

**U.S. ENVIRONMENTAL PROTECTION AGENCY**  
**CAFO PUBLIC MEETING—BALTIMORE, MARYLAND**  
**MARCH 1, 2001, 1:00 to 3:45 PM**

On December 15, 2000, former U.S. Environmental Protection Agency (EPA) Administrator Carol Browner signed proposed revisions to the National Pollutant Discharge Elimination System (NPDES) Permit Regulations and the Effluent Limitation Guidelines and Standards (ELG) for Concentrated Animal Feeding Operations (CAFOs). The proposed revisions revise and update the two regulations that address impacts on water quality from manure and process waters generated by CAFOs. EPA published these proposed revisions in the *Federal Register* on January 12, 2001, at 66 FR 2959.

EPA held eight public information meetings in different cities across the country. The purpose of these meetings was to enhance public understanding of the proposed changes to regulations for CAFOs. At each meeting, EPA presented an overview of the proposed regulations and responded to questions and requests for clarification from attendees.

These informational meetings were not part of the public comment process. Any comments that citizens or groups wish EPA to consider as part of the rulemaking process must be submitted in accordance with the requirements specified in preamble to the proposed rule. The public comment period extends until July 30, 2001. In Baltimore, Geoff Grubbs and Janet Goodwin from the Office of Science and Technology, and Karen Metchis from the Office of Wastewater Management presented the overview of the proposed CAFO rule revisions.

The summary below is an overview of statements made by the public participants at the informational meeting. These notes are not intended to be a verbatim transcript or a comprehensive record of the meeting; rather, they are intended to identify the participants at this meeting, the issues of concern, and the general nature of the questions asked and the answers provided. The summary is organized by order of questioner.

**MEETING SUMMARY**

**Presenters:** Geoff Grubbs, Director, Office of Science and Technology, USEPA;  
Karen Metchis, CAFO NPDES Rule Revision Project Lead, Office of Wastewater Management, USEPA;  
Janet Goodwin, CAFO ELG Rule Revision Project Lead, Office of Science and Technology, USEPA

**Moderator:** Joe Piotrowski, Associate Director, Office of Watersheds, USEPA Region 3

**Panelists:** Geoff Grubbs, Karen Metchis, Janet Goodwin

**Approximate number of public participants:** 110

**Attendees:** Majority of questions posed by agriculture trade associations, university professors, state agency staff, and environmental associations. Also present were industry representatives, citizen groups, farmers (owners of operations), U.S. Department of Agriculture (USDA) representatives, reporters, and law firm representatives.

**Meeting Opened:** 1:15 PM

**Questioning Began:** 2:00 PM

**Meeting Adjourned:** 3:45 PM

**SUMMARY OF QUESTIONS AND ANSWERS**  
(By order of questioner)

*The following are notes of this proceeding. EPA does not have a verbatim transcript of the proceeding.*

**1. W. Richard Smith, Jr., Robinson & Cole LLP**

**Q:** Are there any references that define direct hydrological connection to surface water?

**A:** The preamble identifies factors that pertain to this. EPA's Office of Science and Technology (OST) and Office of Wastewater Management (OWM) are working with the Office of Ground Water and the Office of Drinking Water (OGW, ODW) regarding this definition.

**Q:** Is there any standard for hydrogeologists to use in demonstrating that a hydrological connection to surface water does not exist at a site?

**A:** USEPA Region 6 has some examples of this. These permits are in the record for this rule.

**Q:** Is the cost for analysis of hydrological connection that is performed by hydrogeologists included in the economic analysis?

**A:** Yes.

**Q:** Was hydrologic connection addressed during the Small Business Regulatory Enforcement Fairness Act (SBREFA) process? Is this on record?

**A:** Yes

**Q:** Do confidential business protections apply to what is submitted as part of a Permit Nutrient Plan (PNP)? Is there a concern that 40 CFR Part 2 does not cover this, since EPA seeks comment on what is confidential business information (CBI)?

**A:** Existing CBI regulations would be used to address this. EPA is trying to find a balance between public needs and operator confidential business information.

**Q:** Have any thoughts been given to protection against citizen suits for CAFOs that have submitted permit applications, but are awaiting approval decisions by states and EPA?

**A:** EPA believes those CAFOs are protected, but EPA counsel will look into the matter and make a determination.

**Q:** Are the presentation materials used today available on a web site?

**A:** Yes, they will be.

**2. Alan Roberson, American Water Works Association**

**Q:** Of the water quality impacts potentially posed by CAFOs, which are most significant for drinking water facilities?

**A:** Pathogens.

**Q:** Will a correction be made to the date given for the end of the comment period in the *Federal Register* notice? May 2 was given, yet the real date is May 14.

**A:** Yes, it was corrected on January 19, 2001.

**Q:** Are you working with the Offices of Ground Water and Drinking Water on applying their criteria to define hydrological connection to surface water?

**A:** Yes.

### **3. Craig Adams, University of Missouri**

**Q:** What is the status of technology evaluations, and how do we track that?

**A:** EPA is looking at pathogens now and seeking information on other technologies.

**Q:** Do you have any information regarding technologies to address organic and inorganic phosphates? Is more development needed?

**A:** EPA has looked at feeding strategies and technologies that selectively remove phosphorus. Yes, there is need for more development.

### **4. John Hughes, Delaware Department of Natural Resources and Environmental Conservation**

**Q:** Do you agree with Delaware Nutrient Management Commission's definition of functional equivalence, which means that they will address CAFOs in a manner that is based upon mutual agreement with EPA rather than in lockstep with EPA directives.

**A:** EPA wants to preserve flexibility for state programs, but EPA does not believe there can be such a thing as "functional equivalency" without meeting the basic requirements of the Clean Water Act (CWA), which includes federal enforceability and public participation. However, EPA is examining ways to build in flexibility for state programs such as Delaware's.

**Q:** The 100-foot setback allows crops but not manure. This allows use of fertilizer in the setback area, which does not seem sensible. I would understand a buffer strip better. Any comments on this?

**A:** EPA did consider a range of options and encourages the use of buffers, but EPA is uncomfortable taking land from production; therefore, a setback was proposed. There may be nutrients in the runoff due to fertilizer application in setback area, but there should be less pathogens and metals than from manure. EPA is still looking at what will work.

### **5. Lucy Goodrum, Farm Animal Reform Movement**

**Q:** How does the ELG address pesticides and antibiotics from manure?

**A:** Pesticides and antibiotics are prevented from contaminating water by providing manure storage and stormwater containment in the production areas, and through the use of PNPs for land application.

### **6. Sam Slabaugh, Medallion Advisory Service**

**Q:** Have you considered how family farms would be covered by the proposal? Was it your intent to exclude family farms from the CAFO definition? [Slabaugh defined a family farm as a farm that would support one household, and argued that 100,000 chickens (1,000 animal units) is not enough to support a family farm.]

**A:** Some proposals defer to smaller operations, but no, EPA did not intend to exclude family farms. The inclusion of farms is based upon the environmental risk from manure. EPA did, however, do a Small Business Regulatory Enforcement Fairness Act (SBREFA) analysis.

**Q:** Will these regulations drive agriculture to fewer, larger operations?

**A:** That is the current trend, but EPA does not think that these regulations are the main driver causing it.

**Q:** Is finished compost managed the same as raw manure?

**A:** Yes, offsite, too.

**Q:** Is it the intent to discourage people from using alternative methods in dealing with manure?

**A:** No, the regulations would encourage operators to find new pathways to dispose of manure. Please give us ideas on incentives for composting.

**Q:** How would a producer innovate under the regulations if a technology is experimental and not done on a large scale?

**A:** EPA does not specify technologies, only performance standards.

## **7. Paryse Turgeon, Maine Department of Agriculture**

**Q:** With regard to zero discharge, is dropping the 25-year, 24-hour storm exemption possible given the state of the technology?

**A:** Yes, the removal of the 25-year, 24-hour exemption for the ELG applies only to swine, poultry, and veal. These animals are generally under roof or in houses and the feed is stored under cover. If a lagoon cover is added and clean water is diverted from manure storage areas, then zero discharge can be achieved.

**Q:** Does zero discharge include field runoff?

**A:** No.

**Q:** Regarding flexibility for state programs, Maine's program works well, but some things clash with EPA's rule (e.g., 100-foot setback; Nutrient Management Plans (NMP) are confidential in Maine). Where is the flexibility?

**A:** EPA's rules are based upon performance standards, not specific practices. The Key is for EPA to lay out a framework to achieve performance standards nationally, while allowing state and local flexibility regarding the practices used to achieve the performance standards. Please send in your comments regarding alternatives where clashes occur.

## **8. Bill Satterfield, Delmarva Poultry Industry Association**

**Q:** Did EPA consider that larger operations are better run and less likely to pollute than smaller operations?

**A:** Yes, EPA believes that many well-run larger operations exist. EPA also believes that smaller operations pose less risk overall because they concentrate less manure at a given facility.

**Q:** Has EPA considered how farmers will pay the \$5,000 to \$36,000 annualized cost per CAFO that is shown in Table 10-1?

**A:** Yes. EPA has performed an economic achievability analysis. Supporting documents contain the details.

**Q:** Has EPA added the costs CAFOs incur as a result of state requirements?

**A:** Yes, EPA has tried to add the costs CAFOs incur as a result of state requirements. Please comment on this.

**Q:** Has EPA done anything to try to improve the environmental management of homeowners and government? Are you picking on everybody?

**A:** Yes, EPA regulates many sources of pollution, such as, construction in urban areas, metal finishers, and stormwater from urban areas. These include both big and small industry.

**Q:** What about homeowners?

**A:** Homeowners are not dischargers as defined under the CWA, so there is a jurisdictional matter. However, homeowners are covered under the CWA through storm water sewers and can be placed under restrictions.

**Q:** What is the mechanism for CAFO operators to get permits? Who makes sure they apply for a permit?

**A:** NPDES-authorized states or EPA Regions will communicate the necessary information. If operators do not apply for a permit, they may be found to be discharging without a permit. EPA will develop a compliance guidance, particularly to help small businesses determine if the rules apply to them. EPA also has a compliance assistance center in Kansas City.

**Q:** What is the mechanism to enforce the rule that CAFOs must have and adhere to a PNP?

**A:** A PNP must be developed and a notice to the permitting authority must be filed. Inspections will be used to ensure that PNPs are being properly implemented.

**Q:** Will there be public hearings for each PNP under the general permit?

**A:** No.

## **9. Clark White, Allen's Food**

**Q:** Has EPA looked at cone-shaped outside storage of manure? A crust forms on the cone and limits losses. If it is okay in Delaware, is it okay with EPA?

**A:** EPA has no information on the effectiveness of this approach, and seeks data.

**Q:** Is co-permitting necessary if a state already has a law?

**A:** If the law provides the necessary assurances, a waiver may be okay.

## **10. Tom Sims, University of Delaware, speaking for the American Society of Agronomy and the Soil Science Society of America**

**Q:** Will EPA be willing to establish a permanent working relationship with our group of researchers to bring new findings and technology to the field as they are generated, to allow for updates and corrections?

**A:** Yes, but a formal arrangement may be an issue. Please contact Jan Goodman with the USEPA/OST. However, when the rules are set, they are set and cannot be updated like a field guide. The use of performance standards allows for the use of new technologies.

## **11. Barbara Ley, Physicians for Social Responsibility**

**Q:** How likely is it that pathogen controls in the proposal will be implemented? Will you go beyond those controls that are in the proposal?

**A:** EPA is interested in more data, but also need to take cost into account. Most pathogen control technologies are expensive. EPA could look at both the production area and field practices within cost limits and applicability constraints.

**Q:** Are you considering additional measures for antibiotics and pesticides?

**A:** EPA has even less information there; and believe the levels are low and therefore hard to treat to achieve significant removal. EPA considered seven technology options and EPA is still looking for information.

## **12. Melanie Flynn, Natural Resource Defense Council**

**Q:** How will land application rates in a PNP be enforced if periodic reporting to the permit authority is not required?

**A:** The PNP requires that the quantity of manure expected to be transferred off site be estimated. Spot checks and inspections can be used where problems are suspected.

**Q:** Why do dairy and beef operations have different requirements from poultry, veal, and swine?

**A:** Dairy has open lots and storage of silage on site, so there is a need to capture the stormwater and provide an overflow allowance for large storm events.

**Q:** Is EPA requiring reporting of overflow discharges?

**A:** Yes, within 24 hours.

**Q:** Has EPA considered how to deal with abandoned lagoons?

**A:** Yes; in the proposal, operators must retain a permit until the manure generated by the CAFO is disposed of properly.

**Q:** Given that a low percent age of operations that should have permits currently have permits, how will EPA enforce the requirement that many more facilities obtain permits?

**A:** The 25-year, 24-hour exemption has been an issue. Operations that do not discharge, except under those conditions, currently feel they do not need a permit. Two rounds of permitting are planned. In round one, EPA is working with the EPA regions and the states to issue permits for all existing CAFOs. A second round will address new CAFOs after the rule is final.

**Q:** Are lagoon covers required for veal, poultry, and swine?

**A:** That is the proposal basis, but other options that achieve the performance standards can be used.

## **13. Ellen Silbergold, University of Maryland Medical School**

**Q:** Are you looking at the movement of antibiotics and resistant genes?

**A:** Yes, but EPA is trying to find data. The costs for tracking resistant genes may be prohibitive. EPA focused on pathogens themselves, using indicators such as fecal coliform, fecal streptococcus, and cryptosporidium. [Silbergold responded that the list of pathogens was a bad list, and that EPA should consult with Center for Disease Control and Prevention.]

**Q:** Is the purpose of assessing hydrological connection of ground water to surface water intended only to protect surface water?

**A:** Yes.

**Q:** Have you tested the sensitivity of your monitoring methods?

**A:** Yes.

**Q:** What is the basis for the 25-year, 24-hour storm exemption? Have you considered an update?

**A:** The 25-year, 24-hour exemption has been in place for a long time. A greater storm size will create larger lagoons and that may not be a good idea.

**Q:** Was underground injection considered?

**A:** Yes.

#### **14. John Lincoln, New York Farm Bureau, dairy farmer**

**Q:** Why the regulation?

**A:** Changes in this industry plus ongoing environmental problems suggest that EPA should review its 25-year-old regulation. In addition, EPA was sued by the Natural Resource Defense Council (NRDC) and agreed to review the effluent guidelines for CAFOs.

**Q:** How will the new rule achieve better performance and stop the trend toward a more concentrated industry?

**A:** The proposals are for the best available technology that is economically achievable. Also, a range of options is proposed from which final decisions will be made. Where to draw the lines is part of what we're trying to decide.

**Q:** Where will I find certified planners for my PNP? Where is the protection against civil suits?

**A:** EPA believes the market will develop for certified planners. EPA is working with USDA to develop training programs for certified planners.

**Q:** What about financial assistance?

**A:** The USDA Environmental Quality Incentives Program (EQIP) provides some assistance.

#### **15. Kevin Donnelly, Delaware Department of Natural Resources**

**Q:** Describe the process between 5/14/01 and 12/5/02, particularly the public role.

**A:** The new EPA administrator needs to be factored in before the EPA can provide a detailed schedule. EPA may look at new alternatives and new data, which would require that the agency go out again for public comment. Otherwise, EPA will do outreach with states regarding the directions EPA will take. The EPA administrator ultimately is the one to make the final decisions. She must sign all new regulations.

#### **16. Tommy Daniel, University of Arkansas**

**Q:** Will EPA consider sponsoring a conference on phosphorous to promote research and exchange of information regarding waste management technologies?

**A:** Yes.

**Q:** What is the difference between the agricultural stormwater exemption and a proper agricultural practice?

**A:** EPA's definition of a CAFO includes both the production area and the land application area, and the permit would address both the production area and the land application area. Under the proposal, the permit would include a PNP, which would ensure that all manure is land applied for agricultural purposes, and therefore any runoff would be considered agricultural storm water.

**Q:** What are manure application rates based on?

**A:** Each state would select its preferred USDA Natural Resource Conservation Service (NRCS) 590 method(s) for inclusion in the permit. Depending on the method used, a nitrogen-based application rate would be allowed if there is no phosphorus buildup in the soil. Otherwise, a phosphorus-based application rate would be used, including what the soil can adsorb and what the crop can remove.

**Q:** Do recipients of CAFO manure have to obtain a PNP?

**A:** No, but if they land-apply manure, they are expected to do so for “agricultural” purposes, rather than for disposal. EPA defines “agricultural purpose” as being based on an application rate using the state-adopted NRCS 590 method.

**Q:** If a facility covered under a general permit amends its PNP, is a public notice required?

**A:** The PNP would be required to be reviewed annually. If practices change significantly and the PNP is amended, a notice would need to be sent to the permit authority. The notice is public only in the sense that the permit authority would be required to publish on a quarterly basis the list of entities filing such notices.

**Q:** Can you clarify what state plans dealing with excess manure might be acceptable for and would allow them a waiver?

**A:** The state would need an enforceable program for managing manure, and for moving manure away from counties with excess. EPA is interested in your comments on what this could look like.

**17. Richard Reynells, United States Department of Agriculture, Cooperative State Research, Education, and Extension Service**

**Q:** Did EPA consider the impact of commercial fertilizer, especially with regard to the setback?

**A:** Fertilizer application is not a point-source activity, so it is not covered. With regard to commercial fertilizer application in the setback, EPA considered buffers and is still open to suggestions. Direct manure discharge, pathogens, and metals were the concerns that led EPA to focus on manure in a setback. The PNP also incorporates commercial fertilizer application in determining manure application rates.

**Q:** Are heavy metals often included in commercial fertilizer?

**A:** Please submit any data you have.

**18. Doug Goodlander, Pennsylvania State Conservation Commission**

**Q:** For beef and dairy production area, is zero discharge to ground water just for storage or for all areas, including exercise areas?

**A:** EPA developed the costs only for manure storage areas.

**Q:** With regard to co-permitting, what is substantial operational control (SOC)?

**A:** Examples of SOC are given in the preamble. EPA is seeking a definition that is clear, and seeks input.

**Q:** Is SOC related to just control over the manure, or does it also apply to the animal production area?

**A:** EPA envisions that the permit can specify separate liability for specific aspects of the production area, but EPA believes that both the CAFO operator and the processor should be responsible for the excess manure.



**19. Lesley Foxhall, Sidley & Austin**

**Q:** Any idea how the new administration might modify the rule?

**A:** Geoff Grubbs has discussed it with Administrator Whitman. The rule has not been held back. Administrator Whitman is open to continuing public discussions and is pleased with the range of options in the proposed rule. EPA expects that she will testify on Capitol Hill.

**20. Tom Sims, University of Delaware**

**Q:** Is a direct hydrological connection between ground water and surface water a criterion for a permit?

**A:** Beef and dairy operations must determine if their operation has such a link. If they do, they need to take some actions in the production area but not in the land application area.

**21. Paryse Turgeon, Maine Department of Agriculture**

**Q:** Has EPA given any thought to helping farmers implement the regulations?

**A:** EPA is looking for suggestions.

**Q:** What is the role of NRCS in technical assistance?

**A:** NRCS does provide help to farmers but is not responsible for implementing the regulation.