



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

**MAR 04 2016**

REPLY TO THE ATTENTION OF:

WN-16J

Mr. Mark D. Aquino  
Director, Office of Business Support and Science  
101 South Webster Street  
Wisconsin Department of Natural Resources  
PO Box 7921  
Madison, WI 53707-7921

Subject: CAFO Vegetative Treatment Areas

Dear Mr. Aquino:

In response to recent discussions between Region 5, Water Enforcement and Compliance Assurance Branch, and Wisconsin Department of Natural Resources, Runoff Management Section, this letter is intended to clarify the application of EPA's Effluent Limitations Guideline (ELG) for concentrated animal feeding operations (CAFOs). More specifically, Region 5 is clarifying how this ELG applies to vegetative treatment areas (VTAs) associated with feed storage areas at CAFOs.

The federal ELG prohibits the discharge of manure, litter, or process wastewater pollutants from production areas at Large CAFOs that are subject to 40 CFR Part 412 Subpart C or D, into waters of the United States. An exception arises when, subject to additional conditions, a discharge is caused by precipitation and consists of an overflow from a structure that is designed, constructed, operated, and maintained to contain all manure, litter, and process wastewater including the runoff and direct precipitation from a 25-year, 24-hour rainfall event. 40 CFR §§ 412.2(g), 412.31(a)(1), 412.32(a), 412.33(a), 412.35(a), 412.43(a), 412.44(a), and 412.45(a). Feed storage areas are part of the production area at CAFOs, and process wastewater includes any water which comes in contact with, among other things, feed, thus the discharge of process wastewater pollutants in runoff from the feed storage area at a CAFO is subject to the "no discharge" performance standard requirement of the ELG. Region 5 is concerned that the use of VTAs and the design standards for VTAs established in a Natural Resources Conservation Service (NRCS) Conservation Practice Standard does not ensure that the required level of performance is being achieved.

During compliance evaluation inspections at Wisconsin CAFOs, Region 5 has documented discharges of manure, litter, and process wastewater pollutants from VTAs to waters of the United States. These discharges are not compliant with the federal ELG or Wisconsin Administrative Code nor are such discharges authorized by the Wisconsin Pollutant Discharge

Elimination System (WPDES) CAFO permits. 40 CFR §§ 412.31(a), 412.32(a), 412.33(a) and 412.35(a); NR 243.13(2)(a); and WPDES Permit WI-0063274-01 Sections 3.1 and 3.2.

Region 5 is finding that CAFOs in Wisconsin are designing VTAs to meet design standards established by NRCS. Based on inspections and field observations, it does not appear to Region 5 that VTAs or the NRCS design standards for VTAs ensure that the required "no discharge" level of performance established in the federal ELG is being achieved.

To the extent that any VTAs are to be used at Large CAFOs to control runoff of process wastewater pollutants from the production area (whether alone or in conjunction with other control technologies or methods), the VTAs need to be designed, constructed, operated and maintained to achieve compliance with the "no discharge" performance standard requirement of the ELG. Review of VTA designs must focus on meeting the ELG performance standard and not just the NRCS design standards. This review should consider operation of the VTA under various conditions such as, but not limited to, when the ground is saturated or frozen, freeze-thaw conditions, likelihood of sufficient winter vegetation, and accumulation of nutrients and other pollutants over time. A CAFO may also request that an alternative performance standard be established in its WPDES permit for its VTA. The alternative performance standard is a separate and distinct exception to the performance based ELG that authorizes a discharge of process wastewater based on a site-specific demonstration. 40 CFR § 412.31(a)(2) and NR 243.13(2)(b). For additional EPA guidance on this subject, see the National Pollutant Discharge Elimination System Permit Writers' Manual for Concentrated Animal Feeding Operations, Appendix F ("Voluntary Alternative Performance Standards for CAFOs").

If you have any additional questions concerning this matter please feel free to contact me directly. Your staff may also contact either Cheryl Burdett or Julianne Socha, of my staff, at (312)-886-1463 or (312) 886-4436, respectively.

Sincerely,



Tinka G Hyde  
Director, Water Division

cc: Pamela Biersach, Director, Bureau of Watershed Management  
Mary Anne Lowndes, Chief, Runoff Management Section