

# **ENVIRONMENTAL REGULATORY UPDATE**

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## **The Concentrated Animal Feed Operation (CAFO) Rule**

- EPA published the CAFO rule in February, 2003 which revised existing regulations for large animal feeding operations.
- The CAFO rule required States with permitting authority to develop regulations for large animal feeding operations (>125,000 bird-dry system; 30,000 birds- wet system) to obtain a Clean Water Act “NPDES” permit.
- After the rule was published, EPA was sued by both industry and environmental groups on a variety of issues contained in the rule.
- In February, 2005, the U.S. Court of Appeals for the 2<sup>nd</sup> Circuit in “Water Keeper Alliance Inc. et al vs. EPA” ruled that the agency exceeded its statutory authority under the Clean Water Act on several issues and will delay the current implementation deadline of February 13, 2006.
- At issue were:
  - o Nutrient Management Plans: The Court held that nutrient management plans must be reviewed by the permitting authority included in the NPDES permit and be made available for public review.
  - o Duty to Apply: The Court held that without an actual discharge, CAFO’s cannot be required to apply for a permit or comply with regulations for point source discharges.
  - o Agricultural Storm Water Exemption: The Court held that EPA did not violate the Clean Water Act by defining agricultural storm water to include precipitation-related discharges from land application areas where manure has been applied in accordance with an approved nutrient management plan.

SO WHERE DOES THIS LEAVE US?

- It is likely the States will wait for EPA guidance before finalizing their programs with the February 13, 2006 deadline probably being extended.
- The States MAY proceed with the CAFO rule under State-specific statutes but not under the authority of the Clean Water Act.
- The Environmental petitioners did file a request for a re-hearing and was subsequently denied.

**THE BOTTOM LINE**... If a grower has a current nutrient management plan AND is implementing it properly, the need for an NPDES CAFO permit can be avoided. However, care must be taken when handling/storing litter to ensure no runoff which can be construed as a discharge.

## **The Air Compliance Agreement**

- The Ag Air Coalition was formed by the pork, layer and dairy groups to explore a legal agreement with EPA which would prevent further enforcement actions (i.e. Seaboard Farms, Premium Standard, Buckeye Egg) until valid emissions numbers could be determined.
- The “meat bird” sector was also a party to the negotiations but opted not to participate due to a perceived low risk exposure for enforcement actions on broiler and breeder farms.
- In December, 2003 the industry decided to resume discussions with EPA in light of the unfavorable court rulings regarding Tyson and Seaboard Farms.
- Although several draft compliance agreements were proposed by EPA, very little action had taken place until January, 2005 when EPA published the Air Compliance Agreement in the Federal Register.

### **Proposed Agreement:**

- The agreement is non-negotiable.
- The respondent (integrator) must comply with the following to receive a limited covenant not to sue from EPA:
  - o Provide a list of farms to be covered by the agreement.
  - o Pay a civil penalty for perceived violations ranging from \$200.00 to \$100,000.00 per farm based on size.
  - o Fully fund an emissions monitoring study (\$2,500.00/each) and make farms available for monitoring (estimated cost- \$1.8 million).
  - o Waive any right to challenge the emissions data or study protocols.

- Based on the results of the study, obtain necessary air permits and file release reporting documentation.
- The agreement DOES NOT expressly protect the grower or integrator from state, local or third-party lawsuits.
- If a grower does not comply with the provisions of the agreement, then both the grower and the integrator lose the covenant not to sue.
- There is a 30 day comment period (ended March 2, 2005) and a 90 day sign-up period running concurrently.
- If the monitoring study is not fully funded, the agreement becomes null and void.

**Issues of Concern:**

- Payment of civil penalties for which no violations of applicable laws have been documented.
- Questionable protection from non-EPA lawsuits.
- No exclusion or cut-off size provided for small farms.
- Comment period and sign-up period running concurrently showing an unwillingness of EPA to consider comments and revising the agreement.
- The proposed monitoring program is geared more toward a wet system (i.e. lagoon) than dry litter operations and the study results cannot be challenged.
- New farms or expanding farms cannot become part of the study after the sign-up period.
- EPA has remained silent on the request to define “facility” as it applies to release reporting requirements (i.e. CERCLA & EPCRA).

- EPA has provided no outreach or education to the growing community and has not conducted an economic impact analysis for small businesses.

**Status:**

- The sign-up period for the ACA ended on August 12, 2005 and it is reported that 2,000+ animal feeding operations (combination of pork, egg, and meat birds, dairy) from 37 states have signed up.
- After EPA determines whether there is adequate representation of all animal sectors, EPA will request approval from the Environmental Appeals Board to begin monitoring. It is expected the monitoring of selected farms will begin in early 2006 and continue for 2 years.
- A petition for exempting poultry operations from CERCLA/EPCRA reporting requirements has been submitted to EPA and we are awaiting a response.

### **Air Emissions**

- Both MD & DE are developing regulations governing the use of emergency generators which includes on-farm units.
- Must meet certain emission limits or install a control device (cost share available in DE).
- Permit/registration will be required with associated record-keeping requirements including fuel usage, hours of operation, maintenance.

### **NEIGHBOR RELATIONS!**

- Noise
- Odor
- Dust/Feathers
- Vector Control (flies, rodents)
- Farm Appearance