



National Association of Conservation Districts

August 29, 2006

Water Docket
Environmental Protection Agency
Mail Code 4203M
1200 Pennsylvania Ave., NW.
Washington, DC 20460

Attention Docket ID No. EPA-HQ-OW-2005-0037

Dear Sir or Madam:

The National Association of Conservation Districts (NACD) is pleased to submit comments on behalf of the nation's 3,000 conservation districts relative to the above-referenced proposed regulation. Established under state law, conservation districts are local units of state government charged with carrying out programs for the protection and management of natural resources at the local level. Conservation districts work with nearly two-and-half million cooperating landowners and operators each year and provide assistance in managing and protecting nearly 70 percent of the private working lands in the coterminous United States.

In response to the 2nd Court of Appeals decision in the case of *Waterkeeper Alliance, et al. v. EPA*, 399 F.3d 486 (2nd Cir. 2005), NACD offers the following comments.

With regard to duty to apply, NACD supports the elimination of duty to apply requirement for all CAFOs. NACD supports EPA's proposal for the revised regulation that would require only those CAFOs that discharge or propose to discharge to apply for an NPDES permit. We support the court's interpretation of the Clean Water Act with regard to this provision in the *Waterkeeper* case.

We are concerned however about the date by which a nutrient management plan would need to be implemented for CAFOs seeking to obtain a permit. The July 31, 2007 deadline may not provide sufficient time considering the backlog of conservation program delivery. Conservation Districts work with landowners across the country to implement conservation practices and develop conservation plans, including nutrient management plans on individual operations. We know first hand the back-log of individuals seeking technical assistance and cost-share assistance to implement nutrient management plans. There are also individuals with approved contracts, but have not had installed the practices due to a backlog in technical assistance and access to qualified personnel to assist with implementing the practice. Conservation Districts continue to

support full funding for cost-share and incentive programs to aid agricultural producers in the development of nutrient management plans.

With regard to unpermitted large CAFOs and AFOs not required to obtain permits, we would encourage operators to work with voluntary conservation programs and their local conservation districts to determine the conservation practices that best suit their specific operations. Again, limited availability of staff expertise to provide technical assistance and limited funding for financial assistance programs is impacting the ability to meet the demand for conservation assistance. Landowners are frequently seeking assistance in applying conservation practices, but are limited by the technical knowledge to implement these practices correctly.

With regard to public review, we support state flexibility in meeting these requirements. The specific details on the timing of public review are decisions that are best left to the state to determine.

NACD agrees with including a comprehensive nutrient management plans (CNMP) as components of NPDES permits for CAFOs. We also agree that associated production and/or land application areas, as defined in the proposed regulation, should be included within the permit itself only for the CAFO permittee itself. It should not include off-site application CAFO-generated wastes. In modifying a nutrient management plan, we support allowing the operation to modify implementation and report modifications to the permitting authority while not requiring public review. An operator must have flexibility in meeting the goals of the nutrient management plan providing for some alteration in cropping and practices as appropriate for their operation.

The National Association of Conservation Districts appreciates the opportunity to provide comments on this proposed regulation change.

Sincerely,

Bill Wilson
President