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## **Compliance and Enforcement National Priority: Concentrated Animal Feeding Operations (CAFOs)**

The United States Environmental Protection Agency's (EPA) Office of Enforcement and Compliance Assurance (OECA) established several national priorities for federal fiscal years (FY) 2008 through 2010. Among these priorities, OECA and the ten EPA Regions continue to make concentrated animal feeding operations (CAFOs) a Clean Water Act (CWA) priority for compliance monitoring, compliance assistance, and enforcement through at least FY 2010.

CAFOs have been regulated under the National Pollutant Discharge Elimination System (NPDES) program since the mid-1970s. In February 2003, EPA promulgated new CAFO regulations to update the NPDES program and prevent environmental harm from these operations through better animal waste management. The 2003 regulations required all CAFOs to seek NPDES permit coverage. Because of the 2005 decision by the U.S. Court of Appeals for the Second Circuit in *Waterkeeper v. EPA* (399 F.3d 486), EPA can only require CAFOs which discharge or propose to discharge to apply for a NPDES permit. In November, 2008, EPA revised its CAFO regulations regarding the submission of permit applications and the development of nutrient management plans to address the *Waterkeeper* decision mandates.

### **Environmental Problem**

An ongoing trend toward fewer but larger farm operations, more intensive animal production methods, and larger volumes of waste within small geographic areas have heightened CAFOs' environmental and public health impacts. Additionally, many large operations do not have sufficient cropland necessary to properly apply all of the manure as fertilizer. The U.S. Department of Agriculture estimates that operations which confine livestock and poultry animals generate about 500 million tons of manure annually – three times EPA's estimate of 150 million tons of human sanitary waste produced annually in the U.S. Under Section 305(b) of the CWA, states have consistently identified agricultural sources - including CAFOs - as a leading contributor of water quality impairment in state assessed surface waters.

Pollutants associated with animal waste primarily include nutrients - mainly nitrogen and phosphorus. However, animal waste may also include organic matter, solids, pathogens, pesticides, antibiotics, hormones, salts and various trace elements (including metals). Improperly managed manure and wastewater can release pollutants into the environment through several pathways, such as through runoff from animal confinement areas, manure storage areas, and/or from cropland where manure is applied as fertilizer.

## **Why OECA is Addressing the Problem**

OECA continues to focus on CAFOs as a CWA national enforcement priority due in part to potential risks from CAFOs' inadequate manure management, a pattern of CWA noncompliance in the industry, and the need for EPA leadership in implementing the federal CAFO regulations. The 2005 *Waterkeeper* decision narrowed the universe of CAFOs required to obtain permits to those facilities that discharge, or propose to discharge. In addition to narrowing the scope of who is required to seek permits, EPA's revised 2008 CAFO regulations and strategy clarify that the CWA and the federal regulations prohibit discharges from a CAFO, even one that is unplanned or accidental, unless it is authorized by the terms of a permit. Any facility that meets the regulatory definition of a "CAFO" as it was defined in the 1976 rule and discharges, needs a NPDES permit now.

## **How the Problem will be Addressed**

Because it is impossible for EPA to identify and address all CAFOs that have unauthorized discharges, the Agency, along with its state partners, will engage in strategically targeted inspections and enforcement actions. The Agency's strategy is to have EPA Regions work closely with state partners to identify specific geographic areas where CAFOs are having, or may have, a serious environmental or human health impact. EPA expects that the targeted CAFO universe will generally consist of large and medium CAFOs that are discharging, or are designed, operated, or maintained such that a discharge to a water of the United States is likely to occur.

EPA will continue to refine its understanding of the CAFO universe, improve targeting of compliance and enforcement activities to increase CAFO NPDES permit coverage and compliance, and assess and communicate the effectiveness of its actions. EPA believes ensuring CAFOs that need permits obtain them is critical to improving manure management and addressing the environmental problems associated with this industry.

EPA considers individual state commitments to CAFO permitting a critical component to achieving a level playing field. EPA will seek to ensure that state NPDES programs are comparable to federal standards, CAFO permits are being issued, and CWA non-compliance issues are being identified and remedied.

Federal efforts will also address CAFOs that have NPDES permits and are in violation of their permit requirements. EPA's strategy seeks to ensure that CAFO permit coverage results in proper manure management.

## **Highlights from the Previous Cycle**

EPA has established an internal national CAFO work group to provide a forum for discussing CAFO compliance and enforcement issues and identifying training needs. OECA has provided and continues to develop additional technical training to support EPA Regions in the development of CAFO CWA cases.

Through FY 2008, EPA has conducted over 1,100 inspections (EPA-only inspections and EPA/state joint inspections) and completed 244 federal enforcement actions against CAFOs for CWA violations. Federal enforcement actions have resulted in CAFOs spending more than 53 million dollars on corrective measures and a reduction of over 64 million pounds of pollutants that would have otherwise been discharged.

A number of EPA Regions are using a variety of sampling and modeling tools to develop cases against existing CAFOs with unauthorized discharges. Recent EPA enforcement actions reflect the high level of sophistication with which some Regions are conducting CAFO compliance investigations.