PART 125—NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

Concentrated Animal Feeding Operations

On November 20, 1975, the Environmental Protection Agency (EPA) proposed regulations for applying the National Pollutant Discharge Elimination System (NPDES) permit program to concentrated animal feeding operations (40 FR 54182). These regulations were proposed in accordance with the June 10, 1975, court order issued following the decision of the Federal District Court for the District of Columbia in the case of NRDC v. Train (196 F. Supp. 1393, 7 ERC 1881 (D.D.C. 1975)). Although EPA is proceeding with the appeal of this case, the Agency is required to proceed with the promulgation of these regulations. For a detailed history of the development of the proposed regulations, see the preamble to the November 20, 1975, publication.

At the time of the November 20, 1975, publication of the proposed regulations, EPA solicited comments on all aspects of the regulations and received more than 50 comments in response from industry groups, educational institutions, environmental organizations, federal, state and local agencies and interested persons. The comments have been carefully considered and several changes have been made to the proposed regulations in response to the suggestions made. The most important of these changes are diagrammed as follows and discussed below.

**Basic Structure of Feddlot Program**

**Program Proposed in Nov. 7 Regulations**

- Feddlots with 1,000 or more animal units
  - Permits required for all feddlots with 1,000 animal units or more
  - Permits required for feddlots with:
    1. Discharges of pollutants through a manmade conveyance, or
    2. Discharges of pollutants into waters traversing the confined area.
  - Feddlot not subject to requirement to obtain permit if discharge occurs only in the event of a 25-yr, 24-h, 10-yr storm event.
  - Note: All feddlots subject to a case-by-case designation requiring an individual permit.

- Feddlots with less than 1,000 animal units
  - No permits required unless case-by-case designation as provided below.

**Basic Structure of Feedlot Program—Program promulgated today**

- Feddlots with 1,000 or more animal units
  - Permits required for all feddlots with 1,000 animal units or more
  - Permits required for feddlots with:
    1. Discharges of pollutants through a manmade conveyance, or
    2. Discharges of pollutants into waters traversing or coming into direct contact with animal in the confined area.
  - Feddlot subject to case-by-case designation requiring an individual permit only if after onsite inspection and notice to the owner or operator.

- Feddlots with less than 1,000 animal units
  - No permit required unless case-by-case designation as provided below.

**Response to Comments on the Proposed Program**

Comments received in response to the proposed November 20, 1975, regulations have been entered into the record of the development of these regulations and are available for public inspection at EPA. All comments received have been carefully considered and many have been adopted or substantially satisfied by editorial changes, deletions or additions to the regulations. Several of the major comments and their disposition are discussed below.

1. The definition of "animal feeding operation" [(a) (1)]. Several commenters pointed out that a clarification of this definition was necessary, particularly as to the intent of the vegetation criterion. To accommodate these comments, this part of the definition section has been revised to include post-harvest residues and to make clear that only confined areas which lack vegetation, crops, etc. in every part or portion of the lot or facility are included within the term "animal feeding operation."

Comments were also received concerning the meaning of "an aggregate of 45 days," suggesting that the word "total" be substituted for "aggregate," or that the phrase be changed to read "45 consecutive days." Changes to the number of days were also suggested, specifically to change the number to 30 or 60 days. However, except for the change of the word "aggregate" to "total," meaning that the 45 days are not necessary continuous, no change has been made to the 45 day criterion.

The comments also make clear that it is necessary to reiterate EPA's intent not to require permits from operations where discharges are less than 100 cattle. As stated in the November 20, 1975, proposed regulations:

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there must be a "discharge of a pollutant" from the point source into "navigable waters." If there is no discharge from a particular operation which is a point source, there is no need for a permit. * * *(1) The proposed regulations provide that a permit is required for any concentrated animal feeding operation which discharges pollutants in amounts of a 20 year, 24 hour rainfall event. In addition, although there may be a discharge of a pollutant from a point source, no permit is required if such a discharge does not reach navigable waters.

2. The definition of "concentrated animal feeding operation" (a) [2]. Many comments were received suggesting that this critical term be clarified in several ways.

(a) One commenter pointed out that the word "concentrated" connotes a large number of animals confined in a relatively small area, and indicated that part of the regulations were inconsistent with this plain meaning of the term. The parts of the definition of "concentrated animal feeding operation" beginning with the words "with regard to the number * * * of animals confined" present a meaning contrary to the ordinary use of the word "concentrated." In order to eliminate this contradiction, a number of small holding numbers have been added to the definition. These numbers would indicate the size of the animal feeding operation of the type contemplated, as a numerical matter, "concentrated" and, therefore, for which, lacking a specific written determination following a field inspection; see further below) to the contrary, no permit would be required. This de minimis level lower general cutoff is consistent with the decision in NADCO v. 279, which states that not every "ditch, water or culvert" is "meant to be a point source under the Act (Federal Water Pollution Control Act) (7 ERC 1821 at 1887).

In addition, in response to comments concerning combinations of animals for confined operations, the term "animal unit" is re-defined consistent with the term as used in the July 1973 publication. This term is defined and added to the definition as follows;

(b) Many commenters asked for a definition of "measurable wastes." Because it implied the imposition of costly and time consuming monitoring requirements, the term "measurable wastes" has been deleted. The more consistent term "pollutants," which is defined in section 5.11 of the Federal Water Pollution Control Act (Public Law 92-500; 33 U.S.C. 1251 et seq; the Act), has been inserted instead.

(c) Some commenters noted the need to clarify the term "navigable waters." This term is fully explained and interpreted in detail at 40 CFR 125.1(q). Several commenters asserted that the criterion related to waters which "traverse" the operation be clarified. Accordingly, this criterion has been rewritten without the word "traverse" in order to make clear that this criterion relates to waters which come into contact with the animals confined in the operation.

3. Three commenters pointed out that the words concerning direct discharge were ambiguous in that wastes might not be discharged from an animal feeding operation but may not reach navigable waters. These regulations concern only those discharges which enter navigable waters. Thus for example, if discharges leave the feeding operation but do not reach navigable waters because of filter strips or other waste management techniques, no permit is required.

(f) Several commenters were concerned that the cutoff number used in the definition. The majority of these comments accepted the numbers and urged that they be adopted. One comment suggested higher numbers. As discussed in more detail above, however, the numbers established in the previous regulations, published in July 1973, have been reinstalled.

(g) Several comments were received in reference to the provision concerning the 25 year, 24 hour storm event. Half of these comments suggested that a 10 year, 24 hour storm event be substituted for the 25 year event in the regulations. However, consistent with data used in the development of the July 1973 promulgation indicating that such criterion was rational and feasible for all feedlots with 300 or more animal units, the 25 year, 24 hour storm criterion has been retained.

3. The definition of "man-made" (a) [3]. This definition has been amended to reflect four comments recommending a slight expansion of the definition.

4. Application for a permit (b) [1] and (2). Comments were received indicating that the time period between the application and the implementation deadline in the Act of July 1, 1977, and the implementation deadline in the Act of September 1, 1975, is inadequate to enable owners and operators to construct pollution control devices. In order to alleviate this problem, the deadline for permit applications has been changed to September 1, 1975. This shortened deadline will not be used because the Short Form B on which the permit applications are to be filed is very brief. (The application fee for the Short Form B is $10). The earlier deadline also provides more time for the procedural elements of permit issuance, including a notice and opportunity for public hearing.

5. Case-by-case designation (e). Several commenters pointed out a need to narrow the discretion of the Director or Regional Administrator to designate an animal feeding operation as concentrated and therefore require a permit. This section was included in the regulations to provide for flexibility in State pollution control programs which was urged by states as an effective technique. In the public meetings held on this subject.

To further define the criteria the director would have the discretion of this provision to provide for site-specific determinations.

However, it is intended that the Director or Regional Administrator should exercise this discretion with respect to facilities having pollution potential. Thus, for operations smaller than 300 animal units only those which (a) have significant impact on local area or (b) have direct discharges to navigable waters are subject to this case-by-case designation.

In exercising this discretion, the Director or Regional Administrator will designate a concentrated animal feeding operation only, upon determining that the operation should and could be regulated under the permit program. In addition, before an application can be reviewed, the owner or operator of the feedlot will be notified of the application requirement. As with past experience, it is anticipated that the Director or Regional Administrator would exercise this discretion only in exceptional cases.

It is to be re-emphasized that owners or operators of point sources are not required to apply for and obtain pollution discharge permits if there is no discharge of pollutants from such point sources into navigable waters. Thus, totally enclosed systems, such as many poultry operations, without discharges into navigable waters are not subject to the permit requirements regardless of their size. Also, no permits would be required from owners or operators of operations which receive all animal wastes from adjacent harvest activities and are thereby unobservable.

Because of the importance of promptly making known to other Federal Agencies, States, Dischargers, environmentalists and other interested persons the content of these regulations and because of the need to implement this program promptly, the Administrator finds good cause to declare these regulations effective immediately upon publication.

No Environmental Impact Statement is required by Executive Order 11621 for these regulations since the economic effects will not exceed the criteria established by EPA and approved by the Office of Management and Budget for the preparation of such statements.

Dated: March 10, 1976.

RUSSELL E. TRAIN, Administrator.

Part 124 of Title 40 of the Code of Federal Regulations, setting forth State program elements necessary for participation in the National Pollutant Discharge Elimination System, is amended as follows:

Subpart A—General

§ 124.1 [Amended]

1. Section 124.1 is amended by deleting subsection (a) and relettering subsection (a) to (b).
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§ 124.11 [Amended].

2. Paragraph (h) of § 124.11 is amended by deleting paragraphs (h)(1) and (2), by renumbering paragraphs (h)(3), (4), (5), and (6) respectively, and by adding a new paragraph (h)(1) as follows: "(1) Discharges from concentrated animal feeding operations as defined in § 124.82(a)(2)."

Subpart I—Disposal of Pollutants Into Wells

§ 124.80 Redesignated 124.81.

3. Subpart I of Part 124 is amended by deleting the title "Disposal of Pollutants Into Wells" and by renumbering § 124.80 to 124.81.

(a) 109.65.1 Paragraph 124.10 is amended by adding a new § 124.82. Concentrated Animal Feeding Operations, as follows:

§ 124.82 Concentrated Animal Feeding Operations.

(a) Definitions.

For purposes of this section:

(1) The term "animal feeding operation" means a lot or facility (other than an aquatic animal production facility) where the following conditions are met: (i) Animals have been, are or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period, and (ii) Crops, vegetation, forage growth or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility. Two or more animal feeding operations under common ownership are deemed to be a single animal feeding operation if they are adjacent to each other or if they utilize a common area or system for the disposal of wastes.

(b) The term "concentrated animal feeding operation" means an animal feeding operation which meets the criteria set forth in either (a)(2)(i) or (ii) below:

(1) More than the numbers of animals specified in any of the following categories are confined in any 12-month period: (a) 1,000 head and feeder cattle, (b) 700 mature dairy cattle (whether milked or dry cows), (c) 2,500 swine weighing over 50 pounds, (d) 500 hogs, (e) 10,000 sheep or lambs, (f) 55,000 turkeys, (g) 30,000 laying hens or broilers (if the facility has a liquid manure handling system), (h) 5,000 ducks, or (i) 1,000 animal units; or

(2) More than the following numbers and types of animals are confined: (a) 300 slaughter or feeder cattle, (b) 200 mature dairy cattle (whether milked or dry cows), (c) 750 swine weighing over 55 pounds, (d) 150 hogs, (e) 3,000 steers, (f) 16,500 turkeys, (g) 30,000 laying hens or broilers (if the facility has continuous overflow watering), (h) 9,000 laying hens or broilers (if the facility has a liquid manure handling system), (i) 1,500 ducks, or (j) 300 animal units; and either one of the following conditions are met:

(i) Pollutants are discharged into navigable waters through a man-made ditch, flushing system or other similar man-made device; or

(ii) Pollutants are discharged directly into navigable waters which originate outside of and pass over, across, through or otherwise come into direct contact with the animals confined in the operation.

Provided, however, that no animal feeding operation is a concentrated animal feeding operation if such animal feeding operation discharges only in the event of a 25 year, 24 hour storm event or otherwise come into direct contact with the animals confined in the operation.

(c) Application for Permit. (1) Any person discharging or proposing to discharge pollutants from a concentrated animal feeding operation, who has not already done so, shall file an application with the Director by September 1, 1976. (2) (i) Each application must be filed on a Short Form B and completed in accordance with the instructions provided with such form. (ii) In addition to the information required in the Short Form B the Director may require any applicant to submit such additional information as the Director deems necessary to proceed with the issuance of the permit.

(d) Case-by-case Designation of Concentrated Animal Feeding Operations.

Notwithstanding any other provision of this section, the Director or the Regional Administrator may designate as a concentrated animal feeding operation any animal feeding operation not otherwise for which a permit has been issued under this section.

Provided, however, that no animal feeding operation is a concentrated animal feeding operation if such animal feeding operation discharges only in the event of a 25 year, 24 hour storm event or otherwise come into direct contact with the animals confined in the operation.
§ 125.51 Concentrated Animal Feeding Operations.

(a) Definitions.

For the purposes of this subpart:

(1) The term “animal feeding operation” means a lot or facility (other than an aquatic animal production facility) where the following conditions are met:

(i) Animals have been, are or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12 month period, and

(ii) Crops, vegetation, forage growth or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.

Two or more animal feeding operations under common ownership are deemed to be a single animal feeding operation if they are adjacent to each other or if they utilize a common area or system for the disposal of wastes.

(2) The term “concentrated animal feeding operation” means an animal feeding operation which meets the criteria set forth in either (i) or (ii) below:

(i) More than the numbers of animals specified in any of the following categories:

(a) 1,000 slaughter and feeder cattle,

(b) 700 mature dairy cattle (whether milked or dry cows),

(c) 2,000 swine weighing over 55 pounds,

(d) 500 horses,

(e) 10,000 sheep or lambs,

(f) 50,000 turkeys,

(g) 100,000 laying hens or broilers (if the facility has a liquid manure handling system),

(h) 2,000 laying hens or broilers (if the facility has a liquid manure handling system),

(i) 1,500 ducks, or

(j) 300 animal units; or

(ii) More than the following numbers and types of animals are confined:

(a) 200 slaughter or feeder cattle,

(b) 200 mature dairy cattle (whether milked or dry cows),

(c) 750 swine weighing over 55 pounds,

(d) 150 horses,

(e) 3,000 sheep,

(f) 16,500 turkeys,

(g) 30,000 laying hens or broilers (if the facility has continuous overflow watering),

(h) 9,000 laying hens or broilers (if the facility has a liquid manure handling system).

(3) (i) Pollutants are discharged into navigable waters through a man-made ditch, flushing system or other similar device; or

(ii) Pollutants are discharged directly into navigable waters which originate outside of and pass over, across, through or otherwise come into direct contact with the animals confined in the operation.

Provided, however, that no animal feeding operation is a concentrated animal feeding operation as defined above if such animal feeding operation discharges only in the event of a 25 year, 24 hour storm event.

(3) The term “animal unit” means a unit of measurement for any animal feeding operation calculated by adding the following numbers: the number of slaughter and feeder cattle multiplied by 1.0, plus the number of mature dairy cattle multiplied by 1.4, plus the number of swine weighing over 55 pounds multiplied by 0.4, plus the number of sheep multiplied by 0.1, plus the number of horses multiplied by 2.0.

(4) The term “man-made” means constructed by man and used for the purpose of transporting wastes.

(5) Application for Permit. (1) Any person discharging or proposing to discharge pollutants from a concentrated animal feeding operation, who has not already done so, shall file an application with the Regional Administrator by September 1, 1976.

(2) Each application must be filed on a Short Form B and completed in accordance with the instructions provided with such form.

(6) In addition to the information required in the Short Form B the Regional Administrator may require any applicant to submit such other appropriate information as the Regional Administrator deems necessary to proceed with the issuance of the permit.

(7) Case I Designation of Concentrated Animal Feeding Operations. Notwithstanding any other provision of this section, the Director or the Regional Administrator may designate as a concentrated animal feeding operation any animal feeding operation not otherwise falling within the definition provided in § 125.51(a)(2) above. In making such designation the Director or Regional Administrator shall consider the following factors:

(1) The size of the animal feeding operation and the amount of wastes reaching navigable waters;

(2) The location of the animal feeding operation relative to navigable waters;

(3) The means of conveyance of animal wastes and process waste waters into navigable waters;

(4) The slope, vegetation, rainfall, and other factors relative to the likelihood or frequency of discharge of animal wastes and process waste waters into navigable waters; and

(5) Other factors relative to the significance of the pollution problem sought to be regulated.

Provided, however, that no animal feeding operation with less than the numbers of animals set forth in (a)(2) above shall be designated as a concentrated animal feeding operation unless such animal feeding operation meets either of the following conditions:

(1) Pollutants are discharged into navigable waters through a man-made ditch, flushing system or other similar man-made device; or

(2) Pollutants are discharged directly into navigable waters which originate outside of and pass over, across, through or otherwise come into direct contact with the animals confined in the operation.

In no case shall a permit application be required from a concentrated animal feeding operation designated pursuant to this section unless there has been an on-site inspection of the operation and a determination that the operation should and could be regulated under the permit program. In addition, no application shall be required from an owner or operator of a concentrated animal feeding operation designated pursuant to this section unless such owner or operator is notified in writing of the requirement to apply for a permit.

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