



Concentrated Animal Feeding Operation Permits

Issue

Permitting of concentrated animal feeding operations (CAFO) has evolved on the federal and state level since Tennessee law required all CAFO operations to be permitted in 1998. Federal regulations have changed numerous times because of court rulings which also required changes in state regulations. Tennessee producers believe the permitting process is over burdensome and more restrictive than surrounding states.

Commodity groups, Farm Bureau, the Department of Agriculture, and the Department of Environment and Conservation attempted to revise the permitting process however, an agreement could not be reached for a solution. As a result, legislation brought by the Tennessee Dairy Producers Association and the Tennessee Poultry Association was introduced in the 2017 legislative session to only require CAFO operations that discharge wastes to be permitted. The Department of Environment and Conservation would no longer provide a state operating permit for producers unless the operations discharge. This concerned some producers who want a permit to prove compliance with water quality laws. The legislation passed with an effective date of March 1, 2018. The reason for the later effective date was to give state agencies and industry groups an opportunity to craft revised permit requirements that are more workable and less burdensome for producers. This is an effort to provide permit coverage as a means of protection in the event a CAFO has an alleged violation or third party legal action.

Background

The 1972 Federal Water Pollution Control Act, also known as the Clean Water Act, included within the definition of point sources the term concentrated animal feeding operations from which pollutants are or may be discharged. The law did not define or further describe this term. EPA later developed a definition based on the number of animal units. Permits were made available to operations that chose to discharge.

A hog operation lagoon spill in 1995 sent 25 million gallons of waste into North Carolina's New River. This spill placed nationwide attention on CAFO operations. The Clinton administration's Clean Water Action Plan included the development of a USDA-EPA Unified National Strategy for Animal Feeding Operations to minimize the water quality and public health impacts of animal feeding operations. In 1998, the Tennessee legislature passed Public Chapter 735 which required a permit for the construction, installation, and operation of a CAFO in Tennessee. This trend was also taking place in other states in order to comply with new federal proposals and address public attention on CAFOs.

Tennessee's first CAFO strategy was implemented in 1998 by the Department of Environment and Conservation and the Department of Agriculture. In 1999, the first general permits for CAFOs in Tennessee became effective based on this strategy. This strategy was developed based on proposed federal regulations and certain requirements already in place by EPA since 1976. A major difference in Tennessee's regulations and the federal regulations was that Tennessee required Medium CAFOs to also receive a permit if an operation was built or expanded after May, 1999, or an operation was located on a 303(d) listed watershed impaired by animal wastes.

The federal Unified National Strategy for Animal Feeding Operations was released in 1999 and was the precursor for new federal regulations for CAFOs. The Clinton administration released a proposed rule but the Bush administration placed the proposal on hold for review during the transition. A final CAFO rule was published in 2003 which included a "duty to apply" for any operation that fit the definition of CAFO regardless of whether the operation discharged. This required a change in state regulations and permits for CAFOs which went into effect

in 2004. In 2005, the 2nd Circuit Court decision in the *Waterkeeper* case vacated the “duty to apply” and made other changes to the federal regulations. This caused EPA to make further changes to the federal CAFO rules and as a result Tennessee changed the state CAFO rules again. Because of the *Waterkeeper* decision the Tennessee legislature passed Public Chapter 330 which allowed the Department of Environment and Conservation to offer state operating permits for operations that no longer were required to have a federal NPDES permit under the Clean Water Act which once again prompted changes to Tennessee’s regulations and permits.

Since Tennessee implemented a CAFO strategy in 1998 the regulations and permits have changed numerous times and the permit requirements maintained a “duty to apply” for Medium and Large operations which exceeds the federal requirements. The state permits also contain many of the onerous requirements in the federal permits which were designed for Large operations. Many Tennessee producers either want a less burdensome state permit or no permit requirement since CAFO operations are designed and operated to not discharge.

Questions

1. Are current CAFO permit requirements too burdensome?
2. Would CAFO owners want permit protection from allegations and lawsuits if the permit process and requirements were less burdensome?
3. What would be the public perception if CAFO owners were no longer required to be permitted?

Farm Bureau Policy (partial)

Poultry

We encourage individual producers to voluntarily adopt and follow litter/manure management plans. We urge the University of Tennessee Extension to promote the value of poultry litter as plant nutrient. Composted poultry litter is a high quality organic soil conditioner providing a slower release and longer lasting nutrient benefit than commercial fertilizer. We support aggressive research to address the inadequate scientific information concerning phosphorus. We urge more funding for stack houses, compost houses and other storage facilities through the farm agencies and the Tennessee Department of Agriculture. The Tennessee Farm Bureau and the University of Tennessee Extension should represent poultry growers in discussion and policy proposals affecting the quantity and timeliness of spreading poultry litter upon farmland. We urge the Tennessee Department of Agriculture to fund nutrient testing of poultry litter.