

CAFO NPDES Permit – General Overview of Federal Regulations

In December 2008, U.S. EPA revised portions of the Clean Water Act (CWA) regulations that pertain to National Pollutant Discharge Elimination System (NPDES) permits for Concentrated Animal Feeding Operations (CAFOs). This fact sheet briefly outlines the new regulations and requirements for livestock producers in Ohio.

A Brief History

Since 1976, the CWA has defined CAFOs as point sources and has required regulation of these operations under the NPDES permit program. However, before 2003 CAFOs that did not have a discharge to surface waters, unless associated with a 25-year, 24-hour storm event, were exempt from the requirement to obtain a permit. As the result of dramatic changes in the livestock industry and a 1992 court-issued consent decree, in 2003 U.S. EPA revised the Code of Federal Regulations (CFR) Section 40 Parts 122, 123, and 412, then again in 2008 to strengthen and clarify the regulation of CAFOs.

New CAFO Definitions

In the 2003 regulations, U.S. EPA eliminated the animal units terminology and defined three CAFO categories (large, medium and small) and listed the range of animals applicable to each category.

Under the new definitions, a **large CAFO** is an animal feeding operation (AFO) that stables or confines as many as, or more than, the following numbers of animals:

- 700 mature dairy cows (milked and dry);
- 1,000 veal calves;
- 1,000 cattle other than mature dairy cows or veal calves (includes heifers, steers, bulls, and cow/calf pairs);
- 2,500 swine each weighing 55 pounds or more;
- 10,000 swine each weighing less than 55 pounds;
- 500 horses;
- 10,000 sheep or lambs;
- 55,000 turkeys;
- 30,000 laying hens or broilers (liquid manure handling system);
- 125,000 chickens other than laying hens (other than liquid manure handling system);

- 82,000 laying hens (other than a liquid manure handling system);
- 30,000 ducks (other than a liquid manure handling system); or
- 5,000 ducks (liquid manure handling system).

A **medium CAFO** is an AFO in which the type and number of animals that is stabled or confined falls within any of the following ranges:

- 200-699 mature dairy cows (milked and dry);
- 300-999 veal calves;
- 300-999 cattle other than mature dairy cows or veal calves (includes heifers, steers, bulls, and cow/calf pairs);
- 750-2,499 swine each weighing 55 pounds or more;
- 3,000-9,999 swine each weighing less than 55 pounds;
- 150-499 horses;
- 3,000-9,999 sheep or lambs;
- 16,500-54,999 turkeys;
- 9,000-29,999 laying hens or broilers (liquid manure handling system);
- 37,500-124,999 chickens other than laying hens (other than liquid manure handling system);
- 25,000-81,999 laying hens (other than a liquid manure handling system);
- 10,000-29,999 ducks (other than a liquid manure handling system); or
- 1,500-4,999 ducks (liquid manure handling system).

And either one of the following conditions are met: (A) pollutants are discharged directly into waters of the United States through a man-made ditch, flushing system, or other similar man-made device, or (B) pollutants are discharged directly into waters of the United States which originate outside of and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.

A **small CAFO** is an AFO that is not a medium CAFO but has been designated as a CAFO by the director after determining that the operation is a significant contributor of pollutants to waters of the United States.

Major Requirements

Under the 2008 federal regulations, operations meeting the definition of a large or medium CAFO must apply for an NPDES permit if they discharge or propose to discharge. A CAFO proposes to discharge if it is designed, constructed, operated or maintained such that a discharge will occur.

It must be noted that there is no exemption for large storm events – a discharge at any level or occurrence of precipitation needs a permit. Also, for large CAFOs, discharges from land application fields under the control of the CAFO that do not meet the agricultural storm water exemption require coverage by an NPDES permit.

An objective evaluation of the operation should be conducted to determine if the operation will discharge. U.S. EPA has provided suggestions for this evaluation in their guidance document *Implementation Guidance on CAFO Regulations – CAFOs that Discharge or Propose to Discharge* available to the public on May 28, 2010 and found at www.epa.gov/npdes/caforule.

Note that medium CAFOs do not need to be designated as a CAFO. If they meet the definition and discharge or propose to discharge, they must apply. Small CAFOs will be notified to apply for an NPDES permit when they are designated as a CAFO. There are penalties for facilities that meet the large and medium CAFO definitions and discharge or propose to discharge, but fail to apply for coverage.

The permit requirements in the federal rule include:

- Prohibition of discharge from the operation's production area, except in the event of a 25-year, 24-hour storm event (or 100-year, 24-hour storm event for new veal, poultry, and swine facilities) if the required records are maintained. (Note: Even if a CAFO only discharges in these events, they are no longer exempt from being required to obtain a permit.)
- Development and implementation of a manure management plan that includes best management practices to protect water quality.
- Application of manure based on nitrogen and phosphorus restrictions.
- Record-keeping.
- Submission of annual report.

The production area includes the animal confinement areas, manure storage areas, raw materials storage areas and waste containment areas.

The animal confinement area includes, but is not limited to, open lots, housed lots, feedlots, confinement houses, stall barns, free stall barns, milkrooms, milking centers, barnyards, medication pens, animal walkways and stables.

The manure storage area includes, but is not limited to, lagoons, runoff ponds, storage sheds, stockpiles, under house or pit storages, liquid impoundments and composting piles.

The raw materials storage area includes, but is not limited to, feed silos, silage bunkers and bedding materials.

The waste containment area includes, but is not limited to, settling basins and areas within berms and diversions which separate uncontaminated storm water. Also included in the definition of production areas is any egg washing or egg processing facility, and any area used in the storage, handling, treatment or disposal of mortalities.

Storm water contaminated by pollutants in the production area cannot be discharged during rain events less than the 25-year, 24-hour storm for most facilities, or the 100-year, 24-hour storm for new swine, veal and poultry facilities. Storm water from poultry operations that is contaminated by particles from fans settling on the ground may be permitted to discharge if covered by an NPDES permit.

Who Will Enforce These Regulations?

In the State of Ohio, Ohio EPA has been delegated from U.S. EPA to implement the NPDES permit program. Therefore, CAFOs must apply to Ohio EPA for coverage under the NPDES permit. The State has petitioned U.S. EPA for transfer of the CAFO NPDES permit program to the Ohio Department of Agriculture (ODA), and that petition is under review.

For More Information

For more information, refer to Ohio EPA *CAFO NPDES Permit I – What is it and How to Get One?* fact sheet or U.S. EPA (www.epa.gov/npdes/caforule). You may also contact Ohio EPA directly at:

Ohio EPA
Division of Surface Water
(614) 644-2001
P.O. Box 1049
Columbus, Ohio 43216-1049
www.epa.ohio.gov/dsw/cafo/index.aspx