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## Archived Publication

This information provided in this document is for reference. Please be aware that the information in this document may be outdated or superseded by additional information.



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](http://www.epa.gov/npdes/caforule) to view the 2008 CAFO Final Rule and supporting documents.



## What Is the Compliance Assurance Process?

EPA's goal in revising the CAFO regulations is to restore and protect water quality. EPA wants to help CAFO owners and operators comply with the regulations to minimize the environmental risks from their operations. EPA (or a state permitting authority) is also responsible for enforcing the regulations and may issue an order to comply. Such an order might or might not impose penalties on operators who don't comply. Read on to find out where you can get help to comply, and what to do and expect if you find that you're out of compliance with the CAFO regulations.

### Where can I get help?

For help in understanding the regulations, permitting process, and permit requirements, it's best to contact your NPDES permitting authority. Even if you don't have an NPDES permit, the permitting authority for CAFOs in your state can explain what the regulations are all about and whether you need an NPDES permit. You can find contact information for your permitting authority in the appendix or on EPA's Web site at <http://www.epa.gov/npdes/afo/statecontacts>.

EPA can also help you understand the regulations and permitting process. You can find information about the regulations (including animal sector-specific brochures, frequently asked questions, and the text of the regulations) on EPA's Web site at <http://www.epa.gov/npdes/caforule>.

In addition, EPA plans to publish more information to help you use different technologies and management practices at your CAFO to comply with the regulations.

EPA's National Agriculture Compliance Assistance Center, or Ag Center, is a good starting point to find help. The Ag Center has information on many topics, including BMPs, education and training, laws, and research.

### **EPA's National Agricultural Compliance Assistance Center**

Telephone: 1-888-663-2155

E-mail: [agcenter@epa.gov](mailto:agcenter@epa.gov)

Web site: <http://www.epa.gov/agriculture>

Mailing address: 901 North 5th Street, Kansas City, KS 66101

USDA has voluntary financial and technical assistance programs that can help CAFO owners and operators comply with the regulations. AFO operators might be able to use these programs to avoid or eliminate conditions that could qualify their operations as CAFOs (such as discharging pollutants through a man-made ditch or pipe, having animals in direct contact with a stream running through the production area, or being a significant contributor of pollutants to waters of the United States).

The Environmental Quality Incentives Program (EQIP) can provide up to 75 percent cost-share for storage structures and management practices. Cost-share for limited-resources producers can be even higher (up to 90 percent). EQIP assists producers in complying with federal, state and local environmental laws. If a producer has been accused of violating a law or regulation but is in the position of voluntarily applying a conservation practice to comply with the law or regulation, the producer may be eligible for EQIP financial assistance. However, EQIP financial assistance is not available for conservation practices required as a result of a judicial action or regulatory enforcement order.

The Conservation Reserve Program (CRP) provides annual rental payments for land devoted to special conservation practices such as riparian buffers and filter strips under the continuous signup provisions. This acreage may be enrolled at any time and is not subject to competitive bidding. The contract duration is 10 to 15 years. CRP could help Large CAFOs comply with the vegetated buffer

requirement, in lieu of the 100-foot setback. All CAFOs are eligible for these programs.

More funds are available to AFOs from EPA and the Small Business Administration. You might also be able to get funds or technical assistance from your state or local government. You can find a description of these and other programs in EPA's draft *Financial Assistance Summaries for AFOs*.

EPA's draft *Financial Assistance Summaries for AFOs* is available on the Internet: [http://www.epa.gov/npdes/pubs/financial\\_assistance\\_summaries.pdf](http://www.epa.gov/npdes/pubs/financial_assistance_summaries.pdf).

You can also contact your local NRCS office, Farm Services Agency (FSA), or Cooperative Extension Service for more information on the financial and technical assistance available for AFOs and CAFOs.

#### **USDA Contact Information on the Internet**

NRCS: <http://www.nrcs.usda.gov/about/organization/regions.html>  
 FSA: <http://www.fsa.usda.gov/edso/Default.htm>  
 Extension: <http://www.reeusda.gov/1700/statepartners/usa.htm>

### **How do I minimize harm if I think I'm out of compliance?**

If you think you're not complying because of a discharge of waste to a water body, your first step is to stop the discharge. For example, if a pipe is broken, close the valve to stop flow to that pipe. Then use a temporary barrier like a temporary dirt dam to keep the discharge out of the water body. If the discharge could endanger human health or the environment, you must report it to the permitting authority verbally within 24 hours and in writing within 5 days.

You should clean up waste spills as soon as possible to help keep waste from flowing into a water body when storm water runs off. Collect the spilled waste with a suitable tool. You may apply the waste to agricultural land if it will not violate the land application restrictions in your NPDES permit. Otherwise, you may put the waste in a lagoon or other storage area.

If you're not complying because you applied too much manure, litter, or process wastewater to a field or applied in an area not allowed by your

permit, you must stop the land application at once. If you can, you should clean up any excess as described above. You may continue land application only when it will not violate the land application restrictions in your NPDES permit. You should also check your land application equipment and procedures to see if changing them can prevent future application problems.

If you're at risk of not complying because your lagoon is getting too full to maintain the extra storage needed for a large storm, you might consider applying waste from the lagoon to agricultural land if you can do so without violating the land application restrictions in your NPDES permit and nutrient management plan. If you have new land application areas, be sure to follow the required nutrient management procedures (such as soil testing) and land application restrictions (such as buffers and setback requirements). If there are no land application areas on your land, you might be able to find other suitable places for land application by negotiating with neighboring farms. You should also make temporary changes that reduce the amount of liquid flowing into the lagoon. For example, if animal buildings are scheduled for clean-out, postpone the clean-out until lagoon levels are lower or reduce the amount of water you use for clean-out.

### **How will EPA know my operation is complying with environmental requirements?**

EPA and the state permitting authorities use several approaches to monitor compliance with environmental regulations.

**Inspections.** EPA and the state permitting authorities may periodically inspect facilities subject to these regulations. They might inspect your operation because it was the subject of a citizen complaint or tip, because it was randomly selected, or because it was targeted for inspection based on your state's targeting method. EPA and the state permitting authorities conduct two main types of inspections at AFOs:

1. Inspections that help to decide whether a facility is a CAFO and should have a permit.
2. Inspections to determine whether a permitted CAFO is in compliance with its NPDES permit.

**Permits, records, and reports.** Your permitting authority will monitor the information you submit,

including your annual report. Your permitting authority might also request a copy of your nutrient management plan.

**Self-audit and self-disclosure.** You're responsible for ensuring that your CAFO is always in compliance with the conditions in your NPDES permit. EPA encourages you to take advantage of its Audit Policy or Small Business Policy if you find that you're not complying. These policies are discussed in more detail in "If I find a violation, how can I work with EPA to correct it?" on this page.

### What will an inspector look at?

If you own or operate a CAFO, it must be covered by an NPDES permit unless you have received a "no potential to discharge" determination (as described in "Are there any CAFOs that do not need a permit?" on page 17 of this guide). Your permitting authority might inspect your CAFO to make sure you're complying with the requirements in your permit. The inspector will make sure there has been no unauthorized discharge of manure, litter, or process wastewater to surface waters. The Clean Water Act doesn't allow such discharges except when they're authorized by a permit. For example, runoff from feedlots and spillover from lagoons, except in certain special circumstances, are violations. The inspector will examine your manure management system(s) and any areas where manure, litter, or process wastewater is land applied. The inspector will ask for your nutrient management plan and might check your operation to make sure you're following the plan. The inspector will check for the following:

- Is any manure, litter, or process wastewater being discharged to surface water, or is there any sign of a recent discharge?
- How are manure, litter, and process wastewater handled? Is a discharge likely because of the way manure, litter, or process wastewater is being collected, stored, or land applied?
- Do you have a nutrient management plan? Are you following the nutrient management plan? Is your nutrient management plan up-to-date? Does your plan
  - ✓ Ensure adequate storage of manure, litter, and process wastewater and proper operation and maintenance of storage facilities?
  - ✓ Address dead animal handling?

- ✓ Address keeping clean water and wastewater separate?
- ✓ Address keeping animals out of surface waters?
- ✓ Ensure that chemicals and pesticides are handled properly (for example, not disposed of in the lagoon)?
- ✓ Implement site-specific conservation practices such as vegetated buffers?
- ✓ Address when and how to test manure, wastewater, and soil?
- ✓ Ensure proper land application practices for manure and process wastewater?
- ✓ Specify what records you should keep?
- Are you keeping the required records?

### If I find a violation, how can I work with EPA to correct it?

EPA gives incentives to promote environmental compliance. EPA or your state permitting authority can waive or reduce your penalty if you participate in compliance incentives programs or voluntarily report and correct violations as soon as possible. EPA has two policies that could apply to CAFOs regulated by the NPDES regulation and ELGs for CAFOs. (These policies do not apply if your permitting authority has already started an enforcement action.)

**Audit Policy.** "Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations" (60 FR 66706) is known as the Audit Policy. EPA created this policy to encourage operations of all sizes to voluntarily find and promptly report and correct violations of environmental regulations.

**Small Business Policy.** EPA developed its "Policy on Compliance Incentives for Small Businesses" to help small businesses (with 100 or fewer employees) comply with environmental regulations. The Policy creates benefits for businesses that make a good faith effort to comply with environmental regulations before a government agency discovers a violation or otherwise takes an enforcement action. The Policy offers incentives (like penalty waivers or penalty reductions) for businesses that take part in on-site compliance assistance programs or conduct environmental audits to find, report, and correct violations. The Policy is being changed to broaden when and how a small business may use it.

**EPA Policies on the Internet****Audit Policy:**

<http://www.epa.gov/compliance/resources/policies/incentives/auditing/finalpolstate.pdf>

**Small Business Policy:**

<http://www.epa.gov/compliance/resources/policies/incentives/smallbusiness/index.html>

**Clean Water Act Settlement Penalty Policy:**

<http://www.epa.gov/compliance/resources/policies/civil/cwa/cwapol.pdf>

**If EPA finds a violation, how might it respond?**

To get the best compliance, EPA uses a balanced program of compliance assistance, compliance incentives, and traditional enforcement.

EPA knows that small business owners want to do the right thing by complying with complicated new laws or rules but might not have the knowledge, resources, or skills to do so.

**Compliance assistance** and technical advice help small business owners to understand and meet their environmental obligations. “Where can I get help?” on page 41 of this guide has more information on compliance assistance.

**Compliance incentives** like EPA’s Small Business Policy encourage people to voluntarily find, report, and correct violations before the government finds the violations. “If I find a violation, how can I work with EPA to correct it?” on page 43 of this guide has more information on compliance incentives.

EPA uses different methods to know whether businesses are complying. These include inspecting facilities, reviewing records and reports, and responding to citizen complaints. If EPA or a state agency learns a person may be violating the law, EPA or the state will review the facility’s compliance history before deciding what steps to take.

EPA’s **enforcement program** protects all of us by targeting facilities that don’t comply with the Clean Water Act. The Clean Water Act allows EPA to bring civil or criminal actions against business owners who violate their permits or do not obtain permits as required. EPA and the states

have specific procedures for reviewing annual reports and inspection reports to decide what type of enforcement is appropriate. Typical types of enforcement actions include the following (listed in order of severity):

- A telephone call
- A Notice of Violation
- An Administrative Order
- An Administrative Order with penalty
- A civil lawsuit
- Criminal prosecution

The penalty in a given case will depend on many things, including

- The number, length, and severity of the violations
- The economic benefit obtained by the violator
- The violator’s ability to pay

EPA has a Clean Water Act settlement Penalty Policy to deter noncompliance, ensure violators do not obtain an economic advantage over their competitors, and encourage national consistency in civil penalty calculations. Any company that EPA sues may dispute the allegations.

EPA knows that the greatest possible environmental protection is achieved by encouraging businesses to find, report, and correct violations. That’s why EPA issued self-disclosure and small business policies to eliminate or reduce penalties for small and large businesses that cooperate to address compliance problems. In addition, EPA provides compliance assistance centers that serve over a million small businesses. For more information on these and other EPA programs for small businesses, contact EPA’s Small Business Ombudsman.

**EPA’s Small Business Ombudsman Hotline:**

1-800-368-5888