

SCC Approves Proposing Rulemaking For Nutrient Management

(Continued from Page A32)

- (1) Manure, contaminated water or nutrients leaving manure storage or animal concentration areas and directly entering surface water or ground water
- (2) The inadequate control of storm water flow into manure storage facilities, manure storage areas, and animal concentration areas.
- (3) Manure storage facilities overflowing or maintained at levels above freeboard heights.
- (4) Manure storage facilities that are inadequately sized for production and expected application periods
- (5) Leaking or unstable manure storage facilities

(b) As a part of a plan certification, the nutrient management specialist shall assure that the review required under subsection (a) of this section was undertaken in the preparation of the plan. The plan will contain those BMPs that are necessary to correct identified water contamination sources and protect surface water and ground water. BMPs shall meet the specifications contained in the Pennsylvania Technical Guide unless other specifications set forth in §83.311 (relating to minimum standards for manure storage facilities) apply. The plan is not required to include engineering design work. However, the implementation of the plan shall require the necessary BMP designs, and these designs shall be kept on record by the operator as a supplement to the plan.

(c) The following BMPs may be used to protect water quality and to control water in farmstead, 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 ground water as part of an integrated nutrient management system.
- (2) Adequate collection of manure from animal concentration areas for utilization on cropland or for other acceptable uses
- (3) Diversion of contaminated runoff within animal concentration areas to a storage, lagoon, collection basin, vegetated filter area, or another suitable site or facility
- (4) Diversion or elimination of contaminated water sources unless required for proper operation of the manure management system.
- (5) Temporary manure stacking areas provided they are located outside concentrated water flow areas and areas where manure application is restricted or prohibited based on §83.234(5) (relating to nutrient application procedures).
- (6) Other appropriate BMPs acceptable to the Commission, or the delegated conservation district

(d) When temporary manure stacking areas may be necessary for the implementation of the plan, the plan shall identify those areas available for the storage of manure due to unforeseen circumstances such as adverse weather conditions. Manure shall be removed from temporary stacking areas for utilization on cropland or other acceptable uses as soon as feasible.

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

(f) The siting design and installation of manure storage facilities shall meet the requirements contained in §83.311 (relating to minimum standards for manure storage facilities) and the *Pennsylvania Technical Guide*.

STORM WATER RUNOFF CONTROL

§83.261. Storm Water Runoff Control

- (a) Erosion and sedimentation control
- (1) The plan shall include a verification of the adequacy of existing erosion and sedimentation control practices on fields, croplands, and pastures. The verification may be performed by the specialist in conjunction with other individuals with erosion and sedimentation expertise such as NRCS or conservation district personnel.
 - (2) An erosion and sedimentation control plan for agricultural plowing and tilling that meets the requirements of 25 Pa. Code Chapter 102 (relating to erosion control) is required in order to minimize the nutrient loss associated with accelerated erosion and sedimentation. A current conservation plan meeting the erosion and sedimentation control requirements of 25 Pa. Code Chapter 102 is adequate to meet this requirement.
 - (3) An erosion and sedimentation control plan, or the erosion and sedimentation control portion of a conservation plan shall be developed based upon the information contained in the Department of Environmental Resources' Soil Erosion and Sedimentation Control Manual for Agriculture.
 - (4) The plan included in paragraph (2) shall be attached and become part of the nutrient management plan submitted for review. Engineering designs are not required to be included in the nutrient management plan when first developed. However, the implementation of the plan shall require the development of the necessary BMP designs, and these designs shall be kept on record by the operator as a supplement to the plan.
- (b) Animal concentration areas
- (1) The plan shall address storm water runoff controls in animal concentration areas in a manner that meets the provisions of §§88.251(a), (b), and (c) (relating to manure management).
 - (2) Runoff controls in animal concentration areas shall be designed, installed, operated, and maintained in accordance with the standards contained in the *Pennsylvania Technical Guide*.
 - (3) Engineering designs are not required to be included in the nutrient management plan when first developed. However, the implementation of the plan shall require the development of the necessary BMP designs, and these designs shall be kept on record by the operator as a supplement to the plan.

IMPLEMENTATION SCHEDULE

§83.271. Implementation Schedule.

A plan or plan amendment shall contain a reasonable implementation schedule. The schedule shall identify when the necessary capital improvements and management changes will be made.

ADDITIONAL PLAN CONTENT REQUIREMENTS FOR CAOs

§83.281. Excess Manure Utilization Plans for CAOs.

- (a) When manure will be exported to known landowners or operators for agricultural land application, the plan shall list:
- (1) The name(s) and general location of the proposed importing agricultural operation(s).
 - (2) The estimated number of acres available for spreading manure at the importing agricultural operation(s).
 - (3) The estimated amount of manure that could be exported to each agricultural operation.
 - (4) The intended season(s) for the manure transfer(s).
- (b) When manure will be transferred through a manure broker, the plan shall list:
- (1) The broker's name.
 - (2) The estimated amount of manure the exporting agricultural operation will transfer through the broker.
 - (3) The intended season(s) for the manure transfer(s).
- (c) When manure will be transferred to a known importer for use other than agricultural land application, the plan shall include the following information:
- (1) The name and general location of the importing agricultural operation.
 - (2) A brief description of the planned use of the imported manure.
 - (3) The estimated amount of manure the operator plans to transfer to the importer.
 - (4) The intended season(s) for the manure transfer(s).

(d) Where manure is to be processed/utilized on the CAO in a manner other than for agricultural land application, the plan shall briefly describe the planned use of the manure.

(e) Nutrient management plans for CAOs that come into existence after the effective date of the regulations, or agricultural operations newly classified as CAOs due to expansion after the effective date of the regulations, shall provide for the utilization of manure by meeting one of the following:

- (1) Demonstrate agricultural land is available for application by providing the information as in subsection (a).
- (2) Include written agreements with importers or brokers and follow subsections (b) or (c).
- (3) If manure is to be used on the agricultural operation for purposes other than for land application, describe how the manure is to be processed/utilized as in subsection (d).

(f) Agricultural operations newly classified as CAOs due to the loss of land available for manure application, may use any of the manure utilization options described in this subsection.

(g) Where manure is to be marketed from an existing agricultural operation using an open advertising system and the importers cannot be identified at planning time, the plan shall describe the proposed marketing scheme.

RECORD KEEPING AND INFORMATIONAL REQUIREMENTS FOR ALL PLANS

§83.291. Record Keeping Relating to Application of Nutrients.

(a) Nutrient management plans developed for CAOs shall, at a minimum, be supported by the information required in §§83.291 through 83.302.

(b) A nutrient management plan voluntarily developed for agricultural operations pursuant to the Act shall, at a minimum, be supported by the information required in §§83.291 through 83.293 (relating to record keeping and informational requirements for all plans).

(c) The operator of an agricultural operation that develops a nutrient management plan under the Act shall keep the following accurate records of the land application of nutrients, crop yields, and soil tests on the agricultural

- (1) Records of soil testing results shall be maintained consistent with procedures at §83.231(f) (relating to determination of available nutrients).
- (2) Records of manure testing results and testing of other nutrient sources shall be maintained consistent with procedures at §83.231(b)(3) (relating to determination of available nutrients).
- (3) Land application of nutrients on an agricultural operation 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 month(s) of nutrient application.
 - (iii) The rate of nutrient application for each field or crop group.
- (4) Annual crop yields for each crop group shall be recorded.
- (5) Annual manure production calculated consistent with procedures at §83.231(b)(2) (relating to determination of available nutrients) shall be recorded.

(d) Records required under this subsection shall be maintained for a minimum of three years.

§83.292. Alternative Manure Utilization Record Keeping.

- (a) Record keeping for manure transfers
- (1) A Manure Transfer Sheet shall be used for all manure transfers from land under the control of agricultural operations falling under the Act.
 - (2) The Manure Transfer Sheet shall be provided by the Commission.
 - (3) Computer-generated forms other than the Manure Transfer Sheet provided by the Commission may be used provided they contain the same information as, and are reasonably similar in format to, the forms provided by the Commission.
 - (4) Record keeping related to the application of exported manure shall comply with the following:
 - (i) The exporter shall be responsible for the completion of Section 1 of the Manure Transfer Sheet.
 - (ii) Where the exporter, or person working under the direction of the exporter, applies the manure to the land, the exporter shall be responsible for completion of Section 2 of the Manure Transfer Sheet.
 - (5) Operators of agricultural operations other than CAOs need not submit manure transfer records to the agency approving the plan, but shall retain these records.
 - (b) Record keeping for alternative manure utilization by means other than manure transfer. Operators shall keep annual records of the amount of manure utilized in any manner other than through manure transfers.
 - (c) Retaining records. Records required under this section shall be retained for a minimum of three (3) years.

§83.293. Exported Manure Informational Packets.

- (a) When manure is exported from an agricultural operation, the exporter will provide the importer with an appropriately completed Manure
- (b) If the manure is to be land applied, the exporter is encouraged to provide the following:
 - (1) A fact sheet allowing for quick estimation of manure application rates.
 - (2) The applicable sections of the *Manure Management Manual*.
 - (3) A concise educational publication describing the key concepts of nutrient management.
 - (4) Additional informational items as supplied by the Commission for this purpose.
 - (c) The Commission will provide the materials listed in subsection (b) for distribution by the exporter.

ADDITIONAL RECORD KEEPING AND INFORMATIONAL REQUIREMENTS FOR CAOS

§83.301. Record Keeping for Manure Transfers from CAOs.

(a) In addition to the requirements of §83.292 (relating to alternative manure utilization record keeping), CAOs shall comply with the requirements of this section.

(b) Those exporters following plans that detail the exporting of manure to known landowners, as in §83.281(a) (relating to excess manure utilization plans for CAOs), need not submit manure transfer records to the agency approving the plan, but shall retain these records for review by the appropriate agency personnel in accordance with §83.292(c) (relating to alternative manure utilization record keeping). All other CAOs exporting manure shall be required to, within one year of approval of the plan, submit to the agency which approved the plan a copy of the Manure Transfer Sheets or the Summary of Manure Transfers for all manure transfers. Submittal of these records for subsequent years will be at the discretion of the agency which approved the plan.

(c) Annual Summary of Manure Transfers. Where manure transfer records are required to be submitted to the reviewing authority, the exporter may either submit the Manure Transfer Sheets for all manure transfers within the appropriate time frame, or the exporter may summarize the information from these sheets on the Annual Summary of Manure Transfers and submit this form only.

(d) The Summary of Manure Transfers forms shall be provided by the Commission. Computer-generated forms other than the Summary of Manure Transfers provided by the Commission may be used provided they contain the same information as, and are reasonably similar in format to, the forms provided by the Commission.

§83.302. Exported Manure Informational Packets for Distribution by CAOs.

- (a) In addition to the requirements of §83.293 (relating to exported manure informational packets), CAOs exporting manure shall comply with the requirements of this section.
- (b) If the exported manure is to be land applied, the exporter shall be responsible for providing the informational materials described in subsection 83.293(b) (relating to exported manure informational packets) only if the importer/broker does not already have a current copy of the particular document.

MINIMUM STANDARDS FOR MANURE STORAGE FACILITIES

§83.311. Minimum Standards for the Design, Construction, Location, Operation and Maintenance of Manure Storage Facilities.

(a) The minimum standards contained in this section shall apply to new manure storage facilities constructed and existing manure storage facilities expanded as part of a nutrient management plan developed under the Act.

(1) Manure storage facilities shall be designed, constructed, located, operated, and maintained to prevent the pollution of surface and ground water, or the off-site migration of any such pollution, by meeting the standards contained in the *Pennsylvania Technical Guide*, except where these standards conflict with the provisions of this subchapter.

(2) Where standards for a particular design of a manure storage facility do not exist in the *Pennsylvania Technical Guide*, best available technology will be used in the planning, design, operation, and maintenance of the facility. Commission or delegated conservation district approval will be required before construction of the facility.

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

- (i) Facilities shall comply with the applicable criteria in 25 Pa. Code Chapter 105 (relating to dam safety and waterway management).
- (ii) The location and construction of facilities to be placed within a floodplain, must be consistent with local ordinances developed under the Pennsylvania Flood Plain Management Act, which relates to the dangers and damage of floodwaters.
- (iii) The sides of facilities located in a floodplain shall be protected from erosion and scouring from a 25 year flood event.

(iv) Facilities, except reception pits and transfer pipes, may not be constructed.

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

(B) Within 100 feet of any water well, or open sinkhole.

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

(D) Within 200 feet of any perennial stream, river, spring, lake, pond, reservoir, or any water well where such facilities (except permanent stacking and compost facilities) are located on slopes exceeding 8 percent or have a capacity of 1,500,000 gallons or greater.

(E) Within 200 feet of any property line, where such facilities (except permanent stacking and compost facilities) are located on slopes exceeding 8 percent or have a capacity of 1,500,000 gallons or greater, unless the landowner(s) within the 200 foot distance from the facility otherwise agree and execute a waiver in a form acceptable to the Commission.

(v) The Commission or a delegated conservation district may waive the distance restrictions set forth in this section only for the expansion of existing manure facilities, or the construction of new facilities on agricultural operations that were producing livestock or poultry on the effective date of these regulations, if the following can be demonstrated to the satisfaction of the Commission or delegated conservation district:

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

(B) A site investigation (including consultation with affected landowner(s)) has been conducted which demonstrates that the proposed system will protect water quality and protect against offsite migration of pollution.

(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 off-site migration of pollution, and

(D) where a waiver from the water well setback requirement is requested, the well construction meets the criteria that the Commission or delegated conservation district, in consultation with the NRCS, deems necessary to protect water quality.

PLAN REVIEW AND IMPLEMENTATION

§83.321. Initial Plan Review and Approval.

(a) Plans or plan amendments required for CAOs shall be submitted for initial review and approval to delegated conservation districts or alternatively to the Commission for agricultural operations located in counties not delegated administrative authority under §83.371 (relating to delegation to local agencies). Any person performing the plan review shall be certified in accordance with the Department of Agriculture's nutrient management specialist certification requirements at 7 Pa. Code §§131.1-131.51 (relating to nutrient management certification). A plan or plan amendment voluntarily developed for an agricultural operation other than a CAO and submitted to the Commission or delegated conservation district shall be deemed approved unless disapproved by the Commission or district within 45 days of receipt.

(b) The Commission or delegated conservation district shall either approve, modify or disapprove the plan or plan amendment within 90 days of receipt. The notice of determination to modify or disapprove a plan or plan amendment shall be provided in writing to the person submitting the same and include an explanation specifically stating the reasons for modification or disapproval.

(c) Approvals shall be granted only for those plans or plan amendments that satisfy the requirements of the Act and this subchapter.

(d) If a plan or plan amendment is disapproved, the person submitting the plan or plan amendment for the first time shall have 90 days after receipt of the notice of disapproval to resubmit a revised plan or plan amendment.

(e) An agricultural operation that submits a complete plan or plan amendment is authorized to implement the same if the Commission or delegated conservation district fails to act within 90 days of submittal. When the Commission or delegated conservation district fails to act within 90 days of plan submission and the plan or plan amendment is resubmitted and the delegated conservation district or Commission again fails to act within 90 days of submittal, it shall be deemed approved.

§83.322. Plan Implementation.

(a) A CAO required to develop a nutrient management plan pursuant to §§83.211 and 83.212 (relating to nutrient management plans) shall fully implement the plan within three years of the date the plan is approved or deemed approved or for which implementation is otherwise authorized pursuant to §83.321(e) (relating to initial plan review and approval), unless extended upon approval of the Commission for cause shown or a plan amendment. The three-year implementation schedule shall be extended an additional two years for individual substantial capital improvements required under an approved plan for an operation required to submit a plan pursuant to §83.211(a) (relating to general requirement) if:

(1) The owner or operator demonstrates that the cost of all or part of the individual improvements for which the extension is applicable cannot be financed through available funding mechanisms, and

(2) A sum of \$2,000,000 or more has not been appropriated for grants and loans to the Nutrient Management Fund above and beyond any Chesapeake Bay nonpoint source pollution abatement moneys that may be appropriated to the fund, within one year of the effective date of this subchapter.

(b) Whatever adjustments are made in the implementation of the plan, the nutrient application rates must be balanced as described in §83.233 (relating to determination of nutrient application rates). The owner, operator or nutrient management specialist shall review the nutrient management plan at least annually to ensure that this condition is met.

(c) At a minimum of every three (3) years, the plan shall be reviewed by a nutrient management specialist. If the agricultural operation is still consistent with the approved plan, the specialist shall provide such notice to the reviewing agency. A plan amendment shall be submitted to the reviewing agency in accordance with §83.321(a) (relating to initial plan review and approval), if the agricultural operation has changed from that described in the approved plan.

PLAN AMENDMENTS AND TRANSFERS

§83.331. Plan Amendments

(a) In addition to the requirements of §83.322(c) (relating to plan implementation), a plan amendment is required when the operator of an agricultural operation expects to make significant changes in the management of nutrients from those contained in the approved plan. Significant changes in the management of nutrients include the following:

- (1) A net increase of greater than 10% occurs in AEU's 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) For CAOs, a change in method of excess manure utilization under §83.281 (relating to excess manure utilization plans for CAOs).

(Turn to Page A35)