



Date: September 11, 2020
To: Pennsylvania Department of Environmental Protection, Policy Office
From: Jennifer Reed-Harry, PennAg Industries Association
RE: Comments on the Draft PAG-12 General Permit and associated documents

Dear Pennsylvania Department of Environmental Protection, Policy Office:

PennAg Industries Association is an agriculture trade association with more than 425 business members and has been in existence since 1878. Our mission focuses on working to create and maintain an effective, viable and competitive environment for Pennsylvania agribusiness to grow and prosper.

Many of our members interact with the Department of Environmental Protection (DEP) on a regular basis and work tirelessly to produce safe, nutritious protein while maintaining a high standard of environmental stewardship and integrity.

Rules, regulations and guidance documents are important to ensure proper safeguards are in place. However, it is equally important for government to work within boundaries as to not over regulate and put businesses at a competitive disadvantage. When this occurs, businesses move which negatively impacts the local economy, the tax base, unemployment rates and in the case of agriculture – removes local food sources.

With that in mind please accept the following comments in the framework they are intended, as constructive comments offering practical suggestions for improvements which will benefit the environment, DEP staff and the agriculture community.

Comments on PAG-12 NPDES CAFO Notice of Intent (NOI) Instructions – document number: 3800-PM-BCW0032a Rev. 8/2020 NOI Instructions

1. Page 2 bottom of page: Clarify NOI Submission requirements for existing CAFO operations.
Is the intent of the Department for every General CAFO to submit a NOI by 1/1/2021? And 1/1 thereafter?
2. Remove all NOI Filing Fees. This is a heavy financial burden for agricultural industry
3. Page 8 Freeboard. Only use Regulatory Freeboard. Do not refer or mention December 15 freeboard in NMP. This creates confusion among inspectors (see

comments #2 and #3 in the section below). The minimum Regulatory Freeboard needs to be consistent across the program.

4. Page 10 & 11 bottom of 10 top of 11: Act 14 submissions. “This notification is required for NOI Types of New and Renewal, as well as Amendment if the operation proposes an expansion.”
 - a. Clarify this section. Does an existing operation that has not expanded need to submit an Act 14 with the NOI? If so, I respectfully challenge this as it will once again create extra burdens to the agricultural applicant in the form of an unnecessary expenditure of both time and money.

Comments on PAG-12 NPDES CAFO Annual Report Instructions – document number: 3800-PM-BCW0032g Rev. 8/2020 CAFO Annual Report Instructions

1. Page 1 Top of page – Comment- Remove the following language from the General Instructions Section
 - a. “Completion of the CAFO Annual Report template (3800-PM-BCW0032f) is a requirement of PAG-12 NPDES General Permit coverage. The Report must be submitted to the regional office of the Department of Environmental Protection (DEP) that approved General Permit coverage by January 1.”
2. Page 4 – Required Freeboard- Make the “regulatory freeboard” the only reportable measurement on the annual report. It leads to unnecessary Notice of Violations per Part C. Section D, Subsection 3.
3. Page 5- Freeboard Required as of December 15 to Implement NMP- Make the “regulatory freeboard” the only reportable measurement on the annual report. It leads to unnecessary Notice of Violations per Part C. Section D, Subsection 3.

Comments on PAG-12 NPDES CAFO Annual Report – document number: 3800-PM-BCW0032f Rev. 3/2018 CAFO Annual Report

1. Page 2 - Liquid and Semi-Solid Manure Storage Facilities Chart- Third Column (Required Freeboard)
 - a. Comment: Change Required Freeboard to Regulatory Freeboard.
2. Page 3- Winter Manure Management Chart- Third Column (Freeboard Required as of December 15 to Implement NMP)
 - a. Comment: Change Freeboard Required as of December 15 to Implement NMP to Regulatory Freeboard.

Comments on PAG-12 Authorization of Operate (i.e. the Permit) – document number: 3800-PM-BCW0032d Rev. 8/2020

1. Page 4 – NOI REQUIREMENTS – Deadlines for NOI – “An existing operation that will be a CAFO effective October 1, 2019 based on new standard animal weights approved by the State Conservation Commission (as published in the Pennsylvania Bulletin on June 3, 2017), and as contained in Pennsylvania State University Agronomy Fact Sheet 54, must submit an administratively complete and acceptable NOI for PAG-12 General Permit coverage or an individual permit application no later than April 1, 2019.”
Comment: Why is this language in the most recent permit?
2. Page 4_ NOI REQUIREMENTS- Deadlines for NOI – “... so long as a complete NOI using the NOI form (3800-PM-BCW0032b) was submitted to DEP prior to the effective amendment date of this General Permit (i.e., January 1, 2021).
 - a. Comment: Clarification is needed. Existing CAFO operations need to submit a NOI how often? A submission prior to 1/1/21? or every year with the annual report?
3. Page 10 – Definition- Regulatory Freeboard
Comment: Use Regulatory Freeboard per 25 Pa. Code § 91.36(a)(6) across the entire program instead of Freeboard Required as of December 15 to Implement NMP. It leads to unnecessary Notice of Violations per Part C. Section D, Subsection 3 when permittees have winter application in the approved NMP.
4. Page 11- III. Self-Monitoring, Reporting and Recordkeeping, Section D. Reporting and Related Requirements- 1. CAFO Annual Report- Section d.
Comment: Remove section d. Remove “may result in revocation of coverage....”
5. Page 11- III. Self-Monitoring, Reporting and Recordkeeping, Section D. Reporting and Related Requirements- 1. Annual NOI Fee- Section e.
Comment: Remove section e. A late NOI fee should not constitute “revocation of coverage....”
6. Page 21 – Other Requirements – 1. Nutrient Management Plans and Manure Management – Part C – Winter Application- D.3.

Comment: Section D. should state the following:

“The permittee shall maintain regulatory freeboard in manure storage facilities.”

Note: Regulatory Freeboard is the only actionable freeboard the Department can consider.

7. Page 23 –Freeboard
Comment: Use Regulatory Freeboard per 25 Pa. Code § 91.36(a)(6) across the entire program instead of Freeboard Required as of December 15 to Implement NMP.

8. Page 23- Other Requirements – V. Manure Storage Facilities – E. Leak Detection and Subsurface Drainage Monitoring- Section 2.
 - a. Comment: Please support the threshold of 3.0 mg/L or greater for NH3-N with peer reviewed data.

General comments and questions:

1. A CAFO Application includes many elements, of which, are costs the applicant must assume. The current challenge is the cost to produce a complete CAFO application continues to rise. Each time DEP or another government entity update/change a requirement, this costs the applicant. On top of that, there continue to be 'requests for data and information' of administratively complete applications from permit reviewers. There needs to be a check and balance system in place to minimize costs.
2. In addition to the cost component there is a challenge in available people (consultants, planners) who offer the services of Nutrient Management Planning, completing CAFO Permit Applications and so forth. This is not an issue solely on DEP to solve but it something to be factored into discussions.
3. Once a CAFO permit is issued, there are numerous components to comply with in regards to paperwork and dates for submittals. Would DEP consider simplifying this and/or making a straightforward checklist to accompany each issued permit outlining what is need and by what date?
4. What is the justification for excluding sheep, lambs, horses and ducks from reporting water usage?

We appreciate the work of the DEP team on the General Permit . Understanding it will soon be time for the five-year review and update of the permit language we hope there will be ample opportunity for input from the agriculture community. Some of the challenges with the current permit stem from its development in a silo within DEP and those who actually utilize the permit were never given the opportunity to provide helpful insight and direction. We strongly urge DEP to utilize the DEP Ag Advisory Board in the process of the 2023 updates.

If you would like additional information or clarification, do not hesitate to contact me at (717) 651-5920 or via email at jrharry@pennag.com

Sincerely,



Jennifer Reed-Harry
PennAg Industries Association