



The Wyoming Department of Agriculture is dedicated to the promotion and enhancement of Wyoming's agriculture, natural resources and quality of life.

January 5, 2012

Water Docket
Environmental Protection Agency
Mailcode: 28221T
Attention Docket ID No. EPA-HQ-OW-2011-0188
1200 Pennsylvania Ave., NW
Washington, DC 20460

To Whom It May Concern:

The Wyoming Department of Agriculture (WDA) appreciates the opportunity to provide comments on the proposed National Pollutant Discharge Elimination System (NPDES) Concentrated Animal Feeding Operation (CAFO) Reporting Rule.

Our comments are specific to our mission within state government: dedication to the promotion and enhancement of Wyoming's agriculture, natural resources, and quality of life. As this proposed rule has major impacts upon our agriculture industry, our natural resources and the welfare of our citizens, we believe it is important you continue to inform us of proposed actions and decisions and continue to provide us the opportunity to express pertinent issues and concerns.

We appreciate the Environmental Protection Agency's (EPA) attempt at improving water quality under the Clean Water Act (CWA). We are however, displeased with the approach the EPA is taking and offer the following comments in opposition of proposing a rule to collect private landowner and CAFO information to *"improve the EPA's ability to effectively implement the NPDES program and to ensure that CAFOs are complying with the requirements of the CWA."*

Evaluate Past Activities for Effectiveness

The EPA mentions this proposed action will include evaluating NPDES program effectiveness. We believe EPA should already have evaluated past actions and policies prior to implementing such an invasive rule. EPA assumes there are continued violations of previous EPA compliance; however, EPA has yet to publish or evaluate these efforts.

The EPA provides two options to gather CAFO information: 1) CAFOs respond to a survey either individually or as a group, provided by the state Department of Environmental Quality (DEQ) or 2) utilize a watershed approach. We do not support either of these options. The EPA should first assess what has been done and seek additional information from states, associations and producers to what works best at the local levels. The approach EPA is taking is not only invasive, but creates an increasing wedge between the federal

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government, the efforts of the state DEQ and local farmers and ranchers trying to make a living from livestock production.

General Comments Per EPA Request

The EPA proposed a number of questions throughout the 40 CFR Parts 9 and 122. We have listed these questions in bullet and underline format and provided comments directly after each question.

- Signature by an authorized representative should be permitted to sign the survey form instead of the CAFO owner or operator: Most farm and ranch managers have signatory authority for their operation. However, it's fair to assume most managers would have final approval from the livestock operation owner when it comes to legal ramifications, such as what EPA is proposing.
- Information the CAFO would be required to submit as specified. Security or privacy concerns for CAFO owners. Seeking alternatives to submission of latitude and longitude. Discuss the advantages and limitations of information for protection. We are greatly concerned about the information EPA is requesting from CAFO owners and managers. Requested information includes:
 - Name and address of the owner and operator
 - If contract operation, name and address of the integrator
 - Location (longitude and latitude) of the operation
 - Type of facility
 - Number and type(s) of animals
 - Type and capacity of manure storage
 - Quantity of manure, process wastewater, and litter generated annually by the CAFO
 - Whether the CAFO land-applies
 - Available acreage for land application
 - If the CAFO land-applies, whether it implements a nutrient management plan for land application
 - If the CAFO land-applies-whether it employs nutrient management practices and keeps records on site consistent with 40 CFR 122.23(e)
 - If the CAFO does not land apply, alternative uses of manure, litter and/or wastewater
 - Whether the CAFO transfers manure off site, and if so, quantity transferred to recipient(s) of transferred manure; and
 - Whether the CAFO has applied for an NPDES permit

EPA has not developed a system or guaranteed privacy for all the information collected. This is unacceptable and we will not support EPA gathering information and providing this publicly. We ask EPA to consider how inappropriate it is to publish CAFO information and strongly recommend adding language to protect producers' privacy.

- Using ranges of large, medium, small CAFOs. Making public information ranges, but CAFO specifying specific numbers: WDA would only support information ranges if no specific information was included, such as, names, addresses, locations, watersheds, or other identification information. We

recommend working cooperatively with the National Agricultural Statistics Service for their protocol and reporting methodology.

- Determine if a fiscal or calendar or previous 12 months is appropriate for completing the survey: We do not support the survey EPA is proposing or the information being sought.
- Would CAFOs understand the questions asked and on the technical appropriateness of the questions? The question proposed is derogatory, using the term “understand.” The questions EPA is asking may require considerable technical expertise. EPA assumes most of the CAFOs are large and corporate in nature, with experienced staff working specifically to address the continuing demands of EPA. Many CAFOs are likely small, family run operations and may not have the expertise, equipment or collected scientific data to thoroughly answer the questions EPA proposes. We recommend EPA spend their time and money to educate the CAFO owners and managers, develop grant programs and help implement Best Management Practices (BMPs) to modify existing practices.
- Allow the state submission option as proposed by the agency versus all information individually submitted to EPA by individual operations. We do not support Wyoming DEQ spending state funding on a federally mandated program. We believe Wyoming DEQ is adequately working in cooperation with Wyoming conservation districts and landowners to integrate BMPs and improve CAFO operations and water quality at a localized level.
- Allowing 180 days instead of 90 days for state agencies to submit on behalf of operators. As mentioned above, we do not support state agencies submitting information on behalf of the operators, especially if the information submitted becomes public.
- Should only states with an authorized NPDES program have the option to submit information on behalf of the CAFOs? See comments above.
- Is the use of watershed and existing publicly available data and programs to identify CAFOs. CAFO operators who voluntarily cooperate at the local level with conservation districts or Natural Resources Conservation Service are not providing data for the public’s use. Therefore, we believe, EPA may not have the accessible data they need to address the perceived problems on a watershed basis at the local level.
- Use of state and federally collected data, i.e. nutrient monitoring data: We do not support using data collected to make broad assumptions or to federally implement a program to possibly cause financial harm or stress on livestock producers. We would again emphasize the importance of EPA implementing BMPs and not focus on regulatory or non-compliance techniques.
- Whether minimum standards for selection of a focus watershed should be adopted and what such standards might be. EPA also asks whether the results of a focus watershed assessment including decisions to focus or not to focus on an area, should be made available to the public. How frequently

EPA should review and or revise its identification of focus watershed. Any use of private information for a federally mandated program is not supported by the WDA. We question if the EPA has the staffing to support the proposed action. We do not support EPA implementing this rule due to inadequate staffing, which may force state agencies or organizations, such as conservation districts, into servicing CAFOs to meet EPA's regulatory expectations.

We appreciate the opportunity to comment and the extended comment period. We believe EPA is taking the wrong approach to reach their goals of the Clean Water Act. We emphasize the importance of working cooperatively with livestock producers and land owners to build trust and strong working relationships rather than creating a heavy regulatory burden upon those who provide food and fiber to millions of people. We look forward to being involved in the future.

Sincerely,

A handwritten signature in blue ink that reads "Jason Fearneyhough". The signature is written in a cursive, flowing style.

Jason Fearneyhough
Director

JF/jw

CC: Governor's Policy Office
Wyoming Board of Agriculture
Wyoming Stock Growers Association
Wyoming Wool Growers Association
Wyoming Farm Bureau Federation
Wyoming State Grazing Board
Wyoming Association of Conservation Districts
Wyoming Department of Environmental Quality