



December 13, 2011

1931 N. Meacham Rd.  
Suite 100  
Schaumburg, IL  
60173-4360  
phone 847.925.8070  
800.248.2862  
fax 847.925.1329  
www.avma.org

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

**RE: Docket Number [EPA-HQ-OW-2011-0188], National Pollutant Discharge Elimination System (NPDES) Concentrated Animal Feeding Operation (CAFO) Reporting Rule**

Dear Sir or Madam:

I am writing on behalf of the American Veterinary Medical Association (AVMA), established in 1863 and the largest veterinary medical association in the world. As a not-for-profit association established to advance the science and art of veterinary medicine, the AVMA is the recognized national voice for the veterinary profession. The association's more than 81,000 members comprise approximately 83% of U. S. veterinarians, who are involved in a myriad of areas of veterinary medical practice including private, corporate, academic, industrial, governmental, military, and public health services.

This letter is in response to the solicitation for public comment by the U. S. Environmental Protection Agency on the Proposed Rule, National Pollutant Discharge Elimination System (NPDES) Concentrated Animal Feeding Operation (CAFO) Reporting Rule. The AVMA supports the basic premises of current federal and state legislation and regulations enacted to prevent negative environmental impacts from wastes generated by animal productions. We support education, outreach, and extension programs to assist producers in meeting or exceeding current federal and state requirements, including establishing and implementing nutrient management plans and effective waste management facilities to prevent contamination of the environment. We are a proponent of scientific studies of the impact of pathogens and chemicals from animal/human waste sources on the environment and means to mitigate such. Similarly, the AVMA supports science based research on animal waste

management systems and procedures which foster the utilization of animal waste materials as nutrient sources for sustainable agriculture systems.

AVMA opposes both of the EPA's current co-proposed rules because neither enhances environmental or public health efforts beyond what already exists, and yet both clearly increase the risks to the animals, the producers, and the public. Additionally, the co-proposed rules do not fully utilize pre-existing State and Federal data, have controversial justifications, and create redundancies. Below is a brief discussion of some of the key concerns the AVMA has with the co-proposed rules as well as suggested alternatives.

**1. Increased Risks**

- a. Compiling specific site location and contact information of CAFOs in a format accessible by the public will place the farms' biosecurity at risk and risks the security of the U.S. food supply from the impacts of a foreign animal disease and malicious adulterations. The EPA would in effect provide a roadmap to the nation's CAFOs, and by doing so would dramatically undermine concurrent antiterrorism, biosecurity, and food defense efforts by the Department of Homeland Security, Federal Bureau of Investigation, U.S. Department of Agriculture, Food and Drug Administration, farmers, food processors, and other stakeholders. The AVMA is a member of the Sector Coordinating Council of the Food and Agriculture Sector, which is one of the 18 Critical Infrastructure and Key Resources within the U.S. Department of Homeland Security's National Infrastructure Protection Plan, and is keenly aware of security threats associated with the proposed listing of CAFOs.
- b. Providing such a public listing or roadmap of CAFOs will result in increased incidences of trespassing, vandalism, animal harm, and human risks from activists. First responders to incidences as well as reporters also pose unintentional biological risks. The uninvited traffic, regardless of the intent, jeopardizes the biosecurity and animal health on the farms involved because organisms or substances introduced (intentionally or unintentionally) by individuals may negatively impact the animals, people, and the environment. Furthermore, in many cases, the address and location of the farm is the same as that for the farmer's residence. Listing this confidential information will expose farmers and their families' privacy and security to unnecessary and unwarranted risks.

**2. No Discernible Enhancement to Existing Environmental or Public Health Efforts**

- a. Part of the information being sought by the EPA is whether or not a CAFO has a National Pollutant Discharge Elimination System (NPDES) permit or has applied for one. Regardless, the applicable regulations and penalties are the same. Under the Clean Water Act (CWA), permits are required for facilities to discharge pollutants to a water of the United States. Under the CAFO rule and this current co-proposed rule, the requirements remain the same.
- b. Currently, facilities must adhere to the specifics of their individual NPDES permit. The current co-proposed rules do not change this or any other precautions taken by CAFOs regarding discharges.

- c. Currently under the CWA, the EPA has the authority to inspect any discharging facility, its records, and its effluents. The current co-proposed rules do not limit or enhance the inspection or regulatory enforcement authority.
- d. All CAFOs that discharge currently have recordkeeping and reporting requirements that are far more detailed than the reporting included in the co-proposed rules.
- e. The resources and efforts involved in collecting and processing CAFO information that already exists publically and detailed location information that should not be shared publically would detract from the limited resources currently available for the NDPES permit program oversight, inspection, and enforcement efforts.

### 3. Pre-existing State and Federal Data

- a. The AVMA strongly recommends as an alternative that the EPA utilize pre-existing data from the U.S. Department of Agriculture (USDA) National Agriculture Statistics Service's Census of Agriculture (<http://www.agcensus.usda.gov/>) for the information it seeks to make public with the current co-proposed rule. The Census of Agriculture, which is publically available, has already established means to collect and report farm locations, types, sizes, and much more without jeopardizing security information.
- b. The EPA's own Nitrogen and Phosphorus Pollution Data Access Tool (<http://gispub2.epa.gov/npdat/>) could be the ideal location for the EPA to incorporate data from the USDA's Census of Agriculture. While the data migration may pose temporary logistical or formatting issues, the end result would likely eliminate the need for both of the current co-proposed rules.
- c. The U.S. Geological Survey's SPARROW Surface Water-Quality Modeling database could prove exceedingly beneficial for EPA's efforts regarding CAFO NPDES monitoring. The USGS website, <http://water.usgs.gov/nawqa/sparrow/> states that SPARROW "*relates in-stream water-quality measurements to spatially referenced characteristics of watersheds, including contaminant sources and factors influencing terrestrial and aquatic transport. SPARROW empirically estimates the origin and fate of contaminants in river networks and quantifies uncertainties in model predictions.*"
- d. State maintained NDPES permitting information on the CAFOs that discharge is a vital source of information that should be utilized. The AVMA recognizes that data quality and formatting disparity exists among the datasets of States; however, the AVMA recommends that the EPA work with the States to facilitate the EPA's data mining of this source instead of passing over it and requiring CAFO reporting redundancy.

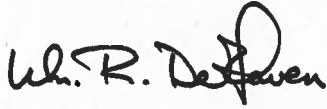
### 4. Controversial Justification

- a. The EPA admits in the *Federal Register* announcement of the co-proposed rules that the CWA does not require the EPA to collect the proposed information. The AVMA strongly discourages the compilation for public access data that is optional under CWA and yet compromises national biosecurity and food defense.

- b. The data comparison of the 2010 pharmaceuticals sold or distributed for use in food-producing animals with years prior to 2009 is potentially misleading.
- i. As stated on the Food and Drug Administration's website (<http://www.fda.gov/ForIndustry/UserFees/AnimalDrugUserFeeActADUFA/ucm236149.htm>), "*The ADUFA 105 summary report is not directly comparable to other previously reported estimates of antimicrobial drug sales or distribution. The ADUFA 105 summary report includes data on the quantity of antimicrobial drugs sold or distributed for use in all food-producing animal species for all purposes, both therapeutic and non-therapeutic, and includes all dosage forms. Previously reported estimates included different categories of antimicrobials and used different sources of information and thus cannot be directly compared to the ADUFA 105 summary report.*"
  - ii. Between 2009 and 2010, there was approximately a 1% increase in pharmaceuticals sold or distributed for use in food-producing animals.
- c. While the EPA is proposing to ask CAFOs questions relative to land application or off-site transport of manure, the EPA is not proposing to ask CAFOs whether or not they discharge to water.
- i. The omission is counterintuitive considering the purposes of the current proposed rules are focused on water quality and compliance with the CWA.
  - ii. On March 29, 2011, the U.S. Court of Appeals for the Fifth Circuit found that "... cases leave no doubt that there must be an actual discharge into navigable waters to trigger the CWA's requirements and the EPA's authority. Accordingly, the EPA's authority is limited to the regulation of CAFOs that discharge. Any attempt to do otherwise exceeds the EPA's statutory authority."
  - iii. If the focus on land application serves to target field runoff secondary to rain (agricultural stormwater), doing so does not seem justified because the above court case and previous ones have upheld that agricultural stormwater is an exemption from the CWA. Specifically, the February 28, 2005 decision of the U.S. Court of Appeals for the Second Circuit decision included that "... while the Rule holds CAFOs liable for most land application discharges, it prevents CAFOs from being held liable for 'precipitation-related discharge[s]' where 'manure, litter or process wastewater has [otherwise] been applied in accordance with site specific nutrient management practices that ensure appropriate agricultural utilization.' 40 C.F.R. § 122.23(e). In other words, like the Clean Water Act itself, the CAFO Rule seeks to remove liability for agriculture-related discharges primarily caused by nature, while maintaining liability for other discharges. ... discharges from land areas under the control of a CAFO can and should generally be regulated, but where a CAFO has taken steps to ensure appropriate agricultural utilization of the nutrients in manure, litter, and process wastewater, it should not be held accountable for any discharge that is primarily the result of "precipitation."

The AVMA appreciates the opportunity to provide comment. For further clarification on the AVMA's response, please contact Dr. Kristi Henderson at 800-248-2862 ext. 6651 or at [khenderson@avma.org](mailto:khenderson@avma.org).

Sincerely,

A handwritten signature in black ink that reads "W. Ron DeHaven". The signature is written in a cursive style with a large, looped initial "W".

W. Ron DeHaven, DVM, MBA  
CEO and Executive Vice President  
American Veterinary Medical Association