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EPA Seeks Private CAFO Data

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The Environmental Protection Agency claims that 29 states have "...specifically identified animal feeding operations as contributing to water quality impairment." Moreover, EPA says 68 studies have been completed and show the animal livestock industry "...as an important contributor of surface water pollution."

In fact 15 of the 68 studies, EPA alleges, have directly linked confined animal feeding operations to air and water pollutants which have lead to specific health or environmental impacts.

The allegations get much worse!

To start solving this problem EPA has issued a proposed rule to force CAFOs to provide it with data, so EPA can "...achieve more efficiently and effectively the water quality protection goals and objectives of Clean Water Act." The rule was proposed on October 21, 2011 in the Federal Register. (It is a piece of coal for your Christmas!)

EPA is proposing the rule because it signed a settlement agreement with environmental litigants on a case brought in 2008. EPA, in settling, agreed with the environmentalists to force all CAFOs to provide certain information to EPA and make it public. The agreement, according to the proposal, requires CAFOs to submit certain private information to EPA notwithstanding whether the CAFO has a NPDES (National Pollutant Discharge Elimination System) permit or has a discharge!

EPA has not sought this information in the past, but is now because it signed a consent agreement with environmental groups.

EPA's proposal claims the purpose is to restore water quality by collecting this data to "...ensure that CAFOs are complying with the requirements of the CWA including the requirement to obtain an NPDES permit if they discharge pollutants to waters of the U.S...."

CAFOs, nor anyone else can discharge into a water of the U.S without a permit. CAFOs have 'no discharge' requirements. What is EPA talking about? If it finds a CAFO discharging, bring an enforcement action.

EPA lost the NPPC (National Pork Producers Council) v. EPA case, 635 F.3rd 738 (5th Cir.2011), which held there must be an "actual discharge" into a water of the U.S. before an NPDES permit is required.

Now EPA is attempting to get around the NPPC decision by claiming it is authorized to collect information from "any point source." True, but CAFOs do not discharge therefore are not point sources.

EPA is not giving up on attempting to regulate CAFOs, regardless of what the courts have ruled.

Just review EPA's Impact Analysis on page 65,447 of the Federal Register, which claims that this October CAFO reporting proposal will help it as did the 2003 CAFO rule, to obtain pollutant reductions of 56 million pounds of phosphorus, 110 million pounds of nitrogen, and two billion pounds of sediment from entering waters of the U.S. EPA claims: "The effect of the proposed rule would be to enable full attainment of the benefits calculated in the 2003 rule."

EPA claims against CAFOs

EPA claims pollutants from manure, litter and waste water from CAFOs contain pathogens, heavy metals and pharmaceuticals. When the manure is applied before rainfall these nutrients run into the waters of the U.S.

Also, EPA claims there are 40 diseases found in manure which can be transferred to humans, such as Salmonellosis, Tuberculosis, Leptospirosis, infantile diarrheal disease and Trichinosis. These pathogens, EPA claims, are in recreational surface waters from CAFOs.

EPA continues its accusations to support its rule by saying heavy metals such as arsenic, cadmium, iron, lead, and nickel are commonly found in CAFO manure. EPA cites a report which says that 80-90% of copper, zinc and arsenic which are consumed by animals is excreted and then contaminates the soil, runs into rivers and "...may eventually release to pollute the water."

EPA also claims that the health hazards that result from manure runoff may result in chronic exposure and lead to nervous system disorders, cardiovascular effects, diabetes, respiratory effects, reproductive effects and cancers from multiple tissues from arsenic.

EPA cites an FDA 2010 *Summary Report on Antimicrobials Used in Food Producing Animals* which claims antimicrobials used in CAFOs increased from 8.8 million kilograms in 1995 to 13.3 million kilograms in 2009. EPA claims these antibiotics are not metabolized completely and suggests that these antibiotics are in the waters of the U.S. and are "...increasing the severity of [human] disease and limiting treatment options for sickened individuals..." and cites an EPA report dated 2005.

EPA would have you believe it merely wants the name of the owner of the CAFO, location, type and capacity of manure storage, whether the CAFO land-applies manure, whether there is a nutrient management plan, whether the CAFO transfers manure offsite and whether the CAFO has applied for an NPDES permit. Sounds straight forward enough, but as you can see from the foregoing claims, EPA believes it needs basic information from CAFOs to support its alleged goal of water quality protection.

In reading the Federal Register 76 F.R. 65431 (October 21, 2011) it is clear that EPA will do everything in its power to bring CAFOs under its regulation. CAFO managers need to read the fine print set forth in this proposal.