



Defending Agriculture

Legal, environmental hot button issues that impact U.S. farmers.

More Regs for Livestock Farms?

Posted on June 08, 2010 at 3:43 PM

[Click here](#) to view [recent posts](#)

Environmental groups, including the Natural Resources Defense Council, Sierra Club, and Robert F. Kennedy Jr.'s Waterkeeper Alliance reached a Settlement Agreement with EPA in 2009 which required EPA, by May 28, 2010, to develop a guidance document "...designed to assist permitting authorities in implementing NPDES permit regulations and Effluent Limitations Guidelines and Standards for concentrated feeding operations (CAFOs)...".

This cozy arrangement negotiated between EPA and its environmental friends also requires EPA to ensure all owners or operators of CAFOs, regardless of whether they discharge or propose to discharge, to submit required information to EPA.

The 8-page [Consent Decree](#) sets forth information that will be required to be submitted to EPA every five years. In other words, more expense for CAFO operators.

EPA lost a major case involving CAFOs (*Waterkeeper Alliance v EPA*, 2005) where a court declared if there is no discharge from a CAFO, no NPDES (National Pollutant Discharge Elimination System) permit is required.

EPA, nor the environmental groups, cannot get over this defeat.

As a result, CAFO operators will soon be required to report substantial new, detailed, and expensive information to EPA pursuant to section 308 of the Clean Water Act (CWA).

End run The requirements set forth in the Settlement Agreement appear to go beyond the scope of the CWA. It is also clear EPA is attempting, in every way possible, to get around the agricultural stormwater runoff exemption set forth in the CWA and approved by the courts!

The Settlement Agreement requires approximately 15 pieces of substantial data, such as "quantity of manure, process wastewater and litter generated annually by the CAFO." EPA wants to know the exact longitude and latitude location of a CAFO operation, whether manure is transferred off-site, type and capacity of manure storage and whether the CAFO has applied for an NPDES permit.

Of course, this information will be made public.

In addition, EPA published on May 28, 2010 a document entitled "Implementation Guidance on CAFO Regulations – CAFOs That Discharge or Are Proposing to Discharge" (EPA-833-R-10-006). This document claims to be a guidance document and for all those reading this column, I would suggest it is mandatory reading.

Not legally enforceable A guidance document, as EPA clearly points out, is not legally enforceable and does not confer any legal rights or impose any legal obligations on any CAFO operation. The 18-page guidance document also makes it clear that discharges of manure from a land application area will not qualify as agricultural stormwater runoff unless it is applied on the site using practices that guarantee appropriate agricultural utilization of nutrients. (The last time I checked, the CWA statute did not include that language.)

What EPA is attempting to do is to avoid the requirements of the Waterkeeper case, which clearly states if you have no discharge to a water of the United States, an NPDES permit is not required.

In a blatant attempt to undermine the Waterkeeper case, EPA now tells a CAFO operator that if an "objective assessment" suggests a possible discharge, an NPDES permit should be sought.

EPA wants the CAFO to examine through an objective assessment climatic, hydrologic, topographic, and other characteristics which may be beyond the operator's control. The guidance also wants the CAFO to consider the design construction operation or maintenance of the CAFO.

EPA then claims "An objective assessment provides a common basis for both the CAFO and the permitting authority to determine whether the CAFO discharges or proposes to discharge."

What EPA is attempting to do is return to its 2003 rule, which categorically required any CAFO with a potential to discharge to have an NPDES permit. The court in *Waterkeeper* overturned this rule.

EPA is continuing its effort to regulate as many aspects of production agriculture as possible. The guidance is merely a precursor to more lawsuits against livestock production in the United States.

It may be called a Guidance Document, but my bet is it will be applied as a regulation - which will set up yet another court challenge.

[Add a Comment](#)

Recent Posts

[Back to Top](#)

[More Regs for Livestock Farms?](#)

Posted on June 08, 2010 at 3:43 PM

Large-scale operations may soon need to report detailed information under the Clean Water Act.

Category: [Issues](#)