

## Pennsylvania's CAFO Strategy

In February 1999, DEP adopted its "Final Strategy for Meeting Federal Requirements for Controlling Water Quality Impacts of Concentrated Animal Feeding Operations" ("CAFO Strategy"). In general, the CAFO Strategy establishes:

- Definitions of concentrated animal feeding operations (CAFOs)
- Permitting procedures for CAFOs
- Public input requirements for the permit process
- Nutrient management planning requirements for CAFOs
- Manure storage construction requirements
- Self-monitoring and reporting guidelines for operators

The definition of a CAFO and the permit requirements of the CAFO Strategy are based largely on the Nutrient Management Act (P.L. 12, No. 6, 1993), commonly referred to as Act 6.

The Strategy defines which animal operations are CAFOs and therefore must obtain permits. At present, only the largest and most concentrated livestock operations must obtain permits.

In Pennsylvania, agricultural operations that are considered CAFOs and which must obtain an NPDES/Clean Streams Law permit include:

- A farming operation with more than 1000 AEUs, animal equivalent units
- A concentrated animal operation with more than 301 to 1000 animal equivalent units
- A farming operation that discharges to surface waters (during a storm, event of less than a 25-year/24-hour storm)

## Enforcement of Regulations Governing CAFOs

Enforcement of various regulatory programs is assigned to a number of federal and state agencies, including the U.S. Environmental Protection Agency (EPA), the US Department of Agriculture (USDA) and the Natural Resource Conservation Service (NRCS) as well as the Pennsylvania Department of Environmental Protection (DEP), the Pennsylvania Department of Agriculture (PDA), and the State Conservation Commission (SCC).

In terms of enforcement, the roles of these agencies often overlap, making it difficult to determine which group has

responsibility, or control, in a particular situation. DEP often is left to enforce regulations with limited field staff and little established relationship with the agricultural community. In contrast, the Conservation District is responsible for getting farms which qualify as CAOs to develop Nutrient Management plans. In Snyder County, the District has been successful in the effort

## Other Regulations of CAFOs – Local Government Operations

State and federal regulations do provide important oversight, but they do not address specific concerns that many municipalities have about industrial agriculture. These regulations do not address, for example, odor, dust, noise and other nuisances, water use, property value issues, and long-term maintenance of operations.

Other major regulatory programs such as air quality and waste management regulations have generally not been applied to agriculture; indeed, many of these programs have specific exemptions for agricultural activities. Protection of the community from these other impacts of industrial agriculture is largely left to local governments to address.

The ability of local governments to regulate CAFOs is not without limitation. Act 6, for example, protects farmers from municipal regulation of nutrient management practices beyond those articulated in the Nutrient Management Act.

## Nutrient Management Act (Act 6)

The Pennsylvania Nutrient Management Act, or Act 6 was put in place in 1993, although final regulations were not adopted until June 1997 and did not become effective until October 1997.

According to Act 6, an animal equivalent unit (AEU) is equal to 1000 pounds live weight of livestock or poultry present on a given day, regardless of the actual number of animals. A concentrated animal operation (CAO) is defined by the Nutrient Management Act as a farming operation where the animal density exceeds two AEU's per acre of cropland or land suitable for application of animal manure. Of the 55 designated CAOs in the County, there is 100% participation, with plans either approved or in process.

Intended to address the problem of nutrient pollution of streams, Act 6 requires that CAOs -- farms with 2 AEU's or more per acre -- develop and implement nutrient management plans showing how farmers will manage nutrients, primarily phosphorous and nitrogen, contained in manure and chemical fertilizers applied to agricultural land. These nutrient management plans are submitted to county conservation districts for review and approval.

The Act has been a positive tool in reducing pollution to PA streams, lakes, ponds, and wells. For example:

- The Act provides farmers with efficient spreading rates that will provide optimum nutrients.
- All pollution problems have to be addressed and corrected as part of a plan of implementation.
- It provides farmers with grants and low interest loans to install Best Management Practices.
- All improvements constructed as a result of BMP will have to meet State standards to ensure that they will protect water quality.
- It places a limitation on the amount of manure to be used on a farm so no over-application of nutrients will occur.
- It requires a farm to export excess additional manure for other farmers to use.
- No tracking of manure application is required beyond the immediate property if manure is sent to a manure "broker" for distribution on other farms. The Conservation Service does require, however, the name of the manure broker and the farmer as well as data associated with each manure transfer to be recorded.
- Nutrient management plans are not required for farms receiving manure exported from intensive agriculture operations unless they are CAOs.
- Current nutrient management plans principally address nitrogen, even though both nitrogen and phosphorus are of concern. Recently, however, there is an increased awareness of the role of phosphorous in stream pollution and it will be added to the plan requirements in one year.

One farm in Penn Township has prepared a nutrient management plan for a dairy/poultry operation. However, participation was voluntary since the farmer did not meet the 2 AEU per acre threshold. In the State, fewer than 10% of all farms are defined as CAO's.

Nutrient management plans are useful tools for small farms, but they are not adequate for large-scale operations that export large amounts of manure for disposal purposes. Among the shortcomings of Act 6 for handling intensive agriculture and large quantities of manure generated by major operations are the following:

- Manure testing is not required, except for manure that is exported, but is expected to be required in the future.
- Construction of manure storage facilities in flood plains is still allowed; however, it is regulated by the Township Floodplain Ordinance. Such facilities must be designed by a registered engineer and meet the 25-year storm requirements.

Township and community representatives should participate in the public review process for NPDES

permits and nutrient management plans for facilities.

*regulations promulgated under this act.*

DEP has attempted to address these issues by tracking off-site manure application, conducting inspections, and limiting construction in flood plains. But this level of review applies only to the largest CAOs (over 1000 AEU's).

## What Local Governments Can Do

The preemption language in the Nutrient Management Act, however, does not prevent local ordinances from addressing the following:

### Act 6 Preemption

The Nutrient Management Act states:

*...no ordinance or regulation of any political subdivision or home-rule municipality may prohibit or in any way regulate practices related to the storage, handling or land application of animal manure or nutrients or to the construction, location or operation of facilities used for storage of animal manure or nutrients or practices otherwise regulated by this act if the municipal ordinance or regulation is in conflict with this act and the regulations promulgated thereunder...*

This section of the Act has been interpreted as a "preemption" of local regulations and has caused many township officials to assume they are powerless under Act 6 to control large-scale agriculture at the local level. Nevertheless, Act 6 also states:

*Nothing in this act shall prevent a political subdivision or home-rule municipality from adopting and enforcing ordinances or regulations which are consistent with and no more stringent than the requirements of this act and the*

- Specifically define the nature of the agriculture operation they wish to manage (so as not to "punish" family farmers) and clearly define characteristics of such operations.
- Adopt a similar version of Pennsylvania CAFO regulations and the Nutrient Management Act at the municipal level to allow for local enforcement.
- Adopt more powerful enforcement tools, including bonds, permit fees, and inspections.
- Require water use and hydrology reports before facilities are constructed.
- Require that operators obtain all relevant state and federal permits before building permits are issued.

In cases where existing state or federal regulations do not apply to intensive agriculture, the Township has the ability to develop regulations to control land use activities in order to address the following concerns:

- Create health and safety regulations to protect citizens
- Remove nuisances
- Control noxious activities
- Establish building regulations, including lot area coverage
- Manage development through zoning ordinances
- Control stormwater run off by reducing impervious surface coverage
- Create vegetative buffer yards from adjoining land

Township officials also can take action to manage industrial-scale agriculture while still meeting state regulations. These options include:

- Creating and implementing land use planning that designates areas and conditions that are appropriate, and inappropriate, for industrial-scale agriculture.
- Creating ordinances that establish requirements pertaining to the op-

eration of industrial-scale agriculture facilities consistent with CAFO regulations.

- Creating and following a checklist for information that industrial agriculture developers must provide township officials.
- Becoming familiar with requirements that industrial-scale agriculture developers must meet at other regulatory levels.

Some townships across the state have chosen to adopt ordinances as protective measures. Aspects of intensive agriculture operations that local governments most often attempt to manage are:

- Odor control and health concerns
- Corporate ownership
- Bonding and permit fee requirements
- Water usage
- Public water supply impacts
- Agricultural zoning conditions