

CHAPTER 83. STATE CONSERVATION COMMISSION

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Authority

The provisions of this Chapter 83 issued under act of the Conservation District Law (3 P. S. §§ 849—864), unless otherwise noted.

Source

The provisions of this Chapter 83 adopted November 8, 1974, effective November 9, 1974, 4 Pa.B. 2357, unless otherwise noted.

Cross References

This chapter cited in 7 Pa. Code § 130e.2 (relating to definitions).

Subchapter A. [Reserved]

Source

The provisions of this Subchapter A adopted November 8, 1974, effective November 9, 1974, 4 Pa.B. 2357; reserved May 4, 1984, effective May 5, 1984, 14 Pa.B. 1551. Immediately preceding text appears at serial pages (88321) to (88322), (69543) to (69544) and (88323) to (88334).

§ 83.1. [Reserved].

Source

The provisions of this § 83.1 adopted November 8, 1974, effective November 9, 1974, 4 Pa.B. 2357; reserved May 4, 1984, effective May 5, 1984, 14 Pa.B. 1551. Immediately preceding text appears at serial page (88322).

§ 83.2. [Reserved].

Source

The provisions of this § 83.2 adopted November 8, 1974, effective November 9, 1974, 4 Pa.B. 2357; amended February 12, 1982, effective February 13, 1982, 12 Pa.B. 645; reserved May 4, 1984, effective May 5, 1984, 14 Pa.B. 1551. Immediately preceding text appears at serial page (88322).

§ 83.3. [Reserved].

Source

The provisions of this § 83.3 adopted November 8, 1974, effective November 9, 1974, 4 Pa.B. 2357; amended February 12, 1982, effective February 13, 1982, 12 Pa.B. 645; reserved May 4, 1984, effective May 5, 1984, 14 Pa.B. 1551. Immediately preceding text appears at serial page (69543).

**§ 83.4. [Reserved].****Source**

The provisions of this § 83.4 adopted November 8, 1974, effective November 9, 1974, 4 Pa.B. 2357; reserved May 4, 1984, effective May 5, 1984, 14 Pa.B. 1551. Immediately preceding text appears at serial page (69543).

**§ 83.5. [Reserved].****Source**

The provisions of this § 83.5 adopted November 8, 1974, effective November 9, 1974, 4 Pa.B. 2357; reserved May 4, 1984, effective May 5, 1984, 14 Pa.B. 1551. Immediately preceding text appears at serial pages (69543) to (69544).

**§ 83.6. [Reserved].****Source**

The provisions of this § 83.6 adopted November 8, 1974, effective November 9, 1974, 4 Pa.B. 2357; reserved May 4, 1984, effective May 5, 1984, 14 Pa.B. 1551. Immediately preceding text appears at serial page (69544).

**§ 83.7. [Reserved].****Source**

The provisions of this § 83.7 adopted November 8, 1974, effective November 9, 1974, 4 Pa.B. 2357; amended February 12, 1982, effective February 13, 1982, 12 Pa.B. 645; reserved May 4, 1984, effective May 5, 1984, 14 Pa.B. 1551. Immediately preceding text appears at serial page (69544).

**§ 83.8. [Reserved].****Source**

The provisions of this § 83.8 adopted November 8, 1974, effective November 9, 1974, 4 Pa.B. 2357; reserved May 4, 1984, effective May 5, 1984, 14 Pa.B. 1551. Immediately preceding text appears at serial page (69544).

**§ 83.9. [Reserved].****Source**

The provisions of this § 83.9 adopted November 8, 1974, effective November 9, 1974, 4 Pa.B. 2357; reserved May 4, 1984, effective May 5, 1984, 14 Pa.B. 1551. Immediately preceding text appears at serial page (88323).

**§ 83.10. [Reserved].****Source**

The provisions of this § 83.10 adopted November 8, 1974, effective November 9, 1974, 4 Pa.B. 2357; reserved May 4, 1984, effective May 5, 1984, 14 Pa.B. 1551. Immediately preceding text appears at serial page (88323).

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**GENERAL PROVISIONS****§ 83.31. Purpose.**

(a) The act provides for the General Assembly of the Commonwealth to appropriate moneys into a special fund known as the Conservation District Fund for allocation to local conservation districts. Funds allocated to conservation districts from this fund shall be used for activities necessary to meet the requirements of the act and costs associated with implementing programs delegated, contracted or approved by the Commission.

(b) It is the intention of the Commission to provide conservation districts with funds to be used for the employment of conservation district managers for the districts, to provide administrative funding assistance to districts, to finance Commission mandated or authorized activities, and to provide financial assistance for technical staff and programs of districts under the act, if the district complies with the terms and conditions of this chapter.

(c) The Commission will annually allocate the available funding to one or more of the program elements identified in this subchapter and will provide for the fair and equitable distribution of the funds to districts. Total funding available for allocation to one or more of the program elements will be determined by the Commission in consultation with the PDA, the Department and other funding sources on an annual basis as funding is available.

(1) The Commission will have the authority to reallocate district funding based on actual and anticipated district costs.

(2) The Commission will provide advanced payments for conservation districts consistent with the authority of the act and this subchapter.

(d) State funds allocated to districts under this program will be utilized solely for employing conservation district managers, conservation district management staff, conservation district technicians and engineers and to finance administrative expenses related to program elements and special project expenses of this subchapter approved by the Commission.

(e) The following program elements may be funded under the Conservation District Fund Allocation Program:

(1) *Conservation District Management Cost Share Program*. The purpose of the Conservation District Management Cost Share Program is to provide cost share assistance to conservation districts for their employment of a conser-

vation district manager or other management staff to provide overall administration of the district's programs.

(2) *Administrative Assistance Funding Program.* The purpose of the Administrative Assistance Funding Program is to provide financial assistance for administrative purposes to conservation districts. The funds shall be used to help defray district administrative expenses related to actions required or authorized by the act or an action of the Commission and enhance the conservation district's ability to provide administrative support to other program areas where the conservation district has accepted administrative responsibilities. Activities include general administrative support for conservation districts programs and administrative support of other programs supported by other funding sources and approved by the Commission.

(3) *Technical Assistance Cost Share Program.* The purpose of the Technical Assistance Cost Share Program is to provide cost share assistance to districts for their employment of technical staff to carry out district functions that require specialized training or abilities. Funding under this program shall be utilized to support positions at conservation districts employed to carry out responsibilities under the Erosion and Sediment Control Program; the National Pollutant Discharge Elimination System Permitting Program; and the Agricultural Conservation Technical Assistance Program. Funding may also be utilized for other technical related program and staff positions determined necessary and approved by the Commission.

(4) *Special Project Funding Program.* The purpose of the Special Projects Funding Program is to provide State, Federal or private funds to districts or cooperating organizations in return for proper execution of special programs or projects approved by the Commission.

(5) *Others.* Other programs as approved by the Commission.

#### Authority

The provisions of this § 83.31 amended under the Conservation District Law (3 P. S. §§ 849—864) and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20).

#### Source

The provisions of this § 83.31 adopted February 24, 1984, effective January 6, 1984, 14 Pa.B. 657; amended June 23, 1995, effective June 24, 1995, 25 Pa.B. 2506; amended February 15, 2008, effective February 16, 2008, 38 Pa.B. 889. Immediately preceding text appears at serial pages (227122) to (227123).

### § 83.32. Definitions.

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

*Act*—The Conservation District Law (3 P. S. §§ 849—864).

*Agricultural Area Security Law (3 P. S. §§ 901—915)*—This act creates a State agricultural conservation easement purchase program for the purchase of conservation easements on eligible farms administered by the PDA and local county farmland preservation boards assisted by county conservation districts.

*Agricultural Conservation Technical Assistance Program*—A cost share program to support the employment and training of agricultural conservation tech-

nicians and engineers serving as a resource and technical advisor providing increased levels of direct technical services and assistance to production agriculture cooperators and other landowners. Technical assistance and services may include assessing natural resource problems and developing, updating or implementing conservation plans and other natural resource plans such as nutrient management, integrated pest management and pasture, crop and forest management plans for delegated or other technical assistance activities of a program assumed by the conservation district. Training opportunities include, but are not limited to, the Agricultural Technical Boot Camp Training Program.

*Associate director*—A person appointed by the conservation district board consistent with section 6(2) of the act (3 P. S. § 854(2)).

*Commission*—The State Conservation Commission created by the act.

*Conservation district manager*—A person employed by the district to perform those duties determined by the district, if those duties comply with this subchapter.

*Conservation district management staff*—A person employed by the district other than the conservation district manager to perform those duties determined by the district as providing overall administration of district programs that comply with this subchapter.

*Conservation district technician and engineer*—A person employed by the district to perform those technical or educational duties determined by the district or the Commission that are of a specialized nature and require a specific educational background or specialized training.

*Cooperating organization*—An organization approved by the Commission to assist in carrying out the act.

*Department*—The Department of Environmental Protection of the Commonwealth.

*Directors*—The district's board of directors as defined in the act.

*District*—A conservation district as defined in the act.

*Erosion and Sediment Control Program*—A State program to help provide for the conservation of soil, water and related resources and for the control and prevention of soil erosion and preservation of natural resources established under the erosion control rules and regulations in Chapter 102 (relating to erosion and sediment control) adopted under the authority of The Clean Streams Law (35 P. S. §§ 691.1—691.1001).

*Fiscal year*—The State fiscal year being July 1 through June 30.

*National Pollutant Discharge Elimination System Permitting Program*—A Federal discharge permitting program established under section 402 of the Federal Water Pollution Control Act (33 U.S.C.A. § 1342).

*PDA—Pennsylvania Department of Agriculture*—The Department of Agriculture of the Commonwealth.

*Special project*—A specific program or planned undertaking approved by the Commission.

**Authority**

The provisions of this § 83.32 amended under the Conservation District Law (3 P. S. §§ 849—864); and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20).

**Source**

The provisions of this § 83.32 adopted February 24, 1984, effective January 6, 1984, 14 Pa.B. 657; amended June 23, 1995, effective June 24, 1995, 25 Pa.B. 2506; amended February 15, 2008, effective February 16, 2008, 38 Pa.B. 889. Immediately preceding text appears at serial page (227123).

**§ 83.33. Eligible expenses.**

(a) The Commission will determine the nature, extent and eligibility of expenses to be funded.

(b) When the Commission funds a staff position under this subchapter, the total cost of employment for those staff positions shall include salary and salary-related expenses provided by the conservation district, such as Social Security, workers' compensation, unemployment compensation, liability insurance, disability insurance, medical/life insurance, Medicare, hospitalization, dental plan, vision plan, other health plans, retirement, professional fees, separation costs and other expenses the Commission determines to be appropriate.

(c) The following are not salary-related expenses: travel, lodging, vehicle insurance and office rent.

(d) When the Commission provides funds to a district for the purpose of supporting general administrative activities of districts and fulfilling requirements of the act and this subchapter, eligible costs include:

(1) Director and associate director mileage and travel expenses to district meetings or other official business.

(2) Publishing the annual report, bonding, liability or errors and omissions insurance.

(3) Postage, legal fees and audit fees.

(4) Expenses related to keeping full and accurate district records.

(e) The Commission may approve and reimburse staff mileage and travel expenses for official administrative activities as approved by the district board of directors when the Commission has determined adequate funding is available.

(f) When the Commission, agency or other funding source provides funding to a conservation district for a program approved by the Commission, the agency or other funding source shall define program activities and acceptable expenses through a delegation agreement, other program agreement or criteria established within the specific guidelines of the funding source.

(g) Other eligible expenses will be determined by the Commission.

(h) Salary and salary-related expenses for specific programs delegated or contracted to the district by the Commonwealth will be eligible expenses when the Commission specifically approves payment.

**Authority**

The provisions of this § 83.33 issued under the Conservation District Law (3 P. S. §§ 849—864) and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20).

**Source**

The provisions of this § 83.33 adopted February 15, 2008, effective February 16, 2008, 38 Pa.B. 889.

**Cross References**

This section cited in 25 Pa. Code § 83.51 (relating to general requirements and eligibility).

**§ 83.34. Application procedures.**

(a) An application for funding, in a format approved by the Commission, shall be completed by the district for any staff position, project or activity authorized by the Commission and this subchapter.

(b) The application for funding shall be signed by the chairperson or a designee and submitted to the Commission within the time frames established by the Commission.

(c) When an application for funding is submitted for a staff position, a copy of the job description for each staff position shall be included in each application for funding.

(d) When multicounty proposals for staff positions or programs authorized by the Commission or this subchapter are the most feasible and cost-effective manner for delivering program objectives or services, the Commission may authorize two or more conservation districts to apply for funding. Applications must include letters of intent from all cooperating districts, signed by the chairperson or a designee of that cooperating district, indicating that each cooperating conservation district board took official action to support the proposed application and the date of that action.

(e) In prioritizing and selecting applications to be funded under the Technical Assistance Cost Share Program element, the Commission may consider the district's application consistency with goals and other relevant information established in program guidelines.

(f) Upon Commission approval of an application, the district will be notified of the amount available for funding.

**Authority**

The provisions of this § 83.34 issued under the Conservation District Law (3 P. S. §§ 849—864) and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20).

**Source**

The provisions of this § 83.34 adopted February 15, 2008, effective February 16, 2008, 38 Pa.B. 889.

**Cross References**

This section cited in 25 Pa. Code § 83.42 (relating to application procedures); 25 Pa. Code § 83.53 (relating to application procedures for reimbursement); and 25 Pa. Code § 83.62 (relating to application procedures).

**§ 83.35. Procedures for allocating funds.**

(a) The district shall submit documentation of the eligible staff position's salary and salary-related costs for the actual and anticipated calendar periods on forms approved by the Commission.

(b) The State or Federal government may provide funds to the district for activities devoted to a program of the State or Federal government in addition to the funding provided by the Commission through this program. A district may not receive State or Federal funds, the combination of which exceeds 100% of the cost of administering a program.



(c) If extenuating circumstances regarding the allocation warrant special consideration, the Commission will have the discretion to adjust the allocation provided to a particular district.

(d) Funds provided will be available on a fiscal year basis for costs incurred for the positions at the beginning of the fiscal year or from the time the district fills the position during that fiscal year.

(e) The Commission may exercise its judgment in approving applications for funding and in determining the distribution of these funds.

(f) The Commission may impose restrictions or special conditions upon the issuance of these funds.

(g) The Commission will have sole authority to determine the level of funding that individual conservation districts are eligible to receive under any element of this program.

#### Authority

The provisions of this § 83.35 issued under the Conservation District Law (3 P. S. §§ 849—864) and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20).

#### Source

The provisions of this § 83.35 adopted February 15, 2008, effective February 16, 2008, 38 Pa.B. 889.

#### Cross References

This section cited in 25 Pa. Code § 83.52 (relating to procedures for allocating funds).

### § 83.36. Procedures for advance payments.

For purposes of disbursing funds to conservation districts, the Commission may process an advanced payment as follows:

(1) When an application for funding of a staff position has been approved by the Commission, the Commission may advance up to 25% of the approved application amount. Subsequent payment to the district will be made on an “actual cash expended” basis not to exceed approved funding caps for the positions. The district shall request reimbursement of the remaining allocation amount on forms approved by the Commission in accordance with §§ 83.37 and 83.38 (relating to reimbursement requirements and procedures; and reporting requirements).

(2) When annual funding for administrative assistance for general conservation district program administration has been approved by the Commission, a district shall receive an initial grant, the amount to be determined by the Commission, if funding is available for the fiscal year and the requirements of § 83.55(a) and (b) (relating to reporting procedures) for administrative assistance are met. Additional administrative funds may be granted to districts if they become available, provided the requirements of § 83.55(a) and (b) are met.

(3) When annual funding for administrative assistance for other program elements under this subchapter include eligible expenses for both staff positions and administrative activities and have been approved by the Commission, the Commission may advance funding consistent with paragraphs (1) and (2) up to caps that may be established by the Commission.

(4) Upon receipt of advance payment funds, the district shall promptly deposit these funds in an interest bearing account in a bank or other financial institution insured by the FDIC, FSLIC or equivalent insurer. The advance payment funds and any interest earned thereon shall be expended by the district to fulfill the objectives of the approved program element for which the advance payment was received.

(5) For each program element when advance payment funds are received, the district shall keep a separate accounting of the advance payments and the interest earned thereon.

**§ 83.37. Reimbursement requirements and procedures.**

(a) The following reports and documents shall be provided to the Commission or its designee on or before the dates listed. Other reports required by the Commission and this subchapter shall be provided on or before dates established by the Commission.

<i>Report/Document</i>	<i>Due Date</i>
Team Sheets	January 31
Annual Report	March 31
Budget (current calendar year)	March 31
Financial Statement (previous calendar year)	March 31
Financial Audit Report	October 1
Quarterly Reports (program elements and special projects)	January 15, April 15, July 15, October 15

(b) The Commission or its designee may not process a district's claim for reimbursement until that district's required reports and documents related to a Conservation District Fund Allocation Program element or an approved special project are received by the Commission.

(c) Final payment for activities conducted under program elements or approved special projects under this subchapter will not be provided to a district until all program elements or special project activities have been completed as described in the program guidelines or the special project work plan and the required reports have been submitted to the Commission in a manner consistent with § 83.38 (relating to reporting requirements).

(d) When a conservation district receives funding under this subchapter and is unable to meet a reporting deadline as noted in subsection (a), the conservation district may request an extension to that deadline as outlined in Commission policy.

(e) Funding claims will be reviewed and forwarded by the Commission or its designee to the comptroller for payment within 15 working days after an acceptable claim and the required reports are received in the Commission or designee's office.

#### Authority

The provisions of this § 83.37 issued under the Conservation District Law (3 P. S. §§ 849—864) and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20).

#### Source

The provisions of this § 83.37 adopted February 15, 2008, effective February 16, 2008, 38 Pa.B. 889.

#### Cross References

This section cited in 25 Pa. Code § 83.44 (relating to reimbursement procedures); 25 Pa. Code § 83.54 (relating to reimbursement procedures); 25 Pa. Code § 83.65 (relating to reimbursement procedures); and 25 Pa. Code § 83.74 (relating to reimbursement procedures).

### § 83.38. Reporting requirements.

(a) A district having staff positions or special projects approved for funding by the Commission shall file quarterly claims indicating applicable cost of employment or costs of the special project for the period.

(b) Claims shall be filed no later than 15 days after the close of the quarter. Quarters end on September 30, December 31, March 31 and June 30.

(c) At the same time, the district shall submit a quarterly report of activities for the program element or special project.

(1) Quarterly reports for cost share program elements must include a report of activities and accomplishments that have resulted from the employment of the conservation district manager, technician or engineers or the monthly board meeting minutes for the quarter if they include activities and accomplishments of the conservation district manager, technicians or engineers.

(2) Quarterly reports for special projects must include a report indicating the status of the project or accomplishments consistent with the project work plan.

(d) When available, the district shall use the Conservation District E-commerce System for submission of forms and reports required by the Commission or delegated and contracted programs to the greatest extent possible.

(e) If a position is employed by more than one district, the host district shall maintain records and file reports for the position.

(f) Quarterly claims and activity reports shall be submitted in a manner and on forms approved by the Commission.

#### Authority

The provisions of this § 83.38 issued under the Conservation District Law (3 P. S. §§ 849—864) and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20).

**Source**

the provisions of this § 83.38 adopted February 15, 2008, effective February 16, 2008, 38 Pa.B. 889.

**Cross References**

This section cited in 25 Pa. Code § 83.43 (relating to reporting requirements); 25 Pa. Code § 83.63 (relating to reporting requirements); 25 Pa. Code § 83.73a (relating to reporting requirements).

**§ 83.39. Record retention requirements.**

(a) The district shall maintain in its file a record of the activities of all positions (district manager, technicians and engineers) and special projects funded under this subchapter.

(b) A conservation district receiving funds under any program element under this subchapter shall maintain in accordance with generally accepted accounting principles the books, records, receipts, financial statements and other documents pertaining to any program element or special project under this program. These records shall be retained a minimum of 3 years, commencing at the end of the fiscal year of funding. The records shall be made available to the Commission, PDA and the Department or their agents upon request.

**Authority**

The provisions of this § 83.39 issued under the Conservation District Law (3 P. S. §§ 849—864) and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20).

**Source**

The provisions of this § 83.39 adopted February 15, 2008, effective February 16, 2008, 38 Pa.B. 889.

**Cross References**

This section cited in 25 Pa. Code § 83.46 (relating to record retention requirements).

**CONSERVATION DISTRICT MANAGEMENT  
COST SHARE PROGRAM****§ 83.41. General requirements.**

(a) This program is known as the Conservation District Management Cost Share Program.

(b) The conservation district manager or other management staff position shall be the employee of the district and not the employee of the Commonwealth. A person serving as a conservation district manager or in another management staff position may not serve in a clerical capacity with the district unless the Commission gives special approval.

(c) The Commission will pay no more than 50% of the total cost of employment for a conservation district manager or other management position even when employed by more than one district. The maximum amount that a district can be reimbursed for the fiscal year per management staff position will be set annually by the Commission.

(d) No more than one conservation district management staff position per district may be cost shared unless the Commission determines that adequate funds are available.

(e) The Commission will have the authority to adjust the conservation district management annual cost share for unforeseen circumstances.

**Authority**

The provisions of this § 83.41 issued under section 4(1), (5)(c) and (6) of the act of December 19, 1984 (P. L. 1125, No. 221) (3 P. S. § 852(1), (5)(c) and (6)); amended under the Conservation District Law (3 P. S. §§ 849—864); and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20).

**Source**

The provisions of this § 83.41 adopted February 24, 1984, effective May 5, 1984, 14 Pa.B. 657; amended September 22, 1984, effective September 23, 1984, 14 Pa.B. 4090; amended July 4, 1986, effective July 5, 1986, 16 Pa.B. 2411; amended June 23, 1995, effective June 24, 1995, 25 Pa.B. 2506; amended February 15, 2008, effective February 16, 2008, 38 Pa.B. 889. Immediately preceding text appears at serial pages (227123) to (227124).

**§ 83.42. Application procedures.**

Application for funding for this program element shall be completed in a manner consistent with § 83.34 (relating to application procedures).

**Authority**

The provisions of this § 83.42 amended under the Conservation District Law (3 P. S. §§ 849—864); and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20).

**Source**

The provisions of this § 83.42 adopted February 24, 1984, effective May 5, 1984, 14 Pa.B. 657; amended June 23, 1995, effective June 24, 1995, 25 Pa.B. 2506; amended February 15, 2008, effective February 16, 2008, 38 Pa.B. 889. Immediately preceding text appears at serial page (227124).

**§ 83.43. Reporting requirements.**

Reporting requirements for this program element shall be completed in a manner consistent with § 83.38 (relating to reporting requirements).

**Authority**

The provisions of this § 83.43 amended under the Conservation District Law (3 P. S. §§ 849—864); and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20).

**Source**

The provisions of this § 83.43 adopted February 24, 1984, effective May 5, 1984, 14 Pa.B. 657; amended June 23, 1995, effective June 24, 1995, 25 Pa.B. 2506; amended February 15, 2008, effective February 16, 2008, 38 Pa.B. 889. Immediately preceding text appears at serial pages (227124) to (227125).

**§ 83.44. Reimbursement procedures.**

Reimbursement procedures for this program element shall be completed in a manner consistent with § 83.37 (relating to reimbursement requirements and procedures).

**Authority**

The provisions of this § 83.44 amended under the Conservation District Law (3 P. S. §§ 849—864); and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20).

**Source**

The provisions of this § 83.44 adopted February 24, 1984, effective May 5, 1984, 14 Pa.B. 657; amended June 23, 1995, effective June 24, 1995, 25 Pa.B. 2506; amended February 15, 2008, effective February 16, 2008, 38 Pa.B. 889. Immediately preceding text appears at serial page (227125).

**§ 83.45. Procedures for allocating funds.**

The conservation district management staff position's actual salary and salary-related costs for the new July 1 through December 31 calendar period and anticipated salary and salary-related costs for the new January 1 through June 30 calendar period shall be the basis for computing the new fiscal year allocation.

**Authority**

The provisions of this § 83.45 amended under the Conservation District Law (3 P. S. §§ 849—864); and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20).

**Source**

The provisions of this § 83.45 adopted February 24, 1984, effective May 5, 1984, 14 Pa.B. 657; amended September 22, 1989, effective September 23, 1989, 19 Pa.B. 4090; amended June 23, 1995, effective June 24, 1995, 25 Pa.B. 2506; amended February 15, 2008, effective February 16, 2008, 38 Pa.B. 889. Immediately preceding text appears at serial pages (227125) to (227126).

**§ 83.46. Record retention requirements.**

Record retention requirements for this program element shall be completed in a manner consistent with § 83.39 (relating to record retention requirements).

**Authority**

The provisions of this § 83.46 amended under the Conservation District Law (3 P. S. §§ 849—864); and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20).

**Source**

The provisions of this § 83.46 adopted February 24, 1984, effective May 5, 1984, 14 Pa.B. 657; amended June 23, 1995, effective June 24, 1995, 25 Pa.B. 2506; amended February 15, 2008, effective February 16, 2008, 38 Pa.B. 889. Immediately preceding text appears at serial page (227126).

**ADMINISTRATIVE ASSISTANCE FUNDING PROGRAM****§ 83.51. General requirements and eligibility.**

(a) This program is known as the Administrative Assistance Funding Program.

(b) Funds made available to this program shall be utilized to help defray costs directly related to the following:

(1) Administration of general district programs, fulfillment of requirements of the act and this subchapter. Eligible costs are those costs contained in § 83.33(d)—(f) (relating to eligible expenses).

(2) Administrative or other expenses approved by the Commission and incurred by conservation districts when the conservation districts have agreed to provide administrative support to the county agricultural land preservation board for duties carried out by the board under the Agricultural Area Security Law.

(3) Administrative or other expenses approved by the Commission and incurred by conservation districts when the conservation district accepts administrative responsibility and activities of other county, State or Federal programs. Eligible costs are those costs contained in § 83.33(f).

**Authority**

The provisions of this § 83.51 amended under the Conservation District Law (3 P. S. §§ 849—864); and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20).

**Source**

The provisions of this § 83.51 adopted February 24, 1984, effective January 6, 1984, 14 Pa.B. 657; amended June 23, 1995, effective June 24, 1995, 25 Pa.B. 2506; amended February 15, 2008, effective February 16, 2008, 38 Pa.B. 889. Immediately preceding text appears at serial page (227126).

**§ 83.52. Procedures for allocating funds.**

(a) A district shall annually receive funds in a manner consistent with § 83.35 (relating to procedures for allocating funds), the amount to be determined by the Commission, if funding is available for the fiscal year and the requirements of § 83.55(a) and (b) (relating to reporting procedures) are met.

(b) Additional administrative funds may be granted to districts if they become available, provided the requirements of § 83.55(a) and (b) are met.

(c) Contingent on the availability of funds, the Commission, at its discretion, also has the option to reimburse conservation districts for:

(1) Extraordinary travel and administrative expenses in excess of the initial administrative assistance grant.

(2) Additional eligible expenses in providing administrative support, or other services to a county, State or Federal program when the conservation district accepts administrative responsibility and program implementation activities.

(3) The Commission may also reimburse a district for the travel expenses of a district director, associate director or staff person to attend a meeting or conference at the request of the Commission.

**Authority**

The provisions of this § 83.52 amended under the Conservation District Law (3 P. S. §§ 849—864); and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20).

**Source**

The provisions of this § 83.52 adopted February 24, 1984, effective May 5, 1984, 14 Pa.B. 657; amended September 22, 1989, effective September 23, 1989, 19 Pa.B. 4090; amended June 23, 1995, effective June 24, 1995, 25 Pa.B. 2506; amended February 15, 2008, effective February 16, 2008, 38 Pa.B. 889. Immediately preceding text appears at serial pages (227126) to (227127).

**§ 83.53. Application procedures for reimbursement.**

Application for funding shall be completed for this program element in a manner consistent with § 83.34 (relating to application procedures).

**Authority**

The provisions of this § 83.53 amended under the Conservation District Law (3 P. S. §§ 849—864); and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20).

**Source**

The provisions of this § 83.53 adopted February 24, 1984, effective May 5, 1984, 14 Pa.B. 657; amended September 22, 1989, effective September 23, 1989, 19 Pa.B. 4090; amended June 23, 1995, effective June 24, 1995, 25 Pa.B. 2506; amended February 15, 2008, effective February 16, 2008, 38 Pa.B. 889. Immediately preceding text appears at serial page (227127).

**§ 83.54. Reimbursement procedures.**

(a) When extraordinary travel and administrative expenses in excess of the initial grant are to be reimbursed, a reimbursement claim form shall be submitted by districts to the Commission semiannually indicating costs to be reimbursed for the period. The claims shall be filed no later than 15 days after December 31 and June 30.

(b) The Commission may reimburse all or a portion of the reimbursable expenses submitted by districts.

(c) Reimbursement claims shall be made by conservation districts, and processed by the Commission, consistent with the reimbursement procedures contained in § 83.37 (relating to reimbursement requirements and procedures).

**Authority**

The provisions of this § 83.54 amended under the Conservation District Law (3 P. S. §§ 849—864); and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20).

**Source**

The provisions of this § 83.54 adopted February 24, 1984, effective May 5, 1984, 14 Pa.B. 657; amended June 23, 1995, effective June 24, 1995, 25 Pa.B. 2506; amended February 15, 2008, effective February 16, 2008, 38 Pa.B. 889. Immediately preceding text appears at serial page (227127).

**§ 83.55. Reporting procedures.**

(a) Within 15 days following the end of the fiscal year on June 30, each participating district shall file an “Administrative Assistance Program Financial Statement” noting how the general administrative funds were utilized.

(b) A district shall, by October 1, submit a financial audit for the previous calendar year unless an extension of time is requested by the district and approved by the Commission. The standards and guidelines for the financial audit and extension of time request will be established by the Commission.

(c) A conservation district accepting funds for administrative activities of programs other than general conservation district programs or fulfillment of requirements of the act and this subchapter shall provide a quarterly report of activities and accomplishments that have resulted from the expenditure of these funds as required by the Commission or guidelines established for that program.

**Authority**

The provisions of this § 83.55 amended under the Conservation District Law (3 P. S. §§ 849—864); and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20).

**Source**

The provisions of this § 83.55 adopted February 24, 1984, effective May 5, 1984, 14 Pa.B. 657; amended June 23, 1995, effective June 24, 1995, 25 Pa.B. 2506; amended February 15, 2008, effective February 16, 2008, 38 Pa.B. 889. Immediately preceding text appears at serial page (227128).



**§ 83.56. Special requirements.**

General administrative funds not used for the purposes authorized by the Commission shall be reconciled and deducted from the following year's grant to that district.

**Authority**

The provisions of this § 83.56 amended under the Conservation District Law (3 P. S. §§ 849—864); and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20).

**Source**

The provisions of this § 83.56 adopted February 24, 1984, effective May 5, 1984, 14 Pa.B. 657; amended June 23, 1995, effective June 24, 1995, 25 Pa.B. 2506; amended February 15, 2008, effective February 16, 2008, 38 Pa.B. 889. Immediately preceding text appears at serial page (227128).

**TECHNICAL ASSISTANCE COST SHARE PROGRAM****§ 83.61. General requirements.**

- (a) This program is known as the Technical Assistance Cost Share Program.
- (b) Funds allocated to districts under this program shall be utilized solely for employing conservation district technicians or engineers to provide technical assistance and services assumed by the district including, but not limited to, the following:
  - (1) The Erosion and Sediment Control Program and the National Pollutant Discharge Elimination System Permitting Program as specified in the delegation agreement with the Department. The percentage of cost share for conservation district technicians performing duties under Erosion and Sediment Control Program shall be at the following rates, based on the level of responsibilities:
    - (i) Level I—35%
    - (ii) Level II—50%
    - (iii) Level III—65%
  - (2) The Agricultural Conservation Technical Assistance Program established in program guidelines and approved by the Commission.
    - (i) Cost share provided for agricultural conservation technicians and engineers shall be at a rate of 50% of the total cost of employment, up to caps established by the Commission for entry, working and master-level positions established in the Agricultural Conservation Technical Assistance Program guidelines.
    - (ii) For purposes of the Agricultural Conservation Technical Assistance Program, the balance of the funds shall be from non-State sources, except as are provided to conservation districts under the Nutrient Management Act Program, the Biosolids Program and the Easement Program and may be utilized for the purpose of matching funds. Other State and Federal funds, as approved by the Commission on a case-by-case basis, may also be authorized for purposes of matching funds.
  - (3) Other program areas established in Technical Assistance Cost Share Program elements under this subchapter.

(i) Cost share shall be provided for technical staff positions performing duties under the approved program area approved by the Commission at a rate established by the Commission.

(ii) The conservation district technician or engineer funded under the Technical Assistance Cost Share Program is the employee of the district and not the employee of the Commonwealth. A person serving as a conservation district technician or engineer shall receive general supervision from a district director or an employee of the district designated by the board of directors.

(iii) The Commission will pay no more than the established cost share rate of the total cost of employment for the conservation district technician or engineer even when employed by more than one district.

(iv) The Commission, as funds are available, has the authority to increase a district technician's cost share allocation and reimburse the district up to an additional 10% for each conservation district technician, or engineer, in supplemental increments of up to 10%, if the following conditions in clauses (A) and (B) are met by a district employee. Caps for supplemental funding increases will be established by the Commission.

(A) For a conservation district technician under the Erosion and Sediment Control Program who has achieved certification as an erosion and sediment control technician, level 2, by the National Institute for Certification in Engineering Technologies or certified by the International Erosion Control Association as a Certified Professional in Erosion and Sediment Control and other professional certification programs recognized by the Commission or is a professional engineer with a minimum of 2 years experience in erosion and sediment control.

(B) For an agricultural conservation technician or engineer who has obtained and maintained certain Natural Resources Conservation Service Engineering Job Approval Ratings, professional certifications or specified training as prescribed by the Commission; or is a registered engineer with a minimum of 2 years experience in the design and installation of agricultural conservation best management practices.

(v) The Commission may determine the number of technicians or engineers to be cost shared per district contingent on the availability of funds.

(A) The cost share rate for additional conservation district erosion and sediment control technicians shall be based on the level of responsibility assumed by the district in the Erosion and Sediment Control Program as specified in the delegation agreement with the Department.

(B) The cost share rates for additional agricultural conservation technicians or engineers within a single county will be established at the sole discretion of the Commission.

(vi) The Commission has the authority to reduce the cost share rate for additional conservation district technicians or engineers where more than one technician or engineer is cost shared in the conservation district.

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(vii) If an evaluation of the district's performance reveals that a district is not performing satisfactorily at the authorized level, the Commission has the authority to reduce the allocation or the level of cost share for the technicians, or both.

**Authority**

The provisions of this § 83.61 amended under section 4(1), (5)(c) and (6) of the act of December 19, 1984 (P. L. 1125, No. 221) (3 P. S. § 852(1), (5)(c) and (6)); amended under the Conservation District Law (3 P. S. §§ 849—864); and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20).

**Source**

The provisions of this § 83.61 adopted February 24, 1984, effective January 6, 1984, 14 Pa.B. 657; amended July 4, 1986, effective July 5, 1986, 16 Pa.B. 2411; amended September 22, 1989, effective September 23, 1989, 19 Pa.B. 4090; amended June 23, 1995, effective June 24, 1995, 25 Pa.B. 2506; amended February 15, 2008, effective February 16, 2008, 38 Pa.B. 889. Immediately preceding text appears at serial pages (227128) to (227129).

**§ 83.62. Application procedures.**

Application for funding for this program element shall be completed in a manner consistent with § 83.34 (relating to application procedures).

**Authority**

The provisions of this § 83.62 amended under the Conservation District Law (3 P. S. §§ 849—864); and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20).

**Source**

The provisions of this § 83.62 adopted February 24, 1984, effective January 6, 1984, 14 Pa.B. 657; amended June 23, 1995, effective June 24, 1995, 25 Pa.B. 2506; amended February 15, 2008, effective February 16, 2008, 38 Pa.B. 889. Immediately preceding text appears at serial page (227129).

**§ 83.63. Reporting requirements.**

Reporting requirements for this program element shall be completed in a manner consistent with § 83.38 (relating to reporting requirements).

**Authority**

The provisions of this § 83.63 amended under the Conservation District Law (3 P. S. §§ 849—864); and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20).

**Source**

The provisions of this § 83.63 adopted February 24, 1984, effective January 6, 1984, 14 Pa.B. 657; amended June 23, 1995, effective June 24, 1995, 25 Pa.B. 2506; amended February 15, 2008, effective February 16, 2008, 38 Pa.B. 889. Immediately preceding text appears at serial page (227130).

**§ 83.64. Procedures for allocating funds.**

(a) For Technical Assistance funding, the technician's or engineer's actual salary and salary-related costs for the new July 1 through December 31 calendar period and anticipated salary and salary-related costs for the new January 1 through June 30 calendar period shall be the basis for computing the new fiscal year allocation.

(b) The Commission will determine, on the basis of criteria established by the Commission, which technical personnel will receive cost share.

(c) The allocation may be prorated if sufficient funds are not available to provide the desired rate of cost share for the approved technicians or engineers.

**Authority**

The provisions of this § 83.64 amended under the Conservation District Law (3 P. S. §§ 849—864); and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20).

**Source**

The provisions of this § 83.64 adopted February 2, 1984, effective January 6, 1984, 14 Pa.B. 657; amended September 22, 1989, effective September 23, 1989, 19 Pa.B. 4090; amended June 23, 1995, effective June 24, 1995, 25 Pa.B. 2506; amended February 15, 2008, effective February 16, 2008, 38 Pa.B. 889. Immediately preceding text appears at serial page (227130).

**§ 83.65. Reimbursement procedures.**

Reimbursement requirements and procedures for this program element shall be completed in a manner consistent with § 83.37 (relating to reimbursement requirements and procedures).

**Authority**

The provisions of this § 83.65 amended under the Conservation District Law (3 P. S. §§ 849—864); and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20).

**Source**

The provisions of this § 83.65 adopted February 24, 1984, effective January 6, 1984, 14 Pa.B. 657; amended June 23, 1995, effective June 24, 1995, 25 Pa.B. 2506; amended February 15, 2008, effective February 16, 2008, 38 Pa.B. 889. Immediately preceding text appears at serial pages (227130) to (227131).

**§ 83.66. [Reserved].**

**Source**

The provisions of this § 83.66 reserved February 15, 2008, effective February 16, 2008, 38 Pa.B. 889. Immediately preceding text appears at serial page (227131).

**SPECIAL PROJECTS FUNDING PROGRAM**

**§ 83.71. General requirements.**

(a) The Commission may allocate to districts, State, Federal or other funds, as available, to reimburse districts for a portion of their costs to carry out special projects approved by the Commission. These projects shall be limited to a reasonable period of time for the accomplishment of project objectives but State funding will not be assured for longer than 1 State fiscal year. Eligible projects will be determined on individual merit by the Commission based on criteria established within the specific guidelines of the funding source.

(b) The Commission may authorize special project grants to any district or cooperating organization for purposes consistent with this subchapter and the act.

**Authority**

The provisions of this § 83.71 amended under the Conservation District Law (3 P. S. §§ 849—864) and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20).

**Source**

The provisions of this § 83.71 adopted February 24, 1984, effective January 6, 1984, 14 Pa.B. 657; amended June 23, 1995, effective June 24, 1995, 25 Pa.B. 2506; amended February 15, 2008, effective February 16, 2008, 38 Pa.B. 889. Immediately preceding text appears at serial page (227131).

**Cross References**

This section cited in 25 Pa. Code § 83.81 (relating to forfeiture).

**§ 83.72. Application procedures.**

(a) Districts may apply for available funds. The Commission will establish a deadline for the filing of the applications. Applications must be in writing and be made on forms prescribed, prepared and furnished by the Commission. Applications must set forth the information and be accompanied by the data that is necessary for the Commission to determine the applicant's eligibility to be considered for a special project.

(b) Project proposals shall be submitted to the Commission in a format provided by the Commission that describes the purpose, schedule and scope of activities, expected results, and projected completion dates, required personnel, special services, physical resources and estimated costs for the completion of the project and the district's financial resources to cost share the project.

(c) Applications will be reviewed by the Commission and preliminarily ranked based on guidelines adopted by the Commission. Additional information may be required of districts submitting projects regarding the intent and purpose of the project.

**Authority**

The provisions of this § 83.72 amended under the Conservation District Law (3 P. S. §§ 849—864) and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20).

**Source**

The provisions of this § 83.72 adopted February 24, 1984, effective January 6, 1984, 14 Pa.B. 657; amended June 23, 1995, effective June 24, 1995, 25 Pa.B. 2506; amended February 15, 2008, effective February 16, 2008, 38 Pa.B. 889. Immediately preceding text appears at serial pages (227131) to (227132).

**Cross References**

This section cited in 25 Pa. Code § 83.81 (relating to forfeiture).

**§ 83.73. Procedures for allocating funds.**

(a) The Commission will approve the amount of funds available for special projects.

(b) Projects containing objectives that are consistent with the current priorities of the Commission may receive higher priority for funding and may be cost shared at a higher rate.

(c) The Commission will approve special projects for funding. Districts will be notified immediately following approval or denial by the Commission.

(d) It is the goal of the Commission to require a project sponsor to provide a portion of the funding for special projects. The Commission may require the

project sponsor to provide matching funds or in-kind services, at the Commission's discretion. The Commission is authorized to provide up to 100% cost share for special projects.

(e) Funds may be reallocated at any time in the event a project cannot be completed or is abandoned for any reason.

**Authority**

The provisions of this § 83.73 amended under the Conservation District Law (3 P. S. §§ 849—864); and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20).

**Source**

The provisions of this § 83.73 adopted February 24, 1984, effective January 6, 1984, 14 Pa.B. 657; amended June 23, 1995, effective June 24, 1995, 25 Pa.B. 2506; amended February 15, 2008, effective February 16, 2008, 38 Pa.B. 889. Immediately preceding text appears at serial page (227132).

**Cross References**

This section cited in 25 Pa. Code § 83.81 (relating to forfeiture).

**§ 83.73a. Reporting requirements.**

Reporting requirements for this program element shall be completed in a manner consistent with § 83.38(b), (c)(2) and (f) (relating to reporting requirements).

**Authority**

The provisions of this § 83.73a amended under the Conservation District Law (3 P. S. §§ 849—864); and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20).

**Source**

The provisions of this § 83.73a adopted February 15, 2008, effective February 16, 2008, 38 Pa.B. 889.

**Cross References**

This section cited in 25 Pa. Code § 83.81 (relating to forfeiture).

**§ 83.74. Reimbursement procedures.**

(a) Reimbursement requirement and procedures for this program element shall be completed in a manner consistent with § 83.37(b) and (c) (relating to reimbursement requirements and procedures).

(b) Administrative expenses of the district such as district employees' salaries which are defrayed through this subchapter, routine office rental or other routine overhead costs will not be reimbursable. Payment of these items is not includable in claims submitted to the Commission.

**Authority**

The provisions of this § 83.74 amended under the Conservation District Law (3 P. S. §§ 849—864) and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20).

**Source**

The provisions of this § 83.74 adopted February 24, 1984, effective January 6, 1984, 14 Pa.B. 657; amended June 23, 1995, effective June 24, 1995, 25 Pa.B. 2506; amended February 15, 2008, effective February 16, 2008, 38 Pa.B. 889. Immediately preceding text appears at serial pages (227132) to (227133).

**Cross References**

This section cited in 25 Pa. Code § 83.81 (relating to forfeiture).

**§ 83.75. Special requirements.**

After receiving initial approval, districts shall provide additional information required by the Commission.

**Authority**

The provisions of this § 83.75 amended under the Conservation District Law (3 P. S. §§ 849—864) and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20).

**Source**

The provisions of this § 83.75 adopted February 24, 1984, effective January 6, 1984, 14 Pa.B. 657; amended June 23, 1995, effective June 24, 1995, 25 Pa.B. 2506; amended February 15, 2008, effective February 16, 2008, 38 Pa.B. 889. Immediately preceding text appears at serial page (227133).

**Cross References**

This section cited in 25 Pa. Code § 83.81 (relating to forfeiture).

**FORFEITURE AND SPECIAL PROVISIONS****§ 83.81. Forfeiture.**

(a) The Commission will reallocate funds previously approved by the Commission for a district, if that district fails to comply with this subchapter and other practices and procedures established by the Commission.

(b) A recipient of Conservation District Funding Allocation Program funds that fails to abide by §§ 83.71—83.82 (relating to special projects funding program), shall be in default. In the event of a default, the Commission may cancel the special project agreement and reallocate the special project funds previously approved by the Commission.

**Authority**

The provisions of this § 83.81 amended under the Conservation District Law (3 P. S. §§ 849—864); and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20).

**Source**

The provisions of this § 83.81 adopted February 24, 1984, effective January 6, 1984, 14 Pa.B. 657; amended September 22, 1989, effective September 23, 1989, 19 Pa.B. 4090; amended June 23, 1995, effective June 24, 1995, 25 Pa.B. 2506; amended February 15, 2008, effective February 16, 2008, 38 Pa.B. 889. Immediately preceding text appears at serial page (227133).

**§ 83.82. Special provisions.**

The Commission may delegate authority to the PDA, the Department or other Commonwealth agency staff to act on its behalf.

**Authority**

The provisions of this § 83.82 amended under the Conservation District Law (3 P. S. §§ 849—864); and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20).

**Source**

The provisions of this § 83.82 adopted February 24, 1984, effective January 6, 1984, 14 Pa.B. 657; amended June 23, 1995, effective June 24, 1995, 25 Pa.B. 2506; amended February 15, 2008, effective February 16, 2008, 38 Pa.B. 889. Immediately preceding text appears at serial page (227133).

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**Cross References**

This section cited in 25 Pa. Code § 83.81 (relating to forfeiture).

**Subchapter C. CHESAPEAKE BAY  
NONPOINT SOURCE POLLUTION ABATEMENT  
PROGRAM—STATEMENT OF POLICY****GENERAL**

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- 83.131. General requirements.  
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**FINANCIAL ASSISTANCE FUNDING PROGRAM**

- 83.141. General requirements.  
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83.146. Agreements.  
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**Authority**

The provisions of this Subchapter C issued under section 4(1), (5)(c) and (6) of the act of December 19, 1984 (P. L. 1125, No. 221) (3 P. S. § 851(1), (5)(c) and (6)), unless otherwise noted.

**Source**

The provisions of this Subchapter C adopted July 4, 1986, effective July 5, 1986, 16 Pa.B. 2404, unless otherwise noted.

**GENERAL****§ 83.101. Purpose.**

(a) The EPA and the Department have determined that excess levels of pollutants, including sediment, nitrogen and phosphorus, are delivered to the Chesapeake Bay via Elk Creek, Potomac River and the Susquehanna River systems. The pollutants result from improper agricultural activities, primarily poor farming methods, mismanaged animal wastes and other activities causing excess soil erosion and runoff. A nonpoint source pollution abatement program initiative by the Commonwealth requires a comprehensive program to encourage better land management practices within the agricultural community. The intention of the Commission is to:

- (1) Promote these practices through a comprehensive program to demonstrate new land management techniques.
  - (2) Foster new land management attitudes.
  - (3) Furnish technical expertise.
  - (4) Provide financial assistance to landowners for the installation of BMPs to control nonpoint sources of pollution.
- (b) The purpose of the Planning Assistance Funding Program is to:
- (1) Provide financial assistance to districts, agencies and cooperating organizations to identify nonpoint pollution sources.
  - (2) Monitor water quality.
  - (3) Measure the runoff characteristics of watershed areas.
  - (4) Design treatment methods for sources of nonpoint pollution.

(c) The purpose of the Educational Assistance Funding Program is to provide financial assistance to districts, agencies and cooperating organizations to accelerate the adoption of and demonstrate the use of soil and water conservation management techniques through educational programs. The goal is to provide information to landowners and the public to foster the need for nutrient management, erosion control and water quality management.

(d) The purpose of the Technical Assistance Funding Program is to provide financial assistance to districts, agencies and cooperating organizations to provide technical planning and other assistance to accelerate the installation of BMPs for landowners for the proper disposal and application of nutrients on land areas that are responsible for nonpoint source pollution.

(e) The purpose of the Financial Assistance Funding Program is to assist landowners with the cost of the installation of BMPs. This cost-share program will be administered by the Commission cooperatively with the districts and the ASCS.

**Source**

The provisions of this § 83.101 adopted July 4, 1986, effective July 5, 1986, 16 Pa.B. 2404; corrected May 13, 1994, effective February 10, 1990, 24 Pa.B. 2529; amended December 2, 1994, effective December 3, 1994, 24 Pa.B. 5987. Immediately preceding text appears at serial pages (189750) to (189751).

**§ 83.102. Definitions.**

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

*ASCS*—Agricultural Stabilization and Conservation Service of the United States Department of Agriculture.

*Act*—The Soil Conservation Law (35 P. S. §§ 849—864).

*Agency*—An agency of the Commonwealth and an agency of the United States as defined in the act.

*BMPs*—Best management practices—Specialized practices designed to control erosion, to control runoff, to establish vegetation and to manage nutrient animal wastes and fertilizers. The term includes practices listed in the Statewide Plan for Agriculture and Earthmoving Activities or other practices approved by the Commission.

*Commission*—The State Conservation Commission created by the act.

*Cooperating organization*—An organization approved by the Commission to assist in implementing the act.

*Director*—A member of the district board of directors as defined in the act.

*District*—A conservation district as defined in the act.

*Landowner*—A natural person who holds fee title to the land or who holds an equitable interest arising from an agreement of sale with the fee title holder.

*Nutrient management program*—A system of BMPs to prevent the pollution of surface waters and groundwaters by addressing the most critical farm nutrient problems through measures to manage fertilizers and animal wastes and to reduce soil erosion.

*Program area*—The land surface area within the Chesapeake Bay drainage basin.

*Project area*—A designated area where critical nonpoint source pollution problems have been identified or quantified.

*SCS*—The Soil Conservation Service of the United States Department of Agriculture.

*Statewide Plan for Agriculture and Earthmoving Activities*—The comprehensive water quality management plan developed under § 91.31 (relating to com-

prehensive water quality management) and published as a notice at 9 Pa.B. 3248 (September 22, 1979).)

#### Source

The provisions of this § 83.102 adopted July 4, 1986, effective July 5, 1986, 16 Pa.B. 2404; corrected May 13, 1994, effective February 10, 1990, 24 Pa.B. 2529; amended December 2, 1994, effective December 3, 1994, 24 Pa.B. 5987. Immediately preceding text appears at serial pages (189751) to (189752).

#### Cross References

This section cited in 25 Pa. Code § 83.111 (relating to general requirements); 25 Pa. Code § 83.121 (relating to general requirements); and 25 Pa. Code § 83.131 (relating to general requirements).

### § 83.103. Cooperation.

(a) The Commission will encourage cooperation between agencies and organizations which have either direct or indirect involvement in the program to achieve the objectives to reduce nonpoint source pollution.

(b) Nondistrict project sponsors will work closely with the appropriate districts to promote local awareness of the projects.

#### Source

The provisions of this § 83.103 adopted July 4, 1986, effective July 5, 1986, 16 Pa.B. 2404; amended December 2, 1994, effective December 3, 1994, 24 Pa.B. 5987. Immediately preceding text appears at serial pages (189752) to (189753).

### § 83.104. Annual notice.

(a) Cost-share rates will be determined annually by the Commission for the Technical Assistance Funding Program under § 83.131(e) (relating to general requirements).

(b) Public notice of the action listed in subsection (a) will be published in the *Pennsylvania Bulletin*.

#### Source

The provisions of this § 83.104 adopted July 4, 1986, effective July 5, 1986, 16 Pa.B. 2404; corrected May 13, 1994, effective February 10, 1990, 24 Pa.B. 2529; amended December 2, 1994, effective December 3, 1994, 24 Pa.B. 5987. Immediately preceding text appears at serial page (189753).

## PLANNING ASSISTANCE FUNDING PROGRAM

### § 83.111. General requirements.

(a) The program is known as the Planning Assistance Funding Program (Program).

(b) Funds allocated under the Program shall be utilized solely for implementing the planning assistance funding program established by the Commission.

(c) Eligibility for this Program will be limited to the program area as defined under § 83.102 (relating to definitions).

(d) Funding for a year's Program may be designated by the Commission for specific uses including watershed monitoring, watershed modeling, assessments of potential critical areas and related planning activities. Funding may be made available to districts, agencies and cooperating organizations eligible to participate in this Program.

(e) Technical equipment and nonexpendable supplies purchased by districts, agencies and cooperating organizations under the agreement will be the property of the Commonwealth unless otherwise determined by the agreement.

#### Source

The provisions of this § 83.111 adopted July 4, 1986, effective July 5, 1986, 16 Pa.B. 2404; amended December 2, 1994, effective December 3, 1994, 24 Pa.B. 5987. Immediately preceding text appears at serial pages (189753) to (189754).

### § 83.112. Application requirements.

(a) An application for available funds shall be in writing on forms furnished by the Commission. An application shall be received by the deadline established by the Commission for filing of applications.

(b) An application shall describe the problem (why the project is required), purpose and objectives, methods and procedure, summary of requirements—for example, projected completion dates, required personnel, special services, physical resources and estimated costs—and projected completion date for report of results.

(c) The Commission will execute an agreement with an approved applicant including the terms and conditions for completing work and a budget for submitting reimbursement claims. Reimbursable costs incurred by the applicant will include those items determined by the Department to be necessary to carry out the agreement.

#### Source

The provisions of this § 83.112 adopted July 4, 1986, effective July 5, 1986, 16 Pa.B. 2404; corrected May 13, 1994, effective February 10, 1990, 24 Pa.B. 2529; amended December 2, 1994, effective December 3, 1994, 24 Pa.B. 5987. Immediately preceding text appears at serial page (189754).

### § 83.113. Procedures for allocating funds.

(a) The Commission will determine the amount of funds available for funding under the Planning Assistance Funding Program.

(b) The Commission will give priority to watersheds and other areas that the Commission determines are high priority based on studies and surveys.

(c) The Commission may reallocate funds if an authorized project cannot be completed or is abandoned.

**Source**

The provisions of this § 83.113 adopted July 4, 1986, effective July 5, 1986, 16 Pa.B. 2404; amended December 2, 1994, effective December 3, 1994, 24 Pa.B. 5987. Immediately preceding text appears at serial page (189754).

**§ 83.114. Reporting requirements.**

- (a) Project sponsors shall report program accomplishments in a manner prescribed in the agreement.
- (b) Claims for reimbursement shall be submitted to the Commission in accordance with the schedule outlined in the agreement. The claims shall show the utilization of funds in accordance with the budget outlined in the agreement.
- (c) The Commission reserves the right to audit Federal and State project related accounts and records to determine if funds were expended in conformance with the agreement.
- (d) Records shall be retained for 3 years following the last payment from the Commission.
- (e) A project sponsor shall maintain a separate accounting system for funds received under the Planning Assistance Funding Program.

**Source**

The provisions of this § 83.114 adopted July 4, 1986, effective July 5, 1986, 16 Pa.B. 2404; amended December 2, 1994, effective December 3, 1994, 24 Pa.B. 5987. Immediately preceding text appears at serial pages (189754) to (189755).

**§ 83.115. Reimbursement procedures.**

- (a) The Commission will not process a project or program claim for reimbursement until all reports related to the project or program claim are received in the Commission's office.
- (b) The Commission will not process a final claim for reimbursement under the agreement until the conditions of the agreement have been met and are acceptable to the Commission.
- (c) Claims for reimbursement shall be filed with the Commission within 15 days of dates prescribed in the agreement showing the utilization of funds in accordance with the budget outlined in the agreement.
- (d) Acceptable reimbursement claims submitted in compliance with subsections (a)—(c) will be forwarded by the Commission to the comptroller for payment within 15 working days after the claim is received in the Commission office.

**Source**

The provisions of this § 83.115 adopted July 4, 1986, effective July 5, 1986, 16 Pa.B. 2404; amended December 2, 1994, effective December 3, 1994, 24 Pa.B. 5987. Immediately preceding text appears at serial page (189755).

**EDUCATIONAL ASSISTANCE FUNDING PROGRAM****§ 83.121. General requirements.**

(a) This program is known as the Educational Assistance Funding Program (Program).

(b) Funds allocated under this Program shall be utilized solely for implementing the educational assistance funding program established by the Commission.

(c) Eligibility for this Program will be limited to the program area as defined under § 83.102 (relating to definitions).

(d) Funding for a year's Program may be designed by the Commission for demonstration projects and educational activities related to nonpoint source pollution control. Funding may be made available to districts, agencies and cooperating organizations.

(e) Technical equipment and nonexpendable supplies purchased by districts, agencies and cooperating organizations under the agreement shall be the property of the Commonwealth unless otherwise determined by the agreement.

**Source**

The provisions of this § 83.121 adopted July 4, 1986, effective July 5, 1986, 16 Pa.B. 2404; amended December 2, 1994, effective December 3, 1994, 24 Pa.B. 5987. Immediately preceding text appears at serial pages (189755) to (189756).

**§ 83.122. Application requirements.**

(a) An application for available funds shall be in writing and made on forms furnished by the Commission. An application shall be received by the deadline established by the Commission for filing applications.

(b) An application shall describe the problem (why the project is required), purpose and objectives, methods and procedure, summary of requirements—for example, projected completion dates, required personnel, special services, physical resources and estimated costs—and projected completion date for report of results.

(c) The Commission will execute an agreement with an approved applicant including the terms and conditions for completing work and a budget for submitting reimbursement claims. Reimbursable costs incurred by the applicant will include those items determined by the Department to be necessary to carry out the agreement.

**Source**

The provisions of this § 83.122 adopted July 4, 1986, effective July 5, 1986, 16 Pa.B. 2404; corrected May 13, 1994, effective February 10, 1990, 24 Pa.B. 2529; amended December 2, 1994, effective December 3, 1994, 24 Pa.B. 5987. Immediately preceding text appears at serial page (189756).

**§ 83.123. Procedures for allocating funds.**

(a) The Commission will determine the amount of funds available for funding under the Educational Assistance Funding Program.

(b) The Commission will give priority to an applicant who can demonstrate the institutional and financial capabilities to undertake the project in a timely fashion and for projects with the most potential for transference to other areas experiencing similar problems.

(c) The Commission may reallocate funds if the project or program component cannot be completed or is abandoned.

**Source**

The provisions of this § 83.123 adopted July 4, 1986, effective July 5, 1986, 16 Pa.B. 2404; amended December 2, 1994, effective December 3, 1994, 24 Pa.B. 5987. Immediately preceding text appears at serial page (189756).

**§ 83.124. Reporting requirements.**

(a) A project sponsor shall report program accomplishments in a manner prescribed in the agreement.

(b) Claims for reimbursement shall be submitted to the Commission in accordance with the schedule outlined in the agreement. The claims shall show the utilization of funds in accordance with the budget outlined in the agreement.

(c) The Commission reserves the right to audit Federal and State related accounts and records to determine if funds were expended in conformance with the agreement.

(d) Records shall be retained for 3 years following last payment from the Commission.

(e) A project sponsor shall maintain a separate accounting system for funds received under the Educational Assistance Funding Program.

**Source**

The provisions of this § 83.124 adopted July 4, 1986, effective July 5, 1986, 16 Pa.B. 2404; corrected May 13, 1994, effective February 10, 1990, 24 Pa.B. 2529; amended December 2, 1994, effective December 3, 1994, 24 Pa.B. 5987. Immediately preceding text appears at serial page (189757).

**§ 83.125. Reimbursement procedures.**

(a) The Commission will not process a program claim for reimbursement until all reports related to the program claim are received in the Commission's office.

(b) The Commission will not process a final claim for reimbursement under the agreement until the conditions of the agreement have been met and are acceptable to the Commission.

(c) Claims for reimbursement shall be filed with the Commission within 15 days of dates prescribed in the agreement showing the utilization of funds in accordance with the approved budget.

(d) Acceptable reimbursement claims submitted in compliance with subsections (a)—(c) will be forwarded by the Commission to the comptroller for payment within 15 working days after the claim is received in the Commission office.

**Source**

The provisions of this § 83.125 adopted July 4, 1986, effective July 5, 1986, 16 Pa.B. 2404; amended December 2, 1994, effective December 3, 1994, 24 Pa.B. 5987. Immediately preceding text appears at serial page (189757).

**TECHNICAL ASSISTANCE FUNDING PROGRAM**

**§ 83.131. General requirements.**

(a) This program is known as the Technical Assistance Funding Program (Program).

(b) Funds allocated under this Program shall be utilized solely for implementing the Program established by the Commission.

(c) Funds allocated to districts or others shall be utilized only to employ technical personnel, obtain technical services or to acquire technical equipment and supplies, for the purpose of implementing the Program.

(d) Technical personnel shall be the employes of the district, agency and cooperating organizations, and not the employes of the Commission or Department. A technical person employed under this funding program by a district shall receive general supervision from a district director or an employe of the district designated by the board of directors.

(e) The Commission will pay the cost of employment for the technical personnel at a cost-share rate to be determined by the Commission. The rate established may not be exceeded even when a technical person is employed by more than one district. The total cost of employment shall include salary and salary-related expenses such as social security, worker's compensation, health plans and retirement.

(f) Not more than one technical position may be cost-shared per district under this Program unless the Commission determines that adequate funds are available and sufficient technical needs exist within the district for additional technical personnel.

(g) Technical personnel funded to agencies and cooperating organizations other than districts shall be the employes of those agencies and cooperating organizations under the terms and conditions agreed to between the Commission and the agencies and cooperating organizations.

(h) Technical equipment and nonexpendable supplies purchased by districts, agencies and cooperating organizations under the agreement shall be the property of the Commonwealth unless otherwise determined by the agreement.



(i) Eligibility for this Program is limited to the Program area as defined under § 83.102 (relating to definitions).

**Source**

The provisions of this § 83.131 adopted July 4, 1986, effective July 5, 1986, 16 Pa.B. 2404; amended December 2, 1994, effective December 3, 1994, 24 Pa.B. 5987. Immediately preceding text appears at serial page (189758).

**Cross References**

This section cited in 25 Pa. Code § 83.104 (relating to annual notice).

**§ 83.132. Application requirements.**

(a) An application for available funds shall be in writing on forms furnished by the Commission. An application shall be received by the deadline established by the Commission for filing the applications.

(b) An application shall describe the problem (why the project is required), purpose and objectives, methods and procedure, summary of requirements—for example, projected completion dates, required personnel, including time allotted for expected work tasks, special services, physical resources and estimated costs—and projected completion date for report of results.

(c) The Commission will execute an agreement with an approved applicant including the terms and conditions for completing work and a budget for submitting reimbursement claims or request for advance payments. Eligible costs incurred by the applicant will include those items determined by the Department to be necessary to carry out the agreement.

**Source**

The provisions of this § 83.132 adopted July 4, 1986, effective July 5, 1986, 16 Pa.B. 2404; corrected May 13, 1994, effective February 10, 1990, 24 Pa.B. 2529; amended December 2, 1994, effective December 3, 1994, 24 Pa.B. 5987; amended March 21, 1997, effective March 22, 1997, 27 Pa.B. 1472. Immediately preceding text appears at serial page (194049).

**§ 83.133. Procedures for allocating funds.**

(a) The Commission will determine the amount of funds available for funding under the Technical Assistance Funding Program.

(b) Priority for funding may be given to project areas if no other technicians have been funded by other Commission programs.

(c) The Commission may reallocate funds if an agreement cannot be fulfilled by the district, agency and cooperating organization.

**Source**

The provisions of this § 83.133 adopted July 4, 1986, effective July 5, 1986, 16 Pa.B. 2404; amended December 2, 1994, effective December 3, 1994, 24 Pa.B. 5987. Immediately preceding text appears at serial page (189759).

**§ 83.134. Reporting requirements.**

(a) Project sponsors shall report program accomplishments to the Commission in a manner prescribed in the agreement.

(b) Claims for reimbursement or requests for advance payments shall be submitted to the Commission in accordance with the schedule outlined in the agreement. The claims shall show the utilization of funds. Advance payments will be based on demonstrated need in accordance with the budget outlined in the agreement.

(c) The Commission reserves the right to audit Federal and State project related accounts and records to determine if funds are expended in conformance with the agreement.

(d) Records shall be retained for 3 years following the last payment from the Commission.

(e) A project sponsor shall maintain a separate accounting system for funds received under the Technical Assistance Funding Program.

**Source**

The provisions of this § 83.134 adopted July 4, 1986, effective July 5, 1986, 16 Pa.B. 2404; amended December 2, 1994, effective December 3, 1994, 24 Pa.B. 5987; amended March 21, 1997, effective March 22, 1997, 27 Pa.B. 1472. Immediately preceding text appears at serial page (194050).

**§ 83.135. Reimbursement procedures and advance payments.**

(a) The Commission will not process a program claim for reimbursement or request for advance payment until all reports related to the program are received in the Commission's office.

(b) The Commission will not process a final claim for reimbursement under the agreement until the conditions of the agreement have been met and are acceptable to the Commission. No advancement of funds will be made until final approval of the previous quarterly report of expenditures is given by the Department.

(c) Claims for reimbursement or requests for advance funds shall be filed with the Commission within 15 days of the date prescribed in the agreement showing the utilization of funds in accordance with the approved budget.

(d) Acceptable reimbursement claims or requests for advance funds submitted in compliance with subsections (a)—(c) will be forwarded by the Commission to the comptroller for payment within 15 working days after the claim or request is received in the Commission office.

**Source**

The provisions of this § 83.135 adopted July 4, 1986, effective July 5, 1986, 16 Pa.B. 2404; amended December 2, 1994, effective December 3, 1994, 24 Pa.B. 5987; amended March 21, 1997, effective March 22, 1997, 27 Pa.B. 1472. Immediately preceding text appears at serial page (194050).

**FINANCIAL ASSISTANCE FUNDING PROGRAM****§ 83.141. General requirements.**

(a) This program is known as the Financial Assistance Funding Program (Program).

(b) Eligibility for this Program is limited to the program area. Funding may be designated by the Commission to specific areas of high priority based upon detailed watershed assessments and landowners surveys or district prioritization of landowners for Program participation on forms provided by the Commission. Eligible landowners shall become cooperators with the district within an approved watershed and shall consent to the development of a nutrient management program.

(c) BMPs eligible for cost sharing shall be nutrient management measures and associated erosion and water control measures necessary to provide a nutrient management program. Approved practices shall be from the list of BMPs approved by the Commission. A nutrient management system may consist of a single practice or several practices installed over more than 1 year. BMPs will be cost shared on a one-time basis except for soil and manure testing analysis. Certain failed BMPs may be cost shared more than one time at the discretion of the Commission.

(d) Technical equipment and nonexpendable supplies purchased by districts, agencies and cooperating organizations under the agreement shall be the property of the Commonwealth unless otherwise determined by the agreement.

**Source**

The provisions of this § 83.141 adopted July 4, 1986, effective July 5, 1986, 16 Pa.B. 2404; amended December 2, 1994, effective December 3, 1994, 24 Pa.B. 5987. Immediately preceding text appears at serial pages (189760) to (189761).

**§ 83.142. Application requirements.**

(a) The distribution of cost-share funds shall be based on the best available information and knowledge of potential agriculture-related pollution. This information may be developed by surveys, studies or sampling of field conditions by the Commission or by districts or by data supplied by cooperating Federal and State agencies.

(b) The Commission will execute an agreement with a participating district specifying the terms and conditions for receiving and distributing cost-share funds, including advance payments, if requested, and a schedule of reporting progress on installing BMPs. Allowable reimbursable items for administering the program by the district will include those items determined by the Department to be necessary to carry out the agreement.

**Source**

The provisions of this § 83.142 adopted July 4, 1986, effective July 5, 1986, 16 Pa.B. 2404; corrected May 13, 1994, effective February 10, 1990, 24 Pa.B. 2529; amended December 2, 1994, effective December 3, 1994, 24 Pa.B. 5987. Immediately preceding text appears at serial page (189761).

**§ 83.143. Procedures for allocating funds.**

- (a) The Commission will determine the amount of funds available for funding under the Financial Assistance Funding Program.
- (b) An allocation will be made to districts based on criteria established by the Commission including the following:
  - (1) Uncommitted cost share funds already available within the district.
  - (2) Cost share funds within the district remaining to be spent.
  - (3) Landowner interest in the program.
- (c) The Commission may reallocate funds if a district cannot commit allocated funds within the term of the agreement.

**Source**

The provisions of this § 83.143 adopted July 4, 1986, effective July 5, 1986, 16 Pa.B. 2404; amended December 2, 1994, effective December 3, 1994, 24 Pa.B. 5987. Immediately preceding text appears at serial pages (189761) to (189762).

**Cross References**

This section cited in 25 Pa. Code § 83.144 (relating to payments).

**§ 83.144. Payments.**

- (a) The Department may advance funds on a quarterly basis to a district for the purpose of providing the State's share for installation of BMPs.
- (b) Advanced payments will be based on demonstrated need as documented on Commission-provided forms not to exceed the allocations developed in § 83.143(b) (relating to procedures for allocating funds).
- (c) Payments will include administrative costs of the district as determined by the Department necessary for the administration of the Financial Assistance Funding Program. Payments for administrative costs shall be limited to 10% of the total allocation. The 10% will be added to the allocation to districts for providing administrative support to carry out the Financial Assistance Funding Program.
- (d) No advancement of funds will be made until final approval is made by the Department of the previous quarterly report of expenditures.

**Source**

The provisions of this § 83.144 adopted July 4, 1986, effective July 5, 1986, 16 Pa.B. 2404; corrected May 13, 1994, effective February 10, 1990, 24 Pa.B. 2529; amended December 2, 1994, effective December 3, 1994, 24 Pa.B. 5987. Immediately preceding text appears at serial page (189762).

**Cross References**

This section cited in 25 Pa. Code § 83.147 (relating to procedures).

**§ 83.145. District responsibilities.**

(a) The district is encouraged to enter into an agreement with the county committee of the ASCS to outline the tasks and responsibilities of a party to effectively administer State cost-share funds consistent with the Agricultural Nonpoint Source Abatement Program for the Chesapeake Bay and to maximize the use of State and Federal funds.

(b) The district is encouraged to develop a fair and open project selection process that includes sign-up periods as necessary to receive requests for BMP installation from eligible landowners. Special efforts will be made to enlist the cooperation of landowners with identified critical problems. Landowner applications shall be prioritized for project selection based on criteria established by the Commission. Criteria established by the Commission shall include: the existence of identified water quality problems from agricultural nonpoint sources; high potential for pollution on the farm; and probability that significant reductions in nutrients can be achieved through the implementation of acceptable BMPs. A district may utilize its own prioritization form provided it addresses the criteria established by the Commission.

(c) The format of supplemental agreements between the districts and ASCS and between the districts and landowners shall be approved by the Commission.

(d) Technical responsibilities for needs determination, practice design and layout are assigned to the district. The district should utilize the technical services of the SCS, Cooperative Extension Service or other cooperating Federal and State agencies in developing this information where available.

(e) BMP completion will be certified for landowners by the designated technical agency.

(f) Upon proper determination of practice completion, including copies of appropriate invoices for materials, supplies and labor, as required by the Commission, the district will disperse cost-share funds to eligible landowners. Reimbursement shall be paid from amounts advanced quarterly by the Commission for this purpose and may exceed except as provided in § 83.148 (relating to additional funding for failed BMPs) neither a maximum of 80% total combined State and Federal funding from all sources for each practice nor a total of \$30,000 Financial Assistance Funding Program State funding per landowner. Reimbursement shall be made by districts to landowners within 30 days following receipt of accurate documentation that shows appropriate receipts, completion certification and technical certification, if necessary, that BMPs have been installed according to specification.

(g) The district shall conduct an annual audit of programs in accordance with section 2(a)(7) of the Single Audit Act of 1984 (31 U.S.C.A. § 7501(7)).

(h) The district shall adhere to the “Administrative Manual for the PA Chesapeake Program” developed by the Department to provide uniformity and consistency in the administration of the program.

**Source**

The provisions of this § 83.145 adopted July 4, 1986, effective July 5, 1986, 16 Pa.B. 2404; amended September 29, 1989, effective July 5, 1989, 19 Pa.B. 4220; amended December 2, 1994, effective December 3, 1994, 24 Pa.B. 5987. Immediately preceding text appears at serial pages (189762) to (189763).

**Cross References**

This section cited in 25 Pa. Code § 83.148 (relating to additional funding for failed BMP’s).

**§ 83.146. Agreements.**

- (a) An agreement is required between a district and a landowner.
- (b) An agreement shall provide that if the landowner does not implement and maintain the nutrient management program as planned, the landowner shall refund to the district at the discretion of the district, all or a portion of Financial Assistance Funding Program State cost-share monies already earned under the agreement. Refunds are not required following the destruction or discontinuance of a BMP or combination of BMPs caused by one of the following:
  - (1) An act of God or other conditions beyond the landowner’s control.
  - (2) A change in land use if the landowner installs and maintains another BMP or combination of BMPs that provide comparable nutrient-erosion control benefits for the same area previously served by the cost-shared practice.
- (c) The term of the agreement shall cover the life of BMPs implemented under the agreement.
- (d) The landowner may request Commission review of a determination by a district under this section.

**Source**

The provisions of this § 83.146 adopted July 4, 1986, effective July 5, 1986, 16 Pa.B. 2404; amended December 2, 1994, effective December 3, 1994, 24 Pa.B. 5987. Immediately preceding text appears at serial pages (189763) to (189764).

**Cross References**

This section cited in 25 Pa. Code § 83.149 (relating to special requirements).

**§ 83.147. Reporting procedures.**

- (a) The district shall report program accomplishments quarterly to the Commission on prescribed forms. Copies of cost verification forms used to reimburse landowners for BMP installation shall be forwarded to the Commission showing the utilization of advanced payments. This district shall include an itemized accounting of administrative costs claimed under § 83.144(c) (relating to payments).

(b) The district shall maintain a separate accounting system for funds received under the Financial Assistance Funding Program. Districts shall deposit advanced funds in a Federally insured interest bearing account. Interest earnings from the account shall be applied only to the Chesapeake Bay Program or returned to the Commonwealth.

(c) The Commission reserves the right to audit Federal and State related accounts.

(d) Records shall be retained by districts for 3 years beyond the district's participation in the Financial Assistance Funding Program.

#### Source

The provisions of this § 83.147 adopted July 4, 1986, effective July 5, 1986, 16 Pa.B. 2404; amended December 2, 1994, effective December 3, 1994, 24 Pa.B. 5987. Immediately preceding text appears at serial page (189764).

### § 83.148. Additional funding for failed BMPs.

(a) The Commission may disperse additional Financial Assistance Funding Program funds in excess of the \$30,000 per landowner State fund limit set forth in § 83.145(f) (relating to district responsibilities).

(b) The additional funds shall be used solely for the correction of BMPs that fail to perform as intended due to design errors or other errors in judgment by district engineers, district technicians, SCS engineers or SCS technicians while overseeing the construction of a BMP. The Commission may fund up to 100% of the costs to reconstruct or repair the BMP, whichever is less. The Commission will not fund the repair or reconstruction of a failed BMP caused by experimental or nonstandard design or construction.

(c) The Department will appoint a fact-finding team comprised of representatives of SCS, the Department and the affected district to investigate and determine the reason for failure of a BMP and its eligibility for additional funding for appropriate corrective measures.

(d) The Commission will prepare an annual report indicating the number of BMP investigations conducted, the kinds of corrective measures instituted and the number, cost and county location of restored practices.

#### Source

The provisions of this § 83.148 adopted July 4, 1986, effective July 5, 1986, 16 Pa.B. 2404; amended December 2, 1994, effective December 3, 1994, 24 Pa.B. 5987. Immediately preceding text appears at serial page (189764).

#### Cross References

This section cited in 25 Pa. Code § 83.145 (relating to district responsibilities).

**§ 83.149. Special requirements.**

The Commission may conduct periodic inspections of BMPs to determine compliance with practice specifications and to assure that a nutrient management program has been installed. The district shall return State funds to the Commission or the Commission will deduct the funds from future advances if landowners do not fulfill program requirements, except as provided under § 83.146(b) (relating to agreements).

**Source**

The provisions of this § 83.149 adopted December 2, 1994, effective December 3, 1994, 24 Pa.B. 5987.

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#### Authority

The provisions of this Subchapter D issued under section 4(1) of the Nutrient Management Act (3 P. S. § 1704(1)); section 4 of the Conservation District Law (3 P. S. § 852); and section 503(d) of the Conservation and Natural Resources Act (71 P. S. § 1340.503(d)), unless otherwise noted.

#### Source

The provisions of this Subchapter D adopted June 27, 1997, effective October 1, 1997, 27 Pa.B. 3161, unless otherwise noted.

#### Cross References

This subchapter cited in 7 Pa. Code § 130b.2 (relating to definitions); 7 Pa. Code § 130e.2 (relating to definitions); 7 Pa. Code § 130e.5 (relating to authority, duties and prohibitions); 7 Pa. Code § 130e.31 (relating to determination of competence); 7 Pa. Code § 130e.41 (relating to determination of competence); 25 Pa. Code § 83.704 (relating to relation to subchapter D (relating to nutrient management regulations)); 25 Pa. Code § 83.721 (relating to applicant eligibility); 25 Pa. Code § 91.1 (relating to definitions); 25 Pa. Code § 91.36 (relating to pollution control and prevention at agricultural operations); 25 Pa. Code § 92a.29 (relating to CAFO); and 25 Pa. Code § 96.8 (relating to use of offsets and tradable credits from pollution reduction activities in the Chesapeake Bay Watershed).

### GENERAL PROVISIONS

#### § 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.

#### Source

The provisions of this § 83.201 amended June 2, 2006, effective October 1, 2006, 36 Pa.B. 2636. Immediately preceding text appears at serial pages (316145) to (316146) and (315385) to (315386).

#### Cross References

This section cited in 7 Pa. Code § 130e.2 (relating to definitions).

### § 83.202. Scope.

This subchapter specifies criteria and requirements for:

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

(2) The construction, location, design, installation and operation of animal manure storage facilities on NMP operations.

(3) Manure handling in emergency situations when there is an outbreak of a contagious disease that poses a threat to animal or human health.

(4) The awarding of financial assistance under the act for the implementation of plans for existing agricultural operations.

(5) The awarding of incentives for the development of plans under the Plan Development Incentives Program in §§ 83.211—83.216.

#### Source

The provisions of this § 83.202 amended June 2, 2006, effective October 1, 2006, 36 Pa.B. 2636. Immediately preceding text appears at serial page (315386).



**§ 83.203. Purpose.**

The purposes of this subchapter are to:

- (1) Assure the proper utilization and management of nutrients on CAOs, VAOs and operations required to develop compliance plans under section 506(j) of the act (relating to nutrient management plans).
- (2) Assure the proper utilization and management of nutrients when manure is exported off of the operations described in paragraph (1).
- (3) Protect the quality of surface water and groundwater.

**Source**

The provisions of this § 83.203 amended June 2, 2006, effective October 1, 2006, 36 Pa.B. 2636. Immediately preceding text appears at serial page (315386).

**§ 83.204. [Reserved].****Source**

The provisions of this § 83.204 reserved June 2, 2006, effective October 1, 2006, 36 Pa.B. 2636. Immediately preceding text appears at serial pages (315386) and (233481).

**§ 83.205. Preemption of local ordinances.**

(a) The act and this subchapter are of Statewide concern and occupy the whole field of regulation regarding nutrient management to the exclusion of all local regulations.

(b) After October 1, 1997, no ordinance or regulation of any political subdivision or home rule municipality may prohibit or in any way regulate practices related to the storage, handling or land application of animal manure or nutrients or to the construction, location or operation of facilities used for storage of animal manure or nutrients or practices otherwise regulated by the act or this subchapter if the municipal ordinance is in conflict with the act and this subchapter.

(c) Nothing in the act or this subchapter prevents a political subdivision or home rule municipality from adopting and enforcing ordinances or regulations which are consistent with and no more stringent than the requirements of the act and this subchapter.

(d) No penalty will be assessed under any valid local ordinance or regulation for any violation for which a penalty has been assessed under the act or this subchapter.

**Source**

The provisions of this § 83.205 amended June 2, 2006, effective October 1, 2006, 36 Pa.B. 2636. Immediately preceding text appears at serial page (233481).

**§ 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.

**Source**

The provisions of this § 83.206 amended June 2, 2006, effective October 1, 2006, 36 Pa.B. 2636. Immediately preceding text appears at serial page (233481).

**Cross References**

This section cited in 25 Pa. Code § 83.362 (relating to plan 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.

**PLAN DEVELOPMENT AND PLAN MAINTENANCE  
INCENTIVES PROGRAMS****§ 83.211. Applicant eligibility.**

(a) To be eligible to apply for financial assistance for nutrient management plan development or plan maintenance, a person shall meet the following criteria.

(1) In addition to seeking financial assistance for the implementation of a nutrient management plan under §§ 83.221—83.233 (relating to financial assistance), an NMP operation seeking to submit a nutrient management plan for the first time under the act, may apply for funding under the Plan Development Incentives Program for the development of a nutrient management plan by a certified plan writer.

(2) In addition to seeking financial assistance for the implementation of a nutrient management plan under §§ 83.221—83.233, an NMP operation seeking to amend an existing nutrient management plan approved prior to October 1, 2006, may apply for funding under the Plan Development Incentives Program for the development of the amendment to the existing approved plan by a certified nutrient management plan writer.

(3) In addition to seeking financial assistance for the implementation of a nutrient management plan under §§ 83.221—83.233, an NMP operation seeking to update or amend an approved nutrient management plan meeting the requirements of this revised subchapter, may apply for funding under the Plan Maintenance Incentives Program for the development of a nutrient management plan update or amendment by a certified nutrient management plan writer.

(b) Agricultural operations existing as of October 1, 2006, and are or will be producing or utilizing livestock or poultry manure or both on their operation, are eligible to receive funding under this subchapter.

(c) NMP operations that are in violation of the nutrient management plan submission requirements, or any other requirements of an existing nutrient management plan, the act, or this chapter, will not be eligible for funding under the Plan Development Incentives Program or the Plan Maintenance Incentives Program.

(d) NMP operations having an approved plan prior to October 1, 2006, that are in compliance with that plan and the act are eligible to receive funding under the Plan Development Incentives Program to amend the plan to meet the requirements of this revised subchapter.

(e) Only those agricultural operations having an approved nutrient management plan meeting the requirements of this revised subchapter shall be eligible to receive funding under the Plan Maintenance Incentives Program.

#### Source

The provisions of this § 83.211 amended June 2, 2006, effective October 1, 2006, 36 Pa.B. 2636. Immediately preceding text appears at serial page (233482).

#### Cross References

This section cited in 25 Pa. Code § 83.502 (relating to definitions); and 25 Pa. Code § 83.521 (relating to general).

### § 83.212. Application procedure.

(a) An application for funding from the Plan Development Incentives Program or Plan Maintenance Incentives Program shall be made on forms developed by the Commission and shall be addressed to the Commission or delegated conservation district.

(b) An application received by the Commission or delegated conservation district will be reviewed for completeness, eligibility and the appropriate level of funding.

(c) If the application is determined to be incomplete, the Commission, or delegated conservation district, will provide the applicant with a written explanation of the reason for the determination, and request the additional information needed to complete the application process.

(d) The Commission or delegated conservation district will approve or disapprove each application submitted. Within 45 days of receipt of the required information, applicants will be notified in writing of actions taken on their applications and their rights to appeal the actions.

(e) If the approval of applications for funding from the Plan Development Incentives Program or Plan Maintenance Incentives Program is delegated to a county conservation district under § 83.241 (relating to delegation to local agencies), actions of conservation districts shall be deemed actions of the Commission

unless an applicant aggrieved by an action of a conservation district seeks Commission review of the action within 30 days from actual or constructive notice of the action.

(f) The applicant may appeal a decision of the Commission to the EHB as provided for in section 517 of the act (relating to appealable actions).

#### Source

The provisions of this § 83.212 amended June 2, 2006, effective October 1, 2006, 36 Pa.B. 2636. Immediately preceding text appears at serial pages (233482) to (233483).

#### Cross References

This section cited in 25 Pa. Code § 83.502 (relating to definitions); and 25 Pa. Code § 83.521 (relating to general).

### § 83.213. Application prioritization criteria.

(a) The distribution of funding under the Plan Development Incentives Program shall be provided to the extent funds are available based on the following prioritization:

- (1) Agricultural operations newly classified as CAOs due to the revised criteria established in this amended subchapter.
- (2) CAOs amending a plan approved prior to October 1, 2006, to conform with the revised program criteria.
- (3) CAOs coming into existence after October 1, 2006, due to loss of rented acres.
- (4) VAOs amending a plan approved prior to October 1, 2006, to conform with the revised program criteria.
- (5) VAOs submitting a plan under the act.
- (6) Other CAOs coming into existence after October 1, 2006.

(b) The distribution of funding under the Plan Maintenance Incentives Program will be provided to the extent funds are available based on the following prioritization:

- (1) CAOs developing plan updates or amendments.
- (2) VAOs developing plan updates or amendments.
- (3) Other NMP operations developing plan updates or amendments.

#### Source

The provisions of this § 83.213 amended June 2, 2006, effective October 1, 2006, 36 Pa.B. 2636. Immediately preceding text appears at serial page (233483).

#### Cross References

This section cited in 25 Pa. Code § 83.502 (relating to definitions); and 25 Pa. Code § 83.521 (relating to general).

**§ 83.214. Eligible costs.**

(a) Eligible costs considered by the Commission under the Plan Development Incentives Program are those fees incurred for the development of the initial nutrient management plan or the amendment of a nutrient management plan approved prior to October 1, 2006, to conform with the revised program criteria.

(b) Eligible costs considered by the Commission under the Plan Maintenance Incentives Program are those fees incurred for the development of an update or amendment to a nutrient management plan meeting the requirements of this revised subchapter.

(c) Costs of soil and manure tests (not including labor costs) for initial plan development, or for developing the amended or updated plan as described in subsections (a) and (b), are eligible for reimbursement.

**Source**

The provisions of this § 83.214 amended June 2, 2006, effective October 1, 2006, 36 Pa.B. 2636. Immediately preceding text appears at serial page (233483).

**Cross References**

This section cited in 25 Pa. Code § 83.502 (relating to definitions); and 25 Pa. Code § 83.521 (relating to general).

**§ 83.215. Funding limitations.**

(a) The Commission will limit individual awards in the amounts it deems appropriate for the particular classification of operation.

(b) Funding under the Plan Development Incentives Program will be limited to a one-time reimbursement payment for initial plan development costs incurred after the eligible agricultural operator's application has been approved, and as a one-time reimbursement payment for a nutrient management plan amendment of a plan approved prior to October 1, 2006, to conform with the revised program criteria.

(c) Funding under the Plan Maintenance Incentives Program will be limited to one payment annually for updating or amending an approved nutrient management plan meeting the requirements of this revised subchapter.

(d) Funding under both the Plan Development Incentives Program and the Plan Maintenance Incentives Program will not be available for planning efforts initiated prior to approval of the request for participation in the program.

**Source**

The provisions of this § 83.215 amended June 2, 2006, effective October 1, 2006, 36 Pa.B. 2636. Immediately preceding text appears at serial page (233483).

**Cross References**

This section cited in 25 Pa. Code § 83.502 (relating to definitions); and 25 Pa. Code § 83.521 (relating to general).

**§ 83.216. Implementation and reporting.**

(a) The Commission will develop implementation and reporting documents defining the terms and conditions under which funding under each program will be provided and other documents determined to be necessary by the Commission.

(b) Only plans or plan updates and amendments meeting the requirements of this revised subchapter will be eligible for reimbursement under this program.

(c) The recipient of a Plan Development Incentives Program or a Plan Maintenance Incentives Program award shall maintain financial records for 3 years to substantiate reimbursement expenditures covered by this subchapter.

**Source**

The provisions of this § 83.216 amended June 2, 2006, effective October 1, 2006, 36 Pa.B. 2636. Immediately preceding text appears at serial page (233484).

**Cross References**

This section cited in 25 Pa. Code § 83.502 (relating to definitions); and 25 Pa. Code § 83.521 (relating to general).

**FINANCIAL ASSISTANCE****§ 83.221. Applicant eligibility.**

(a) An owner of an agricultural operation existing as of October 1, 2006, may apply for financial assistance for the implementation of plans developed under the act. The owner shall have legal and financial responsibility for the agricultural operation during the term of the financial assistance provided by the Commission.

(b) Existing CAOs required to implement BMPs to conform with the revised criteria of this subchapter are eligible for financial assistance for the implementation of the BMPs.

(c) New agricultural operations coming into existence after October 1, 2006, are not eligible for financial assistance for the implementation of their approved plan, including the BMPs in the plan.

(d) Existing NMP operations having an approved nutrient management plan that are currently or were in violation of the plan submission requirements or any other requirements of this act prior to October 1, 2006, are not eligible for funding under this program.

(e) Existing agricultural operations expanding to become a CAO after October 1, 2006, are not eligible for financial assistance for the implementation of their approved plan, including the BMPs in the plan.

(f) Only those agricultural operations having over eight AEU's are eligible to receive financial assistance for the implementation of their approved plan, including the BMPs in the plan.

**Source**

The provisions of this § 83.221 amended June 2, 2006, effective October 1, 2006, 36 Pa.B. 2636. Immediately preceding text appears at serial page (233484).

**Cross References**

This section cited in 25 Pa. Code § 83.211 (relating to applicant eligibility); and 25 Pa. Code § 83.233 (relating to delegation of financial assistance).

**§ 83.222. Condition for receipt of financial assistance.**

(a) An agricultural operation approved to receive financial assistance under the Chesapeake Bay Nonpoint Source Pollution Abatement Program after October 1, 2006, or otherwise receiving financial assistance under the act for plans, shall agree to develop and implement a plan as a condition for receiving the financial assistance.

(b) A recipient of financial assistance under this subchapter shall be obligated to maintain the BMPs funded by the financial assistance and continue to implement and adhere to the provisions of the plan, the act and this chapter for 10 years following receipt of the funds.

**Source**

The provisions of this § 83.222 amended June 2, 2006, effective October 1, 2006, 36 Pa.B. 2636. Immediately preceding text appears at serial page (233484).

**Cross References**

This section cited in 25 Pa. Code § 83.211 (relating to applicant eligibility); and 25 Pa. Code § 83.233 (relating to delegation of financial assistance).

**§ 83.223. Financial assistance eligibility criteria.**

(a) The Commission will consider the following criteria in reviewing applications for financial assistance:

- (1) Whether the project will improve the health, safety or environment of the people of this Commonwealth and otherwise satisfy the purposes of the act and this subchapter.
- (2) The long-term financial or operational viability, or both, of the agricultural operation.
- (3) The cost effectiveness of the proposed BMPs in comparison with other alternatives.
- (4) The applicant's ability to operate and maintain the BMPs in a proper manner.

(b) Only those BMPs listed in an approved plan or plan amendment are eligible to receive funding under the plan implementation category of the Financial Assistance Program.

**Cross References**

This section cited in 25 Pa. Code § 83.211 (relating to applicant eligibility); 25 Pa. Code § 83.232 (relating to implementation and reporting); and 25 Pa. Code § 83.233 (relating to delegation of financial assistance).

**§ 83.224. Project evaluation and prioritization criteria.**

(a) Applications for financial assistance will be evaluated in accordance with project evaluation criteria guidelines developed by the Commission.

(b) Applications for financial assistance will be prioritized for consideration as follows:

- (1) CAOs in compliance with the act and properly implementing a plan approved prior to October 1, 2006, which, due to the revisions to the regulations, are required to implement additional practices to meet the new criteria.
- (2) Existing agricultural operations newly classified as CAOs due to the revised criteria established in this amended subchapter.
- (3) Existing agricultural operations that become CAOs after October 1, 2006, due to loss of rented acres.
- (4) VAOs having an approved plan as of October 1, 2006.
- (5) Other agricultural operations in existence as of October 1, 2006.

**Source**

The provisions of this § 83.224 amended June 2, 2006, effective October 1, 2006, 36 Pa.B. 2636. Immediately preceding text appears at serial page (232345).

**Cross References**

This section cited in 25 Pa. Code § 83.211 (relating to applicant eligibility); and 25 Pa. Code § 83.233 (relating to delegation of financial assistance).

**§ 83.225. Application procedure.**

(a) An application for financial assistance shall be made on forms approved by the Commission and shall be addressed to the Commission or a delegated agent.

(b) An application received by the Commission or delegated agent will be reviewed for completeness and eligibility. An application must include a copy of the approved plan which identifies the proposed BMPs for which financial assistance is being requested.

(c) If the application is determined to be incomplete, the Commission or a delegated agent will provide the applicant with a written explanation of the reasons for the determination, and request the additional information needed to complete the application process.

(d) Within 60 days of receipt of all required information, applicants will be notified in writing of actions taken on their applications and any right to appeal the actions.



(e) The applicant may appeal a decision of the Commission to the EHB as provided for in section 517 of the act (relating to appealable actions).

**Source**

The provisions of this § 83.225 amended June 2, 2006, effective October 1, 2006, 36 Pa.B. 2636. Immediately preceding text appears at serial pages (232345) to (232346).

**Cross References**

This section cited in 25 Pa. Code § 83.211 (relating to applicant eligibility); and 25 Pa. Code § 83.233 (relating to delegation of financial assistance).

**§ 83.226. Eligible costs for the implementation of an approved plan.**

(a) Eligible project costs considered by the Commission shall be the costs necessary to implement the plan and may include the following:

(1) Project design and engineering including plans, specifications, cost estimates, certifications and surveys.

(2) Costs associated with obtaining the financial assistance and may include loan origination or loan application fees, or both, title fees and filing fees.

(3) Project construction, including labor, materials, machinery, equipment and site preparation associated with the project.

(4) Costs associated with the implementation of a cover cropping BMP, in response to the requirement contained under § 83.294(f)(5)(i) (relating to nutrient application procedures).

(5) Other costs the Commission has determined to be necessary.

(b) Funds encumbered or advanced for the project which are not used for eligible costs in the project shall be returned to the fund or account from which they originated for reallocation and use in the implementation of other plans.

(c) The Commission may consider alternative manure technology practices and equipment eligible to receive financial assistance under this subchapter if these practices or equipment are considered to be effective in addressing nutrient management issues on the agricultural operation. Financial assistance funding levels and limitations for these alternative practices and equipment will be established by the Commission. These eligible practices may be approved to service an individual operation or may service more than one operation if approved by the Commission. For multi-partnered projects, all farms providing manure for the project must agree to amend an existing plan or develop and implement a new approved nutrient management plan meeting the provisions of this subchapter.

**Source**

The provisions of this § 83.226 amended June 2, 2006, effective October 1, 2006, 36 Pa.B. 2636. Immediately preceding text appears at serial page (232346).

**Cross References**

This section cited in 25 Pa. Code § 83.211 (relating to applicant eligibility).

**§ 83.227. Loans.**

(a) The Commission will issue loans and set applicable terms and conditions it deems appropriate. The Commission may consider factors it deems relevant, including the following:

- (1) Current market interest rates.
- (2) The financial ability of the applicant to repay.
- (3) The necessity to maintain the fund in a financially sound manner.

(b) Loans may be based on the ability to repay from future revenue to be derived from the applicant's agricultural operation. Loans may be secured by a mortgage or the security interest, or both, or by any other fiscal manner which the Commission deems appropriate. The minimum rate of interest to be paid on any loan made is 1%.

(c) The term of loans may not exceed 10 years from the day the loan agreements are executed.

(d) The Commission may defer the initiation of the repayment of principal up to 12 months from the date the loan agreements are executed. The borrower may begin principal and interest payments sooner than required, if the borrower so desires.

**Cross References**

This section cited in 25 Pa. Code § 83.211 (relating to applicant eligibility); and 25 Pa. Code § 83.233 (relating to delegation of financial assistance).

**§ 83.228. Loan guarantees.**

The Commission may make loan guarantees if the Commission determines that it is an appropriate method to accomplish the purposes of the act or this subchapter.

**Cross References**

This section cited in 25 Pa. Code § 83.211 (relating to applicant eligibility); and 25 Pa. Code § 83.233 (relating to delegation of financial assistance).

**§ 83.229. Grants.**

(a) A grant will be considered when funds have been made available to the Commission and the Commission determines that the financial condition of the recipient is such that the repayment of a loan is unlikely and that the recipient will be financially distressed by the implementation of BMPs without a grant.

(b) The Commission may limit individual grant awards to whatever amount it deems appropriate. The maximum amount of a grant may not exceed those maximum grant limits established by the Commission. An agricultural operation that has received or is approved to receive financial assistance under any local,

State, Federal or other financial assistance program may also be eligible for grants under the Nutrient Management Plan Implementation Grant Program up to the grant limit established by the Commission in grants from those combined sources and the Nutrient Management Plan Implementation Grant Program.

(c) A grant will be made subject to the terms and conditions the Commission establishes.

#### Source

The provisions of this § 83.229 amended June 2, 2006, effective October 1, 2006, 36 Pa.B. 2636. Immediately preceding text appears at serial page (232347).

#### Cross References

This section cited in 25 Pa. Code § 83.211 (relating to applicant eligibility); and 25 Pa. Code § 83.233 (relating to delegation of financial assistance).

### § 83.230. Grants and loans.

The Commission will, when it deems it appropriate and to the extent financial circumstances permit, mix grant funds with loan funds.

#### Cross References

This section cited in 25 Pa. Code § 83.211 (relating to applicant eligibility); and 25 Pa. Code § 83.233 (relating to delegation of financial assistance).

### § 83.231. Funding limitations.

(a) *Total funding limits.* Total assistance provided under loans, grants and loan guarantees for the implementation of a single plan may not exceed those funding limits established by the Commission.

(b) *Partial funding.* The Commission reserves the right to provide funding for only a portion of the total costs of the project or only a portion of the amount requested in a financial assistance application.

(c) *Least cost alternative.* Financial assistance provided may not exceed that amount necessary for the least-cost alternative for each BMP included.

(d) *Limitation.*

(1) Financial assistance will not be made available that might jeopardize or compromise the fund.

(2) Financial assistance will not be available for refinancing.

(3) Financial assistance will not be available for BMPs if construction is initiated prior to submission of an application for financial assistance, unless a letter of no prejudice has been issued by the Commission as provided in subsection (e).

(e) *Letters of no prejudice.* Exceptions to the general prohibition against initiation of construction prior to consideration by the Commission may be made when circumstances require immediate plan implementation to proceed before an application for financial assistance can be submitted to the Commission. Circum-

stances that would require immediate plan implementation and therefore appropriate for consideration by the Commission for a letter of no prejudice, must relate to acute failures or malfunctions of practices where immediate implementation is necessary to address significant environmental degradation. In this case, a potential applicant may apply to the Commission for a letter of no prejudice wherein the Commission agrees to consider a future application for financial assistance without limitation or prejudice even if project construction has begun at the time of the future application for financial assistance. The application for a letter of no prejudice must set forth, in detail, the exact reason or reasons a letter of no prejudice is necessary and should be granted. The application for and approval of a letter of no prejudice must occur prior to the start of project construction. If the Commission issues a letter of no prejudice, project construction can begin without jeopardizing or benefiting a future application.

#### Source

The provisions of this § 83.231 amended June 2, 2006, effective October 1, 2006, 36 Pa.B. 2636. Immediately preceding text appears at serial page (232348).

#### Cross References

This section cited in 25 Pa. Code § 83.211 (relating to applicant eligibility); and 25 Pa. Code § 83.233 (relating to delegation of financial assistance).

### § 83.232. Implementation and reporting.

(a) The Commission will develop financial assistance documents which will define the terms and conditions under which the financial assistance is offered and specify other documents determined to be necessary by the Commission.

(b) Unless otherwise approved by the Commission, the recipient of financial assistance under this subchapter shall begin construction of the project, in accordance with its approved application within 9 months of the Commission sending notice of approval of a grant or loan application. If the applicant does not begin implementation within the specified time period, does not continue work without unreasonable interruption or does not complete the project within the specified time period in the grant agreement, the financial assistance may be withdrawn by the Commission.

(c) Design and construction of BMPs must conform to the standards found in the *Pennsylvania Technical Guide*. The applicant may not significantly deviate from the scope, design or time schedule for a project unless prior written approval is given by the Commission or delegated agent. The term “scope,” as used in this subsection, means the extent of project activities determined by the Commission to be eligible for financial assistance.

(1) A request for significant changes in scope shall be submitted in writing to the Commission for approval. When changes in scope require a plan amendment under the criteria of § 83.371 (relating to plan amendments), the applicant shall provide a copy of the approved plan amendment.

(2) Funding eligibility for a change in scope will be based on the criteria described in § 83.223 (relating to financial assistance eligibility criteria). Consent of the Commission to a change in scope will not be deemed to increase the amount of financial assistance provided without the express approval of the Commission. Funding for changes in the scope of an assistance project will be approved only in the following circumstances:

(i) The change in scope is a result of new or revised requirements, Federal legislation, or a Federal regulation thereunder, State legislation or State regulation thereunder, the act, this subchapter, The Clean Streams Law (35 P. S. §§ 691.1—691.1001) or regulations thereunder.

(ii) The change in scope is necessary to protect the structural or process integrity of the facilities.

(iii) Adverse conditions are identified during the construction of the facilities which could not have been foreseen by the design engineer prior to encountering the condition.

(iv) The change is necessary to relieve emergency conditions occurring during construction of the facilities.

(d) A request for a disbursement of financial assistance must be on forms approved by the Commission, include a statement certifying the project was completed as planned, and be submitted on a schedule approved by the Commission.

(e) The applicant shall maintain project progress and financial records to substantiate expenditures, as well as plan implementation records as outlined in §§ 83.341—83.344 (relating to recordkeeping and informational requirements).

(f) If the applicant fails to comply with this section, the Commission may withdraw the remaining funds allocated to the project, as well as take other action which it is legally entitled to take.

#### Source

The provisions of this § 83.232 amended June 2, 2006, effective October 1, 2006, 36 Pa.B. 2636. Immediately preceding text appears at serial pages (232348) to (232350).

#### Cross References

This section cited in 25 Pa. Code § 83.211 (relating to applicant eligibility); and 25 Pa. Code § 83.233 (relating to delegation of financial assistance).

### § 83.233. Delegation of financial assistance.

(a) Under section 4(3) of the Conservation District Law (3 P. S. § 852(3)) and subject to this section, the Commission may by written agreement delegate to one or more agents the administration of the financial assistance provisions of this subchapter in §§ 83.221—83.232. The Commission will retain final approval authority for all applications for financial assistance.

(b) To the extent delegated by the agreement, the delegations may include the authority to review and make recommendations to the Commission on applica-

tions for financial assistance under the act and this subchapter and to exercise other powers and duties otherwise vested in the Commission to administer the Financial Assistance Program. The Commission will retain final approval authority for all applications for financial assistance received by a delegated agent.

(c) A delegation agreement shall:

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

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

(3) Require the delegated agent to maintain records of activities under the delegation.

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

(d) When the Commission delegates one or more of its powers and duties to an agent, the Commission will retain the concurrent power to administer the financial assistance provisions of this subchapter.

#### Cross References

This section cited in 25 Pa. Code § 83.211 (relating to applicant eligibility).

### DELEGATION TO LOCAL AGENCIES

#### § 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.

**Source**

The provisions of this § 83.241 amended June 2, 2006, effective October 1, 2006, 36 Pa.B. 2636. Immediately preceding text appears at serial pages (232350) to (232351).

**Cross References**

This section cited in 25 Pa. Code § 83.207 (relating to compliance assistance and enforcement); 25 Pa. Code § 83.212 (relating to application procedure); 25 Pa. Code § 83.361 (relating to initial plan review and approval); and 25 Pa. Code § 83.471 (relating to initial plan review and approval).

## COMPLIANCE PLANS

### § 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.

**Source**

The provisions of this § 83.251 amended June 2, 2006, effective October 1, 2006, 36 Pa.B. 2636. Immediately preceding text appears at serial page (232351).

**Cross References**

This section cited at 25 Pa. Code § 83.261 (relating to general).

## NUTRIENT MANAGEMENT PLANS

### § 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.

#### Source

The provisions of this § 83.261 amended June 2, 2006, effective October 1, 2006, 36 Pa.B. 2636. Immediately preceding text appears at serial pages (232351) to (232352).

#### Cross References

This section cited in 25 Pa. Code § 83.261 (relating to general); 25 Pa. Code § 83.272 (relating to content of plans); 25 Pa. Code § 83.281 (relating to identification of agricultural operations and acreage); and 25 Pa. Code § 83.311 (relating to manure management).

### § 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 × 2.3 lb. avg. wt. = 23,000 lb. total weight  
Step 2. 23,000 lb. total weight × 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  
Step 4. Total number of AEU on the agricultural operation is 16.25  
Step 5. 16.25 AEU divided by 7 acres of land suitable = 2.32 AEU per acre

**Source**

The provisions of this § 83.262 amended June 2, 2006, effective October 1, 2006, 36 Pa.B. 2636. Immediately preceding text appears at serial pages (232352) to (232355).

**Cross References**

This section cited in 25 Pa. Code § 83.261 (relating to general).

**CONTENT REQUIREMENTS FOR ALL PLANS**

**§ 83.271. Scope of plan.**

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

**Cross References**

This section cited in 25 Pa. Code § 83.201 (relating to definitions); 25 Pa. Code § 83.261 (relating to general); and 25 Pa. Code § 83.272 (relating to content of plans).

**§ 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.

**Source**

The provisions of this § 83.272 amended June 2, 2006, effective October 1, 2006, 36 Pa.B. 2636. Immediately preceding text appears at serial pages (232355) to (232356).

**Cross References**

This section cited in 25 Pa. Code § 83.201 (relating to definitions); 25 Pa. Code § 83.204 (relating to applicability of requirements); and 25 Pa. Code § 83.261 (relating to general).

**PLAN SUMMARY INFORMATION****§ 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, includ-

ing 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).

#### Source

The provisions of this § 83.281 amended June 2, 2006, effective October 1, 2006, 36 Pa.B. 2636. Immediately preceding text appears at serial page (232356).

#### Cross References

This section cited in 25 Pa. Code § 83.201 (relating to definitions); 25 Pa. Code § 83.261 (relating to general); and 25 Pa. Code § 83.272 (relating to content of plans).

### § 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.

#### Source

The provisions of this § 83.282 amended June 2, 2006, effective October 1, 2006, 36 Pa.B. 2636. Immediately preceding text appears at serial pages (232356) to (232357).

#### Cross References

This section cited in 25 Pa. Code § 83.201 (relating to definitions); 25 Pa. Code § 83.204 (relating to applicability of requirements); 25 Pa. Code § 83.261 (relating to general); and 25 Pa. Code § 83.272 (relating to content of plans).

## NUTRIENT APPLICATION

### § 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  $\text{NH}_4\text{-N}$ ), total phosphate (as  $\text{P}_2\text{O}_5$ ) and total potash (as  $\text{K}_2\text{O}$ ), 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.

#### Source

The provisions of this § 83.291 amended June 2, 2006, effective October 1, 2006, 36 Pa.B. 2636. Immediately preceding text appears at serial pages (232357) to (232358).

#### Cross References

This section cited in 25 Pa. Code § 83.201 (relating to definitions); 25 Pa. Code § 83.204 (relating to applicability of requirements); 25 Pa. Code § 83.261 (relating to general); 25 Pa. Code § 83.272 (relating to content of plans); 25 Pa. Code § 83.293 (relating to determination of nutrient application rates); and 25 Pa. Code § 83.342 (relating to recordkeeping relating to application of nutrients).



**§ 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  $P_2O_5$ ) and potassium (as  $K_2O$ ) 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.

#### Source

The provisions of this § 83.292 amended June 2, 2006, effective October 1, 2006, 36 Pa.B. 2636. Immediately preceding text appears at serial pages (232358) to (232359).

#### Cross References

This section cited in 25 Pa. Code § 83.201 (relating to definitions); 25 Pa. Code § 83.204 (relating to applicability of requirements); 25 Pa. Code § 83.272 (relating to content of plans); 25 Pa. Code § 83.281 (relating to identification of agricultural operations and acreage); and 25 Pa. Code § 83.293 (relating to determination of nutrient application rates); 25 Pa. Code § 83.294 (relating to nutrient application procedures); and 25 Pa. Code § 83.342 (relating to recordkeeping relating to application nutrients).

### § 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 AEUs 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.

#### Source

The provisions of this § 83.293 amended June 2, 2006, effective October 1, 2006, 36 Pa.B. 2636. Immediately preceding text appears at serial page (232359).

#### Cross References

This section cited in 25 Pa. Code § 83.201 (relating to definitions); 25 Pa. Code § 83.204 (relating to applicability of requirements); 25 Pa. Code § 83.261 (relating to general); 25 Pa. Code § 83.262 (relating to identification of CAOs); 25 Pa. Code § 83.371 (relating to plan amendments); 25 Pa. Code § 83.272 (relating to content of plans); 25 Pa. Code § 83.281 (relating to identification of agricultural operations and acreage); 25 Pa. Code § 83.294 (relating to nutrient application procedures) and 25 Pa. Code § 83.301 (relating to excess manure utilization plans).

### § 83.294. Nutrient application procedures.

(a) *General.* Nutrients shall be applied to fields during times and conditions that will hold the nutrients in place for crop growth, and protect surface water and groundwater using BMPs as described in the plan.

(b) *Timing.* Intended target spreading periods for the application of manure shall be included in the plan.

(c) *Equipment capabilities.* Manure application rates and procedures must be consistent with the capabilities, including capacity and calibration range, of available application equipment.

(1) For existing operations using their own application equipment, the plan must include a statement indicating that the existing equipment has been calibrated to ensure implementation of the application rates described in the plan, and that the equipment has the capacity to meet those application rates. The

supporting documentation for this statement shall be available at the operation for inspection by the county conservation district and the Commission.

(2) For proposed operations, or when it is not feasible to calibrate the equipment or verify its capacity at planning time, the operator shall perform this application equipment calibration and capability verification prior to the first application of manure. The statement described in paragraph (1) shall be included in any necessary amendments to the plan. The supporting documentation of this statement shall be available at the operation for inspection by the Commission and delegated county conservation district.

(3) If a commercial manure hauler is used, the hauler shall be responsible for ensuring that the equipment is capable of complying with the application rate contained in the plan.

(d) *Irrigation systems.* If manure will be applied using an irrigation system, the following applies:

(1) Application rates for irrigated liquid manure shall be based on the lesser of the following:

(i) The planned application rates in gallons per acre determined in accordance with § 83.293(a) (relating to determination of nutrient application rates).

(ii) The combination of the following:

(A) The liquid application rate in inches per hour determined to be within infiltration capabilities of the soil.

(B) The liquid application depth in inches not to exceed the soil's water holding capacity within the root zone or any restricting feature at the time of application.

(2) The allowable liquid application rate and application depth shall be based on appropriate factors such as available water holding capacity of the soil, depth of the root zone, depth to a shallow impervious soil layer, soil infiltration rate, soil texture and drainage, vegetation and ground slope. Application BMPs that are consistent with the current versions of Penn State Fact Sheets F254 through F257, as applicable to the type of irrigation system planned to be used on the operation, and the *NRAES-89 Liquid Manure Application System Design Manual*, may be used to comply with this subsection. Other BMPs shall be approved by the Commission.

(3) The plan must include the computations for the application rate (in inches per hour) and application depth (in total inches) of the various application rates, and these applications may not exceed either the infiltration rate or the water holding capacity of the application sites, as listed in the plan.

(e) *Manure application at rates greater than 9,000 gallons per acre.* If liquid or semisolid manure is planned to be applied at rates greater than 9,000 gallons per acre at any one application time, the rates and amounts shall be limited based on the infiltration rate and water holding capacity of the application areas as described in subsection (d). In those instances, the plan must include the compu-

tations for the application rates in inches per hour, and in total inches, for the various application areas, and these applications may not be allowed to exceed either the infiltration rate or the water holding capacity of the application sites, as listed in the plan.

(f) *Setbacks and buffers.* Manure may not be mechanically applied in the following situations:

(1) Within 100 feet of the top of the bank of a perennial or intermittent stream with a defined bed and bank, a lake or a pond, unless a permanent vegetated buffer of at least 35 feet in width is used, to prevent manure runoff into the stream, lake or pond.

(2) Within 100 feet of an existing open sinkhole unless a permanent vegetated buffer of at least 35 feet in width is used.

(3) Within 100 feet of active private drinking water sources such as wells and springs.

(4) Within 100 feet of an active public drinking water source, unless other State or Federal laws or regulations require a greater isolation distance.

(5) On crop management units having less than 25% plant cover or crop residue at the time of manure application, unless:

(i) For fall applications, the crop management unit is planted to a cover crop in time to allow for appropriate growth to control runoff until the next growing season, or the manure is injected or mechanically incorporated within 5 days using minimal soil disturbance techniques consistent with no-till farming practices. The *Pennsylvania Technical Guide* contains practices which may be used to satisfy this requirement. Other practices shall be approved by the Commission. The practices must be consistent with those in the agricultural erosion and sediment control plan.

(ii) For applications in the spring or summer, the crop management unit is planted to a crop that growing season.

(iii) For winter applications, the crop management unit is addressed under subsection (g).

(g) *Winter application.* For winter application of manure, the following apply:

(1) The application procedures shall be described in the plan.

(2) The plan must list the following:

(i) The crop management units where winter application is planned or restricted.

(ii) The application procedures that will be utilized at those crop management units.

(iii) The field conditions that must exist for winter application.

(3) Setbacks listed in subsection (f) shall be implemented. In addition, during winter manure may not be mechanically applied in the following situations:

(i) Within 100 feet of an above-ground inlet to an agricultural drainage system, if surface flow is toward the aboveground inlet.

(ii) Within 100 feet of a wetland that is identified on the National Wetlands Inventory Maps, if the following are met:

(A) The wetland is within the 100-year floodplain of an Exceptional Value stream segment.

(B) Surface flow is toward the wetland.

(4) Fields where manure will be applied in winter must have at least 25% residue, or an established cover crop. The BMPs contained in the *Pennsylvania Technical Guide* may be used to satisfy this requirement. Other practices shall be approved by the Commission.

(h) *In-field stacking*. In-field stacking of dry manure as a part of manure application is permissible on an NMP operation, and any importing lands governed by § 83.301 (relating to excess manure utilization plans), if the following requirements are met:

(1) The manure shall be land applied on the crop management unit within 120 days of stacking, or prior to the beginning of the next growing season, whichever is sooner.

(2) The stacks shall be constructed using appropriate BMPS such as:

(i) Placement on appropriate soils.

(ii) Proper consideration of slopes where stacks will be placed.

(iii) Shaping that minimizes absorption of rainfall.

(iv) Proper consideration of the size of the stack.

(v) Use of setbacks

(vi) Rotation of stack locations.

(3) If stacking occurs for a longer period than that described in paragraph (1), the stacks shall either be covered to keep rainwater from entering the stacks, or a waste stacking and handling pad shall be used. The BMPs contained in the *Pennsylvania Technical Guide* may be used to meet this requirement. Other BMPs shall be approved by the Commission.

(4) Locations for in-field stacking of dry manure shall be shown on the farm maps and the nutrient balance sheet maps required by this subchapter.

(i) *Commercial manure haulers*. If a commercial manure hauler will be used for the application of the manure on the agricultural operation, the commercial manure hauler shall meet the requirements of Act 49.

(j) *Pastures requiring phosphorus restrictions*. If a pasture has been determined to require total restriction of phosphorus application under § 83.293(c), the risk of phosphorus loss shall be addressed by the following BMPs in lieu of total restriction of phosphorus application:

(1) Grazing may not be conducted within 50 feet of a perennial or intermittent stream, a lake or a pond.

(2) A prescribed grazing system shall be used to maintain an established stand of forage on the pasture area.

(3) The stocking rate shall be limited to ensure that the level of phosphorus deposited by the animals does not exceed the level of phosphorus removal from the soil by vegetation in the pasture.

(4) BMPs contained in the *Pennsylvania Technical Guide* may be used to meet the requirements in paragraphs (1) and (2). Other BMPs shall be approved by the Commission.

#### Source

The provisions of this § 83.294 amended June 2, 2006, effective October 1, 2006, 36 Pa.B. 2636. Immediately preceding text appears at serial pages (232359) to (232360).

#### Cross References

This section cited in 25 Pa. Code § 83.201 (relating to definitions); 25 Pa. Code § 83.204 (relating to applicability of requirements); 25 Pa. Code § 83.226 (relating to eligible costs for the implementation of an approved plan); 25 Pa. Code § 83.261 (relating to general); 25 Pa. Code § 83.262 (relating to identification of CAOs); 25 Pa. Code § 83.272 (relating to content of plans); 25 Pa. Code § 83.281 (relating to identification of agricultural operations and acreage); 25 Pa. Code § 83.293 (relating to determination of nutrient application rates) 25 Pa. Code § 83.301 (relating to excess manure utilization plans); 25 Pa. Code § 83.311 (relating to manure management); and 25 Pa. Code § 83.381 (relating to manure management in emergency situations).

### ALTERNATIVE USES FOR EXCESS MANURE

#### § 83.301. Excess manure utilization plans.

(a) *General.* If manure will be exported for use off the NMP operation at known agricultural operations for agricultural land application, the following applies:

(1) The plan must include signed agreements, on a form acceptable to the Commission, between the NMP operation and each importing operator agreeing to accept the manure from the exporting operation. If the importing operator will be applying manure on lands rented or leased to that importing operator, the agreement must state that the importing operator has the authority to apply manure on the leased or rented lands.

(2) The importing operator is responsible for the proper handling and application of the imported manure accepted from an exporter, in accordance with subsection (b).

(3) An NMP operation exporting manure shall also be responsible for the proper handling and application of the exported manure if the NMP operation, or an employee or contractor of the operation, applies manure at the importing operation.

(4) The plan must demonstrate how the exported manure will be properly managed. This must be done by use of either nutrient balance sheets or approved nutrient management plans, and signed agreements with importers, under this subchapter.



(b) *Restrictions on land application of exported manure.* The land application of manure exported from an NMP operation must address the risk and impacts of nitrogen and phosphorus loss to waters.

(1) Nitrogen shall be addressed under § 83.293(b)(relating to determination of nutrient application rates).

(2) Phosphorus shall be addressed by one of the following, as selected by the operator:

(i) The rate at which phosphorus is applied may not exceed the level of phosphorus removal from the soil by the planned crop as determined under § 83.293(c), and the manure may not be applied within 150 feet from the top of the bank of an intermittent or perennial stream, a lake or a pond.

(ii) For crop management units with documented soil test levels of phosphorus less than 200 PPM, manure may not be applied within 150 feet from the top of the bank of an intermittent or perennial stream, a lake or a pond.

(iii) Manure application shall be determined in accordance with § 83.293(c).

(iv) Manure application shall follow a nutrient management plan approved by the Commission or delegated conservation district under this subchapter.

(3) The setbacks in § 83.294 (relating to nutrient application procedures) apply to land application of manure exported from an NMP operation.

(c) *Nutrient balance sheets.* The method, rate and timing for any land application under subsection (b)(2)(i)—(iii) shall be described in a nutrient balance sheet. Nutrient balance sheets must include the following:

(1) A map which identifies the crop management units where the manure is planned to be applied, location for field stacking and applicable setbacks under § 83.294 and this section.

(2) Documentation of the selected method used to address nitrogen and phosphorus on the crop management units receiving the imported manure. Acceptable methods are those described in this section.

(3) If options in subsection (b)(2)(i)—(iii) are used, the calculations associated with determining the manure application rate appropriate to the selected nitrogen and phosphorus management option used.

(4) The date when the nutrient balance sheet was developed.

(5) The name and signature of the certified planner or broker that developed the nutrient balance sheet.

(d) *Commercial manure haulers.* If the NMP operation will utilize a commercial manure hauler for the hauling or application of the exported manure, only those haulers that hold a valid and current certification under Act 49 may be used. The plan must include a statement indicating that any commercial manure haulers used for implementation of the plan shall hold a valid and current certification under Act 49.

(e) *Brokers.* If manure will be exported for use off of the NMP operation through a manure broker, the following apply:

(1) The plan must include a signed agreement, on a form acceptable by the Commission, between the operation exporting the manure and each broker agreeing to accept manure from the exporting operation. Brokers are responsible for the proper handling and storage (where applicable) of the manure accepted from the NMP operation. Only brokers that meet the requirements of Act 49 shall be acceptable in the plan.

(2) If the manure accepted by a broker shall be land applied to agricultural operations for crop production, the broker shall be responsible for the following:

(i) Ensuring that nutrient balance sheets exist for the relevant crop management units on the importing operations, and that the importing operator is provided with nutrient balance sheets with respect to that manure.

(ii) Implementing manure application rates and applicable setbacks described in § 83.294, and any nutrient balance sheet and approved nutrient management plans, if the broker will be responsible for land application of the manure.

(iii) Retaining copies of all nutrient balance sheets.

(f) *Other uses of manure away from the operation.* If manure will be exported for use off of the NMP operation for use other than agricultural land application, the plan must include the following information:

(1) The name and general location of the importing agricultural operation.

(2) A brief description of the planned use for the imported manure.

(3) The amount of manure the operator plans to export to the importer annually.

(4) The planned season for the manure export.

(5) A signed agreement between the NMP operation and each importing operation agreeing to accept the manure for this use, on a form acceptable to the Commission.

(g) *Other uses of manure on the operation.* If manure is to be processed or utilized on the NMP operation in a manner other than for agricultural land application, the plan must briefly describe the planned use of the manure, including the amount planned to be processed or utilized annually.

(h) *Use of open advertising systems.* If manure is to be exported for use off of an NMP operation existing on October 1, 1997, by using an open advertising system and the importers cannot be identified at planning time, the following apply:

(1) The plan must describe the proposed marketing scheme, including the estimated amount of manure planned to be marketed annually using an open advertising system.

(2) An operator may only utilize this method of exporting manure if the operator meets the manure broker requirements for certification under Act 49.

(3) Where the marketed manure will be utilized for application to crop fields, the exporting operation shall ensure that nutrient balance sheets exist for the relevant crop management units on the importing operations, and the importing operator is provided with the nutrient balance sheets. These nutrient balance sheets shall be retained by the exporting operation, the importing operation and any commercial manure hauler involved in the exporting of the manure. Nutrient management plans implemented at the importing operations may be used instead of nutrient balance sheets.

(4) The setbacks in § 83.294 apply to land application of manure exported from an NMP operation under this paragraph.

(i) *Exceptions.* The plan is not required to provide the specific exported manure details as provided in subsections (a)—(h) if an importer receives less than the following amounts of manure from the NMP operation on an annual basis:

- (1) 5 tons of solid poultry manure.
- (2) 25 tons of solid nonpoultry manure.
- (3) 10,000 gallons of liquid manure.

#### Source

The provisions of this § 83.301 amended June 2, 2006, effective October 1, 2006, 36 Pa.B. 2636. Immediately preceding text appears at serial pages (232361) to (232362).

#### Cross References

This section cited in 25 Pa. Code § 83.201 (relating to definitions); 25 Pa. Code § 83.204 (relating to applicability of requirements); 25 Pa. Code § 83.261 (relating to general); 25 Pa. Code § 83.272 (relating to content of plans); 25 Pa. Code § 83.294 (relating to nutrient application procedures); and 25 Pa. Code § 83.343 (relating to alternative manure utilization recordkeeping).

## MANURE MANAGEMENT

### § 83.311. Manure management.

(a) *Review existing practices.* In the preparation of a plan, the nutrient management specialist shall perform a site visit to conduct a review of the adequacy of existing manure management practices to prevent surface water or groundwater pollution from storm events up to and including a 25-year, 24-hour storm intensity. The specialist may confer with NRCS, conservation district staff or others with expertise with nutrient runoff control. This review shall be documented in the plan by identification of those conditions and areas where there is a potential for stormwater commingled with manure to directly runoff into surface water as a result of a storm event up to and including a 25-year, 24-hour storm intensity, without sufficient filtration or other appropriate treatment or handling BMPs, such as vegetated buffers. Practices to be evaluated in this review

include manure handling, manure collection, barnyard runoff control and manure storage practices. Examples of inadequate manure management practices include the following:

- (1) Manure, contaminated water or nutrients leaving manure storage or animal concentration areas, and directly discharging into surface water or groundwater.
  - (2) The uncontrolled flow of storm water into, or across, manure storage facilities, emergency manure stacking areas or animal concentration areas.
  - (3) Manure storage facilities overflowing or maintained at levels above design full levels.
  - (4) Manure storage facilities that are sized for less than the projected manure accumulation based on the expected application periods used in the plan.
  - (5) Leaking or unstable manure storage facilities.
  - (6) Manure storage facilities which otherwise do not comply with § 91.36 (relating to pollution control and prevention at agricultural operations).
- (b) *Address inadequate practices.* The plan must address any existing inadequate manure management practices as follows:
- (1) As part of a plan certification under § 83.261(8)(relating to general), the nutrient management specialist shall ensure that the review required under subsection (a) was undertaken in the preparation of the plan.
  - (2) The plan must contain a listing of inadequate manure management practices and related conditions and problem areas, and the BMPs planned to correct them to protect surface water and groundwater.
  - (3) The BMPs shall be selected, designed, constructed and maintained to meet the requirements of this subchapter. When this subchapter does not specifically address an inadequate manure management practice, the BMPs contained in the *Pennsylvania Technical Guide* may be used to comply with this section. Other BMPs shall be approved by the Commission.
  - (4) 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. The BMP designs and associated operation and maintenance plans shall be kept on record by the operator as a supplement to the plan.
- (c) *Animal concentration areas.* The following applies to animal concentration areas:
- (1) These areas shall be sized, located, implemented and managed using BMPs to eliminate the direct discharge of storm water runoff commingled with manure from these areas to surface water and groundwater.
  - (2) These areas must meet the following requirements which shall be addressed in the plan:

- (i) Animal concentration areas shall be sized appropriately to minimize environmental impacts that may be associated with the areas.
- (ii) These areas shall be located and managed to eliminate the direct discharge of storm water runoff commingled with manure from a storm event of up to and including a 25-year 24-hour storm intensity, except as allowed in paragraph (5).
- (3) Accumulated manure on nonvegetated animal concentration areas shall be collected and land-applied to cropland, or exported from the operation, as described in the plan.
- (4) These areas shall be designed, implemented and managed to minimize the amount of clean water entering the animal concentration area.
- (5) Storm water runoff commingled with manure from these areas shall be either treated or stored through an appropriate vegetative or other suitable treatment or storage method, which meets the requirements of this subchapter. BMPs for vegetated buffers and other treatment or storage methods contained in the *Pennsylvania Technical Guide* may be used to satisfy this requirement. Other BMPs shall be approved by the Commission.
- (6) Animal access to surface water in these areas shall be limited to properly installed stream crossings. BMPs contained in the *Pennsylvania Technical Guide* may be used to meet this requirement. Other BMPs shall be approved by the Commission.
- (d) *BMPs*. The following BMPs, as appropriate, shall be used if necessary, and shall be described in the plan, to protect water quality by controlling storm water in the farmstead, including the manure storage and animal concentration areas:
  - (1) Manure storage facilities including permanent manure stacking areas. The construction of manure storage facilities is not required unless necessary to protect surface water and groundwater. Nutrient management plans that require the construction of a manure storage facility must describe the planned type, dimensions and capacity of the proposed facility, and the location of the proposed facility shall be identified on a plan map.
  - (2) Diversion of clean water from manure storage facilities and animal concentration areas, unless required for proper operation of the BMP.
  - (3) Treatment or storage of storm water commingled with manure in the manure storage or animal concentration areas.
  - (4) Emergency manure stacking areas must be located outside of concentrated water flow areas and areas where manure application is restricted or prohibited based on § 83.294(f) and (g) (relating to nutrient application procedures).
  - (5) Other appropriate BMPs acceptable to the Commission, including those described in the *Pennsylvania Technical Guide*.
- (e) When emergency manure stacking areas may be necessary for the implementation of the plan, the plan must identify those areas available for the storage

of manure due to unforeseen circumstances such as adverse weather conditions. The stacks shall be managed using appropriate BMPs such as placement on appropriate soils, proper consideration of slopes where stacks will be placed and shaping that minimizes absorption of rainfall. The operator shall notify the county conservation district at least 24 hours in advance of the use of an emergency manure stacking area. Manure shall be removed from emergency stacking areas for utilization on cropland or other acceptable uses within 60 days, unless extended by the Commission or a delegated conservation district.

(f) Information contained in other sections of the plan may be used by the specialist when addressing this section.

(g) The siting, design and installation of manure storage facilities shall meet the requirements in § 83.351 (relating to minimum standards for the design, construction, location, operation, maintenance and removal from service of manure storage facilities). The BMPs contained in the *Pennsylvania Technical Guide*, as they relate to water quality protection, may be used to comply with this subsection. Other measures shall be approved by the Commission.

(h) If alternative manure technology practices and equipment are planned to address nutrient management issues related to the operation, the rationale for and expected benefit of the planned alternative practices and equipment shall be described in the plan.

#### Source

The provisions of this § 83.311 amended June 2, 2006, effective October 1, 2006, 36 Pa.B. 2636. Immediately preceding text appears at serial pages (232362) and (266201).

#### Cross References

This section cited in 25 Pa. Code § 83.201 (relating to definitions); 25 Pa. Code § 83.204 (relating to applicability of requirements); 25 Pa. Code § 83.261 (relating to general); 25 Pa. Code § 83.272 (relating to content of plans); and 25 Pa. Code § 83.381 (relating to manure management in emergency situations).

### SITE SPECIFIC EMERGENCY RESPONSE PLANS

#### § 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.

#### Source

The provisions of this § 83.312 adopted June 2, 2006, effective October 1, 2006, 36 Pa.B. 2636.

#### Cross References

This section cited in 25 Pa. Code § 83.261 (relating to general).

### STORMWATER CONTROL

#### § 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.

#### Source

The provisions of this § 83.321 amended June 2, 2006, effective October 1, 2006, 36 Pa.B. 2636. Immediately preceding text appears at serial pages (266201) to (266202) and (232365).

#### Cross References

This section cited in 25 Pa. Code § 83.201 (relating to definitions); 25 Pa. Code § 83.204 (relating to applicability of requirements); 25 Pa. Code § 83.261 (relating to general); and 25 Pa. Code § 83.272 (relating to content of plans).

## IMPLEMENTATION SCHEDULES

### § 83.331. Implementation schedule.

A plan must contain a schedule that identifies when the necessary capital improvements and management changes will be made, consistent with the time frames in § 83.362 (relating to plan implementation).

#### Source

The provisions of this § 83.331 amended June 2, 2006, effective October 1, 2006, 36 Pa.B. 2636. Immediately preceding text appears at serial page (232365).

#### Cross References

This section cited in 25 Pa. Code § 83.201 (relating to definitions); 25 Pa. Code § 83.204 (relating to applicability of requirements); 25 Pa. Code § 83.261 (relating to general); and 25 Pa. Code § 83.272 (relating to content of plans).

## RECORDKEEPING AND INFORMATIONAL REQUIREMENTS

### § 83.341. General recordkeeping requirements.

(a) Unless otherwise specified, records required under this subchapter are not required to be submitted to the Commission or delegated conservation district, but shall be retained by the agricultural operation for at least 3 years.



(b) Records required under this subchapter shall be maintained on forms provided by the Commission, unless otherwise allowed by the Commission.

**Source**

The provisions of this § 83.341 amended June 2, 2006, effective October 1, 2006, 36 Pa.B. 2636. Immediately preceding text appears at serial page (232365).

**Cross References**

This section cited in 7 Pa. Code § 130e.12 (relating to certification requirements); 7 Pa. Code § 130e.32 (relating to certification requirements); 7 Pa. Code § 130e.42 (relating to certification requirements); 25 Pa. Code § 83.204 (relating to applicability of requirements); 25 Pa. Code § 83.232 (relating to implementation and reporting); 25 Pa. Code § 83.261 (relating to general); and 25 Pa. Code § 83.343 (relating to alternative manure utilization recordkeeping).

**§ 83.342. Recordkeeping relating to application of nutrients.**

(a) Plans must be supported by the information required in this section and §§ 83.343 and 83.344 (relating to alternative manure utilization recordkeeping; and exported manure information packets).

(b) The NMP operation shall keep the following accurate records of the land application of nutrients, crop yields and soil tests on the NMP operation:

(1) Records of soil testing results shall be maintained consistent with § 83.292(e) (relating to determination of nutrients needed for crop production). Soil testing is required once every 3 years for each crop management unit.

(2) Records of manure testing results and testing of other nutrient sources shall be maintained consistent with § 83.291 (relating to determination of available nutrients). Manure testing is required once every year for each manure group, except manure groups associated with less than five AEUs and manure groups representing grazing consistent with § 83.291(c)(3)(iv) and (vi).

(3) Land application of nutrients on NMP operations shall be documented on an annual basis by recording the following information for each source of nutrients:

- (i) The locations and number of acres of nutrient application.
- (ii) The dates of nutrient application.
- (iii) The rate of nutrient application for each crop management unit.
- (iv) The number of animals on pasture, the number of days on pasture and the average number of hours per day on pasture.
- (4) Approximate annual crop yield levels for each crop management unit.
- (5) Annual manure production figures for each manure group.

**Source**

The provisions of this § 83.342 amended June 2, 2006, effective October 1, 2006, 36 Pa.B. 2636. Immediately preceding text appears at serial pages (232365) to (232366).

**Cross References**

This section cited in 7 Pa. Code § 130e.12 (relating to certification requirements); 7 Pa. Code § 130e.32 (relating to certification requirements); 7 Pa. Code § 130e.42 (relating to certification requirements); 25 Pa. Code § 83.204 (relating to applicability of requirements); 25 Pa. Code § 83.232 (relating to implementation and reporting); and 25 Pa. Code § 83.261 (relating to general).

**§ 83.343. Alternative manure utilization record-keeping.**

(a) *Recordkeeping for manure exports.* The following recordkeeping requirements apply to manure exported off of the NMP operation:

(1) A manure export sheet shall be used for all manure transfers from the operation.

(2) The Commission or delegated conservation district will make copies of the manure export sheet forms available to the operation.

(3) Computer-generated forms other than the manure export sheet forms provided by the Commission may be used if they contain the same information as, and are reasonably similar in format to, the forms provided by the Commission.

(4) Recordkeeping related to the application of exported manure must comply with the following:

(i) The exporter is responsible for the completion of the manure export sheet, providing a copy to the importer and retaining a copy at the exporting operation.

(ii) When the exporter, or person working under the direction of the exporter, such as an employee or a commercial manure hauler, applies the manure to the land, the exporter is responsible for maintaining records of the actual application dates, application areas (including the observation of any relevant setback restrictions), application methods, and application rates for the exported manure.

(iii) When the manure is exported through a broker, the exporting operation is not responsible for obtaining records of actual application information for importing operations, unless the exporting operator manages the application of the manure. If the broker is responsible for applying the manure, the broker shall retain records of the application of all manure (including date, areas, methods and rates applied) and shall provide a copy of these application records to the importing operation for its records.

(b) *Recordkeeping for alternative manure utilization by means other than manure export.* Operators shall keep annual records of the amount and use of manure utilized in any manner other than through manure transfers.

**Source**

The provisions of this § 83.343 amended June 2, 2006, effective October 1, 2006, 36 Pa.B. 2636. Immediately preceding text appears at serial pages (232366) to (232367).

**Cross References**

This section cited in 7 Pa Code § 130e.12 (relating to certification requirements); 7 Pa. Code § 130e.32 (relating to certification requirements); 7 Pa. Code § 130e.42 (relating to certification requirements); 25 Pa. Code § 83.204 (relating to applicability of requirements); 25 Pa. Code § 83.232 (relating to implementation and reporting); 25 Pa. Code § 83.261 (relating to general); and 25 Pa. Code § 83.342 (relating to recordkeeping relating to application of nutrients).

**§ 83.344. Exported manure informational packets.**

(a) If manure is exported from an NMP operation, the exporter will provide the importer and any relevant manure hauler or brokers with a completed manure export sheet.

(b) If the manure is to be land applied at an importing operation, the exporter is required, except as provided in subsection (c), to provide the following information to the importer, as supplied by the Commission or its delegated agent:

(1) The relevant sections of the *Manure Management Manual*.

(2) A concise educational publication describing the key concepts of nutrient management.

(3) Additional informational items as supplied by the Commission for this purpose.

(c) If a broker will be responsible for applying the manure at the operation, the broker shall meet the requirements of subsection (b).

(d) The Commission or its delegated agent will provide the materials in subsection (b) for distribution by the exporter. The exporter is only required to provide those items in subsection (b) that have been made available to the exporter by the Commission or its delegated agent.

(e) The exporter is responsible for providing the informational materials described in subsection (b) only if the importer or commercial manure hauler does not already have a current copy of the informational materials.

**Source**

The provisions of this § 83.344 amended June 2, 2006, effective October 1, 2006, 36 Pa.B. 2636. Immediately preceding text appears at serial pages (232367) to (232368).

**Cross References**

This section cited in 7 Pa Code § 130e.12 (relating to certification requirements); 7 Pa. Code § 130e.32 (relating to certification requirements); 7 Pa. Code § 130e.42 (relating to certification requirements); 25 Pa. Code § 83.204 (relating to applicability of requirements); 25 Pa. Code § 83.232 (relating to implementation and reporting); 25 Pa. Code § 83.261 (relating to general); and 25 Pa. Code § 83.342 (relating to recordkeeping relating to application of nutrients).

**MINIMUM STANDARDS FOR MANURE STORAGE FACILITIES****§ 83.351. Minimum standards for the design, construction, location, operation, maintenance and removal from service of manure storage facilities.**

(a) The minimum standards contained in this section apply to new manure storage facilities and the expansion of existing manure storage facilities, as part of a plan developed for an NMP operation.

(1) Manure storage facilities shall be designed, constructed, located, operated, maintained, and, if no longer used for the storage of manure, removed from service, in a manner that protects surface water and groundwater quality, and prevents the offsite migration of nutrients. Implementation of BMPs con-

tained in the *Pennsylvania Technical Guide* may be used to satisfy this requirement, except if these standards conflict with this subchapter. Other BMPs shall be approved by the Commission.

(2) In addition to complying with paragraph (1), manure storage facilities shall be designed and located in accordance with the following criteria:

(i) Facilities shall comply with the applicable criteria in § 91.36 (relating to pollution control and prevention at agricultural operations).

(ii) Facilities shall comply with the applicable criteria in Chapter 105 (relating to dam safety and waterway management).

(iii) The location and construction of facilities to be placed within a floodplain shall be consistent with local ordinances developed under the Pennsylvania Flood Plain Management Act (32 P. S. §§ 679.101—679.601), which relates to the dangers and damage of floodwaters.

(iv) The sides of facilities located in a floodplain shall be protected from erosion and scouring from a 25 year flood event.

(v) For operations that were producing livestock or poultry on or before October 1, 1997, facilities, except reception pits and transfer pipes, may not be constructed:

(A) Within 100 feet of an intermittent or perennial stream, river, spring, lake, pond or reservoir.

(B) Within 100 feet of a wetland that is identified on the National Wetlands Inventory maps, if the following apply:

(I) The wetland is within the 100-year floodplain of an Exceptional Value stream segment.

(II) Surface flow is toward the wetland.

(C) Within 100 feet of a private water well, or open sinkhole.

(D) Within 100 feet of an active public drinking water well, unless other State or Federal laws or regulations require a greater isolation distance.

(E) Within 100 feet of an active public drinking water source surface intake, unless other State or Federal laws or regulations require a greater isolation distance.

(F) Within 100 feet of a property line, unless the landowners within the 100 feet distance from the facility otherwise agree and execute a waiver in a form acceptable to the Commission.

(G) Within 200 feet of an intermittent or perennial stream, river, spring, lake, pond or reservoir, or any water well, or wetland described in clause (B), if a facility (except permanent stacking and compost facilities) is located on slopes exceeding 8% or a facility has a capacity of 1.5 million gallons or greater.

(H) Within 200 feet of a property line, if a facility (except permanent stacking and compost facilities) is located on slopes exceeding 8% and if the slope is toward the property line, or a facility has a capacity of 1.5

million gallons or greater, unless the landowners within the 200 foot distance from the facility otherwise agree and execute a waiver in a form acceptable to the Commission.

(vi) For NMP operations that come into existence after October 1, 1997, facilities, except reception pits and transfer pipes, may not be constructed:

(A) Within 100 feet of an intermittent or perennial stream, river, spring, lake, pond or reservoir.

(B) Within 100 feet of a wetland that is identified on the National Wetlands Inventory maps, if the following apply:

(I) The wetland is within the 100-year floodplain of an Exceptional Value stream segment.

(II) Surface flow is toward the wetland.

(C) Within 100 feet of a private water well, or open sinkhole.

(D) Within 100 feet of an active public drinking water well, unless other State or Federal laws or regulations require a greater isolation distance.

(E) Within 100 feet of an active public drinking water source surface intake, unless other State or Federal laws or regulations require a greater isolation distance.

(F) Within 200 feet of a property line, unless the landowners within the 200 foot distance from the facility otherwise agree and execute a waiver in a form acceptable to the Commission.

(G) Within 200 feet of an intermittent or perennial stream, river, spring, lake, pond, reservoir or any water well, or wetland described in clause (B), if a facility (except permanent stacking and compost facilities) is located on slopes exceeding 8% or has a capacity of 1.5 million gallons or greater.

(H) Within 300 feet of a property line, if a facility (except permanent stacking and compost facilities) is located on slopes exceeding 8%, and if the slope is toward the property line, or a facility has a capacity of 1.5 million gallons or greater, unless the landowners within the 300 foot distance from the facility otherwise agree and execute a waiver in a form acceptable to the Commission.

(vii) The Commission or a delegated conservation district may waive the distance restrictions in subparagraph (v)(A)—(C) and (G), if the following can be demonstrated to the satisfaction of the Commission or a delegated conservation district:

(A) The siting restrictions contained in subparagraph (v) would make the placement economically unreasonable or physically impractical.

(B) A site investigation has been conducted which demonstrates that the proposed system will protect water quality and protect against offsite migration of nutrients.

(C) The type, design and contingency plan developed for the facilities meet additional criteria the Commission or delegated conservation district, in consultation with the NRCS, may require to protect water quality, and protect against offsite migration of nutrients.

(D) In the case of a private water well, the well construction meets the criteria that the Commission, in consultation with the NRCS, deems necessary to protect water quality. There will be no waivers granted from the setback requirements for public water wells or sources.

(viii) Manure storage facilities constructed after October 1, 1997, on CAOs that were in existence prior to October 1, 1997, shall meet the applicable criteria established under this section.

(3) The designer of the manure storage facility described in the plan shall address the following:

(i) Verification of the minimum manure storage period and minimum manure storage volume documented in the current plan.

(ii) Determination of the type and dimensions of facilities considering the environmental and space limitations of the site, as well as the operator's preference.

(iii) An onsite investigation to evaluate the site suitability for a facility. The criteria contained in the *Pennsylvania Technical Guide* may be used to satisfy this requirement. Other criteria shall be approved by the Commission.

(b) The repair of an existing manure storage facility that is part of a plan developed for an NMP operation shall be done in a manner that protects surface water and groundwater quality, and prevents the offsite migration of nutrients. Applicable standards in the *Pennsylvania Technical Guide* may be used to meet this requirement. Other standards shall be approved by the Commission. The location standards do not apply to these facility repairs.

(c) The site specific design for the construction, expansion or major repair of a liquid or semisolid manure storage facility covered under the act shall be done or approved by an engineer registered in this Commonwealth. The engineer shall certify that the design protects surface water and groundwater quality, and prevents the offsite migration of nutrients. Compliance with the applicable design standards described in the *Pennsylvania Technical Guide* may be used to meet this requirement. Other standards shall be approved by the Commission.

(d) At least 2 weeks prior to installation of the facility or the repair, the registered engineer shall submit a verification (including a quality assurance inspection plan for construction) to the Commission or delegated conservation district documenting that the design, meeting the requirements of this subsection including applicable setbacks, has been completed. Following completion of the installation or repair, the responsible engineer and construction contractor shall certify to the Commission or delegated conservation district that construction of the manure storage facility was completed according to the design, construction and location standards.

(e) A written site specific contingency plan, addressing actions to be taken in the event of a manure leak or spill from a manure storage facility covered under the act to protect surface water and groundwater quality, and prevent the offsite migration of nutrients, shall be developed and kept onsite at the operation. The standards contained in the *Pennsylvania Technical Guide* may be used to meet this requirement. Other standards shall be approved by the Commission. In the case of a leak or spill of manure from a manure storage facility covered under the act, the operator is responsible for implementation of the site specific contingency plan developed for the operation. The contingency plan must contain information necessary to meet the notification requirements for reporting 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).

#### Source

The provisions of this § 83.351 amended June 2, 2006, effective October 1, 2006, 36 Pa.B. 2636. Immediately preceding text appears at serial pages (232368) to (232370) and (263017).

#### Cross References

This section cited in 25 Pa. Code § 83.204 (relating to applicability of requirements); 25 Pa. Code § 83.261 (relating to general); 25 Pa. Code § 83.311 (relating to manure management); 25 Pa. Code § 83.312 (relating to site specific emergency response plans); and 25 Pa. Code § 91.36 (relating to pollution control and prevention at agricultural operations).

### PLAN REVIEW AND IMPLEMENTATION

#### § 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.

#### Source

The provisions of this § 83.361 amended June 2, 2006, effective October 1, 2006, 36 Pa.B. 2636. Immediately preceding text appears at serial pages (263017) to (263018).

#### Cross References

This section cited in 25 Pa. Code § 83.204 (relating to applicability of requirements); 25 Pa. Code § 83.261 (relating to general); 25 Pa. Code § 83.362 (relating to plan implementation); and 25 Pa. Code § 83.371 (relating to plan amendments).

### § 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.

#### Source

The provisions of this § 83.362 amended June 2, 2006, effective October 1, 2006, 36 Pa.B. 2636. Immediately preceding text appears at serial page (263018).

#### Cross References

This section cited in 25 Pa. Code § 83.204 (relating to applicability of requirements); 25 Pa. Code § 83.261 (relating to general); 25 Pa. Code § 83.331 (relating to implementation schedule); and 25 Pa. Code § 83.371 (relating to plan amendments).

### PLAN AMENDMENTS AND TRANSFERS

#### § 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 AEU's 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).

#### Source

The provisions of this § 83.371 amended June 2, 2006, effective October 1, 2006, 36 Pa.B. 2636. Immediately preceding text appears at serial page (232373).

#### Cross References

This section cited in 25 Pa. Code § 83.204 (relating to applicability of requirements); 25 Pa. Code § 83.232 (relating to implementation and reporting); 25 Pa. Code § 83.261 (relating to general); 25 Pa. Code § 83.291 (relating to determination of available nutrients); 25 Pa. Code § 83.292 (relating to determination of nutrients needed for crop production); 25 Pa. Code § 83.362 (relating to plan implementation); and 25 Pa. Code § 83.373 (relating to plan transfers).

**§ 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.

**Cross References**

This section cited in 25 Pa. Code § 83.204 (relating to applicability of requirements); and 25 Pa. Code § 83.261 (relating to general).

**§ 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).

**Source**

The provisions of this § 83.373 amended June 2, 2006, effective October 1, 2006, 36 Pa.B. 2636. Immediately preceding text appears at serial page (232374).

**Cross References**

This section cited in 25 Pa. Code § 83.204 (relating to applicability of requirements); and 25 Pa. Code § 83.261 (relating to general).

**CONTAGIOUS DISEASE EMERGENCIES****§ 83.381. Manure management in emergency situations.**

(a) If there is an outbreak of a contagious disease as regulated by the Department of Agriculture, manure management shall be consistent with requirements in the Department of Agriculture's order of quarantine issued under the Domestic Animal Act (3 P. S. §§ 311—354) and regulations thereunder.

(b) The Department of Agriculture will notify the Commission when a quarantine is imposed on an agricultural operation covered by the act. The Department of Agriculture will supply the Commission and delegated conservation district with a copy of the quarantine document.

(c) Unless otherwise directed by the quarantine, an amended plan shall be developed addressing the management of manure under the quarantine. This plan shall be certified by a nutrient management specialist prior to implementation and submitted to the reviewing agency within 30 days of implementation.

(d) If nutrients are applied in excess of crop need due to the quarantine restrictions placed on the manure, and the cropping sequence permits, cover crops shall be planted to the site to minimize the loss of these nutrients. The harvesting of these cover crops is encouraged to facilitate the removal of excess nutrients.

(e) The temporary storage of manure during the quarantine shall be done under § 83.311 (relating to manure management).

(f) The application of manure during the quarantine shall be done under § 83.294(f) (relating to nutrient application procedures).

(g) Standard soil tests will be required each year for crop management units where the implementation of the quarantine required that nutrients be applied in excess of the amount the crop can use, and shall continue for 3 successive years thereafter. In addition to the standard test, an appropriate test indicating the amount of nitrogen available for crop uptake will be required for 1 year beyond the cessation of excess manure application.

**Source**

The provisions of this § 83.381 amended June 2, 2006, effective October 1, 2006, 36 Pa.B. 2636. Immediately preceding text appears at serial pages (232374) to (232375).

**Cross References**

This section cited in 25 Pa. Code § 83.204 (relating to applicability of requirements); 25 Pa. Code § 83.261 (relating to general); and 25 Pa. Code § 83.372 (relating to amendments due to unforeseen circumstances).

**§§ 83.391 and 83.392 [Reserved].****Source**

The provisions of these §§ 83.391 and 83.392 reserved October 6, 2006, effective October 1, 2006, 36 Pa.B. 6096. Immediately preceding text appears at serial pages (319494) to (319495).

**§§ 83.401—83.404. [Reserved].****Source**

The provisions of this §§ 83.401—83.404 reserved October 6, 2006, effective October 1, 2006, 36 Pa.B. 6096. Immediately preceding text appears at serial pages (319495) to (319498).

**§ 83.411. [Reserved].****Source**

The provisions of this § 83.411 reserved October 6, 2006, effective October 1, 2006, 36 Pa.B. 6096. Immediately preceding text appears at serial pages (319498) to (319499).

**§ 83.421. [Reserved].****Source**

The provisions of this § 83.421 reserved October 6, 2006, effective October 1, 2006, 36 Pa.B. 6096. Immediately preceding text appears at serial pages (319499) to (319500).

**§ 83.431. [Reserved].****Source**

The provisions of this § 83.431 reserved October 6, 2006, effective October 1, 2006, 36 Pa.B. 6096. Immediately preceding text appears at serial pages (319500) to (319502).

**§ 83.441. [Reserved].****Source**

The provisions of this § 83.441 reserved October 6, 2006, effective October 1, 2006, 36 Pa.B. 6096. Immediately preceding text appears at serial page (319502).

**RECORDKEEPING AND INFORMATIONAL  
REQUIREMENTS FOR VOLUNTEERS****§§ 83.451—83.453. [Reserved].****Source**

The provisions of these §§ 83.451—83.453 reserved October 6, 2006, effective October 1, 2006, 36 Pa.B. 6096. Immediately preceding text appears at serial page (319502) to (319503).

**§ 83.461. [Reserved].****Source**

The provisions of this § 83.461 reserved October 6, 2006, effective October 1, 2006, 36 Pa.B. 6096. Immediately preceding text appears at serial pages (319503) to (319506).

**§§ 83.471 and 83.472. [Reserved].****Source**

The provisions of these §§ 83.471 and 83.472 reserved October 6, 2006, effective October 1, 2006, 36 Pa.B. 6096. Immediately preceding text appears at serial pages (319506) and (319507).

**§§ 83.481—83.483. [Reserved].****Source**

The provisions of these §§ 83.481—83.483 reserved October 6, 2006, effective October 1, 2006, 36 Pa.B. 6096. Immediately preceding text appears at serial pages (319508) to (319509).

**§ 83.491. [Reserved].****Source**

The provisions of this § 83.491 reserved October 6, 2006, effective October 1, 2006, 36 Pa.B. 6096. Immediately preceding text appears at serial pages (319509) to (319510).

**Subchapter E. NUTRIENT MANAGEMENT FUNDING PROGRAM—  
STATEMENT OF POLICY****GENERAL PROVISIONS**

- Sec.  
83.501. Purpose.  
83.502. Definitions.

**TECHNICAL ASSISTANCE FUNDING PROGRAM**

- 83.511. General requirements.  
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83.513. Application procedures.  
83.514. Reimbursement procedures.  
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**PDIP**

- 83.521. General.
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- 83.524. Reimbursement procedures.
- 83.525. Advance payments to cooperating organizations.
- 83.526. Allowable administrative expenses.
- 83.527. Conservation district responsibilities.
- 83.528. Cooperating organization responsibilities.

**Source**

The provisions of this Subchapter E adopted August 22, 1997, effective August 23, 1997, 27 Pa.B. 4355, unless otherwise noted.

**GENERAL PROVISIONS****§ 83.501. Purpose.**

(a) It is the intention of the Commission to provide delegated conservation districts with funds to assist districts in the implementation of the Program developed under the act, if the district complies with the terms and conditions of this subchapter. The funds will be used for the employment of technical staff, to provide administrative funding assistance to the district and to finance other Commission approved activities under the Program.

(b) The Commission will annually allocate the available funding for this program and will provide for the fair and equitable distribution of funds.

(c) The purpose of the Technical Assistance Funding Program is to provide assistance to delegated districts for employment of technical staff, administrative purposes and other Commission approved activities to carry out those district functions necessary to implement the Program.

(d) The purpose of the PDIP is to provide financial support to the operators of concentrated animal operations or other agricultural operations for the development of an approved nutrient management plan under the act.

**§ 83.502. Definitions.**

The definitions in § 83.201 (relating to definitions) apply to this subchapter. In addition, the following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

*Cooperating organization*—An organization approved by the Commission to assist in carrying out the Conservation District Law (3 P. S. §§ 849—864).

*Directors*—The district's board of directors as defined in the Conservation District Law.

*Nutrient management technician*—A person employed by the district to perform those duties necessary to implement the Program developed under the act.

*PDIP—Plan Development Incentives Program*—The program established in §§ 83.211—83.216 (relating to PDIP).

*Program*—The Nutrient Management Program.

### TECHNICAL ASSISTANCE FUNDING PROGRAM

#### § 83.511. General requirements.

- (a) This program is known as the Technical Assistance Funding Program.
- (b) State and Federal funds allocated to districts for the Technical Assistance Funding Program shall be used solely to employ nutrient management technicians and finance administrative expenses and other Commission approved activities to implement the act. The funding allocation will be based on the level of responsibilities assumed by the district in the Program as specified in the delegation agreement with the Commission.
- (c) The nutrient management technician is not an employe of the Commission. A person serving as a nutrient management technician shall receive general supervision from a district director or an employe of the district designated by the board of directors.
- (d) The Commission will prioritize and determine the amount of funding provided to each district and the nature and extent of expense to be funded.
- (e) If an evaluation of the district's performance reveals that the district is not performing satisfactorily at the authorized level, the Commission has the authority to reduce the funding allocation to that district.
- (f) Within 60 days of the termination of the delegation agreement with the district, the Commission may require the return of equipment and nonexpendable supplies purchased under the delegation agreement.
- (g) Fines, fees, judgments and interest collected by the district on behalf of the Commission under the Program shall be paid or credited to the Fund at the end of each quarter.
- (h) The Commission may audit any records or accounts of the district under the Program.

#### § 83.512. Procedures for allocating funds.

- (a) The Commission will determine the amount of funding available for the Technical Assistance Funding Program.
- (b) Priority for funding shall be established by the Commission based on the estimated workload for the district under the Program.
- (c) The Commission may reallocate funds if a delegation agreement cannot be fulfilled by the district.
- (d) During fund allocation, the Commission, at its own discretion, may require that the district budget requests meet specific technical and administrative funding levels.



**§ 83.513. Application procedures.**

(a) An application for available funds, including requests for advance payments, shall be in writing on forms approved by the Commission. The application shall be received by the deadline established by the Commission for filing applications. The application shall also include a budget outlining anticipated expenses.

(b) Applications will be approved based upon the priorities set by the Commission and the availability of funds.

(c) Applications for districts will not be approved and expenses cannot be incurred unless the district has entered into a fully approved delegation agreement.

(d) Applications will be for a calendar year period, unless other time periods are established by the Commission.

**§ 83.514. Reimbursement procedures.**

(a) Claims for reimbursement shall be made on forms approved by the Commission.

(b) Claims for reimbursement shall be submitted to the Commission within 15 days of the end of each quarter. The days are April 15, July 15, October 15 and January 15.

(c) The Commission will suspend claim processing until receipt of required reports or the completion of all conditions of the agreement.

**§ 83.515. Advance payments.**

(a) Requests for advance payments shall be made on forms approved by the Commission.

(b) Advance payments to cover expenses for the first claim of each year may be requested from the Commission. Advance payments will be based on demonstrated need in accordance with the Commission-approved district budget submitted with the application.

(c) Advance payments and unspent funds shall be placed in an insured, interest bearing account. To document the amount of interest to be paid or credited to the Fund, the district may use methods that are equal to the method used by the account holding the unspent program funds that follow generally accepted accounting principles.

(d) Requests for advance payments to cover expenses for the first claim of each year shall be submitted to the Commission by January 15, or as established by the Commission.

(e) Claims may be filed for reimbursement for the first and second quarter. Claims shall be submitted to the Commission within 15 days of the end of the quarter.

(f) Expenses for the third quarter shall be submitted, but no payments will be processed until final claims are submitted at the end of the fourth quarter. A final yearly payment will be made after balancing money provided in the initial advanced payment with claims for the third and fourth quarter. No advancement of funds will be made until final approval of the previous quarterly report of expenditures is given by the Commission.

(g) The Commission will suspend advance payment processing until receipt of required reports or the completion of all conditions of the agreement.

**§ 83.516. Allowed expenses.**

(a) Eligible expenses directly related to implementation of the delegation agreement and the Technical Assistance Funding Program include:

(1) Salary, benefits and associated costs (for example, travel and training) of an act technician (if not reimbursed from other State or Federal programs).

(2) Clerical assistance and managerial oversight provided to the program (if not reimbursed from other State or Federal programs).

(3) Materials, supplies, equipment, postage, phone bills, office rent, legal expenses, certification fees and administrative travel.

(b) The district will be bound by the terms and conditions of the approved application and budget. The Commission, at its own discretion, may require specific technical and administrative funding levels.

(c) Budget modifications for reallocations of up to 10% of the total approved annual budget amount between the categories of an approved budget shall be approved in writing by the Commission prior to expenses being incurred.

**§ 83.517. Reporting requirements.**

(a) Reports shall be filed as specified on forms or in a format approved by the Commission.

(b) The dates for report submission are April 15, July 15, October 15 and January 15 unless otherwise specified in the agreement.

(c) Processing of expense claims or request for advance payment will not begin until required reports are received by the Commission.

(d) Records shall be maintained for 3 years following termination of the agreement with the Commission.

**§ 83.518. Relationship to other programs and money sources.**

(a) Individuals being funded by the Technical Assistance Funding Program may participate in other programs, but the district providing technical, clerical or managerial assistance for the Program may not apply for or receive payment from more than one program for the same work.

(b) Money received through the Technical Assistance Funding Program shall be used solely for the program purposes authorized by the Commission.

**§ 83.519. Special provisions.**

(a) Funds not used for the purposes authorized by the Commission will be deducted from the following year's allocation to that district.

(b) The Commission may delegate authority to the Commission's staff to act on its behalf.

**PDIP****§ 83.521. General.**

(a) This program is known as the Plan Development Incentives Program (PDIP).

(b) State and Federal funds allocated for the PDIP shall be used solely to finance a portion of the costs associated with the development of plans for agricultural operations planning under the act and those administrative expenses of delegated conservation districts or cooperating organizations associated with the implementation of the PDIP.

(c) Eligibility for cost-share funding under the PDIP is limited to operators of concentrated animal operations and other agricultural operations participating under the act as defined in § 83.211 (relating to applicant eligibility).

(d) PDIP participants shall submit an application for PDIP funds to the Commission or a delegated conservation district on forms provided by the Commission.

(e) Funding levels for PDIP shall be determined by the Commission. Availability of funds to eligible participants will be determined as described in § 83.213 (relating to application prioritization criteria).

(f) The Commission or a delegated conservation district will evaluate applications for eligibility, prioritization and allowable reimbursement based on criteria established in §§ 83.211—83.216 (relating to Plan Development Incentives Program) and other guidance established by the Commission.

(g) An approved application for funding shall remain effective for 180 days from the date of approval by a delegated conservation district or the Commission.

(h) The Commission may audit PDIP records or accounts of the conservation district or cooperating organization assisting in the administration of the PDIP.

**§ 83.522. Procedures for allocating PDIP funds.**

(a) The Commission will determine the amounts of funds available for the PDIP.

(b) The Commission will determine the cost share rates for reimbursement to participants for the PDIP.

(c) The Commission will determine the nature and extent of administrative expenses to be funded to delegated conservation districts and cooperating organizations.

**§ 83.523. Agreement procedures and requirements.**

(a) The Commission will execute an agreement with a participating conservation district or cooperating organization specifying the terms and conditions for providing PDIP funds, including advance payments to cooperating organizations, if requested. Allowable reimbursable items for administering PDIP will include those items determined by the Commission to be necessary to carry out the agreement or PDIP.

(b) Conservation districts or cooperating organizations may not incur reimbursable expenses in advance of the effective date of the agreement or contract with the Commission.

**§ 83.524. Reimbursement procedures.**

(a) Claims for reimbursement by delegated conservation districts or cooperating organizations shall be made on forms or in a format approved by the Commission.

(b) Claims for reimbursement by the cooperating organization shall be submitted to the Commission within 15 days of the end of each quarter. These days are April 15, July 15, October 15 and January 15. A summary of PDIP activities during the quarter shall be included with the claim for reimbursement for that quarter.

(c) The Commission will suspend claim processing to a cooperating organization until receipt of the required quarterly report or the completion of all conditions of the agreement.

(d) Claims for reimbursement by a delegated conservation district shall be made on forms or in a format approved by the Commission and submitted to the cooperating organization within 15 days of the end of each quarter. These days are April 15, July 15, October 15 and January 15.

**§ 83.525. Advance payments to cooperating organizations.**

(a) The Commission may advance funds to cover expenses for the first claim of each year as requested. Advance payments will be based on a demonstrated need in accordance with the Commission-approved budget submitted with the application.

(b) When the Commission has determined that an emergency payment is necessary to assure cash flow to a cooperating organization, the Commission will advance funds based on demonstrated need in accordance with criteria established by the Commission.

(c) Advance payments and unspent funds shall be placed in an insured, interest bearing account. To document the amount of interest to be credited to the fund, a cooperating organization may use methods that are equal to the methods used by the account holding the unspent PDIP funds that follow generally accepted accounting principles.

(d) Request for advance payments to cover expenses for the first claim of each year shall be submitted to the Commission by January 15, or as established by the Commission. Requests for advance payments shall be made on forms or in a format approved by the Commission.

(e) Advance payments will include cost-share funds for disbursement to PDIP participants and administrative costs of the delegated conservation district or cooperating organization as determined by the Commission necessary for the administration of the PDIP.

(f) Claims may be filed for reimbursement for the first, second and third quarter. Claims shall be submitted to the Commission within 15 days of the end of the quarter.

(g) If an agreement between the Commission and a cooperating organization is terminated, all unspent PDIP funds pertaining to the agreement shall be returned to the Commission within 10 days.

**§ 83.526. Allowable administrative expenses.**

Eligible expenses directly related to the implementation of PDIP may include approved charges for staff support, office equipment and supplies, accounting supplies, postage, telephone charges, office rent, legal expenses, and bank charges and other expenses as determined appropriate by the Commission.

**§ 83.527. Conservation district responsibilities.**

(a) A delegated conservation district is encouraged to promote PDIP participation through sign-up periods or other processes as an integrated element of the conservation district's education and outreach programs.

(b) A delegated conservation district shall evaluate applications for eligibility, prioritization and allowable reimbursement based on criteria established in §§ 83.211—83.216 (relating to Plan Development Incentives Program) and other PDIP guidance established by the Commission.

(c) A delegated conservation district shall transmit to the cooperating organization a request for an allocation and authorization for payment of PDIP funds for the applicant.

(d) PDIP activity reports shall be filed quarterly to the Commission on forms or in a format approved by the Commission.

(e) PDIP reports shall be submitted to the Commission on April 15, July 15, October 15 and January 15 unless otherwise specified in the agreement.

(f) Records shall be maintained for 3 years following the termination of the agreement with the Commission.

**§ 83.528. Cooperating organization responsibilities.**

(a) The cooperating organization shall obligate funds to the approved PDIP applications submitted by the conservation district.

(b) The cooperating organization shall disburse PDIP funds in the form of a one-time payment according to funding levels established by the Commission to approved applicants. Records of these fund disbursements shall be submitted to the Commission on a quarterly basis.

(c) The cooperating organization shall deposit advance funds in an insured, interest bearing account. Interest generated by these advance funds shall be utilized within the PDIP.

(d) The cooperating organization shall disburse administrative funds to participating delegated conservation districts for their efforts under the PDIP. Administrative funding levels for conservation district PDIP activities will be determined by the Commission.

(e) Reports shall be submitted as specified on forms or in a format approved by the Commission. These reports shall detail quarterly activities and cost share and administrative fund disbursements.

(f) PDIP reports shall be submitted to the Commission on April 15, July 15, October 15 and January 15 unless otherwise specified in the agreement.

(g) Records shall be maintained for 3 years following termination of the agreement with the Commission.

## **Subchapter F. DIRT AND GRAVEL ROAD MAINTENANCE PROGRAM—STATEMENT OF POLICY**

### **GENERAL PROVISIONS**

Sec.	
83.601.	Purpose.
83.602.	Definitions.
83.603.	Cooperation.
83.604.	Apportionment criteria.
83.605.	Payments by the Commission to districts.
83.606.	QAB Advisory Committee responsibilities.
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83.608.	QAB responsibilities.
83.609.	Application by project participants.
83.610.	Agreements.
83.611.	Eligible expenses.
83.612.	Project participant responsibilities.
83.613.	Performance standards.
83.614.	Payment of eligible expenses to project participants.

#### **Authority**

The provisions of this Subchapter F issued under the Conservation District Law (3 P. S. §§ 849—864); and the Vehicle Code, 75 Pa.C.S. § 9106, unless otherwise noted.

**Source**

The provisions of this Subchapter F adopted September 11, 1998, effective September 12, 1998, 28 Pa.B. 4634, unless otherwise noted.

**§ 83.601. Purpose.**

It is the intention of the Commission to provide local governments and other eligible entities with funds to:

- (1) Fund safe, efficient and environmentally sound maintenance of sections of dirt and gravel roads which have been identified as sources of dust and sediment pollution.
- (2) Establish a dedicated and earmarked funding mechanism that provides streamlined apportionment to the county level and enables local officials to establish fiscal and environmental controls.
- (3) Provide training to road crews on techniques of dirt and gravel road maintenance which minimize negative environmental impact.
- (4) Conduct demonstrations of new and innovative techniques of dirt and gravel road maintenance to assist in training of road crews and educate the general public on this matter.

**§ 83.602. Definitions.**

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

*Act*—The act of April 17, 1997 (P. L. 6, No. 3) which amended 75 Pa.C.S. (relating to the Vehicle Code) by adding 75 Pa.C.S. § 9106 (relating to dirt and gravel road maintenance).

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

*Cooperating organization*—An organization approved by the Commission to assist in implementing the act.

*District*—A conservation district as defined in the Conservation District Law (3 P. S. §§ 849—864).

*Exceptional value*—A stream or watershed which is designated as an exceptional value water under Chapter 93 (relating to water quality standards).

*High quality*—A stream or watershed which is designated as a high quality water under Chapter 93.

*Performance standards*—The administrative policies or technical requirements, or both, adopted by the Commission for the implementation of the Program, including standards that prohibit the use of materials or practices which are environmentally harmful.

*Program*—The Dirt and Gravel Road Maintenance Program.

*Project area*—A designated area where critical sediment or dust, or both, pollution problems have been identified.

*Project participant*—A municipality or State agency eligible to participate in a Program project under the act.

*QAB—Quality Assurance Board*—The administrative board impaneled by a district to administer the Program locally, under 75 Pa.C.S. § 9106(e).

*QAB Advisory Committee*—The advisory committee established by the Commission to assist and advise the Commission on the implementation and administration of the Program by local QABs.

*Task Force on Dirt and Gravel Roads*—The public/private sector, multi-agency task force which provides program guidance to the Commission on technical standards and other aspects of the Program.

### § 83.603. Cooperation.

(a) The Commission will encourage cooperation between Commonwealth and Federal agencies and other organizations including the Task Force on Dirt and Gravel Roads which have either direct or indirect involvement in the program to achieve the objectives to reduce sediment or dust, or both, pollution originating from dirt and gravel roads.

(b) Agencies other than conservation districts will be encouraged to work closely with the appropriate conservation districts to promote local awareness of the projects and to effectuate the purposes of the Program.

### § 83.604. Apportionment criteria.

(a) The Commission will apportion the amount of funds for each participating district under the program, based on the act and the criteria in subsection (c).

(b) The Commission may reallocate funds if an agreement cannot be fulfilled by the district, local government, contractor, and agency or cooperating organization.

(c) Apportionment criteria shall be based on the verified need to correct pollution problems related to the road and shall include consideration of the following:

(1) The total number of miles of dirt and gravel roads maintained by local municipalities or State agencies that are open to the public during any period of the year.

(2) The total miles of dirt and gravel roads within watersheds protected as of November 1996 as exceptional value or high quality waters of this Commonwealth.

(3) Allowances for the local costs of limestone aggregate.

(4) The commitments of grant applicants to comply with the nonpollution requirements established.

(5) Other factors determined by the Commission to be appropriate.

(d) In the first fiscal year, top priority shall be given to specific trouble spot locations already mapped by the Task Force on Dirt and Gravel Roads. The Commission may extend this priority beyond the first fiscal year.



(e) The Commission may allocate funds for training or road demonstration project, or both, to an aggregated budget managed by the Commission and may establish spending limits, consistent with the act, which includes the portion of the aggregated funds administered by the Commission.

(f) Public notice of the apportionment of funds for this Program will be published by the Commission in the *Pennsylvania Bulletin*.

**§ 83.605. Payments by the Commission to districts.**

(a) State funds apportioned to districts under this Program will be utilized solely for implementing a county level Program.

(b) The Commission will provide apportioned funds to a participating district through an agreement between the Commission and each participating district.

(c) The Commission may withhold funds until the Commission has received any overdue Program reports and audit statements as required by the Commission.

(d) For purposes of disbursing funds to participating conservation districts, the Commission may process an advanced working capital payment as follows:

(1) Upon the full execution of the grant agreement, the Commission may process up to 50% of the approved grant amount. Subsequent payments to the districts will be made on an “actual cash expended” basis to replenish the working capital advance.

(2) Advance payments by a conservation district to an eligible project participant under a project agreement shall be considered “actual cash expended” when the advance is paid by the conservation district.

(3) The district shall request the payments to replenish working capital in writing to the Commission in a format and time frame as prescribed by the Commission. The Commission may set a minimum payment level or time frequency, or both, for each request for payment.

(4) Notwithstanding the provisions of paragraph (1), (2) or (3), grant awards apportioned by the Commission to a conservation district and any advanced working capital payments made to conservation districts which will be \$25,000 or less for any 1 fiscal year may be advanced in total to the district.

**§ 83.606. QAB Advisory Committee responsibilities.**

The QAB Advisory Committee shall advise the Commission on the following:

- (1) Allocation of funds from the State level to conservation districts.
- (2) Development of Program and administrative procedures for QABs.
- (3) Review of administrative and technical guidance for the Program.
- (4) Other matters relating to the administration of the Program.

**§ 83.607. District responsibilities.**

(a) A district participating in the Program shall enter into an agreement with the Commission establishing the duties and responsibilities of each entity.

(b) The district shall receive and manage funds for the Program that have been apportioned by the Commission to the district.

(c) The district is responsible for all aspects of the management and administration of the Program within that county.

(d) A participating district shall conduct its Program consistent with the act, this subchapter and all other policies and regulations established by the Commission.

(e) The district shall appoint and impanel a four-member QAB to administer the Grant Program within the county, under the supervision and direction of the district board of directors. The QAB is to be comprised of a nonvoting chairperson appointed by the district and one local representative appointed by each of the following entities:

- (1) The Federal Natural Resource Conservation Service.
- (2) The Fish and Boat Commission.
- (3) The district.

(f) The district shall develop a fair and open project selection process, consistent with Commission policy, that provides general program information to all eligible project participants and includes sign-up periods necessary to receive requests for road maintenance and repair work from eligible project participants. Special efforts will be made to enlist the cooperation of project participants with identified critical erosion or dust problems.

(g) Work completion by project participants will be subject to approval by the district under the performance standards adopted by the QAB.

(h) The district shall conduct an annual audit of Program expenditures in accordance with guidance provided by the Commission.

(i) The district shall submit the results of its annual audit to the Commission in a manner and time frame established by the Commission. The Commission reserves the right to audit all Program-related accounts and records to determine if funds were expended in accordance with Commission policies and the act.

(j) The district shall report Program accomplishments to the Commission on prescribed forms at times as specified by the Commission.

(k) The district shall maintain a separate accounting of funds received under the Program. The district shall maintain an itemized accounting of administrative costs claimed. Districts shall deposit funds in a Federally insured interest bearing account. Interest earnings from the account shall be applied only to the Program. The percent of apportioned funds utilized by the district for administration or training grants may not exceed those limits established by the Commission or the act, or both.

(l) Records shall be retained by districts for 3 years after completion of the work.

(m) The Commission reserves the right to examine all records and files maintained by the district related to the administration of the district's Program.

**§ 83.608. QAB responsibilities.**

(a) The QAB impaneled by a district shall establish and administer the Program for the district under the direction of the board of directors of the district and consistent with the policies adopted by the Commission.

(b) The QAB shall consider and adopt the following:

(1) Written criteria to assure equal access for all eligible applicants within each funding category.

(2) Procedures that assure a minimum amount of procedural paperwork.

(3) Written criteria to specify priorities.

(4) Funding categories to provide separate budgeting for road maintenance projects, road demonstration projects, training grants and administrative costs:

(i) QAB training grants may not exceed limits established by the Commission.

(ii) Administrative costs may not exceed 10%.

(5) Incentives for training road managers and equipment operators.

(6) Standards that prohibit use of materials or practices which are environmentally harmful.

(7) Site inspection requirements to verify completion of work.

(c) The QAB shall review applications and recommend project participants to be funded through the Program.

(d) The QAB shall consider and adopt procedures for the conduct of business by the Board, including the following:

(1) Meeting schedules and procedures for public notice of meetings.

(2) Recordkeeping and provisions to make minutes and records available to the public.

(3) Rules of conduct, including rules necessary to avoid conflicts of interest by members of the QAB.

**§ 83.609. Application by project participants.**

(a) Applications will be on a one-page form approved by the Commission. Applications should be submitted to the local conservation district at the times designated by the local district. Handwritten applications will be acceptable.

(b) An application shall be specific to one work location or one type of work and shall include the following:

(1) A short description of the problem being solved.

(2) The basis of the cost estimate.

(3) The proposed project work schedule.

(4) The basis for successful completion.

(5) The type of pollution to be reduced.

(6) Other items specified by the Commission.

(c) The QAB shall expedite the approval process by inserting additional requirements which become binding when accepted by the applicant.

**§ 83.610. Agreements.**

- (a) An agreement is required between a district and project participants.
- (b) The form of agreements between the district and project participants shall be approved by the Commission.
- (c) Each agreement shall provide that the parties agree to comply with the conditions in this subchapter, the general contract conditions adopted by the Commission and the performance criteria adopted by the QAB of the district.
- (d) The term of the agreement shall be sufficient to cover the duration of work implemented under the agreement.

**§ 83.611. Eligible expenses.**

- (a) Eligible expenses include all Program and project costs associated with the administration and implementation of the Program, and the design, review, approval, implementation and maintenance of any project approved and funded by the Program. Eligible costs payable to project participants for Program projects and eligible costs payable to conservation districts for the overall administration and implementation of the Program will be determined by the Commission.
- (b) Eligible expenses for project participants include the materials, services and labor required to design and implement a project, including, but not limited to, construction and maintenance supplies and materials, equipment rental and transportation charges, demurrage, reimbursement for use of participant owned equipment, salaries and benefits, automotive and hauling travel including room and board expenses, contracted specialized services, miscellaneous expenses, certain engineering and technical fees as determined by the Commission and other expenses necessary for the satisfactory completion of a project as determined by the Commission.
- (c) Eligible expenses for participating conservation districts shall include eligible costs defined in subsections (a) and (b) for project participants, plus materials, services, labor, insurance/liability coverage and all other expenses necessary for the overall administration and implementation of the Program, the development and delivery of training/education programs, demonstration projects, resource assessment, site inspections and other expenses determined by the Commission to be necessary to administer and implement the Program.

**§ 83.612. Project participant responsibilities.**

- (a) Project participants shall conduct the dirt and gravel road maintenance project in accordance with the project agreement with the district, the work plan for the project, the standards established by the QAB for the district, and the policies adopted by the Commission.
- (b) Project participants may not use materials or practices that are environmentally harmful.

(c) Project participants shall apply for necessary local, State and Federal permits required for the project and provide the district with suitable documentation of permit issuance and requirements.

(d) Project participants shall report Program accomplishments to the district in a manner prescribed in the agreement.

(e) Claims for payment shall be submitted to the district in accordance with the schedule contained in the agreement. The claims shall be itemized and show that the utilization of funds are in accordance with the budget outlined in the agreement. The claims shall also include receipts, weigh slips or other appropriate supporting information, as determined by the Commission, to document actual expenditures by the project participant.

(f) The district and the Commission reserve the right to audit project related accounts and records to determine if funds were expended in conformance with the agreement.

(g) A project participant shall maintain a separate accounting of the funds received under the Program.

(h) Records shall be retained for 3 years following the last payment for the project.

(i) Upon the request of the district or the Commission, or both, project participants shall provide access to all records, files and documents related to Program projects.

#### **§ 83.613. Performance standards.**

(a) The Commission will establish, as it deems appropriate, performance standards for the implementation of the Program. These standards may include specific administrative policies or technical requirements, or both, adopted by the Commission for the implementation and administration of the Program, including standards which prohibit the use of materials or practices which are environmentally harmful.

(b) Standards which prohibit the use of materials or practices which are environmentally harmful shall include the following minimum requirements:

(1) The commercial products used by project participants within a project area shall be used or installed, or both, according to manufacturer's recommendations and label requirements.

(2) Materials toxic to aquatic life, as defined by The Clean Streams Law (35 P. S. §§ 691.1—691.1001), may not be used where surface runoff may enter surface or ground waters.

(3) Compliance with applicable Federal, State and local laws, regulations and permit requirements.

#### **§ 83.614. Payment of eligible expenses to project participants.**

(a) Payments made by a district pursuant to a project agreement shall be solely for eligible expenses.

(b) Claims for payment shall be submitted by a project participant to the district in accordance with the schedule and terms contained in the approved project agreement. The claims shall be itemized and show that the utilization of funds are in accordance with the project cost summary contained in the approved project application and work plan. Claims shall include receipts, weigh slips, equipment use time sheets, employe time sheets or other appropriate supporting information to document actual expenditures by the project participants.

(c) For the purpose of dispersing funds to a project participant under a project agreement, the district may process an advanced working capital payment as follows:

- (1) Upon the full execution of the project agreement, the district may process an advanced payment to a project participant of up to 50% of the approved project expenses.
- (2) Subsequent payments to the project participant will be made on an actual cash expended basis.
- (3) In all cases, the district shall withhold payment of at least 30% of the approved project expenses until the satisfactory completion of the project. Final payment for the project expenses shall be made only after a final inspection by the district determines that the work was performed consistent with the project application and the work plan, and to the satisfaction of the district.

### **Subchapter G. FACILITY ODOR MANAGEMENT**

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**Authority**

The provisions of this Subchapter G issued under 3 Pa.C.S. § 504(1.1); section 4 of the Conservation District Law (3 P. S. § 852); and section 503(d) of the Conservation and Natural Resources Act (71 P. S. § 1340. 503(d)).

**Source**

The provisions of this Subchapter G adopted November 28, 2008, effective February 27, 2009, 38 Pa.B. 6459, unless otherwise noted.

**Cross References**

This Subchapter G cited in 7 Pa. Code § 130f.2 (relating to definitions).

**GENERAL PROVISIONS**

**§ 83.701. 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.

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

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

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

*CAFO—Concentrated animal feeding operation*—An agricultural operation that meets the criteria established by the Department in regulations under the authority of The Clean Streams Law (35 P. S. §§ 691.1—691.1001), found in Chapter 92 (relating to National Pollutant Discharge Elimination System Permitting, Monitoring and Compliance).

*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.

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

*Conservation district*—A county conservation district established under the Conservation District Law.

*Construction or construction activities*—The act or process of systematically building, forming, assembling or otherwise putting together a facility or parts of a facility.

(i) The terms do not include any of the following, when used in relation to the following activities at animal housing facilities:

(A) Replacement of existing equipment at an existing animal housing facility.

(B) Replacement of an existing animal housing facility in existence as of February 27, 2009, that has been destroyed by fire, flooding, wind, or other acts of God, vandalism, or other similar circumstances beyond the operator's control, with a facility that is of similar animal capacity.

(ii) The terms do not include any of the following, when used in relation to the following activities at manure management facilities:

(A) Improving the integrity of an existing manure storage facility with no more than a 15% increase in manure storage volume as measured from the current storage volume documented in the approved nutrient management plan.

(B) Adding treatment technology, such as solids separation, anaerobic digestion, and composting, and their associated facilities, on agricultural operations in existence as of February 27, 2009, provided that the treatment technology is designed, built and operated consistent with the Commission's current "Odor Management Guidance."



*Expand, expansion*—Creation of additional space of an animal housing facility by increasing the size of an animal housing facility, or increasing the volume of a manure storage facility by increasing the size of the manure storage facility.

*Facility*—Refers to the animal housing facility and manure management facility, or portion of a facility, which are required to be, or are voluntarily subject to this subchapter.

*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).

*Impacts*—

- (i) Conflicts arising from the offsite migration of the odors from agricultural facilities.
- (ii) The term does not include mental or physical health affects, or changes in property values.

*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 management facility*—

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

*OMP—Odor management plan—Plan—*

(i) A written site-specific plan identifying the Odor BMPs to be implemented to manage the impact of odors generated from animal housing and manure management facilities located or to be located on the site.

(ii) The term includes plans approved for VAOs and facilities not required to submit a plan under this subchapter.

(iii) The term includes plan amendments required under this subchapter, except when otherwise stated.

*Odor BMP—Odor best management practice—*A practice or combination of practices, technologies, standards and strategies to manage the potential for odor impacts from animal housing facilities and manure management facilities that are subject to this subchapter.

*Odor management specialist—*A person satisfying the certification requirements of the Department of Agriculture's proposed Odor Management Certification Program in 7 Pa. Code Chapter 130f (relating to odor management certification).

*Odor Site Index—*The field evaluation methodology developed specifically for this Commonwealth and approved by the Commission, which applies 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, to determine the potential for odor impacts.

*Offsite migration—*The airborne movement of odors past the property line of an agricultural operation.

*Public use facility—*Public schools, hospitals, public nursing homes/elder care facilities and apartment buildings with greater than four dwelling units.

*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 an odor management plan.

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

### § 83.702. Scope.

This subchapter specifies the criteria and requirements for:

(1) Odor management planning required under the act for certain facilities at CAOs and CAFOs.

(2) Voluntary OMPs developed for VAOs and facilities not required to submit a plan under this subchapter, that are submitted to the Commission or delegated conservation district for approval under the act.

(3) The construction, location and operation of animal housing facilities and animal manure management facilities, and the expansion of existing facilities, as part of a plan developed under the act.

- (4) The awarding of financial assistance under the act for the development and implementation of OMPs for existing agricultural operations.

**§ 83.703. Purpose.**

The purposes of this subchapter are as follows:

- (1) To provide for the management of odors generated only from animal housing facilities and manure management facilities on certain CAOs and CAFOs, considering the following:

- (i) Site-specific factors.
- (ii) Reasonably available technology, practices, standards and strategies.
- (iii) The practical and economic feasibility of installation and operation of the technology, practices, standards and strategies.
- (iv) The potential impacts from the facilities that may lead to conflicts between the agricultural operation and neighbors, arising from the offsite migration of the odors.

- (2) To apply scientific information on odor management that is current at the time of plan approval, using the factors in paragraph (1), and recognizing the limitations of that scientific information and the subjective nature of identifying and managing odor impacts from agriculture.

- (3) OMPs are intended to address the potential for odor impacts. The plans are not required to completely eliminate the potential for odor impacts.

- (4) To encourage the management of odors generated from any VAOs and facilities, not required to submit a plan under this subchapter, consistent with paragraphs (1)—(3).

**§ 83.704. Relation to Subchapter D (relating to nutrient management regulations).**

This subchapter may not be construed as modifying, rescinding or superseding applicable manure management requirements for water quality protection contained in Subchapter D (relating to nutrient management).

**§ 83.705. Preemption of local ordinances.**

- (a) The act and this subchapter are of Statewide concern and occupy the whole field of regulation regarding odor management to the exclusion of all local regulations.

- (b) No ordinance or regulation of a political subdivision or home rule municipality may regulate the management of odors generated from animal housing or manure management facilities regulated by this chapter if the municipal ordinance or regulation is in conflict with this chapter and the regulations or guidelines promulgated under it.

(c) Nothing in the act or this subchapter prevents a political subdivision or home rule municipality from adopting and enforcing ordinances or regulations which are consistent with and no more stringent than the requirements of the act and this subchapter.

(d) A penalty may not be assessed under any valid local ordinance or regulation for any violation for which a penalty has been assessed under the act or this subchapter.

**§ 83.706. Limitation of liability.**

If an operator for an agricultural operation is fully and properly implementing and maintaining an OMP approved by the Commission or a delegated county conservation district 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 odor impacts.

**§ 83.707. 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 odor management program responsibilities under § 83.731 (relating to delegation to conservation districts).

(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 Departments of Agriculture and Environmental Protection.

**FINANCIAL ASSISTANCE FOR PLAN  
DEVELOPMENT**

**§ 83.711. Applicant eligibility.**

Agricultural operations existing as of February 27, 2009, which are subject to this subchapter under § 83.741(b) (relating to general) or § 83.741(g), are eligible to receive funding under this program.

**FINANCIAL ASSISTANCE FOR PLAN  
IMPLEMENTATION**

**§ 83.721. Applicant eligibility.**

An owner of an agricultural operation existing as of February 27, 2009, may apply for financial assistance for the implementation of OMPs developed under the act only when the Commission requires construction of a manure management facility as part of the nutrient management program requirements, as deter-

mined under Subchapter D (relating to nutrient management). The owner shall have legal and financial responsibility for the agricultural operation during the term of the financial assistance provided by the Commission.

#### DELEGATION TO CONSERVATION DISTRICTS

##### § 83.731. Delegation to conservation districts.

(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.

#### Cross References

This section cited in 25 Pa. Code § 83.707 (relating to compliance assistance and enforcement); and 25 Pa. Code § 83.801 (relating to initial plan review and approval).

#### ODOR MANAGEMENT PLANS

##### § 83.741. General.

(a) OMPs submitted under this subchapter must meet the requirements in this section and §§ 83.751, 83.761, 83.762, 83.771 and 83.781—83.783.

(b) *Applicability.* Agricultural operations that meet the criteria of paragraphs (1) and (2) shall develop and implement an OMP:

(1) *Types of operations.* Operations that meet one of the following:

- (i) CAOs and CAFOs existing as of February 27, 2009.
- (ii) Agricultural operations existing on February 27, 2009, which, because of an increase, resulting from expansion in the number of animals maintained at the operation, will become regulated as either a CAO or CAFO.
- (iii) Agricultural operations existing on February 27, 2009, which, because of a decrease in lands available for manure application, will become regulated as either a CAO or CAFO.
- (iv) New agricultural operations after February 27, 2009, which will be regulated as either a CAO or CAFO.

- (2) *Types of activities.* Operations that meet one of the following:
- (i) Constructing a new animal housing facility or a new manure management facility after February 27, 2009.
  - (ii) Constructing an expansion of an animal housing facility or a manure management facility after February 27, 2009.
- (c) *Transition.* Agricultural operations that initiate facility construction prior to February 27, 2009, are not required to develop and implement an OMP.
- (d) *Scope of plan.*
- (1) The OMP for activities under subsection (b)(2)(i) are only required to be developed and implemented with respect to the new facility.
  - (2) The OMP for activities under subsection (b)(2)(ii) are only required to be developed and implemented with respect to the newly constructed portion of the facility.
- (e) *Schedule to obtain plan approval.* Operations required to have an OMP under this subchapter shall obtain approval of their OMP prior to the commencement of construction of new or expanded facilities.
- (f) *Implementation of plans.*
- (1) Operations required to have an OMP under this subchapter shall fully implement the approved plan prior to commencing use of the new or expanded animal housing facility and manure management facility.
  - (2) A plan is considered fully implemented when the Odor BMPs in the plan are being implemented in compliance with the schedule of Odor BMPs.
- (g) *Voluntary plans.* An agricultural operation which is not required to comply with this subchapter may voluntarily submit a plan any time after February 27, 2009.
- (h) *Qualifications.* Plans shall be developed by odor management specialists certified in accordance with the Department of Agriculture's odor management certification requirements in 7 Pa. Code Chapter 130f (relating to odor management certification). The specialists shall certify that the plans are in accordance with the act and this subchapter.
- (i) *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.
- (j) *Penalties.* Operators and odor management specialists who sign plans may be subject to penalties for any false information contained in the plans.

**Cross References**

This section cited in 25 Pa. Code § 83.711 (relating to applicant eligibility); 25 Pa. Code § 83.761 (relating to identification of agricultural operations and regulated facilities); and 25 Pa. Code § 83.812 (relating to plan transfers).

**CONTENT REQUIREMENTS FOR ALL PLANS****§ 83.751. Content of plans.**

- (a) A plan must follow the standardized plan format provided by the Commission, unless otherwise approved by the Commission.
- (b) The operator shall be involved in the development of the plan.
- (c) The Odor BMPs listed in the plan must be consistent with the management practices listed in other relevant plans required by State regulations administered by the Commission or the Department, such as the nutrient management plan and Agriculture Erosion and Sedimentation Control plan developed for the operation, unless otherwise approved by the Commission or delegated conservation district.

**Cross References**

This section cited in 25 Pa. Code § 83.741 (relating to general).

**PLAN SUMMARY INFORMATION****§ 83.761. Identification of agricultural operations and regulated facilities.**

- (a) *Agricultural operation identification sheet.* The plan must include an agricultural operation identification sheet that contains the following information:
  - (1) The operator name, address and telephone number, and the address for the regulated facilities if that address is different from the operator's address.
  - (2) A description of the operation for both the existing and proposed facilities, clearly indicating the regulated facilities or portions thereof, or both, identifying how the odor will be addressed through the plan, including the following:
    - (i) Animal types and numbers included on the agricultural operation.
    - (ii) Types of structures proposed.
  - (3) The signatures and documentation as required by § 83.741 (relating to general).
  - (4) The counties and municipalities where land included in the plan is located.
  - (5) The name, odor management certification program identification number and signature of the odor management specialist that prepared the plan and the date of plan preparation.
- (b) *Maps.* The plan must include a topographic map drawn to scale identifying the lands where the facilities that are addressed in the plan are located. The map must clearly identify the following:
  - (1) The location and boundaries of the agricultural operation.

- (2) The location of the neighboring homes, businesses, churches and public use facilities in the evaluation distances as determined by § 83.771(b)(1)(i) (relating to managing odors).
- (3) Local topography.
- (4) The location of proposed and existing animal housing and manure management facilities.

**Cross References**

This section cited in 25 Pa. Code § 83.741 (relating to general).

**§ 83.762. Operator commitment statement.**

The plan must include a statement, signed by the operator, committing to the following:

- (1) Implementation of the Odor BMPs.
- (2) Maintaining the Odor BMPs consistent with the operation and maintenance criteria contained in the plan.
- (3) Keeping documentation of plan implementation activities, as described in the plan, and to allow access by the Commission or delegated conservation district to the documentation needed to determine compliance status.
- (4) Allowing access to the agricultural operation by the Commission or delegated conservation district needed for status reviews and inspections for complaints.
- (5) Providing operator's biosecurity protocols to the Commission or a delegated conservation district, if requested.

**Cross References**

This section cited in 25 Pa. Code § 83.741 (relating to general).

**MANAGING ODORS**

**§ 83.771. Managing odors.**

(a) *General.* OMPs must address the offsite migration of odors generated from facilities, as described in subsections (b) and (c). OMPs are intended to address the potential for odor impacts. The plans are not required to completely eliminate the potential for odor impacts.

(b) *Evaluation.* The plans must include an evaluation of the potential impacts according to the following:

- (1) The evaluation must address proximity to neighboring landowners, land use of the surrounding area, type of structures proposed, species of animals, local topography and direction of the prevailing winds, according to the following:
  - (i) To establish the extent of the surrounding area to be included in this evaluation, an evaluation distance from the proposed facility shall be estab-



lished. The number of AEUs on the agricultural operation shall be used as the primary factor in determining this evaluation distance.

(ii) The types of neighboring land owners and land uses that shall be assessed in this evaluation include homes, businesses, churches and public use facilities existing at the time of the submission of the plan.

(iii) The geographic center of a facility may be used as the starting point for the evaluation distance and for determining proximity to neighboring homes, businesses, churches and public use facilities.

(iv) Prevailing winds are presumed to be coming from the West and Northwest.

(2) The criteria and procedures in the current “Odor Management Guidance” (Guidance) issued by the Commission, and in effect at the time of plan submission, may be used to comply with this paragraph, including the use of an Odor Site Index contained in the Guidance. If the criteria and procedures in the Guidance issued by the Commission are not followed, an alternative method must be approved by the Commission.

(c) *Odor BMPs*. Based on the evaluation in subsection (b), the plan must include Odor BMPs that are necessary, if any, to address the potential for offsite migration of odors to meet the purposes of this subchapter, and as described in § 83.781 (relating to identification of Odor BMPs).

(d) *Time period to implement*. If construction activities of the new or expanded facility do not commence within 3 years of the date of plan approval, a new plan shall be submitted and approved prior to construction of the facility subject to this subchapter. The Commission may allow for extensions of the 3-year time frame, not to exceed an additional 2 years, when the agricultural operation was not able to obtain the necessary permits and approvals in time to initiate construction activities within the 3-year time frame due to circumstances beyond the reasonable control of the operation.

#### Cross References

This section cited in 25 Pa. Code § 83.741 (relating to general); 25 Pa. Code § 83.761 (relating to identification of agricultural operations and regulated facilities); 25 Pa. Code § 83.781 (relating to identification of odor BMPs); and 25 Pa. Code § 83.811 (relating to plan amendments).

#### ODOR BMPs

### § 83.781. Identification of Odor BMPs.

(a) *General*. A plan must identify all existing and planned Odor BMPs used to address the potential for odor impacts from the facilities covered by the plan.

(b) *Odor BMPs*. Odor BMPs are only required if they are necessary to address the potential for impacts, and installation and operation of the BMPs are feasible from a practical and economic perspective. The Commission may require the agricultural operation to demonstrate why a particular Odor BMP is not feasible from a practical and economic perspective for the given operation.

(c) *Level of Odor BMPs.*

(1) Based on the evaluation in § 83.771(b) (relating to managing odors), and the criteria in subsection (b), determine the Odor BMPs which need to be included in the plan, if any. If Odor BMPs are needed, the BMPs must meet one of the following levels:

(i) *Level 1 Odor BMPs.* Basic management-oriented Odor BMPs that are applicable to the operation according to the species of animals, such as dust management, moisture control and facility sanitation, and that manage odors according to the purposes of this subchapter.

(ii) *Level 2 Odor BMPs.* Specialized nonmanagement oriented Odor BMPs that are applicable to the type of operation, such as windbreak shelterbelts, biofilters and manure storage covers, that are in addition to the Level 1 Odor BMPs, and that manage odors according to the purposes of this subchapter.

(2) The criteria and Odor BMPs contained in the current “Odor Management Guidance” issued by the Commission, and in effect at the time of plan submission, may be used to comply with this subsection. If the criteria and Odor BMPs contained in the current “Odor Management Guidance” issued by the Commission are not followed, an alternative method must be approved by the Commission.

(d) *Description of Odor BMPs.* The plan must list the Odor BMPs, their general construction and implementation criteria, and their operation and maintenance requirements.

(e) *Implementation of supplemental Odor BMPs.* Supplemental Odor BMPs may be implemented in addition to the approved Odor BMPs in the plan, on a temporary or permanent basis, without approval by the Commission or a delegated conservation district.

(1) Plan updates to address operational changes of these supplemental Odor BMPs shall be:

(i) Retained at the operation.

(ii) Submitted to the Commission or delegated conservation district for inclusion in the approved OMP within 30 days after the end of the calendar year in which they are implemented.

(2) Inspection reports, as provided for in § 83.802(b) (relating to plan implementation), may be used as documentation for plan updates.

#### Cross References

This section cited in 25 Pa. Code § 83.741 (relating to general); 25 Pa. Code § 83.771 (relating to managing odors); and 25 Pa. Code § 83.811 (relating to plan amendments).

### § 83.782. Implementation schedule.

(a) OMPs must contain a schedule that identifies all Odor BMPs with the corresponding time frames that each Odor BMP will be implemented.

(b) Odor BMPs that involve planting of vegetation such as a shelterbelt are considered fully implemented if the planting satisfies the criteria in the OMP.

(c) Prior to utilizing a new or expanded facility that is required to implement an OMP under this subchapter, the operation must receive written approval from the Commission, or a delegated conservation district, confirming implementation of the plan.

(1) The operation shall provide the Commission, or a delegated conservation district, with written notification provided by certified mail, of the intent to utilize the facility.

(2) If the Commission, or a delegated conservation district, fails to act within 10 business days of the notification to utilize the facility, it will be deemed approved.

#### Cross References

This section cited in 25 Pa. Code § 83.741 (relating to general).

### § 83.783. Operation and maintenance schedule.

OMPs must contain a schedule that identifies all operation and maintenance procedures, the time frames that the operation and maintenance procedures will be conducted and the lifespan for each Odor BMP listed in the plan.

#### Cross References

This section cited in 25 Pa. Code § 83.741 (relating to general).

## DOCUMENTATION REQUIREMENTS

### § 83.791. General documentation requirements.

Unless otherwise specified in the plan, documentation required under this subchapter is not required to be submitted to the Commission or delegated conservation district, but shall be retained by the agricultural operation for at least 3 years from the date they are prepared.

### § 83.792. Documentation relating to plan implementation.

Written documentation to demonstrate implementation of the OMP must be appropriate to the types of Odor BMPs required by the plan, including documentation of installation, operation and maintenance activities relating to the approved Odor BMPs consistent with the documentation requirements included in the approved plan, and shall be completed and maintained at the operation.

## PLAN REVIEW AND IMPLEMENTATION

### § 83.801. Initial plan review and approval.

(a) Plans shall be submitted for initial review and approval to the Commission, or alternatively to delegated conservation districts, for agricultural operations located in counties delegated administrative authority under § 83.731 (relat-

ing to delegation to conservation districts). A person performing the plan review shall be certified in accordance with the Department of Agriculture's odor management certification requirements in 7 Pa. Code Chapter 130f (relating to odor 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. The Commission or a delegated conservation district may confer with experts in odor management, such as those at Pennsylvania State University, Natural Resources Conservation Service, and with others having knowledge of the local community in which the agricultural operation is located.

(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 and the plan 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 is disapproved, the operator submitting the plan 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.

### **§ 83.802. Plan implementation.**

(a) The plan shall be fully implemented in accordance with the implementation schedule included as part of the approved plan.

(b) Periodic inspections and review of the agricultural operation, the plan and the plan implementation documentation will be conducted by the Commission or a delegated conservation district at least annually to determine the status of the operation's compliance and whether a plan amendment is required.

## **PLAN AMENDMENTS AND TRANSFERS**

### **§ 83.811. Plan amendments.**

(a) A plan amendment is required if the operation expects to make a significant change in any animal housing and manure management facilities subject to this subchapter, prior to those changes being implemented.

(b) Any of the following are presumed to be a significant change in the operation which will require a plan amendment:

- (1) A net increase of equal to or greater than 25% in AEU's, as measured from the time of the initial plan approval.

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

(c) Any operation which would be required to submit a plan amendment under subsection (b) may avoid that requirement if it can demonstrate that there will not be an increase in the potential for offsite migration of odors under § 83.771 (relating to managing odors).

(d) Any operation that is required to implement Odor BMPs under § 83.781 (relating to identification of Odor BMPs), may submit a plan amendment requesting to change the Odor BMPs that are to be implemented, without conducting a new evaluation of the potential offsite migration of odors as described in § 83.771(b) (relating to managing odors), if the following applies:

(1) Supporting documentation is submitted, such as the implementation, operation and maintenance schedule, to demonstrate compliance with § 83.771(c).

(2) The operation is not making a significant change in the operation as described in subsection (b).

(3) The operator will continue to implement the original Odor BMPs until the Commission has approved the requested amendment.

(e) A plan amendment shall be developed and certified by an odor management specialist and be submitted to the Commission or delegated conservation district for approval under this subchapter.

#### Cross References

This section cited in 25 Pa. Code § 83.812 (relating to plan transfers).

### § 83.812. Plan transfers.

(a) An approved OMP may be transferred to a subsequent owner or operator of an agricultural operation by notification of the transfer to the Commission or a delegated conservation district, unless the transfer results in operational changes requiring a plan amendment under § 83.811 (relating to plan amendments). However, any new signatures required under § 83.741(i) (relating to general) must be obtained before a plan is transferred to any new operator.

(b) If the transfer of the approved plan results in operational changes requiring a plan amendment under § 83.811, 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).

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