



CENTER FOR FOOD SAFETY

February 27, 2013
Docket No. EPA-HQ-OECA-2012-0956
Via www.regulations.gov
Environmental Protection Agency
EPA Docket Center
1200 Pennsylvania Ave. NW
Washington, DC 20460

Re: Public Comments on EPA's National Enforcement Initiatives for Fiscal Years 2014-2016 (Docket No. EPA-HQ-OECA-2012-0956)

The Environmental Integrity Project,¹ the Humane Society of the United States,² the Center for Food Safety,³ and 35 additional organizations⁴ submit these comments on the U.S. Environmental Protection Agency's (EPA) national enforcement initiatives for fiscal years 2014 – 2016. We urge EPA to keep large Concentrated Animal Feeding Operation (CAFO) discharges on its enforcement initiatives list, and to broaden this to include all CAFO discharges. Consideration of EPA's three selection criteria supports maintaining CAFO water pollution as a national enforcement priority, and the importance of establishing effective regulation of CAFO discharges increases each year as the number of confinement operations and their environmental impacts grow.

Although EPA has listed CAFO discharges among its national enforcement initiatives for several years, EPA actions to better quantify, track, and regulate these discharges and thereby improve Clean Water Act (CWA) enforcement throughout the country have fallen short. In fact, EPA actions during the past three years – most notably withdrawing the proposed CWA Section 308 information collection rule⁵ – have run directly counter to any effort to prioritize enforcement of CAFO discharges, and have undermined EPA's and the states' ability to enforce EPA's CAFO regulations.

¹ EIP is a nonpartisan, nonprofit organization established in March of 2002 by former EPA enforcement attorneys to advocate for more effective enforcement of environmental laws.

² The HSUS is the nation's largest animal protection organization, with nearly eleven million members and constituents, that works to protect all animals through education, investigation, litigation, legislation, advocacy, and field work. Among other issues, The HSUS campaigns to eliminate the most egregious factory farming practices and to promote practices that support animal welfare and environmental health.

³ CFS is a non-profit, membership organization of 245,000 people that works to protect human health and the environment by curbing the proliferation of harmful food production technologies and by promoting organic and other forms of sustainable agriculture. See <http://www.centerforfoodsafety.org>.

⁴ The co-signing organizations include Waterkeeper Alliance, Inc. {insert wording re: RKAs}, Animal Legal Defense Fund, Assateague Coastkeeper, Center for Race, Poverty and the Environment, Community Association for Restoration of the Environment, Environmentally Concerned Citizens of South Central Michigan, Friends of Family Farmers, Friends of the Earth U.S., Illinois Citizens for Clean Air and Water, Iowa Chapter of the Sierra Club, Lewis and Clark Animal Law Clinic, Midwest Environmental Advocates, National Sustainable Agriculture Coalition, Our Children's Earth Foundation, Public Justice, and Socially Responsible Agriculture Project.

⁵ EPA, National Pollutant Discharge Elimination System (NPDES) Concentrated Animal Feeding Operation (CAFO) Reporting Rule, 77 Fed. Reg. 42679 (Jul. 20, 2012).

I. CAFO Discharges Have a Large Environmental Impact

The Government Accountability Office (GAO) recently investigated CAFO water pollution and EPA's program to regulate illegal CAFO discharges, and found that EPA does not have adequate information about CAFOs or their discharges.⁶ Despite gaps in information, however, the GAO also found that the environmental impacts of the CAFO industry are growing as the facilities grow in size and concentrate in certain geographic areas.⁷ EPA's own findings indicate that CAFO discharges have a serious impact on water quality throughout the U.S.⁸ These water quality impacts are not exclusively caused by large CAFOs, and EPA should prioritize enforcement with regard to all CAFO polluters.

EPA's investigations in states with numerous CAFOs support this finding. For example, recent EPA investigations in Iowa and Illinois found that these states have failed to issue permits to discharging CAFOs and that the states' CAFO inspection, enforcement, and penalty programs fall short of federal minimum requirements, thereby failing to control and minimize the industry's impact on water quality.⁹ Iowa's failure to adequately regulate CAFOs is especially troubling in light of its acknowledgement of CAFOs as the state's largest threat to water quality.¹⁰ Strong CWA regulations are critical if EPA and states are to effectively address CAFO water pollution.

II. CAFOs Have Significant Noncompliance Rates Due to Poor Implementation of EPA's Regulations and Lax Enforcement

Because EPA and states have failed to track CAFOs and their discharges and to issue CWA permits when required, it is impossible to precisely quantify CAFO non-compliance rates.¹¹ However, the fact that regulators are so behind in basic CWA permitting makes it even more critical for EPA to prioritize this industry sector. Poor CWA enforcement with regard to CAFOs has formed the basis for several petitions to withdraw state CWA authorization,¹² and

⁶ See U.S. Government Accountability Office, *Concentrated Animal Feeding Operations: EPA Needs More Information and a Clearly Defined Strategy to Protect Air and Water Quality from Pollutants of Concern* (Sept. 2008) [hereinafter GAO Report].

⁷ *Id.* at 18-23.

⁸ EPA, National Pollutant Discharge Elimination System Permit Regulation and Effluent Limitation Guidelines and Standards for Concentrated Animal Feeding Operations (CAFOs), 68 Fed. Reg. 7176 at 7179-7181 (Feb. 12, 2003). EPA has also found that CAFOs are responsible for significant groundwater contamination. See, e.g., EPA Region 10, *Relation Between Nitrate in Water Wells and Potential Sources in the Lower Yakima Valley*, Washington (Sept. 2012), available at http://www.epa.gov/region10/pdf/sites/yakimagw/nitrate_in_water_wells_study_9-27-2012.pdf.

⁹ EPA Region 7, *Preliminary Results of an Informal Investigation of the National Pollutant Discharge Elimination System Program For Concentrated Animal Feeding Operations in the State of Iowa* (July 2012) [hereinafter EPA Region 7 Report]; EPA Region 5, *Initial Results of an Informal Investigation of the National Pollutant Discharge Elimination System Program for Concentrated Animal Feeding Operations in the State of Illinois* (Sept. 2010) [hereinafter EPA Region 5 Report].

¹⁰ Iowa Dep't of Nat. Resources, *Water Quality in Iowa During 1998 and 1999* at 1-7 (2001).

¹¹ See EPA, National Pollutant Discharge Elimination System (NPDES) Concentrated Animal Feeding Operation (CAFO) Reporting Rule, 76 Fed. Reg. 65431 (Oct. 21, 2011); GAO Report.

¹² See, e.g., Iowa Citizens for Community Improvement, Iowa Chapter of the Sierra Club, and Environmental Integrity Project, *Petition for Withdrawal of the National Pollutant Discharge Elimination System Program Delegation from the State of Iowa* (Sept. 20, 2007); Illinois Citizens for Clean Air and Water, *Petition for Withdrawal of the National Pollutant Discharge Elimination System Program Delegation from the State of*

several other states have lagged behind in adopting and implementing EPA's CAFO regulations in the wake of federal Courts of Appeals decisions.¹³ Moreover, the information available to EPA and states indicates that CAFOs not only have high rates of noncompliance, but also that the consequences for noncompliance do not deter further violations.¹⁴

III. Strong Federal Involvement is Necessary and Appropriate in Light of Failures to Adequately Regulate CAFO Water Pollution

EPA has acknowledged a need for strong federal oversight of state implementation of the CAFO CWA regulations.¹⁵ Absent strong federal involvement, many states simply do not issue required permits, adequately inspect facilities, or take appropriate enforcement actions following illegal CAFO discharges or permit violations.¹⁶ Confusion and uncertainty over the federal CAFO regulations and guidance following several federal Courts of Appeals decisions and rule amendments heightens the appropriateness of a strong federal role in enforcement of the CAFO regulations with regards to state program implementation. Weak state permitting and infrequent CAFO inspections and enforcement actions by state agencies also underscore the need for a stronger federal role in pursuing civil and criminal enforcement actions against individual violators. Overall, states need more EPA guidance to effectively regulate CAFOs than they do regulating traditional point sources, and consequently federal enforcement attention can have a significant impact in this industry sector.

IV. Conclusion

Accordingly, due to the significant environmental impacts of CAFOs and their widespread noncompliance with Clean Water Act discharge requirements, it is appropriate and necessary for EPA to prioritize CAFOs when exercising its enforcement authority. Active federal engagement will lead to significant water pollution reductions from this industry. Therefore, we believe that federal resources would be well spent by keeping CAFO discharges on the national enforcement initiative list. Thank you for your consideration.

Sincerely,
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Illinois (Mar. 27, 2008); Conservation Law Foundation, Petition for Withdrawal of the National Pollutant Discharge Elimination System Program Delegation from the State of Vermont (Aug. 14, 2008).

¹³ See James Hanlon, EPA, Memorandum: Concentrated Animal Feeding Operation Program Update after *National Pork Producers Council v. EPA* (Dec. 8, 2011) [hereinafter Hanlon Memo].

¹⁴ See, e.g., GAO Report; EPA Region 7 Report; EPA Region 5 Report; EPA, NPDES CAFO Rule Implementation Status Table-- National Summary, End year 2011 (Dec. 31, 2011); EPA, FY 2012 Office of Enforcement and Compliance Assurance (OECA) Final National Program Manager (NPM) Guidance, Pub. No. 300F1105 (Apr. 30, 2011).

¹⁵ See, e.g., Hanlon Memo; EPA Region 7 Report; EPA Region 5 Report.

¹⁶ See *id.*

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