



CHESAPEAKE BAY FOUNDATION
Saving a National Treasure

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Department of Environmental Protection
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RE: Chesapeake Bay Foundation Comments to the Draft PAG-12 NPDES General Permit for Concentrated Animal Feeding Operations

On behalf of the Chesapeake Bay Foundation (CBF), we respectfully submit the following comments on the draft PAG-12 NPDES General Permit Concentrated Animal Feeding Operations (CAFOs).

The Chesapeake Bay Foundation, established in 1967, is the largest nonprofit conservation organization dedicated to the restoration and protection of the Chesapeake Bay and its tributaries. With the support of over 300,000 members and e-subscribers across the country, our staff of scientists, attorneys, educators, and policy experts work to ensure that policy, regulation, and legislation are protective of the quality of the Chesapeake Bay and its watershed. Since 1986, CBF's Pennsylvania Office has worked through education, restoration and collaboration with a broad range of stakeholders - including schools, government officials, businesses, farmers, landowners, and others - to protect and restore the rivers and streams in the Commonwealth that ultimately flow to the Chesapeake Bay. Central to our efforts has been our award-winning restoration program in which we have worked with over 5,000 farmers and landowners on projects that keep nutrients and soil on the land instead of in the water.

CBF commends the agricultural producers who have adopted conservation practices to improve water quality, and recognizes the importance of strengthening the profitability of agriculture. CBF has made a strong commitment to finding solutions to water quality problems and simultaneously assisting farmers to attain well-managed farmland through implementation of riparian buffers, improved feed management, and other conservation practices.

CBF hopes that the NPDES General Permit for CAFO Operations (PAG-12) will strengthen water quality protection in Pennsylvania, and that the Department of Environmental Protection (Department) will use the Annual Installment fees to adequately manage the CAFO program

with adequate staff and robust inspections. We offer the following recommendations to bolster the CAFO General Permitting process:

Notice of Intent (NOI)

CBF appreciates the removal of language indicating that the submission of a CAFO annual report will be considered a Notice of Intent (NOI) for continuing coverage. Requiring an actual NOI for both new and renewing CAFOs, with publication in the *Pennsylvania Bulletin*, provides greater transparency and opportunity for public input. Prior to determining whether to allow coverage to continue in the next iteration of the General Permit, the Department and the public require detailed information, including: operation name, site location and description, animal population and weights, acreage available for manure application, status of Nutrient Management Plans and Erosion and Sediment Control Plans, manure storage and agricultural wastewater storage and management, animal mortality management, Animal Heavy Use Area management, name of the surface water(s) closest to the production area(s) and existing and/or designated uses, biosecurity measures, existing (or pending) permits issued by the Department or EPA, and compliance history.

Need to Achieve Water Quality Standards

The draft permit provides no requirement that all CAFOs will adopt and maintain all practices necessary for Pennsylvania to comply with the Total Maximum Daily Load (TMDL) and Watershed Implementation Plan (WIP) for Chesapeake Bay or other impaired waters. This conflicts with 40 CFR § 122.44(d)(1) that requires NPDES permits to achieve water quality standards established under Section 303 of the Clean Water Act. Agriculture is the largest source of nitrogen and phosphorus loading to the Chesapeake Bay and the Department must ensure that CAFOs are meeting their responsibilities.

Section VI (“Other Requirements” on page 24) of the draft PAG-12 General Permit vaguely states that the Department “may require additional BMPs and controls to protect public health and to protect, maintain and restore water quality and the existing and designated uses of waters of the Commonwealth. For operations within the Chesapeake Bay watershed, this may include additional BMPs listed in Pennsylvania’s Watershed Implementation Plan for the Chesapeake Bay TMDL.” However, CBF recommends that this be replaced with a clear statement that the CAFO *shall* adopt and maintain all necessary BMPs to ensure that water quality standards are met, and that this be verified by testing of groundwater and surface water, to confirm that no pollution is occurring.

Review of Cumulative Impacts

CBF applauds the Department’s requirement of individual permits from “operations that, individually or in combination with other similar operations, are or have the potential to be a contributor of pollution, as defined in the Pennsylvania Clean Streams Law.” Pursuant to 25 Pa. Code § 92a.54(7) a general permit can only be issued if the point sources “individually and cumulatively do not have the potential to cause or contribute to a violation of an applicable water quality standard established under Chapter 93 (relating to water quality standards) or cause significant adverse environmental impact.”

Additional nutrient loads need to be considered carefully, especially in watersheds already impaired by excessive nutrients. Simply requiring that each new or expanding operation meet permit requirements is inadequate for preventing additional nutrient loads in areas where there already is an excess.

However, we cannot find details on how the Department determines which operations' impacts, in conjunction with other discharges into the same waterbody segment, meet this threshold. The Department should review each new or expanding CAFO to determine if the cumulative impacts of that operation with others could contribute to pollution.

Require Individual Permit Coverage in Impaired Watersheds

Operations with discharges to Exceptional Value and High Quality watersheds are ineligible for a general permit and must obtain an Individual Permit to provide an increased level of oversight. In addition, CBF recommends that Individual Permits also be required in watersheds with documented nutrient or sediment related water quality impairments or risks where the General Permit may not address specific environmental concerns. Thus, the eligibility criteria for the NPDES General Permit for CAFO Operations (PAG-12) must be revised to exclude CAFOs in watersheds designated as impaired by nutrients on the Section 303(d) list of impaired waters under the federal Clean Water Act.

Permits on operations with discharges

CBF appreciates the requirement of a permit from "any agricultural operation defined as a Medium CAFO under 40 CFR § 122.23(b)(6)(i) or as a Small CAFO under 40 CFR § 122.23(b)(9) that discharges pollutants to surface waters as described in 40 CFR § 122.23(b)(6)(ii)."

CBF recommends that livestock operations of any size with discharges should be covered by an Individual Permit rather than a General Permit. The Department appears to agree, as its *Instructions for Completing and Submitting a NPDES Individual Permit Application for a Concentrated Animal Feeding Operation (CAFO)* also include operations with a treated wastewater or manure discharge.

CBF is concerned that there may be significant variation among Department staff and regions in determining whether or not a farm has a discharge. CBF proposes that guidance be provided to enforcement staff that a discharge include, at a minimum, any source of pollution, including but not limited to the following:

- (1) Manure, or water contaminated with manure, nutrients, silage leachate or waste water or wash water leaving the animal production area (animal confinement facility, manure storage and animal concentration areas) and discharging into surface water or groundwater.

(2) The uncontrolled flow of stormwater from manure storage facilities, temporary manure stacking areas and animal concentration areas unless the storm exceeds the 25-year/24-hour storm level.

(3) Overflowing, leaking manure storage facilities.

(4) Permanent or intermittent stream within an Animal Concentration Area without practices to control nutrient loss, such as a fenced vegetated barrier.

(5) Concentrated water flow areas in animal production areas (pipes, ditches, waterways, gullies and swales) that transport waste water, wash water, or water contaminated with manure, silage leachate or other nutrients to a permanent or intermittent stream.

The Pennsylvania Clean Streams Law prohibits a broader range of discharges resulting in pollution than the federal definition. See, 35 P.S. §§ 691.1, .401 and .402 and 40 CFR § 122.23(b)(6)(ii). All operations with a discharge resulting in the broad definition of pollution are in violation of the Clean Streams Law and should be required to obtain an Individual Permit, to provide a higher level of assurance that these discharges will be eliminated. See, 35 P.S. §§ 691.1, .401 and .402. Thus, requiring an Individual Permit in all cases of discharge would better serve as an incentive to these farms to quickly correct the problems leading to the discharge, to avoid needing an Individual Permit later.

This may serve as a tool to require these operations to resolve problems and remediate these discharges. However, greater clarity is needed to ensure that the Department will actually identify these operations and require them to correct the discharge, with greater surveillance provided by the CAFO program.

Prohibit Winter Application Except in Emergencies

The draft General Permit provides inadequate water quality protections during the winter, when land application of manure has serious pollution risks without a growing crop to utilize these nutrients. While CBF recognizes that prohibiting winter manure application on all livestock operations would be extremely difficult without massive public investment, CAFOs should have adequate manure storage capacity to preclude the need for land application in winter.

Winter application by CAFOs should only be permitted during an emergency and with Department approval. Many other states, also in cold climates, have proven that tighter restrictions on winter manure application are possible, for CAFOs and other livestock operations. For example:

- Vermont has restricted winter application of manure by all farms between December 15 and April 1 unless the Secretary grants an exemption because of an emergency situation, such as structural failure of a waste storage facility, since 1995.

- Maine bans manure spreading by all farms from December 1 through March 15, unless there is a variance from the Commissioner for the Department of Agriculture, Food, and Rural Resources.
- Maryland prohibits field application of manure and other organic nutrient sources from December 16 through March 1 or when fields are no longer saturated, frozen or snow-covered ground. CAFOs were first prohibited from winter manure application, while smaller operations had several additional years to adapt their management to eliminate winter application.
- Delaware prohibits manure application between December 7 and February 15, and on snow-covered or frozen ground.
- Michigan CAFOs are banned from manure application in January, February and March.

CBF agrees that Nutrient Management Plans should define in advance which fields would receive manure in case of such emergency.

Inadequate Effluent Limits

CBF is concerned about the inconsistent and inadequate effluent limits. All new and expanding operations, not limited to those with swine, poultry or veal, should be designed, constructed, operated and maintained to contain all manure and wastewater in a 100-year/24-hour storm. The weaker 25-year/24-hour storm criteria should not apply to operations with other species, such as horses, sheep, cattle, and ducks.

Climate change will likely lead to more frequent and more intense storm events, exceeding the predictions used to determine current standards for effluent limits. Therefore, all new and expanding farms should be designed to contain all discharges and prevent runoff in a 100-year/24-hour storm at a minimum.

Manure Application in Adverse Weather

CAFOs need to avoid manure application in times of heavy rain, saturated soils, and other adverse weather conditions, not simply document the weather 24 hours prior to and following application, as required in the draft General Permit. The permit should be clarified to express this more clearly to prohibit manure application on saturated soils or under adverse weather conditions, or when adverse weather is predicted by the National Weather Service.

Increase Staff

CBF is especially concerned about the limited staff and resources for enforcement, necessary to ensure that farms are adequately following permit requirements. More importantly, sufficient staff is needed to ensure that all farms requiring permits, especially those that discharge pollutants to surface waters, are brought under the oversight of the CAFO program.

Daily Inspections

CBF supports the requirement that all large CAFOs inspect water lines daily, and correct leaks as soon as possible. This is a common-sense measure to prevent discharges.

Thank you very much for your consideration, and we look forward to improved water quality as a result of the recommended revisions.

Sincerely,



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