



Animal Welfare Institute

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Water Docket
Environmental Protection Agency
1200 Pennsylvania Ave, NW
Washington, D.C. 20460

VIA ONLINE SUBMISSION

RE: Docket ID No. EPA-HQ-OW-2011-0188

To Whom It May Concern:

I am writing on behalf of the Animal Welfare Institute (AWI) and our supporters to offer comments on the Environmental Protection Agency's (EPA) proposed National Pollutant Discharge Elimination System (NPDES) Concentrated Animals Feeding Operation (CAFO) Reporting Rule.

A. About AWI

Since its founding in 1951, AWI has worked to reduce animal suffering and promote the welfare of all animals, including animals in agriculture. As a part of our mission, we promote humane farming systems and work to advance legislative and regulatory efforts to improve the conditions of farm animals. We also administer our own animal care certification program, Animal Welfare Approved, through which we work with scientists and farmers to set the highest farm animal care standards in the country.

AWI supports environmental stewardship as a necessary component of responsible farming, and we believe that regulation is necessary to curb the environmental destruction perpetrated by factory farms. Consequently, AWI supports better regulation of CAFOs under the Clean Water Act.

B. AWI supports adoption of Option 1.

Adoption of a Clean Water Act reporting requirement for CAFOs would have immense public educational value. Presently, members of the public have access to very limited information about CAFOs, which hinders a true understanding of their impacts on animals and the environment.

Because Option 1 creates the most comprehensive reporting scheme, AWI supports its adoption, and makes the following recommendations:

1. Clarify 40 C.F.R. § 122.23(b)(1)(i)'s "45 days or more" confinement requirement.

Either option under the proposed rule would require reporting by only those operations that intensively confine animals for 45 days or more in any 12 month period. This threshold is derived from 40 C.F.R. § 122.23(b)(1)(i)'s definition of "animal feeding operation." We recommend that EPA clarify this requirement to ensure that broiler chicken and hatchery operations are covered under the rule.

In conventional production, broiler chickens are produced in hatcheries, where they remain for less than 24 hours before they are shipped to grow-out facilities. The chickens will spend the remaining weeks of their unnaturally short lives in these facilities until they are shipped off to slaughter. A broiler chicken's life is typically only six to seven weeks long (42-49 days). Thus, hatcheries and broiler operations confine multiple flocks of birds a year, but each flock may be confined for less than 45 days. Nevertheless, these operations have the potential to discharge pollutants into the nation's waters. Grow-out operations' primary pollutant is litter – a mixture of manure and bedding – which contains the hypoxia-producing nitrogen and phosphorous. Hatcheries chiefly produce viscous egg liquid, shells, and wastewater used to wash down the facilities.

As currently written, EPA's regulatory definition is ambiguous as to whether it applies to operations in which individual flocks or groups of animals are confined on the premises for less than 45 days, even if those operations house multiple flocks or groups for at least 45 days in any 12 month period. The sample Information Gathering Survey Form included in the Federal Register attempts to address this ambiguity by stating that "The 45 days do not have to be consecutive,"¹ but this wording remains vague. Thus, AWI recommends that EPA clarify that the reporting rule applies to any operation that confines the requisite number of animals for 45 days, regardless of the duration that any single group of animals remains on the premises.

2. An online searchable database would be the most appropriate format for making information available to the public.

AWI believes that the information collected under the proposed rule would serve great educational value to the public and act as a resource for individuals hoping to learn more about agriculture in America and its environmental effects. For this reason, AWI supports the release of the information collected under the proposed rule to the public.

¹ 76 Fed. Reg. 65,452 (Oct. 21, 2011).

As EPA recognizes, existing information on the location and size of America's CAFOs is limited at best. Information held by the USDA is only available in an aggregated or statistical form, while the kind of information available from the states is not uniform. The benefit of EPA's proposed reporting rule is that it would serve as a resource for members of the public seeking authoritative, comprehensive information about CAFOs. The dearth of publicly available information is likely a factor contributing to the sort of behavior that CAFO operators perceive as an invasion of privacy or a security threat (e.g. flyovers and other investigative methods).

Thus, EPA ought to make the information it collects under the NPDES CAFO Reporting Rule public, and it ought to present the information in an accessible, searchable online format. Placing released information online minimizes the need for interested persons to submit Freedom of Information Act requests, which in turn minimizes the administrative burden and financial strain on EPA in filling such requests. An online database would also enable members of the public to find precisely the information that they seek.

Finally, AWI does not believe that EPA, in determining what information to collect, should consider the fact that such information would be released to the public. The existing regulations protecting confidential business information from disclosure are sufficient to protect the privacy of CAFO operators.

3. Collect specific information on the number and kind of animals confined on an operation, as well as specific information on the location of CAFOs.

Because AWI believes that collecting precise data would benefit the public, we support EPA's proposal to collect specific information on the number and kind of animals confined, as well as the specific location of CAFOs.

As mentioned above, information currently available on CAFOs is limited because it is presented in an aggregated, statistical form. By allowing operators to report generalized information – such as a watershed rather than a precise location or a range of animals rather than a precise number – EPA risks severely curbing the usefulness of the information gathered. If, as proposed, EPA's "range" requirement corresponded to the regulatory definitions of medium and large CAFOs, the information gathered would not capture a meaningful picture of the true size of the operation and its potential impacts. For example: for medium operations, the maximum allowable number of animals confined is more than three times larger than the minimum allowable number; for large operations, however, there is no range at all, only a minimum threshold.

AWI therefore recommends that EPA collect specific, precise information regarding the number and kind of animals on an operation, as well as the fixed location of an operation.

4. For contract operations, collect the name and address of integrators.

AWI does not support EPA's proposal to not collect the name and address of integrators on contract operations. Integrators play a vital role in determining the day-to-day operations on contract farms, and are often responsible for the quantity and quality of waste generated, as well as the methods for disposing of that waste. Consequently, there is no justification for failing to collect information about integrators on contract farms.

C. Conclusion

AWI supports EPA's adoption of NPDES CAFO Reporting Rule Option 1 because it will lead to a better understanding of the nation's CAFOs and their environmental impacts, and it will create an important public educational resource.

Thank you very much for your consideration. Please do not hesitate to contact me at 202-446-2139 or rachel@awionline.org should you have any questions or desire additional information.

Very truly yours,

A handwritten signature in black ink that reads "Rachel Mathews". The signature is written in a cursive style with a long horizontal flourish at the end.

Rachel Mathews, Esq.
Farm Animal Policy Associate