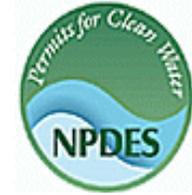


Proposed CAFO Rule **Public Meeting Notes**

Dallas, TX
August 2, 2006



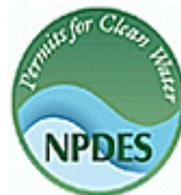
CAFO Proposed Rule Public Meeting Sign-In Sheet
Wednesday, August 2, 2006
Texas A&M – Dallas Agricultural Research & Extension Center
Dallas, TX



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CAFO Proposed Rule Public Meeting
Wednesday, August 2, 2006
Texas A&M Agricultural Research & Extension Center
Dallas, TX

- I. Welcome by Miguel Flores , *US EPA Region 6 Water Division Director*

- II. Opening remarks by Jon Scholl, *US EPA Counselor to the Administrator on Agricultural Policy*

- III. Introduction to the CAFO Proposal by Allison Wiedeman, *US EPA Rural Branch Chief, Office of Wastewater Management*

- IV. Presentation on the Proposed CAFO Rule Revisions by George Utting (*Office of Wastewater Management*)

- V. Q&A's

- VI. Closing Remarks

Section I

Welcome by Miguel Flores, US EPA Region 6 Water Division Director

Mr. Flores welcomed the stakeholders to the meeting and emphasized the Region's efforts to build relationships with the agriculture industry in recognition of the importance of agriculture in Region 6. Mr. Flores stated that restoration of water quality in impaired watersheds is an agency priority that will require collaboration between Federal agencies, State agencies, agriculture interests, and other stakeholders.

Section II

Opening remarks by Jon Scholl, Counselor to the Administrator on Agricultural Policy, US EPA

- We are pleased to speak with you today about the Concentrated Animal Feeding Operations Proposed Rulemaking, published in the Federal Register on June 30, 2006. This proposed rule is of great significance to animal agriculture producers and the public and your participation in this process is very important to us.
- The purpose of this meeting is to enhance public understanding of the proposed regulation for CAFOs. After a presentation is provided today summarizing the elements of this rule, participants are encouraged to ask clarifying questions. Just to be clear, this meeting is not a mechanism for providing formal comments on the rule. Those must be submitted in writing to the Agency by August 29.
- This meeting is part of a larger agricultural strategy issued by the Agency earlier this year which focused on the increased communications on important issues with the agricultural community. We believe that extended outreach is essential to partnering with the agricultural community to protect the environment.
- The proposed rulemaking seeks comment on a number of issues, one of which is the feasibility (including consideration of legal, technical, and implementation issues) of allowing flexibility in how facilities can meet various programmatic requirements, for instance those of the Clean Air Act and Clean Water Act, in order to achieve greater cross-media pollutant reductions. We are interested in exploring this type of approach for both existing and new CAFOs.

Section III

Introduction to the CAFO Proposal by Allison Wiedeman, Rural Branch Chief, Office of Wastewater Management US EPA

In Ms. Wiedeman's introduction she identified five elements of the Proposed Rule that the agency was soliciting comment on:

Vacatures:

1. Duty to Apply
2. NMP Public Review

Remands:

1. Water Quality-Based Effluent Limits (WQBELs) for production area
2. New Source Performance Standards (NSPS) for veal, pork, and poultry
3. Best Conventional Pollutant Control Technology (BCT) for pathogens

Ms. Wiedeman also informed the public that the majority of the technical regulations are unchanged by the litigation. The proposed revisions relate directly to the court decision and the agency is only soliciting comments on the revisions. The agency is not soliciting comments on the unchanged portions of the regulations.

Ms. Wiedeman reiterated the point made by Jon Scholl that this is a public meeting, not a public hearing, and that the purpose of this meeting is to educate the public on matters regarding the rule's revisions in order for the public to provide more knowledgeable comments.

Ms. Wiedeman added that there had been public meetings in DC, North Carolina, Iowa, and Colorado and one forthcoming in California.

Section IV

Presentation on the Proposed CAFO Rule Revisions by George Utting (Office of Wastewater Management)

Vacatures:

1. Duty to Apply
2. NMP Public Review

Remands:

1. Water Quality-Based Effluent Limits (WQBELs) for production area
2. New Source Performance Standards (NSPS) for veal, pork, and poultry
3. Best Conventional Pollutant Control Technology (BCT) for pathogens

Section V

Questions

[Note – the questions presented below are not verbatim transcripts of the discussions that occurred at the meeting. Rather, the following is a paraphrased summary of the issues raised. The answers will be reflected in a forthcoming response to comments guidance document.]

Q1. Would a change in feed management be considered a substantial change to the nutrient management plan (NMP)? [Leonard Dougal – Jackson Walker, LLP]

Q2. What does EPA consider to be a “significant increase” in the number of animals? [Leonard Dougal – Jackson Walker, LLP]

Q3. Has EPA considered the amount of confusion that will be created and the amount of resources required to review all NMPs as outlined in the proposal? There is a lot of variation in the way different people prepare NMPs. EPA needs to explore the NMP template option. [Vernon Rowe – Pilgrim’s Pride]

Q4. Has EPA considered creating a menu of [best management practices] BMPs that would allow a facility’s NMP to be automatically deemed acceptable if it fell within the criteria established? For example, in Texas, poultry facilities have Water Quality Management Plans developed by Soil and Water Conservation. Would the rules allow that a poultry facility with a Water Quality Management Plan that plan meets established criteria be in compliance with the rule? The review process would basically be automatic for a majority of people with this approach. [Stakeholder not identified.]

Q5. With the proposed timing of the final rule, CAFOs will have limited time to comply with the requirements. States have no time to incorporate the terms of the revised rule. EPA needs to move the compliance dates back to allow states to make changes based on the final rule. [Stakeholder not identified.]

Q6. What would constitute a “proposed” discharge? We are concerned with what would trigger the duty to apply. For example many CAFOs have been designed for the 25-year, 24-hour rainfall event. In our watershed, CAFOs are designed for the 25-year, 10-day rainfall event. Those facilities are designed to have a discharge under certain circumstances. However, with the potential for increased burden of the NMP review process, CAFO operators might decide to take a chance that they won’t have a discharge in order to avoid the burden. This is particularly true for operators who want to expand their herd or make similar changes. Those operators will take a chance on enforcement rather than apply for permits. It is not adequate for the Agency to simply say that it’s an enforcement problem. [Jack Battle – Brown McCarroll]

Q7. You’ve said that the NMP is equivalent to the NRCS Conservation Practice Standard Code 590 and that the Second Circuit court said that the NMP must be made publicly available. What document has to be made publicly available – is it the 590 standard or the NMP itself? [Darrell Williams – Eco-Environmental Services]

Q8a. It should not be necessary for individual growers to have to add sections to plans that they’ve already developed. Texas has a good, established program. The Soil and Water Conservation plan should be all that’s necessary. The Second Circuit court did not require EPA to reinvent the wheel. [Vernon Rowe – Pilgrim’s Pride]

Q8b. You said that the CNMP is supposed to address everything but if there are other items in the rule that are not addressed then the operator needs to add them. Nutrient utilization plans are all that are needed to meet water quality requirements. There are things in the rule that don’t need to be there. States need to be given flexibility to determine what they will require for NMPs. [Vernon Rowe – Pilgrim’s Pride]

Q8c. Farmers don’t have the technical expertise to address chemical handling. [Vernon Rowe, Pilgrim’s Pride]

Q9a. If the rule won’t be finalized until the springtime, states will not have enough time to issue revised permits before the implementation deadlines. It will take at least 6 months for a permit revision. [Stakeholder not identified]

Q9b. Timing is an issue for newly defined CAFOs that do not want permit coverage in states with current permits that include the duty to apply for all CAFOs. [Stakeholder not identified.]

Q9c. States are reluctant to assume that EPA is going to issue the rule as proposed. Texas has been prudent in saying that will wait to see how EPA proceeds. So there will be problems where a new facility has to apply for a permit now in order to be able to build the facility, but they ultimately don't want permit coverage. [Vernon Rowe – Pilgrim's Pride]

Q10a. The rule identifies an increase in the application rate as a major change. The application rate is specific to a field based on soil nutrient levels, crops grown, yield goals, etc. What would constitute an increase in application rate that would require a permit modification and public notice? [Tom McDonald – Five Rivers Ranch Cattle Feeding]

Q10b. The draft NMP template includes specific application rates for each field. Rather than require CAFOs to be so specific, would EPA consider allowing CAFOs to submit the methodology or equation that they'd use to calculate land application rates? If CAFOs have to submit specific rates, they will have to do NMP and permit modifications and for any application rate change. [Tom McDonald – Five Rivers Ranch Cattle Feeding]

Q10c. Commenters are going to have a problem with this approach. If you build in a lot of contingencies and variations, then it is not a plan; it becomes more of a generalized concept. It's great that EPA supports flexibility in NMPs, but public commenters will criticize a non-specific plan. [Stakeholder not identified.]

Q11. How will the rule deadlines impact CAFOs in non-delegated states, such as Oklahoma? Our permit expired in 1998. Where do we go next for guidance? [Roy Lindsey – OK Pork Council]

Q12a. The 2003 rule says that if a general permit is not available, the CAFO must apply for an individual permit. We don't have a general permit in New Mexico and have been told by Region 6 not to apply for individual permits. We agree with Region 6 but we don't want to get caught in the middle and get our dairy producers in trouble. [Jay Lazarus – Glorieta Geoscience/Dairy Producers of New Mexico]

Q12b. Will Region 6 automatically cover those producers that have applied for individual permits under a general permit when it's available? [Jay Lazarus – Glorieta Geoscience/Dairy Producers of New Mexico]

Q13. Does the court provide any guidance on who has standing to comment on an NMP and what will be considered a significant comment? [Ross Wilson – Texas Cattle Feeders Association]

Q14. Will EPA apply the standard definition for “discharge?” [Keith Brown – Arkansas DEQ]

Q15. What documentation is needed to show that a facility will not discharge? [Keith Brown – Arkansas DEQ]

Q16. Facilities are typically designed for the 25-year, 24-hour storm event; they are designed to discharge. Are facilities designed for the 25-year, 24-hour event subject to permit conditions by EPA? [Keith Brown – Arkansas DEQ]

Q17. The original new source performance standards included a 100-year, 24-hour storm design standard, but now EPA has proposed a rigorous modeling process to determine the adequacy of a facility to meet the zero discharge requirement. Would that modeling process also apply if you don’t want permit coverage? Would you need to have that type of modeling information available if the facility had a discharge? [Vernon Rowe – Pilgrim’s Pride]

Q18. Permitting authorities could be encouraged to put a set of general BMPs in the general permit and then only address site-specific situations in the NMP. This could further reduce the complexity and length of the NMP template. [Benjamin Weinheimer – Texas Cattle Feeders Association]

Q19. Could permitting authorities allow CAFOs to address minor NMP changes in annual reports? For example, for a change that is not significant such as a change from harvesting corn for grain to harvesting for silage, could that be reported at the end of the year? [Stakeholder not identified.]

Section VI

Closing Remarks

Ms. Wiedeman thanked all the stakeholders and urged the group to formally comment on the Proposed CAFO Rule.