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EPA ISSUES “CAFO RULE”

EPA’s rule sent to the Federal Register on October 31, 2008 is hopefully the end of a process that started in the late ‘90s and has kept producers “confused” for a long time. Although we don’t believe the radical environmental groups will challenge the new rules in court at this time it is still a possibility. NDEQ and EPA have made it clear that facilities who do not obtain a permit and discharge will apply some type of penalty.

The CAFO rule applies to **ALL** producers but the requirements are meant for “large” CAFO’s --- 2500 swine over 55 pounds, 1000 cattle, 700 dairy cows, etc. The good news is that many of you who need an NPDES probably already have one. However, there are some facility’s that do not have an NPDES permit and probably should. Remember that an NPDES permit is good for a period of **FIVE YEARS** and a CAFO must submit an application

All CAFO’s that land apply manure must have a “sound nutrient management system” to qualify for an Agricultural Stormwater Exemption. What this means is, if you had applied manure to a field and a rain event moved the manure from the field into a body of water you would be covered under the Agriculture Stormwater Exemption. This exemption is **ONLY** for land application sites and **DOES NOT** apply to the production area. You must also have a Nutrient Management Plan (NMP) in place by **Feb. 27, 2009**.

While making the decision whether to apply for the Federal NPDES permit is a voluntary choice, NDEQ may still require you to apply for a State Permit. **You must apply for a permit prior to Feb. 27, 2009. No extensions will be granted.**

A Few Common Questions:

Do I need an NPDES permit?

Open Feedlots over 1000 head /Dairy over 700 head: If your feedlot were to receive any size of rain event that would carry runoff from your facility to water’s of the United States. It does not matter how big or small of a rain event this would be. If you were to receive an “Act of God” rain event (example: the 14 inch that fell in 24 hours just west of Ogallala a few years ago) and the runoff water from your feedlot made it to water’s of the United States it would be advisable to apply for an NPDES permit.

Total Housed Feedlots over 1000 head /Dairy over 700 head: An NPDES permit probably would not be warranted unless some special circumstances were involved.

Open Feedlot over 1000 head /Dairy over 700 head with both Open Feedlot and Total House Feedlot (regardless of species): Same recommendation as an Open Feedlot over 1000 head.

Open Feedlot/Dairy over 300 head and less than 999: This decision should be made on a case by case situation.

Deep Pit Hog Barn: An NPDES permit probably would not be warranted unless some special circumstances were involved.

Hog Barn with External Manure Storage (either lagoon or manure storage pit): This decision should be made on a case by case situation. More than likely not needed.

Do I Need a NMP (Nutrient Management Plan)?

CAFO with NPDES; Yes, the NPDES permit holder is required to have an NMP, including a detailed recordkeeping requirement.

NDEQ Permit without NPDES; State law still requires the same NMP for large and medium CAFO's as a part of the State Permit Application.

CAFO with neither permit; Yes, in order to meet the previously discussed Agricultural Stormwater Exemption.

Is there a penalty for a discharge?

CAFO with NPDES; No,.. If the discharge is the result of a 25 yr/24 hr. storm event or greater, chronic wet period and the operator has properly operated and maintained a manure storage facility and has the records to document the previous criteria occurred. **Yes** ...if the permit holder has failed to properly operate and maintain the manure storage facility or failed to keep proper records. A penalty will probably be assessed.

CAFO with no NPDES; **Yes**...When operating without a NPDES Permit, there is **no allowable discharges**, and the EPA/NDEQ has a "duty to apply a discharge penalty." If you discharge and do not have a permit there is a good chance a penalty would be assessed.

NDEQ Permit without NPDES; **Yes**...When operating without a NPDES Permit, there is no allowable discharges, and the EPA/NDEQ has a "duty to apply a discharge penalty."

For those operations that need to Request an Inspection, newly defined CAFO's or previously exempted CAFO's, you have until Dec. 31 2008 to Request an Inspection. Remember if you confine animals for a period greater than 45 days you may have to obtain a permit.

I know it seems like we are always sending you newsletters with changes to the regulations but that is what we are here for, to keep you update and in compliance. As always, should you have any questions please feel free to contact either Rod Johnson (402) 570-6756 or Vaden Hellerich (402) 817-3942.

Happy Holiday's from PES!!!