



U.S. Environmental Protection Agency – October 2006
**Compliance and Enforcement National Priority:
Clean Water Act, Wet Weather, Concentrated Animal
Feeding Operations**

The United States Environmental Protection Agency (EPA) Office of Enforcement and Compliance Assurance (OECA) has established national priorities for federal fiscal years (FY) 2005 through 2007. OECA and the EPA's 10 Regions will make the following issues priorities for monitoring, compliance assistance, enforcement and cleanup actions over the next three years:

1. Clean Air Act: Air Toxics
2. Clean Air Act: Prevention of Significant Deterioration and New Source Review
3. Tribal
4. Clean Water Act: Wet Weather, including:
 - Concentrated Animal Feeding Operations
 - Combined Sewer Overflows
 - Sanitary Sewer Overflows
 - Storm Water
5. Resource Conservation and Recovery Act: Mineral Processing and Mining

After evaluating the Safe Drinking Water Act (SDWA) Microbial Rules as a national priority, the Agency determined that it was more appropriate to address the microbial non-compliance problems, which occur predominately at very small drinking water systems, through the SDWA core program. The Petroleum Refining national priority is near completion and will be assessed during the coming year to determine if sufficient progress has been made to return this priority to the core program.

Four environmental challenges that are exacerbated by wet weather were chosen as Clean Water Act (CWA) national enforcement and compliance priorities for FY 2005 through FY 2007. They are concentrated animal feeding operations, combined sewer overflows, sanitary sewer overflows and storm water runoff. Like the other national priorities, they were selected because they met the selection criteria: (1) increased national attention could lead to significant environmental benefits; (2) there were patterns of non-compliance; and (3) EPA was well-suited to take action in this strategy area.

The Concentrated Animal Feeding Operations (CAFO) *Compliance and Enforcement Strategy* summary that follows provides clear goals to achieve maximum compliance with environmental regulations in order to protect human health and the environment. The *CAFO Strategy* summary was revised in April 2006 in response to the February, 2005, decision of the U.S. Court of Appeals for the Second Circuit in *Waterkeeper v. EPA*. The decision had an impact on the universe of CAFOs required to apply for NPDES permit coverage. The decision affects EPA's implementation of its *CAFO Strategy* resulting in revisions. These revisions address performance under the *CAFO Strategy* from April 2006 through September 2007.

Background

Concentrated Animal Feeding Operations (CAFOs) have been regulated under the National Pollutant Discharge Elimination System (NPDES) program since 1976. In February 2003, EPA promulgated new CAFO regulations to update the NPDES program to avoid and manage environmental harm from these operations' animal manure and waste. The 2003 regulation required all CAFOs to be covered by NPDES permits and in compliance with the requirements of those permits no later than April 2006, unless they have received a determination that they have "no potential to discharge." As a result of the decision by the U.S. Court of Appeals for the Second Circuit in *Waterkeeper v. EPA* only CAFOs which discharge or propose to discharge will be required to apply for a NPDES permit. EPA is revising its CAFO regulations to address changes mandated by the *Waterkeeper* decision.

The animal feedlot industry has undergone major changes. These changes include consolidation trends in the industry toward larger-sized operations that have less available land on which to spread manure. Large CAFOs produce large quantities of nutrients that may exceed the capacity of available crop land to utilize these nutrients.

The Environmental Problem

The major environmental problem associated with CAFOs is the large volume of animal waste generated in concentrated areas. For example, roughly 700 dairy cows can generate more waste than a city of 10,000 people. Pollutants associated with animal waste primarily include nutrients -- mainly nitrogen and phosphorus -- but animal waste may also include organic matter, solids, pathogens, pesticides, antibiotics, hormones, salts and various trace elements (including metals). If manure and wastewater are not properly managed, pollutants can be released into the environment through discharges from manure storage areas or land application.

EPA's *National Water Quality Inventory: 2000 Report* indicates that the agricultural sector--including confined animal feeding operations--is a major contributor of pollutants in the nation's rivers and streams. EPA's data show that water quality concerns tend to be greatest in regions where crops are intensively cultivated and livestock operations are concentrated. Other problems associated with animal manure include surface water (e.g., lakes, streams, rivers, and reservoirs) and ground water quality degradation, and adverse effects on estuarine water quality and resources in coastal areas. Water quality degradation can contribute to increased risk to aquatic and wildlife ecosystems, including fish kills.

Nationwide, EPA's Office of Water estimates that there are approximately 18,700 CAFOs, and approximately 8,100 or 44 percent of these operations currently have NPDES permits. The major focus of the revised strategy will be those livestock and poultry sectors that have outdoor production waste or raw material handling or storage areas rather than those that are exclusively indoor operations. This approach is designed to identify those facilities most likely to need NPDES permits while exploring how to identify and address those sectors (primarily indoor) that have a lower risk of having discharges because of the technology and management of their operations.

The *CAFO Strategy* is being revised to clarify that the Agency's primary focus is on facilities that need permits based on the currently enforceable provisions of the CAFO regulations promulgated in February, 2003 (*i.e.*, 40 CFR Parts 9, 122, 123, and 412). These federal regulations prohibit any discharge from a CAFO, even one that is unplanned or accidental, unless it is authorized by the terms of a permit. **Any CAFO in operation prior to April 14, 2003 which discharges needs a permit now.** In addition, CAFOs which are new sources after April 14, 2003 which discharge or propose to discharge must apply for a permit. Under the 2003 regulations, **only** facilities which are newly defined as CAFOs will have until July 31, 2007 to apply for a permit.¹ OECA's *CAFO Strategy* does not address newly defined CAFOs.

This revised *CAFO Strategy* has established as a target, to reduce the amount of pollution discharged from CAFOs by at least 16 million pounds as a result of enforcement actions concluded in FY 2007.

Strategy for CAFOs with Outdoor Waste or Raw Material Handling or Storage Technologies or Practices

- Target federal inspections at large and medium CAFOs with a likelihood of discharges which do not have or have not applied for a permit. Many facilities were previously regulated under the 1976 CAFO regulations and should have obtained permits previously; focus federal enforcement actions against CAFOs found to be discharging without a permit, and against CAFOs with a permit that are in noncompliance with their permit requirements.
- Work with states: 1) to ensure that all permitted CAFOs will be inspected every five years and to identify and maintain a CAFO inventory (utilizing all available data and techniques such as remote sensing), and 2) to identify for inspection and potential follow-up enforcement action, CAFOs that are un-permitted and may have a likelihood of discharging;
- Work with states to undertake compliance assistance to help medium CAFOs eliminate or resolve the conditions which cause them to be defined as CAFOs;
- Later in 2007, re-emphasize compliance assistance concerning the requirements of the 2003 CAFO rule for CAFOs which are newly defined and the content and need for nutrient management plans. Communicate the need for permits for CAFOs regulated under the 1976 CAFO regulations and for new sources.

¹ Newly defined CAFOs are animal feeding operations that were in operation prior to April 14, 2003 but were not defined as CAFOs under the 1976 regulations. These include dry waste chicken, swine nursery, and stand alone heifer operations or CAFOs entitled to the 25 year, 24 hour exemption. On February 10, 2006, EPA extended the deadlines to July 31, 2007 for newly defined CAFOs which discharge or propose to discharge to apply for permits and develop and implement nutrient management plans.

- Form a national CAFO compliance and enforcement working group composed of EPA Headquarters and Regional staff to guide the effort.

Strategy for CAFOs Which Primarily Use Indoor Technology and Practices

Although CAFOs that use indoor waste handling technology have a lower risk of discharging than those using outdoor technology, some *may* discharge and may need NPDES permits. If they do discharge, evidence of a discharge may not be as readily apparent as it is for CAFOs with outdoor manure handling systems. Discharges for indoor waste handling facilities, for example, may occur in the transition from indoor storage to its actual land application or from over application or misapplication of manure to land to the extent that there are discharges not exempted from permitting by the agriculture storm-water exemption. In addition, some nominally indoor facilities may operate production areas in such a way that there are, in fact, discharges from those areas. For 2006, the focus will be on exploring ways to better identify for appropriate follow-up action those facilities with indoor waste handling systems that discharge, and to communicate which production practices may result in a discharge.

Exit Strategy

CAFOs will likely remain a national compliance and enforcement priority beyond FY 2007. The status of CAFO compliance and enforcement activities should change from a national priority to an element of the core NPDES program when the following benchmarks are met:

- At least 90% of the CAFO universe estimated to need NPDES permits have permits.
- 95% of permitted CAFOs have been inspected at least once in the past 5 years.