



## Fact Sheet: Concentrated Animal Feeding Operations Proposed Rulemaking June 2006

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*EPA seeks comments on a proposed rule that would revise several parts of EPA's National Pollutant Discharge Elimination System (NPDES) and Effluent Limitation Guidelines for concentrated animal feeding operations (CAFOs). The proposed rulemaking is in response to the order issued in *Waterkeeper Alliance et al. v. EPA*, (2nd Cir. 2005). This proposed rule furthers the statutory goal of restoring and maintaining the nation's water quality and effectively ensuring that CAFOs properly manage manure generated by their operations.*

### **Background**

There are approximately 18,800 CAFOs in the U.S., which contribute up to sixty percent of all manure generated by operations that confine animals. Poorly managed CAFO operations may threaten water quality and public health by releasing pollutants into the environment through spills, overflows, or runoff.

EPA initially issued national effluent limitations guidelines and standards for feedlots on February 14, 1974 (39 FR 5704), and NPDES CAFO regulations on March 18, 1976 (41 FR 11458). In February 2003, EPA issued a revised rule that focused on the 5% of the nation's animal feeding operations (AFOs) that presented the highest risk of impairing water quality and public health (68 FR 7176). The revised rule expanded the number of operations covered by the CAFO regulations to an estimated 15,500 and included requirements to address the land application of manure from CAFOs. It required all Large CAFOs, and all Medium CAFOs that discharge manure, litter, or process wastewater to waters of the U.S., to apply for an NPDES permit. The rule became effective on April 14, 2003 and authorized NPDES states were required to modify their programs by February 2005 and develop state technical standards.

After EPA issued regulations in February, 2003, petitions for judicial review were filed by CAFO industry organizations and by environmental groups. The petitions for review, which were originally filed in several different circuit courts of appeal by these organizations, were consolidated into one proceeding before the Second Circuit. The Second Circuit's decision, which applies nationally, both upheld and vacated or remanded provisions of the CAFO regulations. This proposed rulemaking responds to the order issued by the Second Circuit Court of Appeals in *Waterkeeper Alliance et al. v. EPA*, 399 F.3d 486 (2nd Cir. 2005).

## **About this Regulation**

This proposal would revise several aspects of EPA's current regulations governing discharges from CAFOs. First, EPA proposes to require only CAFOs that discharge or propose to discharge to apply for a permit. However, CAFOs that land apply manure, litter or processed wastewater would not need NPDES permits if the only discharge from those facilities is agricultural stormwater. The preamble to the proposed regulation provides language describing factors that may result in discharges from CAFOs that operators should consider in determining whether to seek permit coverage.

Second, EPA proposes to require greater public participation in the issuance of an NPDES permit by requiring CAFOs seeking coverage under a permit to submit a facility-specific nutrient management plan (NMP) with their permit application or notice of intent. Permitting authorities would be required to review the plan and allow the public meaningful review and comment on it. Permitting authorities would also be required to incorporate terms of the NMP into the permits as enforceable elements. The proposed rule lays out a process for including these facility-specific provisions in general permits.

Finally, EPA is proposing to remove the 100-year, 24-hour storm containment structure standard for new large swine, poultry, and veal facilities, due to the lack of record supporting this technology, and replacing it with a zero discharge requirement. EPA proposes to clarify that WQBELs are available in permits with respect to production area discharges but are not applicable to permits for land application areas at Large CAFOs. Additionally, EPA proposes to clarify its selection of BCT for pathogens (fecal coliform), and reaffirm its decision to set the BCT limitations for fecal coliform to be equal to the Best Practicable Technology (BPT) limits established in the 2003 CAFO rule.

## **How to Get Additional Information**

For additional information visit EPA's Office of Wastewater Management web site at <http://www.epa.gov/npdes/afo/revisedrule> or contact Kawana Cohen at [cohen.kawana@epa.gov](mailto:cohen.kawana@epa.gov) or (202) 564-2345.

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