



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF:

DEC 05 2016

WN-16J

Pamela Biersach, Director
Bureau of Watershed Management
Wisconsin Department of Natural Resources
101 S. Webster Street
PO Box 7921
Madison, WI 53707-7921

Subject: Draft Feed Storage Runoff Controls for CAFOs guidance

Dear Ms. Biersach:

Thank you for the opportunity to review the Wisconsin Department of Natural Resources (WDNR) draft *Feed Storage Area Runoff Controls for CAFOs* guidance. EPA has reviewed the draft guidance to determine whether it is consistent with the federal effluent limitations guideline (ELG) for Large concentrated animal feeding operations (CAFOs) and acknowledges our concerns regarding documented discharges of manure and process wastewater pollutants from vegetative treatment areas (VTA) to waters of the United States (see EPA letter dated March 4, 2016).

EPA provides the following comments and recommendations on the draft guidance:

1. The guidance should include State action to advise permitted CAFOs to immediately implement interim measures to cease all discharges of pollutants from VTAs while the state and facility work to make any necessary modifications to the existing Wisconsin Pollutant Discharge Elimination System (WPDES) permit. The guidance as currently written does not require WPDES permitted CAFOs to ensure that their VTA meets the "no discharge" performance standard. Inspections conducted by EPA have documented discharges of pollutants from existing VTAs at WPDES permitted CAFOs. Wisconsin Administrative Code NR 243.31 provides that WDNR may, following notice to the permittee, modify, suspend or revoke a permit, in whole or in part when the state finds that the owner or operator of a CAFO violated its WPDES permit. WDNR should provide notice to all permitted Large CAFOs that operate a VTA that a discharge of pollutants from the VTA to a navigable water is a violation of its current permit.

2. Options 3 and 4 in the guidance provide for the use of an infiltration basin to control feed storage runoff. Although these options include criteria to ensure that an infiltration basin is designed, constructed, operated and maintained to contain all manure, litter and process wastewater including the runoff and the direct precipitation from a 25-year, 24-hour rainfall event, it is unclear how the WPDES permit will ensure that groundwater protection standards are met as required by Wis. Stats. 283.31(3) and NR 243.13(1). Option 3 in the guidance provides that operators should collect at least up to the peak flow from a 1-inch storm, however, it is unclear what data WDNR has used to support this requirement or if this requirement will be protective statewide. EPA recommends that permittees be required to submit a site-specific demonstration supporting what minimum amount of feed storage runoff collected prior to runoff entering the infiltration basin will be protective of groundwater quality. EPA also recommends that groundwater monitoring be required pursuant to NR 243.15(7) at all CAFOs operating infiltration basins. In the absence of groundwater monitoring, WDNR will have no method to determine if the operation is complying with groundwater standards.

3. The Objective and Options sections of the guidance should clarify that the options in this guidance do not guarantee that the "no discharge" performance standards will be attained. The guidance should make clear that the state will review each feed storage runoff control system design on a case-by-case basis and will require additional design criteria beyond that presented in the guidance, if necessary, to ensure compliance with the "no discharge" performance standard.

4. To be consistent with 40 CFR 412.31(a)(1)(i) and NR 243.13(2)(a)(2), the "or" should be changed to "and" and "process" should be added to describe wastewater in the first bullet of Section C. Background and Definitions. The bullet should read "...constructed and maintained to contain all manure **and process** wastewater ...".

5. The Implementation section, fourth bullet, should require that design plans meeting the "no discharge" performance standard be submitted with the permit application; a schedule to evaluate an existing VTA for a new permittee is not acceptable. If interim practices are necessary while construction is being completed, the permit should identify these interim practices. To further implementation of this guidance and compliance with the "no discharge" performance standard, EPA recommends that WDNR notify all permitted CAFOs and CAFOs with pending permit applications of this guidance once finalized. WDNR should highlight in this notification that all CAFOs, permitted or those with pending applications, take necessary action to ensure that all feed storage runoff control systems meet the "no discharge" limitations for CAFO production areas and that any unauthorized discharge from the production area is a violation.

6. EPA recommends that the Options Section - Runoff Storage Requirements that Apply to All Options - clarify that case by case design criteria may be required for protection of both surface water quality standards and groundwater protection standards.

7. The Options Section - Discharges Impacting Outstanding and Exceptional Resource Waters and 303(d) Listed Waters - provides that additional design practices may be required for discharges that impact ORW, ERW or 303(d) listed waters. This is inconsistent with the overall goal of the guidance which is to eliminate discharges of pollutants from feed storage runoff control systems. The federal BLG does not authorize discharges from feed storage runoff control

systems. These systems should be operated as no discharge systems. It is unclear why this section of the guidance is suggesting that there may be discharges that need further design criteria requirements.

8. Options 2 and 3 refer to the use of "multiple discharge locations" or "multiple discharge points" to provide uniform application of runoff over the entire VTA or infiltration basin. The use of the term "discharge" may cause some confusion. EPA recommends WDNR not use the term discharge. Multiple inlet locations is an option that WDNR could consider using.

9. Option 3(c) Vegetation section should include that management of vegetation be included in the CAFO's nutrient management plan.

10. The citation NR 243.15(6) in Option 3(e) Groundwater Monitoring and Option 5 sections should be corrected to NR 243.15(7).

11. EPA recommends that groundwater monitoring be required pursuant to NR 243.15(7) at all CAFOs operating VTAs that discharge to an internally drained area. In the absence of groundwater monitoring, WDNR will have no method to determine if the operation is complying with groundwater standards.

If you have any questions or would like to discuss these comments further please feel free to contact me or Julianne Socha, of my staff, at (312) 886-4448 or (312) 886-4436, respectively.

Sincerely,



Kevin M. Pierard
Chief, NPDES Programs Branch

cc: Mary Anne Lowndes, Chief, Runoff Management Section
Bernard Michaud, Water Resources Engineer, Agriculture Runoff Program