



Wyoming Association of Conservation Districts
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January 2, 2012

Return Receipt Requested

Concentrated Animal Feeding Operation Proposed Rule
Office of Water, Engineering and Analysis Division (4303)
US EPA, 1200 Pennsylvania Avenue, NW
Washington, DC 20460

RE: Docket ID No EPA-HQ-OW-2011-0188; Environmental Protection Agency; 40 CFR Parts 9 and 122; National Pollutant Discharge Elimination System Concentrated Animal Feeding Operation Reporting Rule.

Dear Sir/Madam:

On behalf of the Wyoming Association of Conservation Districts, below are the Association's comments on the above referenced proposed regulations. WACD represents Wyoming's 34 local Conservation Districts (political sub-divisions of state government), which are governed by 170 locally elected officials and are charged specifically, pursuant to §§ 11-16-101 *et seq.*, with the protection of natural resources, including water quality, thereby stabilizing farming and ranching operations and protecting the tax base.

The Association and its member districts have worked extensively with Wyoming's livestock producers, the Wyoming Department of Environmental Quality (DEQ), Department of Agriculture, the USDA Natural Resources Conservation and other partners on animal feeding operations/concentrated animal feeding operations to ensure that producers are addressing potential impacts to water quality. These efforts have consisted of outreach through producer workshops and forums, cost-share and technical assistance to address unacceptable conditions and remove impacts to water quality as well as technical assistance for nutrient management planning where required and/or appropriate.

The Association believes that due to the extensive nature of this proposed rulemaking, an extension of the comment period is in order. **A 60-day comment period is simply insufficient to provide adequate opportunity for producers to even be aware of this proposed rule, let alone formulate comments. Subsequently, we are requesting an extension to the comment period. When a proposed federal rule has the potential of penalties up to \$37,500 per day per violation to family farms and ranches it is appropriate to afford more notice and**

opportunity for comment. It continues to be a misconception that this issue is limited “factory farms” and “industrial scale” agriculture production.

The Association further offers the comments below on this rule:

This rulemaking is illogical. First, EPA proposes to require all CAFO's, as defined in the regulations, to submit a detailed survey form that discloses extensive details about their operations including exact locations, conditions, etc. (76 FR 65432) This is all premised on EPA's assumption that there is “inadequate compliance with existing regulations or limitations in CAFO permitting programs”. (76 FR 65434) EPA purports that if the agency had a comprehensive inventory of all operations then they could take enforcement action to ensure compliance and hence the estimated annual pollutant reductions estimated at 56 million pounds of phosphorus, 110 million pounds of nitrogen and two billion pounds of sediment, as articulated in the 2003 rule revisions, would be realized. (76 FR 65447)

But in order for EPA to locate and take enforcement action against these alleged violators, EPA proposes that the producers themselves must first fill out and submit the survey form to enable EPA to locate the operation.

Other options proposed are equally disturbing. Requiring CAFO's within targeted watersheds to submit a survey form, requiring states to collect and submit the information or relying on biased NGO's information and reports. (76 FR 65447)

The only feasible option proposed is the use of alternative mechanisms for promoting environmental stewardship and compliance. (76 FR 65447)

The Association incorporates by reference herein those comments submitted to the Office of Management and Budget on behalf of the National Cattleman's Beef Association; National Milk Producers Federation; National Pork Producers Council, and the United Egg Producers on. These comments articulated very clearly and concisely a number of issues and concerns shared by the Association.

This Association is very well aware of EPA's desire to have inventories of all livestock producers across the country and have participated in numerous discussions to that effect over the years. The Association, on behalf of our districts, has consistently rejected any such inventory and has refused to participate in supplying such information to EPA.

In fact, based on the data and information provided by EPA in response to a Freedom of Information Act request filed by the Association in 2000 we understand that inventories of livestock operations were already being conducted by EPA and/or its contractors. There were numerous methodologies being employed by EPA ranging from flyovers, to inventories being conducted via Duns and Bradstreet, to EPA subcontracting with private firms to drive around areas and document their findings, including interviews with unsuspecting producers.

The Association would question why EPA has now determined that it is appropriate to shift the burden of compiling this information from the agency itself to that of the livestock producers of the nation, in many cases the family farms and ranches that make up a majority of the producers in the country.

As conservation districts, our ability to work with our landowners and livestock producers is founded on the principal that we deliver assistance using voluntary incentive based approaches. As a result, our ability to be successful is dependent upon the trust and credibility we have with our producers. To participate in any effort to locate, provide coordinates, and in essence map out all livestock production facilities in our state would destroy that relationship. Frankly, we believe it would be a waste of time and resources. In addition, as the Wyoming DEQ has repeatedly conveyed, operations have either been permitted or have rectified unacceptable conditions, thereby eliminating the necessity for a NPDES permit. Additional efforts continue to be implemented where funds and water quality assessments dictate.

It is apparent, EPA, in the absence of forcing the states or other entities to complete such an arduous task of inventorying all producers, has now determined that the burden to submit a survey should be on the producers. Producer's who are largely unaware that this proposal exists and whom will be subject to harsh penalties should they fail to comply. In addition, there is a lack of certainty on who exactly is required to submit the information.

The discussion contained in the proposed rule in regard to utilizing State Department of Agriculture and local Conservation Districts as a source for compiling information on CAFO's is deeply disturbing and demonstrates a lack of understanding or regard for the working relationship between the local districts and their producers/constituents. **(76 FR 65445-46)**

In addition, EPA discusses the use of Other Sources of Data and refers to a Report title "Food & Water Watch Report – Factory Farm Nation: How America Turned Its Livestock Farms into Factories" and the Pew Commission report – "Putting Meat on the Table: Industrial Farm Animal Production in America." **(76 FR 65447)** After a review of aforementioned internet site/publication the Association is appalled at the notion that this very biased and inaccurate information would be remotely used by any government agencies. For example, the Water Watch Report website contains a map that depicts levels of "density" based on an "extreme", "severe", etc. ranking. Carbon County, Wyoming shows up as a "High" ranking for confined facilities. Based on a review of the entities methodology for determining where "factory farms" are located, one quickly realizes the flaws inherent in drawing conclusions from generalized agriculture statistical data. For instance Carbon County Wyoming may have operations with a large number of livestock however to automatically make the leap and assume they are all in concentrated facilities is just simply erroneous. Carbon County is 7,896 square miles in size. The average size of a farm/ranch is over 8,000 acres and the average number of cattle and calves per 100 acres of all land in farms is 3.49. (http://www.city-data.com/county/Carbon_County-WY.html)

In reality there is one permitted CAFO in Carbon County. WACD would suggest that EPA completely avoid the use of the NGO information provided.

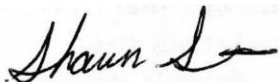
In regard to EPA's request for input on "Alternative Mechanisms for Promoting Environmental Stewardship and Compliance" (76 FR 65447) WACD believes that any efforts on EPA's behalf should be focused on promoting environmental stewardship. The Association has found this to be an extremely successful approach at a much lower cost to the tax payer. In addition, EPA needs to refrain from continually assuming that the states who have delegated authority are incapable of meeting their obligations.

As well, EPA suggests the use of satellite imagery and aerial photography to inventory operations. EPA alludes to the fact that this technology is limited they have used it in the past, however it is resource intensive. The Association is aware that in the early 2000's EPA was using a number of methods to inventory operations and believes that EPA should first disclose the extensiveness of these inventories prior to issuing any rules. If EPA has already been conducting inventory work, it seems as though that should factor into whether this rule is even necessary. For instance, to what extent has EPA already compiled information? If inventories have been compiled, how many inspections has EPA done to verify their assumptions of non-compliance? Of those inspections, how many resulted in notices of noncompliance with the regulations?

Lastly, the Clean Water Act is structured to provide a national framework with state's having delegated authority where assumed, or EPA acting in that capacity where they have not. Yet this proposed rule completely ignores that structure and framework and imposes federal reporting requirements over the top of state programs and authorities.

The Association requests that this rule be, at a minimum extended for comment, if not completely withdrawn and that EPA focus its efforts on assisting with environmental stewardship programs or efforts. In the absence of that, then it would be more appropriate for EPA to justify to Congress the funding to compile such data and information.

Sincerely,



Shaun Sims
President

bkf/SS

Cc: Wyoming's Congressional Delegation
Matt Mead, Governor, State of Wyoming
Wyoming DEQ
Wyoming Department of Agriculture
National Association of Conservation Districts
Wyoming Agriculture Organizations
Wyoming's Conservation Districts