



Concentrated Animal Feeding Operations Proposed Rulemaking: Date Extension

*EPA seeks comments on a proposal to extend the dates for newly defined concentrated animal feeding operations (CAFOs) to seek National Pollutant Discharge Elimination System (NPDES) permit coverage and for permitted CAFOs to develop and implement nutrient management plans (NMPs) as required by EPA's 2003 CAFO rule. The proposed extensions are necessary to allow the Agency time to finalize a rule in response to the decision issued by the Second Circuit Court of Appeals in *Waterkeeper Alliance et al. v. EPA*, 399 F.3d 486 (2nd Cir. 2005). EPA is proposing February 27, 2009, as the new date for newly defined CAFOs to seek permit coverage and for permitted CAFOs to develop and implement an NMP.*

Background

EPA promulgated regulations for CAFOs in February 2003. The revised regulations expanded the number of operations covered by the CAFO regulations and included requirements to address the land application of manure from CAFOs. The rule became effective April 14, 2003, and States were required to modify their programs by February 2005 and develop State technical standards regarding appropriate land application rates for manure.

Lawsuits in opposition to various provisions in the regulations were filed in October 2003 in the U.S. Court of Appeals for the Second Circuit. On February 28, 2005, the Second Circuit issued its nationally applicable decision in *Waterkeeper Alliance et al. v. EPA*. EPA is continuing to work on a final rule in response to the *Waterkeeper* decision, but will not complete the rulemaking prior to the date by which newly defined CAFOs must seek permit coverage.

About this Regulation

EPA proposes to extend certain compliance dates in the NPDES permitting requirements and Effluent Limitations Guidelines and Standards (ELGs) for CAFOs as part of EPA's efforts to respond to the order issued by the Second Circuit Court of Appeals in *Waterkeeper Alliance et al. v. EPA*, 399 F.3d 486 (2nd Cir. 2005). This proposal would revise dates established in the 2003 CAFO rule, and later modified in February 2006, by which facilities newly defined as CAFOs are required to seek permit coverage and by which permitted CAFOs are required to develop and implement NMPs.

EPA is proposing to extend the date by which operations defined as CAFOs as of April 14, 2003, who were not defined as CAFOs prior to that date, must seek NPDES permit coverage, from July 31, 2007, to February 27, 2009. EPA is also proposing to amend the date by which operations that become defined as CAFOs after April 14, 2003, due to operational changes that would not have made them a CAFO prior to April 14, 2003, and that are not new sources, must seek NPDES permit coverage, from July 31, 2007, to February 27, 2009. In addition, EPA is proposing to extend the deadline by which permitted CAFOs are required to develop and implement NMPs, from July 31, 2007, to February 27, 2009. This proposal would revise all references in the NPDES regulations and ELGs to the date by

which permitted CAFOs must develop and implement NMPs.

The extensions would ensure that permit application deadlines for newly defined CAFOs and dates by which permitted CAFOs must develop and implement an NMP would not take effect until after the final rule revisions in response to the *Waterkeeper* decision have been completed. Revisions to other portions of the 2003 CAFO rule consistent with the Court's decision will appear in a subsequent rulemaking.

How to Get Additional Information

Copies of the Federal Register Notice containing the proposed rule are available on EPA's website at www.epa.gov/npdes/afo/revisedrule. Copies of the Notice may also be obtained by contacting EPA's Water Resource Center, Mail Code RC-4100T, 1200 Pennsylvania Avenue NW, Washington, DC 20460, 202-566-1729, or via email at center.water-resource@epa.gov.

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