



Overview of NPDES CAFO Supplemental Proposed Rule

Webcast

March 14, 2008





Welcome

- Welcome to EPA's public webcast on the Supplemental Proposed Rule for the CAFO NPDES Program.
- Purpose
 - This webcast aims to assist the public in understanding the supplemental proposal.
 - EPA will not be accepting formal public comments during the webcast. Comments must be submitted in accordance with the directions in the Federal Register notice.



Disclaimer concerning content of this presentation:

Nothing in this presentation is intended as a substitute for the information provided in the Supplemental Notice of Proposed Rulemaking (73 FR 12321) ("SNPRM"). In the event of any conflict between the information provided in this presentation and the SNPRM, the SNPRM is regarded as authoritative. Further, the Agency is not taking comment on any of the information provided in this presentation. The scope of public comment is limited to the scope provided in the SNPRM.



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Agenda

1. Background
 - i. The *Waterkeeper* Decision
 - ii. June 2006 Proposed Rule
 - iii. Polling Questions
2. Supplemental Proposed Rule
 - i. No Discharge Certification
 - ii. Question & Answer
 - iii. Terms of the Nutrient Management Plan (NMP)
 - iv. Question & Answer



CAFO Rule Timeline

2003 February 12	CAFO Final Rule
2005 February 28	<i>Waterkeeper</i> Decision
2006 June 30	CAFO Proposed Rule
2008 March 7	CAFO Supplemental Proposed Rule
2008 April 7	Comment Period Closes
2008 Summer	Projected Completion of Revised CAFO Final Rule



The *Waterkeeper* Decision

○ *Issues Vacated by the Court*

- Duty to Apply for all CAFOs
- Failure to establish sufficient requirements for CAFO nutrient management plans

○ *Issues Remanded by the Court*

- WQBELs
- New Source Performance Standard (NSPS) for swine, poultry, and veal calf CAFOs
- Best Conventional Technology (BCT)



June 2006 Proposed Rule

- Proposed rulemaking to address vacatures and remands from *Waterkeeper* decision.
- Proposed to require owners or operators of those CAFOs that discharge or propose to discharge to seek NPDES permit coverage.
- Proposed to clarify how unpermitted CAFOs may meet the agricultural stormwater exemption when they land apply manure, litter, and process wastewater.



June 2006 Proposed Rule (cont'd)

- Proposed to require CAFOs seeking permit coverage to submit a NMP with their permit application or notice of intent (NOI) for coverage under a general permit.
- Proposed to require permitting authorities to review the NMP and provide the public with an opportunity for meaningful review and comment.



June 2006 Proposed Rule (cont'd)

- Proposed to require permitting authorities to incorporate the terms of the NMP as NPDES permit conditions.
- Proposed a list of changes to the NMP that would require public notice and comment and a process for permitting authorities to modify the permit when an operator changes the terms of the NMP.



2008 Supplemental Proposal: Overview

- Supplements the 2006 proposed rule by proposing additional options being considered by EPA for inclusion in the final rule.
 - No Discharge Certification
 - Terms of the Nutrient Management Plan
- No provisions promulgated in the 2003 final rule are affected or reopened, nor is EPA reopening the comment period for the 2006 proposed rule.
- Comment period is for 30 days and ends on April 7, 2008. EPA is committed to finalizing a strong and flexible rule this Summer.



No Discharge Certification

- Description
- Eligibility
- Submission
- Effective Date
- Required Withdrawal
- Discharge from Certified CAFO



No Discharge Certification: Description

- Under the 2006 proposal, all CAFOs that discharge or propose to discharge would be required to apply for a permit.
- Supplemental proposal would provide a voluntary option for unpermitted CAFOs that have no duty to apply to certify to the permitting authority that they do not discharge or propose to discharge based on an objective assessment of the CAFO's design, construction, operation, and maintenance.
- CAFOs that are not required to seek permit coverage would be able to either certify or operate without permit coverage or certification, for as long as the CAFO does not discharge or propose to discharge.



No Discharge Certification: Eligibility

- Eligibility for certification would involve meeting a set of criteria designed to ensure that there will not be any discharge from the production and land application areas (other than agricultural stormwater).
- The documents necessary to meet eligibility criteria would not be submitted to the permitting authority; must be kept up-to-date and be maintained on site or made readily available.



No Discharge Certification: Eligibility

Supplemental Proposal includes two criteria:

- 1) Demonstrate that the production area does not discharge, including a technical evaluation of open manure storage structures conducted in accordance with the technical evaluation required for permitted new source swine, poultry and veal calf operations to meet a no discharge standard.
- 2) Development and implementation of an NMP including the recordkeeping requirements in the ELG for the land application areas.



No Discharge Certification: Submission

- CAFO would submit certification to permitting authority by certified mail or equivalent method of documentation.

- Information to be submitted would include:
 - Name and location;
 - Signed certification statement (CAFO certifying under penalty of law that it does not discharge or propose to discharge); and
 - Detailed description of how CAFO meets eligibility criteria.



No Discharge Certification: Effective Date

- A CAFO's certification would become effective upon submission.
- There would not be any requirement for permitting authority approval, rejection or review for completeness.
- Under proposal, certification would remain in effect until:
 - End of 5 year term;
 - CAFO voluntarily withdraws certification; or
 - Certification becomes invalid (CAFO discharges or fails to continuously meet eligibility criteria).



No Discharge Certification: Required Withdrawal

- If a CAFO's certification becomes invalid, the CAFO would be required to withdraw the certification by notifying the permitting authority within 3 days of the certification becoming invalid.
- A certification would be rendered invalid by:
 - Change in the factual basis for certification eligibility (e.g., increase in animals that exceeds that operational capacity, loss of land application areas, etc.); or
 - A discharge from the CAFO to waters of the U.S.



No Discharge Certification: In the Event of a Discharge

- Certification would be invalid prospectively from the time of the discharge.
- If properly certified at time of discharge, the CAFO would not be liable for failure to apply for permit, i.e., no violation of CWA §308 and regulatory duty to apply.
- Any discharge from a certified CAFO to waters of the U.S. would be an unpermitted discharge in violation of CWA §301.



No Discharge Certification: In the Event of a Discharge

To re-certify after a discharge the CAFO would be required to submit:

- A description of the discharge and the steps taken to permanently address the cause of the discharge; and
- All standard information required for certification (certification statement, description of eligibility, etc.).



Questions?



Nutrient Management Plans

- Summary of Proposal
- The Linear Approach
- The Matrix Approach
- The Narrative Rate Approach
- Minimum Terms Related to Application Rates
- Substantial Changes
- Annual Report Requirements



NMP: Overview of Terms

- Proposes to add regulatory provisions to identify what constitutes the “terms of the NMP”.
- Would define “terms of the NMP” generally as “the information, protocols, best management practices, and other conditions” identified in the CAFO’s NMP necessary to meet the requirements of the 2003 rule NMP requirements.
- For CAFOs that land apply manure, the terms would include the fields used for land application and rates of application.



NMP: Overview of Terms (cont'd)

- Proposes that the terms of the NMP include key factors and the methodology used to develop field-specific rates of application for each crop.

- Would allow three alternative options for rates of application, providing flexibility for CAFO operators as appropriate:
 1. Linear approach
 2. Matrix approach
 3. Narrative rate approach



NMP: Overview of Terms (cont'd)

- Under each approach, the CAFO would be required to submit detailed NMP that calculates rates of application for manure, litter, and process wastewater, by crop, by field, and by year.
- Under each approach, terms would include:
 - Field-specific assessment for nutrient transport
 - Crop or crops to be planted
 - Yield goals for each crop
 - Nutrient recommendations for each crop



NMP: 1. The Linear Approach

- Rates of application expressed as **tons/gallons of manure, litter, and process wastewater** by crop, by field.
- Additional terms would include:
 - Credits for N & P in the field
 - Accounting for other additions of N & P
 - Form and source of manure, litter, and process wastewater to be applied
 - Timing and method of land application



NMP: 2. The Matrix Approach

- Rates of application expressed as **pounds of nitrogen/phosphorus** from manure, litter, and process wastewater, by crop, by field.

- Additional terms would include:
 - Credits for N & P in the field
 - Accounting for other additions of N & P
 - Methodology for calculating maximum rates of application of manure, litter and process wastewater.
 - Methodology accounts for:
 - Form/source of manure, litter, and process wastewater
 - Timing and method of land application



NMP: 2. The Matrix Approach (cont'd)

- Would allow flexibility in two ways:
 - CAFO could change crops and crop rotations without changing NMP; and
 - the amount of manure, litter, and process wastewater might vary depending on source, timing, and method of application, as well as manure test results.



NMP: 3. The Narrative Rate Approach

- Rates of application expressed as a **narrative rate based on maximum amount of total nitrogen and phosphorus from all sources** by crop, by field.
- In addition, the terms would include the methodology for calculating maximum rates of application of manure, litter and process wastewater.
- Methodology would account for:
 - Credits for N & P in the field
 - Accounting for other additions of N & P
 - Form/source of manure, litter, and process wastewater
 - Timing and method of land application



NMP: 3. The Narrative Rate Approach (cont'd)

- Additional requirements would include annual soil testing and recalculation of rates based on all plant available N & P in the field.
- Would add flexibility by allowing real time calculation of actual rates of application based on annual soil test results, etc.

NMP: Proposed Minimum Terms of the NMP Related to Application Rates

NMP Components		Term of the NMP		
		Linear	Matrix	Narrative Rate
1	Fields available for land application	✓	✓	✓
2	Timing restrictions/prohibitions	✓	✓	✓
3	Outcome of the assessment of the potential for N and P transport from each field	✓	✓	✓
4	Planned crop or other use (e.g., fallow or pasture) or alternative crop	✓	✓	✓
5	Realistic annual yield goal	✓	✓	✓
6	Total N and P recommendation for each crop	✓	✓	✓
7	Max. Amount of N and P from all sources to meet crop needs			✓
8	Credits for N and P in the field	✓	✓	
9	Accounting for all other additions of N and P to the field (e.g., chemical fertilizer, etc.)	✓	✓	
10	App. Rate – lbs of N and P from manure, litter, process wastewater		✓	
11a	Methodology (to account for form, source, timing and method of application, and values and formulas for volatilization/mineralization)		✓	
11b	Methodology (to account for annual soil test results, non-manure sources of nutrients, and the form, source, timing and method of application, and values and formulas for volatilization/mineralization)			✓
12	Method and timing of land application	✓		
13	Form and source of manure litter and process wastewater	✓		
14	App. Rate – tons/gallons of manure, litter, process wastewater	✓		
15	Most recent manure test results (all approaches)	Annual Report Only; Not Terms		
16	Actual crop planted (all approaches)			
17	Actual yield for each crop in each field (all approaches)			
18	Actual amount of manure applied to each field (all approaches)			
19	Results of any soil testing preceding land application (narrative rate approach only)			
20	Amount of chemical fertilizer applied (narrative rate approach only)			





NMP: Substantial Changes to Terms

- Modifies the list of changes to the terms of the NMP that would constitute a substantial change requiring public review that was proposed in 2006:
 1. Addition of new land application areas
 2. Changes to maximum rates of application
 3. Addition of crops not identified in NMP with rates of application
 4. Changes likely to increase the risk of nitrogen/phosphorus runoff



NMP: Annual Report Requirements

- Proposes supplemental annual reporting requirements related to the 3 proposed approaches for expressing rates of application.
- CAFOs following any of the approaches would report actual crops and crop yields, manure test results, and amount of manure actually land-applied.
- CAFOs following the narrative rate approach also need to report annual soil test results and amount of commercial fertilizer used.



Additional Information

For copies of the FR notice and the Fact Sheet, please visit:

<http://www.epa.gov/npdes/afo/revisedrule>



Questions?