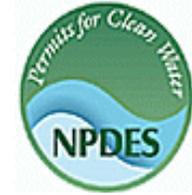


**Proposed CAFO Rule**  
**Public Meeting Notes**

**Golden, CO**  
**August 1, 2006**



**CAFO Proposed Rule Public Meeting Sign-In Sheet**  
**Tuesday, August 1, 2006**  
**Jefferson County Fairgrounds**  
**Golden, CO**

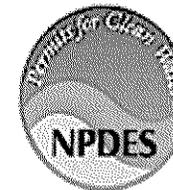


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**CAFO Proposed Rule Public Meeting  
Tuesday, August 1, 2006  
Jefferson County Fairgrounds  
Golden, CO**



- I. Welcome by Debra Thomas, US EPA Region 8 Water Program 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) and Paul Shriner (Office of Science and Technology)***
  
- V. Q&A's***
  
- VI. Closing Remarks***

## **Section I**

### **Welcome by Debra Thomas, US EPA Region 8 Water Program Director**

Ms. Thomas welcomed the stakeholders to the meeting and emphasized the importance of crop and livestock agriculture in the Region 8. Ms. Thomas thanked the stakeholders for their interest in the proposed rule and encouraged them to continue to be engaged in CAFO regulatory issues.

## **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, and Iowa, and two more public meetings will be forthcoming in Texas, and California.

## Section IV

### **Presentation on the Proposed CAFO Rule Revisions by George Utting (Office of Wastewater Management) and Paul Shriner (Office of Science and Technology)**

Mr. Utting presented on the two vacatures:

Vacatures:

1. Duty to Apply
2. NMP Public Review

and one of the remands:

Remand:

1. Water Quality-Based Effluent Limits (WQBELs) for production area

Mr. Shriner presented on the remaining two remands:

Remands:

1. New Source Performance Standards (NSPS) for veal, pork, and poultry
2. 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.** If a CAFO does not apply for a permit but is doing nutrient management, is it eligible for the agricultural stormwater exemption or do you need a permit to be eligible for the exemption? [Stakeholder not identified.]

**Q2.** How does a non-permitted CAFO get recognized for having a NMP (with regard to protection from citizen suits related to the agricultural stormwater exemption) without having a permit? [Stakeholder not identified.]

**Q3.** What is considered the “point of discharge” from a CAFO? [Stakeholder not identified.]

**Q4.** Can you clarify the definition of “water of the U.S.”? [Stakeholder not identified.]

**Q5.** Will the final rule be published in its entirety with all the changes incorporated, or will it be just the excerpts of the rule that were revised? [Colorado Department of Public Health and Environment (CDPHE)]

**Q6.** Is EPA considering revising the definition of “waters of the U.S.” with regard to the recent court decision? [Stakeholder not identified.]

**Q7.** The “waters of the U.S.” definition is critical for CAFOs to determine whether to apply for permits. [Stakeholder not identified.]

**Q8.** You mentioned that July 31, 2007 is the benchmark for finalizing the rule. Shouldn't you plan to finalize the rule earlier than that to give operators time to develop NMPs? [Stakeholder not identified.]

**Q9.** Will a CNMP meet the federal NMP requirements? [Stakeholder not identified.]

**Q10a.** Is the phosphorus index part of an NMP? [Stakeholder not identified.]

**Q10b.** Two of the states we work with don't have a phosphorus index and they're waiting for EPA's rule to address it. [Stakeholder not identified.]

**Q11.** Some states might not adopt NRCS Code 590 *in toto*. CAFOs with NRCS contracts have to use it, but states don't have to adopt the entire 590 standard. [Stakeholder not identified.]

**Q12.** What is the new date for states to adopt technical standards? [Stakeholder not identified.]

**Q13.** Slide 15 of the presentation outlined several substantial changes that would require a permit modification. What do you mean by "increase in runoff?" [Stakeholder not identified.]

**Q14a.** Why is the addition of more land a significant modification?

**Q14b.** So runoff is not the issue – it's runoff to waters of the U.S. But why is this significant if BMPs are in place and being followed as required? Where does the volume of water coming off the field come into play? [CDPHE]

**Q15.** With the proposed permit modification requirements, the system will get so burdened with applications for modifications that no one will get a permit. The NMP should be as realistic as possible. For example, corn needs so much nitrogen and phosphorus per acre and my NMP says that I will use a certain percentage of manure and supplemental nitrogen to meet those needs. But because of changes in the cost of supplemental nitrogen, I had to put on more manure and less supplemental nitrogen. Is that a major modification that would require that I reapply? [Stakeholder not identified.]

**Q16.** Consider a producer who is following all the requirements of the regulation but does not want to get a permit. If he gets a permit he'll be doing the same thing. Is the advantage of a permit that there is no penalty if he has a discharge? [Stakeholder not identified.]

**Q17.** Consider an example where an operator has already applied phosphorus to a crop in accordance with his NMP, but then a severe hail storm knocks the plants down. The crop won't take up as much phosphorus because of the hail damage. Is the operator liable for runoff of excess phosphorus? [Stakeholder not identified.]

**Q18.** If a CAFO discharged in the past, is it automatically required to get a permit or is there some discretion to show that they've fixed the problem and are not likely to discharge again? [CDPHE]

**Q19.** What is the violation if a CAFO discharges without a permit? [Stakeholder not identified.]

**Q20.** What is the legal status of preamble language, especially for states that are statutorily prohibited from imposing permit requirements that are more stringent than federal requirements? How does EPA view clarifications included in the preamble? [CDPHE]

**Q21.** Referring to the preamble language with regard to NMP application rate recommendations, if a state didn't require those elements, would it be contrary to EPA regulation? [CDPHE]

**Q22.** This rule is challenging for arid states; it seems to be more of an "eastern rule." [Stakeholder not identified.]

**Q23.** Consider an NMP that includes a minimum and maximum land application rate. When I begin implementing the NMP I apply near the maximum rate and the next year I apply less. If I want to increase the application rate back up to the maximum in the third year, would that be considered a substantial increase in the application rate? [Stakeholder not identified.]

**Q24a.** Thank you for soliciting comments on the workload involved with reviewing NMPs and modifying permits. Has EPA developed an estimate to compare how many NMPs will be required and how many permits the states and EPA are issuing per year now? [Stakeholder not identified.]

**Q24b.** One state has 451 permitted facilities and has a permit backlog right now. They have a turn-around time of 120 days for issuing permits and those permits don't have NMP reviews. [Stakeholder not identified.]

**Q25a.** Assuming there is a permit backlog in the state, are CAFO operators going to be allowed to operate if the state is unable to approve their permits? [Stakeholder not identified.]

**Q25b.** In the Midwest very few have started and there's a big backlog for NRCS to develop NMPs. In Colorado staff is limited and they are going to have to approve 200 to 400 NMPs. [Stakeholder not identified.]

**Q25c.** That depends on the first NMP public notice – if it goes well, you will have a flood of producers apply. It's beneficial for producers to have permits and they will apply if they know that the public review process will not be too burdensome. [Stakeholder not identified.]

**Q25d.** That would work if the rule clearly spelled out what is required in an NMP, but there is too much gray area in the rule – it's too subjective. It will be hard for a producer to show that he's met the permitting authority's requirements. [Stakeholder not identified.]

**Q26a.** Page 37749 of the rule states that it is *generally* the CAFO's responsibility to decide whether to seek permit coverage. What is the word "generally" intended to mean in this context? [CDPHE]

**Q26b.** So this portion of the rule is not trying to say that states need to determine what "propose to discharge" means? It would be hard for states to try to figure out how a CAFO operator might determine if he proposes to discharge. [CDPHE]

**Q26c.** Is there guidance from other point source categories for states to determine what is meant by "propose to discharge" versus "potential to discharge?" [CDPHE]

**Q26d.** You will get a lot of comments on "propose to discharge." From a producer's standpoint evaluating his own operation, I can't think of any operators who will "propose to discharge" under any of the conditions laid out in the preamble. "Propose to discharge" is a difficult concept. [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.