



ISSUE BRIEF: EPA'S PROPOSED CAFO REPORTING RULE

December, 2011

BACKGROUND

EPA recently proposed a rule to require Confined Animal Feeding Operations (CAFOs) to report a laundry list of information about their operations to EPA under Section 308 of the Clean Water Act (CWA). In this rule, referred to as the "CAFO Reporting Rule" or "308 Rule", EPA agreed to issue a rulemaking requiring the submission of the following information from *all* CAFOs: the name and address of the farmer; longitude and latitude; number and type(s) of animals; types of manure storage; quantity of manure produced; quantity of land used for manure application; the presence of a nutrient management plan; and whether the farmer transfers manure off-site, and if so, the quantity transferred to recipients of the transferred manure. Proposed as part of a private lawsuit settlement agreement with environmental groups, the stated purpose of the information request is to enable EPA to use the information to establish a regulatory presumption that a large CAFO discharges without proof of such a discharge.

SDCA strongly opposes the proposed rule and questions whether EPA has the authority to gather this information from all CAFOs considering the 5th Circuit ruling in March, 2011 that limited EPA's authority over CAFOs to only those that actually discharge. SDCA is also concerned about EPA's plans to publish the data it receives on its website for public consumption, information which in the wrong hands, could jeopardize the security of our cattle herds and food safety.

BOTTOM LINE

SDCA will file comments prior to the January 19 deadline on behalf of our members, but we also encourage individual producers to comment, including some or all of the following key points:

- ***Security/Privacy Concerns*** – If provided to the EPA, the location of a feeding site will be made public. In many cases, this would be the same site as a producer's home. Homeland security has already raised concerns. This would allow activists to know exactly where your livestock is located and the number of head.
- ***Redundant Information*** – the SD Department of Environment & Natural Resources (DENR) already has contact information on file for feeding operations with permits and has indicated they share concerns about making this information public. SDCA opposes the proposed option to have state agencies, such as DENR, report on behalf of producers.
- ***No Demonstrated Need for the Information*** – If the CAFO doesn't discharge, there is no Clean Water Act violation and thus no jurisdiction for the EPA to gather the information.
- ***"CAFO" Not Clearly Defined*** – For the purposes of this rule, a CAFO is not clearly defined, thus allowing for wider interpretation and inclusion of potentially many smaller producers with 300 head of cattle or more. Cows in a confined non-vegetated site during winter feeding with calves may put many, many producers in the recording range.
- ***"Focus Watershed" Not Clearly Defined*** – EPA is requesting input on two reporting options. Under the second option, reporting would only be required in "Focus Watersheds" but this term is undefined and, by the EPA's own admission, this could include the entire state thus the impact of this option is unknown.

For more information log on to www.sd cattlemen.org. To read the proposed rule, visit EPA's website at <http://cfpub.epa.gov/npdes/afo/aforule.cfm#reportingrule>

Comment deadline: January 19, 2012

Identify comments with "docket ID No. EPA-HQ-OW-2011-0188 and submit via e-mail to ow-docket@epa.gov; fax to (202) 566-9744; or submit via the Federal eRulemaking Portal at <http://www.regulations.gov>.