

A **Frank & West** White Paper



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## **Livestock Farms and Environmental Regulations**

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## Introduction

Raising livestock in Illinois is challenging. 2011 and beyond promises more of the same. Ever changing regulations lead to confusion about whom and what is regulated...

## FEDERAL REGULATIONS

The USEPA promulgated revised regulations for Confined Animal Feeding Operations (CAFOs) on February 12, 2003. The 2003 regulations expanded the number of operations covered by the CAFO regulations and included requirements to address the land application of manure from CAFOs...

## STATE REGULATIONS

In Illinois, the Illinois EPA has the authority to enforce the CAFO regulations...

## ILLINOIS DEPT. OF AGRICULTURE

The Illinois Department of Agriculture (IDOA) administers the Livestock Management Facilities Act that regulates the siting and construction of livestock production facilities...

## NRCS & EQIP

... a voluntary program that provides financial and technical assistance to livestock producers through contracts that provide financial assistance to help plan and implement conservation practices...

## CONCLUSION

...what control do you have over the environmental regulations? You have more control than you may know!



## INTRODUCTION

Raising livestock in Illinois is challenging. 2011 and beyond promises more of the same. Ever changing regulations lead to confusion about whom and what is regulated. Increased enforcement of these regulations lead to both USEPA and IL EPA unannounced farm visits. Site visits frequently lead to calls for compliance with regulations, requirements to file for a NPDES permit, violation notices, lawsuits, etc. Any of these cause farm owners and operators to lose valuable time operating their livestock.

This white paper is intended to provide livestock producers a window into:

- what the regulations are,
- who is regulating their farms,
- what to expect during farm visits,
- what to expect after farm visits,
- what is a NPDES permit,
- what are the requirements of a NPDES permit,
- what are the requirements if a farm expands,
- what funding is available and what is covered?

## FEDERAL REGULATIONS:

The USEPA promulgated revised regulations for Confined Animal Feeding Operations (CAFOs) on February 12, 2003. The 2003 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 on April 14, 2003, and authorized NPDES states were required to modify their programs by February 2005, and develop state technical standards. The rule was modified again and published as final in 2008. The 5<sup>th</sup> Circuit Court of Appeals recently ruled in a unanimous decision that the U.S. Environmental Protection Agency (EPA) had exceeded its authority and cannot require livestock operations to obtain Clean Water Act (CWA) permits – ***also referred to as a NPDES permit*** – unless and until they have a ***discharge*** into a waterway of the United States.

*What does this mean to current livestock production?* First let's look at what is considered a CAFO. A farm is a CAFO when:

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

A large CAFO is defined as a farm that stables or confines as many as or more than the numbers of animals specified in any of the following categories:



- 700 mature dairy cows, whether milked or dry;
- 1,000 veal calves;
- 1,000 cattle other than mature dairy cows or veal calves. Cattle includes but is not limited to heifers, steers, bulls and cow/calf pairs;
- 2,500 swine each weighing 55 pounds or more;
- 10,000 swine each weighing less than 55 pounds; etc.

A medium CAFO is:

- 200 to 699 mature dairy cows, whether milked or dry;
- 300 to 999 veal calves;
- 300 to 999 cattle other than mature dairy cows or veal calves. Cattle includes but is not limited to heifers, steers, bulls and cow/calf pairs;
- 750 to 2,499 swine each weighing 55 pounds or more;
- 3,000 to 9,999 swine each weighing less than 55 pounds; and where one of the following conditions are met:
  - Pollutants are discharged into waters of the United States through a man-made ditch, flushing system, or other similar man-made device; or
  - Pollutants are discharged directly into waters of the United States which originate outside of and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.

A small CAFO is:

- When a farm meets the discharge requirements of a medium CAFO but with animal numbers less than a medium.

#### STATE REGULATIONS:

In Illinois, the Illinois EPA has the authority to enforce the CAFO regulations. Enforcement of these regulations typically begins with a farm visit. Farm visits are usually conducted by regional IL EPA employees, but in the last few years farm visits have also been conducted by personnel from the Chicago USEPA office.

*What actions cause a farm visit?* The EPA (both US and Illinois) is determined to visit as close to 100% of the livestock farms in Illinois as possible over the next few years. So in essence, if you have never encountered an EPA farm visit to date, one should be expected. Also, just because your farm has already been visited by the EPA, it is not an indication that the EPA will never be back. If violations were identified during a farm visit you should expect the EPA to return as a follow up to make sure you have corrected them. Also, complaints from neighbors or other individuals will lead to an EPA farm visit since they are required to follow up on all complaints.



*What should you expect during a site visit?* First, the EPA by law can conduct an unannounced farm visit anytime. That is not always the case though. In most cases, the EPA will provide 24 hours notice prior to a farm visit, unless they have reason to believe there is an active situation that is harmful to the environment. The one thing that you should do once they arrive is inform them of all bio-security protocols for your farm. You should also let them know if these protocols indicate which parts of the farm should be visited first or last. The EPA should follow these protocols as long as they are reasonable and allow them to inspect the portions of the farm they believe are necessary.

*What is the EPA looking for and what is a discharge?* One not so simple word – discharges. In Illinois, livestock farms are allowed to have zero discharges. That may be the most important topic to discuss here. Unfortunately there is not a definitive definition of a discharge and right now it is up to the discretion and judgment of the EPA personnel conducting the farm visit. Some examples of discharges are:

- Runoff of manure or water coming in contact with manure from a feedlot or other non-vegetated areas,
- Runoff from a feed or commodity storage area,
- Runoff from a mortality composter,
- Direct release of manure from any storage structure,
- Runoff from animal watering systems,
- Runoff from washing, cleaning, or flushing pens, barns, manure pits,
- Runoff from areas that have collected dust from animal facilities,
- Runoff from dairy parlor systems,
- Runoff from land applications of manure if you don't have a CNMP.
  - Runoff from land applications are considered discharges. According to EPA regulations – *“The discharge of manure, litter or process wastewater to waters of the United States from a CAFO as a result of the application of that manure, litter or process wastewater by the CAFO to land areas under its control is a discharge from that CAFO subject to NPDES permit requirements, except where it is an agricultural storm water discharge as provided in 33 U.S.C. 1362(14).”*

What the last point means is that where manure, litter or process wastewater has been applied in accordance with a CNMP written for specifically for your farm and where all the records required within the CNMP are kept up to date, precipitation-related runoff is not considered a discharge and is protected as an agricultural storm water discharge.

The point here though should be very clear. Any release of anything other than clean water from your farm will likely be considered a discharge by EPA personnel.

*What should be expected after a farm visit?* If the livestock on your farm are confined, there are no discharges from the mortality, feed or commodity storage areas, the farm is operating under a comprehensive nutrient management plan and is maintaining all the required records for the farm the EPA will likely inform you that you are in compliance



and you will receive no further correspondence from them. If any of these are not the case, and there are discharges at your farm, you will be informed by the EPA that the farm stop all discharges immediately. The farm should also expect a letter from the EPA. That letter will at least demand that the farm provide a plan on what will be done by the farm to correct the problem areas. The letter will likely also demand that the farm file for a National Pollutant Discharge Elimination System (NPDES) permit. The letter will also require the farm to provide updates on what has been done to correct the discharges they identified during the farm visit.

*What is an NPDES permit?* An NPDES permit is required in Illinois for any CAFO that is designed, constructed, operated, or maintained such that a discharge will occur. This requirement to seek NPDES permit coverage applies to all owners and operators of CAFOs that discharge or propose to discharge regardless of the volume or duration of the discharge. Again the important word is discharge. If you do not discharge you are not required to have an NPDES permit.

*What are the requirements of an NPDES permit?* If a farm obtains an NPDES permit, there are dozens of things that the farm will now be required to do to stay in compliance. If the farm does not have a CNMP it will be required to develop and maintain one. By maintaining a CNMP, all the record keeping forms within the CNMP must be kept up to date at all times and be available for inspection or review at any time by EPA personnel. This can be in excess of 20 pages of records that must be kept up to date monthly, every other week or as often as weekly in some cases. Annual reports must also be developed for the farm and submitted to the EPA. These reports will document animal numbers during the past year, manure production and application, mortality disposal, etc.

An NPDES permit is significant for more than one reason. In addition to the reasons detailed above, an NPDES permit could prove costly as well. There are currently discussions in the Illinois congress that would place a fee on an NPDES permit. The fee is yet to be determined and may be a one-time charge or an annual fee. Keep in mind that the NPDES permit is a five-year permit so the fees will add up.

## ILLINOIS DEPARTMENT OF AGRICULTURE

The Illinois Department of Agriculture (IDOA) administers the Livestock Management Facilities Act that regulates the siting and construction of livestock production facilities across the state. These regulations include requirements regarding facility setback distances, facility design and construction standards, waste management plans, and livestock manager certification. This means that any additions or expansions of your farm livestock housing or waste holding areas require an approval from the IDOA before these structures can be built.

The regulations are basically split into two general categories: existing facilities and new facilities. For facilities that are existing and are considering expanding, the regulations



require that a notice of intent application for construction be submitted along with a full set of construction plans for the proposed structures.

For facilities that are considered “new,” the regulations require that a notice of intent application for construction be submitted that indicates the setbacks from the proposed facility. The larger the proposed facility the larger the setbacks from neighboring houses, businesses and common places of assembly will be. In addition, a full site investigation of the facility looking at flood plains and environmentally sensitive soil types, along with a full set of construction plans for the proposed structures are required to be submitted. Larger facilities will also be subject to a potential public meeting discussing the facility’s compliance with specific siting criteria.

*Are nutrient management plans required?* According to the Livestock Management Facilities Act an owner or operator of a livestock facility with greater than 1,000 animal units is required to develop, maintain and implement a nutrient management plan (NMP). A comprehensive nutrient management plan (CNMP) is similar to a NMP but has a significant amount of additional information. A CNMP is an important tool for livestock producers. A CNMP helps producers plan out their manure applications and utilize livestock waste as a valuable fertilizer. As discussed earlier, a CNMP also protects these applications from being considered discharges by the EPA, but only if the CNMP is kept up to date. A CNMP has another advantage over a NMP—it can be funded through the EQIP program.

#### NRCS & the EQIP PROGRAM

The NRCS defines the Environmental Quality Incentives Program (EQIP) as a voluntary program that provides financial and technical assistance to livestock producers through contracts that provide financial assistance to help plan and implement conservation practices. These practices address natural resource concerns identified within a CNMP.

In essence, the farm will work with a trained professional consultant to develop a CNMP and identify what areas of concern (considered resource concerns) the farm has and how the farm would like to correct them. The consultant should listen to what the future goals of the farm are and provide examples of ways that these goals can be met while at the same time addressing the resource concerns.

EQIP is a competitive process. EQIP applications compete for funding on a statewide basis. The NRCS utilizes a ranking process to determine which applications will be granted EQIP funding. All ranking criteria categories achieve the common EQIP objective of optimizing environmental benefits. EQIP has a continuous sign-up process; applicants can sign up anytime of the year at their local NRCS field office. Once a farm has completed the application, funding will be determined each year after October 1, the start of fiscal year for NRCS. The actual start date for funding changes from year to year, so it is important to have your CNMP complete and submitted to NRCS in order to qualify for EQIP funding.



*What is eligible for EQIP funding?* There are numerous components that are potentially available for funding through the EQIP program. Some examples with recent funding amounts are:

- Comprehensive Nutrient Management Plans (CNMP) – \$4,100 - \$6,100
- Waste Storage Structures – max of \$150,000 combined
  - Rigid Roof Structures
    - Compost Barns & Bed-Pack Barns
  - Liquid Waste Storage Structures
    - Earthen Holding Ponds, Concrete Tanks, Steel Tanks, etc.
  - Dry Manure Stack
- Waste Transfer Items – range of \$2,100–almost \$80,000
  - Pumps, Pipelines, Manure Agitators, Curbing and Alleys, Reception Pits
- Waste Utilization - \$57/acre with a max of \$36,000
  - In 2011 this was a one-year payment only.
- Access Roads – \$400 - \$33,000
- Closure of Waste Impoundments
- Mortality Composting Facility – \$9,000 - \$46,000
- Other Funded Items – Fencing, Filter Strips, Grazing Plans, Ponds, Roof Guttering, Tree/Shrub Establishment, etc.

## CONCLUSION

Weather, feed costs, and the current environmental regulations are just some of the challenges out there that make raising livestock in Illinois demanding. As a farmer you can't control the weather at all, and at best you may have some control over feed costs, but what control do you have over the environmental regulations? You have more control than you may know!

As a result of the recent ruling of the 5<sup>th</sup> Circuit Court of Appeals, as long as your farm does **not** have a discharge your farm is **not** required to have a NPDES permit. Sometimes small updates to your facility may stop a discharge situation and bring your farm into compliance. Other times it may take larger additions with significant capital investments. In either situation, there is potential funding available to help pay for these improvements. The professionals at Frank & West are available anytime to listen. There are no costs for a phone call. Frank & West would be happy to discuss your situation, what your options are and how they will conform to current environmental regulations.