UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAY - 3 2007

OFFICE OF
WATER

MEMORANDUM

SUBJECT: Extension of CAFO Compliance Dates

FROM: Benjamin H. Grumbles, Assistant Administrator
Office of Water (4101)

TO: Regional Administrators I – X

EPA is publishing a Notice of Proposed Rulemaking in the Federal Register and seeking public comment on an extension of certain compliance dates for concentrated animal feeding operations (CAFOs). Currently, operations newly defined as CAFOs as a result of amendments to the CAFO definition promulgated in 2003 are subject to Clean Water Act permit application requirements as of July 31, 2007. EPA is proposing to extend the date by which these newly defined CAFO operations that discharge or propose to discharge must seek National Pollutant Discharge Elimination System (NPDES) permit coverage from July 31, 2007, to February 27, 2009. EPA is also proposing to extend the date by which all permitted CAFOs must develop and implement their nutrient management plans (NMPs) from July 31, 2007, to February 27, 2009.

EPA is proposing these extensions to allow the Agency adequate time to finalize revisions to the 2003 CAFO NPDES and Effluent Limitations Guidelines regulation in response to the decision issued by *Waterkeeper Alliance et al. v. EPA* (2nd Cir. 2005), which the agency proposed in June 2006. This will also provide time for State regulatory authorities and members of the agricultural community to adjust to the new requirements once they are promulgated. However, as we finalize decision-making regarding the *Waterkeeper* rule, Regions should continue to work with State permitting authorities to implement existing CAFO regulatory and permitting requirements. The implementation of the 2003 CAFO rule is critical in our mission to restore and protect watersheds across the nation. EPA is committed to finalizing the rulemaking process and to working with States and agricultural partners to ensure timely development of permit applications and NMPs where necessary.

States are actively implementing their existing regulations and continue to issue permits, and some have already revised their programs to reflect the *Waterkeeper* decision since it was issued in 2005. The proposed changes in the compliance dates would not supersede existing state requirements. States may choose to require CAFOs to obtain NPDES permits in advance of the dates set in the federal NPDES regulations, pursuant to the authority reserved to States under section 510 of the Clean Water Act to adopt requirements more stringent than those that apply

under federal law. See 40 CFR 123.1 of the federal permit regulations. Further, existing CAFOs that have been required to seek NPDES permit coverage before EPA issued the 2003 CAFO rule continue to be required to seek and/or maintain permit coverage pursuant to 40 CFR Part 122. This proposal also would not affect CAFOs subject to the new source performance standards under 40 CFR 412.35 and 40 CFR 412.46. New sources that discharge or propose to discharge must seek permit coverage at least 180 days prior to commencement of operations. 40 CFR 122.23.

This proposal would not affect CAFOs operating under existing permits as long as those permits remain in effect. If their existing permits require development and implementation of an NMP, currently permitted CAFOs must develop and implement their NMPs in accordance with the terms of their current permit. In addition, upon permit coverage, new sources must meet all applicable requirements, including land application requirements. Even for newly defined CAFOs that would not be required to apply for permits until February 2007, we encourage Regions and States to work with them to develop their NMPs such that they are informed and ready to apply when the time comes.

EPA's Office of Enforcement and Compliance Assurance (OECA) has determined that CAFOs are an enforcement priority for FY05-07, and has proposed to maintain this as a priority for FY08-10 to ensure compliance with existing federal regulations. With CAFO enforcement as a top Agency priority, States and Regions are encouraged to implement their programs and assist members of the agricultural community with coming into, or maintaining, compliance.

EPA headquarters is available to provide assistance in development and/or review of State and Regional programs. Please do not hesitate to call me or Jim Hanlon, Director, Office of Wastewater Management at 202-564-5766 regarding questions or comments.