



Enforcement Alert

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EPA Targets Clean Water Act Violations at Livestock Feeding Operations

Agricultural activities are a leading cause of water pollution. Of particular concern to EPA are large-scale livestock feeding operations that confine hundreds or thousands of animals in a relatively small area. Because of their size, these animal feeding operations (AFOs) can discharge a significant volume of animal waste if designed, constructed and/or managed improperly, potentially contaminating rivers, streams, lakes, bays, coastal shorelines and other surface waters.

Certain AFOs are defined as concentrated animal feeding operations (CAFOs), which are subject to Clean Water Act (CWA) requirements, including permits to discharge. Revised permitting requirements were published by EPA in November 2008. Bringing CAFOs that discharge into compliance with those requirements is an EPA national compliance and enforcement priority. EPA promotes compliance by providing extensive information and outreach to CAFOs on applicable environmental requirements, as well as by conducting compliance monitoring inspections at CAFOs and initiating enforcement actions, where appropriate.

Pollution from CAFOs

Consolidation in the livestock industry has resulted in large-scale operations that can generate significant volumes of animal manure in excess of what is needed to fertilize cropland in an operation's immediate vicinity. The U.S. Department of Agriculture (USDA) estimates that confined livestock operations generate about 500 million tons of manure annually – three times the amount of human sanitary waste EPA estimates is produced annually in the United States. Although most of the manure is used to fertilize agricultural crops, manure and urine can escape from CAFOs into the environment from leaking or overflowing animal waste storage lagoons, as runoff in wet weather from animal confinement areas and uncovered manure stockpiles, and from cropland where manure is applied in excess of agronomic needs.

Adverse environmental and human health impacts associated with water polluted by animal wastes include: increases in suspended solids that cloud the water and inhibit the functioning of aquatic plants and animals, nitrate contamination of drinking water, and transmission of pathogens (disease-causing bacteria)

and parasites associated with food and waterborne diseases in humans. Animal wastes are typically high in nutrients, such as nitrogen and phosphorus, which can cause decreased oxygen levels, adversely affecting fish and other aquatic life. In addition, ammonia above certain concentrations in surface water is toxic to fish. An EPA analysis in 2000 found that, between 1981 and 1999, 19 states reported a total of four million fish killed by runoff and spills from CAFOs.



Manure discharges from the production area at a dairy

Benefits of Permit Coverage and Revised Regulatory Requirements

CAFO discharges have been regulated under the CWA for over 30 years as “point source” discharges of pollutants into the waters of the United States. CAFOs are often complex operations that have many sources for discharges, such as animal confinement areas, lagoons, food storage, silage, and manure application fields. They are required to obtain National Pollutant Discharge Elimination System (NPDES) permits under the CWA if they discharge or

propose to discharge into waters of the United States. Discharging without an NPDES permit and failing to apply for an NPDES permit when one is required are violations of the CWA.

CAFO owners or operators that do not apply for NPDES permits operate at their own risk because any discharge from an unpermitted CAFO (other than “agricultural stormwater”) and the failure to apply for an NPDES permit when one is required are violations of the CWA subject to enforcement action, including third party citizen suits. NPDES permit coverage provides the benefit of certainty to CAFO owners and operators regarding activities and actions that are necessary to comply with the CWA. Compliance with the permit is deemed compliance with the CWA and thus acts as a shield against EPA enforcement, state enforcement, or citizen suits. For example, NPDES permits for large CAFOs specify operating requirements that the operator must meet. If the operator is in compliance with these permit requirements, the CAFO is deemed in compliance with the CWA. In addition, NPDES permits include provisions that may be used by the permittee as a defense when emergencies or natural disasters cause discharges beyond their reasonable control.

EPA estimates that there are currently 19,000 large and medium-sized CAFOs nationwide and that as many as 75% of these may need to obtain NPDES permits because they discharge or propose to discharge. As of March 2008, approximately 9,000 CAFOs (47%) have NPDES permit coverage.

Unfortunately, many owners or operators of unpermitted CAFOs mistakenly believe that the animal waste that escapes from their facilities does not constitute a discharge as defined by the CWA, and therefore erroneously conclude that they are not subject to the Act’s regulatory requirements.

Some unpermitted CAFOs do not currently discharge but are nevertheless designed, constructed, operated or maintained so that discharges will occur, particularly during severe or chronic weather events. In other words, these facilities propose to discharge and are therefore subject to enforcement action for failure to apply for an NPDES permit. A discharge from these unpermitted CAFOs would subject the CAFOs to liability for the discharge and for failing to apply for the NPDES permit. The CWA authorizes EPA to seek up to \$37,500 per violation per day.

EPA published revised CAFO permitting regulations in November 2008. In the discussion accompanying the revised rule, EPA describes how CAFOs should evaluate whether they discharge or propose to discharge in order to determine if they need to seek NPDES permit coverage.

As explained in the final rule, this evaluation calls for a case-by-case determination by the CAFO owner or operator as to whether the CAFO does or will discharge from its production area or land application area based on an objective, rigorous assessment of the CAFO’s design, construction, operation, and maintenance. This evaluation must take into account not only the characteristics of the man-made aspects of the CAFO itself, but climatic, hydrological, topographical and other characteristics beyond the operator’s control. When making such a determination the owner or operator must keep in mind that any discharge from an unpermitted CAFO, even one that is unplanned or accidental, is illegal under the CWA and may result in significant penalties.

The 2008 CAFO rule creates an option for a CAFO to voluntarily certify that it does not discharge or propose to discharge. A valid certification establishes that the certified CAFO is not required to apply for an NPDES permit. The requirements for certification are stringent and require a demonstration that the CAFO is designed, constructed, operated, and maintained such that the CAFO will not discharge. A discharge from a CAFO with an invalid certification would render the CAFO liable for multiple days of violation for failing to apply for an NPDES permit, in addition to liability for the actual discharge. Therefore, if a CAFO seeks to minimize its potential liability, EPA recommends that the CAFO apply for an NPDES permit.



Manure runoff from a beef cattle CAFO in the Midwest

EPA Compliance Monitoring and Enforcement Activities

In response to state water quality reports of large numbers of surface waters impaired by nutrients and frequent CWA violations in the CAFO industry, EPA made CAFOs a national compliance and enforcement priority. The Agency is using all available compliance assistance, compliance monitoring and enforcement tools to ensure CAFO compliance with regulatory requirements; the goal is to improve animal waste management nationwide.

EPA’s primary inspection and enforcement emphasis is on those CAFOs that have failed to obtain an NPDES permit (despite their discharges of animal waste) and that may be expected to cause the most significant environmental harm from uncontrolled discharges. Generally, these are large and medium-size CAFOs with outdoor production areas and inadequately designed or operated manure storage lagoons, containment systems or uncovered stockpiles.

From October 1, 2007, through September 30, 2008, EPA conducted a total of 220 federal CAFO inspections; an additional 87 inspections were conducted jointly with state agencies at CAFOs. During this same time period, EPA concluded 71 CWA enforcement actions against CAFOs, including one civil judicial settlement and 70 administrative actions. These actions resulted in a total of over \$9,000,000 spent on corrective measures, a reduction of over

31,000,000 pounds of pollutants that would have otherwise been discharged, and over \$500,000 in penalties.

Federal District Court Actions

Two civil judicial settlements concluded by EPA in 2007 brought 239 swine CAFOs and one large egg processing facility, with its seven associated poultry farms, into compliance with the environmental laws.

M.G. Waldbaum Company has a large egg processing facility and seven associated poultry operations near Wakefield, Nebraska. EPA alleged that Waldbaum violated the CWA by overloading the wastewater treatment lagoons at Wakefield's publicly-owned treatment works, illegally discharging pollutants from a large pile of poultry waste from its poultry CAFO into a creek, and improperly dumping process sludge waste from its egg processing facility at two of its other operations.



Chicken litter pile at Waldbaum's poultry CAFO

Under a 2007 settlement, Waldbaum agreed to apply for an NPDES permit at its CAFO and develop and implement manure management plans at its six other poultry operations. To resolve CWA violations associated with its egg processing facility (which is not a CAFO), Waldbaum agreed to construct a wastewater treatment plant. Waldbaum also paid a \$1.05 million civil penalty. EPA estimates that these actions will result in annual pollutant reductions of 60 pounds of phosphorus, 61,000 pounds of suspended solids and 41,600 pounds of ammonia.

Seaboard Foods LP, one of the nation's largest pork producers, has 239 CAFOs in Oklahoma, Kansas, Texas and Colorado. In 2006, Seaboard paid a \$205,000 civil penalty for failure to comply with the CWA and the Clean Air Act. The company was ordered to implement erosion control measures at 16 CAFOs to prevent runoff of soils to nearby waters and to establish protective buffer zones around sensitive wetland areas at 17 of its other CAFOs.

David Inskeep. EPA also pursues criminal violations of the CWA at CAFOs. In September 2005, David Inskeep, who formerly

managed and operated the Inwood Dairy in Elmwood, Illinois, was charged with one criminal count of knowingly discharging pollutants without an NPDES permit. Although specifically warned that the Dairy's waste lagoon was full and advised to stop pumping in more waste, Inskeep refused to turn off the pump or hire waste haulers to remove the waste. When repeatedly advised that his action was illegal, Inskeep kept pumping waste from the lagoon, discharging more than one million gallons of waste and manure into a tributary of the Illinois River on his property. In 2006, Inskeep pled guilty to a one-count misdemeanor, and was sentenced to 30 days in prison and a criminal fine of \$3,000.

EPA's CAFO Compliance Assistance Resources

Providing extensive technical and compliance assistance resources is an EPA priority. EPA has awarded \$8 million in federal grants for providing technical assistance to livestock operators, including animal feeding operations, for the prevention of water discharges and reduction of air emissions. Under these grants, CAFOs can obtain facility-specific, confidential nutrient management plans (NMPs) at no cost to the operator. For more information see <http://livestock.rti.org> and <http://www.erc-env.org/CLEANMP.htm>. The Manure Management Planner software program, under development by a grant from EPA and USDA to Purdue University, is a computer program that will provide permitting authorities and producers assistance in NMP development (<http://www.agry.purdue.edu/mmp/>).

EPA's National Agriculture Compliance Assistance Center (Ag Center) supplies important information on laws and regulations, and state and regional contacts, as well as links to information on agricultural production, education and training opportunities, best management practices, research and compliance and enforcement matters. The Ag Center also staffs a toll free phone line (888-663-2155) where agricultural producers, advisors or the general public can ask questions, request publications or receive a referral for more information. The Ag Center works mainly with advisors to agriculture operations; for example, university extension agents, consultants and USDA field staff.

Compliance assistance materials are provided to state and federal inspectors to be distributed to producers during inspections and site visits, and provided to producers and advisors at conferences. In 2007, the Ag Center's web site (<http://www.epa.gov/agriculture>) had requests for over 1.42 million pages of information, approximately 15 percent of which were related to livestock and poultry. Since 1999, the Ag Center has distributed nearly 30,000 animal-related publications.

The Ag Center funded the development of the Livestock and Poultry Environmental Stewardship training curriculum, and is currently involved with the Livestock and Poultry Environmental Learning Center in coordination with USDA's extension service to make the best scientific information available on the internet.

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Further Information

For information on EPA's CAFO regulations: <http://www.epa.gov/npdes/afo>, see *40 CFR Parts 9, 122, 123, and 412 Revised National Pollutant Discharge Elimination System Permit Regulation and Effluent Limitation Guidelines and Standards for Concentrated Animal Feeding Operations (CAFOs) in Response to the Waterkeeper Decision; Final Rule*, *Federal Register*, Vol. 73, No. 225, Thursday, November 20, 2008, pp. 70418 – 70486, or contact Rebecca Roose, Water Permits Division, Office of Wastewater Management at (202)564-0758; Email: roose.rebecca@epa.gov.

For further information of the estimated waste produced annually by CAFOs, see Preamble to *40 CFR Parts 9, 122, 123, and 412 National Pollutant Discharge Elimination System Permit Regulation and Effluent Limitation Guidelines and Standards for Concentrated Animal Feeding Operations (CAFOs); Final Rule*, *Federal Register*, Vol. 68, No. 29, Wednesday, February 12, 2003, pp. 7180 - 7181 and 7235 - 7238.

EPA's National Agriculture Compliance Assistance Center: <http://www.epa.gov/agriculture>, or contact Carol Galloway, Agriculture Division, Office of Compliance at 913-551-5092; Email: galloway.carol@epa.gov.

For a summary of EPA's National Performance-based Strategy for CAFOs: <http://www.epa.gov/compliance>, or contact Kathryn Greenwald, Water Enforcement Division, Office of Civil Enforcement at (202) 564-3252; Email: greenwald.kathryn@epa.gov.

Disclaimer: This document attempts to clarify in plain language some EPA provisions. Nothing in this Enforcement Alert revises or replaces any regulatory provision in the cited part, or any other part of the Code of Federal Regulations, the Federal Register, or the Clean Air Act, the Comprehensive Environmental Response, Compensation and Liability Act or the Emergency Planning and Community Right-To-Know Act. For more information go to: www.epa.gov/compliance



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