

COMPLIANCE WITH THE CLEAN WATER ACT: ANIMAL FEEDING OPERATIONS AND THE EPA

Jay Carr, Randall R. Mills, and John Williams

The Environmental Protection Agency (EPA) has begun inspections of cattle feeding operations for potential violations of the Clean Water Act (CWA). These inspections will take place on Animal Feeding Operations (AFO) and Confined Animal Feeding Operations (CAFO) that have shown some evidence that they may be polluting the waters of the State.

Four educational meetings were held in Northeast Oregon, sponsored by the local County Stock growers or Cattleman Associations and the OSU Extension Service. Bub Loiselle, manager of EPA's point source Compliance Division; and Eric Moegenberg, Oregon Department of Ag. (ODA) Confined Animal Feeding Operation Inspector from Pendleton, explained why EPA was beginning these inspections, the CWA rules, and the conditions that EPA considers in violation of the CWA. As a follow-up to these meetings we have written this overview of what we learned.

EPA is concentrating on "point source" pollution generated from either an AFO or CAFO operation, as defined below. Currently, EPA is concentrating its inspections on the AFO/CAFO operations with more than 300 head of cattle.

If you do *not* qualify as an AFO or CAFO operation, you are regulated under the "non-point" source pollution found in Section 208 and 319 of the Clean Water Act. These sections lay out incentives and grant programs to mitigate and correct non-point source problems. EPA is not inspecting these operations at the current time.

To determine whether your operation is an Animal Feeding Operation (AFO) or a Confined Animal Feeding Operation (CAFO):

AFO is a lot with cattle confined for 45 days and no or little vegetation.

CAFO is an AFO with one of the following additional characteristics:

- An AFO with 1 to 300 head with "Significant Discharge of Pollutants" into the waters of the State; *or*
- An AFO with 300 head or more and a discharge of pollutants into the waters of the State; *or*
- An AFO with 1,000 head or more of livestock.

The most important question EPA is looking at is, "**Does a rancher have animal waste discharging into the waters of the State from his cattle feeding area?**" If the answer is yes, then pollution is occurring as defined by the Clean Water Act.

To determine which of the AFO/CAFO operations with more than 300 head of cattle the EPA will inspect, the Agency is utilizing a couple of methods. First, they are doing aerial observations of the areas; and, second, they look at the various agency complaint lists (ODA, DEQ, EPA, etc.)

If your operation is selected for inspection, we have heard a variety of things that might be important:

- With no discharge there is no worry.
- EPA states that it will not select an operation for inspection without some evidence of a possible violation.
- You should participate in the inspection.
- If you have made improvements in your operation, tell the inspector.
- If you have participated in a watershed improvement project, tell the inspector.
- The inspector may use: water testing for E. coli and/or BOD (biological oxygen demand), photos of the discharge area as well as their personal observations, and the discussion with the owner as part of their decision making and record keeping.

Following an inspection, the inspector will write the report and send it to Seattle where a team of EPA individuals, including the inspector, will decide: Is there a violation? and what consequences will be imposed. Consequences from a violation can vary. EPA has the discretion to work with the operator by issuing a warning letter that a re-inspection will occur and including a timeline outlining by when the violations need to be addressed; or stiff fines can be imposed; or anything in-between.

When the consequences are made known, an operator needs to decide if they are fair. If the operator feels they are not fair, the concerns need to be communicated to the EPA. **The EPA does look at mitigating circumstances when imposing consequences; therefore, operators need to communicate to EPA any improvements to their operations that may be pertinent.** If EPA doesn't know the circumstances, the outcome may be harsher than is appropriate. The list of items EPA considers is listed below:

Nature of Violation	Circumstances
Extent and Gravity	Violations
Ability to Pay	History of Violations
Degree of Culpability	Economic Benefit
Other Matters as Justice May Require	

Until recently, Oregon ranchers have been following ODA rules for Confined Animal Feeding Operations. The CWA authorizes EPA to delegate to state agencies authority for implementation. EPA has delegated their implementation authority to the Department of Environmental Quality in Oregon. DEQ has signed agreements with ODA for implementation of the Confined Animal Feeding Operations rules. EPA is stepping in where DEQ has not implemented any program for AFO operations and is spot-checking ODA on CAFO inspections. This will continue until EPA and DEQ come to agreement on the appropriate rules, and who will implement them.

In addition to the lack of AFO inspections, the EPA rules are more stringent than the current ODA rules. EPA will be using these more stringent rules when doing inspections. The differences are listed below:

Condition	ODA	EPA
Days of Confinement	4 months	45 Days
Hardened Surface	Yes	No
Lack of Vegetation	NA	Yes
Waste Handling	Yes	NA

These inspections are separate from the Senate Bill 1010 plans that are being developed around the state. The SB1010 plans cover "non-point source" pollution while the inspections are only for "point source" pollution.

For more information, you can contact Jay Carr, 2610 Grove St., Baker City, OR (541) 523-6418; Randy Mills, 721 SE Third St., Suite 3, Pendleton, OR (541) 278-5403; or John Williams, 668 NW 1, Enterprise, OR (541) 426-3143; or your local county Extension specialist.

Definitions:

- AFO Animal Feeding Operation
- CAFO Confined Animal Feeding Operation
- EPA Environmental Protection Agency
- ODA Oregon Department of Agriculture
- DEQ Department of Environmental Quality

