



## **U.S. Environmental Protection Agency - October 2007 FY08 – FY10 Compliance and Enforcement National Priority: Clean Water Act, Wet Weather, Concentrated Animal Feeding Operations (CAFOs)**

### **What is the Environmental Problem?**

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 management of animal waste. The 2003 regulation required all CAFOs with a potential to discharge to be covered by NPDES permits. 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 requires only CAFOs that discharge or propose to discharge to apply for a NPDES permit. EPA is also revising its CAFO regulations regarding the development of nutrient management plans to address changes mandated by the *Waterkeeper* decision.

An ongoing trend toward fewer but larger farm operations, together with greater emphasis on intensive animal production methods, increases environmental and public health risks by concentrating large volumes of animal waste within geographic areas. In addition, many large operations often do not have sufficient cropland to effectively utilize the manure they generate as fertilizer. The U.S. Department of Agriculture estimates that operations that 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 -- but animal waste may also include organic matter, solids, pathogens, pesticides, antibiotics, hormones, salts and various trace elements (including metals). If manure and wastewater are not properly managed, pollutants can be released into the environment through discharges from animal confinement areas, manure storage areas, and/or from cropland where manure is applied as fertilizer.

### **Why Are We Addressing this Problem?**

Inadequate manure management and the resulting risks, a pattern of CWA noncompliance in the industry, and the need for EPA leadership in implementing the federal CAFO regulations contributed to OECA's decision to continue CAFOs as a CWA national priority. The 2005 *Waterkeeper* decision that eliminated the requirement that virtually all CAFOs obtain permits, resulted in uncertainty in the regulated community regarding the direction of the CAFO program. EPA's strategy helps to 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.

Nationwide, EPA's Office of Water estimates that there are approximately 19,000 large and medium CAFOs, and roughly 8,300 or 43 percent of these operations currently have NPDES permits. EPA will lead by example and focus on identifying and addressing those facilities most likely to need NPDES permits based on provisions of the federal CAFO regulations that have been on the books since the 1970s.

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

Because it is impossible for EPA to identify and address all CAFOs that have unauthorized discharges and need permits in a timely manner, strategically targeted inspections and enforcement actions and publicized enforcement results will be utilized. Federal inspections and enforcement actions will focus primarily on existing large and medium CAFOs identified as discharging without a permit to maximize deterrence against noncompliance with the permitting requirement of the CWA and to improve the technical capability of EPA Regions and, ultimately, states to identify and address CWA violations at CAFOs. In selecting which facilities to investigate, EPA will consider factors such as: size and type of operation, proximity to waters of the U.S., proximity to impaired waters or priority watersheds, citizen complaints and manure spill data, environmental harm, compliance history, and environmental justice.

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 assess and communicate the effectiveness of its actions. EPA believes that ensuring that CAFOs that need permits obtain them is critical to improving manure management and addressing the environmental problems associated with this industry.

Through this strategy, EPA will consider the critical role of individual state commitments to CAFO permitting in achieving a level playing field. EPA will target compliance and enforcement activities in states with lower levels of CAFO permit coverage.

Although not the emphasis of EPA's strategy, some federal actions will address CAFOs that have NPDES permits and are in violation of their permit requirements. These actions also support the overall theme of EPA's strategy that appropriate CAFO permit coverage resulting in proper manure management is important.

## **Highlights from the FY 2005-2007 Planning 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.

In fiscal year 2006, nine out of ten EPA Regions either met or significantly exceeded their CWA commitments to conduct federal CAFO inspections and to conduct joint CAFO inspections with their states, resulting in 262 federal CAFO inspections conducted and 130 CAFO joint and/or oversight inspections conducted. EPA also concluded 56 enforcement actions against CAFOs for CWA violations that year, with a total value of over \$400,000 in administrative penalties and an estimated 12 million pounds of pollutants reduced via those actions.

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 at which some Regions are performing in conducting CAFO compliance investigations.