

SCC Approves Proposing Rulemaking For Nutrient Management

(Continued from Page A1)

It has two non-voting members — the associate dean of Penn State Cooperative Extension Service, and the state conservationist who heads the state office of the USDA Natural Resources Conservation Service (NRCS).

In remarks to the group prior to presenting certificates of appreciation for their perhaps unprecedented work, State Secretary of Agriculture Charles Brosius told the group that he was amazed at the process.

He commended them for their work and said that if anyone wants to see an example of how the regulation-negotiation process can work, they should review the workings of the Nutrient Management Advisory Board and the staff of the SCC.

Secretary of Environmental Resources James Seif also commended the members of the Advisory Board and the commission staff for their work, recognizing them with certificates of appreciation, though not in connection with the proposed regulations. That board will review the proposal, however.

The Nutrient Management Advisory Board had approved its

recommendations to the SCC last month.

At that time, there was some contention over whether a last-minute change in the definition of "farming resources" that would have included the "maintenance" of animals, such as at horse boarding operations.

While the definition was approved at the board meeting, a legal review of the proposal revealed that it could not be done, since the Nutrient Management Act specifically selected production agriculture livestock operations.

Planning for the control of other forms of non-point nutrient sources are to be addressed later, either through research findings and additional action on areas specified in the Nutrient Management Act, or through legislative action.

Another amendment to the proposed package of regulations had to do with review time of voluntary plans. The proposal had been for 15 days, but, at the behest of the Advisory Board, it was lengthened to 45 days.

Under the Nutrient Management Act, the SCC is to oversee the implementation of the act, the creation of regulations, and the enforcement of the act.

Local conservation districts are to be the local offices which deal directly with the public with nutrient management planning to whatever extent each local district board decides is appropriate for its own resources and area served.

The package of regulations outlines who has to have nutrient management plans, and how nutrient management plans are to be developed, reviewed and maintained.

Any non-mandatory livestock operation is eligible to adopt voluntary nutrient management plans. The benefits of doing so not only include the operator having more control and understanding over his/her own operation, but they are also to gain favorable consideration from government should related complaints be filed against that operation.

The regulations are to be published in the Pennsylvania Bulletin, which is expected to take at least six weeks from the SCC's approval.

When published in the Bulletin, the official public comment period begins.

(Extra copies of the Bulletin are to be published for better distribution of the proposed regulations. While a copy of the regulations is

contained in this issue of Lancaster Farming as approved Thursday by the SCC, the "official" copies are those published in the Bulletin. Little, if any, is expected to change between the "official" regulations and those published here.)

Before the proposed regulations can be published in the Bulletin, however, they must go through a formal review by the Governor's Office of General Counsel and then by the Attorney General.

The public comment period is to be a minimum of 60 days and include four formal public informational meetings and four formal public hearings.

The difference between a meeting and hearing is that during a hearing public testimony, opinion and facts are gathered for consideration of the proposed regulations. Meetings are to be places where information is shared and questions answered.

The dates for those are to be announced, but the SCC members and Advisory Board members are to be present to help with the meetings and hearings.

In related activity, on Thursday the House of Representatives approved a final version of House Bill 1400, which is the outline for

the division and renaming of the Department of Environmental Resources to Department of Environmental Protection (DEP), and the creation of a new Department of Conservation and Natural Resources (DCNR) to oversee the operation and maintenance of the state's forests and parks, as well as other resources. (See story in June 17 issue of Lancaster Farming).

The legislation is scheduled to be signed into law by Gov. Tom Ridge June 30.

Under provisions in HB 1400, the SCC will change slightly with the executive secretary to be an appointed person not employed by either the PDA or the DEP.

Further, the chairmanship of the SCC is to alternate annually between the secretary of agriculture and the secretary of environmental protection.

In other action Wednesday, the commission also heard reports on the progress of the Nutrient Management Certification Program, which is being organized through the Department of Agriculture; progress on the educational program, which Penn State Extension is putting together; and some requests for authorization for funding certain programs.

These regulations are not official and should not be used for technical legal interpretations. However, barring any typographical errors, or any minor changes which may occur prior to being printed in the Pennsylvania Bulletin, these are the proposed regulations created and recommended by the Nutrient Management Advisory Board to the State Conservation Commission, which the commission approved for rulemaking.

PROPOSED RULEMAKING STATE CONSERVATION COMMISSION [25 Pa. Code Chapter 83— Subchapter D Nutrient Management

The State Conservation Commission (Commission) proposes to promulgate new regulations governing nutrient management by adding Subchapter D to Chapter 83. These proposed regulations implement provisions of the Nutrient Management Act (act) (3 P S §§1701-1719).

This proposal was adopted at the Commission's meeting of June 21, 1995.

A. Effective Date

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

B. Contact Persons

For further information, the contact persons are Michael D. Krempasky, Executive Secretary, State Conservation Commission, P O Box 8555, Harrisburg, PA 17105-8555, (717) 787-5267; and David J. Gromelski, Assistant Counsel, P O Box 8464, Harrisburg, PA 17105-8464, (717) 787-7060.

C. Statutory Authority

These proposed regulations are promulgated under the authority of section 4(1) of the Nutrient Management Act (3 P S §1704(1)) which requires the Commission to promulgate regulations establishing minimum criteria for nutrient management plans and other requirements necessary to implement the act, and Section 4 of the Conservation District Law (3 P S §852) which authorizes the Commission to promulgate rules and regulations as may be necessary to carry out its functions.

D. Purpose And Background

The Nutrient Management Act was enacted in May, 1993 to improve farm efficiency and prevent the nonpoint source pollution of surface water and groundwater. It authorizes the Commission, in conjunction with the Department of Agriculture, the Penn State Cooperative Extension, the Nutrient Management Advisory Board and county conservation districts, to develop a program for the proper utilization and management of nutrients. Nitrogen was identified in the act as the nutrient of primary concern. The Commission is also required to provide education, technical assistance and financial assistance to the agricultural community regarding proper nutrient management.

The Commission has developed this proposal in conjunction with the Nutrient Management Advisory Board (Advisory Board) as required by the act. The Advisory Board, which represents a wide-ranged agriculture, government and private interests, worked hundreds of volunteer hours in an effort to develop a workable and effective regulatory proposal. The proposal was also developed with the assistance of major farm organizations, county conservation districts, the Department of Agriculture, the Penn State Cooperative Extension and the Natural Resources Conservation Service.

During the regulatory development process, the Advisory Board raised concerns regarding liability protection for farmers who develop and implement nutrient management plans (See Section 13 of the act, 3 P S §1713) as well as protection from fines and penalties resulting from environmental violations if the operator is implementing an approved plan. The Commission intends to clarify the liability protection for those agricultural operations which develop and implement an approved nutrient management plan with the assistance of the Nutrient Management Advisory Board.

E. Summary of Proposal

These proposed regulations will directly affect the concentrated animal operations (CAOs) that are required to plan under the act as well as other agricultural operations that voluntarily plan under the act. Only about 5-10% of agricultural operations in Pennsylvania will meet the criteria for mandatory planning under the act. The Commission is hoping to obtain the voluntary participation of other agricultural operations in the nutrient management program. The proposed regulations were developed to streamline planning and other requirements, where possible, in order to encourage maximum voluntary participation by non CAOs. The Commission believes that a strong voluntary program must operate simultaneously with the mandated regulatory program in order to assure proper nutrient management.

Nutrient management plans are required to be developed by nutrient management specialists certified by the Department of Agriculture. Additionally, plans are to be submitted to the Commission or delegated county conservation district for approval. Nutrient management planning responsibilities for CAOs and for other agricultural operations that develop voluntary plans are set forth in detail. Minimum standards for the construction, location, storage capacity and location of animal manure storage facilities on agricultural operations that develop a plan under the act are spelled out. Manure management procedures in emergency situations where there is an outbreak of contagious disease must be consistent with the existing quarantine requirements set by the Department of Agriculture. Existing agricultural operations may apply for financial assistance to implement nutrient management plans pursuant to the procedures herein. Commission responsibilities for administering and enforcing the act and regulations may be delegated to local county conservation districts.

Definitions (§§3.201)

Most definitions contained in the proposal are drawn from the act. Additional definitions contained in the proposal include "concentrated water flow areas", "conservation plan", "crop group", "erosion", "farming resources", "Manure Management Manual", "manure storage facility", "pastures", "Pennsylvania Agronomy Guide", "Pennsylvania Technical Guide", "storm water", "surface water and groundwater" and "temporary manure stacking areas".

The term "Surface water and groundwater" is defined consistent with the term "waters of the Commonwealth" that is used in the Department of Environmental Resources' regulatory programs. The term "agricultural operation" is defined as it appears in the act as "the management and use of farming resources for the production of crops, livestock, or poultry". However, the term "agricultural operation" is defined in terms of a general activity rather than a site specific operation. To clarify that an agricultural operation, for purposes of nutrient management planning, is a site specific operation, a definition of "farming resources" was added. "Farming resources" is defined to include all facilities and land associated with production or maintenance of crops, livestock or poultry. Maintenance includes operations which board livestock.

General Requirements and Identification of CAOs (§§3.211, §3.212)

CAOs required to plan under the act are those agricultural operations where the animal density equals or exceeds two animal equivalent units (AEU) per acre. An AEU is one thousand pounds of live weight of livestock or poultry animals. Specific calculation procedures to determine whether a particular agricultural operation is a CAO based on the number and weight of animals and the amount of land suitable for manure application are set forth in detail. Standard animal weights included in Appendix A are required to be used in the calculations unless the operator can justify the use of alternative weights. Timeframes for plan submittal based on when the operation came into existence are drawn from the act.

Applicability of Requirements (§§3.204)

This Section was included to make it easier for volunteer operations to identify their applicable requirements. It identifies the sections applicable to CAOs required to plan under the act and the sections applicable to those operations voluntarily planning under the act.

Plan Content Requirements (§§3.221 - §3.281)

The main components of plans developed under the act are 1) nutrient application procedures based on nitrogen need-estimation of crop production; 2) utilization of excess manure; 3) proper manure management in the barnyard and 4) stormwater runoff controls. The plan is also required to contain a reasonable implementation schedule that takes into account necessary management and capital intensive changes to the operation.

1. Nutrient Application (§§3.231 - §3.234)

The nutrient application component of a plan includes a determination of nutrients available to the agricultural operation, a determination of nutrients needed for crop production, determination of acceptable nutrient application rates that do not exceed crop needs, and nutrient application procedures for the proper application of nutrients. Consistent with the act, nitrogen is the nutrient of primary concern. Areas where manure application is limited based on proximity to water sources are spelled out.

2. Alternative Uses for Excess Manure (§§3.241, §3.281)

The proposed regulations require the plan to contain a description of how the operation will utilize manure in excess of that needed for crop production. Information required includes whether the manure will be exported off the operation and whether it will be utilized on the operation in a manner other than land application. CAOs are required to provide more detail regarding the uses of any excess manure than operations voluntarily planning under the act.

3. Manure Management (§§3.251)

The plan would identify best management practices (BMPs) necessary to correct any inadequate manure handling, collection, storage and spreading practices and protect surface and ground water. BMPs are required to meet the specifications contained in the Natural Resources Conservation Service's (NRCS) Pennsylvania Technical Guide. The plan would identify appropriate areas for temporary manure stacking where necessary for plan implementation.

4. Storm Water Runoff Control (§§3.261)

The proposal requires the plan to meet the existing erosion and sedimentation requirements for agriculture contained in 25 Pa. Code Chapter 102. The plan would also address runoff problems associated with the barnyard and animal concentration areas.

Minimum Standards for Manure Storage Facilities (§§3.311)

The proposal meets the act's requirements to establish minimum standards for the construction, location, operation, maintenance and storage capacity of manure storage facilities. The standards apply only to new storage facilities and expansions of existing facilities that are part of a nutrient management plan developed under the act. Manure storage facilities are required to meet the standards contained in the NRCS Pennsylvania Technical Guide. The proposed regulations also contain location standards for manure storage facilities from bodies of water, drinking water wells, open sinkholes and property lines. The purpose of the location standards is to protect water quality and prevent the off site migration of any discharge from a storage facility. Waivers from the location standards contained in the proposal may be obtained from adjacent property owners or the Commission provided the applicable criteria are met.

Plan Review and Implementation (§§3.321, §3.322)

Plan review, approval and implementation procedures included in the proposal are drawn from the act. Implementation provisions include requirements for annual adjustments and three year plan review. Plans are to be submitted to the Commission or delegated conservation district for review and approval and have a reasonable implementation schedule. Criteria for the extension of the implementation requirement are also specified.

Recordkeeping and Informational Requirements (§§3.291, §3.302)

Accurate records regarding the application of nutrients on the agricultural operation and manure transfers must be kept and maintained. For CAOs, manure transfer records are required, in some cases, to be submitted to the Commission or delegated conservation district. Operations voluntarily planning under the act are only required to keep the records and need not submit them to the Commission or districts.

Operators that export excess manure off of the operation are required to provide the operations importing the manure with information on the amount, nutrient content, and, if appropriate, the rate at which the manure was applied. Additionally, CAOs are required to provide the importer with manure informational packets on proper manure management. Voluntary operations need only to provide the importers with information on the amount and nutrient content of manure.

Plan Amendments and Transfers (§§3.331 - §3.333)

The proposed regulations include procedures for plan amendments and plan transfers, including plan amendments due to unforeseen circumstances. Plan amendments due to unforeseen circumstances may be implemented prior to submission of the amendment to the Commission or conservation district for approval.

Contagious Disease Emergencies (§§3.341)

Where there is an outbreak of a contagious disease on an agricultural operation, manure management operations are required to comply with the Department of Agriculture's existing quarantine procedures.

Financial Assistance (§§3.351 - §3.353)

Financial assistance will be offered when funds are made available to the Commission for such purposes. Eligibility for financial assistance is limited to agricultural operations in existence on the effective date of final regulations. The proposal allows for the awarding of grants, loans or loan guarantees. Grants may be awarded when the Commission determines that repayment of a loan is unlikely, based on the financial condition of the operation and the fact that the operation will be financially distressed by the implementation of the plan without a grant. The minimum rate of interest on a loan is 1% and the term of loans shall not exceed ten years.

Total funding limits provided under loans, grants and loan guarantees may not exceed \$75,000. The maximum amount of a grant may not exceed 80% of the eligible costs of implementation or a sum of \$30,000. Agricultural operations receiving grants under the Chesapeake Bay Nonpoint Source Pollution Abatement Program are eligible for grants under the nutrient management program up to a maximum of \$30,000 from the combined sources. The proposal allows for Commission delegation of the financial assistance program to a fully authorized agent of the Commission.

Delegation to Local Agencies (§§3.371)

County Conservation districts are envisioned as the primary entities responsible for implementing the act. The proposal provides for Commission delegation of its administrative and enforcement authority under the act, including the review and approval of nutrient management plans.

F. Benefits, Costs and Paperwork

Benefits

The act was passed by the Legislature in response to excess levels of nitrates found in both the Commonwealth's surface and ground waters. The act and regulations are a key part of the Commonwealth's Nutrient Reduction Strategy necessary to attain the 40% reduction of nutrients entering the Chesapeake Bay. These proposed regulations will directly benefit Pennsylvania's citizens by creating, in conjunction with education, technical assistance and outreach efforts, an orderly solution to address these nutrient problems. Downstream uses of water will be protected for recreational, industrial and agricultural use. Rural citizens benefit from a reduction of nitrates in groundwater. The health of livestock will benefit from drinking unpolluted water. Improved farm efficiency will occur in many cases resulting in labor and fertilizer savings for agricultural operations.

Costs

CAOs may incur some costs for implementing nutrient management plans developed under the act. These costs may be, in turn, offset by the financial assistance program established by the act and detailed in the proposed regulations. Add-

(Turn to Page A30)