

**AAB Member Comments on Proposed Changes to PAG-12
July 1, 2020 Special Meeting**

PennAg Industries Association, Letter Dated June 18, 2020 from Jennifer Reed-Harry

1. Under the Authority granted by coverage, item No.1 and No.2. with the proposed removal of No2 – what does the Department expect to receive as the NOI and Supporting documents (as stated in No 1.)? Please elaborate and provide detailed expectation to ensure both the applicant and the DEP reviewer adhere to the same process.

Recommendation: In the event that a timely and complete NOI seeking continued coverage under PAG-12 has been submitted and the Department is unable, through no fault of the permittee, to reissue the permit before the expiration date below, the terms and conditions of this permit will be automatically continued, and this approval of Coverage will remain full effective and enforceable pending the grant or denial of the pending NOI as long as the permittee is and remains in compliance with the terms and conditions of the Approval of Coverage and PAG-12.

2. Page 10, C: Routine Inspections and Record: No. 1”...Except where the water lines are associated with facilities housing sheep, lambs, horses or duck”. Why specifically “ducks”? Recommendation: Replace the word ducks with poultry.
3. Page 11, D Reporting and Related Requirements: 1(d). Failure to submit the CAFO Annual Report by the due date. Please elaborate to clarify how DEP staff will be interpreting the submittal of the NOI and Annual Report for continued permit coverage.
4. Page 11, D Reporting and Related Requirements: 3.a and 3.d, Annual Installment Payment. These sections reference the submittal of the annual payment and the later references electronic payment. Elaborate on the method of payment deemed acceptable to DEP and what form of receipt will be generated to the permittee/application.
5. Request that Department provide NOI Instruction, CAFO Annual Report Instructions, and the CAFO Annual Reporting Form, for review and comment.

Walter Moore, Email dated June 23, 2020

1. Page 4 regarding the NOI - what exactly is to be included with the NOI? Will it be due the same time as the Annual reports? I think that is a big ask of the CAFO operators and the plan writers. Could the NOI be simplified to just 6-page application and not include the ACT 14 notifications? I believe you would already have all that info in your files so why create more work/kill more trees sending duplicate paperwork? I would suggest a simplified version of the NOI.

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2. Page 10 - I don't think that any CAFO operations should have to inspect and report their water lines daily. Personally, if we have a water line broken or a cattle water bowl running over we fix it. Adding it to the daily/monthly reporting requirement to me is a waste of everyone's time. If dropping that requirement is not an option then I think it should be required for ALL CAFO operations not a select few? Why should a Dairy CAFO have to do this and an Equine CAFO not have to?
3. Page 11 - d. at the top and e at the bottom. I like the changes but am concerned with the word "may". I think that it is too vague and leaves it open to interpretation. Please consider making it more concrete.

PA Farm Bureau, Letter Dated June 24, 2020 from John Bell

1. PA Farm Bureau is generally supportive of the objectives that PAG-12 is attempting to accomplish. The Department's use of the annual report as the NOI has subjected CAFOs to additional legal and administrative problems. Challengers are attempting to claim a "right of appeal" to any and all aspects of a CAFO's general permit each year that the CAFO operator's PAG-12 permit is "renewed," despite the CAFO operator's faithful adherence to the production practices and nutrient management planning and implementation activities identified by the operator under his or her initial PAG-12 filing. The five-year general permit cycles strike a reasonable balance for both the Commonwealth and concerned citizens and for CAFOs and entities subject to the permit. Those concerned are given opportunity to review whether a regulated entity is operating consistently with terms of the permit and pursue administrative and judicial due process if they reasonably believe the entity may not be operating sufficiently within the permit's terms. And CAFO operators and other regulated persons who comply with the terms of the NOI and accompanying materials initially filed are given reasonable assurance that they may pursue viable business plans consistent with their permit for an extensive period in the future.
2. Submission of a NOI by 1/1/2021 - we are concerned with the additional work and cost that CAFO operators faithfully adhering to the terms of their initial filing under 2018's revised PAG-12 may have to do under the Draft PAG-12. Page 4 of the Draft would require "existing operations with coverage under the PAG-12 General Permit as of [Draft PAG-12's effective date], who wish to remain covered under the PAG-12 General Permit" to "submit an administratively complete and acceptable NOI for PAG-12 General Permit coverage no later than January 1, 2021."

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

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

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