

**U.S. ENVIRONMENTAL PROTECTION AGENCY**  
**CAFO PUBLIC MEETING—RIVERSIDE, CALIFORNIA**  
**MARCH 13, 2001, 1:00 to 5:00 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 Riverside, Jeff Lape and Karen Metchis from the Office of Wastewater Management, Ron Jordan from the Office of Science and Technology 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:** Jeff Lape, Acting Director, Water Permits Division, Office of Water, USEPA;  
Karen Metchis, CAFO NPDES Rule Revision Project Lead, Office of Wastewater Management, USEPA;  
Ron Jordan, Office of Science and Technology, Office of Water, USEPA

**Moderator:** Terry Oda, Chief, Clean Water Act Standards and Permits Office, USEPA Region 9

**Panelists:** Jeff Lape, Karen Metchis, and Ron Jordan

**Approximate number of public participating:** 60

**Attendees:** Meeting attendees were predominantly dairy producers, dairy industry trade representatives, or persons associated with the dairy industry. There was some representation by the poultry industry. California Regional Water Quality Control Board (RWQCB), U.S. Department of Agriculture (USDA), and university agency representatives were also in attendance. Most attendees were from California.

**Meeting Opened:** 1:15 PM

**Questioning Began:** 2:00 PM

**Meeting Adjourned:** 5:00 PM

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

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

**1. Rick Scott, AGRI Beef Co.**

**Q:** Does EPA have legal authority to regulate ground water? Whether there is a direct link to ground water is arbitrary; how would the EPA implement this, and who makes the decision?

**A:** EPA has authority over ground water when ground water discharges to surface water; there are court cases cited in the preamble regarding EPA's legal authority. Please submit additional information on this subject.

**Q:** Whether a CAFO discharges to ground water and whether there is a direct link to surface water is a legal question. Is there potential for EPA to be attacked on this issue?

**A:** EPA deals with this all the time and believes it has the authority if there is an established direct hydrologic link between ground water and surface water. EPA encourages the CAFO to use a hydrogeologist to determine if there is a connection. For estimating costs of compliance, EPA assumed that every CAFO would use the services of a hydrogeologist.

**2. Arthur Unger, Sierra Club**

**Q:** Does EPA have any jurisdiction over air pollution?

**A:** Yes, but not under the Clean Water Act (CWA).

**Q:** The proposed regulation allows for discharge of a 25-year flood; are we able to handle that?

**A:** Unfortunately there is a threshold where feasibility of storage vs. discharge is going to have to take place and that threshold is the 25-year, 24-hour storm. Under the proposed regulation, beef and dairy operations would be required to store the runoff from a 25-year, 24-hour storm. EPA expects that there will be mitigation by the CAFO when storage capacity is exceeded. The swine, veal, and poultry animals sectors raise animals under cover and should have zero discharge.

**Q:** Is it okay for a dairy to flood?

**A:** While swine, veal, and poultry operations can be designed to the point where they can achieve zero discharge, that is not possible for beef and dairy operations. EPA would not issue a regulation that would not be attainable by the industry.

**3. Ethan Samples, City National Bank, dairy lender in California**

**Q:** Have there been any studies done on retrofitting—cost studies on the least vs. the most expensive options—and have costs and benefits been analyzed?

**A:** Yes, EPA has looked at the cost. EPA used a modeling approach and assessed the cost for operators to comply with the proposed regulation.

**Q:** Can I get that information?

**A:** For this information, look in the *Federal Register Notice, Technical Development Document*, and the other supporting documents. You can also call the CAFO rule hotline for the documents.

**Q:** Who designates and monitors manure being taken off the property and will the removal be by a certified nutrient management planner?

**A:** Off-site transfer of manure results in no liability on for the CAFO owner/operator. The recipient of manure is required to apply manure according to agricultural practices, while enforcement and monitoring will be done by the NPDES permitting authority.

#### **4. Larry Collar, California Dairy, Inc.**

**Q:** How did you arrive at the 25 percent estimated increase in cost for CAFOs?

**A:** EPA assumed that all permitted operations will have an increase in cost for transport of manure off-site and for best management practices. Every CAFO will incur some cost, which depends on location and size. The 25 percent refers to the CAFOs that will incur additional costs for the protection of ground water.

#### **5. Deanne Meyer, University of California at Davis**

**Q:** Where do operations that are not listed in the proposed regulation, but that are animal production facilities (e.g., wild game birds, sheep, horses, and ducks), fit into the definition of a CAFO?

**A:** EPA is not changing the regulation with respect to ducks, horses, sheep, and lambs. If an operation meets the definition of an animal feeding operation (AFO), then it can be designated by the permitting authority as a CAFO.

**Q:** The number for ducks is very harsh. Where did this number come from?

**A:** [No answer.]

**Q:** Is there some thought to breaking down the proposal to a round two proposal, something more realistic to comment on?

**A:** A second proposal is probably unlikely. If you do not want to comment on every part of the proposal, think about commenting on what you think the threshold should be.

**Q:** When you refer to USDA staff in the proposal, is it solely USDA Natural Resource Conservation Service (NRCS) staff, or does it include land grant staff? Will USDA NRCS be the only ones to train certified nutrient management planners, or will this include land grant people?

**A:** This is up to USDA.

**Q:** Will we have an opportunity to comment on USDA's choice for certified planners? Do I send my comments to USDA or EPA?

**A:** EPA can only accept comments that apply to this regulation.

**Q:** A permit nutrient plan (PNP) is a subset of a comprehensive nutrient management plan (CNMP), but a PNP is not like a CNMP. Farmers are not required to have a CNMP. EPA has established a number in the PNP, while the CNMP guidance does not have a minimum standard. This requires a huge rollout by states, including training and education of staff.

**A:** EPA strongly encourages an operation to have a CNMP. If the operation is a CAFO, EPA is going further than USDA's requirements for a CNMP by establishing more specific standards for certain elements of a CNMP.

**Q:** Who is going to train the people at EPA Region 9, State Water Board, and RWQCBs? Who is paying for this training? What is the penalty if a CAFO does not get permit?

**A:** The state and EPA will have certified CNMP preparers. Funding may be available by expanding the 319 non-point source programs, and State Revolving Funds (SRF), by working closely with USDA, and provisions of the farm bill. In Region 9, the penalty for not having an NPDES CAFO permit is \$25,000 per day of discharge.

## **6. Paul Martin, Western United Dairyman**

**Q:** Does the hydrologic connection requirement apply to all operations?

**A:** Yes.

**Q:** Will this require a certified hydrogeologist?

**A:** Yes

**Q:** Do you have any thoughts on local risk determination and using a soil survey on a local basis?

**A:** EPA is still trying to assess how this can be accomplished; it is conceivable that a risk determination method could be created at a local level.

**Q:** Are the upset and bypass provisions for livestock operations dependent on having an NPDES permit?

**A:** Yes.

**Q:** When does co-permitting apply to custom feed operations? When the feedlot owner handles breeding, feeding, or vaccinations?

**A:** EPA does not intend to cover custom feedlots. Please submit comments on how EPA can address this issue.

**Q:** Would EPA defend a co-permitting situation where the responsibility for waste control is with the operator and not the owner (integrator)?

**A:** EPA is considering several factors about contractor relationships. Please submit comments on co-permitting.

## **7. Brent Newell, Attorney, CRPE**

**Q:** If there is discharge to a stream from land application, which is largely due to rain fall and because the field has a slope, is this in compliance with PNP?

**A:** The zero discharge requirement only applies to the animal confinement areas. If land application is done appropriately any subsequent discharge to waters of the United States would be covered under the agricultural storm water exemption.

**Q:** How does the state water quality board regulate the quality of a PNP?

**A:** All states will have to develop a quality assurance program for PNPs.

**Q:** Are general or individual NPDES permits required?

**A:** EPA is not requiring individual permits. States authorized to administer NPDES permits have to establish criteria for determining when a facility should have an individual permit. However, in the proposed rule, an entity could propose to a state that an operation should apply for an individual permit.

**Q:** Will ground water monitoring require analysis for antibiotics and pathogens?

**A:** In the proposed regulation only monitoring of ammonia, nitrate, fecal coliform, total coliform and total solids is required.

**Q:** Has the EPA studied the technologies in use in California designed for the 25-year, 24-hour storm?

**A:** Please send EPA additional information about these technologies.

**Q:** Is a dairy cooperative a co-permitting situation?

**A:** Our intention is not to cover this situation. EPA requests that you provide more information to help clarify this issue. Co-permitting is intended for poultry and hog operations that are vertically integrated.

**Q:** Does land under the control of the CAFO owner extend to manure taken off site?

**A:** No.

**Q:** Do you know what counties in California have excess manure nutrients?

**A:** Please send us this request by e-mail and EPA will provide you with the information.

## **8. Ria de Grassi, California Farm Bureau Federation**

**Q:** How will EPA view elements of the rule not commented on or not commented on significantly?

**A:** EPA usually indicates in the response to comments if parts of the rule do not receive comments. Additional data received during the proposal period from commentors will be considered.

**Q:** Page 3143, section 412.37, additional measures, a.1.ii, iii weekly/daily inspections, requires records to be kept; how long should they be kept?

**A:** Please refer to the PNP guidance document for inspection requirements and let EPA know if you need more clarification.

**Q:** What degree of comment do I give? Should I comment on each inspection requirement?

**A:** Please provide the level of comment that is appropriate and include any geographic variability issues in your comments.

**Q:** In the same section, a.3, mortality, where is the flexibility for occurrences such as an act of God?

**A:** You may be able to apply the bypass provision.

**Q:** In the same section, the proposal says paragraph b.1-12, but there are only 10 paragraphs; can you explain?

**A:** EPA will check into this issue. It could be a typing error.

**Q:** In the same section, B.9, how is mortality going to be handled?

**A:** This is a good basis for comment; please provide comment on how dead animals should be handled.

**Q:** Do mortalities include still-births, abortions, and death of heifers and cows?

**A:** Mortalities do include all of the above.

**Q:** In the same section, B.7, rainfall duration? Is there something that tells how to collect and record that information?

**A:** Please submit your question as a comment on the proposed rule so it can be addressed.

**Q:** Who shoulders liability for the PNP?

**A:** The permit holders are responsible for compliance.

**Q:** On page 3134, item number 27, what does this mean? Is this for new facilities? Is the EPA not concerned about animal welfare? Did EPA review national organic standards for livestock requirements?

**A:** [No answer.]

**Q:** The regulation says the person writing the PNP must be CNMP certified; will there be enough qualified people by December 15, 2002?

**A:** EPA does not expect initially to have enough people certified by 12/15/2002. However, this should not be an issue because the permits for operations will be phased in over time.

### **9. Mark Stigfel, Stigfel Dairy**

**Q:** Where does EPA get their data on water quality?

**A:** Data are collected by states and provided to the federal government.

**Q:** For industrial vs. agricultural sources, what is the difference in permits? Why is there zero discharge for agriculture, but discharge is allowed for industry?

**A:** Industry has an end-of-the-pipe treatment expectation, as well as monitoring and reporting requirements. Oil and gas and paint industries, for example, have no discharge allowed.

### **10. Jay Lazarus, Glorieta Geoscience, Inc/ Ponderosa Dairy; represents dairymen and is an environmental consultant in New Mexico and Nevada**

**Q:** How many data points do you have showing where manure is transferred off-site has caused water quality problems?

**A:** EPA only has data showing cases where land application causes water quality problems.

**Q:** Would the proposal for regulation of off-site transfers of manure be for the whole country or specific to a region?

**A:** It would be based on the whatever the NPDES authorized state determines is appropriate.

**Q:** The people that usually take manure from CAFOs will no longer take it because they are afraid they may be liable, and they have gone back to using commercial fertilizer. Will there be any help for people to get manure off-site?

**A:** It is not EPA's intention to stop people from using manure. Please submit as a written comment what will work.

**Q:** Why is the EPA holding a public meeting and not a public hearing?

**A:** This was designed to be an information meeting to discuss with one another what is in the rule. In a public hearing you would be forced to state comments prematurely. EPA thought an informational meetings would help you comment on the rule.

**11. Marvin Mears, Environmental Products and Technologies Corp.**

**Q:** Are the requirements for wastewater treatment sludge similar to the requirements for manure?

**A:** There are extensive requirements for sewage sludge. The proposed CAFO rule does mirror many respects of the sewage sludge requirements, but it does not have as many requirements for metals.

**Q:** Please clarify the requirements for impervious pads for solids. Is it for corrals or for where manure is stored?

**A:** The proposed rule considered costs for concrete pads under manure stock piles. Please provide more comment on this issue.

**12. Patty Cox, PCOX Environmental**

**Q:** Does the 300 to 1,000 animal unit (AU) tier under NPDES include implementation of ISO 14000?

**A:** Please provide comment on this in regard to the conditions that would require an AFO to obtain a permit.

**Q:** What are the conditions under the 300 to 1,000 AU tier?

**A:** The conditions include direct contact of animals to a stream, insufficient storage, production area within 100 feet of waters of United States, operator does not have a PNP, no evidence of discharge in last 5 years, and more than 12 tons of manure transported off-site.

**13. Don Bell, University of California**

**Q:** A zero discharge requirement for a poultry house is confusing unless you are talking about a waste lagoon. Do you define a discharge to mean that it has a contaminant? What about when water has no exposure to the feedlot, such as roof runoff?

**A:** A discharge does not include uncontaminated runoff. Only the water that comes into contact with manure is regulated.

**14. Dough Kuney, University of California, poultry farm advisor**

**Q:** Have you considered drying manure for fly control? We have poultry facilities that take manure out and dry it on a field. There is very little rain. Can this type of practice fall under the 25-year, 24-hour exemption?

**A:** Please provide comment on this type of operation and how these operations prevent discharge.

**15. Sheilou Ault, RWQCB #7**

**Q:** Does the 100-foot setback include agriculture drains, wash, and ephemeral streams?

**A:** Yes, these would fall into this category, but it would rely on the regional water control board for determination.

**Q:** The NPDES General Permit for Region 7 is going to the board today and will not be up for renewal until 2006. How does the proposed rule affect the General Permit?

**A:** The proposed regulation does not apply until reissue of the general permit.

**Q:** Regarding rangeland, what is considered a CAFO? What if a farm allows animals to graze?

**A:** The proposed regulation says 45 days of confinement, which is part of the core definition of an AFO, and that growth should be sustained during the entire year. Please provide comment on this.

## **16. Al Varga, CDFA**

**Q:** Please provide clarification on the existing regulatory definition for what is a CAFO. Is the definition the same as in the proposed rule?

**A:** Changes to the proposed definition of a CAFO include changing the conditions under the middle tier of the three-tier structure; proposing a two-tier alternative; eliminating the mixed-animal calculation; eliminating the 25-year, 24-hour exemption; and covering dry manure-handling poultry operations, veal operations, swine nurseries and heifer operations.

**Q:** Regarding the dairy statistics for 1999, you mentioned that 60 percent of the dairies in California would meet the 1,000 AU threshold and 30 percent would meet the 300 AU threshold. There are 2,300 dairies in the state, and you can count the numbers of inspectors on two hands. This is an administrative nightmare. Has the EPA considered alternatives other than permits, such as environmental management systems along with third-party verification, like the current United Egg and Poultry project XL program, but with no permit?

**A:** [No answer.]

**Q:** If the topography is rolling, and during the first winter flush the producer monitors discharge of ammonia leaving the property, does this violate the discharge requirement?

**A:** It depends on whether or not manure is applied at the right time and at the right rate. If there is proper application and proper timing, then you will not have a violation.

**Q:** If I pasture animals and put out feed and water and the animals congregate at the feeder, is this a confinement area? Do you have to regulate manure in that situation?

**A:** It is still a pasture situation that is not regulated by this rule. EPA hopes that good management practices are used and that you periodically move the feed area to other locations.

**Q:** There is a large concentration of dairies in California. Is there any way for dairies to inspect facilities themselves to see if there is a hydrologic connection?

**A:** It is the responsibility of the operator hire a hydrogeologist to determine if there is a linkage.

## **17. Bill Brandenburg, Cattle Feeder**

**Q:** There is a drainage system from the Imperial Irrigation District that runs through my property, and I cannot get an engineering permit. Does this require an NPDES permit?

**A:** The 25-year, 24-hour standard is still the same.

**Q:** What happens if the water level rises from the Imperial Irrigation District drainage system and floods my property?

**A:** This has the same effect as a 25-year, 24-hour storm. Please provide more comment on this situation.

**Q:** We have very little rainfall where I live, and no ground water problem. A lot of operators have problems getting rid of manure. We cannot pay farmers to take excess manure and, in some cases, we have 6 months of manure stored. Farmers are losing money and are afraid of liability. In response, feedlots are starting to



rent ground to land-apply manure. Is the local board going to look at the situation and not put on additional requirements if the storage is not causing water quality problems?

**A:** [No answer.]

**Q:** How much of the nutrient management plan is going to be made available to public?

**A:** The cover letter and executive summary will be available to the public. Confidential business information (CBI) is determined on a case-by-case basis. The PNP does not list recipients, only how much manure is going off-site. Please provide more comment on what you consider CBI.

### **18. Sue Meyer, Defend the Bay**

**Q:** What is the public participation in the general permit process?

**A:** Under the proposal, the Permit authority would issue quarterly lists of all Notices of Intent (NOI) submitted for coverage under the general permit. The permit authority also would issue a quarterly list of which permittees have submitted a PNP. There is public participation in developing a General Permit, however, the NOI does not require a public hearing.

### **19. Heather Hoecherl, Natural Resources Defense Council**

**Q:** Have you considered the phaseout of lagoons for new sources and alternatives for lagoons?

**A:** EPA has looked at alternatives for lagoons, such as requirements for the 100-year storm. EPA is trying to move away from lagoons, but does not limit or prohibit technologies.

### **20. Ted Vitro, Orange County Sanitation District**

**Q:** For multi-day rainfall events, what would be the new standard or the new norm for chronic rainfall?

**A:** When properly designed, constructed, and maintained, CAFOs are allowed to discharge overflow from a 25-year, 24-hour storm or a series of chronic storms. EPA is requesting comments on the criteria for chronic storms and other events beyond the control of the operator.

**Q:** Will the nutrients present in the irrigation water (wash water for dairies) be considered in the NMP for the operation?

**A:** The PNP looks at manure, irrigation, egg wash water, residual crops, commercial fertilizer, legumes, and any other source of nutrients.

**Q:** Will the EPA define which ground water basins qualify for the zero discharge due to a direct hydrologic connection to surface waters?

**A:** EPA does not intend to define this.

### **21. Nathan de Boom, Milk Producers Council**

**Q:** The 610 dairy operations in California may have economic stress; what are you doing to alleviate this stress?

**A:** For a small business, EPA tries to develop options that provide regulatory relief. There are no expectations that EPA can set a regulation that everyone will be able to afford. EPA develops regulations that are economically achievable for the industry as a whole.

**22. Chris Gehr, Interglobal Waste Management**

**Q:** Have you thought about allowing producers to use new technologies to treat wastewater and then discharge the treated waste?

**A:** They would have to treat the wastewater to meet drinking water standards to be exempt; however even drinking water quality fails to meet a zero discharge limitation.

*[Questioning was opened to the floor at this point, and questions were asked by participants who were not on the sign-in list.]*

**23. Questioner Not Identified**

**Q:** Is the proposed rule economically feasible for the whole industry? Did you look at the increase in costs for energy costs in California?

**A:** Please look at the economic support document.

**24. Paul Benedict, USDA/NRCS**

**Q:** Most CAFOs have more than 1,000 AU in California; however, only facilities with less than 1,000 AU qualify for the USDA Environmental Quality Incentives Program (EQIP). Could you work with the new farm bill to change this?

**A:** [No answer.]

**25. Questioner Not Identified**

**Q:** USDA sets the price of milk. Can EPA work with USDA to raise the price producers get for their milk to pay for PNPs or CNMPs? You could say they get the higher price if they have the plan. This would be a big incentive.

**A:** [No answer.]