

COMMENTS SUBMITTED
ON BEHALF OF THE

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The following recommendations are made in order to clarify some concerns we have with the current proposed regulations that the North Dakota Division of Water Quality has proposed in response to the new federal CAFO NPDES regulations released February 12, 2003.

language - Double underlined language our changes

CHAPTER 33-16-01
NORTH DAKOTA POLLUTANT DISCHARGE ELIMINATION SYSTEM

33-16-01-01 (3) Definitions:

b) "Applicable Water quality Standards" - The State should include the language from Chapter 33-16-02, Standards of Water Quality for State of North Dakota, specifically section 33-16-02-01, Antidegradation Policy, in conjunction with the current language.

f) "Discharge" Means the introduction or addition of a pollutant into state waters by the release or leaking, pumping, pouring, emitting, emptying, dumping, escaping, seeping, leaching or other means of release of waste, waste waters or pollutants into any waters of the state or into or on any location where they may in all probability then enter waters of the state.

(aa) "Surface Water" The State needs to define the term "Surface Water" under these proposed regulations. The term is used a number of times and the definition under 33-16-03.1 does not include hydrologically connected waters within its definition, which is a criteria under the Federal Requirements.

33-16-01-02 Acquisition of Data:

We believe the State needs to clarify under this section that in the event the "New Source" facility or point source is a CAFO, the federal requirements

mandate they apply no less than 180 days prior to CAFO commencing operations and 2(b) of this section is not an option as you have indicated with the word "or" after 2(a).

In addition, the State need to incorporate into this section that under the Clean Water Act, Section 129.29 (c)(1) that the issuance of an NPDES permit to new source "New Sources", Requires an environmental impact statement be done on the facility seeking coverage under an NPDES permit.

33-16-01-02 (6)

Under the new CAFO Federal Requirements, it states that all records will be maintained for a minimum of 5 years, NOT the 3 years you have indicated in your proposal.

33-16-01-26.1 General Permits

Recently the Montana First Judicial District Court ruled that before the Montana Department of Environmental Quality can issue a General Permit to CAFO's, they must first do an Environmental Impact Study (EIS), which considers the impacts of CAFO's on water quality.

TALLAHASSEE (March 8, 2004)--A Leon County Circuit Judge, L. Ralph Smith, Jr. in a Florida Court, found that Florida's Department of Environmental Protection (DEP) failed to implement and enforce a permitting program for CAFO's as required by Florida law and the federal Clean Water Act. "Judge Smith was loud and clear: Industry can't police itself," said Linda Young. "Our state government has a duty to protect our waterways and our health, and it's a sad day when you have to go to court to force it to do its job."

January 9, 2004 - The American Public Health Association (APHA) has issued a resolution urging federal, state, and local government health agencies to impose a precautionary moratorium on all new Concentrated Animal Feeding Operations (CAFOs) - also known as factory farms - and to initiate and support further research on the health impacts of air and water pollution from such operations.

We believe the State has failed to address a number of issues here, which need to be clarified and expanded on.

- 1) There has been no attempt by the state to differentiate between CAFO types. (There is a significant difference between ruminant and non-ruminant animals and the waste composition.)

- 2) The State has not differentiated between wet and dry manure systems. (wet systems increase significantly the volume of waste to be disposed of and the amount of land required)
- 3) The State appears to presume that the geographical and demographic make-up within a political boundary is consistent. We contend that the State must rely not only on the geographical and demographical make-up of an area, but an emphasis must be put on the sub-surface make-up of an area, which plays a significant role in the land application area's ability to utilize the nutrients applied to it as well as the geographical characteristics of slope, proximity to surface water and depth to groundwater to mention a few.
- 4) The Division assumes that because two facilities raise cattle, that the effluent limitations required for both facilities will be the same.

The Division appears to ignore the fact that the majority of facilities, although defined as a CAFO under the Federal Regulation, the similarity between facilities ends there. Seldom do multiple facilities within a region have the same:

- i) number of animals
- ii) size of production area
- iii) size of lagoons
- iv) same feed rations
- v) waste composition
- vi) manure systems (wet verses dry)
- vii) conveyance and diversion structures

There are a number of additional aspects between facilities that constitutes an individual permit being required for all CAFO's.

We believe that the courts and our arguments above substantiate that the State should rely on individual permits verses a General Permit scheme when regulating CAFO's in the state and that only in very rare circumstances would general permits be warranted.

