

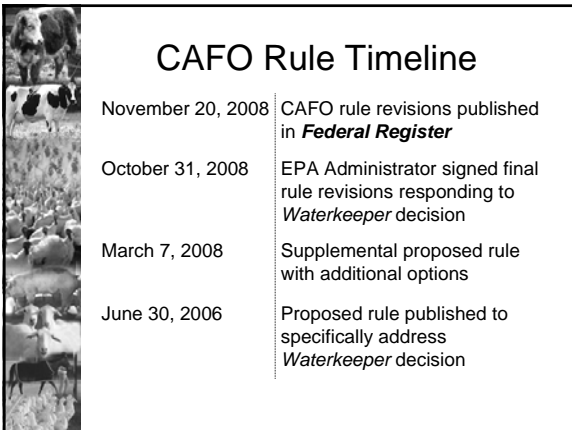


**CAFO Permit Program:
Final NPDES Rule**

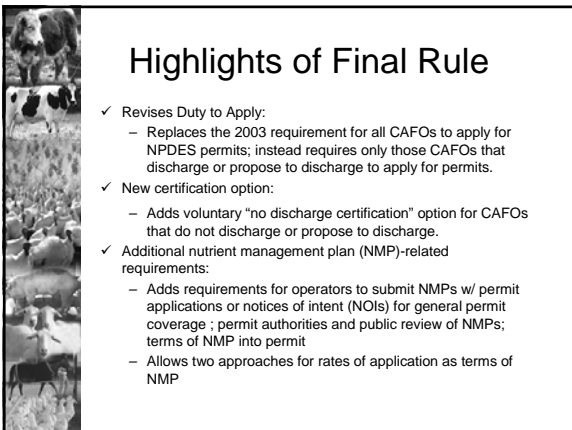
November 2008




CAFO Rule Timeline

November 20, 2008	CAFO rule revisions published in <i>Federal Register</i>
October 31, 2008	EPA Administrator signed final rule revisions responding to <i>Waterkeeper</i> decision
March 7, 2008	Supplemental proposed rule with additional options
June 30, 2006	Proposed rule published to specifically address <i>Waterkeeper</i> decision




Highlights of Final Rule

- ✓ Revises Duty to Apply:
 - Replaces the 2003 requirement for all CAFOs to apply for NPDES permits; instead requires only those CAFOs that discharge or propose to discharge to apply for permits.
- ✓ New certification option:
 - Adds voluntary "no discharge certification" option for CAFOs that do not discharge or propose to discharge.
- ✓ Additional nutrient management plan (NMP)-related requirements:
 - Adds requirements for operators to submit NMPs w/ permit applications or notices of intent (NOIs) for general permit coverage ; permit authorities and public review of NMPs; terms of NMP into permit
 - Allows two approaches for rates of application as terms of NMP




Highlights of Final Rule, cont.

- ✓ **Alternative NSPS provision for new sources swine, poultry and veal calf facilities**
- ✓ **Affirms BCT limitations:**
 - **Best Conventional Technology (BCT) limitations established in 2003 represent the Best Conventional Control Technology for achieving fecal coliform reductions.**




Additional Details – Duty to Apply

- How does a CAFO know if it needs to apply for permit coverage?
 - The Final Rule calls for a case-by-case determination of whether the CAFO does or will discharge from its production or land application area based on an objective assessment of the CAFO's design, construction, operation, and maintenance.
- If an unpermitted CAFO previously discharged and has permanently fixed the cause of the discharge, does it need to apply for a permit?
 - A CAFO that has had a discharge in the past and has taken the steps necessary to permanently fix the cause of the discharge is not required to apply for a permit if it is designed, constructed, operated, and maintained for no discharge.




Additional Details – Duty to Apply, cont.

- Does a CAFO need to obtain permit coverage to claim the agricultural stormwater exemption for precipitation-related discharges from land application?
 - A CAFO that does not have any discharge other than agricultural stormwater and that does not propose to discharge is not required to seek permit coverage. In the Final Rule EPA clarifies the applicability of the agricultural stormwater exemption to unpermitted CAFOs.




Additional Details – Voluntary Certification Option

- What is the incentive for an unpermitted CAFO to certify?
 - A properly certified CAFO makes an up-front demonstration to the Director that it does not have to get a permit. In the event of a discharge from a CAFO with a valid certification, the CAFO would only be subject to liability for the unpermitted discharge, not for failure to seek permit coverage prior to the discharge.
- What are the qualifications for the voluntary certification option?
 - In order to properly certify under the voluntary option, a CAFO must be designed, constructed, operated and maintained for no discharge in accordance with rigorous eligibility criteria, including a technical evaluation of open manure storage structures and development and implementation of an NMP that ensures no discharge.
 - The CAFO also must submit a signed statement, general information about the facility, and description of eligibility. If a CAFO meets all of the eligibility and submission requirements its certification will become effective upon submission without required review by the permitting authority.



Additional Details – Voluntary Certification Option, cont.

- If a properly certified CAFO discharges, can it recertify?
 - After a discharge from a properly certified CAFO, the CAFO can recertify if it permanently fixes the cause of the discharge and it has not previously recertified after a discharge from the same cause. The CAFO's recertification is submitted for a 30-day review.



Questions?



Additional details – Nutrient Management Plans

- Is the entire NMP required to be publicly noticed?
 - Yes, the permitting authority is required to make the entire NMP and the draft terms of the NMP available to public.
- Is the entire NMP incorporated into the permit?
 - The permitting authority must incorporate the terms of the NMP into the permit, which include the information, protocols, best management practices (BMPs) and other conditions in the NMP necessary to meet the NMP requirements of the 2003 rule.




Additional details – Nutrient Management Plans, cont.

- What are the two approaches in the final rule for expressing rates of application?
 - The “linear approach” expresses field-specific maximum rates of application in terms of the amount of nitrogen and phosphorus from manure, litter, and process wastewater allowed to be applied.
 - The “narrative rate approach” expresses the field-specific rate of application as a narrative rate prescribing how to calculate the amount of manure, litter, and process wastewater allowed to be applied.




Additional details – Nutrient Management Plans, cont.

- Do either of the two approaches in the final rule for identifying terms of the NMP for expressing rates of application address the concern regarding flexibility of the NMP?
 - Yes. The narrative rate approach allows CAFO operators to change their crop rotation and form and source of manure, litter, and process wastewater, as well as the timing and method of application. The narrative rate approach allows the use of “real time” data for determining rates of application and provides the most flexible approach for farmers.




**Additional details –
Nutrient Management Plans, cont.**

- What are substantial changes to the NMP and that require a permit modification?
 - The final rule includes a list of changes to the NMP that constitute a substantial change that would trigger permit modification. These include addition of new land application areas not previously included in the CAFO's NMP and addition of any crop not included in the terms of the CAFO's NMP and corresponding field-specific rates of application.




Questions?



**Additional details –
Water Quality-based Effluent
Limitations**


- EPA clarifies that permit writers may require water quality-based effluent limitations (WQBELs) in CAFO permits if necessary to meet applicable water quality standards
 - To further limit discharges from the production area; and/or
 - With respect to any non-agricultural stormwater discharges from the land application areas.



**Additional details –
Technology-based Effluent
Limitations**


What are the best conventional pollutant control technology (BCT) effluent limitations for fecal coliform?

- EPA did not identify any economically achievable, technologically available, and cost reasonable technologies on which to establish national effluent limitations for fecal coliform.
- EPA affirmed the BCT limitations are the same as the 2003 rule BPT and BAT limitations:
 - No discharge from production area.
 - Limited exemption for precipitation-based overflows under specified conditions.
 - Land application rates that minimize transport of nutrients; required setback or vegetated buffer.



**Additional details –
Technology-based Effluent
Limitations, cont.**

- What are the requirements for new source swine, poultry, and veal calf CAFOs?
 - Basic new source requirements are the same as 2003 CAFO rule:
 - No discharge from production area.
 - No exemption for precipitation-based overflows for new swine, poultry, and veal calf CAFOs.
 - Alternative provision in the rule for demonstrating the new CAFO is a no discharge facility based on well-established USDA models.
 - Flexibility for Director to approve other models



Questions?



Additional Details - Timelines

- Any extensions to compliance deadlines?
 - No. EPA is not extending the existing February 27, 2009, compliance deadlines for newly defined facilities to apply for NPDES permits and to develop NMPs.
- How much time will States have to update their programs?
 - One year to update programs; two years if statutory changes are needed. States are not required to adopt the provisions for no discharge certification in this time period.



Initial Outreach on Rule

- Updates to EPA website, including Federal Register notice and outreach materials
- Press release, fact sheet, Qs & As
- Rollout email to key stakeholders on 10/31/08
- Conference calls/meetings with stakeholders
- Public webcast scheduled for November 19 (see website for details and to register)



EPA Implementation Support

- Training for NMP development and for permit writers and inspectors
- Permit writer's manual and producer's guide
- Example permit; detailed Qs & As; technical standards review
- Implementation of "Manure Management Planner" (MMP) – coordinating with USDA



Key Grants

- \$8 million grant to ERC/RTI for technical assistance to livestock operators — offers no-cost environmental assessments and no-cost NMPs
- MMP developed under grants to Purdue Univ. to aid with NMPs/ CNMPs
- Grant to Iowa Cattlemen's Association to monitor effectiveness of alternative technologies



Additional information

- For copies of the latest updates and outreach materials....

<http://www.epa.gov/npdes/afo>



Questions?
