

September 14, 2020

Secretary Patrick McDonnell  
Department of Environmental Protection  
400 Market Street  
P.O. Box 2063  
Harrisburg, PA 17105-2063

**RE: Draft amendments to NPDES General Permit for Operation of Concentrated Animal Feeding Operations (PAG-12), Noticed in the August 15, 2020 Issue of the *Pennsylvania Bulletin* (50 Pa.B. 4194)**

*VIA EMAIL TRANSMISSION (ecomment@pa.gov)*

Dear Secretary McDonnell:

Pennsylvania Farm Bureau (“PFB”) offers the following comments, relative to the aforementioned draft amendments to PAG-12. PFB is the largest general farm organization in the Commonwealth.

At the August 27 joint meeting of the Agricultural Advisory Board and Nutrient Management Advisory Board, Department officials confirmed that the draft version of proposed changes to PAG-12 was not changed from the version provided to Agricultural Advisory Board for consideration and comment at the Board’s special meeting of July 1. PFB was among those offering comments for consideration at that meeting. APPENDIX 1 contains the comments provided by PFB to the Department for consideration at that meeting. Since no changes were made to the draft version considered at the July 1 meeting of the Agricultural Advisory Board, we feel our comments then submitted are equally relevant to the Department’s consideration of the final version of the revised PAG-12 permit. We request the Department treat and consider the comments appearing in APPENDIX 1 as an incorporated part of the comments we offer today.

PFB is still very concerned with the potential challenges in timing and cost that farmers who have been permitted and operating without material change in accordance with the current version of PAG-12 may face in resubmission of an NOI under the Department’s revised version. The time between the date the revised PAG-12 will go into effect and the deadline for operators of Concentrated Animal Feeding Operations to file for permit under the revised PAG-12 will be seriously short. We fear that period will be too short for numerous farmers who may need to consult and work with supporting professionals to fully comply with the documentary filings that must accompany the filing of a NOI under the revised PAG-12 within the Department’s proposed deadline.

We believe the Department needs to more clearly and specifically recognize for those farm operators currently operating under the current PAG-12 without material change in operation the following principles with respect to filings made under the revised PAG-12:

- They will not be subject to additional costs in permit fees than they would have otherwise been subject under the existing PAG-12.
- They will not be required to refile with the Department supporting documents that the operator has already provided to the Department under the operator's original NOI filing or subsequent informational filings for "annual permit" under the existing PAG-12.
- They will be afforded upon formal request to the Department a reasonable extension of time to submit an NOI to enable the operator to consult with and have tasks performed by technical service providers whom the operator utilizes to meet regulatory requirements under the revised PAG-12.

While we do not offer specific itemization of additional costs and time and resource challenges that may be associated with re-filing of an original NOI under the revised PAG-12, we would remind the Department that the development in 2018 of the PAG-12 version that Pennsylvania CAFO farms operate under today was a significant deviation from legal and administrative standards traditionally employed under federal and state programs, which presumed five-year intervals for issuance or reissuance of general CAFO permits. More than likely, the current federal criteria governing documents that must be filed with "original" NOIs were developed without meaningful consideration of regulatory design for general permits that Pennsylvania adopted in 2018. And we strongly believe they do not account for the additional modifications in PAG-12 that the Department is proposing midstream in the five-year cycle.

Further revisions in the proposed PAG-12 guidance to incorporate the principles we are recommending above will be a significant help in minimizing confusion, inconsistency and regulatory consequences that could arise regarding the scope and extent of documentary filings that currently permitted CAFO operators will be required to make as part of filing a "new" NOI under the revised PAG-12.

While not specifically related to matter of proposed revisions to PAG-12, we also note that Pennsylvania's currently effective five-year period for authorization to issue CAFO general permits is set to expire on March 31, 2023. PFB and other agricultural stakeholders were highly critical of the Department's lack of diligence and progressive effort to seek input from the regulated community during its drafting and final adoption of PAG-12 in 2018. The Agricultural Advisory Board was not made meaningfully aware of a draft version of the 2018 PAG-12 until approximately three months before its final adoption, and was not afforded any real opportunity for input prior to the Department's public release of the draft in December of 2017. Nor was the agricultural community given any real opportunity for input in the drafting of the original version prior to the Department's release to the Agricultural Advisory Board.

The process for review and input from the regulated community taken by the Department in development of 2018's version of PAG-12 fell far short of the more comprehensive and proactive process that the Department had engaged with the regulated community during the prior round of PAG-12 review and adoption in 2013. During that round, the Department engaged in a 10-month process to educate and seek input from the agricultural community, before any changes to the prior PAG-12 standards were formally proposed. During that ten-month period, the Department held numerous briefings and

meetings with the Agricultural Advisory Board and with agricultural advisory bodies and agricultural workgroups in the effort to arrive at permitting standards that provided effective regulation of CAFO operations and were consistent with common farming practices and avoided needlessly onerous regulatory burdens.

It is our hope and strong recommendation that the Department engage in a more timely and proactive process to inform and receive input from the Agricultural Advisory Board and from the regulated community of proposed changes to PAG-12 well in advance of the March 31, 2023 deadline, as was done during the 2013 round.

PFB thanks you for the opportunity to provide comments regarding the proposed changes to PAG-12. If you do have any questions, please feel free to contact me by telephone at 717-731-3547 or by email at [jjbell@pfb.com](mailto:jjbell@pfb.com).

Sincerely,

A handwritten signature in blue ink that reads "John J. Bell". The signature is fluid and cursive, with the first name "John" and last name "Bell" clearly legible.

John J. Bell  
Environmental Issues Counsel

## **APPENDIX 1**

June 24, 2020

Jill Whitcomb, Director  
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Pennsylvania Department of Environmental  
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**RE:** Comments by Pennsylvania Farm Bureau to the proposed amendments to PAG-12 NPDES General Permit contained in the Pre-Draft provided to the Agricultural Advisory Board on June 5, 2020 (hereafter referred to as “Draft PAG-12” or “Draft”)

*VIA EMAIL TRANSMISSION*

Ms. Whitcomb and Mr. Patel:

The following are comments provided on behalf of Pennsylvania Farm Bureau to the proposed amendments to PAG-12, governing the general permitting of animal farm operations subject to regulation as Concentrated Animal Feeding Operations (“CAFOs”), which are contained in the June 5 Draft PAG-12. Pennsylvania Farm Bureau the largest statewide general farm organization in the Commonwealth. We appreciate the opportunity to offer our comments relative to the Draft PAG-12.

We would initially note that we are supportive of the objectives that the Draft PAG-12 is attempting to accomplish. When the original changes to PAG-12 were proposed in 2018 – particularly the change that established a process of “annual permit renewals” through filings of annual reports and proportionate payment of permit fees – many including Farm Bureau were concerned that the “annual permitting” approach applied under the revised PAG-12 might create additional legal and administrative problems for CAFO operators who have already completed their initial filing of NOI and the comprehensive documentation, planning and analysis that accompanies a completed NOI filing during the 5-year period that their general permit is supposed to be in effect.

We are seeing now a growing trend by those opponents of agricultural production practices commonly performed on CAFO operations to test the legal waters on what “annual permit renewals” may mean under 2018’s revised process and “rights” that challengers to CAFOs may have under this process. Challengers are attempting to claim a “right of appeal” to any and all aspects of a CAFO’s general permit each year that the CAFO operator’s PAG-12 permit is “renewed,” despite the CAFO operator’s faithful adherence to the production practices and nutrient management planning and implementation activities identified by the operator under his or her initial PAG-12 filing.

At best, legal pursuit of opponents' claims will impose substantial additional legal and administrative cost consequences for both the Commonwealth and those CAFOs attempting to repeatedly defend the validity of the general permit under which they operate and degree of compliance with the terms of the permit. At worst, court recognition of opponents' claimed "rights of appeal" will have a devastating effect on CAFO operators' confidence and ability to make and pursue viable business plans for their operations in future years.

The main principle behind general NPDES permitting, such as that established under PAG-12, is to provide a more simplified and definitive regulatory process for persons who intend to consistently operate within the permit's prescribed criteria and limitations. General permits enable persons engaged in practices potentially harmful to the environment to identify the practices the person intends to perform and demonstrate through documentation and analysis the practices will meet the permit's commonly prescribed criteria. Traditionally, the effective term of PAG-12 and similar general NPDES permits is five years. The five-year general permit cycles strike a reasonable balance for both the Commonwealth and concerned citizens and for CAFOs and entities subject to permit. Those concerned are given opportunity to review whether a regulated entity is operating consistently with terms of the permit and pursue administrative and judicial due process if they reasonably believe the entity may not be operating sufficiently within the permit's terms. And CAFO operators and other regulated persons who comply with the terms of the NOI and accompanying materials initially filed are given reasonable assurance that they may pursue viable business plans consistent with their permit for an extensive period in the future.

The Draft PAG-12 will help restore the principle that was traditionally advanced under the general permit NPDES program and that was essentially advanced under PAG-12 prior to the 2018 changes.

That said, we are concerned with the additional work and cost that CAFO operators faithfully adhering to the terms of their initial filing under 2018's revised PAG-12 may have to do under the Draft PAG-12. Page 4 of the Draft would require "existing operations with coverage under the PAG-12 General Permit as of [Draft PAG-12's effective date], who wish to remain covered under the PAG-12 General Permit" to "submit an administratively complete and acceptable NOI for PAG-12 General Permit coverage no later than January 1, 2021."

It should be well understood by the Department that "initial" NOI filings for general permit normally require extensive documentation and analysis to accompany the filing of the NOI "notice."

We believe the effect of Draft PAG-12's directive for submission of an "administratively complete and acceptable NOI" is essentially to have all CAFOs operating under the current version of PAG-12 to perform a full resubmission of all documents and analyses for permit that they filed originally in 2018, and become subject once again to "right of appeal" by those who had already been given that opportunity in 2018. We feel it is especially unfair for current permit holders of PAG-12 who have already filed and have not violated the terms and criteria of their PAG-12 since 2018 to be required to perform a comprehensive refiling of documentation and analysis already performed under the holder's

original NOI filing, or become potentially subject to another round of “appeals” on matters that have already been identified under that original filing.

More likely than not, to provide the type and degree of documentation and analysis required for their initial filing an “administratively complete and acceptable” NOI in 2018, CAFO operators needed to utilize and incur significant costs in attaining professional agricultural consultants with knowledge and expertise in environmental and agronomic practices. Although they are knowledgeable in agricultural practices specific to their operations, CAFO operators will not likely have the personal knowledge to prepare and organize the documentation and analysis required normally under initial NOI filings. If required to make an unabbreviated NOI resubmission under the Draft PAG-12, CAFO operators will likely need to tap those professional consultants used in the operators’ 2018 filing, and incur substantial additional costs in the effort to do so.

We believe CAFO operators who have faithfully adhered to the requirements of initial filing of NOI in 2018 should not be again required to make the same NOI filing in 2020, nor be exposed to review and potential appeal.

We recommend CAFOs currently operating under PAG-12 only be required to file an NOI that consists of “notice” and any material deviations in documentation to what was filed originally under the operator’s initial NOI filing. Since potential objectors have already had sufficient opportunity to appeal a CAFO’s initial PA-12 filing, we further recommend that appeal of NOI filed by a CAFO currently operating under PAG-12 be limited to those matters related to deviations required to be identified.

Pennsylvania Farm Bureau thanks you for the opportunity to share our views regarding the Draft PAG-12. If you do have additional questions, please contact me by phone at 717-731-3547 or by email at [jibell@pfb.com](mailto:jibell@pfb.com).

Sincerely,



John J. Bell  
Environmental Issues Counsel