Archived Publication

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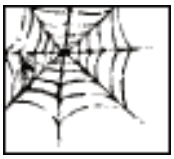

EPA promulgated regulations for Concentrated Animal Feeding Operations (CAFOs) in February 12, 2003 that expanded the number of operations covered by the CAFO regulations and included requirements to address the land application of manure from CAFOs. The rule became effective on April 14, 2003. NPDES-authorized states were required to modify their programs by February 2005 and develop state technical standards for nutrient management. On February 28, 2005, in response to litigation brought by various organizations, the Second Circuit court issued its decision in *Waterkeeper Alliance et al. v. EPA*, 399 F.3d 486 (2d Cir. 2005). EPA has updated the CAFO rule to reflect the changes requested by the Court. Visit www.epa.gov/npdes/caforule to view the 2008 CAFO Final Rule and supporting documents.

APPENDIX C

EXAMPLE LETTERS TO AFO OWNERS/OPERATORS REGARDING INSPECTION RESULTS

APPENDIX C. EXAMPLE LETTERS TO AFO OWNERS/OPERATORS REGARDING INSPECTION RESULTS

Example Letter in Follow-up to an Inspection: Facility ***Not Designated*** as a CAFO C-3

Example Letter in Follow-up to an Inspection: Facility ***Designated*** as a CAFO C-4

Example Letter in Follow-up to an Inspection:

Facility *Not Designated* as a CAFO

[NAME & ADDRESS]

Dear Mr./Ms. _____:

An inspection of your facility, located at [ADDRESS], was conducted on [DATE] by representatives of the [PERMITTING AUTHORITY]. The purpose of the inspection was to determine if conditions or practices on your animal feeding operation (AFO)[1] warrant designating your facility as a concentrated animal feeding operation (CAFO) and, consequently, requiring a National Pollutant Discharge Elimination System (NPDES) permit for operation.

During the inspection, no conditions or practices were observed to warrant designation of your facility as a CAFO at this time. However, the following areas of potential concern were noted.

[NOTE AREAS OF POTENTIAL CONCERN, IF ANY]

We request that you evaluate and address these areas of potential concern to ensure that they do not become problems. Technical information and assistance is available through [LOCAL NRCS OR EXTENSION OFFICE, STATE DEPARTMENT OF AGRICULTURE, OR USEPA's AGRICULTURAL ASSISTANCE CENTER (888/663-2155)].

The [PERMITTING AUTHORITY] may inspect your facility again in the future. Please be advised that any illicit discharges[2] to surface water or to surface water through ground water are violations of the Clean Water Act and subject to enforcement action with penalties.

Sincerely,

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[1] An animal feeding operation is defined by the [Permitting Authority] as a "lot or facility" where animals "have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period and crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility" **[or alternate definition established by the Permitting Authority]**.

[2] In the absence of a NPDES Permit all discharges from the facility are prohibited.

Example Letter in Follow-up to an Inspection:

Facility *Designated* as a CAFO

[NAME & ADDRESS]

Dear Mr./Ms. _____:

An inspection of your facility, located at [ADDRESS], was conducted on [DATE] by representatives of the [PERMITTING AUTHORITY]. The purpose of the inspection was to determine if conditions or practices on your animal feeding operation (AFO)[3] warrant designating your facility as a concentrated animal feeding operation (CAFO) and, consequently, requiring a National Pollutant Discharge Elimination System (NPDES) permit for operation.

During the inspection, the following conditions were observed:

[NOTE THE CONDITIONS THAT SUPPORT THE CAFO DESIGNATION]

Based on these conditions, the [PERMITTING AUTHORITY] has determined that your facility is or has the potential to be a contributor of pollutants to the waters of the United States. As such, the [PERMITTING AUTHORITY] designates your operation as a CAFO, with the requirement of applying for a NPDES permit and taking immediate steps to cease existing discharges and eliminate the potential for future discharges.

To meet the requirement of applying for a permit for your facility, [PROVIDE SPECIFIC INSTRUCTION AS TO WHETHER THEY ARE REQUIRED TO APPLY FOR AN INDIVIDUAL PERMIT OR SUBMIT AN NOI FOR A GENERAL PERMIT. INCLUDE STEPS AS TO HOW TO GET PERMITTED]

The [PERMITTING AUTHORITY] may inspect your facility again in the near future. Please be advised that discharges such as that observed on [DATE] are in violation of the Clean Water Act and as such can subject you to enforcement action with penalties.

Sincerely,

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[3] An animal feeding operation is defined as a "lot or facility" where animals "have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period and crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility" **[or alternate definition established by the Permitting Authority]**.

If you operated a small business as defined by the Small Business Administration (defined at 13 CFR 121.201; in most cases, this means a business with 500 or fewer employees), you may find the following information helpful.

The United States Environmental Protection Agency (EPA) offers small businesses a wide variety of compliance assistance resources and tools designed to help small businesses comply with federal and state environmental laws. These resources can help businesses understand their obligations, improve compliance and find cost-effective ways to comply through the use of pollution prevention and other innovative technologies.

Web sites EPA offers a great deal of compliance assistance information and materials for small businesses on the following Web sites, available through public libraries:

- www.epa.gov — EPA's Home Page
- www.smallbiz-enviroweb/org — EPA's Small Business Home Page
- www.smallbiz-enviroweb.org/state.html — List of State Contacts
- www.epa.gov/ttn/sbap — Small Business Assistance Programs
- www.epa.gov/oeca/polguid/index.html — Enforcement Policy and Guidance
- www.epa.gov/oeca/smbusi.html — Small Business Policy
- www.epa.gov/oeca/oc — Compliance Assistance Home Page
- www.epa.gov/oeca/ccsmd/commpull.html — Small Business and Commercial Services
- www.epa.gov/oeca/ccsmd/mun.html — Small Communities Policy

Hotlines EPA sponsors approximately 89 hotlines and clearinghouses that provide free and convenient avenues to obtain assistance with environmental requirements. EPA's Small Business Ombudsman Hotline can provide you with a list of all the hotlines and assist you with determining which hotline will best meet your needs. Key hotlines that may be of interest to you include:

- EPA's Small Business Ombudsman.....(800) 368-5888
- RCRA/UST/CERCLA Hotline.....(800) 424-9346
- Toxics Substances and Asbestos Information.....(202) 554-1404
- Safe Drinking Water.....(800) 426-4791
- Stratospheric Ozone/CFC Information.....(800) 296-1996
- Clean Air Technical Center.....(919) 541-0800
- Wetlands Hotline.....(800) 832-7828

Compliance Assistance Centers

EPA has established national compliance assistance centers, in partnership with industry, academic institutions, and other federal and state agencies, that provide online and fax assistance services in the following sectors heavily populated with small businesses:

•Access to All Centers (www.epa.gov/oeca/mfcac.html)

•Metal Finishing (1-800-AT-NMFRC or http://www.nmfrc.org)

•Printing (1-888-USPNEAC or http://www.pneac.org)

•Automotive (1-888-GRN-LINK or http://www.ccar-greenlink.org)

•Agriculture (1-888-663-2155 or http://www.epa.gov/oeca/ag)

•Printed Wiring Board Manufacturing or http://www/pwbrc.org)

•The Chemical Industry (1-800-672-6048 or http://www.chemalliance.org)

•The Transportation Industry (http://www.transource.org)

•The Paints and Coatings Center (http://www.paintcenter.org)

•Local Governments (1-877-TO-LGEAN or http://www.lgean.org)

State Agencies

Many state agencies have established compliance assistance programs that provide on-site as well as other types of assistance. Please contact your local state environmental agency for more information. EPA's Small Business Ombudsman can provide you with State Agency contacts by calling (800) 368-5888.

Compliance Incentive Policies

EPA's Small Business Policy and Small Communities Policy are intended to promote environmental compliance among small businesses by providing incentives such as penalty waivers and reductions for participation in compliance assistance programs, and encouraging voluntary disclosure and prompt correction of violations. These policies can not be applied to an enforcement action that has already been initiated. Contact Ginger Gotliffe (202-564-2310) for information on the Small Business Policy and Ken Harmon (202-564-2310) for information on the Small Communities Policy.

In order to improve your understanding of and compliance with environmental regulations and avoid the need for future enforcement actions, we encourage you to take advantage of these tools. **However, please note that any decision to seek compliance assistance at this time does not relieve you of your obligation to respond to an EPA request, administrative or civil complaint in a timely manner, does not create any new rights or defenses, and will not affect EPA's decision to pursue this enforcement action.**

The Small Business and Agriculture Regulatory Enforcement Ombudsman and ten Regional Fairness Boards were established to receive comments from small businesses about federal agency enforcement actions. The Ombudsman will annually rate each agency's responsiveness to small businesses. If you believe that you fall within the Small Business Administration's definition of a small business (based on your SIC designation, number of employees or annual receipts, defined at 13 CFR 121.201) and wish to comment on federal enforcement and compliance activities, call 1-888-734-3247). **However, participation in this program does not relieve you of your obligation to respond to an EPA request, administrative or civil complaint or other enforcement action in a timely manner nor create any new rights or defenses under law. In order to preserve your legal rights, you must comply with all rules governing the administrative enforcement process. The ombudsman and fairness boards do not participate in the resolution of EPA's enforcement action.**

Dissemination of this information sheet does not constitute an admission or determination by EPA that you business organization or government jurisdiction is a small entity as defined by the Small Business Enforcement and Fairness Act (SBREFA) or related provisions nor does it create any new rights or defenses under law.