

Proposed CAFO Rule
Public Meeting Notes

Sacramento, CA
August 3, 2006



CAFO Proposed Rule Stakeholder Meeting Sign-In Sheet
Thursday, August 2, 2006
CalEPA Byron Sher Auditorium – Sacramento, CA

NAME	ORGANIZATION	EMAIL
Jim Hogan	NV Div Environ Protection	jhogan@ndep.gov
Marsha Campbell Mathews	University of California	mcmathews@ucdavis.edu
John Ungvarsky	EPA Region 9	Ungvarsky.John@epa.gov
Rudy Schnagl	CVRWQCB	rschnagl@waterboards.ca.gov
Noelle Cremers	CA Farm Bureau Federation	ncremers@cfsf.com
Polly Lowry	CVRWQCB	plowry@waterboards.ca.gov
Tracy Schohr	CA Cattlemen's Assoc	tracy@calcattlemen.org
Jon Tarr	Harris Feeding Co.	Jtarr@harrisranch.com
Paul Machin	Western United Dairymen	paulwud@callats.com
Ed Burton	NRCS	ed.burton@ca.usda.gov
Dennis Westcot		dwestcot@sbcglobal.net
Gary Stewart	CVRWQCB	gstewart@waterboards.ca.gov
Katherine Noble-Goodman	Water Ed Foundation	knoblegoodman@waterboards.ca.gov
Anita Brown	USDA NRCS	anita.brown@ca.usda.gov
Eddie Hard	CDFA	ehard@cdfa.ca.gov
Luana Kiger	NRCS	luana.kiger@ca.usda.gov
Ria de Grassi	California Farm Bureau Fed	rdegrassi@cbbf.com
Ted Gaylord	JDF Cattle	theflying@yahoo.com
Vicki Lee	Sierra Club	Vickilee10@comcast.net
Syed Ali	SWRCB / CAL-EPA	sali@waterboards.ca.gov
Stephen Siptroth	Herum Crabtree Brown	ssiptroth@herumcrabtree.com
Deanne Meyer	UC Davis	dmeyer@ucdavis.edu

Charlie Davis	NRCS	charles.davis@ca.usda.gov
Bruce Holmgren	NDEP	bholmgre@ndep.nv.gov
Beth Kelly	Foster Farms	kellyb@fosterfarms.com
Ralph L. Sartori	Dairy Farmers of America	rsartori@dfamilk.com
Barbara Gaume	Coaltec Energy USA, Inc	bgaume@sbcglobal.net
Betsy Peterson	Pacific Egg & Poultry Assoc.	bpeterson@cgfa.org
Charlene Herbst	CVRWQCB	cherbst@waterboards.ca.gov
Kevin Abernathy	CA Dairy Campaign	kevina@CDC-CFU.com
Paul Sousa	Western United Dairymen	psousawud@yahoo.com
Alex Mayer	State Water Resources Control Board	amayer@waterboards.ca.gov
William Boyd	NRCS	william.boyd@gnb.usda.gov
Endicott	TAV	sierraclub@aol.com

Proposed CAFO Rule Public Meeting

3 August 2006 • 8-11 am • Byron Sher Auditorium, Cal/EPA, 1001 I St., Sacramento, CA



- Welcome** Jovita Pajarillo, Associate Director,
Water Division, Pacific Southwest
Region, US EPA
- Opening Remarks** Jon Scholl, Counselor to the
Administrator on Agricultural Policy,
US EPA
- Introduction to the
CAFO Proposal** Allison Wiedeman, Rural Branch
Chief, Office of Wastewater
Management, US EPA
- Presentation on the
Proposed CAFO
Rule Revisions** George Utting, Office of
Wastewater Management, US EPA
- and
- Ron Jordan, Office of Science and
Technology, US EPA
- Questions/Answers**
- Closing Remarks**

US EPA is convening six public meetings around the country on the Proposed CAFO Rule published in the Federal Register on June 30, 2006. The revised NPDES permitting requirements for CAFOs respond to the February, 2005 Second Circuit Court of Appeals *Waterkeeper Decision*. The purpose of these meetings is to enhance public understanding of the proposed rule. The meetings are not a mechanism for submitting formal comments – to submit formal comments –

via web:

<http://www.regulations.gov>, follow the on-line instructions for submitting comments

e-mail:

ow-docket@epa.gov, attention Docket ID No. EPA-HQ-OW-2005-0037

mail:

send the original and 3 copies of your comments to
Attention Docket ID No. OW-2005-0037
Water Docket
Environmental Protection Agency
1200 Pennsylvania Ave., NW, Mail Code 4203M
Washington, DC 20460

Contacts:

John Ungvarsky, US EPA, 415-972-3963
John Menke, California State Water Resources
Control Board, 916-341-5587



Section I

Welcome by Jovita Pajarillo, US EPA Region 9 Water Division Associate Director

Ms. Pajarillo welcomed the stakeholders to the meeting and emphasized the importance of the dairy industry in California. Ms. Pajarillo stated that the dairy industry in California produces 12 percent of the U.S. supply which equates to \$4 billion per year. While the aggregate number of Dairy CAFOs has decreased, Ms. Pajarillo stressed the importance of water quality in the Region due to the increased concentration of animals.

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, Colorado, and Texas.

Section IV

Presentation on the Proposed CAFO Rule Revisions by George Utting (Office of Wastewater Management) and Ron Jordan (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. Jordan 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. When a CAFO submits an NMP, the implementation deadline is the date that the permitting authority accepts the NMP, not the date that the NMP was submitted. Is there a timeline for the permitting authority to accept the NMP? [CA Farm Bureau Federation]

Q2a. How do you know if you need to design a structure for a 100 year storm? [NRCS]

Q2b. This only applies to swine, poultry and veal. What about dairy? [NRCS]

Q3. Do water quality-based effluent limitations apply to land application areas at unpermitted facilities? [Stakeholder not identified]

Q4. The NMP deadline is July 31, 2007 and the permit date is June 2007. Is there any talk of extending the date for the NMP? [Dennis Westcot – independent contractor]

Q5. The NMP template has field by field for nutrient management as a separate worksheet. Can the worksheet be modified without revising the plan? [Western United Dairymen]

Q6a. In regard to the rate of manure applied, we can't submit this information in a permit but we can determine the process. [CA State Water Board]

Q6b. The quantity of manure nutrients and not manure application should be submitted in the Template. We should list ‘lbs/manure cropland acre’ instead of ‘tons/manure’. [CA State Water Board]

Q7. The proposed regulations say that the technical standards are established by the Director. It seems better to say ‘established by permitting authority.’ [CA State Water Board]

Q8. If a facility has a best management zero discharge system, is it necessary for them to get a permit? [Ted Gaylord]

Q9. Who decides if there is a discharge? [Stakeholder not identified]

Q10. The State Water Board was redefining conditions of the permit. A permitted facility had a discharge and the state said that was a violation. [Stakeholder not identified]

Q11a. Discharge uncertainty scenario - The producer says that a facility is designed to meet regulations but there is a discharge. What is the timeframe of discharge and enforcement? [Deanne Meyer – UC Davis]

Q11b. Will enforcement happen for just that day of discharge or every day that a permit has not been obtained? [Deanne Meyer – UC Davis]

Q12a. In a specific scenario of a chronic rainfall event, the facility is not permitted but the facility is designed and operated according to the regulations and has an NMP. A discharge happens. The Water Board doesn’t take action. Is the facility in violation? Is a permit required? [Stakeholder not identified]

Q12b. The Regional Board does not take action so doesn’t that throw the producer into a double jeopardy status? [Stakeholder not identified]

Q13a. How many hours will it take for a facility to develop a permit and respond to public comments? Can you provide the hourly rate? [Stakeholder not identified]

Q13b. Does the report include inspections? [Stakeholder not identified]

Q14a. In a specific scenario of a facility being on a low point in a valley facing the east side slope of the Sierra’s West, the facility has a permit. A storm event occurs (not quite a 24 hour, 25 year storm) and gravity causes the water to come onto and run off the property. Is this a discharge? [CA Dairy Campaign]

Q14b. What if the Water Board doesn't take action but there is citizen litigation?
[Deanne Meyer – UC Davis]

Q15. When a permit is submitted, there is a time period for public comment. Is the operator covered in this time period if there is a discharge? [CA Cattlemen's Association]

Q16. Has EPA done a cost effective analysis for producers in the development of NMPs, submission of NMPs, and to go through the public comment process? Does EPA have this technical understanding? What qualifies environmentalists to be an expert on this topic? [Stakeholder not identified]

Q17. For CAFOs that have a potential to discharge, does the discharge apply to surface water as opposed to groundwater? Has EPA made a determination of geographical areas of the US where facilities have no access to surface water?
[Stakeholder not identified]

Q18. Does the permitting authority have an obligation to respond to all comments? Do they respond individually or in groups? [Deanne Meyer – UC Davis]

Q19. On the Duty to Apply – Factors to Consider slide, it states if you want to get a permit, you have to have an NMP. The slide says this backwards. Also the Federal Register format is difficult to track. Could EPA provide a Word Document with numbered lines to comment on? [Stakeholder not identified]

Q20. What happens to the comments that the public sends in on the CAFO revised rule? It seemed like the last proposed rule didn't change much when the final rule was released. [Stakeholder not identified]

Q21. The rule says that small and medium AFOs should show that they are using nutrient management and technical standards. If they don't, do they lose stormwater exemption? [Dennis Westcot – independent contractor]

Q22. For clarification on litigation, if a facility submits an NMP and it is approved but a third party doesn't think it is correct; would the permitting authority or the permittee be liable in a lawsuit? [Stakeholder not identified]

Q23. Is irrigation tailwater covered under agricultural stormwater? [Stakeholder not identified]

Q24. Under the 180 day allowance, would the facility be in violation if there was a discharge? [Stakeholder not identified]

Q25. In regard to the General Permit – Process of NMPs slide, is this process going to be challenged? [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.