

January 19, 2012

Water Docket  
U.S. Environmental Protection Agency  
Mail Code 2822T  
1200 Pennsylvania Ave., N.W.  
Washington, D.C. 20460

Re: *National Pollution Discharge Elimination System (NPDES) Concentrated Animal Feeding Operation (CAFO) Reporting Rule*, EPA-HQ-OW-2011-0188

Dear Sir or Madam:

I respectfully submit these comments on the proposed National Pollutant Discharge Elimination System (NPDES) Concentrated Animal Feeding Operation (CAFO) Reporting Rule announced in the Federal Register on Oct. 21, 2011. *76 Fed. Reg.* 65431 (Oct. 21, 2011), Docket Number EPA-HQ-OW-2011-0188.

As part of the cattle industry [or “as the owner/operator of a CAFO”], I am deeply concerned about the proposed CAFO Reporting Rule because I believe it goes beyond the authority of the Environmental Protection Agency (EPA) under the Clean Water Act (CWA) and puts our nation’s food system at risk of activist and terrorist attacks. I support the comments submitted by the National Cattlemen’s Beef Association and other livestock organizations and encourage EPA to consider them carefully. In lieu of imposing this burdensome regulation on individual owners and operators, we believe EPA can achieve its goal of improving water quality by relying on publicly available information and partnerships to target its outreach and compliance assistance efforts.

One of the many components of the U.S. cattle industry is the feeding sector. The U.S. has the world’s largest fed-cattle industry in the world and, as a result, is the world’s largest producer of beef. There are thousands of cattle producers across the United States who own or operate feeding operations, some of which meet the definition of a CAFO, and would be directly affected by the proposed CAFO Reporting Rule. [My operation is one such operation..... any individual operation information]

EPA’s proposals to require all CAFOs across the country or all CAFOs within “focus watersheds” to submit information to EPA go beyond its delegated authority in the CWA. Sec. 308 of the CWA provides EPA authority to request information from “point sources.” CAFOs that do not discharge and may not discharge are not “point sources” under the definition provided in 33 U.S.C. § 1362(14). The federal courts have twice struck down EPA efforts to impose mandatory permitting of all CAFOs. The 2nd Circuit Court (*Waterkeeper Alliance v. EPA*, 399 F.3d 486) struck down EPA’s requirement that all CAFOs must apply for a CWA permit simply because of their “potential to discharge.” And just this past March, the 5th Circuit Court (*National Pork Producers Council v. EPA*, 635 F.3d 738) struck down the requirement that a CAFO has a “duty to apply” if it “proposes to discharge.” These cases clearly explain EPA’s authority over CAFOs is limited and therefore a rule requiring all CAFOs to report specific information subject to CWA fines of \$37,500 per day is overly broad and beyond the agency’s authority. [insert your operation’s individual burdens with complying with this information request]

The public disclosure of all CAFO locations through the proposed rule would significantly increase the likelihood of serious biosecurity breaches and terrorists attacks against operations like mine. There is a long record of illegal acts of trespass and property damage against CAFOs and other animal agriculture facilities by animal rights extremists. Publicly displaying all CAFO locations opens the door to an increasing number of, and potentially more devastating, attacks on our food system. The Departments of

Justice and Homeland Security have recognized these threats and included agriculture as one of the seven “critical infrastructures” of our country (Homeland Security Presidential Directive 7, “Critical Infrastructure Identification, Prioritization, and Protection”). EPA should recognize these efforts by other departments of government, consider the serious health and safety concerns that have been raised, and work with these agencies in protecting our food system. The proposed rule only hinders their efforts to protect our country.

To address these concerns, we strongly encourage EPA not to finalize the proposals, but instead focus its efforts on outreach and compliance assistance utilizing already publicly available information and partnerships. Thank you for the opportunity to comment on this proposed regulation.

[YOUR NAME]