

# BACKGROUND ON NR 243 ANIMAL FEEDING OPERATIONS (AFO)

## Introduction

U.S. Environmental Protection Agency (EPA) rules affecting animal feeding operations (AFOs) have evolved from the 1972 Federal Clean Water Act (CWA). Section 502 of the CWA specifically defined feedlots as “point sources” along with dozens of other industries such as meat processing and fertilizer manufacturing. The goal of the 1972 CWA was to restore “fishable, swimmable” quality of lakes, streams and estuaries in the United States.

A federal permit program termed the National Pollutant Discharge Elimination System (NPDES) was created for point sources that discharged into “waters of the United States.” The EPA regulations that ensued from the 1972 CWA were singularly focused on the main issue of surface water protection and the rules developed for the feedlots point source category were no exception.<sup>1</sup> (2003)

Concentrated Animal Feeding Operations (CAFOs) have been regulated by federal rule through the NPDES or equivalent state permits since the mid-1970s. However, modifications to the original rule have been made over the decades, including vacating the requirement for all CAFOs to apply for a NPDES permit in 2005, requiring CAFOs to submit a nutrient management plan (NMP) as part of their permit application in 2008 and a clarification of the definition for the “Waters of the United States” as recently as 2020.

## CAFOs Requiring NPDES Permits

In 1976, EPA first defined exactly which livestock facilities constituted an AFO and, within this larger group, those operations that constituted a CAFO (point source) requiring NPDES permits. The criteria for determining when an AFO is a CAFO involved having sufficient numbers of animals to warrant regulation under NPDES. Size categories for different animal species that made operations subject to the CAFO rules included: 1,000 head or more of beef cattle; 2,500 swine; 750 dairy cattle, etc. In terms of beef feeder-cattle equivalents, operations smaller than 300 AU were considered AFOs exempt from NPDES permits except by specific case-by-case designation. Those between 300 and 1,000 AU were to be evaluated on a case-by-case basis depending on potential for discharge and other factors including types of wastewater conveyance structures or immediate proximity to a stream. 1 (2003)

## In Wisconsin

In Wisconsin, CAFOs are livestock operations regulated by the WI Department of Natural Resources (DNR) for water quality in accordance with the Clean Water Act. CAFOs must have an approved Wisconsin Pollutant Discharge Elimination System (WPDES) permit to ensure they use proper planning, nutrient management and structure or system construction to protect Wisconsin waters. These permits apply only to water quality protection and do not give DNR authority to address air, odor, traffic, lighting, land use or any of the social concerns people may have about large farms. Most WPDES permits are valid for five years.

The WI CAFO program is applicable to all new or expanding operations with 1,000 AU or more. It is also possibly applicable for operations with less than 1,000 AU if there is a discharge of pollutants to waters of the state or groundwater. The goal is to protect water quality by reducing or preventing manure or process wastewater pollution from land applications and production site wastes.<sup>2</sup> (DATCP website) A NMP must be provided with the application for review and acceptance by the DNR and becomes an enforceable part of the permit.

In the past decade or more, the CAFO permitting process has experienced a decline in satisfactory service to applicants. Conversations have taken place between the industry and the DNR, but subsequent improvements to the process have yet to be implemented. Much of that conversation has occurred around the extreme length of time for initial WPDES application approvals as well as a backlog of unapproved renewals. More consistent requirements and established timelines for submitting information and documentation would make it smoother for new applicants to provide all the needed information to the DNR in a more expedient way. In addition, a more streamlined permit renewal process and established timeline for producers who are not making significant changes to their farms and have no history of a violation but are simply applying for a renewal could be an efficiency in the program.

Additionally, dedication of technical staff who have a background in agriculture could assist in addressing the backlog of applications in addition to providing consistency in the application process and regulation of the industry. Dedicated staff might also provide an opportunity for better communication and interaction with the environmental engineers and farm consultants who are critical in providing expertise to producers going through the application process.

The backlog could also be improved by continuing access to the General Permit (GP) option. The GP option allows DNR to issue WPDES permits to cover a category or group of CAFOs. This option, which is available to industries with various categories and classes of point source discharge, has provided CAFO owners the stability and predictability of knowing the DNR's expectations. Providing clear guidance and allowing applicants to access the GP option should free up staff time and eliminate any uncertainty in applying the standards for the permit under Wis. Admin. Code s.NR 243. Broadening the use of the GP could expedite the renewal of those CAFOs that are not making changes to their operations but merely renewing because their permit date expired.

Finally, the DNR and the industry could benefit from the implementation of assured engineers or nutrient management planners. The DNR is familiar with this concept. They currently accept the work of approved private sector professionals in the Wetlands Assured Delineation program. According to DNR's website, this pilot program brings efficiency to the department by accessing highly trained professionals in the appropriate field. Accepting the work of individuals who are certified and intimately familiar with the process of developing and successfully maintaining NMPs on a daily basis could alleviate the application backlog. This would free up DNR staff to oversee and administer Wis. Admin. Code s.NR 243 in a more efficient manner.

### **Questions for WFBF Policy Development Committee:**

- Is there a value to continuing the General Permit?
- Should the General Permit be expanded to include additional categories of farm applicants?
- Should establishing mandatory timelines for DNR to complete CAFO permit applications be statutorily established? If so, what is an acceptable timeframe for:
  - New farm permits?
  - Permit renewals with no significant changes or violations?
  - Permit renewals for farms with significant updates?
- Should certified private sector professionals be allowed to assist the DNR by providing the on-site and written reviews necessary to meet clarified requirements from NR 243?

### **Related Wisconsin Farm Bureau Policy**

- All CAFO policy is located on Page 18, Lines 13-18.

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<sup>1</sup>(2003) *MidWest Plan Service, Iowa State University, Ames, Iowa 50011-3080. Reprinted from Livestock and Poultry Environmental Stewardship curriculum, fact sheet authored by John Sweeten, Texas A&M University; Ron Miner, Oregon State University; and Carrie Tengman, National Pork Board, courtesy of MidWest Plan Service, Iowa State University, Ames, Iowa, 50011-3080 and your land-grant universities, Copyright © 2003.2 October*

<sup>2</sup>(DATCP website) *LSSitingVsCAFOs.pdf (wi.gov)*