



University of Arkansas Division of Agriculture

An Agricultural Law Research Project

Nutrient Management Plans Statutes & Regulations

Pennsylvania

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Nutrient Management Plans

STATE OF PENNSYLVANIA

1) 3 Pa.C.S.A. §§ 502, 503, 504, 506, 513, 514, 515, 516; 25 Pa. Code §§ 83.201, 206, 207, 241—293, 312, 321, 361—373

2) 3 Pa.C.S.A. § 508; 7 Pa. Code § 130b

3) 35 P.S. §§ 691.201, 202; 25 Pa. Code §§ 92a.1, 2, 21, 23, 29

The statutes and Constitution are current through the 2018 regular and special legislative sessions. The statutes are subject to changes by the Pennsylvania Legislative Reference Bureau.

1) 3 Pa.C.S.A. §§ 502, 503, 504, 506, 513, 514, 515, 516; 25 Pa. Code §§ 83.201, 206, 207, 241—293, 312, 321, 361—373

§ 502. Declaration of legislative purpose.

The purposes of this chapter are as follows:

(1) To establish criteria, nutrient management planning requirements and an implementation schedule for the application of nutrient management measures on certain agricultural operations which generate or utilize animal manure.

(2) To provide for the development of an educational program by the State Conservation Commission in conjunction with the Cooperative Extension Service of The Pennsylvania State University, the department and conservation districts to provide outreach to the agricultural community on the proper utilization and management of nutrients on farms to prevent the pollution of surface water and groundwater.

(3) To require the State Conservation Commission, in conjunction with the Cooperative Extension Service of The Pennsylvania State University, the Department of Environmental Protection, the department and the Nutrient Management Advisory Board to develop and provide technical and financial assistance for nutrient management and alternative uses of animal manure, including a manure marketing and distribution program.

(4) To require the Department of Environmental Protection to assess the extent of nonpoint source pollution from other nutrient sources, determine the adequacy of existing authority and programs to manage those sources and make recommendations to provide for the abatement of that pollution.

(5) To require the State Conservation Commission, in conjunction with the Nutrient Management Advisory Board, to develop and administer a regulatory program requiring odor management plans addressing new and expanded animal housing facilities and manure management facilities at concentrated animal operations and concentrated animal feeding operations after July 19, 1993, and to encourage the voluntary implementation of odor management plans for other agricultural operations.

§ 503. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

“*AEU.*” — Animal equivalent unit.

“*AEU per acre.*” — An animal equivalent unit per acre of cropland or acre of land suitable for application of animal manure.

“*Agricultural operations.*” — The management and use of farming resources for the production of crops, livestock or poultry.

“*Animal equivalent unit.*” — One thousand pounds live weight of livestock or poultry animals, regardless of the actual number of individual animals comprising the unit.

“*Animal housing facility.*” — A roofed structure or facility, or any portion thereof, used for occupation by livestock or poultry.

“*Best management practice*” or “*BMP.*” — A practice or combination of practices determined by the commission to be effective and practicable (given technological, economic and institutional considerations) to manage nutrients to protect surface water and groundwater, taking into account applicable nutrient requirements for crop utilization. The term includes, but is not limited to:

- (1) Conservation tillage.
- (2) Crop rotation.
- (3) Soil testing.
- (4) Manure testing.
- (5) Diversions.
- (6) Manure storage facilities.

(7) Storm water management practices.

(8) Nutrient application.

“Board.” — The Nutrient Management Advisory Board created by section 510 (relating to Nutrient Management Advisory Board).

“Commission.” — The State Conservation Commission established by the act of May 15, 1945 (P.L.547, No.217), known as the Conservation District Law.

“Concentrated animal feeding operation.” — An agricultural operation that meets the criteria established by the Department of Environmental Protection under authority of the act of June 22, 1937 (P.L.1987, No.394), known as The Clean Streams Law.

“Concentrated animal operation.” — Agricultural operations meeting the criteria established under this chapter.

“Conservation district.” — Any county conservation district established under the act of May 15, 1945 (P.L.547, No.217), known as the Conservation District Law.

“Cooperative extension.” — The Cooperative Extension Service of The Pennsylvania State University.

“Department.” — The Department of Agriculture of the Commonwealth.

“Fund.” — The Nutrient Management Fund.

“Manure management facility.” — A manure storage facility, including a permanent structure or facility, or a portion of a structure or facility, utilized for the primary purpose of containing manure. The term includes liquid manure structures, manure storage ponds, component reception pits and transfer pipes, containment structures built under a confinement building, permanent stacking and composting facilities and manure treatment facilities. The term does not include the animal confinement areas of poultry houses, horse stalls, free stall barns or bedded pack animal housing systems.

“Nutrient.” — A substance or recognized plant nutrient, element or compound which is used or sold for its plant nutritive content or its claimed nutritive value. The term includes, but is not limited to, livestock and poultry manures, compost as fertilizer, commercially manufactured chemical fertilizers, sewage sludge or combinations thereof.

“Nutrient management plan.” — A written site-specific plan which incorporates best management practices to manage the use of plant nutrients for crop production and water quality protection consistent with the criteria established in sections 504 (relating to powers and duties of commission) and 506 (relating to nutrient management plans).

“Nutrient management specialist.” — A person satisfying the certification requirements of section 508 (relating to nutrient management certification program and odor management certification program).

“Odor management plan.” — A written site-specific plan identifying the practices, technologies, standards and strategies to be implemented to manage the impact of odors generated from animal housing or manure management facilities located or to be located on the site.

§ 504. Powers and duties of commission.

The commission shall have the following powers and duties:

(1) Before July 19, 1995, and periodically thereafter, to promulgate regulations, in consultation with the department, the Department of Environmental Protection and the board, establishing minimum criteria for nutrient management plans developed in accordance with section 506 (relating to nutrient management plans) and other regulatory requirements to implement this chapter. In establishing such criteria, the commission shall consult the Manure Management for Environmental Protection Manual of the Department of Environmental Protection, the Pennsylvania Agronomy Guide published by The Pennsylvania State University and the Pennsylvania Technical Guide for Soil and Water Conservation published by the United States Department of Agriculture’s Soil Conservation Service. The criteria to be established pursuant to this section shall include the following:

(i) An identification of nutrients as defined by this chapter. Unless otherwise appropriate pursuant to specific criteria which shall be established by the commission, there shall be a presumption that nitrogen is the nutrient of primary concern.

(ii) The establishment of procedures to determine proper application rates of nutrients to be applied to land based on conditions of soil and levels of existing nutrients in the soil and the type of agricultural, horticultural or floricultural production to be conducted on the land.

(iii) An identification of best management practices to be utilized for proper nutrient management.

(iv) The establishment of recordkeeping requirements related to land application and distribution of nutrients.

(v) The establishment of minimum standards of construction, location, storage capacity and operation of facilities intended to be used for storage of animal manure.

(vi) The establishment of conditions under which amendments to nutrient management plans are required to be made after initial development or filing.

(vii) The establishment of special criteria which may be utilized for manure handling in emergency situations where there is an outbreak of a contagious disease.

(viii) The establishment of conditions under which changes due to unforeseen circumstances render the plan amendment process set forth in section 506(e) impracticable. Where such conditions exist, the owner or operator of an agricultural operation shall follow the procedures set forth in section 506(f).

(1.1) Within two years following the effective date of this section and periodically thereafter, to promulgate regulations, in consultation with the department, the Department of Environmental Protection and the board, establishing practices, technologies, standards, strategies and other requirements for odor management plans developed in accordance with section 509 (relating to odor management plans). The commission shall consider the following in promulgating the regulations under this paragraph:

(i) Site-specific factors such as proximity to adjoining landowners, land use of the surrounding area, type of structures proposed, species of animals, local topography and direction of the prevailing winds.

(ii) Reasonably available technology, practices, standards and strategies to manage odor impacts, considering both the practical and economic feasibility of installation and operation and the potential impacts from the facilities. Only those technologies, practices, standards and strategies that are necessary to address the offsite impacts of odors associated with these new facilities will be required to be included in the odor management plans.

(2) Prior to the adoption of regulations under paragraph (1.1), to establish interim guidelines for the operations identified in section 509.

(3) To continually evaluate emerging practices, methods and technology for utilization as best management practices and to so identify the practices, where appropriate, pursuant to paragraph (1)(iii).

(4) Beginning October 1, 2002, to evaluate the criteria for concentrated animal operations in this Commonwealth and to make appropriate changes in those criteria by regulation. Any such regulatory change related to concentrated animal operations shall require a two-thirds majority vote of the commission.

(5) Prior to the adoption of regulations under paragraph (1), to recommend, in consultation with the Department of Environmental Protection, the department and the board, interim criteria for the sole purpose of facilitating the initial development of the nutrient management certification program established by this chapter.

(6) Before July 19, 1995, to develop and implement, in cooperation with the department, the board, the Cooperative Extension Service and conservation districts, a program to provide education and technical assistance to the agricultural community and, to the extent funds are available, to provide financial assistance to existing agricultural operations for implementation of proper methods, practices, facilities and techniques for the utilization and management of nutrients on the farm to prevent the pollution of groundwater and surface water.

(7) To consult with the board as provided in section 510 (relating to Nutrient Management Advisory Board).

(8) To issue orders and take actions as are necessary to administer and enforce this chapter.

(9) To delegate administration or enforcement authority, or both, under this chapter to county conservation districts that have an adequate program and sufficient resources to accept and implement this delegation.

§ 506. Nutrient management plans.

(a) *Concentrated animal operations.* — Concentrated animal operations are those agricultural operations where the animal density exceeds two AEUs per acre on an annualized basis. Beginning October 1, 2002, the commission, in consultation with the department, the board, the Department of Environmental Protection and the Cooperative Extension Service, shall review the criteria used to identify concentrated animal operations and make appropriate changes to the definition of concentrated animal operations by regulation.

(b) *Development of nutrient management plans.* — The operator of any concentrated animal operation shall develop and implement a nutrient management plan consistent with the requirements of this section.

(c) *Certification of plans.* — All plans and plan amendments shall be developed by nutrient management specialists who shall certify that the plans are in accordance with the requirements of this chapter and the regulations promulgated under this chapter.

(d) *Review procedure.* — Nutrient management plans required by this section shall be submitted for review in accordance with the following schedule:

(1) For a concentrated animal operation in existence on October 1, 1997, by October 1, 1998.

(2) For a concentrated animal operation which comes into existence after October 1, 1997, by the later of:

(i) January 1, 1998; or

(ii) commencement of operations.

(3) For an agricultural operation which, because of expansion, meets the criteria for a concentrated animal operation, within three months after the date of expansion.

(e) *Plan review and approval.* — Plans or plan amendments required under this chapter shall be submitted to local conservation districts for review and approval or alternatively to the commission for agricultural operations located in counties not delegated administrative authority under section 504 (relating to powers and duties of commission). Any person performing the plan review must be certified in accordance with section 508 (relating to nutrient management certification program and odor management certification program). Within 90 days of receipt of a nutrient management plan or plan amendment, the reviewing agency shall either approve, modify or disapprove the plan or plan amendment. Approvals shall only be granted for those plans or plan amendments which satisfy the requirements of this chapter and the regulations promulgated under this chapter. Notice of determination to approve, modify or disapprove a plan or plan amendment shall be provided in writing to the person submitting same. Notice of a determination to modify or disapprove shall include an explanation specifically stating the reasons for modification or disapproval. If a plan or plan amendment is disapproved, the person submitting a plan or plan amendment for the first time shall have 90 days after receipt of notice of disapproval to resubmit a revised plan or plan amendment. An agricultural operation that submits a complete plan or plan amendment is authorized to implement the same if the reviewing agency fails to act within 90 days of submittal. Where the reviewing agency fails to so act and the plan or plan amendment is resubmitted and the reviewing agency again fails to act within 90 days of resubmittal, it shall be deemed approved.

(f) *Amendments due to unforeseen circumstances.* — Amendments to plans or to implementation of plans made after initial development or filing which satisfy the criteria established under section 504(1)(vii) shall be certified by a nutrient management specialist prior to implementation and submitted to the district within 30 days of implementation.

(g) *Implementation.* — A person required to develop a nutrient management plan pursuant to subsection (b) shall fully implement such plan within three years of the date such plan is approved or is deemed approved or for which implementation is otherwise authorized pursuant to subsection (e), unless extended for cause shown or by 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 under subsection (d)(1) 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 created under section 512 (relating to Nutrient Management Fund), above and beyond any Chesapeake Bay nonpoint source pollution abatement moneys that may be appropriated to the fund, before October 1, 1998.

(h) *Voluntary plans.* — Any agricultural operation which is not a concentrated animal operation may voluntarily develop a nutrient management plan and have it reviewed pursuant to this section. To the extent possible, the commission, the Cooperative Extension Service, the department, the Department of Environmental Protection and conservation districts shall assist and promote the development of voluntary plans.

(i) *Financial assistance.* — Any agricultural operation receiving financial assistance under the Chesapeake Bay Nonpoint Source Pollution Abatement Program or otherwise receiving financial assistance under this chapter for the development of a nutrient management plan shall agree to develop and implement a nutrient management plan as a condition for receiving this financial assistance.

(j) *Compliance plans.* — Any agricultural operation found to be in violation of the act of June 22, 1937 (P.L.1987, No.394), known as The Clean Streams Law, may be required to submit a nutrient management plan within three months of notification thereof and implement the plan in order to prevent or abate such pollution.

(k) *Transferability of plans.* — A plan approved under this section shall be transferable to a subsequent owner of an agricultural operation upon notification thereof to the district unless the transfer results in operational changes requiring plan modification pursuant to the criteria established under section 504(1)(vi).

(l) *Construction of section.* — The density criteria for concentrated animal operations as identified in subsection (a) or as it may be subsequently modified by the commission shall only be utilized to identify those agricultural operations for which the planning requirements of this section shall apply and shall not be construed to prohibit the development or expansion of agricultural operations meeting or exceeding such criteria.

§ 513. Unlawful conduct.

It shall be unlawful to fail to comply with or to cause or assist in the violation of any order or any of the provisions of this chapter or the rules and regulations adopted under this chapter or to fail to comply with a nutrient management plan or an odor management plan.

§ 514. Civil penalties and remedies.

(a) *Civil penalty.* — In addition to proceeding under any other remedy available at law or in equity for a violation of a provision of this chapter or a rule or regulation adopted, order issued or odor management plan or nutrient management plan approved under this chapter, the commission may assess a civil penalty of not more than \$ 500 for the first day of each offense and \$ 100 for each additional day of continuing violation. The factors for consideration in determining the amount of the penalty are:

(1) The gravity of the violation.

(2) The potential harm to the public.

(3) The potential effect on the environment.

(4) The willfulness of the violation.

(5) Previous violations.

(6) The economic benefit to the violator for failing to comply with this chapter. Whenever the commission finds that a violation did not cause harm to human health or an adverse effect on the environment, the commission may issue a warning in lieu of assessing a penalty where the owner or operator, upon notice, takes immediate action to resolve the violation and come into compliance. If the commission finds the nutrient pollution or the danger of nutrient pollution or the negative impacts from odor associated with new or expanded facilities results from conditions, activities or practices which are being or have been implemented in accordance with a nutrient management plan or odor management plan developed and approved pursuant to and consistent with this chapter and the regulations developed under this chapter and which is being or has been fully implemented and maintained, the owner or operator of the agricultural operation shall be exempt from the imposition of penalties under this chapter.

(b) *Collection.* — In cases of inability to collect the civil penalty or failure of any person to pay all or a portion of the penalty, the commission may refer the matter to the Office of General Counsel or the Office of Attorney General which shall institute an action in the appropriate court to recover the penalty. Any penalty assessed shall act as a lien on the property of the person against whom the penalty has been assessed.

(c) *Civil remedies.* — In addition to any other remedies provided for in this chapter, any violation of this chapter, the rules and regulations promulgated under this chapter or any order or nutrient management plan or odor management plan approved under this chapter shall be abatable in the manner provided by law or equity for the abatement of public nuisances. In addition, in order to restrain or prevent any violation of this chapter or the rules and regulations promulgated under this chapter or any order or nutrient management plan or odor management plan approved under this chapter, suits may be instituted in equity or at law in the name of the Commonwealth upon relation of the Attorney General, the General Counsel, the district attorney of any county, the solicitor of any municipality affected or the solicitor of any conservation district, provided that the General Counsel, district attorney or solicitor shall first serve notice upon the Attorney General of the intention to so proceed. These proceedings may be prosecuted in the Commonwealth Court or in the court of common pleas of the county where the activity has taken place, the condition exists or the public is affected, and, to that end, jurisdiction is hereby conferred in law and equity upon these courts. Except in cases of emergency where, in the opinion of the court, the exigencies of the case require immediate abatement of the nuisance, the court may in its decree fix a reasonable time during which the person responsible for the nuisance may make provision for the abatement of same.

(d) *Equitable relief.* — In cases where the circumstances require it or the public health is endangered, a mandatory preliminary injunction, special injunction or temporary restraining order may be issued upon the terms prescribed by the court, provided that notice of the application has been given to the defendant in accordance with the rules of equity practice. In any such proceeding the Attorney General, the General Counsel, the district attorney or the solicitor of any municipality or conservation district shall not be required to give bond. In any such proceeding, the court shall issue a prohibitory or mandatory preliminary injunction if it finds that the defendant is engaging in unlawful conduct as defined by this chapter or is engaged in conduct which is causing immediate and irreparable harm to the public. In addition to an injunction, the court in such equity proceeding may assess civil penalties in accordance with this section.

§ 515. Limitation of liability.

If a person is fully and properly implementing a nutrient management plan or an odor management plan approved by the local conservation district or the commission and maintained under this chapter for an agricultural operation, the implementation shall be given appropriate consideration as a mitigating factor in any civil action for penalties or damages alleged to have been caused by the management or utilization of nutrients or the abatement of odor impacts pursuant to the implementation.

§ 516. Enforcement authority; enforcement orders.

(a) *Right of access.* — A duly authorized agent of the commission or a conservation district shall have authority to enter any agricultural operation at reasonable times to conduct such investigations and to take such actions as are necessary to enforce the provisions of this chapter or any order, rule or regulation issued hereunder.

(b) *Duty to grant access.* — Any person owning or operating an agricultural operation shall grant access to any duly authorized agent of the commission or a conservation district pursuant to subsection (a) and shall not hinder, obstruct, prevent or interfere with such agents in the performance of their duties, provided, however, that agents shall perform such reasonable measures and actions as directed by the owner or operator of an agricultural operation as will reasonably and substantially prevent the spread or outbreak of contagious diseases.

(c) *Orders.* — The commission or any conservation district delegated enforcement authority may issue such orders as are necessary to aid in the enforcement of the provisions of this chapter. Any order issued under this section shall take effect upon notice unless the order specifies otherwise. An appeal of the order to the Environmental Hearing Board shall not act as a supersedeas, provided that, upon application for and cause shown, the hearing board may issue such a supersedeas under the rules established by the hearing board.

§ 83.201. Definitions

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

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

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

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

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

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

Agricultural erosion and sediment control plan – A site-specific plan identifying BMPs to minimize accelerated erosion and sedimentation from agricultural runoff, required by Chapter 102 (relating to erosion and sediment control). The

agricultural erosion and sediment control components of a conservation plan may meet this requirement, if allowed under Chapter 102.

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

Animal concentration areas –

- (i) Barnyards, feedlots, loafing areas, exercise lots or other similar animal confinement areas that will not maintain a growing crop, or where deposited manure nitrogen is in excess of crop needs.
- (ii) The term excludes areas managed as pastures or other cropland.
- (iii) The term excludes pasture access ways, if they do not cause direct flow of nutrients to surface water or groundwater.

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

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

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

Buffer or vegetated buffer –

- (i) A permanent strip of dense perennial vegetation established parallel to the contours of, and perpendicular to, the dominant slope of the field.
- (ii) There is no mechanical application of manure within the buffer area.
- (iii) The purposes include slowing water runoff, enhancing water infiltration and minimizing the risk of any potential nutrients from leaving the field and reaching surface waters.

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

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

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

Concentrated water flow areas –

- (i) Natural or manmade areas where stormwater runoff is channeled and conveyed directly to surface water or groundwater.
- (ii) The term includes, but is not limited to, ditches, waterways, gullies and swales.

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

Cooperative Extension – The Penn State Cooperative Extension.

Critical runoff problem areas –

- (i) Nonvegetated concentrated water flow areas directly discharging into surface water or groundwater, and areas where runoff containing nutrients that were applied after the growing season discharge directly into surface water or groundwater.
- (ii) The term includes gullies and unprotected ditches.

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

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

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

that are used for the application, treatment or storage of manure generated at the facility.

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

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

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

Livestock –

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

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

(iii) The term does not include aquatic species.

Manure

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

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

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

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

Manure storage facility –

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Phosphorus Index –

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

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

Plan – Nutrient management plan –

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

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

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

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

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

VAO – *Voluntary agricultural operation* –

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

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

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

§ 83.206. Limitation of liability.

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

§ 83.207. Compliance assistance and enforcement.

(a) The Department of Agriculture will assist the Commission in developing programs to assist those engaged in production agriculture to comply with the act and this subchapter.

(b) The Department of Agriculture will act as an ombudsman to help resolve issues related to county conservation district implementation of the act and this subchapter for those conservation districts delegated nutrient management program responsibilities under § 83.241 (relating to delegation to local agencies).

(c) The Commission will be responsible for taking enforcement actions under the act and this subchapter. In the exercise of its enforcement authority, the Commission will be assisted by the staff of the Department for actions resulting in violations of The Clean Streams Law (35 P. S. § § 691.1—691.1001) and will be assisted by the Department of Agriculture for all other violations.

§ 83.241. Delegation to local agencies.

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

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

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

(d) A delegation agreement will:

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

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

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

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

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

§ 83.251. Compliance plans.

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

§ 83.261. General.

NMP operations shall meet the plan requirements of §§ 83.251, 83.262, 83.271, 83.272, 83.281, 83.282, 83.291—83.294, 83.301, 83.311, 83.312, 83.321, 83.331, 83.341—83.344, 83.351, 83.361, 83.362, 83.371—83.373 and 83.381 according to the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) For sole proprietorships, the proprietor.

(ii) For partnerships, a general partner.

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

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

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

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

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

§ 83.262. Identification of CAOs.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Step 4. Total number of AEU's on the agricultural operation is 16.25

Step 5. 16.25 AEU's divided by 7 acres of land suitable = 2.32 AEU's per acre

§ 83.271. Scope of plan.

Plans developed under the act shall comply with the act and this subchapter.

§ 83.272. Content of plans.

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

- (b) A plan must follow the standardized plan format provided by the Commission, unless otherwise approved by the Commission.
- (c) The operator shall be involved in the development of the plan.
- (d) The BMPs listed in the plan must be consistent with the management practices listed in other relevant plans, such as the agricultural erosion and sediment control plan developed for the operation, unless otherwise approved by the Commission or delegated conservation district.
- (e) The only nutrient elements of concern to be addressed by BMPs in the plan, based on their potential to impact the quality of surface water or groundwater, are nitrogen and phosphorus. Unless the context clearly indicates otherwise, "nutrients" as used in this subchapter means nitrogen and phosphorus.
- (f) The plan must list potassium crop needs, and potassium application rates, from all nutrient sources, to ensure that adequate soil fertility levels are addressed to meet crop production goals.

§ 83.281. Identification of agricultural operations and acreage.

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

- (1) The operator name, address and telephone number.
- (2) A brief description of the operation including:
 - (i) Animal types and numbers included on the operation.
 - (ii) The crop rotation planned to be used on the operation.
 - (iii) The dimensions, capacity and freeboard of any existing manure storage facilities on the operation.
- (3) The signatures and documentation as required by § 83.261 (relating to general).
- (4) The counties where land included in the plan is located.
- (5) The watersheds in which the land included in the plan is located. The existence of any special protection waters, as identified in Chapter 93 (relating to water quality standards), shall also be noted.

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

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

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

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

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

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

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

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

(2) Individual field boundaries under the plan.

(3) Field number and acreage of each field.

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

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

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

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

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

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

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

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

§ 83.282. Summary of plan.

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

(1) A manure summary table listing:

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

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

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

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

(i) Acres.

(ii) Expected yield.

(iii) Nutrients applied as starter chemical fertilizer.

(iv) Planned manure application period.

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

(vi) Planned manure incorporation time.

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

(viii) Other nutrients applied through chemical fertilizer.

(ix) Other comments or notes.

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

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

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

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

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

§ 83.291. Determination of available nutrients.

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

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

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

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

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

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

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

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

(i) Analytical manure testing results shall be used in the development of the plan. These manure tests must include an analysis of the percent solids, total nitrogen (as N), ammonium nitrogen (as NH₄ - N), total phosphate (as P₂O₅) and total potash (as K₂O), for each manure group generated on the operation, and these analytical results shall be recorded in the plan.

(ii) These manure analyses shall be performed using manure sampling and chemical analysis methods which accurately represent the contents of the manure. Methods described in the *Pennsylvania Agronomy Guide* may be used to meet this requirement. Other methods shall be approved by the Commission.

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

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

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

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

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

(E) Samples and chemical analysis of the manure generated on the operation shall be obtained within 1 year of implementation of the

approved plan, and the requirements of § 83.371 (relating to plan amendments) shall be followed as applicable.

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

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

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

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

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

(e) The residual nitrogen from legume crops and previous applications of manure shall be determined using values which represent the common nitrogen residuals from the past crops and manure applications at the operation. Standard book values contained in the *Pennsylvania Agronomy Guide* may be used to meet this requirement. Other values shall be approved by the Commission. The values shall be recorded in the plan and credited when determining nutrient application rates.

§ 83.292. Determination of nutrients needed for crop production.

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

(b) For the development of the initial plan, expected crop yields may not exceed those considered realistic for the soil type and climatic conditions, as set by the operator and the specialist, and approved by the Commission or delegated conservation district. If

actual yield records are available during the development of the initial plan, the expected crop yields shall be based on these records.

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

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

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

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

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

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

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

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

(iii) Soil test levels for pH.

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

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

(f) Based on the soil tests in subsection (e), the plan must include recommendations for the amount of nitrogen (as total N), phosphorus (as P [2]O [5]) and potassium (as K [2]O) necessary for realistic expected crop yields.

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

§ 83.293. Determination of nutrient application rates.

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

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

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

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

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

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

- (i) Soil phosphorus levels.
- (ii) The method, rate and timing of phosphorus application.
- (iii) Runoff and soil loss potential for the application area.
- (iv) Distance to surface water.
- (v) The type of phosphorus source being used.

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

- (i) Manure application is limited to nitrogen requirements of the crop, if the application of phosphorus to the soil is not expected to pose an immediate risk of impacts to surface water.
- (ii) Phosphorus application is limited to the level of phosphorus removal from the soil by the crop, if the application of phosphorus to the soil would be expected to pose an immediate risk of impacts to a surface water unless the risk is managed by limiting the application based on phosphorus.
- (iii) Phosphorus application is completely restricted, if the application of phosphorus to the soil would be expected to pose an immediate risk of impacts to a surface water which cannot be managed by limiting the nutrients based on phosphorus.

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

- (i) The phase-in shall allow flexibility in controlling phosphorus loss, as long as the phosphorus application rates on any crop management unit where the phase-in is used do not exceed the levels of phosphorus removal from the soil by the crops.
- (ii) The phase-in in this paragraph also applies to operations that import manure from NMP operations existing on October 1, 2006.

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

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

- (ii) An operation that becomes defined as a CAO, due to an increase in animal numbers, after October 1, 2006.
 - (iii) An operation that increases the total AEU's on the operation by 20% or more after October 1, 2006.
 - (iv) An operation that adds a new animal type after October 1, 2006.
 - (v) Fields where the nearest downgradient stream segment which receives runoff from the fields is classified as a special protection water under Chapter 93 (relating to water quality standards).
- (5) The criteria and procedures in the current phosphorus application guidance issued by the Commission may be used to comply with paragraphs (1)—(4), including the use of a Phosphorus Index contained in the guidance.
- (6) If the criteria and procedures in the phosphorus application guidance issued by the Commission are not followed, an alternative method of meeting paragraphs (1)—(4) will be approved by the Commission.
- (7) For pastures which require complete restrictions on phosphorus application as determined under this section, § 83.294(j) (relating to nutrient application procedures) applies.

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

§ 83.312. Site specific emergency response plans.

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

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

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

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

§ 83.321. Stormwater control.

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

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

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

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

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

- (i) Implement the listed BMP.
- (ii) Enter into an agreement with the landowner requiring the landowner to implement the BMP.

§ 83.361. Initial plan review and approval.

- (a) Plans for NMP operations shall be submitted for initial review and approval to delegated conservation districts, or alternatively to the Commission for NMP operations located in counties not delegated administrative authority under § 83.241 (relating to delegation to local agencies). A person performing the plan review shall be certified in accordance with the Department of Agriculture's nutrient management specialist certification requirements in 7 Pa. Code §§ 130b.1—130b.51 (relating to nutrient management certification).
- (b) The Commission or a delegated conservation district will, within 10 days from the date of receipt of the plan, provide notice to the operator indicating whether all of the required plan elements have been received.
- (c) The Commission or a delegated conservation district will approve or disapprove the plan or plan amendment within 90 days of receipt of a complete plan or plan amendment.
- (d) If the Commission or delegated conservation district does not act on the plan within the 90-day period, the agricultural operation that submitted the plan is authorized to implement the plan. The Commission or delegated conservation district will thereafter have another 90 days to complete review of the plan, beginning on the expiration of the initial 90-day review period. If the Commission or delegated conservation district fails to act within the second 90-day period, it will be deemed approved.
- (e) The notice of determination to disapprove a plan will be provided in writing to the operator submitting the plan, and include an explanation specifically stating the reasons for disapproval. If a plan for a CAO is disapproved, the operator submitting the plan for the first time shall have 90 days after receipt of the notice of disapproval to resubmit a revised plan.
- (f) Approvals will be granted only for those plans that satisfy the requirements of this subchapter, including verification by the delegated conservation district or the Department of Environmental Protection that the operation has a current agricultural erosion and sediment control plan. For CAOs and VAOs existing on October 1, 2006, this agricultural erosion and sediment control plan verification is not required until October 1, 2009.

§ 83.362. Plan implementation.

- (a) An NMP operation shall fully implement the plan consistent with the implementation schedule included as part of the approved plan. Implementation schedules may not extend

past 3 years of the date the plan is approved or deemed approved, or for which implementation is otherwise authorized under § 83.361(d) (relating to initial plan review and approval), unless the implementation schedule is extended upon approval of the Commission or delegated conservation district.

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

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

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

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

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

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

§ 83.371. Plan amendments.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 83.372. Amendments due to unforeseen circumstances.

Changes in the implementation of plans due to unforeseen circumstances shall be certified by a nutrient management specialist as meeting applicable requirements of this subchapter and submitted to the district within 30 days of implementation. The amendments called for under this section will not require the review and approval of the Commission or a delegated conservation district, but shall temporarily become part of the plan until normal operations are resumed. Unforeseen circumstances include the following:

(1) Outbreak of contagious disease. Manure management shall be consistent with the procedures in § 83.381 (relating to manure management in emergency situations).

(2) Failures or malfunctions of equipment or storage that require a change in manure handling procedures.

(3) Other unforeseen circumstances that cause a significant change in the management of nutrients on the agricultural operation, such as:

(i) Unforeseen weather conditions which significantly impact plan implementation or crop failure due to adverse weather conditions.

(ii) Unanticipated loss of rented land that would create a reduction of greater than 20% in the nitrogen necessary for expected crop yields.

§ 83.373. Plan transfers.

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

(b) If the transfer of the approved plan results in operational changes requiring a plan amendment under § 83.371, the plan amendment shall be submitted for approval of the

Commission or a delegated conservation district along with, or before, the notification required under subsection (a).

2) 3 Pa.C.S.A. § 508; 7 Pa. Code § 130b

§ 508. Nutrient management certification program and odor management certification program.

(a) *Requirement.* — The department shall establish, in consultation with the commission, a nutrient management certification program for the purpose of certifying individuals who have demonstrated the competency necessary to develop nutrient management plans and an odor management certification program for the purpose of certifying individuals who have demonstrated the competency necessary to develop odor management plans. The department or its designee shall develop such written testing procedures, educational requirements and examinations as it deems appropriate to carry out its responsibilities under this section. The department shall by regulation establish such fees and terms and conditions of certification as it deems appropriate. The department shall establish individual, commercial and public certification categories, including a certification category for farmers to develop and certify nutrient management plans and odor management plans for their own agricultural operations.

(b) *Interim nutrient management certification program.* — Until the department develops and implements a nutrient management certification program, persons having the following qualifications shall, upon request, receive interim certification from the department.

(1) the person has at least two years' experience in the development of nutrient management plans;

(2) the person is approved to develop nutrient management plans approved under the Chesapeake Bay Nonpoint Source Pollution Abatement Program, the United States Department of Agriculture's Water Quality Improvement Projects Program or other programs requiring submission and approval of a nutrient management plan, including sludge disposal under the act of July 7, 1980 (P.L.380, No.97), known as the Solid Waste Management Act; or

(3) the person is a farmer who has been provided training and assistance in developing and implementing nutrient management plans.

(c) *Nutrient management specialist.* — A person shall not certify a nutrient management plan or plan amendment unless that person has first satisfied the requirements of this section.

(d) *Odor management specialist.* — A person shall not certify an odor management plan or plan amendment unless that person has first satisfied the applicable requirements of this section.

§ 130b.1. Scope.

This chapter prescribes policies and procedures relating to the certification and recertification of nutrient management specialists. It includes the establishment of fees and delineation of requirements for certification of commercial, public and individual specialists.

§ 130b.2. Definitions.

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

Act – 3 Pa.C.S. §§ 311—522.

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

BMP – *Best management practice* –

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

(ii) The term includes:

(A) Conservation tillage.

(B) Crop rotation.

(C) Soil testing.

(D) Manure testing.

(E) Diversions.

(F) Manure storage facilities.

(G) Stormwater management practices.

(H) Nutrient application.

(I) Practices set forth in the nutrient management regulations.

Certificate year – The period from January 1 to December 31.

Certification – The completion of all requirements of a nutrient management specialist contained in this chapter.

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

Competency – Demonstrating a high level of technical or scientific knowledge as evidenced by successfully meeting the requirements of § 130b.11 (relating to determination of competence) for commercial and public nutrient management specialists, or meeting the requirements of § 130b.21 (relating to determination of competence) for individual nutrient management specialists.

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

Department – The Department of Agriculture of the Commonwealth.

Designee – A person chosen or appointed by the Secretary of the Department to carry out the Secretary's duties under this chapter.

Nutrient –

(i) A substance or recognized plant nutrient, element or compound which is used or sold for its plant nutritive content or its claimed nutritive value.

(ii) The term includes livestock and poultry manures, compost as fertilizer, commercially manufactured chemical fertilizers, sewage sludge or combinations thereof.

Nutrient management plan – A written site-specific plan which incorporates BMPs to manage the use of plant nutrients for crop production and water quality protection consistent with the criteria established in sections 504 and 506 of the act (relating to powers and duties of commission; and nutrient management plans).

Nutrient management regulations – The regulations in 25 Pa. Code Chapter 83, Subchapter D (relating to nutrient management).

Nutrient management specialist –

(i) *Individual* – A person certified to develop nutrient management plans for his agricultural operation.

(ii) *Commercial* – A private sector person certified to develop nutrient management plans for another person's agricultural operation.

(iii) *Public* – A State, Federal or other public employee certified to develop or review, or both, nutrient management plans and make recommendations for approval or denial of nutrient management plans to a conservation district or the State Conservation Commission, or both.

(A) *Review specialist* – A public nutrient management specialist certified to review nutrient management plans and make recommendations for approval or denial of nutrient management plans.

(B) *Dual specialist* – A public nutrient management specialist certified to review and develop nutrient management plans for another person's agricultural operation and make recommendations for approval or denial of nutrient management plans which the specialist has not personally written or developed.

Precertification training – The initial nutrient management training courses which shall be completed by persons seeking to become nutrient management specialists.

Provisional certification – The level of certification obtained by a nutrient management specialist applicant who has successfully completed the precertification training and passed the written examination, but has not yet developed or reviewed, or both, the required number of nutrient management plans.

Recertification training – The completion of continuing education and training requirements in § 130b.31 (relating to recertification).

§ 130b.3. Fees.

(a) *Certification fees.* Certification fees are nonrefundable. The Department establishes the following certification fees for each level of nutrient management specialist:

(1) Individual nutrient management specialist – \$ 15.

(2) Commercial nutrient management specialist – \$ 200.

(3) Public nutrient management specialist:

(i) Review specialist – \$ 25.

(ii) Dual specialist – \$ 50.

(b) *Examination fees.* Examination fees are nonrefundable. The Department establishes the following examination fees for each level of nutrient management specialist:

(1) Individual nutrient management specialist – No charge

(2) Commercial nutrient management specialist – \$ 50

(3) Public nutrient management specialist:

(i) Review specialist – \$ 50

(ii) Dual specialist – \$ 50

§ 130b.4. [Reserved].

§ 130b.5. Certification authority.

(a) *Individual certification authority.* A person certified under this chapter as an individual nutrient management specialist is authorized to develop nutrient management plans for his own agricultural operation. An individual nutrient management specialist has no authority to develop a nutrient management plan for another person or review and recommend action on a nutrient management plan.

(b) *Commercial certification authority.* A person certified under this chapter as a commercial nutrient management specialist is authorized to develop nutrient management plans for another person's agricultural operation. A commercial nutrient management specialist has no authority to review or recommend action on a nutrient management plan.

(c) *Public certification authority.* A public employee certified as a public nutrient management specialist has authority to review and recommend action or develop a nutrient management plan for another person, or both, dependent on the certification requirements he has successfully completed.

(1) *Public nutrient management review specialist.* A person certified under this chapter as a public nutrient management review specialist is authorized to review nutrient management plans and make recommendations for approval or denial of nutrient management plans.

(2) *Public nutrient management dual specialist.* A person certified under this chapter as a public nutrient management dual specialist is authorized to review and develop nutrient management plans for another person's agricultural operation

and make recommendations for approval or denial of nutrient management plans which the specialist has not personally developed.

§ 130b.11. Determination of competence.

(a) *Commercial nutrient management specialist.* Determination of competence for a commercial nutrient management specialist shall be based on the successful completion of precertification training and examinations as set forth in this section. Precertification requirements for a commercial nutrient management specialist include an orientation training course, a nutrient management plan writing course and a written examination approved by the Department. As advancements in science and technology make new nutrient management techniques and BMPs available and after these techniques and BMPs are approved by the State Conservation Commission, the precertification requirements may include other course work related to those techniques and best management practices, as well as, any new requirements set forth in the nutrient management regulations, as part of the certification course and training requirements. The new techniques and BMPs will not become part of the final certification requirements until after training manuals and course work have been modified to include the information necessary to impart knowledge of these new techniques and BMPs. Nutrient management plans developed under this subsection shall be determined to be adequate by the Department or its designee.

(b) *Public nutrient management specialist.* Determination of competence for a public nutrient management specialist shall be based on the level of certification sought to be attained.

(1) *Public nutrient management review specialist.* To be certified as a public nutrient management review specialist the applicant shall successfully complete precertification training and examinations as set forth in this section. The precertification requirements for a public nutrient management review specialist include an orientation training course, a nutrient management plan review course, a nutrient management plan writing course and a written examination approved by the Department. As advancements in science and technology make new nutrient management techniques and BMPs available and after these techniques and BMPs are approved by the State Conservation Commission, the precertification requirements may include other course work related to those techniques and best management practices, as well as, any new requirements set forth in the nutrient management regulations, as part of the certification course and training requirements. The new techniques and BMPs will not become part of the examination until after training manuals and course work have been modified to include the information necessary to impart knowledge of these new techniques and BMPs. Nutrient management plan reviews completed and nutrient management plans developed under this subsection will be determined to be adequate by the Department or its designee.

(2) *Public nutrient management dual specialist.* To be certified as a public nutrient management dual specialist, the applicant shall successfully complete precertification training and examinations set forth in this section. The precertification requirements for a public nutrient management dual specialist include an orientation training course, a nutrient management plan review course, a nutrient management plan writing course and a written examination approved by the Department. As advancements in science and technology make new nutrient management techniques and BMPs available and after these techniques and BMPs are approved by the State Conservation Commission, the precertification requirements may include other course work related to those techniques and best management practices, as well as, any new requirements in the nutrient management regulations, as part of the certification course and training requirements. The new techniques and BMPs will not become part of the final certification requirements until after training manuals and course work have been modified to include the information necessary to impart knowledge of these new techniques and BMPs. Nutrient management plan reviews completed and nutrient management plans developed under this subsection will be determined to be adequate by the Department or its designee.

(c) *Precertification.* The precertification training courses must, at a minimum, consist of the following areas of nutrient management planning:

- (1) Nutrient application including:
 - (i) Determination of the cropping system and crop nutrient requirements.
 - (ii) Determination of sources of nutrients available for application on the farm.
 - (iii) Determination of additional nutrients required to obtain realistic expected crop yields.
 - (iv) Application records.
- (2) Manure management.
- (3) Excess manure alternatives.
- (4) Stormwater runoff control.
- (5) Applicable laws and regulations.
- (6) Proper nutrient management plan review procedures (public nutrient management specialists only).

(7) Proper nutrient management plan writing procedures (commercial, public nutrient management specialists only).

(8) Other areas and course work related to requirements set forth in the nutrient management regulations, as determined appropriate by the Department.

(d) *Examination.* The written examination will be proctored by the Department or its designee. The Department will administer the examination at least twice per year, or more often as deemed necessary by the Department. At a minimum, the successful completion of the examination will demonstrate an examinee's technical knowledge relating to nutrient management planning and nutrient management plan development in the following areas:

(1) Competency in soil science and soil fertility.

(2) Competency in nutrient application and management.

(3) Competency in crop production.

(4) Competency in soil and manure testing and interpretation.

(5) Understanding in determining needed BMPs related to proper utilization of nutrients and stormwater management.

(6) Competency in fertilizer materials and their characteristics.

(7) Understanding of environmental and economic impacts associated with nutrient management.

(8) Understanding of the act and other applicable laws and regulations.

(9) Other areas related to new technology and BMPs that become available and are approved by the State Conservation Commission, as well as, new requirements set forth in the nutrient management regulations. These other areas will not become part of the final certification requirements until training manuals and course work have been modified to include information necessary to impart knowledge of these new techniques and BMPs.

(e) *Other examinations.* The Department may approve the use of written examinations other than the Pennsylvania nutrient management examination, if the written examinations meet the requirements in subsection (d).

(f) *Provisional certification.* Upon the successful completion of the requirements in subsections (c) and (d), the applicant for certification as a commercial or public nutrient management specialist will be issued the appropriate provisional certification. The holder of a provisional certification is qualified, dependant on the type of provisional

certification attained, to develop or review, or both, nutrient management plans for the purpose of satisfying the requirements of this section regarding final certification. Provisional certification is valid for 3 years ending on the last day of the month from the date of issuance.

(g) *Final certification requirements.* Once provisional certification has been granted the provisionally certified specialist shall complete one of the following dependant on the type of provisional certification granted and final certification sought.

(1) *Commercial nutrient management specialist.* To attain final certification, a provisionally certified commercial nutrient management specialist shall develop three approved nutrient management plans which meet the requirements of section 6(e) of the act (relating to nutrient management plans). Nutrient management plans developed by the applicant shall be submitted to the Department or its designee for approval.

(2) *Public nutrient management specialist.* To attain final certification, a provisionally certified public nutrient management specialist shall do one of the following dependant upon the level of provisional certification attained and the level of final certification sought.

(i) *Public nutrient management review specialist.* To attain final certification, a provisionally certified public nutrient management review specialist shall successfully review two nutrient management plans and develop one approved nutrient management plan which meets the requirements of section 6(e) of the act. Nutrient management plan reviews completed and nutrient management plans developed by the applicant shall be submitted to the Department or its designee for approval.

(ii) *Public nutrient management dual specialist.* To attain final certification, a provisionally certified public nutrient management dual specialist shall successfully review two nutrient management plans and develop two approved nutrient management plans in accordance with section 6(e) of the act. Nutrient management plan reviews completed and nutrient management plans developed by the applicant shall be submitted to the Department or its designee for approval.

(h) *Public nutrient management specialist to commercial nutrient management specialist.* A certified public nutrient management specialist may obtain certification as a commercial nutrient management specialist. To attain this certification, a certified public nutrient management review specialist shall develop two approved nutrient management plans or a certified public nutrient management dual specialist shall develop one approved nutrient management plan in accordance with section 6(e) of the act. The certified public nutrient management specialist seeking this certification shall submit the nutrient management plans or plan to the Department or its designee for review and approval.

(i) *Public nutrient management review specialist to public nutrient management dual specialist.* A certified public nutrient management review specialist may obtain certification as a public nutrient management dual specialist. To attain this certification, the certified public nutrient management review specialist shall develop one approved nutrient management plan in accordance with section 6(e) of the act. The applicant seeking to attain this certification shall submit the nutrient management plan to the Department or its designee for review and approval.

(j) *Commercial nutrient management specialist to public nutrient management specialist.* A certified commercial nutrient management specialist who wishes to obtain certification as a public nutrient management specialist shall complete a nutrient management plan review course covering proper nutrient management plan review procedures and shall successfully review two nutrient management plans in accordance with section 6(e) of the act. The applicant seeking to attain this certification shall submit the nutrient management plan reviews to the Department or its designee for review and approval.

§ 130b.12. Final certification.

(a) *Application for final certification.* Upon completion of all the requirements of this chapter, a commercial nutrient management specialist or a public nutrient management specialist may submit an application to the Department for final certification. The appropriate certification fee, as set forth in § 130b.3(a) (relating to fees) shall accompany the application for final certification.

(b) *Eligibility for final certification.* A person is eligible to apply for final certification as a commercial or public nutrient management specialist upon fulfilling the applicable requirements established under § 130b.11 (relating to determination of competence). An application for final certification may be obtained from the Department.

(c) *Time period for filing application.* An application for final certification shall be filed with the Department within 120-calendar days of notification by the Department of meeting the appropriate requirements in § 130b.11. If the applicant fails to file an application with the Department within the prescribed 120-calendar days, that person shall again satisfy the appropriate competency requirements as provided in § 130b.11.

(d) *Time period final certification is valid.* A final certification is valid for 3 years ending on December 31 of the third year following the date of final certification. However, the Department will authorize an additional year when the certification is issued during the last 2 months of the initial certificate year.

§ 130b.21. Determination of competence.

(a) Determination of competence for an individual nutrient management specialist shall be based on the completion of precertification training which includes an orientation training course and a written examination approved by the Department.

(b) The orientation training course shall at a minimum consist of the same requirements as in § 130b.11(c) (relating to determination of competence).

(c) The written examination will be proctored by the Department or its designee. The Department will administer the examination on an as needed basis, which will be determined by the number of requests for the testing. At a minimum, the successful completion of the examination will demonstrate an examinee's technical knowledge relating to nutrient management planning and nutrient management plan development in the following areas:

- (1) Competency in nutrient application and management.
- (2) Competency in crop production.
- (3) Competency in soil and manure testing and interpretation.
- (4) Understanding in determining needed BMPs related to proper utilization of nutrients and stormwater management.
- (5) Understanding of soil science and soil fertility.
- (6) Understanding of fertilizer materials and their characteristics.
- (7) Understanding of environmental and economic impacts associated with nutrient management.
- (8) Understanding of the act and other applicable laws and regulations.
- (9) Other areas and coursework related to the requirements in the nutrient management regulations as determined appropriate by the Department.

(d) The Department may approve the use of written examinations other than the Pennsylvania nutrient management examination, if the written examinations meet the requirements in subsection (c).

(e) Individual nutrient management specialists are exempt from the nutrient management plan preparation requirement.

§ 130b.22. Final certification.

(a) A person is eligible to apply for final certification as an individual nutrient management specialist upon fulfilling the requirements under § 130b.21 (relating to determination of competence). An application for certification may be obtained from the

Department. The appropriate fee shall accompany the specialist's application for certification.

(b) An application for certification shall be filed with the Department no later than 120-calendar days after the applicant's completion of the competency requirements. If the applicant fails to file an application with the Department within the prescribed 120-calendar days, that person shall again satisfy the competency requirements as provided in § 130b.21(a)—(d).

(c) A certificate is valid for 3 years ending on December 31 of the third year following the date of certification. However, the Department will authorize an additional year when the certification is issued during the last 2 months of the initial certificate year.

§ 130b.31. Recertification.

(a) At intervals of 3 years, final certified commercial, public or individual nutrient management specialists shall provide written documentation of having received continuing education and training in Department-approved training courses in nutrient management planning and nutrient management plan development. Training must address the specific areas in § 130b.11(c) and (d) (relating to determination of competence) for commercial and public specialists and § 130b.21(b) and (c) (relating to determination of competence) for individual specialists.

(b) Recertification credits approved by the Department will be given on the basis of attendance at approved training sessions, as provided in subsection (a). The Department will evaluate the training and assign the appropriate credits. Commercial and public specialists are required to obtain 20 credits with one quarter or 5 of those credits being obtained through Department or Commission conducted courses. Individual specialists are required to obtain 6 credits during the recertification interval. The Department may, if deemed necessary, require specific training for certified nutrient management specialists, in addition to the required training in §§ 130b.11 and 130b.21. The Department will provide written notification to the certified nutrient management specialists of required specific training.

(c) Training will be approved for recertification credits at the rate of 1 credit per hour of applicable instruction, exclusive of coffee breaks, lunches, visits to exhibits, and the like. Credits will be assigned to each training session based upon the subjects covered and the amount of time expended on each subject. Credits assigned may be modified if either the content or length of the training substantially differs from the originally approved course.

(d) Sponsors of recertification training shall first submit a written request for course approval to the Department of Agriculture, Bureau of Plant Industry, 2301 North Cameron Street, Harrisburg, Pennsylvania 17110-9408. A request shall be submitted to the Department at least 15 working days prior to the training date and include the following information:

- (1) The name and phone number of the contact person who is coordinating the training.
- (2) The specific location of the training.
- (3) The date of the training.
- (4) A listing of the speakers, subject matter and time allotted to each subject.
- (5) A statement whether the training is open to the public and if there is a charge to attend.

(e) A recertification training course will be approved if at a minimum it consists of the same requirements as set forth in § 130b.11(c) and (d) and is conducted or sponsored by an educational institution, an association, a business, a governmental agency or other qualified source. Preapproval of recertification courses is vested solely with the Department.

(f) Falsification by a course sponsor of information required under this section may result in the withdrawal of credits or course approval, or both.

(g) If the Department or its designee is unable to monitor the training, the sponsor shall be responsible for verifying attendance and shall compile a list of Pennsylvania certified specialists in attendance. The list shall be returned to the Department within 10 working days following the training date and include the name of each person attending and their certification number.

(h) If a nutrient management specialist allows his final certification to expire and does not obtain recertification in accordance with this chapter, his final certification shall be suspended and the specialist must refrain from all duties relating to his certification until all delinquent recertification credits are acquired as described in subsection (b).

(i) If a nutrient management specialist whose final certification has been suspended as set forth in subsection (h) fails to complete delinquent recertification credits within 1 year from the expiration date of his final certification, then his final certification shall be revoked and that person shall again satisfy the requirements of § 130b.11 and § 130b.12 (relating to final certification) for commercial and public specialists, and § 130b.21 and § 130b.22 (relating to final certification) for individual specialists.

§ 130b.41. General.

(a) A person who has a valid certificate or license from another state may obtain certification in this Commonwealth if:

- (1) The state in which that person is certified has a reciprocal agreement with the Department.

(2) The applicant satisfies the required precertification training as set forth in § 130b.11(c) (relating to determination of competence). The applicant will not be required to take a written examination to determine competence if the applicant satisfies the requirements of this subsection.

(b) Upon the successful completion of the requirements in subsection (a), the applicant for certification as a commercial or public nutrient management specialist will be issued provisional certification and shall complete the requirements in § 130b.11(g). Provisional certification is valid for 3 years ending on the last day of the month from the date of issuance.

(c) In addition to the requirements in subsection (a), if the applicant is a commercial nutrient management specialist, that person shall develop three approved nutrient management plans which meet the requirements of section 6(e) of the act (relating to nutrient management plans). If the applicant is a public nutrient management review specialist, that person shall successfully review two nutrient management plans and develop one approved nutrient management plan which meets the requirements of section 6(e) of the act. If the applicant is a public nutrient management dual specialist, that person shall successfully review two nutrient management plans and develop two approved nutrient management plans which meet the requirements of section 6(e) of the act. Nutrient management plan reviews completed and nutrient management plans developed by the applicant shall be submitted to the Department or its designee for approval.

(d) The applicant shall complete all requirements for reciprocity in the manner and within the time frames established in § 130b.11 and § 130b.12 (relating to final certification).

§ 130b.42. Procedure.

A person desiring a certificate under § 130b.41(a)(1) and (2) (relating to general) shall submit to the Department a properly completed application and appropriate fee, as set forth in § 130b.3 (relating to fees) along with a copy of the person's out-of-State certificate.

§ 130b.51. Denial, suspension and revocation of certificates.

(a) The Department may, after notice, including a statement of the reasons therefore, deny, suspend or revoke a commercial, public or individual nutrient management specialists certification for any of the following:

- (1) A violation of the act or this chapter.
- (2) Failure to obtain the required recertification credits.

- (3) Inconsistency and demonstration of a lack of knowledge of nutrient management plan writing and review skills.
- (4) Three or more occurrences within a 3-year period of delay or noncommunication with landowner or review agency during plan development or review.
- (5) Falsifying information.
- (6) Misrepresentation of the Nutrient Management Act Program.
- (7) A violation of program policy established by the Department, its designee or the State Conservation Commission.

(b) An applicant or nutrient management specialist may request a hearing, in writing, within 15 days of receipt of notice of the denial, suspension or revocation from the Department. The request shall be sent to the Bureau of Plant Industry, Agriculture Building, 2301 North Cameron Street, Harrisburg, Pennsylvania 17110.

3) 35 P.S. §§ 691.201, 202; 25 Pa. Code §§ 92a.1, 2, 21, 23, 29

§ 691.201. Prohibition against discharge of sewage.

No person or municipality shall place or permit to be placed, or discharge or permit to flow, or continue to discharge or permit to flow, into any of the waters of the Commonwealth any sewage, except as hereinafter provided in this act.

§ 691.202. Sewage discharges.

No municipality or person shall discharge or permit the discharge of sewage in any manner, directly or indirectly, into the waters of this Commonwealth unless such discharge is authorized by the rules and regulations of the department or such person or municipality has first obtained a permit from the department. Such permit before being operative shall be recorded in the office of the recorder of deeds for the county wherein the outlet of said sewer system is located and in case the municipality or person fails or neglects to record such permit, the department shall cause a copy thereof to be so recorded, and shall collect the cost of recording from the municipality or person. No such permit shall be construed to permit any act otherwise forbidden by any decree, order, sentence or judgment of any court, or by the ordinances of any municipality, or by the rules and regulations of any water company supplying water to the public, or by laws relative to navigation. For the purposes of this section, a discharge of sewage into the waters of the Commonwealth shall include a discharge of sewage by a person or municipality into a sewer system or other facility owned, operated or maintained by

another person or municipality and which then flows into the waters of the Commonwealth. A discharge of sewage without a permit or contrary to the terms and conditions of a permit or contrary to the rules and regulations of the department is hereby declared to be a nuisance.

§ 92a.1. Purpose and scope.

(a) *Purpose.* The regulatory provisions contained in this chapter implement the NPDES Program by the Department under the Federal Act.

(b) *Scope.* A person may not discharge pollutants from a point source into surface waters except as authorized under an NPDES permit.

§ 92a.2. Definitions.

The following words and terms, when used in this chapter, 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).

Administrator – The Administrator of the EPA or an authorized representative.

Agricultural operation – 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.

Applicable effluent limitations or standards – State, interstate and Federal effluent limitations or standards to which a discharge is subject under the State and Federal Acts, including, but not limited to, water quality-based and technology-based effluent limitations, standards of performance, toxic effluent standards and prohibitions, BMPs and pretreatment standards.

Applicable water quality standards – Water quality standards to which a discharge is subject under the State and Federal Acts, and regulations promulgated thereunder.

Application – The Department's form for applying for approval to discharge pollutants to surface waters of this Commonwealth under a new NPDES permit,

or reissuance of an existing NPDES permit, or the modification or transfer of an existing NPDES permit.

Aquaculture project – A defined managed water area which uses discharges of pollutants into that designated area for the maintenance or production of harvestable freshwater, estuarine, or marine plants and animals.

Authority – A body politic and corporate created under 53 Pa.C.S. Chapter 56 (relating to municipal authorities act).

BAT – Best Available Technology Economically Achievable –

(i) The maximum degree of effluent reduction attainable through the application of the best treatment technology economically achievable within an industrial category or subcategory, or other category of discharger.

(ii) The term includes categorical ELGs promulgated by the EPA under section 304(b) of the Federal Act (33 U.S.C.A. § 1314(b)).

BOD [5] – Biochemical oxygen demand, 5-day – The 5-day measure of the pollutant parameter biochemical oxygen demand.

BMP – Best Management Practices –

(i) Schedules of activities, prohibitions of practices, maintenance procedures and other management practices to prevent or reduce pollutant loading to surface waters of this Commonwealth.

(ii) The term includes treatment requirements, operating procedures and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage. The term includes activities, facilities, measures, planning or procedures used to minimize accelerated erosion and sedimentation and manage stormwater to protect, maintain, reclaim, and restore the quality of waters and the existing and designated uses of waters within this Commonwealth before, during and after earth disturbance activities.

BTA – Best Technology Available – The combination of technologies and operational practices that achieves the most effective degree of impingement mortality and entrainment reduction applicable to the facility.

CAAP – Concentrated Aquatic Animal Production Facility – A hatchery, fish farm or other facility which meets the criteria in 40 CFR 122.24 (relating to concentrated aquatic animal production facilities (applicable to State NPDES programs, see § 123.25)).

CAFO – Concentrated Animal Feeding Operation – A CAO with greater than 300 AEU's, any agricultural operation with greater than 1,000 AEU's, or any agricultural operation defined as a large CAFO under 40 CFR 122.23(b)(4) (relating to concentrated animal feeding operations (applicable to State NPDES programs, see § 123.25)).

CAO – Concentrated Animal Operation – An agricultural operation that meets the criteria established by the State Conservation Commission 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).

CBOD [5] – Carbonaceous biochemical oxygen demand, 5-day – The 5 day measure of the pollutant parameter carbonaceous biochemical oxygen demand.

CSO – Combined Sewer Overflow – An intermittent overflow or other untreated discharge from a municipal combined sewer system (including domestic, industrial and commercial wastewater and stormwater) prior to reaching the headworks of the sewage treatment facility which results from a flow in excess of the dry weather carrying capacity of the system.

Combined sewer system – A sewer system that has been designed to serve as both a sanitary sewer and a storm sewer.

Conventional pollutant – Biochemical oxygen demand, carbonaceous biochemical oxygen demand, suspended solids, pH, fecal coliform, oil or grease.

DMR – Discharge Monitoring Report – The Department or EPA supplied forms for reporting of self-monitoring results by the permittee.

Daily discharge – The discharge of a pollutant measured during a calendar day or any 24-hour period that reasonably and accurately represents the calendar day for purposes of sampling:

- (i) For pollutants with limitations expressed in units of mass, the daily discharge is calculated as the total mass of the pollutant discharged over the day.
- (ii) For pollutants with limitations expressed in other units of measurement, the daily discharge is calculated as the average measurement of the pollutant over the day.

Discharge – An addition of any pollutant to surface waters of this Commonwealth from a point source.

Disturbed area – As defined in Chapter 102 (relating to erosion and sediment control).

Draft permit – A document prepared by the Department indicating the Department's tentative decision to issue or deny, modify, revoke or reissue a permit.

ELG – Effluent Limitations Guideline – A regulation published by the Administrator under section 304(b) of the Federal Act, or by the Department, to revise or adopt effluent limitations.

Earth disturbance activity – As defined in Chapter 102.

Effluent limitation or standard – A restriction established by the Department or the Administrator on quantities, rates and concentrations of chemical, physical, biological and other constituents which are discharged from point sources into surface waters, including BMPs and schedules of compliance.

Entrainment – The incorporation of all life stages of fish and shellfish with intake flow entering and passing through a cooling water intake structure and into a cooling water intake system.

Existing discharge – A discharge that is not a new discharge or a new source.

Facility or activity – Any NPDES point source or any other facility or activity including land or appurtenances thereto that is subject to regulation under the NPDES Program.

Federal Act – The Federal Water Pollution Control Act (33 U.S.C.A. §§ 1251 — 1387) also known as the Clean Water Act or CWA.

GPD – Gallons per day.

Impingement – The entrapment of all life stages of fish and shellfish on the outer part of the intake structure or against a screening device during periods of intake water withdrawal.

Indirect discharger – A discharger of nondomestic wastewater introducing pollutants into a POTW or other treatment works.

Industrial waste –

- (i) A liquid, gaseous, radioactive, solid or other substance, not sewage, resulting from manufacturing or industry, or from an establishment, and mine drainage, refuse, silt, coal mine solids, rock, debris, dirt and clay

from coal mines, coal collieries, breakers or other coal processing operations.

(ii) The term includes all of these substances whether or not generally characterized as waste.

Instantaneous maximum effluent limitation – The highest allowable discharge of a concentration or mass of a substance at any one time as measured by a grab sample.

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

Interstate agency – An agency of two or more states established by or under an agreement or compact, or any other agency of two or more states, having substantial powers or duties pertaining to the control of pollution as determined and approved by the Administrator.

Large municipal separate storm sewer system – A municipal separate storm sewer system as defined in 40 CFR 122.26(b)(4) (relating to storm water discharges (applicable to State NPDES programs, see § 123.25)).

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.

MGD – Million gallons per day.

MS4 – Municipal Separate Storm Sewer System – A separate storm sewer (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels or storm drains) which is all of the following:

(i) Owned or operated by a State, city, town, borough, county, district, association or other public body (created by or under State law) having jurisdiction over disposal of sewage, industrial wastes, stormwater or other wastes, including special districts under state law such as a sewer district, flood control district or drainage district, or similar entity, or a designated and approved management agency under section 208 of the Federal

Act (33 U.S.C.A. § 1288) that discharges to surface waters of this Commonwealth.

(ii) Designed or used for collecting or conveying stormwater.

(iii) Not a combined sewer.

(iv) Not part of a POTW.

Major amendment – Any amendment to an NPDES permit that is not a minor amendment.

Major facility – A POTW with a design flow of 1.0 MGD or more and any other facility classified as such by the Department in conjunction with the Administrator.

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.

Medium municipal separate storm sewer system – A municipal separate storm sewer system as defined in 40 CFR 122.26(b)(7).

Mining activity – A surface or underground mining activity as defined in Chapter 77 or Chapter 86 (relating to noncoal mining; and surface and underground coal mining: general).

Minor amendment – An amendment to an NPDES permit to correct a typographical error, increase monitoring requirements, change interim compliance dates by no more than 120 days, allow for a change in ownership or operational control of a facility, delete an outfall, change a construction schedule for a discharger that is a new source, or to incorporate an approved pretreatment program into an existing permit.

Minor facility – A facility not identified as a major facility.

Monthly average discharge limitation – The highest allowable average of daily discharges over a calendar month, calculated as the sum of all daily discharges measured during the calendar month divided by the number of daily discharges measured during the month.

Municipality – A city, town, borough, county, township, school district, institution, authority or other public body created by or pursuant to State law and having jurisdiction over disposal of sewage, industrial wastes or other wastes.

NOI – Notice of Intent – A complete form submitted for NPDES general permit coverage which contains information required by the terms of the permit and by § 92a.54 (relating to general permits). An NOI is not an application.

NPDES – National Pollutant Discharge Elimination System.

NPDES form – An issued NPDES permit, the application, NOI or any DMR reporting form.

NPDES general permit or general permit – An NPDES permit that is issued for a clearly described category of point source discharges, when those discharges are substantially similar in nature and do not have the potential to cause significant adverse environmental impact.

NPDES permit – An authorization, license or equivalent control document issued by the Administrator or the Department to implement the requirements of 40 CFR Parts 122 — 124 (relating to EPA administered permit programs: the National Pollutant Discharge Elimination System; state program requirements; and procedures for decision making) and the Federal Act.

New discharger – A building, structure, facility, activity or installation from which there is or may be a discharge of pollutants that did not commence the discharge at a particular site prior to August 13, 1979, which is not a new source, and which has never received a final effective NPDES permit for discharges at that site.

New source – A building, structure, facility, activity or installation from which there is or may be a discharge of pollutants, the construction of which commenced after promulgation of standards of performance under section 306 of the Federal Act (33 U.S.C.A. § 1316) which are applicable to the source.

No exposure – Where industrial materials and activities are protected by a storm-resistant shelter to prevent exposure to stormwater. Industrial materials and activities include, but are not limited to, material handling equipment or activities, industrial machinery, raw materials, intermediate products, by-products, final products, or waste products. Material handling activities include the storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, final product or waste product.

Nonconventional pollutant – A pollutant which is not a conventional or toxic pollutant.

Nonpoint source – A pollutant source that is not a point source.

POTWs – Publicly Owned Treatment Works –

- (i) A treatment works which is owned by a state or municipality.
- (ii) The term includes any devices and systems used in the storage, treatment, recycling and reclamation of municipal sewage or industrial wastes of a liquid nature.
- (iii) The term also includes sewers, pipes or other conveyances if they convey wastewater to a POTW treatment plant.
- (iv) The term also means the municipality as defined in section 502(4) of the Federal Act (33 U.S.C.A. § 1362(4)), which has jurisdiction over the indirect discharges to and the discharges from such a treatment works.

Perennial stream – A body of water flowing in a channel or bed composed primarily of substrates associated with flowing waters and capable, in the absence of pollution or other manmade stream disturbances, of supporting a benthic macroinvertebrate community which is composed of two or more recognizable taxonomic groups of organisms which are large enough to be seen by the unaided eye and can be retained by a United States Standard No. 30 sieve (28 meshes per inch, 0.595 mm openings) and live at least part of their life cycles within or upon available substrates in a body of water or water transport system.

Person – Any individual, public or private corporation, partnership, association, municipality or political subdivision of this Commonwealth, institution, authority, firm, trust, estate, receiver, guardian, personal representative, successor, joint venture, joint stock company, fiduciary; department, agency or instrumentality of State, Federal or local government, or an agent or employee thereof; or any other legal entity.

Point source – A discernible, confined and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, CAAP, CAFO, landfill leachate collection system, or vessel or other floating craft, from which pollutants are or may be discharged.

Pollutant – A contaminant or other alteration of the physical, chemical, biological or radiological integrity of surface water that causes or has the potential to cause pollution as defined in section 1 of the State Act (35 P. S. § 691.1).

Pollution prevention – Source reduction and other practices that reduce or eliminate the creation of pollutants through increased efficiency in the use of raw materials, energy, water or other resources, without having significant cross-media impacts.

Privately owned treatment works – A device or system used to treat wastewater that is not a POTW.

Process wastewater – Water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, byproduct or waste product.

SRSTP – 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, that solely collects, treats, and disposes of direct or indirect sewage discharges from the residence into surface waters of this Commonwealth.

SSO – Sanitary Sewer Overflow – An overflow of wastewater, or other untreated discharge from a separate sanitary sewer system (which is not a combined sewer system), which results from a flow in excess of the carrying capacity of the system or from some other cause prior to reaching the headworks of the sewage treatment facility.

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

Separate storm sewer – A conveyance or system of conveyances (including pipes, conduits, ditches and channels) primarily used for collecting and conveying stormwater runoff.

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 include, but are not limited to:

- (i) Open tile line intake structures.
- (ii) Sinkholes.
- (iii) Agricultural wellheads.

Sewage – A substance that contains any of the waste products or excrementitious or other discharge from the bodies of human beings or animals.

Significant biological treatment – The use of an aerobic or anaerobic biological treatment process in a treatment works to consistently achieve a 30-day average of at least 65% removal of BOD [5].

Small flow treatment facility – A treatment works designed to adequately treat sewage flows of not greater than 2,000 gallons per day for final disposal using a stream discharge or other methods approved by the Department.

Small municipal separate storm sewer system – A municipal separate storm sewer system as defined in 40 CFR 122.26(b)(16).

State Act – The Clean Streams Law (35 P. S. §§ 691.1 — 691.1001).

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

Stormwater discharge associated with construction activity – The discharge or potential discharge of stormwater from construction activities into waters of this Commonwealth, including clearing and grubbing, grading and excavation activities involving 1 acre (0.4 hectares) or more of earth disturbance activity, or an earth disturbance activity on any portion, part or during any stage of, a larger common plan of development or sale that involves 1 acre (0.4 hectares) or more of earth disturbance activity over the life of the project.

Stormwater discharge associated with industrial activity – The discharge from any conveyance that is used for collecting and conveying stormwater and that is directly related to manufacturing, processing or raw materials storage areas at an industrial plant, and as defined in 40 CFR 122.26(b)(14) (i) -- (ix) and (xi).

Surface waters – Perennial and intermittent streams, rivers, lakes, reservoirs, ponds, wetlands, springs, natural seeps and estuaries, excluding water at facilities approved for wastewater treatment such as wastewater treatment impoundments, cooling water ponds and constructed wetlands used as part of a wastewater treatment process.

TMDL – Total Maximum Daily Load – The term as defined in Chapter 96 (relating to water quality standards implementation).

TSS – Total Suspended Solids – The pollutant parameter total suspended solids.

Toxic pollutant – Those pollutants, or combinations of pollutants, including disease-causing agents, which after discharge and upon exposure, ingestion, inhalation or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, may, on the basis of information available to the Administrator or the Department, cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions, including malfunctions in reproduction, or physical deformations in these organisms or their offspring.

Treatment works – Any devices and systems used in the storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature to implement the State and Federal Acts, or necessary to recycle or reuse water at the most economical cost over the estimated life of the works, including intercepting sewers, outfall sewers, sewage collection systems, pumping, power, and other equipment, and their appurtenances; extensions, improvements, remodeling, additions, and alterations thereof; elements essential to provide a reliable recycled supply such as standby treatment units and clear well facilities; and any works, including site acquisition of the land that will be an integral part of the treatment process (including land used for the storage of treated wastewater in land treatment systems prior to land application) or is used for ultimate disposal of residues resulting from the treatment.

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.

WETT – Whole Effluent Toxicity Testing –

(i) A test, survey, study, protocol or assessment which includes the use of aquatic, bacterial, invertebrate or vertebrate species to measure acute or chronic toxicity, and any biological or chemical measure of bioaccumulation, bioconcentration or impact on established aquatic and biological communities.

(ii) The term includes any established, scientifically defensible method that is sufficiently sensitive to measure toxic effects.

WQBEL – Water Quality-based Effluent Limitation – An effluent limitation based on the need to attain or maintain the water quality criteria and to assure protection of designated and existing uses.

Water quality standards – The combination of water uses to be protected and the water quality criteria necessary to protect those uses.

Weekly average discharge limitation – The highest allowable average of daily discharges over a calendar week, calculated as the sum of all daily discharges measured during the calendar week divided by the number of daily discharges during that week.

Wetlands – Areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions, including swamps, marshes, bogs and similar areas.

Whole effluent toxicity – The aggregate toxic effect of an effluent measured directly with a WETT.

§ 92a.21. Application for a permit.

(a) The provisions of 40 CFR 122.21(b), (g)(1)—(7), (9)—(13), (h), (i), (j), (k), (l), (m)(1) and (6), (p), (q) and (r) (relating to application for a permit (applicable to State programs, see § 123.25)) are incorporated by reference.

(b) *Duty to apply.* Persons wishing to discharge pollutants shall file a complete application for an individual permit at least 180 days before the date on which it is desired to commence the discharge of pollutants or within another period of time that the Department determines is sufficient to ensure compliance with the Federal Act and the State Act, including applicable water quality standards and effluent limitations or standards.

(c) *Application forms.* Applicants for permits shall submit applications on Department permit application forms. At a minimum, the following are required to be submitted by applicants for a permit, except as otherwise specified:

(1) One original and two copies of the complete application. The Department may require additional copies, if needed to complete the review process.

(2) The applicable permit application fee and other fees as set forth in § 92a.26 (relating to application fees).

(3) If required by the application, proof that a written notice of an application has been submitted to the municipality and county in which the activity is or will be located at least 30 days before the Department may take action on the application. This notice must satisfy the notification requirements of section 1905-A of The Administrative Code of 1929 (71 P. S. § 510-5) and the Pennsylvania Municipalities Planning Code (53 P. S. §§ 10101—11107) if required.

(4) If required by the application, proof that public notice of the application has been published in a newspaper of general circulation in the locality in which the activity is or will be located once a week during a consecutive 4-week period.

(5) A description of the activities conducted by the applicant that require an NPDES permit; name, mailing address and location of the facility; up to four standard industrial codes (SIC) or North American Industry Classification System (NAICS) code that best reflect the principal products or services provided by the facility; the operator's name, address, telephone number, ownership status and entity status; a listing of all Department and EPA environmental quality permits for the facility; a topographic or other map extending 1 mile beyond the

boundaries of the facility or activity; and a brief description of the nature of the business.

(6) Documentation that the applicant is in compliance with all existing Department permits, regulations, orders and schedules of compliance, or that any noncompliance with an existing permit has been resolved by an appropriate compliance action or by the terms and conditions of the permit (including a compliance schedule set forth in the permit) consistent with § 92a.51 (relating to schedules of compliance) and other applicable Department regulations.

(d) *Additional information.* The Department may require other information or data needed to assess the discharges from the facility and any impact on receiving waters, and to determine whether to issue an NPDES permit, or what conditions or effluent limitations (including water quality based effluent limitations) to place in the permit. The additional information may include, but is not limited to:

(1) The results of an effluent assessment (or estimate for new dischargers or new sources), including a list of the mass and concentration of pollutants found (or estimated to be for new discharges or new sources) in the wastewater discharge, under Department protocols.

(2) Information and data relating to the biological, physical and chemical characteristics of waters and habitat immediately upstream and downstream of the proposed discharge, performed under a Department-approved protocol.

(3) The results of a waterbody assessment, under Department protocols, setting forth the impact (or potential impact) of the discharges on surface waters of this Commonwealth.

(4) The results of whole effluent toxicity testing, an instream cause/effect survey, or other tests or surveys as needed to determine the impact of a discharge on a waterbody performed under a Department-approved protocol.

(e) *Addresses.* The Department will publish at least annually a list of addresses to which applications and their accompanying papers shall be submitted.

(f) *Supporting documentation.* A person required to file an application shall also file additional modules, forms and applications, and supply data as specified by the Department. Additional modules, forms, applications and data are considered a part of the application.

§ 92a.23. NOI for coverage under an NPDES general permit.

(a) Except as provided for in subsection (c), eligible dischargers, who wish to be covered by a general permit, shall file a complete NOI as instructed in the NOI. At a minimum, the NOI must identify each point source for which coverage under the general permit is

requested; demonstrate that each point source meets the eligibility requirements for inclusion in the general permit; demonstrate that the discharge from the point sources, individually or cumulatively, will not cause or contribute to a violation of an applicable water quality standard established under Chapter 93 (relating to water quality standards) and include other information the Department may require. By signing the NOI, the discharger agrees to accept all conditions and limitations imposed by the general permit.

(b) If the NOI is acceptable, the Department will process the NOI in accordance with § 92a.54 (relating to general permits).

(c) General permits for POTWs, CSOs, CAFOs, MS4s, primary industrial facilities, and stormwater discharges associated with industrial activities must require that an NOI be submitted for each issuance and reissuance of coverage under the general permit. A general permit for any other category of discharges may be designed to allow discharges to be authorized to discharge without submitting an NOI for coverage under the general permit. Alternatively, such a general permit may require an initial NOI for issuance of coverage, but no subsequent NOI for reissuance of coverage. The Department will consider the following in deciding whether an NOI must be submitted for coverage under the general permit: the type of discharge; the potential for toxic and conventional pollutants in the discharge; the estimated number of discharges to be covered by the permit and the cumulative impact of the discharges. The public notice of the general permit will provide the reasons for not requiring the NOI.

§ 92a.29. CAFO.

(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 AEU's.

(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 AEU's.

(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 § 92a.2 (relating to definitions) shall apply for a permit by April 24, 2006, and obtain a permit.

(e) The NPDES permit application requirements include, but are not 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 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 under 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.