

U.S. ENVIRONMENTAL PROTECTION AGENCY
CAFO PUBLIC MEETING—FORT WAYNE, INDIANA
MARCH 15, 2001, 1:00 to 5:30 PM

On December 15, 2000, former U.S. Environmental Protection Agency (EPA) Administrator Carol Browner signed proposed revisions to the National Pollutant Discharge Elimination System (NPDES) Permit Regulations and the Effluent Limitation Guidelines and Standards (ELG) for Concentrated Animal Feeding Operations (CAFOs). The proposed revisions revise and update the two regulations that address impacts on water quality from manure and process waters generated by CAFOs. EPA published these proposed revisions in the *Federal Register* on January 12, 2001, at 66 FR 2959.

EPA held eight public information meetings in different cities across the country. The purpose of these meetings was to enhance public understanding of the proposed changes to regulations for CAFOs. At each meeting, EPA presented an overview of the proposed regulations and responded to questions and requests for clarification from attendees.

These informational meetings were not part of the public comment process. Any comments that citizens or groups wish EPA to consider as part of the rulemaking process must be submitted in accordance with the requirements specified in preamble to the proposed rule. The public comment period extends until July 30, 2001. In Ft. Wayne, Mike Cook and Gregory Beatty from the Office of Wastewater Management, Janet Goodwin from the Office of Science and Technology presented the overview of the proposed CAFO rule revisions.

The summary below is an overview of statements made by the public participants at the informational meeting. These notes are not intended to be a verbatim transcript or a comprehensive record of the meeting; rather, they are intended to identify the participants at this meeting, the issues of concern, and the general nature of the questions asked and the answers provided. The summary is organized by order of questioner.

MEETING SUMMARY

Presenters: Mike Cook, Director, Office of Wastewater Management, Office of Water, USEPA;
Gregory Beatty, Office of Wastewater Management, USEPA;
Janet Goodwin, CAFO ELG Rule Revision Project Lead, Office of Science and Technology, USEPA

Moderator: Stuart Hill, Office of Public Affairs, USEPA Region 5

Panelists: Jose Cisneros (USEPA Region 5), Arnie Leader (USEPA Region 5), Mike Cook, Gregory Beatty, Janet Goodwin

Approximate number of public participants: 170

Attendees: The attendees were from all of the states in Region 5. There was a large constituency of citizen groups from Ohio and Michigan, with issues concerning pollution from the dairy and egg industries. There was a diverse group of industry representatives and producers representing all sectors, including ducks.

Meeting Opened: 1:15 PM

Questioning Began: 2:00 PM

Meeting Adjourned: 5:30 PM

SUMMARY OF QUESTION AND ANSWERS

(By order of questioner)

The following are notes of this proceeding. EPA does not have a verbatim transcript of the proceeding.

1. Dave Burkhart, Citizens of Putnam County for Clean Air and Water

Q: What is EPA doing to address the non-nutrient components of manure, such as pathogens, metals, and salts?

A: EPA is gathering data on how to reduce pathogens. Data indicate that storing manure in lagoons longer allows for more die-off of pathogens, and lower rates will reduce the number of pathogens and metals reaching the end of field.

2. Richard Bodenbender, Citizens of Putnam County for Clean Air and Water

Q: The U.S. Department of Agriculture (USDA), EPA, and universities claim lagoons have leaks. What happens when lagoons do not have liners? Is EPA inspecting lagoons? If so, are the inspections for all lagoons regardless of size? Is the manure from these lagoons applied evenly?

A: The Clean Water Act (CWA) addresses discharges of pollutants to surface water. USEPA's ground water program protects ground water, but most states also are responsible for the protection of ground water. Ground water is addressed in the CAFO proposed rule only when there is a direct hydrologic connection to surface water. Pollutants leaching to ground water should be identified through monitoring. EPA is not proposing inspection of liners right now. EPA recommends that operations sample their manure to identify nutrient content before they apply it to land.

3. Don Scheckelhoff, Citizens of Putnam County for Clean Air and Water

Q: Does EPA believe Riverkeepers (and related organizations) should help with inspections of waters, especially in areas such as Maryland and New Jersey, where there is a large concentration of manure?

A: There are regions, Delmarva in particular, where there is a significant concentration of poultry. Maryland is trying to deal with how to get the manure off the peninsula. One of their biggest problems is pollutants entering the waterway from runoff. River Keepers and other citizen groups will play a role.

4. John Kahle, Citizens of Putnam County for Clean Air and Water

Q: Is it not true that the widespread use of antibiotics at factory farms is contributing to the rise of human disease and making it harder to treat the spread of diseases?. What is EPA doing about this?

A: Livestock may contribute to this problem, but more research is needed.

5. Dave Alig

Q: What is the maximum level of phosphate that EPA allows in manure?

A: There are three methods in the proposed rule for determining phosphate level: phosphorus index, soil test phosphorus, and soil phosphorus threshold. EPA has left it up to the states to specify the exact method.

6. Roberta Osborne, Michigan State University Extension Service

Q: In the proposed rule, is the requirement to make executive summaries of the Permit Nutrient Plans (PNP) available to the public used in other industries?

A: There are not many regulations for other industries that are comparable. Please provide EPA with comment regarding what parts of the permit should be available to the public.

7. William Knapke, Cooper Farms

Q: Would EPA please explain co-permitting, environmental management systems, and who is a third party?

A: Substantial operational control (SOC) will determine whether there is a potential co-permitting situation, which can include direct supervision and who owns, feeds, or medicates the animals. Environmental Management System (EMS) is a more flexible approach in which each industry comes up with its own system. An example of the use of a third party is in the pork industry. They have trained people to help implement and EMS at swine operations with a third party providing an audit role. Another example is the United Egg Producers, who uses a general permit under the project XL and an EMS.

8. Pat Wolf, National Council of Farmer Cooperatives

Q: Why is EPA proposing to expand the CAFO program through regulation rather than focusing on the 9,000 CAFOs under the existing regulation that have more than 1,000 animal units (AU)?

A: The 9,000 CAFOs feel they are exempt because of the 25-year, 24-hour storm exemption. EPA is proposing these revisions to protect the environment and control the movement of manure.

9. Claud Kesler, Putnam County for Clean Air and Water

Q: Has EPA considered the phaseout of lagoons, requiring that new lagoons not be built, or placing a moratorium on lagoons?

A: The proposed regulation for swine and veal has a zero discharge requirement that will encourage other alternatives to lagoons. In the proposed regulation are performance standards; however, EPA does not mandate technology or ban technology. Lagoons are one of a few ways to manage waste water, and manure has to be captured in something. The beef and dairy industries are looking into a dry manure management option.

10. Kath Burkhart, Citizens of Putnam County for Clean Air and Water

Q: Under what circumstances would a liner be required for liquid storage?

A: A liner is required if there is a direct link of ground water to surface water. The individual should hire a hydrologist to determine if a connection is there. If a connection is established, the individual may be required to retrofit the lagoon with a liner or to install a new lagoon.

11. Vicki Kadesch, Citizen of Paulding Ohio

Q: Why is EPA recommending general permits for CAFOs? Does the public have an opportunity to comment on general permits? Does the public have an opportunity to comment on where CAFOs are located?

A: EPA believes it is a large administrative burden for the permitting authority to require individual permits for all CAFOs. The public has an opportunity to comment on a general permit when it is in draft form. Under the CWA, regulation 40, *Code of Federal Regulations* (CFR), Part 122 allows the public the opportunity to provide comments on why a facility should not receive a general permit and should be covered under an individual permit. Under the general permit, a facility must submit a notice of intent (NOI). The permit authority is required to let the public know about the NOI and to provide the public with an opportunity to comment on the NOI. Whether a CAFO receives a individual permit is under the discretion of the states.

12. Ron Kadeshch, citizen of Paulding, Ohio

Q: What is EPA doing to address air emission and pests from CAFOs?

A: Air emission and pests are not part of the CWA authority. The USEPA Office of Air is doing an analysis on the emissions from CAFOs. The requirements for swine and veal operations require covered storage, which will reduce emissions. EPA is not directly controlling these problems, but EPA believes that some of the requirements will reduce these problems. EPA will consider any practices and suggestions, and encourages the public to tell EPA if any of the proposed requirements would increase pest problems. EMS, for example, can include things beyond waste water control.

13. Clark Semett, Indiana Beef Cattle Association

Q: If we are required to keep records under Indiana law, do we also need to keep records under federal law?

A: It would depend on the kind of records the Indiana law requires. EPA's presumption is that record requirements under state law can also be used to meet federal requirements.

Q: The additional recordkeeping and accountability you require will put more farmers out of business and result in more consolidation. Please explain EPA's rationale.

A: The regulation is necessary to ensure that manure is managed properly.

Q: I have 600 feed cattle and 200 cows; is a farm this size in the cost study? What will be the cost for compliance?

A: Yes, EPA modeled farms across the country. This information is available in the supporting documents and in the costing report for beef and dairy.

14. Phil Anderson, Indiana Beef Cattle Association

Q: I am concerned that "40 percent of survey waters" in the fact sheet is an overstatement of the problem. Why is the existing regulation not sufficient to go after violators?

A: EPA is under court order to propose this regulation. Yes, there is room under the current regulation, but there are also a lot of loopholes.

15. Kevin Harvey, farmer

Q: Is EPA concerned with pollution, no matter where it comes from?

A: Yes.

Q: Why can we dump raw sewage legally in any stream?

A: This is not true; combined sewer overflows can discharge only in event of a large rainfall.

Q: Why not zero tolerance?

A: The costs associated with treating the wastewater and monitoring to comply with discharge limits is very expensive and will put people out of business; therefore, EPA requires zero discharge. EPA allows an overflow for beef and dairy in the event of a large storm, similar to the overflows experienced at some municipalities.

Q: If you are a poultry or swine facility, you cannot discharge?

A: Land application does not require zero discharge from the field as long as the operator develops and implements a PNP.

Q: As long as cities are allowed to dump, I believe this regulation is just who you can point a finger at.

A: EPA is trying to get around to all municipalities. Storm sewer overflows are legal, however, the discharge of raw sewage is illegal. EPA is trying to eliminate this problem and is putting pressure on states.

16. Jack Pfiester, Concerned Citizens

Q: What about prevention methods? Why has thought not been given to the limited number of animals per acre, type of soil, and a one-page set of rules? [Pfiester referenced two reports: EIS by the University of Michigan, and Citizens Guide to Regional Environmental Economic Effect from Dairy Operations.]

A: Please submit comments on your statement and reference the documents in your comments.

17. Deb Cato, Concerned Citizens

Q: How can the public and permittees evaluate a PNP adequacy? How can a PNP ensure that over-application does not happen if there only is periodic inspection?

A: If the operator is following a sound manure management plan, then the plan is adequate. EPA will work with state agencies on this issue. Most states, however, have an active permit program and enforcement programs; only Michigan does not have permitting regulation.

Q: Are there going to be more people enforcing?

A: EPA is training additional inspectors. Minnesota and Wisconsin have strong programs, and EPA tries to work with them.

18. Madelon Salisbury, Concerned Citizens

Q: Why doesn't the proposed regulation adequately prevent discharge to ground water and drinking water supply?

A: CWA authority allows EPA to control surface water from point sources. State programs should prevent discharge to ground water. Only a direct discharge from ground water to surface water is part of the proposed regulation.

19. Carmen Kaiser

Q: Why are CAFOs allowed to build in flood areas? Why are CAFOs not under inspection like home builders?

A: EPA does not include siting restrictions in the proposed regulation. This is up to local authorities.

Q: How do you regulate how much manure is land-applied per acre?

A: States should develop methods that will be used to determine site-specific rates.

20. David Donathen, Maple Leaf Farms, Inc. (duck producer)

Q: How are “best available technology” and “economically achievable” used to determine technology in the proposed regulation?

A: EPA looks at both factors, then assesses their impact on facilities.

Q: EPA decides what is feasible and what is not?

A: Yes.

Q: Once the proposed regulation goes through, will duck facilities be allowed to discharge?

A: There are fundamentally different factors for this industry. Please submit comments about the duck industry and include information about putting in wastewater treatment plants.

21. Leo Homan, Ohio Farmers Union

Q: Does EPA have precedence over Ohio Department of Agriculture?

A: The Ohio Environmental Protection Agency will continue to run its program until the Ohio Department of Agriculture is able to run the CAFO program. The Ohio Department of Agriculture’s program will have to meet USEPA’s standards for NPDES authority.

Q: Is there any provision in the law to put an end to the pollution from a CAFO? Buckeye Ag has violated the rules repeatedly.

A: It is Ohio’s responsibility, and the state has brought actions against this facility. The state has required monitoring and gotten the facility to come under compliance. The facility will not produce liquid manure any more. EPA cannot force a facility to close down, only subject it to penalties if they violate regulations. In theory, economics would force a repeat violator out of business.

22. Kristen Whittington, Indiana Department of Environmental Management

Q: Indiana’s state regulatory agency works with USDA Natural Resource Conservation Service (NRCS). What steps have been taken on a national regulatory level to work with USDA on these issues?

A: EPA has worked with USDA in development of comprehensive nutrient management plan (CNMP) regulations regarding construction of facilities. EPA is in contact with USDA regional offices and is familiar with what USDA is advising.

23. Brian Daggy, Indiana Farm Bureau

Q: Yesterday Indiana passed a new rule. What does the proposed regulation from EPA do to bring better protection?

A: EPA's proposed regulation is focused on the national issues. Unfortunately, other states are not as aggressive as Indiana.

Q: I believe this is best addressed at the state level.

A: The nation needs a level playing field so that all states have a minimum requirement.

Q: Will EPA grant equivalence to operate under one program rather than two?

A: States have authority to issue permits if adopted as an NPDES-authorized state. If a state program is equally stringent as or more than the federal NPDES program, they can have one program.

Q: Why is the NPDES regulating what traditionally has been a non-point source?

A: EPA is required under the CWA to regulate point sources. Under the CWA, a CAFO is identified as a point source

Q: The CWA NPDES program is designed to address large feedlots. How does this apply to a facility discharging non-point source pollution?

A: The CAFO program is operated under the same definition. Please provide EPA with comment on this issue.

24. Vicki Ponteodut, Michigan Department of Agriculture

Q: Why in the proposed rules are you using a PNP? What are the differences between a PNP and CNMP? Why confuse the agriculture community?

A: EPA welcomes comment on this subject. PNPs will establish a specific recordkeeping regime, frequency for sampling soil, and manure, which are not specified by the USDA in the CNMP. The PNP is part of NPDES and may be considered publicly available. Information in the CNMP is often considered confidential business information (CBI). EPA thinks it is an advantage to have a PNP. Also, a PNP does not add conservation and nutrition requirements as a CNMP does.

25. Michael Braverling, Homan, Inc.

Q: Who is going to be the soil police and diagnose what is over the maximum amount? What happens to people when they over-apply?

A: The CAFO owner or operator is required to analyze and maintain records at the facility. An inspector then looks at the records or may choose to take his/her own sample. The proposed regulation requires self monitoring. If EPA receives a complaint, an agency inspector will look at all things at the facility, including the application of manure, to determine if it is excessive.

26. Paul Brennan, Indiana State Poultry Association

Q: Is poor drinking water a major problem?

A: There are only a limited number of instances.

Q: EPA assumes that agriculture is a problem. Is there baseline water quality information for the whole country?

A: EPA gets data from states, USGS, and other sources. States submit data and EPA tracks them. EPA has a data base called STORET and uses the data to track changes. USGS also looks at these trends.

Q: Why is EPA combining veal, swine, and poultry? These are very different sectors.

A: EPA is not saying that they are similar other than that they house their animals in total confinement and the waste can be stored to prevent contact with rain.

Q: Why are CAFOs permitted for zero discharge?

A: The most economical control was zero discharge, not treatment and discharge. Other industries are designated as zero discharge, and the goal of the CWA is “no discharge of pollutants to waters of the United States.”

Q: EPA says 70 percent of impaired waters are impaired due to agriculture. Is this true?

A: It is 70 percent of the *assessed* waters.

27. Drew Frey, Culver Duck Farms, Inc.

Q: Why are ducks not treated like other poultry? The proposed cutoff is not fair. The rule requires regulation of 100 percent of producers.

A: EPA solicits comments on this issue.

28. Larry Gearhardt, AgPro, Inc.

Q: Are submerged perforated field tiles a “tile inlet” under the proposed regulation?

A: No, only if the tiles come to the surface.

Q: Will the final regulation clarify this?

A: EPA can clarify what the regulation is trying to cover.

Q: Has the term “substantial operational control” been checked against other laws, such as contract law or insurance law?

A: EPA will continue to look at this issue. Please provide comment on this issue.

Q: Will you provide more information on the lawsuit?

A: It is listed as “Natural Resources Defense Council (NRDC) versus William Reilly.”

29. Julia Wickard, Indiana Office of the Commissioner of Agriculture

Q: Why has EPA separated different sectors?

A: They use different types of housing. EPA is soliciting comments on whether this is not feasible.

30. Steve Loeschuer

Q: Would EPA have proposed this rule without the lawsuit?

A: EPA does have the responsibility under the CWA to revise regulations when the need becomes apparent.

Q: Please explain the rulemaking process and the number of iterations.

A: The proposed rule was published on January 12, 2001. There is a 120-day comment period. All comments will be read and responses prepared. New data will be evaluated and EPA may put out a subsequent notice if the data indicate that the options should be substantially changed. The court-ordered deadline is December 15, 2002.

Q: Will there be more than one draft?

A: EPA may issue a notice on the availability of new data.

Q: Why has EPA not required double-lined lagoons and monitoring of liner failure the same as landfills?

A: This rule was made under the CWA, not the Resource Conservation and Recovery Act (RCRA). This rule only established performance standards. The rule was cost-estimated for synthetic and clay liners. Monitoring requirements should detect leaks.

31. Mark Thornburg, Indiana Farm Bureau

Q: The NPDES program is a point-source program, and EPA has a lot of latitude defining a point source. Is the land application area part of the CAFO?

A: Yes.

Q: Are offsite recipients CAFOs if the CAFO operator applies the manure offsite?

A: If manure is applied to land that is not under control of the CAFO, it is not part of the CAFO. EPA expects manure to be applied according to a CNMP. If manure is applied according to the PNP, it is in compliance.

Q: You are not doing away with the agriculture storm water runoff exemption?

A: That is correct; the agriculture storm water runoff exemption is not being affected by this proposed revised regulation.

Q: Are programs similar to the construction grant program for publicly owned treatment works (POTW) being contemplated?

A: Some funds are available through USDA's Environmental Quality Incentives Program (EQIP) and EPA's 319 program, but these funds are for facilities without permits. The State Revolving Fund (SRF) can lend funds. A new program may be needed.

32. David Clidence, consultant

Q: Odor is a problem. Who can be contacted about odor problems?

A: EPA has an air program. Sally Shaver in Research Triangle Park, North Carolina is the EPA contact.

33. Lyn Henning, Clayton, MI

Q: Three CAFOs in Hudson County had discharges last year. What is being done?

A: EPA Region 5 issued an administrative order in one case and will be visiting CAFOs in that area soon.

Q: Who will inspect field tiles to make sure there is no direct connection?

A: EPA does inspect those kinds of things and is discussing these issues with the state of Michigan.

34. Terry Fleck, Indiana Pork Producer Association

Q: When is an AFO a CAFO?

A: If an operation is greater than 1,000 AU it is a CAFO. If an operation is between 300 and 1,000 AU and has a direct discharge or comes in contact with water, it is a CAFO. If an operation is less than 300 AU, it can be designated a CAFO if it is a significant contributor of pollution to waters of the United States.

Q: If an operation is over 1,000 AU is it then considered a significant contributor?

A: Yes, it can be a significant contributor.

Q: Greater than 1,000 AU has a potential to be a significant contributor even if no discharge?

A: That was the reasoning in 1974.

Q: A contributor is simply a number?

A: Yes, a large number.

Q: Where do AFOs fall into costs?

A: Cost information is only for CAFOs.

35. Dick Ward, fourth-generation pork producer

Q: Has EPA considered that this regulation will push family farmers into integration contracts?

A: It is not EPA's intent that the regulations will put facilities out of business or push them into contracts. EPA believes that the regulations are affordable. Please submit comments on this issue. EPA is working with the Indiana Department of Agriculture to make sure the Indiana regulations are equivalent.

36. Dave Sommers, pork producer

Q: What can the proposed EPA regulations do better than the Indiana regulations?

A: EPA is setting a minimum national standard. In Indiana you will probably not need additional paperwork. The NPDES program can provide protection against lawsuits.

37. Steven Howell, Congressman Mark Souder's office

Q: What is this regulation going to cost producers?

A: It will cost about \$830 to \$925 million per year for all producers.

Q: What will it cost the taxpayers?

A: It will not cost the taxpayers; producers were assumed to pay the full costs.

38. Susan Studer King, Ohio Environmental Council

Q: Will EPA extend the comment period?

A: EPA is likely to extend the comment period, but it will not affect the date of December 2002 for publishing the final rule.

Q: How will comments be addressed?

A: EPA is required to respond to every comment before the final rule is published.

39. Theresa Seidel, Michigan Department of Environmental Quality

Q: Did EPA consider the 503 regulations that deal with disposal of municipal sewage?

A: Not specifically, but EPA looked at the metals data.

Q: How will EPA assist in the design of storage for swine, poultry, and veal?

A: Designs requiring covers should prevent clean storm water or rain from coming in contact with stored manure.

Q: Will additional funds be available to states?

A: There recently has been a large increase in state 106 and 319 grants.

Q: Does EPA have any thoughts on designating a portion of the SRF for this?

A: States have total discretion in how SRF funds are spent.

40. Nancy Erickson, Illinois Farm Bureau

Q: Has EPA done a cost and benefit analysis of established voluntary programs?

A: No, but EPA welcomes any analysis you have. The rule proposes that 90 to 95 percent of AFOs will be addressed through voluntary programs with assistance from the states.

41. Don Schedcehoff

Q: Will the proposed rules restrict water usage?

A: No, but they should discourage water use, particularly if there is a need to transport manure.

Q: Why is there no federal building code for CAFOs?

A: [No answer.]

Q: Will Ohio have a manure management system like Michigan's?

A: The two programs are very different.

Q: Will the proposed regulations require incorporation of manure?

A: No, but some states may require it and set more restrictive standards.

42. Rob Hoover

Q: Do you have any examples of functionally equivalent programs?

A: No, EPA will evaluate part or all of a state's program for equivalency. EPA is looking for acceptable alternatives.

43. Dave Wade

Q: How does EPA define pollutant?

A: The definition is in the CWA and 40 CFR, part 122.2.

[Questioning was opened to the floor at this point, and questions were asked by people who did not give their names.]

Q: Will functional equivalency be judged against the current or the proposed rule.

A: Functional equivalency will be judged against the rule that is in place. It will be judged against the new rule once it is finalized.

Q: What will constitute an acceptable impermeable liner?

A: Whatever meets the standard of no discharge. EPA analyzed costs on a combination of clay and synthetic liners in the technical and cost analysis.

Q: How far must a lagoon be from the water table?

A: EPA has not specified in the proposed regulation.

Q: Who pays for the ground water monitoring wells?

A: The producer will pay.

Q: How many wells should be installed?

A: EPA does not specify, but expects at least four wells.

Q: Has EPA considered the industrial treatment of wastes?

A: EPA did consider it, but did not propose it because it would be expensive and labor intensive, and there is no strong indication that producers want to use treatment and discharge systems to manage their waste.

Q: Will the rule restrict land application of manure to fields with tiles?

A: No, only around surface openings of tiles.

Q: Will EPA consider risks when developing this regulation?

A: EPA looked at the performance of technologies, not the risks.

Q: Is there any control over siting?

A: Siting is a state, municipal, and local issue, not EPA's.