

RULES AND REGULATIONS

ENVIRONMENTAL QUALITY BOARD

[25 PA. CODE CHS. 91 AND 92]

Concentrated Animal Feeding Operations and Other Agricultural Operations

[35 Pa.B. 5796]

The Environmental Quality Board (Board) by this order amends §§ 91.1, 91.35, 91.36, 92.1 and 92.5a. These amendments conform current Department of Environmental Protection (Department) regulations to the revised Federal regulations for concentrated animal feeding operations (CAFOs). The amendments also make some substantive and organizational changes to existing regulations regarding agricultural operations in this Commonwealth.

These amendments were adopted by the Board at its meeting on June 21, 2005.

A. *Effective Date*

These amendments will go into effect upon publication in the *Pennsylvania Bulletin* as final rulemaking.

B. *Contact Persons*

For further information, contact Cedric Karper, Chief, Division of Conservation Districts and Nutrient Management, Bureau of Watershed Management, Rachel Carson State Office Building, P. O. Box 8465, Harrisburg, PA 17105-8465, (717) 783-7577; or Douglas Brennan, Assistant Counsel, Bureau of Regulatory Counsel, Rachel Carson State Office Building, 400 Market Street, Harrisburg, PA 17101-2301, (717) 787-9373. Persons with a disability may use the AT&T Relay Service, (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This final-form rulemaking is available on the Department's website: www.dep.state.pa.us.

C. *Statutory Authority*

The final-form rulemaking is being made under the authority of sections 5(b)(1) and 402 of The Clean Streams Law (35 P. S. §§ 691.5(b)(1) and 691.402) and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20).

D. *Background*

1. *Purpose.*

The primary purpose of these revisions to Chapter 92 (relating to National Pollutant Discharge Elimination System permitting, monitoring and compliance) is to allow the Commonwealth to maintain delegation of the National Pollutant Discharge Elimination System (NPDES) CAFO program, which was revised by the Federal government in 2003. The purpose of these revisions to Chapter 91 is to strengthen existing requirements for pollution control and prevention at agricultural operations which are not subject to the NPDES permit requirements of Chapter 92 relating to CAFOs. In particular, the proposed Chapter 91 (relating to general provisions) revisions clarified and strengthened the requirements related to agricultural discharges, including provisions for manure storage facilities and land application of manure. Those revisions included a provision which authorized the Department to establish "appropriate vegetated buffers and setbacks . . . to protect and maintain water quality." The final Chapter 91 regulation also contains a setback requirement, although it has been revised to focus on the highest risk operations.

The revisions are also intended to implement a regulatory program for livestock and poultry operations that reasonably controls the risk to the environment in a sustainable way, with due regard for the economic importance of the industry and other societal benefits, using the input from the public and important stakeholders and relying as much as possible on the existing successful CAFO program.

The most recent (2002) Commonwealth report on the quality of surface waters listed agriculture as the second leading cause of impairment. Improper management of nutrients such as manure and fertilizers, as well as lack of stormwater runoff controls, are the primary contributing factors to these water quality problems around the Commonwealth. Livestock and poultry operations, including large-scale operations whose animals generate large amounts of manure, present risks of water pollution. In addition, many of the Commonwealth's agricultural operations are in the Chesapeake Bay watershed. This requires a special focus on best management practices to protect and restore that important resource, and to meet Pennsylvania's legal obligations under the Federal Clean Water Act.

At the same time, agriculture is an important industry in this Commonwealth, providing livelihood for thousands of citizens and their families. In addition, agricultural lands provide significant aesthetic and environmental benefits to this Commonwealth. Finally, agriculture is an important part of the cultural fabric of this Commonwealth.

2. *Federal CAFO Regulations.*

To address the environmental risks posed by large-scale livestock and poultry operations, the United States Environmental Protection Agency (EPA) promulgated a comprehensive set of revised regulations governing CAFOs in February 2003. These regulations greatly expanded existing Federal rules put in place over 20 years ago, to strengthen the existing regulatory program for CAFOs. The regulations revised 40 CFR Parts 122 and 412 (relating to EPA administered permit programs: the National Pollutant Discharge Elimination system; and concentrated animal feeding operations (CAFO) point source category).

The Department already had in place NPDES permit regulations for CAFOs in § 92.5a (relating to CAFOs). These regulations were previously approved by the EPA as part of a delegation agreement to administer the Federal program in this Commonwealth. To

maintain delegation of the Federal program, the Department must demonstrate that its regulations meet the new Federal requirements. In the case of the Commonwealth, the existing CAFO regulations, along with Chapter 83, Subchapter D (relating to nutrient management) promulgated by the State Conservation Commission (Commission), Chapters 91 and 102 (relating to erosion and sediment control), previously contained many of the new Federal requirements. These regulations have been in place for several years and have achieved wide acceptance in the agricultural community as well as various stakeholders such as Department regional offices, the Department of Agriculture, the Commission, the Nutrient Management Advisory Board and the county conservation districts.

3. Public Comment.

These final regulations reflect public comments received after the proposed changes were published in August 2004. For instance, the preponderance of comments received on manure storage and appropriate setbacks and buffers in the proposed Chapter 91 revisions urged clear, simple and enforceable standards to apply to farm operations based upon science rather than regulatory categories or Department discretion. Similar discussions arose in response to the administration's Agriculture, Communities and Rural Environment initiative (ACRE), during the public comment period for the proposed regulations. ACRE is the result of Governor Rendell's directive to the Secretaries of Agriculture and Environmental Protection to develop a comprehensive, progressive plan to support farmers' rights under the act of June 10, 1982 (P. L. 454, No. 133), known as the Right-to-Farm Law (3 P. S. §§ 951--957) and to address the concerns over animal feeding operations that spawn ordinances restricting farming. The Governor directed the agencies to require minimum buffer areas where no manure can be applied for all CAFOs and CAOs, and that farms that import manure must meet the same buffer requirements as the farm that produces the manure. Therefore, these final regulations establish a minimum 100 foot setback or 35 foot vegetated buffer for all CAFOs, CAOs and importing farms, which correspond to minimum National criteria for nutrient reduction. In addition, these final regulations require water quality management permits for new or expanded manure storage facilities based upon volume and criteria related to potential for pollution.

The CAFO Stakeholder Group (Group) that assisted the Department in developing the proposed rulemaking also assisted with these final regulations. The Department has also sought the advice of the Agricultural Advisory Board in developing these final regulations.

E. Summary of Changes from the Proposed Rulemaking

The regulatory scheme for agricultural operations contains several levels of requirements, which increase in stringency as the risk of impacts to water resources increases. The final rulemaking makes changes at several of those levels, and has been developed concurrently with regulation changes by the Commission under Chapter 83, Subchapter D (relating to nutrient management).

1. CAFOs.

One main focus of this final rulemaking is CAFOs, the largest livestock and poultry operations in this Commonwealth. The basic requirement for CAFOs will continue to be to obtain a permit under the Department's program implementing the NPDES Program. The NPDES permit program has several fundamental requirements, some of which are new or

which contain new elements to conform to the new Federal requirements. Underlying the NPDES requirements are several other levels of requirements:

a. *Manure Management.* First, agricultural operations in this Commonwealth, including CAFOs, must meet construction and operation requirements for manure storage, and for land application. These broad based regulations are currently described in §§ 91.35 and 91.36 (relating to wastewater impoundments; and pollution control and prevention at agricultural operations), which are administered by the Department. The final rule consolidates them into one section, § 91.36. CAFOs, which have large and higher risk manure storage facilities, have special permitting requirements above and beyond those of most other livestock and poultry operations, and this final rule preserves that extra protection. For swine, poultry and veal operations, these protections are increased, consistent with the revised Federal CAFO regulations.

b. *Conservation Practices.* Second, all agricultural operations that conduct plowing and tilling, including CAFOs, must develop and implement an erosion and sediment control plan to limit runoff, under Chapter 102 (relating to erosion and sediment control), also administered by the Department. These plans are important to the prevention of surface water pollution by phosphorus from manure and other nutrient sources applied to the land as fertilizer. The final rule specifies that the erosion and sediment control plans must be submitted with CAFO permit applications.

c. *Nutrient Management.* Third, the approximately 840 CAOs (some of which are also CAFOs) regulated under Chapter 83 (relating to State Conservation Commission) based on their concentration of animals (as opposed to their absolute numbers of animals) must meet a series of requirements related to nutrient management. These requirements currently include testing of soils and manure for nitrogen and phosphorus, determination of agronomic needs of the crops based on nitrogen (as well as phosphorus, after a decision of the Environmental Hearing Board (EHB) in April 2004), land application of manure based on those tests and on crop needs, and stormwater runoff controls around the farmstead. These requirements, including the need to have a nutrient management plan (NMP) approved by the local county conservation district, are also imposed on CAFOs under the existing and final regulations. The NMPs are subject to appeal to the EHB.

Chapter 83 is promulgated by the Commission and is administered primarily through county conservation districts. Extensive revisions to Chapter 83 were proposed in a rulemaking at the same time the Board proposed changes to these regulations. (Editor's Note: For the document relating to those proposed revisions see 34 Pa.B. 4361 (August 7, 2004).) The Chapter 83 final regulations are expected to be approved by the Commission later in 2006.

The amendments to Chapter 83 include new, additional requirements for addressing the impacts on water quality from phosphorus (in addition to nitrogen) and more frequent soil and manure testing for nitrogen and phosphorus. They also are expected to significantly increase the regulation of the export of manure. These amendments are relevant to CAFOs because § 92.5a requires CAFOs to have an NMP under Chapter 83.

Although it has been important to keep the Chapter 83 and the CAFO and other agricultural operations regulation updates on a coordinated schedule through development, they can now proceed independently to final. These final regulations can be fully implemented and satisfy Federal CAFO requirements independent of finalization of

revisions to Chapter 83. This is important because of the Federal deadlines of April 2005 for states to update their CAFO program requirements and various dates in 2006 for CAFOs to implement the new requirements, under the Federal CAFO regulations. This is possible primarily because of an EHB decision in 2004 and subsequent Commission action that required immediate implementation of phosphorus-based nutrient management planning. Other significant Federal CAFO requirements are independently addressed in these final regulations and in the existing Chapter 83 requirements.

d. *Federal CAFO Requirements.* Finally, Chapter 92 contains the Department's NPDES regulations and § 92.5a governs CAFOs. Section 92.5a incorporates the other requirements already applicable to agricultural operations found in Chapters 83, 91 and 102, and adds special requirements for CAFOs within the Department's NPDES permit program. These final regulations make several changes to § 92.5a, as well as the related definitions in § 92.1 (relating to definitions), to conform to the new EPA CAFO regulations:

- * A revised definition of "CAFO" expands the scope of these regulations to include all Federally defined large CAFOs as well as all operations with over 1,000 animal equivalent units (AEUs) and CAOs with greater than 300 AEUs.

- * A new definition of "livestock" to include horses.

- * Definitions of "manure" and "agricultural process wastewater."

- * A timetable for poultry operations with dry manure to apply for NPDES CAFO permits.

- * Setback requirements at CAFOs from surface waters for land application of manure.

- * Recordkeeping and reporting requirements that are identified in the NPDES permit and also in the Department's implementation strategy to be published later in 2005.

- * A PPC plan for chemicals.

- * Implementation of management controls on the export of manure away from the CAFO.

- * Compliance with 3 Pa.C.S. §§ 2301--2389 (relating to Domestic Animal Law) when handling animal mortality.

- * Effluent limits and conditions for treated wastewater discharges from CAFOs.

- * Limits on field storage of CAFO manure and proper management of CAFO feed and supply storage areas.

e. *Definition of a "CAFO."* This final rulemaking amends the definition of a "CAFO" to alter the way in which a discharge to surface waters from the operation would trigger the CAFO requirements. The existing regulations consider any agricultural operation, no matter how small, to be a CAFO if it has a discharge to surface waters. The final rulemaking replaces this broad CAFO designation authority with an emphasis on enforcing The Clean Streams Law requirements to address unauthorized discharges. This change is based on the

focus of the CAFO regulations: large animal operations. For the most part, these regulations do not allow discharges. Smaller operations that have discharges are subject to other, more basic requirements and prohibitions under The Clean Streams Law. The Board believes that the CAFO program should keep its focus on permitting (and monitoring) larger operations. The final rulemaking adds new language highlighting The Clean Streams Law general prohibitions against unpermitted discharges to surface waters including medium and small operations with discharges that would otherwise lead to a CAFO permitting process under the Federal regulations.

In addition, the Board added a category of operations that will be a CAFO--operations designated as large CAFOs by the EPA. The purpose of this provision is to satisfy the new Federal definition of a CAFO, which does not use the Pennsylvania approach of "animal equivalent units."

f. Comparison of Federal CAFO Regulations and the Pennsylvania CAFO Program.

The following table summarizes the requirements in the Federal regulations and the associated Pennsylvania regulations that are used in this final rulemaking to meet those requirements.

Issue	EPA--New Rule	Department/Commission Regulations
Definitions	§§ 122.23(b)(4), (6) and (7); and 412.4(b)	§ 92.1
NMP	§§ 122.42(e)(1) and 412.4(c)(1)	§ 92.5a(f)(1) and Chapter 83
--Storage	§ 122.42(e)(1)(i)	§§ 91.36(a), 92.5a(e)(1)(ii), (3) and (6) and § 92.5a(f)(4), (7)
--Dead animals	§§ 122.42(e)(1)(ii) and 412.37(a)(4)	§ 92.5a(f)(3)
--Stormwater management	§ 122.42(e)(1)(iii)	§ 92.5a(f)(1) and Chapter 83
--Animal contact with waters of the United States	§ 122.42(e)(1)(iv)	§ 92.5a(f)(1) and Chapter 83
--Chemical handling	§ 122.42(e)(1)(v)	§ 92.5a(f)(1)
--Conservation practices	§ 122.42(e)(1)(vi)	§ 92.5a(f)(1) and Chapters 83 and 102
--Testing of manure and soil	§§ 122.42(e)(1)(vii) and 412.4(c)(3)	§ 92.5a(f)(1) and Chapter 83
--Land application protocols	§§ 122.42(e)(1)(viii) and 412(c)(2)	§ 92.5a(f)(1) and Chapter 83
--Recordkeeping for NMP	§§ 122.42(e)(1)(ix) and (e)(2) and 412.37(b) and (c)	§ 92.5a(f)(5)
Manure transfer (export)	§ 122.42(e)(3)	§ 92.5a(e)(1) and (f)(1) and Chapter 83
Annual report	§ 122.42(e)(4)	§ 92.5a(f)(5)

Nitrogen and phosphorus	§ 412.4(c)(1)	§ 92.5a(f)(1) and Chapter 83 (Including 2004 EHB decision on P-Based planning)
Maintenance of land application equipment	§ 412.4(c)(4)	§ 92.5a(f)(1) and Chapter 83
Setback requirements	§ 412.4(c)(5)	§ 92.5a(e)(1)(i)
Discharge prohibition from production areas	§ 412	§§ 91.36(a)(1) and (5), 92.5a(f)(1) and (7)
Visual inspections of production area	§ 412.37(a)(1) and (3)	§ 92.5a(f)(1) and Chapter 83
Depth markers	§ 412.37(a)(2)	§§ 91.36(a) and 92.5a(f)(4)

2. *Other Agricultural Operations; Setbacks and Buffers.*

The Group that assisted the Department in the development and finalization of this final rulemaking identified smaller livestock and poultry operations as causing a substantial portion of pollution problems created by agriculture. To address this, the amendments to § 91.36(c) emphasize the responsibility of all agricultural operations to prevent the discharge of pollutants to waters of this Commonwealth under The Clean Streams Law. In addition, the amendments in § 91.36(a)(4) require permits for new or expanded liquid or semisolid manure storage at operations smaller than those currently required to obtain a permit, to minimize the risk of impacts to water resources. Section 91.36(a)(4) also establishes specific size, type and location criteria for permit requirements for new or expanded manure storage facilities.

In addition, the Board has narrowed the focus of § 91.36(b)(2), which now establishes minimum setback and buffer requirements for (1) CAOs and farms which import manure from CAOs, as well as for (2) CAFOs and their manure import sites. The setbacks and buffers for CAOs and importers only apply to certain key types of waterbodies. The Board recognizes that the scope of this provision includes farms that are also regulated under the Nutrient Management Act (3 P. S. §§ 1701--1718) which was repealed by Act 38-2005 hereinafter referred to as Act 38. Therefore, the Board has included a special provision in its Order that terminates the part of this subsection applicable to CAOs and their importers, if the Commission promulgates regulations which impose, at a minimum, the same setback and buffer requirements on CAOs and their importers. This special provision is not applicable to CAFOs or their importers, and is not intended to affect the duty of all agricultural operations to comply with The Clean Streams Law and other provisions in Chapters 91 and 92.

3. *Chapter 91.*

§ 91.1. Definitions of "CAO" and "CAFO" are added to explain key terms in the setback provision in § 91.36(b)(2). A definition of "manure storage capacity" is added to clarify the meaning of § 91.36(a)(4) regarding the volume of storage that will be used in determining if a permit is required. A definition of "agricultural process wastewater" is added to identify other wastewaters such as egg wash water and milkhouse wastewater that are part of normal farming operations and regulated under § 91.36. A definition of "manure" has been added for clarity. The proposed definition of "setback" has been deleted.

§ 91.36(a)(1). The references to the Manure Management Manual and the Pennsylvania

Technical Guide in this paragraph, and in § 91.36(a)(2) and (b)(1)(i), are revised to properly describe the purpose of the practices, standards and criteria that are contained in these guidance documents. They are intended to be used as tools for agricultural operations to meet the basic regulatory requirements, and avoid the need to obtain a permit or approval from the Department.

§ 91.36(a)(2), (3) and (4). The categories of manure storage facilities requiring permits is clarified. A new requirement for operators to maintain copies of engineer certifications has been added.

§ 91.36(a)(6)(i). The freeboard requirements for manure storage facilities are simplified to be consistent with the Pennsylvania Technical Guide and to allow a minimum 6 inch freeboard for storage facilities not exposed to rainfall.

§ 91.36(a)(7). The general statement that the Department may require any manure storage facility to obtain a permit has been deleted. This authority already exists for the types of situations where this would be applied.

§ 91.36(b)(2). This subsection (b)(2) is revised from the general provision for requiring setbacks and buffers adequate to protect water quality at any agricultural operation, to target CAOs, CAFOs and CAFO/CAO manure import sites, for implementation of a 100 foot setback or 35 foot vegetated buffer. For CAOs and importers, the setbacks and buffers only apply to certain key types of waterbodies. The Board has included a special provision in its order that terminates the part of this subsection applicable to CAOs and their importers, if the Commission promulgates regulations which impose, at a minimum, the same setback and buffer requirements on CAOs and their importers. This special provision is not applicable to CAFOs or their importers, and is not intended to affect the duty of all agricultural operations to comply with The Clean Streams Law or other provisions of Chapters 91 and 92.

§ 91.36(c)(2). This provision is added to clarify that operations that would otherwise be considered small and medium CAFOs under the Federal regulations will be addressed as enforcement cases under The Clean Streams Law.

4. Chapter 92.

§ 92.1. The definition of "CAFO" is revised to eliminate the designation of any operation as a CAFO and to delete operations with "authorized discharges." These changes help to simplify the definition and eliminate objectionable broad authority to designate operations as CAFOs. To address concerns over consistency with the Federal definition relative to small and medium sized operations, operations with illegal discharges will be addressed as Clean Streams Law enforcement cases.

§ 92.1. The definition of "setback" is revised to specify the point from which setbacks are to be measured and examples of surface water conduits are added to be consistent with the Federal definition of "setback." Definitions of "agricultural process wastewater" and "manure" are added to be consistent with the Federal definitions. A revised definition of "CAOs" is included to be consistent with the § 91.1 definitions.

§ 92.5a(d). A new provision was added to ensure that all operations that are required to

obtain permits have a permit application deadline which applies to them.

§ 92.5a(e)(1)(ii). A limit of 14 days for stockpiling CAFO manure on CAFO operations without cover or protection is added. The EPA has stipulated this limit, and persons representing the category of CAFO operations that are impacted have indicated that this is manageable. Given the current "CAFO" definition, this is an appropriate requirement for management of dry manure from these operations. There are no expectations to extend this requirement to other operations. Manure stockpiling for other high-risk operations will be regulated through the Nutrient Management Act regulations and any discharge of pollutants from any manure stockpiles is subject to enforcement under The Clean Streams Law.

§ 92.5a(e)(5) and (f)(6). With the change in the CAFO definition to eliminate confusion by deleting the reference to operations with an "authorized discharge," language was added to this subsection to address the same issue--to allow CAFO permit applicants to include design plans and specifications for manure treatment systems with a treated wastewater discharge. This is to encourage innovative technologies, including energy generation projects, by consolidating water quality permitting requirements. In these cases, the permit will include effluent limits and conditions determined in the same way as they are for other NPDES discharge permits as required by § 92.2a.

§ 92.5a(e)(6) and (f)(7). For consistency with Federal requirements, a provision was added to account for runoff from CAFO feed and supply storage areas in CAFO permit applications. This runoff can be a source of pollution. Applicants may address this runoff as part of the nutrient management plan or as separate plans and practices submitted with the application.

F. Summary of Comments and Responses on the Proposed Rulemaking

Written comments were received from 191 commentators during the public comment period between August 7, 2004, and November 5, 2004. Oral testimony was also received at two public hearings conducted in Mechanicsburg, PA and DuBois, PA in October 2004.

Comments concerned the following general topics: the definition of a CAFO, setback and buffer requirements for land application of manure (both for CAFOs and for all other agricultural operations), manure storage facilities, economics, enforcement/accountability, CAFO permit review considerations and CAFO permit conditions. In general, as one would expect, environmental commentators advocated stricter, more expansive regulatory requirements, while farming interests wanted to limit the requirements. The comment/response document provides detailed responses to these comments, explaining the Department's position.

1. Definition of a "CAFO"

Based on the comments received, the definition of "CAFO" has been revised to delete language regarding: (1) the general authority for the Department to designate operations as CAFOs in certain circumstances; and (2) operations with treated discharge authorized by the Department. These provisions created unnecessary confusion and concern.

In addition, the EPA and others commented on the absence of "medium" and "small" CAFOs as described in the Federal CAFO definition, which requires that a discharge be

present at the operation. In response to these comments additional language was included in § 91.36(c) to clarify the Department's intent to address these situations as violations with enforcement actions under The Clean Streams Law. CAFOs with authorized discharges--treated wastewater discharges--are now addressed in the provisions for CAFO permit applications and permit conditions.

2. Setbacks and Buffer Requirements for Land Application of Manure

General provisions for all agricultural operations were proposed for manure application setbacks and vegetated buffers adequate to protect water quality. Again, a wide range of comments resulted from this provision. The Federal standard, 100 foot setback or 35 foot buffer for CAFO operations, remains in the final regulation, and a parallel provision was added to § 91.36(b) for consistency. For CAOs, and for CAO and CAFO manure import sites, § 91.36(b) now contains a focused Statewide setback/buffer requirement to prevent pollution from land application of manure, using the same distances as for CAFOs. The Board has included a special provision in its order that terminates the part of this subsection applicable to CAOs and their importers, if the Commission promulgates regulations which impose, at a minimum, the same setback and buffer requirements on CAOs and their importers. This special provision is not applicable to CAFOs or their importers, and is not intended to affect the duty of all agricultural operations to comply with The Clean Streams Law or other provisions of Chapters 91 and 92. Consistent with the NPDES program, the CAFO setbacks and buffers apply to all surface waters as defined in Chapter 92, whereas the setbacks for the other operations only apply to certain key types of waterbodies.

3. Manure Storage Facilities

Similar comments were raised concerning general designation provisions for permit requirements for manure storage. Refinements to the Manure Management Manual under existing authority can be used to better define acceptable standards for manure and agricultural process wastewater storage in Special Protection and agriculture impaired watersheds. The specific requirement for manure storage permits--new and expanding, liquid and semisolid manure storage ponds between 1 million and 2.5 million gallons in special protection and agriculture impaired watershed and all new and expanding liquid and semisolid manure storage facilities over 2.5 million gallons--remains in these final regulations. Generally, comments were not critical of these requirements.

The proposed CAFO regulations did not have a provision for field stockpiling of manure because these provisions are being included in the nutrient management regulation revisions. CAFOs are subject to those requirements. The EPA commented that the proposed revisions in the Nutrient Management regulations did not meet their limitations on field stacking. As a result a 14-day limit of stockpiling of CAFO manure on CAFO operations was added to the final CAFO regulations. Through the work group formed to assist with this regulation development and follow up discussions with those impacted by this addition it was determined that this would be an inconvenience but manageable. There is no expectation to expand this requirement to other operations. Other operations will fall under the requirements of the nutrient management regulations and Chapter 91. Any discharge of pollutants from any manure stockpile is subject to enforcement action under The Clean Streams Law.

4. Economics

A number in the regulated community raised the concern of cost. In general, the final regulations reduce these concerns. The incremental costs of meeting new requirements under the revised regulations is minimal other than the cost of obtaining a permit in some cases since most practices and standards should have already been met under existing requirements.

5. Enforcement/Accountability

Comments were provided on the level of enforcement of existing and new requirements. Noncompliance with existing requirements is a cause of agriculturally driven water quality impairment. Regulations alone will not solve this concern. Allocation and alignment of resources is important. A reorganization to give higher priority and focus to nonpoint sources, including agriculture, and additions to compliance resources for these programs are planned by the Department.

G. Benefits, Costs and Compliance

1. Benefits

Human health and the environment will benefit because agricultural operations, including CAFOs, will be required to effectively manage the manure and agricultural process wastewater that they produce. The largest and most concentrated operations are targeted under the CAFO program. The Department estimates that there will be a total of 350 CAFOs in this Commonwealth, as defined under this final-form rulemaking (there are approximately 160 now), mostly in the central parts of this Commonwealth. The population of the Susquehanna River Basin, in particular, will benefit from enhanced water quality and associated economic and recreational benefits. The final-form rulemaking will also complement the Commonwealth's efforts to meet its commitments to the Chesapeake Bay Program and will help to address agricultural nonpoint sources of pollution that are among the most significant sources of water quality impairment in this Commonwealth. It clarifies the regulation of agricultural process wastewater on agricultural operations. The CAFO permitting process will also help farmers critically assess the costs and benefits of developing CAFOs before they make substantial financial commitments.

2. Compliance Costs

There will be compliance costs for some agricultural operations around this Commonwealth, especially existing poultry producers that will be newly regulated as CAFOs, new or expanded operations which become CAFOs, some agricultural operations with manure storage capacity greater than 1 million gallons, and operations with additional costs associated with setback/buffer requirements.

The approximately 190 operations that are expected to be directly affected by the new CAFO regulations should not be surprised by the changes. The EPA began soliciting comments on the proposed Federal rule changes about 4 years ago. Fact sheets, reports and the Federal AFO/CAFO Strategy were widely circulated to both government and industry for review and comment. The large poultry and swine integrators have been expecting these changes. In addition, Department staff have met with the poultry and swine representatives during the development of the proposed rulemaking. The technical capacity in the private sector for preparing the permit applications exists, although the timeline established by the

Department in § 92.5a(b)--(d) will dictate the burden placed on these resources.

The Department does not have detailed information on the anticipated CAFO compliance costs in this Commonwealth. Using information from the EPA on the average costs of obtaining an NPDES CAFO permit, costs are estimated to be no more than the following:

- Existing operation, general permit: \$1,000 to \$2,500.
- Existing operation, individual permit: \$1,500 to \$3,500.
- New or expanded operation: \$10,000 to \$15,000.

In addition to the costs for obtaining a CAFO permit, smaller CAFOs and some agricultural operations will incur expenses to obtain permits for large manure storage facilities. The Department estimates those costs to be up to \$1,500 to \$3,500 per storage facility.

3. Compliance Assistance Plan

To help these livestock and poultry operations meet the proposed rulemaking's requirements, Congress increased funding for land and water conservation programs in the 2002 Farm Bill by \$20.9 billion Nationwide, bringing total funding for these programs to \$51 billion over the next decade. The Environmental Quality Incentives Program (EQIP) was authorized at \$200 million in 2002 and will ultimately go up to \$1.3 billion in 2007; 60% of those funds must go to livestock operations. The Commonwealth's allocation is approximately \$8 to \$10 million annually. New technology is also being perfected to aid farmers in meeting the proposed rulemaking.

Several financial assistance programs are available to livestock producers in this Commonwealth. Federal grants, such as EQIP and the Conservation Reserve Enhancement Program are available. State cost share and grant programs such as the Chesapeake Bay Program, Growing Greener and the Nutrient Management Program grants and low interest loans through Agrilink are also available.

Additionally, compliance assistance efforts following the enactment of the new regulations will be in the form of education and outreach by the conservation districts, Penn State Extension and Department trainings and fact sheets.

4. Paperwork Requirements

The final rulemaking will cause no additional paperwork (for example, reporting forms, recordkeeping, application forms, letters, public notices, and the like) for existing CAFOs in this Commonwealth.

It should be noted that the Department has been actively endorsing electronic data reporting instead of conventional paper form reporting to water systems throughout this Commonwealth. If employed, electronic data reporting would greatly reduce a CAFO's current paperwork requirements.

H. Pollution Prevention

Management of agricultural manure under these regulations is based on the premise of recycling the nutrients for crop production. Properly managing and applying manure for crop growth prevents pollution and reduces the need for commercial fertilizers.

I. Sunset Review

The final rulemaking will be reviewed in accordance with the sunset review schedule published by the Department to determine whether the regulations effectively fulfill the goals for which they were intended.

J. Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on July 28, 2004, the Department submitted a copy of the notice of proposed rulemaking, published at 34 Pa.B. 4353, to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House and Senate Environmental Resources and Energy Committees for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC and the Committees were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing these final-form regulations, the Department has considered all comments from IRRC, the Committees and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P.S. § 745.5a(j.2)), on August 24, 2005, these final-form regulations were deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on August 25, 2005 and approved the final-form regulations.

K. Findings of the Board

The Board finds that:

(1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and regulations promulgated thereunder at 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided as required by law, and all comments were considered.

(3) These regulations do not enlarge the purpose of the proposal published at 34 Pa.B. 4353 (August 7, 2004).

(4) These regulations are necessary and appropriate for administration and enforcement of the authorizing acts identified in Section C of this order.

L. Order of the Board

The Board, acting under the authorizing statutes, orders that:

(a) The regulations of the Department, 25 Pa. Code Chapters 91 and 92, are amended by

amending §§ 91.1, 91.35, 91.36, 92.1 and 92.5a to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

(b) Section 91.36(b)(2)(i) and (ii) shall remain in effect until the effective date of regulations promulgated by the Commission that establish requirements which provide, at a minimum, the same setback and buffer requirements for concentrated animal operations, and for agricultural operations that import manure from those operations, established in § 91.36(b)(2). The Department will publish notice in the *Pennsylvania Bulletin* if those regulations are promulgated. Nothing in this order is intended to affect the duty of any agricultural operation to comply with The Clean Streams Law or any other provision of Chapters 91 and 92.

(c) The Chairperson of the Board shall submit this order and Annex A to the Office of General Counsel and the Office of Attorney General for review and approval as to legality and form, as required by law.

(d) The Chairperson of the Board shall submit this order and Annex A to IRRC and the Senate and House Environmental Resources and Energy Committees as required by the Regulatory Review Act.

(e) The Chairperson of the Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau, as required by law.

(f) This order shall take effect immediately upon publication.

KATHLEEN A. MCGINTY,
Chairperson

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 34 Pa.B. 5068 (September 10, 2005).)

Fiscal Note: Fiscal Note 7-391 remains valid for the final adoption of the subject regulations.

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[35 Pa.B. 5796]

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Annex A

TITLE 25. ENVIRONMENTAL PROTECTION

PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION

Subpart C. PROTECTION OF NATURAL RESOURCES

ARTICLE II. WATER RESOURCES

CHAPTER 91. GENERAL PROVISIONS

GENERAL

§ 91.1. Definitions.

The definitions in section 1 of The Clean Streams Law (35 P. S. § 691.1) apply to this article. In addition, the following words and terms, when used in this article, have the following meanings, unless the context clearly indicates otherwise:

*AEU--Animal equivalent unit--*One thousand pounds live weight of livestock or poultry animals, regardless of the actual number of individual animals comprising the unit, as defined in 3 Pa.C.S. § 503 (relating to definitions).

*Act--*The Clean Streams Law (35 P. S. §§ 691.1--691.801).

*Agricultural operations--*The management and use of farming resources for the production of crops, livestock or poultry as defined in 3 Pa.C.S. § 503.

*Agricultural process wastewater--*Wastewater from agricultural operations, including from spillage or overflow from livestock or poultry watering systems; washing, cleaning or flushing pens, milkhouses, barns, manure pits; direct contact swimming, washing or spray cooling of livestock or poultry; egg washing; or dust control.

*Application--*The Department's form for requesting approval to construct and operate a wastewater collection, conveyance or treatment facility under a new water quality management permit, or the modification, revision or transfer of an existing water quality management permit.

*CAFO--Concentrated animal feeding operation--*An agricultural operation that meets the

criteria established by the Department in § 92.1 (relating to definitions).

*CAO--Concentrated animal operation--*An agricultural operation that meets the criteria established by the State Conservation Commission in regulations under 3 Pa.C.S. Chapter 5 (relating to nutrient management and odor management) in Chapter 83, Subchapter D (relating to nutrient management).

*Facility--*A structure built to collect, convey or treat wastewater which requires coverage under a water quality management permit.

*Federal Act--*The Federal Water Pollution Control Act (33 U.S.C.A. §§ 1251--1387).

*General water quality management permit or general permit--*A water quality management permit that is issued for a clearly described category of wastewater treatment facilities, which are substantially similar in nature.

Manure--

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

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

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

*Manure storage capacity--*The total volume in gallons of a manure storage facility, less any required freeboard, sufficient and available to contain all of the following:

(i) Accumulated manure and agricultural process wastewater during the storage period.

(ii) Normal precipitation less evaporation on the surface of the facility.

(iii) Normal runoff during the storage period.

(iv) The design storm precipitation and runoff (25 year or 100 year, as appropriate under § 91.36(a).

(v) Solids remaining after liquids have been removed.

*Manure storage facility--*A permanent structure or pond, a portion of a structure or pond, or a group of structures or ponds at one agricultural operation, utilized for the purpose of containing manure or agricultural process wastewater. This includes concrete, metal or other fabricated tanks and underbuilding structures, as well as earthen and synthetically-lined manure storage ponds.

NOI--Notice of Intent--A complete form submitted as a request for general water quality management permit coverage.

Operator--A person or other legal entity responsible for the operation or maintenance of a facility or activity subject to this chapter.

Owner--The person or other legal entity holding legal title to a facility or activity subject to this chapter.

Pennsylvania Technical Guide (Guide)--

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

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

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

Pollutant--A contaminant or other alteration of the physical, chemical or biological properties of surface water which causes or has the potential to cause pollution as defined in section 1 of the act (35 P. S. § 691.1).

Pollution prevention--Source reduction and other practices (for example--direct reuse or in-process recycling) that reduce or eliminate the creation of pollutants through increased efficiency in the use of raw materials, energy, water or other resources, or protection of natural resources by conservation.

Pollution prevention measures--Practices that reduce the use of hazardous materials, energy, water or other resources and that protect natural resources and human health through conservation, more efficient use, or effective pollutant release minimization prior to reuse, recycling, treatment or disposal.

Schedule of compliance--A schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with effluent limitations, other limitations, prohibitions or standards.

Single residence sewage treatment plant--A system of piping, tanks or other facilities serving a single family residence located on a single family residential lot which collects, disposes and treats solely direct or indirect sewage discharges from the residences into waters of this Commonwealth.

Stormwater--Runoff from precipitation, snow melt runoff and surface runoff and drainage.

Vegetated buffer--A permanent strip of dense perennial vegetation established parallel to the contours of and perpendicular to the dominant slope of the field for purposes that

include slowing water runoff, enhancing water infiltration, and minimizing the risk of any potential pollutants from leaving the field and reaching surface waters.

Wastewater impoundment--A depression, excavation or facility situated in or upon the ground, whether natural or artificial and whether lined or unlined, used to store wastewater including sewage, animal waste or industrial waste.

Water quality management permit--A permit or equivalent document (Part II Permit) issued by the Department to authorize one of the following:

- (i) The construction, erection and location of a wastewater collection, conveyance or treatment facility.
- (ii) A discharge of wastewater to groundwaters of this Commonwealth.

MANAGEMENT OF OTHER WASTES

§ 91.35. Wastewater impoundments.

(a) Except as otherwise provided under subsections (c) and (d), a person may not operate, maintain or use or permit the operation, maintenance or use of a wastewater impoundment for the production, processing, storage, treatment or disposal of pollutants unless the wastewater impoundment is structurally sound, impermeable, protected from unauthorized acts of third parties, and is maintained so that a freeboard of at least 2 feet remains at all times. The person owning, operating or possessing a wastewater impoundment has the burden of satisfying the Department that the wastewater impoundment complies with these requirements.

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

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

- (1) If a variance is requested from the requirements in subsection (a).
- (2) If the capacity of one wastewater impoundment or of two or more interconnected wastewater impoundments exceeds 250,000 gallons.
- (3) If the total capacity of polluting substances contained in wastewater impoundments on one tract or related tracts of land exceeds 500,000 gallons.
- (4) If the Department determines that a permit is necessary for effective regulation to insure that pollution will not result from the use, operation or maintenance of the wastewater impoundment.

(d) This section does not apply to:

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

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

§ 91.36. Pollution control and prevention at agricultural operations.

(a) *Animal manure storage facilities.*

(1) Except when more stringent requirements are contained in paragraphs (2)--(5), a manure storage facility shall be designed, constructed, operated and maintained in accordance with current engineering and agronomic practices to ensure that the facility is structurally sound, water-tight, and located and sized properly, to prevent pollution of surface water and groundwater, including design to prevent discharges to surface waters during a storm up to and including a 25-year/24-hour storm.

(i) The Manure Management Manual and the Pennsylvania Technical Guide contain current engineering and agronomic practices which can be used to comply with the requirements in paragraph (1).

(ii) If the criteria in the Manure Management Manual and the Pennsylvania Technical Guide are not followed, the owner or operator shall obtain a water quality management permit or other approval from the Department for the manure storage facility.

(2) For liquid or semisolid manure storage facilities constructed after January 29, 2000, the owner or operator shall obtain a water quality management permit from the Department for the manure storage facility unless the design and construction of the facility are certified to meet the "Manure Management Manual" and "Pennsylvania Technical Guide" by a registered professional engineer. The owner or operator shall retain a copy of the certification at the operation and provide a copy to the Department upon request.

(3) In the case of a new or expanded liquid or semisolid manure storage facility located at an animal operation with over 1,000 AEUs for the first time after January 29, 2000, a water quality management permit is required.

(4) For a new or expanded liquid or semisolid manure storage facility after October 22, 2005:

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

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

(B) The nearest downgradient stream has been determined by the Department to be impaired from nutrients from agricultural activities.

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

(5) For new or expanded CAFOs that commenced operations after April 13, 2003, and that include swine, poultry or veal calves, the CAFO shall prevent discharges to surface waters during a storm event up to and including a 100-year/24-hour storm from manure storage facilities that contain manure from those swine, poultry or veal calves.

(6) For a liquid or semisolid manure storage facility, the following minimum freeboard requirements apply and shall be maintained:

(i) For an agricultural operation with over 1,000 AEUs that was a new or expanded operation after January 29, 2000, a minimum 24-inch freeboard, except for enclosed facilities that are not exposed to rainfall, which must have a minimum freeboard of 6 inches.

(ii) For all other facilities, a minimum 12-inch freeboard for manure storage facilities that are ponds, and a minimum 6-inch freeboard for all other manure storage facilities.

(7) The requirements in this section are in addition to and do not replace any more stringent requirements in Chapter 83, Subchapter D (relating to nutrient management).

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

(1) The land application of animal manures and agricultural process wastewater requires a permit or approval from the Department unless the operator can demonstrate that the land application meets one of the following:

(i) The land application follows current standards for development and implementation of a plan to manage nutrients for water quality protection, including soil and manure testing and calculation of proper levels and methods of nitrogen and phosphorus application. The Manure Management Manual contains current standards for development and implementation of a plan to manage nutrients for water quality protection which can be used to comply with the requirements in paragraph (1).

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

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

(2) Unless more stringent requirements are established by statute or regulation, the following agricultural operations may not mechanically land apply manure within 100 feet of surface water, unless a vegetated buffer of at least 35 feet in width is used, to prevent manure runoff into surface water:

(i) A CAO.

(ii) An agricultural operation receiving manure from a CAO directly, or indirectly through a broker or other person.

(iii) An agricultural operation receiving manure from a CAFO directly, or indirectly through a broker or other person.

(3) CAFOs shall meet the setback requirements in § 92.5a(e)(1)(i).

(4) For purposes of paragraph (2) only, "surface water" means a perennial or intermittent stream with a defined bed and bank, a lake or a pond.

(c) *Discharge of pollutants.*

(1) It is unlawful for agricultural operations to discharge pollutants to waters of this Commonwealth except as allowed by regulations or a permit administered by the Department. The Department is authorized to take an enforcement action against any agricultural operation in violation of this requirement.

(2) An operation that has a discharge that is not authorized under the act and that meets the definition of either a medium or small CAFO under 40 CFR 122.23 (relating to concentrated animal feeding operations (applicable to State NPDES programs, see 123.25)) is considered to have an illegal discharge and is subject to enforcement action under the act.

(3) When an agricultural operation is found to be in violation of the act, the Department may require the agricultural operation to develop and implement a nutrient management plan under Chapter 83, Subchapter D, for abatement or prevention of the pollution.

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

GENERAL PROVISIONS

§ 92.1. Definitions.

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

* * * * *

Agricultural process wastewater--Wastewater from agricultural operations, including from spillage or overflow from livestock or poultry watering systems; washing, cleaning or flushing pens, milkhouses, barns, manure pits; direct contact swimming, washing or spray cooling of livestock or poultry; egg washing; or dust control.

* * * * *

CAFO--*Concentrated animal feeding operation*--A CAO with greater than 300 AEUs, any agricultural operation with greater than 1,000 AEUs, or any agricultural operation defined as a large CAFO under 40 CFR 122.23 (relating to concentrated animal feeding operations).

CAO--*Concentrated animal operation*--An agricultural operation that meets the criteria

established by the State Conservation Commission in regulations under the authority of 3 Pa.C.S. Chapter 5 (relating to nutrient management and odor management) in Chapter 83, Subchapter D (relating to nutrient management).

* * * * *

Livestock--

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

(ii) The term does not include aquatic species.

* * * * *

Manure--

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

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

* * * * *

*Setback--*A specified distance from the top of the bank of surface waters, or potential conduits to surface waters, where manure and agricultural process wastewater may not be land applied. Examples of conduits to surface waters includes, but are not limited to:

(i) Open tile line intake structures.

(ii) Sinkholes.

(iii) Agricultural wellheads.

* * * * *

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

* * * * *

PERMITS

§ 92.5a. CAFOs.

(a) Except as provided in subsections (b)--(d), each CAFO shall have applied for an NPDES permit on the following schedule, and shall have obtained a permit:

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

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

(3) Prior to beginning operation, for any new or expanded CAFO that began operation after November 18, 2000, and before October 22, 2005.

(b) A poultry operation that is a CAFO, which is in existence on October 22, 2005, and that is not using liquid manure handling systems, shall apply for an NPDES permit no later than the following, and shall obtain a permit:

(1) By April 24, 2006, for operations with 500 or more AEUs.

(2) By January 22, 2007, for all other operations.

(c) After October 22, 2005, a new operation, and an existing operation that will become a CAFO due to changes in operations such as additional animals or loss of land suitable for manure application, shall do the following:

(1) Apply for an NPDES permit at least 180 days before the operation commences or changes.

(2) Obtain an NPDES permit prior to commencing operations or making changes, as applicable.

(d) Other operations not described in subsections (a)--(c) that will become newly regulated as a CAFO for the first time due to the changes in the definition of a CAFO in § 92.1 (relating to definitions) shall apply for a permit by April 24, 2006, and obtain a permit.

(e) The NPDES permit application requirements shall include, but not be limited to, the following:

(1) A nutrient management plan meeting the requirements of Chapter 83, Subchapter D (relating to nutrient management) and approved by the county conservation district or the State Conservation Commission. The plan must include:

(i) Manure application setbacks for the CAFO of at least 100 feet, or vegetated buffers at least 35 feet in width.

(ii) A statement that manure that is stockpiled for 15 consecutive days or longer shall be under cover or otherwise stored to prevent discharge to surface water during a storm event up to and including the appropriate design storm for that type of operation under § 91.36(a) (1) and (5) (relating to pollution control and prevention at agricultural operations).

(2) An erosion and sediment control plan for plowing and tilling operations meeting the

requirements of Chapter 102 (relating to erosion and sediment control).

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

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

(5) A water quality management permit application as required by this chapter and Chapter 91 (relating to general provisions), when treatment facilities that would include a treated wastewater discharge are proposed.

(6) Measures to be taken to prevent discharge to surface water from storage of raw materials such as feed and supplies. These measures may be included in the nutrient management plan.

(f) NPDES permits for each CAFO shall include, but not be limited to, conditions requiring the following:

(1) Compliance with the Nutrient Management Plan, the Preparedness, Prevention and Contingency Plan and the Erosion and Sediment Control Plan for plowing and tilling operations.

(2) A separate NPDES permit for stormwater discharges associated with a construction activity meeting the requirements of Chapter 102 (relating to erosion and sediment control) when applicable.

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

(4) Compliance with § 91.36.

(5) Recordkeeping and reporting requirements as described in the permit.

(6) When applicable, effluent limitations and other conditions as required under § 92.2a (relating to treatment requirements) to meet water quality standards, for treated wastewater discharges.

(7) Measures needed to be taken to prevent discharge to surface water from storage of raw materials such as feed and supplies, which are not otherwise included in the nutrient management plan.

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