing the management of manure under the quarantine. This plan shall be certified by a nutrient management specialist prior to implementation and submitted to the reviewing agency within 30 days of implementation.

(d) If nutrients are applied in excess of crop need due to the quarantine restrictions placed on the manure, and the cropping sequence permits, cover crops shall be planted to the site to minimize the loss of these nutrients. The harvesting of these cover crops is encouraged to facilitate the removal of excess nutrients.

(e) The temporary storage of manure during the quarantine shall be done under § 83.311 (relating to manure management).

(f) The application of manure during the quarantine shall be done under § 83.294(f) (relating to nutrient application procedures).

(g) Standard soil tests will be required each year for crop management units where the implementation of the quarantine required that nutrients be applied in excess of the amount the crop can use, and shall continue for 3 successive years thereafter. In addition to the standard test, an appropriate test indicating the amount of nitrogen available for crop uptake will be required for 1 year beyond the cessation of excess manure application.