Animal Agriculture and the Clean Water Act

The Clean Water Act is the principal law for controlling pollution of rivers, lakes and wetlands in the United States. With its ambitious goal to restore and maintain “the chemical, physical and biological integrity” of the nation’s waterways, the law has a mixed record overall but a poor record when it comes to regulating pollution from animal agriculture, particularly concentrated animal feeding operations (CAFOs).

In 1998, a government assessment of progress under the Clean Water Act noted that an estimated 40% of the nation’s waters were not fishable or swimmable, with agriculture ranking as the top pollution source for impairments to both lakes and rivers. The report called for the Environmental Protection Agency (EPA), the primary federal agency with responsibility for the law, to improve controls on “non-point” or diffuse sources of pollution, including agriculture.

The report and a joint USDA/EPA strategy on CAFOs stressed that voluntary programs had not proven adequate and called on EPA to update regulations for animal feeding operations that predated the dramatic growth of large industrialized animal operations. EPA estimated that by making the needed changes the number of livestock operations that should be covered by Clean Water permits could rise from around 2,000 to as many as 20,000.

These National Pollutant Discharge Elimination System (NPDES) permits set conditions on the amount and type of pollutants coming from discrete facilities and conveyances known as “point sources.” Under the law, the term “point source” expressly includes CAFOs. The law also specifically excludes “agricultural stormwater” from permit coverage.

NPDES permits, issued by states or the federal EPA and subject to enforcement by regulatory agencies and citizen suits, have been viewed as the centerpiece of the Clean Water Act and an effective way to minimize pollution in our nation’s waterways and ensure the...
health of lakes, rivers, and groundwater nationwide. However, industrialized animal agriculture operations have long resisted using permit requirements to address pollution from their operations and instead advocated for voluntary “best management practices.”

**New Rules—Under Challenge**

A decade following the release of the 1998 report, the EPA issued new rules for CAFOs that, in essence, treat livestock operations as both point sources and non-point sources, with permit obligations for discharges other than stormwater runoff from fields where manure has been properly applied as fertilizer. These rules call for the largest facilities to apply for NPDES permits, as required of any point source, if they plan to discharge or operate in ways that would allow pollutants into waterways. Permits would cover the management of manure, litter, dead animals and other wastes from animal confinement areas, feed storage areas, manure handling facilities, fields receiving manure applications and other pathways for pollutants to reach waterways.

The permit rules also specify that when manure is applied to crop land under the control of the CAFO, operators must follow a Nutrient Management Plan (NMP) to assure that the rates, timing and methods of application protect water quality and constitute legitimate fertilization rather than simple waste disposal. The NMP would be subject to public review and comment and, once approved, specific terms of the plan would become enforceable permit conditions. If a facility operates in compliance with an approved NMP, any runoff that occurs during a heavy storm is treated as “non-point pollution” or “agricultural stormwater” and exempt from permit sanctions.

The 2008 rules have been criticized by environmental groups for failing to identify all existing CAFOs, for covering too few operations and for failing to require tighter controls on the releases of harmful pathogens in CAFO wastes. They have also been criticized by industry, which mounted a legal challenge to the requirement for permits to cover facilities with a “potential to discharge.” The rules remain in effect as of October 2010, and include the following points of contention.

- An earlier but contested version of the rule required large operators to apply for a permit as a matter of course, but the final rule calls for a case-by-case self-evaluation of a facility’s design, construction and operation to assess the “potential to discharge.” Smaller facilities whose manure management practices threaten water quality are subject to permitting requirements only after inspection reveals a problem. While industry argues that only facilities that actually discharge should be covered by permits, others believe that all CAFOs discharge to some extent and a standard requirement for permitting will provide for needed review of operations before problems arise.
Major corporations often contract with individual farmers to feed and manage animals owned by the corporation under terms specifying housing, feed and other aspects of livestock management. EPA’s initial proposal would have required both entities to sign and be responsible for the permit. The final rule excluded this co-permitting approach, and only the grower is directed to apply for a permit, even though the contract terms may affect the volume and nature of wastes produced.

EPA’s CAFO rules address land application of manure but require compliance with an NMP only for land owned by or under the control of the operator. A CAFO operator whose animals produce more than a usable amount of manure may ship the excess manure off site and must document the transfer of that waste. But, once the waste is transferred, its use is no longer regulated under the Clean Water Act and no longer the responsibility of the CAFO operator.

Clean Water Act permit holders with facilities that pipe or channel discharges to waterways are generally required to complete and submit monitoring reports on a frequent basis. That information is readily accessible to the public. For CAFOs, permits generally require annual analysis of manure, litter and other wastewaters as well as soil testing at least once every five years. This information, along with the facility’s NMP, is to be kept on-site and available to regulators rather than submitted to regulatory agencies. Public access and review of such data appears to be limited.

U.S. livestock production generates between 500 million and 1 billion tons of manure annually, with a significant part of that waste coming from CAFO operations with minimal treatment requirements. Clear and improved regulations and permit requirements under the Clean Water Act are critical to ensuring that industrialized animal agriculture in the U.S. does not continue to contribute to the pollution of our lakes, rivers and groundwater.

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