

Senate Majority Policy Committee

**The Department of Environmental Protection's
Permitting Process**

**Testimony of William C. Fink
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Tuesday, March 16, 2010
9:30 a.m.

Good morning Senator Erickson and members of the committee, my name is William Fink and I am the Environmental Management Specialist for Country View Family Farms. Country View Family Farms is based in Lancaster County and is a swine procurement and production company. Country View owns or operates swine farms throughout Pennsylvania, which specialize in various aspects related swine breeding and producing piglets. After the breeding farms, swine animals are sent to nursery farms, then to finishing farms and eventually processed at Hatfield Quality Meats. The nursery and finishing farms are independently owned and operated. I work completely with the company owned or operated farms. My responsibilities include keeping the farms in compliance with State and Federal environmental regulations that are administered by the State Conservation Commission and the PA Department of Environmental Protection (DEP).

The two regulatory programs that place the most requirements on farms are Pennsylvania's Nutrient Management Program and the National Pollutant Discharge Elimination System Concentrated Animal Feeding Operations (CAFO) program. Pennsylvania's Nutrient Management Program is administered by the State Conservation Commission while the CAFO program is administered by the Department of Environmental Protection (DEP). I specifically deal with the reporting and recordkeeping requirements related to the Nutrient Management Program and CAFO program and applying for new and renewing existing plans and permits. In dealing with the CAFO program, Country View staff has regular contacts with various DEP Regional Office staff. Today's testimony involves Country View's interactions with the DEP Regional Offices as it relates to the CAFO program. I hope to address how the regulations and permitting guidance developed by DEP's top management in Central Office does not necessarily ensure that the Regional Office staff interprets regulations and guidance documents in the same manner. I want to be clear that the examples I am using today are issues that have happened in the past. The issues were brought to a resolution. However, reaching an agreement on these issues, involved many hours of talks with DEP Regional Staff, the involvement of various industry groups, and eventually our companies' top executives personally meeting with senior DEP staff. In the time since these events occurred, some DEP staff changes were made at the Regional Offices and with the staff changes many of the issues have gone away. My point today is that farming community should expect the DEP staff, no matter who or where they are located, to follow the regulations and guidance documents set by DEP's Central Office.

Country View Family Farms is committed to being a good steward of the environment and follows the laws and regulations. When developing a permit application for new farm or renewing an existing permit, a review is conducted of the regulations and DEP's written guidance. The permit applications are then submitted based on the regulations and the written permitting guidance. Once a permit is issued Country View takes implementing the permit requirements seriously. Country View prides itself on trying to work closely with the DEP staff. In return we expect that the DEP staff to follow the regulations and technical guidance when issuing a permit.

Regulations and technical guidance documents are developed by DEP's Management Staff with assistance from public boards, experts in the specific fields, concerned citizens groups, and the regulated community. The regulations and technical guidance should take in to account protecting the environment to a level that the regulated community can accept, while maintaining financially viable operations. As you know the Regulations and technical guidance documents go through a public comment process and once finalized are meant to provide uniformity across the

entire state. The permitted community expects that the different DEP Regional Offices would issue the permits based on standard state wide regulations and guidance documents. That is not always the case.

We have experienced times when the regional DEP staffs have gone beyond the regulations and technical guidance by adding additional conditions or recommendations to CAFO permits. The farming community understands that additional conditions to permit may be needed to address a specific environmental problem or a deficiency at a farm. However; some of the conditions that have been placed into permits seem to address no problems or deficiencies at the farm. When questioned the DEP staff use statements like "we are doing this to protect water quality" or "you can appeal the decision if you don't like it". Going through the appeal process can be a costly process with unclear outcomes and is not something the farming community should have to do with each permit.

Some examples include:

Requiring additional freeboard at certain times of the year;

DEP has required in a CAFO permit, that a farm have a certain level of freeboard in manure storage by a specific date before winter. Freeboard level is the amount of storage remaining in manure storage, the area between the top liquid level of the manure in the manure storage and the top of the manure storage. The condition only allows winter manure applications if permission is obtained from the regional DEP staff. This was being done to prohibit the spreading of manure in the winter, which we agree that is not an ideal practice, however; it must sometimes be done due to varying field and weather conditions.

At the farm where DEP required this condition, winter manure application was not a standard practice, and if winter spreading was needed the farms approved Nutrient Management Plan had specific procedures to address winter manure applications. The DEP staff would not take into account the farms history or the procedures in NMP; the staff person's only way to deal with winter spreading was to prohibit winter application by requiring additional freeboard going in to winter. In this farm's permit, DEP required that the farm have 6 feet of freeboard by December 15, however the regulations only requires that a farm maintain 2 feet of freeboard. The requirements for manure storage freeboard are spelled out in the Chapter 91 Regulations based on the type and age and size of the operation. The requirements added to this farm permit were not based on any guidance and went beyond the regulatory requirements. When questioned the DEP staffer informed us of our ability to appeal.

This farm manure is exported to neighboring farms; the neighboring farms rely on the exported manure to offset their need for commercial fertilizer. To implement this requirement and avoid being in violation and to avoid the need get DEP permission, if it can be obtained, the farm must apply manure at times that are less than desirable. For example; the neighbors must be convinced to allow manure applications onto saturated fields; this can cause soil compaction which has the potential to limit their crop yield. At times the neighbors have said no to manure applications onto saturated fields, forcing the manure to be transported to other farms usually farther away, increasing the manure hauling cost. Some of the neighbors have said they would get manure from another source that does not have this requirement; the farm then loses a place to apply manure. Following standard requirements, like consistent freeboard requirements, for all farms, makes a level playing field, and does not pit one farm against another.

Placing recommendations in permits;

In one permit renewal, DEP placed a recommendation to use field markers to delineate manure set-backs. There is no CAFO regulation or any mention in the CAFO guidance for the use of field markers to delineate manure set-backs. In the case of this farm, there had been no problems with meeting manure set back requirements. The farm utilizes certified commercial manure haulers. The Hauler Certification Program was developed to train the commercial haulers on proper application procedures and application set-backs requirements.

When asked if DEP was planning to require field markers to all permits, the staff person replied "you should have no issues because it's only a recommendation not a requirement". When questioned on permit implementation what the difference is between a recommendation and a requirement regarding permit conditions, DEP provided no clear guidance. It is unclear if DEP would expect the farm to implement a recommendation. We requested that the recommendation be deleted; again we were informed of our ability to appeal.

Self-Inspection Reports to the local municipalities;

While reviewing a draft permit as part of a renewal, it was observed that the DEP permit engineer required that CAFO self-inspection reports be submitted to the local municipalities. Again this requirement is not in the CAFO regulations or mentioned in the CAFO guidance. When the permit engineer was questioned about the requirement, the engineer quipped, "not everyone is catching that". Country View Family Farms has the staff that can review permits and question what DEP is doing. What I wonder is has this requirement been placed in other farms CAFO permits. Most CAFO are small family operated farms, they may not have the time to spend reviewing word by word draft permits; they are out daily tending the animals and the crops. When writing permits, DEP should follow the regulations and guidance, they should not have staff just putting requirements or conditions into permits just to see if he or she can get away with it.

The agricultural community recognizes that mismanagement at a farm can have negative impact on the environment; however most in the agricultural community are good stewards of the land, water and animals under their control. People in the agricultural industry realize that they need to protect the land and water to assure that the next generation has the land and water resources needed to continue farming in to the future.

I want to end on a positive note; the issues reviewed today have currently ceased, this happened when DEP made some staff changes; however a staff change could happen again and we could be back to having similar problems. The current Central and Regional DEP staff are trying to follow the guidance and will listen when that is a problem or misunderstanding. Having liaison staff that can act as intermediaries between the farming community, DEP, PDA, and SCC seems to help with communications. Staff that can act as liaisons keeping the lines of communication open between the Regional office, the Central office and the farming community need to be maintained.

Thank you for your time and attention to this issue and I would be happy to answer any questions.