U.S. Environmental Protection Agency | Office of Wastewater Management | October 2008

Concentrated Animal Feeding Operations Final Rulemaking – Fact Sheet

EPA has finalized revisions to the National Pollutant Discharge Elimination System (NPDES) permitting requirements and Effluent Limitations Guidelines and Standards (ELG) for Concentrated Animal Feeding Operations (CAFOs). This rulemaking is in response to the Waterkeeper *decision issued by the Second Circuit Court of Appeals in February 2005.*

Background

In February 2003, EPA issued revised Clean Water Act (CWA) permitting requirements and effluent limitations for CAFOs. The revised regulations expanded the number of CAFOs required to seek NPDES permit coverage and added requirements applicable to land application of manure by CAFOs.

In February 2005, the Second Circuit Court of Appeals issued its decision in *Waterkeeper Alliance et al. v. EPA* regarding legal challenges to the 2003 rule. Among other things, the court directed EPA to:

- Remove the requirement for all CAFOs to apply for NPDES permits, and
- Add requirements for Nutrient Management Plans (NMPs) to be submitted by CAFOs with their permit applications, reviewed by permitting authorities and the public, and the NMP terms incorporated into permits.

EPA published proposed rules in June 2006 and March 2008 describing how the Agency intended to address the court's decision in the *Waterkeeper* case. In addition, a July 2007 final rule extended certain deadlines that CAFOs were required to meet under the 2003 rule and a 2006 date extension rule from July 31, 2007 to February 27, 2009. EPA is not further extending the February 27, 2009 compliance dates and will work with State permitting agencies and CAFOs on implementation of the revisions to the CAFO rule discussion below.

Key Revisions

The final rule includes two key changes that address the *Waterkeeper* court decision. First, it revises the requirement for all CAFOs to apply for NPDES permits and instead requires only those CAFOs that discharge or propose to discharge to apply for permits. In the discussion accompanying the revised rule, EPA is providing additional clarification on how operators should evaluate whether they discharge or propose to discharge. 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 assessment of the CAFO's design, construction, operation, and maintenance. The final rule also provides a voluntary no discharge certification option for CAFOs that do not discharge or propose to discharge. A properly certified CAFO demonstrates to the permitting authority that it is not required to seek permit coverage.

Second, the rule adds new requirements relating to NMPs for permitted CAFOs. CAFO operators were already required to develop and implement NMPs under the 2003 rule; the new rule

EXHIBIT 3017-7

requires CAFOs to submit the NMPs along with their NPDES permit applications. Under the new rule, permitting authorities are then required to review the NMPs and provide the public with an opportunity for meaningful review and comment on the plans. Permitting authorities are also required to include the terms of the NMP as enforceable elements of the permit. The final rule lays out a process for including these facility-specific provisions in both individual and general permits.

The final rule also addresses other aspects relating to the *Waterkeeper* court decision. First, EPA is clarifying that water quality-based effluent limitations (WQBELs) may be required in any CAFO permit with respect to production area discharges and discharges from land application areas that are not exempt agricultural stormwater. Second, EPA removed the provision that allowed new source swine, poultry, and veal calf CAFOs to use containment structures designed for the 100-year, 24-hour storm to fulfill the no discharge requirement. Such CAFOs may now meet the no discharge requirement with site-specific best management practice effluent limitations. Finally, the final rule affirms that the Best Conventional Technology (BCT) limitations established in 2003 do in fact represent the Best Conventional Control Technology for achieving fecal coliform reductions.

Environmental Benefits and Public Costs of the Regulation

The February 2003 CAFO rule presented an extensive discussion of the environmental benefits associated with updating the CAFO regulations. This final rule does not alter these benefits since the technical requirements for CAFOs that discharge are not affected and all facilities will still need to control nutrient releases from production and land application areas. Since the final rule does not alter these technical requirements, CAFO operators and State permitting authorities will only experience a minor change to the existing regulatory burden under the CAFO NPDES regulations as revised in the final rule. This change in regulatory burden arises exclusively from the amended administrative processes associated with the final rule, and EPA estimates that the final rule will add less than one percent to the total current administrative burden.

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