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Is Your CAFO Proposing to Discharge?

Posted on June 22, 2010 at 6:16 AM

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In an earlier blog, "More Regs for Livestock Farms," I referred to EPA's Implementation guidance on CAFO (Concentrated Animal Feeding Operations) Regulations – CAFOs That Discharge or Are Proposing to Discharge (http://www.epa.gov/npdes/pubs/cafo_implementation_guidance.pdf).

I have now had a chance to study the EPA guidance document issued on May 28, 2010, and it really is an effort to regulate virtually any CAFO discharge. This effort is part of President Obama's promise to his supporters.

In David Kirby's new book, Animal Factory, there is a listing of the President's plan to support rural communities. The third item on page 421 which the book claims is a quote from the BarackObama.com website, declares, "Regulate CAFOs: Obama's Environmental Protection Agency will strictly regulate pollution from large CAFOs, with fines for those that violate tough standards. Obama also supports meaningful local control."

This new EPA guidance is following through on the President's promise.

EPA makes it very clear that it will not "categorically" require (this avoids the Waterkeeper court decision) any CAFO to have a Clean Water Act (CWA) permit. The new guidance simply calls for a "case by case" evaluation. The evaluation is described as an objective assessment in terms of whether a CAFO needs a permit.

The objective assessment as determined by EPA needs to evaluate the animal confinement areas; feed storage areas; manure; litter; process waste water storage areas; confinement house ventilation fan exhaust; land applied manure, litter or processed waste water; and other site specific sources of pollutants which possibly can reach waters of the U.S.

If you have a CAFO, EPA wants your objective assessment to include the following, and these are critical for any CAFO operator:

- Proximity of the CAFO to waters of the United States, and if the CAFO is upslope from waters of the U.S.;
- Climatic conditions, including whether precipitation exceeds evaporation;
- Discharge history;
- Type of waste storage system, and the capacity, quality of construction and presence and extent of built-in safeguards of the storage system;
- Management of mortalities;
- Standard operating procedures and quality of maintenance protocols, such as for equipment or infrastructure;
- Drainage of production area;
- Exposure of animal waste and feed to precipitation or other water;
- If the CAFO land applies, method for nutrient management planning and source of technical standards (e.g., technical standards established by the Director).

This guidance document from EPA is extremely important to read and understand because the Obama administration has made a political promise, and it is being carried out.

Storm Water Exemption Remember there is an "agricultural storm water discharge" exemption, but EPA is doing everything possible to undercut this statutory exemption which is section 504 (14) of the CWA.

EPA has an entire section discussing appropriate land application, where it makes it very clear that a discharge from land application under the control of a CAFO is subject to CWA permit requirements. The requirements even apply if a CAFO has manure broker agreements or sales contracts for the manure. A CAFO will need to prove if it has precipitation related discharges that it qualifies for the stormwater exemption!

For example, the application must be in accordance with EPA protocols which assure appropriate utilization of nutrients. The CAFO must take into account soil characteristics, terrain, and whether the soil is saturated with manure or water. In fact, EPA will even take into consideration whether the CAFO has site specific conservation practices to control runoff of manure into waters of the U.S.

Clean Water Act Loophole The CWA states plainly that agriculture storm water runoff is exempt. EPA is saying "...buffers or equivalent practices are a factor for whether precipitation-related discharges qualify as agricultural storm water..."

Using this standard when we use surface-applied fertilizers or pesticides - should they run into a 'water of the United States' - well, you'd better make sure you have a buffer to prohibit such pollutants from moving off target. Think of the consequences of this action.

This guidance document issued by EPA is not to be taken lightly!

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Strict EPA regulations on large-scale livestock farms is part of Barack Obama's political promise to supporters.

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