



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

JAN 17 2013

Jawed Shami
Santa Ana Regional Water Quality Control Board
3737 Main Street, Suite 500
Riverside, CA 92501

Re: Tentative General Waste Discharge Requirements for Concentrated Animal Feeding Operations (Dairies and Related Facilities) within the Santa Ana Region (NPDES Permit No. CAG018001)

Dear Mr. Shami:

Thank you for the opportunity to review and comment on the tentative General Waste Discharge Requirements for Concentrated Animal Feeding Operations (Dairies and Related Facilities) (CAFOs) within the Santa Ana Region, National Pollutant Discharge Elimination System (NPDES) Permit No. CAG018001 ("tentative permit"). We commend the Santa Ana Regional Water Quality Control Board for their long-running regulatory program for CAFOs, and support renewal of the NPDES permit. However, we have concerns about the tentative permit that need to be addressed to ensure the permit effectively protects water quality and complies with NPDES requirements. Pursuant to 40 CFR 123.44, we reserve the right to object to issuance of this permit if our concerns are not addressed.

A. Compliance Schedules

The tentative permit contains compliance schedules that do not meet the requirements of the Clean Water Act (CWA) and implementing regulations. Section 502(17) of the CWA defines a compliance schedule as an "enforceable sequence of actions or operations leading to compliance with an effluent limitation, other limitation, prohibition, or standard." Federal regulations at 40 CFR 122.47(a)(3) require that "if a permit establishes a schedule of compliance which exceeds 1 year from the date of permit issuance, the schedule shall set forth interim requirements and the dates for their achievement," and that "the time between interim dates shall not exceed 1 year." The proposed compliance schedules in sections II.B.2, III.F.1, and III.F.2 of the tentative permit do not contain an enforceable sequence of actions that will lead to compliance with final limits, and the time between some interim dates exceeds 1 year. The proposed compliance schedules must include annual (or more frequent) interim milestones during the period of the permit term. These interim milestones should consist of concrete actions that demonstrate measurable progress toward achieving the final limits or permit requirements. (See comment B for further discussion of compliance schedules for implementation of Total Maximum Daily Load requirements.)

B. Total Maximum Daily Load (TMDL) Requirements

The tentative permit should include a specific list of all implementation actions required for compliance with the Middle Santa Ana River Bacteria TMDL and the Lake Elsinore and Canyon Lake Watershed Nutrient TMDL. Sections II.B.2 and III.D of the tentative permit mention TMDL implementation actions, which include "Participation in the TMDL taskforces including the monitoring programs,

workplan development and implementation activities”, as well as other “special studies, monitoring programs and technical reports.” These implementation actions are included by reference as interim requirements for achievement of the WLAs included in the tentative permit as water quality-based effluent limits (section II.B.2). To enhance permit clarity and enforceability, any required TMDL implementation actions should be explicitly stated in the permit.

Moreover, these interim requirements may not be sufficient to meet the federal regulatory requirements for compliance schedules. 40 CFR 122.47(a)(3) provides the following examples of interim requirements: “(a) Submit a complete Step 1 construction grant (for POTWs); (b) let a contract for construction of required facilities; (c) commence construction of required facilities; (d) complete construction of required facilities.” As discussed in comment A, the compliance schedules for achievement of the WLAs included in the tentative permit as water quality-based effluent limits (section II.B.2) do not appear to contain an enforceable sequence of actions that will lead to compliance with final limits, and interim milestones are not explicitly provided. The proposed compliance schedules must include annual (or more frequent) interim requirements during the period of the permit term, which consist of concrete actions that demonstrate measurable progress toward achieving the final limits or permit requirements.

Additionally, as the tentative permit prohibits discharges to surface waters except in certain situations related to precipitation or stormwater runoff as specified in tentative permit sections II.A and II.B.1, enrollees under this permit should be immediately able to comply with the Santa Ana River Basin TMDL “dry summer condition” WLAs for fecal coliform and E. Coli. Federal regulations at 40 CFR 122.47(a)(1) state that “any schedules of compliance...shall require compliance as soon as possible.” Therefore, these WLAs should be included as immediately-effective final water quality-based effluent limits in the permit.

C. Nutrient Management Plan (NMP) Development, Submission, and Implementation

The schedules for NMP development, submission, and implementation in the tentative permit do not appear to meet all requirements of the CWA and implementing regulations. Section III.E.5 of the tentative permit states, “The NMP shall be developed and submitted for the Executive Officer’s review within the time schedule outlined in the Executive Officer’s authorization letter.” This sentence should be revised to reflect to the enrollment process outlined in section I.C of the tentative permit, which requires NMPs (where applicable) to be submitted concurrently with the Notice of Intent (NOI), prior to the issuance of a discharge authorization letter by the Executive Officer, in accordance with federal regulations (see comment F).

Section III.E.5 of the tentative permit also states, “Once the NMP is approved, the Discharger must implement it within 90 days,” which appears to conflict with federal requirements. 40 CFR 122.23(h) requires that “[w]hen the Director authorizes coverage for the CAFO owner or operator under the general permit, the terms of the nutrient management plan shall become incorporated as terms and conditions of the permit for the CAFO.” As explained in EPA’s *NPDES Permit Writers’ Manual for CAFOs* (EPA 833-F-12-001, February 2012), “Once a CAFO obtains authorization to discharge under an NPDES permit, it must implement the terms and conditions of the NMP as incorporated in the permit, as of the date of permit coverage authorization.” The permit should clarify that CAFOs must implement the terms and conditions of their NMP as of the date of permit coverage.

D. Technical Standards for Nutrient Management

The permit does not require application rates for manure, litter, or other process wastewater applied to land under the ownership or operational control of a CAFO subject to 40 CFR 412 subpart C or D to be calculated in compliance with technical standards for nutrient management, as required by 40 CFR 412.4(c)(2). Permit section III.E.5 states, “The NMP shall be prepared in accordance with 40 CFR 122.42(e)(1) and 40 CFR 412.4, and *should* [emphasis added] follow the guidelines developed by Natural Resources Conservation Service (NRCS), Conservation Practices Standard 590.” The federal regulations at 40 CFR 122.42(e)(1) and 40 CFR 412.4 do not constitute technical standards. The permit must *require* that NMPs be prepared in accordance with technical standards for nutrient management.

In 2011, EPA reviewed the NRCS Conservation Practices Standard 590 and found that this standard does not appear to meet all EPA’s expectations for technical standards for nutrient management (see Enclosure). The permit must include technical standards that are consistent with all requirements for technical standards specified at 40 CFR 412.4(c)(2).

E. Monitoring and Reporting Requirements

The terms of the Monitoring and Reporting Program, contained in Attachment B of the tentative permit, do not meet all the requirements of the CWA and implementing regulations. The tentative permit does not include the following monitoring and reporting requirements, which are required by the corresponding federal regulations to be included as terms and conditions of CAFO permits, where applicable:

40 CFR citation	Summary of Federal Requirement
122.42(e)(3)	Provide most current manure nutrient analysis to recipients of transferred manure; maintain manure transfer records for 5 years
	Include in Annual Report:
122.42(e)(4)(iv)	- Total number of acres for land application covered by NMP
122.42(e)(4)(vi)	- Approximate volume of each discharge from the production area
122.42(e)(4)(vii)	- Statement indicating whether current NMP is certified
122.42(e)(4)(viii)	- Actual crop yields, manure nutrient content, calculations of manure application rates, and amount of manure spread on each field
412.4(c)(4)	Periodically inspect land application equipment for leaks
412.37(a)(1)(ii)	Inspect water lines daily
	Retain on-site for 5 years:
412.37(b)(4)	- Records of mortalities management and practices
412.37(b)(5)	- Records documenting current design of any manure storage structures
412.37(c)(1)-(10)	- NMP and supporting information (see sections (c)(1) through (c)(10) for specifics)

The permit must include these monitoring, reporting, and recordkeeping requirements to meet federal requirements.

F. Notice of Intent (NOI)

The NOI form contained in Attachment C of the tentative permit does not contain all of the information required by federal regulations to be included in a NOI for coverage under a general permit for CAFOs.

40 CFR 122.28(b)(2)(ii) states that an NOI for coverage under a CAFO general permit must include all the information specified in 40 CFR 122.21(i)(1). The NOI form in Attachment C does not appear to require submission of the following information at 40 CFR 122.21(i)(1):

40 CFR citation	Federal Requirement
122.21(i)(1)(iii)	Latitude and longitude of the production area (entrance to production area)
122.21(i)(1)(iv)	A topographic map of the geographic area in which the CAFO is located showing the specific location of the production area
122.21(i)(1)(vi)	The type of containment and storage (anaerobic lagoon, roofed storage shed, storage ponds, underfloor pits, above ground storage tanks, below ground storage tanks, concrete pad, impervious soil pad, other) and total capacity for manure, litter, and process wastewater storage (tons/gallons)
122.21(i)(1)(vii)	The total number of acres under control of the applicant available for land application of manure litter, or process wastewater
122.21(i)(1)(viii)	Estimated amounts of manure, litter, and process wastewater generated per year (tons/gallons)
122.21(i)(1)(ix)	Estimated amounts of manure, litter, and process wastewater transferred to other persons per year (tons/gallons)
122.21(i)(1)(x)	A nutrient management plan that at a minimum satisfies the requirements specified in 40 CFR 122.42(e), including, for all CAFOs subject to 40 CFR part 412, subpart C or subpart D, the requirements of 40 CFR 412(c), as applicable. (see comment C)

We appreciate the opportunity to provide comments on the tentative permit. If you would like to discuss these comments, please contact Amelia Whitson of my staff at (415) 972-3216.

Sincerely,



David Smith, Manager
NPDES Permits Office (WTR-5)

Enclosure

Electronic cc: Michael Adackapara, Santa Ana Regional Water Quality Control Board
Stephen Mayville, Santa Ana Regional Water Quality Control Board