



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

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MEMORANDUM

OFFICE OF
ENFORCEMENT AND GENERAL COUNSEL

To: All Regional Administrators

From: Alan G. Kirk II, Assistant Administrator for Enforcement
and General Counsel (EG-329)

Subject: Applicability of Feedlot Guidelines to Related Activities

There has been continuing controversy over the legal and technical appropriateness of applying the feedlot effluent guidelines to such related but nonproduction-oriented operations as stockyards and auction yards. This is to inform you of our intended resolution of the issue.

The legal question arises because the preamble to the effluent guidelines implies that such related activities are to be included in the feedlot category. The regulation itself, however, defines a feedlot as an "animal or poultry growing operation for meat, milk or egg production, or stabling...." Further, the development document lists as the first criterion for inclusion in the category the requirement that animals be held for the purpose of production.

The technical issue is that runoff from manure is the cause of pollution from both feedlots and the nonproduction operations. However, the feeding done at the latter facilities is not intensive but rather is intended for sustenance only; in some cases the animal is not there long enough for any feeding. Further, these facilities are often in urban or suburban locations which have no land available for containment and disposal. In such cases, this method of control, prescribed in the feedlot guidelines, is not only not "best practicable," it may not even be feasible.

Since the guidelines should not, and in light of the definition of feedlot, do not extend to these facilities, we will issue a Federal Register notice which makes it clear that the feedlot category does not include these nonproduction operations. Until appropriate guidelines are published, permits will be written on the general authority of section 402(a), with conditions based on whatever control approach is appropriate for the specific facility, given its available land, type of waste, and local regulations. This could include containment/land disposal, treatment, connection to a municipal system (animal wastes can be considered compatible for this purpose; however, any volume contributed by storm water may not be), or any combination thereof.